



RESOLUTION NUMBER: 2020-30

**Opposing the Recommendations of the New Mexico Civil Rights Commission
and Urging the Legislature to Provide More Resources to Address the Root
Causes of Civil Rights Claims Against Local Governments**

WHEREAS, in Laws 2020, 1st Special Session, Chapter 1 (HB 5) and in response to certain high-profile civil rights violations 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, 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 close of the public comment period it created and before receiving insightful comments from several governmental entities; 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, §41-4-12); 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 commercially reasonable 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 in the population with which they interact; 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, 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 Roosevelt County, New Mexico, that:

1. Roosevelt 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. Roosevelt 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.

PASSED, APPROVED, and ADOPTED this 9th day of November, 2020.

**BODY OF COUNTY COMMISSIONERS
ROOSEVELT COUNTY, NEW MEXICO**

ATTEST:

Nath Baca
Nath Baca, Deputy County Clerk

Telephonically approved
Matthew Hunton, Chairman – District II
Voted: Yes No Abstained

Telephonically approved
Tina Dixon, Vice Chair – District IV
Voted: Yes No Abstained

Telephonically approved
Dennis Lopez – District I
Voted: Yes No Abstained

Telephonically approved
Lewis (Shane) Lee – District III
Voted: Yes No Abstained

Telephonically approved
Paul Grider – District V
Voted: Yes No Abstained

