California Climate Disclosure Laws: Ninth Circuit Keeps SB-253 Scopes 1 and 2 Reporting in Effect; Holds Scope 3 Reporting and SB-261 Climate Risk Reporting Likely Unconstitutional

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Current Status

- SB-253 Scopes 1 and 2 reporting **remains in effect**, with initial reports from in-scope entities due November 10, 2026.
- SB-253 Scope 3 reporting, which had been scheduled to begin in 2027, **is now paused**. Whether the rest of SB-253 can stand without Scope 3 is a severability question for the district court on remand.
- SB-261 reporting, which would otherwise have been due from in-scope entities by January 1, 2026, **remains enjoined** under the Ninth Circuit's November 2025 injunction pending appeal. The California Air Resources Board (CARB) has said it will not enforce SB-261 unless and until the injunction is lifted.
- As of this writing, CARB has not issued a formal statement or further guidance in response to the November 9, 2026 decision.

Background

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In January 2024, a coalition of business groups led by the U.S. Chamber of Commerce filed suit against California, alleging, among other claims, that the state's climate disclosure laws—SB-253 (requiring annual disclosure of Scopes 1, 2 and 3 greenhouse gas emissions) and SB-261 (requiring biennial disclosure of climate-related financial risks)—are facially unconstitutional under the First Amendment. The plaintiffs moved to enjoin the laws in February 2025, arguing that they compel noncommercial speech and fail strict scrutiny. In August 2025, the U.S. District Court for the Central District of California denied the plaintiffs' motion for a preliminary injunction, concluding that both laws regulate commercial speech and therefore are not subject to strict scrutiny, and that the plaintiffs were unlikely to succeed on the merits of their First Amendment claims.

The plaintiffs appealed to the U.S. Court of Appeals for the Ninth Circuit and, in September 2025, requested an injunction pending appeal, citing "imminent, irreparable harm" from the laws' rapidly approaching compliance deadlines. In November 2025, the Ninth Circuit enjoined the enforcement of SB-261 pending appeal but denied the plaintiffs' motion for a similar injunction as to SB-253. Oral argument took place in January 2026, and on November 9, 2026, a divided three-judge panel affirmed in part and reversed in part the district court's decision.

The Ninth Circuit's Decision

According to the 84-page opinion:

SB-253's Scopes 1 and 2 Disclosure Requirements Regulate Commercial Speech and Survive Intermediate Scrutiny

The majority affirmed the district court's denial of a preliminary injunction as to SB-253's Scopes 1 and 2 disclosure requirements. It held that the Scope 1 (direct emissions from operations) and Scope 2 (indirect emissions from purchased energy) disclosures regulate commercial speech because they compel disclosure of factual information on emissions generated through the reporting entities' own operations and bear on capital transactions. Writing for the majority, Judge Jacqueline H. Nguyen explained:

> "The compelled Scope 1 and 2 disclosures concern only factual information—emissions data reported using standardized measurement protocols the industry has long employed…. SB 253 does not require a company to characterize itself as part of the climate solution or a contributor to its degradation. The statute

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requires companies to report emissions data about their operations. That is a factual disclosure, not a moral one."

Applying intermediate scrutiny, the majority concluded that, for purposes of preliminary injunctive relief, the state demonstrated substantial interests in mitigating information asymmetries for investors and reducing emissions, as well as a likelihood that the Scopes 1 and 2 disclosure requirements directly advance those interests and are no more extensive than necessary.

SB-253's Scope 3 Disclosure Requirement Does Not Regulate Commercial Speech and Fails Strict Scrutiny

The panel reversed the district court's denial of a preliminary injunction as to SB-253's Scope 3 disclosure requirement. The majority held that because the Scope 3 (value-chain emissions) disclosures concern "diffuse third-party conduct in the value chain" by suppliers, customers, distributors and others, they are insufficiently connected to the reporting entity's own operations and capital transactions to qualify as commercial speech. As such, these disclosures are subject to strict scrutiny, which they likely fail to satisfy because, even assuming that mitigating information asymmetries and reducing emissions are compelling governmental interests, the state failed to show that the Scope 3 requirement is narrowly tailored to achieve either interest.

Because the Scope 3 disclosure provisions are "likely unconstitutional" and SB-253 includes a severability clause, **the panel remanded to the district court to determine, in the first instance, whether those provisions are severable from the statute's other requirements**. At oral argument, in response to a question from Judge Nguyen, the state said it would be appropriate to send the case back for a severability analysis if the panel had concerns about the Scope 3 disclosure requirement.

SB-261 Does Not Regulate Commercial Speech and Fails Strict Scrutiny

The panel reversed the district court's denial of a preliminary injunction as to SB-261 in its entirety. The majority held that SB-261 compels noncommercial speech by requiring covered entities to disclose, among other information, subjective ideological assessments. As Judge Nguyen wrote:

- "Unlike SB 253's Scope 1 and 2 disclosure requirements, SB 261 goes far beyond compelling the reporting of factual information about the entities' emissions. Compliance would require a reporting entity to assess and disclose

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climate-related financial risks, which involves predictive and normative judgments about future economic conditions and a politically fraught subject."

- "In practical effect, SB 261 requires companies to answer a speculative and contested policy question: 'How should climate change shape the company's future operations and economic planning?' The required disclosures thus compel covered companies to express normative, and inherently subjective, judgments about the significance of climate change, its long-term consequences for their businesses, and the extent to which it should influence their operations and strategy."

Applying strict scrutiny, the majority concluded that, even assuming that mitigating information asymmetries and reducing emissions are compelling state interests, SB-261 fails on tailoring grounds because the state could have employed less restrictive means to accomplish its goals.

Partial Concurrence and Dissent

Judge Mark J. Bennett, concurring in the judgment in part and dissenting in part, argued that the majority strayed too far from the usual definition of commercial speech as speech that "does no more than propose a commercial transaction." In addition to SB-261, he would have preliminarily enjoined SB-253 in its entirety, reasoning that its Scopes 1 and 2 disclosures, like its Scope 3 disclosures, compel noncommercial speech and therefore warrant strict scrutiny, which California "all but concedes it cannot satisfy" (borrowing the majority's phrase). Judge Bennett wrote:

> "I believe that all of SB 253's and SB 261's disclosures are noncommercial in nature. In my view, both laws compel disclosure of information lacking a close tether to commercial transactions. I reach that conclusion because neither law informs market participants about a specific product."

He warned that because the majority opinion can be read as equating investors' interest in companies with consumers' interest in products, there may be "no end" to the information that states can now compel companies to disclose.

Next Steps

The November 9 decision addresses only preliminary injunctive relief while the underlying litigation proceeds; **neither law has been upheld or struck down on the merits**.

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Any petition for panel rehearing or rehearing en banc is due within 14 days after entry of judgment (by November 23). The case will then return to the district court for the Scope 3 severability determination and further proceedings on the merits. That court stayed all proceedings and vacated all case deadlines pending the appeal. Within 21 days of the Ninth Circuit's decision (by November 30), the parties must file a proposed case management order with renewed deadlines for discovery, pretrial motions and trial.

The California Attorney General's office said it is "pleased that reporting under SB 253 will move forward, providing valuable Scope 1 and Scope 2 information to California stakeholders," and is "evaluating next steps." The U.S. Chamber of Commerce called the decision an "important victory" and said it will seek permanent injunctions against both laws.

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