WILLKIE

CLIENT ALERT

Ninth Circuit Finds Certain Aspects of California's Climate Risk Disclosure Laws Likely Unconstitutional, While Preserving Core Emissions Reporting Requirements

November 11, 2026

AUTHORS

William L. Thomas | Zaina Fontane | Maria Clara Castro do Egito Coelho

On November 9, 2026, the U.S. Court of Appeals for the Ninth Circuit issued a significant decision in *Chamber of Commerce of the United States of America v. Sanchez*, No. 25-5327, concerning constitutional challenges to California's corporate climate-disclosure laws, Senate Bill 253 ("SB 253") and Senate Bill 261 ("SB 261"). The Court held that SB 261's climate-related financial risk disclosure requirements and SB 253's Scope 3 greenhouse gas ("GHG") emissions disclosure requirements likely violate the First Amendment. However, the Court declined to enjoin SB 253's Scope 1 and Scope 2 reporting requirements, allowing those provisions to remain in effect. Although the decision does not constitute a final determination of the statutes' constitutionality, the Court's substantive First Amendment analysis creates significant obstacles to their enforcement while the litigation proceeds.

The ruling had no immediate implications for companies subject to California's climate-disclosure regime preparing their initial Scope 1 and Scope 2 reporting under SB 253 by the November 10, 2026 deadline. However, the Ninth Circuit's decision left lingering doubts about the future prospects of SB 261 and Scope 3 reporting under SB 253.

Background: California's Corporate Climate-Disclosure Regime

In October 2023, California enacted SB 253 (the Climate Corporate Data Accountability Act) and SB 261 (the Climate-Related Financial Risk Act), establishing two complementary corporate climate-disclosure regimes. Both laws apply to certain companies doing business in California—including companies headquartered outside of the state—and impose reporting obligations based on annual revenue thresholds.

1. SB 253: Greenhouse Gas Emissions Reporting

SB 253, codified at California Health and Safety Code Section 38532, requires U.S.-formed business entities doing business in California with annual revenues exceeding $1 billion to disclose their GHG emissions annually. The law distinguishes among three categories of emissions: (1) Scope 1: direct emissions from sources owned or controlled by the reporting entity; (2) Scope 2: indirect emissions associated with purchased electricity, steam, heating, and cooling consumed by the reporting entity; and (3) Scope 3: other indirect emissions associated with the reporting entity's upstream and downstream value chain, including suppliers, customers, business travel, and other activities outside the company's direct control.

The California Air Resources Board ("CARB"), which is responsible for implementing the regime, adopted initial implementing regulations in October 2026 which established November 10, 2026, as the initial deadline for Scope 1 and Scope 2 reporting. Scope 3 disclosures are not required for the initial 2026 reporting cycle, and CARB has been developing additional regulations governing reporting in subsequent years.[1]

2. SB 261: Climate-Related Financial Risk Reporting

SB 261, codified at California Health and Safety Code Section 38533, applies to U.S.-formed entities doing business in California with annual revenues exceeding $500 million, subject to statutory and regulatory exemptions. Unlike SB 253, which focuses on quantifiable emissions data, SB 261 requires covered entities to prepare and publicly disclose biennial reports assessing their climate-related financial risks. Reports must address material risks arising from physical climate-related events and the transition to a lower-carbon economy, consistent with the framework developed by the Task Force on Climate-related Financial Disclosures or an equivalent reporting standard. These disclosures address corporate governance, strategy, risk management, and metrics and targets relating to climate-related financial risks, as well as measures adopted to mitigate or adapt to those risks.

The statute originally contemplated initial reporting by January 1, 2026. However, in November 2025, the Ninth Circuit temporarily enjoined enforcement of SB 261 on appeal, pending its decision on the merits, as described

[1] For 2026, CARB has also established transitional reporting accommodations. Covered companies may submit emissions information already possessed or being collected as of December 5, 2024. Alternatively, qualifying entities that neither possessed nor were collecting Scope 1 or Scope 2 information as of that date may submit a statement of non-reporting on company letterhead.

below. CARB subsequently announced that it would not enforce the original reporting deadline and established a mechanism for voluntary submissions.

The Ninth Circuit's Decision

The U.S. Chamber of Commerce and other business associations filed suit in January 2024, challenging SB 253 and SB 261 as unconstitutional under the First Amendment because they compel companies to disclose information and express views concerning climate change. While that litigation was pending, plaintiffs sought a preliminary injunction, asking the U.S. District Court for the Central District of California to prevent California from enforcing the laws before the litigation concluded. The court denied the plaintiffs' request, concluding that the statutes regulated commercial speech and were sufficiently justified by California's interests in providing information to investors and reducing emissions. The Ninth Circuit granted an injunction preventing enforcement of SB 261 pending appeal but declined to grant similar relief concerning SB 253. On November 9, 2026, the Ninth Circuit affirmed in part and reversed in part, drawing a distinction between the factual GHG emissions reporting required under Scope 1 and Scope 2 and the broader disclosures required under Scope 3 and SB 261.

1. Scope 1 and Scope 2 Disclosures Survive Constitutional Scrutiny

The Ninth Circuit concluded that SB 253's Scope 1 and Scope 2 reporting requirements regulate commercial speech because they compel disclosure of factual information concerning emissions associated with a company's own operations. The Court reasoned that such information is relevant to commercial transactions, including investment, lending, and insurance decisions. In particular, emissions data can inform market participants about a company's operational efficiency, regulatory exposure, profitability, and overall financial risk.

Because these disclosures constitute commercial speech, the Court applied intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). Under that standard, the government must demonstrate that a regulation directly advances a substantial governmental interest and is not more extensive than necessary.

The Court concluded that California had demonstrated a substantial interest in reducing information asymmetries affecting investors and reducing GHG emissions. It further found that mandatory Scope 1 and Scope 2 reporting was sufficiently tailored to advance those interests. Accordingly, the Court affirmed the denial of a preliminary injunction against these requirements, leaving them operative.

2. Scope 3 Reporting Likely Violates the First Amendment

The Court reached a different conclusion regarding Scope 3 emissions, which originate from third parties throughout a company's value chain. Unlike Scope 1 and Scope 2 emissions, Scope 3 emissions arise from activities that the reporting entity does not directly own or control. The Court reasoned that the required disclosures concern the conduct of independent suppliers, customers, distributors, and other third parties, making them insufficiently connected to the reporting entity's own commercial operations and transactions to qualify as commercial speech.

Consequently, the Court applied strict scrutiny, which requires a compelling governmental interest and narrow tailoring.

The Court concluded that California had failed to establish that mandatory Scope 3 reporting satisfied this demanding standard. Among other considerations, the Court emphasized that Scope 3 emissions data frequently must be collected from third parties or estimated using industry averages and proxy data. The State had not shown that such reporting would produce materially more reliable information than alternative approaches, including voluntary disclosures or government-generated estimates. The Court also found insufficient evidence that mandatory Scope 3 reporting would reduce emissions.

The Ninth Circuit therefore concluded that the Scope 3 disclosure requirement likely violates the First Amendment. Because SB 253 contains a severability provision, the Court remanded to the District Court for a determination of whether the Scope 3 requirement can be severed from the remainder of the statute.

3. SB 261's Climate-Related Financial Risk Disclosures Likely Violate the First Amendment

The Ninth Circuit similarly concluded that SB 261's reporting requirements likely violate the First Amendment, but for somewhat different reasons. The Court emphasized that SB 261 goes beyond requiring companies to report historical, quantifiable information. Instead, it requires companies to assess and disclose potential future climate-related risks, evaluate the consequences of climate change for their business models, and explain their strategies for addressing those risks. According to the Court, these obligations require companies to make subjective, predictive, and normative judgments about a politically contested subject. The Court therefore determined that SB 261 compels non-commercial speech and is subject to strict scrutiny.

Applying that standard, the Court concluded that California had not established that the law was narrowly tailored to advance its asserted interests. The Court identified potentially less restrictive alternatives, including encouraging voluntary disclosures, disseminating existing climate-related financial risk information, and directly regulating or incentivizing emissions reductions. Accordingly, the Ninth Circuit reversed the denial of preliminary injunctive relief concerning SB 261 in its entirety.[2]

What the Decision Means for Reporting Entities

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

The most immediate consequence is that covered entities remain subject to SB 253's Scope 1 and Scope 2 reporting requirements. The Ninth Circuit's decision did not suspend those obligations, and CARB's November 10, 2026 reporting deadline remained in place.

---

[2] Judge Mark Bennett concurred in part and dissented in part. Although he agreed with the majority that SB 261 and SB 253's Scope 3 reporting requirements likely violate the First Amendment, he would have gone further and preliminarily enjoined SB 253 in its entirety. In his view, even Scope 1 and Scope 2 emissions disclosures constitute noncommercial speech because they concern company-level information insufficiently connected to particular commercial transactions. Accordingly, Judge Bennett would have subjected both statutes in their entirety to strict scrutiny and concluded that neither satisfied that standard.

2. SB 261 Reporting Faces a Substantial Constitutional Obstacle

The Ninth Circuit's decision provides relief to entities otherwise subject to SB 261's climate-related financial risk reporting requirements. Enforcement of SB 261 was already suspended pending appeal, and the Court has now concluded that the statute is likely unconstitutional under the First Amendment and that preliminary injunctive relief is warranted. Although the decision does not finally invalidate SB 261, it substantially limits California's ability to enforce the statute while the litigation continues. Companies should monitor subsequent District Court proceedings and CARB guidance concerning the continued suspension of reporting and any future deadlines.

3. Scope 3 Reporting Under SB 253 is Likewise Subject to Preliminary Injunctive Relief

The Court's conclusion that mandatory Scope 3 reporting likely violates the First Amendment creates a significant obstacle to implementing that requirement. Because Scope 3 reporting was not required for the initial 2026 reporting cycle, the decision does not directly alter the November 10, 2026 filing requirements. Nevertheless, it raises substantial questions about whether California can implement mandatory Scope 3 reporting in future years. The District Court must first address whether the Scope 3 provisions can be severed from the remainder of SB 253.

4. Companies Should Distinguish Between the Two Reporting Regimes When Evaluating Compliance Obligations

Although SB 253 and SB 261 were enacted together and share certain administrative requirements, the Ninth Circuit's decision underscores that they impose legally distinct disclosure obligations. The Court's reasoning suggests that requirements to disclose objective, standardized information about a company's own operations may be more readily sustained against First Amendment challenges than requirements compelling companies to evaluate uncertain future risks, express normative judgments, or report information concerning activities outside their control. Accordingly, companies should assess their obligations under each statute separately rather than treating California's climate-disclosure regime as a single, uniformly enforceable framework.

5. Expect Additional Litigation and Regulatory Developments

The decision arises from an appeal concerning preliminary injunctive relief, rather than a final adjudication on the merits. Further District Court proceedings, additional appellate review, and regulatory responses may affect the ultimate scope and enforceability of California's disclosure requirements. The ruling also does not resolve other legal challenges to the statutes that were outside the scope of the appeal.

Conclusion

The Ninth Circuit's November 9, 2026 decision reshapes the legal landscape for California's corporate climate-disclosure laws. By finding SB 261 and SB 253's Scope 3 reporting requirement likely unconstitutional, the Court has imposed significant limitations on California's ability to mandate broad corporate climate disclosures. At the same time, the decision preserves SB 253's core Scope 1 and Scope 2 emissions reporting requirements, which remained subject to CARB's November 10, 2026 initial reporting deadline.

For reporting entities, the immediate message is one of continued compliance with Scope 1 and Scope 2 reporting obligations, coupled with close monitoring of further developments affecting SB 261 and SB 353' Scope 3 reporting.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

William L. Thomas	Zaina Fontane	Maria Clara Castro do Egito Coelho
202 303 1210	202 303 1067	212 728 8049
wthomas@willkie.com	zfontane@willkie.com	mcastro@willkie.com

WILLKIE

BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

Copyright © 2026 Willkie Farr & Gallagher LLP. All rights reserved.

This alert is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: www.willkie.com.