

No. 25-5327

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ET AL.;
Plaintiffs-Appellants,

– v. –

LAUREN SANCHEZ, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:24-cv-00801-ODW-PVC

**BRIEF OF AMICUS CURIAE U.C. BERKELEY
CENTER FOR CONSUMER LAW & ECONOMIC JUSTICE
IN SUPPORT OF DEFENDANT AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 26.1(a), the undersigned counsel states that the Center for Law, Energy and the Environment and the Center for Consumer Law and Economic Justice have no parent corporations, and no publicly held corporation owns 10% or more of their stock.

Dated: October 23, 2024

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INTERESTS OF AMICUS CURIAE¹

Amicus curiae Center for Consumer Law and Economic Justice at the University of California, Berkeley, School of Law is the nation’s leading legal academic center dedicated to ensuring safe, equal, and fair access to the marketplace. Through regular participation as amicus curiae in the U.S. Supreme Court and appellate courts throughout the nation, the Center seeks to support sensible guardrails that enhance transparency and fairness in consumer financial markets. The Center frequently serves as expert amicus curiae on the constitutionality of compelled commercial disclosures like those here.

INTRODUCTION AND SUMMARY OF ARGUMENT

In January 2025, a series of devastating fires tore through areas of Los Angeles, causing widespread devastation, the loss of hundreds of lives, and property damage and capital losses estimated as high as \$164 billion.² The high winds, increasing temperatures, and mounting volatility in rainfall levels that created the conditions for this disaster are the symptoms of climate change—itsself

¹ No counsel for any party authored this brief in whole or in part, and no person other than amici curiae, their members, and their counsel made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a). All parties consented to the filing of this brief.

² UC Berkeley Ctr. for Law, Energy & the Env’t (CLEE), *Costs of Climate Change: Financial Impacts on California and U.S. Households* 11 (Sept. 2025), <https://perma.cc/NCN9-27SB>.

in large part resulting from the burning of fossil fuels and release of greenhouse gases in power generation, manufacturing, and transportation.

The costs of climate change to California's markets, businesses, and consumers reach into the billions of dollars annually.³ Investors especially are aware of the potential consequences of climate change. The health of their portfolios depends not only on finding and supporting successful enterprises but also on preventing their destruction by fire, flood, drought, and other climate-driven disasters.

What investors, consumers, and policymakers need most is information: for instance, how extreme heat and drought might upend the state's critical-to-the-nation agricultural market, or how sea-level rise might affect sectors reliant on coastal real estate and operations. That information is precisely what SB 261 and 253 provide. These laws expose how the largest corporations in the state's economy are affected by climate change—or might be affecting it—and any consequent material financial risks to their industries and the state economy. Instead of inventing new metrics, the Legislature incorporated respected, voluntary frameworks and methodologies that many large corporations, including those operating and based in California, already employed to calculate and spread their climate-related financial risks and greenhouse gas emissions. Then, the Legislature

³ See CLEE, *Costs of Climate Change*, *supra*, at 8.

obligated only the largest businesses to report this information (which they likely already measure) to the California Air Resources Board (CARB), which was then tasked with making summary assessments available for investors, policymakers, and consumers.

Laws like SB 261 and SB 253 advance the purpose and requirements of the First Amendment. The reason that commercial speech receives First Amendment protection is because of the information that it provides to the marketplace. *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). For the same reason, government has the greatest leeway in legislating when it requires the addition, not restriction, of factual information to the functioning of markets. *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626 (1985); *see Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010). There is thus a particular irony in this First Amendment challenge to SB 261 and SB 253. The laws offer what investors demand and the constitution protects: they make available vital information about highly consequential activities to those whose livelihoods and wellbeing depend on it.

The district court's order denying a preliminary injunction should be affirmed.

FACTUAL BACKGROUND

After decades of nation-leading efforts to develop high-quality assessment standards to better understand and spread the causes and risks of climate change, in 2023 California legislators identified two related but distinct sets of information—financial risks associated with climate change and greenhouse gas emissions—that are crucial for economic decision-making today in a dramatically warming world but not adequately disclosed. Thus, the state enacted SB 261 and 253 to fill these gaps, allow policymakers, investors, and consumers to make well-informed decisions, and foster greater market transparency in the world’s fourth largest economy.⁴

I. CLIMATE CHANGE THREATENS CALIFORNIA’S MARKETS.

Climate change poses unique economic challenges to California that warrant government attention. In recent years, California has experienced severe droughts, floods, historic wildfires, rising sea levels, and record temperatures,⁵ all driven by

⁴ Off. of Governor Gavin Newsom, *California is now the 4th largest economy in the world* (Apr. 23, 2025), <https://perma.cc/CEA7-7CE6>.

⁵ See Cal. OEHHA, *Drought* (last modified July 1, 2024), <https://perma.cc/WN64-M8VH>; Cal Fire, *Top 20 Most Destructive Fires* (Last modified July 25, 2025), <https://perma.cc/NU3P-8SHN>; Scripps Inst. of Oceanography, UC San Diego, *FAQ: Carbon Dioxide and Climate Change* (last visited Oct. 21, 2025), <https://scripps.ucsd.edu/research/climate-change-resources/carbon-dioxide-and-climate-change>.

climate change.⁶ These climate effects and their corresponding economic impacts will certainly increase as the state continues to warm.⁷

Worsening climate conditions impact many industries across the state. For example, the state's agricultural sector, which produces over 11 percent of the nation's agriculture and generates more than \$50 billion in annual revenue, is acutely susceptible to climate change.⁸ During the 2020-21 megadrought, crop revenue losses and increased water pumping cost the industry an estimated \$1.1 billion.⁹ Extreme heat events hurt dairy productivity, threaten cornerstone crops from alfalfa to grapes, and cause reduced work times in certain agricultural industries.¹⁰ Similarly, California's recreation industry, which draws millions of tourists and creates thousands of jobs, will also suffer the significant impact of climate change by the end of this century. Without a major reduction in greenhouse gas emissions, Yosemite's annual snowpack is expected to decline by 49 percent.¹¹

⁶ Cal. Governor's Off. of Land Use & Climate Innovation, *California's Fifth Climate Change Assessment* (last visited Oct. 21, 2025), <https://perma.cc/XP6U-PUHX>.

⁷ Cal. Governor's Off. of Land Use & Climate Innovation, *California's Fourth Climate Change Assessment* 4 (Aug. 2018), <https://perma.cc/ZA3L-2LD6>.

⁸ Public Policy Inst. of Cal. (PPIC), *Policy Brief: Drought and California's Agriculture* 1 (Apr. 2022), <https://perma.cc/V3FT-9WCV>; Cal. Dep't Food & Agric., *California Agricultural Statistics Review 2023-24* (last visited Oct. 21, 2025), <https://perma.cc/JYH8-Z2S4>.

⁹ PPIC, *supra*, at 2.

¹⁰ CLEE, *Costs of Climate Change*, *supra*, at 13, 30.

¹¹ Nat'l Park Serv., Yosemite, *Climate Change: Snowpack and Waterfalls* (last updated May 1, 2024), <https://perma.cc/6HPJ-RPY5>.

Warmer temperatures, intensifying droughts, and more frequent and severe wildfires also threaten California’s forests and popular tourist destinations there.¹² California’s coastline is further at risk from rising sea levels and the increasing intensity of storms: without intervention, at least 25 percent—and as much as 75 percent—of the state’s beaches could disappear.¹³

II. IN RESPONSE TO INVESTOR DEMAND, CALIFORNIA ADOPTS CLIMATE FINANCIAL RISK DISCLOSURES DESIGNED AND FOLLOWED BY INDUSTRY.

A. Large Institutional Investors Need Standardized Assessments of Material Climate-Related Risk.

Urged by investors for greater transparency around the risks that California’s businesses face due to a changing climate, the California Legislature enacted SB 261, which contains carefully crafted reporting guidelines to help investors make informed decisions. 2023 Cal. Stat. ch. 383. SB 261 continues a longstanding tradition of risk disclosure laws to protect investors and promote the freer flow of commercial information.¹⁴ *See, e.g.,* Securities Act of 1933, Pub. L. 73-22, 48 Stat.

¹² *See, e.g.,* NPS, Yosemite, *Climate Change: Tree Mortality* (last updated May 5, 2025), <https://perma.cc/QN6Z-3ZKP>; Cal. Tahoe Conservancy, *Integrated Vulnerability Assessment of Climate Change in the Lake Tahoe Basin* (2020), <https://perma.cc/S9M4-L95J>.

¹³ Julia Busiek, *Why California’s beaches are shrinking, and what we can do to save them*, Univ. of Cal. (June 28, 2024), <https://perma.cc/W765-5UG5>.

¹⁴ Cong. Rsch. Serv., *SEC Securities Disclosure: Background and Policy Issues 1* (2024), <https://www.congress.gov/crs-product/IF11256> (“Disclosure requirements are the cornerstone of federal securities regulation”).

74; Dodd-Frank Act of 2010, Pub. L. 111-203, 124 Stat. 1376.

Just as with any material risk affecting a company’s supply chain, operations, and bottom line, risks attributable to climate change are crucial facts for investors’ consideration. In particular, California’s three largest pension funds, CalPERS, CalSTRS, and UC Investments, all recognized that material climate-related factors affect their portfolios, and thus the retirement accounts of millions of public employees.¹⁵ With roughly \$1 trillion in combined assets under their management, these pension funds and their beneficiaries have a considerable stake in the health of the financial system, which will be threatened if companies do not plan for climate-related risks.¹⁶ But absent transparent and standardized disclosures of those risks, institutional investors often struggle to compare companies’ different approach to climate risk management.¹⁷ Not only does self-reported corporate information on climate risk vary, but a lack of uniform disclosures inhibits investors from measuring climate risk across their entire portfolios. CalSTRS noted in support of SB 261 that climate change is a “key factor” in its investment policymaking but since “slow market uptake has made it difficult to assess climate

¹⁵ Cal. Climate-Related Risk Disclosure Advisory Grp., *Developing Climate Risk Disclosure Practices for the State Of California* 41 (2021), <https://perma.cc/RFJ2-SH5C>

¹⁶ *Id.*

¹⁷ CalSTRS, Bill Analysis: SB 261, at 3 (Sept. 8, 2023), <https://perma.cc/S3WQ-L4FC>.

risks across the U.S. market . . . a regulatory power to require fuller, consistent and vetted disclosures from covered entities . . . would improve CalSTRS’ ability to measure portfolio risk from climate change.”¹⁸

B. The Legislature Adopts The Well-Accepted, Voluntary, And Business-Designed TCFD Standards.

Heeding investors’ call, the California Legislature enacted SB 261, which obligates large corporations doing business in California¹⁹ to biennially prepare a report on their “climate-related financial risks.” Cal. Health & Safety Code § 38533(a)(2). The law requires covered entities to post these reports on their websites and directs CARB to review the disclosures and prepare a report that analyzes systemic economic risks and identifies inadequate assessments. *Id.* § 38533(d).

California lawmakers designed SB 261 to facilitate information-gathering and disclosure of publicly relevant data without overburdening reporting entities. Rather than formulate a California-specific standard, lawmakers based the reporting requirements on the voluntary standard developed by the independent and industry-led Task Force on Climate-related Financial Disclosures (TCFD),

¹⁸ *Id.* at 3-4.

¹⁹ “Covered entities” include all US companies other than insurance companies doing business in California and generating revenue over \$500 million annually. Cal. Health & Safety Code § 38533(a)(4). A recent estimate identified 2,675 covered entities. Ceres, *Companies Covered by Climate Disclosure Laws: An Updated Estimate 2 (2025)*, <https://perma.cc/Y62Q-42AR>.

called the “international benchmark for climate risk disclosure.” 2023 Cal. Stat. ch. 383, § 1(j); *see* Cal. Health & Safety Code § 38533(b)(1)(A). Initially constituted in 2015, TCFD was comprised of experts from large banks, insurance companies, asset managers, pension funds, and other industries to design a set of recommendations for consistent disclosures.²⁰ Among its main goals, TCFD sought to encourage better disclosure of companies’ assessment and management of climate-related risks and opportunities.²¹ That disclosures were meant to be compatible with other risks companies already release, such as risks related to cybersecurity, artificial intelligence, international geopolitics, etc.²² The disclosures encompass four main categories of information regarding climate-related risk and opportunities: governance, impacts to strategy, risk management, and metrics and targets. Each category is focused on existing processes and known risks.²³ The TCFD further divided climate-related risks into those related to the *transition* to a lower-carbon economy,²⁴ and those risks related to the *physical* impacts of climate

²⁰ TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* 1-2 (2017), <https://perma.cc/M96M-WWG5>.

²¹ *See id.* at 8 fig.1.

²² *See* Dean Kingsley et al., *SEC Risk Factors Disclosure Analysis*, Harv. L. Sch. Forum on Corp. Governance (Dec. 3, 2024), <https://perma.cc/FNP3-Z466>.

²³ *Id.* at 10.

²⁴ *E.g.*, risks related to policy changes like carbon pricing; potential for increased legal exposure; emerging technologies that affect market competitiveness; external market shocks, and reputation risk. TCFD, *Recommendations, supra*, at 5-6.

change.²⁵ The TCFD also recommended that companies report climate-related opportunities—for example, by adopting resource efficiency and cost savings measures, using low-emission energy sources, developing new products and services, accessing to new markets, and building supply chain resilience.²⁶

The TCFD standards are now widely recognized and accepted. Between the issuance of the recommendations in 2017 and the final TCFD report in 2023, support for TCFD implementation grew from over 100 to over 4,850 companies worldwide.²⁷ In fact, at the time of SB 261’s passage, prominent California-based covered entities that had prepared TCFD-aligned reports included Wells Fargo, Chevron, and Meta.²⁸

The Legislature wisely recognized that the TCFD standards offer a thorough and business-designed voluntary framework to publicly disclose financial risk data. Yet despite their wide uptake by thousands of companies, voluntary standards alone were inadequate to meet the widespread investor demand for this information and the cascading climate crisis. 2023 Cal. Stat. ch. 383, § 1. Responding to calls

²⁵ *E.g.*, acute risks like extreme weather events and chronic risks like higher temperatures. *Id.* at 5.

²⁶ *Id.* at 6.

²⁷ TCFD, *2023 Status Report*, at vi-vii (2023) <https://perma.cc/TP2X-Q2AM>.

²⁸ Wells Fargo Inc., *Climate Report* (Aug. 2024), <https://perma.cc/CX89-288P>; Chevron, *2023 Climate Change Resilience Report* (last updated Mar. 2024), www.chevron.com/-/media/chevron/sustainability/documents/climate-change-resilience-report.pdf; Meta Platforms, Inc., *2024 Sustainability Report* (last visited Oct. 21, 2025), <https://perma.cc/899J-NNG2>.

from advocates for mandatory mandate climate risk disclosures or TCFD reporting,²⁹ the Legislature provided that the largest corporations doing business in this state adhere to a climate risk disclosure regime. Cal. Health & Safety Code § 38533(b).

III. CALIFORNIA ALSO ADOPTS LONGSTANDING DISCLOSURE STANDARDS TO CALCULATE AND REPORT CORPORATE GREENHOUSE GAS EMISSIONS IN RESPONSE TO INVESTOR AND CONSUMER DEMAND.

Similar interests in enabling “informed, environmentally sound decisions” by investors, consumers, and policymakers by corporations operating in this state motivated California to enact greenhouse gas emission disclosures in SB 253.³⁰ The law responds to a straightforward call to “inform investors, empower consumers, and activate companies to improve risk management.” 2023 Cal. Stat. ch. 382, § 1(e), (g).

Support for enhanced greenhouse gas disclosure is widespread given the interests of companies in a level playing field and those of investors and consumers in useful information for decisionmaking. A range of California-based and international corporations, from Adobe and Sierra Nevada Brewing to Ikea and

²⁹ See CLEE et al., *Fiduciary Duty in the 21st Century* 30 (Sept. 2020), <https://perma.cc/U8AR-HN6C>.

³⁰ Cal. S. Com. on Judiciary, Analysis of Sen. Bill No. 253, at 7, 12 (2023), <https://perma.cc/WXP4-PTDM> (explaining that the law was intended to help consumers “make informed decisions); *see also id.* at 10 (describing the information gaps facing to investors).

Microsoft, urged passage of SB 253, arguing that its disclosures would “help companies, investors, and the State better understand emission output, and strengthen the ability of economic actors to strategize in combatting costly risks associated with climate change.”³¹ Ceres, a nonprofit investor and corporate network which co-sponsored both SB 253 and SB 261, noted that over 500 investors representing nearly \$40 trillion in assets had publicly called for mandatory disclosure standards.³² Meanwhile, the market for environmentally sustainable goods and services has exploded in recent years driven by consumer demand for products manufactured through with lower greenhouse gas emissions.³³

SB 253 requires the largest corporations doing business in California to annually disclose their greenhouse gas emissions, pursuant to a framework developed by CARB. Cal. Health & Safety Code § 38532(c)(1); *see id.* § 38532(b)(2) (stating that the law applies to companies generating over \$1 billion

³¹ Letter from Adobe et al. to Asm. Chris Holden, Leading Companies and Institutions Support the Climate Corporate Data Accountability Act (SB 253) (Aug. 14, 2023), <https://perma.cc/W3K5-T3UE>.

³² Ceres, *California Sets National Standard for Corporate Climate Disclosure as Governor Signs Landmark Legislation* (Oct. 7, 2023), <https://perma.cc/5TCP-6P9E>.

³³ *See, e.g.*, PwC, *Consumers Willing To Pay 9.7% Sustainability Premium, Even As Cost-Of-Living And Inflationary Concerns Weigh: PwC 2024 Voice of the Consumer Survey* (May 15, 2025), <https://perma.cc/W8C4-TTN2>; McKinsey & Co., *Consumers Care About Sustainability—And Back It Up With Their Wallets* (Feb 6. 2023), <https://perma.cc/4CW8-CMW7>.

annually).³⁴ Reporting entities must make their disclosures to a third-party nonprofit reporting organization selected by CARB and follow the reporting standards developed by leading international business and nonprofit groups as the Greenhouse Gas Protocol. *Id.* § 38532(c)(1), (c)(1)(A)(ii).

As with SB 261, the California Legislature incorporated a globally recognized and accepted disclosure model for greenhouse gas emissions. Covered entities must report their emissions in three categories: scope 1 (direct from operations), scope 2 (indirect from purchased electricity and energy sources), and scope 3 (indirect from upstream and downstream sources along the company's entire value chain). *Id.* § 38532(b)(3)-(5), 38532(c)(1)(A)(i).³⁵ In each category, the required disclosures consist solely of numerical data regarding actual or modeled tons of greenhouse gases emitted into the atmosphere.³⁶

The three scopes are designed to provide understandable, comprehensive information to policymakers and market participants while at the same time enabling companies to easily differentiate between the pollution they emit directly

³⁴ A recent estimate identified 1,971 covered reporting entities. Ceres, *Companies Covered By The California Climate Disclosure Laws*, *supra*, at 2.

³⁵ See also McKinsey & Co., Inc., *What are Scope 1, 2, and 3 emissions?* (Sept. 17, 2024), <https://perma.cc/7LLY-M33A>.

³⁶ See World Bus. Council for Sustainable Dev. (WBCSD) & World Res. Inst. (WRI), *The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard 63* (2004), <https://perma.cc/YV62-VSSX>; WBCSD & WRI, *Corporate Value Chain (Scope 3) Accounting and Reporting Standard 118-20* (2011), <https://perma.cc/UF87-834L>.

into the air, over which they have the most control, and the emissions they contribute to indirectly.³⁷ The international World Resources Institute introduced the “scope framework” in 2001 to create a universal method for companies to measure and report the emissions.³⁸ Increasingly, companies and jurisdictions have decided to adopt the standard to voluntarily guide emissions disclosures. Now, thousands of companies, including Apple, Ford, General Mills, Walmart, and AstraZeneca, already disclose scope 3 emissions.³⁹ SB 253 provides the most flexibility for scope 3 reporting: CARB will accept “industry average data, proxy data, and other generic data” for scope 3 disclosures and will not penalize any such misstatements made with “a reasonable basis and disclosed in good faith.” Cal. Health & Safety Code § 38532(c)(1)(A)(ii), (f)(2)(B).

ARGUMENT

The climate disclosure regimes established by SB 261 and SB 253 promote the “free flow of commercial information” and the “formation of intelligent opinions” by investors and other market actors about the largest businesses in California. *Va. Citizens*, 425 U.S. at 765. These narrowly designed reporting requirements serve the greater good by generating more information and thereby

³⁷ WBCSD & WRI, *Corporate Value Chain Accounting*, *supra*, at 11-12.

³⁸ WBCSD & WRI, *The Greenhouse Gas Protocol*, *supra*, at 3.

³⁹ Ceres, *Meet the Companies that are Leading the Way on Scope 3 Emissions* (Nov. 8, 2022), <https://perma.cc/B5XM-PSZ2>.

accord with the First Amendment’s protections for commercial speech. *See id.* at 770 (explaining that “open[ing] the channels of communication” is the best way to inform people and enable them to “perceive their own best interests”).

In fact, because neither SB 261 nor SB 253 restrict what their covered entities must say regarding their climate risks or greenhouse gas emissions, the most lenient standard of review under *Zauderer* is appropriate in both circumstances. *See Milavetz*, 559 U.S. at 249 (applying *Zauderer* where laws “impose a disclosure requirement rather than an affirmative limitation on speech”); *Cal. Chamber of Comm. v. Council for Educ. & Rsch. on Toxins (CERT)*, 29 F.4th 468, 480 n.14 (9th Cir. 2022). The required data is purely factual based on existing internal business metrics, risk assessment and management strategies, and governance efforts, and does not mislead investors or policymakers. The disclosures are also uncontroversial: SB 253 “involves no compelled recitation of a message and no affirmation or belief” about emissions nor does it prohibit covered entities from “stating [their] own views about the proper means of managing” them. *Env’t Def. Ctr. v. EPA*, 344 F.3d 832, 850 (9th Cir. 2003) (upholding safe toxin disposal disclosures under *Zauderer*). Accordingly, the threshold *Zauderer* inquiry is met.

Applying the rest of the standard, both laws in their own way further California’s substantial interest in promoting market transparency and protecting

its investors, markets, and consumers. Both are also carefully designed to avoid burdening the speech of covered entities. And even subjecting SB 261's disclosures to the analysis under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980) militates the same result: the laws are fully consistent with the First Amendment and wholly constitutional vehicles to ensure fairness and the dissemination of information around a rapidly changing climate.

I. THE COMMERCIAL SPEECH FRAMEWORK SUPPLIES THE APPROPRIATE STANDARD FOR ANALYZING SB 261 AND SB 253.

Both SB 261 and SB 253 address commercial speech in the context of compelled securities-related government filings. The fact that these disclosures deal with climate change-related matters does not alter the analysis. The Chamber attempts to subject reporting disclosures to more exacting levels of scrutiny, AOB 36, yet this Court thoroughly rejected a similar argument two months ago. "As a general matter, it makes little sense to determine the appropriate level of scrutiny to apply to government reporting requirements using the traditional definitions of commercial speech." *Pharm. Rsch. & Mfrs. v. Stolfi*, -- F.4th --, 2025 WL 2448851, *10 (9th Cir. Aug. 26, 2025), *see also id.* at *17 n.26 (raising and rejecting the notion that nonprofit charity reporting requirements would be subject to strict scrutiny).

The disclosures here follow a long, established legacy of mandatory reporting requirements. *See, e.g.*, 15 U.S.C. § 78m (requiring registered securities

issuers to file periodic reports with the SEC as the agency may prescribe “for the protection of investors”); *Stolfi*, 2025 WL 2448851, *5 (enumerating various government reporting requirements); *see also Am. Meat Inst. v. USDA*, 760 F.3d 18, 23-24 (D.C. Cir. 2014) (en banc) (identifying the “historical pedigree” and “time-tested consensus” supporting country-of-origin label mandates). Similar investor-related reporting requirements have withstood First Amendment scrutiny. *See, e.g., Chamber of Commerce v. SEC*, 85 F.4th 760, 770-72 (5th Cir. 2023) (upholding constitutionality of SEC share buyback disclosure requirement); *Full Value Investors, LLC v. SEC*, 633 F.3d 1101, 1109 (D.C. Cir. 2011) (institutional investment manager disclosures).

II. THE CLIMATE FINANCIAL RISK DISCLOSURES IN SB 261 ACCORD WITH THE FIRST AMENDMENT UNDER *ZAUDERER*.

Requiring large companies to disclose the financial risks to their business model and supply chains from climate change does not violate the First Amendment. *See Milavetz*, 559 U.S. at 250 (upholding disclosures that “entail only an accurate statement” about the service provided). To the contrary, these requirements further the flow of climate-related information in the marketplace—the core principle animating the commercial speech doctrine. *See Va. Citizens*, 425 U.S. at 765. The district court correctly held that SB 261 is constitutional but erred in the test it applied. Because SB 261 does not curtail speech but merely obligates

disclosure of factual and uncontroversial risk data to CARB, the lenient *Zauderer* test is the appropriate standard.

The threshold inquiry determining which standard applies places SB 261 firmly in the *Zauderer* camp because the law compels purely factual and uncontroversial information about covered entities' financial risks. *See Nat'l Ass'n of Wheat Growers v. Bonta (NAWG)*, 85 F.4th 1263, 1275 (9th Cir. 2023) (setting forth the threshold standard). The law satisfies the remainder of the *Zauderer* test because "it is reasonably related to a substantial governmental interest" — protecting investors in California's economy. It is also "not unjustified or unduly burdensome," *id.*, for the limited number of entities it covers: sophisticated corporations with hundreds of millions of dollars in annual revenue.

A. SB 261 Requires Factual and Non-Misleading Information About Corporate Climate Risks.

By calling on companies to present their own estimation of material risks from climate change to their business model, based on actual internal data, SB 261 compels disclosure of "necessarily factually accurate" data. *NAWG*, 85 F.4th at 1276-77. Statements of a corporation's own risk analyses are "literally true" based on "accurate, factual information," *id.*, because they are based on formulations of material data produced by the company's own records and inputs about costs and assessments of risks. Cal. Health & Safety Code § 38553(a)(2), (b)(1); *supra* pp. 12-14; *see SBFA v. Mohseni*, 2025 WL 1111493, *2 (9th Cir. 2025) (concluding

that mandatory APR disclosures for small business loans are “literally true” because they are “calculated using the information in the financing agreement and a description of its meaning and/or characteristics”). Crucially—and just like for ordinary SEC disclosures—the statutory framework calls for covered entities to assess the materiality of risks and the systems and processes that exist to address them.⁴⁰

The district court therefore erred in holding that the disclosures provided in SB 261 do not compel factual information. *See Chamber of Commerce v. CARB*, 2025 WL 2337209, *12-13 (C.D. Cal. Aug. 13, 2025). Every day corporations make pricing, investment, and other financial decisions by modeling future risks using current factual data. Utilities, for example, make all sorts of considerations about price based on elevated risk of wildfire damage in California.⁴¹ That these estimates are future-oriented or predictive does not make them less “purely factual” or more akin to “inflammatory” statements like opinions. *CTIA—The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 847 (9th Cir. 2019); *see also R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 879 (5th Cir. 2024) (explaining that, under *Zauderer*, compelled disclosures must be “composed of only (a) information

⁴⁰ *See* CARB, *Climate Related Financial Risk Disclosures: Draft Checklist 2* (2025), <https://perma.cc/V8GY-2KER>.

⁴¹ *See, e.g.,* PG&E, *Climate Adaptation and Vulnerability Assessment Executive Summary* (2024), <https://perma.cc/GZ89-FNUE>.

supported by facts and (b) conclusions driven by those facts, and (2) not akin to unfalsifiable statements of opinion”). Nor are the disclosures of SB 261-required data and inferences drawn from that data likely to mislead investors or government entities. *Compare CERT*, 29 F.4th at 478-79 & n.12 (finding “misleading” a mandatory statement based on a word with “complex legal meaning” that required “context”). Rather, these disclosures reveal the financial considerations that the largest corporations are likely already making. *See Stolfi*, 2025 WL 2448851, *16 (“Many routine financial regulations require the reporting of similar internal economic analysis”). That future risk data are necessarily estimated does not render them misleading. *See SBFA*, 2025 WL 1111493, *3 (upholding disclosures of “estimated APR” based on actual costs and funding information); *N.Y. State Rest. Ass’n v. N.Y.C. Bd. of Health*, 556 F.3d 114, 121-22 (2d Cir. 2009) (sustaining disclosures of sugary beverage nutrition labels even if some “variation in calorie content” exists).

B. The Disclosures Are Uncontroversial Because They Do Not Force Covered Entities To Opine On Climate Change.

Requiring the largest corporations to disclose their climate-related financial risks does not force them to engage in a debate characterized by a “robust disagreement by reputable scientific sources” nor “convey a message fundamentally at odds with their businesses.” *NAWG*, 85 F.4th at 1277-78

(suggesting that “controversy” for *Zauderer* purposes has objective and subjective valences).

Compelling disclosures about financial risks associated with a well-accepted scientific fact is uncontroversial. First, the existence of climate change is uniformly accepted by scientists, economists, and the mainstream business sector.⁴² Even the Chamber admits that “[a]ll parties here agree climate change is a reality and emissions contribute to it.” Reply, *Chamber v. CARB*, 2025 WL 2337209 (C.D. Cal. Aug. 19, 2024) (ECF No. 59). Statements on how climate change impacts a corporation’s value chain thus do not embroil the speakers in a “scientific debate,” *CERT*, 29 F.4th at 478 & n.10 (acknowledging the debate over whether food-borne acrylamide causes cancer), or entail a “hotly disputed scientific finding,” *NAWG*, 85 F.4th at 1279.

⁴² See, e.g., NASA, *Do scientists agree on climate change?* (last visited October 21, 2025), <https://perma.cc/SHC2-BMPX> (finding that 97 percent of actively publishing climate scientists agree that humans are causing global warming and climate change.); Inst. for Policy Integrity, NYU Sch. of Law, *Gauging Economic Consensus on Climate Change*, at i (2021) (finding that less than 1 percent of economists surveyed believe that climate change is “not a serious problem”), <https://perma.cc/XW2H-Y74U>; Climate Impact Partners, *Quiet Climate Action: Fortune Global 500 Climate Progress Continues (2024)* (finding that 45 percent of Fortune 500 companies have pledged to be net zero by 2050), <https://perma.cc/2S24-WJRR>; Sam Meredith, *BlackRock CEO says the climate crisis is about to trigger 'a fundamental reshaping of finance,'* CNBC, <https://perma.cc/A4DN-NNVJ>.

Moreover, even if certain covered entities have some ideological disagreement with this scientific consensus, merely reporting climate-related financial risks does not force companies to take any political stance on their climate risks or express any statements about climate change or their possible contributions to it. *See NAWG*, 85 F.4th at 1277 (describing the “subjectively controversial” prong as the disclosure’s “effect on the speaker”). The disclosures here are far from the kind of ideological or hot-button cultural issue like abortion about which a company may be forced to convey a polemical message. *Compare Nat’l Inst. of Family & Life Advocates v. Becerra (NIFLA)*, 585 U.S. 755, 769 (2018) (calling abortion “anything but an uncontroversial topic”). Just as the district court found with respect to SB 253, *Chamber v. CARB*, 2025 WL 2337209, *13, disclosing financial risks to government entities does not require stating that large corporations caused the climate crisis or opining on their responsibility for those risks.⁴³ SB 261 simply obligates reporting information without analysis or opinion; it does not mandate issuance of text that “conveys moral responsibility” for climate change or “require an issuer to tell consumers that its products are ethically tainted.” *NAM v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015) (invalidating disclosure requirement regarding whether minerals were “conflict-free” because

⁴³ While the district court did not reach whether SB 261’s disclosures are controversial, its reasoning with respect to SB 253 is equally applicable.

the regulation would require a company “to publicly condemn itself”). The disclosures also do not compel companies to proclaim any causal connection between their products or services and climate change. *See, e.g., NAWG*, 85 F.4th at 1280-81 (invalidating warning that glyphosate may cause cancer); *Md. Shall Issue, Inc. v. Anne Arundel Cty.*, 91 F.4th 238, 249-50 (4th Cir. 2024) (affirming constitutionality of mandatory suicide prevention pamphlet to be provided with handgun sales because “[t]he pamphlet does not suggest that firearms cause suicide”).

C. The Risk Disclosure Laws Serve California’s Substantial Interest In Protecting Investors And Do Not Unduly Burden Covered Entities.

Because SB 261 mandates purely factual and uncontroversial information, the district court erred in rejecting the application of the *Zauderer* test.

1. SB 261 Serves California’s Substantial Interest in Fostering Truthful and Transparent Markets.

California’s “interest in ensuring the accuracy of commercial information in the marketplace is substantial.” *Edenfield v. Fane*, 507 U.S. 761, 769 (1993).

Additionally, California has a “significant interest in protecting the health, safety, and welfare of its citizens.” *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 485 (1995).

The disclosures established by SB 261 serve both interests by promoting transparency about material investment risks due to a changing climate that could significantly impact California’s economy. *See supra* pp. 5-7. They respond to

demands from large institutional investors like pension funds that seek to make fully informed investment decisions. *Supra* pp. 8; *see Stolfi*, 2025 WL 2448851, *18; *Chamber v. SEC*, 85 F.4th at 771-72 (recognizing that the “SEC has a legitimate interest in promoting the free flow of commercial information”). As the Legislature identified, “consistent, higher level, and mandatory disclosure” of climate risks will help state government and business leaders avert “significant harm to California, residents, and investors,” and thereby “ensure a sustainable, resilient, and prosperous future for our state.” 2023 Cal. Stat. ch. 383, § 1.

Government-mandated reporting requirements to assist investors are well-accepted mechanisms to promote transparency in the marketplace and routinely pass constitutional muster. Interpreting SEC rules compelling disclosures of corporate stock buyback, for example, the Fifth Circuit found that the SEC used “empirical evidence” that public companies have “many reasons for repurchasing shares,” and that regulations intended to “allow investors to separate out and assess the different motivations behind, and impacts of, share repurchase” served a “legitimate interest.” *Chamber v. SEC*, 85 F.4th at 771.⁴⁴ So too here: the empirical evidence demonstrates that investment decisions today must consider the impact of

⁴⁴ While the court ultimately invalidated the regulations, it did so on administrative law, not First Amendment, grounds. *Id.* at 779.

climate change, and the disclosures enable investors to evaluate various potential financial risks. *Id.*; *see supra* pp. 11-12.⁴⁵

2. SB 261 Is Neither Unduly Burdensome Nor Unjustified.

Finally, the mandatory disclosures do not restrict what corporations can say about their climate risks. *See Am. Beverage Ass'n v. City & Cty. of S.F.*, 916 F.3d 749, 757 (2019) (en banc) (explaining that disclosures that “chill[] protected speech” are unduly burdensome). SB 261 merely requires data reporting. Cal. Health & Safety Code § 38533. Covered entities are free to provide any additional messages about climate change that they wish. *See Milavetz*, 559 U.S. at 250; *Chamber v. SEC*, 85 F.4th at 772; *Nat'l Retail Fed. v. James*, 2025 WL 2848212, *7, *10 (S.D.N.Y. Oct. 8, 2025) (affirming mandatory algorithmic pricing disclosure and noting that “Plaintiff’s members are free to utilize algorithmic pricing or not and are free to communicate their own views about the use of such technologies”).

Moreover, challenged disclosures also are wholly justified in light of the global climate crisis and the demonstrated economic harms it poses to California’s consumers and investors. *See R J Reynolds*, 96 F.4th at 885 (characterizing this element as a “balancing requirement”). By contrast, the disclosures apply narrowly

⁴⁵ Amicus agrees with the State that California’s interests in reducing overall climate-related risks to its markets and preventing misleading or asymmetrical information to consumers are also substantial. RB 61-63.

to a limited number of covered entities. *See NIFLA*, 585 U.S. 755, 776 (2018) (stating that disclosures must remedy harms that are “potentially real, not purely hypothetical”). Large corporations regularly identify, calculate, and disclose material financial risks to government regulators; no one can reasonably claim that reporting risks due to climate change is anything different. Moreover, as noted above, prominent California-based companies were already complying with the voluntary TCFD-aligned reports at the time of SB 261’s passage, *supra* p. 12; accordingly, complying with state standards that explicitly adopt that framework poses little financial obstacle and is neither “excessive [n]or disproportionate to the benefits gained.” *R J Reynolds*, 96 F.4th at 885. At the same time, the law is crafted to only minimally burden covered entities that do not already conduct the analyses underlying a full TCFD report. *See* Cal. Health & Safety Code § 38533(b)(1)(B).

SB 261 demands reasonable, well-accepted risk assessments premised on factual and uncontroversial data. The appropriate standard of review is *Zauderer*, and the law meets that standard.

III. THE CLIMATE RISK DISCLOSURES ALSO SATISFY THE *CENTRAL HUDSON* STANDARD.

Even if the proposed restrictions are deemed controversial and thus *Central Hudson* supplies the correct analysis, “the outcome is the same”: the reporting requirements established by SB 261 are consistent with the First Amendment. *Yim v. City of Seattle*, 63 F.4th 783, 793 (9th Cir. 2023) (articulating the four-part

Central Hudson standard); see *Spirit Airlines, Inc. v. DOT*, 687 F.3d 403, 415 (D.C. Cir. 2012) (finding that airline total price disclosure was constitutional under both *Zauderer* and *Central Hudson*).

The first three elements are easily met. First, there should be no dispute that reporting climate-related financial risks “concerns lawful [business] activity,” *Yim*, 63 F.4th at 793, and does not “propose[] an illegal transaction,” *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 821 (2013). Second, for the same reasons described *supra* Section II.C.1, California has a substantial interest in protecting its investors, including significant institutional investors like CalPERS, residents, and consumers from harm arising from climate-related financial risks. See also RB 61-63. The empirical evidence presented to the Legislature of the risks to California’s economy from global climate change further substantiates those interests. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (authorizing states to supply “studies” and “anecdotes” to justify commercial speech restrictions). Third, SB 261 directly advances those interests by requiring covered entities to publicize their reports and authorizing CARB to prepare a publicly accessible “systemic and sectorwide” report. Cal. Health & Safety Code § 38533(c)-(d). While simply mandating reporting financial risk to government entities undoubtedly, without more, does not “deal perfectly and fully” with the potential economic upheaval posed by the climate crisis, it serves as an important protection for California’s

investors, and California “should not be punished for leaving open more, rather than fewer, avenues of expression.” *Yim*, 63 F.4th at 795.

Finally, the disclosures are narrowly tailored to the goals expressed in SB 261. *See Valle*, 709 F.3d at 825 (requiring a reasonable “fit between the government’s legitimate interests ends and the means it uses”). The law merely obligates certain corporations to report internal risk data—which many corporations already collect voluntarily—to the state and post the same information on their websites; it does not require them to say anything else or limit their speech in any way. *See Spirit*, 687 F.3d at 415 (“The rule simply regulates the manner of disclosure. It imposes no burden on speech other than requiring airlines to disclose the total price consumers will have to pay. This the First Amendment plainly permits.”) The law also only covers the largest corporations operating in California. SB261 is thus, if anything, underinclusive in its scope in attempting to craft one narrow yet sensible solution to address the cascade of problems associated with climate change. *See Metro Lights, L.L.C. v. City of Los Angeles*, 551 F.3d 898, 911 (9th Cir. 2009) (explaining that “the narrow tailoring requirement guards against over-regulation rather than under-regulation”).

IV. THE EMISSIONS DISCLOSURES ALSO SATISFY ZAUDERER SCRUTINY.

Finally, the emissions disclosure regime established by SB 253 also comports with the First Amendment for largely the same reasons as does SB 261.

The threshold inquiry is easily met. *See* RB 27-28. For scopes 1 and 2, the required emissions disclosures call for “literally true” statements calculated from a covered entity’s activities within its control. *CTIA*, 928 F.3d at 846; *see* Cal. Health & Safety Code § 38532(b)(3)-(4); *SBFA*, 2025 WL 1111493. The information required about emissions from an entity’s own fuel combustion, consumed electricity, supply chains, and personnel practices are “straightforward, evenhanded, and readily understood.” *AMI*, 760 F.3d at 34 (Kavanaugh, J., concurring). For scope 3, while data may not be within an entity’s direct control, SB 253 authorizes use of well-accepted third-party standards using industry averages and proxy data. *See* Cal. Health & Safety Code § 38532(b)(5), (c)(A)(ii); *supra* p. 16. That the data may be estimated, as acknowledged by the WRI standards on which the law is based, does not render the disclosures misleading. *See SBFA*, 2025 WL 1111493.⁴⁶ Nor is emissions data “ideological,” AOB 43—and even if it were, “ideological baggage has no relevance to the first *Zauderer* prong.” *R J Reynolds*, 96 F.4th at 880 (holding that mandatory images on tobacco labels are purely factual).

Also, just as disclosures about a company’s climate financial risks are noncontroversial, so too are mandatory emissions disclosures. *See supra* Section

⁴⁶ WBCSD & WRI, *The Greenhouse Gas Protocol, supra*, at 31 (“Emission estimates are acceptable as long as there is transparency”).

I.A.2. On the objective level, it is now incontrovertible among the scientific community that greenhouse gas emissions are the principal driver of climate change.⁴⁷ As to the subjective, reporting greenhouse gas emissions also does not force multibillion-dollar corporations from conveying messages at odds with their mission. Even accepting that “the policy judgment” that corporate greenhouse gas emissions can increase California’s climate risks “may be controversial . . . the existence and contents” of a longstanding, third-party-created scope framework “is not itself controversial.” *CompassCare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025) (concluding that mandatory employment handbook notices about New York reproductive care laws were “purely factual and uncontroversial” statements, even if the underlying subject—abortion—was controversial); *see* 2023 Cal. Stat. ch. 382, § 1(g), (k). The reporting requirement also does not obligate any statements implying causal connection between an entity’s emissions and effects on the climate. *Compare NAWG*, 85 F.4th at 1280-81.

Moreover, under SB 253 covered entities are free to say anything they want about climate risks and greenhouse gas emissions. *Enviro. Def. Ctr.*, 344 F.3d at 850; *S. Cal. Inst. of Law v. Biggers*, 613 F. App’x 665, 666 (9th Cir. 2015) (rejecting that the “implications” the audience might draw from disclosure of factual data alters the inquiry); *contra* AOB 45. That is a far cry from a compelled

⁴⁷ *Supra* note 47.

disclosure implicitly conveying a stigmatizing message about any contributions from an entity's industrial emissions to a changing climate. *Compare NAM*, 800 F.3d at 530.

Applying the rest of the *Zauderer* test, California has a substantial interest in protecting its markets, investors, and residents from the increased climate risks posed by greenhouse gas emissions, as well as promoting transparency in the marketplace. 2023 Cal. Stat. ch. 382, § 1; *see Rubin*, 514 U.S. at 485; *Edenfield*, 507 U.S. at 769; RB 36-49. Like SB 261, the disclosures in SB 253 do not unduly burden the speech of their covered entities: lawmakers narrowly crafted them simply as reporting requirements based on the recognized scope framework without imposing or barring any specific message about emissions. The hurdles are low: the Legislature cabined the law to apply only to the very largest corporations, which undoubtedly have the means and expertise to identify, calculate, and report their emissions information, especially by consulting with statutorily mandated third-party assurance providers. *See* Cal. Health & Safety Code § 38532(c). Additionally, the law does not penalize any misstatements on scope 3 emissions issued in good faith in light of the recognized complexity in gathering that data. *See id.* § 38532(f)(2)(C).

The global climate crisis threatens to disrupt California's vast and varied economy—indeed, the state is already experiencing market volatilities as a

consequence. The Legislature appropriately and carefully enacted a pair of laws intended to enhance the free flow of information to enable better financial decision-making in this new, dramatically changing world. As simple reporting requirements premised on accepted third-party standards, the laws comport with the First Amendment.

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Dated: October 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 23, 2025

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 9th Cir. R. 32-1 because it contains 6,997 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word. The text is in 14-point Times New Roman type.

Dated: October 23, 2025

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