CADES SCHUTTE
A Limited Liability Law Partnership

TREVER K. ASAM 8133
LINDSAY N. MCANEELEY 8810
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Telephone: (808) 521-9200
Email: tasam@cades.com
lmcaneeley@cades.com

WILEY REIN
A Limited Liability Law Partnership

CALEB P. BURNS (*Pro Hac Vice*)
JEREMY J. BROGGI (*Pro Hac Vice*)
2050 M Street NW
Washington, DC 20036
Telephone: (202) 719-7000
Email: cburns@wiley.law
jbroggi@wiley.law

U.S. CHAMBER LITIGATION CENTER
JONATHAN D. URICK (*Pro Hac Vice*)
KEVIN R. PALMER (*Pro Hac Vice*)
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337
Email: JUrick@USChamber.com
KPalmer@USChamber.com

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

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-LEK-KJM

REPLY IN SUPPORT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S MOTION FOR A PRELIMINARY INJUNCTION (ECF No. 10); CERTIFICATE OF SERVICE

HEARING:
Date: November 19, 2026
Time: 10:30 a.m.
Judge: Hon. Leslie E. Kobayashi

REPLY IN SUPPORT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S MOTION FOR A PRELIMINARY INJUNCTION (ECF No. 10)

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. Hawai‘i Does Not Contest That The Chamber Is Likely To Succeed On Its First Amendment Claims 2

II. The Undisputed Record Establishes Irreparable First Amendment Injury 5

A. The Chamber’s Loss Of Protected Political Speech Is Imminent 6

B. Act 11 Is Already Chilling The Chamber’s Political Speech 10

C. The Prospect Of An Early Merits Decision Does Not Justify Withholding Preliminary Relief 13

III. The Remaining Equitable Factors Favor An Injunction 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

303 Creative LLC v. Elenis,
600 U.S. 570 (2023).....4

ACLU v. Johnson,
194 F.3d 1149 (10th Cir. 1999).....9

AFL-CIO v. FEC,
333 F.3d 168 (D.C. Cir. 2003).....12

Anderson v. City of Hermosa Beach,
621 F.3d 1051 (9th Cir. 2010).....12

Baird v. Bonta,
81 F.4th 1036 (9th Cir. 2023).....2, 5, 8, 14, 15

Boardman v. Pacific Seafood Group,
822 F.3d 1011 (9th Cir. 2016).....8, 13

Buckley v. Valeo,
424 U.S. 1 (1976).....10

Chiles v. Salazar,
607 U.S. 627 (2026).....6

Citizens United v. FEC,
558 U.S. 310 (2010).....3, 4, 11

City of Houston, Texas v. Hill,
482 U.S. 451 (1987).....5

Colorado v. EPA,
989 F.3d 874 (10th Cir. 2021).....8

Cuviello v. City of Vallejo,
944 F.3d 816 (9th Cir. 2019).....6, 8

Defenders of Wildlife v. Salazar,
812 F. Supp. 2d 1205 (D. Mont. 2009).....8, 9

Doe #1 v. Trump,
957 F.3d 1050 (9th Cir. 2020) 8

First National Bank of Boston v. Bellotti,
435 U.S. 765 (1978).....3, 4, 13

Grosjean v. American Press Co.,
297 U.S. 233 (1936).....4

Imperial Sovereign Court of Montana v. Knudsen,
170 F.4th 820 (9th Cir. 2026) 6, 14

Klein v. City of San Clemente,
584 F.3d 1196 (9th Cir. 2009) 8, 11

Maryland v. King,
567 U.S. 1301 (2012).....15

Matos ex rel. Matos v. Clinton School District,
367 F.3d 68 (1st Cir. 2004).....8

Matsumoto v. Labrador,
122 F.4th 787 (9th Cir. 2024) 9

NetChoice, LLC v. Bonta,
692 F. Supp. 3d 924 (N.D. Cal. 2023).....7

NFIB v. OSHA,
595 U.S. 109 (2022).....15

Northwest Ass'n of Independent Schools v. Labrador,
166 F.4th 1148 (9th Cir. 2026) 2, 5, 6

Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission,
461 U.S. 190 (1983).....7

Perry v. Schwarzenegger,
591 F.3d 1126 (9th Cir. 2009) 12

Pierce v. Society of Sisters,
268 U.S. 510 (1925).....7

Project Veritas v. Schmidt,
125 F.4th 929 (9th Cir. 2025) 11

Ripplinger v. Collins,
868 F.2d 1043 (9th Cir. 1989) 5

Rumsfeld v. FAIR,
547 U.S. 47 (2006).....11

Terral v. Burke Construction Co.,
257 U.S. 529 (1922).....5

U.S. Chamber of Commerce v. Sanchez,
No. 25-5327 (9th Cir. Nov. 18, 2025) 7

Uber Technologies, Inc. v. City of Seattle,
168 F.4th 1202 (9th Cir. 2026) 11

Virginia v. American Booksellers Ass'n,
484 U.S. 383 (1988).....10

INTRODUCTION

Hawai‘i does not defend Act 11. Although likelihood of success is the "most important" preliminary-injunction factor, Hawai‘i expressly declines to contest the Chamber's likelihood of success on its First Amendment claims. And little wonder. Act 11 categorically prohibits corporations from engaging in core political speech based on the identity of the speaker and the content of its message, all in service of a speech-leveling interest the Supreme Court has repeatedly rejected.

Hawai‘i asks this Court to deny the preliminary injunction anyway, insisting that this is the rare case where a First Amendment violation produces no irreparable harm. Vanishingly rare, in fact: Hawai‘i cannot cite even one. Instead, its entire opposition turns on timing. But there is no dispute that Act 11 will unconstitutionally prohibit the Chamber's planned political speech when it takes effect on July 1, 2027, and precedent confirms that this certain injury is sufficiently imminent to warrant preliminary relief. That is enough to refute the State's opposition.

Independently, the undisputed evidence establishes that the Chamber's political advocacy is already being chilled. Hawai‘i argues that the Chamber's speech preparations are not themselves protected expression. That is both wrong and misses the point. The Chamber's disrupted planning shows that Act 11 is already inflicting irreparable injury by chilling the development of its planned

political speech. Nor can Hawai‘i withhold its merits defense now while urging the Court to deny preliminary relief on the assumption that those same merits will be adjudicated before July.

ARGUMENT

I. Hawai‘i Does Not Contest That The Chamber Is Likely To Succeed On Its First Amendment Claims

Likelihood of success is "the most important" preliminary-injunction factor. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023); *accord Nw. Ass'n of Indep. Schs. v. Labrador*, 166 F.4th 1148, 1156 (9th Cir. 2026). Yet Hawai‘i does not defend Act 11 on the merits. Just the opposite. "For purposes of the Chamber's preliminary injunction motion," it states, "Defendants do not contest the Chamber's argument that it has met its burden to establish a likelihood of success on the merits." Hawai‘i Opp. 1, Dkt. 33.

That litigation choice is unsurprising. The Chamber's motion showed that Act 11 violates the First Amendment at every turn. It categorically prohibits corporations from engaging in core political speech; discriminates based on content, speaker identity, and viewpoint; rests on the invalid interest in reducing the relative influence of disfavored speakers that the Supreme Court has repeatedly rejected; and is radically untailored, reaching corporations Hawai‘i did not create while exempting favored speakers engaged in the same political advocacy. Chamber Mem. 8-19, Dkt. 10-1. Those constitutional defects are compounded by Act 11's attempt to condition

the benefits of incorporation and authority to do business on the surrender of First Amendment rights. Chamber Mem. 19-23. And because Act 11 imposes the same categorical prohibition on political advocacy across the board, its unconstitutional applications overwhelmingly predominate, rendering the statute facially overbroad. Chamber Mem. 23-26.

Proposed *amici*, including legislators who may themselves be the subjects of political speech Act 11 prohibits, now advance a merits defense that the State itself has declined to make. Even if considered, their arguments are squarely foreclosed. While appearing to concede that Act 11 would fail First Amendment scrutiny, proposed *amici* argue (at 7-23) that the First Amendment does not apply because Hawai‘i has framed the statute's prohibitions as limits on corporate "powers." But as the Chamber already explained, the Supreme Court has rejected the "extreme position" that "corporations, as creatures of the State, have only those rights granted them by the State." *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 778 n.14 (1978) (collecting cases); *see Citizens United v. FEC*, 558 U.S. 310, 342-43 (2010); Chamber Mem. 14-16.

That holding cannot be evaded by substituting "powers" for "rights." Justice White's dissent criticized the *Bellotti* majority for "precluding Massachusetts from *defining the powers* of corporations active within its borders so as to prohibit the expenditure of funds in connection with referenda campaigns." *Bellotti*, 435 U.S. at

816 n.13 (White, J., dissenting) (emphasis added). Justice Rehnquist's separate dissent likewise embraced *amici*'s theory that the Constitution does not require a State to "endow a business corporation with the *power* of political speech." *Id.* at 826 n.6 (Rehnquist, J., dissenting) (emphasis added). But those were dissents. The Court squarely rejected that "semantic reasoning," observing that it would give States greater latitude than Congress to abridge corporate speech. *Id.* at 780 n.16 (majority opinion).

Proposed *amici*'s remaining arguments assume the same rejected premise. Their observation (at 23) that natural persons associated with the Chamber remain free to speak is no answer to the suppression of the Chamber's own speech, *see Citizens United*, 558 U.S. at 337, 342-43; *Bellotti*, 435 U.S. at 778 n.14, 780 n.15; *Grosjean v. Am. Press Co.*, 297 U.S. 233, 244 (1936), nor to those individuals' choice to associate and speak through the corporate form, *see Citizens United*, 558 U.S. at 349, 354, 356; *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023). *Amici*'s attempt (at 19) to distinguish the unconstitutional-conditions holding in *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922), asserts that the right there existed independently of state corporate law, whereas the Chamber's right to speak supposedly does not. But that just concedes that corporations do in fact hold constitutional rights independent of state law, and *amici* offer no persuasive reason why the First Amendment right to speak is not among them. Because *Bellotti*

establishes that the Chamber's First Amendment rights do not exist at Hawai'i's sufferance, *Terral*'s holding that a State may not condition a foreign corporation's authority to do business on surrendering a federal constitutional right is dispositive here. *Id*. at 532-33. At bottom, *amici*'s arguments only underscore why Hawai'i does not defend the indefensible.[1]

Hawai'i's concession therefore substantially narrows the dispute between the parties. As Hawai'i's own authority explains, when a plaintiff is likely to establish a constitutional violation, "that showing will almost always demonstrate he is suffering irreparable harm," and informs the other factors as well. *Baird*, 81 F.4th at 1041-42; *accord Nw. Ass'n of Indep. Schs.*, 166 F.4th at 1169-70. Hawai'i acknowledges that rule but contends (at 2-3) that this is the unusual case in which it does not apply. But the undisputed record provides no basis for treating this case as an exception.

II. The Undisputed Record Establishes Irreparable First Amendment Injury

Hawai'i's reliance on Act 11's July 2027 effective date does not defeat irreparable harm. The Chamber's concededly unconstitutional loss of political

[1] Nor is proposed *amici*'s certification request appropriate: "It would be manifestly inappropriate to certify a question in a case where, as here, there is no uncertain question of state law whose resolution might affect the pending federal claim." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 471 (1987); *see Ripplinger v. Collins*, 868 F.2d 1043, 1056 (9th Cir. 1989) ("First amendment cases are generally not appropriate cases for abstention under the law of this circuit.").

speech is sufficiently imminent, and Act 11 is independently chilling that speech today. Nor can Hawai‘i avoid either injury by speculating that final judgment may arrive before July.

A. The Chamber's Loss Of Protected Political Speech Is Imminent

"[I]rreparable harm is relatively easy to establish in a First Amendment case." *Nw. Ass'n of Indep. Schs.*, 166 F.4th at 1169 (quoting *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022)). It is particularly easy here.

Hawai‘i does not dispute that, once Act 11 takes effect, it will prohibit constitutionally protected political speech that the Chamber intends to undertake. Imel Decl. ¶¶ 14-18, Dkt. 10-2; Hawai‘i Opp. 1. That plainly is concrete First Amendment injury. *See Chiles v. Salazar*, 607 U.S. 627, 637 n.* (2026) (finding injury-in-fact based on a plaintiff's "present 'intention' to speak in a way the law forbids"); *Imperial Sovereign Court of Mont. v. Knudsen*, 170 F.4th 820, 835 (9th Cir. 2026) ("Self-censorship qualifies as injury-in-fact"). And it is equally well settled that such First Amendment injury is irreparable, warranting a preliminary injunction. *See Knudsen*, 170 F.4th at 876 ("A 'colorable First Amendment claim' is 'irreparable injury sufficient to merit the grant of relief'"); *Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019) ("Cuviello continues to restrain his own speech under the threat that Chapter 8.56 will be enforced against him.

This … constitutes irreparable harm."); Chamber Mem. 26-27. Absent relief, there is no dispute that the Chamber will forgo its planned speech supporting or opposing candidates. The only question is whether that certain injury is sufficiently imminent.

It is. That Act 11 does not take effect until July 1, 2027, does not make the Chamber's injury too remote. "One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough." *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 201 (1983). In *NetChoice, LLC v. Bonta*, 692 F. Supp. 3d 924 (N.D. Cal. 2023), *aff'd in relevant part*, 113 F.4th 1101 (9th Cir. 2024), the district court relied on exactly that principle to reject California's argument that irreparable injury was premature because the challenged statute had not yet taken effect. Reasoning that the effective date was "less than a year away," the court had "no difficulty" concluding irreparable harm was sufficiently imminent and entering a preliminary injunction. *Id.* at 964; *see also Pierce v. Soc'y of Sisters*, 268 U.S. 510, 536 (1925) (affirming preliminary injunction entered *years* before statute's effective date) ("The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the act, the injury would have become irreparable."); *U.S. Chamber of Com. v. Sanchez*, No. 25-5327 (9th Cir. Nov. 18, 2025) (granting injunction pending appeal months before statute's effective date). The same reasoning applies with

even greater force here, where Hawai‘i's concession means there is no uncertainty that Act 11 will unconstitutionally prohibit the Chamber's planned speech.

Hawai‘i's authorities do not support its contrary view. Indeed, the Ninth Circuit cases Hawai‘i cites all granted, required, affirmed, or left in place preliminary relief. *See Cuviello*, 944 F.3d at 834 (reversing denial of preliminary injunction); *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (same); *Baird*, 81 F.4th at 1040-42 (directing entry of preliminary injunction); *Doe #1 v. Trump*, 957 F.3d 1050, 1059-61, 1070 (9th Cir. 2020) (declining to stay preliminary injunction); *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (affirming preliminary injunction). None supports Hawai‘i's effort to treat the Chamber's certain and impending loss of constitutionally protected political speech as too remote for preliminary relief.

The few cases Hawai‘i cites that actually denied preliminary relief are non-binding and involve nothing like the certain loss of protected speech here. *Colorado v. EPA*, 989 F.3d 874 (10th Cir. 2021), involved "pure speculation" about a potential regulatory injury that was, in any event, not traceable to the challenged action. *Id.* at 886-87. *Matos ex rel. Matos v. Clinton School District*, 367 F.3d 68 (1st Cir. 2004), involved a contingent injury tied to possible events years in the future. *Id.* at 73-74 & n.4. And in *Defenders of Wildlife v. Salazar*, 812 F. Supp. 2d 1205 (D. Mont. 2009), the plaintiffs failed to offer "any" evidence of irreparable harm.

Id. at 1210. Here, by contrast, there is no uncertainty about whether or when the injury will occur: Act 11 takes effect July 1, and Hawai‘i does not dispute that it will then prohibit the Chamber's planned political speech. That certain injury is sufficiently imminent for preliminary relief.

Nor does Hawai‘i's footnote (at 5 n.4) provide an escape hatch. Hawai‘i suggests the familiar rule linking likely First Amendment violations to irreparable harm applies only when the challenged restriction is already in effect. Not so. In *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024), the Ninth Circuit affirmed a preliminary injunction entered months before the challenged statute's effective date. The court explained that once likely success was established, "[i]rreparable harm [was] a given" and the balance of equities "compel[led]" relief. *Id.* at 816; *see id.* at 796 (noting that the action was filed on July 11, 2023, and that the statute became effective on May 5, 2024); *accord ACLU v. Johnson*, 194 F.3d 1149, 1154, 1163 (10th Cir. 1999) (affirming injunction entered "before the effective date of [the statute]" and "agree[ing]" with the district court's application of the usual First Amendment rule that anticipated "curtailment of … constitutionally protected speech" establishes irreparable injury). A future effective date thus provides no exception to the ordinary First Amendment rule that the Chamber easily satisfies here.

B. Act 11 Is Already Chilling The Chamber's Political Speech

The Chamber need not rely on its imminent loss of protected speech alone. Act 11 is already chilling that speech by interfering with the process necessary to develop it.

The undisputed evidence establishes that the Chamber is planning its 2027-2028 advocacy now; that the necessary "planning, budgeting, and message development" "cannot occur overnight"; and that Act 11 is "already impeding" that process and causing "harmful and disruptive chilling effects" on the Chamber's ability to engage in its planned expressive activity. Imel Decl. ¶ 19. These uncontested facts establish a cognizable here-and-now chilling effect for two independent reasons.

First, a First Amendment chill does not depend on present enforceability. In *Virginia v. American Booksellers Ass'n*, 484 U.S. 383 (1988), the Supreme Court considered a First Amendment challenge that was brought "before the statute became effective" and explained that "self-censorship" is "a harm that can be realized even without an actual prosecution." *Id.* at 392-93. The same principle applies here, where the future prohibition of speech alters the process necessary to develop that speech today. The Chamber's candidate advocacy must be planned, created, and paid for, all before it is ultimately disseminated. Imel Decl. ¶ 19; *see Buckley v. Valeo*, 424 U.S. 1, 19 (1976) ("Speeches and rallies generally necessitate

hiring a hall and publicizing the event"; "The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs").

Indeed, the Supreme Court has recognized that "[l]aws enacted to control or suppress speech may operate at different points in the speech process." *Citizens United*, 558 U.S. at 336. And the Ninth Circuit has explained why: "If restrictions on speech-creation processes did not implicate the First Amendment, governments 'could effectively control or suppress speech by the simple expedient of restricting an early step in the speech process rather than the end result.'" *Project Veritas v. Schmidt*, 125 F.4th 929, 943 (9th Cir. 2025) (en banc). These principles confirm that Act 11 inflicts a present First Amendment injury by interfering with the early steps necessary to produce the Chamber's speech supporting or opposing candidates during the 2027-2028 election cycle. That injury is especially acute in the political-speech context, where "timing is of the essence" and even "a delay of a day or two may be intolerable." *Klein*, 584 F.3d at 1208.

Hawai'i's cases (at 5-7) miss the point. Each asks whether conduct directly regulated by the challenged law was itself protected expression. *See Rumsfeld v. FAIR*, 547 U.S. 47, 66 (2006) (law schools' treatment of military recruiters "not inherently expressive"); *Uber Techs., Inc. v. City of Seattle*, 168 F.4th 1202, 1214 (9th Cir. 2026) (city ordinance regulating deactivation of app-based workers' accounts "governs nonexpressive conduct"). Here, by contrast, Act 11 directly

regulates concededly protected political speech. The Chamber's disrupted preparations show that the prohibition is already chilling the political speech those preparations are necessary to produce. Even if those preparations are not themselves protected, that does not eliminate the present chill on the future speech that indisputably is protected.

Second, and independently, Hawai'i is wrong that the Chamber's speech-creation activities are themselves unprotected. In the context of candidate advocacy, the Ninth Circuit has recognized First Amendment protection for organizations' "internal communications regarding formulation of strategy and messages." *Perry v. Schwarzenegger*, 591 F.3d 1126, 1145 n.12 (9th Cir. 2009) (emphasis altered); *accord AFL-CIO v. FEC*, 333 F.3d 168, 177-78 (D.C. Cir. 2003) (recognizing First Amendment protection for an organization's "internal planning materials"). In the First Amendment context more generally, the Ninth Circuit has "not attempted to disconnect the end product from the act of creation." *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061-62 (9th Cir. 2010); *see id.* at 1062 ("we have not drawn a hard line between the essays John Peter Zenger published and the act of setting the type"). The activities Hawai'i dismisses as mere "logistical planning" (at 5, 7) include precisely that kind of protected speech creation. The Chamber is evaluating candidates' positions on issues affecting free enterprise, "develop[ing] messaging concerning those positions," and determining the appropriate means of

communicating those messages to Hawai‘i voters. Imel Decl. ¶ 16; *see id.* ¶¶ 14-15. That is not planning divorced from protected expression; it is the process by which the Chamber formulates the content and strategy of its speech supporting or opposing candidates. Those protected speech-creation activities are themselves being irreparably chilled by Act 11's unconstitutional prohibition.

C. The Prospect Of An Early Merits Decision Does Not Justify Withholding Preliminary Relief

Hawai‘i nevertheless argues (at 2-5) that preliminary relief should be withheld because the Court may resolve the merits before Act 11 takes effect. But that is no reason to leave the Chamber's free speech rights unprotected in the meantime.

For one, Hawai‘i's argument does not answer the present chill. A merits judgment months from now cannot precede, much less remedy, an injury that is already occurring.

Nor is there any assurance that effective merits relief will arrive before July 1. In *Bellotti*, the Supreme Court deemed even an eighteen-month window "too short" for "complete judicial review" of a restriction on corporate political speech. 435 U.S. at 774. Hawai‘i quotes (at 4) *Boardman* for the proposition that relief is warranted "if the plaintiff 'is likely to suffer irreparable harm before a decision on the merits can be rendered.'" But that case hardly establishes that preliminary relief should be withheld whenever merits adjudication might come first. Indeed, preliminary relief did issue in *Boardman* even though the anticipated injury was

more than 60 days away, and potentially much longer. More importantly, *Boardman* does not turn the possibility of an earlier merits decision into a reason to assume one.

Hawai‘i's own litigation posture makes that assumption especially untenable. Earlier in this litigation, Hawai‘i twice declined the Chamber's proposed schedules for earlier consideration of preliminary relief in favor of later ones. *See* Pls.' Status Report 2-3, Dkt. 30. And the Chamber has already offered the expedited merits adjudication Hawai‘i now invokes. *See* Chamber Mem. 26 n.5. Hawai‘i neither addresses that proposal nor proposes another path to final judgment before July 1. Instead, it expressly declines to defend Act 11 on the merits at this stage, while making clear that its concession applies only "[f]or purposes of the Chamber's preliminary injunction motion." Hawai‘i Opp. 1. Hawai‘i cannot withhold its merits defense now while urging the Court to deny preliminary relief on the assumption that those same merits will be adjudicated before July.

III. The Remaining Equitable Factors Favor An Injunction

In First Amendment cases, "a likelihood of success on the merits" not only establishes irreparable harm but also "strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048 (citations omitted); *see also Knudsen*, 170 F.4th at 876 ("the balance of equities favors Plaintiffs, whose First Amendment rights are being chilled" and "it is always in the public interest to prevent the violation of a party's constitutional rights"

(cleaned up)). Hawai‘i does not contest likelihood of success, so its only argument (at 7 n.5) depends on its contention that the Chamber faces no current or imminent First Amendment injury. For the reasons explained, the undisputed record forecloses that contention.

Nor does *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers), help Hawai‘i. Whatever interest a State ordinarily has in enforcing its duly enacted laws, it is not "harmed in any legally cognizable sense by being enjoined from constitutional violations." *Baird*, 81 F.4th at 1042 (citation omitted); *see NFIB v. OSHA*, 595 U.S. 109, 120 (2022) ("equities do not justify withholding interim relief" where government action is unlawful). Furthermore, Hawai‘i's position that Act 11 has no practical effect until July 1 makes the balance especially straightforward: an injunction would impose no present burden on the State, while the undisputed record establishes that Act 11 is already chilling the Chamber's First Amendment rights. The balance is therefore one-sided.

CONCLUSION

The Court should grant the Motion.

DATED: Honolulu, Hawai‘i, November 5, 2026.

/s/ Trever K. Asam

TREVER K. ASAM
LINDSAY N. MCANEELEY
CALEB P. BURNS*
JEREMY J. BROGGI*
JONATHAN D. URICK*
KEVIN R. PALMER*

Attorneys for Plaintiff
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
* *Pro Hac Vice*

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-LEK-KJM **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served electronically on all counsel of record through the Court's CM/ECF System.

DATED: Honolulu, Hawai‘i, November 5, 2026.

/s/ Trever K. Asam

TREVER K. ASAM
LINDSAY N. MCANEELEY
CALEB P. BURNS*
JEREMY J. BROGGI*
JONATHAN D. URICK*
KEVIN R. PALMER*

Attorneys for Plaintiff
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
* *Pro Hac Vice*