

Effects of Divided Government in Kansas

If you ask someone what the purpose of a bicameral legislature is, many will say it encourages bipartisan cooperation and allows for each chamber to check the power of the other, ultimately making it more difficult for one party to assert absolute authority over the other. From that, one would assume that a government in which the legislature is ruled by a party different from the one of the executive branch — otherwise known as a ‘divided government’ — would be the most fostering of bipartisan negotiation and compromise. However, what usually ends up being the reality of divided governments, particularly when *both* legislative chambers are controlled by the same party, is that the balance of power between the two branches is lopsided towards the legislature. In instances where this disproportionate distribution is extreme, the executive branch's ability to govern is severely restricted to the point where the legislative branch is effectively controlling the entire institution of government.

This reality was all-pervading over the course of my internship with the Kansas Governor's Office and is likely the explanation for Governor Laura Kelly's grim hopes of reelection in 2022. While eleven of forty-nine states¹ (Nebraska is unicameral and non-partisan) currently operate under divided governments, Kansas is one of only four states where one party controls the executive and the other party has a veto-proof supermajority in both chambers of the legislature². In these systems, if the legislature passes a bill that the governor vetoes, assuming the bill withstands court challenges, then the legislature can use their supermajority to override the veto and implement the law without executive approval. Because the role of the executive branch is limited to implementing laws, the only way governors can create laws is via executive orders or encouraging the legislature to

¹ (National Conference of State Legislatures, 2021)

² (Ballotpedia, n.d.)

prioritize certain issues.³ However, a divided government's legislature obviously would not prioritize legislation recommended by a governor from another party and executive orders are not absolute. Gubernatorial influence can be further overpowered by a legislature even when a governor issues an executive order that holds up to legal standards, as the legislature can simply pass a bill that contradicts the content of the order and override the governor's inevitable veto of said bill. Given the ever-growing degree of political partisanship in this country, especially at the state level, the governors of these four divided states are quite literally only able to govern at the will of their legislatures, completely eliminating the need for bipartisan cooperation between or within either branch.

Before applying these concepts to the currently divided Kansas state government, consider the differences in legislative-executive relations when one party controls both legislative chambers and the governorship, otherwise known as 'party trifectas.' As one could expect, when one party absolutely controls both branches there is minimal conflict which gives way to very efficient governing. However, while that might sound like a good thing, the subsequent governing is done with absolutely zero consideration of the minority party since the party in power can legislate their agenda even with no minority support, creating a system of governing that is *too* efficient.

Considering Kansas Democrats have not held control over either chamber of the Legislature since 1992⁴, this single-party dominance is very familiar to Kansas, especially after two-term Republican Governor Sam Brownback's⁵ 2010-2018 rule that coincided with Republican supermajorities in both chambers⁶. 2010 marks an extremely significant year for the Republican

³ (National Governor's Association, n.d.)

⁴ (Ballotpedia, n.d.)

⁵ (Ballotpedia, n.d.)

⁶ (Ballotpedia, n.d.)

party nationally as the far-right conservative Tea Party movement, founded in reaction to the first year of the Obama Administration, made significant gains in the midterm elections at the federal level, but especially at the state level, taking control of twenty state legislative chambers⁷ that were previously held by Democrats. While the Kansas State Senate had already been operating under Republican supermajorities since 1996, the Kansas State House of Representatives officially crossed the threshold from Republican majority to Republican supermajority in 2010⁸. At the same time and with the fervor of the national Tea Party movement behind conservative voters, Republican Sam Brownback was elected Kansas Governor with 63.3% of the vote⁹, succeeding popular two-term Democratic Governor Kathleen Sebelius.

Coming out of the 2010 election cycle emboldened by national conservative ideological resurgence, this new era of Republican-dominated Kansas government was expectedly cooperative amongst the branches, albeit, too cooperative. Aside from the various bills passed with ease early on, the Legislature allowed for the passage of Gov. Brownback's 2012 fiscal year budget which called for the \$100 million reduction in state funds towards public schools¹⁰. Obviously, this was protested by state Democrats, but their minority calls were not heard over the Republican trifecta. As Gov. Brownback and the legislature continued to easily cut funding for public schools, by 2013 state education funding had fallen 16.5% below that of 2008¹¹. In 2017, the Kansas Supreme Court classified this decrease in funding as wholly unconstitutional pursuant to the Kansas State Constitution's sixth article mandating a minimum level of public education funding that Gov. Brownback, with the approval of the Republican supermajority Legislature, failed to meet¹².

⁷ (Ballotpedia, n.d.)

⁸ (Ballotpedia, n.d.)

⁹ (Ballotpedia, n.d.)

¹⁰ (Carpenter, 2011)

¹¹ (Ballotpedia, n.d.)

¹² (Shorman, 2017)

I wish I could say that the public education funding debacle was the most damning thing perpetrated by this Republican trifecta, but the 2012 passage of Gov. Brownback's trademark tax policy would be remiss. The so-called 'Great Kansas Tax Cut Experiment,' derived from a legislative template published by the conservative American Legislative Exchange Council (ALEC), called for the decreasing of income tax rates and corporate tax rates from 7% to zero. While Gov. Brownback and fellow subscribers to the unsubstantiated trickle-down economics theory predicted this policy would deliver a "shot of adrenaline" to the state's economy, what actually happened was a \$900 million budget deficit that accumulated in just five years of the policy being enacted. As if the trifecta hadn't already cut funding for education, infrastructure, Medicaid, and other services enough, this policy decreased funding of social services even further. Additionally, the Governor had promised a return of 22,000 jobs to the state and record-high levels of investments but was only able to deliver record-high levels of tax fraud and record-low economic development rates that trailed that of the rest of the country, neighboring states, and Kansas' own previous rates.¹³

After voting 64-59 in the House and 23-15 in the Senate to pass the bill in 2012¹⁴, by 2017 the Legislature had realized their mistake, but the Governor did not. In a move very out of character for the party, both Republican supermajorities defied Gov. Brownback and passed legislation to undo his failure of a tax policy. Gov. Brownback responded with a gubernatorial veto, only to be met with the Legislative overriding of said veto¹⁵ — one of the few instances when the supermajorities recognized the necessity of the minority.

Both gubernatorial legacies Brownback made for himself before he abandoned the state he almost bankrupted to fill a ceremonial cabinet position with the Trump administration are not

¹³ (Hobson & Raphelson, 2017)

¹⁴ (Kansas Legislature, 2012)

¹⁵ (Carpenter, 2017)

remembered fondly in the minds of most Kansans. However, giving all the credit to Gov. Brownback would be unfair to the Legislature who are more than deserving of some of the credit considering both the Governor's 2012 budget and tax policy could have been prevented in the first place if they had only given the minority party's precautions a little bit of legitimacy. But lo and behold, the supermajorities were too caught up in the simplicity of governing that comes with legislative-executive trifectas, when one party's voice becomes so loud that any dissenting voices aren't ignored, but are not even given the chance to be heard to begin with.

Whereas governments with too much ideological cohesion present their own set of drawbacks in that there is too little conflict, divided governments are problematic in the fact that there is too much conflict. The Kelly Administration has become far too familiar with this reality in their three years in office, and will likely only be a one-term administration because of it. As explained earlier, divided governments wherein both chambers of the legislature are veto-proof supermajorities of the opposing party to the governor's produce an inverted power dynamic between the branches, with the executive having to bend to the will of the legislature instead of vice versa. What this ultimately leads to is inefficient, inconsistent, and contentious governing with the executive restrained from implementing the policies she was directly and popularly elected to implement by a far broader electoral base than any legislators.

Kansas Republicans have been using this fact to their advantage since Gov. Kelly's election in 2018. When I was witnessing it this past summer, their efforts were heavily focused on drawing barely-legal electoral districts and finding ways to limit the Governor's emergency response powers while simultaneously increasing their own political influence. Before serving even half the tenure of her predecessor, Gov. Kelly has already had to make use of her gubernatorial veto power more often

than Gov. Brownback over the entire span of his two terms. In her first year in office, the Governor vetoed three bills related to taxes and abortion, all of which were sustained by the Legislature and four more in 2020 which were also all sustained. However, 2021 veto records show that this tolerantly cooperative relationship seems to have been strained. Vetoing more pieces of legislation than any other Kansas governor in seventeen years, Gov. Kelly issued ten vetoes in 2021, only half of which the Legislature was willing to sustain and spare from supermajority override votes¹⁶. This sudden shift in tolerance from one branch towards the other is likely indicative of broader political and polarization trends across the country, where lawmakers are being rewarded more and more often by voters for being more extreme and less bipartisan. Added on to this is the fact that as these lawmakers approach their term's expiration dates, they need to be able to go back to their voters with something to show for their time in Topeka. And for many rural Kansans, the obstruction and demonization of the Democratic Governor and her 'tyrannical' political agenda are more than enough of a reason to reward them with a reelection vote.

Showing the extremes that Kansas Republicans will go to in order to wield their influence is their effort to make something that has already been declared unconstitutional by the U.S. Supreme Court the reality in Kansas for at least the next decade; unabashedly gerrymandered electoral maps. While the claim that Republicans generally dodge this court precedent is most often presumptive, former Republican Kansas State Senate President Susan Wagle made sure voters knew exactly where Kansas Senate Republicans stood on the issue in 2020 when she was caught on video guaranteeing a crowd of donors that the new maps would have four Republican districts instead of just the current three¹⁷. The district that Wagle promised would flip is the third congressional district, my home

¹⁶ (Helling & Bernard, 2021)

¹⁷ (Bahl, 2022)

district. In 2018 — the same year Gov. Kelly was elected — Democratic U.S. Representative Sharice Davids defeated a long-time Republican incumbent with the help of the more liberal Kansas City area and surrounding suburbs, giving Kansas its one and only Democratic influence at the federal level. The state representatives from this same district are also overwhelmingly Democratic, showing why Kansas Senate Republicans have more than one incentive for fracturing the district to be diluted by nearby Republican votes. Considering that the Republicans even still are keeping the plans for new maps under tight lock and key, it is obvious that they are not interested in passing a map with bipartisan support from the Governor meaning that even if vetoed, the Republican supermajorities would soon jump on the chance to override the Governor and dictate the future of Kansas politics for at least the next decade.

Secondly, in my time working at the Statehouse state Republicans worked tirelessly to limit the Governor's ability to effectively respond to the Delta-variant wave of coronavirus cases. These attempts culminated with the passage of three bills in particular: H.B. 2054, H.B. 2016, and S.B. 40. The latter of these three bills was so egregious that Gov. Kelly did not even have to veto it before it was completely struck down by a circuit court judge because of how explicitly it violated the State Constitution, statutes, and other precedents¹⁸. Again though, even if Gov. Kelly had time to veto, it would have been completely symbolic relative to the power of legislative Republicans.

The most frustrating part for me was leaving work and hearing people complain about the Governor's coronavirus response without understanding that control over the state's response had essentially been seized by legislative Republicans at that point. And maybe that is exactly the Republican's goal in doing so. Even though many of the Republicans in question here are the type to deny the existence of the virus altogether when they are talking to their loyal voter base, they more

¹⁸ (Smith, 2021)

than likely do not genuinely believe it and recognize the fact that an insufficient response at preventing the spread of the virus will lead to higher infection, hospitalization, and death rates — all of which they can turn around and pin on the Governor who under the State Constitution is *supposed* to be in charge of the state's response to emergencies like this.

It doesn't take a political scientist or politician to know that partisanship in the U.S. is as high as it has been since the Civil War, if not the conception of the nation. What many do not realize though, is that aside from affecting how voters view one another and political candidates, higher levels of partisanship also lead to lower levels of bipartisanship and cooperation within government. Given the nature of state politics and primary election politics to be particularly polarizing, when you combine the two and have voters elect state legislators in primary elections — especially in a state like Kansas where primaries are closed to registered party voters — the most extreme candidate will walk away with a party nomination. Moreover, because state primaries are where conservative grass-roots and extremist movements get their start, candidates are essentially in a competition amongst themselves to see who can be the most far-right and anti-left. And in a state like Kansas where one-hundred out of one-hundred-and-five counties voted for Donald Trump in the 2020 presidential election¹⁹, securing the Republican primary nomination may as well be an automatic ticket to Topeka.

Divisive tactics are not limited to newcomer candidates but are also utilized by those already in power to seek reelection. In the case of the Kansas government, the great Cedar Crest Fence Scandal was the GOP's morale-boosting non-issue of choice for June 2021. Because Cedar Crest — the Kansas Governor's mansion — property is open to the public, many protests happen outside the residence which is only protected by an approximately three-foot-tall stacked wooden

¹⁹ (Arkin, 2020)

fence. Amid rising political tensions and increasing threats of violence to governors generally, as well as to Gov. Kelly specifically, the federal Department of Homeland Security assessed the house and recommended the Kansas Department of Administration spend \$217,000 on a permanent metal fence perimeter of the property. When these security enhancements to a residence that has been occupied by Democrats and Republicans alike were announced, Republican House Majority Leader Dan Hawkins decided to give his two cents; He began by clarifying that while he had no issue with the fence, he found it ironic and hypocritical that a Democratic governor would be the one to have it built — given the party's attitudes towards Donald Trump's proposed 1,954-mile, \$11 billion wall along the U.S-Mexico border²⁰. This ludicrous analogy performed well within the Kansas GOP sphere and became one more of the right's hot-button topics used to paint Gov. Kelly as a hypocrite. For a more recent example of the Kansas GOP inconsistently criticizing Gov. Kelly, consider how the party has spent the past three years trying to portray her as a radical, far-left tyrant. The campaign manager for the Governor's gubernatorial challenger has even said so himself in past Tweets. However, that same campaign manager just last month Tweeted accusing Kelly of copying GOP tax policy²¹, to which Democratic House Minority Policy Chair Riu Xu responded; "Kinda hard to say both 'liberal Laura' is an extreme partisan' and that she's using GOP ideas...Maybe she's just a bipartisan, pragmatic governor who uses all the best ideas available for the benefit of Kansans."²²

Understandably, polarizing tactics like these turn independent and moderate voters away not just from either party, but from the entire institution of government and politics. Further, high levels of inter-party conflict like we are seeing now are preventing executives, Democratic ones

²⁰ (Bahl, 2021)

²¹ (Grover, 2021)

²² (Xu, 2021)

specifically, from effectively governing as they get caught up in GOP media ploys fabricated to bolster far-right energy. The way I see it, Republicans are not governing anymore, they are just preventing Democrats from doing so. The GOP is no longer a party whose platform centers around the introduction of new policies or any kind of change from the status quo. Their only prerogative now is to contradict and obstruct new policies and ideas put forth by Democrats. For example(s); Democrats establish a platform for environmentalism and climate action and Republicans deny the existence of the subject. Democrats support racial justice movements and condemn police brutality and Republicans create a non-issue from critical race theory and reactionarily appreciate law enforcement. Democrats endorse universal voting rights protections and Republicans introduce reactionary voter restriction laws based on debunked claims of voter fraud and a lost presidential election. The only platforms the GOP has maintained consistently is one: the pro-life ideology based on the acceptance of government control over women's bodies that is not then consistently applied to the issue of vaccine mandates, and, two: tax cuts and trickle-down economic schemes that have proven to be failures each time they have been implemented.

I hope it is clear now how divided governments where each chamber of the legislature is controlled by a supermajority opposing the party controlling the executive branch more often than not does not lead to bipartisan cooperation but instead gives way to the executive essentially being held hostage by the legislature. From this, a governor is only able to govern via executive orders and emergency powers, both of which delegitimizes the governor's ability to represent the will of the people, even though she was popularly elected by more Kansans than any of her legislative counterparts. Finally, I hope it is clear how ideological extremities are all exacerbated when the

government is divided, even when the governor is a moderate in a climate so ideologically polarized that hatred of the other party is a given and sympathy for them puts a legislator out of a job.

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