

What's Next for SB 253 and SB 261? Ninth Circuit Oral Argument Recap

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On January 9, 2026, the Ninth Circuit heard oral argument in an appeal challenging California's climate reporting laws: SB 253 (emissions disclosure) and SB 261 (climate-related financial risk reporting).¹ The court previously stayed enforcement of SB 261 pending appeal, leaving SB 253 in place for now. We have covered the procedural background leading to oral argument [here](#).

The Ninth Circuit panel, comprised of Judges Nguyen, Bennett and Matsumoto, repeatedly returned to SB 253's Scope 3 emissions reporting requirements, asking both counsel about reporting burdens.² In a notable exchange, Judge Nguyen asked California's counsel whether it would support a potential remand to the district court to reconsider severability if the panel were to conclude that SB 253's Scope 3 emissions reporting requirement is problematic under the First Amendment. The state confirmed that it raised the issue of severability during the district court proceedings and indicated openness to severing Scope 3 while preserving the remainder of SB 253. On the neutrality topic, the panel asked plaintiff-appellant how emissions reporting could be political if SB 253 only requires companies to report data. Conversely, the panel pressed California's counsel regarding how SB 261's narrative disclosures could avoid being political, given how broadly and "ill-defined" the state has defined required disclosures. We have written about California Air Resources Board's (CARB) efforts to issue disclosure guidance [here](#) and proposed regulatory text [here](#).

The argument suggests two focal points: whether SB 253's required Scope 3 emissions disclosures are overly burdensome and the lawfulness of SB 261's overall framework. The panel's emphasis on SB 261 is not surprising given the court's earlier injunction limiting the

state's authority to enforce compliance with SB 261. Recall that the panel's earlier ruling operated to pause SB 261's inaugural January 1, 2026 reporting deadline, potentially signaling that the court may see stronger compelled-speech concerns in SB 261's narrative-style disclosure requirements relative to SB 253's data-driven regime.

Plaintiff-appellants U.S. Chamber of Commerce emphasized that the reporting laws do not compel commercial speech and thus should be subject to strict scrutiny. Even in the alternative, plaintiff-appellants maintain that the laws unlawfully compel commercial speech in a manner inconsistent with Supreme Court precedent. Counsel reasoned that the statutes are not "closely tethered" to a product or transaction because the required climate disclosures apply broadly to "every product" and operate outside the context of an advertisement or product offering.³ Separately, counsel emphasized that SB 253's Scope 2 and 3 emissions requirements are expensive and inherently controversial because they force companies to report other companies' emissions as their own.

For its part, California argued that the standard of review should not be the tougher standard argued by the U.S. Chamber of Commerce, instead advocating for lighter review.⁴ In defense of SB 261, California countered that the majority of California companies already provide climate-related information voluntarily, but in inconsistent and unverifiable ways that create information asymmetries. The statutes aim to standardize disclosures that investors, lenders and insurers need to evaluate climate-related risks, including the potential implications of such risks and how such risks are managed. The state also argued that SB 261's requirements are neutral, requiring companies only to report what actions they are taking with regard to climate change, not what they think about climate policy. Counsel offered the following example: a company may disclose supply-chain risks arising from the war in Ukraine without commenting on the war itself; likewise, a company can disclose that climate change presents no material business risk even if it supports climate policy in other settings.

We will continue to monitor and provide updates on developments to California's climate reporting statutes and legal challenges thereto. Please contact a member of our team with questions about reporting and compliance obligations.

¹ *Chamber of Commerce v. Sanchez*, Case No. 25-5327 (9th Cir. 2025); other plaintiffs include the California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central

Valley Business Federation, and Western Growers Association. SB 253 is codified at Cal. Health & Safety Code § 38532. SB 261 is codified at Cal. Health & Safety Code § 38533.

2 Judge Nguyen was appointed by President Obama, Judge Bennett appointed by President Trump, and Judge Matsumoto (who was sitting in designation and typically presides as Senior Judge of the U.S. District Court for the Eastern District of New York) was appointed by President George W. Bush.

3 *Pharm. Rsch. & Manufacturers of Am. v. Stolfi*, 153 F.4th 795, 822 (9th Cir. 2025) (categorizing a government reporting requirement as commercial speech when the “reporting requirement [was] closely tethered to the sale of a product” and assisted consumers in making informed choices); *National Institute of Family and Life Advocates (NIFLA) v. Becerra*, 585 U.S. ____ (2018) (holding that a disclosure requirement cannot be “unduly burdensome” and must “extend no broader than reasonably necessary”) (citing *Zauderer v. Office of Disc. Counsel*, 471 U.S. 626 (1985)).

4 Courts typically apply strict scrutiny to First Amendment challenges, evaluating whether a law is narrowly tailored to serve a compelling government interest in the least restrictive manner. However, courts apply intermediate scrutiny to challenges to commercial speech, evaluating whether the restriction directly advances a substantial government interest in a manner not more extensive than is necessary. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980). An even lighter standard—more akin to rational basis review—applies under Zauderer review, in which the law must be reasonably related to the state's interest in preventing deception of consumers. *Zauderer*, 471 at 651.

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