

tended to business corporations or associations or to labor organizations which are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll v. Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co. v. Taylor*, 234 U. S. 224, 227; *Bunting v. Oregon*, 243 U. S. 426; *Sproles v. Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 400, and cases cited. And for this reason it may exclude from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation. *Ziffrin, Inc. v. Reeves*, 308 U. S. 132, 140; cf. *Union Bank & Trust Co. v. Phelps*, 288 U. S. 181, 186.

We would not have granted certiorari to review so unsubstantial a question, and all the other issues, as presented by the record now before us, are, for reasons which we have given, inappropriate for decision in a declaratory judgment proceeding. The writ of certiorari will therefore be

Dismissed.

CONGRESS OF INDUSTRIAL ORGANIZATIONS
ET AL. *v.* McADORY ET AL.

CERTIORARI TO THE SUPREME COURT OF ALABAMA.

No. 855. Argued April 3, 4, 1945.—Decided June 11, 1945.

1. Decision in this case is controlled by the principles governing *Alabama State Federation of Labor v. McAdory*, *ante*, p. 450. P. 477.
2. This Court will not pass upon the constitutionality of legislation in a suit which is not adversary, or in which there is no actual antagonistic assertion of rights. P. 475.
3. The Court cannot say that the present proceeding is adversary as to § 7 of the Bradford Act (Alabama Laws of 1943, No. 298) in view of the agreement by respondents to refrain from enforcing that section until its validity is finally determined by this Court,

and in view of the decision in the *Alabama State Federation of Labor* case. P. 475.

4. In the absence of an authoritative construction of § 16 by the state courts, this Court cannot say whether that section will be interpreted so as to include within its scope employees which petitioners intend to admit to membership, and thus cannot pass on the constitutional validity of the section as applied to the future admission of members. P. 476.
5. The contention in this case that § 16 of the Bradford Act conflicts with the National Labor Relations Act does not appear to have been properly presented to the state courts, nor to have been passed upon by those courts, and this Court upon review is without jurisdiction to consider it in the first instance. P. 477.

Writ dismissed.

CERTIORARI, 324 U. S. 832, to review a judgment, 246 Ala. 198, 20 So. 2d 40, which affirmed a judgment sustaining in part the constitutionality of a state statute.

Mr. Lee Pressman, with whom *Messrs. Crampton Harris* and *Frank Donner* were on the brief, for petitioners.

Messrs. James A. Simpson, John W. Lapsley and *John E. Adams*, with whom *William N. McQueen*, Acting Attorney General of Alabama, was on the brief, for respondents.

Briefs were filed by *Solicitor General Fahy, Messrs. Robert L. Stern, Alvin J. Rockwell, Miss Ruth Weyand* and *Mrs. Elizabeth W. Weston* on behalf of the United States; *Messrs. Arthur Garfield Hayes* and *Osmond K. Fraenkel* on behalf of the American Civil Liberties Union; and *Mr. Paul O'Dwyer* on behalf of the Workers Defense League, as *amici curiae*, in support of petitioners.

MR. CHIEF JUSTICE STONE delivered the opinion of the Court.

This suit, brought in the state courts of Alabama for a declaratory judgment adjudicating the constitutional validity of the Bradford Act, No. 298 Alabama Laws of 1943, (Code 1943, Tit. 26, §§ 376, *et seq.*), and for an injunction,

is a companion case to *Alabama State Federation of Labor v. McAdory*, ante, p. 450.

Petitioners are the Congress of Industrial Organizations, a national labor organization, and certain affiliated labor organizations, whose members are employed within the State, and certain of their officers. Petitioners brought the present suit in the State Circuit Court against respondents who are county officers charged with the duty of enforcing the Act, praying a declaratory judgment that the Act as a whole and particularly §§ 7 and 16, among others, are unconstitutional under the Federal and State Constitutions, and are invalid because in conflict with the National Labor Relations Act, and praying that an injunction issue.

After a trial upon evidence the Circuit Court adjudged certain sections of the Act, not here in issue, to be invalid in whole or in part. In other respects it held the Act constitutional and valid. It found that the evidence disclosed no effort on the part of respondents to enforce the provisions of the Act declared to be invalid and accordingly denied an injunction. On appeal the Supreme Court of Alabama affirmed, 246 Ala. 198, 20 So. 2d 40, for the reasons stated in its opinion in the *Alabama State Federation of Labor* case.

We granted certiorari, 324 U. S. 832, on a petition which urged that §§ 7 and 16 of the Act deprive petitioners of their civil rights in violation of the constitutional guarantees of free speech and assembly; that §§ 7 and 16 conflict with the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*; and that § 7 denies petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment on the ground that its provisions have not been extended to employers' associations, and that the Act excludes from its operation labor organizations which are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*

The record shows that the respondents have agreed not to enforce § 7 of the Act until the final decision as to the section's validity by this Court in *Alabama State Federation of Labor v. McAdory, supra*. Since we have held in that case that it is inappropriate to pass upon the constitutional validity of § 7 on the record presented, we cannot say that the present proceeding is adversary as to § 7. The Court will not pass upon the constitutionality of legislation in a suit which is not adversary, *Bartemeyer v. Iowa*, 18 Wall. 129, 134-5; *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U. S. 339; *Atherton Mills v. Johnston*, 259 U. S. 13, 15; *Coffman v. Breeze Corps.*, 323 U. S. 316, 324, or in which there is no actual antagonistic assertion of rights. *Cleveland v. Chamberlain*, 1 Black 419; *Swift & Co. v. Hocking Valley R. Co.*, 243 U. S. 281, 289; *Norton v. Vesta Coal Co.*, 291 U. S. 641; *United States v. Johnson*, 319 U. S. 302.

Upon an examination of the record in this case we find that it shows that petitioners or some of them have members who are employed in the State of Alabama in industries whose employees are subject to the National Labor Relations Act, and that they act in the State and are certified as bargaining representatives of such employees under the Act. But the extent to which they act in the State as bargaining representatives of employees in industries which are not subject to the National Labor Relations Act does not appear, and consequently the record affords no adequate basis for an adjudication of the extent to which for that reason the petitioners or some of them may be rightly subject to local regulation even though they also represent employees in other industries which are subject to the National Act.

The record does not show whether or not petitioners provide insurance benefits for their members. The State Supreme Court has construed § 16 as inapplicable whenever it would otherwise "interfere with or void any in-

insurance contract now in existence and in force" and, as construed, has held it valid as applied to petitioners. On this state of the record we are unable to say to what extent § 16 can be deemed applicable to members of any of petitioners because of existing insurance arrangements. For this and the other reasons stated in our opinion in the *Alabama State Federation of Labor* case the record does not present a case calling for decision of the constitutional validity of § 16 as applied to any existing union members.

Petitioners nevertheless assert that they intend to admit such supervisory employees as members in the future, and that the Supreme Court of Alabama in the *Alabama State Federation of Labor* case has held that such future "executive, administrative, professional, or supervisory" employees are not excepted from the provisions of § 16 by reason of their acquisition as such employees of insurance benefits. Although there is evidence in the record indicating that some of petitioners who have non-supervisory members admit to membership employees whom they designate as "supervisory" in the words of the statute, and will continue to do so, there is also evidence that they do not admit supervisory employees who have the right to "hire and fire." The Supreme Court of Alabama did not in its opinion in this case or in the *Alabama State Federation of Labor* case define the statutory language "executive, administrative, professional, or supervisory employee." Thus on the basis of the record before us we do not know whether those employees which petitioners intend to admit to membership are such as are included in § 16. We do not know that § 16 will not be interpreted to embrace only those employees which have the authority to employ and discharge employees. And so it does not appear that the statute will be applied so as to raise the federal question which we are asked to decide.

Further, the contention that § 16 conflicts with the National Labor Relations Act, cf. *Hill v. Florida*, *post*, p. 538, was not passed on by the Circuit Court, was not raised by assignment of error in the Alabama Supreme Court, and that court did not pass on that question either in its opinion in this case or in its opinion in the *Alabama State Federation of Labor* case which it adopted as controlling. The Alabama Supreme Court will not consider errors which have not been assigned, *Rowland & Co. v. Plummer*, 50 Ala. 182, 197; *Pettibone-Taylor Co. v. Farmers Bank*, 156 Ala. 666, 46 So. 751; *Malaney v. Ladura Mines Co.*, 191 Ala. 655, 65 So. 666; *Nichols v. Hardegree*, 202 Ala. 132, 79 So. 598; *Halle v. Brooks*, 209 Ala. 486, 96 So. 341, or which have not been specifically and precisely raised in the assignments of error, *Kinnon v. Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397; *Carney v. Kiser Co.*, 200 Ala. 527, 76 So. 853; *Hall v. Pearce*, 209 Ala. 397, 399, 96 So. 608; *Jackson Lumber Co. v. Butler*, 244 Ala. 348, 13 So. 2d 294, 298. Since the State Supreme Court did not pass on the question now urged, and since it does not appear to have been properly presented to that court for decision, we are without jurisdiction to consider it in the first instance here. *Caperton v. Bowyer*, 14 Wall. 216, 236; *Hulbert v. Chicago*, 202 U. S. 275, 280, 281; *Dorrance v. Pennsylvania*, 287 U. S. 660; *Chandler v. Manifold*, 290 U. S. 665; see also *Flournoy v. Wiener*, 321 U. S. 253; *Charleston Assn. v. Alderson*, 324 U. S. 182, 185, and cases cited.

We find no other factual differences calling for comment between the case presented by the record here and that presented in the *Alabama State Federation of Labor* case. Our decision here is therefore controlled by our decision in that case. The question raised as to the equal protection of the laws is too unsubstantial to merit review. The other issues, as presented by the record now before us, are, for reasons stated at length in our opinion in the *Alabama State Federation of Labor* case, inappropriate for decision

in a declaratory judgment proceeding. The writ of certiorari is accordingly

Dismissed.

KEEGAN *v.* UNITED STATES.

NO. 39. CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.*

Argued November 9, 10, 1944.—Decided June 11, 1945.

1. The evidence in this case was insufficient to sustain conviction of the petitioners, members of the German-American Bund, for conspiracy knowingly to counsel others to evade service in the armed forces of the United States, in violation of § 11 of the Selective Training and Service Act of 1940. Pp. 488, 494.

Opinion of ROBERTS, J., in which FRANKFURTER and MURPHY, JJ., concur:

2. Promulgation and communication of Bund Command No. 37 was not in itself a counsel to evade; evidence of the general disposition of the petitioners either towards the Government of the United States or towards the Selective Service Act did not make the Command a counsel to evade; and the evidence and oral statements of the various petitioners at committee meetings and unit meetings of the Bund did not supply the basis for a finding, beyond a reasonable doubt, of counselling, or intending to counsel, or conspiring to counsel, evasion of military service within the meaning of § 11 of the Act. P. 494.

BLACK and RUTLEDGE, JJ., concur in separate opinions, pp. 495, 498. 141 F. 2d 248, reversed.

CERTIORARI, 322 U. S. 719, to review a judgment affirming convictions of conspiracy in violation of § 11 of the Selective Training and Service Act of 1940.

Messrs. John F. X. Finn and Harold W. Hastings and Mr. William H. Timbers, pro hac vice, with whom Messrs.

*Together with No. 44, *Kunze et al. v. United States*, also on certiorari to the Circuit Court of Appeals for the Second Circuit.