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9 **IN THE UNITED STATES DISTRICT COURT**  
 10 **FOR THE DISTRICT OF ARIZONA**

11 Kathleen Hoffard, 12 13 <b>Plaintiff,</b> 14 vs. 15 Cochise County, Arizona; Lisa Marra, 16 in her official capacity as Director of 17 Cochise County Elections Department,  <b>Defendants.</b>	Case Number: 4:20-cv-00243-SHR  <b>PLAINTIFF’S MOTION FOR          PRELIMINARY INJUNCTION          AND EXPEDITED HEARING</b>  <i>(Assigned to the Hon. Scott H. Rash)</i>
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18 Plaintiff, by and through counsel, respectfully moves the Court to enter a  
 19 Preliminary Injunction under Fed. R. Civ. P. 65 ordering Defendants to make a reasonable  
 20 modification to their policy of a blanket ban on curbside voting during in-person voting,  
 21 or provide a substantially equivalent reasonable modification, at Defendants’ Vote  
 22 Centers for the November 2020 General Election. This Motion is supported by Plaintiff’s  
 23 declaration and a Memorandum of Law of Points and Authorities.

24 In support of her Motion, Plaintiff states:

25 1. Plaintiff has rheumatoid arthritis and takes medication that suppresses her  
 26 immune system. She is a registered voter in Cochise County who desires to cast a vote  
 27 in-person using curbside voting or a substantially equivalent reasonable modification, on  
 28

1 Election Day at one of Defendants' Vote Centers in the November 2020 General Election.  
2 *See* Declaration of Kathleen Hoffard at ¶¶ 1, 13-15, Exhibit 1 ("Hoffard Decl.").

3 2. Plaintiff is likely to succeed on the merits of her claims under the Americans  
4 with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section  
5 504"), and the Arizona Civil Rights Act ("ACRA"), because Defendants discriminate  
6 against her and other voters based on disability in their refusal to provide curbside voting,  
7 or a substantially equivalent reasonable modification, for qualified individuals with  
8 disabilities who wish to participate in in-person voting on Election Day.

9 3. Absent a preliminary injunction, Plaintiff and other voters with disabilities  
10 will suffer irreparable harm in the 2020 General Election. Specifically, Plaintiff will be  
11 forced to navigate the parking lot and Vote Center despite significant pain in walking,  
12 standing and, unlike in prior years, the absence of a preliminary injunction forces Plaintiff  
13 to risk exposure to COVID-19 at a County Vote Center to exercise her right to cast a  
14 ballot by in-person voting. Hoffard Decl. at ¶ 13-15.

15 4. The balance of equities supporting the grant of preliminary injunctive relief  
16 tips in favor of Plaintiff. In the absence of a preliminary injunction, Plaintiff and other  
17 voters whose disabilities place them at greater risk of serious health complications or  
18 death from COVID-19 will suffer injury to their right to equal access to voting on Election  
19 Day when there are rapidly deployable, free or limited cost ways to provide curbside  
20 voting as a reasonable modification for qualified individuals with disabilities.

21 5. The public interest is in upholding the right of Plaintiff and other voters  
22 with disabilities to have equal access to the in-person voting process, especially  
23 considering the ongoing COVID-19 pandemic.

24 6. On October 1 and October 5, 2020, Plaintiffs, through counsel, conferred  
25 with Defendants' counsel to try and avoid the need to request a Preliminary Injunction.  
26 Defendants have not agreed to Plaintiff's request to provide curbside voting, or a  
27 substantially equivalent reasonable modification, during the upcoming General Election  
28

1 on November 3, 2020. *See* Declaration of Rose Daly-Rooney at ¶¶ 9-10, Exhibit 2 (“Daly-  
2 Rooney Decl.”)

### 3 MEMORANDUM OF POINTS OF AUTHORITIES

#### 4 INTRODUCTION

5 Curbside voting is offered at polling places across America as a reasonable  
6 modification for voters with disabilities, allowing them the opportunity to vote in person  
7 like their peers. This modification is especially important for voters whose physical  
8 disabilities or immune system deficiencies make it painful, dangerous, or impossible to  
9 safely enter their polling places to vote. During the COVID-19 pandemic, it is more  
10 important than ever that jurisdictions provide the reasonable modifications necessary to  
11 ensure equal access to in-person voting for people with disabilities, including curbside  
12 voting.

13 In Cochise County, Arizona, voters with disabilities who want to vote at the polls  
14 but are unable to safely enter Vote Centers to do so, do not have the option of voting  
15 curbside and face imminent disenfranchisement. Since 2017,<sup>1</sup> Cochise County’s blanket  
16 ban on curbside voting has prevented voters with disabilities like Hoffard from being able  
17 to safely vote in person, in violation of the ADA, 42 U.S.C. § 12131 *et seq.*; Section 504,  
18 29 U.S.C. § 794; and ACRA, A.R.S. § 41-1421(B). Defendants’ blanket ban eliminates a  
19 recognized reasonable modification that many individuals with disabilities may need in  
20 order to have equal access to the in-person voting process to exercise their constitutional  
21 right to vote.

22 For the reasons set forth herein, Hoffard is entitled to a preliminary injunction  
23 enjoining Cochise County’s curbside voting ban because: (1) she is likely to succeed on  
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25  
26 <sup>1</sup> Cochise County implemented its ban on curbside voting on June 19, 2017, an election off year  
27 where the only election conducted after the ban involved a school district override *See* Cochise  
28 County, *Previous Election Results* [https://www.cochise.az.gov/elections/previous-election-  
results](https://www.cochise.az.gov/elections/previous-election-results) (last visited Sept. 9, 2020). In 2018, Hoffard became aware of the ban when she requested  
curbside voting to vote in the 2018 Mid-Term Election. Hoffard Decl. at ¶ 6.

1 the merits, (2) she will suffer irreparable harm in the absence of an injunction, (3) an  
 2 injunction is in the public interest, and (4) the balance of equities tips in her favor.

### 3 **FACTS**

#### 4 **A. Plaintiff Desires a Reasonable Modification to Vote in Person.**

5 Hoffard is an individual living with severe physical disabilities. Hoffard Decl. at ¶  
 6 2. She has spinal stenosis (lumbar and cervical spondylosis), rheumatoid arthritis,  
 7 osteoarthritis, spondylolisthesis of the lumbar region, and degenerative disc disease.<sup>2</sup> *Id.*  
 8 at ¶ 2-3. As a result of these conditions, Hoffard is substantially limited in the major life  
 9 activities of standing, walking, and musculoskeletal function. *Id.* at ¶ 2. Hoffard also  
 10 experiences numbness throughout her body and problems balancing because of these  
 11 disabilities. *Id.* at ¶ 5. She always uses a cane as an assistive device outside her home and  
 12 a walker when extensive walking is required. *Id.* But walking even short distances can  
 13 cause Hoffard great pain and physical distress because of these disabilities. *Id.* at ¶ 4.  
 14 Hoffard also takes medication to manage her rheumatoid arthritis which suppresses her  
 15 immune system. *Id.* at ¶ 3. As a result, Hoffard is also is substantially limited in the major  
 16 life activity of immune system function. *Id.* This may also place her at higher risk of  
 17 severe illness from COVID-19, the disease caused by the novel coronavirus SARS-CoV-  
 18 2. *Id.*

19  
 20 As a result of her disabilities, Hoffard seeks curbside voting, or a substantially  
 21 equivalent reasonable modification, to have equal access to vote in person. *Id.* at ¶ 13-15.  
 22 Due to her disabilities, Hoffard participated in curbside voting in Cochise County in  
 23 elections for years prior to the 2018 Mid-Term Election. *Id.* at ¶ 6.

24 A Mid-Term Election was held across the United States, and in Cochise County,  
 25 on November 6, 2018. On that day, Hoffard went to the Vote Center located at the United  
 26 Methodist Church at 3225 St. Andrews Dr., Sierra Vista, AZ 85650, to vote. *Id.* at ¶ 7.

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27  
 28 <sup>2</sup> At the time of the 2018 election, Hoffard also experienced drop foot. Hoffard Decl. at ¶ 11.

1 When Hoffard arrived, she was told by a poll worker that curbside voting was not  
2 available at that location. *Id.* She then phoned the Cochise County Elections Department  
3 and spoke with an employee named Ross Romero. *Id.* at ¶ 8. She was told by Mr. Romero  
4 that curbside voting would not be available at any polling location in Cochise County  
5 because all the vote centers in the County were compliant with the Americans with  
6 Disabilities Act. *Id.* Finally, Hoffard went to a second Vote Center, Shiloh Christian  
7 Ministries, located at 1519 S. Ave. Del Sol, Sierra Vista, AZ 85635, to vote. *Id.* at ¶ 9.  
8 Hoffard was told in-person by a poll worker there that curbside voting was not available  
9 at that location. *Id.* No other reasonable modifications were offered to her by Mr. Romero  
10 or any of the Vote Center poll workers. *Id.* at ¶¶ 7-9.

11 After also being informed by poll workers at the Shiloh Christian Ministries Vote  
12 Center that curbside voting was not available, Hoffard was faced with the choice of being  
13 disenfranchised or struggling to exit her vehicle and navigate to the polling location in  
14 order to vote. Hoffard chose the latter. *Id.* at ¶ 10.

15 Hoffard experienced great physical pain and fatigue while using her walker to walk  
16 from the parking space where she parked her car to the entrance of the polling location,  
17 and through the polling location to the polling booth. *Id.* at ¶ 11. Due to disability-related  
18 pain, fatigue, and balance concerns, she had to stop for several breaks to rest. *Id.* Hoffard  
19 also had to navigate pavement in the parking lot of the polling location that was difficult  
20 to walk on due to disabilities, and an interior of the polling location filled with small area  
21 rugs, which posed trip hazards for her as she navigated over them in her walker. *Id.* While  
22 Hoffard managed to eventually cast her ballot on November 6, 2018, she did so despite  
23 great difficulty and pain she experienced throughout the in-person voting process in the  
24 absence of a reasonable modification for curbside voting. *Id.* at ¶ 12.

25 Hoffard requires a reasonable modification that allows her to vote in person  
26 without having to exit her vehicle or navigate the parking lot and polling location, as this  
27 causes Hoffard significant difficulty and pain due to her disabilities. *Id.* at ¶ 13. Hoffard  
28 plans to vote in person in all upcoming elections in Cochise County, including the general

1 election scheduled for November 3, 2020. *Id.* at ¶ 14. Hoffard believes in the tradition of  
 2 voting in-person on Election Day and wishes to cast her vote this way. *Id.* at ¶ 16. To  
 3 Hoffard, voting in any other format would not feel the same. *Id.* In addition to the other  
 4 reasons associated with her disabilities, based on current medical knowledge, Hoffard  
 5 also needs the reasonable modification to avoid an increased risk of contracting COVID-  
 6 19 due to her status as a person with suppressed immune function. *Id.* at ¶ 14.

7 **B. Cochise County’s Blanket Ban on Curbside Voting.**

8 Although Defendants previously provided curbside voting for people with  
 9 disabilities, in 2017, they instituted a blanket ban on curbside voting, thus eliminating a  
 10 reasonable modification for people with disabilities who are unable to enter or navigate  
 11 Vote Centers on Election Day. Cochise County included the following statement in its  
 12 “Poll worker’s Training Handbook” for the 2020 Presidential Preference Election,  
 13 published on the County’s public website:

14 CURBSIDE VOTING (County Policy effective 2017): Curbside voting is  
 15 allowed when a Vote Center is not ADA accessible. ALL 17 VOTE  
 16 CENTERS IN COCHISE COUNTY ARE ADA ACCESSIBLE PER  
 FEDERAL GUIDELINES. **CURBSIDE VOTING IS NO LONGER**  
**OFFERED** as an additional service.

17 Cochise County “Poll worker’s Training Handbook” for the 2020 Presidential Preference  
 18 Election at 27<sup>3</sup>, available at [https://www.cochise.az.gov/sites/default/files/elections/](https://www.cochise.az.gov/sites/default/files/elections/PPEPollWorkerHandbook_Final.pdf)  
 19 [PPEPollWorkerHandbook\\_Final.pdf](https://www.cochise.az.gov/sites/default/files/elections/PPEPollWorkerHandbook_Final.pdf) (2020 PPE Handbook) (last visited Oct. 4, 2020)  
 20 (emphasis in original).

21 The Cochise County public website also includes the following statement  
 22 concerning curbside voting: “All vote centers in use in Cochise County are fully ADA  
 23 compliant under Federal law. As such, disabled voters are welcome into the polling  
 24 locations to cast their vote and curbside voting is not required. Because there are no pre-  
 25 printed paper ballots at our vote centers, all voters are required to vote on the electronic  
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27 <sup>3</sup> Page numbers for this document refer to the PDF page numbers, not the printed page  
 28 numbers, which are not consecutive.

1 machines which are not able to be moved outside, or to the curb, due to the sensitive  
2 computer equipment inside the machines.” *Cochise County Arizona: Elections FAQs –*  
3 *I’m disabled – how can I vote?*, available at: [https://www.cochise.az.gov/elections/](https://www.cochise.az.gov/elections/elections-faqs)  
4 [elections-faqs](https://www.cochise.az.gov/elections/elections-faqs) (last visited Oct. 4, 2020).

5 Cochise County also states that curbside voting cannot be offered “because of  
6 potential injury to Voters, Poll workers, and equipment” and because the number of ballot  
7 styles would make it difficult to have paper ballots on hand. *See*. 2020 PPE Handbook at  
8 27.

9 **C. If Necessary, Commercially Available, Low Cost Options Exist to Provide**  
10 **Curbside Voting as a Reasonable Modification.**

11 There is equipment to transport voting machines or alternatively, to print paper  
12 ballots, that is commercially available at moderate to minimal cost. Carts specifically  
13 designed to make it even easier to move voting machines for curbside voting are  
14 commercially available.<sup>4</sup> *See* PeakLogix CurbExpress™ by ReadyVote®, [https://www.](https://www.peaklogix.com/products/curbside-voting/)  
15 [peaklogix.com/products/curbside-voting/](https://www.peaklogix.com/products/curbside-voting/) (last visited Oct. 4, 2020). According to the  
16 manufacturer, this cart is designed to be compatible with the ExpressVote ballot marking  
17 device that Cochise County (and many other Arizona counties) use as accessible voting  
18 machines at all its Vote Centers. It is designed for the ExpressVote machine to be able to  
19 be fastened to the cart with screws, in order to ensure it is secure, and is also designed to  
20 be able to traverse all types of terrain (grass, gravel, snow, sand, etc.) and be easily  
21 maneuvered by a single poll worker. *See* Daly-Rooney Decl. at ¶ 4. The base rate for this  
22 cart is \$615 per unit and is available with add-on accessories to shield the device from the  
23 elements for \$795 per unit. *Id.* at ¶ 5. Additionally, ballot printers can be used to print  
24 paper ballots at Vote Centers, which would allow voters who need to vote curbside to  
25 vote the appropriate paper ballot from their vehicle. *See, e.g.*, Election Systems and

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26 <sup>4</sup> In addition to the availability of carts, it must be noted that the ExpressVote machines that  
27 Cochise County uses are, according to the manufacturer, “small, lightweight and easy to move.”  
28 *See* ExpressVote One-Sheet at 2, available at [https://www.essvote.com/wp-](https://www.essvote.com/wp-content/uploads/2020/09/ExpressVote-Marker_One-Sheet.pdf)  
[content/uploads/2020/09/ExpressVote-Marker\\_One-Sheet.pdf](https://www.essvote.com/wp-content/uploads/2020/09/ExpressVote-Marker_One-Sheet.pdf) (last visited Oct. 4, 2020).

1 Software, *Ballot on Demand® Solution*, [https://www.essvote.com/products/ballot-on-](https://www.essvote.com/products/ballot-on-demand/)  
2 demand/ (last visited Oct. 4, 2020).

3 Other Arizona counties, which use the same electronic voting equipment as  
4 Cochise County, also provide curbside voting.<sup>5</sup> Other jurisdictions across the country also  
5 use the same voting equipment that Cochise County uses to provide Election Day curbside  
6 voting.<sup>6</sup>

### 7 **C. The COVID-19 Pandemic Makes Voting in Person More Risky.**

8 The COVID-19 pandemic has altered the lives of Arizonans, particularly  
9 Arizonans with disabilities. On March 11, 2020 Governor Ducey declared a State of  
10 Emergency for the State of Arizona, and the Arizona Department of Health Services  
11 (“ADHS”) urged citizens to take extra precautions to keep the spread of the virus at a  
12 minimum. Among these recommendations is to avoid close contact with others and to  
13 wear masks in public. ADHS, *What Everyone Needs to Do*,  
14 [https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-](https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-what-everyone-needs)  
15 [epidemiology/index.php#novel-coronavirus-what-everyone-needs](https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-what-everyone-needs) (last visited Oct. 4,  
16 2020).

17 The United States Centers for Disease Control and Prevention (“CDC”) published  
18 a list of “certain underlying medical conditions” that place an individual at an increased  
19 risk of severe illness if an individual contracted the virus. These conditions include:  
20 cancer, chronic kidney disease, chronic obstructive pulmonary disease,  
21 immunocompromised state from organ transplant, obesity, serious heart conditions, sickle

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22  
23 <sup>5</sup> See, e.g., Pinal County, *Voters with Disabilities*, available at <https://www.pinalcountyyaz.gov/elections/pages/voterswithdisabilities.aspx> (last visited Oct. 4, 2020); Santa Cruz County, *Voters with Disabilities*, available at <https://www.santacruzcountyyaz.gov/693/Voters-with-Disabilities> (last visited Oct. 4, 2020). For a list of counties and election software currently in use, see Arizona Secretary of State, *2020 Election Cycle / Voting Equipment*, available at [https://azsos.gov/sites/default/files/2020\\_0709\\_Election\\_Cycle\\_Voting\\_Equipment.pdf](https://azsos.gov/sites/default/files/2020_0709_Election_Cycle_Voting_Equipment.pdf) (last visited Oct. 4, 2020).

27 <sup>6</sup> See, e.g., Dallas County Elections Department, *What is Curbside Voting?*, available at <https://www.dallascountyvotes.org/election-day-voting/> (last visited Oct. 5, 2020) (“Poll worker will take the designated Express Vote device to the voter’s vehicle”).  
28



1 cell disease, and type 2 diabetes. CDC, *People with Certain Medical Conditions* (updated  
2 Aug. 14, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/  
3 people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (last visited Oct. 4, 2020). According to the CDC,  
4 based on current data and information about the impact of underlying medical conditions  
5 and whether they increase the risk for severe illness from COVID-19, people with the  
6 following conditions might be at an increased risk for severe illness from COVID-19:  
7 asthma (moderate-to-severe), cerebrovascular disease (affects blood vessels and blood  
8 supply to the brain), cystic fibrosis, hypertension or high blood pressure,  
9 immunocompromised state from blood or bone marrow transplant, immune deficiencies,  
10 HIV, use of corticosteroids, or use of other immune weakening medicines, neurologic  
11 conditions, liver disease, pregnancy, pulmonary fibrosis, smoking, thalassemia (a type of  
12 blood disorder), and Type 1 diabetes mellitus. *Id.*

13 The rates of COVID-19 are predicted to rise in the coming months as we approach  
14 the General Election on November 3, 2020. Most prediction-models, including an  
15 influential model designed and used by the Institute for Health Metrics and Evaluation at  
16 the University of Washington, predict “a catastrophic winter with a significant rise in  
17 coronavirus deaths.” *See, e.g., Amir Vera et al., US Could See a 'Very Deadly December'  
18 with Tens of Thousands of Coronavirus Death [sic] to Come, Computer Model Predicts,*  
19 *CNN.com*, Sept. 11, 2020, available at [https://www.cnn.com/2020/09/11/health/us-  
20 coronavirus-friday/index.html](https://www.cnn.com/2020/09/11/health/us-coronavirus-friday/index.html) (last visited Oct. 4, 2020).

21 **D. State and Federal Guidance Encourages Curbside Voting During The**  
22 **COVID-19 Pandemic.**

23 Both state and federal guidance for voting during the COVID-19 pandemic  
24 encourage the use of curbside voting to promote appropriate social distancing and allow  
25 for increased safety during in-person voting. The CDC has recommended alternatives to  
26 voting inside polling locations, including curbside voting, so that voters can exercise their  
27 rights while avoiding group settings. CDC, *Considerations for Election Polling Locations  
28 and Voters* (June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/>

1 election-polling-locations.html (last visited Oct. 4, 2020). The Office of Secretary of State  
2 Katie Hobbs, who is the Chief Election Official in Arizona, issued a press release on  
3 March 11, 2020, concerning response to COVID-19 for election officials. The press  
4 release stated the following: “According to health experts and the governor’s recent  
5 executive order, Arizona’s elderly population and those with underlying health conditions  
6 are most at risk of serious illness from COVID-19.” *See* Arizona Secretary of State, Press  
7 Release, March 11, 2020, available at [https://azsos.gov/about-office/media-center/press-](https://azsos.gov/about-office/media-center/press-releases/1116)  
8 [releases/1116](https://azsos.gov/about-office/media-center/press-releases/1116) (last visited Oct. 4, 2020). Secretary Hobbs encourages curbside voting as  
9 an alternative means of voting: “Provide curbside voting whenever possible and ensure  
10 adequate signage and instructions so voters can request the accommodation from the  
11 parking lot.” Secretary of State - Arizona Dot Vote, *Guidance for Reducing COVID-19*  
12 *Risks at In-Person Voting Locations*, available at [https://azsos.gov/sites/default/files/](https://azsos.gov/sites/default/files/AZSOS_Polling_Place_Guidance_2020.pdf)  
13 [AZSOS\\_Polling\\_Place\\_Guidance\\_2020.pdf](https://azsos.gov/sites/default/files/AZSOS_Polling_Place_Guidance_2020.pdf) (last visited Oct. 4, 2020); *see also* Secretary  
14 of State of Arizona, *Voting in this Election – Curbside Voting*, available at  
15 <https://azsos.gov/elections/voting-election> (last visited Oct. 4, 2020) (“Voters who are  
16 unable to enter the polling location or voting center may ask that a ballot be brought to  
17 them by an election poll worker”).

18 National guidance has also been issued on keeping voters safe from COVID-19  
19 during the in-person voting process: “[c]onsider expanding curbside or “drive-thru”  
20 voting options to maintain social distancing and offer access to voters with disabilities.”  
21 U.S. Elections Assistance Commission, *Preparing for In-Person Voting During COVID-*  
22 *19: Voting Location Requirements*, available at  
23 [https://www.eac.gov/sites/default/files/document\\_library/files/In-](https://www.eac.gov/sites/default/files/document_library/files/In-Person%20Voting%20-%20Building%20Requirements%20%28004%29.pdf)  
24 [Person%20Voting%20-%20Building%20Requirements%20%28004%29.pdf](https://www.eac.gov/sites/default/files/document_library/files/In-Person%20Voting%20-%20Building%20Requirements%20%28004%29.pdf) (last  
25 visited Oct. 5, 2020). Despite this guidance, in-person voting, as with all in-person  
26 activities, still comes with risks. Aerosols that are emitted by someone who is infected  
27 with COVID-19 can remain in the air for hours. Harvard Health Publishing, *Coronavirus*  
28

1 *Resource Center* (updated Oct. 2, 2020) [https://www.health.harvard.edu/diseases-and-](https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center)  
2 [conditions/coronavirus-resource-center](https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center) (last visited Oct. 4, 2020).

3 **ARGUMENT**

4 **I. A PRELIMINARY INJUNCTION SHOULD BE ISSUED TO ENSURE**  
5 **PLAINTIFF CAN CAST A BALLOT IN-PERSON ON ELECTION DAY**  
6 **DURING THE NOVEMBER 2020 GENERAL ELECTION**

7 A party seeking a preliminary injunction must demonstrate that: (1) she is  
8 likely to succeed on the merits; (2) she will suffer irreparable harm in the absence of an  
9 injunction; (3) an injunction is in the public interest; and (4) the balance of equities tips  
10 in her favor. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiff  
11 demonstrates all these factors, and a preliminary injunction should be issued directing  
12 Defendants to make an exception to their blanket ban on curbside voting as a reasonable  
13 modification to allow Hoffard to vote in person on Election Day.

14 **A. Plaintiff is Likely to Succeed on Federal and State Civil Rights Claims**  
15 **that Require Defendants to Provide a Reasonable Modification for Her**  
16 **to Cast an In-Person Ballot.**

17 Title II of the ADA, Section 504, and ACRA prohibit covered entities from  
18 discriminating against people with disabilities:

19 No qualified individual with a disability shall, by reason of such disability,  
20 be excluded from participation in or be denied the benefits of the services,  
21 programs, or activities of a public entity, or be subjected to discrimination  
22 by any public entity.

23 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a) (ADA); 29 U.S.C. § 794(a) (Section  
24 504); A.R.S. § 41-1421(B) (ACRA).<sup>7</sup> Public entities also may not, on the basis of  
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26 <sup>7</sup> Claims under Section 504 of the Rehabilitation Act, 29 U.S.C. §794 *et. seq.*, against federally  
27 funded entities, are generally given the same analysis as claims under the ADA. *See Duvall v.*  
28 *County of Kitsap*, 260 F.3d 1124, 1136 (9th Cir. 2001). Similarly, claims under ACRA, A.R.S.  
§ 41-1421, are given the same analysis as the ADA. *See* A.R.S. § 41-1421(D) (“[c]ompliance  
with title II of the Americans with disabilities act [sic] (42 United States Code §§ 12131 through  
12134) and its implementing regulations and the voter accessibility for the elderly and  
handicapped act [sic] (42 United States Code §§ 1977ee through 1977ee-6) is deemed in  
compliance with this article”). Therefore, arguments about Plaintiff’s claims under the ADA,  
Section 504, and ACRA are consolidated. Statutory and rule citations are provided for each  
statute.

1 disability, afford a qualified individual with a disability an opportunity to participate in  
 2 or benefit from the aid, benefit, or service that is not equal to that afforded others. 28  
 3 C.F.R. § 35.130(b)(1)(ii) (ADA); 11 C.F.R. § 9420.3(b)(1)(ii) (Section 504). The ADA  
 4 applies to state and local government entities and protects qualified individuals with  
 5 disabilities from discrimination based on disability in services, programs, and activities  
 6 provided by local government entities. 42 U.S.C. §§ 12131-12132. Defendants are subject  
 7 to Section 504 because they operate a “program or activity” receiving Federal financial  
 8 assistance, which is defined to include “all the operations of a department, agency . . . or  
 9 other instrumentality of local government.” 29 U.S.C. § 794(b). Defendant Cochise  
 10 County receives federal funds administered by the U.S. Election Assistance Commission.  
 11 11 C.F.R. § 9420.3.<sup>8</sup>

12 The ADA and Section 504 provide for broad coverage extending to “anything a  
 13 public entity does.” *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014); *see*  
 14 *also Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir. 1998) (finding that “the phrase  
 15 ‘services, programs, or activities’ encompasses virtually everything that a public entity  
 16 does”).<sup>9</sup> The ADA and Section 504 apply to all the Defendants’ voting services, programs,  
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18 <sup>8</sup> The federal government distributes funds to help local officials to improve election security and  
 19 administration. Federal funds are distributed via, among other programs, the Help America Vote  
 20 Act of 2002, § 302, 42 U.S.C. § 15482 (“HAVA”). Congress authorized funding for the 2018  
 21 HAVA Election Security grant, pursuant to the Consolidated Appropriations Act, 2018 (Public  
 22 Law 115-141). The State of Arizona was awarded \$7,463,675 with a state match share of  
 23 \$373,184. *See 2018 HAVA Election Security Sub-Grant Guidelines* at 2, available at  
 24 [https://destinyhosted.com/cochidocs/2020/BOS/20200107\\_1806/4933\\_2018%20HAVA%20Sub-Grant%20Guidelines.pdf](https://destinyhosted.com/cochidocs/2020/BOS/20200107_1806/4933_2018%20HAVA%20Sub-Grant%20Guidelines.pdf) (last visited Oct. 5, 2020). Cochise County was awarded \$143,184.40  
 25 by the Arizona Secretary of State. *Id.* at 7. The Consolidated Appropriations Act, 2020 included  
 \$425 million in new HAVA funds that have been distributed to state election offices by the U.S.  
 Election Assistance Commission. *See* U.S. Election Assistance Commission, *Election Security*  
*Funds*, available at <https://www.eac.gov/payments-and-grants/election-security-funds> (last  
 visited Oct. 5, 2020)

26 <sup>9</sup> While the covered “services, programs, and activities” of public entities are not defined in the  
 27 ADA, the ADA was modeled on the Rehabilitation Act of 1973, which prohibited any “program  
 28 or activity” that received federal funds from discriminating against individuals with disabilities.  
 29 U.S.C. § 794(a); *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1216 n. 27 (9th Cir. 2008). The

1 or activities, including *in-person voting* at the County’s Vote Centers. *See Crawford v.*  
2 *Marion County Election Bd.* 553 U.S. 181 n. 4 (2008) (“It is one thing (and a  
3 commendable thing) for the State to make [alternatives to in-person voting] available to  
4 the elderly and disabled; but it is quite another to suggest that, because the more  
5 convenient but less reliable [alternative] is available, the State may freely deprive the  
6 elderly and disabled of the option of voting in person.”); *People First of Alabama, et al.*  
7 *v. Merrill*, 2:20-CV-00619-AKK, 2020 WL 3207824 at \*26 n. 46 (N.D. Ala. June 15,  
8 2020), appeal dismissed, 20-12184-GG, 2020 WL 5543717 (11th Cir. July 17, 2020)  
9 (“The ADA is not so narrow that the plaintiffs’ rights only extend to voting at some time  
10 and in some way.”) (internal citations omitted); *see also* U.S. Dep’t of Justice, ADA  
11 Checklist for Polling Places (June 2016) (“ADA Checklist”), available at  
12 <https://www.ada.gov/votingchecklist.pdf> (last visited Oct. 4, 2020). Voting at one’s  
13 polling place “allows voters the chance to interact with neighbors and candidates who  
14 talk with voters outside the polling place, and to ask questions of or receive assistance  
15 from trained poll workers inside the polling place.” *See* ADA Checklist. “[V]oting in  
16 person at a local polling place is the quintessential American voting experience.” *Id.*

17       Successful claims under the ADA, Section 504, and ACRA consist of showing the  
18 following elements: (1) the plaintiff is an individual with a disability; (2) the plaintiff is  
19 otherwise qualified to participate in or receive the benefit of some public entity's services,  
20 programs, or activities; (3) the plaintiff was either excluded from participation in or  
21 denied the benefits of the public entity's services, programs, or activities, or was otherwise  
22 discriminated against by the public entity; and (4) such exclusion, denial of benefits, or  
23 discrimination was by reason of the plaintiff's disability. *Thompson v. Davis*, 295 F.3d  
24 890, 895 (9th Cir. 2002) (per curiam).

25  
26       Rehabilitation Act defines “program or activity” as “*all of the operations of . . . a department,*  
27 *agency, special purpose district, or other instrumentality of a State or of a local government.*” 29  
28 U.S.C. § 794(b) (emphasis added). Congress instructed that the ADA is to be interpreted  
consistently with the Rehabilitation Act. *See Armstrong v. Wilson*, 124 F.3d 1019, 1023 (9th Cir.  
1997).

1                   **1. Plaintiff is an individual with a disability who is qualified to vote.**

2                   Hoffard is a “qualified individual with a disability” which is defined as:

3                   an individual with a disability who, with or without reasonable  
4                   modifications to rules, policies, or practices, the removal of architectural,  
5                   communication, or transportation barriers, or the provision of auxiliary aids  
6                   and services, meets the essential eligibility requirements for the receipt of  
7                   services or the participation in programs or activities provided by a public  
8                   entity.

9                   42 U.S.C. § 12131(2) (ADA); 11 C.F.R. § 9420.2 (Section 504); A.R.S. § 41-1421(E)(1)-  
10                  (2) (ACRA). Hoffard’s physical impairments substantially limit the major life activities  
11                  of walking, standing, immune system function, and musculoskeletal function. Hoffard  
12                  Decl. at ¶¶ 2-3. Accordingly, she is an individual with a disability as defined by the ADA,  
13                  Section 504, and ACRA. 42 U.S.C. § 12102(1)-(2); 29 C.F.R. § 1630.2(i)(1)(ii) (adding  
14                  musculoskeletal function as a major life activity); 29 U.S.C. § 705(9) (incorporating  
15                  ADA’s definition of disability); A.R.S. § 41-1421(E)(1)(a). Hoffard is also a duly  
16                  qualified and registered elector in Cochise County, and is therefore qualified to vote in  
17                  the general election. 28 C.F.R. § 41.32(b); 11 C.F.R. § 9420; A.R.S. § 41-1421(E)(2).  
18                  Accordingly, she is a qualified individual with a disability. 42 U.S.C. § 12131(2).

19                   **2. The County discriminates against Hoffard by denying a reasonable  
20                   modification of curbside voting to allow meaningful access to the  
21                   County’s in person voting.**

22                  Defendants must “make reasonable modifications in policies, practices, or  
23                  procedures when the modifications are necessary to avoid discrimination on the basis of  
24                  disability, unless the public entity can demonstrate that making the modifications would  
25                  fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. §  
26                  35.130(b)(7)(i) (ADA); 11 C.F.R. § 9420.2 (Section 504); A.R.S. § 41-1421(C) (ACRA);  
27                  see *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (“An organization . . .  
28                  violates § 504 if it denies a qualified individual with a disability a reasonable  
accommodation that the individual needs in order to enjoy meaningful access to the  
benefits of public services”); *McGary v. City of Portland*, 386 F.3d 1259, 1267 (9th Cir.  
2004) (failing to provide a reasonable accommodation is a form of discrimination under

1 the ADA); *cf Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1086 (9th Cir. 2004)  
2 (“[T]he ADA defines discrimination as a public accommodation treating a disabled patron  
3 the same as other patrons despite the former's need for a reasonable modification”) (interpreting identical reasonable modification requirement under the ADA’s Title III).

4  
5 For example, in *Crowder v. Kitagawa*, a class of individuals with visual disabilities  
6 who used guide dogs brought suit to challenge Hawaii’s rabies quarantine rules, which  
7 required all carnivorous animals, including dogs, to quarantine for 120 days upon entry  
8 to Hawaii. The court found that without reasonable modification of the administrative  
9 rule, the rule discriminated against people with disabilities by denying them meaningful  
10 access to state services, in violation of the ADA. 81 F.3d 1480 (9th Cir. 1996). “When a  
11 state’s policies, practices or procedures discriminate against the disabled in violation of  
12 the ADA, Department of Justice regulations require reasonable modifications in such  
13 policies, practices or procedures ‘when the modifications are necessary to avoid  
14 discrimination on the basis of disability, unless the public entity can demonstrate that  
15 making the modifications would fundamentally alter the nature of the service, program,  
16 or activity.’” *Id.* at 1485.

17 Unlike the 120-day quarantine rule in *Crowder*, Defendants’ policy of banning  
18 all curbside voting is per se unlawful on its face because it prevents an individualized  
19 assessment of whether curbside voting is a reasonable and necessary modification based  
20 on a voter’s disability-related need. *Id.*; *Cf. McGregor v. Nat’l R.R. Passenger Corp.*, 187  
21 F.3d 1113, 1116 (9th Cir. 1999) (holding that a policy requiring an employee to be “100%  
22 healed” before returning to work does not allow a case-by-case assessment of an  
23 individual's ability to perform essential functions of the individual's job, with or without  
24 accommodation) (Title I ADA). Under the ADA, Plaintiff only must show that  
25 Defendants failed to make a requested reasonable modification that was necessary to  
26 accommodate her disability. *Fortyune*, 364 F.3d at 1085.

27 Hoffard requested a *reasonable* modification. Curbside voting is a reasonable  
28 modification to provide a meaningful opportunity to vote in person at a Vote Center on

1 Election Day. Reasonableness “depends on the individual circumstances of each case,  
2 and requires a fact-specific, individualized analysis of the disabled individual's  
3 circumstances and the accommodations that might allow him to [enjoy meaningful access  
4 to the program.]” *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002) (internal citation  
5 and quotation marks omitted). Here, curbside voting can be provided by transporting the  
6 voting machine to the voter’s parked vehicle or making a paper ballot available and  
7 bringing it to the voter’s car. The voting machine the County uses is already designed to  
8 be easy to move, and there is a commercially available cart designed for the same machine  
9 that can be purchased to make it even easier for the voting machine to be pushed to the  
10 vehicle. There are also ballot printers that can be used to print ballots that could be handed  
11 to voters requiring curbside voting as a reasonable modification. Other Arizona counties  
12 using the same voting machines offer curbside voting for those voters who need it.

13         Providing curbside voting is necessary for Hoffard to cast her vote in person on  
14 Election Day. Although Hoffard can walk, she experiences significant pain and fatigue  
15 when walking and standing. Hoffard Decl. at ¶¶ 4, 13, 15. To traverse the distance from  
16 the parking space to the building entrance and to the voting machine as well as standing  
17 or sitting while waiting will involve pain and fatigue. *Id.* Additionally, to treat an  
18 underlying physical disability, she is prescribed Methotrexate, which produces the  
19 adverse side effect of weakening her body’s own immune response. *Id.* at ¶ 3. Because of  
20 the predicted rise of COVID-19 in the coming months as we approach the General  
21 Election on November 3, 2020, she will be taking significant risk to enter the Vote Center  
22 to cast her ballot. *Id.* at ¶ 14.

23         Defendants cannot show that making exceptions to the ban on curbside voting as a  
24 reasonable modification would be a fundamental alteration of in-person voting.  
25 Defendants made a policy decision to discontinue curbside voting as a method of  
26 providing program access at is Vote Centers for people with disabilities in favor of  
27 removing architectural barriers at the Vote Centers. However, compliance with the  
28 affirmative obligation to offer program access in existing facilities under 28 C.F.R. §



1 35.150 (ADA) [11 C.F.R. § 9420.5 (Section 504), and A.R.S. § 41-1421(D) (ACRA), and  
2 to design and construct new or altered facilities in compliance with accessibility standards  
3 under 28 C.F.R. § 35.151 (ADA) [11 C.F.R. § 9420.6 (Section 504), and A.R.S. § 41-  
4 1421(D) (ACRA)] does not relieve a public entity of its obligation to comply with other  
5 ADA regulations, such as reasonable modifications to rules and practices under 28 C.F.R.  
6 § 35.130(b)(7) (ADA) [11 C.F.R. § 9420.2 (Section 504), and A.R.S. § 41-1421(C)  
7 (ACRA)]. While covered entities may chose the methods to provide program access in  
8 existing facilities (e.g. provide structural changes or offer rolling stock or alternative  
9 accessible locations for services)<sup>10</sup>, they may not choose whether to comply with the  
10 reasonable modification regulation. *Cf. Anderson v. City of Blue Ash*, 798 F.3d 338, 363  
11 (6th Cir. 2015) (“Requiring public entities to make exceptions to their rules and zoning  
12 policies is exactly what the [Fair Housing Amendments Act] does. The fact that the City  
13 banned horses from residential property does not mean that any modification permitting  
14 a horse necessarily amounts to a fundamental alteration”). Otherwise, covered entities  
15 could justify denying a voter the right to bring their service animal into a Vote Center or  
16 to provide a sign language interpreter to a voter who was deaf in a discussion about how  
17 to fill out their voter registration paperwork on the grounds their facility was physically  
18 accessible. *Cf. Fortyune*, 364 F.3d at 1085 (rejecting Defendant’s insistence that the  
19 ADA’s accessibility guidelines controlled in a reasonable modification claim about a  
20 policy regarding the use of availability of companion seating).

21 Furthermore, the ADA “guarantees the disabled more than mere access to public  
22 facilities; it guarantees them ‘full and equal enjoyment.’” *See Baughman v. Walt Disney*  
23 *World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012) (public accommodations should consider

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24  
25 <sup>10</sup> Under 28 C.F.R. 35.150(b)(1), a public entity may comply with the requirements to provide  
26 program access through various methods, such as “redesign or acquisition of equipment,  
27 reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits,  
28 delivery of services at alternate accessible sites, alteration of existing facilities and construction  
of new facilities, use of accessible rolling stock or other conveyances, or any other methods that  
result in making its services, programs, or activities readily accessible to and usable by  
individuals with disabilities.”

1 “how their facilities are used by non-disabled guests and then take reasonable steps to  
2 provide disabled guests with a like experience.”) (interpreting identical reasonable  
3 modification requirement under Title III of the ADA). Under a “meaningful access”  
4 standard, an entity is “not required to produce the identical result . . . for handicapped and  
5 nonhandicapped persons,” but they nevertheless “must afford handicapped persons equal  
6 opportunity to . . . gain the same benefit.” *Argenyi v. Creighton Univ.*, 703 F.3d 441, 449  
7 (8th Cir. 2013) (citation omitted).

8 Based on Defendants denial of a reasonable modification during the 2018 midterm  
9 elections, the blanket ban on curbside voting in Cochise County, and the County’s failure  
10 to offer an alternative reasonable modification for in-person voting, Defendants  
11 discriminated against and continue to discriminate against Hoffard and other voters with  
12 disabilities with similar needs who will, without intervention from this Court, face  
13 discrimination in November 2020. Because Hoffard has shown that she needs curbside  
14 voting as a reasonable accommodation, or a substantially equivalent reasonable  
15 modification, for a meaningful opportunity to vote in person in the November 2020  
16 General Election, she has made a sufficient showing of likelihood to prevail on the merits.

#### 17 18 **B. Hoffard Will Suffer Irreparable Harm.**

19 Courts routinely deem restrictions on fundamental voting rights as irreparable  
20 injuries. *See Jones v. Gov. of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020) (finding “plaintiffs  
21 will suffer an irreparable injury if they are precluded . . . from voting in an election in  
22 which they were constitutionally entitled to vote.”); *Obama for Am. v. Husted*, 697 F.3d  
23 423, 436 (6th Cir. 2012) (affirming order granting preliminary injunction, reasoning “[a]  
24 restriction on the fundamental right to vote [] constitutes irreparable injury.”); *Williams*  
25 *v. Salerno*, 792 F.2d 323, 330 (2d Cir. 1986) (same). Further, denial of the opportunity to  
26 cast a vote constitutes irreparable harm because monetary damages would not be an  
27 adequate remedy:

1 Casting a vote has no monetary value. It is nothing other than the  
2 opportunity to participate in the collective decision making of a democratic  
3 society and to add one's own perspective to that of his or her fellow citizens.  
4 Each vote provides a unique opportunity to do that. No compensation a  
court can offer could undo that loss. The denial of the opportunity to cast a  
vote that a person may otherwise be entitled to cast—even once—is an  
irreparable harm.

5 *Jones*, 950 F.3d at 828 (affirming a district court's grant of a preliminary injunction).

6 Hoffard and other voters with disabilities recognized by the CDC to increase  
7 likelihood of serious harm from contracting COVID-19 will be placed at risk of  
8 irreparable harm if they are denied access to curbside voting, or a substantially equivalent  
9 reasonable modification, on Election Day. *See Thakker v. Doll*, 451 F. Supp. 3d 358, 372  
10 (M.D. Penn. 2020) (granting plaintiffs' temporary restraining order, reasoning that  
11 irreparable harm was imminent as the global COVID-19 pandemic sweeps across the  
12 nation) (appeal filed); *Immigrant Legal Resource Center v. City of McFarland*, 1:20-CV-  
13 00966-TLN-AC, 2020 WL 4593886 at \*10 (E.D. Cal. 2020) (finding a likelihood of  
14 irreparable harm because "COVID-19 poses a concrete threat to the public health"). On  
15 Election Day, Vote Centers will be filled with voters who will spend time inside the  
16 buildings checking in, waiting in line, and casting their votes. If required to enter the Vote  
17 Center to vote in person, Hoffard will have to be in proximity to other voters and poll  
18 workers, increasing her risk of contracting COVID-19. Additionally, Hoffard will  
19 experience significant pain related to walking, sitting, and standing as she checks in, waits  
20 in line, and casts her vote. Hoffard Decl. at ¶ 13-15. These physical barriers are significant  
21 for Hoffard, and place her in the position of having to risk her health and safety or give  
22 up her right to vote in person on Election Day. *Id.* at ¶ 14.

23 **C. Providing Reasonable Modifications for Participation in the County's**  
24 **In-Person Voting Program is in the Public Interest.**

25 "The public interest ... favors permitting as many qualified voters to vote as  
26 possible." *Husted*, 697 F.3d at 437; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)  
27 (the public has a "strong interest in exercising the fundamental political right to vote")  
28 (citations omitted). Additionally, "upholding constitutional rights serves the public

1 interest.” *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003).  
2 Furthermore, in cases involving elections, “[t]he public interest is significantly affected.”  
3 *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003).

4 When determining public interest, it is also important to note that the government  
5 has an interest in protecting the health and safety of its citizens and preventing the further  
6 spread of COVID-19. *See National Association of Wheat Growers v. Zeise*, 309 F.Supp.  
7 3d 842, 853 (E.D. Cal. 2018) (recognizing that the state has a significant interest in  
8 protecting its citizens and informing them of possible health risks); *Diretto v. Country Inn*  
9 *& Suites by Carlson*, 1:16CV1037, 2016 WL 4400498, at \*4 (E.D. Va. Aug. 18, 2016)  
10 (there is a public interest in preventing the further spread of disease).

11 Moreover, society has a public interest in ensuring the rights of individuals with  
12 disabilities and preventing discrimination. *Newton-Nations, v. Rogers*, 316 F. Supp. 2d.  
13 883, 889 (D. Ariz. 2004) (“Our society as a whole suffers when we neglect . . . the disabled,  
14 or when we deprive them of their rights or privileges.”) (quoting *Lopez v., Heckler*, 713  
15 F.2d 1432, 1437-38 (9th Cir. 1983)). The public interest is not served when governmental  
16 policies violate federal law. *A. O. v. Cuccinelli*, 19-CV-06151-SVK, 2020 WL 2097586  
17 at \* 11 (N.D. Cal. 2020) (citing *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053,  
18 1069 (9th Cir. 2014); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)).

#### 19 **D. The Balance of Equities Tips in Favor of Preliminary Relief.**

20 To determine the balance of equities, the court must “balance the interests of all  
21 parties and weigh the damage to each.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138  
22 (9th Cir. 2009) (citation omitted). Here, the balance of interests tip in favor of Hoffard.  
23 There is a strong public interest in protecting a voter’s right to reasonable modifications  
24 during in-person voting, and the health of Cochise County voters with underlying medical  
25 conditions who choose to vote in person at one of the County’s Vote Centers. Hoffard  
26 and other voters with disabilities in Cochise County face a lack of meaningful access  
27 under the ADA, Section 504, and ACRA, and the prospect of disenfranchisement if their  
28 physical disabilities become too burdensome, or if COVID-19 rates increase. There is no

1 immediate relief for a voter who is either unable to vote or required to vote under unsafe  
2 or painful conditions due to disability-related discrimination. Hoffard and other voters  
3 with disabilities recognized by the CDC to increase likelihood of serious harm from  
4 contracting COVID-19 will be placed at risk if they chose to enter the Vote Centers if  
5 curbside voting is not made available.

6 On the other hand, if a preliminary injunction were to issue, Defendants would be  
7 required to abandon their local preference to rely exclusively on their obligation to  
8 remove architectural barriers and lift their ban against *all* curbside voting as necessary to  
9 provide reasonable modifications. An interest in ignoring the reasonable modification  
10 mandate under the ADA, Section 504, and ACRA should not tip the scale in Defendants'  
11 favor. Allowing curbside voting as a reasonable accommodation, where necessary based  
12 on a voter's disability-related need, will require the County to take some steps for the  
13 upcoming election. These steps may include providing notice to voters that curbside  
14 voting is available as a reasonable modification and preparing Vote Center(s) for  
15 providing the reasonable modification, including (if the County decides not to move the  
16 voting machines without them) purchasing for carts to transport voting machines curbside,  
17 or ballot printers to produce ballots on demand and carry paper ballots to the voter's car,  
18 or other effective method of providing in person voting for the voters with disabilities that  
19 require such a reasonable modification.

## 20 **II. THE COURT SHOULD NOT REQUIRE A BOND**

21 Although the plain language of the Fed. R. Civ. P. 65(c) suggests that a bond is  
22 mandatory, the Ninth Circuit has held that it "invests the district court with discretion as  
23 to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086  
24 (9th Cir. 2009) (citation omitted). A district court need not require a bond "when it  
25 concludes there is no realistic likelihood of harm to the defendant from enjoining his or  
26 her conduct." *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (citation omitted);  
27 *see also Bell S. Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d  
28 964, 971 (11th Cir. 2005) ("it is well-established that the amount of security required by

1 the rule is a matter within the discretion of the trial court..., and the court may elect to  
2 require no security at all”) (citation omitted). Here, the Court should exercise its discretion  
3 to waive the bond requirement in this case, as there is no realistic likelihood that  
4 Defendants will be harmed as a result of an injunction that would cost little, if anything,  
5 to implement. Further, Hoffard’s attorneys provide free legal services to individuals with  
6 disabilities in Arizona, including Hoffard, and a bond would strain limited financial  
7 resources for this work.

8 **CONCLUSION**

9 For the foregoing reasons, Plaintiff Kathleen Hoffard respectfully requests that this  
10 Court issue a preliminary injunction, enjoining Defendants from implementing their  
11 blanket ban on curbside voting as set forth in the Proposed Order.

12 DATED this 5<sup>th</sup> day of October, 2020.

13 **ARIZONA CENTER FOR DISABILITY LAW**

14 /s/ Tamaraingsey In  
15 Rose Daly-Rooney  
16 Maya Abela  
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19 *Attorneys for Plaintiff Kathleen Hoffard*  
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