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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

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.

No. 1:26-cv-00497-LEK-KJM

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [ECF NO. 10]; CERTIFICATE OF SERVICE

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

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [ECF NO. 10]

Earlier this year, the Hawai'i Legislature passed Senate Bill 2471. It was signed into law as Act 11 on May 14, but does not take effect until July 1, 2027. Act 11, § 27.[1]

Plaintiff, the Chamber of Commerce of the United States of America (the Chamber), filed its Complaint and Motion for Preliminary Injunction on September 9, 2024. ECF No. 1; ECF No. 10. The Chamber asserts three claims for relief, all based on the assertion that Act 11 violates the First and Fourteenth Amendments to the United States Constitution. Compl., ECF No. 1, ¶¶ 67–90. The Chamber requests that the Court preliminary enjoin Defendants from enforcing various sections of Act 11. ECF No. 10 at 2.

For purposes of the Chamber's preliminary injunction motion, Defendants do not contest the Chamber's argument that it has met its burden to establish a likelihood of success on the merits of its claims. Nevertheless, the Chamber has failed to demonstrate that it will imminently suffer irreparable harm absent a preliminary injunction. Its failure to establish that requirement means it is not entitled to preliminary injunctive relief.

[1] The full text of the enacted version of Act 11 is available at https://www.capitol.hawaii.gov/sessions/session2026/bills/GM1111_.PDF.

I. LEGAL STANDARD

Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief"; it is "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008). The plaintiff must establish that "(1) [it] is likely to succeed on the merits of [its] claim[s], (2) [it] is likely to suffer irreparable harm absent the preliminary injunction, (3) the balance of equities tips in [its] favor, and (4) a preliminary injunction is in the public interest." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023).

II. ARGUMENT

Even if the Chamber has met its burden of establishing a likelihood of success on the merits,[2] it must also show that it is likely to suffer irreparable harm without preliminary injunctive relief. Its failure to make that showing here means it is not entitled to the "extraordinary remedy" it seeks. *Winter*, 555 U.S. at 24.

The purpose of a preliminary injunction is to prevent irreparable injury so that the court can render a meaningful decision on the merits. *Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020). As such, a plaintiff must "demonstrate that [it] is likely to suffer irreparable harm in the absence of a preliminary injunction," and it must do so "[e]ven where [it] demonstrates a likelihood of success on the merits of a free

[2] Any assessment of the Chamber's likelihood of success on the merits applies only to the Chamber's preliminary injunction motion and is not intended to apply to any other case.

speech claim[.]" *Cuviello v. City of Vallejo*, 944 F.3d 816, 831 (9th Cir. 2019) (quoting *Klein v. City of San Clemente*, 584 F.3d 1196, 1207 (9th Cir. 2009)). "The analysis focuses on irreparability, 'irrespective of the magnitude of the injury.'" *Washington v. Trump*, 487 F. Supp. 3d 976, 982 (E.D. Wash. 2020) (quoting *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999)). Courts have therefore denied requests for preliminary injunctive relief on the grounds that irreparable harm is not likely, even where the plaintiff has established a likelihood of success on the merits. *See Defs. of Wildlife v. Salazar*, 812 F. Supp. 2d 1205, 1209–11 (D. Mont. 2009) (denying a motion for preliminary injunction "[b]ecause Plaintiffs . . . failed to show a likelihood of irreparable harm"). Here, the Chamber has not established the irreparable harm element and its motion should be denied on that basis.[3]

[3] *Baird* does not absolve plaintiffs from establishing irreparable harm as a mandatory requirement in addition to showing a likelihood of success on the merits. In *Baird*, the district court had "declined to undertake *any* analysis of Appellants' likelihood of success on the merits of their claim" and denied the request for a preliminary injunction based solely on "the theory that the public interest disfavoring a preliminary injunction can outweigh a plaintiff's showing that a law likely infringes his constitutional rights and causes him irreparable harm." 81 F.4th at 1041. The Ninth Circuit reversed, concluding that the district court had applied an improper standard because it was required to analyze whether the plaintiffs were likely to succeed on the merits and then "account for the impact that determination has on the remaining *Winter* factors when it analyzes each of them." *Id.* at 1048. Here, Defendants do not dispute that the Court must consider whether the Chamber is likely to succeed on the merits. Instead, as explained below, Defendants contend that even assuming such likelihood is established, it does not, in these circumstances, necessarily lead to a presumption of irreparable harm.

First, Act 11 will not imminently cause the Chamber irreparable harm because the Act does not take effect until July 1, 2027. Act 11, § 27. "A threat of irreparable harm is sufficiently immediate . . . if the plaintiff 'is likely to suffer irreparable harm before a decision on the merits can be rendered.'" *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (quoting *Winter*, 555 U.S. at 22). If, however, "the harm is not 'likely to occur before the district court rules on the merits,' there is no need for preliminary injunctive relief." *Colorado v. EPA*, 989 F.3d 874, 884 (10th Cir. 2021) (quoting *N.M. Dep't of Game & Fish v. U.S. Dep't of Interior*, 854 F.3d 1236, 1250 (10th Cir. 2017)); *see also Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 74 (1st Cir. 2004) ("If a case can be adjudicated on the merits before the harm complained of will occur, there is no sufficient justification for preliminary injunctive relief."). As Act 11 will not govern any conduct by the Chamber for over eight months, the Chamber cannot show that the threat of irreparable harm is "sufficiently immediate" to warrant the extraordinary relief of a preliminary injunction. *Boardman*, 822 F.3d at 1023.

Second, the Chamber's argument that it is *currently* suffering irreparable harm misses the mark. Although it is true that a showing by a plaintiff that it is likely to prevail on the merits of a constitutional claim will "usually" be sufficient to demonstrate it is suffering irreparable harm, *Baird*, 81 F.4th at 1040, that is not the

case here.[4] The Chamber does not suggest that any "communications that support or oppose candidates" are currently proscribed or will be proscribed before July 1, 2027. ECF No. 10-1 at 7. Instead, it asserts that it is currently suffering irreparable harm because it is "planning its advocacy efforts for the next election cycle now and must make those decisions now under the shadow of Act 11." *Id.* at 26. But the Chamber's "[p]lanning, budgeting, and message development" are not regulated or otherwise subject to Act 11 and the Chamber's decision to refrain from such planning at this point is therefore entirely voluntary. Decl. of Jennings Imal, ECF No. 10-2, at ¶ 19.

Moreover, this type of logistical "planning" is not protected expression, so the Chamber cannot rely on any presumption of irreparable harm stemming from a potential First Amendment violation. The First Amendment extends "only to

[4] The cases the Chamber cites for the proposition that "[i]rreparable harm is readily established where a plaintiff demonstrates a likely First Amendment violation[,]" ECF No. 10-1 at 27, all involved allegations of First Amendment violations asserted against laws or policies that were already in effect, thus establishing a clear link between the alleged First Amendment violation and present harm. *See Hubbard v. City of San Diego*, 139 F.4th 843, 848 (9th Cir. 2025) (challenges to City's anti-yoga ordinance after the plaintiffs were issued infraction tickets under the ordinance); *X Corp. v. Bonta*, 116 F.4th 888, 894–95 (9th Cir. 2024) (First Amendment challenge filed a year after the law was passed and nine months after it took effect); *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2022) (challenge to school board's introduction of LGBTQ+ texts into public school curriculum and recission of "opt out" policy); *Klein*, 584 F.3d at 1199 (challenge to anti-litter ordinance after plaintiff was ordered to stop distributing leaflets by sheriff's deputies).

conduct that is inherently expressive." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 66 (2006). There is, therefore, "absolutely no indication . . . that constitutional standards of free speech would extend so far as to embrace" the type of non-expressive "intra-corporate communications" that would presumably be involved in the Chamber's intended planning activities. *Mutafis v. Erie Ins. Exch.*, 561 F. Supp. 192, 198 (N.D. W. Va. 1983). And the boundary between expressive and non-expressive conduct exists even where the conduct in question is connected to protected expression. *See Wise v. City of Portland*, 483 F. Supp. 3d 956, 967 (D. Or. 2020) (rejecting the plaintiffs' "novel position that 'rendering medical aid to support and advance a protest is itself a form of constitutionally protected expression'"); *Uber Techs., Inc. v. City of Seattle*, 168 F.4th 1202, 1214 n.6 (9th Cir. 2026) ("[N]ot all activity conducted with an intent to express an idea amounts to speech within the meaning of the First Amendment."); *id.* ("[E]ven if the Ordinance were understood to be not wholly unrelated to a communicative component, that in itself would not trigger First Amendment scrutiny." (cleaned up)).

Absent any First Amendment protection, the Chamber has failed to meet its burden to show why it would be irreparably harmed by its decision to refrain from its logistical planning activities absent a preliminary injunction.[5]

III. CONCLUSION

Because it has failed to establish any imminent irreparable harm, the Chamber's motion should be denied.

DATED: Honolulu, Hawai'i, October 22, 2026.

/s/ *Ewan C. Rayner*
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[5] Because the Chamber is not suffering any current or imminent irreparable First Amendment injury, its argument that the balance of the equities and the public interest favor granting its motion also fails. *See* ECF No. 10-1 at 27. When the government is a defendant, the third and fourth preliminary injunction factors merge. *Baird*, 81 F.4th at 1040 (citations omitted). The Chamber seeks to enjoin Act 11 months before there is any risk of it "suppressing constitutionally protected political speech." ECF No. 10-1 at 27. But "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). In these circumstances, the third and fourth factors do not tip the scales in favor of granting the motion.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached was served electronically through the Court's CM/ECF system or conventionally by mailing copies via U.S. Mail, postage prepaid, upon the following:

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