

Dedication

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As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more women out there doing things, and we'll all be better off for it.

–Justice Sandra Day O’Connor¹

The *Arizona State Law Journal* staff was deeply saddened to learn of the passing of former United States Supreme Court Justice Sandra Day O’Connor on December 1, 2023. We respectfully dedicate this issue of the *Arizona State Law Journal* to her memory.

Justice O’Connor, our law school’s namesake,² was greatly respected and revered in the Arizona legal community well before she became a Supreme Court Justice. A longtime resident of Arizona, Justice O’Connor served our great state in many capacities: as an Assistant Attorney General, as a State Senator, as a Maricopa County Superior Court judge, and later, as a judge for the Arizona Court of Appeals.³ To the world, Justice O’Connor is remembered as the first woman to sit on the United States Supreme Court. But to Arizonans, Justice O’Connor’s legacy extends far beyond that; we also treasure her profound local influence on this community,

* Former Editor-in-Chief, 2023–2024, *Arizona State Law Journal*. No one achieves anything alone. Thank you to Caitlin Brydges, Alexander Egber, Katharine Greer, and Ashley Liu for their thoughtful edits.

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1. Sandra Day O’Connor, Just., Sup. Ct. of the U.S., *Women in Power*, Address at the 16th Annual Olin Conference (Nov. 14, 1990), <https://library.oconnorinstitute.org/speeches-writings/women-in-power> [https://perma.cc/WU5U-3RZW].

2. Justice O’Connor was a woman of many “firsts,” including being the first woman to have a law school named after her. Lindsay Walker & Erik Ketcherside, *Judicial Icon, Groundbreaking Arizonan Sandra Day O’Connor Dies at 93*, ARIZ. STATE UNIV. NEWS (Dec. 1, 2023), <https://news.asu.edu/20231201-arizona-impact-judicial-icon-asu-law-namesake-sandra-day-oconnor-dies-93> [https://perma.cc/ZDA5-E8EB].

3. *Biography of Associate Justice Sandra Day O’Connor*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographyOconnor.aspx> [https://perma.cc/238J-A9DS].

which runs as deep as her national impact.⁴ Many scholars have eloquently recounted her extensive list of achievements.⁵ We will simply add that the *Arizona State Law Journal's* mission to publish thoughtful legal scholarship, particularly on issues relevant to Arizona law, was forever changed by Justice O'Connor's service to this state in all three branches of its government.

We cannot pay tribute to Justice O'Connor without recognizing her monumental impact on the advancement of women in the legal community. As a dedicated mother and wife,⁶ Justice O'Connor demonstrated that commitment to family and success in the legal field—or indeed, in any industry—are not mutually exclusive. She defied expectations, was fearless in the face of adversity, and championed women's rights throughout her career.⁷ As an Arizona legislator and the first woman in the nation to serve as a majority leader in a state legislature, Justice O'Connor worked to change several state laws that discriminated against women.⁸ Decades later on the Supreme Court, Justice O'Connor coauthored the plurality opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey* upholding a woman's fundamental right to abortion.⁹ Throughout her career, she remained a committed mentor to her clerks and to numerous women judges. Her influence on women in the law is both multifaceted and far-reaching.

Since the *Arizona State Law Journal's* inception in 1969, nearly half of our Editors-in-Chief have been women, and this marks the twelfth

4. See, e.g., Lauren Castle, *Sandra Day O'Connor's Legacy Seen Through Arizona's Schools, Buildings*, AZ CENTRAL (Dec. 1, 2023, 9:00 PM), <https://www.azcentral.com/story/news/politics/arizona/2023/12/01/sandra-day-oconnors-legacy-seen-through-arizonas-schools-buildings/1347475002> [<https://perma.cc/9GX3-JER3>].

5. See, e.g., EVAN THOMAS, FIRST: SANDRA DAY O'CONNOR (2019); JOAN BISKUPIC, SANDRA DAY O'CONNOR (2006); see also William Cracraft, *Ninth Circuit Judges Reflect on the Passing of Retired Associate Justice Sandra Day O'Connor*, U.S. CTS. FOR NINTH CIR. (Dec. 6, 2023), <https://www.ca9.uscourts.gov/circuit-executive/ninth-circuit-judges-reflect-on-the-passing-of-retired-associate-justice-sandra-day-o-connor> [<https://perma.cc/3VNF-56M5>]. For information straight from the source, see SANDRA DAY O'CONNOR & CRAIG JOYCE, THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE (2003); SANDRA DAY O'CONNOR & H. ALAN DAY, LAZY B: GROWING UP ON A CATTLE RANCH IN THE AMERICAN SOUTHWEST (2002).

6. SUP. CT. U.S., *supra* note 3.

7. See *id.*

8. *Id.*

9. 505 U.S. 833 (1992), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

consecutive year in which women have held that title.¹⁰ For over a decade, women have overseen and directed the *Journal’s* production of legal scholarship and the development of hundreds of law students as Staff Writers and Editors. We have published countless female authors over the years, including five in this issue alone. And we are proud of the work the *Arizona State Law Journal* has done to advance the prominence of women in legal discourse—but we could not have achieved these feats without the trailblazing work of Justice O’Connor.

In remembrance of Justice O’Connor, this issue of the *Arizona State Law Journal* has been specially curated with remarks and articles related to her life and legacy. We are honored to feature statements from the U.S. Supreme Court on Justice O’Connor’s passing, as well as remarks delivered by Justice Sonia Sotomayor during the Lying in Repose of Justice O’Connor at the Supreme Court on December 18, 2023. In addition, we are pleased to publish a eulogy honoring Justice O’Connor prepared by Justice Ruth McGregor, one of Justice O’Connor’s first clerks on the Supreme Court and a former Arizona Supreme Court Justice. Finally, this issue includes remarks presented in memory of Justice O’Connor at the 2024 Ninth Circuit Judicial Conference by Senior Judge Mary Schroeder.¹¹

These tributes are penned by individuals who knew Justice O’Connor over her long life and career as a colleague, mentor, or simply a friend. But a bright throughline emerges from each piece: Justice O’Connor was a woman of tremendous care. She cared about her professional and personal relationships, she cared about her work, she cared about civics education, and she cared about Arizona. We all benefit immensely from Justice O’Connor’s unrelenting dedication to the law, justice, and the advancement of women in the legal field and society at large.

During her lifetime, she empowered countless law students, lawyers, judges, legislators, and scholars, including current and former members of

10. Justice O’Connor herself was on the Board of Editors of her law school’s preeminent law journal. *Id.* (select “Childhood and Education” on the left menu). In fact, that is how she met her future husband; as Justice O’Connor wisely noted, “Beware of proofreading over a glass of beer. . . . It can result in unexpected alliances.” *Id.*

11. Justice O’Connor served as the Circuit Justice for the Ninth Circuit from 1986 until her retirement from the Supreme Court in 2006. *O’Connor, Sandra Day*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/oconnor-sandra-day> [<https://perma.cc/TBG8-FVC4>].

the *Journal*.¹² And her legacy will continue to inspire others for many generations to come. For that, and on behalf of the entire *Arizona State Law Journal* editorial staff: Thank you, Justice Sandra Day O'Connor.

12. In the 1950s, only two percent of law students were women. By the time Justice O'Connor retired from the U.S. Supreme Court in 2006, that statistic had risen to forty-eight percent. See *Sandra Day O'Connor*, SANDRA DAY O'CONNOR INST. FOR AM. DEMOCRACY, <https://oconnorinstitute.org/civic-programs/oconnor-history/sandra-day-oconnor-policy-archives-research-library/biography> [<https://perma.cc/J4XF-SNFN>].

Editors' Introduction

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This Winter Issue of the *Arizona State Law Journal* presents eight pieces carefully selected by the *Journal's* editors for their relevance to Justice O'Connor and her legacy. The authors herein touch on a range of topics—including federalism, judicial integrity, gender, and issues unique to Justice O'Connor's home state of Arizona—that each tie back to Justice O'Connor's background and the causes she championed.

In *The Virtues of Optional Legislation*, Professors Jacob Bronsther and Guha Krishnamurthi propose optional legislation as a solution to the legislative gridlock plaguing modern politics, reimagining Justice O'Connor's vision of states as “laboratories of democracy” through opt-in federal legislation.¹ The authors explore the virtues and vices of optional legislation, as well as the impacts such legislation would have on federalist principals and our political discourse.

The Elected Judge by Professor Matthew Kim questions whether apprehensions regarding the independence and integrity of elected judges are warranted.² Through extensive empirical analysis, this Article posits that such fears surrounding judicial elections are largely unfounded, as voters appear to value judges who adhere to principled legal analysis and rarely vote against judges simply for issuing countermajoritarian decisions.

Arizona's Elimination of Peremptory Challenges: A First Look by Judge Paul McMurdie et al. reports the effects of Arizona's unprecedented elimination of peremptory challenges in jury selection. As Justice O'Connor recognized, the discriminatory use of peremptory challenges poses threats to the judicial process.³ The data from Arizona suggests that eliminating

1. See *Fed. Energy Regul. Comm'n v. Mississippi*, 456 U.S. 742, 788 (1982) (O'Connor, J., concurring in part and dissenting in part).

2. See Sandra Day O'Connor, Opinion, *Justice for Sale: How Special-Interest Money Threatens the Integrity of Our Courts*, WALL ST. J. (Nov. 15, 2007, 12:01 AM), <https://www.wsj.com/articles/SB119509262956693711>.

3. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 147 (1994) (O'Connor, J., concurring).

peremptory challenges has helped address these risks without producing the adverse effects that some feared would result from the absence of these courtroom tools.

In *Gender Differentials in the Content of Judicial Opinions*, Kaleigh Ruiz presents the results of a study suggesting that, on average, women judges produce longer and more thoroughly cited opinions than their male counterparts. While the author suggests multiple factors that could explain this difference, her results echo the words of Justice O'Connor, who once noted that her influence on the Court as the first woman Justice was not simply due to her gender but rather the “power of her arguments.”⁴

In Dobbs, *Deliberative Interference, and Legitimacy*, Matthew Slovin discusses how the leaked draft opinion in *Dobbs v. Jackson Women’s Health Organization*⁵ may have impacted the perceived legitimacy of the Supreme Court’s deliberations and its final opinion. As a vocal advocate for judicial independence, Justice O'Connor warned us to “be ever vigilant against those who would strong-arm the judiciary into adopting their preferred policies”⁶—but as this author suggests, such vigilance should extend equally against both external *and* internal pressures on the Court.

Second-Guessing State Courts in Election Cases: Arrogation and Evasion Under Moore v. Harper by Michael Weingartner explores the aftermath of the Supreme Court’s recent decision that left open a path for federal courts to second-guess state courts in election cases. As Justice O'Connor once explained, a key component of federalism is deference to state courts on matters of state law.⁷ This author thus offers a framework to preserve this deference, discussing when and how federal courts should review state election law decisions after *Moore v. Harper*.⁸

Finally, this issue features two student Comments, written by Rosemarie McCormack and Kaitlyn Vance, which focus on important legal issues in

4. Staci D. Kramer, *Enter O'Connor, Exit 'Mr. Justice,'* N.Y. TIMES, Nov. 16, 1990, at B6.

5. 597 U.S. 215 (2022).

6. Sandra Day O'Connor, Assoc. Just., Sup. Ct. of the U.S., Remarks on Judicial Independence, Dedication of the Lawton Chiles Legal Information Center University of Florida, Levin College of Law (Sept. 9, 2005), in 58 FLA. L. REV. 1, 6 (2006).

7. See Sandra Day O'Connor, Assoc. Just., Sup. Ct. of the U.S., Our Judicial Federalism, Third Sumner Canary Lecture, Case Western Reserve University School of Law, Cleveland, Ohio (Nov. 13, 1984), in 35 CASE W. RES. L. REV. 1, 10 (1984).

8. 600 U.S. 1 (2023).

Justice O'Connor's home state of Arizona: respectively, the use of progressive supersession concerning Arizona's territorial abortion ban; and the resolution to property conflicts between the federal and state governments along Arizona's border. Authored by students who attend the very law school bearing Justice O'Connor's name, these pieces—and the *Journal* itself—reflect the vibrant legal discourse taking place in the state Justice O'Connor long called home.

On behalf of the *Arizona State Law Journal*, we extend our heartfelt gratitude to these authors for their contributions to this historic issue. We also wish to thank the *Journal's* Editors and Staff Writers, who worked tirelessly to bring this issue to fruition. Justice O'Connor's memory carries on through her influential legal career, the Sandra Day O'Connor College of Law, and now this issue of the *Arizona State Law Journal*. We hope that Justice O'Connor would be proud to see her legacy recognized and celebrated through these pages.

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