

Judge LANTZ. Well, if you make it single space it is about a page and a half but it is very important to us, inasmuch as the American Bar Association report is going to be part of it and——

The CHAIRMAN. Without objection, we will put it in at your request.

Judge LANTZ. Thank you so much.

Mr. Chairman, I have had the privilege of watching you all day, and I know that you have not only acted in good faith but I do not know if I could have done the job that you have done all day in being fair and equitable to all the witnesses, irrespective of their background or irrespective of their opinion. I have to commend you for that.

Thank you, sir.

The CHAIRMAN. Thank you for your kind remarks.

The next witness here has to catch a plane soon, so we will call him up now: Father Charles Fiore, representing the National Pro-Life Political Action Committee. Father Fiore, will you come around? Is he here?

If you will raise your hand, some priests desire to use "affirm" rather than "swear." I will put both; use either one you want to.

Father FIORE. As you wish, Senator.

The CHAIRMAN. Do you affirm or 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?

Father FIORE. I do.

I do not mind swearing, Senator, under these circumstances, since God is my witness.

#### **TESTIMONY OF FATHER CHARLES FIORE, CHAIRMAN, NATIONAL PRO-LIFE POLITICAL ACTION COMMITTEE**

Father FIORE. First of all, Senator, I have submitted a text of my remarks which, with your permission, I would like inserted into the record, and I will spend the time allotted to me synthesizing those remarks if I may.

The CHAIRMAN. All right. Without objection, so ordered, but try not to duplicate.

Father FIORE. I will. Thank you, Senator.

Mr. Chairman, I thank you and the members of the committee for this opportunity to appear before you as founder and chairman of the National Pro-Life Political Action Committee, and on behalf of the tens of thousands of our supporters in all States and right-to-lifers everywhere who oppose the nomination of Judge Sandra Day O'Connor to the U.S. Supreme Court.

As you well know by now, Mrs. O'Connor's nomination by President Reagan has been the occasion of virtually unanimous disappointment on the part of rank-and-file right-to-lifers because it represents a breach of the 1980 Republican platform on which he ran, and on the basis of which he convinced millions of blue collar, traditionally Democratic ethnic, Catholic, and fundamentalist and evangelical Protestant voters to switch parties and vote for him.

I say these things at the outset not because they have any bearing on Mrs. O'Connor's qualifications but because they have something very much to do with the larger processes of representative government which are also at stake in these hearings.

Now the facts of Judge O'Connor's legislative and judicial careers are matters of public record and they have been amply set forth for examination by other witnesses who have already appeared before the committee, so I will not belabor that part of my testimony.

I had listened for the past 2 days to Mrs. O'Connor's explanations of her proabortion votes while a member of the Arizona State Senate, and I was especially interested to hear last evening from six members of the Arizona State Legislature. I must say I was impressed and moved by their testimony but it would have to come, I am sure, under the heading of being character witnesses for her probity and her good character.

However, Senator Biden yesterday underscored our reaction and puzzlement when he told Mrs. O'Connor that she had not answered most of the questions which had been posed to her. Senators Denton, East, Grassley, and Hatch, despite their best efforts, could not get Judge O'Connor to admit that she was anything more than "personally opposed" to abortion.

Now I appreciate her personal opposition to abortion but, for the record, those words since the 1973 *Roe v. Wade* decision have become a catch phrase used by many making public policy in our State legislatures and in the Congress, who on the other hand do not wish to do anything to protect the innocent unborn.

Senator, if I may digress for a moment, I would like to thank you for your statement a little bit earlier this afternoon in which you spoke to the fact that in your opinion the Supreme Court really did not have jurisdiction to do what they did on the *Roe v. Wade* decision. I am not a lawyer, I am not a Member of Congress, obviously, but I concur heartily in that judgment, as you know indeed many constitutional attorneys do.

Judge O'Connor rightly said she could not speak to how she might rule in any future case to come before the Court. She also said that she would not comment on the 1973 *Roe v. Wade* decision of the Court because, her explanation was, that matter might once again come before the Court as the subject of litigation.

On the other hand, busing might again come before the Court as a matter of litigation, and Judge O'Connor categorically said that she opposes busing. The death penalty might once again come before the Court as a matter of litigation, and Judge O'Connor said she favors the death penalty.

However, on the grounds that the 1973 *Roe v. Wade* decision might again come before the Court, in other words, on the same grounds, she again and again refused to give any direct or categorical comment on the legal or substantive aspects of the *Roe v. Wade* decision, or even on the matter of abortion itself. She would only say she was personally opposed.

Now what does that mean for one who will adjudicate laws that the legislatures will make? Is she opposed to abortion for other people, and not merely personally?

Mr. Chairman, we see no evidence of a change of heart or of mind on the part of Judge O'Connor from the proabortion stance that admittedly dominates her public record in the Arizona State Senate. We do now know what questions the President asked of her in his private meeting, or the questions that were posed to her by members of this committee in their private meetings with her.

I understand Mrs. O'Connor's ambition and desire to become the first woman Justice of the Supreme Court of the United States, a perfectly valid ambition. I find, however, her philosophy as exemplified in her record as a legislator and leader in the State Senate of Arizona clearly proabortion, and so on the basis of criteria set forth by the platform of the majority party in the Senate and by the President who nominated her, she would appear to be unqualified.

One final comment: All of us in public life must realize at times like these that our judgments are themselves subject to reexamination. I sincerely hope, as has been implied by members of the Arizona State Legislature, that she has changed her opinion on abortion. With Dr. Gerster, I hope that that is the case. In fact, I might even say I pray for that.

However, all of us will be subject to reexamination by the one judge who alone is just and to whom all of us must finally submit our thoughts and hopes, our words, our deeds, our very lives, all of which and each part of which ultimately will be germane. Mr. Chairman, Members of the committee, I ask that the Members of the Senate and in particular the members of the Judiciary Committee not confirm the nomination of Judge Sandra Day O'Connor, unless and until such time as she comments on these matters of her public record.

I thank you.

The CHAIRMAN. I do not believe there are any questions because there are no other Senators here, and I do not believe I have any questions. We thank you for your appearance here and for your testimony.

Father FIORE. I thank you, Senator.

[Material follows:]



# National Pro-Life Political Action Committee

101 Park Washington Court  
Falls Church, VA 22046

(703) 536-7650

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† Deceased

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† Deceased

## TESTIMONY

of the

Rev. Charles Fiore, O.P.,

Chairman,

National Pro-Life Political Action Committee,

Falls Church, Virginia

before the

Judiciary Committee

of the

United States Senate,

September 11, 1981

Mr. Chairman and Members of the Committee:

I thank you for this opportunity to appear before you as founder and Chairman of the National Pro-Life Political Action Committee, and on behalf of tens of thousands of our supporters in all states and right-to-lifers everywhere, who oppose the nomination of Judge Sandra Day O'Connor to the U.S. Supreme Court.

Mrs. O'Connor's nomination by President Reagan has been the occasion of virtually unanimous disappointment on the part of rank-and-file pro-lifers, because it represents a breach of the 1980 Republican Platform on which he ran (and which he more than once privately and publicly affirmed as a candidate), and on the basis of which he convinced millions of blue-collar, traditionally Democratic voters --

ethnic Catholics and fundamentalist-evangelical Protestants -- to switch parties and vote for him.

As a result, in the first six months of his incumbency, President Reagan may have seriously alienated major portions of the "social issues conservatives" who comprised the pro-life/pro-family coalition that helped elect him last November. Those same voters are intently watching these hearings, and will long remember and note well the final "ayes" and "nays" as the full Senate determines Judge O'Connor's qualifications to sit with the Court. As voters they perceive the members of the House and Senate not as party functionaries, but as their representatives first of all; just as they also perceive party platforms and election pledges not as "litmus tests," but as implied contracts to be fulfilled by those elected.

I say these things at the outset, not because they have bearing on Mrs. O'Connor's qualifications, but because they have very much to do with the larger processes of representative government, which are also at stake in these hearings.

The facts of Judge O'Connor's legislative and judicial careers are matters of public record, even though it appears that the Administration paid scant attention to them when evaluating her qualifications for the Supreme Court, even as late as the now-infamous Starr Justice Department memorandum hurriedly compiled a day or so before the nomination was made.

Briefly, as they pertain to the abortion issue, the facts are:

1. As a State Senator in 1970, Mrs. O'Connor twice voted for HB 20, to repeal Arizona's existing abortion statutes -- three years before the U.S. Supreme Court legalized abortion-on-demand, throughout the nine months of pregnancy, in all 50 states.
2. In 1973, Senator O'Connor co-sponsored a so-called "family planning" Act (SB 1190) which would have allowed abortions for minors without the consent of parents or guardians. The bill was considered by all observers in Arizona to be an abortion measure, and the Arizona Republic (3/5/73) editorialized, "The bill appears gratuitous -- unless energetic promotion of abortion is the eventual goal."
3. In 1974, Senator O'Connor voted against a bill (HCM 2002) to "memorialize" Congress on behalf of passage of a Human Life Amendment to the Constitution protecting the unborn.
4. In 1974, she voted against an amendment to a University of Arizona funding bill that prohibited use of tax-funds for abortions at University hospital, because Mrs. O'Connor claimed it was "non germane" and thus violated the state constitution. However, the bill passed with the amendment, and its constitutionality was upheld by the State Supreme Court.

It seems rather peculiar to us that Mrs. O'Connor, in discussing her legislative record on abortion with Mr. Starr of the Justice Department, could not remember her position on the first three votes, since they all represented dramatic departures from the existing laws and aroused national media attention. Yet she was apparently able to recall the far less significant fourth vote and her precise reason for it. Stranger still, was her attempt in the Starr memorandum to portray herself as a friend and intimate of Dr. Carolyn Gerster, M.D., Phoenix, titular head of the state right-to-life organization, when Dr. Gerster says it was well-known that she and Mrs. O'Connor had long been in heated opposition on these very votes.

The question looms large over Mrs. O'Connor's qualifications to sit as a member of the Supreme Court: Did she deliberately seek to mislead investigators for the Justice Department and/or the President as to the facts of her legislative record on this vital issue; did she give false or selective information in an attempt to portray her clearly pro-abortion legislative record as something else?

And if she did, what does that say about her ambition to accede to the high Court...and her moral strengths once part of it?

What price glory?

I raise these blunt and impolite questions because the matter of the right to life of the unborn is fundamental and critical to the health of our society. "The right to life," as also the rights to "liberty and the pursuit of happiness" are not "minor" or peripheral issues in our political process. Nor are they "private" any more than

homicide is a "private" act if the unborn are human, as indeed every medico-scientific test affirms.

Because of the complicated and sensitive issues involved, at the very least we expect you to fully explore her philosophy and opinions on this issue of life versus death. If this judge be not guilty of the pro-abortion charge, let her proclaim her innocence loudly and clearly. Indeed, if she has changed her views, National Pro-Life PAC would be first in line to reconsider our opposition to this nomination.

As Professor William Bentley Ball, former Chairman of the Federal Bar Association's Committee on Constitutional Law, and one who has argued a number of religious liberty cases before the U.S. Supreme Court, recently wrote apropos of Mrs. O'Connor's nomination:

*"Some zealous supporters of the O'Connor nomination...have made the astonishing statement that, on the Supreme Court of the United States, ideology doesn't count. They say...that it would be of no significance that a candidate would have an actual and proved record of having voted or acted on behalf of racism or anti-Semitism or any other philosophic point of view profoundly opposed by millions of Americans. These concerns are not dispelled by a recital that the candidate is 'personally' opposed to such a point of view. Why the qualifying adverb? Does that not imply that, while the candidate may harbor private disgust over certain practices, he or she does not intend to forgo support of those practices?"*

*"Philosophy is everything in dealing with the spacious provisions of the First Amendment, the due process clauses, equal protection, and much else in the Constitution. It is perfect nonsense to praise a candidate as a 'strict constructionist' when, in these vital areas of the Constitution, there is really very little language to 'strictly' construe..."*

*"It is likewise meaningless to advance a given candidate as a 'conservative' (or as a 'liberal'). In the matter of Mrs. O'Connor, the label 'conservative' has unfortunately been so employed as to obscure a very real issue. The scenario goes like this:*

*"Comment: 'Mrs. O'Connor is said to be pro-abortion.'*

*Response: 'Really? But she is a staunch conservative.'*

*"Just as meaningful would be:*

*"Comment: 'John Smith is said to be a mathematician.'*

*Response: 'Really? But he is from Chicago.'*

*"Whether Mrs. O'Connor is labeled a 'conservative' is irrelevant to the question respecting her views on abortion. So would it be on any other subject." (Emphasis added. Cf. Appendix for complete text, "The O'Connor Supreme Court Nomination: A Constitutional Lawyer Comments," from THE WANDERER, St. Paul, MN, Vol. 114, No. 31; July 30, 1981).*

"Philosophy is everything..." says Professor Ball. And we concur. With these facts of her record in mind, and in the light of President Reagan's pro-life promises before, during and after the campaign, logically only three conclusions can be drawn:

1. Either Sandra Day O'Connor has changed her views, and is no longer a pro-abortion advocate ("personal opposition" does not necessarily translate into "public" opposition to abortion), or
2. President Reagan appointed Mrs. O'Connor without full knowledge about her public record, or
3. President Reagan was fully informed about Mrs. O'Connor's public record as pro-abortion, but chose to disregard it and the solemn pro-life promises he had made.

If, as it appears, Judge O'Connor and some of her supporters have attempted to cloud over or to minimize the importance of her pro-abortion record for the sake of these hearings, what does that say about her record? More, what does it say about her probity and candor?

Far from being unimportant, these questions are absolutely essential in judging the qualifications of one nominated to the Supreme Court of our land.

Mrs. O'Connor, although she has already testified and submitted herself to your queries, technically is still before this Committee, and may be recalled for further questioning by yourselves or other Senators.

She must be asked directly if she has changed her views on abortion since her votes in the Arizona State Senate. She must be asked specifically

about each of those votes. She must be asked about Roe vs. Wade and Doe vs. Bolton, about parental consent to medical procedures on minors, and the other excellent questions Professor Ball raises in his article (op. cit.).

Should this Committee and the Senate fail to raise these questions with Judge O'Connor now, as previous Judiciary Committees did not hesitate to question Judges Haynesworth and Carswell on their records and philosophies, her nomination if confirmed will always be tainted, and history will record that the Senate rushed to confirm her for specious reasons and not her legitimate qualifications for the job.

Mr. Chairman and Members of the Committee, we see no evidence of a change of heart or mind on the part of Judge O'Connor from the pro-abortion stance that dominates her public record. We do not know what questions President Reagan asked Mrs. O'Connor in his private meeting with her, and so we do not know the practical value, if any, of her newfound "personal opposition" to abortion. On the contrary, we find evidence that one week after her conversation with the President (and before her nomination) she gave partial and misleading information on these very issues as they arise in her record, to an investigator for the Attorney General of the United States, at a time when she knew full well that she was being considered among the finalists for this nomination.

I understand Mrs. O'Connor's ambition and desire to become the first woman Justice of the Supreme Court of the United States.

I find her philosophy as exemplified in her record as a legislator and leader in the State Senate of Arizona clearly pro-abortion and so, on the basis of criteria set forth by the Platform of the majority party in the Senate, and by the President who nominated her, she is unqualified.

But all of us in public life must realize at times like these that our judgments are subject to re-examination, first of all by the public record which follows, and ultimately by the one Judge Who alone is Just, and to whom all of us must finally submit our thoughts, hopes, our words, our deeds, our very lives--all of which and each part of which will be "germane."

Quite simply, gentlemen, abortion goes beyond partisan platforms and political promises -- it is morally unjustifiable. For that fundamental reason, we urge all of you -- Democrats and Republicans alike -- to vote against the nomination of Sandra Day O'Connor to the U.S. Supreme Court.