



August Recap

Speaking Sustainability - Legal & Regulatory Updates

Akin's Speaking Sustainability newsletter provides a monthly digest of key news items and other relevant information on significant legal and regulatory developments in the continuum of sustainability issues, including environmental, social and governance (ESG)-related considerations.

Akin also maintains three trackers to help keep you up to date in between our newsletters:

- **Sustainability Legislation & Regulation Monitor** covers the latest sustainability-related legal and regulatory developments across the United States, which can be searched by state or topic.
- **EPA Deregulation Tracker** logs the environmental regulations the Environmental Protection Agency (EPA) plans to reconsider and provides a current status of the changes underway.
- **Trump Executive Order Tracker** keeps up with the fast pace of executive orders issued by the Trump administration.

As a reminder, you can also find our earlier newsletter, other alerts and blog updates at **Speaking Sustainability**.

Key Sustainability Highlights

- California's Climate Disclosure Laws remain poised to take effect on January 1, 2026.
 - U.S. District Court rejects First Amendment challenge to the Laws.
 - CARB presses forward with related workshops and regulations.
 - Glass Lewis launches annual, informal survey to inform the firm's 2026 proxy voting guidance.
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The Details

1. California's Climate Disclosure Laws remain poised to take effect on January 1, 2026, despite legal challenges from opponents and CARB's own delays in issuing implementing regulations.

First, in the ongoing legal challenge to California's climate-disclosure statutes ([SB 253](#) and [SB 261](#), discussed [here](#) by Akin), the U.S. District Court for the Central District of California recently issued an **Order** on August 13 that denied plaintiffs' motion for a preliminary injunction. That motion was filed by the U.S. Chamber of Commerce and other business and farming groups arguing the statutes violated their First Amendment rights. The Court **found** that the plaintiffs were unlikely to succeed on the merits of their claims.

- SB 253 (the Climate Corporate Data Accountability Act and codified at California Health and Safety Code § 38532) and SB 261 (the Climate-Related Financial Risk Act and codified at California Health and Safety Code § 38533) require scoped-in companies to publicly disclose Scope 1, 2 and 3 greenhouse gas (GHG) emissions and those with over \$500 million in annual revenue to report on climate-related financial risk and any measures adopted to mitigate those risks.
- The Order noted SB 253 “merely requires companies to report data on emissions,” and “does not require companies to say whether they are ‘responsible’ for those emissions or advocate for any (and no) policy response to climate change.”
- Although the preliminary injunction was denied, unless resolved otherwise, the First Amendment claims will proceed to trial a little over a year from now. Earlier this year, in a separate **Order**, the Court dismissed plaintiffs' other Constitutional challenges.

Relatedly, the California Air Resources Board (CARB) convened its second public workshop on August 21 to provide additional implementation guidance on the climate-disclosure statutes, with stated plans to finalize regulations later this year. During the most recent workshop, CARB staff discussed their ongoing work refining foundational definitions that will be critical to determining which entities are subject to the state's reporting obligations.

- In response to feedback following its May workshop—where CARB personnel initially suggested defining revenue as “gross receipts” under California Revenue and Taxation Code § 25120(f)(2), a concept many commenters found overly expansive—CARB is now proposing a new definition: “[R]evenue is the total global amount of money or sales a company receives from its business activities, such as selling products or providing services,” without deductions for operating costs or other expenses.

- With respect to defining what constitutes “doing business in California,” CARB has streamlined its proposed test to apply to companies (i) that are organized or domiciled in the state and (ii) with sales in California exceeding an inflation adjusted threshold of \$735,019. Previously, CARB’s proposed definition included additional tests that were determined to be unnecessary.
- While CARB continues to consider which entities may be exempted from complying with the statutes, it has clarified that nonprofits, government entities and companies whose only business in California is the presence of teleworking employees will be exempted from complying with the statutes.
- The agency additionally outlined a draft timeline moving forward, with public comments regarding the content of the workshop due before September 11, 2025. CARB intends to issue a Notice of Proposed Rulemaking on or about October 14, 2025, with public comments open between October 17 - November 30, 2025. CARB’s Board is scheduled to take up the proposed rulemaking on December 11-12, 2025.

2. Glass Lewis has launched its annual, informal process for obtaining market feedback regarding its proxy voting policies for the 2026 proxy season. This follows on the heels of Institutional Shareholder Services (ISS) recently launching its own annual policy survey. Glass Lewis has asked participants to submit feedback by September 15, 2025. The survey seeks feedback on a variety of topics, including:

- *Board Oversight and Performance:* Board diversity, director performance and whether share ownership thresholds should be adopted as a condition to submitting shareholder proposals or filing derivative actions without shareholder approval.
- *Compensation:* Non-executive directors’ fees, security costs for executives, time-based incentive awards and whether certain compensation metrics should continue to be required if the U.S. Securities and Exchange Commission (SEC) scales back disclosure requirements.
- *ESG:* Reactions to anti-ESG sentiment in the United States and say on climate proposals.
- *Shareholder Rights:* Approaches to reincorporation proposals and virtual-only shareholder meetings.
- *General:* Benchmarks relating to artificial intelligence (AI) matters, basing voting decisions on financial factors rather than corporate governance “best practices” and shareholder engagement practices in light of recent updates to the compliance & disclosure interpretations (C&Dis) covering Regulation 13D and 13G.

As is customary, Glass Lewis is expected to publish its final voting guidance for the 2026 proxy season later this year.

Key Environmental Developments

FDA Moves Forward on Fluoropolymers (Akin)

Akin discusses recent reports that the U.S. Food and Drug Administration (FDA) is the latest government agency to confirm fluoropolymers are both safe and necessary.

DC Circuit Embraces Seven County in FERC Pipeline Review Proceeding (Akin)

The U.S. Court of Appeals for the District of Columbia Circuit upheld the Federal Energy Regulatory Commission's (FERC) approval of a 1,000-foot natural gas pipeline segment crossing the United States-Mexico border under section 3 of the Natural Gas Act.

CARB Publishes FAQs: More Questions than Answers? (Akin)

Akin discusses a recent FAQ document CARB released covering compliance issues under the state's climate disclosure statutes.

U.S. States Have Passed 11 Anti-ESG Bills in 2025 So Far (ESG Dive)

Ten state legislatures have passed 11 new laws limiting the ability of financial institutions to consider ESG, climate risk and other sustainability-related factors when developing and implementing investment strategies and decisions.

Key Social Developments

Non-Compete Update (Akin)

In video format, Akin discusses recent developments implicating non-competition agreements.

White House Issues Long-Awaited AI Action Plan and Accompanying Executive Orders (Akin)

Akin discusses the Trump administration's recent Executive Order, "AI Action Plan" to establish U.S. leadership in AI.

To Make Economies Work for Everyone, We Need to Put a Price on Social Impact (Reuters)

This opinion piece argues the proponents of ESG need to demonstrate more clearly that social progress is both morally correct and economically beneficial.

At Public Companies, It's All Quiet on the DEI Front (Intelligize)

The diversity, equity and inclusion (DEI) landscape continues to evolve in corporate America as anti-DEI sentiment has not slowed even amidst companies "greenhushing" and avoiding publicizing such efforts.

For Asset Owners, Sustainability Still Matters *(Morningstar)*

A recent survey of 25 institutional asset owners finds climate and sustainability matters remain top priorities, though the future label of ESG continues to be an open-ended question.

Key Governance Developments

U.S. Legal Developments Targeting ESG - Implications for the Financial Industry *(Financier Worldwide)*

ESG-related legal and regulatory developments at the state and federal levels continue to implicate the financial industry as it questions whether adoption of ESG is “appropriate and consistent” with maximizing shareholder value and fund beneficiaries.

ESG Consultants at the Core - Guiding the Shift from Compliance to Strategy *(Center for Sustainability and Excellence)*

The recent edition of Morgan Stanley’s “Sustainable Signals: Corporate 2025” reports on the future of sustainability and how companies continue to incorporate ESG and sustainability into long-term strategies.

Judicial Committee of the Privy Council Declares the End of the ‘Shareholder Rule’ Regarding Privilege *(Akin)*

The Judicial Committee of the Privy Council issued a landmark ruling in the case *Jardine Strategic Limited (Appellant) v Oasis Investments II Master Fund Ltd and 80 others (Respondents) No 2 (Bermuda) [2025] UKPC 34*, that concluded the Shareholder Rule, which provided that a company could not assert legal advice privilege against its shareholders, should be abolished.

Texas Passes Landmark Law Regulating Proxy Advisors: What Companies Need to Know *(Akin)*

Akin discusses a recent Texas law, **SB 2337**, that significantly alters the landscape for proxy advisory firms providing services to shareholders of Texas companies.

CFOs Embrace Sustainability for Long-Term ROI Despite Political Pressures *(Center for Sustainability and Excellence)*

Chief financial officers are adapting their sustainability strategies in the changing political climate; however, they continue to incorporate sustainability considerations of long-term business strategies.

Strategic Oversight and Governance in the Age of AI *(BDO)*

This article summarizes recent remarks regarding the intersection between technology and AI governance during a Corporate Board Member’s Director Peer Exchange.

Upcoming Sustainability Events

Amplify Americas: Finance, Sustainability, and Risk

Workiva

Washington, D.C.

September 8-10, 2025

Resilience, Stability & Digital Innovation: Investing in Infrastructure

GRESB

London, U.K.

September 9-10, 2025

Sustainable Debt Americas 2025

Environmental Finance

New York, NY

September 19, 2025

Climate Week NYC 2025

Climate Group

New York, NY

September 21-28, 2025

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