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THE APPOINTMENT OF JUSTICE SANDRA DAY O'CONNOR: WHEN THE
CONFIRMATION PROCESS AND ABORTION POLITICS COLLIDE

by

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ABSTRACT

Despite unanimous confirmation by the Senate, President Reagan's 1981 nomination of Sandra Day O'Connor to the United States Supreme Court was not without controversy. As a rhetorical form, any confirmation process is fundamentally about determining whether a candidate will protect liberty. The study of O'Connor's confirmation not only increases scholarly understanding of the confirmation process as a rhetorical form but it also complicates the historical narratives of both the women's and conservative movements. While her nomination was groundbreaking for women, it would also become a battle to define the future of political conservatism, specifically the emerging controversy around abortion rights. Although her gender cannot be discounted for its effect on the narrative, through a rhetorical analysis of articles published about O'Connor's nomination, as well as testimonies to the Senate Judiciary Committee, this research finds that social conservatives questioned O'Connor's position on abortion to judge her ability to protect liberty.

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INTRODUCTION

When President Ronald Reagan announced the nomination of unknown Arizona state judge Sandra Day O'Connor to the Supreme Court, anti-abortion groups immediately protested. However, for those who knew O'Connor, the backlash seemed unwarranted. "I don't know what they're upset about," Arizona Senate colleague and self-proclaimed 'pro-life legislator' Donna West told the *New York Times* less than a week after the July 7, 1981 announcement, "I have known her for 15 years, and I've never seen anything that would lead me to believe she's pro-abortion" (Crewdson 22). Even Reagan's personal assurances that lifelong Republican O'Connor found abortion "personally abhorrent" did little to quell the controversy ("Honored by Post" A12). Anti-abortion groups keyed in on fewer than a dozen votes O'Connor made in the early 1970s as an Arizona state senator, which they interpreted as pro-abortion. In light of a campaign promise to nominate only anti-abortion candidates to the Court, Reagan's nomination was seen as a betrayal. Thus, O'Connor's confirmation process was set to become a battleground over defining the future of political conservatism, with the Republican Party's commitment to outlawing abortion at the heart of the struggle between traditional political conservatives and an increasingly powerful social conservative movement.

While the majority of media coverage focused on the abortion controversy, O'Connor's nomination and eventual confirmation was groundbreaking in another way: she would be the first woman to sit on the Supreme Court. In 1981, no woman prior had even been nominated for the prestigious position. Certainly, as with any woman in an almost exclusively male public sphere, both her opponents and her supporters discussed her with sexist language. Further, O'Connor had to act in ways that no male candidate would ever have to, literally serving Reagan's advisors food and drinks in her Arizona kitchen, as if she were the wife of a candidate

and not the candidate herself (Hirshman 132). However, O'Connor never publically complained that the paradoxical requirements that she maintain a feminine front and meet the standards of traditionally masculine judicial competence were sexist.

Furthermore, O'Connor's political conservatism seemingly worked in her favor. The articles written during her confirmation process suggest that many senators, all but two of whom were male, were not going to vote against the first female Supreme Court justice. Democratic senators supported her nomination exclusively, with many issuing statements commending the milestone in women's history. Thus, all controversy remained within her party, but none of it seemed to assert that O'Connor should be disqualified based on gender. Yet, the sexist language spoken about her, combined with Reagan's insistence that he fulfill a campaign promise to appoint the first woman to the Court, reeks of tokenism, even if the end result was positive for women's rights. With the 1970s feminist movement lingering in the political atmosphere, even on its last legs, no man would dare vote against a competent female candidate, especially one nominated by the harbinger of modern conservatism.

Yet, the form of the process itself also affected O'Connor's confirmation. The confirmation process has developed since the writing of the Constitution into a form with its own rhetorical requirements, including public vetting and Senate hearings. O'Connor necessarily had to conform to requirements that had been crafted rhetorically over time; otherwise, she would not be successful. This form, through tradition, has largely been concerned with the preservation of liberty, due to the 'apolitical' nature of the judicial branch. Thus, not only did O'Connor have to act within the procedural requirements of the confirmation process as a rhetorical form but she also had to craft a rhetorical response that assured her confirmation would conform to the ideals of protecting liberty.

The confirmation process of Sandra Day O'Connor is caught in the storm of political and cultural change. As a constitutional prerogative, the confirmation process is a rhetorical form dedicated to the assessment candidate's ability to protect liberty; the rhetorical form necessarily complicates the life of the controversy surrounding her. Study of this process not only increases scholarly understanding of the rhetorical form, but it also complicates the historical narratives of both the women's and conservative movements. Through a rhetorical analysis of articles published about O'Connor's nomination in the *New York Times* from July 2, 1981 to September 29, 1981, as well as testimonies to the Senate Judiciary Committee from September 9, 1981 to September 11, 1981, this research finds that O'Connor's position on abortion was the issue through which social conservatives judged her ability to protect liberty as they defined it. Although her gender cannot be discounted for its effect on narrative, ultimately, O'Connor's nomination is profoundly shaped by disagreement between traditional Republicans and an increasingly powerful social conservative faction over the future focus of political conservatism, with abortion as the issue driving the conflict forward.

Before moving to analysis, this paper offers a literature review of the scant research previously conducted on the confirmation process, as well as O'Connor's specifically, followed by an explanation of the analytical framework for this study—based on Lloyd Bitzer's rhetorical situation and rhetorical form. Chapter 2 argues that the confirmation process is a rhetorical form; thus, arguing that predetermined rhetorical requirements cannot be ignored by any scholarship concerning the confirmation process. Chapter 3 analyzes the media attention and language about the O'Connor nomination specifically, illuminating what occurred when the rhetorical form and abortion politics of the conservative movement collided, giving attention to the representation of her gender and ideological positions. Chapter 4 concludes the paper, arguing that despite an

ultimately unanimous approval, O'Connor's position on abortion became the standard by which her ability to potentially protect liberty on the Court would be judged, because her nomination occurred at a critical historical and cultural moment in which Republicans were attempting to define the future of political conservatism, with abortion politics at the epicenter.

Literature Review

Research about the confirmation process, the time between the president's nomination of a candidate to the full Senate vote to confirm or deny, is scarce but it does exist; rhetorical analysis of the process is even more difficult to find. Legal scholars have focused on the history of the process as a whole, as well as its component parts. Rhetorical scholars have focused on the most controversial processes, mostly failed nominations with great public controversy.

Successful, or perceived as uncontroversial, processes are sidelined by most scholarship. Those researchers who deal with O'Connor usually relegate her confirmation to a few sentences or a footnote, if they even mention her at all. Up to this point, any research that mentions O'Connor does so to discount the importance of her nomination, usually arguing that there is nothing to be gained from further research.

While the confirmation process is an essential aspect of choosing members of the judiciary, legal scholars have given it only some focus; instead, the bulk of legal research concerns itself with legal interpretation. Legal scholars prefer substance to process. However, the scholars who have researched the process should be mentioned. In the 2011 article, "Choosing Justices: How Presidents Decide," Joel Goldstein gives the most expansive explanation of how and why confirmation process work, arguing "that Supreme Court nominations are best understood as the product of the interaction between three interrelated and dynamic variables—the pool of potential candidates, the context in which the nomination is made, and presidential

idiosyncrasy” (427). In terms of understanding the process as a rhetorical form, Goldstein’s work is a critical piece for its explanation of the history and the requirements of the process, going back to 1900.

Aside from Goldstein, legal research tends to focus on specific aspects of the process. In the 1993 article, “Confirming the Constitution: The Role of the Senate Judiciary Committee,” Stephen Wermiel argues that since the nomination and defeat of Judge Robert Bork in 1987, the Senate Judiciary Committee has used its hearings, a requirement of the form, to “influence constitutional interpretation” (122). While his argument about Senate influence is convincing, the dividing line of a pre- and post-Bork era is less so, especially in light of more current research. On the other hand, Joel Aberbach and Bert Rockman turn attention to the president’s role, in the 2009 article, “The Appointments Process and the Administrative Presidency.” Aberbach and Rockman use the Richard Nathan-coined concept, the ‘administrative presidency,’ to explain how presidents since Richard Nixon have used the appointments process, which includes but is not limited to Supreme Court nominees, to assert control over the legislative process (40). Taking into consideration the Reagan promise to nominate only those opposed to abortion to the Court, a key aspect of the O’Connor controversy and clearly an attempt to influence policy, their argument that the administrative presidency is an ongoing concept is persuasive.

Analysis of specific nominees has largely focused on the more controversial. In the 1994 mass-market publication and arguably the most successful analysis of any confirmation process, “Strange Justice: The Selling of Clarence Thomas,” Jane Mayer and Jill Abramson argue that the Thomas nomination, especially the hearings, was plagued by falsehoods. However, aside from the fact that they were both successful Republican-president nominees, there is little comparison

between the O'Connor and Thomas nominations. Focusing solely on failed nominations, John Massaro argues that since the unsuccessful nomination of Justice Abe Fortas to Chief Justice by President Lyndon Johnson, fitness for the Court has largely focused on a candidate's ideology, which undercuts Wermiel's argument that this has only happened in a post-Bork era (6). The controversy surrounding O'Connor's ideological position on abortion seems indicative of Massaro's argument.

In terms of rhetorical analysis, focus on the confirmation process has been bleak in terms of volume. In a 1974 article for the *Quarterly Journal of Speech*, Richard Vatz and Theodore Windt, Jr. analyze the defeats of Nixon nominees, Clement Haynesworth and G. Harrold Carswell. While they convincingly argue that nominees generally fail on the grounds of philosophy, ethics, and/or competence, their focus on failed nominees sheds little light on how to analyze a successful, albeit controversial, nomination. Most closely aligned with the research at hand is Trevor Parry-Giles's 2006 book, *The Character of Justice: Rhetoric, Law, and Politics in the Supreme Court Confirmation Process*. Within this research, Parry-Giles draws on Alexander Hamilton's contributions to the *Federalist Papers* to argue that the essential function of the confirmation process is to protect liberty, which informs a crucial aspect of what this paper argues is the rhetorical form (12). Parry-Giles's thesis that confirmation processes as public debates "are moments of constitutive formation for American conceptions of law, justice, and democracy" aligns quite well with this scholarship (3). However, Parry-Giles's treatment of the O'Connor nomination leaves much to be desired.

Parry-Giles does not limit his research to unsuccessful processes, like Vatz and Windt, Jr.; arguably, he would agree that successful nominations could be just as enlightening as unsuccessful nominations, in terms of understanding the historical and cultural implications of

such important public debates. However, buried in a chapter about Bork's nomination as political spectacle, he throws away O'Connor's process as "relatively trouble free" (118). At best, Parry-Giles at least finds her groundbreaking nomination worth mentioning, unlike most confirmation process scholars. At worst, the statement is startlingly naïve, perhaps looking only to the unanimity of her eventual nomination or, as Wermiel suggests, interpreting her confirmation as inevitable (Wermiel 129). Yet, if processes can inform understanding of historically and culturally defined concepts, such as Parry-Giles's suggested 'liberty,' then the O'Connor nomination, with its incredible controversy surrounding abortion—itsself an issue dealing fundamentally with liberty—and alarmingly sexist rhetoric, seems ripe for further research.

Analytical Framework

For purposes of framing the analysis, this research relies heavily on Lloyd Bitzer's 1968 concept, the 'rhetorical situation,' as well as a more specific type of rhetorical situation, the 'rhetorical form,' as defined by Bitzer in 1980. Specifically, the rhetorical situation is defined as "a complex of persons, events, objects, and relations presenting an actual or potential exigence that can be completely or partially removed if discourse, introduced into the situation, can so constrain human decision or action as to bring about the significant modification of the exigence" (Bitzer, "Rhetorical Situation" 6). On the one hand, Bitzer's terminology explains the constraints placed upon the discourse of any confirmation process, through understanding the confirmation process as a rhetorical form. On the other hand, it helps to organize the life of the controversy surrounding O'Connor's nomination, by utilizing Bitzer's stages of a rhetorical situation.

Examination of a rhetorical situation's three constituents—exigence(s), audience(s), and constraints—is required for any analysis utilizing such framework. Bitzer defines exigence as

“an imperfection marked by urgency; it is a defect, an obstacle, something waiting to be done, a thing which is other than it should be” (6). A situation might involve multiple exigences, but a rhetorical situation is only defined by the *rhetorical* exigence(s). Bitzer defines the audience in concrete terms, not as potential or actual hearers, but consisting “only of those persons who are capable of being influenced by discourse and of being mediators of change” (7). Therefore, any audience member must have agency. Lastly, Bitzer explains, “Every rhetorical situation contains some constraints such as persons, events, objects, relations, rules, principles, facts, laws, images, interests, emotions, arguments, and conventions. Having the power to influence decision and action needed to modify the exigence, these constraints are parts of the situation and influence both rhetor and audience” (“Functional Communication” 23). Constraints can limit the ability of a rhetor to effectively persuade, or they provide opportunities for the rhetor to overcome (24).

Sometimes, a rhetorical situation can emerge that is remarkably similar in exigence, audience, and/or constraint to a prior one; this situation is referred to as the rhetorical form:

From day to day, year to year, comparable situations occur, prompting comparable responses from speakers and writers. Rhetorical forms thus arise as natural responses to situations, and their contents, structural features, and strategies are answers to demands imposed by recurring situations.... A form, once established, tends to constrain a new instance of discourse in that form. Forms change in response to situational changes; commonly, however, changes in form lag behind changes in situation (36).

If a rhetorical situation can be identified as a rhetorical form, which a confirmation process arguably can be as argued in chapter 2, then wider-reaching trends can be established, making the rhetorical form an incredible analytical tool for research across situations that might usually have great historical and cultural differences.

Additionally, in specific analysis, whether dealing with a rhetorical form or not, Bitzer’s stages provide a framework to view the evolution of any rhetorical situation, which is used to frame the analysis of O’Connor’s confirmation process in chapter 3. Unless it decays or is

resolved by the speaker's response, a rhetorical situation evolves in four stages (34). The first stage is 'Origin and Development of Constituents,' during which time the exigence is noticed, but the audience or constraints are not actualized (34). The second stage is 'Maturity,' during which time all the constituents are present and can be identified: exigence, audience, and constraints. Bitzer explains that this stage may last "no more than a moment" (34). However, it also has the capacity to last much longer and "may 'peak' one or more times during this stage" (35). The third stage is 'Deterioration,' during which time any one of the constituents makes "modification of the exigence significantly difficult" (35). The audience may no longer care for the exigence or the speaker, another situation might trump the one at hand, or constraints might disappear or be rendered moot (35). The fourth stage is 'Disintegration,' during which time the exigence can no longer be resolved, the audience has disappeared, or constraints are no longer present (35). Before analyzing the stages of O'Connor's confirmation process, first the confirmation process as a rhetorical form must be established.

THE CONFIRMATION PROCESS AS A RHETORICAL FORM

A confirmation process is what Bitzer refers to as a rhetorical form, or a rhetorical situation that shares overwhelmingly similar exigence(s), audience(s), and/or constraints to previous situations. That form has developed over time to protect a fundamental tenet of American society: *liberty* (Parry-Giles 12). Of course, what liberty means is debatable. Liberty can mean something different to any given person. In particular, ideological camps ascribe different requirements to the protection of liberty. But Supreme Court justices have considerable power in affecting what liberty means and how liberty is protected. Thus, the controlling exigence of any confirmation process, as a rhetorical form, is the determination of the potential justice's ability to protect liberty, however it is historically and culturally defined.

Yet, justices have lifetime appointments and are meant to be apolitical. The only time that justices are vetted by the people is indirectly, through the elected representatives of the people: the President and the Senate. The confirmation process represents the sole time that the highest court of the judicial branch is held to the fire of political whim. Arguably, the confirmation process is the most political action of the judicial branch. With this in mind, looking at confirmation processes specifically—as opposed to any other event typical of the judicial branch—can yield information about how Americans define liberty at any given time. However, the confirmation process has an important constraint: the procedure outlined in the United States Constitution. While the constitutional procedure has never changed, it is ambiguous in its simplicity. This ambiguity, combined with over two hundred years of Supreme Court nominations in practice, have forced the form to change over time, albeit slowly.

In discussing the ambiguity of the Constitution, Kenneth Burke argues:

No human Constitution can constitute the whole scene, since it itself is an enactment made in a given scene and perpetuated through subsequent variously altered scenes. Since, by reason of the scene-act ratio, the quality of the Constitutional enactment must change *pari passu* with changes in the quality of the scene in which the Constitution is placed, it follows that a complete statement about motivation will require a wider circumference, as with reference to the social, natural, or supernatural environment in general, the ‘Constitution behind the Constitution’ (*Grammar of Motives* 362).

Burke makes a crucial point about constitutional essence. No Constitution can account for the minute details of every future scenario that it might be applied to because imperfect human action created the Constitution. Yet, the Constitution is meant to be the touchstone of all other law. Humans cannot see into the future; thus, a Constitution is designed to slowly adapt to changing conditions: to be both steadfast and progressive.

On a textual level, the Constitution is ambiguous. As such, interpretation of the Constitution must result in extra-Constitutional analysis. The minute details of every situation

must be accounted for and applied to constitution principles by *somebody*; the Constitution cannot speak for itself. While not every case or situation rises to this level, the justices of the Supreme Court have the power to arbitrate historically-situated social conflicts about issues of utmost public importance, be it ‘liberty,’ ‘justice,’ etc.—issues that are fundamentally ambiguous. While it would be easy to simply argue that the text of the Constitution governs, the arbiters of justice (justices or judges) apply the text in specific historical and cultural contexts. Public policy and social mores evolve and affect constitutional interpretation in real, observable time.

However, a researcher must look to the text before she can appreciate how constitutional principles constrain the exigence of vacancy. After all, the text does always govern. The first three articles outline the structure of the new government—each of the three articles create a separate branch of government, the legislative, executive, and the judicial, respectively. Each branch has a duty to carry out its own responsibilities yet each must also check that the other two branches are governing according to their own rules. This is the heart of the *separation of powers* doctrine, the idea that no one branch held all the power.

Article I of the Constitution gives Congress “all legislative powers,” or the power to create law in concert with the Constitution (U.S. Const., art. I, sec. 1.). Yet, this power could not go unchecked—that would violate the heart of *separation of powers*. Thus, Article II gives the President “the executive power,” essentially the power to enforce the law but veto those he felt unconstitutional (U.S. Const., art. II). Article III grants to the Supreme Court, and inferior courts created-as-necessary by Congress, “the judicial power” (U.S. Const., art. III, sec. 1.). In *The Federalist Papers* No. 78, Alexander Hamilton argues that the judiciary’s duty “must be to declare all acts contrary to the manifest tenor of the Constitution void” (571). Thus, in the early

Supreme Court ruling, *Marbury v. Madison* (1803), Chief Justice John Marshall established this power—*judicial review*, which explains the scope of the Court’s power. Marshall opines:

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other the court must decide on the operation of each. . . . So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty (*Marbury v. Madison* (1803) 177-178).

After this case, the Court has the power to interpret not just the text of the Constitution but also whether the laws created by the legislative branch and enforced by the executive branch conform to the meaning of the Constitution. This is a considerable power in a democracy, especially considering that the members of the judicial department, the justices of the Supreme Court and judges of the inferior courts, are not elected. Yet, this is by design, “liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments” (Hamilton 570). The Founders feared the politicization of the judicial branch; ideally, the judiciary would remain a neutral arbiter.

Hamilton’s words show that the Founders’ greatest concern in designing the process for selecting members for the judicial branch was the preservation of liberty. Justices are not elected, i.e. are ‘apolitical,’ to preserve liberty. Yet, the judiciary cannot avoid the political sphere, albeit indirectly. Congress is elected by the people, and so too is the President.¹ On the other hand, the

1. With this statement, we must take into consideration the fact that the Senate has only been directly elected since the Seventeenth Amendment’s 1913 ratification. Furthermore, in *Bush v. Gore* (2000), the Court opined although the President is technically elected through the Electoral College, it may or may not conform to the popular vote. With the country progressing in viewing more of its citizens as citizens, we have opened up the election processes to these two branches to more diverse persons. Regardless, Hamilton cautions that the judiciary must remain outside the political, that a non-political selection process “may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security” (570).

justices and judges of the judicial branch are not elected; instead, the President, with “advice and consent of the Senate,” appoints them (U.S. Constitution, art. II, sec. 2, cl. 2.). Thus, before any justice can take a seat on the bench, both the political legislative and executive branches must assess the neutral arbiter. Again, the concern is the protection of liberty. Parry-Giles argues that this assessment has largely been concerned with character—looking to the arbiter’s character should preserve the constitutional ideal of liberty:

As it emerged from the Articles of Confederation, the Constitution sought to ensure that people of high caliber occupied its offices and that the selection procedures for those individuals protected and manifested that virtuous character. The system of government proposed by the Constitution depended upon that virtue for success, *The Federalist Papers* suggests, and the maintenance of that virtue allowed for the protection and expansion of republican liberty (12).

However, ‘liberty’ is ambiguous and subject to multiple meanings. In the case of the confirmation process, those in charge of protecting ‘liberty’ are not the justices or judges—the neutral arbiter; they are the President and the Senate—political beings who via the party system often disagree about the meaning of ‘liberty.’ Thus, the confirmation process is no neutral process in practice, despite best intentions.

Having established the confirmation process as a political debate about ‘liberty,’ the exigence of the confirmation process as a rhetorical form is clear: to fill a vacancy on the Supreme Court *to protect liberty*. Of course, the involved political actors’ various interpretations of ‘liberty’ are an essential, historically situated constraint on how each process will play out. In addressing the audience, a political one in that it consists of the President and the Senate, the rhetor (or nominee) must address a composite audience who disagree on what ‘liberty’ means or how it should be protected. Yet, the process is also a rhetorical form—encompassing traditions that constrain any future process. Confirmation processes look strikingly similar on a macro-level.

The confirmation process has evolved over time, however slowly that might be, considering the constraints of rhetorical form. The role of the Senate has seen the most changes. Traditionally, after a justice on the Supreme Court decides to resign or dies, the President vets and then nominates a candidate. How a president chooses a nomination is often contextually situated, depending on a president's current options, political circumstances, and personality (Goldstein 428). Legal scholar Goldstein argues that the diversity of nominations over the years does not "lend itself to formulaic treatment;" however, there are patterns to president's nominations (427). These patterns are effects of the rhetorical form, e.g. presidents tend to choose candidates who identify with their own political party (437).

Regardless, once a President has nominated a candidate, the Senate's role—to provide 'consent'—begins. This process starts with the Senate Judiciary Committee, which begins inquiry into the candidate's background. Since 1916, when President Woodrow Wilson nominated Justice Louis Brandeis, the Senate Judiciary Committee has held "extensive hearings...concerning the suitability of a nominee to the Court" (Parry-Giles 21). Initially, nominees were not involved in these hearings. In 1925, Harlan Stone became the first nominee to testify; however, this remained a unique situation—the next six candidates would not appear before the committee (Goldstein 489). After this, only three of the next eleven candidates would testify (489). Only in 1955, with John Marshall Harlan's nomination, would nominees *always* appear before the committee, making a nominee's testimony a required element of the rhetorical form (489).

After the Senate Judiciary Committee's hearings conclude, and if a majority of the Committee votes then votes in favor of the candidate, the nomination moves to the Senate at large for debate and a possible vote. If the candidate receives a majority vote in the Senate, i.e.

the Senate officially consents, then the President can sign his or her commission—a lifetime appointment to the Supreme Court. A nominee is thus constrained by this situational form—from the President’s nomination, to the Senate Judiciary’s Committee’s hearings, to the full Senate vote—adapted slowly over two centuries.

Because tradition constrains the nominee, he or she must adhere rather strictly to the confirmation process form. Were a nominee to ignore the constraints of the form, the audience “would think they suffered some mental lapse or failed their responsibilities” (Bitzer, “Functional Communication” 34). Thus, a nominee has no choice but to move through the process, subjecting oneself to public and Congressional debates about one’s background. The form is not “deterministic,” argues Bitzer, but it does “indicate that rhetors sometimes are involved in complicated ways with situations, roles, motives, causal forces, genres, and other factors which make their communication behavior highly predictable” (34). Bitzer makes clear that form does not account for the rhetor’s agency: “There is no inherent contradiction between predictable communication behavior, on the one hand, and the presence of freedom and creativity on the other” (34). Freedom and creativity, for certain, can account for changes in the traditional form, but entirely new constraints—based on the rhetor or nominee—could have just as great an impact.

WHEN THE CONFIRMATION PROCESS AND ABORTION POLITICS COLLIDE

In order to understand the controversies surrounding O’Connor’s nomination, it is essential as a rhetorical researcher to define the texts for analysis. While a historical researcher might focus on events, here the focus must be on the language used to discuss O’Connor by the media and her critics, as well as her own language. To achieve this goal requires a look to the newspaper of record, *The New York Times*. A November 2015 search in the *ProQuest Historical*

Newspapers database for articles discussing O'Connor's nomination between July 2, 1981 and September 29, 1981 yielded approximately fifty-one articles of consequence, a great number of which have been utilized for analysis. Some, however, will not be analyzed due to repetition of quotes and/or ideas or lack of significant language. Analysis of key testimonies, as determined by the researcher, during the Senate Judiciary Confirmation Hearings, which were held between September 9, 1981 and September 11, 1981, has also been included.

To clarify the method with which items were chosen for analysis, the researcher used a subjective process to determine what was worthy of analysis. In an effort to not impart any motivation on actors that did not exist, the researcher chose statements from actors whose intentions were clear from their own words; i.e., if a person is discussed as expressing a positive view of O'Connor, it is because he spoke that positive viewpoint. The researcher took great care to not imply motivations or intentions. When a motivation was unclear, the researcher expresses that within the analysis. Furthermore, a lot of potential text for analysis is left untouched. Some text is impertinent to the discussion at hand but some is pertinent. The choice of specific moments for analysis was the researcher's best effort to include the most controversial statements or most important people. Especially in regards to analysis of the Senate testimony, the researcher was compelled to include testimony that had also been picked up by the *New York Times* coverage, because that testimony proved to be important in its own time.

Essential to the analysis is understanding both the confirmation process as a rhetorical form and the controversy surrounding O'Connor's nomination, specifically related to O'Connor's 1970s votes pertaining to abortion rights in the Arizona State Senate, as a rhetorical situation—with its own exigence and constraints. The formulaic requirements of the confirmation process as developed over time necessitate specific actions that must occur: the

President must nominate; the Senate must vet, hold hearings, and vote. All the language of controversy to be analyzed occurs within specific aspects of the formulaic process. The form by very reason of being affects the life of the controversy. When the form clearly affects the controversy, it will be specifically noted.

The life of the controversy, however, is the heart of the analysis. For clarity, the controversy will be tracked utilizing Bitzer's four stages of the rhetorical situation: origin, maturity, deterioration, and disintegration ("Functional Communication" 34-35). Stage 1, *Origin*, analyzes the historical and social context of O'Connor's nomination, as well as the period immediately prior to O'Connor's nomination. Stage 2, *Maturity*, analyzes the reaction to O'Connor's nomination prior to her September 1981 confirmation hearings, during which time her gender becomes a central point of discussion and the controversy about her record on abortion reaches critical mass, requiring a crafted rhetorical response. Stage 3, *Deterioration*, analyzes this response, specifically O'Connor's testimony to the Senate Judiciary Committee on September 9, 1981. Additionally, stage 3 is characterized as the final, unsuccessful push to use the controversy to defeat O'Connor's nomination. *Disintegration*, or stage 4, will be briefly discussed in chapter 4, along with concluding remarks.

Stage 1: Origin

Bitzer explains that the first stage is the period during which the exigence is noticed, but the audience or constraints are not yet actualized (34). In other words, the origin period is the lead up to the controversy. To properly understand the origin, this section examines the historical and social context, which affect key constituents of the rhetorical situation, leading up to Reagan's July 7, 1981 nomination of O'Connor. Of course, the origin of the controversy surrounding O'Connor is absolutely affected by the form of the confirmation process. Prior to

her actual nomination, especially due to the little national exposure O'Connor had previously, the controversy surrounding her position on abortion had clearly not emerged. In fact, the main article published closest to her nomination on July 2, 1981, typifying the origin stage, gives zero indication that a controversy about O'Connor's voting record would emerge.

But before analyzing the language about O'Connor on a national level in the origin stage, the constituents, as well as the historical and social context, specific to this rhetorical situation need to be defined. The origin analysis is divided into four parts in order to better understand how O'Connor emerged as a candidate. The first subsection provides a brief biography of Sandra Day O'Connor, including explanation of the 1970 Arizona Senate votes that would become a point of contention in her confirmation process. The second subsection examines the unique constraint of being a Republican woman. The third subsection examines how abortion emerged as an issue within the conservative movement, which would necessarily affect the exigence of the confirmation process. The fourth subsection analyzes the media coverage in the lead up to O'Connor's nomination, when only rumors were circulating and issue had not yet been taken with her record on abortion rights.

Sandra Day O'Connor

Sandra Day O'Connor never let her gender hold her back. By the time she was nominated to the Supreme Court, O'Connor was used to breaking down barriers for women. While that might cause some to label her a feminist, O'Connor's career seemed to defy labels. While her background suggests a commitment to politically conservative ideology, *New York Times* reporter John Crewdson described O'Connor as "a sometimes conservative with a moderate, even progressive streak, a determined woman but not a dogmatic one" (1). The controversy

surrounding her nomination would be a result of just a few label-defying votes, which social conservatives would label ‘pro-abortion,’ over the course of her groundbreaking career.

O’Connor (née Day) was born in 1930 to cattle-rancher Henry Day and his wife Ada Mae (Hirshman 3). O’Connor spent her early years and summers on the family’s Lazy B Ranch in Arizona; however, O’Connor spent her school years in El Paso, Texas with her maternal grandmother in order to attend school (4). In 1946, O’Connor would leave the southwest to attend college and law school at Stanford University, from where she would graduate in 1952 (12). Yet, O’Connor was one of only four women in her class (13). Although she had distinguished herself as an editor of the law review, over forty law firms would reject the young attorney after her graduation, solely because they would not hire a woman (14).

Despite the initial setback, O’Connor would not be deterred, working for no charge in the San Mateo County attorney’s office (18). For comparison, her classmate and future Supreme Court Chief Justice William Rehnquist clerked for Justice Robert Jackson of the Supreme Court post-graduation, an incredible honor for any young lawyer (18). Rehnquist graduated first in his class; O’Connor graduate third—hardly difference enough to warrant such divergent jobs (Ayres Jr. A13). O’Connor would eventually follow her husband, John O’Connor, whom she met at Stanford Law, to Europe, where he worked with the Army’s lawyer corps (Hirshman 18). During his Army training, O’Connor recalled her first visit to the Supreme Court—her only visit prior to her nomination—in her 2013 book, *Out of Order: Stories From the Supreme Court*. O’Connor recalls, “It was a Saturday and the Court was closed. I snapped a picture of John as he stood on the marble steps. I remember thinking that was the closest I would ever get to the Supreme Court” (xi). It would be decades before she would return to those steps.

After John's stint in the army, the O'Connors moved to Phoenix, Arizona, where they would begin involvement with local Republican clubs (Hirshman 19). O'Connor would open her own law practice for a short time, before leaving work to raise her young sons in the early 1960s (20). In the meantime, she began volunteering with the local Junior League chapter, during which time signs of her political acuity would emerge—she quickly was elected president (20). Additionally, O'Connor would develop a reputation as an incredible cook and hostess during this time period—a reputation that would stick to her even after she returned to work (20). In the mid-1960s, she would return to work as Assistant Attorney General, the first woman to gain that position (23).

O'Connor's involvement volunteering with Republican clubs would result in her appointment to a vacant state senate seat in 1969 (23). O'Connor recalls feeling the benefits of a burgeoning women's movement in this time period, "Many women around the nation were claiming more in terms of their desire to be treated equally and to have equal opportunities at work and I was the beneficiary, really, of a lot of that sentiment" (24). She would become Chair of the State, County, and Municipal Affairs Committee, which O'Connor biographer Linda Hirshman explains is "unprecedented for a newbie state senator" (24). This fast rise to power offers some explanation for O'Connor's election to Majority Leader in 1972, making her, as Hirshman puts it, "the first woman in America to sit in the leadership of her state's lawmaking body"—and O'Connor was at the top of the leadership (24). As both a general member and leader of the Arizona State Senate, O'Connor recalls never facing any issues regarding whether she should be in those positions as a woman, "Once I got in, I never had a further problem" (24). Later, however, her recollection would somewhat differ, "I was never one of the boys" (124).

Either way, issues concerning women's equality would be sites of contest during O'Connor's tenure.

In 1972, as majority leader, O'Connor oversaw the fight over Arizona's potential ratification of the Equal Rights Amendment (Hirshman 48). O'Connor was stuck in the middle—she felt the Amendment had merit, but understood concerns being raised within her own party (49). Fellow Arizonian and Republican United States Senator Barry Goldwater wrote O'Connor personally to express his concerns with the Amendment (49). By the time O'Connor voted to send the Amendment to the floor for a vote, the conservative opinion had fully shifted against it. The Equal Rights Amendment would die in committee (49).

Between 1970 and 1974, O'Connor would deal with a handful of bills regarding abortion rights, which social conservatives would label as 'pro-abortion'—thus becoming the key points of protest against her confirmation to the Supreme Court (Crewsdon 22). As a member of the Arizona Senate Judiciary Committee, O'Connor voted in 1970 to approve a bill that would repeal criminal statutes against abortion (Crewdson 22). While O'Connor would argue that she did not remember this vote for a bill that died in committee, she would still be made to explain this vote in the confirmation hearings (Greenhouse, "O'Connor Hearings Open" B14). Further, in 1973, O'Connor would, along with nine colleagues, co-sponsor a bill "requiring that all medically acceptable birth control methods be made available to anyone, regardless of age" (Crewdson 22). Although O'Connor would vote for a bill "permitting doctors and other hospital employees to refuse to perform abortions" in the same year, unsurprisingly, this vote was ignored by critics during the confirmation process (22).

Likely in response to the 1973 Supreme Court decision *Roe v. Wade*, the Arizona State Senate introduced multiple bills concerning abortion in 1974, after O'Connor was elected the

Senate Majority Leader (22). During this year, O'Connor "voted against a measure to prohibit the use of public funds for abortion.... [and] she opposed a bill prohibiting abortions at the University of Arizona hospital" (22). Additionally, she opposed a bill that would call for an amendment criminalizing all abortion to the United States Constitution (22). While O'Connor would maintain that her opposition to these bills was procedural, rather than substantive, these votes would give her social conservative critics grave reservations about her nomination.

After one term as Majority Leader, O'Connor resigned from the state senate in 1974—the same year as her final controversial votes, moving quickly into a position as a state trial judge (Hirshman 124). In 1975, O'Connor's name would first appear on a short list for appointment to the Supreme Court—suggested by Patricia Lindh, White House Special Assistant for Women (127). Yet, it would not be until 1979 that O'Connor would be promoted out of trial court, with an appointment to the Arizona Court of Appeals (129). However, continued friendships with Justice Warren Burger, Justice Rehnquist, and Senator Goldwater kept her name circulating for federal promotion (131). When Justice Potter Stewart announced his retirement from the Supreme Court in 1980, all three men would campaign for her appointment (131).

The Constraint of Being a Republican Woman

O'Connor's nomination came on the heels of the so-called second wave of feminism and the fight for the Equal Rights Amendment. No woman could speak in this time period without being affected by the societal reaction to the onslaught of new female voices within the public sphere. Moreover, O'Connor was not only constrained by reaction to the modern women's movement, she was constrained by her position as a Republican woman—a highly controversial and paradoxical role for a woman to play in the public sphere. Despite social conservative backlash to her record, O'Connor had a long career within the Republican Party. She would

hardly be considered a legal feminist icon like 1995 President William Clinton appointee Justice Ruth Bader Ginsburg. Feminists, however, would affect O'Connor's image, whether she considered herself one or not. In order to understand how her gender constrained the process, a look to the specific historical context for women that O'Connor's nomination occurs within—that necessarily affects her rhetorical response—must be engaged.

Scholars often misinterpret the period between the 'completion' of the first-wave of feminism with passage of the Nineteenth Amendment in 1920, guaranteeing women the right to vote, and the 'beginning' of the second-wave of feminism around 1960. The idea of a forty-year female silence between a so-called 'completion' of one phase and the 'beginning' of another obscures four decades of women's political engagement in all political parties. While fewer women technically considered themselves feminists in this time period, feminist activism had not completely disappeared, nor had the work of women in general. For example, the Equal Rights Amendment (ERA) was first introduced in Congress in 1923, due to the work continued by Alice Paul and the National Woman's Party after the Nineteenth Amendment (Rosen xvii). Additionally, Republican women were calling for more representation within their party on the national political stage, although far more were joining grassroots groups (Rymph 40). While grassroots groups were outside the traditional party hierarchy, Republican women's groups "were explicitly connected to party politics" (40). By the late 1930s, Republican National Committee representative Marion Martin began to organize Republican women's clubs under the traditional party (70). The National Federation of Women's Republican Clubs formed in December 1937, which would become an incredible political force and make conservative icon Phyllis Schlafly a national figure (73).

World War II would be a catalyst launching women into the visible political spectrum. Women entered the workforce in immense numbers during the war—filling much needed labor positions while men were fighting abroad. Among some female Republicans, isolationism—a holdover from World War I—inspired perhaps millions of mothers to join local isolationist mothers’ groups (106). Already mobilized and without a cause after World War II, many of these women joined more respected and established Republican women’s groups, no doubt a contributing factor to the established groups’ considerable strength in the 1960s and 1970s (107). Immediately following the end of the war, women who had entered the workforce to perform much-needed jobs were sent home to make room for a returning male workforce (Rupp and Taylor 12). The working public sphere abandoned women en masse; where women had been praised during wartime for their service, they were now being criticized for entering the workforce—even though they were needed at the time (14). After the initial decline, women steadily re-entered the workforce, increasing in number every subsequent year (13). This despite the fact that, between the years of 1945 and 1967, the percentage of Americans who approved of women working outside the home only increased from 18% to 44% (15). Born in 1930, O’Connor would come of age during this increase of women in the workforce.

The actual, gradual increase of women in the workforce is one of many reasons given for the resurgence of feminism—or women identifying as feminists—in the 1960s, because the workforce offered women independence and an identity outside that of wife and mother (12). This does not account for the damaging ideology used to keep women in the home, and shame felt by those who did not, in the late 1940s and 1950s. The idea that a woman’s place was in the home was a deeply entrenched tenet of life in 1950s’ America. Functionalism, which sought to “analyze social behavior or institutions in terms of the consequences or functions they have

maintaining the larger society or social system in which they exist,” was applied to women’s roles in society; thus, women came to be viewed as worthy only in their biological role as caretaker of her children, husband, and home, while men worked to provide for their families (14). O’Connor faced this stigma herself, when she was refused work after graduating law school (Hirshman 14).

O’Connor was an anomaly, with an education and a drive to fight through the harsh climate for working women. Many women were forced to remain within the home, while men were allowed voice and agency in the public sphere. Facing enormous societal pressure, for some women, this proper role was simply impossible to maintain—their families needed them to work in order to stay afloat (Rupp and Taylor 15). For some other women for whom this ideal was financially possible, having one’s role devoted entirely to home and family became stifling (Friedan 18). However, Republican women’s clubs members tended to relish in their identity as homemakers—as the clubs increasingly appealed to white, middle class, Protestant women (Rymph 112). Despite the hypocrisy of participating in politics and shunning women’s interference in the male labor sphere, Republican women’s clubs were increasingly influencing political action related to their morals—from opposing communism, to electing conservatives, to fighting against the ERA and abortion (6). Despite their profound effect on many issues, Republican women’s work remained largely on the periphery of American consciousness prior to the resurgence of feminist activity within the political sphere. Women’s political activity was mostly silenced on the national political stage.

This environment led Campbell to define any female rhetoric as an “oxymoron” (74). Campbell argues that, “insofar as the role of rhetor entails qualities of self-reliance, self-confidence, and independence, *its very assumption is a violation of the female role*” (75, italics

hers). Campbell tied this argument to the emergence of consciousness-raising, a unique rhetorical form she refers to as “anti-rhetorical” (78). The 1960s, however, would see sharp increase in national political action by women of all parties, despite the extraordinary constraint of violating their gender by speaking at all. While no one could deny consciousness-raising’s ability to constitute a positive female identity, many women chose to live the paradox—to violate their gender to speak within a male-dominated political sphere.

In late 1960, President John F. Kennedy announced his decision to form the President’s Commission on the Status of Women (Rosen 64). The women involved in the commission were largely associated with liberal and labor organizations (65). Since the Equal Rights Amendment was first introduced in the 1920s, women associated with labor strongly opposed the bill, because they feared many of the protectionist laws, which they had fought for years to enact, would be wiped out (66). Thus, the Commission did little to fight for gender equality; however, for the first time, the federal government documented women’s grievances, and the recommendations spawned commissions in every state (67). Documenting grievances would not be the end of the story.

While de facto not associated with the President’s Commission, Republican women were not silent in the early 1960s. Grassroots Republican women’s groups were credited in large part for the nomination of Barry Goldwater for President in 1964 (Rymph 169). After Goldwater ultimately lost, many of his most vocal supporters were purged from traditional groups, including the women’s clubs (178). However, these women remained dedicated and organized Republicans; eventually, many would join the STOP ERA movement, started in 1972 by Phyllis Schlafly—a key target of the post-Goldwater purge, thanks to her 1964 pro-Goldwater book, *A Choice Not an Echo* (Critchlow 212). Thus, despite the early setback for the modern

conservative movement, the 1964 election is considered a spark for the burgeoning conservative moment—with organized women as its moral center.

After Title VII of the Civil Rights Act passed in 1964, placing women's employment equality in the hands of the Equal Employment Opportunity Commission (EEOC), women were finally able to petition the government to act upon their grievances (Rosen 73). However, in 1965, the EEOC would determine that sex-based job advertisements did not violate the Act—the Commission affirming that it would not take women's employment equality seriously (72). Frustrated by the EEOC's failure to act to protect women's legal rights, some women began to talk of a women's civil rights organization (74). In 1966, the National Organization for Women (NOW) convened, with Betty Friedan as its president (78). By 1967, NOW would officially endorse the ERA and the right to an abortion—both of which would become key issues all political women would have to confront (83).

Women quickly moved into the national political sphere. Congress passed the ERA in 1972, with many expecting quite ratification from the states (89). Backlash from conservative women was fast, with Schlafly's STOP ERA forming in the same year. In Arizona, as Senate Majority Leader, O'Connor would see the ERA fail to make it to a vote in the state senate, thanks in large part to the conservative backlash (Hirshman 49). Despite Arizona's failure, within a year, the ERA received ratification from thirty states before progress stalled (Rosen 332). Despite the fact that the modern feminist movement worked for progress on many issues, including sexual harassment and childcare, the media attached the ERA to the movement as if it were the only issue (90). Thus, when progress for the ERA stalled, the feminist movement was assumed to be set back. Even after receiving an extension in 1978, the ERA would be a

pipedream by the time President Reagan nominated O'Connor, largely in part to organized conservative women (332).

Even without an ERA, women were more visible within the political sphere than ever; perhaps ironically, the first woman Supreme Court nominee would be a member of the party that had recently disassociated itself from women's equality. Thus, O'Connor's nomination came at a crucial turning point. With social conservatism fighting to define the ideology of the Republican Party, O'Connor's position as a Republican woman would constrain her rhetoric during the confirmation hearings. A modern feminist movement that thrust women into the political spotlight was on its last legs, with women from O'Connor's own party as the cause. Although O'Connor had fought for the ERA in Arizona, she began her political career within the very Republican women's clubs that had mobilized to defeat it. Arguably more centrist than moral conservatives, O'Connor was nominated at a time when what it meant to be a Republican was changing, while at the same time politics was abandoning women's equality en masse. O'Connor would be constrained to a new set of speaking rules for political conservatives in the spotlight; her status as a legitimate conservative woman would be in question by members of her own ideological camp. An emerging political uprising against abortion would be at the center.

Abortion Politics in the Conservative Movement

Conservative women were not solely working toward defeating the ERA in the latter half of the 1970s. Like their feminist counterparts, they cared about more than one issue. As the conservative movement gained steam, it began to attach itself to an issue increasing in prominence in the nation's psyche—outlawing abortion. While O'Connor herself did not always toe the line of conservatism, the Republican Party was beginning to change its focus to moral conservatism. Arguably, President Reagan's election is the solidification of this crescendo—a

moment of moral conservative triumph. Thus, O'Connor would have to answer to this conservative force; her political history and opinion on abortion, despite her public declarations that she opposed the practice, would matter like it never had before.

Abortion politics did not appear out of thin air; in fact, it was a byproduct of the moral conservative movement—one that was truly borne during the Cold War and the political crusade against communism. The Cold War would have a drastic effect not just on conservatism but also on women's role in a capitalist America. At the beginning of the Cold War, as a result of a rapidly growing economy, American families went nuclear in increasing numbers—generations within families began living separately for the first time (Brands 78). The nuclear family created an increasing demand for housing, crafting a new American landscape—the suburbs. The suburbs ushered in an age of isolation for the middle class American woman, with the suburban life's focus on domesticity (78). In this age of repression, activities that broke the perfect image of suburban domesticity—i.e., a wife happy to raise three to four children while her husband worked—had to be squashed.

Times of great repression, however, tend to breed revolutionary action. As feminism gained ground in the 1960s, women within the movement began to demand the legalization of abortion faster than ever, especially with the support of individual physicians who began advocating the legal system to overturn criminal sanctions against abortion (Reagan 16). In the early 1960s, around the same time Betty Friedan's 1963 book *The Feminine Mystique* shattered the illusion of the happy suburban housewife, feminist action began organizing around legalizing abortion. This action resulted in the infamous 1973 Supreme Court case, *Roe v. Wade*. Essentially, *Roe* answered the question, who has the liberty to govern a pregnancy and at what point of the pregnancy? At stake were the liberties of two parties: the woman and the State.

The woman had liberty to govern her own body up to a definitive moment in pregnancy, that moment defined by the State (*Roe v. Wade*, 410 U.S. 113, 162 (1973)). Regardless, for the first time (arguably, the last time), the Court recognized that a woman had a fundamental right to an abortion—fundamental rights requiring the highest level of scrutiny (*Roe*, 410 U.S. at 153). Abortion rights are a natural site of controversy in how Americans should define liberty, as the fundamental right to an abortion was found in the Fourteenth Amendment’s concept of personal liberty, through a right to privacy found therein (*Roe*, 410 U.S. at 153).

The liberty of the woman—her fundamental right—is balanced, however, against the right of the State to protect women’s health—an act of paternalism that suggests the Court’s does not believe that a woman can protect her own health—and to protect potential human life (*Roe*, 410 U.S. at 162). *Roe* was a breaking point, for a conservative movement that had been gaining steam. By 1975, the National Right to Life PAC organized and Phyllis Schlafly’s Eagle Forum formed as a reaction against feminism, with advocating against abortion as one of their main goals (Rosen xxvii). Televangelist Jerry Falwell created the Moral Majority in 1979, which would become one of the major critics of O’Connor’s nomination (Rosen xxx).

The 1980 presidential election would mark a turning point for conservative politics. Reagan would defeat incumbent Jimmy Carter. In 1976, Reagan had publically joined the increasingly powerful ‘pro-life’ movement, as well as withdrawn his support for the Equal Rights Amendment (ERA) (Rossinow 15). By 1980 and for the first time since 1940, the Republican Party no longer endorsed the Equal Rights Amendment in its party platform (Rosen xxxi). Thus, the Republican Party was taking a clear stance against the liberty of women, as conservatives within the party were redefining what it meant to be a Republican. While campaigning for office, Reagan promised “to appoint only those opposed to abortion” to the

Supreme Court (O'Brien 69). Yet, he also promised to nominate a female (O'Brien 70). For social conservatives, O'Connor's nomination seemed to break the former promise; her record on abortion, an issue fundamentally about liberty, called into question Reagan and the Republican Party's true commitment to socially conservative values.

Before the Storm

Returning to the task of defining the constituents of the rhetorical situation, the exigence(s) must be noticed in stage one. In this particular case, the exigence is the need to nominate a worthy person to the Supreme Court. Worthiness refers to the person's ability to protect the interests of liberty, which, as has been discussed, is the essential purpose of putting a candidate through the form of the confirmation process. Particular to the controversy's origin, the conservative movements' focus on outlawing abortion rights is a broad exigence that cast a shadow over this particular nomination, due in large part to Reagan's public commitment to the growing right to life movement and promise to nominate a candidate clearly opposed to abortion rights. As abortion is largely about liberty, it is an issue ripe for consideration within the confines of the confirmation process as a rhetorical form.

However, the audience, another key component of a rhetorical situation, is not necessarily evident in the origin stage. Defining the audience within this particular situation is interesting and perhaps more complicated than one might think. Because of the nature of the confirmation process as a rhetorical form, the audience is set in stone, on the surface. Of course, Bitzer defines the audience in concrete terms, not as potential or actual hearers, but consisting "only of those persons who are capable of being influenced by discourse and of being mediators of change" ("Rhetorical Situation" 7). The audience must have agency to affect change. No doubt, prior to nomination, the president and his cabinet are the audience, listening to how

potential candidates are received. In this moment, only the president has true capability to affect change. After the nomination, the audience shifts; only the Senate can affect change; they have the sole power to investigate and nominate.

However, this analysis is tracking the controversy, rather than the form. This necessarily complicates the idea of audience. Were analysis just to focus on form, there would be little question as to who the audience would be. When discussing the controversy, a secondary audience emerges: the critics of O'Connor's nomination. It is this audience that has yet to be actualized in the origin stage. The critics are a secondary audience because they do not, even once they emerge, have direct power to affect change. However, as will become evident in later stages, they have the power to influence the direct audience: the Senate. Critics have yet to emerge because the nomination has yet to be announced. Even more importantly, O'Connor's record had not yet been delved into.

O'Connor's record is the key constraint of the controversy, which has not yet been actualized in the origin stage. Critics' arguments live and die by the interpretation of her record on abortion. Without any public indication that O'Connor's previous dealings with abortion had been noticed prior to her nomination, it would be difficult to argue that the controversy exits the origin stage beforehand. Another constraint discussed in detail, O'Connor's gender, *was* noticed. However, this is the nature of the origin stage: some components of the rhetorical situation are present, some have yet to emerge. During this time period, the *New York Times* published one article about O'Connor's potential nomination, within which no mention of the coming controversy around her record on abortion is mentioned. Thus, the origin stage continues until the date of her nomination, when this record—a key constraint—as well as the critics of said

record, begin to emerge. This is not to say that the controversy did not exist; however, it does not reach national significance until her nomination is set.

The July 2 article, “Arizona Judge, a Woman, Is High Court Contender,” contains largely positive coverage (Burks A17). It is evident from the title alone that her gender has been noticed and will become a significant point of discourse throughout the nomination. Additionally, Reagan’s campaign promise to nominate a woman is noted, without further explanation (A17). However, much of the article is dedicated to praise for O’Connor’s reputation as a conservative Republican and skill as an attorney and judge, as well as praise for her good character and temperament. Only one instance of negativity regarding her potential is noted. Burks quotes Michael Hawkins, described as a former United States Attorney for Arizona, “Her weakness is that she has not a scintilla of experience with the Federal system” (A17). While Hawkins also states that his support for her potential nomination, it is fascinating that prior to her nomination the only potential negative noted is what would have been the best argument against her: her lack of experience. Yet, this particular issue would never reach critical mass.

Another aspect of this article that needs to be addressed is the potential bias of whom Burks chooses to quote. Like Hawkins, Burks also quotes Arizona’s then governor, a former Arizona attorney general, and the endorsements of two Arizona newspapers, *The Arizona Republic* and *The Arizona Gazette* (A17). This is not to say that there is no editorial value in quoting those who might know O’Connor best, but seeing as how Arizona might benefit, even if just in honor, by having a native daughter on the Supreme Court, exclusively quoting Arizonans might not account for potential critics. However, it is not clear whether critics had emerged at all. Controversy surrounding O’Connor’s voting record and the battle over defining true conservatism would not emerge until Reagan’s nomination. The backlash would be immediate.

Stage 2: Maturity

Arguably, O'Connor's nomination comes at a very interesting political moment, a moment when liberalism was faltering and conservatism was booming—a time when feminism had lost its momentum and moral conservatives were beginning to have a dominant voice in American politics, with the ability to define issues most present in the national psyche. While O'Connor's nomination would be groundbreaking for women, it was not without tokenism or sexism. Furthermore, O'Connor's record would spark a political debate greater than her nomination: the battle to define the ideological core of the Republican Party. O'Connor's record could be manipulated, despite her public declarations to the contrary and her longstanding devotion to conservative values, to show support for abortion. In 1981, conservatives, specifically those aligning themselves with the Moral Majority, were turning their attention en masse to outlawing abortion—an emerging crusade to regain control of women's bodies lost with the modern feminist movement and to define the morality of the nation. Although Reagan publically asserted that he was confident in O'Connor's position against abortion, the Moral Majority was not convinced (Weisman, "Reaction is Mixed" A1).

Had the controversies surrounding O'Connor not been about the battle over defining conservatism, critics would have used a much better argument that O'Connor should not be on the Court—experience. O'Connor had zero experience with federal law, working only within the Arizona state court system. A person does not need a law degree to understand that federal laws and state laws often diverge. This is important for a Supreme Court Justice, because the Supreme Court can only take cases admissible to federal court: that is, they can only take cases that involve a federal question or meet the requirements of diversity jurisdiction. As a state judge,

O'Connor would not decide cases on the basis of federal law. Some would note this reality, yet her critics would ignore it—instead focusing in on her previous dealings with abortion.

When Reagan's announced the nomination of Sandra Day O'Connor on July 7, 1981, stage 2 of the rhetorical situation—the controversy surrounding O'Connor's nomination—began. Maturity is met when all the constituents of the rhetorical situation are present and can be identified: exigence(s), audience(s), and constraints. The exigences are clear: there exists a necessity to assess O'Connor's ability to protect liberty, and far right conservatives have grasped onto a broader issue that might indicate she cannot. The direct audience, the Senate, is now charged with examining O'Connor. The constraints of her gender and her record have entered the public conscious. Thus, this rhetorical situation has reached maturity. The maturity analysis is divided into two parts in order to better understand the two main issues of nomination. The first subsection analyzes the sexist language used by both O'Connor's supporters and critics, arguing that her gender clearly constrained and affected the process. The second subsection analyzes the controversy surrounding her record on abortion, arguing that her position was used by social conservatives to assess her ability to protect liberty and as a larger argument over the true definition of conservatism.

Reagan's Promise Kept: A Woman for the Court

When O'Connor's nomination was announced, *New York Times* reporter Francis Clines argued that nominating a woman, while a feminist goal, “stirred little public interest;” specifically, a June 1981 *New York Times*/CBS News poll “showed that 72 percent of the public believed that it made no difference whether a man or a woman was appointed” (“Baker Vows” A12). . However, with the fight for the ERA coming to a close, as well as the supposed ‘gender gap’ amongst Reagan voters, it seems almost unbelievable that society had evolved to accept

women in publicly powerful roles. Despite the results of the poll, O'Connor's gender certainly had an impact on and constrained her nomination. Reagan was not only fulfilling a campaign promise to nominate a woman to the Court but he needed to tackle a negative public image that his administration lacked women; this combined with almost immediate bipartisan support of his nomination of the first woman to the Court, despite the fact that O'Connor had little national notoriety, suggests that O'Connor's qualifications would not be judged the same as a man's would be. Of course, this is not to say that O'Connor was not qualified; she had a long and well-respected career on the Court. However, to support her based on gender alone is an insidious sexist act that unfortunately seems to have been the case. Furthermore, even O'Connor's supporters used sexist language to describe and speak to her, which reveals sexism was alive and well during her confirmation process, requiring a crafted rhetorical response to maintain her credibility.

At the end of nearly six months in office, a July 13, 1981 *New York Times* article, "Women Assail White House's Hiring," criticized the Reagan administration for only appointing 42 women to the over 400 positions requiring Senate confirmation (Raines A11). Such criticism highlights how essential O'Connor's confirmation was for Reagan's public image, especially considering his oft-discussed campaign promise, which had been noted by the media even during rumors of an O'Connor nomination. Same-day coverage of O'Connor's nomination suggests that Reagan "placed a high priority on finding a woman with conservative views for the Court" (Weisman, "Reaction is Mixed" A12). This alone is not enough to cry tokenism, but the actual process of finding O'Connor suggests the search was not long or deep enough to be based on qualifications alone. A July 8 article by *New York Times* reporter Steven Weisman noted that O'Connor was the only potential nominee that Reagan spoke to personally and that Reagan

would almost immediately agree to nominate her after the conversation (A12). The swiftness with which Reagan made the decision led many social conservative critics to believe that he did not have all the facts before nominating her (Clines, “September Vote on Nominee Forecast” A16). Furthermore, Reagan praised O’Connor’s record, arguing she had a “long and brilliant record as a legislator and jurist,” remaining silent on her lack of federal experience (Weisman, “Reaction is Mixed” A12). It seemed Reagan was content with the first woman who met his limited requirements, a woman with whose values aligned with the Republican Party, whether she was qualified or not (A12).

Reagan was not alone in the swiftness of his decision. Within hours of his announcement—not nearly the time it takes to truly evaluate the qualifications of the then unknown nominee, bipartisan support poured in, much of it praising the President specifically for nominating the first woman to the Court. In a July 8 article, *New York Times* reporter Francis Clines quotes Senate Republican Majority Leader Howard Baker, Jr., “I commend the President for the courage of his decision” (“Baker Vows Support” A1). The use of the word ‘courage’ here could be interpreted in multiple ways, yet Baker himself does not elaborate on his meaning. Is the nomination courageous because O’Connor is a woman? Regardless of the courage necessary to do so, he vowed to immediately to support her nomination.

Arguably, O’Connor’s status as a republican woman seemed to gain her more support than perhaps a democratic woman would have received. No democrats spoke out against the nomination; in fact, many immediately praised O’Connor and Reagan’s nomination of a woman. Ranking Democrat on the Senate Judiciary Committee Senator Joseph Biden said, “O’Connor seems eminently well qualified for the position, and I’m personally very glad that the President has named a woman to fill the vacancy” (Clines, “Baker Vows Support” A12). House Speaker

Thomas O’Neill, Jr., known for almost always disagreeing with Reagan, called the nomination, “the best thing [Reagan’s] done since he was inaugurated” (Smith A17). Representative Morris Udall, an Arizona Democrat, even went so far to say, “This is incredibly smart politics...With Ronald Reagan as President, the fact that you can get a woman appointed to the Court is remarkable” (A17). While the support for O’Connor can be read as positive, it is incredibly odd for a nominee to gain immediate, positive support from the opposing political party. Of course, the language used to support her heavily suggests this oddity was due to her gender, rather than a positive review of her judicial qualifications. It seemed that democrats would not be accused of voting against the first female Supreme Court Justice, whomever she might be.

O’Connor did not just face a sexist review of her qualifications; her supporters and critics alike often used sexist language to talk about and to talk to her. A July 15 article, “Judge O’Connor Makes Courtesy Call at Capital,” concerning an O’Connor meeting at the Justice Department, describes her as “nervous and tightlipped”—hardly a description that a male candidate would ever receive (Rosellini A19). Worse still, at the same meeting O’Connor is asked if she feels like “a debutante, being introduced to all these people” (A19). A ‘debutante’ hardly conjures up the image of an intellectual equal to a Supreme Court Justice and is certainly an inaccurate depiction of a 51-year old woman. O’Connor’s response was simple, a brilliant move that shut down the questioning, “No, I don’t feel like a debutante” (A19).

Similar to calling O’Connor a ‘debutante,’ on multiple occasions her critics and supporters alike refer to her as a ‘lady.’ A supporter, oddly enough a Democrat, Alfredo Gutierrez, who succeeded O’Connor as Arizona Senate Majority Leader, called her “a terrific lady” the day after her nomination (Clines, “Baker Vows Support” A12). On the other side, Republican Senator Jesse Helms said, “I’m not going to prejudge the lady;” although, Helms

would remain critical of her nomination (Clines, “September Vote on Nominee Forecast” A16). While these instances hardly seem intentionally nefarious, a ‘lady,’ like a ‘debutante,’ evokes an image of a young, naïve women—not the highly accomplished legislator and jurist, as well as married mother of three grown sons, that was O’Connor’s true identity.

O’Connor’s response to instances in which her gender is used to question her credibility, seems to be a crafted rhetorical maneuver. Arguably, the sexism of O’Connor’s nomination is not remembered because she handled such situations so deftly. Unlike the ‘pro-abortion’ label that social conservatives would place on her, an attempt to label O’Connor a ‘radical feminist’ never took off (Crewdson 22). Crewdson labeled O’Connor a “less than ardent feminist,” quoting a close friend of O’Connor and her husband about O’Connor’s response to a males-only grill at the Paradise Valley Country Club to which they all belong: “[She] has often kidded that about how foolish it is that some women get so provoked about how they can’t sit down with the boys and have a beer and a hamburger” (22). This testimony, as well as others’—e.g., Susan Freeman, another friend, who stated, “she’s certainly not a radical feminist”—diffused any controversy about her taking too much liberties with her place as a woman (22). Had the all-male grill offended her or had she ardently supported feminist causes, the controversy surrounding her nomination might have been different. But O’Connor’s public image had never been one of radical feminist, or just feminist, even as she knocked down public barriers to women’s equality.

O’Connor should be credited with deft handling of sexism when she encountered it, either by sloughing it off or shutting it down succinctly. O’Connor did not engage, which—for better or worse for women as whole—was a remarkably successful rhetorical strategy. What O’Connor did not seem to diffuse so handily would be the controversy about her votes on abortion; by July 10, over 21 anti-abortion lobbying groups had vowed to fight her confirmation,

including Jerry Falwell's Moral Majority ("Goldwater Tells Opponents" A11). With abortion being a feminist cause, it would be difficult to say that there is not a link between concern over O'Connor's views on abortion and her gender. Yet, it is odd that O'Connor's strategy of non-engagement with sexist comments succeeded, while the same strategy failed to work with her abortion record. Whether controversy around abortion was actually a placeholder for a gender-based attack could be inferred, but there is no direct evidence—largely because of O'Connor's strategy to not comment on any of it. What can be found, however, is an on-going argument during stage two amongst Republican males over O'Connor's record and conservatism in general.

Reagan's Promise Broken: A 'Pro-Abortion' Candidate

While Reagan's nomination fulfilled his campaign promise to nominate a woman to the Court, many social conservatives felt the nomination betrayed a second promise, to nominate only anti-abortion candidates. O'Connor's nomination would be controversial from the moment Reagan announced it. Social conservatives would immediately utilize language of betrayal and cast O'Connor as 'pro-abortion.' For them, some of O'Connor's votes in the early 1970s as member of the Arizona State Senate indicated a moderate, even progressive, stance on abortion rights, which was unacceptable for any Reagan nominee to the Supreme Court. For the first few weeks following O'Connor's nomination, the controversy surrounding her record on abortion would make up the vast majority of media coverage. Not only would social conservatives use O'Connor's old votes as an assessment of her ability to protect liberty, through the specific issue of abortion, they would also craft larger argument over who would define what it meant to be a political conservative during Reagan's presidency.

In his July 7 remarks at the White House, Reagan described O'Connor as "a person for all seasons, possessing those unique qualities of temperament, fairness, intellectual capacity and devotion to the public good which have characterized the 101 brethren who have preceded her" ("Transcript of Remarks" A12). Reagan declined to answer the first two questions in response to his announcement, "Do you agree with her position on abortion?" and "The right to life people may oppose it, sir, and we just wonder if...?" (A12). By the third question, asking him whether he was satisfied with her 'right to life' position, Reagan chose to respond simply, "I am completely satisfied" (A12). Reagan then left the room before any further questions could be asked; all questions had concerned O'Connor's record on abortion.

Some Senators, specifically Jesse Helms expressed immediate concern about the nomination, with Clines reporting that he spent much of the announcement day "seeking reassurances" that O'Connor met social conservative qualifications (A12). That some Senators expressed doubts created an opening for O'Connor's critics to craft a negative image of O'Connor. The National Right to Life Committee immediately labeled O'Connor as "pro-abortion" and promised to "prevail upon senators to oppose this nomination" (A1). Paul Brown, of the Life Amendment Political Action Committee was quoted saying, "We feel betrayed by the President," and "We've been sold out" (A12). Paul Gemma of the National Pro-Life Political Action Committee explained, "We want to send the President a clear signal at how much of an insult this is" (A12). The pro-abortion label would stick to O'Connor like glue, a label for which she would have to craft a rhetorical response to lessen its impact. In this moment, perhaps, O'Connor did not have the foresight to respond, which may have subdued the controversy; a July 8 article took care to point out that she refused to answer question "related to the announced opposition to her appointment from the Right to Life Organization" ("Honored by Post" A12).

At the most, O'Connor claimed she could not remember the questionable votes ("Goldwater Tells Opponents" A11).

A defense would come from an objectively unlikely source; described by Clines as "a rival Democrat," Alfredo Gutierrez, denied any pro-abortion votes in her record, "That's absolutely not in the record. It just isn't there" ("Honored by Post" A12). Taking into account that no liberal outcry against O'Connor existed, with the language of betrayal, selling out, and insult from social conservatives suggests a much deeper goal of the controversy: to define what political conservatism really means. During stage one, O'Connor had been described as conservative without contest. Less than a week later, O'Connor was a betrayer of conservatism; Reagan had sold out his promise to nominate a pro-life candidate. Reagan tried to subdue the direct audience of any confirmation process, the Senate; he assured Senator Hatch that O'Connor considered abortion "personally abhorrent" (A12). This did little to settle the controversy. *New York Times Reporter* Hedrick Smith explains the fracture amongst conservatives: "the radical right wing...has provided his most zealous political support through the years and is now openly dismayed over Mr. Reagan's Court choice" (A17). But Reagan betrayed their trust and speaking to Senators alone would not be enough to quash the flames.

Labeled "Mr. Conservative," Senator Barry Goldwater made the most public defense of O'Connor on numerous occasions (Clines, "September Vote on Nominee Forecast" A16). Considering the ultra-conservative involvement in Goldwater's ultimately unsuccessful 1964 presidential bid, which brought names like Reagan and Schlafly to the national stage, Goldwater's treatment of O'Connor's critics suggest deep ideological troubles within the Republican party. As early as July 9, Goldwater is on the attack, "If they're going to start a fight, they're going to find Old Goldie fighting them like hell" (A16). The next day, on the Senate

floor, Goldwater would declare the controversy “a lot of foolish claptrap,” further stating “The right-to-life groups are totally off base and should back off” (“Goldwater Tells Opponents” A11). Goldwater’s support for O’Connor was so well-noticed that Clines, one of the key reporters of the controversy, referred to Goldwater as “The Father of the Bride,” discussing in detail a moment in which O’Connor “squeezed [Goldwater’s] fingers as if for sustenance,” during a July 14 photo opportunity at Capital Hill (Clines, “About Washington” A14). Of course, this is another example of sexism rearing its ugly head against O’Connor, as if she needs a father figure to give her confidence; however, as with other instances of blatant sexism, O’Connor would not publically decry the use of such tropes against her.

Despite ‘Mr. Conservative’s’ pleas to back off, the controversy surrounding O’Connor’s record continued. On July 9, Clines reported that anti-abortion group leaders were meeting to “plan a common strategy” for opposing O’Connor (“September Vote on Nominee Forecast” A16). Part of this strategy seemed to be walking back on the initial claims of ‘betrayal’ against Reagan himself. Instead, a day after the ‘betrayal,’ conservative fundraiser Richard Viguerie explained, “He’s a busy man who relies heavily on his staff, who have misled him” (A16). This turnaround over the course of just 24 hours could be the result of a strategic move by Reagan, who reportedly met with Helms—the Senator most opposed to O’Connor—as well as asked Jerry Falwell to consider supporting the nomination, although Falwell made clear “he did not commit himself” (A16). While Reagan was no longer the betrayer of conservative values, the movement against O’Connor was picking up steam.

At least initially, the controversy stirred up by anti-abortion groups was working. On July 9, *New York Times* reporter Steven Weisman reported that the White House press office received mostly negative calls and mails over the first two days since her nomination: “Telegrams and

mail had been 2,573 against, and 290 in favor, while telephone calls were 1,554 against and 263 in favor” (“White House Rebuts” A17). By July 10, only half of Senators publically supported O’Connor, while the other half chose to “[withhold] judgment pending confirmation hearings” (“Goldwater Tells Opponents” A11). Arguably, much of the initial backlash was due to the very little time O’Connor had been in the spotlight; after only two days, her record had not yet been publically vetted in detail. Furthermore, O’Connor’s critics were quick to state, ambiguously, that there would be bombshells in her record; Paul Weyrich of the Committee for the Survival of a Free Congress was reported to say, “I think the decision was made without all the cards in the deck,” suggesting there would be negative cards yet to be seen (“Goldwater Tells Opponents” A11).

Within days, the White House was working overtime to develop a strategy; however, strategic mistakes kept the controversy alive in the press. A policy not to comment on O’Connor’s qualifications was announced and retracted within hours; as well, *New York Times* reporter Howell Raines reported an unsuccessful attempt to suppress the information about overwhelmingly negative responses to her nomination (“Reagan’s Shift to the Center” E1). Furthermore, an off-the-cuff joke by Deputy Chief of Staff Michael Deaver compared the White House’s pre-nomination vetting of O’Connor to shopping for a car, “The President simply liked the first one he saw” (E1). The controversy amongst Republicans was at its peak, with Raines reporting, “the White House cannot so easily brush off conservative activists and Christian fundamentalists who believe Mrs. O’Connor is insufficiently opposed to abortion and women’s rights” (E1). It did not seem the controversy would easily die down; on July 15, O’Connor faced a ‘March for Life’ demonstration while paying courtesy calls to Senators on Capital Hill (“Reagan Meets Court Nominee” A14).

Yet, the controversy was dying after its initial spark. Based on the available articles, it is difficult to pinpoint an exact cause. Anti-abortion groups still opposed her nomination, as will be seen in later analysis, but it seems by July 17 that most Senators and most Americans had warmed to the idea of O'Connor's nomination. A July 17 Associate Press-NBC News poll indicated that approximately 65% of Americans approved the nomination ("Judge O'Connor Talks" 24). Even Senator Helms was quoted saying, "I look forward to following this lady's career," which, while not an endorsement, is a far cry from opposition ("Judge O'Connor Meets" A24). While Jerry Falwell would not budge on his opposition, by July 19 stage two would come to an end, when a spokesman for the Moral Majority publically claimed, "We should have shut up and not said anything" (Herron and Wright E4).

Despite a roaring crescendo of controversy, it seemed the controversy all but disappeared. This could be due to the rhetorical form of the confirmation process itself. After her initial visits to Capital Hill, O'Connor would not return to the spotlight until her hearings began in early September. Aside from an August 20 announcement that the hearings would take place between September 9-11, 1981, O'Connor all but disappeared from the public eye ("Hearings on Court Nominee" A14). But the controversy was not over. The hearings were still to come.

Stage 3: Deterioration

Stage 3 involves the deterioration of a rhetorical situation, a time when the audience may no longer care for the exigence or the speaker, another situation might trump the one at hand, or constraints might disappear or be rendered moot (Bitzer, "Functional Communication" 35). By early September, even some leaders of anti-abortion groups were backing off their initial outcry; *New York Times* reporter Adam Clymer explained some "said privately they do not want to make an all-out stand against the nomination because they expect it to be approved without much

difficulty and they do not want to appear weak” (“Nomination of Judge O’Connor Protested” A8). It seemed unlikely that the Senate would vote against O’Connor, whether due to her gender or the quick decline of the abortion controversy in the media or both; thus, the exigence of the confirmation process as a rhetorical form was seemingly complete—the Senate had vetted and accepted O’Connor as able to protect the interests of liberty. Yet, the exigence of this controversy—the battle to define conservatism—still existed, explaining why anti-abortion forces still protested her nomination and why some leaders began turning their attention to future fights with the Republican Party.

It is important to mark early September through O’Connor’s confirmation hearings as the deterioration period, because anti-abortion forces still had an opportunity to defeat O’Connor, even if the Senate no longer seemed to care. Thus, O’Connor was still faced with a campaign against her, which requires a rhetorical response—one that she did in fact give during her hearings. Some of the initial language of betrayal reemerged: Gemma argued, “We’re made to look like fools,” while Clymer reports that Howard Phillips of the Conservative Caucus “suggested that President Reagan had broken his promises to appoint justices who opposed abortion” (A8). It seemed, however, that Reagan had gained an ally in none other than Jerry Falwell, who attempted to turn the controversy over conservatism’s future to a constitutional amendment on abortion, while essentially removing himself from the larger fight against O’Connor (Clymer, “Right Wing Seeks Shift” 20).

Despite Falwell’s defection from the anti-O’Connor camp, on September 9, the first day of O’Connor’s confirmation hearings, *New York Times* reporter Linda Greenhouse noted that O’Connor “had to pass anti-abortion pickets to reach the hearing room” (“O’Connor Hearings Open” B14). Furthermore, within the first few minutes of her testimony, O’Connor was asked to

explain her opinions on abortion, suggesting that the controversy had not been forgotten. She made her position on abortion absolute: “I am opposed to abortion as a matter of birth control or otherwise.... [the issue of abortion] is a valid one for legislative action, subject to any constitutional restraint or limitation” (*The Nomination of Sandra Day O’Connor* 61). Despite this clear assertion, O’Connor still faced questioning about her position and anti-abortion advocates continued to question her sincerity during the hearings. Greenhouse reported North Carolina Senator John East “tried repeatedly late in the [first] day to get the nominee to give her opinion of *Roe v. Wade*,” but O’Connor refused on the basis that any future case would need to be decided on the facts, rather than personal ideology (Greenhouse, “O’Connor Hearings Open” B14).

Despite waning public interest, anti-abortion advocates had their fair share of time during the hearings. The hearings included testimony from Dr. John Willke, president of the National Right to Life Committee; Dr. Carl McIntire, president of the International Council of Christian Churches; Father Charles Fiore, chairman of the National Pro-Life Political Action Committee; Gordon Jones, executive director of United Families of America; and Anne Neamon, national coordinator of Citizens for God and Country and trustee of Truth In Press, Inc, all of whom questioned O’Connor’s position on abortion, despite her clear assertions to the contrary prior to any of their testimonies. On September 11, 1981, the final days of the hearings, Senator Jeremiah Denton attempted to corner O’Connor on her abortion stance, and after over an hour of questioning stated, “I don’t feel I have made any progress personally on the issue of where you stand on abortion” (*The Nomination of Sandra Day O’Connor* 249), despite her willingness to answer all of his questions.

Perhaps the most memorable testimony on the final day; a last push by anti-abortion advocates came from Dr. Carolyn Gerster, Vice President in charge of international affairs for the National Right to Life Committee (280). While Gerster lamented that it has taken over 200 years for a woman to be nominated to the Court, she explained that she did not share O'Connor's position on abortion, as she interpreted it (280). After admitting that she and O'Connor ran in the same Arizona social circle, Gerster asserted that the two "were in an absolute adversary position during 1973 and 1974," when some of O'Connor's controversial votes were cast. Gerster then characterized O'Connor's Arizona votes as "consistently supportive of legalized abortion" (281). Gerster even called O'Connor's stated anti-abortion stance "disturbing" in light of her "consistently proabortion [sic]" record (286). However memorable Gerster's comments would be, it seemed O'Connor's confirmation could not be stopped. By mid-afternoon on September 11, only Thurmond remained to hear any testimony, including that of Reverend Carl McIntyre, who lamented, "I want to protest coming down to this hearing and having only you to talk to" (345). Without even a physical audience present, it seemed the process of deterioration was complete. The rhetorical situation, the controversy surrounding O'Connor's nomination, was set to disintegrate. Greenhouse would remark, "It was an anticlimactic and unceremonious end to the stop-O'Connor effort" ("New Right Loses" A20).

CONCLUSION

By the end of O'Connor's hearings, the controversy had disintegrated. Her confirmation by the Senate seemed all but certain; the *New York Times* reported, "She seems more than ever an excellent choice" ("A Judge Well Chosen" E20). By September 15, Greenhouse reported that the Senate Judiciary Committee approved the nomination, such that it could move to a full Senate vote ("Panel Approves Judge O'Connor" A16). On September 21, by a unanimous vote

of 99 to 0, the full Senate approved her nomination (Greenhouse, “Senate Confirms” A1). Despite the loss, the anti-abortion forces seemed more ready for battle than ever. Howard Phillips of the Conservative Caucus described the moral conservatives as “demoralized and dispirited,” saying the loss “took the scales off our people’s eyes” (Greenhouse, “New Right Loses A20). Greenhouse reported, “The taste of defeat has clearly given the new right a renewed taste for battle” (A20).

What is most striking about Justice Sandra Day O’Connor’s confirmation process is how little research has actually been performed about it. The study of communication, rhetoric in particular because of its roots in Greek democracy, illuminates all aspects of the democratic process: how leaders are created, how controversies evolve, and how citizens perform within the rules and forms developed over time. In studying the federal government, little research has been performed on the judicial branch and the confirmation process that ensures only those worthy join its ranks. Because of the indirect relation to the democratic process, the justices and judges of the judicial branch have been little researched. Further, the most controversial candidates and processes, most often the failures, are given priority. While perhaps more interesting, should the failures really be the most researched? Without focusing on the successes, only half the battle is understood. Certainly, labeling something unworthy of study just because it is successful silences their perhaps excellent rhetorical maneuvers. Hopefully, this research shows that even successes are worthy of study and that behind a unanimous vote can be found a controversy that further explains the deep ideological divides within democratic society.

Despite the fact that the Senate unanimously confirmed Sandra Day O’Connor’s appointment to the Supreme Court, making her the first female justice, the process of obtaining that result was far from trouble-free. The confirmation process of Sandra Day O’Connor was

caught in the storm of political and cultural change. As a constitutional prerogative, the confirmation process is a rhetorical form dedicated to the assessment candidate's ability to protect liberty; the rhetorical form necessarily complicated the life of the controversy surrounding her. Study of this process not only increases limited understanding of the rhetorical form, but it also complicates the historical narratives of both the women's and conservative movements. Through a rhetorical analysis of articles published about O'Connor's nomination, as well as testimonies to the Senate Judiciary Committee, this research finds that O'Connor's position on abortion was the issue through which social conservatives judged her ability to protect liberty as they defined it. Although her gender could not be discounted for its effect on narrative, ultimately, O'Connor's nomination was profoundly shaped by disagreement between traditional Republicans and an increasingly powerful social conservative faction over the future focus of political conservatism, with abortion as the issue driving the conflict forward.

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