

Corporate Sustainability Update

November 2026

Ninth Circuit Weighs in on California's Climate Disclosure Laws

On November 9, a divided panel of the U.S. Court of Appeals for the Ninth Circuit issued a published opinion in *U.S. Chamber of Commerce v. Sanchez*, No. 25-5327, addressing First Amendment challenges to California's two climate disclosure statutes: the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261). In the long-awaited decision, the court allowed SB 253's Scope 1 and 2 disclosure requirements to proceed but held that SB 253's Scope 3 requirement and SB 261 in its entirety are likely unconstitutional.

The Court's Holdings

Scope 1 and 2 Emissions Reporting Under SB 253

SB 253 applies to U.S.-formed entities doing business in California with more than $1 billion in annual revenue. The panel held that Scope 1 and 2 disclosures (covering a company's direct emissions and emissions from purchased energy) are commercial speech because they require factual information about a company's operations that bears on capital transactions. The court applied intermediate scrutiny and found the requirements likely constitutional. It recognized two substantial state interests: reducing information asymmetries for investors and reducing emissions. The court rejected the state's third asserted interest, preventing misleading speech related to environmental responsibility or climate commitment, commonly known as "greenwashing," as unsupported by the record. Accordingly, the court affirmed the lower court's denial of a preliminary injunction as to SB 253's Scope 1 and 2 disclosures.

Scope 3 Emissions Reporting Under SB 253

Scope 3 disclosures cover indirect emissions from suppliers and customers. The court held that they concern diffuse third-party conduct and are "insufficiently tethered" to the reporting company's own operations to count as commercial speech, and that they likely fail strict scrutiny. The court found that companies do not actually possess Scope 3 data in the way they possess Scope 1 and 2 data. It also found the link to investment decisions too attenuated, and no study in the record tied mandatory Scope 3 reporting to emissions reductions. Because SB 253 contains a severability clause, the case was remanded for the district court to decide whether the Scope 3 provisions can be severed.

Climate-Related Financial Reports Under SB 261

SB 261 requires U.S.-formed companies with more than $500 million in annual revenue that do business in California to prepare biennial climate-related financial reports in accordance with the Task Force on Climate-related Financial Disclosures (TCFD). The panel held that climate-related financial reports compel noncommercial speech because they require "predictive and normative judgments" on a "politically fraught subject." Moreover, the statute likely fails strict scrutiny on tailoring grounds. The court reasoned that the state could have used less restrictive means, such as disseminating voluntary disclosures or offering incentives. The Ninth Circuit had already enjoined SB 261 pending appeal on November 18, 2025.

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Key Takeaways

Scope 1 and 2 reporting is required for companies that are "doing business in California" and have more than $1 billion in annual revenue. The deadline to submit data for 2025 remains November 10, 2026. Companies should prepare for limited assurance of Scope 1 and 2 emissions next year and monitor CARB's ongoing rulemaking process for reporting requirements in 2027 and beyond.

Scope 3 reporting is expected to be enjoined. The Ninth Circuit reversed the district court's denial of a preliminary injunction as to SB 253's Scope 3 disclosure requirement, and an injunction against Scope 3 enforcement is expected on remand.

SB 261 reports are on hold. SB 261 has been enjoined pending appeal since November 18, 2025, and the panel has now reversed the denial of a preliminary injunction as to the statute in its entirety. Covered entities do not need to publish biennial climate-related financial risk reports while the injunction remains in place, but they should monitor further proceedings, including the district court's injunction on remand, any petition for rehearing en banc or Supreme Court review, and any new compliance deadline CARB may set if the injunction is lifted.

FOR MORE INFORMATION

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