

1 EUGENE SCALIA, SBN 151540

2 escalia@gibsondunn.com

3 KATHERINE MORAN MEEKS

4 (*pro hac vice forthcoming*)

5 DC Bar No. 1028302

6 kmeeks@gibsondunn.com

7 BRIAN A. RICHMAN

8 (*pro hac vice forthcoming*)

9 DC Bar No. 230071

10 brichman@gibsondunn.com

11 GIBSON, DUNN & CRUTCHER LLP

12 1050 Connecticut Avenue, N.W.

13 Washington, D.C. 20036-5306

14 Telephone: 202.955.8500

15 Facsimile: 202.467.0539

16 *Attorneys for Plaintiffs Chamber of Commerce of the United States of America,*
17 *California Chamber of Commerce, American Farm Bureau Federation, Los Angeles*
18 *County Business Federation, Central Valley Business Federation, and*
19 *Western Growers Association*

20 (*Additional counsel listed on next page*)

21 IN THE UNITED STATES DISTRICT COURT

22 FOR THE CENTRAL DISTRICT OF CALIFORNIA,

23 WESTERN DIVISION

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

Plaintiffs,

v.

CALIFORNIA AIR RESOURCES
BOARD, LIANE M. RANDOLPH, in her
official capacity as Chair of the California
Air Resources Board, and STEVEN S.
CLIFF, in his official capacity as the
Executive Officer of the California Air
Resources Board.

Defendants.

CASE NO. 2:24-cv-00801

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 BRADLEY J. HAMBURGER,
2 SBN 266916
3 bhamburger@gibsondunn.com
4 SAMUEL ECKMAN, SBN 308923
5 seckman@gibsondunn.com
6 ELIZABETH STRASSNER,
7 SBN 342838
8 estrassner@gibsondunn.com
9 GIBSON, DUNN & CRUTCHER LLP
10 333 South Grand Ave.
11 Los Angeles, CA 90071-3197
12 Telephone: 213.229.7000
13 Facsimile: 213.229.7520

14 *Attorneys for Plaintiffs Chamber of Commerce of the United States of America,*
15 *California Chamber of Commerce, American Farm Bureau Federation, Los Angeles*
16 *County Business Federation, Central Valley Business Federation, and*
17 *Western Growers Association*

18 DARYL JOSEFFER
19 (*pro hac vice forthcoming*)
20 DC Bar No. 457185
21 djoseffer@uschamber.com
22 TYLER BADGLEY
23 (*pro hac vice forthcoming*)
24 DC Bar No. 1047899
25 tbadgley@uschamber.com
26 KEVIN PALMER
27 (*pro hac vice forthcoming*)
28 DC Bar No. 90014967
kpalmer@uschamber.com

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA
1615 H Street, NW
Washington, D.C. 20062-2000
Telephone: 202.659.6000
Facsimile: 202.463.5302

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

INTRODUCTION

1
2 1. This lawsuit challenges two novel California laws that unlawfully attempt
3 to regulate speech related to climate change. Senate Bills 253 and 261 impermissibly
4 compel thousands of businesses to make costly, burdensome, and politically fraught
5 statements about “their operations, not just in California, but around the world,”
6 Assembly Comm. on Nat’l Res., Analysis of SB. 261 (2023–2024 Reg. Sess.) July 7,
7 2023 at 6, in order to stigmatize those companies and shape their behavior. Both laws
8 unconstitutionally compel speech in violation of the First Amendment and seek to
9 regulate an area that is outside California’s jurisdiction and subject to exclusive federal
10 control by virtue of the Clean Air Act and the federalism principles embodied in our
11 federal Constitution. These laws stand in conflict with existing federal law and the
12 Constitution’s delegation to Congress of the power to regulate interstate commerce.
13 This Court should enjoin the Defendants from carrying out the State’s plan.

14 2. Plaintiffs support policies that reduce greenhouse-gas emissions as much
15 and as quickly as reasonably possible, consistent with the pace of innovation and the
16 feasibility of implementing large-scale technical change. Plaintiffs likewise support
17 policies that provide for the disclosure of material information, including climate-
18 related information, as necessary to protect investors. At the same time, policies must
19 be informed by the best science, a careful analysis of available alternatives, and
20 attention to legal rights and requirements. Further, neither businesses nor consumers
21 benefit from a patchwork of inconsistent state-by-state regulatory regimes, under
22 which multiple states attempt to regulate emissions nationally through conflicting
23 means. The laws at issue here run roughshod over those considerations, in violation of
24 the Constitution.

25 3. On October 7, 2023, Governor Gavin Newsom signed into law S.B. 253
26 and 261.

27 4. The laws were designed to “create accountability” for those that are not,
28 in the Legislature’s opinion, “doing their part to tackle the climate crisis.” Statement

1 of Sen. Scott Wiener (Sept. 17, 2023), <http://tinyurl.com/27up3ded> (discussing S.B.
2 253). They will force every covered “entity,” as a consequence of merely entering the
3 California market, to publicly state its opinions regarding the risks associated with
4 climate change, post those opinions to its own website, and then disclose an inexact,
5 misleading calculation of the “entity’s” greenhouse-gas emissions. *E.g.*, S.B. 253
6 § 2(c)(1)(A)(i)(I); S.B. 261 § 2(b)(1)(A). The purpose of this compelled speech is to
7 fuel pressure campaigns against businesses: “For companies, the knowledge” that
8 their compelled statements “will be publicly available might encourage them to take
9 meaningful steps” to support the policy goals of the State. Sen. Judiciary Comm.,
10 Analysis of S.B. 253 (2023–2024 Reg. Sess.) Apr. 14, 2023 at 12. By the Governor’s
11 own reckoning, the legislation will have a negative “financial impact” on the more
12 than 10,000 businesses covered, will impose deadlines that are “likely infeasible,” and
13 will deluge the public with “inconsistent” information. Signing Statement of Gov.
14 Newsom, S.B. 253 (Oct. 7, 2023), <http://tinyurl.com/4mz6by3p>.

15 5. The State’s plan for compelling speech to combat climate change is
16 unconstitutional—twice over.

17 6. The plan violates the First Amendment. It forces thousands of companies
18 to engage in controversial speech that they do not wish to make, untethered to any
19 commercial purpose or transaction. And it does all this for the explicit purpose of
20 placing political and economic pressure on companies to “encourage” them to conform
21 their behavior to the political wishes of the State.

22 7. To make matters worse, the State’s stated objective in enacting S.B. 253
23 and 261 is to regulate conduct, “not just in California, but around the world.”
24 Assembly Comm. on Nat’l Res., Analysis of SB. 261 (2023–2024 Reg. Sess.) July 7,
25 2023 at 6. For example, one legislator specifically noted that S.B. 253 had been
26 described as “groundbreaking legislation with the potential to reach far beyond
27 California’s borders.” Remarks of Assemblymember Rick Chavez Zbur, Debate on
28 S.B. 253 (Sept. 11, 2023), <http://tinyurl.com/taajvam8> (at 5:17:52–5:18:16). The State

1 does not have that authority. While federal law may permit California to regulate
2 greenhouse-gas emissions *within* the State’s own borders, California has no right to
3 regulate emissions in other states or in other parts of the world, let alone to do so
4 through a novel program of speech regulation.

5 8. S.B. 253 and 261 violate the First Amendment. Both laws are also
6 precluded by federal law and run headlong into the Dormant Commerce Clause and
7 broader federalism principles. This Court should bar the Defendants from enforcing
8 the laws.

9 **PARTIES**

10 9. Plaintiff Chamber of Commerce of the United States of America (“the
11 U.S. Chamber”) is the world’s largest business federation. The U.S. Chamber
12 represents 300,000 direct members and indirectly represents the interests of more than
13 three million businesses and organizations. Its members include many companies
14 doing business in California that are subject to S.B. 253 and 261. An important
15 function of the U.S. Chamber is to represent the interests of its members in matters
16 before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber
17 regularly participates in cases that raise issues of vital concern to America’s business
18 community.

19 10. Plaintiff California Chamber of Commerce (“CalChamber”) is the largest
20 broad-based business advocate to government in California. CalChamber represents
21 more than 13,000 members that employ one quarter of the private sector workforce in
22 California. Many of CalChamber’s members are subject to S.B. 253 and 261.
23 CalChamber works at both the state and federal levels to advocate for its members, and
24 CalChamber actively tracks legislation in the California State Legislature. Like the
25 U.S. Chamber, CalChamber regularly participates in cases that raise issues of vital
26 concern to California’s business community.

27 11. Plaintiff American Farm Bureau Federation (“AFBF”) was formed in
28 1919 and is the largest non-profit general farm organization in the United States.

1 Representing about six million member families in all fifty States and Puerto Rico,
2 AFBF’s members grow and raise every type of agricultural crop and commodity
3 produced in the United States. Its mission is to protect, promote, and represent the
4 business, economic, social, and educational interests of American farmers and
5 ranchers. To that end, AFBF regularly participates in litigation. While AFBF’s
6 members will not be directly regulated by the challenged laws, its members will bear
7 much of the burden. Nearly every farmer touches the value chain of those that will be
8 directly regulated by the laws and thus will be caught up in those companies’ efforts to
9 report Scope 3 emissions, incurring burdensome compliance costs, regardless of their
10 contacts with California. Moreover, some regulated companies may favor larger farms
11 that can more easily supply the information, to the detriment of smaller operations,
12 leading to increased consolidation and integration.

13 12. Plaintiff Los Angeles County Business Federation (“BizFed”) is a
14 grassroots alliance of over 240 diverse business groups who represent 420,000
15 employers with over five million employees in the Los Angeles region. As a united
16 federation, BizFed advocates for policies and projects that strengthen the regional
17 economy at the local, state and federal level. A number of BizFed members are
18 impacted by S.B. 253 and 261.

19 13. Plaintiff Central Valley Business Federation (“BizFed CV”) is a
20 grassroots alliance of over 75 diverse business groups who represent 30,000 employers
21 with over 400,000 employees in the Central Valley. As a united federation, BizFed
22 CV advocates for policies and projects that strengthen the regional economy at the
23 local, state and federal level. A number of BizFed CV members are impacted by
24 S.B. 253 and 261.

25 14. Plaintiff Western Growers Association (“WGA”), founded in 1926,
26 represents local and regional family farmers growing fresh produce in California,
27 Arizona, Colorado, and New Mexico. Western Growers’ members and their workers
28 provide over half of the nation’s fresh fruits, vegetables, and tree nuts, including half

1 of America’s fresh organic produce. S.B. 253 and 261 will impact many family farms
2 that are members of WGA.

3 15. Defendant California Air Resources Board (“CARB”) is an agency of the
4 State of California. CARB is responsible for enforcing S.B. 253 and 261, and for
5 issuing regulations to implement S.B. 253.

6 16. Defendant Liane M. Randolph is sued in her official capacity as the Chair
7 of CARB.

8 17. Defendant Steven S. Cliff is sued in his official capacity as the Executive
9 Officer of CARB.

10 JURISDICTION AND VENUE

11 18. This Court has subject matter jurisdiction over this action under 28 U.S.C.
12 §§ 1331 and 1343. This action arises under the United States Constitution.

13 19. Because Plaintiffs seek an “injunction[] to protect rights safeguarded by the
14 Constitution,” they have presented a federal question that the federal courts have
15 jurisdiction to resolve under 28 U.S.C. § 1331. *Free Enter. Fund v. Pub. Co. Accounting*
16 *Oversight Bd.*, 561 U.S. 477, 489, 491 n.2 (2010) (quoting *Bell v. Hood*, 327 U.S. 678,
17 684 (1946)).

18 20. Each of the Plaintiffs has standing to bring this lawsuit because at least one
19 of its members would have standing to sue in its own right, the interests it seeks to protect
20 are germane to its purpose, and neither the claim asserted nor the relief requested
21 requires an individual member to participate in this suit. *See California Rest. Ass’n v.*
22 *City of Berkeley*, 89 F.4th 1094, 1099–1100 (9th Cir. 2024). For example, Plaintiffs’
23 members that are affected and injured by the challenged laws include: Chevron Corp., a
24 member of the U.S. Chamber, CalChamber, BizFed, and BizFed CV, whose annual
25 revenues exceed \$1 billion and whose headquarters is located in San Ramon, California;
26 Triple H Farm, a family-owned and operated farm that is a member of AFBF and in the
27 supply chain of many companies that will be subject to Scope 3 reporting under S.B.
28 253; U-Haul Holding Company, a member of the U.S. Chamber whose annual revenues

1 exceed \$1 billion and whose operations in California include “do-it-yourself” moving
2 and storage; and White Farms and Cattle, a family-owned and operated farm that is a
3 member of AFBF and in the supply chain of many companies that will be subject to
4 Scope 3 reporting under S.B. 253.

5 21. Venue is proper in this District under 28 U.S.C. § 1391 because all
6 Defendants maintain an office and conduct their official duties within this judicial
7 district.

8 22. Venue is further proper in this District under 28 U.S.C § 1391 because a
9 substantial part of the events or omissions giving rise to this action occurred within this
10 judicial district; to wit, Plaintiff BizFed resides within this judicial district at 1150 South
11 Olive Street, Los Angeles, California, 90015.

12 **BACKGROUND**

13 **A. California Seeks to Hold Corporations “Accountable” for Climate** 14 **Change Through Senate Bills 253 and 261.**

15 23. S.B. 253 and 261 were designed to “create accountability for those that
16 aren’t” “doing their part to tackle the climate crisis.” Statement of Sen. Scott Wiener
17 (Sept. 17, 2023), <http://tinyurl.com/27up3ded>. “Californians,” one of the bill’s authors
18 wrote, “have a right to know who” is “destroying [their] planet” by “causing” climate
19 change. Sen. Judiciary Comm., Analysis of S.B. 253 (2023–2024 Reg. Sess.) Apr. 14,
20 2023 at 7.

21 24. These laws were supported by scores of “environmental organizations,”
22 Sen. Judiciary Comm., Analysis of S.B. 253 (2023–2024 Reg. Sess.) Apr. 14, 2023
23 at 2, “including groups dedicated to minimizing the effects of climate change,” Sen.
24 Judiciary Comm., Analysis of S.B. 261 (2023–2024 Reg. Sess.) Apr. 14, 2023 at 2.

25 25. As one supporter explained, “[f]ighting the climate crisis requires bold,
26 strategic regulations,” and the bills offered “California regulators and communities just
27 that.” *California Passes First-in-the-Nation Bill to Expand Transparency in*
28 *California Emissions*, SIERRA CLUB CALIFORNIA (Sept. 12, 2023),

1 <http://tinyurl.com/4v8z34fk>. Other supporters have claimed that the laws will help
2 “check the climate crisis” by letting the public “hold [companies] accountable,”
3 *California Lawmakers Approve Groundbreaking Climate Disclosure Bill*, PUBLIC
4 CITIZEN (Sept. 12, 2023), <http://tinyurl.com/36svd2t3>, and by “ensuring accountability
5 for those emitting greenhouse gasses,” *Sacramento Rally to Unite for Climate
6 Transparency & Passage of SB 253 & SB 261*, CERES (Aug. 22, 2023),
7 <http://tinyurl.com/wz8tzcac>.

8 26. The laws seek this “accountability” through an unconstitutional
9 mechanism: regulation of speech. S.B. 261 requires each covered entity to prepare a
10 detailed report opining on the risks of climate change and to post that report to its own
11 website. S.B. 253, in turn, requires each covered entity to estimate, and then publicly
12 disclose, that “entity’s” greenhouse-gas emissions, including the emissions of *others*
13 that it does business with, such as customers, suppliers, and contractors.

14 27. As supporters of the bills explained, the purpose of these speech
15 compulsions is to “encourage” companies to conform their behavior to the policy
16 preferences of the State. Sen. Judiciary Comm., Analysis of S.B. 253 (2023–2024
17 Reg. Sess.) Apr. 14, 2023 at 12.

18 28. As one legislative report explained, “the knowledge that” companies’
19 compelled statements “will be publicly available might encourage them to take
20 meaningful steps to reduce [greenhouse-gas] emissions.” *Id.* And the goal of S.B. 253
21 was to compel companies to release information even though “they don’t want to do
22 the disclosure” because (in the State’s view) “they think they’re going to be
23 embarrassed by it.” Remarks of Sen. Wiener, Sen. Env’l Quality Comm. Hearing on
24 S.B. 253 (Mar. 25, 2023) <http://tinyurl.com/yf66mbdn> (at 2:30:33–2:23:50).

25 29. While the bills were pending, numerous business-organization
26 representatives noted the significant costs of the bills and the difficulties associated
27 with compliance, including Plaintiffs CalChamber, BizFed, BizFed CV, and WGA.
28

1 30. For example, a “coalition of over 60 [business] organizations” explained
2 that estimating certain greenhouse-gas emissions with “any degree of accuracy [was]
3 not yet possible.” Sen. Judiciary Comm., Analysis of S.B. 253 (2023–2024 Reg. Sess.)
4 Apr. 14, 2023 at 14–15. Estimation methods were (and are) “still in [their] infancy
5 stage” and, for that reason, any reporting would be “more of an art” than “a science.”
6 *Id.* at 15.

7 31. Business-organization representatives further explained that the burdens
8 of the bills would fall disproportionately on small and medium businesses. For
9 example, many small and medium businesses, including family farms, “struggle to
10 accurately measure their greenhouse gas emissions.” *Id.* at 14. These difficulties, the
11 representatives warned, could force “large businesses [to] stop doing business with
12 small and medium businesses” that lack the resources to comprehensively report
13 emissions to supply chain partners. *Id.* If a large business must publicly report, for
14 instance, the “emissions associated with [its] entire supply chain,” including the
15 emissions of its suppliers, that business may have no choice but to cease its
16 relationship with any small-to-medium suppliers that struggle to measure and report
17 their own emissions. *Id.*

18 32. Governor Newsom expressly acknowledged many of these concerns in
19 signing the bills into law. For S.B. 253, for instance, the Governor stated that “the
20 implementation deadlines in this bill are likely infeasible, and the reporting protocol
21 specified could result in inconsistent reporting across businesses subject to the
22 measure.” Signing Statement of Gov. Newsom, S.B. 253 (Oct. 7, 2023),
23 <http://tinyurl.com/4mz6by3p>. And for S.B. 261, he noted his “concern[s] about the
24 overall financial impact of this bill on business” and that “the implementation
25 deadlines fall short in providing the California Air Resources Board (CARB) with
26 sufficient time to adequately carry out the requirements in this bill.” Signing
27 Statement of Gov. Newsom, S.B. 261 (Oct. 7, 2023), <http://tinyurl.com/ycy7vk2w>.
28 The Governor signed both laws anyway.

1 Climate-Related Financial Disclosures (June 2017) published by the Task Force on
2 Climate-Related Financial Disclosures, or any successor thereto.” *Id.* § 2(b)(1)(A),
3 (4). Those recommendations provide detailed instructions on the content that reporting
4 companies must include.

5 39. Companies must publicly post their first disclosure on their “own internet
6 website[s]” by January 1, 2026. *Id.* § 2(c)(1).

7 40. S.B. 261 expressly acknowledges the political, and thus controversial,
8 nature of the speech it requires companies to make, as it proclaims that addressing the
9 risks of climate change is an important political issue and the subject of robust public
10 debate. *See Id.* § 1(b) (“Global economic and climate policy leaders have conclusively
11 established that the long-term strength of global and local economies will depend on
12 their ability to withstand climate-related risks, including physical impacts, economic
13 transitions, and policy and legal responses.”).

14 41. On the other hand, this speech is not commercial speech because S.B. 261
15 compels companies to post statements that are unconnected to proposing any
16 commercial transaction.

17 42. S.B. 261 also requires CARB to contract with a climate reporting
18 organization to prepare its own report on disclosures. *Id.* § 2(b)(3). The organization
19 must be a nonprofit that currently operates as a climate reporting organization for
20 entities operating in the United States and must have experience with climate-related
21 financial risk disclosure by entities operating in California. *Id.* § 2(a)(1). The report
22 must include both a review of climate-related financial risk in various industries as
23 well as an “[a]nalysis of the systemic and sectorwide climate-related financial risks
24 facing the state based on the contents of climate-related financial risk reports,
25 including, but not limited to, potential impacts on economically vulnerable
26 communities.” *Id.* § 2(d)(1)(A)–(B). The climate reporting organization is also
27 responsible for regularly gathering stakeholder input on “current best practices
28 regarding the disclosure of financial risks.” *Id.* § 2(d)(2).

1 c. “*Scope 3 emissions*’ means indirect upstream and downstream
2 greenhouse gas emissions, other than Scope 2 emissions, from
3 sources that the reporting entity does not own or directly control
4 and may include” the emissions of upstream suppliers or
5 downstream customers. *Id.* § 2(b)(5).

6 48. The law requires each covered entity to “measure and report its emissions
7 of greenhouse gases in conformance with the Greenhouse Gas Protocol standards and
8 guidance, including the Greenhouse Gas Protocol Corporate Accounting and Reporting
9 Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3)
10 Accounting and Reporting Standard developed by the World Resources Institute and
11 the World Business Council for Sustainable Development.” *Id.* § 2(c)(1)(A)(ii).

12 49. Although the law purports to require each company to report “its
13 emissions,” *id.*, the reported emissions actually include emissions from utility
14 providers, upstream suppliers, downstream customers, and others. *Id.* § 2(c)(1). Thus,
15 S.B. 253 requires a company to falsely state that the emissions of other entities are its
16 own.

17 50. Moreover, by requiring reporting “in conformance with the Greenhouse
18 Gas Protocol,” the law requires materially misleading emissions reports because the
19 Greenhouse Gas Protocol does not factor in “Scope 4” emissions—emissions that
20 companies avoid, and which should therefore be deducted from Scope 1, 2, and/or 3
21 emissions, as appropriate. For example, a company’s Scope 4 emissions may include
22 those avoided through purchases of energy-efficient equipment or reduction of mileage
23 driven. Thus, to the extent the law’s purpose is to provide customers with clear and
24 comprehensive information about companies’ alleged contribution to global emissions,
25 it fails because the disclosures will exclude any evidence of steps companies have
26 taken to avoid emissions.

27 51. The reported emissions are not purely factual. To the contrary, the proper
28 calculation of the scope of a company’s emissions—including, but not limited to, the

1 need to include Scope 4 emissions—is subject to significant debate. Emissions
2 calculations necessarily turn on subjective judgments concerning the “advantages and
3 disadvantages” of various approaches to estimation. GREENHOUSE GAS PROTOCOL,
4 TECHNICAL GUIDANCE FOR CALCULATING SCOPE 3 EMISSIONS 18 (version 1.0) (2013),
5 <http://tinyurl.com/2f9n52k2>. For Scope 3 emissions, moreover, those subjective
6 judgments are not only those of the reporting entity, but also of *other* entities, both
7 downstream and upstream in the supply chain. *Id.* at 6.

8 52. Estimating greenhouse-gas emissions is enormously burdensome. The
9 requirement to estimate and report Scope 3 emissions alone will cost many companies
10 more than \$1 million per year. *See, e.g.*, Comment of the Williams Companies, Inc.
11 14, SEC File No. S7-10-22 (June 17, 2022), <http://tinyurl.com/y99amdcd>. And as
12 even the Securities and Exchange Commission acknowledges, the estimate in many
13 instances may be inaccurate. *See Enhancement and Standardization of Climate-*
14 *Related Disclosures for Investors*, 87 Fed. Reg. 21,334, 21,387 (proposed Apr. 11,
15 2022) (acknowledging that, “in many instances, direct measurement of [greenhouse-
16 gas] emissions at the sources, which would provide the most accurate measurement,
17 may not be possible”).

18 53. The burden of estimating Scope 3 emissions flows up and down the
19 supply chain. Small businesses nationwide will incur significant costs monitoring and
20 reporting emissions to suppliers and customers swept within the law’s reach. For
21 example, scores of family farm members of AFBF will need to report emissions to
22 business partners that do business with entities covered by S.B. 253.

23 54. One small business owner so affected is Garrett Hawkins. Mr. Hawkins is
24 a third-generation farmer based in Appleton City, Missouri. His farm, Triple H Farm,
25 which he operates with his father and brother, raises beef cattle and markets them in
26 local family-owned livestock auctions. Mr. Hawkins is the President of the Missouri
27 Farm Bureau Federation and is a member of AFBF.

1 55. While Mr. Hawkins does not operate in California and does not sell
2 directly to California companies, his cattle is in the supply chain of many companies
3 that will be subject to Scope 3 reporting under S.B. 253. For example, Mr. Hawkins’
4 cattle will ultimately be bought by packers (slaughter-houses) that are subject to
5 Scope 3 reporting under S.B. 253. And the grocery stores that the packers sell beef to
6 similarly consist of companies that will be subject to Scope 3 reporting under S.B. 253.

7 56. S.B. 253 will require those companies to report on Scope 3 emissions,
8 which include Mr. Hawkins’ farm. Mr. Hawkins is concerned that the documentation
9 and recordkeeping required to supply his greenhouse gas emissions will be incredibly
10 onerous and burdensome for his operation and farms like his. Mr. Hawkins fears that
11 the requirements of S.B. 253 will have the potential to force rapid consolidation across
12 agriculture, such that only the largest operations will survive.

13 57. A similarly affected small business owner is Michael White. Mr. White is
14 a fourth-generation farmer based in Wilbarger County, Texas. Mr. White and his
15 brother and nephew raise wheat, cotton, hay and cattle on their family farm, White
16 Farms and Cattle, which has been in operation for over one hundred years. Mr. White
17 is a member of AFBF.

18 58. Mr. White’s farm is in the supply chain of many companies that will be
19 subject to Scope 3 reporting under S.B. 253. For example, Mr. White retains
20 ownership in his cattle up to the point they are sold to packers, most or all of which
21 will be subject to Scope 3 reporting under S.B. 253. And the grocery stores that the
22 packers sell beef to similarly consist of companies that will be subject to Scope 3
23 reporting under S.B. 253. The wheat, cotton, and hay Mr. White produces will also
24 likely end up in the Scope 3 value chain of companies subject to S.B. 253.

25 59. S.B. 253 will require those companies to report on “their” Scope 3
26 emissions, which includes Mr. White’s farm. Like Mr. Hawkins, Mr. White is
27 concerned that the documentation and recordkeeping required to supply his greenhouse
28 emissions will be incredibly onerous and burdensome for his operation and farms like

1 his. Mr. White, like Mr. Hawkins, fears that the requirements of S.B. 253 will have the
2 potential to force rapid consolidation across agriculture, such that only the largest
3 operations will survive.

4 60. S.B. 253 requires all covered entities not only to publicly report their
5 emissions calculation, but also to file those reports with a newly established statewide
6 reporting organization. S.B. 253 § 2(c)(1). The mandatory reports that companies are
7 compelled to produce will be made publicly available by CARB. *Id.* § 2(c)(2).
8 S.B. 253 also requires each reporting entity’s disclosures to be independently verified
9 by a third-party assurance provider, approved by CARB, that has expertise in
10 greenhouse-gas emissions accounting. *Id.* § 2(c)(1). Assurance of Scope 1 and
11 Scope 2 greenhouse-gas emissions will be required at a “limited assurance” level
12 beginning in 2026 and at a “reasonable assurance” level beginning in 2030. Scope 3
13 greenhouse-gas emissions may require assurance at a “limited assurance” level
14 beginning in 2030. *Id.* § 2(c)(1)(F)(iii).

15 61. CARB is required to contract with an “academic institution,” such as the
16 University of California, “to prepare a report on the public disclosures made by
17 reporting entities to the emissions reporting organization.” *Id.* § 2(d)(1). That report
18 will be posted to a digital platform created by the new emissions reporting
19 organization, regardless of whether a given reporting entity wishes to have its reports
20 shared with the public. *Id.* § 2(d)(2), (e)(1)(A)–(B).

21 62. Reporting entities are also forced to pay for their own compelled
22 disclosures—the law requires them to pay a filing fee to cover the costs of
23 administration and implementation of the new reporting requirements. *Id.*
24 § 2(c)(1)(G)(i). These fees will be deposited in the newly created “Climate
25 Accountability and Emissions Disclosure Fund.” *Id.* § 2(c)(1)(G)(iii).

26 63. S.B. 253 authorizes CARB to assess administrative penalties of up to
27 \$500,000 for noncompliance. *Id.* § 2(f)(2)(A). It includes a safe harbor for Scope 3
28 emissions, which provides that penalties will not apply to Scope 3 misstatements made

1 “with a reasonable basis and disclosed in good faith” and that, until 2030, Scope 3
2 penalties will be assessed only for failures to disclose. *Id.* § 2(f)(2).

3 **C. The Laws Violate the First Amendment.**

4 64. The First Amendment protects “both the right to speak freely and the right
5 to refrain from speaking at all,” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), and
6 “applies not only to expressions of value, opinion, or endorsement, but equally to
7 statements of fact the speaker would rather avoid,” *Hurley v. Irish-Am. Gay, Lesbian &*
8 *Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995). S.B. 253 and 261 violate this right
9 by compelling companies to engage in costly speech on “climate change,” an issue the
10 Supreme Court has acknowledged is “controversial.” *Janus*, 138 S. Ct. at 2476.

11 65. Courts apply different tiers of scrutiny to different types of compelled
12 speech. Where a state seeks to compel a business to speak *noncommercially* on
13 *controversial political matters*, strict scrutiny applies. See *Nat’l Inst. of Family & Life*
14 *Advocates v. Becerra* (“NIFLA”), 138 S. Ct. 2361, 2372–74 (2018). “[S]uch speech
15 occupies the highest rung of the hierarchy of First Amendment values and merits
16 special protection.” *Janus*, 138 S. Ct. at 2476 (citations and quotation marks omitted).
17 Courts therefore apply “the most exacting form of review.” *IMDB.com Inc. v.*
18 *Becerra*, 962 F.3d 1111, 1121 (9th Cir. 2020). Laws subject to strict scrutiny “are
19 presumptively unconstitutional and may be justified only if the government proves that
20 they are narrowly tailored to serve compelling state interests.” *NIFLA*, 138 S. Ct. at
21 2371 (citations and quotation marks omitted).

22 66. Strict scrutiny applies to S.B. 253 and 261 because both laws compel
23 speech concerning the “controversial subject[.]” of “climate change.” *Janus*, 138 S. Ct.
24 at 2476. They do not compel “purely factual and uncontroversial information” that
25 could be subject to a lower standard than strict scrutiny. *NIFLA*, 138 S. Ct. at 2372
26 (quoting *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985)).

27 67. The compelled speech is controversial on two levels. First, the laws
28 require companies to speak about the effects of, and proper response to, climate

1 change, anything but uncontroversial topics. *See Janus*, 138 S. Ct. at 2476. And
2 second, the specific speech compelled by S.B. 261 is controversial. Whether, for
3 example, a particular “wildfire[],” “sea level rise,” “extreme weather event[],” or
4 “extreme drought[],” S.B. 261 § 1(a), has anything to do with climate change, or to
5 what extent, is a matter of significant debate and controversy. Yet S.B. 261 requires
6 companies to opine on the risks that will be specifically caused by climate change.

7 68. The speech compelled by S.B. 253 and 261 also is not “factual.” *NIFLA*,
8 138 S. Ct. at 2372. A company’s compelled assessment of the “risk of harm to
9 immediate and long-term financial outcomes” from a variety of events whose
10 connection to climate change, if any, is subject to reasonable debate, S.B. 261
11 § 2(a)(2), is far from the recitation of a pure, rote “fact.”

12 69. Even the estimation of emissions is a matter of opinion. The law’s
13 requirements do not provide for a readily verifiable way to calculate a company’s total
14 net emissions. Many companies, for instance, believe that emissions that they helped
15 avoid (“Scope 4” emissions) are relevant, and that simply disclosing Scope 1, Scope 2,
16 and Scope 3 emissions will necessarily provide an incomplete and misleading picture
17 about their emissions. But the laws require companies to disclose emissions without
18 considering avoided emissions. Even within a particular scope of emissions, the
19 calculation is anything but factual, especially for Scope 3 emissions by companies,
20 individuals, and others who use or contribute to the provision of a good or service; any
21 reported emissions require a subjective assessment (by the reporting entity and/or
22 outside suppliers), based on numerous assumptions and estimations.

23 70. Additionally, strict scrutiny applies because the speech compelled by
24 S.B. 253 and 261 is not commercial. Not all speech made by a business is
25 “commercial speech.” *See, e.g., NIFLA*, 138 S. Ct. at 2374. Rather, commercial
26 speech is “usually defined as speech that does no more than propose a commercial
27 transaction.” *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021)
28 (quoting *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001)).

1 71. The speech that S.B. 253 and 261 mandate is required regardless of
2 whether it is connected to proposing a commercial transaction.

3 72. Because the speech compelled by S.B. 253 and 261 is noncommercial, not
4 purely factual, and concerns a controversial political matter, strict scrutiny applies
5 three times over. Accordingly, the burden is on the State to prove that the laws “are
6 narrowly tailored to serve compelling state interests.” *NIFLA*, 138 S. Ct. at 2371
7 (citations and quotation marks omitted).

8 73. Both S.B. 253 and 261 fail to satisfy strict scrutiny.

9 74. The speech compelled by S.B. 253 and 261 does not further any
10 legitimate government interest of the State of California, let alone a compelling one.
11 The legislation cites no evidence, for example, that the public’s response to the
12 disclosures would result in material changes in companies’ emissions, or that any such
13 changes would have a material impact on climate change, much less the climate of
14 California.

15 75. The legislation also makes no meaningful effort to restrict its scope to
16 information that is needed to achieve any legitimate governmental purpose. S.B. 253
17 and 261 apply to *any* “business entity” satisfying the revenue threshold, whether or not
18 the entity is publicly traded or has outside investors, and regardless of the extent of its
19 California operations. S.B. 253 § 2(b)(2); S.B. 261 § 2(a)(4). Nor does either law
20 exempt companies that have low greenhouse-gas emissions or face negligible risks
21 from climate change.

22 76. The legislation is also not “narrowly tailored” because it “burden[s]
23 substantially more speech than is necessary to further the government’s legitimate
24 interests.” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). As noted above,
25 S.B. 253’s requirement to report Scope 3 emissions alone will cost many companies
26 more than \$1 million per year. *See* Comment of the Williams Companies, Inc. 14,
27 SEC File No. S7-10-22 (June 17, 2022) <http://tinyurl.com/y99amdcd>.

1 77. The legislation is also not “narrowly tailored” because it unduly burdens
2 the speech and threatens the business viability of small businesses far beyond
3 California’s borders, including Mr. Hawkins’ farm, Mr. White’s farm, and thousands
4 of similarly situated members of AFBF and WGA.

5 78. Even if a lower level of scrutiny were to apply, the laws are nonetheless
6 unconstitutional. Under any form of scrutiny, required disclosures cannot be
7 “unjustified or “unduly burdensome.” *NIFLA*, 138 S. Ct. at 2377 (citing *Zauderer*, 471
8 U.S. at 651). S.B. 253 and 261 are both unjustified and unduly burdensome.

9 79. For government-mandated speech to be justified, the State must show that
10 “the harm” it seeks “to remedy” is “more than ‘purely hypothetical,’” *NIFLA*, 138 S.
11 Ct. at 2377, and that the required disclosures “will in fact alleviate [that harm] to a
12 material degree,” *Ibanez v. Fla. Dep’t of Bus. & Prof’l Reg.*, 512 U.S. 136, 146 (1994).
13 But the State has not connected the disclosures required by S.B. 253 and 261 to any
14 concrete, direct, and immediate interests, instead relying on vague, generalized
15 statements, such as “stakeholders deserv[ing] transparency.” S.B. 253 § 1(e).

16 80. The disclosures that S.B. 253 and 261 require are also unduly
17 burdensome. The requirement to disclose Scope 3 emissions will cost companies more
18 than \$1 million per year, and those disclosures are mandated for any “business entity,”
19 S.B. 261 § 2(a)(4), which is broader than the State’s supposed interest in providing
20 “investors” with certain climate-related information, *id.* § 1(c).

21 81. The problems with these speech compulsions are compounded by the
22 laws’ vagueness. Vague laws “allow arbitrary and discriminatory enforcement.”
23 *O’Brien v. Welty*, 818 F.3d 920, 930 (9th Cir. 2016). And “[w]hen speech is involved,
24 rigorous adherence to [the] requirement[.]” that “parties should know what is required
25 of them” “is necessary to ensure that ambiguity does not chill protected speech.” *FCC*
26 *v. Fox Television Stations*, 567 U.S. 239, 253–54 (2012).

27 82. The definition of “climate-related financial risk” under S.B. 261, in
28 particular, is broad and vague: any “material risk of harm to immediate and long-term

1 financial outcomes due to physical and transition risks, including, but not limited to,
2 risks to corporate operations, provision of goods and services, supply chains, employee
3 health and safety, capital and financial investments, institutional investments, financial
4 standing of loan recipients and borrowers, shareholder value, consumer demand, and
5 financial markets and economic health.” S.B. 261 § 2(a)(2).

6 83. On that expansive definition, the State is likely to be able to find
7 something to fault in the disclosure (or lack of disclosure) of *any* company the State
8 disfavors. This creates a risk that, among other things, companies whose climate-
9 related practices do not conform to California’s policy preferences will be subject to
10 heightened investigation and enforcement. And because the laws authorize the
11 imposition of substantial penalties, companies will be pressured to conform their risk
12 assessments to the State’s policy preferences.

13 **D. Senate Bills 253 and 261 Operate as Impermissible *De Facto***
14 **Regulations on Nationwide Greenhouse-Gas Emissions.**

15 84. Because the new disclosure requirements of S.B. 253 and 261 operate as
16 *de facto* regulations of greenhouse-gas emissions nationwide, they are precluded by the
17 Clean Air Act and are invalid under the Dormant Commerce Clause and principles of
18 federalism. *See* Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat.
19 1676; *see also Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 403-10 (2023)
20 (Kavanaugh, J., concurring). Under the Supremacy Clause, the Clean Air Act
21 displaces state regulation of interstate greenhouse-gas emissions. Further, “[e]ach
22 State’s equal dignity and sovereignty under the Constitution implies certain
23 constitutional limitation[s] on the sovereignty of all of its sister States.” *Franchise Tax*
24 *Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1497 (2019). One such limitation, which stems
25 from each State’s equal sovereignty, is that one State cannot project its laws into
26 another State.

27 85. Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, “when Congress
28 enacts a valid statute pursuant to its Article I powers, state law is naturally preempted

1 to the extent of any conflict with a federal statute. End of story.” *Haaland v.*
2 *Brackeen*, 599 U.S. 255, 287 (2023) (citation and quotation marks omitted). In
3 particular, “where the scheme of federal regulation is so pervasive as to make
4 reasonable the inference that Congress left no room for the States to supplement it,” a
5 state law attempting to regulate the same field is preempted. *Gade v. Nat’l Solid*
6 *Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (quotation marks omitted). The Clean
7 Air Act is ““an intricate regulatory regime intended to protect and enhance the quality
8 of the nation’s air resources so as to promote the public health and welfare and the
9 productive capacity of its population.”” *City of N.Y. v. Chevron Corp.*, 993 F.3d 81, 87
10 (2d Cir. 2021) (quoting *N.Y. Pub. Int. Rsch. Grp. v. Whitman*, 321 F.3d 316, 319–20
11 (2d Cir. 2003)).

12 86. Under the Clean Air Act, the federal government is empowered to
13 implement programs to regulate pollution, including greenhouse gases. *Chevron*
14 *Corp.*, 993 F.3d at 87–88 Although the Act “envisions extensive cooperation between
15 federal and state authorities,” *id.* at 87 (citing 42 U.S.C. §§ 7401, 7411(c)(1), (d)(1)–
16 (2)), when it comes to “regulating pollution sources beyond their borders,” states are
17 limited to “commenting on proposed [Environmental Protection Agency] rules or on
18 another state’s emission plan,” *id.* at 88.

19 87. The legislation here does not limit reporting requirements to emissions
20 produced in California or to companies’ expected climate change financial risks in
21 California—rather, both laws require companies to make sweeping reports about their
22 emissions and risks everywhere they operate, whether in California, in other states, or
23 even abroad. States may not regulate out-of-state emissions by requiring disclosure of
24 data about such emissions in this manner.

25 88. Nor, for that matter, may states enact measures to force actual reductions
26 in out-of-state emissions, whether by disclosure or by any other legal tools. While the
27 laws do not directly require reductions in greenhouse-gas emissions in other states,
28 “[w]hat cannot be done directly cannot be done indirectly” because “[t]he

1 Constitution deals with substance, not shadows.” *Students for Fair Admissions, Inc.*
2 *v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (quoting
3 *Cummings v. Missouri*, 71 U.S. 277, 325 (1867)).

4 89. Although framed in terms of disclosure, these requirements are aimed at
5 stigmatizing companies for the purpose of pressuring them to lower their emissions
6 nation- and even world-wide. *See, e.g.*, S.B. 253 § 1(f) (“United States companies that
7 have access to California’s tremendously valuable consumer market by virtue of
8 exercising their corporate franchise in the state also share responsibility for disclosing
9 their contributions to global [greenhouse-gas] emissions.”); *id.* § 1(f), (h), (l) (claiming
10 a need to encourage “investments in decarbonization strategies,” to “develop means to
11 reduce” emissions, and to “activate companies to improve risk management in order to
12 move toward a net-zero carbon economy”); S.B. 261 § 1(j) (explaining that
13 “mandatory and comprehensive” disclosures are needed to “address the climate
14 crisis”).

15 90. In fact, activists and policymakers have repeatedly stated that they intend
16 to use the compelled reporting to identify companies whose emissions they deem to be
17 unsuitable, and to shame those companies into reducing their emissions. As one
18 sponsor noted, S.B. 253 “ensure[s] that corporate actors in [California] are aligned
19 with [the Legislature’s] goals and are working as diligently as [legislators] need them
20 to be.” Remarks of Sen. Wiener, Debate on S.B. 253, Sen. Floor Sess. (May 30, 2023)
21 <http://tinyurl.com/225dekr5> (at 4:21:17–4:23:02). A main function of the laws,
22 although framed in terms of reporting, is to facilitate public-pressure campaigns to
23 coerce companies into reducing their emissions of greenhouse gases.

24 91. It is immaterial whether such a policy is sound—under the Clean Air Act,
25 the regulation of nationwide greenhouse-gas emissions is exclusively the domain of the
26 federal government. States may not engage in de facto regulation of greenhouse-gas
27 emissions nationwide, running afoul of Congress’s exclusive authority to regulate
28

1 interstate commerce. This legislation is therefore beyond the limits of what state law is
2 allowed to do.

3 **FIRST CLAIM FOR RELIEF**

4 **(First Amendment)**

5 92. Plaintiffs reallege and incorporate herein by reference Paragraphs 1
6 through 91 above.

7 93. S.B. 253 and 261 compel companies to publicly express a speculative,
8 noncommercial, controversial, and politically-charged message that they otherwise
9 would not express, and in the case of S.B. 261, expressly requires companies to
10 communicate that message on their own websites.

11 94. S.B. 261 requires companies to make public statements estimating their
12 future risk from climate change. This speech is necessarily speculative because it
13 requires companies to estimate not only their risk of damage from future events like
14 natural disasters, but also to speculate about whether those events will occur and will
15 do so as a result of climate change. And it is a politically controversial topic about
16 which significant uncertainty is inevitable.

17 95. S.B. 261 also fails to describe its key term—“climate-related financial
18 risk”—with enough specificity to enable companies to comply. The term is so
19 ambiguous that companies will be forced to make high-stakes, public guesses about
20 their future—with the aim, on the part of the State, to discourage investors and
21 consumers from doing business with the companies based on that speculation.

22 96. S.B. 253 requires companies to make public statements not only about
23 their greenhouse-gas emissions, but also about the emissions of up- and downstream
24 entities with which they do business. Because companies must report these Scope 3
25 emissions as their *own* emissions, the law necessarily requires that a company falsely
26 and inaccurately represent the provenance of these emissions.

27 97. Moreover, this compelled speech requires companies to speculate about
28 Scope 3 emissions. Calculating Scope 3 emissions is a subjective undertaking,

1 requiring myriad judgment calls about how to identify and quantify another entity's
2 emissions. Alternatively, companies will be forced to demand information from their
3 non-covered partners in the supply chain. Reporting companies under S.B. 253 might
4 disagree with how upstream and downstream entities calculated their emissions, and
5 thus may be forced to convey speech with which they disagree.

6 98. Under S.B. 253, companies risk enormous penalties and public
7 opprobrium should they happen to guess incorrectly. The compelled reports of
8 Scope 3 emissions are not purely factual but rather are full of subjectivity and
9 guesswork.

10 99. The laws violate the First Amendment to the United States Constitution,
11 which protects both the freedom from being compelled to speak and the freedom to
12 engage in speech.

13 **SECOND CLAIM FOR RELIEF**

14 **(Supremacy Clause)**

15 100. Plaintiffs reallege and incorporate herein by reference Paragraphs 1
16 through 91 above.

17 101. S.B. 253 and 261 require companies to make sweeping reports about their
18 emissions and risks everywhere they operate.

19 102. The laws are not limited to companies that are headquartered or
20 incorporated in the State of California; rather, they reach any company above a certain
21 revenue threshold that does any business in California.

22 103. Nor are the laws limited to reporting of emissions or risks within the State
23 of California; rather, both S.B. 253 and 261 require companies to publicly speak about
24 emissions and risks *wherever* they do business, and wherever their partners in the
25 supply chain also do business—including other states or countries.

26 104. By requiring companies to make speculative public statements about
27 emissions and climate-related financial risk, the legislation enables activists and
28 policymakers to single out companies for stigmatization, criticism, investigation, and

1 boycotts. It therefore functions to pressure companies to reduce their emissions of
2 greenhouse gases, within the State of California and outside of it.

3 105. Under the Clean Air Act and principles of federalism inherent in the
4 structure of our federal Constitution, however, California lacks the authority to
5 regulate greenhouse-gas emissions outside of its own borders. Yet that is precisely
6 what this legislation intentionally accomplishes, using a legal mechanism (requiring
7 extensive disclosure of information about out-of-state emissions) that is itself
8 precluded by the Clean Air Act and the Constitution, as part of a calculated program
9 for mobilizing public pressure.

10 106. Accordingly, this legislation violates the federal Constitution's
11 Supremacy Clause.

12 **THIRD CLAIM FOR RELIEF**

13 **(Constitutional Limitations on Extraterritorial Regulation)**

14 107. Plaintiffs reallege and incorporate herein by reference Paragraphs 1
15 through 91 above.

16 108. The Constitution vests Congress, not each of the fifty states, with
17 authority to regulate interstate and foreign commerce. The laws here intrude on that
18 congressional authority and place upon interstate commerce a burden that far
19 outweighs any benefits to the State of California.

20 109. S.B. 253 and 261 impose significant burdens on interstate and foreign
21 commerce. The laws require companies to spend significant time and money, up to
22 millions of dollars per company, making public statements regarding climate change.
23 The laws will also subject companies, including those in the supply chain that have no
24 intention of doing business in California, to significant political and economic pressure
25 to conform their conduct to the policy preferences of the State of California. And the
26 laws "offend the Commerce Clause" by "'build[ing] up . . . domestic commerce'
27 through 'burdens upon the industry of other States.'" *Pork Producers*, 598 U.S. at 369
28 (quoting *Guy v. Baltimore*, 100 U.S. 434, 443 (1880)). S.B. 253 and 261 apply to any

1 company that meets their respective revenue thresholds, regardless of what proportion
2 of that revenue stems from California. So out-of-state companies that do little business
3 in California will be subject to the laws, even though in-state companies that have their
4 entire business in California (but fall just below the revenue threshold) will not be.

5 110. The benefits to California from the laws are slim to non-existent. The
6 State does not (and cannot reasonably) maintain that the laws will have a meaningful
7 impact on climate change, a *global* phenomenon. Nor does the State explain, let alone
8 demonstrate, how the compelled speech would benefit anyone. The State does not
9 identify any risk of fraud or danger associated with any particular transaction and does
10 not (and cannot) establish that the compelled speech (which applies to private as well
11 as public companies) will be material to investors.

12 111. Even if some of the compelled speech could theoretically be useful in
13 some instances, the laws are so overbroad that their burden on interstate and foreign
14 commerce eclipses any benefit to the State of California. For example, so long as a
15 company exceeds certain revenue thresholds, it, and all of its worldwide operations, is
16 subject to S.B. 253 and 261 if it does *any* business in the State of California, even if
17 that business is de minimis and is unlikely to have any impact in the State. The State
18 does not explain how it has a legitimate interest in compelling speech about activities
19 outside of California that will often have no articulable connection to the State.

20 112. Because the laws so heavily intrude on Congress's authority to regulate
21 interstate and foreign commerce, and because the benefits to California are so limited,
22 the laws are invalid under the Constitution's limitations on extraterritorial regulation,
23 including the Dormant Commerce Clause.

24 **PRAYER FOR RELIEF**

25 113. WHEREFORE, Plaintiffs pray for an order and judgment:

26 a. Declaring that S.B. 253 violates the First Amendment of the U.S.
27 Constitution and is null, void, and with no force or effect;
28

1 b. Declaring that S.B. 261 violates the First Amendment of the U.S.
2 Constitution and is null, void, and with no force or effect;

3 c. Declaring that S.B. 253 is precluded by federal law and is null,
4 void, and with no force or effect;

5 d. Declaring that S.B. 261 is precluded by federal law and is null,
6 void, and with no force or effect;

7 e. Declaring that S.B. 253 is invalid under the Constitution's
8 limitations on extraterritorial regulation, including the Dormant Commerce
9 Clause, and is null, void, and with no force or effect;

10 f. Declaring that S.B. 261 is invalid under the Constitution's
11 limitations on extraterritorial regulation, including the Dormant Commerce
12 Clause, and is null, void, and with no force or effect;

13 g. Enjoining the Defendants from implementing, applying, or taking
14 any action whatsoever to enforce S.B. 253;

15 h. Enjoining the Defendants from implementing, applying, or taking
16 any action whatsoever to enforce S.B. 261;

17 i. Awarding Plaintiffs their reasonable attorneys' and experts' fees
18 incurred in bringing this action; and

19 j. Granting such other and further relief as this Court deems just and
20 proper.

1 DATED: January 30, 2024

2 Respectfully submitted,

3 GIBSON, DUNN & CRUTCHER LLP

4 By: /s/ Bradley J. Hamburger

5 Eugene Scalia, SBN 151540

6 Bradley J. Hamburger, SBN 266916

7 Katherine Moran Meeks

8 (*pro hac vice forthcoming*)

9 Samuel Eckman, SBN 308923

10 Brian A. Richman (*pro hac vice forthcoming*)

11 Elizabeth Strassner, SBN 342838

12 *Attorneys for Plaintiffs Chamber of Commerce*
13 *of the United States of America, California*
14 *Chamber of Commerce, American Farm Bureau*
15 *Federation, Los Angeles County Business*
16 *Federation, Central Valley Business Federation*
17 *and Western Growers Association*

18 CHAMBER OF COMMERCE OF THE
19 UNITED STATES OF AMERICA

20 Daryl Joseffer (*pro hac vice forthcoming*)

21 Tyler Badgley (*pro hac vice forthcoming*)

22 Kevin Palmer (*pro hac vice forthcoming*)

23 *Attorneys for Plaintiff Chamber of Commerce*
24 *of the United States of America*