EUGENE SCALIA, SBN 151540
escalia@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1700 M St. N.W.
Washington, D.C. 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

Attorneys 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

(*Additional counsel listed on next page*)

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 INJUNCTION PENDING APPEAL

HEARING:
Date: September 8, 2025
Time: 1:30 pm
Location: Courtroom 5D
Judge: Otis D. Wright II

BRADLEY J. HAMBURGER
SBN 266916
bhamburger@gibsondunn.com
SAMUEL ECKMAN
SBN 308923
seckman@gibsondunn.com
ELIZABETH STRASSNER
SBN 342838
estrassner@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

BRIAN A. RICHMAN
(*pro hac vice*)
DC Bar No. 230071
brichman@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Ave., Suite 2100
Dallas, TX 75201-2923
Telephone: 214.698.3100
Facsimile: 214.571.2900

Attorneys 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

KEVIN PALMER
(*pro hac vice*)
DC Bar No. 90014967
kpalmer@uschamber.com
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA
1615 H Street, NW
Washington, D.C. 20062-2000
Telephone: 202.659.6000
Facsimile: 202.463.5302

Attorneys for Plaintiff Chamber of Commerce of the United States of America

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I. INTRODUCTION

Plaintiffs have appealed this Court's order denying their motion for a preliminary injunction barring defendants from implementing, applying, or taking any action to enforce Senate Bills 253 and 261—statutes that go into effect January 1, 2026. *See* Dkt. 112 ("Order"); Dkt. 114. In accordance with Federal Rule of Appellate Procedure 8(a)(1)(C), Plaintiffs now respectfully seek an injunction pending that appeal. Rule 8 requires that a request for an injunction pending appeal be made first in the district court, and Plaintiffs do so here. The Court should grant an injunction pending appeal because Plaintiffs face imminent, irreversible First Amendment harm from compelled speech, and the constitutional questions they raise merit appellate review before the laws take effect.

SB 253 and SB 261 require Plaintiffs' members to publicly speak on climate-related topics in mere months; steps to prepare those compelled statements must begin even sooner. *See* Order 4, 8–9 & n.4. And if Plaintiffs are correct that these speech compulsions violate the First Amendment, the resulting harm will be irreparable absent an injunction pending appeal. *See, e.g.*, *Am. Beverage Ass'n v. City of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (en banc). To avoid such irreparable harm while the Ninth Circuit considers Plaintiffs' appeal of the order denying their motion for a preliminary injunction, Plaintiffs respectfully move for a limited injunction pending the conclusion of the Ninth Circuit's review (rather than for the entirety of this action). Plaintiffs also respectfully request a ruling on this motion by **September 15, 2025**, so that Plaintiffs may promptly seek relief from the Ninth Circuit if this Court declines to grant an injunction pending appeal.

Absent this interim relief, Plaintiffs' members will be forced to engage in speech that cannot be undone, even if the laws ultimately are held unconstitutional. An injunction pending appeal is warranted to ensure that these First Amendment rights are not harmed by compelled compliance, and so the Ninth Circuit has a meaningful opportunity to review the serious constitutional questions this case presents.

The standard for obtaining an injunction pending appeal is not demanding, and is satisfied here. Courts routinely grant such relief even where they previously denied a preliminary injunction, recognizing that "the success on the merits factor cannot be rigidly applied" and that "[a]n injunction is frequently issued where the trial court is charting a new and unexplored ground." *Am. Beverage Ass'n v. City of San Francisco*, 2016 WL 9184999, at *2 (N.D. Cal. June 7, 2016); *see also Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 2010 WL 4313973, at *1 n.3 (C.D. Cal. Oct. 25, 2010). As the court explained in granting an injunction pending appeal in *American Beverage Association*, such relief "may be appropriate, even if the Court believe[s] its analysis [previously] denying preliminary injunctive relief [was] correct." 2016 WL 9184999, at *2.

Under Ninth Circuit precedent, Plaintiffs need not show a likelihood of success on the merits. Instead, an injunction may issue where Plaintiffs raise "serious questions" going to the merits and the balance of hardships tips sharply in their favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011); *see, e.g.*, *Am. Beverage Ass'n*, 2016 WL 9184999, at *1–2 (finding "a plausible argument that there are serious questions on the merits"). It is beyond dispute that the issues Plaintiffs have raised are, at a minimum, "serious questions"—a fact that is apparent from the Court's rejection of many of the State's defenses of the laws.

The standard for an injunction pending appeal is especially forgiving in First Amendment cases. The Ninth Circuit has held that the irreparable harm requirement is "relatively easy to establish" where constitutional rights are at stake. *Cal. Chamber of Com. v. Council for Educ. & Research on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022). Plaintiffs "'need only demonstrate the existence of a colorable First Amendment claim.'" *Youth 71Five Ministries v. Williams*, 2024 WL 3749842, at *4 (9th Cir. Aug. 8, 2024) (quoting *Cal. Chamber*, 29 F.4th at 482) (granting injunction pending appeal).

Plaintiffs easily meet this standard. This Court has already concluded that SB 253 and SB 261 "compel speech," triggering First Amendment scrutiny. Order 9, 12. While the Court ultimately concluded that these laws satisfied that scrutiny, Plaintiffs raise

serious constitutional questions about whether the compelled disclosures are commercial speech, whether they are purely factual and uncontroversial, and whether they are tailored to any legitimate government interest. The balance of hardships also tips sharply in Plaintiffs' favor: absent relief, they will be forced to speak in violation of the First Amendment, while the State will suffer no comparable harm from a temporary pause in enforcement. *See Warsoldier v. Woodford*, 418 F.3d 989, 1002 (9th Cir. 2005) (explaining that "this case raises serious First Amendment questions and compels a finding that the potential for irreparable injury exists, or at the very least, that 'the balance of hardships tips sharply in [plaintiff's] favor'"). Finally, the public interest "always" favors protecting constitutional rights from governmental overreach. *Am. Beverage Ass'n*, 916 F.3d at 758.

The Court should enjoin defendants from implementing, applying, or taking any action to enforce SB 253 or SB 261 against Plaintiffs' members pending the Ninth Circuit's resolution of Plaintiffs' appeal.

II. BACKGROUND

Senate Bills 253 and 261 impose sweeping climate-related speech mandates on thousands of companies nationwide. *See* Order 2–5. SB 253 requires entities with over $1 billion in annual revenue that "d[o] business in California" to publicly report Scope 1, 2, and 3 greenhouse gas emissions—defined to include emissions from third parties such as utilities, suppliers, and customers. *Id.* at 2. SB 261 requires entities with over $500 million in annual revenue to publish biennial reports assessing "climate-related financial risk," including speculative judgments about future policy responses and global market impacts. *Id.* at 4.

Although regulations to implement SB 253 are still forthcoming, the California Air Resources Board ("CARB") has issued an enforcement notice confirming that companies must begin reporting Scope 1 and 2 emissions in 2026 and must take action now to demonstrate good-faith compliance. *See* Order 3. SB 261 likewise requires

disclosures beginning January 1, 2026. *Id.* at 4. Plaintiffs' members are already incurring substantial costs to prepare for compliance. *See id.* at 8–9.

On August 13, 2025, the Court denied Plaintiffs' motion for a preliminary injunction. The Court held that SB 253 and SB 261 "compel speech," that their "primary effect—and purpose—is to compel speech," and that the First Amendment applies. Order 9, 12. It also ruled that SB 261's compelled disclosures are not purely factual and thus subject to intermediate scrutiny. *See id.* at 23–24. But the Court ultimately concluded that both laws likely survive First Amendment review—applying *Zauderer* to SB 253 and intermediate scrutiny to SB 261—and held that Plaintiffs had not shown a likelihood of success on the merits of their facial challenge. *See id.* at 27–40. The Court did not dispute that Plaintiffs' members have an imminent obligation to speak under these laws, nor did it question that unconstitutionally compelled speech is irreparable harm. *See id.* at 8–9, 40.

Plaintiffs have filed a notice of appeal, Dkt. 114, and given the laws' effective dates, respectfully request a decision on this motion by **September 15, 2025**.

III. LEGAL STANDARD

A district court may grant an injunction pending appeal under Federal Rule of Civil Procedure 62(d) and Federal Rule of Appellate Procedure 8(a)(1)(C). The standard is less exacting than that for a preliminary injunction, and is applied with flexibility in recognition of the need to preserve appellate rights. See *Am. Beverage Ass'n*, 2016 WL 9184999, at *2 (N.D. Cal. June 7, 2016) ("an injunction pending appeal may be appropriate, even if the Court believed its analysis in denying preliminary injunctive relief is correct").

Under Ninth Circuit precedent, a party seeking an injunction pending appeal need not show a likelihood of success on the merits. Instead, relief is appropriate where the party raises "serious questions" going to the merits and the balance of hardships tips sharply in its favor. *Alliance for the Wild Rockies*, 632 F.3d at 1134–35. This sliding-

scale approach applies with particular force in First Amendment cases, where the irreparable harm requirement is "relatively easy to establish." *Cal. Chamber*, 29 F.4th at 482.

Courts also consider the public interest and whether interim relief would preserve the status quo pending appeal. Where constitutional rights are at stake, the public interest "always" favors protection. *Am. Beverage Ass'n*, 916 F.3d at 758.

IV. ARGUMENT

The Court should not allow thousands of American businesses (*see* Order 2, 4) to be compelled to speak before the Ninth Circuit has an opportunity to review the serious constitutional questions presented in this case. *Cf. Int'l Fruit Genetics, LLC v. P.E.R. Asset Mgmt. Tr.*, 2016 WL 5922715, at *2 (C.D. Cal. Oct. 4, 2016) (Wright, J.) (temporarily suspending injunction "to allow Defendants time to seek a suspension from the Ninth Circuit"). The disclosures mandated by SB 253 and SB 261 are not minor regulatory requirements—they will impose immediate and substantial burdens on numerous businesses in a matter of months, compelling speech on matters of public controversy with significant legal and reputational consequences. *See* Order 8–9.

A. Plaintiffs Have Raised Serious First Amendment Questions

This Court has already held that SB 253 and SB 261 "compel speech," and that their "primary effect—and purpose—is to compel speech." Order 9, 12. That finding alone satisfies the threshold for First Amendment scrutiny and confirms that Plaintiffs' claims are not only colorable but substantial. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1117 (9th Cir. 2024) ("[T]he forced disclosure of information, even purely commercial information, triggers First Amendment scrutiny.").

The constitutional questions presented here are serious. Plaintiffs challenge whether the compelled disclosures are properly classified as commercial speech, whether they trigger limited scrutiny under *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), and whether they compel speech that is purely factual and uncontroversial. Plaintiffs also raise serious questions about whether the laws are appropriately tailored to any legitimate government interest—particularly given their breadth,

controversial content, and lack of a materiality requirement. Each of these issues implicates foundational First Amendment questions. While this Court has concluded that SB 253 and SB 261 are likely constitutional, the Ninth Circuit should have the opportunity to address these issues before the laws take effect.

1. Heightened Scrutiny Applies

The compelled speech mandated by SB 253 and SB 261 raises foundational First Amendment concerns. At the heart of the constitutional analysis is whether the speech these laws require is commercial. If it is not, then strict scrutiny applies—a standard that is rarely satisfied. *See Nat'l Inst. of Family & Life Advocates v. Becerra* (*NIFLA*), 585 U.S. 755, 766 (2018); *NetChoice*, 11 F.4th at 1121. Strict scrutiny requires the government to prove that the law is narrowly tailored to serve a compelling interest, and that no less restrictive alternative would suffice. *See NIFLA*, 585 U.S. at 766; *NetChoice*, 11 F.4th at 1121. That is a "daunting" standard, *Green v. Miss U.S. of Am., LLC*, 52 F.4th 773, 791 (9th Cir. 2022), and the State has not come close to meeting it here.

Plaintiffs have raised serious questions that the compelled speech here is not commercial, and that even if it were, the laws still fall outside the bounds of *Zauderer* review, which applies only to certain factual, uncontroversial disclosures related to specific commercial transactions.

a. The Compelled Speech Is Not Commercial, and Strict Scrutiny Is Required

The speech compelled here does "not satisfy the 'usual definition'" of commercial speech—"speech that does no more than propose a commercial transaction." *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024) (cleaned up); *see also City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993). And there is a serious question whether it has the three characteristics typically found in commercial speech under *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66–67 (1983): it is not an advertisement, it does not refer to a particular product or service, and it is not economically motivated. *See NetChoice*, 113 F.4th at 1120. This Court expressly stated that the

compelled speech here is not an advertisement, and noted that the State itself does not claim the disclosures refer to a particular product. *See* Order 18-19. Thus, according to this Court's Order, two of the three *Bolger* factors are not met.

This Court nevertheless deemed the speech commercial, reasoning that because some companies voluntarily disclose *some* climate-related information, the laws' compelled disclosures of *other* information could "function as advertisements," even though none "refer to a particular product." Order 18–19. Plaintiffs respectfully submit that Ninth Circuit precedent raises a serious question as to that conclusion. Specifically, in *X Corp.*, the Ninth Circuit stated that there are only "limited" exceptions to the "general rule" that commercial speech must "propose a commercial transaction." 116 F.4th at 901. And it made clear that in "all" of those exceptions, the speech must "communicat[e] the terms of an actual or potential transaction." *Id.* The Ninth Circuit cited examples such as "targeted, individualized solicitations," "contract negotiations," and "retail product warnings"—each of which involved speech that was transactional in nature. *Id.*

Here, as in *X Corp.*, there is a serious question whether that standard is met. The speech mandated by SB 253 and SB 261 does not communicate the terms of any transaction, and it is not tied to any product or service. Nor does it serve any promotional function. The Court's suggestion that the disclosures "function as advertisements" at least arguably misapprehends the nature and purpose of the laws. Order 19. The laws' intent is precisely the opposite of promotional: the laws aim to impose public accountability by compelling disclosures that many companies would prefer not to make. *See* Dkt. 48-5 at 2:25-3:11. The mandated speech is designed to expose, not to promote. It is not economically motivated, it does not advance any commercial interest of the speaker, and it does not merely compel disclosures in product labels or advertisements. It is miles apart from what the Supreme Court and Ninth Circuit have recognized as commercial speech.

These constitutional issues underscore why an injunction pending appeal is warranted. Plaintiffs have raised serious First Amendment questions about whether SB 253 and SB 261 compel non-commercial speech on matters of public controversy—speech that is entitled to the highest constitutional protection. These questions go to the heart of the compelled speech doctrine and merit full appellate review before the laws take effect. Because the balance of hardships tips sharply in Plaintiffs' favor and the risk of irreparable harm is imminent, interim relief is necessary to preserve the status quo and prevent constitutional injury.

b. *Zauderer* Does Not Apply

Even assuming the compelled disclosures mandated by SB 253 and SB 261 were commercial speech, there is a serious question whether the laws qualify for the more deferential review available under *Zauderer*.

With respect to SB 261, this Court correctly concluded that *Zauderer* does not apply. Order 23. The Court ruled that SB 261 compels disclosures that are not purely factual, but instead require companies to make subjective assessments about future risks and policy developments—such as the potential financial impact of climate change on their operations. These forward-looking judgments, the Court held, are not factual in nature and therefore fall outside the scope of *Zauderer*. Order 24.

Plaintiffs respectfully submit that serious questions exist as to whether *Zauderer* applies to SB 253, either. *Zauderer* applies only in narrow circumstances, and one threshold requirement is that the compelled disclosure be related to the "terms under which" the product or "services will be available." *NIFLA*, 585 U.S. at 768. If that requirement is not satisfied, *Zauderer* does not apply—regardless of whether the speech is factual or uncontroversial. *See id.*

There are serious arguments that that threshold is not met here. SB 253 does not require companies to disclose information about any specific product or service. Instead, it compels broad public statements about the attribution of emissions to certain companies—topics that are untethered from any particular transaction. The disclosures are not

designed to inform consumers about the terms of a sale, the nature of a service, or any other commercial offering. And they are "disconnected from any economic transaction." *NetChoice*, 113 F.4th at 1119. Because the disclosures are not related to the terms of any product or service, *Zauderer* at least arguably does not apply to SB 253.

SB 253 also at least arguably falls outside *Zauderer*'s reach for an additional reason: it compels speech that is neither purely factual nor uncontroversial. "[C]limate change" is the paradigmatic example of a "controversial subject." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 913 (2018). And there is a serious question as to whether SB 253 requires a reporting company to claim as its own the emissions of third parties whom it does not control—including electricity suppliers, customers, and vendors. That is not a neutral factual disclosure; it is a compelled ideological statement, as it forces companies to adopt the State's normative judgment about responsibility for climate change.

If *Zauderer* does not apply to either SB 253 or SB 261, the laws must satisfy heightened scrutiny. And Plaintiffs have raised serious questions about whether the laws can survive such scrutiny.

2. The Laws Are Not Narrowly Tailored to Any Legitimate Government Interest

Regardless of the level of scrutiny, Plaintiffs have raised serious questions about whether the laws are appropriately tailored to any legitimate government interest. The State has identified three interests—none of which satisfy those standards.

Deception. The Court has already rejected the State's argument that SB 253 and SB 261 are justified by an interest in correcting misleading speech. *See* Order 34–37. That finding forecloses reliance on the core rationale of *Zauderer*, which permits compelled disclosures when they are "reasonably related to the State's interest in preventing deception." *Zauderer*, 471 U.S. at 651. The Supreme Court has made clear that it is "reluctant to mark off new categories of speech for diminished constitutional protection," and "especially reluctant to exempt a category of speech from the normal

prohibition on content-based restrictions." *NIFLA*, 585 U.S. at 767. Yet the alternative justifications the State offers for its restrictions are unprecedented—just as the disclosures themselves are unprecedented in their breadth and burdensomeness.

Reducing Emissions. The State has asserted that SB 253 and SB 261 would help reduce emissions and mitigate climate risks. For SB 261, the Court rejected the argument, finding that the State's emissions-reduction interest could not justify the law under intermediate scrutiny. *See* Order 39–40.

As for SB 253, while the Court accepted emissions reduction as a substantial interest, it found the supporting evidence equivocal. *See* Order 32–33. The State relied on studies showing modest emissions reductions following voluntary or mandatory disclosures, but the Court noted that these studies do not definitively establish that SB 253's requirements will lead to emissions reductions. *See id.* Nonetheless, the Court held that the State had provided "sufficient evidence" that SB 253's mandates were "reasonably related to the State's substantial government interest in reducing emissions." *Id.* at 33.

Plaintiffs respectfully submit that there are serious questions as to whether this conclusion was correct. First, the Court failed to define the asserted interest with the requisite precision. *See NIFLA*, 585 U.S. at 775 ("precision" is "the touchstone" of "regulations of speech" (brackets omitted)). The State does not have a substantial interest in reducing emissions in the abstract; its asserted interest lies in reducing emissions to a level that would materially mitigate "the severity of the climate risks the state faces." Dkt. 89 at 18. Yet the State presented no evidence that the modest reductions it anticipates would have any meaningful impact on climate change. As the State itself acknowledges, climate change is a "global" phenomenon, Dkt. 48-10 at 2, and addressing it requires a "*global* reduction of [emissions]," Dkt. 48-11 at 5 (emphasis added). There is no "long (if heretofore unrecognized) tradition" of using compelled speech to achieve environmental outcomes, *NIFLA*, 585 U.S. at 767, and certainly none to justify compelling thousands of companies to speak in service of a policy goal that will yield only marginal effects.

Second, the Court failed to evaluate whether the speech compulsion, even if it served a government interest, was "broader than reasonably necessary" under *Zauderer*. *NIFLA*, 585 U.S. at 776. As Plaintiffs demonstrated, the State could have calculated its own estimates of companies' greenhouse-gas emissions using publicly available information, such as industry, size, and earnings growth. *See* Dkt. 48-22 at 7. Yet the State offered no evidence to show that this alternative would not satisfy its purported interest. *Cf. Am. Beverage Ass'n*, 916 F.3d at 757 (*Zauderer* not met where less burdensome alternatives "would accomplish [the government's] stated goals").

Consumer and Investor Interests. The State also claimed an interest in providing reliable information to investors and consumers "so that they can 'make informed judgments about the impact of climate-related risks on their economic choices.'" Order 28. The Court rejected this rationale with regard to consumers. *See id.* at 29. And while the Court credited the interest with regard to investors (*see id.*), there is at minimum a substantial question whether that conclusion was correct.

Plaintiffs will argue on appeal that courts have consistently held that satisfying public demand for information is not, by itself, a substantial government interest. *See, e.g.*, *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 73 (2d Cir. 1996); *Am. Meat Inst. v. USDA*, 760 F.3d 18, 31 (D.C. Cir. 2014) (Kavanaugh, J., concurring). As then-Judge Kavanaugh explained, "it is plainly not enough for the Government to say simply that it has a substantial interest in giving consumers information. After all, that would be true of any and all disclosure requirements." *Id.* at 31. If public demand alone were sufficient, "there is no end to the information that states could require manufacturers to disclose about their production methods." *Id.* at 31–32. "Some consumers might want to know whether their U.S.-made product was made by U.S. citizens and not by illegal immigrants. Some consumers might want to know whether a doctor has ever performed an abortion. Some consumers might want to know the political affiliation of a business's owners." *Id.* at 32. The First Amendment does not permit compelled speech merely to satisfy curiosity or promote policy preferences untethered to a substantial interest.

That concern is especially acute here, where the only investor the State identified to support its asserted interest was CALPERS—a state-affiliated investment entity. *See* Order 29. A disclosure mandate affecting thousands of private businesses nationwide cannot be justified by the preferences of a single government-linked investor.

The Court also failed to assess whether the speech compulsion was "broader than reasonably necessary." *NIFLA*, 585 U.S. at 776. The Court acknowledged that SB 253 and SB 261 are not tailored to investor interest "to the extent the law compels disclosure from companies that have no California investors." Order 30; *see also id.* at 38–39. The Court dismissed this as a facial-challenge issue, *see id.* at 30–31, 38–39, but the overbreadth of SB 253 and SB 261 goes to the tailoring requirement; a law that reaches entities with no plausible connection to the asserted interest cannot survive even deferential scrutiny. *See Zauderer*, 471 U.S. at 649 (rejecting "broad prophylactic rules" in this area).

The mismatch between the laws' scope and the State's asserted interest is illustrated even more starkly by the absence of a requirement that the mandated information be *material* to investors, rather than merely of "interest." Under the securities laws, materiality is crucial to determining investors' need for disclosure. *See, e.g.*, FAST Act, Pub. L. No. 114-94, § 72003, 129 Stat. 1312, 1785 (2015). Indeed, the SEC's climate disclosure rule—which presents serious legal problems of its own—at least purports to limit Scope 1, 2, and 3 reporting to circumstances where it would be material. *See* 89 Fed. Reg. 21,668, 21,916/3 (SEC Mar. 28, 2024). The laws at issue here, which purport to serve investors but omit a central determinant of information's importance to investors, are plainly broader than reasonably necessary.

These tailoring flaws reinforce why interim relief is necessary. Plaintiffs have raised serious questions whether SB 253 and SB 261 are appropriately tailored to any legitimate government interest—questions that go to the heart of First Amendment scrutiny. The laws compel speech from entities with no connection to the asserted interests, rely on speculative benefits, and ignore less burdensome alternatives. That overbreadth,

coupled with the absence of a materiality requirement and reliance on a single state-affiliated investor, underscores the constitutional stakes. California has imposed novel and sweeping compelled speech requirements that raise serious constitutional questions and thus warrant appellate scrutiny before those requirements go into effect.

B. Plaintiffs Face Imminent and Irreparable Harm

The speech mandated by SB 253 and SB 261 must begin imminently—as early as January 1, 2026. *See* Order 4, 8–9 & n.4. Plaintiffs' members will then be required to publicly speak on climate-related topics in ways this Court has already ruled "trigge[r] First Amendment scrutiny." *Id.* at 11 (quoting *NetChoice*, 113 F.4th 1117). If Plaintiffs are correct that the laws violate the First Amendment—and they raise "plausible argument[s]" that they do—the resulting harm will be irreparable. *Am. Beverage Ass'n*, 2016 WL 9184999, at *2. As the Ninth Circuit has repeatedly held, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Cal. Chamber*, 29 F.4th at 477 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. The Balance of Equities Tips Sharply in Plaintiffs' Favor

This imminent constitutional harm not only satisfies the irreparable injury requirement—it also tips the equities sharply in Plaintiffs' favor. Absent interim relief, Plaintiffs' members will be forced to speak in violation of the First Amendment, incurring expressive and reputational harms that cannot be undone. By contrast, the State will suffer no comparable injury from a temporary pause in enforcement. The State cannot claim urgency, having already failed to issue implementing regulations within the statutorily required timeline. *See Am. Fed'n of Lab. v. Chertoff*, 552 F. Supp. 2d 999, 1007 (N.D. Cal. 2007) ("the agency's delay does undercut the assertion that it will be irreparably harmed if the Court maintains the status quo"). A limited injunction pending appeal would simply preserve the status quo and ensure that the Ninth Circuit has a meaningful opportunity to review the serious constitutional questions presented before any constitutional harm is inflicted. Moreover, any hardship to the State will be minimal, as

the appeal will proceed on an expedited basis. *See Am. Beverage Ass'n*, 2016 WL 9184999, at *2 (granting injunction pending appeal because "the appeal will likely be resolved on an expedited basis (given Ninth Circuit Rule 3-3)").

The public interest likewise favors an injunction. The public interest "always" favors protecting constitutional rights. *Am. Beverage Ass'n*, 916 F.3d at 758. Enjoining enforcement of SB 253 and SB 261 during the pendency of the appeal would not prevent the State from pursuing its climate goals through other means, including voluntary disclosures and investor engagement. But it would prevent irreversible constitutional harm and ensure that appellate review is not undercut by compelled compliance.

V. CONCLUSION

To preserve the status quo and prevent irreparable harm while the Ninth Circuit considers the serious constitutional questions presented by Senate Bills 253 and 261, the Court should enjoin defendants from implementing, applying, or taking any action to enforce the laws against Plaintiffs' members pending appeal.

DATED: August 20, 2025

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Bradley J. Hamburger*

Eugene Scalia, SBN 151540
Bradley J. Hamburger, SBN 266916
Samuel Eckman, SBN 308923
Brian A. Richman (*pro hac vice*)
Elizabeth Strassner, SBN 342838

Attorneys 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

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Kevin Palmer (*pro hac vice*)

Attorneys for Plaintiff Chamber of Commerce of the United States of America

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 4,620 words, which complies with the word limit of this Court's Rule VII.A.3.

DATED: August 20, 2025

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Bradley J. Hamburger*

Eugene Scalia, SBN 151540
Bradley J. Hamburger, SBN 266916
Samuel Eckman, SBN 308923
Brian A. Richman (*pro hac vice*)
Elizabeth Strassner, SBN 342838

Attorneys 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

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Kevin Palmer (*pro hac vice*)

Attorneys for Plaintiff Chamber of Commerce of the United States of America