UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, NANCY MARASHIO, JAMES FIESEHER, AND PATRICIA GINGRICH, *Plaintiffs*, v. STEVE KRAMER, LINGO TELECOM, LLC, VOICE BROADCASTING CORPORATION, and LIFE CORPORATION, *Defendants*.	)	No. 1:24-cv-73-SM-TSM

PUTATIVE AMICUS COOLIDGE REAGAN FOUNDATION'S BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COUNT I AND AGAINST ENTRY OF DEFAULT JUDGMENT AGAINST STEVE KRAMER ON COUNT I

Putative Amicus Coolidge Reagan Foundation respectfully submits this proposed Amicus Brief in support of Defendants Life Corp.'s, Voice Broadcasting Corp.'s, and Lingo Telecom, LLC's Motions to Dismiss the Amended Complaint for Failure to State a Claim, D.E. #76, 79 (June 25, 2024). This Amicus confirms this Court should dismiss Count I of the Complaint, regarding § 11(b) of the Voting Rights Act ("VRA"), 52 U.S.C. § 10307(b), for four reasons. ***First***, 52 U.S.C. § 10308(a) and (c) confirm § 11(a) does not create an implied right of action. ***Second***, Plaintiffs lack standing to seek prospective relief against future § 11(b) violations. ***Third***, the constitutional avoidance canon counsels against treating the ambiguous political speech from which Plaintiffs' § 11(b) claim arises as sufficient to constitute "intimidat[ion], threat[s], or coerc[ion]." 52 U.S.C. § 10307(b). This Court should not allow Plaintiffs to chill political expression by transforming § 11(b) from a prohibition on true threats to a blanket federal ban on potentially false, misleading,

or deceptive speech. ***Finally***, § 11(b) did not apply to the 2024 New Hampshire Democratic Presidential Preference Primary.

STATEMENT OF INTEREST OF PUTATIVE
AMICUS COOLIDGE REAGAN FOUNDATION

Putative Amicus Coolidge Reagan Foundation is a § 501(c)(3) nonprofit organization incorporated in the District of Columbia with its principal place of business there, as well. It is dedicated to protecting freedom of speech under the First Amendment and the integrity of the electoral process. No counsel for any party authored any part of this brief, or made a monetary contribution to fund its preparation or submission. No person other than amicus CRF, its members and supporters, and counsel made a monetary contribution in connection with this brief.

BACKGROUND OF THE CASE

Defendants are a political consultant and various technology and telecommunications companies who market hardware, software, and services to facilitate the automated dissemination of pre-recorded telephone calls (i.e., "robocalls") commercially available. *Amended Complaint*, D.E. #65, ¶¶ 24, 30-31, 36, 39 (May 28, 2024). Plaintiffs allege the Defendants made thousands of robocalls to New Hampshire Democratic voters in connection with the 2024 New Hampshire Presidential Preference Primary Election. *Id*. ¶¶ 2, 48, 49. The calls allegedly used an AI-generated simulation of President Biden's voice, and the return phone number was allegedly "spoofed" so the calls inaccurately appeared to be originating from a former state Democratic official. *Id*. ¶¶ 2, 51, 54.

The message allegedly stated:

> This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push nonpartisan and Democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the

> ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday. If you would like to be removed from future calls, please press two now. Call [personal cell phone of Kathy Sullivan] to be removed from future calls. *Id.* ¶ 55.

The Amended Complaint does not allege even a single recipient of this pre-recorded message felt threatened, intimidated, or coerced in any way. To the contrary, the only three voters specifically discussed in the Amended Complaint—the three individual plaintiffs in this case—each claimed within a few seconds they realized the call was "fraudulent," *id.* ¶ 59; "not legitimate," *id.* ¶¶ 60, 61; or "faked," *id.* ¶ 62. Plaintiffs nevertheless sue under § 11(b) based solely on one alleged potential interpretation of the calls: the supposed "insinuat[ion]" that "people could lose their ability to vote if they participated in the New Hampshire primary." *Id.* ¶ 6.

I. SECTION 11(b) OF THE VOTIG RIGHTS ACT DOES NOT CREATE AN IMPLIED PRIVATE RIGHT OF ACTION.

As an initial matter, this Court should dismiss Count I because § 11(b) of the VRA does not give rise to a private right of action.[1] Only Congress may create a federal cause of action to enforce a federal statute. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). The U.S. Supreme Court set forth the modern standard for determining whether a federal legal provision gives rise to a private right of action in *Alexander v. Sandoval*, 532 U.S. 275 (2001). It declared, "The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Id.* at 286. Without such affirmative congressional action, "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Id.* Critically,

[1] Since none of the defendants are state or local officials or otherwise acted under color of state law, Plaintiffs must overcome the high barrier established in *Alexander v. Sandoval*, 532 U.S. 275 (2001), rather than the more forgiving standard for pursuing violations of federal statutes pursuant to 42 U.S.C. § 1983 set forth in *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).

"a private right of action under federal law is not created by implication, but must be 'unambiguously conferred.'" *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 332 (2015) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)).

Congress adopted the Voting Rights Act prior to the Court's ruling in *Sandoval*, at a time when courts were much more willing to infer the existence of private rights of action without express Congressional grant. *See Morse v. Republican Party*, 517 U.S. 186, 231 (1996) ("The Voting Rights Act itself was passed one year after this Court's decision in *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964), which applied a highly liberal standard for finding private remedies."). The fact an "enacting Congress" may have "expect[ed]" a legal provision would be privately enforceable, however, is insufficient to satisfy *Sandoval*'s requirements—particularly where Congress did not choose to re-enact specific language from a particular federal law which the Court "had previously interpreted to create a private right of action." *Sandoval*, 532 U.S. at 287-88. Section 11(b) fails both prongs of *Sandoval*.

A. *Section 11(b) Does Not Create a Private Right*

Section 11(b) does not meet *Sandoval*'s first requirement because it does not establish any individual, private rights. *Id*. at 286; *accord Goodwin v. C.N.J., Inc.*, 436 F.3d 44, 49-50 (1st Cir. 2006). To satisfy this requirement, a legal provision must be "'phrased in terms of the persons benefited' and contain[] 'rights-creating,' individual-centric language with an 'unmistakable focus on the benefited class.'" *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 183 (2023) (quoting *Gonzaga*, 536 U.S. at 284, 287). For example, the Court has held 42 U.S.C. § 1982 confers an individually enforceable right because it provides, "All citizens of the United States ***shall have the same right*** . . . as is enjoyed by white citizens thereof . . . [to own property]." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13 (1979) (emphasis added) (quoting *Sullivan v. Little Hunting Park,*

Inc., 396 U.S. 229, 238 (1969)); *see also Talevski*, 599 U.S. at 184 (holding a statute protecting nursing home residents gave rise to private rights since it expressly recognized residents' "rights" and "focus[ed] on individual residents").

The Court has "reject[ed] the notion" that "anything short of an ***unambiguously conferred right***" may satisfy the requirement for finding the existence of a private cause of action. *Gonzaga*, 536 U.S. at 283 (emphasis added).[2] A person does not acquire privately enforceable rights under a federal law simply because they are "within the general zone of interest that the statute is intended to protect." *Id.*; *see also California v. Sierra Club*, 451 U.S. 287, 294 (1981) ("The question is not simply who would benefit from the Act, but whether Congress intended to confer federal rights upon those beneficiaries."). Moreover, a statutory provision does not create private rights simply because other provisions of the same act create implied rights of action. *Cf. Colon-Marrero v. Velez*, 813 F.3d 1, 16-17 (1st Cir. 2016) (recognizing some provisions of the Help America Vote Act are privately enforceable while others do not give rise to private rights).

Here, § 11(b) completely lacks "the 'rights-creating' language" which is "critical to the Court's analysis" of whether a statute objectively manifests congressional intent to create a private right. *Sandoval*, 532 U.S. at 288; *see, e.g.*, *Armstrong*, 575 U.S. at 331 ("Section 30(A) lacks the sort of rights-creating language needed to imply a private right of action."). Codified in a section entitled, "Prohibited acts," § 11(b) provides:

> 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, or . . . for urging or aiding any persons to vote or attempt to vote, or . . . for exercising any powers or duties under [other laws].

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[2] *Gonzaga* addressed a plaintiff's ability to sue for federal statutory violations pursuant to § 1983. But "[a] court's role in discerning whether personal rights exist" is the same in both "the § 1983 context" and "the implied right of action context." *Gonzaga*, 536 U.S. at 285.

As the U.S. District Court for the Western District of Virginia properly concluded, the plain language of this provision does not purport to create any rights. *Schilling v. Washburne*, 592 F. Supp. 3d 492, 498 (W.D. Va. 2022). It is completely bereft of any allusion to a "right to vote" or any other such individual right. *See Sandoval*, 532 U.S. at 291 ("[W]e have found no evidence anywhere in the text to suggest that Congress intended to create a private right . . . .").

Moreover, rather than focusing on any protected class of people, the statute instead prohibits certain specified misconduct by putative defendants. *Sandoval* explains, "Statutes that focus on the person regulated rather than the individuals protected create 'no implication of an intent to confer rights on a particular class of persons.'" *Sandoval*, 532 U.S. at 289 (quoting *California v. Sierra Club*, 451 U.S. 287, 294 (1981)). Section 11(b), however, "states no more than a general proscription of certain activities." *Sierra Club*, 451 U.S. at 294. As the Western District of Virginia explained, the language of § 11(b) "is directed to the regulated party, not the party to be protected. [It] clearly prohibits voter intimidation. But it does not, under the Supreme Court's precedents, confer any new right on voters." *Schilling*, 592 F. Supp. 3d at 498.

Perhaps most importantly, § 11(b) is not among the provisions of the Voting Rights Act which ***Congress itself*** has expressly recognized give rise to individual rights. For example, 52 U.S.C. § 10308(a) authorizes criminal prosecution for violations of numerous VRA provisions. It provides: "Whoever shall deprive or attempt to deprive any person ***of any right*** secured by section 2, 3, 4, 5, or 10 or shall violate section 11(a) [52 USCS § 10307(a)], shall be [punished]." *Id*. (emphasis added). Section 11 is not among the numerous provisions of the VRA expressly recognized as "secur[ing]" a "right." *Id*.

Likewise, § 10308(c) (emphasis added) goes on to add, "Whoever . . . interferes ***with any right*** secured by section 2, 3, 4, 5, 10, or 11(a) shall be [punished]." This provision is even more

informative. While it broadly recognizes sections 2, 3, 4, 5, and 10 of the VRA as creating rights, Congress specifically chose to single out § 11(a) as likewise establishing such rights, rather than broadly including § 11 as a whole. This variation in language suggests that only the specified subsection of § 11—subsection 11(a)—secures "rights," and not § 11(b).

The *expressio unius* canon "instructs that, when parties list specific items in a document, any item not so listed is typically thought to be excluded." *Riley v. Metro. Life Ins. Co.*, 744 F.3d 241, 249 (1st Cir. 2014). It "has force" when "the items expressed are members of an associated group or series, justifying the inference that the items not mentioned were excluded by deliberate choice, not inadvertence." *Owens v. City of Malden*, 85 F.4th 625, 632 (1st Cir. 2023) (quotes omitted). Congress' decision to repeatedly expressly list numerous VRA provisions which give rise to "rights" confirms the Act's other provisions do not create such rights. Perhaps more importantly, the Court itself has invoked § 10308(a) and (c) to determine whether provisions of the VRA create rights enforceable through private litigation. *Morse v. Republican Party*, 517 U.S. 186, 233 & n.44 (1996) ("[T]he other provisions of the [VRA] indicate that [§ 10] established a right to vote without paying a fee." (citing provisions recodified as 52 U.S.C. § 10308(a), (c)).

Section 10308(d) reinforces this conclusion. It empowers the Attorney General to sue "[w]henever any person has engaged . . . in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11 . . . ." Instead of identifying specific provisions of the VRA which give rise to individual rights, this subsection more broadly lists provisions which the Attorney General may enforce. Whereas § 10308(c) singled out § 11(a) as creating rights, this provision permits the Attorney General to enforce all of § 11. "[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotes omitted)); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002).

Thus, Congress has carefully distinguished between the rights-creating provisions of the VRA and its other legal prohibitions. Section 10308 clearly demonstrates Congress' intent that § 11(b) ***not*** be interpreted or applied as giving right to individual rights.

B. *Section 11(b) Does Not Create a Private Remedy*

Section 11(b) similarly fails *Sandoval*'s second prong because it does not manifest any congressional intent to establish a private remedy. *Sandoval*, 532 U.S. at 286. As noted above, the VRA expressly allows the Attorney General to sue for injunctive relief against § 11(b) violations. *See* 52 U.S.C. § 1308(c). The express authorization of civil litigation only by the Attorney General typically suggests Congress did not intend for a statute to be privately enforceable. *See Sandoval*, 532 U.S. at 289-90 ("The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others."); *accord Armstrong*, 575 U.S. at 328; *Long Term Care Pharm. Alliance v. Ferguson*, 362 F.3d 50, 58 (1st Cir. 2004) ("[T]he presence of an explicit enforcement mechanism weighs against inferring private rights of action."). Because § 11(b) "expressly delegates enforcement authority to the Attorney General while making no mention of a private right of action," *Sandoval* counsels against allowing private plaintiffs to sue. *Schilling*, 592 F. Supp. 3d at 498; *see also Andrews v. D'Souza*, 696 F. Supp. 3d 1332, 1351 (N.D. Ga. 2023) (holding § 11(b) does not create an implied right of action because the VRA lacks affirmative evidence of congressional intent to create a private remedy).

Moreover, the VRA provisions implicitly contemplate private litigation do not extend to § 11(b) claims. For example, 52 U.S.C. § 10302 repeatedly discusses the "Attorney General or an aggrieved person institut[ing] proceedings under any statute to enforce the voting guarantees of

the fourteenth or fifteenth amendment." 52 U.S.C. § 10302(a), (b), (c). Likewise, 52 U.S.C. § 10310(e) authorizes "the prevailing party, other than the United States," to recover attorneys' fees "[i]n any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment." These provisions do not broadly purport to recognize private litigation for violation of any VRA provision, however, but instead only cases specifically enforcing voting rights under the Fourteenth and Fifteenth Amendments.

Because § 11(b) does not prohibit violations of the Fourteenth and Fifteenth Amendments, these VRA provisions do not suggest Congress implicitly intended to authorize private enforcement of § 11(b). Indeed, the Fourteenth and Fifteenth Amendments are so irrelevant to Plaintiffs' claim, the Amended Complaint does not even bother alluding to them. This is not a suit to enforce the Fourteenth Amendment—and § 11(b) does not categorically enforce that provision—since there is no state action alleged and that statute does not require any such governmental involvement. *See United States v. Morrison*, 529 U.S. 598, 626 (2000) (holding § 5 of the Fourteenth Amendment generally does not empower Congress to regulate private action because "the Fourteenth Amendment, by its terms, prohibits only state action"); *see also City of Boerne v. Flores*, 521 U.S. 507, 520 (1997) (discussing the limited scope of Congress' power to enforce the Fourteenth Amendment); *cf. United States v. Raines*, 362 U.S. 17 (1960).

The Fifteenth Amendment is likewise inapplicable since it also restricts only action by the federal or state governments. U.S. Const. amend. XV, § 1 (prohibiting discrimination "by the United States or by any State"); *see Cal. Democratic Party v. Jones*, 530 U.S. 567, 573 (2000) (discussing the Fifteenth Amendment's state action requirement). Moreover, this case does not seek to enforce the Fifteenth Amendment because § 11(b) contains no mention of race and the alleged robocalls neither contained any racial overtones nor were allegedly targeted at members

of any particular racial group. *See Allen v. Milligan*, 599 U.S. 1, 41 (2023) (discussing scope of Congress' power to enforce the Fifteenth Amendment by combatting both intentional racial discrimination and racially disparate impacts (citing *City of Rome v. United States*, 446 U.S. 156, 173, 177 (1980)); *cf. United States v. Cruikshank*, 92 U.S. 542, 556 (1875) (holding the Fifteenth Amendment was inapplicable where the defendants were not alleged to have prevented people "from exercising their right to vote on account of their race"). Thus, while 52 U.S.C. § 10302(a)-(c), and 52 U.S.C. § 10310(e) may implicitly authorize private suits to enforce the fourteenth or fifteenth amendments under any VRA provision, they do not suggest Congress intended to create a remedy for other types of alleged VRA violations. *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974) ("Since the Act creates a public cause of action for the enforcement of its provisions and a private cause of action only under very limited circumstances, this maxim would clearly compel the conclusion that the remedies created in § 307(a) are the exclusive means to enforce the duties and obligations imposed by the Act."). Accordingly, Congress has not authorized a private remedy for alleged § 11(b) violations and this Court should decline to invent one from whole cloth.

C. ***Precedent Does Not Require Recognition of an Implied Right of Action Under § 11(b)***

The Supreme Court has never addressed whether § 11(b) gives rise to an implied private right of action. This case is easily distinguishable, however, from Supreme Court rulings allowing private enforcement of other, materially different provisions of the Voting Rights Act. In *Allen v. State Board of Elections*, 393 U.S. 544, 557 (1969), for example, the Court held § 5 of the VRA gave rise to a private right of action. As the Court explained, however, the relevant portion of § 5 contained explicit rights-creating language: "[N]o person shall be denied ***the right to vote*** for failure to comply with [a new state enactment covered by, but not approved under, § 5]." *Id.*

(quoting 52 U.S.C. § 10304(a); emphasis added). Likewise, in *Morse v. Republican Party*, 517 U.S. 186, 232 (1996), the Court assumed § 2 likewise created a private right of action. Section 2, however, likewise recognizes and protects "***the right*** of any citizen of the United States ***to vote***" without discrimination "on account of race or color." 52 U.S.C. § 10301(a) (emphasis added).

Finally, *Morse* goes on to hold § 10 also creates a private right of action. That section, too, expressly declared, "Congress declares that ***the constitutional right of citizens to vote*** is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting." 52 U.S.C. § 10306(a) (emphasis added). Thus, each VRA provision that the Court held creates an implied private right of action contains the rights-creating language required by *Sandoval*. And the VRA itself repeatedly identifies sections 2, 5, and 10—but not § 11(b)—as giving rise to "rights." 52 U.S.C. § 10308(a), (c). Section 11(b), in contrast, lacks rights-creating language and the VRA does not identify it as a rights-creating provision. *See supra* Section I.A. Accordingly, neither *Allen* nor *Morse* provide a basis for recognizing an implied private right of action here.

In addition, both *Allen* and *Morse* rest on reasoning the Court decisively repudiated in its 2002 ruling in *Alexander*. *Allen*, 393 U.S. at 557, was explicitly based on the Court's earlier, much easier-to-satisfy standard for recognizing implied private rights of action from *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964). And *Morse* recognized an implied right of action because it would further the VRA's goals and the Attorney General did not oppose it. *Morse*, 517 U.S. at 231. Critically, *Sandoval* held that its two-prong test, rather than any such alternative standards, applies even to statutes that Congress adopted decades earlier while *Borak* remainded good law, and even where the Court had already construed ***other*** sections of the same statute as creating implied rights of action. *See Alexander*, 532 U.S. at 287 (refusing to "revert in this case to the understanding of private causes of action that held sway 40 years ago when Title VI was enacted . . . captured by

[*Borak*]," even when "interpret[ing] a statute enacted under the *ancien regime*," including the "same Securities Exchange Act of 1934 that was at issue in *Borak*"). Thus, while the holdings of *Allen* and *Morse* continue to require recognizing implied private rights of action under §§ 2, 5, and 10 of the Voting Rights Act, *Sandoval* precludes relying on their since-repudiated reasoning to infer additional causes of action under other VRA provisions. *Schilling*, 592 F. Supp. 3d at 497-98 (agreeing § 11(b) "does not create a private right of action"); *Andrews*, 696 F. Supp. 3d at 1351 ("[T]here exists no private right of action under Section 11(b) of the VRA."); *cf. Ark. State Conf. of the NAACP v. Ark. Bd. of Appointment*, 86 F.4th 1204, 1218 (8th Cir. 2023).

Thus, § 11(b) does not create an implied private right of action.

II. PLAINTIFFS LACK STANDING TO PURSUE § 11(b) CLAIMS

This Court has a duty to *sua sponte* confirm the justiciability of this case, which includes confirming Plaintiffs' standing. *Young v. Becksted*, 2020 U.S. Dist. LEXIS 226374, at *2 (D.N.H. Nov. 10, 2020). This Court should dismiss Count I because Plaintiffs lack standing to pursue their § 11(b) claim. ***First***, Plaintiffs have failed to allege they have suffered a "concrete," particularized injury-in-fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). ***Second***, Plaintiffs have not alleged facts to suggest they face a concrete likelihood of future injury from these defendants.

A. *Plaintiffs Failed to Allege Injury-in-Fact from the Alleged § 11(b) Violations*

Plaintiffs have failed to allege they suffered a concrete injury-in-fact sufficient to give rise to standing to sue under § 11(b). None of the individual plaintiffs allege they felt threatened, coerced, or intimidated by the alleged robocalls. *Amended Complaint*, ¶¶ 59-63. Indeed, each of the individual plaintiffs alleges they immediately or almost immediately recognized the calls as fake. *Id*. They do not claim to have either acted in reliance on the calls, taken preventative measures based on them, or experienced anything other than brief, transient confusion or annoyance. Such

reactions are not the type of concrete injury-in-fact which confer standing for a § 11(b) claim. *Cf. Pierre v. Midland Credit Mgmt.*, 29 F.4th 934, 939 (7th Cir. 2022) (holding "confusion" and "worry" did not give rise to Article III standing to support a claim under the Federal Debt Collection Practices Act); *Rodriguez v. Awar Holdings, Inc.*, 2023 U.S. Dist. LEXIS 115677, at *10 (D.N.J. July 6, 2023) ("[E]xperiencing a psychological state such as worry, helplessness, or confusion is not a concrete injury sufficient to confer Article III standing.").

In *Beaumont Chapter of the NAACP v. Jefferson Cnty.*, 685 F. Supp. 3d 414 (E.D. Tex. 2023), for example, the district court properly rejected the plaintiff group's claim of associational standing because its members had not suffered concrete injury from the alleged § 11(b) violations. The plaintiff group alleged that one of its members "'felt intimidated' by two white poll workers who 'suspiciously look[ed]' at him when he arrived at the Community Center to vote, 'watch[ed] every step he took,' and 'stood about five feet behind [him] as he proceeded through the Community Center and cast his ballot.'" *Id*. at 424 (quoting Amended Complaint). The court dismissed the plaintiffs' claims for lack of standing since any injury from these allegations was purely "conjectural and speculative." *Id*. at 435; *see also Jones v. King*, 2023 U.S. Dist. LEXIS 162077, at *103 (W.D. Tex. Sept. 13, 2023) (holding plaintiffs lacked standing to pursue § 11(b) claims because, "[e]ven if it is true that [the defendant's] letters could be intimidating, at no point do Plaintiffs explain how they would be intimidated or discouraged from voting as a result of them"), *recommendations adopted in relevant part and overruled in part on other grounds*, 2023 U.S. Dist. LEXIS 199137 (W.D. Tex. Nov. 4, 2023). Likewise, here, the individual plaintiffs have not alleged an injury-in-fact from defendants' alleged misconduct.

The organizational plaintiffs—the League of Women Voters of New Hampshire and the League of Women Voters of the United States (collectively, "the Leagues")—similarly lack

organizational standing to pursue § 11(b) claims. The Leagues claim Defendants' robocalls have caused them to divert resources from other activities to respond to such communications. *Amended Complaint*, ¶¶ 72-82. Barely two months ago, the Supreme Court greatly narrowed the scope of organizational standing based on such diversion-of-resources theories in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). This case confirms the Leagues' lack of standing.

First, Plaintiffs allege that, due to Defendants' robocalls, the Leagues provided information to confused voters who needed help to cast their ballots, *Amended Complaint* ¶ 74; *see also id.* ¶ 77 (alleging the Leagues will provide information to voters to combat robocalls). But giving voters information to help them vote is exactly what the groups were already doing as part of their primary mission, *id.* ¶ 72; *see also id.* ¶ 75 (alleging the LWV "will ***continue to prioritize voter education***, and the upcoming elections, to encourage higher voter turnout and participation" (emphasis added)); *id.* ¶ 82 (alleging LWV-NH's "priority is . . . to encourage high voter participation"). Voting rights organizations cannot assert organizational standing based on public education efforts under a diversion of resources theory when they had "already been using their respective resources on voter education programs and initiatives to educate . . . voters." *Citizens Proj. v. City of Colo. Springs*, 2024 U.S. Dist. LEXIS 120393, at *13 (D. Colo. July 9, 2024).

Second, the Leagues further allege, in response to the risks posed by AI-generated robocalls, they have voluntarily decided to update the text of their websites, *Amended Complaint*, ¶ 76; advertisements, *id.* ¶ 81; mailers, *id.* ¶ 80; and training materials, and say a few somewhat different things when speaking to voters, *id.* ¶ 77. These are not the type of concrete harms that gives rise to standing. A group cannot voluntarily "spend its way into standing" through "public education" efforts in this manner. *Alliance for Hippocratic Med.*, 602 U.S. at 370, 394.

Finally, the acts that the Leagues are taking (and will take) to address AI-generated robocalls are not a response specifically to Defendants' alleged robocalls in New Hampshire, but rather the development of this technology on a national and even global level. The relief the Leagues seek will not redress their claimed harm; even if Defendants are enjoined precisely as the Leagues ask, the Leagues still intend to eengage in efforts to monitor such "AI Deepfakes." Thus, the claimed harm the League uses as a basis for organizational standing is not resolved by the grant of their desired remedy. Rather, the Leagues are taking prophylactic steps to allow them to respond to any AI-generated calls relating to the election, regardless of who generates them. *See, e.g.*, *Amended Complaint* ¶ 79 (alleging LWV-NH must allocate volunteer time to "prepare specifically for ***similar efforts***" to make "future such voter-suppression calls" of an "unpredictable nature" (emphasis added)); *id*. ¶¶ 80-81 (alleging LWV-NH must budget additional funds to be able to respond to "these new false and malicious tactics"). The diversion of resources of which Plaintiffs complain will occur regardless of what happens here. Thus, the Leagues lack organizational standing to pursue their § 11(b) claim.

B. *Plaintiffs Have Failed to Show a Substantial Likelihood Defendants Will Target New Hampshire Voters in the Future*

Second, none of the Plaintiffs allege any facts to suggest they have a "reasonable apprehension" of injury-in-fact from each named Defendant due to future AI-generated political robocalls which would violate § 11(b). "[T]hreatened injury must be ***certainly impending*** to constitute injury in fact,' and . . . 'allegations of ***possible*** future injury' are not sufficient." *Clapper v. Amnesty Int'l, USA*, 568 U.S. 398, 409 (2013) (emphasis in original; quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). The alleged past occurrence of a § 11(b) violation does not give plaintiffs standing to seek prospective injunctive and declaratory relief against future violations. *L.A. v. Lyons*, 461 U.S. 95, 105 (1983) (holding a plaintiff who had been subject to an

illegal chokehold by the police and claimed the police had a policy of regularly applying such illegal chokeholds lacked standing to seek an injunction against the future use of such chokeholds).

All of the Amended Complaint's allegations regarding Plaintiffs and § 11(b) involve a single robocall to New Hampshire voters from months ago. Plaintiffs do not allege any specific facts to show a likelihood Defendants will violate § 11(b) in the future at all—much less in a manner that will harm Plaintiffs. As in *Jones*, "[a] single event in the middle of an election, supplemented only by a conspiracy," is insufficient "to support standing" to seek relief concerning future potential § 11(b) violations. 2023 U.S. Dist. LEXIS 162077, at *103-04; *see also Beaumont*, 685 F. Supp. 3d at 425 (holding plaintiffs lacked standing to seek prospective relief against future § 11(b) violations because "there is not a sufficient likelihood that they will be personally subjected to [them] in future elections" and "[a]ny such allegations are purely hypothetical and conjectural"); *Mich. Welfare Rights Org. v. Trump*, 2022 U.S. Dist. LEXIS 61836, at *42 (D.D.C. Apr. 1, 2022) ("Plaintiffs lack standing to bring their VRA [§ 11(b)] claim because they have failed to demonstrate that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending." (quotes omitted)). Thus, Plaintiffs' § 11(b) claim should be dismissed for lack of standing.

III. PLAINTIFFS HAVE NOT PLAUSIBLY ALLEGED A § 11(b) VIOLATION

The Amended Complaint does not "plausibl[y] allege a violation of § 11(b) of the VRA." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Section 11(b) prohibits attempts to "intimidate, threaten, or coerce." 52 U.S.C. § 10307(b). One of the first courts to construe § 11(b) explained:

> The word "intimidate" is defined by Webster as "to frighten; to make timid or fearful; to inspire or affect with fear; to deter, as by threats."
>
> The word "threat" is defined as "the expression of an intention to inflict evil or injury on another; menace; threatening; denunciation." To "threaten" is "to utter threats against; promise punishment, reprisal, or the like."

> And to "coerce" is "to restrain by force; to repress; to curb; or to compel to any action."

United States v. Harvey, 250 F. Supp. 219, 236-37 (E.D. La. 1966).

Though the First Amendment does not protect "true threats of violence," *Counterman v. Colo.*, 600 U.S. 66, 72 (2023), the constitutional avoidance doctrine guides this Court not to construe § 11(b) broadly in a way that would raise serious First Amendment questions by burdening protected speech. *Boos v. Barry*, 485 U.S. 312, 330-31 (1988); *see also NLRB v. Catholic Bishops of Chicago*, 440 U.S. 490, 494 (1979). Indeed, the Supreme Court has specifically cautioned against construing terms like "threat" broadly to avoid chilling political expression. *Watts v. United States*, 394 U.S. 705 (1969), involved a statute of comparable importance to the VRA: the prohibition on threatening to assassinate the President. The Court explained the term "threat" had to be construed "against the background profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," and may include "unpleasantly sharp attacks." *Id.* at 708 (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)); *Youngdahl v. Rainfair*, 355 U.S. 131, 138-39 (1957) (holding "intimidation" occurs when speech suggests "violence is imminent").

A California district court recently held the phrase "force, intimidation, or threat," as used in the closely related Ku Klux Klan Act, 42 U.S.C. § 1985(3), must be "[v]iewed in the light of its origin as a reaction against the 'murders, whippings, and beatings committed by rogues in white sheets in the postbellum South.'" *Gaetz v. City of Riverside*, No. 5:23-cv-1368-HDV, 2024 U.S. Dist. LEXIS 52974, at *30 (C.D. Cal. Mar. 22, 2024) (quoting *Gill v. Farm Bureau Life Ins. Co.*, 906 F.2d 1265, 1269 (8th Cir. 1990)). It "obviously meant . . . something much more serious and terrifying than tweets and public statements." *Id.*; *see also Delegates to Rep. Nat'l Convention v.*

Rep. Nat'l Convention, 2012 U.S. Dist. LEXIS 110681, at *40 (C.D. Cal. Aug. 7, 2012); *e.g.*, *Rhodes v. Siver*, 2021 U.S. Dist. LEXIS 78613, at *11 (E.D. Mich. Feb. 1, 2021) (holding intimidation had occurred where the defendants blocked the plaintiff from entering a polling place, "bullied" him, and made "veiled threats"); *Allen v. City of Graham*, 2021 U.S. Dist. LEXIS 103255, at *22 (M.D.N.C. June 2, 2021) ("The use of physical violence and pepper spray to deter an individual from voting or engaging in voting-related activity states a plausible § 11(b) claim.").[3]

Section 11(b) prohibits only ***objectively*** threatening, intimidating, or coercive conduct. *Fair Fight, Inc. v. True the Vote*, 2024 U.S. Dist. LEXIS 22, at *118, *123 (N.D. Ga. Jan. 2, 2024) ("[T]he voter intimidation for Section 11(b) liability must be reasonable."); *Nat'l Conf. on Black Civil Part. v. Wohl*, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020) ("[T]hreats and intimidation include messages that a ***reasonable recipient*** familiar with the context of the message would interpret as a threat of injury tending to deter individuals from exercising their voting rights." (emphasis added)); *see, e.g.*, *Krabach v. King County*, 2023 U.S. Dist. LEXIS 191870, at *17-18 (W.D. Wash. Oct. 25, 2023) (holding plaintiffs stated a valid claim where defendants posted signs stating, "Let's put the FEAR OF GOD in some ballot-trafficking mules!"). It is inapplicable to communications or acts that cause only "frustration." *Fair Fight, Inc.*, 2024 U.S. Dist. LEXIS 22, at *127-28.

The robocall at issue involved an AI-generated imitation of President Biden's voice which sought to persuade voters not to participate in the N.H. Presidential Preference primary. After criticizing non-Republicans voting in the Republican primary as "malarky," it stated:

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[3] Section 11(b) similarly prohibits falsely accusing a specific person of being a criminal, *see Andrews v. D'Souza*, 696 F. Supp. 3d 1332, 1348 (N.D. Ga. 2023), or threatening them with baseless arrest, *see United States v. McLeod*, 385 F.2d 734, 740-41 (5th Cir. 1967); *United States v. Wood*, 295 F.2d 772, 780 (5th Cir. 1961), for voting or registering people to vote. The statute may also reach certain extreme forms of economic coercion, such as the eviction of sharecroppers to prevent them from voting. *See, e.g.*, *United States v. Beaty*, 288 F.2d 653, 656 (6th Cir. 1961).

> We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.

Amended Complaint, ¶ 65. Plaintiffs allege this message threatened that people who voted in the primary would be unable to vote in the general election. This Court must construe political expression from the perspective of a reasonable person, however, rather than speculating about potential misapprehensions and fear that could only arise from someone who lacks even the most rudimentary understanding of the electoral process—facts which a speaker may reasonably assume his audience knows. *See New York v. Operation Rescue Nat'l*, 273 F.3d 184, 196-97 (2d Cir. 2001) (holding the First Amendment protected an abortion protestor's "expression of a political opinion," which was objectively not threatening, even though it made the "clinic doctor fear[] for her safety," because "excessive reliance on the reaction of recipients would endanger First Amendment values"); *cf. Novak v. Parma*, 932 F.3d 421, 424 (6th Cir. 2019) ("[W]hen it comes to parody, the law requires a reasonable reader standard, not a 'most gullible person on Facebook' standard.").

Free speech would be greatly curtailed if the bounds of political expression were determined based on the most ignorant or apprehensive members of the electorate. Section 11(b) does not prohibit political activity or expression based on the mere possibility someone "might" or "could" be intimidated. *Pa. Democratic Party v. Republican Party of Pa.*, 2016 U.S. Dist. LEXIS 153944, at *21 (E.D. Pa. Nov. 7, 2016); *Ariz. Dem. Party v. Ariz. Rep. Party*, 2016 U.S. Dist. LEXIS 154086, at *21, *29-30, *35 (D. Ariz. Nov. 4, 2016) (denying injunctive relief in § 11(b) challenge to campaign efforts to recruit monitors for polling locations, collect evidence of illegal ballot harvesting or voter fraud, and interview voters outside the non-solicitation zone).

Read in context and against the backdrop of the most basic, widely known principles of the electoral process, this message is susceptible to a much more reasonable alternate interpretation: Democrats shouldn't bother going through the effort of voting in the primary because their votes would be much more likely to have a practical impact on the result in the general election. Speakers have a fundamental First Amendment right to express their opinions as to whether votes in a particular election or for a particular candidate "matter," "count," or "make a difference," or the political consequences of certain votes (i.e., helping Trump or some other candidate). While CRF, Plaintiffs, and this Court may disagree with such a message, engaging in political expression—however inelegant or imprecise—to persuade someone to exercise their constitutional right to refrain from voting in a particular election does not violate § 11(b). *Hand v. Scott*, 285 F. Supp. 3d 1289, 1299 (N.D. Fla. 2018) ("By choosing not to vote, [a citizen] may express dissatisfaction with the government or a particular outcome.") (vacated as moot by *Hand v. Desantis,* 946 F.3d 1272 (11th Cir.2020)); *e.g.*, *Ariz. Democratic Party*, 2016 U.S. Dist. LEXIS 154086, at *28-29 (rejecting § 11(b) challenge to Trump campaign plan to reduce turnout by persuading Hillary Clinton's constituencies to not vote for her); *Pa. Democratic Party*, 2016 U.S. Dist. LEXIS 153944, at *17 (same); *cf. Parson v. Alcorn*, 157 F. Supp. 3d 479, 494 n.24, 498 (E.D. Va. 2016) ("backlash" against black church and its minister who supported Donald Trump did not constitute illegal "intimidation" against the black community).

Even under Plaintiffs' interpretation, the robocall is best understood as potentially deceptive speech, rather than a threat. Federal voting rights laws consistently distinguish between threatening speech and false speech. While § 11(b) prohibits threats, other subsections bar various specified types of "false, fictitious, or fraudulent statements." 52 U.S.C. § 10307(c)-(d). The NVRA likewise distinguishes between "intimidating, threatening, or coercing" any person for

registering to vote, *id*. § 20511(1)(A), (C), and submitting "materially false, fictitious, or fraudulent" voter registration forms, *id*. § 20511(2)(A). Section 11(b) does not grant federal courts a roving commission to prohibit false speech which may dissuade a person from voting.

For example, in *Willoughby v. County of Albany*, 593 F. Supp. 2d 446, 463 (N.D.N.Y. 2006), Plaintiff Christine Hughes sued under § 11(b) because she felt "scared and pressured" by a man who came to her home with an absentee ballot for her husband. At the man's request, her husband filled it out for a candidate her husband did not support. *Id*. Other plaintiffs testified to other defendants' efforts to insinuate themselves into their absentee voting efforts. *Id*. The district court rejected their § 11(b) claim, explaining:

> while the evidence offered by these three witnesses would fairly support a finding that [the defendants] misinformed, defrauded, tricked, or deceived these individuals, they provide no sufficient basis for a finder of fact to conclude that [the defendants] committed any ***acts of compulsion*** as required to prove intimidation, threats, or coercion.

Id. (emphasis added). Thus, the district court expressly distinguished between lies, trickery, and deception (however distasteful), which § 11(b) does not cover, and compulsion or force, which is required to make out a violation.

Here, the alleged robocall was ambiguous at best; conveyed a political message; did not threaten violence; is not alleged to have made anyone actually feel intimidated, threatened, or coerced; and even under Plaintiffs' view is best described as potentially misleading rather than intimidating. Plaintiffs' § 11(b) claim should be dismissed.

IV. SECTION 11(b) IS INAPPLICABLE TO THE N.H. DEMOCRATIC PARTY'S EVENT OF JANUARY 23, 2024

Finally, this Court should dismiss Count I because § 11(b) did not apply to the 2024 New Hampshire Democratic Presidential Preference Primary. The NH Democratic Party event conducted on January 23, 2024 was not an election, but rather a legal nullity. The ballots cast

during that event were not "votes" for purposes of the VRA, and Defendants' alleged robocalls regarding that event therefore did not violate § 11(b).

Section 11(b) provides, "No person . . . 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). The VRA defines "vot[e]" as "all action necessary to make a vote effective in any primary, special, or general election." *Id.* § 10310(c)(1). Plaintiffs allege the challenged robocalls sought to deter people from participating in the N.H. Democratic Presidential Preference Primary. *Amended Complaint*, ¶¶ 55, 88; *see also id.* ¶¶ 6, 90, 95. The calls were targeted at New Hampshire Democrats, who were permitted to vote only in that primary, N.H. Rev. Stat. Ann. § 659:14, and others who were likely to vote in it. *Amended Complaint*, ¶¶ 2, 6, 50, 88, 90, 95.

The 2024 Democratic National Convention's rules strictly forbid states from holding their presidential preference primaries before "the first Tuesday in March" without a waiver.[4] This Court may take judicial notice of the fact that, on January 5, 2024, pursuant to that rule, the co-chairs of the DNC's Rules & Bylaws Committee sent a letter to the N.H. Democratic Party [NHDP] chair, https://www.politico.com/f/?id=0000018c-e037-ddd0-a79f-e7778fe50000 (digital copy of letter) [hereinafter, "*DNC Letter*"],[5] warning the state party's plan for nominating delegates to the convention was "non-compliant" with the national party's rules. *DNC Letter*, *supra*.

The letter declared, "The event on January 23, 2024 cannot be used as the first determining stage of the state's delegate selection process and is considered detrimental." *Id.* It directed the NHDP to "educate the public that January 23rd is a ***non-binding*** presidential preference event and

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[4] *Delegate Selection Rules for 2024 Democratic Nat'l Convention*, Rule 12(A), at 13 (Sept. 10, 2022), https://democrats.org/wp-content/uploads/2024/07/2024-Delegate-Selection-Rules.pdf.

[5] *See, e.g.*, Lisa Kashinsky, *DNC Blasts NH Dems Over "Meaningless" Primary*, Politico (Jan. 6, 2024), https://www.politico.com/news/2024/01/06/dnc-nh-primary-00134174.

is ***meaningless*** and the NHDP and presidential candidates should take all steps possible ***not to participate***." *Id*. (emphasis added). The letter further noted, "No delegates or alternates [to the Democratic National Convention] shall be apportioned based on the results of the January 23, 2024 event." *Id*. It also commented the NHDP's "non-compliant" processes "can disenfranchise and confuse voters." *Id*. The letter did not even recognize the January 23, 2024 proceedings as an "election," but rather denigrated it as a generic "event." *Id*.

Consistent with the DNC's position that the January 23 event was a legal nullity, President Joe Biden—the "de facto leader of the Democratic Party," *Amended Complaint*, ¶ 130, and at the time the party's presumptive nominee—completely boycotted the proceedings and declined to run in them. *See* Biden Campaign Letter to NHDP Chair, *reprinted at* https://twitter.com/AdamSextonWMUR/status/1716927055131275290/photo/1. His name did not appear on the ballot (though write-in votes could be cast for anyone, including him).[6]

The New Hampshire Attorney General responded in writing to the DNC's threatening letter on January 8, 2024, declaring, "Falsely telling New Hampshire voters that a New Hampshire election is 'meaningless' violates New Hampshire voter suppression laws." *See* https://newhampshirebulletin.com/wp-content/uploads/2024/01/01.08.2024-nhdoj-candd-to-rbc.pdf. He ordered the DNC and its rules committee to "immediately cease and desist" from making such assertions. *Id*. The League of Women Voters never sued either the DNC or any individual Democrats over the DNC's explicit attempt to deter the state's entire electorate from casting ballots in the N.H. Democratic Party's January 23 event. Indeed, the DNC's letter underscores the difficult First Amendment issues which would be unnecessarily implicated by

[6] *See* Zachary B. Wolf & Ethan Cohen, *What to Know About New Hampshire's First-in-the-Nation Primary*, CNN Politics (Jan 22, 2024) (including image of NH ballot without Biden's name), https://www.cnn.com/2024/01/20/politics/new-hampshire-primary-what-matters/index.html.

allowing activist groups with unacknowledged partisan agendas to weaponize and apply § 11(b) to their opponents' political speech.

New Hampshire's January 23 event did not result in the selection of any delegates to the Democratic National Convention or have any other legal consequences.[7] Rather, the NHDP changed its delegate selection plan to declare its statewide delegates and alternates would be chosen at a private meeting of the state party's district-level delegates[8] on April 27, 2024. *See* https://www.nhdp.org/2024delegateselectionplan; *see also* N.H. Democratic Party, *N.H. Delegate Selection Plan for the 2024 Democratic National Convention*, §§ X(A), at 42; X(F), at 45 (specifying April 27, 2024 as when the New Hampshire Democratic Party's "party leader and elected official [PLEO]" and at-large delegates to the Democratic National Convention are chosen), https://www.nhdp.org/_files/ugd/_696cec_243f54597e1d4b04a38c97d820bb29a9.pdf. The results of this backroom meeting with party leaders were recognized as legally binding, and the delegates they chose were seated at the Convention.[9] Although Biden received the most ballots during the NHDP's January 23 event,[10] all of the state's Democratic delegates voted to nominate Kamala Harris during the DNC's virtual roll call.[11] Thus, the Jan. 23 event had no legal effect.

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[7] *See* Kathlyn Wilson, *How Many Delegates Does New Hampshire Have for the 2024 Primary and How Are They Awarded?*, CBS News (Jan. 24, 2024), https://www.cbsnews.com/news/how-many-delegates-new-hampshire-primary-2024/.

[8] These delegates were chosen at local caucuses on January 6, 2024. *See* N.H. Democratic Party, *2024 New Hampshire Delegate Selection Plan*, https://www.nhdp.org/2024delegateselectionplan.

[9] *See* New Hampshire Democratic Party, Press Release, *Granite State Delegates to Be Seated at the Democratic National Convention*, https://www.nhdp.org/post/granite-state-delegates-to-be-seated-at-democratic-national-convention.

[10] New Hampshire Secretary of State, President of the United States – Write-Ins, https://www.sos.nh.gov/sites/g/files/ehbemt561/files/inline-documents/sonh/2024-pp-write-ins-democratic-summary_4.xlsx.

Plaintiffs are bringing a VRA claim against Defendants for discouraging Democrats from participating in an event from which the DNC itself sought to preclude Democrats from participating. The January 23 event was a legal nullity so far as the DNC was concerned. It did not result in the appointment of any delegates to the Democratic National Convention. Rather, the NHDP's leaders chose the state's delegates in a subsequent, secretive, backroom proceeding. And those delegates did not even vote for the victor of the January 23 event, Joe Biden, who had not even participated in that event in the first place. Instead, New Hampshire's Democratic delegates voted to nominate Kamala Harris, who had likewise failed to participate in the January 23 event and received no votes in it.

The VRA protects real "votes" in real elections that lead to real results. The January 23 Democratic event involved none of that. This Court should dismiss Count I.

CONCLUSION

For these reasons, this Court should dismiss Count I of the Amended Complaint and decline to enter a default judgment based on it.[12] In particular, it should categorically declare § 11(b) of the Voting Rights Act is not privately enforceable through an implied right of action.

Dated: September 6, 2024.

Respectfully submitted,

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[11] NPR Washington Desk, *It's Official: Kamala Harris Becomes Democrats' 2024 Presidential Nominee*, NPR (Aug. 6, 2024), https://www.npr.org/2024/08/01/nx-s1-5060456/harris-democratic-nominee-roll-call-delegates.

[12] When a defendant defaults, the court accepts the factual allegations in the complaint as admitted, but must assess the legal validity of a plaintiff's causes of action before entering judgment. *See United States v. Fuller*, 2023 U.S. Dist. LEXIS 155408, at *2-3 (D.N.H. July 17, 2023).