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**TORRANCE COUNTY
BOARD OF COUNTY COMMISSONERS
RESOLUTION NO. R 2022- 35**

RESOLUTION TO TAKE ALL REASONABLE AND LEGAL COUNTY ACTIONS TO ENSURE THE ACCURACY AND INTEGRITY OF THE ELECTION SYSTEM FOR THE CITIZENS OF TORRANCE COUNTY

WHEREAS, There is no more sacred duty in the Democracy of these United States than ensuring the conduct of fair and accurate elections; and

WHEREAS, In the State of New Mexico, it is the duty of the Legislature and the Secretary of State to establish, operate and oversee fair and accurate elections; and

WHEREAS, During the 2022 Primary Election just conducted in New Mexico, a serious question arose concerning whether the voting machines used throughout the State were properly certified by the Secretary of State for the June 7, 2022 Election; and

WHEREAS, Under the existing law of the State of New Mexico Election Code, the Secretary of State shall certify all voting systems used in New Mexico Elections only if the systems are tested by an independent authority and comply with all requirements of the Election Code and the, "most recent voluntary voting system guidelines adopted by the United States election assistance commission." NMSA 1978 Section 1-9-14(A); and

WHEREAS, In February of 2021, the Election Assistance Commission of the United States (EAC) adopted new standards for voting systems, the Voluntary Voting System Guidelines (VVSG 2.0). Those new standards were not used by the Secretary of State for the 2022 Primary Election; and

WHEREAS, Citizens first raised the issue that the Secretary of State (SOS) was violating State law, Section 1-9-14, at the Torrance County Commission Meeting on May 25, 2022, and subsequently, in individual conversations with the Commissioners, and during the

1 Commission Special Meeting to Canvass the Primary Vote on June 13, 2022. The citizens argued
2 that by not using a voting system compliant with the VVSG 2.0 guidelines the SOS was violating
3 the law and that the Primary Canvass should not be certified; and

4 **WHEREAS**, The Torrance County Board of County Commissioners (Board)
5 investigated the citizens' concerns by:

- 6 1. Asking the Torrance County Clerk many pointed questions about the day-to-day work
7 of running an election in Torrance County;
- 8 2. Studying the Election Code;
- 9 3. Visiting individually with constituents regarding their concerns about election
10 integrity and election system vulnerabilities;
- 11 4. Seeking legal reviews and counsel regarding New Mexico election statutes; and

12 **WHEREAS**, The Board concluded that:

- 13 1. The board of county commissioners is ex-officio the county canvassing board in each
14 county. NMSA 1978 Section 1-13-1
- 15 2. The county clerk shall: A. prepare the report of the canvass of the election returns by
16 carefully examining the returns of each precinct to ascertain if they contain the
17 properly executed certificates required by the Election Code and to ascertain whether
18 any discrepancy, omission or error appears on the face of the election returns; and B.
19 present the report of the canvass to the county canvassing board for the board's
20 consideration and approval. NMSA Section 1-13-4
- 21 3. The county canvassing board shall meet to approve the report of the canvass of the
22 returns and declare the results no sooner than six days and no later than ten days from
23 the date of the election. NMSA 1978 Section 1-13-13

- 1 4. The Board struggled with their statutory responsibility to certify the canvass and with
2 the commissioner's Oaths of Office to "...faithfully support the Constitution of the
3 United States and the Constitution and laws of the State of New Mexico," as they
4 reviewed the election process and system in its entirety.
- 5 5. The SOS should have decertified the voting machines that were used during the 2022
6 Primary Election when VVSG 2.0 was adopted, under the clear language of NMSA
7 Section 1-9-14, or asked a Court to determine that she could ignore the statutory
8 requirement.
- 9 6. Systems utilized to print ballots at polling locations did not comply with NMSA 1978
10 Section 1-1-12(A), "Paper ballots shall: A. be numbered consecutively."
- 11 7. The Board recessed their June 13, 2022 Special Meeting until June 17, 2022, so it
12 could further investigate the 2022 Primary Election as well as the possible
13 ramifications of voting to not certify the canvass based on the above stated violations
14 of state statutes.

15 **WHEREAS**, The New Mexico Supreme Court ruled on June 15, 2022, in a similar case
16 arising out of Otero County, that a Board of County Commissioners canvassing an election only
17 had the authority to comply with the requirements of the Canvassing Statute, NMSA 1978, 1-
18 13-13(A); and

19 **WHEREAS**, The Board performed a Canvass of the June 2022 Primary Election on
20 June 13, 2022, and June 17, 2022 after carefully examining the returns of each precinct to
21 ascertain if they contained properly executed certificates and concluded that there were no
22 discrepancies, omissions or errors on the face of the election returns as required in the Statutory
23 Canvass process of Section 1-13-1 et. seq. NMSA 1978; and

1 **WHEREAS**, As was implied by the Supreme Court holding, the Canvass is not the
2 proper place to challenge the certification of voting machines under New Mexico Law;and

3 **WHEREAS**, the Secretary of State has a duty to ensure voting integrity and voter
4 confidence in the State of New Mexico.

5 **NOW, THEREFORE BE IT RESOLVED:**

6 The Board of County Commissioners hereby authorizes and directs the County Manager
7 and County Attorney to take all actions necessary and proper to ensure the integrity of elections
8 in Torrance County with the cooperation and collaboration of the County Clerk as follows:

- 9 1. Explore all legal and cooperative remedies available to the Board to ensure the
10 integrity of the 2022 Election and resolve the legal question of the proper certification
11 of voting machines in New Mexico. No lawsuit shall be filed without prior Board
12 approval; and
- 13 2. Explore all options, including litigation if necessary, for Torrance County to secure
14 the Election returns, both electronic counters and paper ballots, to verify and audit the
15 outcome of the 2022 Primary Election using the hand-tally method, to be conducted
16 once the ballots are available for review by the public, as the Board desires to include
17 the public in the audit process, and prior to the General Election to help ensure public
18 confidence in the voting systems; and
- 19 3. Work with other Counties, State legislators and the Secretary of State to propose
20 amendments to the Election Code and Election Rules to facilitate greater trust in the
21 election process and improve the election system for future elections; and
- 22 4. Encourage, through greater public outreach in Torrance County, the citizens of
23 Torrance County to get as involved as possible in the election process to better ensure

1 the integrity of the election system through volunteer opportunities, such as becoming
2 election workers, election watchers or simply observing to ensure the proper conduct
3 of the election.

4
5 DONE THIS 22 DAY OF June, 2022.

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8 APPROVED AS TO FORM ONLY:

BOARD OF COUNTY COMMISSIONERS

9
10 [Signature]
11 County Attorney Date June 22, 2022

[Signature]
Ryan Schwebach, Chair, District 2

[Signature]
LeRoy M. Candelaria, Vice Chair, District 3

[Signature]
Kevin McCall, Member, District 1

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17 ATTEST:

[Signature]
Yvonne Otero, County Clerk

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21 Date: June 22, 2022
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