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* *Pro Hac Vice* Motions Forthcoming

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA,

Plaintiff,

v.

ANNE E. LOPEZ, in her official
capacity as Attorney General of
Hawai‘i, and NADINE ANDO, in her
official capacity as Director of Hawai‘i
Department of Commerce and
Consumer Affairs,

Defendants.

CIVIL NO. 1:26-cv-00497-JAO-KJM

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

**MEMORANDUM IN SUPPORT
OF MOTION**

**DECLARATION OF JENNINGS
IMEL**

EXHIBIT A

**CERTIFICATE OF
COMPLIANCE WITH WORD
LIMIT**

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Chamber of Commerce of the United States of America (“the Chamber”) hereby moves to preliminarily enjoin Defendants from enforcing Hawai‘i’s Act 11 (2026) both facially and as applied to the Chamber for the reasons set forth in the accompanying Memorandum in Support of Motion. *See generally* Relating to the Powers of Artificial Persons, S.B. No. 2471, 33rd Leg., Reg Sess., 2026 Haw. Sess. Laws Act 11, *available at* <https://tinyurl.com/45xv8cfb> (“Act 11”).

The Chamber respectfully requests that the Court grant this Motion and preliminarily enjoin Defendants and their agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, from enforcing the following provisions of Act 11:

- Section 1 (uncodified).
- Section 2 (uncodified).
- Section 8 (amending Haw. Rev. Stat. § 414D-14).
- Section 9 (amending Haw. Rev. Stat. § 414D-51).
- Section 10 (amending Haw. Rev. Stat. § 414D-52).
- Section 11 (amending Haw. Rev. Stat. § 414D-54).
- Section 23 (to be codified as Chapter A of Haw. Rev. Stat. Title 23).

This motion is made pursuant to Rules 7(b) and 65 of the Federal Rules of Civil Procedure, and is based upon the accompanying Memorandum in Support of Motion, declarations, exhibits, and by such other matters as may be presented to this Court in any related briefing or hearing.

DATED: Honolulu, Hawai‘i, September 24, 2026.

/s/ Trever K. Asam

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**MEMORANDUM IN SUPPORT
OF THE CHAMBER OF
COMMERCE OF THE UNITED
STATES OF AMERICA’S
MOTION FOR A PRELIMINARY
INJUNCTION**

**MEMORANDUM IN SUPPORT OF THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA’S MOTION FOR A
PRELIMINARY INJUNCTION**

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INTRODUCTION

Hawai‘i has attempted an end run around settled First Amendment law. After the Supreme Court held in *Bellotti* and *Citizens United* that the First Amendment protects corporate political advocacy, Hawai‘i enacted Act 11 to try and accomplish indirectly what Hawai‘i cannot do directly. The State claims authority to redefine the powers of corporations and thereby strip them of the capacity to engage in election and ballot-issue advocacy. But constitutional rights do not disappear when individuals associate through a corporation. And a State cannot evade the First Amendment by imposing a speech ban as a limitation on corporate powers.

Act 11 is unconstitutional. Most obviously, it bans core political speech. The Act prohibits corporations and other entities from supporting or opposing candidates, political parties, political committees, and ballot measures. It discriminates based on content, viewpoint, and speaker identity. It rests on an asserted governmental interest the Supreme Court has repeatedly rejected: reducing the influence of disfavored speakers so that other voices carry greater relative weight. And it is not remotely tailored, sweeping in foreign corporations Hawai‘i did not create, while exempting favored media corporations and political committees.

The Act also independently fails as a textbook unconstitutional condition on the corporate form. Hawai‘i expressly declares that corporate existence and

authority to do business remain merely conditional privileges subject to withdrawal. The State then conditions those privileges on forfeiting the constitutional right to engage in political advocacy. But the First Amendment prohibits Hawai‘i from conditioning incorporation or authority to do business on the surrender of speech rights.

Ultimately, Act 11 rests on a proposition the Supreme Court has rejected for decades: that government may suppress political speech because it dislikes the identity of the speaker or believes that speaker has become too influential. Because Plaintiff is overwhelmingly likely to succeed on the merits, and will suffer irreparable harm in the interim, the Court should preliminarily enjoin Act 11’s enforcement before the law takes effect.

BACKGROUND

The Chamber of Commerce of the United States of America is the nation’s largest business organization. It regularly communicates with voters and public officials concerning economic policy and government regulation. *See* Imel Decl. ¶¶ 4-11. As part of those efforts, the Chamber intends to communicate with Hawai‘i voters regarding candidates for Hawai‘i office, supporting or opposing candidates by expressing approval or disapproval of candidates’ positions on free-enterprise issues, including Hawai‘i Act 11 itself. Imel Decl. ¶¶ 12-16.

Act 11 purports to ban that planned advocacy. Enacted in 2026 and scheduled to take effect on July 1, 2027, Act 11 is styled as a law “relating to the powers of artificial persons.” S.B. No. 2471, 33rd Leg., Reg Sess., 2026 Haw. Sess. Laws Act 11, *available at* <https://tinyurl.com/45xv8cfb>. The statute rests on the premise that corporations possess only those powers the State chooses to confer. The Legislature declared that Hawai‘i maintains “plenary authority to determine the powers and capacities of the artificial persons it creates” and enacted Act 11 to “restate and limit” those powers. § 1.

Act 11 then eliminates political advocacy from the powers of covered entities. The statute provides that a corporation “shall not have the power to expend moneys on or participate in any election activity or ballot-issue activity.” § 10 (§ 414D-52(b)).¹ It defines “election activity” broadly as “paying, contributing, or expending money or anything of value to support or oppose a candidate, political committee, or political party.” § 8 (§ 414D-14). “Ballot-issue activity” is similarly defined as supporting or opposing a ballot question. *Ibid.* The Act further provides that such activities are “ultra vires and void” and that corporate documents purporting to authorize them are likewise void. § 10 (§ 414D-52(d), (f)).

¹ Citations are generally to the nonprofit-corporation provisions applicable to the Chamber. Act 11 imposes materially identical restrictions throughout the statute on other “artificial persons.”

The statute extends beyond Hawai‘i-chartered corporations. Act 11 expressly provides that foreign corporations transacting business or owning property in Hawai‘i face the same restrictions as domestic corporations. § 10 (§ 414D-52(e)). Indeed, any foreign corporation that “directly or indirectly undertakes, finances, or directs election activity or ballot-issue activity in the State” is “conclusively deemed to be transacting business in the State” and subject to the Act’s restrictions and enforcement regime. *Ibid.*

That enforcement regime is severe. The Attorney General and Director of Commerce and Consumer Affairs may impose a range of sanctions for engaging in prohibited political advocacy, including suspension or revocation of the entity’s authority to operate in Hawai‘i, exclusion from state contracts, revocation of tax benefits, additional reporting requirements, and involuntary dissolution. §§ 23-24 (§§ A-1, B-1).

The legislative record reflects a concern that corporations exercise excessive influence over public debate and elections. Supporters repeatedly described the law as a means of restoring “a level playing field where the size of a bank account doesn’t determine the volume of a person’s voice.” *Hearing on S.B. 2471 Before the Hawai‘i Senate Committee on Commerce and Consumer Protection*, 33rd Leg., Reg. Sess. 103 (Haw. 2026), <https://tinyurl.com/3ytu2umf> (“Senate Hearing”); *see also*, e.g., *Hearing on S.B. 2471 before the Hawai‘i House Committee on Judiciary and*

Hawaiian Affairs, 33rd Leg., Reg. Sess. 4 (Haw. 2026), <https://tinyurl.com/43r8zbte> (“House Hearing”) (“This bill is intended ... to limit corporate political spending so Hawai‘i’s election process is shaped more by individual voters than by corporate money”), 15 (“Passage of SB 2471 can help ensure that political speech and influence in Hawai‘i remain grounded in the voices of individuals and communities, rather than being dominated by corporate treasuries”). Other supporters urged enactment to prevent corporations from “dominat[ing]” politics, to “reduc[e] the influence of corporate money in elections,” give “more weight to the voices of residents and less to large organizations with financial power,” and ensure that elections are “driven by the voices of natural persons.” House Hearing 4, 15, 18, 20. Act 11’s sponsors said it would “reduce the influence of corporate money in elections.” Press Release, Hawai‘i Senate Majority, Governor Signs Senate Bill 2471 Into Law To Limit Corporate Political Spending In Hawai‘i (May 14, 2026), <https://tinyurl.com/2hbbncxk>.

Notably, Defendant Attorney General Anne Lopez warned the Legislature that Act 11 was likely unconstitutional.² During the legislative process, she explained that the bill would “likely be subject to strict scrutiny” because it “removes

² The Massachusetts Attorney General recently rejected a materially similar proposal as violating the First Amendment. *See* Letter Ruling, Petition No. 26-03: An Act to Limit Artificial-Person Powers 2-3 (Mass. Att’y Gen. Sept. 2, 2026), <https://tinyurl.com/8pa9kbkv>.

only speech related to elections and ballot initiatives from a corporation’s powers, while permitting a corporation to retain its ability to speak in other contexts.” Ex. A, Attorney General Testimony Excerpt from House Hearing 2 (“Attorney General Testimony”). She further observed that Act 11’s application to foreign corporations “contradicts its own theory.” *Ibid.*

Despite those warnings, Hawai‘i enacted Act 11. Unless enforcement is enjoined before the statute’s July 1, 2027, effective date, Act 11 will prevent the Chamber from engaging in planned advocacy concerning Hawai‘i candidates, elections, and public issues. The Chamber therefore seeks preliminary relief to preserve its First Amendment rights pending final judgment.

STANDARD OF REVIEW

A preliminary injunction is warranted when the plaintiff shows: (1) likelihood of success on the merits; (2) likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest. *See Nw. Ass’n Indep. Schs. v. Labrador*, 166 F.4th 1148, 1156 (9th Cir. 2026) (citing *Winter v. NRDC*, 555 U.S. 7, 20 (2008)).

STANDING

The Chamber has Article III standing. Courts apply standing requirements “less stringently” to “restrict[ion]s [on] “First Amendment rights.” *Imperial Sovereign Ct. of Mont. v. Knudsen*, 170 F.4th 820, 834 (9th Cir. 2026) (cleaned up).

In “a pre-enforcement challenge” like this one, the plaintiff need only show that its intended speech is “arguably proscribed” by the challenged law and that “there exists a credible threat of prosecution thereunder.” *Ibid.*; see *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-61 (2014); *Am. Encore v. Fontes*, 152 F.4th 1097, 1113-19 (9th Cir. 2025).

Both requirements are satisfied. The Chamber intends to engage in communications that support or oppose candidates for Hawai‘i office by praising or criticizing candidates’ positions on Act 11 and other free-enterprise issues. Imel Decl. ¶¶ 12-16. Act 11 specifically prohibits these planned expenditures. §§ 8 (§ 414D-14), 10 (414D-52(b)).

Furthermore, Act 11 is a newly enacted law carrying severe penalties, and Hawai‘i has not disavowed enforcement. That suffices to establish a credible enforcement threat. See *Knudsen*, 170 F.4th at 835-36; *Matsumoto v. Labrador*, 122 F.4th 787, 797-98 (9th Cir. 2024) (standing existed where statute was “of recent vintage” and the State had “never disavowed” enforcement). Indeed, the Chamber is already planning communications concerning future Hawai‘i elections, and Act 11 presently chills those activities because the Chamber must now decide whether to alter, postpone, or forgo communications that Act 11 prohibits. Imel Decl. ¶¶ 18-19; see *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 392 (1988) (plaintiffs had standing for suit brought “before the statute became effective”). Because the

Chamber's injuries are caused by Act 11, they would be redressed by an injunction preventing its enforcement. *See Matsumoto*, 122 F.4th at 799-802.

ARGUMENT

I. The Chamber Is Likely To Succeed On Its First Amendment Claim

Act 11 bans core political speech; discriminates based on content, viewpoint, and speaker identity; rests on an illegitimate censorship interest the Supreme Court has repeatedly rejected; and is not narrowly tailored. The Chamber is likely to succeed on its First Amendment claim.

A. Act 11 Categorically Bans The Chamber's Core Political Speech

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws "abridging the freedom of speech." U.S. Const. amend. I. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Grenning v. Key*, __ F.4th __, No. 23-3018, 2026 WL 2509407, at *7 (9th Cir. Aug. 26, 2026) (quoting *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

Act 11 does precisely that. It expressly states that "a corporation operating under the jurisdiction of this State shall not have the power to expend moneys on or participate in any election activity or ballot-issue activity." § 10 (§ 414D-52(b)); *see ibid.* (§ 414D-52(e) (extending prohibition to any "foreign corporation" operating in Hawai'i)). And the statute defines "election activity" and "ballot-issue activity"

broadly, as “paying, contributing, or expending money or anything of value to support or oppose” either “a candidate, political committee, or political party” or “a constitutional amendment, county charter amendment, or other ballot question.” § 8 (§ 414D-15). As these provisions make clear, Act 11 restricts core political speech whose source is a corporation. It is not a campaign-finance disclosure requirement, reporting obligation, or contribution limit. It is a flat prohibition on corporate political advocacy. Because the Chamber intends to engage in the very candidate-related advocacy that Act 11 defines as “election activity,” Act 11 squarely prohibits its planned speech. *See* Imel Decl. ¶¶ 12-18.

The speech Act 11 bans lies at the heart of the First Amendment. “The First Amendment’s protection of free speech has its ‘fullest and most urgent application precisely to the conduct of campaigns for political office.’” *NRSC v. FEC*, 146 S. Ct. 2404, 2415 (2026). Speech about elections, candidates, political parties, and ballot issues is “core political speech” for which First Amendment protection “is ‘at its zenith.’” *See Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 183 (1999). Moreover, “[b]ecause ‘virtually every means of communicating ideas in today’s mass society requires the expenditure of money,’ a ‘restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by

restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” *NRSC*, 146 S. Ct. at 2412.

The fact that the Chamber is a corporation does not diminish its constitutional injury. “First Amendment protection extends to corporations.” *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (collecting cases). Corporations are “persons” within the meaning of the Fourteenth Amendment, entitled to protection from state abridgement of speech. *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 779-80 & 780 n.15 (1978); *see RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1057 & n.7 (9th Cir. 2002). Corporations are also “associations of citizens” joining together to advance shared objectives. *Citizens United*, 558 U.S. at 349-56. Restrictions on corporate political speech therefore burden not only the First Amendment freedoms enjoyed by the corporation itself, but also the rights of the individuals who associate through the corporation for expressive purposes.

B. Act 11 Is Subject To Strict Scrutiny Because It Discriminates Based On Content, Speaker Identity, and Viewpoint

Act 11 is content-based, aimed at disfavored speakers, and viewpoint-discriminatory. Content-based speech laws “are ‘presumptively unconstitutional’” and subject to “strict scrutiny.” *Chiles v. Salazar*, 607 U.S. 627, 640 (2026). Laws that target “disfavored speakers” are likewise suspect. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011). “Discrimination based on viewpoint is ‘an egregious form of content discrimination.’” *Knudsen*, 170 F.4th at 843. It is a “bedrock First

Amendment principle that the government cannot discriminate based on viewpoint.” *Chiles*, 607 U.S. at 641 (cleaned up).

Act 11 is facially content-based. It permits corporations to speak about so-called “lawful activity,” while expressly prohibiting them from discussing “election activity” and “ballot-issue activity.” § 9 (§ 414D-51(a)); *see* § 10 (§ 414D-52(b)). It specifically prohibits expenditures that “support or oppose” “candidates,” “political parties,” “political committees,” and “ballot measures,” but not those that refer to other subjects. § 8 (§ 414D-14). Act 11 therefore “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *see also Washington Post v. McManus*, 944 F.3d 506, 513 (4th Cir. 2019) (statute was “content-based” where it “single[d] out ... campaign-related speech”).

The statute also “disfavors specific speakers.” *Sorrell*, 564 U.S. at 564. It prohibits “corporation[s]” from speaking for or against candidates, political parties, political committees, and ballot measures. § 10 (§ 414D-52(b)). But it leaves “natural persons,” § 1, media corporations, § 8 (§ 414D-14), and certain “candidate committees and noncandidate committees,” § 10 (§ 414D-52(g)), free to engage in the same advocacy. Thus, although Act 11 would prohibit the Chamber from distributing communications approving or disapproving of candidates’ positions on Act 11, it would permit a newspaper corporation to publish the same views. “[T]he

First Amendment generally prohibits the suppression of political speech based on the speaker's identity.” *Citizens United*, 558 U.S. at 350. Act 11's “target[ing]” of specific “speakers and their messages for disfavored treatment” compounds Act 11's content-based burden. *See Sorrell*, 564 U.S. at 564-65.

Act 11 is viewpoint-discriminatory as well. Indeed, the legislative record confirms that Act 11 was enacted to reduce the influence of corporate speakers whose participation lawmakers viewed as “excessive.” *E.g.*, Senate Hearing 85; House Hearing 183. The statute thus seeks to alter public debate by diminishing the voices of corporations while leaving other speakers free to address the same political questions. That means the speakers most likely to oppose Act 11 and defend corporate participation in politics—like the Chamber—are barred from engaging in candidate advocacy reflecting those views, while other speakers remain free to advocate the contrary position. *See Imel Decl.* ¶¶ 13-15. The alignment between the statute's operation and its purpose confirms that the law is viewpoint discriminatory. *See Sorrell*, 564 U.S. at 564-65, 571 (explaining “purpose” and “practical operation” of state statute showed that its speaker-based restriction was “viewpoint discriminatory”). Act 11's content-, speaker-, and viewpoint-based distinctions trigger strict scrutiny.

C. Hawai‘i’s Asserted Interest Has Been Rejected By The Supreme Court

Because Act 11 is subject to strict scrutiny, Hawai‘i must prove that it “promote[s] a compelling interest” and uses “the ‘least restrictive means to further the articulated interest.’” *NRSC*, 146 S. Ct. at 2417. Hawai‘i must satisfy that burden by reference to interests it actually pursued, not those “hypothesized or invented post hoc in response to litigation.” *Id.* at 2418; *see also Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 543, n.8 (2022).

The Legislature’s censorship objective is clear. Act 11’s supporters repeatedly described the law as a means of restoring “a level playing field where the size of a bank account doesn’t determine the volume of a person’s voice.” Senate Hearing 103; *see* House Hearing at 4, 15. They urged enactment to “reduce the influence of corporate money in elections,” prevent corporations from “dominat[ing]” political discourse, and ensure that political influence remained grounded in “the voices of natural persons” rather than corporate entities. House Hearing 4, 15, 18, 20.

The legislative record repeatedly invokes the same justification: corporate political spending gives corporations excessive influence over public debate and should be curtailed so that the voices of individual voters carry greater relative weight. But the Supreme Court has squarely rejected that interest as illegitimate. “The ‘concept that government may restrict the speech of some elements of our

society in order to enhance the relative voice of others is wholly foreign to the First Amendment.” *NRSC*, 146 S. Ct. at 2418. Such a rationale would permit government “to arrogate the voters’ authority to evaluate the strengths” of competing arguments. *Davis v. FEC*, 554 U.S. 724, 742 (2008). The First Amendment instead “secure[s] ‘the widest possible dissemination of information from diverse and antagonistic sources,’” *Buckley v. Valeo*, 424 U.S. 1, 49 (1976), including “corporation[s],” “association[s],” “union[s],” and “individual[s],” *Citizens United*, 558 U.S. at 349. As *Bellotti* explained, “[t]he people,” not the government, bear “the responsibility for judging and evaluating the relative merits of conflicting arguments.” 435 U.S. at 791. Act 11 therefore begins from a premise the Supreme Court has already condemned: that the State may suppress political speech because it believes some voices have become too influential.

Hawai‘i attempts to avoid settled doctrine by asserting special authority over corporations and other artificial entities. The State “believes” it may regulate political speech by corporations because “the powers conferred on an artificial person are separate and distinct from the rights retained by natural persons.” Act 11 § 1. But *Bellotti* rejected the “extreme position” that “the States are free to define the rights of their creatures without constitutional limit.” 435 U.S. at 778 n.14. *Citizens United* likewise explained that “First Amendment protection extends to corporations,” and “rejected the argument that political speech of corporations or

other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons.’” 558 U.S. at 342-43. And when Montana urged the Supreme Court to disregard *Citizens United* and permit that State’s restrictions on corporate political expenditures, the Court summarily reversed. *See American Tradition Partnership, Inc. v. Bullock*, 567 U.S. 516 (2012) (per curiam). The First Amendment does not permit States to suppress political advocacy by redefining the powers of corporations.

Indeed, Hawai‘i’s theory fails on its own terms. The State may define *within constitutional limits* the powers of entities it creates, but one of those limits is that First Amendment protections do not disappear when individuals join together through corporations and other associations. *Citizens United*, 558 U.S. at 349, 354, 356; *see also Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 606 (2021) (effective advocacy is enhanced by group association); *NAACP v. Alabama*, 357 U.S. 449, 460 (1958) (same). As the Court recently explained, speakers do not “shed their First Amendment protections by employing the corporate form to disseminate their speech.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023). “A corporation,” after all, “is simply a form of organization used by human beings to achieve desired ends.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014). It is merely a means to manage “men’s affairs.” *FTC v. American Tobacco Co.*, 264 U.S. 298, 305-06 (1924). As Justice Holmes explained over a century ago,

“[t]he mere facts of carrying on a commerce not confined within State lines and of being organized as a corporation do not” “sweep all our traditions into the fire.” *Ibid.* The State is therefore wrong to assume that corporate rights may be divorced from the rights of the individuals who associate through the corporation.

Nor is Hawai‘i correct that Act 11 simply grants affirmative powers. The Act repeatedly uses prohibitory language, declaring that corporations “shall not have the power” to engage in election activity and that any such activity is “ultra vires and void.” §§ 10 (§ 414D-52(b), (d), (f)), 11 (§ 414D-54(d)). Hawai‘i’s own Attorney General understood the point. During the legislative process, Defendant Attorney General Lopez explained that Act 11 “removes only speech related to elections and ballot initiatives from a corporation’s powers, while permitting a corporation to retain its ability to speak in other contexts.” Attorney General Testimony 2. She warned, therefore, that Act 11 “will likely be subject to strict scrutiny as a form of content-based speech restriction under the First Amendment.” *Ibid.*

Act 11’s incoherence is even more stark as applied to foreign corporations. *See* Act 11 § 10 (§ 414D-52(e)). As Defendant Attorney General Lopez also recognized, Act 11 “contradicts its own theory” because “Hawai‘i has no ability to define the corporate powers of foreign corporations, which are governed by the state laws where they are incorporated.” Attorney General Testimony 2. Lopez further explained that the legislation “does not account for how Hawai‘i can regulate the

speech of foreign corporations when it does not grant the powers of those corporations,” a defect she described as “logically and legally fatal.” *Id.* at 2-3.

The Attorney General’s conclusion follows from settled corporate-law principles. “No principle of corporation law and practice is more firmly established,” *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 89 (1987), than that “which recognizes that only one State should have the authority to regulate a corporation’s internal affairs,” *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982). If Act 11 truly operated only by defining the powers of entities Hawai‘i creates, there would be no basis for applying it to foreign corporations at all. Nor may Hawai‘i justify such restrictions based on concerns about the influence of nonresident speakers. *See Thompson v. Hebdon*, 7 F.4th 811, 825-26 (9th Cir. 2021) (rejecting Alaska’s “self-governance” rationale as “a re-branding of the interest of combating influence and access that the Supreme Court has squarely rejected”). The Act’s extension to non-Hawaii entities confirms what its operative language already reveals: Act 11 is an unconstitutional restriction on political speech, not a permissible exercise in corporate housekeeping.

D. Act 11 Is Not Tailored To Any Legitimate State Interest

Even if Hawai‘i had asserted a compelling governmental interest for Act 11, it would fail strict scrutiny because it is radically untailored to any conceivable such interest. Because this law burdens core political speech, Hawai‘i must prove it is

“the least restrictive means to further the articulated interest.” *NRSC*, 146 S. Ct. at 2417 (cleaned up); *see Chiles*, 607 U.S. at 640.

To start, Act 11 is a radically overinclusive ban on corporate political spending. The statute is not a campaign-finance disclosure requirement or contribution limit. Instead, it altogether forbids corporations from engaging in election and ballot-issue advocacy. *See* section I.A., *supra*. Hawai‘i’s choice of a complete prohibition, rather than any of the numerous less restrictive tools traditionally used in the campaign-finance context, is an obvious tailoring flaw.

Assuming *arguendo* that Hawai‘i had a compelling governmental interest in defining the powers of entities it creates notwithstanding constitutional limits, *but see* section I.C., *supra*, this law would remain significantly overinclusive. Restricting the speech of *foreign* corporations does not further Hawai‘i’s asserted interest in defining the rights of Hawai‘i-chartered entities. If anything, respect for the principle that state law generally defines corporate powers counsels *against* restricting the powers of non-Hawai‘i entities.

The Act is also underinclusive because favored media corporations remain free to engage in political advocacy. Act 11 broadly prohibits corporations from engaging in “election activity” and “ballot-issue activity,” yet it simultaneously

exempts “bona fide news” organizations from those restrictions. § 8 (§ 414D-14).³ If corporate political advocacy is genuinely so harmful that Hawai‘i may prohibit it, there is no apparent reason why newspaper corporations, broadcasting companies, online publications, and other media corporations may continue engaging in the very same advocacy. The Supreme Court identified a similar flaw in *Citizens United*, observing that Congress could not plausibly justify a sweeping restriction on corporate political speech while simultaneously exempting media corporations from that restriction. *See* 558 U.S. at 352-54. Such underinclusiveness “raises serious doubts about whether the government is in fact pursuing the interest it invokes.” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 802 (2011); *accord NRSC*, 146 S. Ct. at 2423 n.5. Act 11’s favored treatment of media corporations therefore confirms what its overinclusive treatment of foreign corporations already suggests: the statute bears little relationship to the interest it purports to serve.

II. THE CHAMBER IS LIKELY TO SUCCEED ON ITS UNCONSTITUTIONAL-CONDITIONS CLAIM

The Chamber is likely to succeed for a second, independent reason: Act 11 is a textbook unconstitutional condition. Hawai‘i “may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he

³ The Act contains a similar carveout for certain “candidate committees” and “noncandidate committees,” § 10 (§ 414D-52(g)), further underscoring its underinclusiveness.

has no entitlement to that benefit.” *Agency for Int’l Dev. v. Alliance for Open Society Int’l, Inc.*, 570 U.S. 205, 214 (2013) (cleaned up); *see Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022). Yet Act 11 conditions valuable state-conferred benefits on the surrender of First Amendment rights.

Act 11 expressly adopts a conditions-based framework. It provides that corporate existence and authority to do business are not “a right,” but “a conditional grant of legal status” that is “subject to complete to withdrawal” by Hawai‘i “at any time.” § 10 (§ 414D-52(a)). Act 11 then conditions such charter privileges, grant of limited liability, authority to transact business, and other state-conferred benefits on a corporation’s forfeiture of its constitutional rights to engage in “election activity” and “ballot-issue activity.” *Ibid.* (§ 414D-52(b), (d), (f)). “[F]oreign corporation[s],” Act 11 further declares, “shall be subject to the same duties, restrictions, penalties, and liabilities as, a domestic corporation.” *Ibid.* (§ 414D-52(e)). A corporation that engages in such advocacy risks loss of those benefits and, for Hawai‘i-chartered entities, dissolution. § 23 (§ A-1). Act 11 thus presents corporations with precisely the choice the unconstitutional-conditions doctrine forbids: surrender First Amendment rights or forfeit valuable governmental benefits.

The Supreme Court has squarely rejected the notion that a State may condition the benefits of the corporate form on the surrender of First Amendment freedoms. Although incorporation provides certain advantages, “[i]t is rudimentary that the

State cannot exact as the price of those special advantages the forfeiture of First Amendment rights.” *Citizens United*, 558 U.S. at 351; *cf. Healy v. James*, 408 U.S. 169, 176-77 (1972) (holding “official recognition” by government was a protected benefit). The unconstitutional-conditions doctrine forecloses the bargain Act 11 seeks to impose.

The same doctrine forecloses the Act’s application to non-Hawai‘i corporations, including the Chamber. Under Hawai‘i corporate law, “A foreign corporation may not transact business in this State until it obtains a certificate of authority” from the State. Haw. Rev. Stat. § 414D-271(a). Act 11 provides that an entity engaged in “election activity” or “ballot-issue activity” “shall be conclusively deemed to be transacting business in the State,” § 10 (§ 414D-52(e)), and, further, that these are “ultra vires act[s]” that warrant “[r]evocation of the entity’s ... certificate ... authorizing the entity to ... transact business in the State,” § 23 (§ A-1(5)); § 10 (§ 414D-52(f)).⁴ Put differently, Hawai‘i will deny speakers the right to do business in the State because they engage in protected political advocacy.

The Supreme Court has repeatedly rejected such efforts by States to condition an organization’s ability to operate within a State on the surrender of constitutional

⁴ A foreign entity whose certificate is revoked also faces collateral legal consequences, including inability to maintain proceedings in Hawai‘i courts, as well as statutory fees and penalties. Haw. Rev. Stat. §§ 414D-272 (nonprofits), 414-432 (business corporations).

rights. In *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922), the Court expressly held that “a state may not, in imposing conditions upon the privilege of a foreign corporation’s doing business in the state, exact from it a waiver of the exercise of its constitutional right[s].” *Id.* at 532. In *NAACP v. Alabama*, and again in *Americans for Prosperity Foundation*, the Court applied that principle to First Amendment rights, invalidating Alabama’s and then California’s attempts to require organizations to disclose sensitive member and donor information as a condition of operating in the State. *See* 594 U.S. at 618; 357 U.S. at 451-53. The Court recently observed that “banning [an] organization from the State” presents the First Amendment problem “in its starkest form.” *First Choice Women’s Resource Centers, Inc. v. Davenport*, 608 U.S. 174, 185 (2026). Hawai‘i employs the same unconstitutional device.

The consequences for corporations are substantial. The Chamber is currently engaged in a communications campaign concerning the battle between free enterprise and socialism. Imel Decl. ¶¶ 7-11. It plans to extend that campaign to Hawai‘i through communications supporting or opposing candidates for Hawai‘i state office by discussing their positions on various issues, including Act 11 and other measures affecting the business community, with approval or disapproval. Imel Decl. ¶¶ 12-16. Act 11 classifies such advocacy as prohibited “election activity,” § 8 (§ 414D-14), subject to significant consequences, § 23 (§ A-1(5)); § 10

(§ 414D-52(f)). The Act therefore presents the Chamber with an immediate choice: refrain from protected political advocacy or risk the loss of valuable legal benefits, among other sanctions. The unconstitutional-conditions doctrine does not permit Hawai‘i to impose that choice.

III. The Chamber Is Likely To Succeed On Its Overbreadth Claim

Act 11 is unconstitutionally overbroad. In the First Amendment context, “a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Americans for Prosperity Found.*, 594 U.S. at 615.

The first step is to “determine what the law covers.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 725 (2024) (cleaned up). Here, that is straightforward. Act 11 categorically prohibits all “artificial persons” from making any “expenditures in connection with elections and ballot measures.” §§ 1, 2.

The next step “is to decide which of the laws’ applications violate the First Amendment, and to measure them against the rest.” *Moody*, 603 U.S. at 725. That inquiry is unusually straightforward here because Act 11 does not regulate different covered speakers or activities differently. It imposes the same across-the-board prohibition on all political advocacy by every covered entity. The question is therefore not whether some applications raise constitutional concerns while others do not, but whether the categories of speech Act 11 prohibits are constitutionally

protected. Because Act 11 “raise[s] the same First Amendment issues in every application,” the court “do[es] not need a dense factual record to know how these settings will play out in the real world.” *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1022 (9th Cir. 2025) (facially invalidating content-based speech restriction) (cleaned up). The violation is “categorical” and “present in every case.” *Americans for Prosperity Found.*, 594 U.S. at 615 (facially invalidating donor-disclosure requirement); *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1116 (9th Cir. 2024) (facially invalidating compelled reporting requirement where all “covered businesses” were “under the same statutory obligation”).

The prohibition on ballot-issue advocacy is unconstitutional in every application. In *Bellotti*, the Supreme Court facially invalidated a Massachusetts law prohibiting corporations from making expenditures to influence ballot questions unless the measure materially affected the corporation’s property, business, or assets. 435 U.S. at 767-68. Act 11 goes further still, prohibiting all ballot-measure advocacy by artificial persons regardless of the subject matter. *Compare ibid. with* Act 11 § 8 (§ 414D-14). If the statute invalidated in *Bellotti* violated the First Amendment, then Act 11, which prohibits an even broader category of ballot-measure advocacy, necessarily does as well.

The prohibition on election-related advocacy is likewise unconstitutional in all or nearly all applications. After *Citizens United*, it is beyond dispute that

corporations have a First Amendment right to make independent expenditures supporting or opposing candidates. *See* 558 U.S. at 365 (finding “no basis for allowing the Government to limit corporate independent expenditures”). The statute the Court held unlawful prohibited independent expenditures in federal elections for communications that “expressly advocate the election or defeat of a candidate,” as well as independent expenditures for so-called “electioneering communications,” a statutory term defined as those that refer to “a clearly identified candidate” within a specified number of days before an election. *Id.* at 320-21. Act 11 prohibits *even more* speech. Its definition of “election activity” reaches all independent expenditures supporting or opposing candidates, political parties, and political committees, without regard to timing or whether they contain express advocacy. *See* § 8 (414D-14). Whereas the federal restrictions invalidated in *Citizens United* were limited to express advocacy and electioneering communications during defined pre-election periods, Act 11 reaches independent expenditures supporting or opposing candidates, parties, and political committees and without those limitations. Act 11 therefore reaches substantially more speech than the statute held unconstitutional in *Citizens United*.

At most, Act 11 may have a limited constitutional application with respect to direct candidate contributions potentially governed by *FEC v. Beaumont*, 539 U.S. 146 (2003). Courts have repeatedly recognized *Beaumont*’s tension with *Citizens*

United. See, e.g., *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 879 n.12 (8th Cir. 2012) (en banc) (“*Citizens United* ... casts doubt on *Beaumont*, leaving its precedential value on shaky ground” (cleaned up)). But the Court need not resolve that tension. Even assuming *Beaumont* remains good law, Act 11 still prohibits a vast quantity of undeniably protected speech. The unconstitutional applications therefore do not merely exceed the statute’s legitimate sweep. They overwhelmingly predominate. Act 11 is therefore substantially overbroad and facially unconstitutional.

IV. THE REMAINING FACTORS FAVOR INJUNCTIVE RELIEF⁵

The remaining preliminary-injunction factors overwhelmingly favor relief. Absent an injunction blocking Act 11’s enforcement, the Chamber must either forgo protected political advocacy in Hawai‘i or risk the substantial penalties the statute imposes. Imel Decl. ¶¶ 17-18. The chilling effect is already occurring. The Chamber is planning its advocacy efforts for the next election cycle now and must make those decisions now under the shadow of Act 11. Imel Decl. ¶ 19.

That injury is irreparable. Indeed, “[t]he harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as timing is of the

⁵ Even if the Court concludes that further development of the equitable factors is necessary, it may convert the Plaintiff’s motion to one for summary judgment and resolve the purely legal issues presented. See, e.g., *King Cnty. v. Azar*, 320 F. Supp. 3d 1167, 1170 (W.D. Wash. 2018).

essence in politics and a delay of even a day or two may be intolerable.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (cleaned up). “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (alterations rejected). Irreparable harm is readily established where a plaintiff demonstrates a likely First Amendment violation. *See Hubbard v. City of San Diego*, 139 F.4th 843, 853 (9th Cir. 2025); *X Corp. v. Bonta*, 116 F.4th 888, 904 (9th Cir. 2024).

The balance of equities and public interest point in the same direction. *See Nw. Ass’n Indep. Schs.*, 166 F.4th at 1156 (equitable factors “merge” when government is a party). Hawai‘i has no legitimate interest in suppressing constitutionally protected political speech. *See Hubbard*, 139 F.4th at 853. By contrast, denying relief would prevent the Chamber from criticizing or praising candidates’ positions on free-enterprise issues, including Act 11. Imel Decl. ¶¶ 16, 18. The public has a substantial interest in receiving competing views about candidates, elections, and matters of public policy. *See Bellotti*, 435 U.S. at 783-84; *Citizens United*, 558 U.S. at 349. Enjoining Act 11 will preserve, rather than disrupt, the free exchange of political ideas that the First Amendment exists to protect.

Because the Chamber is likely to succeed on the merits, faces irreparable injury absent relief, and has established that the balance of equities and public

interest favor an injunction, the Court should preliminarily enjoin enforcement of Act 11.

CONCLUSION

The Court should grant the Motion.

DATED: Honolulu, Hawai‘i, September 24, 2026.

/s/ Trever K. Asam

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Attorneys for the
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA

* *Pro Hac Vice* Motions Forthcoming

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

**CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA,**

Plaintiff,

v.

ANNE E. LOPEZ, in her official
capacity as Attorney General of
Hawai'i, and **NADINE ANDO**, in her
official capacity as Director of Hawai'i
Department of Commerce and
Consumer Affairs,

Defendants.

CIVIL NO. _____

**DECLARATION OF JENNINGS
IMEL**

DECLARATION OF JENNINGS IMEL

I, Jennings Imel, hereby declare as follows:

1. I am Vice President of the Western Region in the Government Affairs Division at the Chamber of Commerce of the United States of America ("the Chamber"). I am responsible for legislative and political grassroots activities in Hawai'i, among other western states, in support of the Chamber's national public-policy goals. Unless otherwise stated, this declaration is based on my personal knowledge and belief and my review of the Chamber's internal records maintained in the ordinary course of business. If called as a witness, I could and would testify competently to the contents of this declaration.

2. I am over 18 years of age, a citizen of the United States, and of sound mind.

3. The Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly litigates on behalf of its members in federal court on issues of concern to the nation's business community, including the exercise of their First Amendment rights. The Chamber is a 501(c)(6) non-profit organization, incorporated under the laws of the District of Columbia, with its headquarters at 1615 H Street, NW, Washington DC 20062. It has no parent corporation.

4. As the nation's leading voice for business, the Chamber regularly participates in political speech, including election-related speech and associational activities. For example, the Chamber has repeatedly endorsed Representative Ed Case for Hawai'i's 1st Congressional District. Such political speech also includes the dissemination of electioneering communications and similar advertisements that refer favorably or unfavorably to candidates and discuss their stance on various

issues.

5. The Chamber recently conducted a six-figure advocacy campaign supporting the One Big Beautiful Bill Act. It involved 32 billboards across the country as well as paid digital advertising. The campaign referenced fourteen U.S. Representatives and two U.S. Senators. It was designed to educate constituents on the benefits of making certain tax cuts permanent, thanking lawmakers who were supporting this pro-growth policy, and in some cases, drawing attention to those Members of Congress who were not supportive of the bill.

6. The Chamber is similarly involved in state-level communications. For example, the Chamber contributed \$1.5 million to the North Carolina Chamber of Commerce during the 2022 mid-term cycle to fund advocacy in support of North Carolina candidates for state office who align with the Chamber's values.

7. The Chamber has launched a multi-phase, multi-year strategic initiative known as the New Fight for Free Enterprise, in which the Chamber is working to defend and renew America's economic foundation. For 250 years, free enterprise has been the foundation of American growth, innovation, and rising living standards. Yet today, this system is being steadily undermined. An organized movement is working to erode public support for free enterprise and business and to give government more power to determine market outcomes.

8. The Chamber is responding in four key areas nationwide. First, the

Chamber is competing directly in the public arena through a modern and data-driven communications effort to ensure that free enterprise is represented accurately in the national and local conversation. Second, the Chamber is strengthening its network of state and local partners to ensure that free enterprise has well-coordinated defenders in every state where the future of the economy is being shaped. Third, the Chamber is using its litigation capacity both offensively and defensively to help protect the ability of businesses to operate and compete freely. Fourth, the Chamber is investing in a long-term effort to build a pipeline of pro-growth leaders—engaging with candidates early, strengthening relationships, and providing them with the knowledge and support they need to advance free enterprise.

9. On September 18, 2026, the Chamber launched a national bus tour in support of free enterprise, known as the Opportunity Tour. Departing from the U.S. Chamber's D.C. headquarters, the Free Enterprise Express bus will spend six weeks traveling through key states, cities, and communities to drive the debate on economic policy. This Opportunity Tour will promote the message of free enterprise and underscore that free enterprise is a prevalent election-related issue in 2026 and beyond. The tour will put a national spotlight on the local leaders, businesses, and workers fueling growth and opportunity across America. Along the way, the Chamber will also showcase its support for pro-growth officeholders in these communities who are running for public office and have defended free enterprise.

We will hold dozens of public-facing events, including at local chambers, and we will amplify the Opportunity Tour through a nationwide communications effort.

10. The Chamber also intends to launch a complementary digital communications voter-education effort in parallel to this Opportunity Tour around the country, including in locations such as Hawai'i where the Free Enterprise Express bus will not visit, to ensure wider distribution of our message. Like the New Fight for Free Enterprise, this will be a multi-phase, multi-year communications effort, lasting longer than the Opportunity Tour, designed to educate Americans about the virtues and benefits of free enterprise and the dangers of socialism. Over time, this voter-education effort will become more targeted, moving from the initial phase discussing general free-enterprise principles to more specific discussion of particular candidates' alignment with or opposition to those principles.

11. This effort will begin during the current 2026 election cycle with communications advocating generally in favor of free enterprise and against socialism. For this initial phase of the Chamber's voter-education strategy, we intend to target jurisdictions, including Hawai'i, where the Democratic Socialists of America have endorsed candidates for public office during the current election cycle or previously. The Chamber believes that Hawai'i is an important forum for its message because debates concerning free enterprise, government control of economic outcomes, and the proper role of business in public life have become

increasingly prominent in the State.

12. The Chamber intends to continue its New Fight for Free Enterprise initiative beyond 2026. Parallel to that ongoing nationwide initiative, the Chamber presently intends to engage in and expand its complementary digital voter-education communications across the country during the 2027-2028 election cycle and beyond. This next phase of the Chamber's broader voter-education strategy will continue the Chamber's advocacy in favor of free enterprise and against socialism. It will include more targeted communications in Hawai'i supporting or opposing candidates for Hawai'i state office whose positions affect free-enterprise principles and the business community.

13. Act 11 exemplifies the growing challenge to free-enterprise principles in Hawai'i. The legislation was sponsored and supported by elected officials who continue to shape Hawai'i's economic and regulatory policies and whose positions on free-enterprise issues remain matters of public concern.

14. The Chamber intends to communicate with Hawai'i voters during the 2027-2028 election cycle regarding Hawai'i state candidates' positions on free enterprise, including their support for or opposition to Act 11 and other measures affecting the business community. In the course of discussing free-enterprise principles, the Chamber's planned Hawai'i communications will identify specific candidates for Hawai'i state office by name and will support or oppose those

candidates, directly or indirectly, by discussing with approval or disapproval their alignment with those principles and their positions on various other issues affecting the business community. In particular, the Chamber presently intends to disseminate communications in Hawai‘i referring favorably or unfavorably to specific candidates for Hawai‘i state office by expressing approval or disapproval of their positions on free enterprise and alternative economic and political systems such as socialism.

15. During the 2027-2028 election cycle, the Chamber likewise specifically intends to inform Hawai‘i voters about various positions taken by specific candidates for Hawai‘i state office, including those who supported, opposed, or continue to defend Act 11. The Chamber presently intends to disseminate communications in Hawai‘i referring favorably or unfavorably to specific candidates for Hawai‘i state office by expressing approval or disapproval of their positions on Act 11, among other measures affecting free enterprise and the business community.

16. In preparing these planned communications about candidates for Hawai‘i state office, the Chamber would evaluate such candidates’ positions on matters affecting free enterprise, develop messaging concerning those positions, and determine appropriate channels for communicating with Hawai‘i constituents. The Chamber will undertake those communications about Hawai‘i state candidates and officeholders as part of its planned multistate advocacy efforts so long as Hawai‘i does not prohibit it from doing so.

17. However, I understand that, as of July 1, 2027, Hawai'i Act 11 will make it unlawful for non-Hawai'i corporations like the Chamber to expend or contribute funds in Hawai'i directly or indirectly supporting or opposing candidates, political committees, political parties, or ballot initiatives.

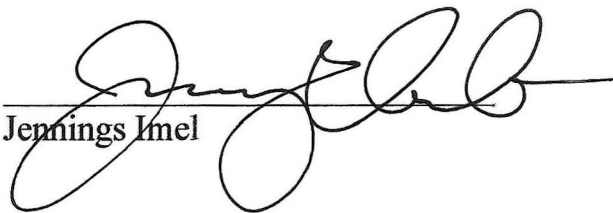
18. If Hawai'i officials are not enjoined from enforcing Act 11, the Chamber fears that, if it carries out the planned expenditures and communications described above, Hawai'i will deem them unlawful under Act 11. I understand that the penalties for violating Act 11's restrictions are highly punitive. The Chamber fears that it will be subject to these penalties if it carries out its planned communications in Hawai'i during the 2027-2028 election cycle. Unless Act 11's enforcement is enjoined, the Chamber will not engage in its planned communications supporting or opposing candidates for Hawai'i state office during the 2027-2028 election cycle.

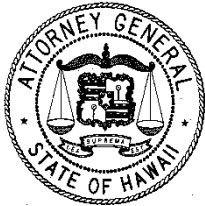
19. Act 11 therefore leaves the Chamber uncertain as to whether it will be able to engage in the political activity that it is preparing to otherwise undertake. The Chamber is planning its nationwide advocacy efforts for the 2027–2028 election cycle now. Planning, budgeting, and message development for the Chamber's communications cannot occur overnight. The Chamber accordingly must now undertake those preparation activities for the Hawai'i communications that it intends to make during the 2027–2028 election cycle after Act 11 takes effect on July 1,

2027. As a result, Act 11 is already impeding the Chamber's planning for communications supporting or opposing candidates for Hawai'i state office during the 2027-2028 election cycle. And those harmful and disruptive chilling effects will only grow as that election cycle approaches and the Chamber must make final approvals for such communications.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 22, 2026


Jennings Imel



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

S.B. NO. 2471, S.D. 2, H.D. 1, RELATING TO THE POWERS OF ARTIFICIAL PERSONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Wednesday, April 8, 2026

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Christopher T. Han or Christopher J.I. Leong, Deputy Attorneys
General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) strongly opposes this bill.

The purpose of this bill is to restrict the power of "artificial persons" created under state law by prohibiting corporations and other covered entities from spending money or contributing anything of value to influence elections or ballot measures. The bill effectuates this restriction by withdrawing certain state-conferred charter privileges, designating election activity and ballot-issue activity as *ultra vires* and void, and ordering the forfeiture of all charter privileges as the penalty for exercising prohibited political spending powers.

While the Department greatly sympathizes with the frustration with federal caselaw on this subject, this bill is likely impossible to defend without *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010), being overturned. While many Americans strongly disagree with the U.S. Supreme Court's holding in *Citizens United*, under our federal system of government, it is our duty to state that this opinion remains the law of the land, irrespective of its merits (or lack thereof).

In *Citizens United*, the U.S. Supreme Court "rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons'." See *id.* at 343. The underlying rationale for the Court's holding that corporations have the right to

speech through political campaign donations is that they are "associations" of individuals. The Court further explained that, by banning corporate expenditures, "certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech." *Id.* at 356.

To apparently work around what is plain in the case, this bill relies on an untested legal theory using an unprecedentedly dangerous mechanism—the *full* revocation of all corporate powers in the state—in defense of a theory that collapses in upon itself upon further examination.

The operative theory behind this bill is that states have the ability to define corporate powers and can strip certain powers to speak based upon the content of that speech that are otherwise protected by the First Amendment and *Citizens United*. This approach alone will likely be subject to strict scrutiny as a form of content-based speech restriction under the First Amendment, as this bill removes only speech related to elections and ballot initiatives from a corporation's powers, while permitting a corporation to retain its ability to speak in other contexts. See e.g., *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 8 (1986) ("The identity of the speaker is not decisive in determining whether speech is protected."); *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 777 (1978) ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.").

The bill purports to revoke all corporate powers granted by Hawaii law in their entirety and then regrant powers pursuant to the new law. This type of drastic legal maneuver alone may create significant unforeseeable impacts from actions regarding all Hawaii corporations at such scale. This bill then contradicts its own theory by saying that foreign corporations authorized to transact business in Hawaii, that are otherwise transacting business in Hawaii, or that own property in Hawaii, are also subject to the provisions of the bill. See, e.g., page 11, lines 1-7, and page 19, lines 8-14. However, Hawaii has no ability to define the corporate powers of foreign corporations, which are governed by the state laws where they are incorporated. The theory simply does not

account for how Hawaii can regulate the speech of foreign corporations when it does not grant the powers of those corporations, and this is logically and legally fatal.¹

This bill may also face an unconstitutional conditions challenge in effectively permitting a corporation to keep certain state-granted benefits only if it refrains from engaging in election activity or ballot-issue activity, activities that a normal corporation is otherwise entitled to engage in under U.S. Supreme Court case law.

Lastly, a legal challenge could result in substantial legal fees for the State's taxpayers, as courts have recognized a corporation's standing to assert constitutional violations under 42 U.S.C. section 1983. See *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1057 n.7 (9th Cir. 2002). Pursuant to 42 U.S.C. section 1988(b), "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs[.]"

We understand and appreciate the frustrations with the U.S. Supreme Court case law in this area. The solution, however, is not this bill, which if passed into law, would have the likely result of only further entrenching *Citizens United* into the law. We ask that this bill be held. Thank you for the opportunity to testify.

¹ Ironically, if this bill is passed into law, one possibility is that only *foreign* corporations could be in a position to engage in the activities addressed by this bill in Hawaii, while domestic corporations would be prohibited from doing so.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA,

Plaintiff,

v.

ANNE E. LOPEZ, in her official
capacity as Attorney General of
Hawai‘i, and NADINE ANDO, in her
official capacity as Director of Hawai‘i
Department of Commerce and
Consumer Affairs,

Defendants.

CIVIL NO. 1:26-cv-00497-JAO-KJM

**CERTIFICATE OF
COMPLIANCE WITH WORD
LIMIT**

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

Pursuant to Rule 7.4 of the Local Rules of Practice for the United States District Court of Hawaii, I hereby certify that the foregoing Memorandum in Support of Plaintiff’s Motion for a Preliminary Injunction (“Memorandum”) contains 6,112 words, exclusive of the case caption, table of contents, table of authorities, exhibits, declaration, and certificate of service, based on the word count provide by Microsoft Word, which is the word-processing system used to produce the document. The Memorandum thus complies with the applicable word limit of no more than 6,250 words.

DATED: Honolulu, Hawai‘i, September 24, 2026.

/s/ Trever K. Asam

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