IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 24, 2025

NO. S-1-SC-41063

STATE OF NEW MEXICO ex rel.
RAUL TORREZ, ATTORNEY GENERAL,

Petitioner,

v.

BERNADINE MARTIN,
DISTRICT ATTORNEY,
ELEVENTH JUDICIAL DISTRICT,
Div. II,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for removal of district attorney pursuant to NMSA 1978, Sections 36-1-9 through -17 (1955), response thereto, and motion to stay discovery pending this Court's decision on jurisdiction;

WHEREAS, the Court issued an order on September 5, 2025, for supplemental briefing on two jurisdictional questions, whereupon the parties filed the requested supplemental briefing;

WHEREAS, the Court thereafter issued an order on October 17, 2025, accepting jurisdiction of this matter under NMSA 1978, Section 36-1-10;

WHEREAS, the Court thereafter issued an order requesting a response to the affirmative defense raised by Respondent as to whether the Court may consider allegations of misconduct that occurred outside of Respondent's current term in office for the purposes of removal under *State v. Santillanes*, 1982-NMSC-138, ¶¶

9-12, 99 N.M. 89, 654 P.2d. 542, whereupon the parties filed responses;

WHEREAS, this matter is now before the Court on its own motion to strike Respondent's affirmative defense that the Court's subject matter jurisdiction is limited to considering allegations of misconduct that occurred during Respondent's current term in office;

WHEREAS, the Court having considered the foregoing and being sufficiently advised; Chief Justice David K. Thomson, Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the motion to stay is DENIED;

IT IS FURTHER ORDERED that Respondent's affirmative defense that the Court's subject matter jurisdiction is limited to consideration of allegations of misconduct that occurred during her current term in office is hereby STRICKEN from any of her pleadings filed in this matter in which this affirmative defense was raised; and

IT IS FURTHER ORDERED that an opinion explaining the Court's reasoning shall follow at a later date.

IT IS SO ORDERED.

WITNESS, the Honorable David K. Thomson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 24th day of October, 2025.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By Kristen R. Edwards
Deputy Clerk

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Kristen Edwards
Deputy Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.
RAÚL TORREZ, ATTORNEY GENERAL

Petitioner,

v. **No. S-1-SC-41063**

BERNADINE MARTIN,
DISTRICT ATTORNEY,
ELEVENTH JUDICIAL DISTRICT,
Div. II,

Respondent.

STATE OF NEW MEXICO'S RESPONSE BRIEF

On October 17, 2025 Order from the New Mexico Supreme Court for Response to One Issue

NEW MEXICO DEPARTMENT OF JUSTICE

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INTRODUCTION

In its October 17, 2025 order, the Court directed the State of New Mexico to respond to the following issue:

> Whether the Court may consider allegations of misconduct for the purposes of removal from office that occurred outside of Respondent's current term in office under *State v. Santillanes*, 1982-NMSC-138, ¶¶ 9-12, 99 N.M. 89, 654 P.2d 542. *See District Attorney Bernadine Martin's Answer to the State of New Mexico's Petition for Removal of District Attorney at pgs. 10, 17-18; Martin's Opposed Motion for an Order to Stay Discovery Pending this Court's Decision on Jurisdiction at pgs. 3-4.*

[10/17/25 Order 1-2] First, the factual statement made by Respondent is false: the procurement violations identified in the State's petition occurred during District Attorney Martin's current term. Second, *Santillanes* is not controlling here. Specifically, the statutory construction analysis in *Santillanes* would be flawed as applied to the present situation District attorneys are fundamentally different from other local officials. It is more likely that the Legislature intended no limitation on this Court's authority to remove a district attorney for misconduct during a prior term when it omitted any statutory language to that effect. As shown below, *Santillanes* is either distinguishable or should be overruled.

ARGUMENT

I. The Alleged Procurement Violations Occurred During Respondent's Current Term of Office.

Initially, Respondent suggests the procurement violations identified in the State's petition for removal "were previously administratively resolved and legal remedies already meted out." **[Ans. 10]** Respondent also states, "the procurement issues cited occurred prior to [her] current term and therefore, cannot legally be used to support removal." **[Ans. 10 (citing *Santillanes*, 1982-NMSC-138)]** However, the State cited the 2023 settlement with the State Ethics Commission as context for the procurement violations that followed. **[*See* Pet. 7 ("but the willful procurement violations have continued.")]** All the violations described by Respondent's Chief Procurement Officer, Samantha Gomez, occurred in 2025 during Respondent's current term of office. **[Pet. 7-10]** Thus, even assuming *Santillanes* is applicable, it is irrelevant to these allegations.

II. *Santillanes* does not control; There is No Time Limitation on Removal.

There is no time limit for removal under NMSA 1978, § 36-1-9 (1955). In *Santillanes*, this Court held that removal of local officials under another removal statute, NMSA 1978, § 10-4-2 (1909), is limited to misconduct during the official's current term of office. 1982-NMSC-138, ¶ 9. *Santillanes* does not address Section 36-1-9 and is not controlling here. Respondent argues the Legislature could not have intended Section 36-1-9 to be inconsistent with *Santillanes*. **[Ans. 18-19 (citing *State ex rel. Stratton v. Roswell Indep. Sch.*, 1991-NMCA-013, ¶ 21, 111 N.M. 495]** However, Section 36-1-9 was enacted twenty-seven years before *Santillanes* was decided, so it would have been impossible for the Legislature to correctly predict the outcome of a challenge to a *different* removal statute when it was crafting the instant one, decades earlier.

A. Respondent's reliance on *Stratton* is misplaced.

In *Stratton,* the Court of Appeals considered a prohibition on state employees serving as legislators enacted in 1943, and whether public school teachers and administrators were included. 1991-NMCA-013, ¶ 1 (citing NMSA 1978, §§ 2-1-3 and -4 (1977)). The Court concluded the

Legislature would have known of constitutional and statutory distinctions between state and local employees and the judicial decisions relating to those distinctions *at the time of the enactment*. *Id.* ¶ 21. The Court also noted that the attorney general had read Section 2-1-4 not to prohibit local school district employees from serving as legislators. *Id.* ¶ 24 (citing N.M. Att'y Gen., No. 45-4645 (Jan. 24, 1945) (advisory letter to Rep. Philip M. Ludi)). The Court explained that persuasive weight is given to long-standing interpretations of a statute, and the more long-standing the interpretation of the statute without amendment by the Legislature, the more likely the interpretation reflects the Legislature's intent. *Id.* Finally, the Court observed that the Legislature is presumed to know case law and it had amended Section 2-1-3 and -4 in 1977 without altering the language in question. *Id.* ¶ 25.

Here, Section 36-1-9 was enacted in 1955 immediately after this Court held that the predecessor of Section 10-4-2—the removal statute for local officials—did *not* apply to district attorneys. *State ex rel. Prince v. Rogers*, 1953-NMSC-101, ¶ 5, 57 N.M. 686. At that time, the *Santillanes* opinion did not exist. Nor was there any other statute or constitutional provision from which the Legislature could have

interpolated a time limitation on removing a district attorney.[1] No long-standing attorney general opinion exists interpreting Section 36-1-9. And the Legislature has not revisited Section 36-1-9 in the intervening seventy years. Thus, the Legislature cannot be presumed to know this Court would intend its *Santillanes* opinion to silently interpret Section 36-1-9 without citing it at all.

B. The plain language of the statute should control.

More importantly, the State believes the statutory construction analysis in *Santillanes* would be flawed as applied to the present situation. District attorneys are fundamentally different from other local officials because many years can pass between a criminal offense and the prosecutorial decisions that follow. A dereliction of prosecutorial duty that occurs early in the criminal process may not result in visible harm to the public until many years later. It is more likely that the Legislature

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[1] In 1965, the Legislature recodified a third removal statute for municipal officers. NMSA 1978, § 3-10-7 (2018). Just as in Section 36-1-9, there is no time limitation on removal, and none should be presumed by this Court. However, had this Court interpreted Section 3-10-7 in a manner like *Santillanes* at some point in the last sixty years, then the logical conclusion of Respondent's argument is that the Legislature should have been aware of a third line of statutory interpretation cases. The web of analogous statutes and corresponding interpretative opinions could extend forever.

intended no limitation on this Court's authority to remove a district attorney for misconduct during a prior term when it omitted any statutory language to that effect. The plain meaning of the statute is the beginning point. *Bishop v. Evangelical Good Samaritan Soc.*, 2009-NMSC-036, ¶ 11, 146 N.M. 473. Here, there is no clear indicator of a time limit in the use of the term "office" or "officer," or through verb tense or otherwise. The one occurrence of the term "in office," *see* § 36-1-9(F), is in a catchall provision for corruption or gross immorality. Importantly, the list of grounds in Section 36-1-9 is disjunctive and subject to the scope-of-subparts canon of statutory interpretation. *See Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest."). Even if subsection F is deemed to be limited to the current term of office, by use of a preposition, it does not affect any of the prior statutory grounds—e.g., subsection B—for removal that do not contain the preposition.

The Court may also consider the practical implications and legislative purpose of the statute. *Bishop,* 2009-NMSC-036, ¶ 11. Much as a district attorney is not absolved of responsibility for prosecuting crimes committed during a prior district attorney's term, but not discovered until the present, she should not be forgiven for misconduct occurring during a previous term that was not detected until the present. For example, Respondent's catastrophic mismanagement of her office during her first term is only now yielding poison fruit in the form of criminal cases that are still going unprosecuted. Most of these cases are known only to Respondent, as the State has made clear in its motion for expedited discovery. The State's discovery requests are directed at identifying criminal prosecutions Respondent has failed to pursue, dismissed and failed to refile, or recused herself from without referring to another prosecutor. Even if the charging decisions or dismissals occurred in her previous term of office, the failure to discharge her duties as a prosecutor as it relates to these cases remains ongoing in her current term of office, if the statute of limitations has not run on the offenses in question.

Moreover, Respondent's private practice of law in the Navajo Nation courts is a violation of the public trust that was extremely difficult to verify. The Navajo Nation courts have no electronic docketing system that may be searched. It is likely only Respondent, her client, and her client's family were aware of the litigation cited in the State's removal petition for many years. **[Pet. 13; St. Ex. G]** Respondent should not evade removal for misconduct the public could not have been aware of during the previous election cycle. This would create perverse incentives for public officials and lead to absurd results the Legislature cannot have intended.

Other states have reached similar conclusions about a "present term rule" or "doctrine of forgiveness," i.e., a public officer may not be removed from office for misconduct occurring during a previous term of the office. *State ex rel. Londerholm v. Schroeder*, 430 P.2d 304, 313 (Kan. 1967).

> [T]he principal rationale of the rule is that reelection or reappointment of the officer amounts to condonation of his prior misconduct. Condonation of an offense implies knowledge of the offense, and, if the officer's misconduct in the prior term was concealed or not known to the electorate or the appointing official at the time of reelection or reappointment, several courts have refused to apply the rule.

Id. at 314; *see also In re Carrillo*, 542 S.W.2d 105, 110-11 (Tex. 1976) ("If, on the other hand, the misconduct is unknown to the public prior to the election and is of such willful nature as to cast public discredit upon the judiciary, it cannot be said that the judge was forgiven by his election or re-election."); *Application of Abare*, 248 N.Y.S.2d 826, 828 (1964) ("Consequently, he was not elected after disclosure, and with public knowledge of the facts, but, on the contrary, upon his assertion of innocent intent, which his post-election admissions of willful theft served to retract."); *McLaughlin v. Shore*, 154 S.W. 45, 47 (Ky. 1913) ("The purpose of the statute is to exclude from office under the board persons who violate its provisions, and the object of the statute would be largely defeated if it were held that an officer who concealed his offense until after that term had expired could continue to hold office under a new election.").

C. This Court should not add into the statute what the text does not state or reasonably imply.

Under the "omitted case canon," a court should recognize matter omitted from a statute as intentional and make no further inquiry into how a Legislature would have handled the matter. *State v. I.C.S.*, 145 So.3d 350, 355 (La. 2014); *see also Nat'l Educ. Ass'n of N.M. v. Santa Fe*

Pub. Schs., 2016-NMCA-009, ¶ 6, 365 P.3d 1 (reiterating that courts "do not read into a statute language which is not there, especially when it makes sense as it is written" (internal quotation marks and citation omitted)); *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920) ("Courts must take statutes as they find them. . . . They are not the law-making body. They are not responsible for omissions in legislation."); Cal. Code Civ. Proc. § 1858 ("In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted . . ."). Section 36-1-9 contains no time limitations on removal, the statute makes sense as written, and this Court should not infer a time limitation that the Legislature did not impose. *See Nat'l Educ. Ass'n of N.M.*, 2016-NMCA-009, ¶ 6.

Indeed, the Legislature could have explicitly limited removal to acts or omissions during the district attorney's current term in office, but it chose not to do so. At least one other state has done so. *See, e.g.*, Tex. Local Gov't Code § 87.001 ("An officer may not be removed under this chapter for an act the officer committed before election to office."). Nevertheless, there are exceptions even to this strict statutory doctrine

of forgiveness, as noted above. *See In re Bazan,* 251 S.W.3d 39, 40 (Tex. 2008) (official may be removed for felony conviction based on acts that occurred prior to election). And reasonable minds may differ as to whether "before election to office" references only the current term in office or encompasses consecutive terms in office. *See id.* at 47-48 (Willett, J., concurring).

States have also limited removal to specific time periods. *See, e.g.*, Cal. Gov't Code § 3074 ("Any officer subject to removal pursuant to this article may be removed from office for willful or corrupt misconduct in office occurring at any time within the six years immediately preceding the presentation of an accusation by the grand jury."); Fla. St. § 112.42 ("The Governor may suspend any officer on any constitutional ground for such suspension that occurred during the existing term of the officer or during the next preceding 4 years."). The Legislature could have easily chosen to enact a strict forgiveness rule; it did not. It could have also chosen *not* to forgive misconduct concealed from the voters. Speculating in this way runs afoul of the omitted case canon, and this Court should decline Respondent's invitation to do so.

III. Alternatively, the Court Should Overrule *Santillanes.*

The State believes *Santillanes* is distinguishable for the reasons set forth above. However, if this Court were to decide that Section 10-4-2 is controlling over Section 36-1-9, *Santillanes* should be overruled. New Mexico utilizes a four-factor test to determine whether to overturn precedent:

> 1) whether the precedent is so unworkable as to be intolerable; 2) whether parties justifiably relied on the precedent so that reversing it would create an undue hardship; 3) whether the principles of law have developed to such an extent as to leave the old rule no more than a remnant of abandoned doctrine; and 4) whether the facts have changed in the interval from the old rule to reconsideration so as to have robbed the old rule of justification.

Dominguez v. State, 2015-NMSC-014, ¶ 27, 348 P.3d 18.

As argued above, a district attorney's duties are fundamentally different from other local officials. Further, many of those acts or omissions are obscured from public view because they are cloaked in privilege or because the harm that may result will not manifest until

years later. For example, a willful pattern of *Brady*[2] or *Napue*[3] violations that result in scores of wrongful convictions during an earlier term of office may not be uncovered until a later term. Section 36-1-9 should be available to remedy such misconduct. To the extent *Santilllanes* would prevent that, it is so unworkable as to be intolerable.

Section 36-1-9 has rarely, if ever been used to remove a district attorney. The undersigned could find no published cases addressing it. Thus, it cannot be said that anyone has ever relied upon *Santillanes* as applied to Section 36-1-9 and no undue hardship would result from overruling it. Further, *Santillanes* is an abandoned doctrine to the extent it applies to Section 36-1-9; no court has so applied it in the intervening forty-three years, and the principles of statutory construction make it clear it was wrongly decided. Therefore, it should be deemed both abandoned and deprived of justification to control the interpretation of

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[2] *See Brady v. Maryland*, 373 U.S. 83, 87 (1983) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.").

[3] *See Napue v. Illinois*, 360 U.S. 264, 269 (1959) (holding a conviction obtained through the knowing use of false evidence, or by the prosecution's failure to correct false testimony, violates due process).

Section 36-1-9. All four factors convincingly demonstrate that *Santillanes* is wrong, and it should be overruled.

CONCLUSION

Section 36-1-9 contains no time limitations, and the doctrines of statutory construction strongly suggest that none should apply. This Court should not substitute itself for the Legislature and insert the limitation Respondent asserts. Additionally, this Court's 1982 decision in *Santillanes*, interpreting a removal statute addressed at wholly different sorts of public officials, should not be retroactively imputed to the Legislature's enactment of the instant statute in 1955.

Respectfully submitted,

NEW MEXICO DEPARTMENT
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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2025October 20, 2025, I caused a copy of the foregoing to be delivered electronically via the Odyssey e-filing and serve platform to all parties entitled to notice.

/s/Edward L. Marshall
EDWARD L. MARSHALL

IN THE SUPREME COURT OF THE STATE OF NEW

MEXICO NO. S-1-SC-41063

STATE OF NEW MEXICO ex rel.

RAÚL TORREZ, Attorney General,

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BERNADINE MARTIN, District

Attorney, Eleventh Judicial
District, Div. II,

Respondent.

DISTRICT ATTORNEY BERNADINE MARTIN'S RESPONSE BRIEF

On October 17, 2025 Order from the New Mexico Supreme Court for Response to One Issue

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INTRODUCTION

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District Attorney Martin hereby files this Response to the Court's request cited to directly above. And specifically puts forth that Martin's Answer to the State of New Mexico's Petition for Removal of District Attorney at pgs. 10, 17-18; Martin's Opposed Motion for an Order to Stay Discovery Pending this Court's Decision on Jurisdiction at pgs. 3-4 are being fully incorporated into this briefing, and reiterated as if set-forth in full herein. And in further support and response, Martin states as follows:

ARGUMENT

I. The Constitution Supports Limiting Any Removal Proceedings to the Current Term of the Elected Official.

New Mexico Constitution, Article VI, § 24 states as follows (in relevant part, emphasis added):

> *There shall be a district attorney for each judicial district, who shall be learned in the law, and who shall have been a resident of New Mexico for three years next prior to his election, shall be the law officer of the state and of the counties within his district,* ***shall be elected for a term of four years****, and shall perform such duties and receive such salary as may be prescribed by law.*

In the *Territory ex rel. Klock v. Mann,* which was decided just after the New Mexico Constitution was enacted, this Court, in finding that the Governor of New Mexico is without power to remove a District Attorney, appointed for a fixed term, before the expiration of such term, held that "'in the light of the history of the subject,' that the term of office of four years provided for district attorneys was a limitation, and not a fixing of tenure. *Territory ex rel. Klock v. Mann, 1911-NMSC-027, ¶ 1, 16 N.M. 211, 114 P. 362, 363.* Therefore, here, in light of the emphasis on the limitation of the four years, rather than a "tenure" it

follows that a an elected official, District Attorney, cannot be removed for actions conducted in a prior term, as this would be treating the District Attorney as if it had a "tenure" beyond the four year term she was elected for. *See* State v. Oliver, 2019, 456 P.3d 1065 (Finding that the House bill that postponed time of elections for certain judges, county officials, and district attorneys, thereby extending their terms in office, violated Constitutional provisions setting election schedules for such offices.)

New Mexico Constitution, Article X, §9 states as follows (in relevant part, emphasis added):

> *A. An elected official of a county is subject to recall by the voters of the county. Subject to the provisions of Subsection B of this section, a petition for a recall election shall cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the official concerned. The cited grounds shall be based upon acts or failures to act* ***occurring during the current term of the official sought to be recalled****. The recall petition shall be signed by registered voters:...*
>
> *B. Prior to and as a condition of circulating a petition for recall pursuant to the provisions of Subsection A of this section, the factual allegations supporting* ***the grounds of malfeasance or misfeasance in office or***

violation of the oath of office *stated in the petition shall be presented to the district court for the county in which the recall is proposed to be conducted... -N.M. Const. art. X, § 9*

As discussed in further detail below in section III of this brief, it would be inherently inconsistent for the Court to interpret the constitution in a manner that allows a District Attorney be removed for conduct that took place in prior terms. This is because, although our Constitution has specifically prescribed that a District Attorney can only be removed *via* a recall election for incidents that occurred in her current term, pursuant to N.M. Const. art. X, § 9, and the specific provision for District Attorneys under Article VI, § 24 does not prescribe removal at all, let alone for a prior term (and specifically references the district attorney's four-year term), it would clearly violate the express intention of the constitution to allow removal an elected District Attorney for conduct in prior terms.

New Mexico Constitution, Article *XX, § 1*, states as follows:

Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

As discussed in further detail below in section II of this brief, the oath that an elected official takes when entering the office for which their constituency has elected them to, pertains to that specific term alone. Here, Martin has taken an oath for her current office, that started in January, 2025; and thus, she can only be held accountable in terms of possible removal, for her conduct in this current term, for which she swore an oath that holds her to specific standards of conduct and regulation. *See* Arellano v. Lopez, 1970-NMSC-058, ¶ 9, 81 N.M. 389, 393, 467 P.2d 715, 719 (citing *Jacobsen v. Nagel*, "there official duties are conferred each term, and consummated *via* the oath the elected officials take each term. Here, for a district attorney, pursuant to our Constitution, that term is for four years.")

II. The Oath Taken by District Attorneys Pertains to Each Term of Office, and Thus, Likewise, a Removal Proceeding Must Be Limited to Each Term of Office

Under NMSA § 36-1-1, for each term of office a District Attorney is elected for, said district attorney must take an Oath. Per Section 36-1-1, entitled "Oath and bond of district attorneys", the statute requires each district attorney to file an oath of office as prescribed for other officers and a good and sufficient bond to be approved by a justice of the supreme court in the sum of five thousand dollars

[($5,000)]. In citing to *State v. Hollenbeck*, 112 N.M. 275, 278, 814 P.2d 143, 146 (Ct.App.1991), this Court recited that "[t]he rationale for requiring authorization for prosecution is to avoid prosecution by persons who are not held accountable or subject to the oath of office." *State v. Cherryhomes*, 1996-NMSC-072, ¶ 6, 122 N.M. 687, 689, 930 P.2d 1139, 114.

Therefore, as discussed above, there is no basis in the constitution, nor is there a basis in NMSA § 36-1-1 *et seq*. to remove an elected District Attorney for alleged conduct that occurred in a prior term, because both the statute and the constitution, require a renewed oath for each term. And thus, any district attorney can only be held accountable for, and subject to, removal for the current term of office, for which their oath creates their accountability and makes them subject to removal.

And this is also supported by the statutory requirement pertaining to salaries paid to District Attorneys in NMSA § 36-1-8(A), which states as follows (emphasis added):

> *The salaries of all district attorneys, assistant district attorneys and other employees of their offices shall be paid from the time when the district attorney or assistant district* ***attorney qualifies*** *and from the time when other employees begin their duties.* NM Stat § 36-1-8 (2024)

An attorney qualifies as the District Attorney, after she takes her oath in office, amongst other qualification. And the fact that a district attorney's salary is authorized after she takes her oath is not insignificant, as the New Mexico Supreme Court has held "[t]he salary of the district attorney, when fixed by the legislature, **may relate back to the time of his *induction into office***." (emphasis added) *State ex rel. Ward v. Romero*, 1912, 17 N.M. 88, 125 P. 617. And thus, this is further evidence that a district attorney cannot be removed, or considered for removal, for alleged conduct from prior terms.

This is because a district attorney's *current term* is regarded as the only operable term for all other purposes under our Constitution and NMSA § 36-1-1 *et seq*., including for purposes of qualification, oaths that hold them accountable, as well as salary, and the ability for the District Attorney's constituency to recall them, as further discussed directly below. Therefore, it is clear that neither our Constitution, NMSA § 36-1-1 *et seq*. nor New Mexico jurisprudence support the review of a removal for a District Attorney for any alleged conduct done outside the scope of her current term. *See* Reyes v. First Jud. Dist. Attorney's Off., 497 F. Supp. 3d 994, 1000 (D.N.M. 2020) ("Moreover, district attorneys in New Mexico: swear an oath of office 'as prescribed for other officers' (NMSA 1978, § 36-1-1); have their salaries determined by the state legislature (NMSA 1978, § 36-1-6); and

pay official expenses with funds appropriated by the state Secretary of Finance (NMSA 1978, § 36-1-8).")

III. Recall Elections, Which Are an Equivalent Form of Relief to Removal of an Elected Official, Are Limited to Actions Done in the Current Term

As discussed above, N.M. Const. art. X, § 9 specifically requires that an elected official can only be recalled by her constituency for alleged misconduct, similar to the type that subjects an elected official to removal under NMSA § 36-1-1 *et. Seq.* and Quo Warranto, that occurred during her current term. And therefore, without an explicit directive in our Constitution authorizing the legislative branch, executive branch or judicial branch to remove an elected official for anything outside of the scope of her current term, there appears to be no authority in which to do so. This conclusion is consistent with the rule "where a power is expressly given by the Constitution, and the means by which, or the manner in which it is to be exercised, is prescribed, such means or manner is exclusive of all others." State ex rel. King v. Sloan, 2011-NMSC-020, ¶ 12, 149 N.M. 620, 623, 253 P.3d 33, 36.

Altogether, with the only express authority given by the Constitution to cause a district attorney, or more generally an elected official, to be subject to

removal from their elected office being for *their current term*, this has clearly been prescribed and is thus exclusive of all other means or manners that could subject an elected official, including a district attorney, to removal. And the natural consequence of this must be interpreted as any alleged conduct outside the scope of an elected official's current term, including District Attorney Martin, cannot subject that elected official to the threat of losing their office. And the same applies to the governing statutes[1].

IV. There is No Basis for This Court Not Follow *State v. Santillanes*, And Limit Any Potential Removal Proceedings of Martin to Her Current Term, Because the Reasoning of *Santillanes* is Directly on Point, and There is No Basis to Distinguish or Overrule *Santillanes*.

It has been clearly reasoned and decided by this Court that "**[w]e join those courts which have held that a public officer may be removed from office only for misconduct committed during his current term of office.** The object of a removal statute has been perceived as protecting "the people from unworthy officers while they were serving as such officers."… **The scope of the accusation must be limited to a present term of office because the purpose of removal is not to determine whether a public officer has been a good person or a bad**

[1] Martin reiterates and incorporates her position put forth in her Supplemental Briefing that there are no New Mexico statutes that lawfully confer original jurisdiction to hear a removal proceeding of an elected district attorney to the Supreme Court, as this violates the doctrine of separation of powers.

person in the past but only to determine whether, by reason of existing facts and circumstances, he should be removed from his present office. **We agree that "an officer cannot ... be removed from office for a violation of his duties while serving in another office, or in another term of the same office."** (emphasis added, internal citations omitted) *State v. Santillanes*, 1982-NMSC-138, ¶9, 99 N.M. 89, 91, 654 P.2d 542, 544.

This reasoning and holding is directly applicable to this instant matter, as Martin is a public officer who is serving a current term as a District Attorney. *See generally* State ex rel. Ward v. Romero, 1912, 17 N.M. 88, 125-* P. 617. The words "district officer" used in Section 3 of Article XX of the Constitution refer to the district attorney).

And because this instant matter cannot be distinguished from *Santillanes* this Court would have to essentially overrule *Santillanes* for it not to apply in this case, and thereby not limit any and all review of District Attorney Martin to her current term. Specifically, "[a]bsent an obvious error in a prior decision, our appellate courts demand 'special justification [before they will] depart from precedent.' A party asking this Court to overrule one of our prior decisions must ordinarily demonstrate that (1) the decision "is so unworkable as to be intolerable"; (2) reversing the decision would not "create an undue hardship" as a result of justifiable reliance on our earlier, erroneous pronouncement of the law; (3) the law

surrounding the prior decision has "developed to such an extent as to leave the old rule no more than a remnant of abandoned doctrine"; or (4) "the facts have changed in the interval from the old rule to reconsideration so as to have robbed the old rule of justification." (internal citation omitted) State v. Hansen, 2021-NMCA-048, 495 P.3d 1173, 1187.

Here, none of these factors apply to the reasoning and decision in *Santillanes*. First [factor], the decision is not so unworkable as to be intolerable, as it was decided upon sound judgement, and essentially joined several other states in taking the position to limit removal to a current term. Second [factor], reversing the decision would certainly create an undue hardship as a result of justifiable reliance on the earlier pronouncement of the law, as it would reverse the entire basis for which New Mexico has proceeded to regard its elected officials.

Third [factor], the law surrounding the prior decision has not developed to such an extent as to leave the old rule no more than a remnant of abandoned doctrine. In fact, the only notable case that has distinguished itself from the *Santillanes* reasoning and holding is *In Re Romero*, and its progeny, which has been limited to only pertain to judges. And this makes sense as our Constitution has expressly prescribed this in Article VI, s 32, which spells out in detail, the grounds, as well as the procedures, for removal of a judge from office. It further provides that the removal of judges for the reasons stated and in the manner provided 'is alternative

to, and cumulative with, the removal by impeachment (as provided in Art. IV, ss 35 and 36, Constitution of New Mexico) and the original superintending control of the Supreme Court (as provided in Art. VI, s 3, Constitution of New Mexico). Cooper v. Albuquerque City Comm'n, 1974-NMSC-006, ¶ 46, 85 N.M. 786, 793, 518 P.2d 275, 282.

In fact, in interpreting Article VI, s 32, this Court has clearly distinguished the basis for *In re Romero* from the facts of this case by stating "'acts of misconduct ... follow the judge to any subsequent judicial office.' *In re Romero*, 100 N.M. 180, 183, 668 P.2d 296, 299 (1983). In this case, although Judge Rodella was not in office when he promised to rule in the Chimayo couple's favor and when he advised them how to excuse the other judge, his conduct affected the functioning of the judicial system, **and that conduct undermines public confidence in an independent, impartial, and competent judiciary**. For us to hold that conduct occurring during a campaign, **which violates the Code of Judicial Conduct and which has a direct impact on the performance of a judge's adjudicative responsibilities**, is immune from investigation by the Commission would be inconsistent with the purpose of Article VI, Section 32." (emphasis added) In the Matter of Rodella, 2008-NMSC-050, ¶ 28, 144 N.M. 617, 626, 190 P.3d 338, 347. See also In re Griego, 2008-NMSC-020, ¶ 22, 143 N.M. 698, 704, 181 P.3d 690, 696 ("The conduct prescribed for judges and justices is more stringent than

conduct generally imposed on other public officials." In re Romero, 100 N.M. 180, 183, 668 P.2d 296, 299 (1983). Accordingly, judges must "respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." Model Code of Judicial Conduct, pmbl. ¶ 1. The reason for these standards is that "[t]he United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." Model Code of Judicial Conduct, pmbl. ¶ 1. With these principles in mind, we hold that Griego must be removed from the bench.)

Here, this case is clearly distinguishable as District Attorney Martin is not held to the same criteria and standards as a judge. This is clear because a district attorney is not supposed to be "impartial, and competent judiciary". Instead, "[p]rosecutors are not held to the same standard of impartiality as judges, and courts may require a stronger showing for a prosecutor than a judge in order to conclude that a conflict of interest exists." State v. Robinson, 2008, 143 N.M. 646, 179 P.3d 1254, certiorari denied 143 N.M. 666, 180 P.3d 673.

Furthermore, an impartial, and competent judiciary is not what prosecutors are charged with accomplishing. Instead, "[p]rosecutorial role is to pursue charging pattern that reconciles community interest in proper enforcement of the law and the interest, shared by community and defendant, in fairness to the

defendant. State v. Brule, 1997, 123 N.M. 611, 943 P.2d 1064, *certiorari granted* 123 N.M. 446, 942 P.2d 189, reversed 127 N.M. 368, 981 P.2d 782, *rehearing denied*. And this is in line with the fact that district attorneys are not being held to the Code of Judicial Conduct, nor area they responsible for a direct impact on the performance of a judge's adjudicative responsibilities.

Unlike judges who are required to be impartial and represent the judicial system that way, district attorneys have a large amount of discretion in how they are constitutionally bestowed to operate with. And this has been recognized by this Court to be a meaningful basis to respect the limit the rule articulated in *In re Romero* from applying in a case like District Attorney Martin's. Specifically, it has been held that "[t]o maintain that confidence and in consideration of the broad authority of judicial power, the 'conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials.' In the Matter of Robert Merle Schwartz, 2011-NMSC-019, ¶ 18 (Citing to *In re Romero*, 1983-NMSC-054, ¶ 14, 100 N.M. 180, 668 P.2d 296 (1983)). However, inherent in state district attorney's constitutional authority to enforce the law is discretion. Borrego v. First Judicial District Attorney's Office, 2025, 2025 WL 830129, *certiorari denied* 569 P.3d 981. And thus, *In re Romero* is clearly distinguishable from the application of *Santillanes* to this case, as District Attorney Martin is not a judge,

nor is she subject to judicial standards, nor expectation of impartiality that must be upheld for judges, and warranted a slight variance from the holding in *Santillane*s.

Finally, the Fourth factor also does not apply here. The facts have not changed in the interval from the old rule to reconsideration so as to have robbed the old rule of justification. And therefore, there is no basis to overrule *Santillane*s, nor distinguish it from this instant matter.

CONLUSION

Here, the rule and holding in *Santillanes* directly apply to the Petition at hand, and the matter of removal of District Attorney Martin generally. Furthermore, the reasoning given for the rule and holding in *Santillanes* is not distinguishable from this matter. And as stated in Martin's Answer to the Petition for Removal, the New Mexico Legislator has had since 1982 to amend NMSA Chapter 36. Article 1, and specifically NMSA §§ 36-1-9 to -17 to include language that its removal proceedings, or any of its statutory requirements for District Attorneys, shall apply to prior terms. And in light of this, the Legislature is deemed to have intended that removal under NMSA §§ 36-1-9 to -17, may only be premised on grounds from Martin's current term. *See* State ex rel. Stratton v. Roswell Indep. Sch., 1991-NMCA-013, ¶ 21, 111 N.M. 495, 502, 806 P.2d 1085,

1092 ("When interpreting a statute we presume that the Legislature was informed as to existing law, and that the Legislature did not intend to enact a law inconsistent with any existing law."). And, as shown above, our Constitution has also not authorized removal of District Attorney Martin for any alleged conduct outside of her current term. Therefore, Martin respectfully requests that this Court limit any review of allegations of misconduct, as well as the scope of discovery in this matter, to Martin's current term of office, which began in January, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 20th, 2025, I filed this Briefing through the Odyssey/E-File & Serve System, which caused all counsel of record to be served at their e-mail addresses of record.

/s/ Kathryn J. Hardy
Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 17, 2025

NO. S-1-SC-41063

STATE OF NEW MEXICO ex rel.
RAUL TORREZ, ATTORNEY GENERAL,

Petitioner,

v.

BERNADINE MARTIN,
DISTRICT ATTORNEY,
ELEVENTH JUDICIAL DISTRICT,
Div. II,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon Respondent's answer to the removal petition, motion to stay, and the Court's own motion to request a response;

WHEREAS, the Court having considered the foregoing and being sufficiently advised; Chief Justice David K. Thomson, Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that a response addressing the following issue shall be timely if filed **on or before October 20, 2025, at 12:00 p.m.**:

(1) Whether the Court may consider allegations of misconduct for the purposes of removal from office that occurred outside of Respondent's current term in

office under *State v. Santillanes*, 1982-NMSC-138, ¶¶ 9-12, 99 N.M. 89, 654 P.2d 542. *See District Attorney Bernadine Martin's Answer to the State of New Mexico's Petition for Removal of District Attorney* at pgs. 10, 17-18; *Martin's Opposed Motion for an Order to Stay Discovery Pending this Court's Decision on Jurisdiction* at pgs. 3-4.

IT IS SO ORDERED.

WITNESS, the Honorable David K. Thomson, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 17th day of October, 2025.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By Kristin R. Edwards
Deputy Clerk

I CERTIFY AND ATTEST:
A true copy was served on all parties or their counsel of record on date filed.
Kristin Edwards
Deputy Clerk of the Supreme Court of the State of New Mexico