

BRIAN M. MCINTYRE
COCHISE COUNTY ATTORNEY
By: CHRISTINE J. ROBERTS
Chief Civil Deputy County Attorney
Arizona Bar No. 033718
P.O. Drawer CA
Bisbee, AZ 85603
(520) 432-8700

CVAttymeo@cochise.az.gov

Attorney for Cochise County and Lisa Marra, in her official capacity as Cochise County Elections Director

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA, TUCSON DIVISION**

Kathleen Hoffard,

Plaintiff,

v.

Cochise County, Arizona; Lisa Marra
In her official capacity as Director of
Cochise County Elections Department

Defendants.

No. 4:20-CV-00243-SHR

**STATEMENT OF FACTS IN
SUPPORT OF DEFENDANT'S
SUPPLEMENTAL BRIEFING
REQUESTING CONVERSION OF
MOTION TO DISMISS TO MOTION
FOR SUMMARY JUDGMENT**

**Assigned to the Honorable
Judge Scott H. Rash**

Pursuant to Federal Rules of Civil Procedure, Rule 56(c)(1), Defendants, Cochise County (the "County") and Lisa Marra, in her official capacity as Director of Cochise County Elections (collectively "Defendants") hereby submits the following statement of facts in support of Defendants' supplemental briefing requesting conversion of the Motion to Dismiss to Motion for Summary Judgment.

STATEMENT OF FACTS

1
2 1. All of the County's seventeen (17) Vote Centers are fully ADA accessible
3 and ADA compliant. All equipment utilized at the Vote Centers are fully ADA accessible.
4 (*See* Doc. 19-1, Declaration of Lisa Marra ("Marra Decl."), ¶ 6).

5
6 2. No pre-printed paper ballots are used at the seventeen (17) Vote Centers
7 throughout the County because the specific ballot style can be accessed via the
8 ExpressVote® machines. Further, there are over 300-700 different ballot styles for each
9 election, making it impossible and impracticable for the County to store paper copies of
10 each ballot style at every one of its Vote Centers. (*Id.*, ¶ 8).

11
12 3. The County does not have ballot on demand. Nor does the County have any
13 technology that would allow for specific, individualized ballots to be printed curbside.
14 (*Id.*, ¶ 9).

15
16 4. The County does not have the WIFI or internet capability and/or capacity to
17 have reliable and consistent ballot on demand at its seventeen (17) Vote Centers
18 throughout the mostly rural County. (*Id.*, ¶ 10).

19
20 5. Electronic e-pollbooks that are used to capture voters' signatures cannot be
21 disconnected from the Vote Centers' circuit to be taken curbside for a voter's signature
22 because when it is disconnected from the system, the *entire voting system* shuts down and
23 has to be restarted before voting can resume, which can take up to twenty (20) minutes.
24 (*Id.*, ¶ 11).

1 6. Curbside voting is no longer offered because of the potential for injury to
2 voters, poll workers and the voting machine equipment. (*Id.*, ¶ 12).

3 7. The touchscreen ExpressVote® machines are very heavy and contain very
4 sensitive components. Even though they are all on portable stands, they are not designed
5 to be moved in and out of the Vote Center facilities repeatedly for curbside voting, and
6 tend to tip over, which could cause damage to a disabled voter's vehicle or serious injury
7 to a disabled voter or to the poll worker moving the ExpressVote® machine. Simply
8 stated, it is not safe for poll workers to move these very top-heavy voting machines outside
9 to a vehicle. (*Id.*, ¶ 15).

11 8. Even though the PeakLogix CurbExpress™ by ReadyVote® cart may be
12 easier to move than the portable stands, the issue of the sensitive components remains
13 unchanged. Repeatedly moving the ExpressVote® machines causes technical problems
14 with the machines. Further, the carts will not always line up with the vehicles causing the
15 disabled voter to get out of the vehicle to use the ExpressVote® machine. Additionally,
16 the fact remains that the vast majority of the County's poll workers are elderly and these
17 elderly poll workers would still be required to physically move the ExpressVote®
18 machines, repeatedly, in and out of the Vote centers, creating the potential for the
19 ExpressVote® machine and cart to tip over, damaging equipment and potentially injuring
20 the poll worker and/or the vote. (*Id.*, ¶ 17).

21 9. To date, the County Elections Department has had to have sixty-two (62)
22 ExpressVote® machines repaired under the County's maintenance agreement, which
23
24
25

1 costs the County approximately \$22,000 per year. All of these repairs resulted from
2 routine movement for delivery, placement and pickup for use on Election Day. (*Id.*, ¶ 16)

3 10. Since the implementation of the Vote Centers, the elimination of curbside
4 voting, and over the course of eleven (11) Vote Centers and nineteen (19) Vote by Mail
5 elections and nearly 57,414 in-person voters, the County has only received two (2)
6 complaints or concerns, inclusive of Ms. Hoffard's complaint, about the elimination of
7 curbside voting. (*Id.*, ¶ 3).

9 11. The County offers various alternative means of voting. (*Id.*, ¶¶ 14, 19, 30).

10 12. On May 4, 2019, Ms. Hoffard filed a Complaint of Discrimination with the
11 Arizona Attorney General's Office, Division of Civil Rights Section ("ACRD"). On May
12 4, 2020, ACRD closed its investigation and issued a dismissal notice finding that "the
13 information obtained [was] not sufficient to establish violations of the statutes and that
14 further investigation is unlikely to produce such evidence." On information and belief,
15 Plaintiff requested that ACRD reopen the case. However, ACRD did not reopen the case.
16 (*Id.*, ¶¶ 32, 35-36).

17
18
19 RESPECTFULLY SUBMITTED this 29th day of March, 2021.

20 BRIAN M. MCINTYRE,
21 COCHISE COUNTY ATTORNEY

22 By: /s/ Christine J. Roberts
23 Christine J. Roberts
24 Chief Civil Deputy County Attorney
25

1 A copy of the foregoing emailed
2 this 29th day of March, 2021, to:

3 Rose Daly-Rooney
4 rdalyrooney@azdisabilitylaw.org

5 Maya Abela
6 mabela@azdisabilitylaw.org

7 Tamaraingsey In
8 sun@azdisabilitylaw.org

9 Meaghan Kramer
10 mkramer@azdisabilitylaw.org