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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kathleen Hoffard,

10 Plaintiff,

11 v.

12 County of Cochise, et al.,

13 Defendants.  
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No. CV-20-00243-TUC-SHR

**Order Re: Plaintiff's Motion to Compel  
Inspection**

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16 Pending before the Court is Plaintiff Kathleen Hoffard's Motion to Compel  
17 Inspection pursuant to Rule 37(a) of the Federal Rules of Civil Procedure. (Doc. 53  
18 ("Mot.")). Defendant Cochise County has responded (Doc. 55 ("Resp.")). and Plaintiff has  
19 replied (Doc. 56 ("Reply")). Plaintiff seeks an order: (1) compelling Defendants to allow  
20 her to complete inspection of Shiloh Christian Ministries ("Shiloh"); (2) granting her  
21 permission to supplement her ADA-compliance expert's report within ten days of  
22 completing the inspection; (3) awarding her sanctions for the expenses associated with the  
23 inspection, supplemental report, and resolving this Motion; and (4) granting any other relief  
24 the Court deems proper. (Mot. at 2.)

25 **I. BACKGROUND**

26 On January 21, 2022, Plaintiff served her Request for Entry Upon Land, pursuant  
27 to Federal Rule of Civil Procedure 34, requesting to inspect:

28 [A]ll 1[7] Vote Centers, permit an inspection of the parking lot  
and passenger drop-off area, the accessible route from the  
parking lot and the nearest public transportation stop to the

1 entrance, the entrance(s), the area(s) where lines are formed to  
2 enter the Vote Center, and the interior of the Vote Centers that  
3 the public and voters may enter on Election Day, including the  
4 restrooms.” (Doc. 50-1.)

5 Defendants objected and requested the Court (1) reschedule the inspection to a different  
6 date and (2) “limit Plaintiff’s inspection of voting centers in Cochise County to a total of  
7 three voting centers in Sierra Vista.” (Doc. 50-2.) The Court limited Plaintiff’s inspection  
8 to the three Vote Centers in Sierra Vista to take place “at a time the parties mutually  
9 agree[d] upon.” (Doc. 50-2.)

10 The parties scheduled the inspection of the three vote centers for March 31, 2022,  
11 and agreed to 1 hour per center, starting with Shiloh at 9:30 A.M. (Doc. 53-1 (“Kramer  
12 Decl.”), Exh. D.) When scheduling the inspection, Defense Counsel noted the “need for  
13 flexibility” in the inspection times, and acknowledged: “Everyone understands that an  
14 inspection may run long or short. That is fine.” (*Id.*) Apparently, the inspection at Shiloh  
15 took longer than the other vote centers and longer than the parties expected, as Shiloh had  
16 more restrooms than the other centers. (Mot. at 5; Kramer Decl. ¶ 8.)

17 Plaintiff’s experts began with a general tour of Shiloh, which took about 8 minutes.  
18 (0331220937.mp4.) During this time, Plaintiff’s experts walked over to a restroom on the  
19 opposite side of the building from the voting rooms and Plaintiff’s Counsel informed them  
20 that voters use the restrooms on the other side. (*Id.* at 6:33.) Before the inspection began,  
21 Plaintiff’s Counsel suggested the experts “should survey the [restrooms] that are available  
22 to voters,” and when one of Plaintiff’s experts said, “all five,” Plaintiff’s Counsel  
23 confirmed all five should be inspected. (*Id.* at 7:50–8:00.) Plaintiff’s experts then walked  
24 to the restroom furthest from the voting rooms and began their survey of that restroom  
25 about 8 minutes and 47 seconds into the inspection. (*Id.* at 8:00–8:47.) The remaining 2  
26 minutes of the first video show Plaintiff’s experts surveying the restroom, the second video  
27 shows the experts spending 5 minutes and 28 minutes surveying the restroom, and the third  
28 video shows the experts surveying the restroom for an additional 32 minutes and 30  
seconds. (0331220937.mp4; 033122948.mp4; 02331220955.mp4.)

1 About 32 minutes into the third video, Plaintiff's experts explained there are a  
2 "minimum of eighty questions when there's not an ambulatory stall," and asked, "so  
3 timewise, what are we looking at right now?" (Resp. Exh. B p. 3, referring to  
4 0331220955.mp4 at 32:30.) Plaintiff's Counsel answered they wanted to be "on [their]  
5 way in half an hour" and said, "it's okay with me if this is the only bathroom we do." (*Id.*;  
6 0331220955.mp4 at 32:40–58.) Plaintiff's Counsel further stated, "I'd prefer us to move  
7 beyond bathrooms right now" and indicated restrooms could be revisited if they had time  
8 at the end. (*Id.*; 0331220955.mp4 at 32:40–58.) The inspection then moved to the entrance  
9 of the voting area and the voting rooms, which lasted about 8 minutes. (*Id.*;  
10 0331221025.mp4; 0331221028.mp4.) After finishing the voting area and voting rooms,  
11 one of Plaintiff's experts said, "the parking lot won't take that long actually," while the  
12 other said it would take 30 minutes; Plaintiff's Counsel stated, "we don't have 30 minutes,  
13 so we can do a few spots." (0331221028.mp4 at 8:08–20.) When Plaintiff's Counsel asked  
14 the experts if it would be okay to leave the building and move to the parking lot, the expert  
15 said they could "do overview only" of the family restroom in 3 minutes, which they did.  
16 (*Id.* at 8:23–8:52; 0331221037.mp4; 0331221038.mp4.) After Plaintiff's experts  
17 completed their overview of the family restroom, they moved outside and started inspecting  
18 the parking lot at 10:38 A.M. (0331221038.mp4 at 00:00–2:44.) Based on the videos  
19 referenced in Defendants' declarations, it appears inspection of the parking lot went on for  
20 at least 6 minutes and 30 seconds, which indicates the inspection at Shiloh went until at  
21 least 10:48 A.M. And, based on the videos, it appears Plaintiff's experts spent 38 minutes  
22 inspecting the one restroom.

23 According to Defendants, as the end of the hour drew near, Defense Counsel twice  
24 warned Plaintiff's Counsel that time was running short. (Resp. Exhs. A–C.) When the  
25 hour ended and Plaintiff's Counsel asserted the parties had agreed to be flexible with time,  
26 Defense Counsel noted Shiloh is private property, so everyone had to leave. (Resp. Exhs.  
27 A, C.)

28 During the parties' lunch break, Plaintiff's Counsel suggested the parties return to  
Shiloh to finish inspecting the other two women's restrooms and parking lot, after

1 completing the inspection of the third vote center. (Kramer Decl. ¶ 20; Mot. Exh. E.)  
 2 Plaintiff's Counsel said she expected the remainder of the Shiloh inspection could be  
 3 completed within 1 hour after the church reopened. (*Id.*) When Defense Counsel rejected  
 4 that proposal, Plaintiff's Counsel contacted the Court pursuant to the Scheduling Order.  
 5 (Mot. Exh. F.) After conducting a telephonic conference that same day, the Court declined  
 6 to decide the matter and encouraged the parties to work together to reach a solution but  
 7 noted the parties could file a motion and seek sanctions, if appropriate.

8 After the conference with the Court, Plaintiff's Counsel offered a new proposal,  
 9 asking to return to Shiloh that day for 30 minutes and indicated Plaintiff would file a motion  
 10 and seek sanctions if the parties could not reach an agreement that day. (Mot. Exh. G.)  
 11 The parties apparently reached no such agreement, as Plaintiff's Motion to Compel is now  
 12 pending before the Court.<sup>1</sup>

## 13 II. DISCUSSION

14 Generally, the scope of discovery allows parties to “obtain discovery regarding any  
 15 nonprivileged matter that is relevant to any party's claim or defense and proportional to the  
 16 needs of the case, considering the importance of the issues at stake in the action, the amount  
 17 in controversy, the parties' relative access to relevant information, the parties' resources,  
 18 the importance of the discovery in resolving the issues, and whether the burden or expense  
 19 of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Under  
 20 Rule 37(a)(3)(B)(iv) of the Federal Rules of Civil Procedure, “[a] party seeking discovery  
 21 may move for an order compelling . . . inspection” when “a party fails to produce  
 22 documents or fails to respond that inspection will be permitted—or fails to permit  
 23 inspection—as requested under Rule 34.” However, the Court must limit the extent of

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 25 <sup>1</sup>Defendants' arguments that the Court should summarily deny the Motion because  
 26 the “only discussion about this Motion was a non-specific threat from Plaintiff's Counsel  
 27 that she would file a discovery motion and obtain sanctions,” and “Plaintiff has never  
 28 provided the Court with an opportunity to resolve her new request for an order for a second  
 inspection” are spurious at best. (Resp. at 5–6.) Not only do Plaintiff's emails between  
 counsel plainly disprove that, but Defense Counsel will recall the Court specifically told  
 the parties they could file whatever motions they deemed appropriate—and seek  
 sanctions—if the parties were unable to resolve this issue without Court involvement.  
 (Kramer Decl. Exhs. A, E, F.)

1 discovery “if it determines . . . the proposed discovery is outside the scope permitted by  
2 Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(iii).

3 As noted above, Plaintiff requested to inspect Shiloh pursuant to Rule 34. Plaintiff  
4 argues Defendants waived any objection to the scope of the inspection because Defendants  
5 did not object to the inspection of restrooms, despite Plaintiff clearly stating she intended  
6 to inspect those. (Doc. 53 at 2–3.) Plaintiff also asserts her request to complete the  
7 inspection meets the “low bar” for discovery of relevant information because the inspection  
8 is relevant to evaluating Defendants’ defense that all vote centers are accessible and ADA-  
9 compliant. (Mot. at 11.) Plaintiff further asserts: the civil rights issue at stake in this  
10 action is “of critical importance”; Plaintiff lacks access to Shiloh because Shiloh “is a vote  
11 center contractually controlled by Cochise County”; completing inspection is critical  
12 “because no other form of discovery or examination at trial will adequately answer the  
13 unresolved issues of fact related to Shiloh’s . . . accessibility and compliance”; and the  
14 expense “for the additional hour to inspect . . . would be the cost of any hourly staff to  
15 attend,” which Defendants could mitigate depending on how they choose to staff the  
16 supervision of the inspection. (Mot. at 11–14.)

17 In their Response, Defendants assert the video of the inspection “belies Plaintiff’s  
18 arguments” and demonstrates Plaintiff’s Counsel and experts “wasted [their] time.” (Resp.  
19 at 6.) Specifically, Defendants emphasize that Plaintiff’s experts chose to inspect a  
20 restroom far from the voting rooms, Defense Counsel warned Plaintiff’s Counsel twice  
21 they were coming up on the 1 hour allotted for the inspection, and Plaintiff’s Counsel failed  
22 to correct course. (*Id.*) Defendants further contend the video of the inspection shows the  
23 experts believed they had adequately inspected the voting area and shows Plaintiff’s  
24 Counsel saying she was “okay” with having only one restroom inspected. (*Id.*) With  
25 respect to the allegation that the parties agreed on being flexible with timing, Defendants  
26 argue “the only agreement was that there could be flexibility if necessary. This was a  
27 professional courtesy—not an alternative schedule” or “invitation for Plaintiff to conduct  
28 a full-scale ADA audit of areas of the buildings unrelated to her claim.” (*Id.* at 7.)  
Defendants argue the decision to “engage in an intrusive fishing expedition for potential

1 ADA violations unrelated to the complaint did not create any need for additional time or  
2 justify a request for ‘flexibility,’” and there was no need for flexibility because “Plaintiff  
3 had plenty of time to inspect the things that matter to this case.” (*Id.*) Finally, Defendants  
4 argue inspection of the restrooms is beyond the scope of discovery because: (1) the  
5 Complaint contains no allegation regarding restrooms; (2) even if Plaintiff complained of  
6 the restrooms, as a religious organization, Shiloh is exempt from ADA accessibility  
7 requirements, and even when the building is used as a vote center, “it is not subject to the  
8 ADA requirements for non-religious organizations regarding restrooms.” (*Id.*)

9 Although Defendants appear to have put the accessibility and ADA-compliance of  
10 their vote centers at issue when they alleged “curbside voting is no longer offered in  
11 Cochise County because all of the County’s seventeen (17) Vote Centers are fully ADA  
12 accessible and ADA compliant, all equipment utilized at the Vote Centers are fully ADA  
13 accessible, and the County is not required to offer curbside voting in this circumstance,”  
14 this overly broad response does not put at issue information that is not necessary or relevant  
15 to the actual claims made in the Complaint. (Doc. 32 ¶ 42.) By Plaintiff’s own argument  
16 in her earlier pleadings, this defense appears to be irrelevant to her claims, as her claims  
17 are “based on the reasonable modification provisions of the ADA, Section 504, and ACRA,  
18 not on the ADA accessibility requirements.” (Doc. 12 at 5.) That is, Plaintiff has asserted  
19 that even if Defendants can show its vote centers are accessible and ADA-compliant, she  
20 still has a claim based on Cochise County’s blanket ban on curbside voting as a reasonable  
21 modification. Accordingly, the accessibility of the vote centers—and, in particular, the  
22 restrooms—is not “importan[t] . . . in resolving the issues” raised in Plaintiff’s Complaint.  
23 *See* Fed. R. Civ. P. 26(b)(1). Considering this and the other Rule 26(b)(1) factors—  
24 particularly the needs of the case and that the burden and expense of inspection outweighs  
25 the likely benefit, the Court concludes the inspection Plaintiff seeks is beyond the scope of  
26 discovery. *See id.* Although Plaintiff is correct in pointing out Defendants failed to timely  
27 object to the scope of the request, because the Court finds the request is outside the scope  
28 permitted by Rule 26(b)(1), the Court must limit the extent of discovery under Rule  
26(b)(2)(C)(iii).

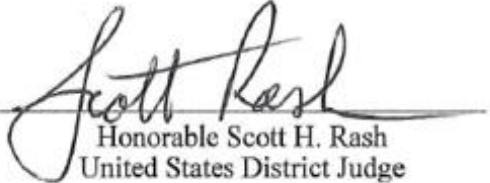
1 Moreover, the Court has reviewed the videos submitted by Defendants and based on  
2 the timeline of the videos, it appears the inspection did not end until almost 20 minutes  
3 after the time agreed upon by the parties. The videos also show Plaintiff's experts spent  
4 almost two-thirds of the allotted hour to inspect a restroom that is not mentioned in  
5 Plaintiff's Complaint. That Plaintiff's Counsel allowed their experts to spend most of their  
6 time inspecting something that is not important to the resolution of the claims at issue and,  
7 as a result, failed to leave sufficient time to inspect relevant areas, is not a circumstance  
8 that warrants further flexibility, much less a Court order compelling further inspection.

9 Accordingly,

10 **IT IS ORDERED** Plaintiff's Motion to Compel Inspection (Doc. 53) is **DENIED**.

11 Dated this 10th day of June, 2022.

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Honorable Scott H. Rash  
United States District Judge