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11 Elections Director*

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

14 Kathleen Hoffard,)	No. 4:20-CV-00243-SHR
)	
15 Plaintiff,)	
)	STATEMENT OF FACTS IN
16 v.)	SUPPORT OF DEFENDANT’S
)	SUPPLEMENTAL BRIEFING
17 Cochise County, Arizona; Lisa Marra)	REQUESTING CONVERSION OF
18 In her official capacity as Director of)	MOTION TO DISMISS TO MOTION
Cochise County Elections Department)	FOR SUMMARY JUDGMENT
)	
)	Assigned to the Honorable
19 Defendants.)	Judge Scott H. Rash
)	

20 Pursuant to Federal Rules of Civil Procedure, Rule 56(c)(1), Defendants, Cochise
21 County (the “County”) and Lisa Marra, in her official capacity as Director of Cochise
22 County Elections (collectively “Defendants”) hereby submits the following statement of
23 facts in support of Defendants’ supplemental briefing requesting conversion of the Motion
24 to Dismiss to Motion for Summary Judgment.
25

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).

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

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

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