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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
CALIFORNIA CHAMBER OF
COMMERCE, AMERICAN FARM
BUREAU FEDERATION, LOS
ANGELES COUNTY BUSINESS
FEDERATION, CENTRAL VALLEY
BUSINESS FEDERATION, and
WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official
capacity as Chair of the California Air
Resources Board, STEVEN S. CLIFF, in
his official capacity as the Executive
Officer of the California Air Resources
Board, and ROBERT A. BONTA, in his
official capacity as Attorney General of
California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

**MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

HEARING:

Date: May 5, 2025
Time: 1:30 PM
Location: Courtroom 5D
Judge: Otis D. Wright II

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I. INTRODUCTION

Courts in this Circuit routinely enjoin California, on a preliminary basis, from enforcing speech compulsions while First Amendment questions are litigated. *E.g.*, *X Corp. v. Bonta*, 116 F.4th 888 (9th Cir. 2024); *NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024); *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468 (9th Cir. 2022). As litigation is now certain to continue beyond S.B. 253 and 261’s effective date, this Court should follow that same approach here and preliminarily enjoin the laws.

The laws will begin to take effect in “less than a year” and, without an injunction, will compel companies to speak on the controversial issue of climate change. *NetChoice, LLC v. Bonta*, 692 F. Supp. 3d 924, 964 (N.D. Cal. 2023) (granting injunction), *aff’d in relevant part*, 113 F.4th 1101 (9th Cir. 2024). S.B. 261 requires disclosures on or before January 1, 2026, and this Court has already found a “credible threat” of enforcement. Dkt. 77 at 11. With respect to S.B. 253, CARB recently confirmed that it will require companies to submit a “first report due in 2026” disclosing emissions for the prior year and instructed companies “to move toward full compliance as quickly as possible.” Hamburger Decl., Ex. A (“CARB Enforcement Notice”) at 1. And CARB has made clear that companies must take action *now* to demonstrate good-faith compliance efforts. *Id.* The laws thus are *already* imposing immediate and irreparable harm on covered companies. The Court should preserve the status quo while litigation proceeds.

As this Court recognized, “[t]here can be no dispute that the primary effect—and purpose—of SBs 253 and 261 is to compel speech.” Dkt. 73 at 7. Being forced to speak against one’s will is a classic, irreparable First Amendment injury warranting injunctive relief. And that injury *will* occur, absent preliminary relief. Although Plaintiffs promptly filed suit after the laws were enacted and filed an early summary-judgment motion, this Court concluded that it could not resolve Plaintiffs’ First Amendment challenge as a matter of law and set the case for discovery. Dkt. 73 at 10-13. The discovery

1 process, however, will take many months to complete, and subsequent adjudication on
2 the merits—whether via summary judgment or trial—will take many months more.

3 Preliminary injunctions exist to preserve the status quo in this exact scenario.
4 Plaintiffs are “likely to succeed on the merits of [their] claim”; they are “likely to suffer
5 irreparable harm absent the preliminary injunction”; “the balance of equities tips in
6 [their] favor”; and “a preliminary injunction is in the public interest.” *X Corp.*, 116 F.4th
7 at 897 (brackets in original).

8 Under the Ninth Circuit’s framework for assessing preliminary injunctions in the
9 First Amendment context, Plaintiffs need only establish “a colorable claim that [their]
10 First Amendment rights . . . are threatened with infringement.” *Meinecke v. City of Se-*
11 *attle*, 99 F.4th 514, 521 (9th Cir. 2024). Plaintiffs have done that, and therefore “the
12 burden shifts to the government to justify” the laws—a burden the government cannot
13 meet. *Id.* The laws plainly “[m]andat[e] speech,” so strict scrutiny applies. And the
14 State can point to no real, legitimate interest the laws serve. Even if it could, the laws
15 compel speech in ways that are unrelated (rather than narrowly tailored) to any such
16 interest.

17 The laws, for example, require *every* covered company to make greenhouse-gas
18 related disclosures, even if the company has *never* made advertisements regarding green-
19 house-gas emissions, climate change, or being a “green” company. These statutes are
20 the opposite of narrowly tailored, given that they impose blanket obligations on any
21 companies that satisfy their revenue thresholds. As the Ninth Circuit recently held while
22 endorsing preliminary injunctions in a pair of compelled-speech cases—*X Corp.*,
23 116 F.4th 888, and *NetChoice*, 113 F.4th 1101—such across-the-board speech compul-
24 sions “are more extensive than necessary to serve the State’s purported goal[s]” and
25 therefore “likely fail under strict scrutiny” and must be enjoined pending a final decision
26 on the merits. *X Corp.*, 116 F.4th at 903.

27 The State says this is permissible because the laws compel “commercial speech.”
28 It invoked the same defense in *X Corp.*, and it lost. There, as here, the State sought to

1 compel companies to “reveal [their] policy opinion about contentious issues.” 116 F.4th
2 at 899. But like the speech in *X Corp.*, none of the speech compulsions here “propose a
3 commercial transaction” or bear other “indicia of commercial speech.” 116 F.4th at 901.
4 Instead, the speech compulsion “go[es] further,” requiring companies to express
5 “view[s] about” climate change; about “whether a company believes” governments will,
6 or companies should, take action to mitigate its effects, *id.*; and about the emissions of
7 suppliers and customers who “the reporting entity does not own or directly control,”
8 Dkt. 48-16 at 4. None of this is commercial speech.

9 The State cannot escape strict scrutiny because a “business’s opinion about” cli-
10 mate change is “not ‘purely factual and uncontroversial.’” *NetChoice*, 113 F.4th at
11 1120. “[C]limate change” is the paradigmatic “controversial subjec[t]” requiring “‘spe-
12 cial [First Amendment] protection.’” *Janus v. Am. Fed’n of State Emps., Council 31*,
13 585 U.S. 878, 913-14 (2018). In any case, the laws are so facially overinclusive, they
14 fail any degree of First Amendment scrutiny.

15 The Court should pause implementation of the laws while the litigation is re-
16 solved. There is simply no other means of forestalling a “colli[sion] with the . . . Con-
17 stitution” and the violation of Plaintiffs’ members’ constitutional rights. *X Corp.*,
18 116 F.4th at 904. Because discovery and full litigation on the merits will not be com-
19 pleted before CARB begins to enforce S.B. 253 and 261, and because companies are
20 already taking steps to prepare for compliance with these laws, only a preliminary in-
21 junction can save Plaintiffs’ members from the impending constitutional injury “of con-
22 vey[ing] to the public” a message they “d[o] not believe.” Shoen Decl. ¶ 41.

23 II. FACTUAL BACKGROUND

24 There is “no dispute” that S.B. 253 and 261 “compel speech” and that their “ob-
25 ligations are expected to take effect in 2026.” Dkt. 73 at 2, 7. As one legislator put it,
26 the goal is to compel companies to make climate-related statements “they don’t want to”
27 because (in the State’s view) they are “going to be embarrassed by” them. Dkt. 48-5 at
28 30:1-6.

1 **S.B. 261.** Without a preliminary injunction, S.B. 261 will compel companies to
2 begin speaking “[o]n or before January 1, 2026,” § 2(b)(1)(A), and to begin incurring
3 substantial compliance costs now. The law “applies to any entity with total annual rev-
4 enues over \$500 million ‘that does business in California.’” Dkt. 73 at 4. “The Califor-
5 nia Senate Rules Committee analysis estimates that over 10,000 companies would meet
6 this threshold[.]” *Id.*

7 S.B. 261 requires any covered entity to publicly state its opinion regarding various
8 “climate-related financial risk[s]” and to post that opinion to the entity’s website.
9 S.B. 261 § 2(b)(1)(A), (c)(1). Under the law, companies must opine on any “material
10 risk of harm to immediate and long-term financial outcomes due to physical and transi-
11 tion risks, including, but not limited to, risks to corporate operations, provision of goods
12 and services, supply chains, employee health and safety, capital and financial invest-
13 ments, institutional investments, financial standing of loan recipients and borrowers,
14 shareholder value, consumer demand, and financial markets and economic health.” *Id.*
15 § 2(a)(2). Companies must then provide a report discussing any “measures adopted to
16 reduce and adapt to” any of the above climate-related risks. *Id.* § 2(b)(1)(A)(ii).

17 Unless a company certifies it has prepared an “equivalent” report for other rea-
18 sons, the law requires companies to conform their reports to the “recommended frame-
19 work” contained in the “Final Report of Recommendations of the Task Force on Cli-
20 mate-Related Financial Disclosures (June 2017).” *Id.* § 2(b)(1)(A), (4). That framework
21 provides detailed instructions on the “types of information that should be disclosed or
22 considered” and how such information “should be presented.” Dkt. 48-23 at 5, 51.

23 **S.B. 253.** S.B. 253 directly applies to any company exceeding \$1 billion in annual
24 revenue that does business in California. S.B. 253 § 2(b)(2). “One of the legislation’s
25 sponsors estimates that SB 253 would apply to approximately 5,300 United States busi-
26 nesses,” Dkt. 73 at 2, although its impact will extend to many more companies that do
27 business with the covered entities, including small businesses and businesses with no
28 operations in California.

1 S.B. 253 requires each covered entity, by 2026, to publicly state the “entity’s”
2 greenhouse-gas emissions for the prior fiscal year. S.B. 253 § 2(c)(1). Each entity must
3 “measure and report” three categories of greenhouse-gas emissions—Scope 1, Scope 2,
4 and Scope 3—“in conformance with the Greenhouse Gas Protocol standards and guid-
5 ance.” *Id.* § 2(c)(1)(A)(ii). And although the law purports to require each company to
6 report “its emissions,” *id.*, “Scope 2” and “Scope 3” emissions are defined to include the
7 emissions of *others*, including emissions from utility providers, upstream suppliers, and
8 downstream customers. *Id.* § 2(c)(1). Thus, S.B. 253 requires a company to mislead-
9 ingly represent that the emissions of other entities are its own. Moreover, by requiring
10 reporting “in conformance with the Greenhouse Gas Protocol,” the law requires compa-
11 nies to report emissions that are misleadingly high, because that protocol does not factor
12 in emissions that companies avoid or offset.

13 The reported emissions are not purely factual. Aside from the problem that
14 S.B. 253 forces a company to report others’ emissions as its own, the proper calculation
15 of a company’s own emissions is itself subject to significant debate. Accordingly, as
16 Governor Newsom acknowledged, “the reporting protocol specified” in S.B. 253 “could
17 result in inconsistent reporting across businesses subject to the measure.” Dkt. 48-15 at
18 1. Emissions calculations necessarily turn on subjective judgments concerning the “ad-
19 vantages and disadvantages” of various approaches to estimation. Dkt. 48-21 at 18.
20 Even more so, the subjective estimates an entity reports as its Scope 3 emissions are
21 those of other reporting entities altogether, both downstream and upstream in the supply
22 chain. Dkt. 48-20 at 77. The resulting burden of estimating emissions flows up and
23 down the supply chain. Dkt. 48-11 at 5. Small businesses nationwide, including family
24 farms far outside of California, Dkt. 48-31 ¶¶ 2-3; Dkt. 48-32 ¶¶ 2-3, will incur signifi-
25 cant costs monitoring and reporting emissions to suppliers and customers swept within
26 the law’s reach.

1 S.B. 253 originally required CARB to issue regulations requiring the specific dis-
2 closures by January 1, 2025. In September 2024, the legislature extended CARB’s dead-
3 line to July 1, 2025. S.B. 219 § 1 (2024).

4 In December 2024, CARB issued an “Enforcement Notice” to explain how the
5 agency would exercise its enforcement discretion in the first reporting year. CARB En-
6 forcement Notice 1. CARB confirmed that “the first reports by reporting entities
7 will . . . be due in 2026” and “will cover scope 1 and scope 2 emissions during the re-
8 porting entity’s prior fiscal year.” *Id.* Recognizing that companies “may need some
9 lead time to implement new data collection processes,” the agency explained that for the
10 first year only, it would exercise “discretion” toward companies that it believes “make a
11 good faith effort to retain all data relevant to emissions reporting for the entity’s prior
12 fiscal year.” *Id.* In their 2026 report, companies can calculate their greenhouse-gas
13 emissions for the prior fiscal year “from information [they] already posses[s] or [are]
14 already collecting at the time [the] Notice was issued.” *Id.* The notice explains that this
15 policy is “aimed at supporting entities actively working toward full compliance,” and it
16 instructs companies to “move toward full compliance as quickly as possible.” *Id.* Com-
17 mentators, accordingly, are recommending that companies “begin to put the right
18 measures in place to comply” now. Hamburger Decl., Ex. B (Loyti Cheng & David
19 Zilberberg, *Climate Disclosure Spotlight Shifts To 2 Calif. Laws*, Law360 (Jan. 14,
20 2025)).

21 * * *

22 “[S]ignificant effort” goes into “developing processes and collecting information
23 needed for disclosing” climate-related information. Dkt. 48-28 at 4. For example, to
24 comply with S.B. 253 and 261, companies will need to locate relevant information
25 across their companies, adopt new policies and procedures, develop new tracking sys-
26 tems, and hire and train employees. Quaadman Decl. ¶ 8; Shoen Decl. ¶ 11. This pro-
27 cess takes “years, not months.” Shoen Decl. ¶ 10. Accordingly, Plaintiffs’ member
28 companies are “tracking and recording a vast amount of climate-related information”

1 and are incurring substantial compliance costs. Quadman Decl. ¶¶ 8-9; see Golombek
2 Decl. (CalChamber); Englin Decl. (BizFed LA); Lunde Decl. (WGA).

3 III. PROCEDURAL BACKGROUND

4 Three months after Governor Newsom signed S.B. 253 and 261, Plaintiffs sued
5 to enjoin the implementation or enforcement of the laws. Dkt. 28. Defendants moved
6 to dismiss Plaintiffs' complaint in part, but did not seek to dismiss the First Amendment
7 claim. Dkt. 38. The Court granted that motion. Dkt. 77.

8 Plaintiffs also moved for summary judgment on their First Amendment claim.
9 Dkt. 46. Though the Court deferred a final ruling on that motion pending further factual
10 development, the Court resolved several important questions. Dkt. 73. First, the Court
11 held "the First Amendment applies to SBs 253 and 261." *Id.* at 8. As the Court recog-
12 nized, "[i]t is well-established that the First Amendment protects the right to refrain
13 from speaking at all' and 'that the forced disclosure of information, even purely com-
14 mercial information, triggers First Amendment scrutiny.'" *Id.* at 7 (internal quotation
15 marks omitted). Moreover, the Court found, "the primary effect—and purpose—of SBs
16 253 and 261 is to compel speech." *Id.* The Court therefore "distinguish[ed]" S.B. 253
17 and 261 from "statutes where the compelled speech was plainly incidental to the [law's]
18 regulation of conduct." *Id.* The Court did not address whether Plaintiffs are likely to
19 prevail on the merits.

20 Since the Court ruled on the summary judgment motion, subsequent develop-
21 ments have compelled Plaintiffs to seek preliminary relief. First, CARB issued its S.B.
22 253 Enforcement Notice confirming that companies must submit a "first report due in
23 2026" for the prior fiscal year and instructing companies "to move toward full compli-
24 ance as quickly as possible." CARB Enforcement Notice 1. In the absence of injunctive
25 relief, companies are (and will continue) incurring substantial costs. Quadman Decl.
26 ¶ 9; see Shoen Decl. ¶¶ 12, 27. Moreover, it now is plain the laws will take effect before
27 litigation is completed. Discovery has not begun, but the State has informed Plaintiffs
28 that it intends to seek expansive information on a range of topics, including any

documents Plaintiffs or their members have regarding climate risks and communications between Plaintiffs and their members regarding S.B. 253 and 261. Hamburger Decl. ¶ 3.

Faced with the passage of time, the State’s intended discovery, and the impending compliance date as clarified by the Enforcement Notice, Plaintiffs bring this motion to preserve the status quo until the case can be resolved on the merits.

IV. ARGUMENT

The Court should preliminarily enjoin Defendants from implementing or enforcing S.B. 253 and 261. Plaintiffs are “likely to succeed on the merits of [their] claim”; they are “likely to suffer irreparable harm absent the preliminary injunction”; “the balance of equities tips in [their] favor”; and “a preliminary injunction is in the public interest.” *X Corp.*, 116 F.4th at 897 (brackets in original). The Court should maintain the status quo until this litigation can be fully adjudicated on the merits—something that is not likely to occur until after the laws go into effect.

A. Plaintiffs Are Likely to Prevail on the Merits

Plaintiffs are likely to succeed in showing that S.B. 253 and 261 facially violate the First Amendment. That is, “‘a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). “As *Moody* clarified, a First Amendment facial challenge has two parts: first, the courts must ‘assess the state laws’ scope’; and second, the courts must ‘decide which of the laws’ applications violate the First Amendment, and . . . measure them against the rest.’” *X Corp.*, 116 F.4th at 899 (ellipsis in original) (quoting *Moody*, 603 U.S. at 724-25).

“Courts asked to issue preliminary injunctions based on First Amendment grounds face an inherent tension: the moving party bears the burden of showing likely success on the merits . . . and yet within that merits determination the government bears the burden of justifying its speech-restrictive law.” *Cal. Chamber*, 29 F.4th at 477. Consequently, the Ninth Circuit has “articulated a unique likelihood-of-success standard in

1 First Amendment cases: “[I]n the First Amendment context, the moving party bears the
2 initial burden of making a colorable claim that its First Amendment rights have been
3 infringed, or are threatened with infringement, at which point the burden shifts to the
4 government to justify the restriction on speech.” *Meinecke*, 99 F.4th at 521 (quoting
5 *Cal. Chamber*, 99 F.4th at 478).

6 Plaintiffs’ First Amendment challenge to S.B. 253 and 261 is more than “colora-
7 ble” and the State cannot, at this stage, meet its burden to justify either law remaining in
8 effect during litigation.

9 **1. The Case Is Appropriate for Facial First Amendment Review**

10 The first step in a facial analysis is “to assess the statute’s scope.” *Matsumoto v.*
11 *Labrador*, 122 F.4th 787, 806 (9th Cir. 2024). Here, the laws’ scope is evident “from
12 the[ir] face.” *X Corp.*, 116 F.4th at 899. The laws require “every covered . . . company”
13 to speak to the *same* “state-specified categories of content.” *Id.* (emphasis added). Spe-
14 cifically, S.B. 253 requires every covered company to estimate and report a certain set
15 of greenhouse-gas emissions (including other entities’ emissions) as its own, in compli-
16 ance with the State’s misleading and controversial directives. And S.B. 261 requires
17 every covered company to opine on the risks of climate change.

18 These laws thus “raise the same First Amendment issues for every[one]”—
19 namely, whether the State could constitutionally compel covered companies to convey
20 the required messages. *X Corp.*, 116 F.4th at 899. And as the Ninth Circuit has recently
21 (and repeatedly) held in closely analogous contexts, this type of the across-the-board
22 speech compulsion lends itself to facial review. *See NetChoice*, 113 F.4th at 1116 (facial
23 review warranted where “all” “covered businesses” are “under the same statutory obli-
24 gation to opine on . . . the risk that children may be exposed to harmful or potentially
25 harmful content”); *X Corp.*, 116 F.4th at 899 (same, where “every” required disclosure
26 “must detail” the same type of “policies and actions”).

1 **2. S.B. 253 and 261 Fail Strict Scrutiny in a Substantial Number of**
2 **Applications**

3 In a substantial number of applications, the laws infringe on companies' freedom
4 "to remain silent." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). As the Su-
5 preme Court has emphasized, the freedom of speech "includes both the right to speak
6 freely and the right to refrain from speaking at all," *Wooley v. Maynard*, 430 U.S. 705,
7 714 (1977), and it "applies not only to expressions of value, opinion, or endorsement,
8 but equally to statements of fact the speaker would rather avoid," *Hurley v. Irish-Am.*
9 *Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995). "For corporations as
10 for individuals," then, "the choice to speak includes within it the choice of what not to
11 say." *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n*, 475 U.S. 1, 16 (1986) (plurality).

12 Laws compelling speech are thus "presumptively unconstitutional" and almost
13 always trigger strict scrutiny. *Nat'l Inst. of Family & Life Advocates v. Becerra* ("NI-
14 *FLA*"), 585 U.S. 755, 766 (2018). The burden shifts to the State to prove that the laws
15 "are narrowly tailored to serve compelling state interests." *Id.* "These requirements are
16 daunting," *Green v. Miss U.S. of Am., LLC*, 52 F.4th 773, 791 (9th Cir. 2022), and in a
17 substantial number of these laws' applications, the State will not be able to meet the
18 challenge.

19 **a. Strict Scrutiny Applies**

20 The State cannot satisfy its burden of showing that an exception to strict scrutiny
21 applies. *See Meinecke*, 99 F.4th at 521.

22 First, the limited exception recognized in *Zauderer v. Office of Disciplinary Coun-*
23 *sel*, 471 U.S. 626 (1985), is inapplicable. *Zauderer* held that the government can compel
24 the disclosure of certain, rote "purely factual" information that is "noncontroversial,"
25 *NIFLA*, 585 U.S. at 769, such as "country-of-origin labels" on imports, *Am. Meat Inst.*
26 *v. USDA* ("AMI"), 760 F.3d 18, 20 (D.C. Cir. 2014), and "whether a particular chemical
27 is within any given product," *Entm't Software Ass'n v. Blagojevich*, 469 F.3d 641, 652
28 (7th Cir. 2006). The compelled speech here is neither purely factual nor uncontroversial,

1 and *Zauderer* has *never* been used to justify the type of full-blown reports—and sub-
2 stantial diligence and analysis—required here.

3 Disclosure of a company’s “climate-related financial risk[s],” S.B. 261
4 § 2(b)(1)(A)(i), is not reporting of a rote, “pure” fact. It represents a company’s com-
5 pelled assessment of the “risk of harm to immediate and long-term financial outcomes”
6 from a variety of events whose connection to climate change, if any, is subject to rea-
7 sonable debate. *Id.* § 2(a)(2). This exercise “inherently involve[s]” the company’s sub-
8 jective “judgment” about unverifiable “future-oriented” events, Dkt. 48-23 at 53, includ-
9 ing future policy responses (“transition risks”) and effects on global “financial markets,”
10 S.B. 261 § 2(a)(2), and requires the weighing and balancing of numerous “factors that
11 may be indicative of potential financial implications for climate-related risks and oppor-
12 tunities,” Dkt. 48-23 at 35. “[U]ndertak[ing] [such] contextual analyses,” and “weighing
13 and balancing many factors,” is “anything but the mere disclosure of factual infor-
14 mation.” *Book People, Inc. v. Wong*, 91 F.4th 318, 340 (5th Cir. 2024). As the Ninth
15 Circuit recently held in affirming a preliminary injunction against another California
16 statute compelling speech, “a business’s opinion” about the risk of potential harm “is
17 not ‘purely factual and uncontroversial.’” *NetChoice*, 113 F.4th at 1120.

18 The compelled disclosures here will also be misleading—the opposite of purely
19 “factual.” *Cal. Chamber*, 29 F.4th at 479 n.12. S.B. 253 requires companies to report
20 “their” greenhouse-gas emissions. § 1(e), (f). But the law requires companies to
21 acknowledge as “their” own the emissions of others, including the emissions of “elec-
22 tricity” providers (Scope 2) and other “upstream and downstream” suppliers and cus-
23 tomers who “the reporting entity does not own or directly control” (Scope 3). § 2(b)(4),
24 (b)(5). It is not accurate—and certainly not “uncontroversial”—to saddle companies
25 with “responsibility” (S.B. 253 § 1(f)) for emissions they did not make and over which
26 they have no control. By forcing companies to speak “in conformance with the Green-
27 house Gas Protocol standards and guidance,” S.B. 253 § 2(c)(1)(A)(ii), the law further
28 misleads by requiring companies to report emissions numbers that do not factor in

1 “avoided emissions or [greenhouse-gas] reductions from actions taken to compensate
2 for or offset emissions,” Dkt. 48-20 at 6. The State has no legitimate interest in slanting
3 the debate on this contested policy issue. *See Cal. Chamber*, 29 F.4th at 479.

4 *Zauderer* also “has no application” because a company’s climate-related risks and
5 emissions are “anything but an ‘uncontroversial’ topic.” *NIFLA*, 585 U.S. at 769.
6 “[C]limate change” is the paradigmatic “controversial subjec[t]” requiring “‘special pro-
7 tection’” at “‘the highest rung of’” the First Amendment ladder. *Janus*, 585 U.S. at
8 913-14. As the State has already conceded, “policy responses to climate change are the
9 subject of vigorous political debate.” Dkt. 52 at 21. Speech compelled by the laws
10 inevitably will be used to “stigmatize” companies and to “shape [their] behavior”—the
11 very features that doomed the SEC’s compulsory conflict-minerals disclosure. *Nat’l*
12 *Ass’n of Manufacturers v. SEC*, 800 F.3d 518, 520, 530 (D.C. Cir. 2015). The State
13 acknowledges that the laws are partly designed to identify purported “greenwashing,”
14 anticipating that activists will flyspeck disclosures to criticize companies and call for
15 increased regulation or other concerted action. Dkt. 48-5 at 2:25-3:11. The State’s at-
16 tempt to skew the debate by arming one side with ammunition for “‘publi[c] con-
17 demn[ation]’” makes it even “‘more constitutionally offensive.’” *Nat’l Ass’n of Man-*
18 *ufacturers*, 800 F.3d at 530.

19 Second, the general test for commercial speech from *Central Hudson Gas & Elec-*
20 *tric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), does not apply, because
21 the speech here is both compelled and noncommercial. “[T]he test for identifying com-
22 mercial speech” is “the proposal of a commercial transaction.” *City of Cincinnati v.*
23 *Discovery Network, Inc.*, 507 U.S. 410, 423 (1993). S.B. 253 and 261’s speech compul-
24 sions are untethered from any economic transaction.

25 *X Corp.* is instructive. There, the Ninth Circuit recognized that even if covered
26 companies engaged in some commercial speech—*e.g.*, if their terms of service were
27 commercial speech—compelled disclosures *about* those terms were not *also* commer-
28 cial. *Id.* at 901-02. As here, the compelled speech in *X Corp.* concerning terms of

1 service lacked indicia of commercial speech. It did not *itself* appear in advertisements;
2 nor did it “*merely* disclose existing commercial speech.” 116 F.4th at 901; *cf.*
3 *NetChoice*, 113 F.4th at 1120 (“businesses do not have a clear motivation to provide [the
4 compelled] opinions”). Such speech is “non-commercial.” 116 F.4th at 901.¹

5 That remains true, even *if* (as the State argued here and in *X Corp.*) the disclosures
6 might inform “prospective consumers” about a “product” or were somehow designed to
7 ensure that no one is “misled about” company policies, State’s *X Corp.* Br. 21, 35.
8 Where, as here, the compelled speech “convey[s]” companies’ “views on intensely de-
9 bated and politically fraught topics,” the speech is simply not commercial. *X Corp.*,
10 116 F.4th at 902. The fact that a company has certain “beliefs . . . does not, by itself,
11 convert expression about those beliefs into commercial speech. . . . [S]uch a rule would
12 be untenable. It would mean that basically any compelled disclosure by any business
13 about its activities would be commercial and subject to a lower tier of scrutiny, no matter
14 how political in nature. Protection under the First Amendment cannot be vitiated so
15 easily.” *Id.*

16 **b. S.B. 253 and 261 Cannot Survive Strict Scrutiny**

17 S.B. 253 and 261 fail strict scrutiny because the State cannot “prov[e] that the
18 [laws] are narrowly tailored to serve compelling state interests.” *NIFLA*, 585 U.S. at
19 766.

20 **State interests.** S.B. 253 and 261 serve no compelling state interest. There is no
21 compelling interest “simpl[y]” in providing “additional relevant information” for its own
22 sake. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 348 (1995); *see AMI*,
23 760 F.3d at 31 (Kavanaugh, J., concurring) (“it is plainly not enough for the Government
24

25 ¹ In denying summary judgment, the Court observed that “if ninety-nine percent of the
26 regulated companies have made advertisements relevant to SB 253’s and 261’s required
27 disclosure,” that may show appropriate tailoring “*under at least rational basis review.*”
28 Dkt. 73 at 12 (emphasis added). By the same token, if *strict scrutiny applies*—which
the State cannot avoid—the State’s prospect of showing appropriate tailoring is nil, or
sufficiently close to nil that, in the context of a motion for preliminary injunction, interim
relief should be granted.

1 to say simply that it has a substantial interest in giving consumers information”); *Int’l*
2 *Dairy Foods Ass’n v. Amestoy*, 92 F.3d 67, 73 (2d Cir. 1996) (similar).

3 And while combatting fraud may be a compelling interest, the State has not iden-
4 tified even “a *single* instance” of climate-related fraud. *Junior Sports Magazines Inc. v.*
5 *Bonta*, 80 F.4th 1109, 1117 (9th Cir. 2023) (State may not burden speech “to prevent
6 something that does not appear to occur”). Nor has it—or can it—show that existing
7 laws are not *already* sufficient; state law already “punish[es] such [fraud] directly.” *Vill.*
8 *of Schaumburg v. Citizens for a Better Envm’t*, 444 U.S. 620, 637 & n.11 (1980); see
9 Cal. Penal Code § 484(a).

10 Moreover, the State’s purported interest is not reflected in the operation of the
11 statutes. S.B. 253, for example, will require *every* covered company to state the level of
12 “sulfur hexafluoride” emitted by its employees commuting to work anywhere in the
13 world. S.B. 253 § 2(c)(1)(A)(ii); Dkt. 48-21 at 14. S.B. 261, likewise, will require *every*
14 covered company to opine on the likely economic impacts of government policy re-
15 sponses to climate change. Dkt. 48-27 at 1-2. The State has not met its burden to supply
16 evidence that any California consumer, investor, or employee would need to know any
17 of this—or more—to make an informed decision. The State’s purported interest is illu-
18 sory—at least in a substantial number of the laws’ applications, which is all facial inval-
19 idation requires.

20 At most, the State seems to believe that the laws may trigger boycotts that will
21 cause “companies doing business in California” to “reduce” their emissions and “thereby
22 mitigate the risks California and its residents face from climate change.” Dkt. 52 at 16.
23 But to credit such a claim would require “pil[ing] inference upon inference.” *United*
24 *States v. Lopez*, 514 U.S. 549, 567 (1995). In *National Association of Manufacturers v.*
25 *SEC*, the SEC similarly, and unsuccessfully, argued that a compelled “conflict free” dis-
26 closure might cause consumers to “boycott mineral suppliers having any connection to
27 [a specific] region of Africa,” which would “decrease the revenue of armed groups . . .
28 [and] end or at least diminish the humanitarian crisis there.” 800 F.3d 518, 525 (D.C.

1 Cir. 2015). But there, as here, the “major problem with this idea” was that it “is entirely
2 unproven and rests on pure speculation.” *Id.* The State here has cited *no* evidence—let
3 alone enough to survive strict scrutiny—that consumers would change their purchasing
4 habits based on a company’s emissions or climate-change risks, that any such consumer
5 sentiment would result in material changes in companies’ emissions, or—critically—
6 that any such changes would have a material impact on climate change. First Amend-
7 ment rights may not be infringed through speculation. *See Farris v. Seabrook*, 677 F.3d
8 858, 867 n.9 (9th Cir. 2012) (affirming preliminary injunction in the First Amendment
9 context where the “State ha[d] not provided any evidence” showing that regulation was
10 necessary). As the State admits, climate change is a “global” phenomenon, Dkt. 48-10
11 at 2; combatting it requires a “*global* reduction of [emissions],” Dkt. 48-11 at 5 (empha-
12 sis added).

13 **Narrow tailoring.** In any event, in a substantial number of applications, the laws
14 “likely fail under strict scrutiny because they are not narrowly tailored.” *X Corp.*,
15 116 F.4th at 903. The Ninth Circuit has held that analogous tailoring defects compel a
16 preliminary injunction against laws compelling speech. As in *NetChoice*, the “State
17 could have” assessed the viability of “less restrictive means” to address concerns regard-
18 ing potential misleading statements, such as by “relying on existing criminal laws that
19 prohibit related . . . conduct.” 113 F.4th at 1121. The State could have also considered
20 limiting any disclosures to those companies that advertise on climate-related grounds,
21 or required disclosures only on climate-related advertisements themselves. Those nar-
22 rower speech compulsions, though still subject to First Amendment scrutiny, would not
23 be the sort of blanket, one-size-fits-all mandates that S.B. 253 and 261 impose on all
24 covered companies that satisfy the applicable revenue thresholds.

25 Rather than compelling speech, the State could also have compiled its own reports
26 disclosing the “physical and transition risks,” S.B. 261 § 2(a)(2), that companies in var-
27 ious industries face. *Cf. Nat’l Ass’n of Manufacturers v. SEC*, 748 F.3d 359, 372 (D.C.
28 Cir. 2014), *overruled on other grounds by AMI*, 760 F.3d 18. Or it could have provided

1 its own estimates of companies’ greenhouse-gas emissions. Studies, after all, show that
2 90% of a company’s emissions can be estimated with readily available information, such
3 as industry, size, and earnings growth. *E.g.*, Dkt. 48-22 at 7. “California could . . . post
4 [such] information . . . on its own website,” without “co-opt[ing]” the speech of anyone
5 else. *Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023). But
6 the State has not “tried” any of these less-speech-restrictive alternatives, *Bruni v. City of*
7 *Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2010), much less carried its burden to show they
8 would not satisfy the State’s purported interest, *Meinecke*, 99 F.4th at 521.

9 ***Vagueness concerns compound the problem.*** Vague laws “allow arbitrary and
10 discriminatory enforcement,” *O’Brien v. Welty*, 818 F.3d 920, 930 (9th Cir. 2016), and
11 may have a significant chilling effect on speech. Here, the definition of “climate-related
12 financial risk” is so broad and vague that California could almost certainly find fault in
13 the disclosure (or lack of disclosure) of any company the State disfavors.² This vague,
14 sweeping definition creates a substantial risk that companies whose climate-related prac-
15 tices do not conform to California’s policy preferences will be subject to “arbitrary and
16 discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see Canyon*
17 *Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1029 (9th
18 Cir. 2019) (invalidating law regarding “reporting requirements” “triggered by any in-
19 kind expenditure”).

20 **3. The Laws Fail Any Degree of First Amendment Review**

21 Even under lesser scrutiny—*Zauderer* or *Central Hudson*—the laws fail. *Zau-*
22 *derer* provides that a “disclosure requirement cannot be ‘unjustified’” or “‘unduly bur-
23 *densome’” and must “remedy a harm that is ‘potentially real, not purely hypothetical.’”*
24 *NIFLA*, 585 U.S. at 776. A requirement is unduly burdensome when its coverage is

25 _____
26 ² This risk is defined as any “material risk of harm to immediate and long-term financial
27 outcomes due to physical and transition risks, including, but not limited to, risks to cor-
28 porate operations, provision of goods and services, supply chains, employee health and
safety, capital and financial investments, institutional investments, financial standing of
loan recipients and borrowers, shareholder value, consumer demand, and financial mar-
kets and economic health.” S.B. 261 § 2(a)(2).

1 either “curiously narrow” or “broader than reasonably necessary.” *Id.* at 777. These
2 requirements are “stringent” and “demanding,” and “tightly limi[t] mandatory disclo-
3 sures to a very narrow class.” *AMI*, 760 F.3d at 34 (Kavanaugh, J., concurring). And the
4 State, not the plaintiff, “has the burden to prove that the [compelled speech] is neither
5 unjustified nor unduly burdensome.” *NIFLA*, 585 U.S. at 776. Because the laws do “not
6 survive *Zauderer*,” they “necessarily cannot survive *Central Hudson*.” *Personal Care*
7 *Products Council v. Bonta*, 2024 WL 3011001, at *7 n.5 (E.D. Cal. June 12, 2024).

8 First, the State has failed to “presen[t] a nonhypothetical justification” for the
9 compelled speech. *NIFLA*, 585 U.S. at 777. As discussed, the State has not shown, and
10 cannot show, that “the harm” it seeks “to remedy” (an alleged lack of information) is
11 “more than ‘purely hypothetical,’” *id.*, or that the required disclosures “will in fact alle-
12 viate [that harm] to a material degree,” *Ibanez v. Fla. Dep’t for Bus. & Pro. Regulation,*
13 *Bd. of Accountancy*, 512 U.S. 136, 146 (1994). Nor, as explained, has the State “nar-
14 rowly drawn” either measure. *R.M.J.*, 455 U.S. at 203. The laws are incredibly broad.
15 They apply to any company over a certain revenue threshold that does business in Cali-
16 fornia, regardless of whether that company has investors or climate change is likely to
17 have a material impact on any product or service sold within the State. The State has no
18 evidence the laws will materially curb climate change. And it cannot articulate a legiti-
19 mate interest in forcing discussion of out-of-state, or even out-of-country, climate-re-
20 lated information merely because a company transacts within the State. S.B. 253 and
21 261 fail any level of First Amendment scrutiny.

22 * * *

23 For these reasons, S.B. 253 and 261 likely facially violate the First Amendment.
24 The State cannot carry its burden of justifying either law. *Meinecke*, 99 F.4th at 521.
25 The laws compel speech on a controversial subject, and the compelled speech is not
26 purely factual. Strict scrutiny applies, even *if* the compelled speech were commercial (it
27 is not). And in all events, the laws are so overinclusive, they flunk any First Amendment
28 test.

B. The Balance of Equities Strongly Supports a Preliminary Injunction

Each of the remaining preliminary-injunction factors supports immediate relief. Without interim injunctive relief, Plaintiffs and their members will be forced to speak against their will on a matter of contentious public debate—a classic irreparable First Amendment injury—and will continue to incur costs as the parties proceed through months of discovery and litigation. The public interest, too, tilts decisively in Plaintiffs’ favor; it is “always in the public interest to prevent the violation of a party’s constitutional rights.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

1. S.B. 253 and 261 Will Cause Irreparable Harm

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Here, the Court should have “no difficulty finding that [Plaintiffs] ha[ve] established a likelihood of irreparable harm,” as the speech compulsions at issue begin to take effect in “less than a year.” *NetChoice, LLC v. Bonta*, 692 F. Supp. 3d 924, 964 (N.D. Cal. 2023), *aff’d in relevant part*, 113 F.4th 1101 (9th Cir. 2024). “S.B. 253 and S.B. 261 will require a number of the Chamber’s members” and other plaintiffs “to speak in 2026.” Quaadman Decl. ¶ 10; *see, e.g.*, Shoen Decl. ¶ 38 (UHHC “disagrees with including this type of information on its public website”); Golombek Decl. ¶ 6; Lunde Decl. ¶ 5; Englin Decl. ¶ 5. Courts in this Circuit have repeatedly endorsed preliminary injunctions against California’s attempts to compel speech in violation of the First Amendment in similar contexts. *See, e.g., X Corp.*, 116 F.4th at 903-04 (reversing denial of preliminary injunction; “[b]ecause X Corp. has a colorable First Amendment claim, it has demonstrated that it likely will suffer irreparable harm”); *Cal. Chamber of Com. v. Becerra*, 529 F. Supp. 3d 1099, 1121 (E.D. Cal. 2021) (granting preliminary injunction as “[i]rreparable harm is relatively easy to establish in a First Amendment case”; “[b]ecause the Chamber has a ‘colorable First Amendment claim,’ it has demonstrated it ‘likely will suffer irreparable harm’”), *aff’d sub nom. Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468 (9th Cir. 2022).

1 The same relief is warranted here. S.B. 261 will require companies to begin
2 speaking—to opine on climate-related risks, in clear violation of their First Amendment
3 rights—“[o]n or before January 1, 2026.” § 2(b)(1)(A). S.B. 253, likewise, will require
4 companies to make their first inexact, misleading emissions reports “in 2026” for the
5 prior fiscal year. CARB Enforcement Notice 1. Implementing regulations for S.B. 253
6 may be pending (as this Court has observed, Dkt. 77), but the State has made clear that
7 reports “will still be due” no matter what. So, companies *will* soon be required to speak.
8 *Id.* Speech obligations under S.B. 261 and 253 are thus “less than a year away” and
9 “businesses already are expending time and funds preparing for enforcement.”
10 *NetChoice*, 692 F. Supp. 3d at 964. “[T]o make the disclosures required in 2026, com-
11 panies must begin tracking and recording a vast amount of climate-related information
12 now.” Quaadman Decl. ¶ 8. For example, they “need to determine where the required
13 information is located across their companies; adopt policies and procedures to collect
14 and analyze that information; develop IT systems to track and aggregate the data; hire
15 additional employees and train current ones; retain external consultants; and test their
16 internal infrastructure.” *Id.*

17 The State itself has exhorted companies to “move toward full compliance” with
18 S.B. 253 “as quickly as possible.” CARB Enforcement Notice 2. It readily acknowl-
19 edges that “companies may need some lead time to implement new data collection pro-
20 cesses to allow for fully complete scope 1 and scope 2 emissions reporting.” *Id.* And
21 even though CARB has not yet issued implementing regulations for S.B. 253, it has in-
22 structed companies to make “good faith efforts to comply”—including by “retain[ing]
23 all data relevant to emissions reporting” for the current fiscal year. *Id.* at 1. In other
24 words, CARB has made clear that companies, must take action *now* to demonstrate good
25 faith compliance efforts.

26 Unsurprisingly, commentators are already recommending companies “begin to
27 put the right measures in place to comply” now. Hamburger Decl., Ex. B (Cheng &
28 Zilberberg, *supra*); see also *id.*, Ex. B (David R. Singh, *SB 253 puts companies on the*

1 *climate clock*, Daily Journal (Dec. 27, 2004)). All those compliance costs—on emis-
2 sions reporting alone—could top \$1 million per firm. *E.g.*, Shoen Decl. ¶ 12. “Requir-
3 ing businesses to proceed with such preparations without knowing whether [the laws
4 are] valid ‘would impose a palpable and considerable hardship’ on them,” further war-
5 ranting the issuance of a preliminary injunction. *NetChoice*, 692 F. Supp. 3d at 964
6 (quoting *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*,
7 461 U.S. 190, 201 (1983)); *see Iowa Pork Producers Ass’n v. Bonta*, 2022 WL 1042561,
8 at *15 (C.D. Cal. Feb. 28, 2022) (compliance costs “can constitute irreparable injury”).

9 Because discovery and full litigation on the merits will not be completed before
10 S.B. 253 and 261 go into effect, and companies are already taking steps to prepare for
11 compliance with these laws, *see, e.g.*, Quaadman Decl. ¶ 8; Shoen Decl. ¶ 11, only a
12 preliminary injunction can save Plaintiffs’ members from the impending constitutional
13 injury of “convey[ing] to the public” a message they “d[o] not believe,” *id.* ¶ 41.

14 **2. The Public Interest Strongly Supports a Preliminary Injunction**

15 When “[g]overnment is the opposing party,” the balance of equities and public
16 interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). As the Ninth Circuit has
17 recognized, “it is *always* in the public interest to prevent the violation of a party’s con-
18 stitutional rights.” *Baird*, 81 F.4th at 1042 (emphasis added). The “fact that [Plaintiffs]
19 have raised serious First Amendment questions compels a finding that . . . the balance
20 of hardships tips sharply in [Plaintiffs’] favor.” *Am. Beverage Ass’n v. City and Cty. of*
21 *San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019); *see Associated Press v. Otter*,
22 682 F.3d 821, 826 (9th Cir. 2012) (Courts “have consistently recognized the significant
23 public interest in upholding First Amendment principles.”)

24 The State, moreover, cannot credibly claim that delaying implementation of
25 S.B. 253 and 261 threatens any urgent public interest. The speech the State seeks to
26 compel has *never* been required. And existing law *already* prohibits misleading state-
27 ments. A preliminary injunction would simply “preserve the status quo until [this Court]
28

1 resolves the merits of this case.” *LGS Architects, Inc. v. Concordia Homes of Nevada*,
2 434 F.3d 1150, 1157 (9th Cir. 2006).

3 **V. CONCLUSION**

4 The Court should preliminarily enjoin defendants from implementing, applying,
5 or taking any action to enforce S.B. 253 or 261.

6
7 DATED: February 25, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation and Western Growers Association, certifies that this brief contains 6,999 words, which complies with the word limit of L.R. 11-6.1.

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