

New Executive Order Targets State AI Laws; States Show No Signs of Backing Down

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Despite extensive pushback from bipartisan coalitions of state attorneys general (about which we've previously blogged [here](#) and [here](#)), President Trump issued a [new Executive Order](#) last week with grand ambitions to rein in state-by-state regulation of artificial intelligence. The Order frames U.S. leadership in AI as both an economic and national security imperative and takes direct aim at what it describes as an emerging patchwork of state AI laws, calling out Colorado's AI Act by name.

Although the Executive Order attempts to align national AI policy with the White House's tech agenda, it does not itself preempt state laws. Indeed, a proposed 10-year ban on state enforcement of AI laws [failed resoundingly](#) in Congress in July as part of the President's "One Big Beautiful Bill." States targeted by the Order can be expected to litigate if targeted by DOJ's new AI Litigation Task Force or if federal agencies attempt to assert preemptive authority. Many states have already signaled that they are prepared to push back.

Executive Order

The Order creates two immediate enforcement-oriented mechanisms:

- A new **AI Litigation Task Force** housed within DOJ, charged with challenging state AI laws that conflict with the Order's policy objectives, including on constitutional and preemption grounds or, more broadly, where the Attorney General determines a law to be "otherwise unlawful."
- An **evaluation of existing state AI laws**, carried out by the Commerce Department, with a mandate to flag within 90 days "onerous laws" that conflict with the EO's mandate. That evaluation must focus on laws that compel AI models to alter truthful outputs or require disclosures that could violate the First Amendment or other constitutional provisions.

The Order also directs the FTC to issue a policy statement on the application of the FTC Act to AI models. That policy statement "must explain the circumstances under which State laws that require alterations to the truthful outputs of AI models are preempted by the Federal Trade Commission Act's prohibition on engaging in deceptive acts or practices affecting commerce." The Order also requires the President's advisors to prepare a legislative recommendation to establish a "uniform Federal policy framework for AI" that would preempt conflicting state laws.

In addition to litigation, policy, and legislative tools, the Order brings financial pressure to bear. States identified as having "onerous" AI laws may become ineligible for certain non-deployment broadband funds under the Broadband Equity Access and Deployment (BEAD) Program "to the

maximum extent allowed by Federal law.” Federal agencies are also instructed to explore conditioning discretionary grants on states refraining from enacting or enforcing already-enacted AI laws.

The EO clarifies that it is not seeking to preempt state laws relating to child safety precautions, AI compute and data center infrastructure, state governments’ own procurement and use of AI and “other topics as shall be determined.”

State Response

Early reactions from the states suggest little appetite for retreat. Florida Governor Ron DeSantis said this week that he will continue to advance his [Artificial Intelligence Bill of Rights](#), which would extend new protections to Florida consumers. And North Carolina’s AG, Jeff Jackson, noted [in a statement](#) that “[i]f Congress wants a national framework for AI, it should pass one.”

Similarly, on December 17, nearly two dozen state attorneys general (including two Republicans) [responded](#) to a FCC [notice of inquiry](#) issued in September, cautioning the agency against “issu[ing] any declaratory ruling purporting to pre-empt state (and local) laws seeking to govern or limit uses of AI.” The letter warns that any such assertion of preemption authority would be “struck down as invalid,” underscoring that states are prepared to litigate if federal agencies move aggressively in this space.

In the near-term, the Order does not itself reset organizations’ AI compliance obligations. Rather, organizations need to closely monitor how the administration implements the Order – and how states respond – to assess whether, and to what extent, it affects AI compliance obligations under state laws.