

A year into the coronavirus pandemic, so many of us are craving the freedom to gather with friends and community. That possibility, largely taken for granted before, is slowly returning.

Commented [KH1]: Or "people" if we're not comfortable with 2nd person.

The ability to gather safely has been threatened before, not by a virus but by legal attack on the First Amendment right to assemble — until a critical Supreme Court case set an important precedent protecting it. On June 30, 1958, the Supreme Court issued a ruling vitally important to the civil rights movement and First Amendment jurisprudence. That day, the high court ruled in *NAACP v. Alabama ex. rel. Patterson* that the state of Alabama could not force the National Association for the Advancement of Colored People to disclose its rank and file membership lists.

Commented [KH2]: I'd want to ask the expert about this before including — the quote at the end makes it sound like the ruling was based on the Court's interpretation of the speech part of 1A vs assembly.

Commented [KH3]: Let's use a little foreshadowing of the positive outcome here, before backing up and illustrating the conflict. This will create interest, tension and resolve.

As the civil rights movement was beginning to gain strength in the mid-1950s, several Southern states took legal action to restrict civil rights advocacy groups like the NAACP. In Louisiana, the state tried to require local NAACP groups to hand over their members' information. Those that did were immediately in danger. When other groups refused, the Louisiana NAACP was forced to shut down — and it looked like Alabama would be next.

Commented [KH4]: Let's start out with a strong connection to the audience. What are people thinking or worrying about right now that connects to this case and could help people understand why it's important?

Commented [KH5]: Let's add some context for folks who may not have taken a US history class for a while.

Commented [KH6]: I think this initialism should be ok on first reference — would ask copy editor to confirm.

Commented [KH7]: This related case really illustrates the stakes.

The Lawsuit

In 1956, Alabama Attorney General John Patterson filed a lawsuit claiming ~~contended~~ that the NAACP had violated a state law requiring out-of-state corporations to register and pay state fees for conducting interstate business and file certain paperwork. The NAACP, based in New York, ~~believed~~ assumed for many years it was exempt in state court

Commented [KH8]: I'd want to ask the expert to be sure on this — I know both issues were in 1956 but not sure of exact dates (Source: <https://www.crmvet.org/tim/timhis56.htm>)

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Commented [KH10]: Funny, I know someone by that name (he's much nicer though)!

seeking to bar the NAACP, which had a regional office in Alabama, from operating in the state. Such attempts were not unique to Alabama, as other Southern states also tried various litigation strategies to thwart the effective civil rights advocacy of the NAACP, which they viewed as a group of harmful agitators.

The attorney general ~~contended~~ that the NAACP had violated a state law requiring out-of-state corporations to register and pay state fees for conducting interstate business. The NAACP, based in New York, ~~assumed~~ for many years it was exempt.

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Before a court hearing, Alabama filed a motion ~~The state~~ asking that ~~told~~ the NAACP it had to produce numerous types of records, including bank statements, leases, deeds and membership lists, including the names and addresses of rank and file members. The group agreed to submit some documents, including information about its leaders, but refused to turn over other members' personal information. The Alabama NAACP, like the Louisiana branch, could be shut down.

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But disclosure of membership in the NAACP could have had dramatic consequences for Alabama residents at that time, as it had for those in Louisiana. In his memoir, *A Matter of Law: A Memoir of Struggle in the Cause of Civil Rights*, Robert L. Carter — NAACP general counsel who argued this case — described the harsh consequences of

~~revealing members' names and addresses:~~ "To do so would expose our members to the threats of lost jobs, physical violence, even possible loss of life, and would risk serious danger to their families," said ~~in his memoir, A Matter of Law: A Memoir of Struggle in the Cause of Civil Rights, NAACP lawyer Robert L. Carter in his memoir. NAACP general counsel who argued this case — described the harsh consequences of revealing members' names and addresses:~~

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In his memoir, Carter also ~~said he~~ believed the ~~case implicated core issue was a~~ First Amendment ~~one issues:~~

"I was also certain that our activities, which involved only peaceful protests and activity against racial discrimination imposed and enforced by the state, were protected by the First Amendment." ~~NAACP lawyer Robert L. Carter in his memoir, A Matter of Law: A Memoir of Struggle in the Cause of Civil Rights~~

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The ~~NAACP lost in~~ Alabama state court ~~didn't agree.~~ Then, when the NAACP continued to refuse to hand over records, ~~a~~ trial judge ~~imposed~~ issued an astronomical fine of \$100,000 ~~for continuing contempt for the civil rights group's alleged violation of the statute.~~ The Alabama Supreme Court twice refused to ~~grant review of this contempt judgment~~ hear the case, but the NAACP kept advocating for the right to assemble.

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The Case

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~~However~~ Finally, the U.S. Supreme Court ~~granted review~~ agreed to hear the case, with Robert Carter arguing for the NAACP. ~~and issued its famous ruling in an opinion by~~ On the court at the time was Justice John Marshall Harlan II, ~~grandson of — the grandson of the first~~ Justice John Marshall Harlan, ~~who who was had been~~ known as "the Great Dissenter" for his lone ~~dissents in the odious pro-segregation decisions The Civil Rights Cases (1883) and Plessy v. Ferguson (1896)~~ voice supporting the rights of civil rights activists in several cases during his time on the court.

Commented [KH16]: Emphasizing the duration of the fight.

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~~This time, Justice Harlan was not to be the lone dissenter on the court.~~

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Harlan wrote that the court agreed with Carter's argument that being forced to reveal the identity of the NAACP's rank-and-file members would put them at risk. In the court's opinion, the state of Alabama had failed to prove that its justification for needing the member information outweighed the limitations on members' right to freely associate the disclosure requirement would cause.

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"Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs," Harlan wrote in NAACP v.

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Alabama. ~~Petitioner has made an uncontroverted showing that on past occasions~~ revelation of the identity of its rank-and-file members has exposed these members to

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economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.”

In a unanimous ruling To Harlan, the “compelled disclosure” of the membership lists would prohibit these NAACP members from exercising their assembly and association rights under the First Amendment. He concluded that “Alabama has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have.”

On June 30, 1958, the Supreme Court issued a ruling vitally important to the civil rights movement and First Amendment jurisprudence. That day, the high court ruled in issued its decision, written by Justice Harlan, in NAACP v. Alabama ex. rel. Patterson, that The state of Alabama could not force the National Association for the Advancement of Colored People NAACP to disclose its rank-and-file membership lists.

~~The Precedent Carter, who has been a federal district court judge since 1972, wrote that the decision was a “great victory, but enforcement took years.” It actually took other decisions by the U.S. Supreme Court in the same litigation, culminating in the 1964 NAACP v. Alabama, also written by Justice Harlan, to ensure that the state would not attempt to oust the civil rights group from the state.~~

The high court’s ruling was vitally important not only to the civil rights movement but to our understanding of the First Amendment.

However, the Court’s decision on June 30, 1958, was a historic decision in many ways. Certainly, the decision sent a message to civil rights activists that the Supreme Court would scrutinize government practices that infringed on limited constitutional freedoms. The decision also proved important to First Amendment law, recognizing the importance of freedom of association and anonymous expression.

“Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs,” – Justice John Marshall Harlan II writing the majority opinion in NAACP v. Alabama.

First Amendment expert Robert M. O’Neil, president of the Thomas Jefferson Center for the Protection of Free Expression, said the decision also “marks the Court’s willingness to apply the First Amendment in non-literal contexts ... something other than the spoken or printed word.”

The Work Continues

~~Carter, who has been went on to be a federal district court judge since 1972, wrote that the decision was a “great victory, but enforcement took years.” It actually took six more years of court battles other decisions by the U.S. Supreme Court in the same litigation.~~

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Commented [KH22]: Rephrasing slightly to emphasize the First Amendment aspects, since the specific cause is less our focus.

Commented [KH23]: It sent that message regardless of cause, so shifting the focus here to the broader 1A implications.

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Commented [KH25]: I’m not quite sure what this quote adds. It sounds like it’s talking about the ruling in relation to the speech clause, rather than the assembly clause. I’d want to talk to the expert author about which clause(s) the ruling was based on in order to clarify this quote.

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culminating in the 1964 NAACP v. Alabama, also written by Justice Harlan, to ensure that Alabama's the state would not continued attempts to oust the civil rights group from the state would finally end. Those cases culminated in 1964 with NAACP v. Alabama, also written by Justice Harlan, which upheld the 1958 ruling and again warned Alabama against "unnecessarily broad" government control which "invade[s] the area of protected freedoms." Since then, these rulings have been cited in dozens of First Amendment court cases.

When it's finally safe to gather again, it will be possible, in part, thanks to Alabama First Amendment advocates like Robert Carter, Supreme Court justices like John Marshall Harlan (and his grandfather) and the ongoing work of upholding First Amendment freedoms.

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Commented [KH28]: Let's conclude by bringing it back around to our original hook (Gathering) with one final reminder of why it matters to people today.

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