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, in her official capacity as Chair of the California Air Resources Board, et al.,
Defendants-Appellees.

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 ENVIRONMENTAL DEFENSE FUND IN SUPPORT OF DEFENDANTS-APPELLEES

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RULE 29 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), I certify that Amicus Environmental Defense Fund's counsel authored this amicus curiae brief in its entirety. No person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund the preparation or submission of this brief.

Amicus has received the consent of all parties to the filing of this brief.

STATEMENT OF INTEREST

Founded in 1967, Environmental Defense Fund ("EDF") is a non-profit organization with more than 2.5 million members nationwide, including approximately half a million members in California. EDF has offices across the country, including in California, and a staff of scientists, economists, policy experts, and other professionals. EDF works to strengthen people's ability to thrive in a changing climate and has long sought to improve disclosure and understanding of climate-related risks through efforts including technical analyses, private sector partnerships, transparent emissions reporting, and development of standards. EDF engages its science, policy, and financial expertise in finding solutions for business that promote corporate performance and sustainability, partnering with more than 40% of Fortune 100 companies to craft and implement pragmatic climate solutions that bolster the bottom line. With its EDF+Business program, EDF conducts research on the financial and economic impacts of climate risk and collaborates with corporate partners on solutions that support long-term growth and resilience.

INTRODUCTION AND SUMMARY OF ARGUMENT

By any honest reckoning, the "Free Speech" burdens entailed by the two California statutes challenged here are remarkably insubstantial. The information that SB 253 and 261 require about the operations of very large corporations doing business in the State is fundamentally similar to disclosures these entities already make routinely to state and federal governments and the public. Indeed, many of Appellants' members are already disclosing much of the *same* information, in the same formats. And the disclosures involve subject matter—*e.g.*, greenhouse gas emissions metrics and targets and an array of other climate-related business practices—that many of Appellants' members speak about regularly, in pursuit of commercial advantage, albeit in ways that investor and consumer audiences lack means to appraise.

The Statutes do nothing to abridge businesses' freedom to express—or to remain silent about—their policy views on climate-related matters or to air complaints about the State's reporting frameworks (though the operative standards were developed through business-led efforts) or tout their programs for offsetting climate harms. And companies who disclose emissions increases (or an absence of climate goals or risk

management practices) suffer no disadvantage. Indeed, if such statements accurately describe a business's circumstances, that is what the Statutes *require* it to report.

From the perspective of the interests the State seeks to advance, however, SB 253 and 261 are game-changers. Both laws directly concern matters of immense importance to California's people and economy. As the district court recognized, the information asymmetries that the two measures seek to overcome cause serious harm, by interfering with capital markets' proper functioning, threatening potentially far-reaching financial instability. Appellants' suggestion that the information is a matter of mere "curiosity" or niche interest is, as the court recognized, fanciful. Expert economists and the Nation's largest investors and corporations have explained the urgent need for exactly the sort of standardized emissions and climate-risk information that SB 253 and 261 elicit.

Much the same goes for California's important interest in promoting commercial honesty and deterring greenwashing. The premise that corporate misrepresentations about climate impacts and practices are a real and serious concern for consumers should require no elaborate

demonstration. Businesses would not spend hundreds of millions of dollars annually publicizing climate-related goals and practices if consumers did not care, and the evidence (both survey research and actual consumer behavior) shows they *do* care. Here too, structural asymmetries call for the solution California enacted: Absent requirements for consistent and verifiable disclosures, consumers are unable to distinguish accurate claims about businesses' climate progress and practices from incomplete and misleading ones. Indeed, evidence that businesses are exploiting this imbalance, to consumers' detriment, is compelling: In anonymous surveys, large numbers of American corporate executives report that their *own* companies engage in greenwashing. Appellants counter that California should address the problem through anti-fraud causes of action, but it is implausible to expect that consumers will be able to marshal the accurate company-level climate information necessary to make that remedy effective—and it is hard to believe that a proliferation of lawsuits would truly be a preferable solution for Appellants.

Finally, the two Statutes will have another salutary effect (though one not necessary to affirm the district court's judgment): They advance

California's compelling interest in meeting its climate goals and shielding the State and its residents from massive climate-induced harms. These benefits will result primarily from covered businesses' economic incentive to bring their actual practices into alignment with the investor and consumer perceptions they have cultivated. But it will also help that the reporting process itself, and information about peers' practices, will advance managers' understanding of risks their own companies face and available means for responding. Rather than dispute this, Appellants posit that these benefits to California's businesses and citizens somehow indict the Statutes—by unmasking their true character as emissions regulation. That is plainly wrong: The Statutes attach no consequences to the quantity of emissions a company reports. What they do regulate and require is the disclosure of accurate information.

ARGUMENT

Appellants focus mostly on claimed errors in the district court's understanding of First Amendment doctrine, saying much less about the important interests the Statutes advance and their efficacy. This brief does not seek to add to the State's showing why Appellants' doctrinal arguments warrant rejection. We respond instead to Appellants' efforts to

sow doubt about the substantiality of the governmental interests at stake and the soundness of the Statutes' approach to pursuing them.

I. The Statutes Advance the State's Interest in Providing California Investors with Reliable Climate-Related Information.

The district court properly determined that Appellants' First Amendment challenge will likely fail, because both Statutes appropriately advance the State's avowed interest in rectifying informational asymmetries that impair the operation of capital markets and threaten serious harm to investors and the broader economy. Appellants' Excerpts of Record ("ER") 1-ER-28. That conclusion, upholding the central premise of both Statutes' design, is unassailably correct. It comports with common sense and the judgments expressed by leading investment firms and large corporations and substantiated by a raft of scholarly research.

"Investors can only price the risks they are aware of," Condon, *Market Myopia's Climate Bubble*, 2022 Utah L. Rev. 63, 71 (2022), and the widespread failure of existing disclosures to provide investors with useable emissions and climate-risk information leads markets to misprice assets. Larcker et al., *2024 Institutional Investor Survey on Sustainability*, Stanford Grad. Sch. Bus., Hoover Inst. Working Grp. on Corp.

Governance, Rock Ctr. for Corp. Governance, & MSCI Sustainability Inst. 6 (2024) ("The world's largest investors overwhelmingly believe that climate change will impact portfolios, but do not think climate risks are fully reflected in asset prices."). Analyses conducted by BlackRock, the International Monetary Fund, and Mercer have likewise found that securities prices fail to reflect actual climate-risk exposure. *See* Condon, *supra*, at 73-74 (describing studies); *see also* Alok et al., *Do Fund Managers Misestimate Climatic Disaster Risk?*, 33 Rev. Fin. Stud. 1146, 1181 (2020) (finding that mutual fund managers misestimate climate risks based on current inconsistent and unreliable disclosures). Those harmed by these market distortions are not just Wall Street firms: They include everyday people whose retirement and other savings are invested in the stock market.

The threats the Statutes address are potentially much more far-reaching. Financial regulators, including heads of central banks, have expressed concern that markets' widespread failure to account for climate risk could "cause a contagion of financial failures" with "domino-effects throughout the financial sector," resulting in a "sudden collapse in asset prices." *Condon*, *supra,* at 112. And modeling shows that "climate

change induced reduction in labor productivity and capital stock could impact the stability of the global banking system." *Id.* at 112-13.

In light of these substantial investor and capital market harms, there is—unsurprisingly—broad investor demand for the information the Statutes require companies to disclose. *Contra* Appellants' Opening Br. ("AOB") 65-66 (positing there is no "informational gap" for the Statutes to fill). For example, a 2022 survey of 439 large institutional investors found that 79% believed climate-risk reporting to be as important as other types of financial reporting, with 28% saying it was more important. Ilhan, *Climate Risk Disclosure and Institutional Investors*, 36 Rev. Fin. Stud. 2617, 2619 (2023). Recently, investors have detailed these informational gaps and the value of climate-related disclosures in expressions of support for the Statutes and the Securities and Exchange Commission's proposed climate-risk disclosure rule, in statements to the public, and in their actual investment decisions.

A. The Emissions Disclosures SB 253 Requires Advance the State's Interest.

For markets to function properly, investors need reliable and comparable greenhouse gas emissions data—not merely to understand companies' environmental impacts but because emissions are an

indicator for climate-related transition risks and opportunities that can have material financial impacts on companies.[1] *See* Condon et al., *Mandating Disclosure of Climate-Related Financial Risk*, 23 NYU J. Legis. & Pub. Pol'y 745, 774 (2021). "Understanding and managing Scope 1, 2, and 3 emissions are critical for investors," because "[c]ompanies with significant [greenhouse gas] emissions may face regulatory risks"; "[c]ompanies that poorly manage emissions may suffer reputational damage, affecting customer loyalty and brand value"; and "[c]ompanies that proactively manage their emissions are often better positioned for long-term sustainability." Furdak et al., *The Scope of Net Zero: The Use of Carbon Emission Data to Achieve Portfolio Goals*, CFA Institute Research & Policy Center 87, 90 (2024). ExxonMobil, for example, has reported that "[g]overnment actions intended to reduce greenhouse gas emissions" could make the company's products "more expensive or less competitive, lengthen project implementation times, and reduce demand for hydrocarbons, as well as

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[1] A transition risk is a financial risk to a company arising from shifts in global markets, policies, technology, and consumer preferences associated with societal responses to climate change. U.S. EPA, *Climate Risks and Opportunities Defined* (Mar. 3, 2025), https://www.epa.gov/climate-leadership/climate-risks-and-opportunities-defined.

shift hydrocarbon demand toward relatively lower-carbon alternatives," and "may also increase [ ] compliance costs." ExxonMobil Corp., Annual Report (Form 10-K) 4-5 (Feb. 19, 2025).[2]

Investors consistently report that considering emissions is critical to their investment decision-making. A recent survey found that 85% of North American institutional investors analyze the emissions of their investments. Larcker et al., *supra,* at 6; *accord* Comments of AllianceBernstein to SEC, 4-5 (June 17, 2022), https://bit.ly/3JePvsm (emissions reporting "is critical to [their] understanding of the quality of a company's earnings in the face of climate change and the energy transition."). CalPERS, which manages a $584 billion investment portfolio, representing the health and retirement funds of some two million individuals, "'has long been a proponent' of 'Scope 1 and Scope 2 emissions [disclosure], because [that information] is crucial in making investment[]' decisions," 1-ER-30, and has further attested to the "material[ity]" of SB

[2] The same submission recognizes that these transitions will also present "advantaged growth opportunities and lower-emission investments," including ones "targeted at reducing emissions in the Company's operations as well as reducing the emissions of other companies." *Id.*

253's Scope 3 emissions disclosure requirement. Cal. Pub. Emps.' Ret. Sys., *Investments* (July 21, 2025), https://bit.ly/474Aa6N.

There is nothing unique about CalPERS's position. *Contra* AOB 31. A group of 16 companies, including Microsoft and Adobe, explained that the emissions disclosures SB 253 requires "will 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." Adobe Inc. et al., Letter to Chris Holden, Chair, Assemb. Appropriations Comm. in Support of S.B. 253, at 1 (Aug. 14, 2023) ("Joint Comments on 253"). And the comments submitted in support of SB 253 echo those submitted by more than 300 institutional investors, managing over $50 trillion in assets, supporting the SEC's climate-related disclosure rules. *See* Comments for the Enhancement and Standardization of Climate-Related Disclosures for Investors, https://www.sec.gov/comments/s7-10-22/s71022.htm; *see also, e.g.*, 89 Fed. Reg. 21,668, 21,730 (Mar. 28, 2024) (citing submissions of Calvert, Fidelity, C. Howard, Impax Asset Mgmt., and Morningstar); *id*. at 21,860

n.2850 (citing submissions of Vanguard, Fidelity, and BlackRock).[3] These realities are not confined to companies whose shares are publicly traded. The large privately owned companies covered by SB 253 almost invariably have multiple outside investors. 6-SER-1692. And those with substantial private investments report confronting "the same risks" they see in public ones. 7-ER-1613-14.

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[3] The SEC rulemaking confirmed strong investor support for climate-related disclosures akin to the Statutes' disclosures. California's disclosure requirements are more important than ever given that the SEC rule is administratively stayed and the SEC's current leadership has expressed opposition to it. SEC Status Report, Doc. 5500618, *Iowa v. SEC*, No. 24-1522 (8th Cir. Mar. 27, 2025). To be sure, the requirements are not identical; the SEC rule, as adopted, did not require Scope 3 disclosures. But many investors expressed support for those too, for good reason. "Upstream scope 3 data could be a leading indicator of supply chain risk and increased cost," while "downstream scope 3 emissions data could be used as a leading indicator of exposure to revenue risk in the future." Comments of Manulife Investment Management to SEC, 2-3 (June 17, 2022), and such disclosures ensure that companies cannot claim impressive progress by "outsourcing a high-risk process to a third-party," thereby "obscuring" but not eliminating the underlying risk. Condon, *What's Scope 3 Good For?*, 56 U.C Davis L. Rev. 1921, 1939-40 (2023). As for Appellants' persistent claim that SB 253 requires them to report Scope 3 (and Scope 2) emissions as "their own" or makes them "responsible" for emissions throughout their "value chain," *see* AOB 9, 18, 45, SB 253 requires no such characterization; it requires that each category—the relationship of which to a company's activities is clearly defined—be reported separately. In any event, Scope 3 disclosures, which are not due to take effect until 2027, are immaterial to Appellants' claims of imminent injury.

Emissions information affects investment decision-making. One study showed that "investors price firms' greenhouse gas (GHG) emissions as a negative component of equity value," with "results suggest[ing] that, for the median S&P 500 firm, GHG emissions impose a market-implied equity discount of $79 per ton." Griffin et al., *The Relevance to Investors of Greenhouse Gas Emissions Disclosures*, 34 Contemp. Acct. Rsch. 1265 (2017). Because "institutional investors ... want to take a proactive approach by divesting from industries with high [carbon] emissions," Bolton & Kacpercyzk, *Do Investors Care About Carbon Risk?*, 142 J. Fin. Econ. 517 (2021), studies find "lower investor holdings among top emitters" after their and other companies' emissions are disclosed. *See* Cohen et al., *Institutional Investors, Climate Disclosure, and Carbon Emissions*, 76 J. Accounting & Econ. 101640 (2023). Recognizing that capital markets need emissions data, many companies already track and disclose emissions. *See* Joint Comments on 253 at 2 ("Globally, thousands of public and private companies are voluntarily reporting their scope 1-3 emissions."). For instance, Amazon publishes an annual sustainability report that includes the disclosure of Scope 1, 2, and 3 carbon emissions. *See* Amazon, *2024 Sustainability Report* (2024), https://bit.ly/47i97Ue.

But existing, mainly voluntary, frameworks for reporting emissions are deficient. Because "the full picture of corporate climate emissions currently remains fragmented, incomplete, and unverified," Joint Comments on 253 at 1, investors are at a disadvantage. *See* Comments of Trillium Asset Management to SEC, 2 (Oct. 20, 2022), https://bit.ly/4ngrSh0 (emphasizing that "the lack of complete and comparable data" under voluntary disclosure frameworks "may leave U.S. companies and investors at a relative disadvantage.").

The lack of standardized, credible emissions disclosure means that multiple large investors each "expend significant resources" attempting to reverse engineer the same companies' emissions information, by "purchasing third-party data, consulting with experts, [and] reconciling gaps in disclosures," *see* AllianceBernstein Comments at 2, and attempt to compile the data in useable, comparable form. The cost of doing so can run into the millions of dollars for a single fund. *See* Comments of CalSTRS to SEC, 5 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132337-302902.pdf (reporting spending of "about $1,600,000 per year" to access data "essential to fill in the gaps left by the roughly 60% of companies and assets in [its] portfolio which do not report

greenhouse gas emissions"). And this is obviously not an option for individuals and smaller-sized participants. *Id*. These piecemeal, duplicative efforts lack standardization and do little to address the informational asymmetries that compromise capital markets. "[C]onsistent, comparable, and reliable emissions data at scale is necessary to fully assess the global economy's risk exposure." Joint Comments on 253 at 2; *see also* Salesforce, Inc., Letter to Luz Rivas, Chair, Assemb. Nat. Res. Comm. in Support of SB 253, 2 (June 30, 2023) (supporting standardized disclosure). The law's requirements thus "fill[] [critical] gap[s]," AOB 65, left by companies that do not voluntarily report and by those whose voluntary reporting is unverified, incomplete, and self-serving.

SB 253 is well designed to provide this credible, standardized information. It requires the use of the Greenhouse Gas Protocol, the gold-standard for emissions reporting and independent third-party verification, Cal. Health & Safety Code § 38532(c), and provides for publication on a website that enables investors to make cross-company comparisons. Research has shown that *combining* these elements is critical to enabling investors to accurately price portfolio assets and make decisions based on those reassessments. *See* Daniel Matisoff, *Different Rays of Sunlight:*

Understanding Information Disclosure and Carbon Transparency, 55 Energy Pol'y 579, 589 (2013) (highlighting the importance of useable, comparable data); Berg et al., *On the Importance of Assurance in Carbon Accounting,* MIT Sloan Research Paper No. 6969-24, 2-3, 13-14 (Sept. 18, 2025), https://bit.ly/47Egsir (explaining that investors respond differently to disclosures that receive independent verification).

By making comprehensive, consistent, and credible emissions data freely available, SB 253 will provide important protections for investors and enable capital markets to better account for and respond to a large and complex class of significant financial risks.

B. The Climate-Related Financial Risk Disclosures and Business Practice Information SB 261 Requires Advance the State's Interest.

As with SB 253, SB 261's disclosure framework is tailored to address investors' pressing informational needs, directly advancing the State's interest in "reducing [informational] asymmetries, facilitating informed commercial transactions, and improving the efficiency of the [relevant] market." *Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, 153 F.4th 795, 826 (9th Cir. 2025).

As the district court recognized, substantially the same investor and capital-market interests advanced by SB 253 are advanced by SB 261, and in much the same way. Emissions data is one key metric investors rely on to price and manage climate risk in their portfolios. But SB 261 further requires disclosure of information about a company's governance, strategy, management, and metrics and targets, if any, for climate-related financial risks, including physical and transition risks. Cal. Health & Safety Code § 38533.[4] This information is equally important to capital-market efficiency and investment management, and, absent intervention, subject to the same sort of intractable asymmetries just described. Information about a company's assessment of climate-related financial risk—including, if the company so believes, that it anticipates *no* climate-related financial risks and is therefore making no related

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[4] Appellants' brief puts in quotation marks the name of the Task Force on Climate-related Financial Disclosures (TCFD), whose framework supplies the basis of SB 261's requirements, implying that California selected some obscure or suspect reporting methodology. AOB 6-7. But the TCFD, convened at the request of G20 Finance Ministers and Central Bank Governors, was chaired by Michael Bloomberg, and its report was prepared by "industry experts from various organizations, including large banks, insurance companies, asset managers, pension funds, large non-financial companies, accounting and consulting firms, and credit rating agencies." TCFD: About, https://www.fsb-tcfd.org/about/.

plans—is important to investor decision-making in the same way as is "earnings" data, AOB 68, and other types of financial information universally recognized as critical for investors to allocate capital efficiently. BlackRock's CEO stated in 2021 that "[c]limate risk is investment risk," cautioning that "[c]ompanies, investors, and governments must prepare for a significant reallocation of capital." BlackRock, *Larry Fink's 2021 Letter to CEOs*, http://bit.ly/4qo5G7s. Indeed, one analysis found that 215 of the world's 500 largest companies reported nearly $1 trillion in estimated aggregate financial risk from climate change. CDP, *Major Risk or Rosy Opportunity: Are Companies Ready for Climate Change?* 5 (2019), http://bit.ly/4hx8k6L.

Without SB 261's disclosures, investors cannot accurately assess a company's value and financial prospects, as "asset valuations and firm valuations (which determine securities prices) are impacted by [climate-related] physical risks and transition risks." Georgiev, *The Market-Essential Role of Corporate Climate Disclosure*, 56 U.C. Davis L. Rev. 2105, 2128 (2023). Specifically, investors need information about whether and how a company is assessing and addressing any physical risks it faces from a changing climate—such as risks posed to its operations by

extreme weather events, prolonged heat, and sea-level rise—as well as its transition risks. Schult et al., *The Impact of Transitory Climate Risk on Firm Valuation and Financial Institutions: A Stress Test Approach*, 76 Schmalenbach J. Bus. Res. 63, 65 (2024) ("The economic damage from these two risks … puts the profitability and financial health of companies at risk" and "may also hurt the financial sector as a lender of capital for these companies and endanger the resiliency of financial institutions.").

As with SB 253, investors have confirmed the value of the types of disclosures SB 261 requires, explaining that companies "face new risks relating to climate change—specifically, transition risk and physical risk—and [] these risks necessitate enhanced [company] disclosure," Comments of Wellington Management Company to SEC, 3 (June 17, 2022), http://bit.ly/4hvTb5O, and that because "[p]hysical risk and transition risk have starkly dissimilar characteristics … [i]nvestors must have detailed information on both risk types to make informed decisions," Comments of Minnesota State Board of Investment to SEC, 3 (June 15, 2022), http://bit.ly/4nYYE7n.

The magnitude of potential costs of climate-related physical risks is enormous. From 2008 to 2018, for example, the estimated financial

impact of California wildfires was more than $400 billion, Connolly et al., *Mortality attributable to PM2. 5 from wildland fires in California from 2008 to 2018*, 10 Sci. Advances 23 (June 7, 2024), http://bit.ly/42OAB2D, and the damage estimates from the 2025 Southern California fires alone stand at $250 billion, Vincent, *Estimated Cost of Fire Damage Balloons to More Than $250 Billion*, L.A. Times (Jan. 24, 2025), http://bit.ly/4odVbBW. In Texas, wildfires in 2024 caused more than $100 million in damage, Fannin, *Agricultural Losses From Texas Panhandle Wildfires Top $123 Million*, Texas A&M Univ. (May 7, 2024), https://bit.ly/3L143wh, and global wildfire risk is expected to increase, U.S. Global Change Research Program, Fifth National Climate Assessment, 2-26 (2023), http://bit.ly/47C2LAw. Across the country, major disasters and severe weather caused massive crop losses. Munch, *Major Disasters and Severe Weather Caused Over $21 Billion in Crop Losses in 2023*, American Farm Bureau Fed'n (Feb. 29, 2024), https://bit.ly/3Wjn3Ze. Increased exposure to higher temperatures has been shown to reduce firm revenue and operating income, Pankratz et al., *Climate Change, Firm Performance, and Investor Surprises*, 69 Mgmt. Sci. 7352, 7377 (2023) (international study of over 17,000 firms),

and extreme temperatures have decreased labor productivity and sales in manufacturing and other heat-sensitive industries, Custodio et al., *Does Climate Change Affect Firm Sales? Identifying Supply Effects*, S&P Global Market Intelligence 2, 28 (May 16, 2025), http://bit.ly/3We9DxL. In fact, between 1980 and 2024, the Nation suffered 403 weather and climate disasters that inflicted more than $1 billion in damage—with their total exceeding $2.915 trillion. NOAA, Billion-Dollar Weather and Climate Disasters, https://bit.ly/3L2Uc9h; *see also* Dance, *In First Six Months, Cost of Weather Catastrophes on Pace to Break a Record*, N.Y. Times (Oct. 22, 2025), https://bit.ly/4ozEP6K.

Company-specific physical risk information is essential to investors because these hazards vary across sectors and locations. *See, e.g.*, 89 Fed. Reg. at 21,689 n.262 (citing comments by BMO Global Asset Mgmt., CalSTRS, IATP, and Morningstar); *see also id.* at 21,677, n.103 (citing comments by BlackRock, Bloomberg, Calvert, Ceres, Franklin Templeton, Miller/Howard, PRI, and US SIF). For oil and gas facilities, for example, "changes in patterns of waves, wind, or ice flows can affect offshore facilities. Onshore facilities could be vulnerable to sea level rise, changes in storm surge, flooding, changes in wind and seismic activity,

or geo-technical considerations." ExxonMobil, 2024 Advancing Climate Solutions 65 (Jan. 8, 2024), https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions/2024/2024-advancing-climate-solutions-report.pdf. Corporations in the agricultural sector face massive financial risk due to droughts, floods, wildfires, and heat. *See, e.g.*, American Farm Bureau Fed., *New Estimates Reveal Major 2022 Weather Disasters Caused Over $21 Billion in Crop Losses* (Mar. 3, 2023), http://bit.ly/4nn6yqf. These physical risks (and adaptation and resilience options) are heterogenous across subsectors, regions, and time, making them largely indecipherable to outsiders. Company-specific physical-risk information is crucial to remedy current market inefficiencies. *See, e.g.*, Hong et al., *Climate Risk and Market Efficiency*, 208 J. Econometrics 265 (2019) (detailing evidence of inefficiencies).

Investors also require information about a company's climate-related transition risks, and not just emissions metrics, *see supra* p. 18, but also the disclosures about strategy, management, and targets that SB 261 requires. Information on the risks and opportunities companies experience from global market and regulatory shifts toward lower-carbon products, practices, and services is highly relevant to investment

decision-making. A company's failure to address transition risk can "result in [its] missing strategic opportunities for growth or the ability to address vulnerabilities in its business model, which, over time, could threaten its profitability or even its ability to continue to operate its business." Wellington Comment Letter at 3.

Current reporting practices, however, do not provide investors with adequate information about whether and how a company is assessing, planning for, and managing these financially consequential risks. Investors have called current reporting requirements "insufficient … to assess corporate climate risk and the related financial impacts to execute investment decisions." CalSTRS Comment Letter at 5; *accord* Microsoft et al., Letter to Chris Holden, Chair, Assemb. Appropriations Comm. in Support of S.B. 261, Climate-Related Financial Risk, 2 (Aug. 14, 2023) ("Joint Comments on 261") ("the current state of voluntary climate disclosure is inadequate for meeting rapidly accelerating climate risks"). The absence of enforceable disclosure requirements has "led to inconsistent information provided across multiple reporting regimes." This inconsistency has allowed companies to self-select which metrics and information to disclose and has caused confusion amongst investors about

which disclosures to trust and use." Comments of Boston Trust Walden to SEC, 3 (June 16, 2022), http://bit.ly/4qs7Tik. Companies "are better positioned than investors to understand their own climate-related exposures so [investors] need reliable, consistent, and comparable climate disclosures from [companies] to reduce this informational asymmetry." Comments of Calvert to SEC, 2 (June 17, 2022), http://bit.ly/4qBA2Ua. SB 261 elicits such disclosures.

By requiring specific, standardized disclosures, SB 261 provides investors with precisely the type of decision-useful information they need from companies. *See* Joint Comments on 261 at 1 ("With SB 261, increased disclosure of the material and systemic risks of climate change will not only help us better understand, price, and manage climate risks as well as take advantage of climate opportunities—it will level the playing field."). As such, the law clearly advances the State's interest.

II. The Statutes Advance the State's Interest in Protecting Consumers from Misleading Information.

The district court recognized that, in addition to securing necessary information for California investors, the State Legislature enacted the Statutes to protect California residents from doing business with companies based on inaccurate, incomplete, or misleading impressions about

their climate commitments and impacts. And as the court further recognized, such concerns can support a substantial government interest. 1-ER-29. The court, however, was unpersuaded that interest was implicated here, because the State had not shown that a "substantial majority" of covered entities make misleading climate-related claims, 1-ER-36, noting, in particular, reservations about a declarant's broad understanding of "indicators of greenwashing," *id.* at 34-36. Appellants go much further, insisting that the Statutes' consumer-protection purposes are nonexistent or "pretextual." AOB 22, 49-50. With due respect, the court's approach was overly demanding: To warrant a disclosure requirement, a problem need just be real and "not purely hypothetical," not pervasive. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra,* 585 U.S. 755, 776 (2018); *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (state may rely on anecdotes and common sense). Appellants' contentions, meanwhile, simply blink reality.

The problems that SB 253 and 261 seek to address are real and serious. The informational asymmetries the laws are designed to overcome are, if anything, more daunting in consumer markets, where it is patently unrealistic to expect participants to monitor the veracity of

firms' climate claims. And the absence of such a check will produce serious market distortions, as commercial dishonesty about, *e.g.*, progress toward carbon-reduction goals, is rewarded by consumers concerned about sustainability.

That leaves Appellants to deny that consumers *do* care about firms' climate practices. But the evidence against *that* suggestion is overwhelming. Vast majorities of American consumers say a sustainable lifestyle is important to them, NielsenIQ and McKinsey, *Consumers care about sustainability—and back it up with their wallets* 2 (Feb. 2023), http://bit.ly/4ouSbB5, and more than 60% of Californians express support for the State's goal to achieve net-zero emissions by 2045, Baldassare et al., *PPIC Statewide Survey: Californians and the Environment*, Pub. Policy Inst. of Cal. 12 (July 2025), http://bit.ly/4qoTu6q. Consumers are more loyal to environmentally responsible companies and are willing to buy products from them at higher prices. 2-ER-399, Gorovaia & Makrominas, *Identifying greenwashing in corporate-social responsibility reports using natural language processing*, 31 Eur. Fin. Mgmt. 427, 436 (2025); de Freitas Netto et al., *Concepts and forms of greenwashing: a systematic review*, 32 Env't Sci. Eur. 1 (2020), http://bit.ly/3Wok81s. A recent survey

found that 80% of consumers are willing to pay more for sustainably produced or sourced goods. 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, 2024), http://bit.ly/4oCIII9. Products making sustainability claims also saw faster growth in the United States (28% over five years) than products without such claims (20% growth). *Id*. at 3.

Given these realities, greenwashing is unsurprisingly ubiquitous. In a 2022 survey of 1,419 executives of global corporations, nearly 60% told researchers that *their own* companies engaged in greenwashing. SGS, *Avoid costly unsubstantiated sustainability claims—exploring greenwashing and ways to prevent it*, 5 (June 29, 2023), http://bit.ly/4os-mfx5 (citing 2022 Harris Poll). For North American companies, a staggering 72% of executives answered affirmatively. *Id.*

Nor is there any merit to the suggestion that consumers care only about the environmental *bona fides* of individual products and are unconcerned with firm-level practices. Greenwashing often occurs at the company-wide level, as consumer loyalty is often dependent on corporations' overall brand image. *See* Ballan & Czarnezki, *Disclosure,*

Greenwashing, and the Future of ESG Litigation, 81 Wash. & Lee L. Rev. 545, 559 (2024); Delmas & Burbano, *The Drivers of Greenwashing*, 54 Cal. Mgmt. Rev. 64, 66 (2011). As noted above, most Californians support the State's emissions-reduction goals, and nearly half of California consumers have indicated they consider emissions when making economic choices. Baldassare et al., *supra,* at 3.

Thus, companies, aware of these strong consumer priorities, devote vast sums to cultivating climate-friendly public images. One investigation found that the five major oil companies collectively spent hundreds of millions of dollars on climate-themed communications and that green claims were far more likely to appear in their promotional materials than information about their core businesses. InfluenceMap, *Big Oil's Real Agenda on Climate Change* 4 (2022), http://bit.ly/4hmLE9l. Similarly, large numbers of companies make climate pledges, with many announcing emissions-reduction targets. 1-ER-36 (citing 2-ER-335 (82% of large North American companies sampled have made green pledges) and 2-ER-306-07 (roughly 73% of those announcing future targets)). But when researchers have examined companies' actual progress toward these attention-getting commitments, their findings are unsettling: Only a

fraction are on track to meet their own targets. Morningstar Sustainalytics, *What Is Greenwashing and How Can Investors Reduce the Risks?* (Apr. 30, 2024), http://bit.ly/3Jbdd8U (finding that 91% of global companies are not on track). This ability to reap consumer goodwill in the present with no meaningful accountability is precisely what the Statutes will counteract.

Compelling evidence confirms that disclosure requirements are effective bulwarks against these sorts of deceptive practices. Researchers found that 68% of electric utility companies that reported emission *reductions* in voluntary disclosures to the Department of Energy reported emission *increases* when subjected to the Federal Energy Regulatory Commission's standardized reporting requirements. Kim & Lyon, *Strategic Environmental Disclosure: Evidence from the DOE's Voluntary Greenhouse Gas Registry*, J. Environ. Econ. & Mgmt, 311, 320 (2011). The authors concluded that these companies treated voluntary disclosure as an opportunity to cherry-pick, including by withholding entity-level emissions. *Id.*

Appellants' counterproposal, that California should (or even must) instead rely on consumer fraud lawsuits, is curious, to say the least. The

State Legislature has enacted a specific prohibition against businesses' deceptive environmental claims. Cal. Bus & Prof. Code § 17580.5 (Environmental Marketing Claims Act). But consumers will often have no means of knowing the law has been violated, let alone of enforcing its prohibitions, unless they have access to the firm-specific climate-related information that SB 253 and 261 will provide.

III. The Statutes Advance the State's Interest in Reducing Greenhouse Gas Emissions.

Given the vast climate-related harms that California has endured in recent years and the grave challenges ahead, the State's interest in covered companies (and others) reducing their greenhouse gas emissions is, as the district court recognized, "compelling." 1-ER-12. The Legislature understood that both Statutes would substantially advance that vitally important objective. Appellants largely confine their response to a fatuous suggestion that the Legislature's awareness of these salutary effects somehow converts the Statutes' disclosure requirements to a regulation of emissions. AOB 55. The district court rebuffed the "emissions regulation in disguise" theory in an earlier decision dismissing other claims, 3-ER-495-97 (rejecting preemption arguments), and it is axiomatic in law and social science that disclosure regimes, by reducing

information asymmetries, can result in behavioral effects. *See generally* Loewenstein et al., *Disclosure: Psychology Changes Everything*, 6 Ann. Rev. Econ. 391, 403-04 (2014). To the extent that Appellants dispute that these disclosures will effectively further (without, of course, fully accomplishing) the State's vital interest in emissions reductions, they are plainly mistaken.

Indeed, the district court, having concluded that both Statutes directly advance the investor protection objective, *see* Section I, *supra*, further recognized that SB 253's potential for reducing emissions had, for First Amendment purposes, been sufficiently established—noting that the State "need not provide definitive results to survive *Zauderer* review," 1-ER-34, and suggesting that the State's submission would suffice under higher review tiers as well. *Id.*; *see also Lorillard*, 533 U.S. at 555 (noting "simple common sense" is enough to survive even strict scrutiny). But even if more formal research were required, that would not avail Appellants: On this point too, a broad array of scholarly findings attest to the soundness of the Legislature's emission-reduction expectation.

Studies have consistently concluded that mandatory disclosure of emissions information under the U.S. Greenhouse Gas Reporting

Program ("GHGRP"), which requires such data from certain industrial sources, leads to emissions reductions in the range of 7% to 7.9%. *See* 1-ER-34 (citing studies); Tomar, *Greenhouse Gas Disclosure and Emissions Benchmarking*, 61 J. Accounting Research 451, 451-52 (2023). In one study focused on the utility sector, GHGRP-covered power plants were 55.4% more likely than uncovered plants to switch their primary fuel type from coal or oil to lower-emitting natural gas. *Id.*; *see also* Bauckloh et al., *Under Pressure? The Link Between Mandatory Climate Reporting and Firms' Carbon Performance*, 36 Org. & Env't: J. of Bus. Sustainability 126 (2022) (finding significantly "stronger improvement in [] carbon performance" for GHGRP-covered firms). Another study found that GHGRP-covered power plants lowered their emissions by 7.1%, and that GHGRP-covered plants owned by publicly traded and S&P 500 companies reduced their emissions by 10% and 11%, respectively. Yang et al., *The Real Effects of Mandatory CSR Disclosure on Emissions: Evidence from the Greenhouse Gas Reporting Program*, 28984 Nat'l Bur. Econ. Res. 1, 3, 17 (July 2021). The authors identified public or shareholder engagement as an important means by which reporting programs influence firm behavior. *Id.* at 27-28. With these reporting requirements—and

attendant emissions-reducing effects—now in jeopardy, *see* Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591 (Sept. 16, 2025) (proposing to eliminate or suspend reporting requirements for all source categories), SB 253 is likely to play an even larger than expected role in securing these benefits.

Studies of the United Kingdom, where standardized emission disclosure requirements are already mandatory for publicly traded firms, have reached the same conclusion. One prominent study found that covered companies have reduced emissions much more than comparators not subject to the reporting requirements, and that these positive effects persisted and grew in subsequent years. *See* Jouvenot & Krueger, *Mandatory Corporate Carbon Disclosure: Evidence from a Natural Experiment* 4 (2021), http://bit.ly/49gZU1b. Another found even larger and more persistent reductions, explaining that "the emission reductions are permanent rather than transitory" and are "stronger ... for firms with larger savings potentials." Downar et al., *Fighting Climate Change with Disclosure? The Real Effects of Mandatory Greenhouse Gas Emission Disclosure*, DIW Berlin Discussion Paper No. 1795, 1-2 (2019). The principal factor driving reductions is that shifting from disparate voluntary

initiatives to "mandatory, standardized, and prescriptive carbon disclosure facilitates across firm comparisons and increases market pressure on firms with high emissions levels." Jouvenot & Krueger, *supra,* at 3, 38.

SB 253's suite of requirements—that covered companies report Scope 1, 2, and 3 data in accordance with the Greenhouse Gas Protocol; that information be published on a user-friendly digital platform, Cal. Health & Safety Code § 38532(d)(1); and that it be independently verified, *id*. § 38532(c)(1)—will facilitate the kinds of comparisons that this research has found to affect investor and consumer behavior in ways that prompt companies to reduce emissions. *See also* Matisoff, *supra,* at 589; Berg et al., *supra,* at 2-3 (finding that companies that obtain third-party assurance have 7.5% year-on-year total emissions declines).

Research has found that transparent and reliable disclosures induce companies to reduce emissions even before investors and consumers are activated, because managers themselves use the information to "benchmark," assessing and then adjusting their company's emissions performance relative to peers, just as they do with other markers of performance. Tomar, *supra,* at 451. Thus, transparency motivates action not

just by exposing companies to external pressure, but also by promoting internal accountability and educating managers about climate-related strategies and opportunities that industry peers have successfully pursued.

The trial court was not convinced that SB 261 disclosures would yield similar emissions effects because the cited studies solely considered emissions reporting or *voluntary* disclosure of climate risk. 1-ER-40-41. But SB 261's requirement that covered entities discuss how they identify and address physical and transition risks, and provide relevant disclosures related to governance, strategy, risk management, and metrics and targets, can be expected to induce companies to reduce emissions for many of the same reasons that SB 253 will.

The feedback mechanisms identified in the emissions studies discussed above are equally applicable to SB 261's disclosures. Just as with emissions data, the disclosures required by SB 261 will facilitate the kinds of comparisons between corporations that prompt companies to reduce emissions, both independent of and in response to consumer and investor pressure. *See supra* pp. 33-35. Moreover, to the extent companies disclose their emissions as part of the metrics and targets or transition

risks included in their SB 261 reports (*see* Cal. Health & Safety Code § 38533(b)(4)), the evidence cited above for emissions reductions resulting from SB 253 clearly applies.

The disclosure requirements of SB 261 will prompt increased management attention to transition risk, and a key way companies mitigate transition risk is by reducing emissions associated with their activities. *See supra* Part I.B. "[C]oncerns about future legislation appear to motivate" companies to curb emissions as a preemptive measure against foreseeable future regulation. Tomar, *supra,* at 467. Companies are therefore more likely to voluntarily reduce their emissions when they are required to disclose whether and how they consider transition risks, along with their strategies for mitigating those risks (including any emission-reduction targets).

Research bears this out. One study found that U.S. insurers that comply with the National Association of Insurance Commissioners' Climate Risk Disclosure Survey ("CRDS") decreased their fossil-fuel investments by an average of 13.1%. Cheng et al., *The Effect of Mandatory Climate Risk Disclosure on Environmentally Responsible Investing: Evidence from the U.S. Insurance Industry*, HKU Jockey Club Enter.

Sustainability Glob. Res. Inst. Paper Series, 14 (2024). Like SB 261, the CRDS asks for detailed assessments of physical and transition risks. *Id.* at 8. When required to disclose their climate risk, insurers "significantly adjust their investment strategies toward more environmentally responsible investments." *Id.* at 3. Insurance companies are exempt from SB 261 because they are already covered by the CRDS; SB 261 will extend similar requirements—and similar benefits—to large companies in other sectors.

Transparency on and management involvement in analysis of emissions and climate-related financial risk will lead to more companies prioritizing emissions reductions. SB 253 and 261 will therefore also advance this State interest.

CONCLUSION

The Court should affirm the district court's order denying a preliminary injunction.

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