

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 pro-life 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

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 and 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

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:]