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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kathleen Hoffard,

Plaintiff,

vs.

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

Defendants.

Case Number: 4:20-cv-00243-SHR

NOTICE OF DECISION

(Assigned to the Hon. Scott H. Rash)

Plaintiff Kathleen Hoffard, by and through counsel, respectfully submits this Notice of Decision of *Merrill v. People First of Alabama*, 20A67, 2020 WL 6156545 (U.S. Oct. 21, 2020) because Plaintiff cited to *People First of Alabama v. Merrill*, 2:20-CV-00619-AKK, 2020 WL 3207824 (N.D. Ala. June 15, 2020), appeal dismissed,¹ 20-12184-GG, 2020 WL 5543717 (11th Cir. July 17, 2020) in these proceedings.

Briefly, the procedural history related to the Supreme Court's order is as follows. On September 30, 2020, the Northern District of Alabama enjoined the Alabama

¹ On July 16, 2020, the Eleventh Circuit dismissed an appeal of an earlier district court order, after the Alabama Secretary of State filed an unopposed motion to voluntarily dismiss appeal. As set forth herein, the appeal of the decision upon which Plaintiff relies remains pending before the Eleventh Circuit.

1 Secretary of State from, among other things, prohibiting counties from establishing
2 curbside voting procedures that otherwise comply with state and federal election law. See
3 *People First of Alabama v. Merrill*, 2:20-CV-00619-AKK (N.D. Ala. Sept. 30, 2020)
4 (available at: <https://ecf.alnd.uscourts.gov/doc1/01915509327>). The State of Alabama
5 appealed. On October 13, 2020, the Eleventh Circuit Court of Appeals, without analysis,
6 denied Defendants' request to stay the injunction as to the curbside voting ban pending
7 the appeal. See *People v. Sec. of State for Alabama*, 20-13695-B, 2020 WL 6074333, at
8 *1 (11th Cir. Oct. 13, 2020). On the evening of October 21, 2020, the United States
9 Supreme Court issued an order staying the Northern District of Alabama's September 30,
10 2020 preliminary injunction order pending disposition of the appeal in the United States
11 Court of Appeals for the Eleventh Circuit and disposition of the petition for a writ of
12 certiorari, if such writ is timely sought. *Merrill v. People First of Alabama*, 20A67, 2020
13 WL 6156545 (U.S. Oct. 21, 2020). The Supreme Court did so without analysis.

14 Plaintiff relied on other propositions in the underlying decision in *People First*,
15 which has not been overruled and the appeal on subsequent decision in this matter is still
16 pending before the Eleventh Circuit. For the Court's convenience, Plaintiff provides the
17 references to *People First* cited in these proceedings.

18 In Plaintiff's Response to Defendants' Motion to Dismiss (DOC 12) (at 18), and
19 in Plaintiff's Motion for Preliminary Injunction (DOC 14) (at 13), Plaintiff included the
20 following citation to this case:

21 *People First of Alabama v. Merrill*, 2020 WL 3207824 at FN 46 (June 15,
22 2020) ("The ADA is not so narrow that the plaintiffs' rights only extend to
23 voting at some time and in some way. The plaintiffs have the right to fully
24 participate in [the state's] voting program, including by casting a vote in
25 person. The plaintiffs demonstrate that by prohibiting curbside voting, the
26 state excludes them from voting in person based on their disability, thereby
27 failing to provide them with meaningful access to the benefit that it offers"
28 (internal citations and quotations omitted)

1 In Plaintiff's Reply in Support of Plaintiff's Motion for Preliminary Injunction
2 (DOC 21) (at 13), Plaintiff again relied on *People First*:

3 A "public entity has the burden of proving that compliance with this subpart
4 would result in a 'fundamental' alteration." *People First of Alabama v.*
5 *Merrill*, 2020 WL 307824, at 21 (N.D. Ala. June 15, 2020) (citing *Hindel*
6 *v. Husted*, 875 F.3d 344, 348 (6th Cir. 2017, referring to 28 C.F.R. §
7 35.164).

8 DATED this 22nd day of October, 2020.

9 **ARIZONA CENTER FOR DISABILITY LAW**

10 /s/ Rose Daly-Rooney

11 Rose Daly-Rooney

12 Maya Abela

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14 Meaghan Kramer

15 *Attorneys for Plaintiff Kathleen Hoffard*

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2020, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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