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Ninth Circuit Splits California's Climate Disclosure Laws: Scope 1 and 2 Reporting Proceeds; Scope 3 and SB 261 Likely Unconstitutional

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Key Takeaways

- On November 9, 2026, the Ninth Circuit in *Chamber of Commerce v. Sanchez* allowed Scope 1 and Scope 2 greenhouse gas (GHG) emissions reporting under SB 253 to proceed but held that SB 253's Scope 3 requirement, and SB 261 in its entirety, likely violate the First Amendment.[1]
- U.S.-formed entities with total annual revenues above $1 billion that do business in California remain subject to Scope 1 and 2 reporting. First reports (or, for eligible entities, statements of non-reporting) were due November 10, 2026.[2]
- Scope 3 reporting (scheduled to begin in 2027) and SB 261 climate-risk reporting are effectively on hold. Entities with revenues between $500 million and $1 billion, which were covered only by SB 261, currently have no reporting obligation under either law.[3]
- The ruling addresses only preliminary injunctive relief; it is not a final judgment on the merits. If the district court finds the Scope 3 requirement non-severable, it could also enjoin Scope 1 and 2 reporting.[4]

Background

SB 253 (the Climate Corporate Data Accountability Act) requires U.S.-formed entities with total annual revenues above $1 billion that do business in California to report Scope 1 and 2 emissions starting in 2026 and Scope 3 emissions starting in 2027, with penalties of up to $500,000 per reporting year.[5] SB 261 (the Climate-Related Financial Risk Act) requires U.S.-formed entities with total annual revenues above $500 million that do business in California to publish biennial climate-related financial risk reports consistent with the Task Force on Climate-related Financial Disclosures (TCFD) framework, with penalties of up to $50,000 per reporting year.[6]

Business groups led by the U.S. Chamber of Commerce challenged both laws as compelled speech that violates the First Amendment. In August 2025, the district court denied their motions for preliminary injunctions. On November 18, 2025, the Ninth Circuit enjoined SB 261 pending appeal but declined to enjoin SB 253.[7] The implementing

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regulation adopted by the California Air Resources Board (CARB) took effect on October 12, 2026, and set November 10, 2026, as the first Scope 1 and 2 reporting deadline.[8]

The Court's Decision

Scope 1 and Scope 2: Upheld for Now

The panel held that Scope 1 and 2 disclosures are commercial speech because they compel disclosure of factual information about emissions from a company's own operations and purchased energy—information that bears on capital transactions. Applying intermediate scrutiny, the court concluded that the requirements advance California's substantial interests in reducing information asymmetries for investors and in reducing emissions and are no more extensive than necessary.[9] The panel split 2–1 on this issue.[10]

Scope 3: Likely Unconstitutional

The court held that Scope 3 disclosures concern diffuse third-party conduct across the value chain and are "insufficiently tethered" to the reporting entity's own operations to qualify as commercial speech. Applying strict scrutiny, the court concluded that the requirement likely fails because (1) SB 253 does not require primary data, (2) the record did not show that companies' proxy-based estimates would be more reliable than estimates the State could generate itself, and (3) the link to investor-relevant risk was too remote.[11]

SB 261: Likely Unconstitutional in Its Entirety

The court held that SB 261 compels noncommercial speech because it requires "predictive and normative judgments" about a "politically fraught subject." Even assuming California's interests are compelling, the court reasoned that the law is likely not narrowly tailored because California could use less restrictive alternatives, such as incentives for voluntary disclosure.[12] The panel was unanimous on Scope 3 and SB 261.[13]

Remand and Severability

The Ninth Circuit did not enter injunctions itself. It reversed the denials of preliminary injunctive relief and remanded with instructions for the district court to enter relief consistent with the opinion and, for Scope 3, to decide severability first.[14] SB 253 contains an express severability clause. If the district court nevertheless finds the Scope 3 requirement non-severable, it could also enjoin Scope 1 and 2 reporting.[15]

Current Status at a Glance

Requirement	Status after the Ruling	Practical Effect
SB 253 – Scope 1 and 2 emissions (entities with revenues above $1 billion)	In effect; denial of preliminary injunction affirmed	First reports were due November 10, 2026; CARB fee notices expected by December 10, 2026[16]
SB 253 – Scope 3	Likely	Not required while remand is

emissions (scheduled to begin in 2027)	unconstitutional; remanded for severability ruling and entry of injunctive relief	pending; scope of CARB's 2027 rulemaking uncertain[17]
SB 261 – climate-related financial risk reports (entities with revenues above $500 million)	Likely unconstitutional in its entirety; enjoined pending appeal since November 18, 2025	No current reporting obligation; voluntary reports permitted[18]

What to Watch

- Any petition for panel rehearing or rehearing en banc (due 14 days after entry of judgment) and any petition for a writ of certiorari to the U.S. Supreme Court.[19]
- The district court's severability ruling and the scope of any preliminary injunctions it enters as to Scope 3 and SB 261.[20]
- CARB's response. As of the date of this alert, CARB has not issued a formal statement on the opinion.[21] CARB had been developing a second rulemaking for reporting years 2027 and later, addressing Scope 3, assurance, deadlines, and reporting templates, and had proposed retaining November 10 as the annual deadline.[22]

Recommended Actions

1. **Confirm coverage entity by entity.** Revenue (gross receipts, based on the lesser of the two prior fiscal years) and "doing business in California" are determined separately for each entity; affiliates are not aggregated. Retain supporting California tax records for five years.[23]
2. **If a covered entity has not filed, file promptly.** Submit the Scope 1 and 2 report (or, if eligible, a statement of non-reporting) and document good-faith compliance efforts, which CARB must consider in assessing penalties.[24]
3. **Calendar the fee cycle.** CARB expects to issue fee notices by December 10, 2026, with payment due within 60 days after the notice; each day of nonpayment is a separate violation.[25] CARB's August 2025 proposal set flat fees at $3,106 per SB 253 entity and $1,403 per SB 261 entity.[26] Confirm the final amount when the CARB notice arrives.
4. **Prepare for 2027 Scope 1 and 2 reporting.** Third-party assurance was not required for 2026, but CARB has signaled that it will require limited assurance of Scope 1 and 2 data for 2027 and later years.[27] Engage assurance providers and strengthen internal data controls now.
5. **Pause, but preserve, Scope 3 and SB 261 workstreams.** Maintain existing data and processes: the ruling is preliminary, and many multinational companies will still need Scope 3 and product-level emissions data under the EU's Corporate Sustainability Reporting Directive (CSRD) and Carbon Border Adjustment Mechanism (CBAM).[28] Companies may still publish SB 261 reports voluntarily.[29]
6. **Review public statements.** Continue to review voluntary climate disclosures for consistency with CARB filings and other regulatory reports.

Considerations for Real Estate and Infrastructure Clients

The following are practice recommendations, not statutory requirements:

- **Control boundaries.** Whether emissions from a building or data center fall within a landlord's or a tenant's Scope 1 or 2 inventory depends on the control approach applied under the GHG Protocol. Leases, colocation agreements, and powered-shell arrangements should specify which party has operational control for GHG reporting purposes.
- **Data cooperation.** Include obligations to deliver utility and energy data (with specified timing and format) and to cooperate with assurance providers, particularly where the landlord or operator holds the utility accounts.
- **Transactions.** In acquisitions and financings, diligence the target's or borrower's SB 253 compliance and fee payments, and consider representations and covenants on the accuracy of emissions data.
- **Value-chain requests.** Counterparty requests for Scope 3 data may slow, but those subject to CSRD will likely continue to make them.

This alert is for general information only and is not legal advice. The law in this area is changing rapidly, and developments after November 18, 2026, may affect this analysis.

[1] *Chamber of Commerce v. Sanchez,* No. 25-5327 (9th Cir. Nov. 9, 2026)
[2] White & Case, California Climate Disclosure Laws: Ninth Circuit Finds SB 253 Scope 3 Requirements and SB 261 Likely Unconstitutional (Nov. 2026)
[3] Legal 500, Ninth Circuit Approves California's Core Carbon Emissions Reporting Rules (Nov. 2026)
[4] White & Case, *supra* note 2.
[5] Kirkland & Ellis, Ninth Circuit Rules on California's Climate Disclosure Laws (Nov. 2026)
[6] Simpson Thacher, California Climate Reporting Laws: Ninth Circuit Issues Partial Injunction (Nov. 2025)
[7] White & Case, *supra* note 2.
[8] Vinson & Elkins, OAL Approves CARB's Initial Regulation (Oct. 2026)
[9] White & Case, *supra* note 2.
[10] Foley & Lardner, California Climate Disclosure Laws (Nov. 2026)
[11] White & Case, *supra* note 2.
[12] *Chamber of Commerce*, No. 25-5327.
[13] Kirkland & Ellis, *supra* note 5.
[14] Troutman Pepper Locke, Ninth Circuit Rules on Challenge to California's Climate Disclosure Laws (Nov. 2026)
[15] White & Case, *supra* note 2.
[16] Davis Polk, Getting Ready for California SB 253's November 10 Reporting Deadline (Oct. 2026)
[17] Troutman Pepper Locke, *supra* note 14.
[18] White & Case, *supra* note 2.
[19] *Id.*
[20] Troutman Pepper Locke, *supra* note 14.
[21] Morgan Lewis, Ninth Circuit Reverses Lower Court (Nov. 2026)

[22] Simpson Thacher, CARB Provides New Guidance on SB 253 Reporting (July 2026)

[23] Davis Polk, *supra* note 16.

[24] *Id.*

[25] *Id.*

[26] CARB, SB 253/261 Public Workshop Slides (Aug. 2025)

[27] Vinson & Elkins, *supra* note 8.

[28] O'Melveny, Is Your Company Still Required to Report Under California's Climate Laws? (Nov. 2026)

[29] White & Case, *supra* note 2.