

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,  
MARCO WHITE, MARK MITCHELL,  
and LESLIE LAKIND,

Plaintiffs,

vs.

Case No. D-101-CV-2022-00473

COUY GRIFFIN,

Defendant.

**BRIEF OF AMICUS CURIAE COMMON CAUSE**  
**IN SUPPORT OF PLAINTIFFS' COMPLAINT FOR *QUO WARRANTO* RELIEF**

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**TABLE OF CONTENTS**

Cover Page.....i

Table of Contents.....ii

Table of Authorities.....iii

Statement of Interests.....1

Introduction.....1

I. Under New Mexico Law, County Commissioners are Executive Officers.....2

II. Defendant’s Ongoing Violations of His Oath Pose a Continued Threat to the Rule of Law in New Mexico.....6

Conclusion.....9

Certificate of Service.....10

**TABLE OF AUTHORITIES**

**United States Constitutional Provisions**

U.S. Const. art. I, § 3.....5  
U.S. Const. art. II, § 2.....5  
U.S. Const. amend. XIV, § 3.....2, 3

**State Appellate Cases**

*State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16, 88 N.M. 244.....2, 3  
*State ex rel. King v. Sloan*, 2011-NMSC-020, 149 N.M. 620.....2  
*State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431.....2, 3, 9

**State Constitutional Provisions**

N.M. Const. art. IV, § 4.....5  
N.M. Const. art. IV, § 9.....4  
N.M. Const. art. V, § 13.....4

**State Statutes**

NMSA 1978, Section 1-13-1(A).....7  
NMSA 1978, Section 1-13-13(A).....7  
NMSA 1978 § 4-38-13.....5  
NMSA 1978 § 4-38-13.1.....5  
NMSA 1978 § 4-38-19.....5  
NMSA 1978 § 10-3-3.....5

**United States Supreme Court Cases**

*Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, (2010) .....5

**Out of Jurisdiction State Appellate Cases**

*Hunt v. Finegan*, 11 Fla. 105 (1864) .....4  
*Worthy v. Barrett*, 63 N.C. 199 (1869) .....4

## **STATEMENT OF INTERESTS**

*Amicus Curiae* Common Cause is a nonpartisan, grassroots organization dedicated to fair elections, due process, and working to ensure that government at all levels may be more democratic, open, and responsive to the interests of the people. Founded by John Gardner in 1970 as a “citizens lobby,” Common Cause has over 1.5 million members nationwide and local organizations in 36 states. Common Cause is a leader in the fight for open, honest, and fair elections throughout the United States, and in New Mexico through its New Mexico chapter. Common Cause has long supported efforts to protect the integrity of elections from partisan attack or manipulation and to ensure stable governing processes rooted in a deep respect for the rule of law over the rule of individuals or cults of personality.<sup>1</sup>

## **INTRODUCTION**

On January 6, 2021, a mob of enraged political partisans engaged in a violent attempt to obstruct and derail the certification of the 2020 presidential election results. Those who participated in or supported this violent attempt explicitly sought to interrupt the peaceful transition of political power at the highest level of American government – and thereby engaged in insurrection by any meaningful definition of the term. One of these individuals was Otero County Commissioner Couy Griffin – hereinafter referred to as “Defendant.”

Since January 6, 2021, and in his capacity as a county commissioner, Defendant has continued to propagate conspiracies and lies regarding the integrity of U.S. elections, has illegally refused to certify the results of the 2022 New Mexico primary election in Otero County, and has

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<sup>1</sup> No party’s counsel authored this brief in whole or in part. No party, no party’s counsel, nor any other person other than Common Cause, its members, and/or its counsel, contributed money for the preparation or submission of this brief.

ignored a writ of mandamus from the New Mexico Supreme Court compelling him to fulfil his duty under the law. Through these ongoing actions, Defendant has demonstrated a comprehensive contempt for the rule of law, providing the Court with compelling evidence of the insurrectionist nature of his conduct on January 6, 2021, and necessitating his removal from public office. This is the claim detailed by the Plaintiffs in their *quo warranto* complaint, and Common Cause fully supports the Plaintiffs in their effort as elaborated more thoroughly below.

## ARGUMENT

Through this Brief, Common Cause buttresses Plaintiffs’ claims in two key ways: first, by showing that county commissioners such as Defendant are properly conceived of as “executive officers” under New Mexico law; and second, by detailing Defendant’s continued disregard for his oath of office since January 6, 2021, thereby demonstrating the continued threat that he poses to the rule of law in New Mexico and beyond.

### **I. Under New Mexico Law, County Commissioners are Executive Officers.**

The *quo warranto* removal of Defendant from public office<sup>2</sup> is justified by Section III of the Fourteenth Amendment to the United States Constitution (known as the “Disqualification Clause”), which reads as follows:

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<sup>2</sup> Defendant has invoked NMSA 1978 § 10-4-1 *et seq.* in an attempt to argue that these mechanisms for the removal of elected officials preempt or supersede *quo warranto* actions. In denying the Defendant’s Motion to Dismiss, the Court has already rejected these arguments from the Defendant on procedural grounds. Moreover, New Mexico courts have repeatedly rejected such arguments on their merits in favor of upholding *quo warranto* relief when the constitutional *disqualification* of the elected official is at issue. *See State ex rel. King v. Sloan*, 2011-NMSC-020, 149 N.M. 620 (ordering a writ of *quo warranto* to remove a state officer convicted of a disqualifying felony and rejecting impeachment as an exclusive remedy); *see also State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431 (affirming a writ of *quo warranto* issued by the trial court to remove two public officers for disqualifying illegal use of public money and rejecting a recall election as an exclusive remedy).

The writ of *quo warranto* coexists with alternative means of removing public officers because the writ investigates a much deeper question than individual acts of official misconduct: it examines the constitutional qualification of an official to office. “One of the primary purposes of *quo warranto* is to ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment, and we must liberally interpret the *quo warranto* statutes to effectuate that purpose.” *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16,

“No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, **or as an executive or judicial officer of any State**, to support the Constitution of the United States, shall have **engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof**. But Congress may by a vote of two-thirds of each House, remove such disability.” U.S. Const. amend. XIV, § 3 [emphasis added].

In this case, there can be no question that Defendant, as a county commissioner, holds “any office...under any State.” As noted by the Plaintiffs, there can also be no question that Defendant has “previously taken an oath... to support the Constitution of the United States.” The only contestable elements of the Disqualification Clause in this case are 1) whether Defendant took his oath as “an executive or judicial officer of any state” (which the Plaintiffs have argued and the Defendant has not disputed), and 2) whether the Defendant has either “engaged in insurrection or rebellion against [the United States]” or “given aid or comfort to the enemies thereof” (which the Plaintiffs have argued thoroughly and the Defendant has disputed vociferously, though not convincingly).

In trial, Plaintiffs elicited testimony from Defendant regarding the executive nature of his office (*Trial Transcript*, August 15, 2022, TR 52-57). Plaintiffs also presented the expert testimony of Professor Mark Graber, who stated that there was broad post-ratification consensus that the Disqualification Clause applied to county officials (*Trial Transcript*, August 16, 2022, TR 17) and that Defendant’s position as an Otero County Commissioner was primarily executive in nature (*Trial Transcript*, August 16, 2022, TR 18-20). In arguing that Defendant took his oath as “an

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88 N.M. 244, 247. New Mexico statute authorizes such an action “when any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office.” NMSA 1978 § 44-3-4(B). In dismissing the distinction between “disqualification” and “forfeiture,” our courts have held that “the terms are synonymous in this context, as both go to eligibility to hold office.” *See Padilla*, ¶ 6.

executive or judicial officer of any state” for purposes of the Disqualification Clause, Plaintiffs and their counsel have traced the development of the Clause back to its earliest stages and its original context and have shown that in this context county commissioners such as Defendant fell plainly within the Clause’s ambit. *See Complaint*, ¶ 73 (citing, *inter alia*, *Worthy v. Barrett*, 63 N.C. 199, 202-04 (1869) (holding that county officials could be subject to the Disqualification Clause)).<sup>3</sup> While the authorities cited by the Plaintiffs provide compelling support for their argument by temporal proximity to the Clause’s origins, additional compelling support may be found “closer to home” – in the constitution and statutes of the State of New Mexico itself.

State officers must be either legislative, executive, or judicial in character. *See, e.g., Worthy* at 201 (noting that “there can be no office in the government that is not in one of these Departments [Legislative, Executive, or Judicial]”). The New Mexico Constitution includes “county commissioners” in a list of local government officers housed within the Executive Department. *See* N.M. Const. art. V, § 13. The New Mexico Constitution also *excludes* county commissioners from the list of “legislative officers” detailed at N.M. Const. art. IV, § 9. Insofar as both executive and judicial state officers are expressly subject to the Disqualification Clause, the New Mexico Constitution’s clarification that county commissioners are not “legislative officers” renders them, by default, either “executive or judicial officers” under New Mexico law – and thereby subject to the Disqualification Clause.

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<sup>3</sup> This understanding of county commissioners as executive or judicial officers in fact predates the passage of the Fourteenth Amendment. In *Hunt v. Finegan*, 11 Fla. 105 (1864), the Florida Supreme Court examined the duties of the office of county commissioner and found that the duties of county commissioners “necessarily make them an executive body; for, although administrative, yet they pertain to the executive as distinct from judicial.” *Id.* at 110. In determining whether a county commissioner was exempt from a conscription law in that same case, the Court held: “we can come to no other conclusion than that they are ‘officers, judicial and executive, of the State government.’” *Id.* at 111.

In New Mexico, county commissioners also possess and exercise numerous powers and duties that are executive in nature, further supporting classification of county commissioners as executive officers of the state of New Mexico:

1. County commissioners have power over county property, including the power to contract county equipment, property, and buildings to community associations, public entities, and nonprofit organizations. *See* NMSA 1978 § 4-38-13, 13.1.
2. County commissioners possess significant appointment powers in New Mexico, as they are empowered to fill vacancies in any county office (aside from the office of county commissioner). *See* NMSA 1978 § 10-3-3. In the federal constitutional structure, the power to appoint “all other officers of the United States” is plainly housed within the executive branch. *See* U.S. Const. art. II, § 2.<sup>4</sup>
3. In addition to their appointment authority at the county level, county commissioners are constitutionally vested with the power to fill any vacancy in the state senate or house of representatives that occurs within their county. *See* N.M. Const. art. IV, § 4. In the federal constitutional structure, the power to fill legislative vacancies of any state is housed with “the Executive thereof.” *See* U.S. Const. art. I, § 3.
4. County commissioners possess the administrative authority to hire and set the salary for a county manager, county deputies, and county employees. *See* NMSA 1978 § 4-38-19.

New Mexico constitutional and statutory law reinforce the Plaintiffs’ argument (from federal constitutional and historical law) that county commissioners such as Defendant are

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<sup>4</sup> *See also Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2010) (noting that “[a] key ‘constitutional means’ vested in the President—perhaps the key means—was ‘the power of appointing, overseeing, and controlling those who execute the laws.’” 1 *Annals of Cong.*, at 463.)



executive officers of the State of New Mexico. As such, New Mexico county commissioners such as Defendant may be constitutionally disqualified from holding office via Section III of the Fourteenth Amendment and properly subject to removal from office via the writ of *quo warranto*.

## **II. Defendant's Ongoing Violations of His Oath Pose a Continued Threat to the Rule of Law in New Mexico.**

Through their Complaint and through the trial testimony of their fact and expert witnesses, Plaintiffs have provided a thorough and detailed account of Defendant's insurrectionist actions on January 6, 2021. Common Cause will not reiterate Plaintiffs' arguments or evidence here, but fully concurs with Plaintiffs that Defendant's conduct on January 6, 2021, satisfies the definition of "insurrection" for purposes of the Disqualification Clause. In supplementation of Plaintiffs' arguments and evidence, Common Cause wishes to draw the Court's attention to some of Defendant's behavior *since* January 6, 2021.

As noted by the Plaintiffs in their Complaint, Defendant took an oath of office to support the Constitution of the United States (as well as the Constitution and laws of the State of New Mexico) on December 28, 2018. *Complaint*, ¶ 10. Defendant's conduct as county commissioner following his insurrectionist actions on January 6, 2021, demonstrates a continued disregard for this oath of office. Rather than "support[ing] and uphold[ing] the Constitution and laws of the State of New Mexico," Defendant has used his position as county commissioner to undermine that Constitution and those laws. Defendant's continuous calls for violence and uprising,<sup>5</sup> coupled with his efforts to undermine the rule of law in New Mexico, provide additional relevant evidence of

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<sup>5</sup> For a brief synopsis of Defendant's continuous calls for violence and uprising, *see Commentary: Commissioner Couy Griffin Has A Long History of Violent Speech Against Democrats*, KRWG Public Media (May 20, 2020, 5:22 PM), <https://www.krwg.org/local-viewpoints/2020-05-20/commentary-commissioner-couy-griffin-has-a-long-history-of-violent-speech-against-democrats>.

the nature of his conduct on January 6, 2021, and further support the classification of that conduct as “insurrectionist” in nature.

In New Mexico, a board of county commissioners “is ex officio the county canvassing board in each county.” NMSA 1978, Section 1-13-1(A). As an Otero County Commissioner, Defendant has a mandatory, non-discretionary duty to certify election results pursuant to NMSA 1978, Section 1-13-13(A), which requires that “[t]he county canvassing board shall meet to approve the report of the canvass of the returns and declare the results no sooner than six days and no later than ten days from the date of the election.” Following the primary election on June 7, 2022, the Otero County Clerk presented the results of the canvass to the County Commission, noted that there were no discrepancies in the results, and recommended the certification of the canvass report as required by law. However, contrary to the recommendation of the county clerk, Defendant led his fellow commissioners in an illegal attempt to impede the execution of the laws of New Mexico,<sup>6</sup> and the Otero County Commission voted unanimously *not* to certify the results of the primary election.<sup>7</sup>

The New Mexico Secretary of State was forced to seek an emergency writ of mandamus from the New Mexico Supreme Court compelling the Otero Board of County Commissioners to fulfill its legal duties under the Election Code. Our Supreme Court granted the Secretary of State’s provision swiftly and immediately issued the writ ordering Defendant and his fellow county commissioners to certify the primary election. *See* Amicus Exhibit A, *Writ of Mandamus*, No. S-

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<sup>6</sup> Defendant admitted at the time that “[m]y vote to remain a no isn’t based on any evidence, it isn’t based on any facts. It’s only based on my own gut feeling, my own intuition, and that’s all I need.” Annie Gowen, *New Mexico county certifies election results, bowing to court order*, The Washington Post (June 17, 2022, 7:43 PM), <https://www.washingtonpost.com/politics/2022/06/17/new-mexico-county-weighs-defying-order-certify-election-results/>.

<sup>7</sup> *See* Morgan Lee, *GOP commission refuses to certify New Mexico primary vote*, AP News, <https://apnews.com/article/2022-midterm-elections-new-mexico-voting-election-recounts-general-54745f2169166e82090d0f7bc1ddc1b2>

1-SC-39426 (June 15, 2022). Even after receiving this writ – an order from New Mexico’s highest court which plainly compelled him to fulfill his duties under New Mexico law – Defendant defied our Supreme Court and refused to certify the primary election results. *See* Amicus Exhibit B, Second Certification Vote of Otero County Commission, June 17, 2022. Defendant’s own words at the time illuminate his disregard for the separation of powers and the notion of checks and balances in American government:

"I'm not planning to move off my position," Otero County Commissioner Couy Griffin said in a telephone interview with CNN [...] "Why have a commission if we just get overridden by the court system?"<sup>8</sup>

While the writ of mandamus from the Supreme Court of New Mexico should have foreclosed this issue, Defendant has instead continued his campaign to undermine the rule of law in New Mexico by peddling and amplifying discredited and baseless conspiracy theories regarding voting machines and electoral fraud. On July 14, 2022, the Commission issued a “Resolution on Election Certification” in which it stated an intent to refuse certification of the 2022 general election in Otero County unless the state legislature acceded to numerous amendments to the Election Code – essentially ransoming an election for political ends. *See* Amicus Exhibit C, “A Resolution on Election Certification,” July 14, 2022. On August 11, 2022, Defendant called a special meeting of the Otero County Commission where (against the counsel of the Otero County attorney) Defendant proposed a resolution to sue the Secretary of State for forcing the Commission to certify the primary election results – at an estimated expense of \$100,000 to the taxpayers of Otero County.<sup>9</sup> Defendant also pushed a vote to remove voting machines and ballot drop boxes

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<sup>8</sup> Fredreka Schouten, *New Mexico county official convicted of January 6 trespassing refuses to certify 2022 primary results based on debunked conspiracy*, CNN (June 16, 2022, 6:35 PM), <https://www.cnn.com/2022/06/16/politics/new-mexico-otero-county-election/index.html>.

<sup>9</sup> *Otero County Meeting, New Mexico, August 11, 2022*, Rumble (Published Aug. 10, 2022, streamed Aug. 11, 2022, 8:00 PM), [https://rumble.com/v1fjt9d-otero-county-meeting-new-mexico-august-11-2022.html?fbclid=IwAR0VuyGP11kxUUU0ubRGUIVuN\\_XmARBMxH6AVpERjKcUEnV65I\\_\\_h9cjeCc](https://rumble.com/v1fjt9d-otero-county-meeting-new-mexico-august-11-2022.html?fbclid=IwAR0VuyGP11kxUUU0ubRGUIVuN_XmARBMxH6AVpERjKcUEnV65I__h9cjeCc).

from the county – a measure the county attorney and the Attorney General’s office had previously stated was well beyond the scope of the commission’s lawful authority. Both measures passed in a 2-1 vote, with Defendant voting in favor of each.<sup>10</sup>

Defendant’s continued disregard for the rule of law in New Mexico demonstrates not only that the Plaintiffs’ *quo warranto* action is sufficient as a matter of law; it is necessary as a matter of good governance. Beyond the satisfaction of all elements of the Disqualification Clause, the Court is faced with a rogue executive official who is entirely unrepentant regarding his ongoing disregard for his oath of office. The Defendant’s actions *since* January 6, 2021, shed clear light on the Defendant’s purposes in acting as he did *on* January 6, 2021. The Court need not – and should not – close its eyes to the fact that Defendant is a repeat offender in this regard, or that his insurrectionist tendencies pose their most immediate threat to the people of New Mexico.

### **CONCLUSION**

Couy Griffin is an insurrectionist. He is a conspiracy theorist. He has placed partisanship and loyalty to a dangerous political faction over his sworn loyalty to the Constitution, the duties of his office, and the rule of law, and he has engaged in insurrectionist activity against the United States. His conduct satisfies all textual elements of Section III of the Fourteenth Amendment and he is disqualified from public office as a result. Because Griffin is disqualified from public office, Plaintiffs’ *quo warranto* action is the proper mechanism for his removal under the holding of *State ex rel. Martinez v. Padilla*.

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<sup>10</sup> Nicole Maxwell, *Otero County votes to continue with its decision to eliminate drop boxes, hand count ballots despite NMAG complaint*, Alamogordo Daily News (Aug. 13, 2022, 6:24 PM), <https://www.alamogordonews.com/story/news/2022/08/12/otero-county-votes-keep-its-voter-regulations-decision/65398463007/>.

For the foregoing reasons, *amicus curiae* Common Cause respectfully requests that the Court GRANT the relief requested in the Plaintiffs' Complaint.

Respectfully submitted,

Hall Monagle Huffman & Wallace, LLC

/s/ Levi A. Monagle 08/25/2022

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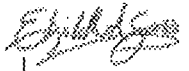
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Counsel for Common Cause

I HEREBY CERTIFY that on August 25, 2022, the foregoing document was electronically filed through the Odyssey File & Serve System, which should cause the document to be served by electronic means to counsel of record for the parties in this case.

/s/ Levi A. Monagle 08/25/2022  
Levi A. Monagle



1           **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2                               **June 15, 2022**

3           **NO. S-1-SC-39426**

4           **MAGGIE TOULOUSE OLIVER,**  
5           **in her official capacity as Secretary of State**  
6           **of the State of New Mexico,**

7  
8                       Petitioner,

9           v.

10  
11           **THE OTERO COUNTY COMMISSION,**

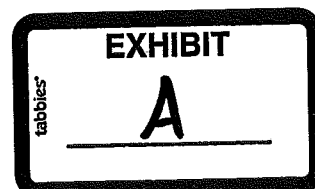
12  
13                       Respondent.

14  
15  
16                               **WRIT OF MANDAMUS**

17           **TO: Otero County Commission**  
18                       **c/of RB Nichols**  
19                       **1101 New York Ave**  
20                       **Alamogordo, NM 88310**  
21

22           **GREETINGS:**

23                       WHEREAS, a petition for writ of mandamus having been granted by this  
24           Court on June 15, 2022, and the Court being sufficiently informed and good cause  
25           appearing for the issuance of a writ of mandamus;



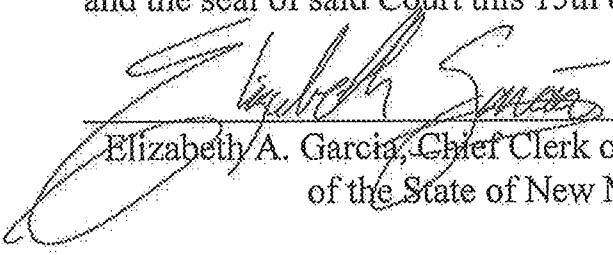
1 NOW, THEREFORE, you, The Otero County Commission, are ordered to  
2 comply with the requirements set forth in NMSA 1978, Section 1-13-13(A) (2019).  
3 Specifically, The Otero County Commission shall "meet to approve the report of the  
4 canvass of the returns and declare the results" of the 2022 primary election no later  
5 than June 17, 2022.

6 NOW, THEREFORE, you, The Otero County Commission, shall comply with  
7 all nondiscretionary duties set forth in Section 1-13-13(B) necessary to permit the  
8 Secretary of State to fulfill her obligations under Section 1-13-13(C).

9 IT IS SO ORDERED.

10 WITNESS, the Honorable C. Shannon Bacon, Chief  
11 Justice of the Supreme Court of the State of New Mexico,  
12 and the seal of said Court this 15th day of June, 2022.

13 (SEAL)

14   
15 Elizabeth A. Garcia, Chief Clerk of the Supreme Court  
of the State of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties  
or their counsel of record on date filed.

Elizabeth A. Garcia

Chief Clerk of the Supreme Court  
of the State of New Mexico



**Emergency Meeting**

**June 17, 2022**

The Board of County Commissioners, in and for the County of Otero, State of New Mexico met in an Emergency Meeting at the Administration Building in Alamogordo, County and State aforesaid. The meeting was called to order by the Chairman at 4:00 p.m., June 17, 2022; and she announced that reasonable notice for this meeting was given to the Alamogordo Daily News and Radio Stations, KYEE, KZZX and KINN.

**Present:**

- Vickie Marquardt                      Chairman
- Gerald Matherly                      Vice-Chairman
- Couy Griffin                              Member (Telephonically)
- Pamela Heltner                        County Manager
- R.B. Nichols                            County Attorney
- Sylvia Tillbrook                        Executive Assistant
- Lynn Estrada                            Deputy Clerk

**Roll call was taken as follows:**

- Commissioner Marquardt    Here
- Commissioner Matherly      Here
- Commissioner Griffin        Here

**Approval of Agenda:**

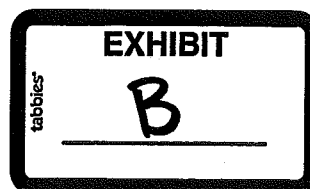
Commissioner Marquardt made a motion to approve the agenda. The motion was seconded by Commissioner Matherly. A vote was taken and the motion passed unanimously.

**New Business:**

- 1. Request approval to Certify the Canvass of the 2022 Primary Election.**

Commissioner Marquardt made a motion to recess the Regular Meeting and convene as the Canvassing Board. The motion was seconded by Commissioner Matherly. A vote was taken and the motion passed unanimously.

Commissioner Marquardt read several statutes pertaining to the Commission sitting as the Canvass Board and what responsibilities they have. Robyn Holmes, County Clerk has cleared up all her concerns with the votes coming from certain addresses.



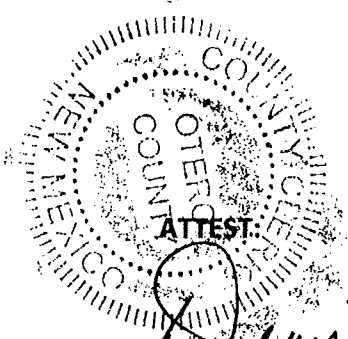
Commissioner Matherly thanked Ms. Holmes for answering all the questions that he had and checking on all the issues that he had. We don't have any facts in black and white that anything went wrong in the 2022 Primary Election.

Commissioner Griffin stated that we should be able to do an outside audit of the election without the attacks that were received. This is only because we stood up to the people at the top.

Commissioner Marquardt stated that if we don't sign the canvass, we can get fined, imprisoned, removed from office and the governor replace our seat. She believes that we can do the County good by remaining in our seat, rather than give them up to someone else.

**Commissioner Marquardt made a motion to approve to certify the Canvass of the 2022 Primary Election. The motion was seconded by Commissioner Matherly. A vote was taken and the motion passed 2-1 with Commissioner Griffin voting against.**

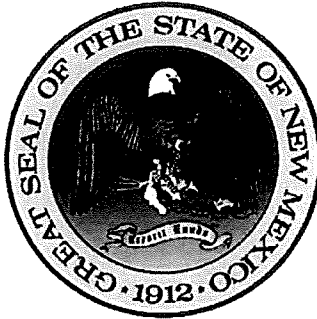
The Chairman recessed the Canvassing Board and returned to Regular Session. There being no further business before the Board, the Chairman adjourned the Meeting at 4:21 p.m.



*Denise Guerra*  
Robyn Holmes, County Clerk *Chief Deputy*

APPROVED:

*Vickie Marquardt*  
Vickie Marquardt, Chairman



## CERTIFICATION OF CANVASS RESULTS

We, the undersigned Board of County Commissioners acting as the Board of Canvassers of Otero County, State of New Mexico, canvass the Primary Election held in said county, June 7, 2022, certify that the canvass results text file sent to the office of secretary of state is a correct canvass of returns of said election.

WITNESS the Honorable Board of County Commissioners, June 17, 2022.

ATTEST:



*Robyn Holmes*

Clerk

*Ronald Matthee*

Member

*Wade Mangrum*

Chairman



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Member

SEAL



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**Resolution No. 07-14-22/111-06**

**A Resolution on Election Certification**

**WHEREAS**, faith in our election process is essential to the functioning of our Republic; and

**WHEREAS**, doubts about election integrity threaten to tear our nation apart and dissuade participation in our electoral process; and

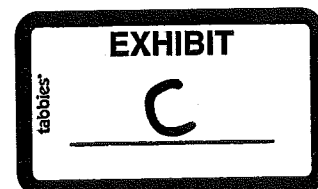
**WHEREAS**, a January 2022 poll by ABC News found only twenty percent of the public felt very confident in our election process; and

**WHEREAS**, Rasmussen polling reported in May 2022, that fifty five percent of voters believe cheating impacted the 2020 election and a significant majority believe election integrity will play an important role in the upcoming midterm elections; and

**WHEREAS**, election integrity is not a partisan issue; and

**WHEREAS**, in 2019, Democratic Senators Amy Klobuchar (D-MN), Mark Warner (D-VA), Jack Reed (D-RI) and Gary Peters (D-MI) held investigations and called attention to election security and voting machine vulnerabilities and threats; and

**WHEREAS**, the vulnerability of absentee/mail-in voting and drop boxes to fraud, forgery, coercion, and voter intimidation is well documented. In fact, the bipartisan 2005 report of the Commission on Federal Election Reform, chaired by



former President Jimmy Carter and former Secretary of State James Baker III concluded that “absentee ballots remain the largest source of potential voter fraud;” and

**WHEREAS**, New Mexico in response to the COVID-19 Pandemic adopted policies and procedures that increased the potential risk of election fraud; and

**WHEREAS**, the risk posed by the pandemic has passed, so has the need for policies that made our elections less secure; and

**WHEREAS**, concerns about election integrity and security are at all-time highs; and

**WHEREAS**, trust in election processes and procedures are at all-time lows; and

**WHEREAS**, it is the desire of the Board of County Commissioners of Otero County to improve both the actual security of elections, and the perceived security of elections in order to restore trust and confidence in our election system.

**WHEREAS**, the Board of County Commissioners of Otero County request the following actions take place in order to secure and protect the vote of every legal voter in Otero County. This is a non-partisan request which should be supported by every legal voter regardless of party affiliation. Every government official should support these measures because they are intended to strengthen the security of our elections and restore the trust of the electorate in the election process. The state of New Mexico and the Secretary of State (SoS), by this resolution, are on notice that the only way that the Board of County Commissioners of Otero County can vote in good conscious to certify the 2022 General Election is if the following requests are fulfilled. If these simple requests cannot be fulfilled the certification process should be changed so that the County Canvassing Board is not coerced by threat to certify unsecure elections under duress.

**NOW, THEREFORE BE IT RESOLVED** BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF **OTERO** that it requests the New Mexico Legislature adopt the following changes to the New Mexico Election Code and until such measures are adopted the board is in agreement that it will not certify the 2022 General Election:

1. **Prohibit the Use of Ballot Drop Boxes.** Ballot drop boxes – even those that are electronically surveilled – pose an unacceptable risk to the election process by making illegal ballot harvesting easier and should be prohibited.
2. **Transparency and Access to Dominion Voting Machines.** It is indisputable that machines and electronic systems can be remotely accessed and hacked through a number of means and methods. This is proven by ransoms paid to hackers accessing our energy and food sectors. The SoS can restore trust and confidence in voting machines through transparency by allowing them to be examined to determine if they contain network capable hardware including modems. Examination of machines should be open to independent forensic experts and elected officials.
3. **Allow Counties the Option to Hand Count Ballots.** Establishing procedures for counties to conduct hand recounts will help assuage those segments of the electorate that are distrustful of machine tabulators. Further, this action acts as check against potential bad actors seeking to manipulate election result through nefarious means.
4. **Provide County Canvassing Boards the Authority to Use Discretion When Certifying Elections.** Currently the duties of the County Canvassing Board are ministerial forcing members to certify election results

despite concerns or questions. The County Canvassing Board and the County Commissioners are the most direct representatives of their constituents. Considering the significant portion of the electorate with doubts about the electoral process, providing for discretionary certification at the local level is a measure that can be taken to restore confidence.

**PASSED, APPROVED AND ADOPTED** this 14th day of July, 2022.

**THE BOARD OF COUNTY COMMISSIONERS OF  
OTERO COUNTY, NEW MEXICO**

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Vickie Marquardt, Chairman

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Gerald R. Matherly, Vice-chairman

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Couy D. Griffin, Commissioner

Attest: \_\_\_\_\_

Robyn Holmes, County Clerk