

First Place

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I. Introduction

As New Mexico is one of a majority of states to take after the federal government by integrating specific separation of powers language into its constitution, the judiciary branch inhabits a more advantageous position in its ability to declare laws and executive decisions unconstitutional. To this extent, it takes part in the activities of both legislating and administrating; powers reserved for its sister divisions in Article three of the state constitution. James Madison was undeniably correct in his assertion that “it is not possible to give each department (of republican government) and equal power of self-defense” (Federalist 51).

Our state’s governing bodies can be compared with those that may inhabit a nuclear household. First, we have the parents: our judiciary. Authoritative figures that provide final deliberation and explanation concerning all familial disputes. Their word not only resolves the immediate issue, but sets a precedent for all future problems of the sort. Constituting the lower two rungs are the older sister and twin brothers, representing the gubernatorial office and bi-partisan state legislature respectively. All three of whom are constantly vying for control over certain household decisions. What’s for dinner? How late is curfew? Who’s turn is it to clean the bathroom? In the process of doing so, every one of these factions is bound to step on each other’s toes in this constant struggle for power.

In practical application, the phenomenon of overlapping responsibility has both the potential to undermine the republic and can at times be necessary for its proper management. This analysis will feature on top of various statutes and amendments, the legal precedents established by three state of New Mexico Supreme Court cases (Legislative Council v. Honorable Susanna Martinez, Maestas v. Hall, and Mower v. Rusk) which highlight the abilities of all three branches to check one another, and how this system, coupled with the separation of powers doctrine outlined in article three, section one, have become tools for both parties of utilize.

II. Checks on Executive Power, Legislative Overreach and Judiciary Appointment

Governor Martinez's line-item veto of The General Appropriation Act of 2017, "thereby defunding and effectively eliminating the legislative branch of government" shook the foundation of politics in the Land of Enchantment. Moreover, it warranted the judicial branch to take a firm stance on both the true limits of executive power and ability of the legislature to leap over the executive's authority in efforts to fulfill its duty of funding "constitutionally and legislatively authorized entities"; as outlined by the Legislative Council's injunction following the veto.

The court's decision to deny the amicus brief as moot further clarified two gray areas. Firstly, the legislature is incapable of overriding an executive veto without the two-thirds vote explicitly called for in Article 4, Section 22 of the state constitution, despite the veto's possibility of interfering with the legislatures inherent duties. Second, it confirms that, although the line-item veto has previously been considered an encroachment on the powers of the legislature, it does not "undermine the essence of separation of powers when the result is to preclude or limit the ability of another branch". The final debate between the state legislature and executive

branch- resulting in a new budget that re-allocated funds for operating all three branches in addition to compromises on taxation, show an equal check on the executive veto through negotiation in addition to a super-majority override.

Despite the supreme court's comparative advantage in the greater scheme of policy making, this institution does not possess an all-powerful grip over the other two branches of government. The ability of the legislature and executive to establish the parameters within which justices may be appointed and operate represents a great deal of leverage. In 1951, then Governor Ed Mechem established a selection committee which served the purpose of recommending justices to be appointed to the court if a seat had become vacant mid-term. The current process by which justices are elected and retain their seats however, is the responsibility of the legislature and people. In 1988 and 1994, voters approved Amendments Six and Ten respectively. These laws altered the election process by forcing justices to compete in a non-partisan election- attaining 57% of the popular vote to retain their seat on the bench. In addition to passing regulatory laws, Article 4, Section 35 outlines the power of the legislature to impeach any government official, including supreme court justices, with a majority vote in the House of Representatives and two-thirds vote of all elected senators.

Both the case regarding The General Appropriations Act fiasco, in addition to other constitutional and statutory powers that keep the judiciary branch in line, comprise a system in which all three branches of state government are equipped with weaponry for an often three way cage match; the likes of which partisanship plays a substantial role in deciding who will come out victorious.

III. Separation of Powers with regard to Partisan Competition

There are few governmental proceedings more blatantly partisan than that of redistricting. The case of *Maestas v. Hall* outlined how checks and balances between branches apply sufficient limitations on the power of the majority over its rival party, while, ironically, strengthening the majority's abilities when coupled with separation of powers precedents.

It is the decennial responsibility of the two chambers of New Mexico's legislative branch to pass a bill outlining their respective re-districting plans based on the Equal Population Principle, Voting Rights Act of 1965, and other previously held federal statutes that will allow for the non-partisan division of power amongst elected officials. When the state House of Representatives aimed to do just this through the passage of House Bill 39, it received not one republican vote on the floor, and was vetoed by Governor Susanna Martinez due to allegations of partisan gerrymandering. A perfect demonstration of how the minority party (in this case republican) was able to surpass the power of the House's democratic majority through its foothold in the executive branch.

Following this dilemma, the responsibility of establishing the reach of all seventy house districts was transferred into the hands of the judiciary. With its newfound power, the supreme court appointed retired district judge James Hall to the task of consolidating plans presented by the legislature, executive and various outside parties to create a constitutional and sensible map. The court's subsequent rejection of Hall's presented plan, which adhered too closely to the population deviation standards, and subsequent adoption of a new one that was primarily concerned with obeying previously held state statute regarding redistricting, gave birth to an ultimatum that aided the legislative majority. This in the sense that it allowed for greater influence on the process through state laws as opposed to mathematical inconsistencies. The

court's sole ability to finalize legal precedents, in this case, gave the legislative majority more influence.

The 1980 New Mexico Supreme Court case *Mower v. Rusk* concerns the ability of separate branches to have influence over the others, not necessarily in the traditional sense of stalling legislation, but power of staff appointment. Although the issue began at a municipal level, its final deliberation demonstrates the safeguards that prevent opposing partisan forces in Santa Fe from utilizing the courts as an intermediary for punishment.

On April 14th, 1979, amendments to the City of Albuquerque Revised Ordinances section 3-1-13 made the chief administrative officer, a member of the executive branch and hence under purview of the mayor, in charge of all staff employed by the municipal court. Immediately following this change, municipal judges Frederick Mower and Elizabeth Love filed both a restraining order to prevent the new regulation from taking effect, and further pursued a declaration of invalidation. After the creation of a completely separate metropolitan court by the 34th state legislature, the issue was still considered by following district courts as not moot due to its questioning the extent of constitutional doctrine.

The court's opinion on the matter is significantly impactful for two reasons. One, it decided that Article III of the state constitution applies to all governing bodies as equally as it does to those elected officials operating in the rotunda. Further, and more importantly, it established that despite the manner in which operating funds and salaries were allocated and distributed (in this case through tax dollars and by city council and the mayor's office), the ability to hire and fire employees is so inherent to the respective branches that there is much less opportunity for elected and appointed officials to be affected in any way by those staff members

whom they would be forced to operate with. In other words, the party operating the executive branch has little sway over judiciary decisions.

IV. Conclusion

Although members of the judicial branch of government have that ability to overrule any decision so long as their explanation is created within the realm of constitutional consistency, this ability to regulate the behavior (or perhaps limit the misbehavior) of other elected officials does more good than harm. Whether it be setting the rules of gerrymandering, hiring government employees or funding another branch, the judiciary's all-encompassing powers are necessary for the regulation of a democratic state and society.

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Second Place

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Framework for Freedom: An Inspection of Democratic Principles

I. Introduction

New Mexico maintains three branches of government: legislative, executive, and judicial. No one branch of government is given more power than the other, thereby establishing an openly checked government in line with the interests of its people. The New Mexico Constitution thwarts the prospect of tyrannical rule by limiting governmental power with checks and balances, ensuring success of democracy and freedom. Similarly, our nation's Constitution transcends time and protects the personal liberties of future generations from inequality and oppression of concentrated government. When government jeopardizes democratic principles, a framework for freedom becomes the back bone to upholding those rights. New Mexico's Constitution works this way by maintaining bureaucratic governance, checks and balances, and the protection of individual liberties.

II. New Mexico's Three Branches

The New Mexican Constitution, by will of its people, assumes the liberties provided by the American national government. Furthermore, it directs the formation of departments under three bodies: " the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others" ("New Mexico State Constitution").

This inscription of law limits the power of the governing elite and tailors New Mexican democracy into three distinctive bodies. The Executive Branch is partitioned between the cabinet of the Governor's office in an unparalleled way, naming six ministers in addition to the governor to comprise the Executive. Conversely, the Executive Branch of the federal government is comprised of solely the President. Officials appointed by the President, operating beneath his office, merely serve as symbols of his Executive Power but attain no real authority. New Mexican officials are similar in nature to those of their senior in D.C.; however, they exercise more power in respect to their office because of the literal power given to them in the State Constitution.

III. Checks and Balances/ Separation of Powers

Equally important, the task of ensuring that each department of the State of New Mexico acts accordingly is the responsibility of each branch to uphold. To secure these widely accepted and fair ideals, a system known as checks and balances was created. Checks and balances consist of actively participating in questioning the directives of all departments of government to ensure that honest governance is being promoted. Furthermore, a separation of powers ensures that government does not become authoritative by dividing the responsibility to rule between three distinctive bodies. This system of checks and balances coupled with a separation of powers guards against tyranny and inhibits subjection to despicable rule:

The separation of powers doctrine is necessary because of the political truth that the accumulation of all governmental powers in the same hands can lead to tyranny. Properly applied, the doctrine is a valid and useful means of preventing the exercise of unchecked power, and is an aid to the efficient organization of government. (Garrity 350)

Here, Garrity bluntly admits that power is always abused when entrusted to one individual or body. Indeed, America and numerous other colonies experienced the full wrath of abusive power under British monarchical rule. Separating government ensures that ruling authority is not invested in one entity, thereby preventing oppressive command of state. In addition, arranging government in this way allows for swifter exercise of dominion that reflects the interests of all people and better management of collective duties.

Moreover, the Legislative and Judicial Branches go hand-in-hand when ensuring that a fair and decisive system of governance may rule. Laws that embolden rather than compromise the freedoms already promised within the State Constitution are crafted by Representatives and Senators making up the Legislature. Justices within the New Mexico Supreme Court exercise power to affirm the legality of laws and actions in accordance with the supreme standard of law, the Constitution. Similarly, Legislative authority is given the directive to balance power from the Judicial as stated, “The power of the judiciary is balanced by the legislature's ability to pass new laws and propose constitutional amendments. Legislatures also may have the power to confirm, select or impeach judicial branch officials” (*Separation of Powers—Legislative-Judicial Relations*). The Legislature possesses the ability to craft laws to counter extreme exercise of judicial power and influence the body of the court. This ability is a prime example of the State Government’s ability to consistently affirm and question the directives of all parts of government. In short, this capability is given to each branch for the purpose of maintaining an efficient and successful government that reflects the needs of its people rather than itself.

IV. Defining Democratic Majority/Minority & the Power of a Democratic Majority

A democratic majority in the State of New Mexico follows the principle of a democratic society; therefore, the political views of the majority of New Mexicans garners a specific direc-

tion of governance and political atmosphere. The power invested in a democratic majority may be simply summed up as the power to rule. A party, having received over fifty percent of the vote, has the ability to rule and assert its own agenda and ideas that should mirror those of its supporters, comprising a majority faction in the Legislature. Until the next political cycle, this democratic majority is tasked with directing the State of New Mexico and its policies. Powerful as this majority might seem, it is important to note that the authority it attains is limited by the separation of powers. As Alexis de Tocqueville once wrote, “A majority taken collectively may be regarded as a being whose opinions, and most frequently whose interests, are opposed to those of another being, which is styled a minority” (*American Democracy*). De Tocqueville characterized the minority as the group whose political opinions are farthest from those shared by most. When a large collection of people think differently and challenge a smaller faction whose opinions differ, the smaller party automatically becomes the minority in contrast to majority power. Hence, the greater part of any given sum of people make up a democratic majority and share similar concerns.

V. The Impact of Checks and Balances/Separation of Powers over the Democratic Majority and Minority

The principle of fair governance in the State of New Mexico encompasses the right of its people to examine the governmental body presiding for improper rule and false implementations of laws. Checks and balances when coupled with a separation of powers operate as efficient as organs, allowing government agencies to complete their own tasks independently and efficiently. The course of action taken by each branch to ensure fair treatment by process of checks and balances helps to maintain a voice for those who are underrepresented and are classified as the democratic minority. As Montesquieu once wrote, “To prevent this abuse, it is necessary from

the very nature of things that power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits” (*Spirit of Laws*). In this regard, Montesquieu highlights the necessity for examinations of governmental actions. Furthermore, he underscores that well crafted government deters abusive power. By inhibiting the ability of one individual to hold authority, the voices of the under-heard are allowed to be spoken. A separation of powers in conjunction with persistent checks and balances ensures protection of individual freedoms and roots out corruption.

VI. Conclusion

The New Mexican Constitution effectively operates through the implementation of checks and balances and the separation of powers. This legal document protects, preserves, and upholds the individual liberties of citizens and creates efficiency within the New Mexico State Government. In addition, it serves well the personal freedoms of New Mexican citizens by adding protection of suppressive and over-extended rule. Therefore, it includes the separation of state powers and couples them with checks and balances to ensure that the democratic majority does not infringe upon the interests of the democratic minority. In short, the New Mexican Constitution ensures that a tyrannical state will never govern its borders and thereby protects the liberties of its citizens.

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Third Place

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I. Background

The United States of America, since the founding of the country, has used a democratic framework to establish and maintain freedom and the rights of its people. The political systems of checks and balances and separation of power between the three branches of the federal government: legislative, executive, and judicial, were created to preserve these foundational American ideals by balancing and limiting the amount of control one branch of government possesses. From the time this system was established, early American political leaders debated whether these political systems were effective in protecting freedom and American rights. James Madison believed strongly in the systems and stated in the Federalist Papers, "...you must first enable the government to control the governed; and in the next place oblige it to control itself." However, Alexander Hamilton did not trust the government having control of the people, nor the people having control over the government. Simply, Hamilton did not trust power in one place. Although there was debate over this type of governmental structure as states were admitted to the Union, their constitutions closely followed that of the federal government, the same was for New Mexico when it joined in 1912. The New Mexico constitution laid out three branches: legislative, executive, and judicial. These branches, like those of the federal government, are separate and have checks and balances

between them. This framework is essential to ensure the state's balance of power in government which exists to establish and protect its citizen's freedoms and rights.

II. The “Checks and Balances” that exist within New Mexico’s three branches of government.

Each branch of government is appointed particular powers and is prevented from overstepping the boundaries of said powers by a system of checks and balances laid out in the New Mexico constitution. The responsibility of the executive office of governor is to appoint the members of the judicial court. As determined by the Constitution of New Mexico, the Judicial Nominating Commission, which is a board made up of judges attorneys, and citizens of New Mexico, selects potential judicial members. Their selection is then presented to the governor who appoints them (*University of New Mexico*). To balance this, the judicial branch can declare a governor's actions unconstitutional; as stated in *Taylor v. Johnson*, a New Mexico case that challenged the power of the executive branch, “Without question, the power of the judiciary to compel compliance with its orders, extends to the executive branch.”(quoting *Westfield v. IRS*, 172 B.R. 178, 179-80) The legislative branch is responsible for debating, processing, and passing bills into law according to Article IV section 1 of the New Mexico Constitution, “ the legislature shall enact laws necessary for the effective exercise of the power hereby reserved.” Conversely, the Governor can veto these passed bills as stated by Article IV section 22, “Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval... otherwise, he shall return it to the house in which it originated, with his objections,” This is evidenced in *Taylor v. Johnson*, in which the policies of the articles are laid out and explained, the legislative

party must be able to look over and debate new policies or changes before the executive member can veto or pass a bill. “The New Mexico Constitution requires that the Legislature first have the opportunity to debate and vote on core policy changes; only then may the Governor exercise his veto powers and force the Legislature to consider a veto-override.” The legislative branch oversees drawing and redrawing district lines as well, however, in the case of partisan gerrymandering the judicial branch can seize control of the process. “When a legislature fails to redraw district lines in compliance with constitutional requirements, the courts may assume the legislature’s redistricting responsibilities” (*Undermining Checks and Balances: The Fallout of Maestas v. Hall*). “Checks and balances” keep the branches of government from grabbing control from others, ensuring a balanced system.

III. How “separation of powers” coupled with “checks and balances impact the power of democratic majority over the minority.

“Separation of powers” and “checks and balances” protects the minority by limiting the power of the majority. “Separation of powers”, as defined by The Separation of Powers Doctrine, is meant to keep the three branches of government from performing the jobs assigned to other branches and stay within the boundaries of their own obligations, “once labeled, the function of the branch must be performed by that branch of government having the same name.” This system that keeps one branch of government from taking control of another branch, is demonstrated by *The New Mexico Legislative Council v. Honorable Susana Martinez*, in which Susana Martinez attempts to cut the

funding for the legislative branch, essentially attempting to give her republican party a huge advantage over the democratic party by immobilizing congress, leaving her to be the main authority in the state government “thereby defunding and effectively eliminating the Legislative branch of government.” (*State of New Mexico, ex. rel. The New Mexico legislative council v. Honorable Susana Martinez*). Gov. Martinez's cut was found to be unconstitutional because of “separation of powers” (Separation of Powers Doctrine), therefore protecting the rights of the democratic party, a minority in the case of the republican governor.

“Checks and balances” between the legislative and judicial branches concerning the restriction of partisan gerrymandering, discussed briefly in the previous section, protects the minority party within the legislature from the majority. The redistricting power of the legislature can be overtaken by the courts if partisan gerrymandering is proven to exist. This protects the minority by not allowing the majority party to use their majority power in the legislature to draw district lines that will shift votes in their favor. *Maestas v. Hall* describes how without this “check and balance” the majority would have detrimental advantage, “the opinion undermines the role of the governor in the legislative process and gives undue deference to a simple legislative majority which failed to construct a single partisan-neutral plan.” “Checks and balances” and “separation of powers” between the branches of government work to protect the rights of the minority from the power of the majority.

“Checks and balances” between the minorities and majorities within the branches of government (Democrats and Republicans) work to defend the minority as well. One example of this is Cloture not directly named but addressed in Rule 20 of The

New Mexico Senate Rules. It states that, "When any bill, resolution, amendment or motion shall have been under consideration for two hours, it shall be in order for any senator to move to close the debate, and the president shall recognize the senator who wishes to make such motion," (NM Senate Rules 20-1). This protects the minority by prohibiting the majority from endlessly debating a measure that favors the minority's views, without ever voting on it. Furthermore, once the debate has been closed, both the minority and majority have equal extra time to debate before the vote, "The vote shall thereupon be taken upon such bill... but without further debate; provided the majority and minority shall be allowed thirty minutes each," (NM Senate Rules 20-3). This further levels the playing field between minorities and majorities. "Checks and balances" and "separation of powers" within and between the branches of government serve to protect the minority from the encroachment of the majority.

IV. Conclusion

"Checks and balances" and "separation of powers" are a part of the democratic framework, developed by the founding fathers, to maintain balance between and within the three branches of federal government. These same systems were carried over into the New Mexico Constitution when it was written. "Checks and balances" and "separation of powers" in New Mexico work not only to keep balances between all the branches in many ways, but also to defend the rights of the minority from the power of the majority. Their existence is mandatory for the fair function of the state.

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