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THE UNITED STATES

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

CRUISE LINES INTERNATIONAL
ASSOCIATION, INC., *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

GARY S. SUGANUMA, in his capacity as
Director of Taxation for the State of Hawaii,
et al.,

Defendants.

Case No. 1:25-cv-00367-JAO-KJM
**MEMORANDUM IN SUPPORT
OF MOTION TO INTERVENE**

HEARING DATE: November 14,
2025

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INTRODUCTION AND BACKGROUND¹

On May 27, 2025, Hawaii Governor Joshua B. Green signed Act 96 into law. Off. of the Governor, *Historic Green Fee Launched to Combat Climate Change in Hawai'i* (June 2, 2025), <https://perma.cc/4QJR-7LGR>. Governor Green boasted Act 96 is “a groundbreaking move for climate action,” “establishing the nation’s first climate impact fee, known as the ‘Green Fee,’” which is expected to “to generate around \$100 million annually” to “fund diverse projects focusing on environmental stewardship, climate resilience and sustainable tourism.” *Id.*

Differential State taxation regimes like Hawaii’s Act 96 are exactly what the Framers sought to avoid when they drafted the Constitution’s Tonnage Clause. The Tonnage Clause “fall[s] within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark.” The Federalist No. 44 (James Madison). And those “obvious” reasonings no doubt include States’ taxation of vessels from other States and interference with interstate and foreign commerce. *Clyde Mallory Lines v. Alabama ex rel. State Docks Comm’n*, 296 U.S. 261, 265 (1935) (citing *Cooley v. Bd. of Wardens of Port of Phila.*, 53 U.S. 299, 314 (1851)); see *Polar Tankers, Inc. v. Valdez*, 557 U.S. 1, 8 (2009) (quoting *Clyde*

¹ See *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001) (“Courts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections.”).

Mallory Lines, 296 U.S. at 265–66) (holding that city’s tax on large vessels docking at city’s ports violated the Tonnage Clause).

If the Tonnage Clause were not clear enough that “No State shall, without the Consent of Congress, lay any Duty of Tonnage,” U.S. Const. art. I, § 10, cl. 3, Congress further clarified in the Rivers and Harbors Appropriations Act of 1884 (Rivers and Harbors Act or RHA) that “No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters,” subject to exceptions that do not apply here. 33 U.S.C. § 5(b).

The United States is uniquely positioned to protect its legal and equitable interests at stake in this matter. Whereas private parties, like the existing plaintiffs here, may rightfully sue to vindicate their own economic and speech interests, the United States has “obligations . . . to the general public” to ensure compliance with the Constitution and the supremacy of Federal laws. *See Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020) (permitting intervention as of right and distinguishing between “private investment” and “obligations to the general public”); *Heaton v. Monogram Credit Card Bank of Ga.*, 297 F.3d 416, 485 (5th Cir. 2002) (“Government agencies . . . must represent the public interest, not

just the economic interests of one industry.”). This is especially true when the statute in question is the RHA. *See United States v. Jantran, Inc.*, 782 F.3d 1177, 1178–79 (10th Cir. 1967) (explaining that a related “Rivers and Harbors Act was . . . in large part . . . designed to establish a national legal framework that would help regulate harm to the nation’s waterways”).

For these reasons and because the United States can show that it is entitled to intervention under Rule 24, the Court should grant this motion.

ARGUMENT

I. The United States Should Be Permitted to Intervene as of Right

A court must permit intervention on timely application by anyone who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). A movant is entitled to intervene as of right when “(1) its motion is timely; (2) it has a significantly protectable interest relating to the subject of the action; (3) it is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) its interest is inadequately represented by the parties to the action.” *Sweet v. Cardona*, 121 F.4th 32, 47–48 (9th Cir. 2024) (citing *Kalbers v. U.S. Dep’t of Just.*, 22 F.4th 816, 822 (9th Cir. 2021)). When evaluating these requirements, courts

“normally follow ‘practical and equitable considerations,’” construing the Rule “‘broadly in favor of proposed intervenors.’” *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (quoting *United States v. City of L.A.*, 288 F.3d 391, 397 (9th Cir. 2002)).

The United States meets each requirement for intervention as of right.

A. The United States’ Motion is Timely

The timeliness of an application for intervention is “determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: ‘(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to the other parties; and (3) the reason for and length of the delay.’” *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

First, the United States is seeking to intervene at an early stage of this proceeding. Plaintiffs filed their complaint on August 27, 2025, ECF No. 1; no discovery or significant proceedings have taken place; and this Court has not yet issued any substantive rulings. District courts routinely grant motions to intervene in cases pending far longer when no substantive rulings have been made. *See, e.g., Walpert v. Solar Integrated Roofing Corp.*, No. 24-cv-0041, 2025 WL 863474, at *2 (S.D. Cal. Mar. 19, 2025) (holding motion was timely filed when lawsuit had been pending for over a year and discovery had not yet taken place); *Friends of Del*

Norte v. Cal. Dep't of Transp., No. 3:18-cv-00129-JD, 2020 WL 4349811, at *1 (N.D. Cal. July 29, 2020) (holding motion was timely filed when lawsuit had been pending for over a year and a half because it preceded “any hearing or rulings on substantive matters”).

Second, intervention here will not prejudice the other parties. The United States seeks to join the suit before the case has meaningfully progressed, and Defendants’ “position following intervention [would be] essentially the same as it would have been had the government intervened earlier.” *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1395 (9th Cir. 1992) (citing *United States v. Oregon*, 745 F.2d 550, 553 (9th Cir. 1990)). At the same time, if intervention is denied, the United States would likely file a separate action addressing the same legal issues, creating the risk of differing judgments and imposing duplicative burdens on the Court and Defendants. *See City of L.A.*, 288 F.3d at 398 (quoting *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d at 1180) (“By allowing parties with a *practical* interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues. . . .”); *see also Sec. Ins. Co. of Hartford & Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995) (finding intervention appropriate when “denial of intervention

would in all likelihood have created additional litigation and the possibility of conflicting results”).

Third, there has been no undue delay. Upon discovering this case, the United States promptly assessed the nature and extent of the Federal interest at stake and determined that its interests would not be adequately protected by the existing parties. *See L.A. Unified Sch. Dist.*, 830 F.3d at 854 (quoting *Smith v. Marsh*, 194 F.3d 1045 (9th Cir. 1999)) (“[T]he crucial date for assessing the timeliness of a motion to intervene is when proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties.”). However, during the lapse in appropriations, Department of Justice attorneys were limited in the matters they could work on, including this one. As a Senate confirmed Presidential Appointee, the undersigned was not. Accordingly, the undersigned submits this motion with the expectation that given that the lapse has now ended, the Environment and Natural Resources Division will fully participate in future proceedings.

The United States’ motion to intervene is therefore timely.

B. The United States Has a Substantial Legal Interest in the Subject Matter of This Case

Because “a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts,” the Ninth Circuit has

interpreted Rule 24(a)(2)’s interest requirement loosely. *Wilderness Soc’y*, 630 F.3d at 1179 (quoting *City of L.A.*, 288 F.3d at 397–98). “Rule 24(a)(2) does not require a specific legal or equitable interest.” *Id.* (quoting *City of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)). Instead, “the ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Id.* (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Thus, a prospective intervenor “has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.” *Id.* (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)).

The United States has a strong interest in ensuring the primacy of Federal law. *See* U.S. Const. art. VI, para. 2 (“This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). A State invasion of a regulatory domain constitutionally reserved for the Federal Government, presents a strong legal interest in defending the preemptive scope of Federal law. *See Arizona v. United States*, 567 U.S. 387 (2012) (emphasizing that adherence to the preemptive effect of Federal law is essential to maintaining the Federal Government’s control over enforcement); *see*

also Sanitary Dist. of Chi. v. United States, 266 U.S. 405 (1925) (recognizing the Federal Government’s interest in enforcing constitutional provisions).

Here, Act 96 violates the Tonnage Clause and the Rivers and Harbors Act, threatening the delicate balance of Federal and State power that the Framers enshrined in the Constitution. *See Bridgeport & Jefferson Steamboat Co. v. Bridgeport Port Authority*, 567 F.3d 79, 88 (2d Cir. 2009) (holding passenger fee violated Tonnage Clause). Like the Commerce Clause, the Tonnage Clause reflects the Founder’s desire to protect federal control over commerce. *See Brown v. Maryland*, 2 U.S. (12 Wheat.) 419, 439 (1827) (noting that the Founders decided, “the interest of all would be best promoted by placing that whole subject under the control of Congress,” and observing that to proceed otherwise would risk, “the power [being] so exercised as to disturb that equality among the States”). The Federal interest in maintaining uniformity in vessel taxation across all States was deemed so obvious as to warrant little debate. *See The Minnesota Rate Cases*, 230 U.S. 352, 399 (1913) (recognizing Congress’s “exclusive power” over “those subjects” of interstate commerce “which require a general system or uniformity of regulation”); *see also* The Federalist No. 44 (James Madison) (explaining that the Tonnage Clause “fall[s] within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark”); 2 Joseph Story, *Commentaries on the Constitution* § 1013 (1833) (explaining the “wisdom and

policy in restraining the states themselves from” exercising the “power of taxation unequally” and “injuriously to the interests of each other”). But, to state the obvious, one goal was to ensure the uniformity of regulation by guarding against discriminatory or conflicting State regulations, thus knitting together and protecting the Nation as a whole. *Cooley v. Bd. of Wardens of Port of Phila.*, 53 U.S. (12 How.) 299, 319 (1851) (holding the Commerce Clause permits Congress to legislate in fields “imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port”); see *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976) (“[H]armony among the States might be disturbed unless seaboard States, with their crucial ports of entry, were prohibited from levying taxes on citizens of other States by taxing goods merely flowing through their ports to the other States not situated as favorably geographically.”); *City of Phila. v. New Jersey*, 437 U.S. 617, 624 (1988) (“[W]here simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected.”). “[A]s powerful as market forces can be, the Founders were unwilling to rely only on the laws of economics to protect against abusive state taxation” like that embodied by Act 96. Erik M. Jensen, *Quirky Constitutional Provisions Matter: The Tonnage Clause, Polar Tankers, and State Taxation of Commerce*, 18 Geo. Mason L. Rev. 669, 689–90 (2011).

Moreover, Act 96 embodies the Founders’ fear that States would sacrifice their own economic interests for some other purpose. Indeed, nearly 100 years ago, the Supreme Court recognized the necessity of the Tonnage Clause in ensuring the effectiveness of the Import-Export Clause: “If the states had been left free to tax the privilege of access by vessels to their harbors the prohibition against duties on imports and exports could have been nullified by taxing the vessels transporting the merchandise.” *Clyde Mallory Lines v. Alabama ex rel. State Docks Commission*, 296 U.S. 261, 265 (1935); *see also Polar Tankers*, 557 U.S. at 7 (holding the purpose of the Tonnage Clause is to ensure States could not nullify the prohibition against duties on imports and exports or obtain geographical vessel-related tax advantages).

Similarly, Congress enacted the RHA to “establish a national legal framework that would help regulate harm to the nation’s waterways,” *United States v. Jantran, Inc.*, 782 F.3d 1177, 1178–79 (10th Cir. 1967) (discussing the related RHA of 1899), and Act 96 impedes that framework. The RHA exists precisely to prevent the taxation scheme Hawaii has adopted by ensuring that vessel taxation adheres to uniform, federally established rules. *Jantran, Inc.*, 782 F.3d at 1178–79. The United States thus has a legal and equitable interest in defending that uniformity, preventing the balkanization of maritime taxation.

Finally, the United States’ interest is neither “generalized” nor “undifferentiated.” *See United States v. Alisal Water Corp.*, 370 F.3d 915, 920

(9th Cir. 2004) (holding that the movant’s interest in the prospective collectability of a debt was too generalized and undifferentiated to justify intervention). Instead, the United States would assert the specific, legally cognizable interests of the Federal sovereign tasked with enforcing constitutional limits on State power, ensuring the coherent operation of a comprehensive regulatory scheme throughout our Nation. No other entity possesses those unique constitutional and statutory responsibilities.

C. The Disposition of this Case May Impede the United States’ Ability to Protect Its Interest

To show entitlement to intervention as of right, a movant must demonstrate that it is “so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest.” *Lockyer*, 450 F.3d at 440 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993)). And when an intervenor has a “significant protectable interest,” there is “little difficulty concluding that the disposition of [the] case may, as a practical matter, affect it.” *Id.* at 442 (quoting *Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001)). This is because the Ninth Circuit “follow[s] the guidance of Rule 24 advisory committee notes that state ‘if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.’” *Id.* (quoting *Berg*, 268 F.3d at 822).

Here, a judgment for Defendants could result in binding precedent that would impair the United States's interests in multiple respects. Upholding Act 96 would endorse Hawaii's enforcement of a taxation law that conflicts with the Tonnage Clause and RHA. Such a judgment would harm the United States' sovereign interest in ensuring States' compliance with the Constitution, the supremacy of Federal law, and the uniform application of a Federal statutory scheme. *Heaton*, 297 F.3d at 423–24. Moreover, a judgment in favor of Act 96 may embolden other States to enact similar taxes, further undermining Federal maritime policy, and spurring more costly litigation at taxpayers' expense.

D. The Existing Parties Cannot Protect the Interest of the United States

The final requirement for intervention as of right is a showing that the “existing parties may not adequately represent the applicant’s interest.” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011). This requirement “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate[,] and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972) (quoting 3B J. Moore, Federal Practice § 24.09–1(4) (1969)); see also *Citizens for Balanced Use*, 647 F.3d at 900 (“We stress that intervention of right does not require an absolute certainty that a party’s interest will be impaired or that existing parties will not adequately represent its interests.”). In evaluating whether an applicant can

demonstrate representational inadequacy, courts consider whether (1) “the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments”; (2) “the present party is capable and willing to make such arguments”; and (3) “a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.” *W. Watersheds Project v. Haaland*, 22 F.4th 828, 840–41 (9th Cir. 2022) (quoting *Citizens for Balanced Use*, 647 F.3d at 898).

Plaintiffs do not and cannot make all of the United States’ arguments. Plaintiffs are private entities, with interests grounded in economic and individual free-speech rights. *See* ECF No. 28-1 at 22–24 (citing reduction in demand, surcharges, and loss of revenue as potential harms); *id.* at 4 (discussing deprivation of First Amendment freedoms as irreparable harm). In contrast, the United States’ interests are rooted in its “obligations . . . to the general public” through its role in enforcing compliance with the Constitution, maintaining the supremacy of Federal law, and administering and enforcing the RHA’s prohibition on State taxation of vessels on navigable waters. *See Forest Conservation Council*, 66 F.3d at 1499 (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994)) (“[T]he government must present the broad public interest, not just the economic concerns of the timber industry.”); *Heaton*, 297 F.3d at 425 (“Government agencies . . . must represent the public interest, not just the economic interests of one industry.”).

Furthermore, Defendants argue that Plaintiffs may not assert their Tonnage Clause and RHA claims. *See* ECF No. 53 at 4–9 (arguing the Tax Injunction Act bars Plaintiffs’ claims); *id.* at 11–18 (arguing Plaintiffs lack standing). Whether or not the Court finds those arguments meritorious, the very fact that Defendants raise them confirms that the United States’ protectable interests are not adequately represented by the present parties. *See Dep’t of Emp. v. United States*, 385 U.S. 355, 358 (1966) (“[W]e conclude, in accord with an unbroken line of authority, and convincing evidence of legislative purpose, that § 1341 does not act as a restriction upon suits by the United States to protect itself and its instrumentalities from unconstitutional state exactions.” (citations omitted)).

II. Alternatively, the United States Should Be Allowed to Intervene by Permission

The Court may also grant the United States leave to permissively intervene. Permissive intervention is allowed on timely motion by a government officer or agency where “a party’s claim . . . is based on: (A) a statute . . . administered by the officer or agency; or (B) any regulation . . . issued or made under the statute.” Fed. R. Civ. P. 24(b)(2). The Court may likewise permit intervention by anyone who has “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). And “[i]n exercising its discretion,” the court

“must consider whether intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

The same substantial interests that give the United States a right to intervene in this case under Rule 24(a)(2) support permissive intervention under Rule 24(b). First, the United States’ Motion to Intervene is timely for the reasons detailed in Section I(A), *supra*. Second, if required to file a separate action to protect the United States’ interests, *see* Section I(D), *supra*, the United States would assert, at a minimum, that Act 96 violates the Tonnage Clause and RHA. *See* United States’ Proposed Intervenor Complaint. These assertions would require the Court to resolve questions of fact and law in common with questions raised by the existing parties. Third, as discussed in Section I(B), *supra*, the Attorney General “by virtue of [her] office may bring [a] proceeding” to “remove obstruction to interstate and foreign commerce.” *See Sanitary Dist. of Chi.*, 266 U.S. at 425–26. Finally, because this case is at an early stage in which discovery has not yet commenced and no dispositive order has yet been issued, the United States’ intervention will not cause undue delay or prejudice.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant the United States’ Motion to Intervene.

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DATED: November 13, 2025

Respectfully submitted,

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

CRUISE LINES INTERNATIONAL
ASSOCIATION, Inc., *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

GARY S. SUGANUMA, in his capacity as
Director of Taxation for the State of Hawaii,
et al.,

Defendants.

Case No. 1:25-cv-00367-JAO-
KJM
**PROPOSED INTERVENOR
COMPLAINT**

HEARING DATE: November 14,
2025

Plaintiff, the United States of America, brings this civil action for declaratory
and injunctive relief, alleging as follows:

INTRODUCTION

1. The United States brings this action to preserve the integrity of Federal law. Although States maintain some power to raise revenue through charges and fees, they may do so only in compliance with Federal law. Hawaii has not. Instead, through its new law, Act 96, Hawaii seeks to impose a “Green Fee” tax on out-of-state cruise lines and, by extension, the out-of-state American citizens they bring to the beautiful State. Worse, Act 96 preys upon American businesses and tourists as means to raise roughly \$100 million annually. Hawaii unabashedly boasts that this revenue is not for the purpose of paying for services actually provided to incoming cruise ships or their passengers, but for funding climate change initiatives in Hawaii. This scheme to extort American citizens and businesses solely to benefit Hawaii flies in the face of Federal law twice over, conflicting both with the Tonnage Clause of the U.S. Constitution and the Rivers and Harbors Appropriation Act of 1884 (the Rivers and Harbors Act or RHA). *See* U.S. Const. art. I, § 10, cl. 3; 33 U.S.C. § 5(b).

2. Act 96, set to take effect on January 1, 2026, is the first law of its kind in our Nation. Act 96 would levy a new 11% surcharge on the gross fares paid by a cruise ship’s passengers, prorated by the portion of its voyage spent docked in Hawaii’s ports. Act 96 also authorizes Hawaii counties to collect additional 3% surcharges, bringing the total imposition to 14% of the prorated fares—adding up to hundreds of millions of dollars in new fees over the next decade on out-of-state

cruise lines and, by extension, their American citizen customers, seeking to visit one of our Nation's most beautiful lands. But Federal law preempts both aspects of Act 96.

3. The Constitution's Tonnage Clause bars States from imposing any "charge for the privilege of entering, trading in, or lying in a port." *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 8 (2009) (quoting *Clyde Mallory Lines v. Alabama ex rel. State Docks Comm'n*, 296 U.S. 261, 265–66 (1935)); see U.S. Const. art. I, § 10, cl. 3. Yet Act 96 does just that, imposing an impermissible charge that requires cruise ships to make enormous payments based on their "days docked at any port in the State." Act 96 § 5.1. Such blatant violation of the Tonnage Clause is reason alone to enjoin enforcement of Act 96.

4. Act 96 also violates Federal statutory limits on the fees that States may impose for the use of navigable waters. Under the Rivers and Harbors Act, Congress bars States from charging "taxes, tolls, . . . or any other impositions whatever" on vessels "operating on any navigable waters subject to the authority of the United States," subject to certain narrowly drawn exceptions. 33 U.S.C. § 5(b). Act 96 does not fit within any of section 5(b)'s exceptions, so the RHA preempts its application to cruise ships, rendering enforcement impermissible under the Supremacy Clause.

5. This Court must act swiftly to preserve the supremacy of Federal law, ending Hawaii's regime that openly flouts both our Nation's Constitution and

Federal law for its own political gain. If Act 96 is not preempted, more States will follow suit, creating a balkanization of maritime commerce to disguise State's individualized environmental regimes.

6. Thus, this Court should declare Act 96's cruise-ship-related provisions unconstitutional and enjoin their enforcement.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

8. Venue is proper in this jurisdiction because Defendants reside within the District of Hawaii and acts forming the basis of this Complaint occurred within this district. *See* 28 U.S.C. § 1391(b).

9. The Court has the authority to provide the requested relief under 28 U.S.C. §§ 2201 and 2202, and its inherent equitable powers.

PARTIES

10. Plaintiff, the United States of America, safeguards the supremacy of Federal laws and ensures States do not violate the United States Constitution.

11. Defendant Gary S. Sukanuma is the Director of the Hawaii Department of Taxation. The United States sues Defendant Sukanuma in his official capacity.

12. Defendant Hawaii Department of Taxation maintains the responsibility of collecting "all taxes imposed under Title 14" of Hawaii law (including surcharges

imposed by Act 96), with the exception of those “collected by county treasurers.”
Haw. Rev. Stat. § 231-3(2).

13. Defendant County of Kauai is a county in Hawaii.

14. Defendant Chelsie Sakai is the County Finance Director for the County of Kauai. The United States sues Defendant Sakai in her official capacity.

15. Defendant City and County of Honolulu are political subdivisions of Hawaii.

16. Defendant Andrew T. Kawano is the Director of the Department of Budget and Fiscal Services for the City and County of Honolulu. The United States sues Defendant Kawano in his official capacity.

17. Defendant County of Maui is a county in Hawaii.

18. Defendant Marcy Martin is the Director of the Department of Finance for the County of Maui. The United States sues Defendant Martin in her official capacity.

19. Defendant County of Hawaii is a county in Hawaii.

20. Defendant Diane Nakagawa is the Director of the Department of Finance for the County of Hawaii. The United States sues Defendant Nakagawa in her official capacity.

BACKGROUND

The Tonnage Clause

21. Seeking to preserve uniformity and promote the flourishing of commerce between the States, our Framers restricted the power of States from laying a duty of tonnage without Congressional consent. Under the Tonnage Clause, “No State shall, without the Consent of Congress, lay any Duty of Tonnage.” U.S. Const. art. I, § 10, cl. 3.

22. Such a restraint on the States is not arbitrary, as the Clause “fall[s] within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark.” The Federalist No. 44 (James Madison). Those “obvious” reasonings include States’ taxation of vessels from other States, which would interfere with interstate and foreign commerce. *Clyde Mallory Lines*, 296 U.S. at 264–65; *see also* 2 Joseph Story, *Commentaries on the Constitution* § 1016 (1833) (explaining the “wisdom and policy in restraining the states themselves from” exercising the “power of taxation unequally” and “injuriously to the interests of each other”).

23. Thus, for over a century, the Supreme Court has explained the Tonnage Clause bars States from imposing any “charge for the privilege of entering, trading in, or lying in a port.” *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 8 (2009) (quoting *Clyde Mallory Lines*, 296 U.S. at 265–66); *see also* Samuel Freeman Miller,

Lectures on the Constitution of the United States 253 (1891) (“The meaning of [the Tonnage Clause], as may be gathered from the numerous decisions, . . . undoubtedly is, that vessels coming from abroad, or engaged in navigation among the States, or even if plying entirely within the boundaries of and owned by citizens of a single State, shall not be taxed, as vessels, for the privilege of navigating the inland waters of the country, or coming into any of its ports.”).

24. Put simply, our Constitution’s prohibition on laying a duty of tonnage includes not only a prohibition on duties according to a vessel’s tons of carrying capacity, but also “all taxes and duties regardless of their name or form, . . . which operate to impose a charge for the privilege of entering, trading in, or lying in a port.” *Clyde Mallory Lines*, 296 U.S. at 265–66; *see also S.S. Co. v. Portwardens*, 73 U.S. (6 Wall.) 31, 35 (1867) (holding that the Tonnage Clause prohibits “not only a *pro rata* tax . . . , but any duty on the ship”).

25. So although States may collect fees for actual services provided, *Polar Tankers*, 557 U.S. at 10, they cannot “tax the privilege of access by vessels to their harbors,” *Clyde Mallory Lines*, 296 U.S. at 265.

The Rivers and Harbors Act

26. Under the RHA, Congress prohibited non-Federal entities from imposing fees or taxes on any vessels navigating waters belonging to the United States.

27. Specifically, Congress mandated that “No taxes, tolls, operating charges,

fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters. . . .” 33 U.S.C. § 5(b).

28. The only exceptions to this broad prohibition are for 1) port or harbor fees under 33 U.S.C. § 2236; 2) “reasonable fees charged on a fair and equitable basis that” “are used solely to pay the cost of a service to the vessel or water craft,” “enhance the safety and efficiency of interstate and foreign commerce,” and “do not impose more than a small burden on interstate or foreign commerce”; 3) or “property taxes on vessels or watercraft, other than vessels or watercraft that are primarily engaged in foreign commerce if those taxes are permissible under the United States Constitution.” 33 U.S.C. § 5(b).

Supremacy Clause and Preemption Principles

29. The Supremacy Clause of the Constitution mandates that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

30. Although, “in exercising the power of regulating their own purely internal affairs, whether of trading or police, the States may sometimes enact laws, the

validity of which depends on their interfering with, and being contrary to, an act of Congress passed in pursuance of the constitution.” *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 209–10 (1824); *see also* The Federalist No. 33 (Alexander Hamilton) (explaining acts beyond constitutional powers are “invasions of the residuary authorities of the smaller societies,” and are not given supreme effect).

31. Put simply, if a state law is contrary to an act of Congress or our Nation’s Constitution, the state law must yield. *See Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 479–480 (2013) (“[I]t has long been settled that state laws that conflict with federal laws are ‘without effect.’” (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981))).

The Unconstitutional Hawaii Statute: Act 96

32. On May 27, 2025, Hawaii Governor Joshua B. Green signed Act 96 into law. Governor Green has touted Act 96 as “a groundbreaking move for climate action” that “establish[ed] the nation’s first climate impact fee, known as the ‘Green Fee.’”¹

33. The law imposes that so-called “Green Fee” on businesses that cater to out-of-state visitors and is “[e]xpected to generate around \$100 million annually” to

¹ Off. of the Governor, *Historic Green Fee Launched to Combat Climate Change in Hawai‘i* (June 2, 2025), <https://perma.cc/4QJR-7LGR>.

“fund diverse projects focusing on environmental stewardship, climate resilience and sustainable tourism.”²

34. Unless Act 96 is enjoined, it will disrupt uniformity of vessel taxation by conditioning cruise-ship access to its ports on surcharges in the amounts of millions of dollars and additional registration fees.

A. Charges for the Privilege of Docketing in Hawaii Ports

35. As relevant here, Act 96 amends Chapter 237D of the Hawaii Revised Statutes to provide that, beginning on January 1, 2026, Hawaii will impose a surcharge of “eleven percent . . . on all gross rental proceeds derived from cruise fares prorated by the percentage of days docked at any port in the State in comparison to the total number of days of the voyage.” Act 96 § 5.1.

36. Under Act 96, the obligation to make payments rests on the “operator[s] of . . . cruise ship[s],” not individual passengers. *Id.* State officials have estimated, however, that “99%” of the surcharges will be passed along to passengers in the form of higher prices.³

37. Act 96 also authorizes individual Hawaii counties to levy additional surcharges on cruise ships calling at Hawaii ports. Specifically, under Hawaii

² *Id.*

³ See Christine Hitt, *Why Hawaii Just Got More Expensive for Visitors*, S.F. Gate (July 2, 2025), <https://perma.cc/5KVB-DJE7>.

Revised Statutes § 237D-2.5, Hawaii counties may levy their own surcharges of up to 3% on the “gross rental proceeds” covered by Chapter 237D. By subjecting cruise ships to the payment requirements of Chapter 237D, Act 96 thus permits Hawaii counties to impose additional 3% surcharges on cruise ships, above and beyond the 11% collected by the State, for the privilege of docking at ports in those counties.

38. The counties of Hawaii, Kauai, and Maui each have imposed the maximum 3% surcharges permitted by Hawaii law. *See* Haw. Rev. Stat. § 237D-2.5.⁴ If Act 96 is permitted to go into effect, those additional surcharges will be levied on cruise ships visiting ports in those counties beginning on January 1, 2026.

39. The City and County of Honolulu has “established a 3 percent transient accommodations tax on all gross rental, gross rental proceeds, and fair market rental value that is taxable under HRS Chapter 237D on property in the city.”⁵ On information and belief, the City and County of Honolulu intends to assess that surcharge against cruise ships that dock in Honolulu beginning on January 1, 2026.

40. The counties of Kauai, Honolulu, Maui, and Hawaii are home to all ports routinely visited by cruise ships in the State of Hawaii. Between the 11% surcharge

⁴ *See* Haw. Cnty. Code § 2-259 (“[A] three percent transient accommodations tax is established on all gross rental, gross rental proceeds, and fair market rental value considered taxable under the definitions of section 237D-1, Hawaii Revised Statutes.”); Kauai Cnty. Code § 5-4.1 (same); Maui Cnty. Code § 3.47.010 (same).

⁵ Rev. Ord. Hon. § 8A-1.1.

levied by the State and the 3% state-authorized surcharges levied by the counties, cruise-ship operators will be required to pay an effective 14% prorated portion of each passenger's gross fare for the privilege of visiting ports in Hawaii.

B. Registration and Fee Requirements

41. Act 96 imposes additional registration and registration-fee requirements on cruise-ship operators.

42. Specifically, section 237D-4 requires that entities subject to surcharges under Chapter 237D “register with the director the name and address of each place of business within the State subject to this chapter,” and “make a one-time payment” of “\$15 for each registration for transient accommodations consisting of six or more units.” Haw. Rev. Stat. § 237D-4(a).

43. To the knowledge of the United States, Hawaii provides no administrative or judicial mechanism through which a cruise-ship operator can challenge or recover registration fees after the registration fees are paid.

44. So beginning on January 1, 2026, a cruise-ship operator's cruise ships will not be permitted to lawfully dock in Hawaii unless the cruise-ship operator pays the required registration fees, ultimately funding Hawaii's “green” climate change initiatives.

C. Filing Requirements

45. Act 96 will require cruise-ship operators to make payments to the

Department of Taxation on a monthly basis. *See* Haw. Rev. Stat. § 237D-6. Cruise-ship operators also will be required to make monthly payments directed to each of the four counties that have imposed additional 3% surcharge under Chapter 237D.⁶ Act 96 thus will require up to five separate payments and associated filings for each month that a cruise-ship operator's vessels visit Hawaii.

46. Along with those monthly payments and filings, Act 96 also will require cruise-ship operators to make annual filings and payments. Specifically, the Hawaii Department of Taxation and the four relevant counties each require entities subject to Chapter 237D file annual reconciliation returns summarizing periodic tax liabilities and payments for the prior taxable year and making any remaining payments due.⁷

CLAIMS FOR RELIEF
COUNT ONE – VIOLATION OF THE TONNAGE CLAUSE

47. The United States hereby incorporates paragraphs 1–46 of the Complaint as if fully stated herein.

48. The U.S. Constitution's Tonnage Clause bars States from imposing "any Duty of Tonnage" without Congressional consent. U.S. Const. art. I, § 10, cl. 3.

⁶ *See* Haw. Cnty. Code §§ 2-261(b)–(c); Kauai Cnty. Code § 5-4.6(a); Maui Cnty. Code § 3.47.060; Rev. Ord. Hon. § 8A-1.6.

⁷ *See* Haw. Rev. Stat. § 237D-7; Haw. Cnty. Code § 2-262; Kauai Cnty. Code § 5-4.7; Maui Cnty. Code § 3.47.070; Rev. Ord. Hon. § 8A-1.7.

49. Our Framers adopted the Tonnage Clause to “diminish a State’s ability to obtain certain geographical vessel-related tax advantages,” *Polar Tankers, Inc.*, 557 U.S. at 7, by “tax[ing] the privilege of access by vessels to their harbors,” *Clyde Mallory Lines*, 296 U.S. at 265.

50. Act 96 does just that in two ways.

51. First, Act 96 requires cruise-ship operators to pay registration fees “as a condition precedent to engaging or continuing in the business of furnishing transient accommodations,” which includes furnishing passage aboard a cruise ship that docks in a Hawaii port. Haw. Rev. Stat. § 237D-4(a). Without paying a registration fee, therefore, cruise ships cannot legally dock in any Hawaii port. Thus, the registration fees constitute an impermissible duty of tonnage owed for the privilege of entering or lying in any Hawaii port. *See Clyde Mallory Lines*, 296 U.S. at 265–66; *S.S. Co.*, 73 U.S. (6 Wall.) at 34–35 (holding that a \$5 fee imposed on all ships arriving at the port of New Orleans was an impermissible duty of tonnage).

52. Second, the authorized surcharges on cruise-ship fares imposed by Hawaii and its individual counties are calculated based on “the percentage of days” that a ship is “docked at any port in the State in comparison to the total number of days of the voyage.” Haw. Rev. Stat. § 237D-2(a). Thus, those surcharges constitute impermissible fees for lying in a Hawaii port. *See Clyde Mallory Lines*, 296 U.S. at 266.

53. Neither the registration fees nor the surcharges imposed under Act 96 bear any relationship to legitimate maritime services provided by the State of Hawaii or Hawaii ports.

54. Cruise ships already pay numerous other charges and fees for maritime services when visiting Hawaii ports. Under longstanding regulations promulgated by the Hawaii Department of Transportation, cruise ships already pay daily dockage fees. *See* Haw. Code R. § 19-44-20. Cruise ships also already pay substantial fees for services such as the provision of clean water, stevedoring, tugboat services, and port security. *See, e.g.,* Haw. Code R. §§ 19-44-23, 19-44-35.

55. In contrast to the abovementioned preexisting payments for specific maritime services, Hawaii boasts the surcharges imposed by Act 96 will be used to pay for “green” projects that otherwise would be funded out of general state and county tax revenues.

56. Specifically, under amendments passed as section 2 of Act 96, the Governor’s annual budget request is required to propose projects through which the additional revenue obtained from the “assessment of the transient accommodations tax on gross rental proceeds derived from cruise fares” can be used for purposes such as to “restore . . . native forests,” perform “flood mitigation,” and support “beach improvement, nourishment, and maintenance projects.” Act 96 § 2.

57. That Act 96 raises revenue for unrelated “green” purposes, rather than for providing maritime services to vessels, underscores that Act 96 violates the Tonnage Clause.

58. Accordingly, Act 96 is unconstitutional. The United States is thus entitled to declaratory judgment that Act 96 violates the Tonnage Clause and is therefore invalid, as well as an injunction prohibiting Defendants and their successors, agents, and employees, from enforcing Act 96.

COUNT TWO – VIOLATION OF THE SUPREMACY CLAUSE
(PREEMPTION BY THE RIVERS AND HARBORS ACT)

59. The United States hereby incorporates paragraphs 1–46 of the Complaint as if fully stated herein.

60. Act 96’s registration fees and surcharges conflict with and are thus preempted by the RHA.

61. The RHA bars non-Federal entities from imposing fees or taxes on any vessels navigating waters belonging to the United States.

62. Hawaii’s ports are part of the navigable waters subject to the authority of the United States. *See, e.g., The Daniel Ball*, 77 U.S. 557, 564 (1870) (defining “navigable waters” as waters “accessible from a State other than those in which they lie”); *Gilman v. Philadelphia*, 70 U.S. (3 Wall.) 713, 724–25 (1866) (same); 33 C.F.R. § 329.4 (“Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used

in the past, or may be susceptible for use to transport interstate or foreign commerce.”).

63. Act 96 imposes mandatory registration fees on any cruise ship that wishes to dock in any Hawaii port, constituting a “fee” collected from a vessel under § 5(b).

64. And Act 96’s surcharges on cruise fares each constitute “taxes, tolls, operating charges, fees, or . . . other impositions” “levied upon or collected from any vessel or other water craft.” 33 U.S.C. § 5(b).

65. Neither the registration fees nor surcharges imposed by Act 96 fall within one of RHA’s exceptions.

66. Neither the registration fees nor surcharges qualify as dues under 33 U.S.C. § 2236 to fund a harbor navigation construction project.

67. Neither the registration fees nor surcharges are “used solely to pay the cost of a service to the vessel or water craft” as Act 96 specifically states such revenue will be used to fund “green” initiatives such as beach improvement, nourishment, flood mitigation, and restoring forests.

68. And neither of Act 96’s registration fees nor surcharges constitute property taxes. *See* 33 U.S.C. §§ 5(b)(1)–(3).

69. Accordingly, Act 96 expressly conflicts with section 5(b). The United States is entitled to declaratory judgment that Act 96 is preempted by Federal law,

as well as an injunction prohibiting Defendants and their successors, agents, and employees, from enforcing Act 96.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court grant the following relief:

1. Enter a judgment declaring:
 - Act 96's 11% and 3% surcharges on cruise fares violate the Tonnage Clause of the United States Constitution;
 - Act 96's registration-fee requirement violates the Tonnage Clause of the United States Constitution;
 - Act 96's 11% and 3% surcharges on cruise fares violate the Rivers and Harbors Act; and
 - Act 96's registration-fee requirement violates the Rivers and Harbors Act.
2. Issue a permanent injunction enjoining Defendants, as well as all officers, agents, and employees subject to their supervision or direction, from enforcing the above requirements of Act 96 against cruise-ship operators.
3. Award any other relief that the Court deems just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

DATED: November 13, 2025

Respectfully submitted,

/s/ Stanley E. Woodward, Jr.

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