BCLP. Client Intelligent

Insights

NINTH CIRCUIT DELIVERS MIXED RULING ON FIRST AMENDMENT CHALLENGE TO CALIFORNIA'S CLIMATE DISCLOSURE LAWS

Nov 10, 2026

Yesterday, the Ninth Circuit issued its ruling in a case challenging California's Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261) as facially unconstitutional under the First Amendment.

The case, *U.S. Chamber of Commerce v. Sanchez*, involves a challenge by chambers of commerce and business associations to two California laws. SB 253 requires companies doing business in California with more than $1 billion in annual revenue to report greenhouse gas emissions. SB 261 requires companies doing business in California with more than $500 million in annual revenue to publish climate-related financial-risk reports.

The plaintiffs asked the district court (C.D. Cal.) to preliminarily enjoin enforcement of both statutes, arguing that both laws violate the First Amendment by compelling non-commercial speech and cannot survive strict scrutiny. The district court denied the motion, concluding that both laws regulate commercial speech and are therefore likely to survive a more deferential level of scrutiny.

The Ninth Circuit affirmed the denial of a preliminary injunction as to SB 253's Scope 1 disclosures (emissions from sources a company owns or controls) and Scope 2 disclosures (emissions from purchased energy). The Ninth Circuit treated these requirements as commercial speech because they compel factual operational emissions data relevant to capital transactions. The court concluded that these requirements likely satisfy intermediate scrutiny because they directly advance California's substantial interests in informing investors and reducing emissions without being more extensive than necessary.

By contrast, the court classified SB 253's Scope 3 disclosures and SB 261's disclosures as non-commercial speech subject to strict scrutiny, which requires narrow tailoring to compelling governmental interests.

SB 253's Scope 3 disclosures require companies to report emissions from independent actors throughout their value chains, including suppliers and customers. SB 261 compels predictive,

© 2026 Bryan Cave Leighton Paisner LLP.

normative judgments about climate change's significance for business strategy within a state-prescribed framework. Even assuming California's interests in reducing emissions were compelling, the Ninth Circuit held that these requirements likely failed strict scrutiny because of less restrictive alternatives and insufficient evidence of emissions-reduction benefits. The court reversed the denial of a preliminary injunction as to both sets of disclosures and remanded for a determination of whether the Scope 3 requirements could be severed from SB 253.

This ruling is significant for businesses facing government-compelled reporting and disclosure requirements. It builds on earlier Ninth Circuit cases addressing the line between compelled commercial speech subject to less demanding scrutiny and compelled non-commercial speech subject to heightened scrutiny.

BCLP's Media and First Amendment group is available to assist businesses facing disclosure or reporting requirements that may implicate their First Amendment rights relating to government-compelled speech. Please direct any questions to Jon Fetterly, Rachel Matteo-Boehm or Eric Schroeder.

Related capabilities

- Media & First Amendment
- Litigation & Dispute Resolution
- ESG Litigation

© 2026 Bryan Cave Leighton Paisner LLP.

Meet the team



Jonathan G. Fetterly

Partner, San Francisco

jon.fetterly@bclplaw.com
+1 415 675 3451



Rachel E. Matteo-Boehm

Partner, San Francisco

rachel.matteo-boehm@bclplaw.com
+1 415 268 1996



Eric P. Schroeder

Partner, Atlanta

eric.schroeder@bclplaw.com
+1 404 572 6894

© 2026 Bryan Cave Leighton Paisner LLP.

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.

© 2026 Bryan Cave Leighton Paisner LLP.