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Ninth Circuit Rules on California's Climate Disclosure Laws — SB 253 Scope 1 and 2 Emissions Reporting Proceeds for Now; Scope 3 Emissions Reporting and SB 261 Preliminarily Enjoined

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On November 9, 2026, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit issued its decision in *Chamber of Commerce of the United States v. Sanchez*, affirming in part and reversing in part a district court's denial of a preliminary injunction against California's climate disclosure statutes: the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261). The plaintiffs — the U.S. Chamber of Commerce, the California Chamber of Commerce, the American Farm Bureau Federation and other business associations — challenged both laws as facially unconstitutional under the First Amendment.

The result is a split decision with significant practical consequences. The ruling turned on whether each law's requirements compel commercial speech (which is subject to a more deferential intermediate scrutiny standard) or instead compel noncommercial speech (which is subject to more rigorous strict scrutiny). A majority of the panel held (over a dissent) that SB 253's Scope 1 and 2 emissions reporting requirements regulate commercial speech and likely survive intermediate scrutiny, so the panel affirmed the district court's denial of a preliminary injunction for those requirements. By contrast, the panel unanimously held that SB 253's Scope 3 (value-chain) emissions reporting requirement and SB 261 in its entirety compel noncommercial speech and likely fail strict scrutiny, and it reversed the denial of a preliminary injunction as to those requirements. The panel remanded for the district court to decide, in the first instance, whether the Scope 3 provisions are severable from the remainder of SB 253.

This is a preliminary injunction ruling and not a final ruling invalidating or upholding either of the laws. The timing of the ruling — 10 months after oral argument and one day before the initial SB 253 November 10 reporting deadline — left companies in-scope of SB 253 in limbo until the very last moment. This *Kirkland Alert* summarizes the panel's reasoning, the partial dissent, and the implications for companies subject to the laws, and for corporate climate and sustainability reporting more broadly.

The Statutes at Issue

As discussed in our prior *Alert*, in October 2023, California enacted SB 253 and SB 261, which were amended by SB 219 in 2024. The laws require U.S.-organized public and private entities that "do business in California"[1] and meet certain annual revenue thresholds[2] to report greenhouse gas (GHG) emissions (in the case of SB 253) and climate-related financial risks (in the case of SB 261).

SB 253 directs the California Air Resources Board (CARB) to adopt regulations requiring in-scope companies to annually calculate and disclose their Scope 1 and 2 GHG emissions for the prior fiscal year starting in 2026 and Scope 3 starting in 2027 in conformance with the GHG Protocol standards and guidance.[3] SB 253 also requires third-party assurance of reported emissions data.[4] Reporting will be made public, and reporting entities are required to pay annual fees to fund CARB's administration of the program. Noncompliance can result in fines of up to $500,000 in a reporting year.

SB 261 requires in-scope companies to publish biennially on their own websites a report disclosing their "climate-related financial risk" in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), or an equivalent reporting standard (e.g., The International Financial Reporting Standards (IFRS) S2, *Climate-related Disclosures*),[5] together with the measures they have adopted to reduce and adapt to the disclosed risks. Reports were initially required on or before January 1, 2026; however the panel enjoined SB 261 pending appeal on November 18, 2025.[6] Noncompliance can result in fines of up to $50,000 in a reporting year.

CARB's October 12, 2026, implementing regulation for the laws established an initial SB 253 Scope 1 and 2 reporting deadline for November 10, 2026.

Legal Challenges

Both laws have been subject to ongoing legal challenges,[7] originally a complaint filed in the U.S. District Court for the Central District of California in January 2024 by the plaintiffs asserting various constitutional claims.[8] On August 13, 2025, after having already dismissed all but the First Amendment claims, the district court denied the plaintiffs' motion for a preliminary injunction, concluding that both statutes regulate commercial as opposed to noncommercial speech. Having found that both laws regulate commercial speech, it applied a more deferential intermediate scrutiny standard to SB 253 because emissions are "factual and uncontroversial," and a more stringent intermediate scrutiny standard to SB 261 because it concerns "non-factual disclosures."

On November 18, 2025, the Ninth Circuit enjoined enforcement of SB 261 pending appeal but declined to do so for SB 253. The court did not provide its reasoning. Members of the legal community attributed the decision to SB 253's later reporting requirement, which CARB originally indicated would not take effect until August 10, 2026 (but later set to November 10, 2026). On January 9, 2026, a three-judge panel of the Ninth Circuit heard oral arguments regarding the laws; SB 253's Scope 3 disclosure requirement drew most of the questioning.

As the reporting deadline approached, the plaintiffs submitted letters to the Ninth Circuit urging a ruling on their pending injunction request, and the Office of the Comptroller of the Currency issued a letter to CARB questioning how the laws might violate the Supremacy Clause.

The Panel's Holdings

SB 253 Scope 1 and 2: Commercial Speech That Likely Survives Intermediate Scrutiny

Writing for the majority, Judge Nguyen concluded that Scope 1 and 2 disclosures regulate commercial speech because they compel factual information, "numerical emissions data — calculated using standardized methodologies," generated through the reporting entity's own operations. The panel stated that both Scope 1 and 2 emissions disclosures "provide parties to actual or potential commercial transactions with pertinent factual information about a regulated entity's operations." The panel reasoned that purchases of stock and other investment products, as well as issuances of debt or insurance, are commercial transactions, and that the record showed carbon emissions expose firms to greater risk and that markets penalize higher-emitting firms.

In the panel's words, "emissions disclosures function like product warnings in capital markets: higher emissions may signal a greater risk of diminished returns" to investors, insurers and other capital market participants.

Relying heavily on an earlier 2025 decision that is the subject of a pending petition for a writ of certiorari before the Supreme Court, *Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, the panel rejected the plaintiffs' argument that commercial speech should be limited to speech that "does no more than propose a commercial transaction," and held that its precedent calls for a more flexible approach in the government reporting context. The panel also rejected the argument that the disclosures were "politically fraught" in the manner of the laws struck down in previous cases, noting that SB 253 does not require companies to attribute culpability, assign moral significance to their emissions or endorse the state's climate-policy positions, and that companies remain free to contextualize or dispute the significance of the data.

The panel then found two of the state's three asserted interests substantial:

- **Mitigating information asymmetries for investors.** The panel credited record evidence that investors rely on accurate emissions data (including CalPERS, California's largest public pension fund, which has described Scope 1 and 2 data as "crucial" to investment decisions) and that voluntary disclosure cannot reliably close the information gap.
- **Reducing GHG emissions.** The panel held that intermediate scrutiny only requires that the asserted interest is real and does not require the state to "solve climate change entirely before taking steps to combat it" (in response to the Chambers' assertion that resulting emissions reductions would not meaningfully alleviate climate change), and that the district court relied on studies in the record, including a study documenting emissions reductions of approximately 7% to 8% associated with mandatory Scope 1 and 2 reporting.

The panel rejected the state's third interest — preventing misleading speech or "greenwashing" — as unsupported by the record, finding that the state's greenwashing indicators "swe[pt] in conduct that is not inherently misleading."[9] With respect to adequate tailoring, the panel rejected arguments that the state should have limited reporting to public companies (noting the district court's finding that over 75% of companies covered by SB 253 are estimated to be publicly traded), relied on state-generated estimates, or depended on market demand or voluntary reporting, stating that none of the latter options would serve the state's interests as effectively.

SB 253 Scope 3: Noncommercial Speech That Likely Fails Strict Scrutiny

The panel reached a different conclusion on Scope 3. It found that Scope 3 emissions disclosures require companies to collect, synthesize and report information about the conduct of independent actors across their value chains that companies do not own or directly control, and which are "insufficiently tethered to the reporting entity's own operations and capital transactions to qualify as commercial speech," and are thus subject to strict scrutiny.

Applying strict scrutiny, which requires that the state show the challenged restriction "furthers a compelling interest and is narrowly tailored to achieve that interest," the panel held that even assuming the state's interests in mitigating data asymmetries and reducing emissions were compelling, the Scope 3 requirement was not narrowly tailored. The panel observed that companies do not possess Scope 3 data in the way they possess Scope 1 and 2 data, and the statute permits reliance on industry averages and proxy data that the record did not show to be more reliable than estimates the state or public could generate independently. The link between third-party emissions and a reporting company's risk exposure was "too remote" to make Scope 3 emissions pertinent to investors. Additionally, the panel noted that every study in the record linking mandatory disclosure to emissions reductions concerned Scope 1 or 2 reporting. None examined mandatory Scope 3 reporting, leaving only emissions reduction trends explored in voluntary reporting programs that could not, according to the panel, address the state's evidentiary gap. The panel reasoned that companies availing themselves of such voluntary programs are "self-selected" and "likely already predisposed, to some extent, to reducing their environmental impact."

SB 261: Compelled Ideological Speech That Fails Strict Scrutiny

The panel held that SB 261 compels noncommercial speech because it requires covered entities to make predictive judgments about uncertain future conditions and normative assessments about whether mitigating climate risks is worth the cost. Analogizing to a previous holding in which a panel of the Ninth Circuit reversed a district court's order denying a social media platform owner's motion for a preliminary injunction to enjoin enforcement of California's newly-enacted social media transparency law, the panel found that SB 261 effectively requires companies to answer a "speculative and contested policy question: 'How should climate change shape the company's future operations and economic planning?'"[10] The panel emphasized that the mere presence of judgment or opinion does not render speech noncommercial; rather, SB 261 crossed the line by requiring companies to make and disclose normative assessments on a "politically fraught subject" within a state-

prescribed framework, and "to go beyond providing economic information tethered to any commercial transaction."

Applying strict scrutiny — a standard the panel noted the state "all but concedes it cannot satisfy" — the panel held that SB 261 fails on tailoring grounds, because the state could have met its interests through less restrictive means such as disseminating existing voluntary disclosures to the public, incentivizing voluntary disclosure, or directly regulating emissions.[11]

Remaining Preliminary Injunction Factors

Finally, because the plaintiffs showed a likely First Amendment violation as to SB 261 and SB 253's Scope 3 emissions reporting requirement, the panel found that the remaining preliminary injunction factors also favored relief.

The Partial Dissent

Judge Bennett concurred in the judgment as to SB 261 and Scope 3 emissions reporting under SB 253 but would have enjoined SB 253 in its entirety. In his view, the "majority stray[ed] too far from the usual definition of commercial speech as speech that does no more than propose a commercial transaction," and its reasoning "c[ould] be read as equating investors' interest in companies with consumers' interest in products," which could open the floodgates of information that states could require companies to disclose.

Judge Bennett also warned that the majority's rationale could open the door to compelled disclosures on other contested topics, and even disclosures targeting individuals in employment markets. He would generally classify compelled disclosures as commercial only where they inform market participants about a specific product or service. While he was clear that purchases of stock and other capital transactions are commercial transactions where stock or other instruments are the product, he concluded that firm-level emissions data inform investors about the company, not its products or services. Judge Bennett also asserted that SB 261 compels noncommercial speech because it requires the disclosure of judgments and opinions that are "disconnected from any economic transaction," rather than finding SB 261 failed on tailoring grounds like the majority.

Implications for Companies and Climate Reporting

SB 253 Scope 1 and 2 — Reporting Obligations Remain in Effect

In affirming the denial of a preliminary injunction with respect to SB 253's Scope 1 and 2 emissions reporting requirements, the panel allowed them to stand, at least for the time being. Ultimately, the panel's decision is a predictive judgment about the likelihood of success on the merits and subject to the district court's final decision and severability analysis.

Thus, the November 10, 2026, Scope 1 and 2 disclosure deadline remained in effect for in-scope companies — and passed without court or agency action. The panel's decision did not change what is currently expected for Scope 1 and 2 emissions reporting in 2027, including the need to obtain assurance. Scope 1 and 2 assurance is required at a limited level beginning in 2027 and a reasonable level beginning in 2030, and Scope 3 assurance is required at a limited level beginning in 2030.

Companies must continue to wait for CARB to issue further implementing regulations for reporting in 2027 and beyond, assuming SB 253 continues to survive, resulting in a potential additional year of confusion for in-scope companies — made more challenging by the fact that they will need to meet more stringent standards and build in lead time to obtain assurance.

Looking ahead, the panel's reasoning that firm-level emissions data is commercial speech relevant to capital markets — and that the state's interests in mitigating information asymmetries and mitigating emissions are substantial — may also strengthen the position of other jurisdictions considering similar factual emissions-reporting mandates, particularly within the Ninth Circuit.

SB 253 Scope 3 — Preliminary Relief but Uncertainty Will Persist Pending Severability Determination

Scope 3 is preliminarily enjoined and ultimately unlikely to be required, as reversing the denial of the preliminary injunction required the panel to decide that the plaintiffs are likely to succeed on the merits of their challenge. The key open questions are whether the Scope 3 requirement can be severed and the Scope 1 and 2 emissions reporting requirements can remain intact, or whether striking Scope 3 brings down SB 253 more broadly, which is now for the district court to decide.[12] Companies subject to other regimes that require or encourage Scope 3 reporting (e.g., the EU Corporate

Sustainability Reporting Directive and ISSB-aligned regimes that require Scope 3 disclosure), or that have made voluntary Scope 3 commitments, are not affected by this decision.

SB 261 — Climate-Risk Reports Remain Enjoined

SB 261, enjoined by the panel earlier in the appellate process, remains on hold and is ultimately unlikely to survive for reasons similar to those stated for Scope 3 requirements above. The panel's decision continues relief from SB 261's biennial climate-related financial risk reports, which had already been enjoined pending appeal since November 2025.

Many companies will continue to report on climate risk on a voluntary basis or a mandatory basis in other jurisdictions (e.g., the UK TCFD regime, which is subject to change, or in other jurisdictions that have adopted ISSB/IFRS-aligned reporting requirements).[13] Additionally, public companies are still required to report on material risks, including material climate risks, in their Exchange Act filings under existing U.S. Securities and Exchange Commission (SEC) disclosure rules, as explained in the SEC's 2010 interpretive guidance on disclosure related to climate change, which remains in effect.

The precise contours of California's climate disclosure regime will become clearer as the district court addresses severability and as any further appellate proceedings unfold. The panel's decision could inform future challenges or how other states approach climate disclosure laws.[14] In the meantime, companies should continue to monitor the district court proceedings, including any implementing injunction orders, CARB's response, and any requests for rehearing or further review in light of the panel's reasoning.

What to Watch

Severability Analysis. On remand, the district court must first decide whether Scope 3 can be severed from SB 253. If it cannot, the court will likely strike down SB 253 entirely, including Scope 1 and 2.[15]

Further Appeals and Challenges. The parties have 14 days from the date of the ruling to seek panel or en banc rehearing, although they could seek an extension.[16]

Supreme Court. Given the split ruling and the First Amendment issues, a certiorari petition could have a chance of being granted.[17] Interested parties should also watch the petition presenting similar questions in *Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, referenced above. The Supreme Court has invited the Solicitor General to file a brief expressing the views of the United States, an action commonly referred to as a Call for the Views of the Solicitor General (CVSG), which is a sign that the court is taking the petition seriously. The Solicitor General has not yet filed a brief in response to the CVSG, but that is likely to happen before the end of 2026.

Scope 1 and 2 Reporting 2027+: Pursuant to guidance from CARB, in-scope companies will be required to report Scope 1 and 2 emissions for the prior fiscal year and provide limited assurance, measurement and reporting in line with the GHG Protocol. CARB has reiterated in public workshops that it aims to provide reporting flexibility. Open points include: a 2027 reporting template, additional detail that CARB will require in disclosures, what assurance standards/frameworks CARB will recognize, the reporting deadline and insurance company inclusion.

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1. CARB's October 12, 2026, Initial Regulation (*California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation*) (Initial Regulation), includes a definition of "[d]oing business in California," which has the same definition as set forth in sections 23101(a)-(b) of the California Revenue and Taxation Code, as companies that are "actively engaging in any transaction for the purpose of financial gain or pecuniary gain or profit"; and either (1) are organized or commercially domiciled in California; or (2) have 2025 sales in California exceeding ~$757,000 or 25% of the company's total sales, including sales by a company's agent or independent contractor.↩

2. SB 253 applies to entities that have more than $1 billion in "total annual revenues" based on the lesser of the two prior fiscal years (noting some exemptions). SB 261 applied to entities that have "total annual revenues" in excess of $500 million based on the lesser of the two prior fiscal years. In its Initial Regulation, CARB states that "[r]evenue" has the same meaning as "gross receipts" in the Tax Code § 25120(f)(2).↩

3. Scope 1 refers to all direct emissions from sources the reporting entity owns or directly controls, including fuel combustion; Scope 2 to indirect emissions from purchased or acquired electricity, steam, heating or cooling; and Scope 3 to indirect upstream and downstream emissions from sources the reporting entity does not own or directly control, such as purchased goods and services, business travel, employee commutes and the processing and use of sold products. A company that was not collecting data or planning to collect Scope 1 and 2 GHG emissions data on or before December 5, 2024 may submit a statement of non-reporting in lieu of the required report. *See* 17 Cal. Code Regs. § 96076(b)(1)(B).↩

4. Scope 1 and 2 assurance is required at a limited level beginning in 2027 and a reasonable level beginning in 2030, and Scope 3 assurance is required at a limited level beginning in 2030.↩

5. Referring to the global baseline standard issued by the International Sustainability Standards Board (ISSB) to require decision-useful, climate-related financial reporting.↩

6. Additionally, CARB issued an Enforcement Advisory on December 1, 2025, indicating that it would provide an alternate date for SB 261 reporting and further information once the appeal was resolved. CARB posted a public docket on December 1, 2025, for covered entities to post the location of their public link to their first climate-related financial risk report on a voluntary basis pending the resolution of the appeal. Over 150 entities have reported on a voluntary basis.↩

7. Separately, on October 24, 2025, Exxon Mobil filed a lawsuit challenging the laws in the U.S. District Court for the Eastern District of California, asserting company-specific arguments under the First Amendment and on federal preemption grounds. Following the panel's injunctive relief granted in November 2025 in the instant case, the company withdrew its application for a temporary restraining order and the case remains on hold. *See Exxon Mobil Corp. v. Sanchez*, No. 2:25-cv-03104-DJC-JDP (E.D. Cal. October 24, 2025).↩

8. Specifically, based on: (i) the First Amendment (arguing the laws compel "noncommercial" and "politically-charged" speech); (ii) the Supremacy Clause (arguing the laws are preempted by the federal Clean Air Act); and (iii) constitutional limitations on extraterritorial regulation, including the Dormant Commerce Clause (arguing the laws impose an undue burden on interstate commerce). *See Chamber of Com. of the U.S. v. CARB*, No. 2:24-cv-00801-ODW-PVC (C.D. Cal. January 30, 2024), Dkt. 1.↩

9. The panel referenced "failing to provide a publicly available emissions-reduction implementation plan or lobbying against climate legislation while utilizing environmentally conscious branding."↩

10. The panel referenced *X Corporation v. Bonta*, 116 F.4th 888, 901-02 (9th Cir. 2024), a lawsuit challenging California AB 587, which requires large social media companies to post their terms of service and provide reports to the State Attorney General concerning their terms of service and content-moderation policies and practices.↩

11. The panel did not assess whether the state's interests, which the state argued were the same as for SB 253, would be compelling state interests with respect to SB 261.↩

12. SB 253 contains an express severability clause. Under California law, a provision is severable if it meets three criteria: (i) the invalid provision can be removed without affecting the wording or coherence of the remaining text; (ii) the remaining provisions are complete in themselves and capable of independent enforcement; and (iii) the state legislature would have adopted the remainder of the statute had it foreseen the partial invalidation of the law.↩

13. 35+ countries representing 60% of global GDP have passed ISSB disclosure rules, with first reports due between 2027 and 2040 — developing, refining or implementing climate disclosure requirements for large companies that operate in their countries. *See International Sustainability Standards Board*, IFRS, (last visited November 13, 2026).↩

14. California's laws have informed similar bills in other states in 2025 (Colorado, Illinois, New Jersey and New York), as well as one from Texas seeking to push back on such legislation. None of these bills passed during their states' respective legislative sessions in 2025, though some were carried over into the 2026 sessions. More legislative activity at the state-level is expected from emboldened blue states following the midterm elections. The SEC rescinded its climate rule for public companies earlier this year.↩

15. Severability analysis had not yet been briefed by the parties in the case. At oral argument, the state provided its view that it was appropriate to advance severability analysis for the district court's evaluation.↩

16. As of November 18, 2026, the *Exxon* case remains on hold. CARB has not responded publicly to the Office of the Comptroller of the Currency letter.↩

17. As a reminder, the plaintiffs filed an emergency application with the Supreme Court seeking to preliminarily enjoin California from enforcing both laws pending litigation on the merits in November 2025.↩

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Suggested Reading

- 09 March 2026 Kirkland Alert U.S. Environmental Protection Agency Issues Final Rule to Rescind Endangerment Finding Underpinning Federal Regulation of Greenhouse Gas Emissions
- 25 August 2025 Kirkland Alert U.S. Environmental Protection Agency Proposes to Alter Framework for Regulating Many Sources of Air Emissions
- 11 June 2024 Kirkland Alert AIFMD II Q&A for Fund Sponsors

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