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Ninth Circuit Splits California's Climate Disclosure Laws

On November 9, 2026, the U.S. Court of Appeals for the Ninth Circuit declined to block California's Scope 1 and Scope 2 greenhouse gas reporting under Senate Bill (SB) 253. It also held that the statute's Scope 3 requirement and SB 261's climate risk reports likely violate the First Amendment. *U.S. Chamber of Com. v. Sanchez*, No. 25-5327 (9th Cir. Nov. 9, 2026). U.S.-formed entities with more than $1 billion in annual revenue that do business in California must still file their first SB 253 reports by November 10, 2026. Entities that meet SB 261's $500 million revenue threshold still face no enforceable reporting obligation. Cal. Health & Safety Code §§ 38532, 38533.

What the Court Decided

The court treated Scope 1 disclosures (emissions from sources a company owns or controls) and Scope 2 disclosures (emissions from purchased energy) as commercial speech, applied intermediate scrutiny, and found them likely constitutional. It found Scope 3 disclosures, which cover emissions across the value chain, too remote from a company's own operations to count as commercial speech; that requirement likely fails strict scrutiny. SB 261 also compels noncommercial speech, the court held, because it requires predictive and normative judgments on a contested subject. The statute likely fails strict scrutiny because less restrictive alternatives exist.

What the Court Did Not Decide

The ruling addresses preliminary relief, not the merits. It does not itself enjoin the Scope 3 requirement. The court reversed the denial of an injunction and remanded for the district court to decide whether Scope 3 is severable from the rest of SB 253. SB 261 has been enjoined pending appeal since November 18, 2025, and the California Air Resources Board (CARB) has said it will not enforce

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the statute while that order stands.

What Companies Should Do Now

- **First, file immediately. Reports are due November 10.** CARB's initial regulation, effective October 12, 2026, fixes that deadline. Companies may rely on emissions information they possessed or were collecting as of December 5, 2024. Companies that were neither collecting nor planning to collect that data on that date should file a statement of non-reporting. CARB will make both reports and statements public. No Scope 3 data is due this year.
- **Second, keep the records behind the filing.** SB 253 requires independent third-party assurance. CARB will accept 2026 reports without it, but later reports must withstand an assurance provider's review of the data.
- **Third, continue collecting Scope 3 supplier data.** The district court has not yet entered an injunction, severability is unresolved, and rehearing remains available.
- **Fourth, keep SB 261 drafts current.** The injunction is preliminary, and a later merits ruling could restore the obligation.

What Happens Next

The parties have until November 23, 2026, to seek rehearing or rehearing *en banc*. Absent a petition, the mandate would issue November 30. The district court will then take up the Scope 3 injunction and severability.

For guidance on whether SB 253 or SB 261 applies to your company, contact the author or any attorney in FBT Gibbons' Environmental practice group.

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