giving the fetus all constitutional rights including the right to life from the moment of conception, is under debate in the Senate majority caucus.

Sen. Sandra O'Connor (R-Paradise Valley), Senate Majority Leader, is hopeful that the bill will go to the floor before the end of this legislative session. "I'm working hard to see to it that no matter what the personal views of people are, the measure doesn't get held up in our caucus."

Note: Attached is an affidavit signed by former Arizona State Senator Trudy Camping, stating that O'Connor voted against the memorial in caucus.

[From the Phoenix Gazette, May 15, 1974]

PRO-LIFE HEAD RAPS SENATE GOP

The president of Arizona Youth for Life has blamed the GOP Senate caucus for the failure of a legislative memorial against abortion to be passed.

Margaret Saunders of Scottsdale, head of the 400-member student organization formed recently, said, "No other measure up for the state legislature's consideration this session had such an overwhelming demonstration of citizen support."

She said that more than 10,000 persons attended a prolife rally at the State Capitol in January and 35,000 persons signed petitions supporting the memorial introduced in the House, which approved the measure 41-43 in March.

"Thus the very heavy responsibility for blocking this measure to death rests squarely with the Senate GOP caucus," which did not schedule the proposal onto the Senate floor for action. Miss Saunders said.

She said the group will "increase our determination to electorally remove from office that insensitive group who blockaded the efforts of so many other conscientious legislators of both parties."

PHOENIX, ARIZONA, *July 23, 1981.*

To Whom It May Concern:

While serving in the Arizona State Senate from 1971-1974, I was a member of the Judiciary Committee and a member of the Majority Caucus.

On April 23, 1974, HCM 2002—extending protection to the unborn, was passed out of Judiciary Committee. It was amended to allow for incest and rape.

After that it was considered in the Majority Caucus, possibly on May 1st, but did not receive the necessary votes for further consideration.

In both the Committee and the Caucus, Sen. O'Connor voted no—the bill was killed.

Mrs. TRUDY CAMPING,
Former State Senator.

The CHAIRMAN. Our next witness is Dr. Carl McIntire, representing the International Council of Christian Churches. Dr. McIntire, come around.

Dr. McIntire, if you will speak for 5 minutes and then be subject to questions, the blue light means you are on; the yellow, there is 1 minute left; and the red, your time is up.

Will you stand and be sworn, please?

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. MCINTIRE. So help me God.

The CHAIRMAN. You may proceed, Dr. McIntire.

TESTIMONY OF DR. CARL McINTIRE, PRESIDENT, INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES

Dr. MCINTIRE. Mr. Chairman, Members of the U.S. Senate, my name is Carl McIntire. I live in Collingswood, N.J. I am pastor of the Bible Presbyterian Church there. I appear in my capacity as president of the International Council of Christian Churches. This

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is an agency set up by fundamental churches over the world, has a membership of 334 Protestant denominations in 86 states.

First, let me identify myself fully with the testimony you have just heard from Dr. Willke and Dr. Gerster. I am here, however, in connection with the matters of liberty as they pertain to our churches in this country. The first amendment guarantees the free exercise of religion, and our Bible Churches and our fundamental churches and pastors have suffered incalculable loss at the hands of the U.S. Supreme Court, which not only refuses to hear our cases but is responsible for abridging our freedom of religion.

It had been the hope of many Christians that President Reagan would give us a new beginning on the Supreme Court, too. Judge O'Connor has her position stated in William & Mary Law Review; she has verified it here. We cannot accept it and we cannot accept her.

First, I think we must recognize that there has been and is a religious upheaval in this country, in which the free exercise of religion is involved. Churches and people are separating from the major denominations, leaving the National Council of Churches and the World Council of Churches. When this is done, the rights of these people are then denied by the courts, in particular the Supreme Court.

This covers the whole realm or range of religious activities: Bible conferences, FCC regulations, IRS legislation, Justice Department decisions, civil rights taking preference over religious rights, mailing permits for religious papers, the grantings of visas, chaplains in the armed services, recognition of accrediting agencies, and the restriction of international congresses and general bureaucratic harassment. There is hardly a realm of religious activity where these new and separated religious bodies are not suffering and being denied their free exercise of religion.

Justice Connor made her position clear in the Law Review, and she has accepted an expounds the position of the Burger Court on abstention, that the Federal court should abstain from intervening in these State courts as they handle these constitutional matters.

Senator, I speak from bitter and costly experience, in case after case and constant court litigation for the past 16 years. After my church broke away from the United Presbyterian Church because of its new, modernistic doctrines and apostasy, we started a Bible conference in Cape May, N.J., called the Christian Admiral. The city of Cape May refused to give tax exemption to this property. The State law provided for exemption under the free exercise of religion.

The litigation consumed 6 years and cost more than the taxes would have cost. The highest Tax Court, however, gave full tax exemption to the Bible Conference. When the appeal was taken up to the State superior court where the State political pressures abound, it was reversed. Finally, when the case reached the Supreme Court of the United States, it refused to look at it.

Though the city gave tax exemption to a bingo hall run by the Roman Catholic Church in the center of town, our Bible Conference pays taxes on the hall where daily and Sunday religious services are conducted. There is now no appeal. Judge O'Connor's view of State court decisions being accepted, prevailed. This is the

only Bible Conference in the State that pays taxes, but we are separated Presbyterians and in a great deal of trouble.

Senator, I have sat here during these 3 days and listened to this testimony. I have not heard of a single Senator asking any questions in this whole, broad area where our fundamental churches are having so much trouble with the courts. You, Senator, were the only one that asked a question about the free exercise of religion; you brought up the question of prayer, but you did not go into the question of prayer and Bible reading.

Senator, I have sat here with frustration. I have heard these Senators say that if something did come up, it might change their mind. Here we are now, I guess there is only one Senator left—that is you—and I brought up this whole area that has not even been looked into. Nothing has been said whatsoever about Judge O'Connor's position in regard to this resolution or this Memorial 2003 back there in April of 1973, in which she succeeded in blocking a memorial to the President and to the Congress asking for full first amendment rights to be given to broadcasters.

We would like to have her questioned on that matter because, as a result of that, that is the issue, that is the case where we lost our radio station WXUR. We did not have our full first amendment rights.

Senator, I raise this question of radio broadcasters, 8,000 stations in this country are involved. They are fearful. You cannot get into controversial issues in these questions because of the Supreme Court of the United States. When we finally got up there, Senator, they would not hear us, and we have suffered incalculably.

There is the question here of church properties, a 5 to 4 decision back there in September 1979. Who gets the properties of these churches that are withdrawing from the National Council of Churches. It is a broad issue all over this country.

Then we have the question here, Senator, of Shelton College. We have been 2 years of litigation with the State court taking the position of Judge O'Connor and the Federal Courts intervening and saving the college's life from being closed down. That whole thing has involved already 2 years of litigation, 200,000 dollars' worth of cost to the college. The issue is coming right up, there is an appeal before the Supreme Court right now simply on the jurisdiction question, and when it gets there it is Judge O'Connor's position as she stated here in this Law Review article from William & Mary, the same identical thing that she is in favor of, now she is going to be asked to make a decision on.

Senator, may I tell you, I have listened here and I saw these Senators come and say, "If something developed, it might change our mind." I am talking only to you, Senator. I want to say I object. A matter of such weight to the churches, a matter of such great concern to our liberty where we are suffering should be heard by this entire committee.

In fact, I would like to request that Judge O'Connor be brought back and answer questions concerning this overture that she opposed. She was the one that led in defeating it in Arizona, that the radio stations get their full first amendment rights. She was not for it. It involves our preaching. It involves our Bible Conference. It involves these things.

We come down to the end of the road, sir, I think this thing has been stacked. We have had quite a situation here. The President said, "Don't talk about it. Wait until we get to the hearing, and if something comes up at the hearing then you can judge this thing," but, sir, I have been here all this time and no one except you has touched this broad field of religious rights, the first amendment rights. Our separated churches, our independent churches are suffering. It goes into this question of our schools and whether we can get a license or teach.

Senator, I want to protest it. I want to protest coming down to the end of this hearing and only having you to talk to. I sat here and listened at every Senator here on the bench, I listened to them, and a majority have already said they are going to vote for her, so how in the world could we even change their minds at the present time with a 5-minute speech.

Thank you.

The CHAIRMAN. Dr. McIntire, you mentioned a memorial considered in the Arizona State Legislature which called for the President and Congress to give full first amendment rights to broadcasters in programing. Is there in your mind a distinction between the scope of first amendment rights guaranteed to the licensee of publicly owned airways and the first amendment rights, for example, of a newspaper publisher?

Dr. MCINTIRE. There should be none, sir, absolutely none. The first amendment is not restricted. One of the good Senators here said yesterday there was no difference now between—that TV had become news, and he mentioned the term "the press." I think that the restraints that have been placed there by the FCC should be removed and that the entire radio world should have the same identical freedom as the press, and be subject to the same restraints of law such as slander and libel and things of that sort.

If we had that, I could talk, sir. I have lost 400 radio stations from my broadcast because of what the Federal Communications Commission did in killing WXUR. When we went to the U.S. Supreme Court, they would not hear it. Senator, you yourself made a statement on the floor of the Senate saying that we had lost our first amendment rights, and Sam Ervin made a 6,000-word speech on the Senate floor saying that it should not have been done.

It has put fear, and it has put anxiety, and radio station owners will not permit controversial or issue problems to be dealt with for fear of complaints that are carried to the FCC. The expense is great, and when they get up there, of course, they could lose their license. It is the pressure that is brought, and this pressure, Senator, has been brought by the religious groups.

It was the United Church of Christ representing the National Council of Churches that went after radio station WXUR in Philadelphia, which Faith Theological Seminary owned, of which I am the pastor. After 8 years of litigation, we got here to the U.S. circuit court here in Washington, and Judge Bazelon was the chairman. The only thing left at that time after all those hearings was the question of the programing, before the station ever went on the air, the original application. It was alleged that it did not record the full intentions of the station, and therefore it was imperfect.

Senator, Judge Bazelon looked at that. He said the FCC has no right to require in its license application the knowledge of what kind of programing they are going to have. He said the station could live.

The CHAIRMAN. I recall when you lost your station I thought it was unjust. I think you were really denied your first amendment rights when that happened.

Dr. MCINTIRE. Senator, David Bazelon made a beautiful opinion in which he said that is what happened, but here we come to Judge O'Connor. She sat here and there were two things she said, both of which are in the general area which have afflicted us. Now she would not give any specifics but the general statements she made do apply to these practice incidents that we have suffered on.

For instance, she said that in the Supreme Court's hearing of constitutional questions, if there were other issues involved in the case by which the case could be settled, they were handled and the question of the Constitution was left not decided. Now she made a statement to that effect. Well, that is exactly what happened in the *WXUR* case.

Bazelon said the first amendment was there. These two judges, Wright and Tamm, said, "Well, there is this other question of the application. There is fraud there. We will say that it should not be continued." We went to the Supreme Court and, of course, they would not even hear it.

Our view, Senator, is that when you get to the first amendment rights of religion, that is primary. The greatest liberty we have is the liberty to serve God. The whole Constitution is designed to the end that we will be able to be free to serve God. Our view is that when cases come into the court procedures, they should have precedence, and if there is a question of a first amendment right of a religious minority coming before the Supreme Court, that should take precedence over any lesser questions that are there. Our religious rights must be first. They are not that at the present time, and her statement places her in the Court on the same level as we have been operating. Senator, we wanted a new beginning in the Court, and we do not have it in this.

The CHAIRMAN. Well, I am not too sure about that.

Now, Dr. McIntire, you have cited in your prepared testimony and here today you have cited several shocking examples of the use of the taxing power to pressure and coerce churches and church-sponsored schools. What action would you recommend that Congress take in curbing governmental interference with the free exercise of religion, and what action do you feel the Supreme Court ought to take in insuring that litigants seeking protection of the first amendment are not arbitrarily shut out?

Dr. MCINTIRE. Well, Senator, the Supreme Court is our guardian. The Supreme Court should make it very, very clear in these cases that the tiniest religious minority will be heard. We cannot be heard. We cannot get in the front door. We have never been able to get in that Supreme Court. That is No. 1.

The other aspect of this is, I feel that the Congress of the United States, every man takes a vow to support the Constitution. They should look into these matters and correct the possibility of such abuse in the Federal Communications Commission, in the Internal

Revenue, where they are going after religious schools right this very minute. We have the *Bob Jones* case that is in the courts right now.

There are a good many cases and it is in that area, I believe, that the Congress of the United States should protect these constitutional rights of the religious minorities. Senator, we are shut out simply on the basis of money. It has cost us $200,000 thus far. Talk about the poor—we just heard about it over here from the Senator from Ohio, and he is right—but how about the little religious minority? They are in the same category. They have no way, and it is just that I have been able to get on my radio and raise this money to pay these lawyers fees and to carry this case up, but we are crushed.

We are crushed, and if we did not have—now, this idea of Judge O'Connor, I think is fallacious, I think it is erroneous. I think that the Federal courts were established in order to protect our constitutional rights. You get down on the State level, as we are in New Jersey, we are a very liberal State. I have been in that State now 50 years; the pastorate I am in now, I have been there 48 years. Senator, I have been in every controversial subject that has come up in the State.

The liberal element in the State sought to kill our college. They actually did take away its license. We had to go to Florida. We came back 2 years ago. We got up to the same trouble again and, Senator, they told us when we went up to get our license in Trenton that in order for us to give a degree they would have to approve of our Bible courses. They would have to approve of our Bible teacher. We said, well, that is the last.

Then we fell back on our first amendment rights. We went ahead and began to operate, and on November 15 or November 14 the Attorney General's assistant called me and said, "Dr. McIntire, tomorrow we are going into the State court, and I am just giving you a courtesy call."

I said, "Oh, please don't do that. You are going to tie us up in all kinds of—let us come and sit down. Let our attorney sit down. Let's discuss this."

"No, this is just a courtesy call." We went into the superior court in Atlantic City the next day, they asked that our college be shut down that day because we did not have a license, and our students turned out on the street, and the semester was not over. The judge accommodated them by saying, "You cannot advertise, you cannot recruit, and on December 22 you close your college down while we continue with the hearings."

It took him a year before he got his decision. In the meantime we did go, Senator, to the Federal court in Trenton, and the judge looked at it and he said, "Well, here, they cannot close this college down," and he gave an injunction against the State court permitting us to continue to exist, but he heeded the O'Connor doctrine and reserved to the State court the actual consideration of the merits of the first amendment, the free exercise of religion.

Senator, the State of New Jersey was so upset by the fact that an injunction had been placed against this court closing the college down that they appealed to the Third Circuit Court in Philadelphia to ask the judges there to rule that the district Federal court

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should not have issued that injunction. The third circuit court ruled that the Federal district judge was within his discretion in his injunction.

The State did not like that so they took the third circuit court's decision over to en banc. They got up there and they lost 8 to 2. Now they have appealed and the appeal has now been filed with the Supreme Court on the State's demand that the Federal court should not even have interfered to the extent of issuing an injunction, and Judge O'Connor will be sitting there when this comes up before it.

Now, Senator, this is not all the story. The college, Shelton College, then reappealed the Federal judge in the State, the district court, reappealed his to the third circuit court on the ground that he should have just handled the whole case and not involved this back again in the State. When we got there, the third circuit court said, "That is right. Your first amendment rights are involved. You have a right to exist without a license."

Senator, we went back then, and by this time the State court—we are in a big fight between the State and Federal courts, has been going on 2 years, and Judge O'Connor is right in the middle of this thing with what she says in her article. The State court then gave its decision in favor of the State board of education; our college had an injunction against it to close us down, and we could not operate.

We then, Senator, went back and the Federal judge heard the case and has issued an injunction against the State court, and now we are on the way up through the State court, superior court, the appeals court, to the Supreme Court, and we will come back around some day to the Supreme Court. I do not know how many years it will be, but in the meantime our little college sits here, suffering.

Senator, I do wish that we could have gotten this before the entire committee and let them see. When I hear these men say that if something special or extra would come up, Senator, Judge O'Connor is going to be dealing with these things. She would not give us any specifics but here are concrete illustrations of how the thing she says she is for has worked in the State of New Jersey. We want the Federal courts to be there where we can run to them any time we want to go there, to protect the life of our college.

I think that gives you—now we are in the midst of that right this very minute, Senator, and it is costly. It has cost us students; it has upset our college, and we are suffering.

The CHAIRMAN. Well, maybe you misconstrued her position some. If she is confirmed, Dr. McIntire, I think you will find she will be very fair toward these Christian schools.

I am glad to have you here. Thank you for coming and thank you for your testimony.

Dr. MCINTIRE. Thank you, Senator.

[Material follows:]

Statement by Carl McIntire
September 9-11, 1981

To the Judiciary Committee of the United States Senate Requesting that the confirmation of Judge Sandra Day O'Connor be laid aside

Mr. Chairman and members of the United States Senate:

My name is Carl McIntire. I reside at 426 Collings Ave., Collingswood, N. J. I am pastor of the Bible Presbyterian Church there. I appear in my capacity as the President of the International Council of Christian Churches. This is an agency set up by Fundamental churches over the world. The ICCC has a membership of 334 Protestant denominations in 86 nations. One purpose, its constitution says, is: "to maintain and defend by every proper means the rights of the member bodies and associated bodies against interference with their liberty to fulfill their God-given calling."

I am here to deal specifically with the First Amendment to the Constitution of the United States. It declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . ."

Our Fundamental, Bible-believing churches and pastors in the U.S. have suffered incalculable loss at the hands of the U.S. Supreme Court, which not only refuses to hear our cases but is responsible for abridging our religious freedom. It has been the hope and prayer of many Christians that President Reagan would give us a "new beginning" on the Supreme Court, too.

Judge O'Connor has made her position in the William and Mary Law Review so clear that we cannot accept it and her.

(I request that her article in the Law Review be inserted in the record, if it has not already been done. Also insert The Memorial to the President and Congress of the Arizona State Legislature, which she successfully in the State Senate led in defeating. This Memorial called upon the president and Congress to give full First Amendment rights to broadcasters in "programming.")

Here are two areas where the Fundamentalists' constitutional rights of free exercise of religion have been denied.

What must be recognized is that there is a religious upheaval in the country. Churches and people are separating from major denominations and leaving the National Council of Churches and the World Council of Churches. When this is done, the rights of these people are then denied by the courts and particularly the Supreme Court. This covers the whole range of religious activities, religious services, church properties, Bible Conferences, FCC regulations, IRS legislation, Justice Department decisions, civil rights taking preference over religious rights, mailing permits for religious papers, the granting of visas, chaplains in the Armed Services, recognition of accrediting agencies, the restriction of international congresses, and general bureaucratic harassment. There is hardly a realm of religious activity where these new and separated religious bodies are not suffering and being denied their "free exercise of religion" here in Washington, D.C. The Fundamentalists are in trouble down here.

Judge O'Connor in her Law Review thesis goes into the question of the "friction between state and federal courts." She argues in favor of the state courts' handling constitutional questions, with the federal courts' being prohibited from intervening. She argues for the acceptance of the state courts' judgments and for the diversity of limitations of federal courts. This is not just a matter for Congress, but it is a power in the Supreme Court itself to restrict its lower federal courts with the further implementation of the Burger court doctrine of "abstention." She argues at great length. In fact her treatise reveals her to be a reformer for both state courts and the Supreme Court. She is an activist in this arena.

I speak now from bitter, costly experience in case after case and constant court litigation for the past 16 years.

After my church broke away from the United Presbyterian Church because of its new Modernist doctrines and apostasy, we started a Bible Conference in Cape May, N. J., called the Christian Admiral. The City of Cape May refused to give tax exemption on this property. The state law provided for exemption under the free exercise of religion. The litigation consumed six years and cost more than the taxes would have cost. The highest tax court of the state gave full tax exemption to the Bible Conference. When the appeal was taken up to

the State Superior Court where the state political pressures abound, it was reversed. Finally when the case reached the Supreme Court of the United States, it refused to look at it. And though the city gives tax exemption to the Bingo Hall run by the Roman Catholic Church in the center of the city, our Bible conference pays taxes on the hall where daily and Sunday religious services are conducted. There is now no appeal. Judge O'Connor's views of state court decisions as being accepted, prevailed. This is the only Bible Conference in the state that pays taxes. But we are the separated Presbyterians with a great deal of opposition.

A second illustration: I am chancellor of Shelton College, a Fundamentalist liberal arts, Christian college whose motto is "Training Christian Warriors." The State of New Jersey will not permit any school on the college level to operate unless it is a part of its "system of higher education" under its planning and direction with a license required to force this submission. When the college refused, the Attorney General of New Jersey for the Department of Higher Education entered the State Superior Court in Atlantic City and demanded that it be closed. The judge ordered the school closed down, December 22, 1979, pending his further hearing. The college then went to the Federal District Court in Trenton to save its life under 42U.S.C. 1983, the civil rights statutes. The Federal District Court enjoined the lower court from closing the college but left to its litigation the decision whether the college could give degrees and be under the state system of education. But the state, not satisfied with this measure of victory, went immediately to the U.S. Third Circuit Court in Philadelphia arguing the position of Judge O'Connor that the Federal Court should have abstained entirely. This would have closed the college down, which the state was determined to do. But the Third Circuit said that the District Court was within its discretion to act as it did.

This developed into a major conflict between the Federal and State courts over the Burger-O'Connor position. So determined is the State of New Jersey to maintain Judge O'Connor's view of noninterference and limitation of federal jurisdiction under the "abstention doctrine" being developed by the Burger court that when the Third Circuit Court refused to enjoin the District Court for enjoining the State Court, New Jersey appealed to the full Circuit Court "en banc." It lost 8 to 2. Now it has appealed to the U.S. Supreme Court where Judge O'Connor may be sitting. If the Supreme Court accepts the case, then it will have one question before it, the Judge O'Connor view, whether the federal court should intervene while the state court was hearing a constitutional question and settling it.

Presently the litigation on the religious rights, their merits, is on appeal from the State Superior Court to the State Appeals Court. It must then go to the State Supreme Court and then to the Federal District Court and up the line to the Supreme Court. It has already taken nearly two years and five courts, and the cost is nearing $200,000. It is the O'Connor position that caused so much trouble and expense.

The courts are fighting among themselves for power. It was only the Federal Court that saved even the existence of the College.

But small religious groups cannot survive this.

Under no circumstances should Judge O'Connor, with the views she expounded concerning the federal courts' deferring to the state courts and accepting state court decisions on constitutional matters, be free as a member of the Supreme Court to help direct its course along this road in future years. Religious freedom is fighting for its very life. How many times does religious freedom have to be aborted and destroyed before it becomes a determining factor on who sits on the Supreme Court?

What I am saying does not pertain or relate to what she said in the Law Review article about Congress's limiting federal jurisdiction; though in this area of First Amendment rights, it could be perilous, since religious rights are not in the general consciousness of the Congress or the courts today.

All this pertains directly to the Supreme Court and its implementing the Burger doctrine of abstention.

This led the federal district judge at Trenton, when he took the case under section 1983, to restrain himself from taking the case. He only lifted the injunction which would have killed the college immediately. He saw and said that the First Amendment right of the college was involved and that by prior restraint, its life was at stake, but he still referred the case, rather than handle it himself, back down to the state judge. After a year the state judge ruled as the state desired, that the college had to be a part of the system of education directed by the State Department of Higher Education and secure a license. The State Department of Higher Education maintained that it had to approve the Bible courses and Bible teachers before Shelton could give any degrees as a college.

Thus the state court issued its permament injunction against the college.

The college, which also had appealed to the Third Circuit Court in Philadelphia against the State District judge's not taking the case in hand and settling it, received a favorable decision from the Third Circuit Court, declaring that the college was religious and was free to operate under the First Amendment without its licenses.

The college then went back a second time to the Federal District Court in Trenton and secured a second injunction against the New Jersey Superior Court, which enabled the college to make its appeal and operate fully as a college, giving its degrees pending its appeal. This injunction does stand pending the lengthy litigation that is still ahead, when at some future time the First Amendment issue will reach the Supreme Court, where Judge O'Connor may be sitting. Without federal court intervention, which her position restrains, the political powers of the State of New Jersey would have their way with a dead college because it was not licensed to their satisfaction.

What I am reporting here, Senator, is reality. A Fundamental Christian College is paralyzed and penalized because of the Supreme Court. Just the cost of litigation and the years now involved make it impossible for these new religious groups, breaking away from the larger denominations which they believe are departing from the faith, to get started again. The Puritans and the Presbyterians could never have started Harvard or Princeton with a Supreme Court like ours today.

(May I ask that there be inserted in the record the letter I wrote the President, August 20, asking him to withdraw his nomination on the basis of Judge O'Connor's views concerning the state court as it relates to our religious minority in which I give further details essential to the full picture.)

Another area is the entire radio world. Eight thousand radio stations in this country have to be licensed by the FCC. Here again is a case where religious freedom and the freedom to preach the the Gospel have been destroyed, I say destroyed. Two celebrated cases are WXUR, a Pennsylvania religious station owned by Faith Theological Seminary, of which I am the president, and KAYE, owned by a Fundamentalist preacher operating in Puyallup, Washington, by the name of Jim Nicholls. Religious interests of the United Church of Christ, representing the National Council of Churches, were instrumental in having the FCC remove these stations from the air. The radio stations of this country have been intimidated, frightened, and the door has been opened for religious opponents, as in the case of the Greater Philadelphia Council of Churches' leading the fight to silence WXUR, making it impossible for stations to be free in their programming.

Here, Senator, I tell you, that after eight years of litigation, the Supreme Court would not hear the case of WXUR. When it reached there, the question of First Amendment rights was the main issue. All that was left when the U.S. Court of Appeals, District of Columbia Circuit, finished was the question of the "programming" that had been listed on the original application before the station even broadcasted a word to the public. David Bazelon, the chief justice, said the FCC had no business under the First Amendment requiring the knowledge of programming in the application as a condition for the license. The other two judges dismissed that and maintained that the application was defective since it was alleged the station did not reveal the full intention of its programming and therefore was fraudulent. When the case went to the Supreme Court, it refused to hear it. The station died July 5, 1973. Here is the quotation from Judge Bazelon: "In this case I am faced with a prima facie violation of the First Amendment. The Federal Communications Commission has subjected Brandywine [WXUR] to the supreme penalty: it may no longer operate as a radio broadcast station. In silencing WXUR, the Commission has dealt a death blow to the licensee's freedoms of speech and press. Furthermore, it has denied the listening public access to the expression of many controversial views."

The death of this station caused several hundred stations to drop Fundamentalist broadcasts that dealt with "issues," including my own, the 20th Century Reformation Hour, for fear of complaints and the owners' unwillingness to take the risk financially and the threat of losing the total investment in their station, as WXUR did. The Supreme Court is responsible for this, and the State of Arizona Memorial, which Judge O'Connor helped defeat, has only to do with freedom in "programming." May we face it There are political leaders who do not want freedom of speech on the radio, and we know that these ecumenical church leaders are determined to keep from the public any effective exposure of what they have done to Christianity, how they have been helping the Communist cause over the world, in various ways, and by their "liberation theology" and their Program to Combat Racism. The Supreme Court of the United States is responsible for the restriction of speech for the Fundamentalists. With Judge O'Connor sitting on that bench, the uncertainty which confronts us is intolerable.

(I request that my letter to the President of the United States, dated August 13, which gives great detail of this point, be inserted into the record.

I also mention another area where Judge O'Connor's decision could turn the whole course of religion in the nation. She will be there long after most of us are dead. My congregation is one of the churches in this country that lost its valuable property to which they alone held the deed. We left the United Presbyterian Church, as I said, because of conscience; we could not have fellowship in a church where different gospels were being preached. I helped found the Bible Presbyterian Church and led in the separation. On the "implied theory" which the Supreme Court maintained, the property of our church was given to eight individuals out of 1200 to the whole denomination. We had to leave and start up again in a tent. Our religious faith and conscience required that we separate. After these years, in September, 1979, the Supreme Court voted 5 to 4, in the case of the Vineville Presbyterian Church of Macon, Georgia, that the implied trust view no longer governed, but the reading of the deed determines the ownership.

Several Episcopal churches in New Jersey have left the denomination over the question of faith, including ordaining homosexuals. The Supreme Court of the State of New Jersey voted 4 to 3 for the implied trust view against the deed view. This case is now awaiting acceptance by the U.S. Supreme Court. Judge O'Connor could be sitting there. Other cases are now coming to the Court asking for a reversal of the 5 to 4 decision. With her deep commitment to the state side, she could in such constitutional matters turn all this around again. Her one vote could do it. Freedom should not take this chance. We are back again to these pressures to accept state judgments as she has advocated in the William and Mary Law Review.

At stake in all this is the whole future of Christianity and the churches in the United States. But this is not the business of the U.S. Senate. All we want is a Supreme Court that will protect the free exercise of religion "without respect" to technicalities, to size, or denomination or pressure or court jurisdictions which will and do destroy it. O'Connor's view on the state courts is fatal to the Fundamentalists. Federal courts are absolutely necessary to protect religious freedom at any stage when necessary to run to them. Up to the present the court has been on the side of the "ecumenical" churches. It has ruled against the Fundamentalists who oppose the ecumenical movement. Religious leaders despair and do not go to the court. They cannot, so they suffer loss. The greatest suffering is loss of religious freedom.

Senator, I cannot express the frustration, the futility, the incredibility of having to fight for religious freedom in the United States. Four Federal judges on the lower level have recognized that First Amendment rights were there. Three of them in the Shelton College case and one in the WXUR case, David Bazelon. That First Amendment rights are involved concerning Fundamentalists these judges have confirmed it.To add Judge O'Connor to this court with its far-reaching implications and complications does involve religious freedom.

Our founding fathers considered religion and the relationship of the people of the country to God their first priority. This First Amendment reveals that one conviction. The state could not interfere with religion; no law was possible. But we have a situation where the Supreme Court will not hear or will not give priority to religious issues. This is more accute because of the breaks now occurring in churches, and separations are on the increase. And courts are the final battlefield for religious freedom. These are the fresh and new struggles over the land. The issues raised by New Jersey over Shelton College are indeed a first and will determine the future for Fundamental Christian colleges in the 50 states and states' power and control over them. The protections in the Constitution have been dormant and latent. Now with the religious conflict and the apostasy of the National Council of Churches, they are of the most vital important to the future of the whole country. The Fundamentalists must have their liberty to stand for their faith, to oppose evil, and to fight for the standards of morality, in our national life which they believe are required by the Ten Commandments. These constitutional questions alone are sufficient to lay aside the nomination of Judge O'Connor. I respectfully request that this be done.

SHIELD FOR NEWSMEN CLEARS PANEL

(By Paul Schatt)

The Senate Judiciary Committee yesterday approved a bill extending the state newsmen's shield law to protect confidential notes, tapes and files, but rejected a memorial urging congress to ban government interferences with broadcast news.

The shield law amendment, which also retains a reporter's privilege to protect his confidential sources after he leaves his news job, was approved unanimously after the word "confidential" was added to limit the law's application.

Sen. Sandra O'Connor, R-Paradise Valley. Senate majority leader, moved passage of the bill after sponsoring the amendment to limit the protection to confidential sources.

Jonathan Marshall, publisher of the Scottsdale Daily Progress and legislative committee chairman of the Arizona Newspapers Association, said he had no objection to the amendment.

Marshall said the bill would close a loophole in the current shield law by providing protection for reporters after they leave the employer for whom they obtained the information by including notes, tapes, photographs and other material of the trade in the protection.

The law currently provides that a newsman cannot be compelled to testify or disclose in a legal or informal proceeding the source of information obtained for publication or broadcast. But it does not protect his notes, tapes or files.

Sen. Robert Strother, R-Phoenix, asked Marshall how he justified a reporter's failure to report a crime he observes in the course of his job.

Marshall replied that the bill does not apply in such cases, that a reporter would have a citizen's duty to report a crime he witnessed. But, he added, this is different from a situation in which a confidential source told a reporter of a crime.

"Almost every major scandal during the past 20 years was revealed this way," Marshall told the committee, "because some little guy talked with a reporter in confidence because he knew the reporter could protect his source. He would be afraid to tell the police for fear of losing his job or being killed."

The memorial on broadcast news freedom was severely criticized by Sens. Strother and O'Connor.

"I find, myself unhappily unable to suspect this because of its broad implications," Sen. O'Conner said.

She objected to wording in the bill asking Congress to prohibit any governmental agency from "dictating, influencing, or regulating in any way programming or content" of news broadcasts.

Strother, who said he found television news biased, contended that television stations should have responsibilities of accuracy in return for their government licenses to broadcast.

Sens. O'Connor, Strother and Trudy Camping, R-Phoenix, opposed the bill, Sen. William Swink, D-San Manuel, was the only "aye" vote, but acting chairman Sen. John Roeder, R-Scottsdale, said he favored the bill. Sen. Charles Await D-Safford did not vote.

This is to certify that the attached copy of "House Concurrent Resolution 2003" (two pages) and the copies of the "Minutes of Judiciary Committee" for April 9, 1973 and attached herewith were personally received by myself from the Secretary of the Arizona State Senate. The attached copy of a newspaper article was obtained from the main branch of the Phoenix Public Library and was copied from their files. It is from the Arizona Republic dated April 10, 1973.

REV. JIM NICHOLLS.

SEPTEMBER 14, 1981.

[From the Christian Beacon, Oct 6, 1981]

Mr. Nicholls brought back more than 50 pages of documentation. Concerning Judge O'Connor's vote on the opposing of the Memorial to the President in Congress on the First Amendment rights of broadcasters, Mr. Nicholls secured from the *Arizona Republic,* April 10, 1973, an account written by correspondent Paul Schatt. The Memorial passed the lower house, and when it went to the Senate, Judge O'Connor's vote was decisive in killing and defeating it. Schatt reported the Memorial was severely criticized by Senator O'Connor. Mr. Schatt states Senator O'Con-

nor said, "I find myself unhappily to support it because of its broad implication." She objected to wording in the bill asking Congress to prohibit any government agency from "dictating, influencing or regulating in any way programming or content of news broadcasts."

The vote in the committee on House Congressional Memorial 2003 was 3 against and 2 affirmative. One refrained from voting. It is reported that she led the opposition to it and was 1 of the 3. Had she voted for it, it would have gone to the full Senate for approval and begun its journey to Washington.

Senator Mathias in the O'Connor Confirmation Hearing stated that the electronic media was "The Press." This House Concurrent Resolution 2003 and attached Senate Judiciary Minutes and the newspaper article indisputedly shows that Senator O'Connor did use her legislative office in an attempt to keep government control on the programming and news content of the electronic media. In reality Senator O'Connor voted to deprive the Broadcaster of First Amendment Rights to a free press. Such action also deprived the public of their First Amendment guarantees, the "right to know" under a free press.

HOUSE CONCURRENT MEMORIAL 2003—STATE OF ARIZONA, HOUSE OF REPRESENTATIVES, THIRTY-FIRST LEGISLATURE, FIRST REGULAR SESSION

A concurrent memorial relating to American broadcasting; urging congress to enact legislation extending first amendment freedoms to the constitution to broadcasting.

To the Congress of the United States:

Your memorialist respectfully represents:

Whereas, the citizens' right to know requires the free and uninhibited flow of information from the broadcasters as well as from the printed news media to the public; and

Whereas, the First Amendment of the United States Constitution provides that the Congress shall make no law abridging the freedom of speech, or of the press; and

Whereas, American free broadcasting has become in its fifty-year history the practical enlargement of a free American press; and

Whereas, legislation now pending before the Congress would provide needed stability to the broadcasting industry in programming, and technological investment, in turn creating added broadcast service to the citizens.

Wherefore your memorialist, the House of Representatives of the State of Arizona, the Senate concurring, prays:

1. That the President and the Congress give their most earnest consideration to the prompt enactment of legislation prohibiting government or any of its agencies from dictating, influencing or regulating in any way programming or content of news broadcasts on radio and television stations licensed to operate in the United States.

2. That the Honorable Wesley Bolin, Secretary of State of the State of Arizona, transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States and to each member of the Arizona Congressional delegation.

MINUTES OF COMMITTEE ON JUDICIARY, ARIZONA STATE SENATE, THIRTY-FIRST LEGISLATURE, FIRST REGULAR SESSION

Date: April 9, 1973; Time: 9:00 a.m.; Room 309.

To: Senator Roeder, Vice Chairman; Senator Camping; Senator O'Connor; Senator Runyan; Senator Strother; Senator Awalt; Senator Swink; Senator Ulm.

Senators Corbet and Runyan were absent due to their attending the Arizona Town Hall. Senator Roeder conducted the Judiciary Committee meeting

CONSIDERATION OF THE FOLLOWING BILLS

H.C.M. 2003—First Amendment—Freedoms to Broadcasting

Mr. F. A. Higgins representing the Arizona Broadcasting Association spoke to the Committee stating that there is legislation before the Congress that would extend the licensing from 3 to 5 years. Senator O'Connor asked Mr. Higgins if this memorial would try to discourage Mr. Vice President Agnew from speaking out on vital issues and that he is trying to have the broadcasting industry give a more objective

viewpoint of the news. Mr. Higgins stated that Mr. Agnew or anyone else has a perfect right to speak out against the press.

Mr. Jonathan Marshall, editor of the Scottsdale Progress, stated that there is a new executive agency headed by Mr. Whitehead who have instituted some tight regulations on the broadcasting industry and they are using scare tactics on the broadcasters.

Senator Swink moved the bill with a DO PASS recommendation. The bill failed

SENATE BILL 1303—Reporter's Privileged Communication

Mr. Jonathan Marshall stated that with the provisions in this bill a reporter could not have a subpoena served against him if he were to leave the employ of a media service. Senator O'Connor asked Mr. Marshall what would have happened in the case of the Kennedy and Wallace shootings if the reporter did not wish to turn over the films of these shootings to the authorities. After a brief discussion, Senator O'Connor moved the bill and proposed amendments to the bill. The amendments pass. The bill was moved with a DO PASS recommendation as amended and passed.

SENATE BILL 1267—Implied Consent—License Suspension

This bill had been in subcommittee chaired by Senator Roeder. John Jones of the Attorney General's Office spoke to the committee in regard for the need for the implied consent legislation. Senator Roeder introduced amendments that had been prepared in the subcommittee. Senator Roeder moved the bill with a DO PASS recommendation as amended. His motion passed.

SENATE CONCURRENT RESOLUTION 1022—Recall Election

Senator O'Connor moved this bill stating that this was a companion bill to House Bill 2020, initiative, referendum and recall. Without any discussion, the bill was moved with a DO PASS recommendation. The bill passed.

HOUSE BILL 2194—Destruction of State Property

Senator O'Connor moved this bill with a DO PASS recommendation. The motion passed.

The meeting was adjourned at 10:10 a.m. with the committee having completed their agenda.

INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES,
Collingswood, N.J., August 11, 1981.

President RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Your nomination of Judge Sandra Day O'Connor to the Supreme Court has projected afresh the question of broadcasters' First Amendment rights into the entire religious broadcasting world. The First Amendment guarantees, or it should, the protection of all religious activity and the free speech of all radio broadcasters. This Amendment reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. . . ."

No judge, who will take an oath to support the Constitution, should ever sit on the Supreme Court of the United States who has not been in favor of, and who does not have an unbroken record of full support of the rights of radio broadcasters in the free exercise of religion, including their programming.

This Judge O'Connor has been guilty of, tragically guilty, at a moment when the whole question of broadcaster's rights to the full protection of their speech and religious activity has been before the country. In presenting this judge for the high bench, you have invaded an area of religious life and free speech in our country which has caused untold controversy, suffering and loss, and even the right of the people to know has been limited.

I am enclosing a copy of a Memorial to the President and Congress of April, 1973. This passed the lower house in Arizona and it was Judge O'Connor's leadership that defeated it in the Arizona Senate. The committee to which it was referred for approval and recommendation, voted 4 against it, 3 for it, and one abstained. She led the opposition to this, and was one of the four. Had her vote been in the affirmative, this resolution would have been approved. You will see it is actually headed "House Concurrent Memorial 2003. A concurrent Memorial relating to American broadcasting; urging Congress to enact legislation extending First Amendment freedoms of the Constitution to broadcasting." Its request is: "1. That the President and the Congress give their most earnest consideration to the prompt

enactment of legislation prohibiting government or any of its agencies from dictating, influencing or regulating in any way programming or content of news broadcasts on radio and television stations licensed to operate in the United States."

The controversy that stirred the radio world at that time was the decision of the FCC to remove from the air radio station WXUR, owned by Faith Theological Seminary, of which I am the president. There was not a radio station in this country that was not aware of what was happening. My broadcast, the 20th Century Reformation Hour, heard over 600 stations, was dropped by stations all over the land. This controversy began in 1965 when area groups under the leadership of the Greater Philadelphia Council of Churches, the New Jersey Council of Churches, a part of the National Council of Churches, sought to have the station's license denied. The battle went up through an examiner of the FCC, who gave the license to the station declaring that the charges against it by the religious leaders and the Broadcast Bureau itself could not be sustained.

Mr. President, the House of Representatives of the State of Pennsylvania passed Resolution 160, December 14, 1965. The House was controlled by the Deomcrats. The Resolution referred specifically to the 1964 Goldwater campaign, saying that his ideas had been repudiated by the country and specific references was made to my ideas which they equated to Goldwater's, saying that they were dangerous to the country.

The FCC under Dean Burch, chairman appointed by Mr. Nixon, reversed their examiner's decision on July 1, 1970. This was in the midst of all the conflict over the Vietnam War, and I had led the first March for Victory on April 4, and we were building for the second March on October 3, which Vice-President Ky had agreed to address. At the height of all this, when I was using my stations over the nation attacking Hanoi and exposing the yippies' and hippies' support of the Communist cause to the division of our country, this move was made by Dean Burch, Robert Lee, who wrote their decision, and Benjamin Hooks, who represented the NAACP and who has been so active recently against your program.

We then went to the United States Circuit Court of Appeals in Washington. This court threw out the major claims or the opponents of the station and the FCC itself. All that was left was the question of programming, that the station in its original application did not fully reveal its program so that the FCC could determine whether the station could be licensed or not. David Bazelon, the chief justice, claimed that there was violation of the First Amendment in requiring these program stipulations, and he declared that the station and the broadcasters had been denied their First Amendment rights. He wrote a magnificent decision in support of the First Amendment, specifically stating: "In this case I am faced with a Prima facie violation of the First Amendment. The Federal Communications Commission has subjected Brandywine to the supreme penalty: it may no longer operate as a radio broadcast station. In silencing WXUR, the Commission has dealt a death blow to the licensee's freedom of speech and press. Furthermore, it has denied the listening public access to the expression of many controversial views."

This was specifically over the FCC's requirement in its application of the knowledge of the program of the station. The Arizona Memorial to the President and Congress specifically identified the question of programming, with the request that it be protected and kept free. O'Connor's opposition was against the exact issue and almost the same language as the WXUIR case—the FCC had to approve programming before a license could be renewed.

The Supreme Court, Mr. President, refused to review the case and on July 5, 1973, the station died. The whole radio world was shaken. Our defenders in the Senate were Sam Ervin, who gave a 6,000-word speech, Jesse Helms, Strom Thurmond. They all declared that the First Amendment rights of the station were denied in their speeches recorded in the Congressional Record. See Congressional Record, November 14, 1973, for Ervin; March 12, 1974, for Thurmond; and February 21, 1974, for Helms.

Letters immediately reached me from all over the country from radio stations cancelling my broadcasts. In Washington, D.C., I was heard every morning at 8 a.m. on WFAX, Falls Church, VA. The owner, Mr. Lamar Newcomb, immediately removed my program, though he had supported my position. He said he could not take the risk of losing his station or becoming involved in expensive litigation. The WXUR litigation took 7 years.

It was station WFAX that so many in high places in Washington listened to, including the State Department and the Defense Department, and it was this one station that L. Mendel Rivers, chairman of the House Armed Services Committee, listened to.

He personally contributed to the broadcast. He was the one who called me to organize the marches for victory in the war in Vietnam. This I did with the help of thousands in the country.

I was broadcasting every day in Phoenix, Arizona, and other stations in the state. It was out of this conflict in Arizona that I spoke in Phoenix a number of times, and here there arose this very resolution from the state legislature. The Pennsylvania legislature had taken its stand against the First Amendment rights. Arizona was taking its stand for First Amendment rights for broadcasters.

I can assure you that this issue was so acute in the State of Arizona that, at the hands of the fundamental preachers, there were very few people who were unaware of the issues involved. Judge O'Connor was in the State Senate at this time. This was before she went into the court. There she was the leading opponent and fought the enclosed Memorial to the President and the Congress of the United States that the First Amendment rights be guaranteed to us broadcasters. This pertained directly to religious broadcasters such as myself. With me was Mr. Jim Nicholls, of KAYE of Puyallup, Washington. The same religious groups that led the fight against me and the Faith Seminary station led the fight against him. He, too, lost everything.

It has been my custom to attend every meeting of the National Council of Churches since the days when it was the Federal Council of Churches back in the early 30's. The chief spokesman for the NCC in this whole area is and has been the United Chruch of the Christ Office of Communications, Dr. Everett Parker in charge. Dr. Parker has prepared the studies, distributed the literature throughout the churches of the country concerning how they can have objectionable broadcasts removed, intimidate stations, threatening them with even the loss of their license, using the death of WXUR as their costly exhibit. Dr. Parker maintained a booth at the Detroit meeting of the NCC and we were out there with a counter rally opposing their Modernism and socialism. At their booth they were distributig their literature and telling the people that this was the way they could have Dr. McIntire's broadcast removed from their local stations.

Thus here comes Judge O'Connor, if confirmed to the Supreme Court, who also lived through those tumultuous days of battling for First Amendment rights for broadcasters. The denial of freedom became a routing matter and a formula was devised by the FCC and its liberal companions to destroy speech and to inhibit the free exercise of religion for the Fundamentalists. Congress cannnot make a law, but it can make bureaus, and the bureaus' regulations have the force of law.

The Supreme Court is the last bulwark of freedom in the protection of the First Amendment rights of religious minorities. Mr. President, a minority can never become a majority unless it can speak and promote its position. The condition of our country as far as speech on the radio is concerned is that it is not possible to expose the National Council of Churches for what it is doing in this area of socialism, its aid to the Communists and its misrepresentation of Christianity.

H. Gifford Irion, the original hearing examiner for the FCC, who after nine months of hearings wrote a 116-page opinion, predicted what would happen. In favoring the station, he said that WXUR-AM and WXUR-FM "performed what would normally be considered a wholesome service in providing an outlet for contrasting viewpoints on a wide variety of subjects. To impose the fell judgment of removing WXUR from the air . . . could only have the consequence of admonishing broadcasters everywhere that they would act at their peril in allowing robust discussing because penalties would be meted out in rigid compliance with the exactions of the rules."

For eight years the station has been preserved with its four towers lighted. We have been praying and believing that this great injustice to speech and to a religious minority would be reversed and the station returned to the air. Sam Ervin said outside political pressures did it. The prayers of thousands is that some day God will bring to life, perhaps on the Nixon tapes, what these pressures were from the highest level of government. God knows it all. God is also a protector of liberty for His people.

This generation of fear did exactly that to my broadcast, and others dared not enter this field to enlighten the American people. As the prophet Hosea said, "My people are destroyed for lack of knowledge."

Men like myself who have come up out of the Christian churches and have a duty before God to preach what the Bible says and expose what we believe is evil, not only in the country but in the churches, find it cannot be done. I am here in Collingswood, New Jersey, and I have been pastor of this one church for 48 years. My record is clean. I am of the opinion that this country cannot be saved unless we are free to expose what we believe are forces inimical and destructive not only to Christianity but to liberty.

You are placing a judge on the Supreme Court who opposed a beautiful, clean resolution. You, yourself, could not have written a better one. None can mistake the "Whereases" that are here.

The fight for freedom of speech and free exercise of religion on radio is still the major battle under the Constitution today, and you are having placed on the Supreme Court a judge who in this particular field has made clear where she stands and the FCC still has a canopy of control over programming today. With these views the FCC will have a judge on the court to their liking, and so will Dr. Everett C. Parker and the National Council of Churches.

Mr. President, you have come up the hard and difficult road to see this nation turned about, but to place on of the nine judges on the court, in a day when the court itself is ideologically divided as you yourself recognize, who did not support the First Amendment rights of broadcasters in this nation, requires that we request that you withdraw this nomination. I am confident that you are unaware of this question concerning her attitude which has come to light as a result of the special investigation Mr. Nicholls made in Phoenix, Arizona.

If we had had our First Amendment rights, free exercise or religion, and could have used it to warn and instruct this country by radio and television, the country could have been turned about a number of years back. The failure to have this freedom has contributed to the havoc that the liberals have wrought in our national life in the economic sphere, the military sphere, and in the whole realm of our spiritual and moral standards and necessities.

This fight for our First Amendment rights has taken a terrific toll. The tragedy is that men in political life, too few to them, are willing to get up and fight for the rights of a religious minority and even for those with whom they differ but whose rights are the same as theirs under that blessed Constitution.

I cannot believe that you yourself are unaware of this major battle for free speech and religious liberty that has been raging in this country over radio programming since the early 60's, but I am confident that you were unaware of her opposition and her part in defeating this Memorial calling for the First Amendment rights of broadcasters. It was headed, "House Concurrent Memorial 2003." It is interesting that the Congressional Record, July 31, contains the statement by Senator Barry Goldwater, introducing "House Concurrent Memorial 2001 to the President and Senate of the United States of America. Your memorialist respectfully re represents . . ." this Memorial, which was adopted, commends Judge O'Connor. The one dealing with First Amendment rights was never fully approved. The Senator maintains that since 2001 was adopted in the Arizona House on July 23, with 51 ayes: only 2 nays and on July 24; in the Senate, there were 29 ayes and 1 nay, that here is an indication "that the single-issue opposition to Mrs. O'Connor's nomination has virtually disappeared."

The "single-issue" refers to the abortion issue. Aside from the fact that this has not disappeared in the country, the issue that I am raising here is new, is real, and indeed is of such weighty importance that as a single issue alone it should disqualify her from a lifetime position on the Supreme Court of the United States.

Now you, Mr. President, in your inauguration January 20, took the oath of office required by the Constitution to maintain and defend it. Here comes the question of the opposition of Judge O'Connor to the full First Amendment rights of broadcasters, and you are in the position of not knowing that she let the battle against a resolution calling for full First Amendment rights for all broadcasters. This is not right. Surely I am bringing to your attention a situation that calls for action before the conscience of the entire nation.

Last Saturday Senator Strom Thurmond, who has spoken for us over the years at our Bible Conference in Cape May, N.J., addressed around 500 people. In the question-and-answer period, has was asked concerning Judge O'Connor's confirmation. He announced that they would begin on September 9 and said that there were 20 men on his committee and that she would be confronted with every conceivable relative question. He told the congregation that he would presonally see that Dr. McIntire would have the opportunity to appear before the committee. I had previously filed my request to be there as a representative of the International Council of Christian Churches. I will, of course, raise this very question and expect to make it known to the Senate.

I poured out my life over a period of 16 years fighting for our religious liberty on the radio as a broadcaster. At the time of the death of station WXUR I went out on the Atlantic Ocean, beyond our territorial limits, opposite our Bible Conference in Cape May, and erected a 10,000 watt transmitter on a ship on a wave length not used by American stations and broadcast from Maine to North Carolina. I called the station Radio Free America on the ship "Columbia." The story made the front pages of papers all over this country. We wanted the world to know that the most precious

rights a human being has were being denied by the FCC and the Supreme Court. We made the mistake of not securing a ship under foreign registry. We obtained a former mine sweeper from Florida and brought it up the east coast. Because of its U.S. registry, the FCC took us to the federal court in Camden, N.J., and had the judge issue an injunction against me.

This country cannot survive without free speech, and we are losing the battle today because men like myself cannot talk as we believe God wants us to speak as His chosen servants to preach the whole counsel of God as found in the Holy Bible.

Speeches made by the prophets Jeremiah, Amos, Isaiah, Hosea, and even our blessed Lord would have brought them before the FCC of Jerusalem and the license of their radio broadcasts would have been denied.

I was in addition to this issue also hoping that in the appointments that you make, especially in the FCC, that these matters could be taken into consideration, I am certain now that they were not, since we have received a present pronouncement of the Federal Communications Commission on WXUR.

I propose to write you another letter dealing with the FCC setup. Mr. President, we have to have the Constitution honored by the United States Government, by every official, every representative, every agency, including the FCC. The Constitution is the supreme law of this land. It is the greatest possession of the American people, and the most important part of its is the First Amendment. The most important of that has to do with religion and with speech which is outside the domain of government, the executive, the legislative, and the judicial branches.

It is in this area that Judge O'Connor's actions in dealing with the Memorial from Arizona invaded and transgressed. Again I request that by God's grace you may withdraw her nomination.

You have our earnest prayers.

Very truly yours,

CARL MCINTIRE,
President, International Council of Christian Churches.

INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES,
Collingswood, N.J., August 19, 1981.

President RONALD REAGAN,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: I wrote you August 11 concerning the free exercise of religion, protected in the Constitution, against which Congress is in no way to legislate or prohibit according to the First Amendment. The instance which I presented was Judge O'Connor's opposition which led to the defeat of a memorial from the State of Arizona to the President and the Congress in April of 1973. It called for action by both parties to restore full First Amendment rights to broadcasters.

I now come with another major issue concerning First Amendment rights of a religious minority of which I am definitely a part. It has to do with current litigation initiated by the State of New Jersey in a state chancery court against Shelton College, Cape May, N.J., of which I am chancellor and which is an agency of the denomination of which I am a part, the Bible Presbyterian Church. That First Amendment rights are involved, the courts we have been in all concede. These are the New Jersey Superior Court, the United States District Court [District of New Jersey], the United States Third Circuit Court of Appeals and then back again to the U.S. District Court.

The state court maintains that the state has an overriding interest because of the degree Shelton gives, and had ordered the College closed December 22, 1979.

The State of New Jersey, through its Department of Higher Education, under instruction from its Governor to its Attorney General on one day's notice, entered a chancery court in Atlantic City on November 15, 1979, and asked that a temporary injunction be granted to close the College down that day without even a hearing. The court actually enjoined the College that day from advertising and recruiting and said it had to close December 22. This judge then did not issue his final decision until November, 1980, a whole year minus three days.

The only thing that saved the College and allowed it to exist, was the intervention of the U.S. District Court in Trenton under Civil Rights Act, section 1983.

I give you this brief statement because Judge O'Connor's opinion in this area is well defined and there can be no question about the position she will hold on the Supreme Court in the years to come. Her William and Mary Law Review article has been widely heralded in the press as a basis for claiming that she "understands

state problems." In her conclusion she said, "We should allow the state courts to rule first on the constitutionality of state statutes." She called for "elimination or restriction of federal court diversity jurisdiction, and a requirement of exhaustion of state remedies as a prerequisite to bringing federal action under section 1983." She is actually a champion of this new setup which she said would be "a step in the right direction to defer to the state courts and give finality to their judgments on federal constitutional questions. . ."

Under these circumstances our Shelton College would now be dead. The state wanted it closed even during the hearing. The judge under state appointment, nominated by the Attorney General, accommodated him.

If we had not had access to the Federal Court, there would be no Bible Presbyterian college in New Jersey today.

The State Superior Court, that ordered the College closed, actually found in its opinion that "the conduct and beliefs of the Shelton student and the theological doctrines which form the content of the academic program are at total variance from secular and most church-sponsored colleges and universities." Judge Philip Gruccio in the same statement said, "Every academic subject is taught from a perspective of the religious point of view of the fundamentalist denominations, whether it be history, art, economics, chemistry or English literature."

In spite of these findings, he closed the school down because it did not have a license from the state and refused to be a part of the "system" of higher education.

It is being argued that Judge O'Connor's position, which calls for the acceptance of the judgment of the state court, would eliminate extensive litigation in criminal cases where constitutional rights are alleged to be involved.

But where do the First Amendment rights come in, the free exercise of religion of a Fundamentalist Christian college, which is accredited and which is preparing leaders and "Christian Warriors," as the motto says, for our churches?

The State of New Jersey, that is the Attorney General, the Department of Higher Education under the Governor's direction, took the College to the U.S. Third Circuit Court of Appeals in Philadelphia. Here the issue was that the Federal District Court in Trenton had no right to interfere in the state's litigation while it was in process. They called it "abstention." A jurisdictional battle developed, with a state court including in its opinion a major defense of its authority, credibility and capability. The Federal court, exercising its discretion, which it believed it had, stepped in to save the life of the College, deferring to the state court whether the College could give its degree for the credits that the College was providing for its students while it continued to exist. The Federal District Court actually retained the jurisdiction pending the final outcome as a cover to protect the College after it gets through with the litigation that is now in the State Appeals Court and has to go to the State Supreme Court. Mr. President, here are five courts, and here sits our little college with irreparable and unimaginable suffering and damage to our religious cause and rights.

Now the state's Attorney General is appealing to the U.S. Supreme Court with their papers to be filed by September 2, asking the U.S. Supreme Court to rule that the Third Circuit Court was in error in sustaining the Federal District Court in using its discretion to lift the injunction of the state court and permitting the College to exist.

If Judge O'Connor is confirmed, she will be sitting on this court to decide the question brought before it, and this is only the question of jurisdiction, and her views on this very point are spelled out in the William and Mary Law Review article.

The Third Circuit Court, however, in ruling on the question of the District Court's discretion, did go in on the merits of the case of the free exercise of religion. Here a beautiful statement is made concerning the right of the College to exist and carry on its work without the control by the process of licensing and without being regulated as a part of the state system of education.

So here we sit today, the first case of its kind in the history of the United States. In the State of New Jersey today, no course in an institution, college or university level, can be taught—no single course—neither can a teacher teach that course without his or her qualifications being approved by the State Board of Higher Education.

The thing that really brought this to a head, when the College was trying to work out the state's terms of licensing, was when the state declared that even the Bible courses taught in the College would have to be approved by the state before the credit could be used for a degree. Even the Bible teachers who taught in the College would have to have their qualifications approved by the state before they would be permitted to teach.

This was the breaking point, and we decided as a college that we would throw ourselves back on our constitutional rights. So here we are, almost two years have passed and we are only one court above the State Superor Court. We are now in the Court of Appeals.

If the U.S. Supreme Court accepts the Attorney General's appeals on the jurisdiction matter, we will soon be in the U.S. Supreme Court, too, with a little college paying all the legal expenses for a major jurisdictional fight between the Federal Court and the State Court, with Judge O'Connor already on record in favor of deferring to the State Court and prohibiting any Federal intervention, under section 1983 of the Civil Rights Act, until all the state's processes have been completed.

We have always believed that the Federal court system was set up to protect the free exercise of religion of any religious group or minority from any interference by the state legislative requirement or attack from federal legislation, and now I must add the regulations of the bureaus.

To think of Judge O'Connor sitting on that court, first, in hearing the question of jurisdiction and, second, in hearing the question of the right of the College to exist in the state without the license, when she is so clearly on the side of the state jurisdiction and power is to us a grave danger.

Should not our religious rights, First Amendment rights, take precedence over all other considerations? The framers of the Constitution thought so when they framed the First Amendment with these words placed first, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. . . ." There is nothing more important than our religious freedom. It has now been denied us by the State Superior Court. The state is of the opinion that if they can destroy the Federal Court's judgment on the technicality of jurisdiction, the College will then be dead, pending the further litigation on the state level.

Mr. President, you have been a governor and you know the power of a governor and his appointments.

I have spent my entire life as a preacher in this state—two and one-half years in Atlantic City and 48 years in Collingswood. I have been most outspoken as a Fundamentalist. I have opposed about everything that has come down the road; the race track, bingo, the Atlantic City casino, sex education, abortion on demand, taking prayer and Bible reading from the schools. I have been active in the religious field exposing the liberals, and the ecumenists. We are a part of a religious movement that calls upon God's people not to support the things that deny the Gospel and cast doubt upon our blessed Saviour, His virgin birth, His sinless life, His death, His resurrection, His ascension and His coming again. We have been exceedingly vocal, for the Bible says, "Cry aloud, spare not, lift up thy voice like a trumpet, and shew my people their transgressions, and the house of Jacob their sins" (Isa. 58:1).

To do this is costly, but the liberty to do so is priceless. Everywhere we have turned we have met opposition from the political forces that have power. We opened a Bible Conference in Cape May. After four years of litigation, the state's highest tax court said that we were entitled to tax exemption on our Bible Conference property, but these government officials went into the state courts and had it reversed. When we knocked on the door of the Supreme Court, they would not look at it. We are the only Bible Conference in the State of New Jersey that has to pay taxes. The tax court said No, but the state courts said Yes. We no longer have any appeal except to God.

Now we are going up the same route with our Christian college. Mr. President, we have to have a college. Our churches are entitled to have a college. We cannot build our churches, our doctrine, our position in the religious world without a college.

Does not one small college count anymore when it comes to liberty?

On July 4, 1962, President Kennedy stood before Independence Hall and made his address on Interdependence which contravened our Declaration of Independence and specifically called for the surrender of some of our sovereignty. There was a great outcry against this at that time.

His retreat at the Bay of Pigs was also a national issue. I was among those who believe that once putting the hand to the plow, we should have dealt with Castro and liberated Cuba. All the mischief that he has caused was because of the nature of Communism, we were certain. If Kennedy had gone ahead, he would have enabled us to honor the Monroe Doctrine.

As far as I was concerned, we were dealing with these matters on our radio. President Kennedy was to speak to the National Council of Churches in Philadelphia. His views were in line with theirs and he was to give them great prestige and coverage. We opposed it. I arranged for a large counter rally at the same time in which General Edwin A. Walker had agreed to speak on the issues of our standing up to the Communists. He was against detente and so were we.

Just five days before this, Kennedy was assassinated.

It was out of this that Ralph Dungan came forth. The Governor of our state, Richard J. Hughes, was tied in very closely with the Kennedys. He brought Dungan to New Jersey, a man not qualified to be the head of the Department of Higher Education. It was political pure and simple, and then Dungan went after our College to stop the training of Christian warriors.

Hughes was then appointed to be Chief Justice of the New Jersey Supreme Court and that tells a story. We have lost every time we went up there.

This drive of the state to take Shelton College to the Supreme Court of the United States on this "abstention" issue against the Federal Court has gone to the very limit. The Third Circuit, I said, refused to nullify the action of the Federal District Court in lifting the injunction. The state then appealed to the Third Circuit en banc for a review of its own decision. It lost 8 to 2. It is from this that they are appealing to the Supreme Court where Judge O'Connor may be sitting.

Mr. President, the State of New Jersey is desperate in its determination to keep this power in its hand through their court. We are dealing with the ideological conflict that has divided our country and which you yourself have declared to be on the side of a new beginning, returning us to the basic concepts of freedom.

I tell you that men are interested in power, courts are the last arena for the exercise of that power in their final victories.

This is why we are so careful and so insistent in regard to Judge O'Connor's confirmation. Do not let the courts be taken away from us. We have a generation that has risen up, baptized in this halo of liberalism. Just look at the decison of Judge Gruccio and see how he had to crucify the Constitution in order to confer the crown of victory to the state's liberals. He did it and a small religious minority is the victim.

This matter is going to cost us at least a half million dollars before we are through, if we can save the College. Under these circumstances, it is impossible for new religious minorities, coming out of the separations and conflicts in the church world, to get started with their schools. We cannot do what our Pilgrim Fathers did, have a new beginning when they came to this new world. We are ready to die for this new beginning and liberty. Please look at these matters. This condition has been developing and evolving over these years, where the liberals have been in ascendancy.

Our trouble started when Dr. Ralph Dungan became head of the newly formed Department of Higher Education in New Jersey. He had been John F. Kennedy's aide in the White House, who was there the day he was assassinated. Johnson sent Dungan to Chile as an ambassador. There he supported Allende. The Chileans called him the "pinko ambassador." We have Fundamental churches in Chile: Presbyterian, Baptist, Methodist, Christian and Missionary Alliance and independent, which belong to the International Council of Christian Churches, of which I am the president. Dungan got to know these churches and what they stood for. They opposed Allende's Marxism.

Dungan had only been in New Jersey a few months before he launched his attack against Shelton College. It had held a state license and had carried on its work. Dungan initiated hearings and when he was through, he had the College's license revoked in 1971. It fled to Florida. When it returned in 1979, it ran into the same opposition again.

What I am trying to tell you is that in these state levels, there is room for pressures, mischief, the designs of men to get at an institution and individuals that they do not like or they fear. To leave the state courts in the position of independency free from any protective interference by the Federal courts is intolerable. We do not see that Judge O'Connor should be on that court with these questions and doubts. The constitutional rights which we have from God are too precious to take any risk.

She made her case in that Law Review article from William and Mary College in Virginia.

I have not mentioned anything yet to you about the financial impossibility. The State of New Jersey was able by its attack upon the College to initiate litigation where its side of it is paid out of the state treasury but our side of it has to come from the churches and individual Fundamental believers who see that the issues are religious liberty. Harvard, Yale, Princeton, the Ivy League, were all started in the same way, and for the same purpose that Shelton College was started—by religious leaders, to provide education for the leaders of the colonies' churches.

Our country was a haven for the Pilgrims, Puritans, for those who fled religious oppression from the old world the Anglicans, the Lutherans with their state churches, and those who fled from the Roman Catholic hierarchy of France and

other European states. William Penn came to Pennsylvania because he wanted the kind of religious freedom that Shelton College is fighting for today.

Have we become so insensible, so numbed, so blinded, and so intolerant, that a tiny religious college cannot exist in a state where the state officials are determined to close it down unless they direct it as a part of the system of education that the state legislature has given them total control over?

Our sufferings are real. Our losses are irreparable. But, Mr. President, our faith in that Constitution is our one hope for free America. Unless we can preserve that, our nation will be gone.

There are fifty states, and if in only one of these states, the State of New Jersey, the constitutional rights of a religious minority are denied, that is sufficient to keep a questionable judge from the Supreme Court, where her decisions will affect all fifty states. I plead with you, please withdraw the nomination. She has written only fifty opinions in the appeal court in Arizona. Give us a judge who will support the Federal system and protect us all from any repetition of what has happened in the State of New Jersey. Please let us end this jurisdictional fight between the state courts and the Federal courts which Shelton College is having to pay for, to the tragic loss of building our churches. How large does a religious denomination have to be or a college enrollment before it can have the protection of the entire country in support of its liberty? I do not believe that this should be ignored.

Please withdraw the nomination and find another judge who favors the Federal judication of religious constitutional rights.

The struggle of our people to keep this country from going socialist or surrendering to the Communists is not only over the presidency and seats in Congress but over the Supreme Court, where the judges there by judicial interpretation may change the country and even the Constitution. O'Connor's appointment could not possibly be more important to the liberty of Fundamental Christians and churches.

We have not been able to get our story into the press. This Sunday the Atlantic City press did carry a story. You will be interested in reading it.

You have our prayers as the chief magistrate of this land. We are commanded by God to pray for you in all your responsibilities as His servant as the Bible says, "to us for good." You are indeed a minister of God to us for good. You are there for the punishment of evildoers.

Very truly yours,

CARL MCINTIRE.

The CHAIRMAN. Our next witness is Ms. Arnette R. Hubbard, National Bar Association.

Are you the president of the National Bar Association?

Ms. HUBBARD. I am, Senator.

The CHAIRMAN. Hold up your hand.

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. HUBBARD. I do.

The CHAIRMAN. You may proceed.

TESTIMONY OF ARNETTE R. HUBBARD, PRESIDENT, NATIONAL BAR ASSOCIATION

Ms. HUBBARD. Mr. Chairman and distinguished members of the Senate Judiciary Committee, I am Arnette Hubbard, a practicing lawyer from Chicago, Ill. I am pleased to participate in your hearing today on behalf of the National Bar Association, now entering its 57th year.

As the 30th president of the oldest and largest association of black lawyers in this country, and as the first female attorney ever to hold this office, I have particular pride and honor in making this appearance to testify in support of the first woman nominated to serve on the Supreme Court of the United States of America. At the same time I am also humbled and distressed by the fact that no