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Department of Justice, Supervisory Official
Office of Legal Policy
950 Pennsylvania Ave NW
Washington, DC 20530

Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce

Dear Mr. Schilling,

Thank you for the opportunity to comment on the Department of Justice's (DOJ) request for information on state laws and regulations that adversely affect domestic commerce. My comment encourages the department to collaborate with the Environmental Protection Agency (EPA) in opposition to California's climate disclosure laws. One of these laws in particular, the Climate Corporate Data Accountability Act (Accountability Act), imposes undue burdens on interstate commerce. It does so by requiring companies to gather and report data on greenhouse gases (GHG) emitted outside of California to aid the firm's compliance. In essence, these third-party firms will be conscripted to assist California-area businesses in complying with a state mandate that reaches far beyond California's borders. This unwarranted regulation by extension violates the Dormant Commerce Clause because California supplants the role of Congress by imposing administrative reporting burdens on firms in other states. Additionally, several other states are pursuing highly similar climate disclosure laws that advance two regional initiatives to eliminate GHG emissions. California's reporting laws have inspired six other states to craft closely similar mandates, each of which furthers the goals of their regional compacts. Such collusion warrants significant federal attention and potential legal intervention. Congress never approved of these state compacts, and it may be unlawful for state members to use taxpayer funding for regulations that fulfill these compacts' goals. Lastly, the EPA should consider withholding grant funds for California's pollution prevention programs, given how two of its climate reporting laws exceed the state's authority to combat pollution.

California's Accountability Act triggers the Dormant Commerce Clause

California's Accountability Act requires roughly 5,300 companies in the state to disclose their carbon footprint by next summer. The Act specifically requires any California area firm (regardless of where it is headquartered) that generates at least $1 billion in revenue to disclose its direct GHG emissions (Scope 1), its indirect emissions purchased from energy companies (Scope 2), and value-chain emissions (Scope 3). Scope 3 reporting requirements begin in 2027, while Scope 1-2 takes effect on June 30, 2026. California's Act was passed in October 2023 amid a wave of pushback from companies in the state, originally facing multiple implementation delays. It is also the target of litigation from several interest groups led by the US Chamber of Commerce in the case of *Chamber of Commerce of the United States of America v. California Air Resources Board* (2025).[1] The Middle District Court in California recently denied a request for preliminary injunction to spare companies of compliance pending litigation.[2]

What the above case failed to address is how the Accountability Act triggers the Dormant Commerce Clause of the Constitution. California's mandate, in particular, violates the Commerce Clause by forcing a host of private firms within and outside of the state to comply with the GHG value-chain emissions reporting requirements. These are third-party firms, often small businesses, who partner with California-area companies to help craft their products or facilitate their services across the value chain.[3] Scope 3 reporting requires these outside firms to quantify and record the GHG emissions from these processes and report them to the primary company in California. This introduces a tremendous compliance cost burden for California companies to gather droves of indirect GHG data from each of their third-party suppliers and partners.[4] This imposes a detrimental strain on large businesses in the state, raising the likelihood of them shedding corporate partners that are unwilling to aid in their compliance under the Accountability Act. Many of these partnered firms are likely small businesses headquartered in states beyond California's jurisdiction.

California's Accountability Act appears to fail the balancing test[5] of *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), for state laws that are facially nondiscriminatory.[6] Under this legal test, the costs of California's disclosure laws must be weighed against the local benefits. "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* at 142.[7] The

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[1] *Chamber of Commerce of the United States of America v. California Air Resources Board No. 2:24-cv-00801, 2025 WL 2337209 (C.D. Cal. Aug. 13, 2025).*

[2] Crowell, *California's Climate Disclosure Laws Continue to Roll Forward*, September 9, 2025, https://www.crowell.com/en/insights/client-alerts/californias-climate-disclosure-laws-continue-to-roll-forward

[3] According to the text of the Climate Corporate Data Accountability Act (SB 253), Scope 3 GHGs derive "from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products," Sec. 2 38532
(a). https://legiscan.com/CA/text/SB253/id/2833821.

[4] Stone Washington, *Climate Disclosure's Triple Threat*, (Competitive Enterprise Institute, December 2024), https://cei.org/studies/climate-disclosures-triple-threat/. See table 1, which estimates that California's laws will cost $3.6 billion to implement. This will largely be borne by California area firms with a $90,000 per firm cost in the form of reporting fees paid to the California Area Resource Board.

[5] ArtI.S8.C3.7.8 Facially Neutral Laws and Dormant Commerce Clause, Legal Information Institute of Cornell Law School, https://www.law.cornell.edu/constitution-conan/article-1/section-8/clause-3/facially-neutral-laws-and-dormant-commerce-clause.

[6] Like the law challenged in *National Pork Producers Council v. Ross*, 598 U.S. 356, 370-71 (2023), California's climate reporting laws do not appear to discriminate against out-of-state commerce. Rather, the laws should be subject to the nondiscriminatory test under *Pike* which weighs the law's costs and benefits with a perceived public interest.

[7] *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), at 142.

Accountability Act neither serves a legitimate local public interest nor does its high compliance costs outweigh its unstated benefits. Proponents of the law failed to scientifically connect the GHG emissions of large firms in the state with occurrences of severe weather impacts.[8] And, instead of consulting local stakeholders, California's government appeals to international standards like the Greenhouse Gas Protocol to justify scope emissions reporting.

California state legislators also refused to conduct a benefit-cost analysis for mandatory GHG reporting. They merely allude to unstated "economic benefits" that the Accountability Act would provide state residents through anticipated corporate emissions reduction.[9] The only implied benefit is that the public may receive access to corporate disclosures of annual GHG emissions levels. However, this information transparency will not rid the state of its struggles with severe weather disasters. Nor can the state government scientifically claim that potential corporate emissions reductions will conserve state resources by mitigating these disasters. California's reporting laws amount to very expensive implementation costs, steep compliance burdens, regulatory constraints on interstate business partnerships, and little to no meaningful benefits to the local public.

Additionally, the California Air Resources Board (CARB) has failed to meet its July 2025 deadline for crafting regulations that properly guide the climate law's implementation. This has left thousands of companies in the dark about how to properly prepare for compliance with the laws, and how this will impact California residents. The Act neither satisfies any clear public interest, nor does it justify the high compliance costs that may burden commerce across state lines.

California thus hijacks interstate commerce in forcing these firms to spend a hefty amount of money to hire accountants and climate change specialists capable of targeting, quantifying, and reporting all their GHG emissions from the products and services they provide. If the targeted firms fail to sufficiently report their Scope 3 emissions, they will be hit with a $1 million penalty for each direct violation.[10] This not only introduces a steep compliance burden for hiring outside professionals, but it also imposes exceedingly high learning costs for small firms that are uninitiated in adequately tracking and reporting their carbon footprints.[11] Even large firms have considered and struggled to adequately report their Scope 3 emissions.

Understandably, such a complicated and costly process has never previously been mandated by local, state, or federal regulation. And the few large companies who voluntarily provide Scope 1-3 reporting have failed to do so with accuracy. A recent study by Boston Consulting Group revealed that 91 percent of firms are incapable of sufficiently reporting their

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[8] These are classified in SB 253 as wildfires, droughts, earthquakes, and sea level rises.

[9] Climate Corporate Data Accountability Act, CA SB253, *LegiScan*, January 30, 2023, https://legiscan.com/CA/text/SB253/id/2833821. See section 1(c).

[10] Stone Washington, *Climate Disclosure's Triple Threat*. See table 2 on pg. 16 of the PDF version.

[11] Lorenz Graf-Vlachy and Maximilian Hettler, *Why Firms are not reporting their Scope 3 CO2 emissions*, (Berkely, CA: California Management Review, March 25, 2024), https://cmr.berkeley.edu/2024/03/why-firms-are-not-reporting-their-scope-3-co2-emissions/. Specifically, the authors warn that "measuring and reporting scope 3 emissions can be a very complex task and requires extensive know-how. Many firms do not possess that know-how and therefore struggle with implementing scope 3 reporting. Furthermore, it requires significant resources."

Scope 1 through 3 greenhouse-gas emissions.[12] Among the 2,000 firms sampled, only 16 percent of them set emissions reduction targets, as most firms found no realistic means of cutting their revealed emissions. California's Accountability Act raises an unfair dilemma for third-party businesses that will be regulated across multiple states. It will force them to choose between aiding the reporting firm in complying with the GHG mandate or forfeiting their business relationships with them to avoid the burden. Both paths invite lost economic opportunity, with businesses opting to avoid commerce in California or redirect revenue to comply with California's extra-jurisdictional requirements.

California's climate disclosure spearheads multistate initiatives in violation of the Compact Clause

California's climate reporting laws lie at the tip of the spear for two multi-state environmental initiatives. One initiative, the 2007 Western Climate Initiative (WCI), seeks to decarbonize GHG emissions along the West Coast, while the 2009 Regional Greenhouse Gas Initiative (RGGI) aims to lower power plant emissions in the East Coast. California's laws and similar state policies seek to turbo-charge the achievability of these initiatives' goals, reinforcing the compacts with state legal enforcement. These multi-state compacts were formed without the approval of Congress, and they directly intrude upon federal supremacy. In the past, the Supreme Court has been clear about the unconstitutionality of these rogue compacts imposing legal standards that supersede federal authority.

We see this with the 19th century case of *Virginia v. Tennessee* (1893)[13], where the Supreme Court unanimously upheld an 1803 state compact that properly complied with the Compact Clause. The Court held that state compacts were constitutional so long as there was an implied consent from Congress through subsequent legislative actions. This stands in stark contrast with today's dilemma. Not only has Congress not consented to either the WCI or RGGI, but California's GHG reporting requirements supplant Congress's federal supremacy[14] by compelling participation of businesses located in other states. In addition to the other states pursuing substantially similar policies, California's laws expose these compacts to a clear violation of the Compact Clause in seeking to regulate all indirect GHG-intensive activities.

California's three climate reporting laws advance the primary goal of a regional, West Coast decarbonization initiative. This is known as the WCI, a 501c3 compact formed between California, Washington, and the Canadian provinces of Nova Scotia and Quebec. The central goal of this initiative is to reduce GHG emissions in the US using a multi-sector, market-based approach: a regional cap-and-trade system. Washington is among the several states pursuing

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[12] Charlotte Degot, Diana Dimitrova, Hubertus Meinecke, et al. *Boosting Your Bottom Line Through Decarbonization*, (Boston, MA: Boston Consulting Group, September 2024), https://www.bcg.com/publications/2024/boosting-bottom-line-reducing-carbon-emissions.

[13] *Virginia v. Tennessee*, 148 U.S. 503 (1893).

[14] *Virginia v. Tennessee.* See the following excerpt, "to those to which the United States can have no possible objection or have any interest in interfering with as well as to those which may tend to increase and build up the political influence of the contracting states so as to encroach upon or impair the supremacy of the United State." States that are members to the WCI and RGGI are actively working to build their political influence to encroach upon Congress's role in ratifying treaties and regulating interstate commerce involving carbon-intensive manufacturing.

highly similar climate disclosure laws in the legislature.[15] California is presently the only state to successfully adopt a GHG reporting mandate into law for all businesses. Minnesota is the only other state to some form of climate reporting law. By comparison, Minnesota has adopted a much narrower requirement that is aimed at only large banks and credit unions and does not compel GHG reporting.[16] Notably, Minnesota's law was signed into law in the spring of 2023, mere months before California Governor Gavin Newsom signed off on his state's climate reporting mandates.

Washington and California seek to compel companies to disclose data on all their GHG emissions for environmental transparency purposes. As California legislators implied in their Accountability Act, the state's goal is to compel decarbonization activities among large firms doing business in the state. To combat the ostensible threat of climate change, the rule incentivizes firms to adopt "decarbonization strategies that unlock emissions reductions and provide economic benefits for Californians and the state economy."[17] As the title suggests, Washington's Climate Corporate Data Accountability Act is a near replica of California's mandate, imposing the same scope reporting requirements for large businesses.

California and Washington are advancing substantially similar climate reporting mandates to diminish West Coast emissions levels. This collusive regulatory push to decarbonize the region satisfies the stated goal of the WGI, which is to facilitate private sector emissions reduction.[18] This is made more evident by California's Voluntary Carbon Market Disclosure, requiring firms to disclose the scope and extent of their carbon credit trading. The Carbon Market Disclosure would force companies to explain how they engage in decarbonization efforts through the voluntary sale and marketing of carbon offsets and to justify whether their carbon reduction goals are being met. This is clearly linked to the WGI's goal to ensure the success of each of its participants' carbon trading schemes. Both California and Washington oversee carbon credit markets, with the former requiring comprehensive disclosure of corporate participation. States shouldn't be permitted to regulate a company's carbon-intensive activities beyond their borders as a means of furthering a collusive compact. This presents a clear violation of the Compact Clause.

This collusive regulatory approach is also being pursued by two East Coast states. New York and New Jersey are members of the RGGI dedicated to reducing GHG emissions from power plants in the region. New York and New Jersey are both pursuing substantially similar GHG reporting policies in their respective legislatures. Both proposals carry the same names—"Climate Corporate Data Accountability Act"—as California and Washington's policies,[19]

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[15] Aliza Cinamon and Hilary Finkelstein, "State Climate Disclosure Bills A Growing Trend?" *Proskauer*, April 10, 2025, https://www.regulatoryandcompliance.com/2025/04/state-climate-disclosure-bills-a-growing-trend/.

[16] Minnesota's law, SF 2744, requires large banks and credit unions holding $1 billion or more in assets to complete a climate risk survey. The reporting entities provide their surveys to the state's commissioner. See "SF 2744," Office of the Revisor of Statues, Minnesota state government, October 25, 2023, https://www.revisor.mn.gov/bills/text.php?number=SF2744&version=latest&session_year=2023&session_number=0.

[17] Climate Corporate Data Accountability Act, section 1c.

[18] Western Climate Initiative, "Our Work/Purpose," n.d., https://wci-inc.org/our-work/purpose.

[19] Aliza Cinamon and Hilary Finkelstein, "State Climate Disclosure Bills A Growing Trend?"

effectively mandating the same reporting requirements.[20] New York is even pursuing a second reporting mandate that closely resembles California's Climate-Related Financial Risk Act. Each of these policies would collectively advance the efforts of the RGGI, to pressure large power plants in the region to decarbonize their operations. This may drive power plants to move operations to other states or, in a worst-case scenario, shut down entirely. This could result in a massive loss of jobs and economic production for that region of the East Coast. Importantly, as with WCI, Congress has not approved of the RGGI in any legislative capacity and likely won't in the foreseeable future given the bitter partisan divide over climate change regulation.[21]

A call for federal attention and potential legal intervention

The DOJ and EPA should consider intervening to prevent harm from these state compacts. If more states follow California's lead by enacting climate disclosure laws, we will see a coast-to-coast assault on access to affordable energy. Multiple state governments compelling costly disclosures from large firms will severely burden interstate commerce. There are several potential routes for federal response. The EPA may consider submitting an *amicus curiae* brief to reinforce the legal arguments of groups suing California over the unconstitutionality of its climate reporting laws. While the Middle District of California ruled against these groups' First Amendment compelled speech arguments, the ruling and accompanying injunction may be appealed to the Ninth Circuit. An amicus brief from the federal government will go a long way to voice opposition to California's laws.

Alternatively, the EPA may combine efforts with the DOJ to sue California in a separate suit. A good case can be made for California's laws violating the Dormant Commerce Clause under the *Pike* test. This is reinforced by the above examples of regional state compacts pursuing collusive regulations to eradicate carbon emissions. Such regulations seek to use non-consenting firms from other states to aid in decarbonization. If this route is taken, the lawsuit should cite to the House Judiciary Committee's June 2024 report exposing a "climate cartel" of collusive organizations seeking to compel US companies into decarbonization.[22] This report raises anticompetitive concerns that may warrant the Federal Trade Commission's (FTC) attention as well.

The Trump Justice Department has unfinished business in challenging the illegality of the WCI in federal court. The DOJ sued the WCI for violating the Constitution, in that California

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[20] New York and New Jersey only vary in the expected dates of compliance for Scope 3 reporting. However, both provide a window of time for companies to comply with Scope 3 after the intended law goes into effect.

[21] In a 2019 report, the Congressional Research Service has acknowledged the RGGI's potential to serve as model for a national program. However, there has been no subsequent legislation affirming this, nor any reasonable path for bi-partisan support for a federal mandatory cap-and-trade program. See, Jonathan L. Ramseur, *The Regional Greenhouse Gas Initiative: Background, Impacts, and Selected Issues*, (Washington, DC: CRS, July 16, 2019), https://sgp.fas.org/crs/misc/R41836.pdf.

[22] House Judiciary Committee, *Climate Control: Exposing The Decarbonization Collusion In Environmental, Social, And Governance (ESG) Investing*, interim staff report, (Washington, DC: House of Representatives, June 11, 2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%2C%20Social%2C%20and%20Governance%20%28ESG%29%20Investing.pdf.

and Washington as states superseding their authority to negotiate treaties with Canadian provinces. This violates both the Supremacy Clause and the Treaty Clause of the Constitution, the latter of which requires supermajority approval from the US Senate for any ratified treaty. This entails "non-binding" treaties like the WCI in part because the member states, namely California, are already codifying the implicit goals of the initiative into state law.[23] This in effect enforces the compact as a legally binding requirement for affected companies to abide by. In 2020, a federal district court dismissed a DOJ lawsuit seeking to terminate the WCI under the Treaty Clause and Compact Clause grounds. Specifically, the DOJ's suit alleged that,

"[a]llowing individual states in the Union to conduct their own foreign policy to advance their own narrow interests is … anathema to our system of government and, if tolerated, would unlawfully enhance state power at the expense of the United States and undermine the United States' ability to negotiate competitive international agreements."[24]

I agree with the above and call upon the current DOJ to revive its lawsuit against California. The DOJ's lawsuit will be reinforced by new circumstances pertaining to the multi-state effort to enact climate reporting laws. The DOJ's original case dismissal would have been appealed had not the change in administration under Biden. DOJ attorneys now possess a golden opportunity to re-challenge California's unconstitutional mandate and prevent other states from superseding their authority to burden commerce.

Concurrently, the EPA should invoke its authority under *Massachusetts v. EPA* (2007) to reaffirm that only the federal government can regulate carbon dioxide emissions that may endanger public health or welfare. The EPA's GHG-regulating authority stretches across the continental US and imposes emissions standards across state boundaries. Where the Supreme Court recognized this as acceptable in *Massachusetts*, it did not permit individual states to mimic the EPA by regulating GHGs across state lines. This is exactly what states like California and New York are doing (and seeking to do) in their draconian climate reporting policies. The EPA must not allow states to encroach upon its supremacy as a climate regulator and join the DOJ in opposing these state efforts on constitutional grounds.

Lastly, the EPA should withhold funding to states like California under its fund for pollution control. This discretionary funding is provided through several competitive grant programs including its Climate Pollution Reduction Grants (CPRG)[25] and its Pollution

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[23] Note that among California's three reporting laws is the "Voluntary Carbon Market Disclosure," which requires stringent disclosure of carbon market activities in the state. Canada and Washington state also facilitate their own carbon credit markets. Following the potential passage of Washington's proposed GHG bill, state legislators will likely pursue a replica of California's Carbon Market Disclosure next.

[24] *United States of America v. California*, 20-16789, 2019. See complaint from DOJ, https://climatecasechart.com/case/united-states-v-california/#:~:text=Appeal%20voluntarily%20dismissed.&text=Stipulation%20for%20dismissal%20filed%20by,program%20and%20Quebec%20trading%20program.

[25] Environmental Protection Agency, "CPRG Implementation Grants: General Competition Selections," n.d., https://www.epa.gov/inflation-reduction-act/cprg-implementation-grants-general-competition-selections#:~:text=Visit%20CPRG's%20list%20of%20selected%20applications%20and%20proposed%20projects%20to%20learn%20more.&text=The%20U.S.%20Environmental%20Protection%20Agency,summarized%20from%20the%20selected%20applications.

Prevention (P2) Grants. Several states, including California, Washington, Illinois and Colorado, have qualified for the CPRG and are concurrently pursuing grant projects in clean energy transitions. The EPA's P2 program provides a broad range of funding options for states to aid businesses in reducing their pollution through various waste removal processes like recycling and disposal.[26] There are six different P2 grant opportunities that offer millions for state-sponsored pollution reduction programs for businesses. Under the Biden administration, there were 48 recipients of P2 grants obtaining a grand total of $19 million.[27] These include many of the states pursuing arbitrary climate disclosure laws, like California, Washington, New York, Minnesota, and New Jersey (encompassing all six states pursing these policies).

The EPA's current leadership should consider revoking any existing or future CPRG and P2 funding to the above states unless they repeal or significantly reduce the reporting burdens under their disclosure mandates. These discretionary matching grants are issued through a competitive process, intended for states to support business efforts to reduce pollution. The goal is to fund a company's voluntary efforts to pursue source reduction in a manner that aligns with the Pollution Prevention Act of 1990. Yet, these grant programs stand in direct contrast with the approach states are taking to compel decarbonization through GHG reporting. Scope 2 and 3 indirect emissions also raise the likelihood of heightened litigation risks facing large companies by opportunistic climate activists.[28] In the least, the EPA should pressure states to remove their unrealistic Scope 3 provisions and drastically scale back their Scope 1-2 requirements. As a potential compromise, large companies should not be forced to align with the GHG Protocol standards, and their emissions should only be reported if they exceed a very high threshold. The EPA should no longer permit federal funds to states that pursue collusive and potentially unconstitutional climate disclosures.

Conclusion

California's climate disclosure laws pose a serious threat to interstate commerce. This is most evident with its Accountability Act's Scope 3 provision targeting many thousands of third-party firms. These include many small businesses that will have their chain of operations disrupted by the high cost of complying with California's GHG law. The implementation of the Accountability Act will likely impede their ability to maintain corporate partnerships with the major firms being targeted. Additionally, multiple states are pursuing several compacts or

[26] Environmental Protection Agency, "Grant Programs for Pollution Prevention Pollution Prevention Grant Funding," n.d., https://www.epa.gov/p2/grant-programs-pollution-prevention.

[27] Environmental Protection Agency, "Biden-Harris Administration Announces 48 Selectees for Nearly $19 Million in Grants to Help Businesses Prevent Pollution as Part of Investing in America Agenda," press release, October 30, 2024, https://www.epa.gov/newsreleases/biden-harris-administration-announces-48-selectees-nearly-19-million-grants-help#:~:text=Biden%2DHarris%20Administration%20Announces%2048%20Selectees%20for%20Nearly,track%20and%20reduce%20their%20greenhouse%20gas%20emissions.

[28] Stone Washington, "Climate Disclosure's Triple Threat." See the following passage, "activists and officials can use California's proposed disclosure laws to accuse firms of engaging in deceptive practices and contributing to climate-related catastrophes. We've already seen California state officials use climate accusations to go to war with major energy companies, like Exxon Mobil, even in the absence of official climate reporting laws. If California's climate disclosure rules are fully implemented, they will drive activist litigation to new levels by providing a new exploitable legal framework for such complaints."

regional initiatives to decarbonize entire sectors of their economies. These collusive agreements will be fueled by the very GHG reporting policies each member state is pursuing in their legislature. Such a framework appears to be an illegal attempt for states to coerce emissions reductions and dismantle fossil fuel firms using taxpayer resources. These anti-competitive multi-state compacts should immediately be addressed by the EPA, DOJ, and potentially the FTC.

Federal agencies may also consider filing suit against California over its disclosure laws, while the DOJ and FTC can investigate how these proposed regulations, including California's Voluntary Carbon Market Disclosure, advance the RGGI and WCI. The EPA should also explore a range of options to defund state pollution reduction programs for members of these compacts and other states pursuing arbitrary climate disclosure policies. If left unchecked, more states will follow California's lead and enact replica GHG reporting mandates that will impose significantly adverse effects on interstate commerce.

Sincerely,

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