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

LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE, *et al.*, Plaintiffs, v. **STEVE KRAMER, *et al.*,** Defendants.	Civil Action No. 1:24-cv-73-SM-TSM

PLAINTIFFS' OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

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Pursuant to Federal Rule of Civil Procedure 72(a), Plaintiffs League of Women Voters of New Hampshire and League of Women Voters of the United States (collectively, the "League"), and Nancy Marashio, James Fieseher, and Patricia Gingrich (collectively, the "Individual Plaintiffs"), respectfully object to the Report and Recommendation issued by the Honorable Judge Talesha L. Saint-Marc, United States Magistrate Judge, on September 19, 2024 (the "Report"), ECF No. 99, which recommends that this Court deny Plaintiffs' Amended Motion for Preliminary Injunction (the "Motion"), ECF No. 71. Plaintiffs object to the Report on the grounds set forth below, as well as in their briefs in support of the Motion, which are incorporated by reference.

PRELIMINARY STATEMENT

On January 21, 2024, two days before the New Hampshire Primary, thousands of potential voters received robocalls that included a prerecorded and deepfake message, all but the last sentence of which was spoken in a voice artificially created to sound like President Biden. 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. The Individual Plaintiffs then recognized the scam only because they are experienced voters, but the deepfake was convincing.

This incident irreparably harmed the League. A critical component of its nonpartisan mission is to encourage citizens to register to vote, participate in elections, and engage with the civic process. 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 result, the League has had to divert its limited resources away from its core activities centered around voter registration. Given the significant harm posed to voters in connection with upcoming elections, Plaintiffs seek a preliminary injunction to enjoin Defendants from delivering more misrepresented, spoofed, or deepfaked robocalls to voters nationwide.

The Magistrate Judge determined that Plaintiffs are not entitled to injunctive relief, and Plaintiffs object to the Report for the following reasons.

First, the Report erroneously concluded that Plaintiffs have not established standing to seek prospective injunctive relief. In particular, the Magistrate Judge stated that "the League does not assert that the robocalls thwarted or otherwise interfered with the organization's mission." Report at 5. This statement ignores the crux of the League's argument in this case. The illegal robocalls directly interfered with League's ability to continue its core mission, as it has been forced to divert human and other resources that would have otherwise been spent on its core services of voter registration. Accordingly, the League has established that it has organizational standing in this case. The Voting Rights Act clearly prohibits *and authorizes injunctive relief for* attempted—and not just successful—intimidation efforts.

Second, the Report erroneously concluded that the League would not suffer irreparable harm absent injunctive relief. Here, too, the Magistrate Judge overlooked the key fact that Defendants' robocall campaign has significantly impaired the League's ability to help register voters during a critical time in the election season, which is core to its mission. This harm is irreparable, as monetary relief awarded after the fact will not make the League whole. The League cannot recover the time and resources it has already spent—and will continue to spend—to combat the danger caused by Defendants, all at the expense of the League's own organizational mission.

Third, the Report erroneously concluded that Plaintiffs' proposed preliminary injunction does not meet the specificity and detail requirements of Rule 65(d)(1). Plaintiffs' requested relief is clear — it seeks to enjoin Defendants from delivering similarly misrepresented, spoofed, or deepfaked robocalls to voters nationwide. Defendants can and must put measures in place to

ensure their internal controls are not deficient in order to prevent an illegal robocall scheme such as the NH Robocalls from occurring again.

For these reasons, the Court should reject the Report's recommendation to deny Plaintiffs' Motion.

STANDARD OF REVIEW

The Court reviews the Report "*de novo* . . . ." 28 U.S.C. § 636(b)(1)(C) (emphasis added); *see also* Fed. R. Civ. P. 72(b). Section 636(b)(1)(C) permits this Court to "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). As part of its review, this Court "may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

BACKGROUND

"[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, Voice Broadcasting Corporation ("Voice Broadcasting"), Life Corporation ("Life Corp."), and Lingo Telecom, LLC ("Lingo") (collectively, "Defendants") orchestrated an assault on New Hampshire citizens' right to vote by creating, authenticating, and disseminating unlawful, intimidating, threatening, and coercive robocalls in advance of the January 2024 New Hampshire Presidential Primary (the "New Hampshire Primary"). *See* Decl. of Joseph T. DiPiero ("DiPiero Decl.") Ex. A (Kramer Notice of Apparent Liability (NAL)), ¶ 5, ECF No. 71-3. Two days before the New Hampshire Primary, Defendants delivered thousands of robocalls (the "NH Robocalls") to potential or likely Democratic voters urging them not to exercise their right to vote and using a threat to do it—specifically, by indicating they would lose their right to vote in the general election if they voted in the primary election. *See id.* Using AI technology

and caller ID spoofing, Defendants misappropriated the identities of two authoritative figures—President Joe Biden and the former Chair of the State Democratic Party, Kathleen Sullivan—in an effort to suppress or divert the patterns of New Hampshire voters. *See id.*; Decl. of Kathleen Sullivan ("Sullivan Decl.") ¶ 7, ECF No. 71-17. The NH Robocalls—delivered via a "deepfake"[1] 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 for President Biden's presumptive opponent, former President Donald Trump. *See* DiPiero Decl. Ex. A ¶ 5; Sullivan Decl. ¶ 7.

Plaintiffs initiated this action in March 2024, alleging that Defendants' delivery of unlawful, intimidating, threatening, and coercive robocalls to New Hampshire voters violated Section 11(b) of the Voting Rights Act ("VRA"), the Telephone Consumer Protection Act ("TCPA"), and the New Hampshire Election Code. Compl. ECF No. 1. In May 2024, Plaintiffs filed an amended complaint to add Voice Broadcasting as a defendant. Am. Compl., ECF No. 65. On August 29, 2024, default was entered against Kramer. ECF No. 92.

On June 7, 2024, following their original motion for preliminary injunction, Plaintiffs filed an amended motion, ECF No. 71, which the Court referred to the Magistrate Judge for a report and recommendation. *See* 28 U.S.C. § 636(b)(1)(B); LR 72.1. On July 25, 2024, the United States filed a Statement of Interest pursuant to 28 U.S.C. § 517, addressing important questions regarding interpretation of Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b). ECF No. 86. In

[1] A "deepfake" is "an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said[.]" *Deepfake*, MERRIAM-WEBSTER (last visited Oct. 3, 2024), https://www.merriam-webster.com/dictionary/deepfake.

advance of a hearing on the preliminary injunction motion, the parties filed a stipulation of facts. ECF No. 87. On July 31, 2024, the Magistrate Judge heard argument.

On September 19, 2024, the Magistrate Judge issued the Report, in which she concluded that the Court should deny Plaintiffs' amended motion for a preliminary injunction on the grounds that (1) Plaintiffs have not established standing to seek prospective injunctive relief; (2) Plaintiffs have not established that they would suffer future irreparable harm absent injunctive relief; and (3) Plaintiffs' proposed preliminary injunction does not meet the specificity and detail requirements of Rule 65(d)(1). ECF No. 99.

ARGUMENT

Each of the Magistrate Judge's conclusions in support of her recommendation is unsupported by the record and the law, and, therefore, erroneous.

I. The Magistrate Judge Erred in Concluding that Plaintiffs Failed to Establish Standing

a. The League has organizational standing to assert its claims.

Recent Supreme Court precedent establishes that the League has organizational standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024). An organization suffers a particularized injury when the defendants' action "directly affected and interfered with [the organization]'s core business activities . . ." *Id.* at 395. That is the case here. While the Report accurately observed that mere "intensity of the litigant's interest" is insufficient, an organization "cannot spend its way into standing[,]" *id.* at 394 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982)), and a diversion of resources alone is not enough, *id.*, Defendants' illegal robocalls directly harmed the League's core business, which meets the test for organizational standing.

The League's core business is to encourage informed and active participation in democracy, which the League facilitates by encouraging citizens to register to vote, participate in elections, and engage with the democratic process. *See* Decl. of Elizabeth Tentarelli ("Tentarelli Decl.") ¶¶ 2–3, ECF No. 47-4. Defendants' illegal robocalls have directly interfered with the League's ability to continue its core business, both by targeting voters in an effort to disenfranchise them—when the League's core mission is to encourage and support all eligible voters—and by forcing the League to take limited resources—including volunteers, funding, and time—away from voter registration and expend them on efforts to counteract Defendants' unlawful actions. *See* Decl. of Celina Stewart ("Stewart Decl.") ¶ 12, ECF No. 47-19. For example, in the aftermath of the NH Robocalls, the League had to write a new alert for its VOTE411.org website to inform voters about the deceptive robocalls, translate the alert into other languages, and then upload it to the website. *Id.* In addition to those remedial measures, the League has provided special guidance and training—that absent the robocalls it would not have provided—to staff who track robocalls from members or via media coverage, and the League has worked directly with staff to educate voters who may be contacted via robocall, including those who become confused about their right to vote and may need additional information to cast their ballot. *Id.* ¶ 10. If it had not spent its time, money, and volunteer efforts to combat Defendants' actions, the League would have put those resources toward its efforts registering voters and encouraging voter turnout and participation.

Although the League spends the months leading up to the General Election focused on registering eligible voters, the League must now expend resources to ensure that those who have already registered to vote do not lose that right due to Defendants' conduct. ECF No. 71-29 ¶¶ 11–14; ECF No. 71-30 ¶¶ 11–14. Defendants' robocall campaign spread misinformation to suppress voters from having their voices heard, and as a result, the League has had to quell current and

potential voters' concerns about their right to vote. Without an injunction, the League will be forced to continue these costly diversions. *See* Tentarelli Decl. ¶¶ 11–13.

In her Report, the Magistrate Judge determined that the League "has not demonstrated that it suffered the type of injury necessary to confer standing" because it "failed to show that defendants' actions interfered with its core mission . . . ." R. & R. 11. Specifically, the Magistrate Judge cited the Supreme Court's *Alliance* decision for the proposition that "harm arising from actions or costs incurred to oppose the defendants' actions does not support standing." *Id.* (citing *Alliance*, 602 U.S. at 394). But the Supreme Court's reasoning in *Alliance* does not support the Report's conclusion.

In *Alliance*, anti-abortion physicians and medical associations sued the U.S. Food and Drug Administration (the "FDA"), challenging various FDA actions that made an abortion drug, mifepristone, more widely available. 602 U.S. at 370–77. The medical associations claimed that they had organizational standing and cited an earlier Supreme Court case, *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), to support their position. In *Havens*, the Supreme Court addressed whether a nonprofit organization, HOME, which operated a housing counseling service, had suffered a cognizable injury when the defendant gave HOME's black employees ("testers") false information about apartment availability. *Id.* at 395. The Supreme Court answered that question in the affirmative, reasoning that the defendant "perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income homeseekers . . . ." *Id.* at 379.

In its recent *Alliance* decision, the Supreme Court explained that the nonprofit organization in *Havens* had standing because it suffered an "informational injury," and the defendants' "actions directly affected and interfered with HOME's core business activities—not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." 602 U.S. at 395. By contrast,

the associations in *Alliance* did not claim a similar informational injury. *Id.* The FDA's actions relaxing regulation of the abortion drug did "not impose[] any similar impediment to the medical associations' advocacy businesses." *Id.* Instead, the associations incurred costs related only to issue advocacy, such as conducting studies of the abortion drug, drafting citizen petitions to the FDA, and engaging in public advocacy to oppose the FDA's position. *Id.*

Here, the League's mission is more than advocacy and it has engaged in far more than issue advocacy. *See id.* at 395. The League has not simply gathered information, lobbied the government, or advocated on an issue, like the associations in *Alliance*—it has taken actions to directly counteract Defendants' misinformation. *Cf. Equal Means Equal v. Ferriero*, 3 F.4th 24, 30 (1st Cir. 2021) (rejecting organizational standing for "lobbying activities" or "pure issue-advocacy" (quoting *People for Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 797 F.3d 1087, 1093–94 (D.C. Cir. 2015))). This is about the League's core business activities. Because of Defendants' actions, the League must counteract the misinformation spread by those actions, taking away critical resources from and compromising their core work, because if they do not, then their core mission of supporting the enfranchisement of all eligible voters will be irrevocably compromised in this and future elections. The League "is in the business of registering voters—not merely gathering information[,]" and therefore Defendants' illegal robocall campaign directly interfered with the League's core business activities. *Tenn. Conference of NAACP v. Lee*, 105 F.4th 888, 905 (6th Cir. 2024).[2] Just like the defendants in *Havens* "perceptibly impaired [the nonprofit

[2] In *Tennessee Conference*, the district court issued an injunction invalidating a Tennessee law requiring felons to confirm their voter eligibility in writing. 105 F.4th at 894. The Sixth Circuit issued a stay of the injunction pending the appeal, holding, in part, that the NAACP likely did not present enough specific evidence to prove its standing to challenge the law at this stage. 105 F.4th at 890. However, the Court suggested that as the parties brief the appeal, "perhaps the NAACP can rely on a *Havens*-like standing theory." *Id.* at 905.

organization]'s ability to provide counseling and referral services" by giving out false information, here too Defendants have perceptibly impaired the League's ability to continue its core business activities by spouting misinformation. *Havens*, 455 U.S. at 379. The League has therefore demonstrated that it suffered the type of injury necessary to confer organizational standing in this case.

Moreover, the League will continue to be harmed in the future absent preliminary injunctive relief. In the Report, the Magistrate Judge concluded that the League lacked standing because it "has not shown a likelihood that it will be harmed in the future because of defendants' actions." R. & R. 11. However, Plaintiffs have shown that the NH Robocalls were not an isolated incident but part of a pattern of illegal robocalls which Defendants, particularly Lingo, have been unable (or deliberately refuse) to catch and stop despite increasing pressure from government agencies to comply with the law. *See, e.g.*, DiPiero Decl. Exs. J (Multistate Litig. Task Force Letter), K (FTC Letter), ECF Nos. 71-12, 71-13; *see also infra* Sections I.b.i, II.

The Magistrate Judge's Report also overlooks a significant, likely future harm that the League faces in the absence of an injunction: the vast resources that will be diverted for a rapid response due to an AI-generated deepfake voter suppression robocall campaign, including the sudden shifting of massive volunteer resources that cannot be recouped with money damages. *See* Stewart Decl. ¶¶ 10–13. In the months ahead, the League must budget for and allocate limited resources to guard against the substantial threat posed by Defendants, particularly given the demonstrated speed and volume at which their voice-cloned and spoofed robocalls can be disseminated to intimidate voters on the eve of an election.

Although the League will continue to incur costs to warn the public about the dangers of illegal robocalls, the League is especially concerned about the looming threat of having to rapidly

respond to future robocall incidents. To mitigate the effect of a single robocall campaign, the League must engage in a massive effort, requiring a significant and sudden shift in its resources, priorities, and goals. *See* Stewart Decl. ¶¶ 10–13. But Plaintiffs' requested injunctive relief would help prevent such destructive robocall campaigns from happening again, and in turn, this relief would guard against the League having to incur this disruptive upheaval in the future.

Regardless of whether Kramer is involved in a future robocall campaign or not, the country is now on notice that companies like Defendants traffic in illegal robocalls, and they can be counted on to generate and disseminate these types of calls, unless enjoined. As the League is preparing for a large-scale national election, it is critical to prevent the spread of illegal robocalls, so the League can guard against the loss of massive resources that it needs to advance its core mission. Yet the Magistrate Judge overlooked the immense harm that could occur to the League's mission if another one of these robocall campaigns gets through on Defendants' equipment and system, especially now on the eve of the presidential election and congressional elections.

The Report cites to two cases in which other district courts found that the League's sister organizations lacked standing, but neither supports its conclusion. *See Lawson v. Hargett*, No. 24-cv-538, 2024 WL 3867526 (M.D. Tenn. Aug. 19, 2024); *Citizens Project v. City of Colorado Springs*, No. 22-cv-2365, 2024 WL 3345229 (D. Colo. July 9, 2024). To be sure, the League believes these out-of-circuit, district court cases were wrongly decided. Regardless, both are unlike this case in key respects.

In *Lawson*, the court held that the League of Women Voters of Tennessee lacked standing under *Alliance* to challenge Tennessee voting laws, where the organization asserted that the "vagueness" of two election provisions made it "more difficult to advise its members and the public how to participate in the democratic process." 2024 WL 3867526, at *17–18. The court

determined that "[t]his alleged impediment is much closer to the medical associations' purported injury in [*Alliance*] than it is to the plaintiff's injury in *Havens*" because "it does not directly affect and interfere with the League's core activities of helping Tennessee citizens register to vote, educating voters about the issues that impact them, and encouraging voters to be active participants in democracy." *Id.* at *18. Here, by contrast, Defendants' misconduct directly affected and interfered with the League's core voter-registration activities, as discussed.

Similarly, *Citizens Project* is not analogous to our case. 2024 WL 3345229, at *5–6. There, the court held that nonprofit advocacy organizations, including the League of Women Voters of the Pikes Peak Region, lacked standing to challenge the timing of local elections because, in part, they were continuing to provide the same educational and outreach services that they were already providing, rather than providing new services. *Id.* at *5–6. But here the League has had to provide entirely new services, rather than the services that they were already providing. Again, the League had to create a new alert to inform voters about robocalls, provide training to staff who track robocalls from members or via media coverage, and provide education to voters who may be contacted via robocall and confused about their right to vote as a result. Stewart Decl. ¶¶ 10, 12.

This case is closer to the two cases that the Magistrate Judge cited where district courts found that organizational plaintiffs (including one of the League's sister organizations) had standing. In *Get Loud Arkansas v. Thurston*, the court held that the organization demonstrated "a likelihood of more than an indirect pocketbook harm from the Wet Signature Rule" for voter registration, as the rule hindered the organization's ability to register voters, such as through online registration. No. 24-cv-5121, 2024 WL 4142754, at *14 (W.D. Ark. Sept. 9, 2024) (internal quotation marks and citation omitted). And in *League of Women Voters of Ohio v. LaRose*, the court held that the League had standing to challenge a state law that prohibited assistance to

disabled voters, and noted that the League suffered a direct injury because it was "a voter-advocacy organization whose core mission is to educate and assist voters[,]" rather than "solely an issue-advocacy organization" seeking to challenge a law. No. 23-cv-02414, 2024 WL 3495332, at *5 n.3 (N.D. Ohio July 22, 2024). Here, too, the League has suffered more than a mere "pocketbook harm"—the Defendants' illegal robocall campaign impeded the League's ability to continue its core mission of registering voters and encouraging voter participation. *Get Loud Ark.*, 2024 WL 4142754, at *14 (internal quotation marks and citation omitted). Moreover, the League is "not solely an issue-advocacy organization seeking to challenge" a law, regulation, or a statute—rather, it is a voter-advocacy organization that suffered a direct injury to its core mission of educating and assisting voters. *LaRose*, 2024 WL 3495332, at *5 n.3.

b. The Individual Plaintiffs have standing to assert their claims.

The Individual Plaintiffs have also shown that an injury is likely to occur if a preliminary injunction is not granted. To establish standing, "a plaintiff must meet a familiar three-part test" showing "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *Wiener v. MIB Grp., Inc.*, 86 F.4th 76, 84 (1st Cir. 2023) (citations omitted). At the preliminary injunction stage, the plaintiff need only show that they are "likely" to establish standing, given that discovery has not been taken. *Murthy v. Missouri*, 144 S. Ct. 1972, 1986 (2024) (citations omitted).

Here, the Magistrate Judge focused on the first prong of the standing inquiry, concluding that the Individual Plaintiffs "have not established a likelihood that defendants will injure them in the future by interfering with their ability to vote." R. & R. 9. Contrary to the Magistrate Judge's determination, however, the Individual Plaintiffs have shown that they are likely to establish an injury that is "concrete and particularized and actual or imminent, not conjectural or hypothetical."

Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017) (internal quotation marks omitted) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). As Plaintiffs explained in their Reply in support of the Motion, both requirements are met here.

i. The Individual Plaintiffs have shown their injury is likely actual and imminent.

A future injury is imminent "if the threatened injury is certainly impending, or if there is a substantial risk that the harm will occur." *Reddy*, 845 F.3d at 500 (internal quotation marks omitted) (quoting *Driehaus*, 573 U.S. at 158). Additionally, when requesting prospective relief, "past exposure to harm will not, in and of itself, confer standing upon a litigant to obtain equitable relief 'absent a sufficient likelihood that he will again be wronged in a similar way.'" *Am. Postal Workers Union v. Frank*, 968 F.2d 1373, 1376 (1st Cir. 1992) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)).

The Magistrate Judge concluded that the Individual Plaintiffs failed to demonstrate a likelihood of future injury to support injunctive relief. In doing so, the Magistrate Judge reasoned that "[t]he circumstances . . . have materially changed since [D]efendants produced, generated, and distributed the Fake Message robocalls[,]" and "new circumstances undermine [P]laintiffs' reliance on past actions to show the likelihood that [D]efendants will injure them in the future." R. & R. 8. Specifically, the Magistrate Judge notes that Kramer is under indictment, Life Corp. ended its relationship with Kramer, and both Kramer and Lingo were the subjects of FCC "Notice[s] of Apparent Liability for Forfeiture" with civil penalties. *Id.* Additionally, the Magistrate Judge noted that a primary election was held in New Hampshire on September 10, 2024, for state offices, and the Defendants were not involved in a robocall campaign in that election. *Id.*

Plaintiffs object to the notion that these developments undermine the likelihood that Defendants will injure them in the future. Plaintiffs have shown that the NH Robocalls were not an isolated incident but part of a pattern of illegal robocalls which Defendants, particularly Lingo, have been unable (or deliberately refuse) to catch and stop despite increasing pressure from government agencies to comply with the law. *See, e.g.*, DiPiero Decl. Exs. J (Multistate Litig. Task Force Letter), K (FTC Letter). Further, Plaintiffs have shown that Lingo has knowingly failed to comply with the STIR/SHAKEN framework, having falsely authenticated Life's illegal calls by marking over ten thousand with an "A" attestation, the highest level. *See* DiPiero Decl. Ex. I (Lingo NAL) ¶¶ 7, 14 n.59, ECF No. 71-11. These examples demonstrate Lingo's refusal to comply with statutory and regulatory standards, in turn showing that, with or without Kramer and Life purchasing its services, Lingo can be expected to send illegal robocalls to intimidate, manipulate, and confuse voters. These are not mere allegations, but conclusions from expert agencies that Lingo continuously engaged in illegal conduct that led to the NH Robocalls. Absent an injunction, that conduct, and the associated injuries, are likely to continue.

Life has worked with Kramer on robocalls since 2010. The fact that the company has ended its relationship with him, *see* Defs.' Life Corp. & Voice Broad. Mem. of Law in Opp'n to Pls.' Mot. for Prelim. Inj. 4, ECF No. 80, does not mean it will not be used again to make illegal robocalls that intimidate voters. To the contrary, their fourteen-year history of working with Kramer indicates a propensity to traffic robocalls. Moreover, the fact that Voice does not have any legal or compliance team, Decl. of Jeff Fournier ¶ 24, ECF No. 80-2, undercuts any asserted commitment to avoid trafficking illegal robocall campaigns in the future. Kramer himself has said "with a mere $500 investment, anyone could replicate" his actions, Decl. of Paul Carpenter Ex. F (Messages with Alex Seitz-Wald) 4, ECF No. 71-28, but that requires participation by these

companies. If they are not enjoined by the court, such participation is likely to recur, with corresponding injuries inflicted.

ii. The Individual Plaintiffs have shown their injury is likely concrete and particularized.

The Individual Plaintiffs also satisfy the standing requirement that "[p]articularity demands that a plaintiff must have personally suffered some harm." *Katz v. Pershing, LLC*, 672 F.3d 64, 71 (1st Cir. 2012) (citation omitted); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992).

The Magistrate Judge determined that the Individual Plaintiffs "have not shown that they would be injured, even if [D]efendants did produce, generate, and distribute false information through robocalls." R. & R. 9. Specifically, the Magistrate Judge focused on the fact that the Individual Plaintiffs "recognized that the Fake Message robocalls were false," and "voted despite receiving the calls." *Id.* Additionally, the Magistrate Judge asserted that the Individual Plaintiffs "have not shown that they would likely be injured by a false message from [D]efendants in the future," because they were able to successfully "discern the falsity of the previous message" and now they are "aware[] of the possibility of false messaging robocalls in the future." *Id.*

The Magistrate Judge appears to have concluded that simply because Defendants' robocalls did not prevent the Individual Plaintiffs from voting, they have not been injured. *See id.* (noting that the Individual Plaintiffs "have not established a likelihood that [D]efendants will injure them in the future by interfering with their ability to vote"). But Plaintiffs contend that the injury here is much broader. The Individual Plaintiffs were harmed by receiving threatening, intimidating, and coercive robocalls—an injury plainly particular enough to confer standing.

The Voting Rights Act clearly prohibits and authorizes injunctive relief for *attempted*—and not just successful—intimidation efforts. To succeed on a claim under Section 11(b) of the VRA, "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). Courts have made clear that the Voting Rights Act in general, and Section 11(b) in particular, should be read expansively. Its application is not limited to any particular act. *See 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*, 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. Riddell*, 476 F. Supp. 849, 859 (N.D. Miss. 1979) (explaining that even where a court finds "no case precisely in point," Section 11(b) should "be given an expansive meaning"). Here, the manipulation and intimidation alleged due to Defendants' misconduct interfered with the exercise of the Individual Plaintiffs' right to vote in the New Hampshire Primary, regardless of whether they ultimately decided to heed the robocalls' warnings or not. The Individual Plaintiffs have an interest in free and fair elections, where they are not subject to voter intimidation and confusion.

II. The Magistrate Judge Erred in Concluding that the League Failed to Establish Irreparable Harm

The Magistrate Judge determined that "[t]o the extent the League would be forced to divert resources or incur costs to counter the Fake Message robocalls, they have not shown those losses could not be compensated with money damages." R. & R. 12. But the League has demonstrated that the harm it has suffered, and will continue to suffer, by being forced to divert resources away from its mission to defend against Defendants' robocall campaign cannot be rectified by monetary relief after the fact. *See* Tentarelli Decl. ¶ 12.

Specifically, Defendants' conduct forced the League to spend more time and resources to combat the misinformation from Defendants' robocall campaign, leaving less time and resources to work on its core organizational mission of voter registration. This drain on the League's resources significantly impaired its ability to help register voters during a critical time in the election season. Monetary relief after the fact will not make the League whole, as the League cannot recover the time and resources it has already spent—and will continue to spend—to combat the harm caused by Defendants, at the expense of its own organizational mission. In other words, money damages cannot remedy the impaired ability to register voters that the League suffered.

As Plaintiffs explained in their briefing and the Report failed to address, the League's harm here is similar to the harm alleged in *Wohl*, 498 F. Supp. 3d 457. In *Wohl*, thousands of voters in the United States received robocalls falsely claiming that voting by mail would result in the voters' personal information being divulged in harmful ways. *Id.* at 465. The *Wohl* court found that the plaintiff nonprofit organization suffered irreparable harm where it was forced to divert resources away from its work related to the Census even though the Census had already concluded at the time of the injunction. *Id.* at 475.

Here, too, the League was forced to divert resources away from its core organizational activities during a critical time period. Again, the League had to expend resources to combat the harm caused by the Defendants' robocall campaign, which meant it had fewer resources to devote to registering voters. And in the months leading up to the General Election, the League is now forced to budget and allocate its limited resources to guard against the substantial threat posed by Defendants—again at the expense of its core mission of registering voters. While the League typically spends the months leading up to the General Election focused on registering eligible voters, the League must now divert some of the resources it would otherwise spend on voter

registration to combat Defendants' conduct. ECF Nos. 71-29 ¶¶ 11–14, 71-30 ¶¶ 11–14. Financial compensation after the fact cannot compensate the League for this harm, especially when the League's voter registration efforts are impaired during such a critical time in the election season.

The Magistrate Judge also concluded that Plaintiffs "have not shown a likelihood that the defendants will cause them harm in the future due to changes in defendants' circumstances in the aftermath of the robocalls." R. & R. 12. As explained in their Reply brief, however, Plaintiffs have shown that there is a substantial risk and sufficient likelihood that they will be similarly wronged again by Defendants. *See* Pls.' Consolidated Reply In Supp. of Mot. for Prelim. Inj. 2–3, ECF No. 83. Specifically, the NH Robocalls were not an isolated incident—rather, they were part of a pattern of illegal robocalls which Defendants, particularly Lingo, have been unable (or deliberately refuse) to catch and stop, despite increasing pressure from government agencies to comply with the law. *See, e.g.*, DiPiero Decl. Exs. J (Multistate Litig. Task Force Letter), K (FTC Letter). Here again, the Report failed to address this substantial risk of ongoing harm.

Not only did Plaintiffs establish irreparable harm absent an injunction, but they also established that the balance of the equities and public interest weighs in Plaintiffs' favor. This case presents issues of national importance vis-à-vis voting rights, as evidenced by the United States's Statement of Interest, ECF No. 86. Yet in assessing the strength of Plaintiffs' arguments, the Magistrate Judge failed to acknowledge both the Plaintiffs' and the public's compelling interest in free and fair elections. There is an overwhelmingly strong interest in protecting the unimpaired right to vote free of intimidation, threats, or coercion. Meanwhile, Defendants Lingo, Life, and Voice have each failed to demonstrate that any burden placed upon them by the injunctive relief would outweigh both the public and Plaintiffs' interest in protecting voters from harassment, intimidation, coercion, or fear.

III. The Magistrate Judge Erred in Concluding that the Scope of Plaintiffs' Requested Injunctive Relief Is Overbroad and Vague

Rule 65(d)(1) provides that every injunction must "state its terms specifically" and "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B), (C). As the Magistrate Judge noted, these requirements were "designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (citing *Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 74–76 (1967)).

Contrary to the Magistrate Judge's conclusion, Plaintiffs' proposed relief falls within the scope of these parameters. Plaintiffs' requested relief is clear: Plaintiffs seek to enjoin Defendants from (1) "producing, generating, or distributing AI-generated robocalls impersonating any person," without that person's express, prior written consent; (2) "distributing spoofed telephone calls, text messages, or any other form of spoofed communication,"[3] without the express, prior written consent of the individual or entity upon whose behalf the communication is apparently being sent; and (3) "distributing telephone calls, text messages, or other mass communications that do not fully comply with all applicable state and federal laws or that are made for an unlawful purpose." [Proposed] Order Granting Pls.' Mot. for Prelim. Inj. 1–2, ECF No. 71-31. As required by Local Rule 65.1 and Federal Rule of Civil Procedure 65(d)(1)(C), Plaintiffs' requested relief is sufficiently specific and described in reasonable detail, such that Defendants can comply without

[3] "Spoofed" is defined as deliberately falsifying the information transmitted via caller ID display to disguise the caller's identity. *See* FCC, Caller ID Spoofing, https://www.fcc.gov/spoofing (last visited Oct. 1, 2024).

confusion. For example, Lingo can and must put measures in place to ensure its internal controls are not deficient to prevent an illegal robocall scheme such as the NH Robocalls from recurring.

The Magistrate Judge stated, without citing to any case law or other authority, that "[t]he proposed injunction does not include definitions of the terms used," and this "lack of definitions renders the proposed injunction too vague to comply with Rule 65(d)(1)." R. & R. 13–14. Additionally, the Magistrate Judge singled out several terms which "appear to be unclear or ambiguous," such as "AI-generated," "spoofed," "applicable state and federal laws," and "unlawful purpose." *Id.* But Rule 65(d)(1) does not require that all terms be defined, at least when they are clear in the context of the litigation like here. Even if the Court believes that certain terms in Plaintiffs' requested relief require definition, there is sufficient information in Plaintiffs' briefing and amended complaint for the Court to provide a reasonable and easily adhered-to definition. As noted earlier, for example, definitions for terms such as "spoofing" exist and have been offered by the Federal Communications Commission. *See* FCC, Caller ID Spoofing, *supra* note 3. Here, Plaintiffs' proposed injunction states its terms with sufficient specificity and describes in reasonable detail the acts restrained, such that Defendants can understand what conduct is enjoined. *Axia NetMedia Corp. v. Mass. Tech. Park Corp.*, 889 F.3d 1, 12 (1st Cir. 2018) ("An 'injunction must simply be framed so that those enjoined will know what conduct the court has prohibited.'" (quoting *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 373 (5th Cir. 1981))). This is especially true because Defendants are sophisticated players in the arena of political robocalls, and they are surely familiar with terms such as "AI-generated" and "spoofed" that are frequently used in this context.

The Magistrate Judge also contends that Paragraph 2 of Plaintiffs' proposed relief is ambiguous as to which individuals or entities must provide consent for spoofed communications.

R. & R. 14 (noting that Paragraph 2 could apply to "the person falsely portrayed in the communication" or "the person or entity who paid for the communication").[4] Under the most natural reading of this paragraph, however, Defendants must secure the consent of the person or entity portrayed in the communication. This reading ensures that the identity of individuals and entities are not misrepresented in Defendants' communications, because speaker misrepresentation is the key reason why AI-generated and spoofed communications are so deceptive, believable, and dangerous to the public.

Lastly, the Magistrate Judge asserts that Plaintiffs' proposed injunction is not sufficiently specific to meet the requirements of Rule 65(d)(1) because Plaintiffs "do not list the laws they intend to have defendants obey . . . ." R. & R. 14. Although some courts have questioned "obey-the-law" injunctions, courts "continue to order such injunctions under what appear to them appropriate circumstances." *Sec. & Exch. Comm'n v. McLellan*, No. CV 16-10874, 2024 WL 3030421, at *6 (D. Mass. June 17, 2024) (collecting cases). Under the circumstances of this case, where Defendants each played a role in delivering thousands of unlawful robocalls to New Hampshire voters on the eve of an election, the proposed injunction against Defendants is justified. The injunctive demands are consistent with federal laws and regulations and do not create conflicting legal obligations, nor do they place an undue burden on Defendants. Moreover, the relief sought is necessary for achieving legal compliance and safeguarding the public's unwavering interest in protecting the right to vote.

[4] Paragraph 2 of Plaintiffs' proposed preliminary injunction precludes distribution "without the express, prior written consent of the individual or entity upon whose half the communication is being sent." ECF No. 71-31, at 2. The Magistrate Judge correctly notes that "half" is a typographical error, R. & R. 14, as Plaintiffs' counsel intended to write "upon whose behalf." Plaintiffs' counsel regret this inadvertent typographical error.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court reject the Report's recommendation and grant Plaintiffs' motion for a preliminary injunction.

Dated: October 3, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

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