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**TORRANCE COUNTY
BOARD OF COUNTY COMMISSONERS
RESOLUTION NO. R 2021- 4**

**A RESOLUTION
OPPOSING THE RECOMMENDATIONS OF THE NEW MEXICO CIVIL
RIGHTS COMMISSION AND URGING THE LEGISLATURE TO
PROVIDE MORE RESOURCES TO ADDRESS ROOT CAUSES OF CIVIL
RIGHTS CLAIMS AGAINST LOCAL GOVERNMENTS**

WHEREAS, during the 2020, 1st Special Session, and in response to certain high-profile civil rights violations in other states, the New Mexico Legislature in House Bill 5 (HB5) created the New Mexico Civil Rights Commission (Commission) to “develop policy proposals for laws for the creation of a civil right of action for the deprivation, by a public body or a person acting on behalf of or under the authority of a public body, of any right, privilege or immunity secured by the constitution of New Mexico”; and

WHEREAS, the Commission’s makeup and work call into question whether it was duly presented with or considered all relevant points of view; and

WHEREAS, most of the five civil attorneys who were appointed to the Commission (excluding retired and sitting judges) are or were lawyers who represent plaintiffs; and

WHEREAS, legal staff hired by the Commission to conduct research and draft its recommendations, is an attorney who specializes in advocating for plaintiffs in civil rights, policy misconduct, prisoner rights, and personal injury cases; and

WHEREAS, the Commission did not hear balanced presentations from individuals with varying positions on the merits of critical legal issues before the Commission; and

WHEREAS, the Commission invited public comment through October 31, 2020, but then inexplicably voted on the questions posed to it in HB 5 on October 23, 2020, before the

1 close of the public comment period the Commission had created and before receiving insightful
2 comments from several governmental entities; and

3 **WHEREAS**, a new cause of action is not necessary to address New Mexico
4 constitutional deprivations by law enforcement because the New Mexico Tort Claims Act
5 already waives immunity for such claims, and qualified immunity is not a defense to such claims
6 (NMSA 1978, §41-4-12); and

7 **WHEREAS**, research by New Mexico Counties presented to the Commission
8 demonstrated that New Mexico – one of the poorest states in the Union – already allows for
9 some of the highest damage awards in the Country for State law claims against law enforcement
10 officers; and

11 **WHEREAS**, New Mexico Counties and other governmental entities also demonstrated
12 that a new cause of action would cause reinsurance and other insurance coverage to no longer be
13 available to the New Mexico County Insurance Authority and/or local governments; and

14 **WHEREAS**, the unavailability of commercially reasonable insurance will cause local
15 governments to self-insure unsustainable amounts of risk, which will divert scarce resources
16 from the very services that proponents of the new cause of action are trying to improve to
17 individual claimants and their attorneys; and

18 **WHEREAS**, uninsured judgments that cannot be satisfied through existing resources are
19 paid by our citizens, through taxes levied to meet the judgment (N.M. Const., art. 8, Section 7);
20 and

21 **WHEREAS**, many of the challenges faced by local law enforcement and county jails
22 stem from co-occurring substance abuse and mental health disorders; and

1 **WHEREAS**, instead of diverting resources to individual claims, the Legislature should
2 be providing more resources to serve the citizens of the State of New Mexico; and

3 **WHEREAS**, information presented to the Commission demonstrated that the New
4 Mexico Law Enforcement Academy needs additional resources to timely discharge its goal of
5 investigating law enforcement officers accused of misconduct; and

6 **WHEREAS**, timely removing the certification of so-called “bad cops” would more
7 effectively and quickly meet the goal of improving law enforcement by avoiding the recycling of
8 such cops among law enforcement departments; and

9 **WHEREAS**, notwithstanding the evidence presented to it and the consequences of a new
10 cause of action, the Commission voted before the close of public comment to recommend that
11 the Legislature create a new State law cause of action for violations of the New Mexico
12 Constitution that:

- 13 • WOULD include attorney fees for prevailing plaintiffs on top of compensatory
14 damages. Fees for plaintiff’s attorneys – many of whom charge in excess of \$450
15 per hour – often exceed the amount of damages awarded to plaintiffs;
- 16 • WOULD require public employers to indemnify public employees for claims
17 brought under the recommended cause of action. This means that the public
18 entity would pay for the costs of defense and any settlement or judgment; and
- 19 • WOULD NOT include qualified immunity as a defense, which means that
20 officials can be second-guessed in hindsight for making judgment calls in
21 unsettled areas of the law.

22 **NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of
23 Torrance County, New Mexico, that:

- 1 1. Torrance County opposes the recommendations of the Commission or broader
2 legislation pursued by individual legislators, which:
- 3 a. are unnecessary for victims of State constitutional violations by law
4 enforcement (including detention officers) to be compensated;
- 5 b. will not address at all the root cause of many claims against local
6 governments: namely, the lack of State resources to treat substance abuse and
7 mental health disorders in non-penal settings;
- 8 c. will be ineffective at driving reform or otherwise improving services, since
9 they will divert resources from law enforcement and detention officer
10 recruitment, retention, and training and other critical services to claims; and
- 11 d. will further dry up the insurance market, requiring local governments to self-
12 insure more and more risk and creating the real possibility that additional
13 taxes will need to be imposed to meet uninsured judgments.
- 14 2. Torrance County urges the New Mexico Legislature to instead provide more
15 resources for:
- 16 a. law enforcement and jail operations;
- 17 b. the treatment of people suffering from substance abuse and/or mental health
18 disorders; and
- 19 c. the New Mexico Law Enforcement Academy to train and investigate law
20 enforcement officers, including independent, elected County sheriffs.

21

22 **DONE THIS 13th DAY OF JANUARY, 2021.**

23

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1 APPROVED AS TO FORM ONLY:

BOARD OF COUNTY COMMISSIONERS

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3 *Sam M. Butts* 1/13/21
4 County Attorney Date

Kevin McCall
Kevin McCall, District 1

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9 *Yvonne Otero*
10 Yvonne Otero, County Clerk
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12
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Ryan Schwebach
Ryan Schwebach, District 2

LeRoy Candelaria
LeRoy Candelaria, District 3

