



CIBOLA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION No 2021- 17

**A RESOLUTION OPPOSING BOTH ORIGINAL AND HOUSE JUDICIARY
COMMITTEE SUBSTITUTE OF HOUSE BILL 4 OF
THE FIRST SESSION OF THE 55TH LEGISLATURE**

WHEREAS, the Board of County Commissioners met in a regularly scheduled meeting on Thursday, February 25, 2021, at 5:00 p.m. in the Cibola County Administration Building 700 Roosevelt, Grants, New Mexico 87020; and,

WHEREAS, NMSA, 1978, Section 4-38-18 (1976) provides that a Board of County Commissioner has the duty and authority “[t]o represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law; and,

WHEREAS, in Laws 2020, 1st Special Session, Chapter 1 (HB 5) and in response to certain high-profile civil rights violations by law enforcement officers in other states, 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, a sharply-divided Commission voted 5-4 to recommend that the Legislature create a new State law cause of action for violations of the New Mexico Constitution, which cause of action would not include a cap on compensatory damages and would mandate the award of litigation expenses and attorney fees for prevailing plaintiffs; and

WHEREAS, the Commission’s recommended legislation was largely introduced into the First Session of the 55th Legislature of the State of New Mexico as House Bill 4 (HB 4); and

WHEREAS, the House Judiciary Substitute has subsequently substituted a revised HB 4 for the original introduced this legislative session; and,



WHEREAS, the substituted HB4 does little to address the County's concerns regarding the bill, and the County strongly opposes the bill; and,

WHEREAS, the substitute for HB4 will do nothing to increase accountability for law enforcement officers who can already be sued for money damages under State law for violations of the State Constitution; and,

WHEREAS, the purported cap contained in the substitute bill is meaningless because it is per claim and per claimant, and in addition to other remedies allowed by law, and because an individual could easily reach \$2.7 million under the proposed language by bringing claims under this law and the New Mexico Tort Claims Act; and,

WHEREAS, adjustments to the cap are automatic and only go one way, increasing annually with the cost of living but not decreasing if the cost of living goes down; and,

WHEREAS, passage of the substitute bill 4 could render county jails and sheriffs uninsurable, and will transform general liability and property claims into constitutional claims with increased monetary damages and attorneys fees, which will consume dollars needed for essential governmental services; and,

WHEREAS, providing attorneys fees will increase the number of cases filed and the cost of cases already brought under the current law, exposing governmental defendants to enhanced compensatory damages and attorneys' fees by requiring that the court award attorneys fees on top of any damage award regardless of size; and,

WHEREAS, elimination of the notice provision reduces the ability for government to appropriately respond and take corrective action because it eliminates the requirement that government be given notice of a potential claim within 90 days and extends the statutes of limitations from two to three years; and,

WHEREAS, when insurance is inadequate, any shortfall must be covered by the County's budget and/or an assessment of property taxes; and,

WHEREAS, a new cause of action is unnecessary to address New Mexico constitutional deprivations by law enforcement officers, including detention officers at county jails, since the New Mexico Tort Claims Act ("NMTCA") waives sovereign immunity for such claims and qualified immunity is not a defense to such claims; and

WHEREAS, plaintiffs are also presently statutorily permitted to recover damage awards up to \$1,050,000 against the County for statutory and constitutional deprivations pursuant to the NMTCA; and

WHEREAS, eliminating NMTCA caps and mandating an award of litigation expenses and attorney fees will increase the costs of claims and will result in the filing of additional claims; and



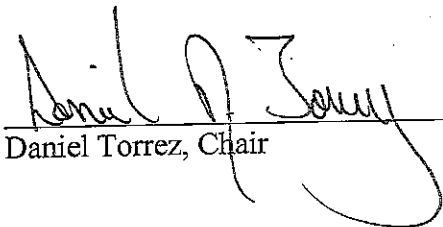
WHEREAS, uninsured judgments that cannot be satisfied through existing resources will be paid by our citizens, through property taxes levied to meet the judgment (N.M. Const., art. 8, Section 7; NMSA 1978, §.7-37-7(C)(3)); and

WHEREAS, the new and broadly drawn cause of action carries the risk of many unintended, negative consequences.

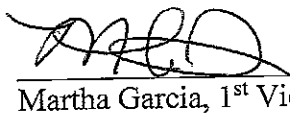
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Cibola Sierra expresses its strong opposition to HB 4 and the HJC substitute bill, and any other potential substitutes that provide for additional causes of actions against the County, exposes the County taxpayers to additional liability, for the reasons stated herein.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CIBOLA

APPROVED, ADOPTED, AND PASSED on this 25th day of February, 2021.



Daniel Torrez, Chair



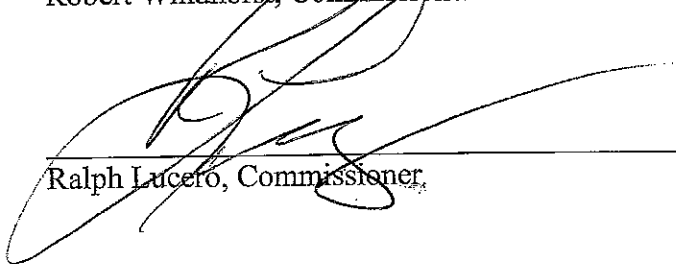
Martha Garcia, 1st Vice-Commissioner

Voted telephonically

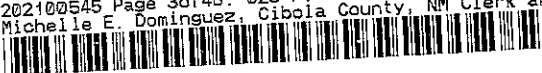
Christine Lowery, 2nd Vice-Chair



Robert Windhorst, Commissioner



Ralph Lucero, Commissioner



ATTEST:

Michelle E. Dominguez

Michelle E. Dominguez
Cibola County Clerk

