

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



RAÚL TORREZ
ATTORNEY GENERAL

January 5, 2024

The Honorable Michelle Lujan Grisham
Governor, State of New Mexico
490 Old Santa Fe Trail Room 400
Santa Fe, NM 87501

Re: Protecting New Mexico Elections from Fake Electors and Similar Schemes

Dear Governor Lujan Grisham,

We share a deep commitment to the integrity of New Mexico's elections and to the vigilant protection of our democratic process. My office has completed its investigation into the fake elector scheme that followed the 2020 presidential election and the scheme's involvement of New Mexico. This investigation will not result in the filing of criminal charges in part because of a deficiency in New Mexico's election laws; as presently written, our laws fail to provide adequate protection against attempts to overturn the legitimate election results for President of the United States. Recognizing the limited scope of the upcoming budgetary legislative session, I write to request that you include this vital issue in a special message to the Legislature.

On November 24, 2020, you issued a Certificate of Ascertainment certifying the official election results and vote totals for the offices of President and Vice President of the United States. You certified that Joseph R. Biden and Kamala Harris of the Democratic Party received 501,614 votes for President and Vice President and identified the presidential electors for the Democratic Party. Donald J. Trump and Mike Pence of the Republican Party received 401,894 votes for President and Vice President and did not prevail in the election. Nonetheless, on December 14, 2020, five Republican Party presidential elector nominees signed a certificate of electoral votes and mailed it to the President of the United States Senate purporting to cast their ballots for Trump and Pence for President and Vice President. These individuals had no authority to execute or transmit this false certificate of electoral votes.

After I took office in January 2023, I tasked investigators and prosecutors in my office with conducting a comprehensive investigation to determine whether state charges should be filed against the fake electors or anyone else involved in the fake elector scheme. My investigators determined that New Mexico's electoral votes became a late target in a scheme by the Trump team to replace the valid electoral votes in seven states and to overturn the results of the election. By the time the Trump campaign contacted New Mexico's fake electors, the campaign had added conditional language to the certificate to satisfy concerns raised in another state. Based on this conditional language and the fake electors' belief that the certificate would have no effect in the absence of a successful lawsuit challenging New Mexico's election results, there is not enough evidence to establish that they had an intent to defraud in support of a charge of forgery. Nor is there a crime in the Election Code that would apply to the actions of the fake electors and the Trump campaign. But their actions nearly had dire consequences for our Nation and are at least partially to blame for the attack on the United States Capitol on January 6, 2021, that resulted in a loss of life, substantial property damage, and a challenge to our Nation's democracy.

In my office's Final Report, which is attached, I have specifically offered two proposed legislative changes that would deter similar conduct in the future. To protect against actions designed to overturn the results of our elections, I suggest expanding the scope of the crime of falsifying election documents under NMSA 1978, § 1-20-9 to include additional election documents while also eliminating an unnecessary mental state required by the statute. I also suggest creating a separate crime of falsely acting as a presidential elector.

These are issues of the utmost importance. I ask that you help New Mexico protect the integrity of its elections by including this important issue on the call.

Sincerely,

A handwritten signature in black ink, appearing to read 'RT', with a long horizontal stroke extending to the right.

Raúl Torrez
Attorney General

cc: Senator Mimi Stewart, President Pro Tempore of the New Mexico Senate
Representative Javier Martinez, Speaker of the New Mexico House of Representative