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Introduction

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INTRODUCTION

Welcome to the second issue of Volume 39 of the *New Mexico Law Review*! This issue is filled with a range of articles that we expect will be both interesting and useful to a variety of readers. We are proud to feature a diverse collection of legal scholarship and analysis—some with a local emphasis and some relating to issues of national and international significance. Regardless of your area of legal interest, we trust that you will find something in these pages to inform your understanding of the law.

First, in *Citizen Gun Rights: Incorporating the Second Amendment Through the Privileges or Immunities Clause*, Kenneth A. Klukowski offers his analysis of a critical issue in the recently heightened debate over gun rights. Mr. Klukowski argues for incorporation against the states of the Second Amendment's guarantee of the individual right to keep and bear arms. However, he makes a convincing case that the U.S. Supreme Court should depart from its exclusive use of the Due Process Clause of the Fourteenth Amendment for applying constitutional protections against the states. Instead, Mr. Klukowski contends that the Privileges or Immunities Clause of the Fourteenth Amendment is a better choice because it is free of the many encumbrances of due process jurisprudence. Given that the Supreme Court has taken up this exact question for review in the 2009–2010 term, it will be exciting to see how the issue is resolved.

Professor Brooke D. Coleman makes a case for the reintroduction of access as a central aim of the Federal Rules of Civil Procedure in her article, *Recovering Access: Rethinking the Structure of Federal Rulemaking*. Professor Coleman looks to the adoption of the Federal Rules and shows that access to justice was a central concern of the Rules' drafters. She then recounts the steady erosion of access over the past century despite the explosion of litigation. The article concludes with suggestions for reworking the rulemaking process with an eye toward restoring access as an overarching goal of the Civil Rules.

Indigenous peoples' rights are the focus of *First Peoples and Human Rights, A South Seas Perspective*. This article is a transcription and adaptation of a speech given by the Right Honorable Dame Sian Elias, Chief Justice of the New Zealand Supreme Court, at the University of New Mexico School of Law. Dame Elias recounts the evolution of New Zealand's unique relationship with its indigenous people, collectively known as the Māori, and describes her vision for the future of that relationship. Along the way, she compares and contrasts the varying roles that the courts have played in New Zealand and other nations, including the United States, with respect to defining and effectuating the rights of their indigenous populations.

In an article geared toward informing New Mexico legal practitioners, Gretchen Elsner analyzes the effect of two recent New Mexico Supreme Court decisions on the rights of minority shareholders in close corporations in *Too Close for Comfort: Minority Litigation Against Close Corporations After McMinn v. MBF Operating Acquisition Corp. and Peters Corp. v. New Mexico Banquest Investors Corp.* Ms. Elsner reconciles the seemingly opposite holdings of these two cases and provides a framework for when minority shareholders may sue for damages beyond the appraised value of their shares. She offers suggestions to attorneys advising clients who could be affected by corporate freeze-outs and provides recommendations to the legislature for updating New Mexico's dissent and appraisal statute.

The Honorable William P. Lynch, U.S. Magistrate Judge for the District of New Mexico, presents his research comparing the efficacy of Rule 68 of the Federal Rules of Civil Procedure with its New Mexico counterpart in *Rule 68 Offers of Judgment: Lessons from the New Mexico Experience*. After noting the relative disuse of the federal rule and the differences between it and New Mexico's, Judge Lynch shares the results of his survey of New Mexico lawyers which demonstrate that the state rule is significantly more effective at encouraging settlements. He concludes with recommendations to the Federal Rules Advisory Committee on how to improve the Federal Offer of Judgment Rule based on the success of New Mexico's Rule 68.

Marshall J. Ray offers his legal and historical analysis of article II, section 4 of the New Mexico Constitution—the “natural rights” clause—in his article *What Does the Natural Rights Clause Mean to New Mexico?* In his search for the clause's proper role in New Mexico law, Mr. Ray looks first to cases construing the clause and then turns to the history surrounding its adoption. Finding this history inconclusive, he ultimately discovers the clause's roots in the Virginia Declaration of Rights and analyzes the intent of the clause's framers. Finally, Mr. Ray considers whether the clause creates any substantive rights that are judicially enforceable.

Finally, in *Developing a State Constitutional Law Strategy in New Mexico Criminal Prosecutions*, Professor J. Thomas Sullivan presents a comprehensive resource relating to the growing body of New Mexico appellate court decisions that interpret the state constitution more broadly than its federal counterpart. In addition to cataloging the specific areas where the New Mexico Constitution affords expanded protections, Professor Sullivan covers a range of related topics, from the rules for preserving state constitutional claims for appellate review to some possible arguments for heightened protections in future cases. He makes a compelling argument that New Mexico attorneys must have a firm grasp on this body of law in order to provide competent legal services to their clients.

The Editorial Board and Staff are proud to publish this issue of the *New Mexico Law Review*. We have worked diligently with our authors to ready this collection of articles for your enjoyment and use. We hope that you benefit from them as much as we have. Until next time!

—Neil Bell, Editor-in-Chief