

**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

**LIFE CORPORATION AND VOICE BROADCASTING CORPORATION'S
RESPONSE TO PLAINTIFFS' OBJECTIONS TO
REPORT AND RECOMMENDATION**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE REPORT CORRECTLY DETERMINED THAT THE PLAINTIFFS HAVE NO STANDING FOR PROSPECTIVE RELIEF.	2
A. The Report correctly found that the League failed to show that Defendants’ conduct interfered with its core mission.....	2
B. The Report correctly found that the record did not demonstrate a likelihood of future harm for the Individual Plaintiffs.....	4
C. The Report correctly found that Plaintiffs have not shown they would be injured if Defendants sent them future robocalls.	5
III. THE REPORT CORRECTLY DETERMINED THAT PLAINTIFFS DID NOT ESTABLISH IRREPARABLE HARM.....	6
IV. THE REPORT CORRECTLY FOUND THAT THE PROPOSED PRELIMINARY INJUNCTION IS OVERBROAD AND VAGUE.	7
V. CONCLUSION.....	7

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TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>FDA v. All. For Hippocratic Medicine</i> , 602 U.S. 367 (2024).....	2, 3
<i>Together Emps. v. Mass. Gen. Brigham Inc.</i> , 19 F.4th 1 (1st Cir. 2021).....	6
Other Authorities	
Fed. R. Civ. P. 65(d)(1)(B)	7
Fed. R. Civ. P. 65(d)(1)(C)	7

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 72(a), Life Corporation (“Life”) and Voice Broadcasting Corporation (“Voice”) file this Response to Plaintiffs’ October 3, 2024 Objection to Magistrate Judge Talesha L. Saint-Marc’s Report and Recommendation, ECF No. 99 (“Report,” “R&R”), and request that this Court deny Plaintiffs’ Amended Motion for Preliminary Injunction, ECF No. 71 (“Amended Motion”) as recommended by the Magistrate Judge.

Based on controlling authority from the U.S. Supreme Court and the First Circuit, Magistrate Judge Saint-Marc issued a well-reasoned Report recommending that this Court deny Plaintiffs’ Amended Motion because (1) Plaintiffs have not established standing to seek prospective injunctive relief; (2) Plaintiffs have not established that they will 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).

In their Objection, ECF No. 104 (“Obj.”), Plaintiffs reiterate their prior arguments without providing any additional evidence, authorities, or arguments that would justify rejecting the Report’s recommendation. Plaintiffs make three arguments: **first**, that the Report “erroneously concluded that Plaintiffs have not established standing to seek prospective injunctive relief”; **second**, that the Report “erroneously concluded that the League would not suffer irreparable harm absent injunctive relief”; and **third**, that the Report “erroneously concluded that Plaintiffs’ proposed preliminary injunction does not meet the specificity and detail requirements of Rule 65(d)(1).” Obj. at 2. For the reasons set forth more fully below, Plaintiffs’ arguments are without merit and Life and Voice respectfully request that the Court adopt the Report’s well-reasoned recommendation that Plaintiffs’ Motion for a Preliminary Injunction be denied.

II. THE REPORT CORRECTLY DETERMINED THAT THE PLAINTIFFS HAVE NO STANDING FOR PROSPECTIVE RELIEF.

A. The Report correctly found that the League failed to show that Defendants' conduct interfered with its core mission.

The Report relies upon the Supreme Court's recent decision in *FDA v. Alliance For Hippocratic Medicine*, finding that the League of Women Voters of the United States and the League of Women Voters of New Hampshire ("the League") "failed to show that [Life and Voice's] actions interfered with [the League's] core mission," and that "it ha[d] not demonstrated that it suffered the type of injury necessary to confer standing." R&R at 11 (citing *FDA v. All. For Hippocratic Medicine*, 602 U.S. 367, 395 (2024) (holding that standing does not exist "when an organization diverts its resources in response to a defendant's actions.")).

In response, the League argues its "core business is to encourage informed and active participation in democracy" and Defendants' conduct required the League to "counteract the misinformation spread by those actions, taking away critical resources from and compromising [the League's] core work." Obj. at 6, 8. The League points to examples of its conduct following the calls at issue to support a finding that the League had standing to pursue its claims, such as: (i) writing a news alert for its VOTE411.org website; (ii) providing special guidance and training to staff who track robocalls; and (iii) working directly with staff to educate voters who may have been contacted via robocall. *Id.* at 6. The League concludes that "had [it] 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." *Id.*

But these examples only lend further support to the Magistrate Judge Saint-Marc's finding, because the League makes clear that it merely diverted its resources to counteract Defendants' alleged misconduct. *See id.* (alleging Defendants' conduct forced "the League to take limited

resources . . . away from voter registration and expend them on efforts to counteract Defendants' unlawful actions."); *id.* at 8 ("the League must counteract the misinformation spread by those actions, taking away critical resources from and compromising their core work . . ."). As the Report correctly concluded, the League has failed to show how Defendants' conduct has interfered with its core mission.

Plaintiffs have not pointed to evidence of any actions that would confer standing under Supreme Court precedent. *See* R&R at 11 (citing *Alliance*, 602 U.S. at 395) (citing as an example of harm that confers standing, "when the defendant disseminates material misinformation to the organization that results in the organization not being able to accurately advise its customers"). Examples of actions that *might* confer standing in light of the League's core mission of "encourag[ing] informed and active participation in democracy" might include: (i) Defendants contacting the League's volunteers and instructing them not to support the New Hampshire primary; or (ii) Defendants contacting the League's volunteers and falsely instructing them that particular efforts were no longer being deployed by the League; or (iii) Defendants contacting the League's volunteers and instructing them of inaccurate plans designed to obstruct the voter registration process, to name a few. However, ***none of these things or anything like them occurred.*** The alleged conduct of Life and Voice in providing the platform, used by Defendant Steve Kramer to send the AI call did not interfere with the League's core mission, and the League fails to show that its response to Life's and Voice's alleged conduct amounted to anything other than a diversion of resources. As the Report correctly determined, "harm arising from actions or costs incurred to oppose the [D]efendants' actions does not support standing." R&R at 10-11.

B. The Report correctly found that the record did not demonstrate a likelihood of future harm for the Individual Plaintiffs.

The Report correctly determined that the Individual Plaintiffs “have not shown that they would likely be injured” in the future, R&R at 9, given that Life “ended its relationship with Kramer, and [P]laintiffs provided no evidence that [Life] will again accept contract work from Kramer, particularly in light of his indictments and FCC liability,” R&R at 8. Moreover, the Report noted that “Plaintiffs have not supplemented their motion with evidence that [D]efendants produced, generated, or distributed false messaging through robocalls related to” the September 10, 2024 primary election in New Hampshire, which would appear to contradict Plaintiffs’ claim that they were likely to be harmed in future elections. *Id.* In response, Plaintiffs argue that they have shown “they are likely to establish an injury that is ‘concrete and particularized and actual or imminent, not conjectural or hypothetical.’” Obj. at 12 (citation omitted). As to Life, Plaintiffs make one argument, stating that “Life has worked with [Defendant] Kramer on robocalls since 2010” and the termination of the Parties’ agreement “does not mean it will not be used again to make illegal robocalls that intimidate voters.” *Id.* at 14. Likewise, Plaintiffs merely argue that Voice’s lack of “legal or compliance team undercuts any asserted commitment to avoid trafficking illegal robocall campaigns in the future.” *Id.* (internal citation omitted).

Plaintiffs’ arguments are misguided. First, Life’s historic relationship with Defendant Kramer does not show a likelihood of future harm because the record demonstrates there were *zero* concerns, complaints, or legal issues surrounding Defendant Kramer’s work with Life before January 2024 and Life has since ended its relationship with Kramer. Declaration of Jeff Fournier, President of Voice, ECF No. 80-2, ¶ 19 (“Fournier Decl.”). Second, Plaintiffs’ claim that Voice’s lack of a legal or compliance team shows a lack of commitment to avoid trafficking illegal robocall campaigns, Obj. at 14, is belied by the record, which establishes that Voice’s “agreements with

clients require that clients certify compliance with all federal, state and local laws.” Fournier Decl. ¶ 23. Both Life and Voice are committed to requiring that all of their customers abide by applicable federal, state and local laws, which is a well-established business model that exists throughout the calling industry.

C. The Report correctly found that Plaintiffs have not shown they would be injured if Defendants sent them future robocalls.

The Report concluded 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,” acknowledging that each of the Plaintiffs “recognized that the Fake Message robocalls were false, and they voted despite receiving the calls” particularly where they had “demonstrated ability to discern the falsity of the previous message and the plaintiffs’ awareness of the possibility of false messaging robocalls in the future.” R&R at 9. In response, the Individual Plaintiffs argue they “were harmed by receiving threatening, intimidating, and coercive robocalls—an injury plainly particular enough to confer standing,” and Defendants “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.” Obj. at 15, 16.

The Individual Plaintiffs’ argument ignores the Magistrate Judge Saint-Marc’s findings, and suggests some additional, abstract injury that *may* be incurred by the Individual Plaintiffs absent an injunction. However, the Individual Plaintiffs further ignore their own allegations contained in the Amended Complaint, and their own declarations, which confirm that none of the individual plaintiffs were misled by the call and each voted anyway, Am. Compl. ¶¶ 60, 61, 62, and their own declarations, ECF No. 47-2, ¶ 11 (Gingrich Decl.), ECF No. 47-3, ¶ 8 (Fieseher Decl.), ECF No. 47-6, ¶ 10 (Marashio Decl.). Further, the Individual Plaintiffs argue that the Report ignores the Voting Right Act’s cause of action for attempted intimidation. Obj. at 15. But

this argument conflates the requirement of actual injury under Article III with arguments regarding the appropriate standard for pleading a claim under the VRA, and the Individual Plaintiffs' own statements prove that they did not incur an actual injury. The Individual Plaintiffs therefore fail to show that they have standing for prospective relief against Life and Voice.

III. THE REPORT CORRECTLY DETERMINED THAT PLAINTIFFS DID NOT ESTABLISH IRREPARABLE HARM.

Magistrate Judge Saint-Marc found there was no potential for irreparable harm to either the League or the Individual Plaintiffs, concluding the League had not shown it “could not be compensated with money damages,” and the Individual Plaintiffs did not “lose their fundamental right to vote” or “show[] any likelihood that such a loss would happen in the future.” R&R at 12. Notably, the Individual Plaintiffs appear to concede that they did not suffer irreparable harm by failing to dispute that they did not lose their right to vote or showing any likelihood that such a loss would occur in the future. For this reason alone, this Court should find that the Individual Plaintiffs failed to establish irreparable harm.

As to the League, their arguments amount to nothing more than the continued assertion that the organizations were harmed by having to divert resources to counteract Defendants' alleged misconduct. By definition, such harm is *not irreparable* because it can be compensated by money damages, as Magistrate Judge Saint-Marc correctly determined: “[w]hen money damages would adequately resolve all of the alleged harms, [P]laintiffs cannot show irreparable harm, even if [P]laintiffs did not allege and are not seeking money damages in the complaint.” R&R at 12 (citing *Together Emps. v. Mass. Gen. Brigham Inc.*, 19 F.4th 1, 7 (1st Cir. 2021)). For this reason, the League did not and cannot show that it has suffered irreparable harm that would warrant a grant of its' proposed preliminary injunction.

IV. THE REPORT CORRECTLY FOUND THAT THE PROPOSED PRELIMINARY INJUNCTION IS OVERBROAD AND VAGUE.

The Report correctly observed that Plaintiffs’ proposed injunction failed to “‘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.’” R&R at 13 (citing Fed. R. Civ. P. 65(d)(1)(B)-(C)). Plaintiffs’ argument that the proposed injunction is sufficiently specific, Obj. at 20-21, is contradicted by the record in this case, which shows that the proposed injunction is overbroad and entirely unworkable for Life and Voice, as it would require the companies to likely hire numerous inside and outside attorneys to try to ensure compliance with federal and state laws notwithstanding Life and Voice’s contracts which expressly assign that responsibility to its customers—who are in the best *and only* position to determine the content of the call, whether consent is required, and whether a call complies with federal and state laws. Fournier Decl., ¶ 23.

V. CONCLUSION

For the foregoing reasons, Defendants Life Corporation and Voice Broadcasting Corporation respectfully request that the Court deny Plaintiffs’ Objections, adopt the opinions and reasoning contained in the Magistrate Judge Saint-Marc’s Report and Recommendation, and deny Plaintiffs’ Motion for a Preliminary Injunction.

DATE: October 17, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served this date upon all counsel of record via the ECF filing system.

/s/ Benjamin T. King

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