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

Kathleen Hoffard,

 Plaintiff,

v.

County of Cochise, et al.,

 Defendants.

No. CV-20-00243-TUC-SHR

**Order re: Plaintiff’s Motion for
Preliminary Injunction and Expedited
Hearing**

Pending before the Court is Plaintiff Kathleen Hoffard’s Motion for Preliminary Injunction and Expedited Hearing (“Motion”) (Doc. 14).¹ On August 27, 2020, Plaintiff filed her First Amended Complaint (“FAC”) (Doc. 6) against Defendants Cochise County and Cochise County Elections Director, Lisa Marra, alleging the lack of curbside voting on Election Day in Cochise County discriminates against her on the basis of her disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq* (“ADA”), the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”), and the Arizona Civil Rights Act, A.R.S. § 41-1421(B) (“ACRA”). Plaintiff’s FAC seeks both declaratory and injunctive relief. On October 5, Plaintiff filed the instant Motion, requesting “a preliminary injunction enjoining Defendants from implementing their blanket ban on curbside voting.” Defendants filed a timely response (Doc. 19) and Plaintiff has replied (Doc. 21). For the following reasons, the Court denies Plaintiff’s Motion.

¹Defendants’ Motion to Dismiss pursuant to Rule 12(b)(6) (Doc. 11) is also pending, which the Court will address in a separate order.

1 **I. Background**

2 The following facts are derived from Plaintiff’s FAC (Doc. 6) and sworn declaration
3 (Doc. 15, Hoffard Decl.). Plaintiff is a registered voter in Cochise County, Arizona, who
4 has physical disabilities which substantially limit everyday activities and is at a higher risk
5 of severe illness from COVID-19 due to medication that suppresses her immune system.
6 Plaintiff participated in curbside voting in Cochise County before 2018 because her
7 disabilities make it difficult and painful for her to exit her vehicle and navigate the parking
8 lot and vote centers.

9 When Plaintiff went to a Cochise County vote center in November 2018, to vote in
10 the mid-term election, a poll worker informed her curbside voting was not available.
11 Plaintiff then called the Cochise County Elections Department which told her curbside
12 voting was not available at any vote centers in the county because all vote centers were
13 compliant with the ADA. Plaintiff then drove to a different vote center and, after again
14 being told curbside voting was not available, she exited her vehicle, went into the vote
15 center, which caused her great physical discomfort and pain, and cast her ballot.

16 Cochise County (“the County”) has indicated on its website that curbside voting
17 will not be available in the November 3, 2020 general election. Specifically, the County
18 website states:

19 All vote centers in use in Cochise County are fully ADA
20 compliant under Federal law. As such, disabled voters are
21 welcome into the polling locations to cast their vote and
22 curbside voting isn’t required. Because there are no pre-
23 printed paper ballots at our vote centers, all voters are required
24 to vote on the electronic machines which are not able to be
25 moved outside, or to the curb, due to the sensitive computer
26 equipment inside the machines.²

27 COCHISE COUNTY, *Election FAQs*, <https://www.cochise.az.gov/elections/elections-faqs>
28 (last visited: Oct. 22, 2020).

²Plaintiff also alleges the County provided a substantially similar message in its Poll Worker’s Training Handbook for 2020. The link provided by Plaintiff, however, is non-functional and Plaintiff has not otherwise provided a copy of the handbook.

1 Plaintiff plans to vote in person in all future elections in Cochise County, including
2 the November 3, 2020 general election, and argues she requires a “reasonable modification
3 of curbside voting, or a substantially equivalent reasonable modification,” especially
4 because she faces a heightened risk of illness from COVID-19 due to her “immune function
5 limitations.”

6 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

7 **II. Hearing on Preliminary Injunction**

8 A hearing on a motion for a preliminary injunction may be necessary where facts
9 are disputed. *See Int’l Molders’ & Allied Workers’ Local Union No. 164 v. Nelson*, 799
10 F.2d 547, 555 (9th Cir. 1986) (“Where sharply disputed the facts are simple and little time
11 would be required for an evidentiary hearing, proceeding on affidavits alone might be
12 inappropriate.”). Here, Plaintiff does not concede the vote centers are ADA-compliant,
13 while Defendant has provided evidence they are ADA-compliant. (Doc. 18, Marra Decl.
14 pg. 2). However, by Plaintiff’s own argument, whether the County’s vote centers are
15 ADA-compliant is not material to her claim as she contends Defendants’ compliance with
16 ADA-accessibility guidelines “does not relieve” them of their “obligation to comply with
17 other ADA regulations, such as reasonable modifications.” (Doc. 14, pg. 16-17). In other
18 words, Plaintiff argues even if the County’s vote centers are accessible and ADA-
19 compliant, the County must provide curbside voting as a reasonable modification.
20 Therefore, whether the vote centers are ADA-compliant is not material to Plaintiff’s
21 reasonable modifications argument.

22 Accordingly, the Court finds oral argument will not aid in resolution of the issue
23 raised and denies Plaintiff’s request for a hearing on her Motion. *See* LRCiv 7.2(f) (“The
24 Court may decide motions without oral argument.”); Fed. R. Civ. P. 78; *Partridge v. Reich*,
25 141 F.3d 920, 926 (9th Cir. 1998) (“[A] district court can decide the issue without oral
26 argument if the parties can submit their papers to the court.”); *see also Bach v. Teton Cty.*
27 *Idaho*, 207 F. App’x 766, 769 (9th Cir. 2006) (“Due process does not require the district
28 court to hold oral argument before ruling on pending motions.”)

III. Preliminary Injunction Standard

A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (emphasis in original)). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Monarch Content Mgmt. LLC v. Ariz. Dep’t of Gaming*, 971 F.3d 1021, 1027 (9th Cir. 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see also All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). The Ninth Circuit Court of Appeals, employing a sliding scale analysis, has also stated: “‘serious questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2013) (quoting *All. for the Wild Rockies*, 632 F.3d at 1132) (sliding-scale test “remains viable” after *Winter* and movants “must also satisfy the other *Winter* factors”).

A mandatory injunction, such as the one Plaintiff seeks, is one that “orders a responsible party to ‘take action.’” *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996). Such an injunction “‘goes well beyond simply maintaining the status quo [p]endente lite [and] is particularly disfavored.’” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (alterations in original) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)). Generally, mandatory injunctions “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases or where the injury complained of is capable of compensation in damages.” *Id.*, 571 F.3d at 879 (quoting *Anderson*, 612 F.2d at 1115)).

IV. Discussion

A. Likelihood of Prevailing on the Merits

Title II of the ADA provides: “no qualified individual with a disability shall, by

1 reason of such disability, be excluded from participation in or be denied the benefits of the
2 services, programs, or activities of a public entity, or be subjected to discrimination by any
3 such entity.” 42 U.S.C. § 12132. This is modeled after § 504 of the Rehabilitation Act,
4 which states: “No otherwise qualified individual with a disability . . . shall, solely by
5 reason of her or his disability, be excluded from the participation in, be denied the benefits
6 of, or be subjected to discrimination under any program or activity receiving Federal
7 financial assistance.” 29 U.S.C. § 794. “Title II extends the anti-discrimination prohibition
8 embodied in section 504 [of the Rehabilitation Act of 1973] to all actions of state and local
9 government and should be read broadly in order to effectively implement the ADA’s
10 fundamental purpose of providing a clear and comprehensive national mandate for the
11 elimination of discrimination against individuals with disabilities.” *City of Los Angeles v.*
12 *AECOM Servs., Inc.*, 854 F.3d 1149, 1153–54 (9th Cir. 2017) (internal citations and
13 quotations omitted) (alteration in original). Similarly, under the ACRA, “A qualified
14 individual with a disability shall not be excluded from voting or be discriminated in voting
15 under this section by reason of the disability.” A.R.S. § 41-1421(B).

16 To prove Defendants discriminated against Plaintiff, she must show: “(1) the
17 plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to
18 participate in or receive the benefit of some public entity’s services, programs, or activities;
19 (3) the plaintiff was either excluded from participation in or denied the benefits of the
20 public entity’s services, programs, or activities, or was otherwise discriminated against by
21 the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason
22 of the plaintiff’s disability.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).
23 “Qualified individual with a disability” means a person “with a disability who, with or
24 without reasonable modifications to rules, policies, or practices, the removal of
25 architectural, communication, or transportation barriers, or the provision of auxiliary aids
26 and services, meets the essential eligibility requirements for the receipt of services or the
27 participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).
28 The ADA defines “disability” as: “(A) a physical or mental impairment that substantially

1 limits one or more major life activities³ of such individual; (B) a record of such an
2 impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(1).
3 Here, Plaintiff alleges, and Defendants do not contest, she “has physical impairments that
4 substantially limit the major life activities of walking, standing, immune system function
5 and musculoskeletal function.” (Doc. 6, ¶¶ 7, 35; Hoffard Decl. pg. 1-2; Doc. 19). The
6 parties also do not dispute Plaintiff is a registered voter qualified to vote in Cochise County
7 and participate in the County’s election process. (Doc. 14 pg. 6; Doc. 19).

8 The likelihood of Plaintiff prevailing on the merits of her claims is low when
9 considering the third and fourth elements. There is no dispute Plaintiff was denied the
10 ability to vote curbside in 2018 or that she will again be unable to do so in the next election,
11 as Defendants stopped offering curbside voting after the 2016 general election. (Doc. 6, ¶
12 42, Doc. 19, ¶ 6) But the inquiry does not end there, as the issue is not simply whether
13 Plaintiff will be denied curbside voting, but whether, in the absence of curbside voting as
14 a reasonable modification, Plaintiff will be excluded from participating in the election on
15 November 3. Plaintiff asserts she will be denied “equal access to the services, programs,
16 and benefits of the voting process offered to others due to Defendants’ categorical ban on
17 providing curbside voting as a reasonable modification at any polling location in Cochise
18 County.” (Doc. 6, ¶¶ 41-42).

19 As Plaintiff notes, “voting is of the most fundamental significance under our
20 constitutional structure.” *Illinois State Bd. of Elections v. Socialist Workers Party*, 99 S.
21 Ct. 983, 990 (1979). “It does not follow, however, that the right to vote in any manner and
22 the right to associate for political purposes through the ballot are absolute.” *Burdick v.*
23 *Takushi*, 504 U.S. 428, 433 (1992). Plaintiff cites no authority, and the Court is aware of
24 none, that requires in-person voting to be available.⁴

25 ³Under the ADA, “major life activities” includes, but is not limited to: “caring for
26 oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing,
27 lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,
28 communicating, and working.” 42 U.S.C. § 12102(2)(A)

⁴Indeed, Washington, Oregon, Hawaii, Colorado, and Utah do not offer in-person
voting on Election Day and instead conduct their elections by mail. See NATIONAL
CONFERENCE OF STATE LEGISLATURES, *State Laws Governing Early Voting*,
<https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state->

1 First, although “[c]urbside voting *may* be made available as a reasonable
2 accommodation as necessary to provide voters with disabilities equal access to the voting
3 process,” Arizona does not require counties to provide curbside voting. Arizona Secretary
4 of State Katie Hobbs, *2019 Elections Procedures Manual*,
5 [https://azsos.gov/sites/default/files/2019 ELECTIONS PROCEDURES MANUAL AP](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
6 [PROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf) (last visited: Oct. 22, 2020) (emphasis added) (prescribing rules and
7 procedures for 2020 elections); *see also* A.R.S. § 16-452 (Arizona Secretary of State’s
8 Elections Procedures Manual has full force of law). Second, the provision allowing for
9 curbside voting is under the “Alternative Voting Options” section of the 2019 Elections
10 Procedures Manual (“EPM”), which reads: “Alternative means of voting shall be used at
11 polling places and vote centers determined by the officer in charge of elections to be
12 inaccessible only when: No accessible sites are available; and No temporary measures can
13 make them accessible.” *2019 Elections Procedures Manual* at 105. Third, if the officer in
14 charge of elections determines there are no accessible sites in their county, then the EPM
15 requires the county to offer at least one of the following alternative means of voting to
16 voters with disabilities or seniors: (1) “Where practicable, reassignment to an accessible
17 voting location”; (2) “Assistance provided by a person of the voter’s choice or two election
18 officials of different political parties”; (3) early voting; or (4) “Curbside voting, if available
19 at the voting location.” *Id.* Notably, the EPM’s list of alternative means of voting employs
20 “or”—it does not use “and.” Therefore, by its own text, the EPM does not mandate
21 curbside voting as a reasonable modification to Plaintiff or any other voter with a disability.

22 Here, the County Elections Director, Lisa Marra, as the officer in charge of
23 elections, has not determined that no accessible sites are available—she has determined
24 just the opposite. (Marra Decl. pg. 2). Plaintiff has provided no evidence to the contrary.
25 Even if Director Marra had determined there are no accessible vote centers available, the
26 County would not be required to offer curbside voting and instead could offer any of the
27 above alternatives.

28 _____
[elections.aspx](#) (last visited: Oct. 21, 2020).

1 As to Plaintiff's argument that curbside voting is a reasonable modification, the
2 Court is doubtful she will prevail. To provide curbside voting, Plaintiff proposes the
3 County either purchase special carts for the machines and bring them outside to the voter's
4 vehicle or obtain ballot printers, print each voter's specific ballot using the "Ballot on
5 Demand" system, and then bring the paper ballot to the voter's vehicle. (Doc. 14 pg. 21).
6 Defendants argue curbside voting would not only fundamentally alter the nature of its all-
7 electronic voting system but would be infeasible. (Doc. 19 pg. 22).

8 "A public entity shall make reasonable modifications in policies, practices, or
9 procedures when the modifications are necessary to avoid discrimination on the basis of
10 disability, unless the public entity can demonstrate that making the modifications would
11 fundamentally alter the nature of the service, program, or activity." 28 C.F.R.
12 § 35.130(b)(7). "The question whether a particular accommodation is reasonable 'depends
13 on the individual circumstances of each case' and 'requires a fact-specific, individualized
14 analysis of the disabled individual's circumstances and the accommodations that might
15 allow him to meet the program's standards.'" *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th
16 Cir. 2002) (quoting *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir.1999)).
17 Plaintiff bears the initial burden of producing evidence that a reasonable modification is
18 possible; thereafter, the burden shifts to Defendants to produce rebuttal evidence that the
19 requested modification is not reasonable. *Id.*

20 Plaintiff has produced evidence there are carts available for purchase that are
21 designed for the ExpressVote machines used by the County, which can traverse all types
22 of terrain and be easily maneuvered by a poll worker. (Doc. 15, Daly-Rooney Decl., pg.
23 1-2; Doc. 21, Keene Decl. pg. 1-2). Thus, Plaintiff has met her initial burden of showing
24 curbside voting is possible in terms of transporting the machines outside. Defendants have
25 rebutted that evidence with their own sworn declaration establishing that even with the
26 carts, the machines tend to tip over and pose a risk of injury to voters and poll workers, as
27 well as damage to the machines and voter vehicles. (Marra Decl. pg. 3-4) Further,
28 Defendants have produced evidence that transporting the machines outside it not the only
logistical problem: the County uses e-pollbooks to capture voters' signatures, which

1 cannot be taken outside without shutting down the entire system, thus requiring a restart
2 that can take up to twenty minutes; the County does not have the internet capability or
3 capacity to reliably and consistently produce ballots with Ballot on Demand; and, due to
4 the wide variety of different ballot styles, it is impracticable for the County to store paper
5 copies of each ballot at each vote center. (Marra Decl. pg. 2-3). Plaintiff has produced no
6 evidence to the contrary, other than pointing to other counties in Arizona that provide paper
7 ballots using Ballot on Demand printers for curbside voting. (Hilser Decl. pg. 1-3). Thus,
8 Plaintiff has not made a clear showing she can establish curbside voting is a reasonable
9 modification. *See Lopez*, 680 F.3d at 1072; *see also Marlyn Nutraceuticals, Inc.*, 571 F.3d
10 at 879.

11 For the foregoing reasons, the Court finds Plaintiff is unlikely to prevail on the
12 merits of her claims.

13 **B. Irreparable Harm**

14 Plaintiff argues she will suffer irreparable harm if she and other voters with
15 disabilities who face an increased risk of serious illness from COVID-19 “are denied access
16 to curbside voting, or a substantially equivalent reasonable modification on Election Day.”
17 (Doc. 14 pg. 17). Specifically, Plaintiff asserts that if she is required to enter a vote center
18 to cast her ballot on Election Day, she “will have to be in proximity to other voters and poll
19 workers, increasing her risk of contracting COVID-19,” in addition to experiencing
20 significant pain related to walking, sitting, and standing. (Doc. 14 pg. 19). Defendants
21 contend Plaintiff will suffer no harm because the County “has not denied her an opportunity
22 to cast her vote” and she “has many opportunities to do so, starting from the early voting
23 period, right up until Election Day.” (Doc. 19 pg. 23).

24 The Court takes judicial notice of and is sympathetic to the increased risk Plaintiff
25 and other individuals with certain underlying medical conditions face of severe illness from
26 COVID-19.⁵ However, as Defendants point out, the County already offers a variety of

27 ⁵*See* CENTERS FOR DISEASE CONTROL & PREVENTION, *People with Certain Medical*
28 *Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited: Oct. 20, 2020).

1 alternative means of voting that reduce and, in some cases, nearly eliminate, contact with
 2 other people, thereby lowering the risk of exposure to COVID-19.⁶ Specifically, Plaintiff
 3 can vote by mail and avoid contact with other individuals entirely. Plaintiff can obtain a
 4 mail-in ballot by either signing up for the Permanent Early Voting List (“PEVL”)⁷ or
 5 calling the County Recorder’s Office to request a ballot by Friday, October 23, 2020 at
 6 5:00 p.m. Plaintiff can then return her ballot by: (1) mailing it, which does not require
 7 postage; (2) dropping it off at any vote center on Election Day; or (3) dropping it off early
 8 at a secure ballot drop-box provided at one of five locations. *See* COCHISE COUNTY,
 9 Elections, <https://www.cochise.az.gov/elections/home> (last visited: Oct. 21, 2020);
 10 COCHISE COUNTY, *Ballot Box Locations*, [https://www.cochise.az.gov/recorder/ballot-box-](https://www.cochise.az.gov/recorder/ballot-box-locations)
 11 [locations](https://www.cochise.az.gov/recorder/ballot-box-locations) (last visited: Oct. 21, 2020).

12 Based on the facts established in the parties’ pleadings, Plaintiff has not clearly
 13 demonstrated she will suffer irreparable harm simply because she will not be offered the
 14 specific means of voting she desires. *See Lopez*, 680 F.3d at 1072; *see also Marlyn*
 15 *Nutraceuticals, Inc.*, 571 F.3d at 879. Furthermore, Plaintiff fails to articulate why the
 16 other available methods of voting, including voting by mail, do not constitute substantially
 17 equivalent reasonable modifications.

18 C. Balance of Equities

19 To qualify for injunctive relief, Plaintiff must establish “the balance of equities tips
 20 in [her] favor.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (quoting
 21 *Winter*, 555 U.S. at 20). In determining whether a movant has met this burden, courts have
 22 a “duty . . . to balance the interests of all parties and weigh the damages to each.” *Id.*

23
 24 ⁶*See* CENTERS FOR DISEASE CONTROL & PREVENTION, *Considerations for Election*
 25 *Polling Locations*, [https://www.cdc.gov/coronavirus/2019-ncov/community/election-](https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html)
 26 [polling-locations.html](https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html) (last visited: Oct. 20, 2020) (advising voters to “[c]onsider voting
 27 alternatives available in your jurisdiction that minimize contact,” such as voting by mail);

28 ⁷Voters can request to be added to the PEVL any time, but requests must be received
 by 5:00 p.m. on the eleventh day before the election, which, in this case, is Friday, October
 23, 2020. *See Ballot-by-Mail & Permanent Early Voting List Request Form*,
https://www.cochise.az.gov/sites/default/files/elections/AZ_PEVL_form2020.pdf (last
 visited: Oct. 22, 2020). Plaintiff has not explained why she has not taken advantage of this
 alternative means of voting, even though voting by mail would obviate her concerns related
 to exiting her vehicle and going inside to vote. (Doc. 6; Hoffard Decl., Doc. 19).

1 (quoting *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,
2 1203 (9th Cir. 1980)). The balance of equities between the parties tips in favor of
3 Defendants.

4 At issue here is not simply Plaintiff's "strong interest in exercising the 'fundamental
5 political right' to vote," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (internal citation
6 omitted), but rather her interest in voting curbside. The Defendants' interest here is
7 effectively running its voting system and administering the November 3 general election.
8 *Cf. Purcell*, 549 U.S. at 4 ("A State indisputably has a compelling interest in preserving
9 the integrity of its election process."). As explained above, the logistics of transporting the
10 electronic voting machines and, in particular, the e-pollbooks which cannot be transported
11 outside without shutting down the entire voting system, make curbside voting infeasible.
12 To provide curbside voting, the County would be required to purchase special carts for the
13 transportation of the voting machines outside and possibly be required to pay for costly
14 repairs to the machines, should they be damaged in the process. The effective
15 administration of the election would also be compromised when the entire system shuts
16 down each time an e-pollbook must be taken outside for use by a curbside voter. Or, as
17 Plaintiff suggests, the County could provide paper ballots, which would require it to
18 purchase Ballot on Demand printers and produce ballots for voters who wish to vote
19 curbside. (Doc. 6 pg. 16). Logistically, these alterations to the election process would be
20 infeasible—especially with less than two weeks remaining before Election Day.

21 Having considered the interests of the parties and weighing the damages to each,
22 the Court finds the balance of equities tips in the Defendants' favor.

23 **D. Public Interest**

24 In cases involving elections, "[t]he public interest is significantly affected." *Sw.*
25 *Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003). And in this
26 case, there are competing public interests. There is a strong public interest in the
27 fundamental right to vote and to provide all voters, including those with disabilities,
28 meaningful access to the election process. These concerns regarding the public interest,
are not what is at stake here. Rather, the public interest advanced by Plaintiff is the ability

1 to vote curbside even if other reasonable accommodations exist. On the contrary, the
2 competing public interest of ensuring elections are effectively administered and avoiding
3 confusion caused by changes to election rules and procedures close to Election Day cuts
4 against issuing a preliminary injunction in this case. Specifically, the Supreme Court “has
5 repeatedly emphasized that lower federal courts should ordinarily not alter the election
6 rules on the eve of an election.” *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140
7 S. Ct. 1205, 1207 (2020) (citing *Purcell*, 549 U.S. 1). In *Purcell*, the Supreme Court
8 explained that because court orders affecting elections can “result in voter confusion and
9 consequent incentive to remain away from the polls. As an election draws closer, that risk
10 will increase.” 549 U.S. at 4-5. As of the date of this order, Election Day is twelve days
11 away.

12 Most recently, on October 21, 2020, the Supreme Court granted a stay application
13 in a case involving an ADA-challenge to Alabama’s lack of curbside voting for voters with
14 disabilities. *Merrill v. People First of Alabama*, __ S.Ct. __, 2020 WL 6156545 (U.S. Oct.
15 21, 2020). There, the district court enjoined the Alabama Secretary of State’s “de facto
16 ban on curbside voting,” among other voting procedures, in part, due to the increased risks
17 voters with disabilities face with COVID-19. *People First of Alabama v. Merrill*, 2020
18 WL 5814455 at *2 (N.D. Ala. Sept. 30, 2020). The Alabama case involved a statewide
19 ban on curbside voting based on the Alabama Secretary of State’s interpretation of state
20 law. Arizona does not ban curbside voting. Indeed, Plaintiff has established that several
21 counties in Arizona offer curbside voting. (Doc. 21, Hilser Decl.). Rather, the County has
22 chosen not to offer it. Moreover, in enjoining Alabama’s ban on curbside voting, the
23 district court specifically explained: “To be clear, lifting the ban on curbside voting permits
24 counties willing to implement the practice, if any, to do so, but this order does not mandate
25 that counties must provide curbside voting in Alabama.” *Id.* The court emphasized the
26 injunction was not a mandatory one, but rather a prohibitory one, as such the order “would
27 not require the defendants to take any affirmative action, such as actually providing
28 curbside voting.” *Id.* at *41. This is in stark contrast to the instant case where Plaintiff
seeks a mandatory injunction that would require Defendants to take affirmative action by

1 providing curbside voting. As noted above, mandatory injunctions are disfavored. *See*
2 *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879. Consistent with that, the Supreme Court's
3 stay of the negative injunction in the Alabama case is instructive to this Court and supports
4 denying the mandatory injunction sought here.


5 **V. Conclusion**

6 Having considered Plaintiff's Motion, the Defendants' Response (Doc. 19), and
7 Plaintiff's Reply (Doc. 21), and good cause appearing,

8 **IT IS ORDERED** Plaintiff's Motion for Preliminary Injunction and Expedited
9 Hearing (Doc. 14) is **DENIED**.

10 Dated this 22nd day of October, 2020.

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Honorable Scott H. Rash
United States District Judge