



Jan 13, 2026

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# After Ninth Circuit's SB 261 Oral Argument: Where First Amendment Line May Land for Climate-Risk Disclosure

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On January 9, 2026, the U.S. Court of Appeals for the Ninth Circuit heard oral argument in *Chamber of Commerce of the United States of America, et al. v. Sanchez*, No. 25-5327 (9th Cir.), challenging California's climate disclosure laws. The argument focused less on climate policy and more on compelled speech. The panel tested where to draw the line between standardized, factual data reporting and the judgment-driven narrative SB 261 can require.

This update highlights the key issues and what they mean for companies doing business in California while SB 261 remains enjoined.

## Commercial Speech Is the Threshold Question

During oral argument, the U.S. Chamber of Commerce ("Chamber") urged a narrow, transaction-based view of "commercial speech." In that framing, compelled disclosures usually arise at the point of sale or in marketing materials, such as ads, labels, or point-of-sale notices. SB 261 and SB 253 differ, the Chamber argued, because they require a public report posted on a company website, not speech tied to offering a product or service in a specific transaction.

The California Air Resources Board (CARB or "State") urged a broader view. It framed the relevant transaction as investment and risk pricing. On that view, SB 261 delivers information to investors, lenders, insurers, and other counterparties who allocate capital and price risk. The State also pointed to evidence that institutional investors use climate-risk information and that voluntary reporting can be selective and inconsistent.

This framing drives the rest of the analysis. If the court requires a close tie to product marketing or point-of-sale transactions, SB 261's public-posting mandate looks more vulnerable. If the court treats investment-risk disclosure as the commercial context, the State has a stronger argument for applying the more deferential compelled-disclosure cases.

## Why SB 261 Drew the Hardest Questions

The Ninth Circuit panel pressed SB 261's breadth and the risk that compliance forces companies to speak in a judgment-laden way. One judge questioned how a company can address scenario analysis, strategy resilience, governance oversight, and risk-management systems without making evaluative judgments about climate risk and the company's response.

That concern sits at the center of the compelled-speech challenge. SB 261 does not mainly require a measurement. It requires a public narrative about "climate-related financial risk" and the steps the company takes to mitigate or adapt. Even with factual inputs, the statute pushes companies to choose assumptions, time horizons, and materiality thresholds. It also pushes companies to explain governance and strategy in a way that can read as endorsement, not just disclosure.

California tried to narrow the concern by treating SB 261 as routine business-risk disclosure. A company can disclose risk without endorsing a policy position, the State argued. In that framing, the statute provides reporting categories, not compelled ideology. The Chamber responded by returning to tailoring. It argued California imported voluntary frameworks without narrowing the mandate to address a specific harm, such as deception, and emphasized that the required report sits outside a sales or marketing context.

## SB 253 as a Contrast Case

SB 253 often served as the comparison point for "factual" disclosure. Judges asked whether greenhouse gas reporting, especially Scope 1 and Scope 2 emissions, looks like operational data rather than ideological speech.

The Chamber argued emissions reporting becomes controversial when it requires companies to report value-chain emissions (Scope 3) and when disclosure pressures companies to change counterparties' behavior. The State argued investors evaluate emissions exposure because it affects pricing, insurance, and regulatory risk. It also relied on standardized accounting approaches used in emissions reporting.

The practical signal matters. The panel appeared interested in drawing a doctrinal line between standardized metrics and narrative reporting. The more emissions reporting looks like data, the more SB 261 becomes the test case for compelled narrative.

## Limiting Principle and Severability

The Chamber pressed a limiting-principle concern: if investor interest alone justifies compelled public reporting, the government can mandate broad corporate speech without a clear stopping point. The panel's questions also returned to SB 261's breadth.

Severability also surfaced, especially as to Scope 3 elements. The State suggested a remand for severability analysis could address discrete constitutional issues. That exchange points to a possible narrowing remedy rather than a full invalidation.

## What Companies Should Do Now

SB 261 remains paused, not repealed. CARB has said it will not enforce Health and Safety Code section 38533 while the injunction remains in place. Companies should use the pause to improve governance, documentation, and consistency across sustainability reports, investor materials, and internal risk processes. If SB 261 returns, inconsistent narratives create the most avoidable exposure.

SB 253 continues on a separate implementation track. CARB's proposed rulemaking continues to address timing and administration, including a proposed August 10, 2026, deadline for Scope 1 and Scope 2 reporting. That schedule requires near-term work on emissions boundaries, data collection, internal controls, and assurance readiness.

Across both statutes, the argument reinforces a drafting discipline: treat climate disclosure as legal speech. Build the record, apply a clear standard, and let evidence drive the narrative.

Our environmental team will continue to monitor these proceedings and provide updates on any new developments. In the meantime, we are here to assist in evaluating entity coverage, designing compliance programs, and integrating California requirements into broader climate and ESG reporting frameworks. For more information, please contact the author or any attorney with the firm's [\*\*Environmental Practice Group\*\*](#).

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