

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

**LEAGUE OF WOMEN VOTERS OF
NEW HAMPSHIRE, *et al.*,**

Plaintiffs,

STEVE KRAMER, *et al.*,

Defendants.

Civil Action No. 1:24-cv-73-SM-TSM

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

“[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Defendants Steve Kramer, Lingo Telecom, LLC (“Lingo”), and Life Corporation (“Life Corp”), (collectively, “Defendants”) orchestrated an assault on New Hampshire citizens’ right to vote by creating and disseminating deceptive, intimidating, and threatening robocalls in advance of the January 2024 New Hampshire Presidential Primary (the “New Hampshire Primary”).

Two days before the New Hampshire Primary, Defendants sent thousands of robocalls (the “New Hampshire Robocalls”) to potential or likely Democratic voters urging them not to exercise their right to vote. Using AI technology and caller ID spoofing, Defendants misappropriated the identities of two authoritative figures on voting—President Joe Biden and the former Chair of the State Democratic Party, Kathleen Sullivan—in an effort to suppress or divert the voting patterns of Democratic voters. The New Hampshire Robocalls—delivered via a “deepfake” voice of President Biden on a call spoofed to appear that it was made from Sullivan’s household—suggested that participating in the New Hampshire Primary would jeopardize voters’ ability to participate in the November 2024 General Election (the “General Election”) and contribute to a victory from President Biden’s presumptive opponent, former President Donald Trump. Defendants’ attempts to coerce voters into abstaining from the New Hampshire Primary violate Section 11(b) of the Voting Rights Act (“VRA”), the Telephone Consumer Protection Act (“TCPA”), and New Hampshire Election Laws.

Once a voter is dissuaded from voting in an election due to intimidation, threat, or deception, that right cannot be recovered. The Defendants’ robocalls created serious consequences for New Hampshire voters and the state’s presidential primary election, and can be easily and

swiftly repeated before other upcoming U.S. local, state, and federal elections. Defendants have already demonstrated their willingness and ability to execute a mass voter suppression scheme less than 48 hours before an election, quickly and at minimal costs. Given the significant harm posed to voters prior to upcoming elections, Plaintiffs seek a preliminary injunction to enjoin Defendants from disseminating or facilitating the dissemination of similarly misrepresented, spoofed, or deepfaked robocalls.

STATEMENT OF FACTS

I. The New Hampshire Robocalls

On January 21, 2024, two days before the New Hampshire Primary, thousands of New Hampshire voters received the following robocall, delivered via an AI-generated voice of the President of the United States, warning them against participating in the primary:

This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push nonpartisan and Democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday. If you would like to be removed from future calls, please press two now.

See Declaration of Joseph T. DiPiero. (“DiPiero Decl.”), Ex. A (Recording of New Hampshire Robocall).

The caller identification system displayed the personal cell phone number of Kathleen Sullivan, a former New Hampshire Democratic Party Chair, the name of her spouse (whose name is on her and her spouse’s joint cell phone account), or both. *See* Declaration of Kathleen Sullivan (“Sullivan Decl.”), ¶ 7. At the time, Sullivan was the treasurer of Granite for America, an independent Super PAC that was leading a public effort to ask Democrats to write in President

Biden's name in the New Hampshire Primary.¹ *Id.* ¶ 5. Certain of the robocalls directed recipients to call Sullivan's personal cell phone number to be removed from future calls. *See* DiPiero Decl., Ex. B. (Letter from FCC Enforcement Bureau to Lingo Telecom, LLC).

The AI-generated voice and spoofed caller ID deceived voters. On the afternoon of January 21, 2024, Sullivan began receiving phone calls from friends, family, and strangers who were confused or upset that they had received robocalls, apparently from Sullivan or her husband. *See* Sullivan Decl. ¶¶ 9-13. At least one of the callers sought to opt out of future calls per the directions in the robocall. *Id.* ¶ 11.

Plaintiffs Fieseher, Marashio, and Gingrich (collectively, the "Individual Plaintiffs") each received a robocall and immediately recognized the voice on the call as President Biden's. *See* Declaration of James Fieseher ("Fieseher Decl."), ¶ 5; Declaration of Nancy Marashio ("Marashio Decl."), ¶ 6; Declaration of Patricia Gingrich ("Gingrich Decl."), ¶¶ 6-7. The Individual Plaintiffs only realized the call was illegitimate when the forged voice of the President told them to not vote and that participating in the New Hampshire Primary would be a waste of their vote. *See* Fieseher Decl. ¶¶ 5-6; Marashio Decl. ¶¶ 6-7; Gingrich Decl. ¶ 8. The Individual Plaintiffs are experienced voters and/or politically active in their communities and understood that President Biden would not attempt to suppress their vote; however, they feared that less experienced voters would not have been able to discern its inauthenticity, and that it could have led to the suppression of these voters in the New Hampshire Primary. *See* Fieseher Decl. ¶¶ 6, 8-9; Marashio Decl. ¶ 10-11; Gingrich Decl. ¶¶ 10-11.

¹ President Biden's name did not appear on the New Hampshire primary ballot due to a conflict between the Democratic National Committee's primary calendar and New Hampshire state law.

II. The Creation and Attempted Obfuscation of the New Hampshire Robocalls

The New Hampshire Robocalls were created by Steve Kramer, a political consultant with extensive experience in New York politics, and Paul Carpenter, a transient individual with experience in AI technology. *See* Declaration of Paul Carpenter (“Carpenter Decl.”), ¶¶ 1, 9-11. In August 2023, Carpenter attended a housewarming party for Kramer in New Orleans. *Id.* ¶ 4. At the party, Carpenter used AI technology to create an audio clip mimicking the voice of U.S. Senator Lindsey Graham. *Id.* Kramer immediately took an interest in the technology. *Id.*

On September 27, 2023, Kramer provided Carpenter with a script to use for an AI-generated recording of Senator Graham. *Id.* ¶ 5. In a contemporaneous text, Kramer suggested that he would be using the audio sample of Senator Graham in connection with “recruiting business.” *Id.*, Ex. B. Carpenter worked with Kramer to create and refine an AI-generated clip of Senator Graham. *Id.* ¶ 5. During this time, Kramer led Carpenter to believe that he would hire Carpenter as an independent contractor on similar projects in the future, to create AI-generated audio recordings for campaigns that hired Kramer’s firm. *Id.* ¶ 7.

In November 2023, Kramer asked Carpenter whether he could create an AI-generated voice of President Biden and Carpenter confirmed that he could. *Id.* ¶ 8. Two months later, on January 19, 2024, Kramer provided Carpenter a script for the Biden recording. *Id.* ¶ 9. The script did not include a phone number of Sullivan, but the text of the call that was distributed to New Hampshire voters by Kramer was otherwise the same. *Id.* ¶ 9.

On January 19, 2024, Carpenter used publicly available software developed by ElevenLabs to generate the AI-generated recording of President Biden’s voice. *Id.* The recording cost Carpenter only \$1. *Id.* After Carpenter sent Kramer a draft of the recording, Kramer asked Carpenter to edit the recording to improve the stability and the sound quality. *Id.* ¶ 10. Carpenter revised the recording in line with Kramer’s request and sent it back to Kramer. *Id.* On January

20, 2024, Kramer directed Carpenter to his father, Bruce Kramer, for payment. *Id.* ¶ 11. Shortly thereafter, Bruce Kramer sent Carpenter \$150 via his Venmo account. *Id.*

Around this time, Kramer hired Life Corp to distribute the AI-generated recording of President Biden’s voice to thousands of likely Democratic voters in New Hampshire. *See* DiPiero Decl., Ex. F (Feb. 25, 2024 NBC News Article). Life Corp relied on Lingo’s services to disseminate the robocalls. *See id.*, Ex. C (Multistate Task Force Letter to Life Corp). Lingo provided certain of the calls “A-level STIR/SHAKEN” attestations, which asserted that Life Corp had the legal right to utilize the phone number that appeared on recipients’ caller IDs.² *See id.*, Ex. B at 4-5 and Attachment A. In this manner, Kramer was able to “spoof” the calls to falsely reflect that they were coming from Sullivan’s phone number.³

On January 22, 2024, Kramer sent Carpenter a link to an NBC News article about the New Hampshire Robocalls. *See* Carpenter Decl. ¶ 14. Kramer also sent a text that read, “Shhhhhhhh.” *Id.*, Ex. D (Kramer and Carpenter Texts). Shortly after sending the article, Carpenter and Kramer spoke over the phone. *Id.* ¶ 15. Kramer directed Carpenter to delete all of his emails and communications related to the creation of the New Hampshire Robocalls. *Id.* Carpenter deleted the relevant emails at Kramer’s direction. *Id.* Kramer also assured Carpenter that the calls could not be traced back to Kramer because he had “spoofed” the call using a number affiliated with a Democratic official. *Id.* ¶ 16.

² STIR/SHAKEN digitally validates the handoff of phone calls passing through the complex web of networks, allowing the phone company of the consumer receiving the call to verify that a call is in fact from the number displayed on Caller ID. *See* FCC, *Combating Spoofed Robocalls with Caller ID Authentication* (last visited April. 17, 2024), <https://www.fcc.gov/call-authentication>.

³ Kramer intended for the caller ID to show Sullivan’s name; however, because Sullivan and her husband own their cell phones under a single account, it was her husband’s name that appeared on the recipients’ caller ID display. *See* Sullivan Decl. ¶ 6.

On February 6, 2024, two weeks after the New Hampshire Primary, New Hampshire Attorney General John Formella announced that his office had launched a criminal investigation into the New Hampshire Robocalls. *See* DiPiero Decl., Ex. D (Feb. 6, 2024 AG Press Release). After learning of the criminal investigation, Carpenter reached out to an NBC News reporter to discuss his and Kramer's role in the creating the New Hampshire Robocalls. *See* Carpenter Decl. ¶ 17. Carpenter did not notify Kramer that he would be contacting a reporter. *Id.* On February 23, 2024, NBC News published a story detailing Kramer's involvement in the New Hampshire Robocalls. *See* DiPiero Decl., Ex. E.

On February 25, 2024, two days after the NBC News story, Kramer issued a press release through a public relations consultant, admitting responsibility for the scheme. *See* Carpenter Decl., Ex. F. Kramer's statement read in relevant part:

The evening of Sunday, January 20th, 2 days before the New Hampshire primary, I sent out an automated call to 5,000 most likely to vote Democrats. Using easy to use online technology, an automated version of President Joe Biden voice was created. [. . .]

With a mere \$500 investment, anyone could replicate my intentional call. A voter list can be purchased quickly and easily through any political vendor. New Hampshire lists are slightly tougher, as each county runs its own show. [. . .]

Campaigns have contacted me since the November election to gauge my interest/ability in creating similar use of A.I. in campaigns against each other. PACs, SuperPACs, corporations were all poised to unleash this technology to the American electorate. Even individuals acting alone can quickly and easily use A.I. for misleading and disruptive purposes. Self-policing won't work.

Id. In subsequent interviews, Kramer claimed he planned the robocalls from the start as an act of civil disobedience to call attention to the dangers of AI in politics, comparing himself to American Revolutionary heroes Paul Revere and Thomas Paine. *See* DiPiero Decl., Ex. F.

On March 14, 2024, Kramer called Sullivan directly and incorrectly accused her of being behind the instant lawsuit. *See* Sullivan Decl. ¶ 22. On this call, he admitted that he orchestrated

the New Hampshire Robocalls, and told Sullivan that he got her cell phone number from an FEC filing for Granite for America. *Id.* ¶ 23. Kramer claimed that many campaigns had asked him to do “bad things,” and that he was working with the New Hampshire Department of Justice and the “FEC.” *Id.* ¶¶ 24-25. Although Kramer repeated his claim that he distributed the robocalls to alert everyone to the dangers of AI-generated robocalls and that he knew it would make the news, later on the same call he told Sullivan that he did not expect the robocalls to generate much media coverage. *Id.* ¶ 27.

III. Defendants’ Pattern of Misconduct

All three defendants have a track record of dishonesty and misconduct. Kramer has been repeatedly accused of deceitful and fraudulent conduct:

- In April 2019, Kramer was the subject of a complaint filed with the New York City Campaign Finance Board by a compliance aide to a local campaign. *See* DiPiero Decl., Ex. G (May 1, 2019 Politico Article). The aide suspected wrongdoing after receiving a \$90,000 invoice from a Kramer-affiliated consulting firm the day after the campaign received \$500,000 in public matching funds from New York City. *Id.* A subsequent media investigation of the allegations revealed that Kramer and his associates concealed the identities of the recipients of campaign funds, altered invoices to inflate the costs of services provided, falsified canvassing records to misrepresent the extent of the services provided, and failed to timely disclose the nature of certain services provided to the campaign, including the organization of robocalls. *Id.*
- In April 2021, Kramer was sued and accused of malfeasance by a former client who had paid him \$80,000 to gather signatures to secure her appearance on the New York mayoral primary ballot. *See* DiPiero Decl., Ex. H (Complaint and Statement of Undisputed Facts). Nearly 90% of the signatures that Kramer submitted were later ruled invalid by the New York City Board of Elections, and, in the course of litigation, Kramer was able to produce timecards for only a fraction of the petitioners and person-hours worked that he had promised under the contract. *Id.*
- In September 2023, Kramer sent robocalls featuring an AI-generated voice of Senator Graham to 300 South Carolina likely Republican primary voters asking whom they supported in the 2024 South Carolina Republican Presidential Primary. *See* DiPiero Decl., Ex. F. Kramer later bragged that

the deepfake robocalls achieved a response rate four times higher than robocalls using a generic automated voice. *Id.*

Prior to the New Hampshire Robocalls, Defendants Lingo and Life Corp both have been the subject of scrutiny from federal regulators and state law enforcement officials for allowing their platforms to be used for unlawful robocalls.

- On July 29, 2003, the FCC issued an official citation to Life Corp for delivering one or more prerecorded unsolicited advertisements to residential telephone lines without a valid exemption in violation of Section 503(5) of the Communications Act of 1934, and failing to disclose required information in its prerecorded messages and telephone solicitations in violation of 47 C.F.R. § 64.1200(e)(2)(iv). *See* DiPiero Decl., Ex. I (2003 FCC Letter).
- On August 1, 2022, the Multistate Task Force issued a Civil Investigative Demand to Lingo to identify, investigate, and mitigate suspected illegal call traffic transmitting from its network. *See* DiPiero Decl., Ex. J (2023 Multistate Task Force Letter).
- On August 23, 2022, the Federal Trade Commission issued Matrix Telecom, LLC (one of Lingo's prior corporate names) a Cease-and-Desist Demand that identified numerous illegal calls that the company was reportedly transmitting. *See* DiPiero Decl., Ex. K (FTC Cease and Desist Letter).
- On November 3, 2023, the Multistate Task Force demanded that Lingo take steps to protect its network after observing that Lingo continued to transmit suspected illegal traffic. *See* DiPiero Decl., Ex. J.

In relation to the New Hampshire Robocalls, on February 6, 2024, the FCC sent a letter to Lingo, identifying Lingo and/or Life Corp as having taken an active role in enabling Kramer's scheme. *See* DiPiero Decl., Ex. B. The FCC accused Lingo and/or Life Corp of providing false attestations for the New Hampshire Robocalls, which allowed Kramer to disguise the source of the calls. *Id.* The FCC also suggested the manner in which the calls were disseminated was consistent with a Telephony Denial of Service attack, in which a communications network is deliberately inundated with malicious inbound calls to disrupt service. *Id.*

IV. The League of Women Voters' Mitigation Efforts

The League of Women Voters of the United States (“LWV-US”) and the League of Women Voters of New Hampshire (“LWV-NH”), collectively (the “League”), share a mission to encourage informed and active participation in the government, increase understanding of major public policy issues, and influence public policy through education and advocacy. *See* Declaration of Elizabeth Tentarelli (“Tentarelli Decl.”), ¶¶ 2-3; Declaration of Celina Stewart (“Stewart Decl.”), ¶¶ 2-3. A critical component of their shared nonpartisan mission is to encourage citizens to register to vote, participate in elections, and engage with the civic process. *See* Tentarelli Decl. ¶¶ 2-3, 5; Stewart Decl. ¶¶ 2-3, 5. Consistent with this nonpartisan mission, LWV-NH serves all individuals who vote or wish to vote in New Hampshire, regardless of political party affiliation. Tentarelli Decl. ¶ 3; Stewart Decl. ¶ 3.

In response to the New Hampshire Robocalls, the League has had to dedicate time, money, and resources to address the harm caused by Defendants’ actions, and to prepare to defend New Hampshire voters against similar calls in the future. As a direct response to the New Hampshire Robocalls, LWV-US has implemented changes to its VOTE411.org website, which provides election-related information to voters. *See* Stewart Decl. ¶ 12. LWV-US created a new alert VOTE411 alert to inform voters of deceptive, threatening, or intimidating robocalls. *Id.* LWV-US diverted staff resources to create the new alert, and will dedicate staff time to updating the website and translating alerts into Spanish to alert voters about similar harmful robocall campaigns. *Id.*

LWV-US has also made changes to its internal threat matrix, which it uses to track and respond to various election threat scenarios in coordination with local state leagues. *See* Stewart Decl. ¶ 9. Before the New Hampshire Primary, LWV-US rated disruptive robocalls relatively low on the threat scale and allocated resources accordingly. *Id.* In response to the New Hampshire

Robocalls, LWV-US raised its assessment of the threat level of inauthentic robocalls to its second-highest ranking. *Id.* ¶ 10. LWV-US has expended, and continues to expend, resources providing additional guidance and training to staff to track inauthentic or deepfake robocalls. *Id.*

LWV-NH is planning additional efforts to address the New Hampshire Robocalls. *See* Tentarelli Decl. ¶¶ 11-13. This includes changing LWV-NH’s standard printed information about voter registration to include warnings about inauthentic robocalls. *Id.* ¶ 13. To incorporate this new cautionary language, LWV-NH anticipates that it will have to incur several hundred dollars in additional printing costs that it would not have otherwise incurred. *Id.* ¶ 13. LWV-NH also expects to dedicate more volunteer hours to rapidly respond to robocall voter suppression schemes, which would severely tax LWV-NH’s limited volunteer-time resources. *Id.* ¶ 12.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In the First Circuit, “the four factors are not entitled to equal weight in the decisional calculus; rather, likelihood of success is the main bearing wall of the four-factor framework.” *Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 9-10 (1st Cir. 2013) (internal citations and quotations omitted).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Plaintiffs Are Likely to Show That Defendants Violated Section 11(b) of the VRA

Plaintiffs are likely to show that Defendants’ robocall campaign violates Section 11(b) of the VRA. Section 11(b) of the VRA provides in relevant part: “No person, whether acting under

color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.” 52 U.S.C. § 10307(b). To succeed on a claim under Section 11(b), “a plaintiff must show that the defendant has intimidated, threatened, or coerced someone for voting or attempting to vote, or has attempted such intimidation, threat, or coercion.” *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020) (hereinafter, “*Wohl I*”).⁴ *Wohl I* described the meanings of these terms:

The words “intimidate,” “threaten,” and “coerce,” have familiar and somewhat overlapping definitions. To “intimidate” means to “make timid or fearful,” or to “inspire or affect with fear,” especially “to compel to action or inaction (as by threats).” To “threaten” means to “utter threats against” or “promise punishment, reprisal, or other distress.” And to “coerce” means to “restrain, control, or dominate, nullifying individual will or desire (as by force, power, violence, or intimidation).

498 F. Supp. 3d at 477 (citations omitted).

Courts have made clear that the Voting Rights Act in general, and Section 11(b) in particular, should be read expansively and is not limited to any particular act. *Allen v. State Bd. of Elections*, 393 U.S. 544, 565-67 (1969) (noting that Congress intended “to give the [Voting Rights] Act the broadest possible scope”), *abrogated on other grounds by Ziglar v. Abbasi*, 582 U.S. 120 (2017); *Wohl I*, 498 F. Supp. 3d at 476 (“Section 11(b)’s reach is extensive, in accordance with the VRA’s ambitious aims of encouraging true enforcement of the Fifteenth Amendment’s promise of unencumbered access to the vote . . .”); *Jackson v. Riddel*, 476 F. Supp. 849, 859 (N.D. Miss. 1979) (explaining that even where a court finds “no case precisely on point,” Section 11(b) should “be given an expansive meaning”). Indeed, courts have regularly found that any actual or attempted

⁴ Section 11(b) does not contain an intent requirement. *Nat’l Coal. on Black Civic Participation v. Wohl*, 661 F. Supp. 3d 78, 116 (S.D.N.Y. 2023) (hereinafter, “*Wohl II*”). In fact, Congress deliberately omitted any intent requirement and prohibited voter intimidation regardless of an actor’s motives. See Voting Rights, Part 1: Hearings on S. 1564 Before the S. Comm. on the Judiciary, 89th Cong. 16 (1965) (Attorney General Nicholas Katzenbach, a drafter of § 11(b), testifying before the Senate Judiciary Committee that, “Under [the VRA] no subjective ‘purpose’ need be shown . . . in order to prove intimidation under the proposed bill. Rather, defendants would be deemed to intend the natural consequences of their acts.”).

action to instill fear in connection with one's exercise of his or her right to vote violates the VRA. *See, e.g., Wohl I*, 498 F. Supp. 3d at 482 (robocalls stating that personal information would be disclosed to creditors, the CDC, and law enforcement violated VRA); *League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 18 Civ. 423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018) (reports published by defendants that falsely accused Virginia voters of committing felony voting fraud by registering to vote and/or voting violated VRA); Decision and Order at 2, *Daschle v. Thune*, No. 4:04-cv-4177 (D.S.D. Nov. 2, 2004) (following Native Americans at polling sites, writing down their license plate numbers, and engaging in loud conversations about Native Americans being prosecuted for voting illegally intimidated prospective Native American voters and merited temporary restraining order); *United States v. Nguyen*, 673 F.3d 1259, 1265 (9th Cir. 2012) (letters mailed to voters warning that if they voted in the upcoming election, their personal information would be collected by the government and shared with organizations who were "against immigration" violated California statute analogous to VRA).

Here, the voter intimidation threat was the loss of the right vote in the General Election. Courts have recognized that voter intimidation encompasses not only "forcefully coercive" conduct, but also subtler forms of intimidation such as "manipulation and suggestion." *Nguyen*, 673 F.3d at 1265; *see also Wohl I*, 498 F. Supp. 3d at 481 ("[U]nlawful voter intimidation also includes subtler forms of intimidation that do not threaten bodily harm"); *Daschle*, No. 4:04-cv-4177, at 1 (following Native American voters to their cars and writing down their license plates intimidated prospective Native American voters and created risk of irreparable harm by "improperly dissuad[ing] [them] from voting"). And in the specific context of voting rights and robocalls, at least one court has concluded that "messages that a reasonable recipient, familiar with

the context of the message, would view as a threat of injury to deter individuals from exercising their right to vote” violate the VRA. *Wohl II*, 661 F. Supp. 3d at 113. The threat of injury need not be violent or physical, and may include communications inspiring fear of other types of harm, such as legal consequences or economic harm. *Id.*

The *Wohl* case is particularly instructive. In *Wohl*, thousands of voters in the United States received robocalls falsely claiming that voting by mail would result in voters’ personal information becoming part of a public database available to police departments and credit card companies to execute old warrants and collect outstanding debt. *Wohl I*, 498 F. Supp. 3d at 465. The robocall came from a woman who identified herself as “Tamika Taylor”—a name that has been used incorrectly by media outlets to refer to the mother of Breonna Taylor, Tamika Palmer, a well-known civil rights activist—and stated it was from “Project 1599, the civil rights organization founded by Jack Burkman and Jacob Wohl.” *Id.* The *Wohl* court concluded that the robocalls violated Section 11(b) of the VRA, explaining that the use of this name in the script of the call, in addition to framing Project 1599 as a civil rights organization, “dressed the call with a veil of legitimacy to mislead its listeners into believing the statements made in the call were true.” *Wohl II*, 661 F. Supp. 3d at 123. The *Wohl* court also had emphasized, in a previous ruling granting the plaintiffs a temporary restraining order, that the defendants had specifically targeted areas with large populations of Black voters, with whom the defendants’ false statements were intended to resonate most. *Wohl I*, 498 F. Supp. 3d at 466.

Similarly here, Defendants sent out thousands of robocalls telling voters to “save [their] vote for the November election” instead of voting in the New Hampshire Primary, warning them that “[v]oting this Tuesday only enables the Republicans in their quest to elect” the opposing party candidate. *See DiPiero Decl.*, Ex. A. This language falsely told voters that exercising their right

to vote in the New Hampshire Primary would carry serious adverse consequences: they would be unable to vote in the General Election. To deliver the message, the robocalls used a deepfake voice recording of the President of the United States, Joe Biden, who has an easily recognizable voice. *See* DiPiero Decl., Ex. A. The robocall even goes so far as to use language associated with President Biden, such as the word “malarkey.” *Id.* Additionally, the caller identification information displayed upon receipt of the robocall was spoofed to dress the call to display a name and phone number associated with Sullivan, a former New Hampshire Democratic Party chair, who was known to be organizing a write-in campaign on behalf of President Biden. *See* Sullivan Decl. ¶¶ 5, 7, 12. As in *Wohl*, Defendants in this case have shrouded their robocall in a “veil of legitimacy” designed to “mislead its listeners into believing the statements made in the call were true.” *Wohl II*, 661 F. Supp. 3d at 123.

Also like in *Wohl*, and to further amplify the threat that voting in the New Hampshire Primary would cause them to lose their vote, Defendants targeted likely Democratic voters, a population with whom Defendants’ false statements are intended to resonate most, and suggested that voting in the New Hampshire Primary would lead to the election of Donald Trump. *See* Carpenter Decl., Ex. F; *Wohl I*, 498 F. Supp. 3d at 466. Defendants’ robocalls were thus “messages that a reasonable recipient familiar with the context of the message would interpret as a threat of injury tending to deter [them] from exercising their voting rights.” *Wohl I*, 498 F. Supp. 3d at 477. Indeed, the loss of a vote is a significant and severe injury. *See Smith v. Meese*, 821 F.2d 1484, 1494 (11th Cir. 1987) (“If individuals fail to vote because of intimidation . . . whether or not specifically targeted at the individuals, the individuals have been injured, especially in light of the importance of the vote in our political system.”). The threat of the loss of the vote violates the VRA. *Wohl I*, 498 F. Supp. 3d at 476; *see also Daschle*, No. 4:04-cv-4177, at 1-2 (“[T]here clearly

is the threat of irreparable harm to the Movant in that if Native Americans are improperly dissuaded from voting . . . even if identified, they can't vote later.”).

B. Plaintiffs Are Likely to Show That Defendants Violated the TCPA

The TCPA prohibits any person or entity from initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, or some other exemption applies. 47 U.S.C. § 227(b)(1)(B). Here, Defendants orchestrated a scheme to send artificial and prerecorded-voice telephone calls to the Individual Plaintiffs, who did not consent to receiving calls, and Defendants did not initiate the artificial or prerecorded-voice telephone calls for “emergency purposes.” *See id.* No statutory exemption applies. *See, e.g., id.* §§ (b)(2)(B)(i) (exempting certain calls not made for a commercial purpose); (b)(2)(B)(ii) (exempting certain commercial calls).

For example, the exemption for calls not made for a commercial purpose plainly does not apply. The TCPA authorizes the FCC, subject to such conditions as the Commission may prescribe, to exempt calls that are not made for a commercial purpose. *See id.* § (b)(2)(B)(i). Acting pursuant to that authority, the FCC exempted certain artificial or prerecorded-voice telephone calls to residential telephone lines if: (a) the call is not made for a commercial purpose; (b) the caller makes no more than three calls within any consecutive 30-day period to the residential line; and (c) the caller honors the called party's request to opt out of future calls as required by 47 C.F.R. § 64.1200(b) and (d). *See* 47 C.F.R. § 64.1200(a)(3)(ii).

Defendants did not follow the requirements prescribed by the FCC. Specifically, 47 C.F.R. § 64.1200(b) requires that “all artificial or prerecorded voice telephone messages shall: (1) at the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call.” *Id.* § (b)(1) Defendants' robocall did not identify any

individual or entity responsible for the call at any point in the message, let alone at the beginning. If the call had complied with the TCPA, it would have identified Kramer as the individual responsible for the call. *Id.* Additionally, 47 C.F.R. § 64.1200(b)(2) requires that during or after the message, a telephone number of the entity or individual responsible for the message be provided. *Id.* § (b)(2). The New Hampshire Robocalls did not do so. Instead, the robocalls provided the cell phone number of a person who was unaffiliated with the calls, who was never asked nor gave permission for her number to be used, and who had no knowledge prior to the calls being made that her number (or her spouse's name) was being associated with the calls. *See* DiPiero Decl., Ex. B; Sullivan Decl. ¶¶ 7, 12, 19.

Furthermore, 47 C.F.R. § 64.1200(d) requires that no robocalls falling under an exemption may be placed unless the individual or entity responsible for the call has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. 47 C.F.R. § 64.1200(d). The TCPA includes minimum procedural standards such as maintaining a do-not-call list as well as having a written policy, available upon demand, for maintaining a do-not-call list; personnel engaged in making prerecorded-voice telephone calls must be informed and trained in the existence and use of a do-not-call list. *Id.* § (d)(1)-(6). Defendants could not have instituted a do-not-call list affiliated with the New Hampshire Robocalls because upset callers—based on misinformation provided by Defendants—directed their opt-out requests to Sullivan who had no prior knowledge of the calls nor any power to opt anyone out of receiving those calls in the future. *See* Sullivan Decl. ¶¶ 11, 19.

As the New Hampshire Robocalls are not exempt from the TCPA, Defendants' actions violated the TCPA. *See, e.g., Jones v. Montachusets Reg'l Transit Auth.*, No. 22-1569, 2023 WL 9233970, at *3 (1st Cir. Nov. 30, 2023) (finding that the defendant company violated the TCPA

after initiating calls to the plaintiff’s phone using an artificial prerecorded voice without the plaintiff’s prior express consent); *Murray v. Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 343 (1st Cir. 2022) (litigating a class action lawsuit under the TCPA after consumers received automated calls on their cell phones and landlines from the defendant company); DiPiero Decl., Ex. C (explaining that the FCC “promulgated rules restricting calls . . . delivering artificial or prerecorded voice messages” under Section 227(b)(1)(B) of the TCPA.)

C. Plaintiffs’ State Law Claims Are Likely to Succeed on the Merits

1. Plaintiffs are likely to show that Defendants violated RSA 664:14-b

New Hampshire law prohibits any person from “knowingly misrepresent[ing] the origin of a phone call which expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains any information about any candidate or party.” RSA 664:14-b(I). “Such knowing misrepresentation shall include, *but shall not be limited to*,” spoofing the person originating the call. RSA 664:14-b(1) (emphasis added). Injunctive relief is available to private plaintiffs under this statute. RSA 664:14-b(II)(b).

As a threshold matter, the New Hampshire Robocalls warned voters not to participate in the New Hampshire Primary. *See* DiPiero Decl., Ex. A (“It’s important that you save your vote for the November election . . . Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again.”). Defendants “knowingly misrepresent[ed] the origin of a phone call” in two distinct ways: spoofing, and the use of deepfake technology to deceive voters into thinking that the call had been recorded by President Biden.

First, Defendants caused the displayed caller identification information to indicate that the call originated from a source other than Defendants. Kramer hired Life Corp, who utilized Lingo’s services to distribute and disseminate the robocalls to New Hampshire voters. *See* Carpenter Decl., ¶ 13; DiPiero Decl., Ex. C. In doing so, Kramer directed the caller ID to display Sullivan’s phone

number. *See* Carpenter Decl. ¶ 16, Sullivan Decl. ¶ 6. Lingo provided A-level STIR/SHAKEN attestations, which asserted that it had the legal right to utilize the phone number that appeared on recipients' caller IDs. *See* DiPiero Decl., Ex. C. But Sullivan did not authorize or otherwise permit Kramer, Lingo, or Life Corp to use her or her husband's personal information for the caller ID. *See* Sullivan Decl. ¶ 19. The robocalls misrepresented caller information to thousands of recipients. *See* DiPiero Decl., Ex. B, C.

Second, although the call did not identify President Biden by name, the call used a deepfake of his voice, which recipients immediately recognized. By using President Biden's voice and language commonly associated with the President, the Defendants sought to lend credibility to the deeply damaging misinformation contained in the robocall message, and to indicate that the robocalls were associated with and endorsed by Biden's campaign. *See* DiPiero Decl., Ex. A. Kramer is unaffiliated with the Biden campaign.

2. Plaintiffs are likely to show that Defendants violated RSA 664:14-a

New Hampshire law requires all prerecorded political messages to contain, or by live operator provide within the first 30 seconds of the message: (i) the name of the candidate or of any organization or organizations the person is calling on behalf of; and (ii) the name of the person or organizations paying for the delivery of the message and the name of the fiscal agent, if applicable. RSA 664:14-a(II). Injunctive relief is available to private plaintiffs under this statute. RSA 664:14-a(IV)(b). Defendants violated RSA 664:14-a because the robocall message did not contain information either about whom the call was made on behalf of, or who paid for its delivery. Kramer's information was never disclosed to robocall recipients, despite having orchestrated and paid for the robocalls.

We are aware of only one decision interpreting the scope of RSA 664:14-a, and it is inapposite to the present case. *See O'Brien v. N.H. Democratic Party*, 166 N.H. 138 (2014). In

O'Brien, the New Hampshire Supreme Court assessed whether a political candidate who was the subject of a prerecorded political message had standing to bring suit for failure to comply with RSA 664:14-a. *Id.* at 139. The Court dismissed the case for lack of standing because the candidate failed to assert that he “suffered a legal injury against which the law was designed to protect.” *Id.* at 142 (citations omitted). The Court explained that no injury was suffered by the candidate because the candidate won the primary and the general election. *Id.* at 144. The Court’s brief discussion of whether a robocall recipient might have had standing (the recipient merely provided a declaration in support of the plaintiff and was not a plaintiff herself) was mere dicta, and addressed a question not before the Court. *Id.* at 145.

In the present case, it is clear that the Individual Plaintiffs have suffered the type of injury from which the RSA 664:14-a was designed to protect. As made clear in the legislative history, RSA 664:14-a was enacted to address “offensive” pre-recorded telephone messages, which interfere with “rights to privacy and the [quiet] enjoyment of [the] home,” and leave recipients “unable to determine who made the recording, who paid for the message, and which political candidate (if any) they were endorsing.” *See* House Committee on Election Law, Public Hearing on HB 332 (N.H. Feb. 4, 2003) (Statement of Representative Paul Spiess, Prime Sponsor of HB 332). Here, the Individual Plaintiffs’ right to privacy and quiet enjoyment of the home were violated by Kramer’s offensive robocalls, which left recipients unable to determine who made and paid for the message, and which lacked the required disclosures to inform the Individual Plaintiffs that Kramer—not President Biden’s campaign, Kathy Sullivan, Granite for America, or any other person affiliated with the Democratic Party—was responsible for the robocall distribution.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT PRELIMINARY RELIEF

A plaintiff suffers “irreparable harm” where, as here, the harm is to the fundamental right to vote. *See Arlene Ocasio v. Comision Estatal de Elecciones*, 486 F. Supp. 3d 478, 484 (D.P.R. 2020); *see also Colon-Marrero v. Conty-Perez*, 703 F.3d 134, 145 (1st Cir. 2012) (dissent) (finding that infringement on the right to vote constitutes irreparable harm per se). In fact, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (“The registration applicants in this case would certainly suffer irreparable harm if their right to vote were impinged upon.”). Given the fundamental nature of the right to vote, “if potential members of the electorate suffer intimidation, threatening conduct, or coercion such that their right to vote freely is abridged, or altogether extinguished, Plaintiff[s] would be irreparably harmed.” *Ariz. Democratic Party v. Ariz. Republican Party*, No. 16 Civ. 03752, 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016).

Here, the Individual Plaintiffs have already been harmed by being subjected to Defendants’ attempted threats, intimidation, and coercion. The harm that Individual Plaintiffs have suffered and will suffer from the false and coercive robocalls cannot be rectified by monetary relief after the fact. “Because there can be no ‘do-over’ or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction.” *Fish v. Kobach*, 840 F.3d 710, 752, (10th Cir. 2016). “Further, if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those voters can be identified, their votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.” *Ariz. Democratic Party*, 2016 WL 8669978, at *11. Additionally, the Individual Plaintiffs were subjected to deceptive calls about their rights.

Pursuant to Section 11(b) of the VRA, the Defendants’ attempt to dissuade the Individual Plaintiffs from voting—by falsely indicating that a vote in the primary election would cost them the right to vote in the general election—was a scheme to “intimidate, threaten, or coerce” the Individual Plaintiffs. 52 U.S.C. § 10307(b). The Defendants’ attempt to deceive the Individual Plaintiffs was also a direct violation of RSA 664:14-a and 664:14-b, because an individual is prohibited from distributing prerecorded political messages without disclosing within 30 seconds the names of the candidates or organization on whose behalf the call is being made and who is paying for the message, RSA 664:14-a; and prohibited from knowingly misrepresenting the origin of a phone call which advocates the success or defeat of any party, measure, or person at any election, or contains any information about any candidate or party, RSA 664:14-b.

Further, the harm that the League has suffered, and will continue to suffer, by being forced to divert resources away from its mission to defend against Defendants’ false and malicious tactics is clearly irreparable. *See* Tentarelli Decl. ¶ 12. This is similar to the harm alleged in *Wohl I*, which the court found to be irreparable because the plaintiff was forced to divert resources away from its work related to the Census and the Census had concluded at the time of the injunction. 498 F. Supp. 3d at 475. Here, too, the League cannot recover the time and resources they have already spent—and will continue to spend—to combat the disinformation spread by the Defendants.

In the months ahead, the League must budget for and allocate limited resources to guard against the substantial threat posed by the Defendants, particularly given the demonstrated speed and volume at which their deepfake robocalls can be disseminated to intimidate voters on the eve of an election. Six months before the General Election, the League would typically be focusing on registering eligible voters so that everyone has the opportunity to participate in the democratic

process. Instead, the League is now diverting its focus and resources to ensuring that Americans who have already registered to vote don't lose that right due to the Defendants' malicious tactics.

III. THE BALANCE OF THE EQUITIES WEIGH IN PLAINTIFFS' FAVOR

To determine the balance of the equities, a court will contrast the hardship that will befall the nonmovant if the injunction issues against the hardship that will befall the movant if the injunction does not issue. *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 115 (1st Cir. 2006). Plaintiffs have an overwhelmingly strong interest in protecting the unimpaired right to vote, free of intimidation, threats, or coercion. The interest in "protecting voters from confusion and undue influence" is "compelling," *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality opinion), and indeed the "right ..., regardless of political persuasion, to cast [] votes effectively" is voters' "most precious" right. *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). That overwhelmingly strong interest in protecting the unimpaired right to vote, free of intimidation, is vindicated by the injunctive relief requested here. *See, e.g.*, 52 U.S.C. § 10307(b) (no person "shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote."); RSA 664:14-a (an individual may not distribute prerecorded political messages without disclosing who paid for the call and who the call is made on behalf of); RSA 664:14-b (an individual may not knowingly misrepresent the origin of a phone call which expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains any information about any candidate or party).

In contrast, Defendants will suffer no harm if injunctive relief is granted. Defendants have no legitimate interest in making future deepfake robocalls. Further, injunctive relief of this nature will not place a burden on Life Corp or Lingo's business. Life Corp and Lingo cannot continue to distribute unlawful deepfake robocalls and courts have found that an injunction that merely ends an unlawful practice does not impart harm on a party. *See, e.g., TikTok Inc. v. Trump*, 490 F. Supp.

3d 73, 84-85 (D.D.C. 2020) (concluding, in context of balance of equities inquiry, that defendant “cannot suffer harm from an injunction that merely ends an unlawful practice”) (citations omitted).

IV. A PRELIMINARY INJUNCTION IS IN THE INTEREST OF THE PUBLIC

“[O]ther rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “By disseminating a robocall message laden with falsity and ill purpose . . . [t]he result cannot be described as anything but deliberate interference with voters’ rights to cast their ballots in any legal manner they choose. And the intimidation of individual voters inflicts harm upon the broader public’s interest in selecting elected officials through a free and fair process.” *Wohl I*, 498 F. Supp. 3d at 488. The court in *Wohl I* recognized that “if left unchecked, Defendants’ conduct imperils this right, and with it, the very heart and constitutional foundation of this nation.” *Id.*

Critically, Defendants’ conduct to date demonstrates that the creation and facilitation of additional such robocalls is not only possible, but likely to recur, if their actions are not enjoined. Kramer’s self-serving explanations of his motives neither hold up to scrutiny,⁵ nor matter to this analysis. None of the statutes that he violated contain an intent requirement. *Wohl II*, 661 F. Supp. 3d at 116 (Section 11(b) does not contain an intent requirement).⁶ Regardless of his motivation,

⁵ Kramer’s testing and marketing of AI-generated robocalls of Senator Graham demonstrate that he was seeking to profit off the technology. And if, as Kramer claims, he was simply a Good Samaritan seeking to prompt regulatory action, it’s unclear why he waited until less than 48 hours before voting started in the New Hampshire Primary, leaving thousands of voters unsure of their rights or why they received these calls, leaving Kathy Sullivan, the League, and others scrambling to mitigate the damage caused by the calls, and creating a scenario in which no one knows how many people who received the calls learned of the deception, and how many may still believe that the call was legitimate and accurate. It’s similarly unclear why Kramer would go to such great lengths to disguise his involvement, hiring Carpenter, a transient individual, to create the calls, funneling payments to Carpenter through his father’s Venmo account, spoofing the calls to misdirect voters (and authorities) about the source of the calls, and directing Carpenter to delete their correspondence after the calls attracted media scrutiny.

⁶ Numerous courts also have determined that the TCPA does not require intent, except when awarding treble damages. *See, e.g., Penzer v. Transp. Ins. Co.*, 545 F.3d 1303, 1311 (11th Cir. 2008); *Univ. Underwriters Ins. Co. v. Lous Fusz Auto. Network, Inc.*, 401 F.3d 871, 876 (8th Cir. 2005) (“[I]ntent is not a prerequisite to liability under the [TCPA].”); *Park Univ. Enters., Inc. v. Am. Cas. Co. of Reading, PA*, 314 F. Supp. 2d 1094, 1103 (D. Kan. 2004) (“The TCPA is essentially a strict liability statute” where liability can be found for erroneous unsolicited faxes), *aff’d*, 442

the evidence establishes that Kramer is able and willing to quickly orchestrate deceptive robocall campaigns that attempt to intimidate, threaten or coerce voters into forgoing their right to vote, and can time such campaigns to occur so closely to an election and have such an extensive reach, that there remains significant risk that thousands of voters will be harmed. Kramer's post-campaign rationalization neither justifies nor cures the harm that the Plaintiffs and other voters have and will continue to sustain.

Defendants Lingo and Life Corp, for their part, have failed to prevent their services from being used to distribute unlawful and abusive robocalls despite previous regulatory scrutiny. *See* DiPiero Decl., Ex. B, C. Their facilitation of the New Hampshire Robocalls makes clear that their internal controls are still deficient in multiple respects. For one, Lingo and Life Corp distributed a message featuring the voice of the President of the United States without confirming President Biden's or his campaign's involvement in the robocall. *Id.* They also allowed the caller identification system to attribute the call to an individual who had no connection to the client ordering the call. *Id.* And they permitted the robocall to quote an "opt-out" number that linked to the personal cell phone of an individual who, again, had no relation to the client. *Id.*

The public interest clearly would be advanced by the preliminary injunction sought here. Defendants should not be permitted to engage in conduct that impedes and threatens the exercise of the most basic right in American democracy.

CONCLUSION

This Court should grant Plaintiffs' application for a nationwide preliminary injunction to enjoin Defendants Kramer, Lingo, and Life Corp until further order of this Court from producing,

F.3d 1239 (10th Cir. 2006). The statutory text of N.H. Rev. Stat. §§ 664:14-a & b does not include an intent requirement.

generating, or distributing AI-generated robocalls impersonating any person, without that person's express, prior written consent; from distributing spoofed telephone calls, texts messages, or any other form of spoofed communication; and from distributing telephone calls, text messages, or other mass communications that do not comply with all applicable state and federal laws or that are made for an unlawful purpose.

Dated: April 26, 2024

Respectfully submitted,

/s/ Mark R. Herring

William C. Saturley (NH Bar #2256)
Nathan R. Fennessy (NH Bar #264672)
Nicholas A. Dube (NH Bar #27464)

PretiFlaherty
57 N Main Street
New Hampshire 03301
(603)-410-1500
WSaturley@preti.com
Nfennessy@preti.com
Ndube@preti.com

Counsel for Plaintiffs

Courtney Hostetler (MA Bar #683307)
John Bonifaz (MA Bar #562478)
Ben Clements (MA Bar #555802)
Amira Mattar (NY Bar #5774450)

Free Speech For People
48 N. Pleasant St., Suite 304
Amherst, MA 01002
617-244-0234
chostetler@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org
amira@freespeechforpeople.org

Counsel for Plaintiffs

Mark R. Herring (DC Bar #90013124)
Matthew R. Nicely (DC Bar #430564)
Caroline L. Wolverton (DC Bar #496433)
Amanda S. McGinn (DC Bar #1049085)
Joseph T. DiPiero (DC Bar #1618536)
Maria Julia Hershey (DC Bar # 90020162)
Sara M. Hanna (DC Bar #90017864)

Akin Gump Strauss Hauer & Feld LLP
2001 K Street, N.W.
Washington, DC 20006-1037
(202)-887-4000
mherring@akingump.com
mnicely@akingump.com
cwolverton@akingump.com
amcginn@akingump.com
jdiplero@akingump.com
mhershey@akingump.com
shanna@akingump.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2024, a true and correct copy of the above and foregoing was mailed by first class mail, postage prepaid to:

Boyd Garriott
Frank Scaduto
Michele E. Kenney
Thomas M. Johnson, Jr.
Wiley Rein LLP
2050 M Street NW
Washington, DC 20036
210-833-5573
Counsel for Defendant Lingo Telecom, LLC

Wayne E. George
Morgan Lewis & Bockius LLP
One Federal St
Boston, MA 02110-4104
Counsel for Defendant Life Corporation

Steve Kramer
2100 Napoleon Ave.,
New Orleans, LA 70115

A true and correct copy was also transmitted via electronic mail to Steve Kramer at gotvcalls@gmail.com.

Respectfully submitted,

/s/ Mark R. Herring
Counsel for Plaintiffs