

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 it 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 Superior 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 3 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 decision of Judge Guccio 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 independence 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 judgment 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