

**SIERRA COUNTY  
BOARD OF COUNTY COMMISSIONERS  
RESOLUTION No 109-029**

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

**WHEREAS**, the Board of County Commissioners of Sierra County, met in a regular meeting on November 17, 2020, at 10:00 A.M. in the Sierra County Administration Office, 855 Van Patten, Truth or Consequences, NM 87901; and,

**WHEREAS**, NMSA 1978, Section 4-37-1 (1995) provides that Counties have the power to, “provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants”; and,

**WHEREAS**, NMSA, 1978, Section 4-38-18 (1976) provides that a Board of County Commissioners generally has the duty and authority “[t]o represent the county;” and,

**WHEREAS**, in Laws 2020, 1<sup>st</sup> Special Session, Chapter 1 (HB 5), the New Mexico Legislature 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 New Mexico Civil Rights Commission was established by the New Mexico Legislature in response to certain high-profile civil rights violations in other states in a hastily called legislative session, not open to the public, called for the limited purposes of addressing the COVID-19 pandemic; 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 close of the public comment period it created and before receiving insightful comments from several governmental entities; 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 Sierra County Commission is genuinely concerned for balancing the interests and needs of individuals aggrieved in connection with governmental action, and the needs of the public to have its governmental entities provide essential services such as fire protection, infrastructural improvements, fair and efficient elections, fair and efficient assessment of property values, fair and efficient collection of property taxes, law enforcement and detention services, and to generally protect the health, safety and welfare of all County inhabitants; and

**WHEREAS**, a new cause of action is not necessary to address New Mexico constitutional deprivations by law enforcement, since the New Mexico Tort Claims Act already waives immunity for such claims and qualified immunity is not a defense to such claims (NMSA 1978, 541-4-12); and

**WHEREAS**, creating an additional mechanism to permit for recovery of violations of Constitutional rights would not improve how Government agencies and officials operate and/or the policies and procedures they create, but rather, such additional mechanism(s) would deplete the already limited resources government agencies have to address the many needs of their constituents; and

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

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

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

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

**WHEREAS**, many of the challenges faced by local law enforcement and county jails stem from co-occurring substance abuse and mental health disorders for which have traditionally been underfunded; and

**WHEREAS**, instead of diverting resources to individual claims, the Legislature should be providing more resources to serve this population, which would minimize their interactions with police officers and keep them out of county jails; and

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

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

**WHEREAS**, the loss of coverage could financially cripple Sierra County and result in a reduction of essential services and/or property tax assessments in the event that there is a judgment that exceed the reduced coverage amount; and,

**WHEREAS**, the proposed legislation will be a windfall for insurance brokers and plaintiff’s attorneys, including 19 legislators, that may benefit from insurance sales or attorneys that may benefit from the legislative proposal to have their fees paid by the taxpayers; and,

**WHEREAS**, the Government Conduct Act disqualifies public officers from engaging in official acts the affect their financial interests, *see* NMSA 1978, Section 10-16-4 (2011); and,

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

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

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

1. Sierra County opposes the recommendations of the Commission or broader legislation pursued by individual legislators, which:
  - a. are unnecessary for victims of State constitutional violations by law enforcement (including detention officers) to be compensated;
  - b. will not address at all the root cause of many claims against local governments: namely, the lack of State resources to treat substance abuse and mental health disorders in non-penal settings;
  - c. will be ineffective at driving reform or otherwise improving services, since they will divert resources from law enforcement and detention officer recruitment, retention, and training and other critical services to claims; and
  - d. will further dry up the insurance market, requiring local governments to self-insure more and more risk and creating the real possibility that property taxes will need to be imposed to meet uninsured judgments.
2. Sierra County urges the New Mexico Legislature to instead provide more resources for:
  - a. law enforcement and jail operations;
  - b. the treatment of people suffering from substance abuse and/or mental health disorders, which would minimize their interactions with police officers and keep them out of county jails; and
  - c. more resources to the New Mexico Law Enforcement Academy to train and investigate law enforcement officers, including independent, elected County sheriffs.

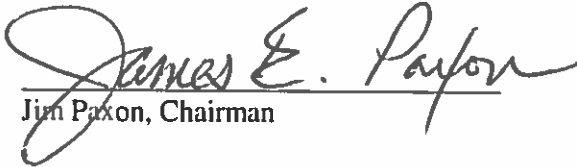
**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Board of County Commissioners of Sierra County, New Mexico that:

1. Sierra County opposes any effort to expand state court jurisdiction for civil rights violations. Such expansion serves no purpose other than to create the potential for inconsistent results thereby making it more difficult for law enforcement officers to know if actions are permissible or impermissible and will result in increased costs.
2. Sierra County expressly opposes the recommendations of the Commission or legislation pursued by individual legislators that would remove the ability to assert a defense of qualified immunity to a civil rights action brought in state court.

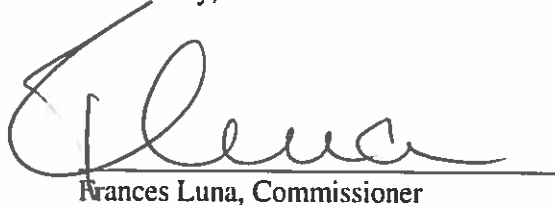
3. Sierra County opposes any effort to impose additional personal liability on individual government officials or employees, as such conduct would likely have a chilling effect on all governmental entities to recruit, hire, and maintain critical public safety and other employees.
4. Sierra County demands that any legislator who will financially benefit from the qualified immunity proposal recuse themselves from the vote or that insurance broker or attorney members of the legislature pledge neither they nor their firm(s) will ever sell insurance policies to cover the liability created or accept attorney fees required to be paid by the legislation.

**PASSED, APPROVED AND ADOPTED** on this 17<sup>th</sup> day of November, 2020.

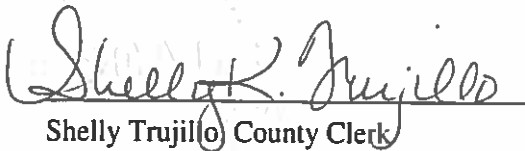
**BOARD OF COUNTY COMMISSIONERS OF SIERRA COUNTY, NEW MEXICO**

  
Jim Paxon, Chairman

  
Travis Day, Vice-Chair

  
Frances Luna, Commissioner

**ATTEST**

  
Shelly Trujillo County Clerk