No. 25-5327

United States Court of Appeals for the Ninth Circuit

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-Appellants,

v.

LAUREN SANCHEZ, 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-Appellees.

On Appeal from an order of the
United States District Court for the Central District of California,
Case No. 2:24-cv-801, Judge Otis D. Wright, II

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INTRODUCTION

California set out to "move the nation and the world" by transforming the economy through compelled, state-scripted speech about climate responsibility, "forcing" the "biggest businesses" to "accoun[t]" publicly for not "doing their part to tackle the climate crisis." 8-ER-1946-1947 (Assemb. Zbur); 8-ER-2035 (Sen. Wiener). SB 261 and SB 253 are extraordinary by design: they use mandatory, government-scripted narratives to "activate" corporate behavior and reshape the marketplace itself. SB 253 § 1(*l*).

Yet California now downplays these unprecedented mandates—the "nation's first" (8-ER-2035 (Sen. Wiener))—as nothing more than mundane "securities"-type disclosures (State Br. 1). That characterization cannot be reconciled with the statutes' text, their avowed purpose of forging a "net-zero" economy (SB 253 § 1(*l*)), or the State's own defense that these laws will help achieve California's "emission reduction goals" (State Br. 42 (emphasis omitted)). These laws are not about transparency in the market—they are about transforming it, "far beyond California's borders." 8-ER-1946 (Assemb. Zbur). The State's own amici trumpet the laws as public-facing mandates geared to influence behavior through reputational and "market pressure." Environmental Defense Fund Br. 35; *see also* FarmSTAND Br. 28.

The State's attempt to rebrand these laws as routine investor disclosures only underscores their constitutional infirmity. The laws compel sweeping, public-facing statements untethered to any product or transaction. They require companies to speak even if they have said nothing about climate change or greenhouse-gas emissions, and to speak in the State's own terms, using State-prescribed methods. And the rationales offered to justify them—"free flow of information," "investor interest," and "usefulness to potential counterparties"—have no limiting principle. Under the State's theory, government could compel any business to speak on any topic that might conceivably be "pertinent" to anyone with any actual or hypothetical connection to the company. That boundless logic is not tailored regulation—it is ideological conscription.

Meanwhile, the State's explicit and tacit concessions give the game away. California does not even attempt to defend its mandates under strict scrutiny. Yet, it never acknowledges that it has the burden to show that a lesser standard applies and is met. And the State concedes key points that doom both statutes even under the reduced standards it invokes: It admits that the laws compel speech; that they apply regardless of whether a company sells a product or speaks about climate; and that they are intended, in its own words, to "encourage companies . . . to reduce their emissions." Br. 41.

The points the State does press range from implausible to alarming. It denies that companies are forced to associate themselves with emissions of others, but that association is central to both statutes. The State asserts that, once a company says *anything* about climate change, the State is free to dictate what else the company must say—a theory antithetical to the First Amendment. And it argues that disclosure of "Scope 3" emissions is justified because *some* regulator might *someday* regulate *someone* in the company's value chain—a rationale as speculative as it is circular.

At bottom, California's defense rests on sharply curtailing the First Amendment's reach. It would transform commercial-speech doctrine into a blank check for compelled advocacy and replace the constitutional presumption against compelled speech with a presumption in favor of government-managed debate. The First Amendment forbids that inversion.

Because these mandates compel speech in violation of settled First Amendment principles—and because the State nowhere disputes that unconstitutionally compelled speech constitutes irreparable harm—the Court should reverse and direct the district court to issue a preliminary injunction.

ARGUMENT

I. Plaintiffs Are Likely To Succeed On The Merits

The State concedes (Br. 20) that SB 261 and SB 253 compel speech and does not deny that compelled speech presumptively triggers strict scrutiny. Instead, it tries to sidestep (Br. 20-25, 53-55) that standard by calling the mandates "commercial." They are not. The State admits (Br. 22-23) that these mandates do not concern "prices, services, or sales"; that the compelled reports do "not themselves 'propose a commercial transaction'"; and that the laws apply "'regardless of whether the company sells any good or service in California.'" These admissions alone show the mandates are not commercial.

The State's fallback (Br. 54)—that any disclosure "useful" to investors or insurers is "commercial"—is the very theory this Court rejected in

X Corp. v. Bonta, 116 F.4th 888 (9th Cir. 2024). There, the Court explained that the commercial-speech analysis cannot turn on whether speech "may presumably play a role" in someone's decision to buy or invest. *Id.* at 902 n.10. That boundless reasoning would let governments compel speech on any public issue whenever an audience might find it "useful." Strict scrutiny therefore applies—and is dispositive, because the State does not attempt to defend the laws under that standard.

A. These Mandates Are Not Commercial Speech

1. The State's "Commercial Speech" Theory Fails Under Every Recognized Standard

Because it does not dispute that SB 261 and SB 253 fail strict scrutiny, the State's entire defense turns on mischaracterizing these laws as commercial-speech regulations. They are not. The State's approach to commercial-speech doctrine is extraordinary. It dismisses (Br. 25) the Supreme Court's settled framework for identifying commercial speech as "narrow and formulaic," and waves away (Br. 21-22, 25) the *Bolger* factors as beside the point. But those factors are not optional—the State concedes (Br. 21) they are "'important guideposts'" for determining whether speech is commercial, and this Court has confirmed that a State cannot "simply skip" them. *Dex Media W., Inc. v. City of Seattle*, 696 F.3d 952, 961 (9th Cir. 2012).

The State then compounds its error by misreading this Court's precedent. It dismisses (Br. 24-25) *IMDb.com Inc. v. Becerra*, 962 F.3d 1111 (9th Cir. 2020), as irrelevant because the speech there did not concern a "'commercial transaction.'" But the same is true here—the compelled reports do not concern *any* transaction. The State's effort (Br. 15, 23) to recast the test only confirms the point: It claims that because companies engage in transactions and third parties might want information they assert are related, the reports are "commercial"—logic that would extend the definition of "commercial speech" to virtually any corporate communication.

Nor does the State address *IMDb.com*'s alternative holding. The Court assumed that "even if the [commercial-speech] question were close," the *Bolger* factors would control, and held that the absence of two factors—advertising and product reference—is independently dispositive. 962 F.3d at 1122. That holding decides this case. The State admits (Br. 22-23) these reports are not advertisements and make no product reference. That ends the matter. *See Dex Media*, 696 F.3d at 959 (holding speech not commercial where two *Bolger* factors absent).

Unable to defend its position under any recognized standard, the State turns (Br. 21, 53) to *PhRMA v. Stolfi*, claiming that commercial speech includes disclosures "provid[ing] parties to 'actual or potential' commercial transactions with information about those transactions." 153 F.4th 795, 821 (9th Cir. 2025) (quoting *X Corp.*, 116 F.4th at 901). But that language defeats, rather than supports, the State's argument. Speech "about those transactions" means speech describing *the transactions*—the obligations, terms, or characteristics of what the speaker is offering. Every case the State cites fits that mold: *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), involved a client's financial obligation; *CTIA v. City of Berkeley*, a product warning, 928 F.3d 832 (9th Cir. 2019); and *Stolfi*, a drug's pricing, 153 F.4th 795.

Stolfi and *X Corp.* themselves make clear that "about those transactions" refers to speech describing the nature of an exchange. *X Corp.* explained that "all" the speech this Court has deemed commercial "communicates the terms of an actual or potential transaction." 116 F.4th at 901. *Stolfi* quoted that same "actual or potential" language and, in the next sentence, applied it: "The reports required by [the statute] *likewise communicate the terms of potential commercial transactions*." 153 F.4th at 821 (emphasis added). SB 261 and SB 253 do the opposite. As the State itself describes them, these laws require companies to provide "firm-level" information about their "emissions," "governance" practices, and "climate-related risks"—information "*disconnected* from a particular product or sale." Br. 17, 25, 36 (emphasis added).

While the State calls (Br. 25) such firm-level disclosures "commonplace," it cites no case—and *Stolfi* identified none—that held such speech to be commercial. The State also leans (Br. 55) on *Stolfi*'s observation that the disclosures were "'economic-focused,'" but omits what *Stolfi* said next: disclosures furnish "product-specific" information—data "about [commercial] products," such as "list prices." 153 F.4th at 823. *Stolfi*'s own reasoning confirms the opposite of what the State suggests: speech "divorce[d] . . . from specific product sales" falls outside the commercial-speech doctrine. *Id.* at 823 n.21.

The State's reliance on *CTIA*, 928 F.3d 832, and *Loan Payment Administration LLC v. Hubanks*, 821 F. App'x 687 (9th Cir. 2020), underscores the point. The State cites those decisions to argue (Br. 32) that the commercial-speech doctrine is not limited to speech about "the terms" of a transaction, but misunderstands what those "terms" encompass. As *Stolfi* explained, commercial disclosures "communicate the terms of potential transactions" by, among other things, "explain[ing] to customers what it is they are paying for." 153 F.4th at 821, 824 n.23. In other words, commercial speech includes not only the express contractual terms, but also, in the State's words (Br. 32), factual information "'about [the] commercial products'" offered for sale—what they are and what they do. That is what *CTIA* and *Loan Payment Administration* involved: factual information "*about commercial products*"—for example, the radiation risk "of the product" the consumer was "about to buy," *CTIA*, 928 F.3d at 848, or whether a mortgage-loan repayment program was affiliated with the original lender, *Loan Payment Admin.*, 821 F. App'x at 688-89. SB 261 and SB 253 are not about "a particular product" (State Br. 25) at all.

The State tries to blur that line, asserting (Br. 22, 54) that these mandates regulate commercial speech because the reports "inform" investors, lenders, and insurers by providing "useful" information "pertinent" to potential transactions. But that argument ignores that these laws have nothing to do with such transactions. They apply regardless whether a company issues stock, borrows money, or seeks insurance, and they compel no disclosures about the terms or goods in any such dealings. *X Corp.* squarely forecloses the State's "pertinence" theory, holding that commercial-speech analysis cannot "turn on whether the speech is 'directed to potential consumers and may presumably play a role in the decision of whether to use'" a product or service. 116 F.4th at 902 n.10. Otherwise, a State could compel disclosure of anything any audience might find "pertinent"—executives' charitable donations, or a company's hiring of immigrant workers—simply by labeling it "commercial." That is not, and "could not be," the law. *Id.*

2. The State Cannot Hide Behind *Zauderer* Or A New "Government-Reporting" Theory

The State turns (Br. 26-32, 56-57) to *Zauderer*—and, belatedly, to a "government-reporting" theory drawn from dicta in *Stolfi*—as its last refuge. But it bears the burden of showing that these laws fit within any recognized category of diminished First Amendment protection. They do not. *Zauderer* rests on a narrow, historically-grounded exception for compelled disclosure of factual, product-specific or service-specific information designed to prevent consumer deception. The State nowhere acknowledges that history—or the Supreme Court's repeated admonitions against marking off new categories of speech for reduced protection.

Instead, the State denies that *Zauderer*'s limits exist and seeks to transform a narrow exception into sweeping license for compelling speech whenever the government deems more "information" desirable.

a. The State dismisses (Br. 31) the rule that *Zauderer* applies only to limited supplements appended to the speaker's message, arguing the limitation "does not appear in any prior cases applying *Zauderer*." But it appears in *Zauderer*, which upheld a brief disclaimer attached to an attorney's own advertisement—requiring the lawyer to provide only "somewhat more information than [he] might otherwise be inclined to present." 471 U.S. at 650; *see also id.* at 658 (Brennan, J., concurring) (explaining that "States may require 'some *limited* supplementation'" (quoting *Bates v. State Bar of Arizona*, 433 U.S. 350, 384 (1977))).

The cases the State cites (Br. 31) do not expand the rule. This Court in *X Corp.* declined to apply *Zauderer* altogether, and the out-of-circuit decisions the State invokes only confirm *Zauderer*'s narrow scope. Each involved disclosures that commented upon a product- or service-specific message—short, factual supplements to the company's presentation of the product explaining "to customers what it is they are paying for," not sweeping, stand-alone reports about a company's overall policies or social impact. *Stolfi*, 153 F.4th at 824 n.23.

In *Rowe*, the First Circuit upheld narrow requirements that pharmacy benefit managers append disclosures of potential conflicts in communications with their pharmacy customers—routine, transaction-specific disclosures to counterparties. *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 299, 310 (1st Cir. 2005). In *Chamber of Commerce v. SEC*, the Fifth Circuit approved a rule requiring issuers to report share-repurchase data and the reason for each transaction—factual disclosures tethered to particular trades. 85 F.4th 760, 769-70 (5th Cir. 2023). The same court soon clarified that the SEC's disclosure authority is limited to preventing fraud, not to satisfying a general "demand for any and every kind of information" regulators deem useful. *Alliance for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 180 (5th Cir. 2024) (en banc). And in *NetChoice v. Paxton*—a decision vacated by the Supreme Court—the Fifth Circuit applied *Zauderer* to permit a requirement that social-media platforms provide factual explanations of their moderation decisions: that was speech directly describing the company's service to its users, not compelled generalized statements about corporate governance or ideology. 49 F.4th 439, 485-86 (5th Cir. 2022), *vacated sub nom. Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

b. The State's fallback argument confirms these laws are outside *Zauderer*. The State argues (Br. 32) *Zauderer* applies because the compelled reports "pertain" to the "operations" of the "reporting entity." That framing admits the problem. Speech about a company's *operations* is not speech about "the product or service that is provided." *CTIA*, 928 F.3d at 845. The State concedes (Br. 32) that this product or service limitation was "inherent in the facts" of *Zauderer* itself. And its theory cannot be squared with *X Corp.*, which rejected the notion that any disclosure "about [a company's] activities" is commercial. 116 F.4th at 902.

NIFLA v. Becerra, 585 U.S. 755 (2018), reinforces the point. There, the Court struck down a compelled disclosure that "in no way relate[d] to the services that [the speakers] provide." *Id.* at 769. The State's attempt to distinguish *NIFLA*—on the ground that the laws "pertain" to companies' "operations" (Br. 32)—misreads the decision. In *NIFLA*, California's failure was not that the compelled notice concerned services the clinics "refused to provide" (State Br. 32 (emphasis removed)); it was that the compelled speech was untethered from services the clinics *did* provide. Likewise, here, reports about a company's "operations" are detached from any product or service a company offers.

The State tries (Br. 32) to paper over the problem that these mandates are not about any product or service by invoking *CTIA* and *Loan Payment Administration*. But those cases confirm the limits of *Zauderer*'s. They hold only that the word "terms" in *Zauderer* encompasses both literal contract provisions and characteristics or attributes of the product or service sold (e.g., whether it emits radiation). *See* pp. 8-9, *supra*. Neither extends *Zauderer* to enterprise-wide reporting divorced from any transaction. If compelled speech merely "pertain[ing]" to a business's "operations" triggered *Zauderer*, there would be no stopping point: any message the government wished to impose on businesses could be compelled. *CTIA* and *Loan Payment Administration* reaffirm the opposite—that *Zauderer* applies only narrowly to factual information "'*about commercial products*.'" *CTIA*, 928 F.3d at 848.

c. These threshold flaws in the State's commercial speech argument are decisive. But even if the Court were to overlook them, *Zauderer* would still not apply because the disclosures SB 261 and SB 253 compel are anything but "purely factual and uncontroversial." *NIFLA*, 585 U.S. at 768.

The State's insistence (Br. 56) that SB 261 requires disclosure "only" of "operational information" is false. The law forces companies to publish forward-looking assessments of "climate-related financial risk," including speculative judgments about future legislation, litigation, and reputational harm. § 2(b)(1)(A). The law even requires companies to articulate their own views about climate change—for example, to evaluate the "[i]ncreased severity of extreme weather events such as cyclones" and to speculate about how governments might respond "under different" future scenarios. 8-ER-1831. These are not "purely commercial projections," as the State calls them (Br. 10, 57); they are speculative forecasts about meteorology and geopolitics.

And unlike disclosures made solely to regulators, SB 261 requires companies to publish these assessments on their own websites—broadcasting the State's preferred narrative to the public, not simply submitting an administrative filing. That amplifies the ideological message and magnifies the constitutional burden. *See Stolfi*, 153 F.4th at 810 (public-facing mandates heighten compelled-speech concerns).

The State's defense of SB 253 likewise falls short. It argues (Br. 27) the statute compels only "factual" speech because the disclosures take the form of "numerical values." But numbers, in context, can carry great normative weight. Consider *National Association of Manufacturers v. SEC*, 800 F.3d 518 (D.C. Cir. 2015), which struck down a rule requiring companies to list products that were not "conflict free" because that label "convey[ed] moral responsibility for the Congo war." *Id.* at 530. On the State's theory, that case would have come out differently had the government instead required companies to report *the number* of products that were not "conflict free," so that investors and consumers could "make their own determinations" (State Br. 28-29) about which firms were complicit. But the moral message would have been identical: the company had "blood on its hands." 800 F.3d at 530.

Requiring firms to publish "their" emissions likewise uses ostensibly "neutral" numbers to assign moral blame—to announce which companies are "good" and "bad" in the State's view. That is precisely how the statute's author described its purpose: to show who is "doing their part to tackle the climate crisis and create accountability for those that aren't." 8-ER-2035 (Sen. Wiener). *B & L Productions, Inc. v. Newsom*, 104 F.4th

108 (9th Cir. 2024), is no refuge. *Contra* State Br. 29. That case concerned *property* regulation that did not have "the direct or inevitable impact" of burdening "speech," whereas SB 253 plainly does—the very circumstance in which *B & L* recognized that governmental motivation "can" be examined. 104 F.4th at 117 n.16.

The State's brief (Br. 34, 57) confirms that SB 253 compels more than "neutral" data. In seeking to rebut Plaintiffs' showing that the law's true purpose is to force companies to "take moral responsibility for climate change," the State asserts (Br. 28) its goal is "accountability *through* transparency"—that is, to provide data "from which third parties can make their own" judgments. But "accountability" is a moral concept, not a factual one. And the State has no response to its own expert's acknowledgment (Chamber Br. 45) that these disclosures embody normative judgments.

The State is equally mistaken in denying (Br. 28) that SB 253 forces companies to assume responsibility "for the emissions of others." The statute expressly requires firms to "disclos[e] *their* contributions to global [greenhouse-gas] emissions," and it mandates inclusion of indirect, third-party emissions within that total. § 1(f) (emphasis added). A company cannot avoid "moral" attribution by disclaiming responsibility—it must report as its own (the "reporting entity's . . . emissions," § 2(c)(1)) the emissions of others. That is the whole point: the State's theory (Br. 28) of "accountability *through* transparency" depends on treating those numbers as the company's *own*. The State's brief (Br. 6) confirms as much, proceeding on the premise that SB 253 requires companies "to report *their* GHG emissions." If SB 253 did not require companies to take "'responsibility' for the emissions of others" (State Br. 28), the State's asserted rationale for the law would collapse.

Nor can the State find refuge in claiming (Br. 8, 27) that SB 253 merely codifies a "widely adopted," "globally accepted" voluntary framework—or that it applies "longstanding financial accounting principles." Its defense hinges (Br. 39) on the opposite premise—that voluntary disclosures are "fragmented" and "incomplete," leaving a "massive blind spot" for investors and others. The State cannot have it both ways: if the regime is truly "widely adopted" voluntarily, the law is unnecessary; if it is not, then the State's coercion is precisely what makes the statute constitutionally suspect.

The State's example proves the point. It notes (Br. 10) that U-Haul already makes some statements "consistent with" the laws' requirements, but that underscores the weakness of the State's claim. Saying that some of U-Haul's *voluntary* statements happen to align with parts of a voluntary framework hardly shows that the entire compelled regime is "widely accepted." If anything, it proves the opposite: companies choose which parts of these frameworks they agree with and omit those they do not.

Finally, the State has no answer to the biased framing of these compelled statements. It suggests companies remain free (Br. 28) to "separately" contextualize their calculations—but in the mandated reports themselves, companies must speak the State's language. The State controls the reporting template precisely to prevent companies from speaking in their own terms.

d. The State briefly suggests (Br. 32-34) that SB 253 should receive minimal scrutiny because it functions like a "government reporting" duty. But the Supreme Court has never recognized any such category, and has repeatedly cautioned courts *not* to carve out new forms of speech for lesser protection. *NIFLA*, 585 U.S. at 767. The dicta the State invokes (Br. 32-33) from *Stolfi* merely observed that certain regulator-facing filings might raise different questions—but the court expressly declined to decide whether a "government-reporting" exception exists. 153 F.4th at 819. And *Stolfi* emphasized that the challenged rule did not compel manufacturers to adopt the State's viewpoint: "[M]anufacturers are free to explicitly *reject* any such message and explain . . . the full range of factors that drive their pricing decisions." *Id.* at 824.

SB 253 is the opposite. It does not mandate mere collection of factual information for regulators; even as amended (State Br. 6 n.2), it forces each company to "publicly disclose" emissions and to conform its speech to the State's mandated calculation method—allowing no space to dissent (State Br. 71 (quoting SB 253 § 2(c)(2)(A)(i)(I)). Every benefit the State identifies flows from public dissemination of information, not from confidential reporting to regulators. The "government-reporting" label is pretext—an attempt to rebrand a public-facing speech mandate as a routine filing requirement.

Regardless, the "government-reporting" theory is waived. The State never argued below that these laws were regulator-facing disclosures or sought reduced scrutiny on that basis. It cannot invoke a novel First Amendment carveout for the first time on appeal—much less at the preliminary-injunction stage. This is the last procedural posture in which a court should experiment with cutting back on core speech rights. The Court should apply the law as it stands, not (as the State urges) announce novel doctrines to deny interim relief from ongoing First Amendment harm.

B. The Laws Fail Under Any Level Of Scrutiny

Even under less than strict scrutiny, none of the State's asserted interests can justify these laws. The State touts (Br. 63) the "tailoring used here," but it identifies neither tailoring that it performed, nor a clear constraining purpose to which the laws were fitted. Instead, the State invokes three *different* rationales—preventing deception, reducing emissions, and satisfying investor demand—and toggles among them to defend whatever aspect of its laws is under fire. The State cannot carry its burden to show its laws are narrowly drawn when it must constantly substitute distinct, inconsistent theories.

In reality, the State simply lifted voluntary frameworks wholesale and imposed them as compulsory obligations—with no tailoring to square them with First Amendment limits. Its "tailoring" defense rests on what it claims (Br. 16) "independent experts" recommended, but those experts described *voluntary* regimes that companies could adopt, modify, or ignore as they saw fit—not government mandates carrying legal penalties. Adopting those flexible, optional standards verbatim as binding law is the opposite of tailoring.

1. The State Admits It Cannot Show Deception

The State barely defends the deception rationale it relied on below. It admits (Br. 47) it cannot "identify a single false statement." Instead, it claims (Br. 46) that the mere "potential" for deception is enough. But "speculation" is insufficient. *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). The State offers no answer to the principle that "a state may not [burden] protected speech to prevent something that does not appear to occur." *Junior Sports Magazines Inc. v. Bonta*, 80 F.4th 1109, 1117 (9th Cir. 2023). Nor does it grapple with *NIFLA*, which rejected California's identical claim that it could compel speech while "point[ing] to nothing" showing anyone was misled. 585 U.S. at 777.

Its only "evidence" of deception—once again—is *truthful* speech. The State now turns (Br. 47) to a study finding that companies participating in a voluntary disclosure program "consistently reported reductions even as their emissions increased." But the emissions measured under that voluntary program *were* declining. 5-SER-1451. The State's quarrel is not with falsehood but with methodology—it disliked that some measures of emissions declined while others rose. *Id.* The district court rejected the attempt to convert this to evidence of deception: "[I]t strains credulity to call a claim misleading when the company explicitly identifies the very metric it is using." 1-ER-37. That assessment stands unrebutted.

The State also runs from Dr. Hsu—the expert on whose declaration it staked its case below. The State now claims (Br. 47) that it was Hsu, not California, who targeted political lobbying. 2-ER-336. But that distinction collapses under the record. In the district court, the State relied on Hsu's testimony to assert that "96% of these statements are misleading" and to argue that "[t]he disclosures required here address *this problem*." 3-ER-378 (emphasis added). Having adopted Hsu's analysis as its own, the State cannot disown it now when it exposes the ideological premise of its case: that "misleading" speech includes viewpoints the government disfavors, not false statements of fact.

Even setting those flaws aside, the laws fail for a more fundamental reason: they are "broader than reasonably necessary." *NIFLA*, 585 U.S. at 776. The State's defense proves the point. It argues, for example, that narrowing SB 253 to companies making "net-zero" claims would be "underinclusive" because the law also reaches entities "soliciting business and investment through other forms of emission claims or commitments." Br. 49. That concession confirms the defect: even companies making entirely different statements must publish the same exhaustive, state-scripted disclosures on every category of emissions. There is no link between the speech that supposedly poses a risk of deception and the speech the laws compel. The statutes thus conscript every speaker "no matter what" the speaker has said—the very defect in *NIFLA*, 585 U.S. at 777, that Plaintiffs highlighted in their opening brief (Br. 52) and which the State never addressed.

Nor does California rationally explain why it cannot rely on existing anti-fraud laws to combat supposed misleading speech. It says only (Br. 49) that "reliance on existing fraud statutes . . . ignores the harms to

Californians from a vast marketplace of unregulated claims." But that is not an explanation—it is a confession. The "harm" California identifies is not fraud or deception, but unregulated speech itself—the very liberty the First Amendment protects.

2. The Emissions-Reduction Rationale Rests On Speculation, Not Evidence

The State defends both laws largely as tools to reduce emissions. Br. 41-45, 61-62. That argument reveals what this case is really about: not transparency, but California's attempt to use compelled speech to reshape corporate behavior and ultimately the economy. Yet in its rush to conscript every company to broadcast the State's climate message, the State designed a regime that does not even accomplish its ultimate goal. The laws are not rationally related to reducing emissions; they simply compel companies to express the State's view of who is to blame for the emissions.

The most revealing aspect of the State's "emissions reduction" rationale is what it omits: any claim that these mandates *will* reduce emissions. The State offers no such assertion—only conjecture about the "[p]otential for emissions reductions," premised on the notion that disclosure might "lead indirectly" to lower emissions by prompting activists or consumers to react. Br. 41, 61. But as Plaintiffs showed (Br. 59), this Court has already held that speech burdens cannot rest on such speculative, "indirect" chains of causation. *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 851 (9th Cir. 2017) (en banc). A compelled-speech regime must "directly and materially advanc[e]" the government's asserted interest, not merely offer "remote support." *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 188 (1999). The State's defense relies entirely on such "indirect" and "remote" effects—it never explains how forcing companies to publish climate assessments and emissions estimates would *directly* reduce emissions, much less directly and meaningfully reduce them within the borders of California, beyond which the State's lawful regulatory interests do not extend.

Nor does the State explain how SB 253 could meaningfully advance its claimed emissions-reduction goal when the statute omits the only metric that could reveal whether emissions are actually improving—per-unit or intensity-based emissions. As Plaintiffs explained (Br. 57), total emissions say nothing about efficiency or overall impact. A company that captures a larger share of the market by producing a more efficient product may reduce emissions economy-wide, yet appear "worse" under California's metric simply because its total output increases. Meanwhile, a less efficient competitor that loses market share could look "better" despite contributing more emissions per unit. Without intensity data, neither regulators nor the public can tell whether real reductions are occurring—or whether the State's system punishes innovation that actually drives emissions down.

The State's only answer (Br. 44) is that companies "*could*"—its emphasis—include that information voluntarily. But the possibility of voluntary speech is no justification for compelled speech, and a statute that omits the very disclosure supposedly necessary to achieve its goal cannot claim constitutional deference. The omission is not incidental—it exposes the truth. At its core, SB 253 is designed to shape opinion.

Even taking the State's theory at face value, the laws are "broader than reasonably necessary." *NIFLA*, 585 U.S. at 776. While purporting to defend SB 253 as an "emissions-reduction" measure, the State concedes (Br. 42) that the law "will not, on its own, alleviate the harms caused by climate change" and pivots (Br. 43-45) to an entirely different justification—"clos[ing] information gaps." That shift, made in the very course of defending the emissions-reduction rationale, underscores the absence of tailoring. A speech mandate is not "tailored" when the State itself cannot clearly or consistently identify the purpose to which it was tailored. And in fact, the State simply imposed voluntary international standards wholesale with no attempt to tailor them to First Amendment demands.

The State also does not explain why it cannot estimate emissions itself. Its only answer (Br. 45) is that its own estimates would be "incomplete." But the State bears the burden of justifying these compelled-speech laws, and it offers no evidence that such "incompleteness" matters. Roughly 90 percent of emissions can be estimated using readily available data (Chamber Br. 29); California does not dispute this, nor show that anyone needs to know the precise figure down to the last percent.

Even if completeness were a legitimate goal, forcing thousands of companies to generate speculative estimates does not solve the problem—it multiplies it. The Greenhouse Gas Protocol—the very framework SB 253 mandates—concedes that the emissions estimates the Protocol uses are inherently incomplete. 7-ER-1538. So the State's cure is worse than the purported disease: in lieu of incomplete government estimates it compels incomplete private ones—and then requires publishing them as if they were authoritative. That makes this scheme doubly constitutionally suspect. Companies must publish contested estimates as if they were facts, so the State may use private speech to advance its views about emissions and who is "accountable."

Nor can the State hide behind "materiality." SB 253 "considers" (Br. 40) materiality only in the sense that it *rejected* it as a limiting concept—a "materiality threshold" is "not compatible" with the protocol (7-ER-1501). The Greenhouse Gas Protocol does not identify what information is material for any company or audience, and the State does not contend that all its mandated disclosures are material to all covered entities. By discarding materiality, the State confirms that it made *no* effort to tailor these laws at all.

3. The Investor-Interest Theory Repeats The Same "Curiosity" Rationale This Court Has Rejected

The State's reliance on investor interest is a repackaged version of the "consumer curiosity" rationale this Court has rejected. *CTIA*, 928 F.3d at 844. Seeking to avoid *CTIA*, California analogizes (Br. 1, 31, 56) these laws to the federal securities regime. That comparison fails.

SB 261 and SB 253 have nothing to do with regulating securities markets; they apply to every business above a revenue threshold, whether or not it has ever issued stock or traded publicly.

Even under the securities laws, disclosures are to protect investors "from fraud"—not to "satisfy the demand" for whatever information policymakers believe might be useful. *Alliance for Fair Bd. Recruitment*, 125 F.4th at 179. In *National Association of Manufacturers v. SEC*, 748 F.3d 359 (D.C. Cir. 2014), the D.C. Circuit rejected the notion that the government may, "using the guise of securities laws," compel "otherwise protected speech" unrelated to preventing fraud. *Id.* at 372. Securities law, the court emphasized, concerns "inherently misleading" statements made in securities sales. *Id.* When "deception is not an issue," compelled statements about "labor conditions," board ideologies, or similar policy matters are "obviously repugnant to the First Amendment." *Id.* Climate policy is no different.

California also never confronts the simpler point that public companies already must disclose all "material" information under federal law—and there is no evidence they do not.

California's "investor interest" rationale is the same justification this Court rejected in *X Corp.* There, as here, the State invoked a supposed "substantial interest" in giving audiences transparency to make "informed decisions." *X. Corp.* Gov't Br. 36. But this Court held that compelled speech cannot be justified merely because it might "play a role" in market participants' choices. 116 F.4th at 902 n.10. Otherwise, the government could force companies to disclose the "political affiliations of [their] managers" simply because investors might care. *Id.*

All this underscores that these mandates are extraordinarily overbroad. As the State's authorities (Br. 38, 61) show, disclosure requirements have traditionally been limited to a single, concrete fact directly relevant to a commercial transaction. *Stolfi*, for example, emphasized a close tie between drug-pricing disclosures and the terms of sale. 153 F.4th at 822. In *American Hospital Association v. Azar*, 983 F.3d 528 (D.C. Cir. 2020), hospitals were required to post "rates negotiated with insurers and formalized in their contracts," information "directly relevant to 'the terms under which [their] services will be available.'" *Id.* at 540. Likewise, *National Electrical Manufacturers Association v. Sorrell*, 272 F.3d 104 (2d Cir. 2001), upheld a rule that "better inform[ed] consumers about the products they purchase," *id.* at 115, and *American Meat Institute v. USDA*, 760 F.3d 18 (D.C. Cir. 2014), involved traditional "country-of-origin" labeling to identify where food was produced—disclosures grounded in product safety and historical tradition, *id.* at 23. Finally, in *Chamber of Commerce v. SEC*, the court said a rule could require issuers to disclose their rationale for stock buybacks—speech tied to a specific transaction. 85 F.4th at 771 (rule vacated on other grounds).

By contrast, *Full Value Advisors v. SEC*, 633 F.3d 1101 (D.C. Cir. 2011), involved nonpublic, regulator-facing disclosures that never required the speaker to communicate anything to the public (and the court expressly declined, on ripeness grounds, to address whether eventual public release would raise First Amendment concerns). *Id.* at 1108, 1110.

Together, those precedents expose California's overreach. Each decision upheld a short, factual supplement about a product, service, or contract term—or, at most, a confidential regulatory filing. SB 261 and SB 253 instead compel public, sprawling, enterprise-wide statements about climate risk and emissions—speech untethered to any transaction or market exchange.

The State tries to justify the laws' sweep by invoking (Br. 1, 54) "investors, lenders, insurers, workers," and "insurance underwriters"—all of whom will supposedly "use" the information. But that argument proves overbreadth. If the State truly believed these disclosures were necessary for specific economic actors, it could have required companies to provide the information directly—and confidentially—to those entities. In fact, *Pharmaceutical Care Management Association v. Rowe*—which the State relies upon (Br. 31)—involved precisely such targeted disclosure: confidential reporting to the counterparty, not compelled publication to the public at large. 429 F.3d at 299.

Meanwhile, the State still cannot explain why its mandates are needed—why market demand, voluntary disclosure, or targeted regulation would not achieve the same ends. The State does not even attempt to address *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), or *International Dairy Foods Association v. Amestoy,* 92 F.3d 67 (2d Cir. 1996)—both of which recognize that when private incentives mitigate the perceived problem, government compulsion is unnecessary (Chamber Br. 67-68). As *Amestoy* explained, those "interested" in information can "exercise the power of their purses" by doing business only with companies "who voluntarily reveal it." *Id.* at 74. That is how markets work. Large investors like CalPERS already use their leverage to demand climate disclosures they want. 7-ER-1614. Insurers, for their part, routinely obtain detailed data from applicants as a condition of coverage—without any government mandate. *See, e.g.*, 6-SER-1540.

This is not a case of hidden product risk, like radiation exposure in *CTIA*, 928 F.3d 832, where consumers cannot protect themselves without state intervention. It is simply information certain institutions would prefer to have. The First Amendment does not allow the government to transform those preferences into a universal duty to speak.

II. The Equities Overwhelmingly Favor An Injunction

The State concedes (Br. 50) that unconstitutional compelled speech is per se irreparable harm. That alone resolves the equities. When a law violates the First Amendment, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 695 (9th Cir. 2023) (en banc). The balance of hardships therefore "tips sharply" toward Plaintiffs, who face the ongoing loss of their constitutional freedom and the unrecoverable costs of preparing for mandates the State acknowledges must be satisfied in 2026. *Matsumoto v. Labrador*, 122 F.4th 787, 816 (9th Cir. 2024).

The State's fallback (Br. 18, 50-51)—that the harm is not "imminent"—is meritless. This Court has never required plaintiffs to wait until a constitutional injury is complete before obtaining relief. Harm is imminent when it will occur before the case can be resolved, not only when it will occur tomorrow. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024) (affirming preliminary injunction issued a year before law's effective date). Here, the harm will plainly occur long before this case can be resolved. Even prior to the district court staying all deadlines pending the outcome of this appeal, summary-judgment briefing was scheduled to conclude in the summer of 2026, *after* the two laws' reporting requirements take effect. Under the State's own timeline, the First Amendment injury will be complete before final judgment issues.

Meanwhile, covered companies are already diverting staff, budgets, and infrastructure to prepare for compliance. The district court itself recognized that reality, finding that Plaintiffs' witness "has demonstrated that it will need to begin preparing to comply" with the laws now.

1-ER-10 n.4. The State does not acknowledge that finding, much less attempt to show it is "clearly erroneous." *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 733 (9th Cir. 1999). Those expenditures are unrecoverable because sovereign immunity bars recovery. Chamber Br. 71-72 (collecting cases).

Having ignored these unrecoverable costs, the State compounds its error by claiming (Br. 51) that such injuries "do not" count. But this Court has squarely held that ongoing economic injury resulting from enforcement of a challenged provision constitutes irreparable harm, as has the Supreme Court. *See Nat'l Inst. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (2025); *Washington v. Trump*, 145 F.4th 1013, 1036 (9th Cir. 2025). The State's contrary position (Br. 51) depends entirely on an out-of-circuit decision from the 1970s—*A.O. Smith Corp. v. FTC*, 530 F.2d 515 (3d Cir. 1976), and two cases citing it—which the issuing court has since flatly rejected, holding that "financial consequences" of compliance *are* irreparable harm. *Pennsylvania v. Trump*, 930 F.3d 543, 574 (3d Cir. 2019), *rev'd on other grounds sub nom. Little Sisters of the Poor v. Pennsylvania*, 591 U.S. 657 (2020).

The record deepens the point. As Plaintiffs noted (Br. 73), the State's own expert estimated that these laws will cost hundreds of thousands of dollars per company to implement—a figure the State never mentions, let alone disputes. That the State clings to discredited 1970s dicta, ignores binding precedent of this Court and Supreme Court, and refuses even to confront its own evidence underscores what this record makes plain: the equities, the public interest, and the Constitution all point one way—an injunction must issue.

CONCLUSION

The Court should reverse the order denying a preliminary injunction and remand with instructions to preliminarily enjoin Defendants from applying or taking any action to enforce SB 253 and SB 261 against Plaintiffs' members.

Respectfully submitted,

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s/ Eugene Scalia

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