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

DEFENDANT LIFE CORPORATION'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Plaintiffs seek to impose a sweeping, unworkable, and unjustified preliminary injunction, requiring Life Corporation ("Life") to review in detail every message for which it leases its dialing equipment, a requirement that is inconsistent with its established business model and would severely restrict Life's ability to conduct business, specifically providing a platform that allows its customers to send polling, fundraising, get-out-the vote, and other election-related communications. There is no justification for this relief. Plaintiffs' request is particularly unfounded given that Life is not responsible for initiating the January 21, 2024 call that is the subject of the Complaint (the "Subject Call")—instead Plaintiffs' own Complaint makes clear that Defendant Kramer is entirely responsible for planning, creating, and sending out the Subject Call.

The Court should deny the motion for preliminary injunction because Plaintiffs have failed to come forward with evidence to sustain the substantial burden required to obtain injunctive relief. In particular, Plaintiffs are unlikely to succeed on the merits of their claims against Life because: (a) they have failed to identify an actual, concrete injury sufficient to confer standing; (b) they have failed to articulate how Life could be liable under the Voting Rights Act; and (c) they have no claim under either the Telephone Consumer Protection Act ("TCPA") or New Hampshire Election Laws. Moreover, Plaintiffs have not shown a risk of irreparable harm where Life did not make the Subject Call and is no longer working with Defendant Kramer. The balance of equities weighs clearly in Life's favor and Plaintiffs' proposed injunction would harm the public interest rather than further it—since the preliminary injunction would actually inhibit the distribution of important information regarding upcoming elections. For the reasons set forth below, Life respectfully requests that the Court deny Plaintiffs' Motion for Preliminary Injunction.

STATEMENT OF FACTS[1]

Plaintiffs allege violations of the Voting Rights Act ("VRA"), the TCPA, and the New Hampshire Election Laws arising from a January 21, 2024 AI-generated phone call "commissioned" by Defendant Steve Kramer and allegedly sent to thousands of New Hampshire voters ahead of the primary election. Compl. ¶¶ 2, 30. Kramer later allegedly admitted that he had "deliberately falsified the information transmitted via caller ID display" to disguise the identity of the caller. *Id.* ¶ 36. According to the Complaint, sometime between January 20 and January 21, 2024, Kramer provided the recording of the Subject Call to Life and Life relied on Defendant Lingo Telecom, LLC ("Lingo") to disseminate the Subject Call. *Id.* ¶ 32. On February 25, 2024, following news coverage identifying Kramer as the "architect" of the Subject Call, Kramer allegedly "released a self-serving statement acknowledging his involvement in commissioning and distributing the New Hampshire Robocalls[.]" *Id.* ¶¶ 46–47.

Although Plaintiffs seek an injunction against all "Defendants," their justification for an injunction is entirely focused on Kramer:

> If Defendants are not permanently enjoined from deploying AI-generated robocalls, there is a strong likelihood that it will happen again. Kramer has already deployed the technology in two states and determined the deepfakes were highly effective. Kramer also claims to have received calls from multiple potential clients asking him to engage in similar tactics and has bragged that his $500 out-of-pocket expenditure had a $5 million impact. Furthermore, Kramer took steps to conceal his involvement by hiring a transient individual, Paul Carpenter, to generate the robocalls, paying for the calls through his father's Venmo account, and asking Carpenter to delete their correspondence after the scheme was revealed. Had Carpenter not come forward, it is unclear if Kramer's involvement would have ever become publicly known.

Id. ¶ 60.

[1] The facts herein are drawn from the declaration being submitted simultaneously with this memorandum.

Plaintiffs incorrectly assert that Kramer "hired Life [Corporation] to distribute thousands of robocalls to likely Democratic voters in New Hampshire," *id.* ¶ 32; Kramer instead distributed the Subject Call to New Hampshire voters pursuant to a Lease Agreement with Voice Broadcasting Corp., an affiliate of Life.[2] Declaration of Jeff Fournier ("Fournier Decl.") ¶¶ 10-11. Voice Broadcasting purchases communications services from Life to enable calling capabilities on the Voice Broadcast platform and, in turn, Voice Broadcasting leases its software and equipment to clients, such as Kramer, who wish to conduct election-related and other calling campaigns. *Id.* ¶ 8. Voice Broadcasting's customers are solely and exclusively responsible for developing calling lists, creating the content of the calls, and providing information related to the telephone number to be displayed when calls are placed. *Id.* ¶ 9. Voice Broadcasting's customers initiate all calls placed through Voice Broadcasting's equipment and software and for all calling campaigns. *Id.*

On April 19, 2010, Kramer and Voice Broadcasting entered into a Lease Agreement through which Voice Broadcasting agreed to lease Kramer equipment, software, and technical support for the purpose of initiating phone calls. Fournier Decl. ¶ 10. Consistent with the Lease Agreement, Kramer controlled all aspects of the Subject Call, including, but not limited to: (a) the content of the message; (b) the residential telephone numbers called; (c) the telephone number that appeared on recipients' caller ID; and (d) when the phone call was transmitted to the recipients. *Id.* ¶ 10, Ex. A. Under the Lease Agreement, and consistent with Voice Broadcasting's policies and practices concerning marketing, Kramer was responsible for ensuring that he had any required permission to call numbers using the Voice Broadcasting platform. *Id.* ¶ 12. As part of the Lease Agreement, Kramer agreed to comply with all applicable laws including the TCPA. *Id.* ¶ 14.

[2] For the reasons set forth in this paragraph and declaration of Jeff Fournier, Life Corporation is not the correct defendant in this case. The correct defendant, if any, would be Voice Broadcasting.

Kramer was a client of Voice Broadcasting from 2010 until 2024, during which time he used Voice Broadcasting's services for hundreds of projects involving millions of election-related calls. Fournier Decl. ¶ 15. Voice Broadcasting never had a reason to question the legitimacy of Kramer's calling campaigns prior to the Subject Call described in the Complaint. *Id.* ¶ 16. Nor did Voice Broadcasting know or have reason to know of the origin or content of Subject Call prior to the call being placed. *Id.* ¶¶ 17–18. Specifically, and as Kramer has since admitted in media interviews which are referenced in the Complaint, Voice Broadcasting did not know that the recording used by Kramer was an AI recording of President Bident's voice. *Id.* ¶ 18. Indeed, in news interviews regarding the Subject Call, Kramer stated regarding Life that "***They had no knowledge of the content of this call prior to delivery***." Alex Seitz-Wald, *Democratic operative admits to commissioning fake Biden robocall that used AI*, NBC News (Feb. 25, 2024), https://www.nbcnews.com/politics/2024-election/democratic-operative-admits-commissioning-fake-biden-robocall-used-ai-rcna140402 (emphasis added) (cited in Compl. ¶ 22 n.6). Upon learning of the origin of the Subject Call, on February 1, 2024, Voice Broadcasting terminated the Lease Agreement between Kramer and Voice Broadcasting based on Kramer's breach of contract. Fournier Decl. ¶ 19. Voice Broadcasting is no longer working with Kramer. *Id.* Since the Subject Call, Voice Broadcasting has not received any reports, complaints, or other information suggesting that its services were used to transmit an AI-generated call. *Id.* ¶ 20.

Despite their claims and stated concerns about the risks associated with the Subject Call, none of the named Plaintiffs have alleged any actual or imminent injury as a result of the robocalls at issue. They all realized the call was bogus. Plaintiff Fieseher "realized the call was not legitimate" "[a]fter listening for 15 to 20 seconds." Compl. ¶ 38. Plaintiff Marashio "was able to

discern that the call was not legitimate." *Id.* ¶ 39. Plaintiff Gingrich "knew that the message was faked." *Id.* ¶ 40.

Finally, League of Women Voters-US ("LWV-US") and League of Women Voters-NH ("LWV-NH") claim that they decided to devote, and will in the future devote, unspecified resources to combat robocalls, but do not allege facts causally relating their alleged injuries to Life's conduct. The Complaint itself makes clear that Kramer is entirely responsible for the Subject Call. Moreover, concerns about robocalls and the use of AI to create fake messages existed before the Subject Call and will likely continue to exist independent of the alleged involvement of Life. The organizational plaintiffs' own decisions regarding how and where to devote their resources devoted are their own—they are not caused by the conduct of Life.

LEGAL STANDARD

When seeking a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance or equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). However, a preliminary injunction is an "extraordinary and drastic remedy" that should "never be awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (citation omitted), *see also Peoples Fed. Sav. Bank v. People's United Bank*, 672 F.3d 1, 8–9 (1st Cir. 2012). In considering a request for a preliminary injunction, the Court must weigh several factors: (1) the likelihood of success on the merits; (2) the potential for irreparable harm to the movant; (3) the balance of the movant's hardship if relief is denied versus the nonmovant's hardship if relief is granted; and (4) the effect of the decision on the public interest. *Philip Morris, Inc. v. Harshbarger*, 159 F.3d 670, 673 (1st Cir. 1998) (citing *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 15 (1st Cir. 1996)). "The party

seeking the preliminary injunction bears the burden of establishing that these four factors weigh in its favor." *Esso Standard Oil Co. (P.R.) v. Monroig-Zayas*, 445 F.3d 13, 18 (1st Cir. 2006).

ARGUMENT

I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS.

A. There is No Actual, Concrete Injury Identified to Satisfy Article III.

Plaintiffs cannot succeed on the merits because they have failed to allege facts sufficient to support constitutional standing. "The irreducible constitutional minimum of standing contains three elements: (1) that the plaintiff suffered an injury in fact, (2) that there is a causal connection between the injury and the conduct complained of, and (3) that it is likely that the injury will be redressed by the requested relief." *Sutliffe v. Epping Sch. Dist.*, 584 F.3d 314, 325 (1st Cir. 2009) (citation and internal question marks omitted). "The burden of stating facts sufficient to support standing rests with the party seeking to assert federal jurisdiction." *Id.* (citation omitted).

Plaintiffs' claims fail because they have failed to allege facts sufficient to show "injury in fact." Injury in fact is "an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 325–26 (citations and internal quotation marks omitted). To meet the "injury in fact" requirement, "plaintiffs must 'show that [they] personally ha[ve] suffered some actual or threatened injury." *Id.* at 326 (alterations in original) (citations omitted). Plaintiffs Fieseher, Marashio and Gingrich all acknowledge they realized the calls were fake and voted anyway, thereby conceding that they suffered no concrete, particularized or actual injury. Compl. ¶¶ 38–40. Moreover, the organizational plaintiffs LWV-US and LWV-NH allege only that they made their own decisions to expend resources to address robocalls, allegations that fail to meet Plaintiffs' burden to show injury in fact attributable to Life since the call was initiated by Kramer and because LWV-US and

LWV-NH would likely expend resources to address AI-related election risks regardless of Life's alleged involvement.

Plaintiffs' failure to meet their burden to allege facts sufficient to establish constitutional standing—including their failure to allege harm that qualifies as injury in fact and their failure to allege any causal relationship between such harm and Life's conduct—dooms all of Plaintiffs' claims, rendering Plaintiffs unlikely to prevail on the merits.

B. Plaintiffs Have No Claim Under the Voting Rights Act.

Plaintiffs argue that Life violated Section 11(b) of the Voting Rights Act through acts of intimidation or attempted intimidation, but they have failed to offer any facts actually and directly connecting their cited examples of intimidation to ***Life's*** actions. Section 11(b) of the Voting Rights Acts states that 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). Specifically, intimidation is where a reasonable recipient would interpret an action or message, intended to deter a person's voting rights, as a threat of injury. *Nat'l Coal. on Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021). For example, courts have found acts that "inspire fear of economic harm, legal repercussions, privacy violations, and even surveillance can constitute unlawful threats or intimidation under the statute." *Id.* Such actions also include "making a voter fearful, compelling voter action or inaction, promising reprisal or distress, or restraining, controlling, or dominating a voter." *See Fair Fight Inc. v. True the Vote*, No. 2:20-CV-00302-SCJ, 2024 WL 24524, at *44 (N.D. Ga. Jan. 2, 2024).

Here, the Subject Call was not intimidating, coercive, or threatening on its face. The call contained no inflammatory language that would put a reasonable listener in fear of threatened injury. Plaintiffs' argument that there was a threat of a loss of vote in November, Dkt. 47-1 at 12–14, is an interpretation created for purposes of litigation, at best. Unlike *Wohl*, where the robocall

contained threats to privacy and legal consequences with law enforcement, 512 F. Supp. 3d at 506; here, the call contained no such threats, Dkt. 47-1 at 2. While Plaintiffs argue the alleged use of President Biden's voice and caller identification of the former New Hampshire Democratic Party chair add legitimacy to the call, *id.* at 14, this argument is undermined by Plaintiffs' own allegations that "the content of the message did not make sense" and they knew it was "not legitimate," Compl. ¶¶ 38–40. A reasonable listener—and, according to their allegations, all plaintiffs—would know that the information conveyed was false and there was no threat to the listener's right to vote. Not a single plaintiff has alleged that they felt intimidated, coerced, or threatened. *See* Compl. ¶¶ 37–40; Dkt. 47-1 at 3, 12–14 ("[Plaintiffs] feared that less experienced voters would not have been able to discern [the call's] inauthenticity."). At most, the call involved misinformation—which is not actionable without more. This is particularly true when not a single plaintiff was misled.

Most importantly, Plaintiffs have not articulated how ***Life*** could be liable, since—according to the Complaint and incorporated news articles—the call was entirely planned and executed by Defendant Kramer. Dkt. 47-1 at 6. Moreover, the evidence in this case will confirm the truth of these allegations—Voice Broadcasting had no knowledge of the content of the call, which was entirely the responsibility of and orchestrated by Kramer. *See* Fournier Decl. ¶¶ 16–18. Plaintiffs argue without any factual basis that Life was "aware or should have been aware" of the false information in Defendant Kramer's robocall. Compl. ¶ 69. However, they fail to provide any case law showing this standard is applicable under the VRA. Dkt. 47-1 at 10–15. Regardless, Plaintiffs must plead sufficient allegations to give rise to the "reasonable inference" that Life was aware of the robocall's falsity or purpose. *Nat'l Coal. on Black Civic Participation v. Wohl*, No. 20 Civ. 8668 (VM), 2021 WL 4254802, at *5 (S.D.N.Y. Sept. 17, 2021) (finding robocall

"intended to discourage mail-in voting and suppress voter turnout" and email correspondence using the phrase "we attack" gave rise to reasonable inference that third-party defendant knew the content and purpose of creator-defendant's robocall) (citation omitted).

Because Plaintiffs do not allege facts that would make Life liable under Section 11(b) of the VRA, they do not have an actionable Section 11(b) claim against Life under the VRA. It is unlikely Plaintiffs will survive a motion to dismiss this claim as to Life, let alone prevail after full discovery and trial. *See id.*

C. Plaintiffs Have No Claim for Count II Under The TCPA.

Plaintiffs also will not prevail on their claims against Life under the TCPA. In the context of certain unlawful telemarketing activities, the TCPA creates a cause of action against "a person or entity [that] initiate[s]" a telephone call. 47 C.F.R. § 64.1200(d). This "generally does not include persons or entities, such as third-party retailers, that might merely have some role, however minor, in the casual chain that results in the making of a telephone call." *In re Dish Network, LLC*, 28 FCC Rcd. 6574, 6583 ¶ 26 (2013) (clarifying the definition of "initiate[]" for purposes of TCPA liability in response to three petitions for declaratory rulings on issues brought under the TCPA).

To determine who is a call initiator, courts examine: "1) who took the steps necessary to physically place the call; and 2) whether another person or entity was so involved in placing the call as to be deemed to have initiated it, considering the goals and purposes of the TCPA." *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7980 ¶ 30 (2015). In enacting the TCPA, Congress never intended to impose TCPA liability upon entities such as Life, a middleman in the telecommunications chain that transmits calls, because Life does not "make" calls—its clients or its client's customers do. *See* S. Rep. No. 102-178, at 9 (1991). The legislative history of the TCPA makes clear that the statute "appl[ies] to the persons initiating the telephone call or sending the message and do[es] not apply to the common carrier or

other entity that transmits the call or message and that is not the originator or controller of the content of the call or message." *Id.*

Here, Plaintiffs concede that Life (actually, Voice Broadcasting) merely hosts a telecommunication broadcasting platform. Compl. ¶ 18. Further, Plaintiffs outline ***in detail*** Defendant Kramer's plot to develop the alleged deepfake AI-generated robocall, *id*. ¶¶ 29–31, 46, making clear that Life exercised no control in orchestrating the robocalls at issue. Defendant Kramer, not Life, chose which New Hampshire citizens received the phone calls on their landlines.[3] *Id.* ¶ 34. Furthermore, neither Voice Broadcasting nor Life selected the number that is shown when the call is made. *See* Fournier Decl. ¶ 9. Their reactive role as a conduit, both generally and in regard to the Subject Call, falls outside the ambits of TCPA liability. *See In re Dish Network*, 28 FCC Rcd. at 6583 ¶ 26 (explaining liability does not extend to entities that "merely have some role . . . in the causal chain that results in the making of a telephone call). Plaintiffs' complaint is devoid of any facts to support a TCPA claim against Life.

Courts across the country routinely dismiss TCPA claims against platforms and similar providers in similar circumstances. For example, in *Clark v. Avatar Technologies PHL, Inc.*, a plaintiff filed suit against Flowroute, a telecommunications provider, seeking "to impose TCPA liability on Flowroute based on the allegation that [the plaintiff] used Flowroute's technology to make the challenged call." No. H-13-2777, 2014 WL 309079, at *2 (S.D. Tex. Jan. 28, 2014). The court granted Flowroute's motion to dismiss with prejudice because a spoofer, and "not Flowroute," initiated the call to the plaintiff's phone. *Id.* The court reasoned that "without more," the TCPA does not impose liability on "telecommunications carrier[s] whose systems are used by another to make an unlawful call to a cellular phone." *Id.*; *see also Selou v. Integrity Sol. Servs.*

[3] Plaintiffs fail to allege that any New Hampshire resident received the underlying robocalls at issue on their wireless devices. *See* Compl. ¶¶ 34, 38-40.

Inc., No. 15-10927, 2016 WL 612756, at *4–5 (E.D. Mich. Feb. 16, 2016); *Adzhikosyan v. Callfire, Inc.*, No. CV 19-246 PSG (GJSx), 2019 WL 7856759, at *3 (C.D. Cal. Nov. 20, 2019); *Meeks v. Buffalo Wild Wings, Inc.*, No. 17-cv-07129-YGR, 2018 WL 1524067, at *2 (N.D. Cal. Mar. 28, 2018), *aff'd sub nom. Meeks v. Blazin Wings, Inc.*, 821 F. App'x 771 (9th Cir. 2020). Here, given the passive role of Life as demonstrated from Plaintiffs' own Complaint, Life cannot be liable under the TCPA. *See* Compl. ¶¶ 29–31, 46. If there was any doubt, discovery will confirm the limited role that Life (or Voice Broadcasting) had and that they cannot be the "caller" responsible for initiating the Subject Call. *See* Fournier Decl. ¶¶ 10–12.

Even if Voice Broadcasting could be deemed to have "initiated" the phone call—which, as detailed above, it cannot—Plaintiffs' TCPA claim would fail anyway. Although Plaintiffs allege that they "did not consent to receiving artificial or prerecorded-voice telephone calls," Compl. ¶ 78, they misstate the law regarding consent to receive political calls on residential telephone lines. *Id.* ¶ 77. The TCPA does not require consent for political calls made to landlines. *In re Rules & Regulations Implementing the Tel. Consumer Prot. of 1991*, 7 FCC Rcd. 8752, 8774 ¶ 41 (1992) ("[W]e find that the exemption for non-commercial calls from the prohibition on prerecorded messages to residences includes calls conducting research, market surveys, ***political polling or similar activities which do not involve solicitation*** as defined by our rules.") (emphasis added). Here, according to the Complaint, the Subject Call was sent to residential landlines and not cell phones. *See* Compl. ¶¶ 35, 38–40 (alleging Plaintiffs received the Subject Call on residential landlines and not cell phones); *id.* ¶ 35 (quoting opt-out language of Subject Call). Likewise, the transcription of the Subject Call quoted in the Complaint contradicts Plaintiffs' claim that the Subject Call lacked an adequate opt-out mechanism. *Compare* Compl. ¶ 88 (citing regulation requiring calls to include key press-activated opt-out mechanisms), *with id.* ¶ 35 ("If

you would like to be removed from future calls, please press two now."). For these reasons, Plaintiffs are unlikely to succeed on the merits as to Life's alleged TCPA violation.

D. Plaintiffs Have No Claim Under the New Hampshire Election Laws.

The Court should dismiss Counts III and IV against Life because Plaintiffs fail to meet the standing requirements as delineated by the New Hampshire Supreme Court in *O'Brien v. New Hampshire Democratic Party*, 89 A.3d 1202 (N.H. 2014). As the *O'Brien* court explained, "[t]he Robocall Statute confers standing to file a private action upon a specific cohort of persons: '*[a]ny person injured by another's violation of this section* may bring an action for damages and for such equitable relief . . . as the court deems necessary and proper.'" *Id.* at 1205 (quoting RSA § 664:14-a).[4] "[A] plaintiff [must] allege *each* of the following three elements in order to have standing: (1) a violation of the statute; (2) an injury; and (3) that the violation of the statute caused the injury." *Id.* Importantly, the *O'Brien* court ***rejected*** the plaintiff's argument that standing is presumed because of the statutory penalties included in the New Hampshire law. The Court explained that "[t]he provision establishing statutory damages does not absolve the plaintiff from satisfying the requirement that he allege injury and causation; rather, it relieves him only of the requirement to plead the amount of his damages." *Id.* Based on these principles of standing, the *O'Brien* court affirmed the trial court's grant of summary judgment to the defendant, holding that "the plaintiff did not allege an injury flowing from the alleged statutory violation, and therefore, . . . does not have standing." *Id.* at 1207.

Plaintiffs here have similarly failed to allege injury flowing from the alleged violations of RSA § 664:14-a and RSA § 664:14-b. The individual plaintiffs acknowledge in the Complaint

[4] *O'Brien* only specifically addresses RSA § 664:14-a, but its holding applies with equal force to RSA § 664:14-b because the latter statute contains the same determinative language as RSA § 664:14-a: "[a]ny person injured by another's violation of this section."

that they incurred no injuries—none of them failed to vote because of the Subject Call or claim to have been misled. LWV-US and LWV-NH allege only unspecified expenditures of resources to address AI-related election risks, expenditures that are attributable to the organizational plaintiffs' own decisions and not to any alleged conduct of Life. The organizational plaintiffs might have decided to make these expenditures regardless of the Subject Call and regardless of Life's alleged role. The Court should therefore find that Plaintiffs are unlikely to prevail on the merits of their Robocall Statute claims because they lack statutory standing.

II. PLAINTIFFS CANNOT DEMONSTRATE THEY WILL SUFFER IRREPARABLE HARM WITHOUT A PRELIMINARY INJUNCTION.

Plaintiffs argue that they will suffer irreparable harm because they have "already been harmed by being subjected to Defendants' attempted threats, intimidation, and coercion," and "[t]he harm that Individual Plaintiffs have suffered and will suffer from the false and coercive robocalls cannot be rectified by monetary relief." *See* Dkt. 47-1 at 20. Plaintiffs also allege that "[w]hile the Plaintiffs in this matter are frequent voters and closely follow local elections, the impact on voters who are not as informed and are consequently misled could be devastating," and "if Defendants are not enjoined and punished, their conduct is likely to be adopted by others, thereby inflicting further harm to other voters." *See* Compl. ¶¶ 62, 63.

As to Life, these allegations are either untrue on the face of the Complaint or are entirely speculative. First, it's untrue that Life has already caused harm to Plaintiffs. The individual plaintiffs allege that they knew the Subject Call was fake and voted anyway. *See id.* ¶ 62. LWV-US and LWV-NH claim that they have had to devote unspecified resources to alerting the public to the dangers of AI in elections is not reasonably attributed to any alleged conduct by Life—such risks are well-known and LWV-US and LWV-NH may well have devoted resources to these issues regardless of any alleged role of Life.

Second, concerns about calls involving Life in the future, including the potential for misleading of other voters, are entirely speculative. As discussed, Life did not initiate the Subject Call, which—according to the Complaint—was entirely planned and executed by Kramer. Voice Broadcasting has terminated its relationship with Defendant Kramer upon learning of the origin of the call. *See* Fournier Decl. ¶ 19. And there is no allegation that Voice Broadcasting's services have otherwise been used by its clients to make AI-generated calls. *Id.* ¶ 20. Plaintiffs have the burden of showing that denial of relief would cause substantive, not potential harm, as "a preliminary injunction is not warranted by a tenuous or ***overly*** speculative forecast of anticipated harm." *Baccarat, Inc.*, 102 F.3d at 19 (emphasis added); *see also Rasheed v. D'Antonio*, No. 10-11253-GAO, 2011 WL 4382517, at *24 (D. Mass. Sept. 19, 2011) ("Such injury cannot be remote or speculative. Therefore, the moving party must show a 'clear and present need for relief to prevent irreparable harm.'") (citation omitted). Plaintiffs have not shown that they would suffer irreparable harm should a preliminary injunction against Life be denied.

III. THE BALANCE OF EQUITIES WEIGHS IN DEFENDANT'S FAVOR.

Plaintiffs further fail to show that the balance of equities weigh in their favor. Courts must "balance[] '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.'" *Mercado-Salinas v. Bart Enters. Int'l, Ltd.*, 671 F.3d 12, 23–24 (1st Cir. 2011) (quoting *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F3d 112, 115 (1st Cir. 2006)). Any potential harm caused to the movant by a denial of its motion must be balanced against any reciprocal harm caused to the nonmoving party by the imposition of an injunction. *ZoomInfo Techs. LLC v. Salutary Data LLC*, No 21-cv-10396-DJC, 2021 WL 1565443, at *5 (D. Mass. Apr. 21, 2021).

Plaintiffs seek an injunction prohibiting Life from "distribut[ing] unlawful deepfake robocalls," stating Plaintiffs "have an overwhelmingly strong interest in protecting the unimpaired

right to vote, free of intimidation, threats, or coercion." *See* Dkt. 47-1 at 22. There is no technical way for Life (or Voice Broadcasting) to review calls for use of AI technology. Fournier Decl. ¶¶ 22. Moreover, Voice Broadcasting's services are designed to be used by clients, who are responsible for the content and all legal compliance related to those calls, including provision of the calling number. Voice Broadcasting does not employ lawyers and is not qualified to provide legal advice to customers. *Id.* ¶ 24. It would be inefficient, burdensome, redundant, and inconsistent with industry practice for Voice Broadcasting to hire the team of attorneys needed to conduct the legal compliance review contemplated by Plaintiffs' proposed order. *Id.* ¶¶ 24–26. The injunction Plaintiffs seek would be incredibly burdensome and completely the shift the business model of Voice Broadcasting. *Id.* ¶ 27. For this reason, Plaintiffs' Motion for Preliminary Injunction must be denied.

IV. THE PROPOSED INJUNCTION WILL HARM THE PUBLIC INTEREST.

Plaintiffs argue that a preliminary injunction advances public interest because Life engaged in conduct that "impedes and threatens" American democracy. Dkt. 47-1 at 22. However, a preliminary injunction will only harm the public interest because Voice Broadcasting's services provide an important medium for promoting democratic and civic engagement. They provide an important political service in helping polling companies and campaigns reach voters. Fournier Decl. ¶¶ 8, 24. Ironically, the injunction Plaintiffs seek would actually harm the ability of candidates, polling companies, and others to communicate with voters in the coming months.

CONCLUSION

For the foregoing reasons, Defendant Life respectfully requests that the Court deny Plaintiffs' Motion for Preliminary Injunction.

DATE: May 17, 2024

Respectfully submitted,

/s/ Benjamin T. King
Benjamin King, NH Bar #12888
Douglas, Leonard & Garvey, P.C.
14 South Street, Suite 5
Concord, NH 03301
(603) 224-1988
Fax: (603) 229-1988
benjamin@nhlawoffice.com
ATTORNEY TO BE NOTICED

/s/ Wayne E. George
Wayne E. George, NH Bar #19061
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110-4104
(617) 341-7596
Fax: (617) 341-7701
wayne.george@morganlewis.com
ATTORNEY TO BE NOTICED

Ezra D. Church
Ezra D. Church, PA Bar #206072
(admitted *pro hac vice*)
Terese Schireson
Terese Schireson, PA Bar #320999
(admitted *pro hac vice*)
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
(215) 963-5000
Fax: (215) 3963-5001
ezra.church@morganlewis.com
terese.schireson@morganlewis.com
ATTORNEYS TO BE NOTICED

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
Benjamin T. King