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 acute 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.