States and Artificial Intelligence: The (Frontier) Laboratories of Democracy

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† Most Outstanding Student Note Award, Awarded by the *Journal of Corporation Law* Volume 51.

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I. INTRODUCTION

Artificial intelligence (AI) has entered the public consciousness at extraordinary speed, outpacing the federal government's willingness or ability to regulate it.[1] In the absence of a national framework, states have begun to fill the regulatory void.[2] California Governor Gavin Newsom signed into law a measure to address potentially catastrophic risks posed by advanced AI systems, including protections for whistleblowers within AI laboratories and transparency requirements for developers.[3] New York has enacted a similar law, imposing reporting requirements on frontier labs.[4] And Colorado enacted consumer-protection rules targeting algorithmic discrimination, though the state eventually rewrote the law, opting for a more restrained approach.[5]

However, legal headwinds and public pressure from the Trump administration and tech-sector titans are mounting.[6] In fact, President Trump issued an Executive Order in

1. Ina Fried, *The Technology Behind ChatGPT Is Evolving Insanely Fast*, AXIOS (Nov. 28, 2023), https://www.axios.com/2023/11/28/chat-gpt-one-year-anniversary-ai (on file with the *Journal of Corporation Law*); Ellen Chang, *How Fast Are AI Companies Evolving? Check This Out.*, HARV. BUS. SCH. (May 12, 2025), https://www.hbs.edu/bigs/perplexity-aravind-srinivas [https://perma.cc/5X3Y-2N7C].

2. Keely Quinlan, *AI Laws Could Stifle Innovation, But Broad Preemption Would Be 'Reckless,' Experts Tell House Subcommittee*, STATESCOOP (Sep. 18, 2025), https://statescoop.com/state-ai-law-preemption-house-hearing/ [https://perma.cc/7SL3-3FXX].

3. Scott Singer & Alasdair Phillips-Robins, *California Just Passed the First U.S. Frontier AI Law. Here's What It Does.*, CARNEGIE ENDOWMENT FOR INT'L PEACE: EMISSARY (Oct. 16, 2025), https://carnegieendowment.org/emissary/2025/10/california-sb-53-frontier-ai-law-what-it-does [https://perma.cc/TB2V-55YP].

4. Ashley Gold, *N.Y. Gov. Kathy Hochul Signs Sweeping AI Safety Bill*, AXIOS (Dec. 19, 2025), https://www.axios.com/2025/12/19/new-york-ai-safety-bill-hochul (on file with the *Journal of Corporation Law*); *see also* Maxwell Zeff, *New York Passes a Bill to Prevent AI-Fueled Disasters*, TECHCRUNCH (June 13, 2025), https://techcrunch.com/2025/06/13/new-york-passes-a-bill-to-prevent-ai-fueled-disasters/ [https://perma.cc/3KNB-KCPF] (discussing the legislation before it was signed into law).

5. Gregory P. Szewczyk et al., *Colorado Rewrites Its Landmark AI Law: Unpacking SB 26-189 and What It Means for Businesses*, BALLARD SPAHR (May 12, 2026), https://www.consumerfinancemonitor.com/2026/05/12/colorado-rewrites-its-landmark-ai-law-unpacking-sb-26-189-and-what-it-means-for-businesses/ [https://perma.cc/3VUQ-9N8T]; *see also* Julie Pattison-Gordon, *Inside the Controversy over Colorado's AI Law*, GOVERNING (Sep. 19, 2025), https://www.governing.com/artificial-intelligence/inside-the-controversy-over-colorados-ai-law [https://perma.cc/53BM-HWFF] (reporting on the controversial law).

6. Nick Robins-Early & Dara Kerr, *Trump Signs Executive Order Aimed at Preventing States from Regulating AI*, THE GUARDIAN (Dec. 11, 2025), https://www.theguardian.com/us-news/2025/dec/11/trump-executive-order-artificial-intelligence [https://perma.cc/W5DY-J9S5] ("The 'Ensuring a national policy framework for

December 2025 to curb state-level AI regulations by encouraging the U.S. Attorney General to challenge state laws in court and to condition federal grants on compliance with the order.[7]

President Trump's opposition to state-level AI regulation comes in part from aggressive tech-sector arguments that state-by-state regulation threatens innovation, imposes heavy compliance costs, and risks fracturing the national AI marketplace.[8] Industry leaders and some federal officials have urged Congress to preempt state regulation.[9] And even absent congressional preemption, these stakeholders claim that sweeping state proposals violate the Dormant Commerce Clause.[10]

This Note challenges both arguments, while advancing the principle that constitutional structure—not industry preference—determines who may regulate frontier AI[11] during this period of congressional inaction.

First, as a policy matter, Congress should not preempt state AI regulation. States function as laboratories of democracy, and their early experimentation with AI oversight builds the necessary public trust for the technology's adoption while generating critical empirical evidence. Sidelining states in the name of national uniformity would forfeit the very information Congress needs to legislate wisely.

Second, Congress cannot prohibit or preempt state AI regulation unless it simultaneously creates a federal regime governing private actors. A stand-alone moratorium—such as that proposed in the initial House version of the 2025 "Big Beautiful Bill"[12]—would violate the anti-commandeering doctrine reaffirmed in *Murphy v. NCAA*, which bars Congress from dictating state legislative silence.[13] President Trump's Executive Order also

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artificial intelligence' order is a victory for Silicon Valley and AI companies that have lobbied against regulation of their technology, arguing that a hodgepodge of state laws would burden the industry with unnecessary bureaucracy.").

7. Mackenzie Weinger & Maria Curi, *Trump Signs Executive Order Targeting State AI Laws*, AXIOS (Dec. 11, 2025), https://www.axios.com/2025/12/11/trump-signs-executive-order-state-ai-laws (on file with the *Journal of Corporation Law*).

8. *See Response to the National Science Foundation's and Office of Science & Technology Policy's Request for Information on the Development of an Artificial Intelligence (AI) Action Plan*, GOOGLE 1–2 (Feb. 6, 2025), https://static.googleusercontent.com/media/publicpolicy.google/en//resources/response_us_ai_action_plan.pdf [https://perma.cc/6APT-HNL8] (articulating the need for a regulatory regime that promotes innovation); *see generally* Letter from Christopher Lehane, OpenAI, to Faisal D'Souza, NCO, Off. of Sci. & Tech. 1 (Mar. 13, 2025), https://cdn.openai.com/global-affairs/ostp-rfi/ec680b75-d539-4653-b297-8bcf6e5f7686/openai-response-ostp-nsf-rfi-notice-request-for-information-on-the-development-of-an-artificial-intelligence-ai-action-plan.pdf [https://perma.cc/53ZA-PQVC] (arguing for the same).

9. Lehane, *supra* note 8, at 6 (arguing for the same).

10. Matt Perault & Jai Ramaswamy, *The Commerce Clause in the Age of AI: Guardrails and Opportunities for State Legislatures*, ANDREESEN HOROWITZ (Sep. 2, 2025), https://a16z.com/the-commerce-clause-in-the-age-of-ai-guardrails-and-opportunities-for-state-legislatures/ [https://perma.cc/X2TT-HHJN].

11. This Note uses "frontier AI" and "frontier labs" to describe organizations committed to pushing the current capabilities of AI models and developing artificial general intelligence, or AGI. These labs include organizations like OpenAI, Anthropic, Google DeepMind, and DeepSeek.

12. Scott Kohler, *State AI Regulation Survived a Federal Ban. What Comes Next?*, CARNEGIE ENDOWMENT FOR INT'L PEACE: EMISSARY (July 3, 2025), https://carnegieendowment.org/emissary/2025/07/ai-congress-bill-state-ban-what-next [https://perma.cc/3U63-G2ZS].

13. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 470 (2018).

does not constitute a legal obstacle to states' regulation of AI, because preemption requires a federal *law*; an executive order alone cannot preempt state-level regulation of AI.[14]

Third, state AI regulations are unlikely to violate the Dormant Commerce Clause. Under *National Pork Producers Council v. Ross*, a state law becomes constitutionally suspect if it discriminates against out-of-state economic interests or deliberately manipulates out-of-state prices.[15] The AI regulations advanced in California, Colorado, and New York do neither. The incidental compliance costs they impose on multistate firms do not amount to impermissible extraterritorial control. Evenhanded frontier AI regulations, meanwhile, will violate the Dormant Commerce Clause only if the resulting burden on interstate commerce is clearly excessive relative to the putative local benefits.[16] This balancing act, also known as the *Pike* balancing test, requires the court to weigh a law's burdens against its benefits. Courts have rarely struck down state laws on traditional *Pike* balancing grounds, sparingly finding a state law's burdens were clearly excessive in relation to its benefits.[17]

This Note's contribution is to translate the Supreme Court's recent federalism decisions—particularly *National Pork Producers Council* and *Murphy*—into the context of frontier-AI statutes enacted since 2024, demonstrating why contemporary constitutional doctrine affords states substantial room to regulate advanced AI during a period of congressional inaction.

Building on this doctrinal foundation, this Note argues that Congress should ultimately adopt a cooperative federalism model for AI governance: a framework that sets national baselines while preserving state authority to innovate. Until Congress enacts such a regime, states should lead, courts should defer to their good-faith experiments, and Congress should resist calls to silence them.

The argument proceeds in four Parts. Part II provides political and doctrinal background, including recent federal initiatives, emerging state law, and the governing doctrines of preemption, anti-commandeering, and the Dormant Commerce Clause. Part III

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14. *See* Puerto Rico Dep't of Consumer Affs. v. Isla Petroleum Corp., 485 U.S. 495, 503 (1988) (holding "[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it"); *see also In re* Nat'l Sec. Agency Telecomms. Recs. Litig., 633 F. Supp. 2d 892, 908 (N.D. Cal. 2007) (stating "[e]xecutive orders, in and of themselves, do not preempt state law"); Gowri Ramachandran, *Trump's AI Order Is More Bark than Bite*, BRENNAN CTR. FOR JUST.: ANALYSIS (Dec. 16, 2025), https://www.brennancenter.org/our-work/analysis-opinion/trumps-ai-order-more-bark-bite [https://perma.cc/3SRY-9WSL]; *see also* Michelle Kallen et al., *Executive Order on AI: Federal Preemption or Federal Pressure?*, STEPTOE (Dec. 12, 2025), https://www.steptoe.com/en/news-publications/steptechtoe-blog/executive-order-on-ai-federal-preemption-or-federal-pressure.html [https://perma.cc/J68R-3JZY] ("Preemption requires *federal law*. An executive order, while powerful, is an instruction to the executive branch; it is not a statute passed by Congress. Therefore, an executive order alone cannot preempt state legislation."); Michael J. Laszlo & Jason M. Schwent, *What Does Trump's AI Executive Order Mean for Colorado's AI Act?*, CLARK HILL (Dec. 12, 2025), https://www.clarkhill.com/news-events/news/what-does-trumps-ai-executive-order-mean-for-colorados-ai-act/ [https://perma.cc/MM28-4NJ2] ("[W]hile an executive order can shape how a law or administrative regulation is enforced . . . there appears to be no such law or regulation identified within the AI Order to provide the necessary authority for the order to have any legal effect.").

15. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 369 (2023).

16. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970) (explaining that a state law that "regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental . . . will be upheld unless the burden imposed . . . is clearly excessive in relation to the putative local benefits" (citing Huron Cement Co. v. Detroit, 362 U.S. 440, 443 (1960))).

17. *See id.* (holding that state laws are generally valid unless they have excessive burdens on interstate commerce).

first considers, as a policy matter, whether Congress should preempt state AI regulation. Next, Part III analyzes why Congress cannot constitutionally bar state regulation without first implementing a federal framework and why state AI laws are unlikely to violate the Dormant Commerce Clause. Part IV outlines a cooperative federalism framework and identifies best practices for states acting as frontline regulators. Part V concludes by situating state experimentation as a constitutional and practical necessity in the early governance of frontier AI.

II. BACKGROUND

A. Federal Regulatory Posture and the Current Political Landscape

1. The "Big, Beautiful Bill" and Failed Attempts to Preempt State AI Regulation

In July 2025, President Donald Trump signed his signature domestic policy legislation, commonly known as the "Big, Beautiful Bill."[18] In the weeks and months leading up to its passage, a debate pitted state lawmakers and attorneys general against Congress and the Trump Administration.[19] The legislation, as originally passed by the United States House of Representatives, would have preempted state and local governments from regulating AI, prohibiting the "'limiting, restricting, or otherwise regulating [of] AI models, systems, or automated decision systems' for ten years, excepting only laws of general (not AI-focused) applicability and laws meant to spur the spread of AI technologies."[20] Before doing away with a related provision, the Senate's version of the legislation included a conditional moratorium, promising to offer "federal funds in exchange for a voluntary 'pause' in AI regulation."[21] Amid pressure from a bipartisan coalition of state leaders, however, the provision was excised from the final version of the "Big, Beautiful Bill," preserving the ability of state and local governments to regulate AI.[22] But this did not settle the debate.

2. The Trump Administration's AI Action Plan and Executive Order

While the preemption language was removed from the House version of the "Big Beautiful Bill," only months later, efforts to preempt state-level AI regulations regained momentum.[23] Following the bill's passage, the Trump White House released an AI Action

18. Kathryn Watson, Caitlin Yilek & Kaia Hubbard, *Trump Signs 'Big, Beautiful Bill' in July Fourth Ceremony at White House*, CBS NEWS: POLITICS (July 4, 2025), https://www.cbsnews.com/news/trump-to-sign-one-big-beautiful-bill-ceremony-today-watch-live-2025-07-04/ [https://perma.cc/8BA9-CKVD].

19. Sophia Fox-Sowell, *State Lawmakers Push Back on Federal Proposal to Limit AI Regulation*, STATESCOOP: AI (June 3, 2025), https://statescoop.com/state-lawmakers-push-back-federal-proposal-limit-ai-regulation/ [https://perma.cc/GYR5-HJMB]; Keely Quinlan, *Attorneys General Urge Congress to Reject 'Irresponsible' State AI Law Moratorium*, STATESCOOP: AI (May 19, 2025), https://statescoop.com/state-attorneys-general-reject-federal-ai-law/ [https://perma.cc/B7UX-UC5Q].

20. Kohler, *supra* note 12.

21. *Id.*

22. *Id.*

23. Quinlan, *supra* note 2; *see generally* THE WHITE HOUSE, WINNING THE RACE AMERICA'S AI ACTION PLAN (July 2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf [https://perma.cc/MPG5-7LKQ] (articulating a policy of light-touch AI regulation and supporting federal preemption).

Plan, outlining the Administration's AI regulatory priorities.[24] The plan, released in July 2025, declared that "[t]he Federal government should not allow AI-related Federal funding to be directed toward states with burdensome AI regulations."[25] Specifically, the AI Action Plan urged industry leaders and the public to submit information about how federal regulations hamper AI use and adoption.[26]

The White House's AI Action Plan also appears to have influenced a December 2025 Executive Order titled "Ensuring a National Policy Framework for Artificial Intelligence."[27] The Executive Order instructs the U.S. Attorney General to establish an "AI Litigation Task Force" to challenge state-level AI regulations, including laws that the order describes as "unconstitutionally regul[ating] interstate commerce."[28] Moreover, the Order requires the Secretary of Commerce to identify laws that conflict with the national policy of "minimally burdensome" regulations.[29] Yet, even on its face, the Order seems to acknowledge that it will take an act of Congress to actually preempt state laws, noting specifically: "[advisors to the President] shall jointly prepare a legislative *recommendation* establishing a uniform Federal policy framework for AI that preempts State AI laws."[30]

While the AI Action Plan and the Executive Order do not have the force and effect of law, both pronouncements signal a federal policy aligned with the priorities of industry leaders such as Google and OpenAI, which have advocated for regulatory regimes that are minimally invasive, opting instead for voluntary standards and industry-led best practices, commonly referred to as "light-touch" regulatory regimes.[31]

Many leaders in economic forecasting and finance have offered bold projections about the financial impact of AI,[32] introducing a tantalizing reward for firms, and helping explain why the tech sector has pushed hard for a regulatory regime with minimal governmental intervention. For instance, the International Monetary Fund has projected that AI will affect almost 40% of jobs globally.[33] Goldman Sachs predicted that AI will increase global GDP by 7%.[34] Meanwhile, accounting giant PwC estimates that AI could boost global GDP by

24. THE WHITE HOUSE, *supra* note 23, at 3.

25. *Id.*

26. *Id.*

27. Ensuring a National Policy Framework for Artificial Intelligence, 90 Fed. Reg. 58, 499 (Dec. 11, 2025).

28. *Id.*

29. *Id.*

30. *Id.* at 58, 501 (emphasis added).

31. *See* GOOGLE, *supra* note 8, at 5 (articulating the need for a regulatory regime that promotes innovation); Lehane, *supra* note 8, at 6–7 (arguing for the same).

32. *See* DARON ACEMOGLU, *THE SIMPLE MACROECONOMICS OF AI*, MIT SHAPING THE FUTURE OF WORK INITIATIVE 4–5 (2025), https://shapingwork.mit.edu/wp-content/uploads/2024/05/Acemoglu_Macroeconomics-of-AI_May-2024.pdf [https://perma.cc/8WB3-WEWY] (arguing that economic returns for AI will be more modest than expected but citing bolder predictions).

33. Kristalina Georgieva, *AI Will Transform the Global Economy. Let's Make Sure It Benefits Humanity.*, IMF BLOG: A.I. (Jan. 14, 2024), https://www.imf.org/en/blogs/articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity (on file with the *Journal of Corporation Law*).

34. *Generative AI Could Raise Global GDP by 7%*, GOLDMAN SACHS (Apr. 5, 2023), https://www.goldmansachs.com/insights/articles/generative-ai-could-raise-global-gdp-by-7-percent [https://perma.cc/DCT2-HNGF].

15 percentage points by 2035.[35] More recently, both Anthropic and OpenAI—global leaders in AI development—have begun exploring initial public offerings, with both firms reportedly seeking trillion-dollar valuations.[36] In addition to lobbying the Trump administration, the tech sector has pressed its case against government intervention in congressional debates over AI regulation.

3. Congressional Hearings and Tech-Industry Lobbying

In Congress, the U.S. House Judiciary Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet held a hearing titled "AI at a Crossroads: A Nationwide Strategy or Californication?"[37] This hearing made the lobbying and legal posture of frontier AI laboratories and industry leaders clear.[38] In their view, from a policy perspective, Congress should preempt state-level regulation of AI or at least institute a moratorium on state regulation.[39] Alternatively, if Congress did not preempt states or institute a moratorium, as a legal matter, sweeping laws—like those in California and New York—represented a violation of the Dormant Commerce Clause.[40] This is a familiar strategic position: "[s]takeholders that cannot convince Congress to preempt state law argue, in court, that the Constitution itself renders state law invalid."[41]

The increasing aggression from the tech sector to prevent the regulation of AI development makes sense, given the financial incentives of industry leaders; "[t]he first companies to make AI breakthroughs potentially stand to gain trillions of dollars in market capitalization."[42] For this reason, tech companies like OpenAI, Meta Platforms Inc., and Google, and venture capital firms like Andreessen Horowitz, have urged lawmakers and decision-makers to regulate individual uses of AI rather than monitor and regulate the

35. Press Release, PwC, AI Adoption Could Boost Global GDP By An Additional 15 Percentage Points by 2035 (Apr. 29, 2025), https://www.pwc.com/gx/en/news-room/press-releases/2025/ai-adoption-could-boost-global-gdp-by-an-additional-15-percentage.html [https://perma.cc/QJZ7-D8DH].

36. *See* Manya Saini & Pritam Biswas, *OpenAI Files for US IPO After Anthropic as AI Giants Head to Public Markets*, REUTERS (June 9, 2026), https://www.reuters.com/technology/openai-files-us-ipo-after-anthropic-ai-giants-head-public-markets-2026-06-08/ [https://perma.cc/TBU6-P2G8] (reporting "OpenAI confidentially filed for a U.S. initial public offering recently . . . joining rival Anthropic in a push toward a stock market listing as it looks to tap into insatiable investor demand for AI shares").

37. Quinlan, *supra* note 2.

38. *Id.*

39. *AI at a Crossroads: A Nationwide Strategy or Californication?: Hearing Before the Subcomm. on Cts., Intell. Prop., AI, and the Internet*, 119th Cong. 21 (2025) [hereinafter *Thierer testimony*] (statement of Adam Thierer).

40. *AI at a Crossroads: A Nationwide Strategy or Californication?: Hearing Before the Subcomm. on Cts., Intell. Prop., AI, and the Internet*, 119th Cong. 12 (2025) (statement of Kevin Frazier) [hereinafter *Frazier testimony*].

41. David S. Rubenstein, *Federalism & Algorithms*, 67 ARIZ. L. REV. 979, 1043 (2025); *see also* Vismaya V., *Coinbase Slams 'Patchwork' State Crypto Laws, Calls for Federal Preemption*, YAHOO! FIN. (Sep. 17, 2025), https://finance.yahoo.com/news/coinbase-slams-patchwork-state-crypto-114057530.html [https://perma.cc/C3F7-Q5X9] (describing how Coinbase went on the offensive against state regulators, and argued that state laws violated the Dormant Commerce Clause).

42. Emily Birnbaum, *Tech Giants Prepare to Challenge State AI Regulations*, BLOOMBERG (Aug. 21, 2025), https://www.bloomberg.com/news/articles/2025-08-21/tech-industry-girds-for-new-battle-to-block-state-ai-rules (on file with the *Journal of Corporation Law*).

development of models.[43] And if lawmakers decide, nevertheless, to regulate AI development, tech industry leaders "prefer to avoid navigating 50 different state rules."[44] Proponents of light-touch, or unregulated, AI development argue that allowing each state to regulate would create confusion and steep compliance costs, making it especially difficult for emerging AI start-ups to thrive.[45]

B. The States as First Movers in AI Governance

Despite industry opposition, many states have proceeded, though implementation and the strength of each state's regulation vary. In 2025, 38 states adopted measures designed to regulate AI.[46] As state legislators returned to their State Capitols in 2026, many vowed to continue their efforts to regulate the technology, irrespective of threats from the tech sector and President Trump.[47] Colorado, California, and New York were among the first to enact AI laws and have been frequently criticized by President Trump and Silicon Valley.[48] More recently, lawmakers in Illinois and Massachusetts took steps to rein in the technology, though these initiatives have yet to take effect as law.[49]

1. Colorado

Colorado was an early mover on AI regulation, enacting legislation that sought to establish consumer protections to prevent discrimination when AI was used to make health

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43. *Id.*; *but see* Christine Mui & Brendan Bordelon, *Anthropic Has a Counter to OpenAI's 'Reverse Federalism' Play*, POLITICO (July 15, 2026), https://www.politico.com/news/2026/07/15/inside-anthropics-state-by-state-plan-to-ratchet-up-ai-rules-00998415 (on file with the *Journal of Corporation Law*) (reporting that Anthropic "is pursuing a strategy . . . that encourages states to impose increasingly tougher AI guardrails").

44. Birnbaum, *supra* note 42.

45. *Thierer testimony*, *supra* note 39, at 22.

46. Madyson Fitzgerald, *States Will Keep Pushing AI Laws Despite Trump's Efforts to Stop Them*, STATELINE (Dec. 12, 2025), https://stateline.org/2025/12/12/states-will-keep-pushing-ai-laws-despite-trumps-efforts-to-stop-them/ [https://perma.cc/CQJ5-WWPW].

47. *Id.* (quoting, among others, Colorado state Representative Brianna Titone: "[w]e will continue to do what we need to do for the people in our state, just like we always have, unless there is an actual preemption in federal law."); *see also* Scott Babwah Brennen, *Where State AI Legislation Stands Half Way into 2026*, TECH POL'Y.PRESS (July 6, 2026), https://www.techpolicy.press/where-state-ai-legislation-stands-half-way-into-2026/ [https://perma.cc/E5TR-37G5] (analyzing the landscape of state AI regulation halfway through 2026).

48. *See* Serena Oduro, *In Delaying Its AI Law, Colorado Shows Tech Lobby's Power in State Politics*, TECH POL'Y.PRESS: PERSP. (Aug. 29, 2025), https://www.techpolicy.press/in-delaying-its-ai-law-colorado-shows-tech-lobbys-power-in-state-politics/ [https://perma.cc/GM8U-9EAX] (noting that Colorado's AI legislation was "first-of-its-kind" across the nation); *see also* Trân Nguyễn, *California Gov. Gavin Newsom Signs Landmark Bill Creating AI Safety Measures*, ASSOCIATED PRESS (Sep. 29, 2025), https://apnews.com/article/california-ai-regulations-gavin-newsom-9f888a7cbaa57a7dec9e210785b83280 (on file with the *Journal of Corporation Law*) (describing California's law as "establish[ing] some of the first-in-the-nation regulations on large-scale AI models"); Justine Gluck, *The RAISE Act vs. SB 53: A Tale of Two Frontier AI Laws*, FUTURE OF PRIV. F. (Jan. 8, 2026), https://fpf.org/blog/the-raise-act-vs-sb-53-a-tale-of-two-frontier-ai-laws/ [https://perma.cc/C5VY-WA4D] (noting that New York is the "second state to enact a statute specifically focused on frontier artificial intelligence (AI) safety and transparency"); Khari Johnson, *Trump's New Order Against AI Regulation Hits California Especially Hard*, CAL MATTERS: TECH. (Dec. 11, 2025), https://calmatters.org/economy/technology/2025/12/california-ai-regulation-targeted-in-trump-order/ [https://perma.cc/CF4B-7HBS] (reporting on President Trump's public opposition to Colorado's and California's laws specifically).

49. Mui & Bordelon, *supra* note 43.

care and employment decisions.[50] But then the tech sector fought back.[51] More than 150 lobbyists were hired—employed by Amazon, major health care companies, and TechNet—and descended on the Capitol to advocate for delayed implementation and ultimately, a watered-down version of the law.[52] And tactics were not limited to the statehouse. xAI—the AI company led by Elon Musk—filed a motion to enjoin the enforcement of Colorado's law,[53] an action that was joined by the United States Department of Justice.[54] The court never ruled on the merits of xAI's motion, but the parties agreed to a temporary suspension of the law's enforcement.[55] Against this backdrop, Colorado lawmakers opted for a wholesale rewrite of the law.[56]

Set to take effect in early 2027, SB 26-189 replaced Colorado's first-in-the-nation law and is meaningfully more conservative in the scope of its regulation.[57] Colorado's original law "required broader reasonable-care, risk-management, impact-assessment, annual-review, and public-summary obligations for deployers."[58] The rewritten scheme, however, "shifts deployers' obligations toward targeted disclosure, explanation, correction, and the right to request human-review."[59]

2. California

S.B. 53 represents California's measure to regulate the potential harms of frontier AI.[60] The law represents a compromise between AI safety advocates, Governor Gavin Newsom, and the tech industry.[61] An earlier bill, S.B. 1047, which was vetoed by Governor Newsom, would have made companies that develop AI models liable for failures to exercise reasonable care in implementing safety protocols to prevent "critical harms."[62] S.B. 1047 would also have established a state regulatory board responsible for setting computing thresholds for models subject to the bill.[63]

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50. Pattison-Gordon, *supra* note 5.

51. John Frank, *Big Tech Wins in Delay of Colorado's AI Transparency Bill*, AXIOS DENV. (Aug. 26, 2025), https://www.axios.com/local/denver/2025/08/26/big-tech-ai-colorado-law [https://perma.cc/QW2Y-C7GE].

52. *Id.*

53. *See generally* Complaint for Declaratory and Injunctive Relief, X.AI, LLC v. Weiser (D. Colo. Apr. 9, 2026); *see also* Marc B. Collier et al., *X.AI Sues, DOJ Intervenes, Enforcement of Colorado's AI Act Suspended*, NORTON ROSE FULBRIGHT (May 2026), https://www.nortonrosefulbright.com/en-us/knowledge/publications/de3ad9de/xai-sues-doj-intervenes-enforcement-of-colorado-ai-act-suspended [https://perma.cc/XR69-CXBQ] (noting that the law was enjoined and the suit was joined by the DOJ).

54. Press Release, U.S. Dep't of Just., Justice Department Intervenes in xAI lawsuit Challenging Colorado's 'Algorithmic Discrimination' Law (Apr. 24, 2026), https://www.justice.gov/opa/pr/justice-department-intervenes-xai-lawsuit-challenging-colorados-algorithmic-discrimination [https://perma.cc/VR96-HYK9].

55. Collier et al., *supra* note 53.

56. Szewczyk et al., *supra* note 5.

57. *Id.*

58. *Id.*

59. *Id.*

60. Gluck, *supra* note 48.

61. Cristiano Lima-Strong, *California Signed a Landmark AI Safety Law. What to Know About SB53.*, TECH POL'Y.PRESS: NEWS (Sep. 30, 2025), https://www.techpolicy.press/california-signed-a-landmark-ai-safety-law-what-to-know-about-sb53 [https://perma.cc/GEH4-F989].

62. S.B. 1047, 2023–2024 Reg. Sess. (Cal. 2024).

63. *Id.*

Instead, S.B. 53's central aim is to enhance the transparency of frontier AI models, streamline responses to model-induced disasters, and establish whistleblower protections.[64] The law demands that, before releasing or modifying frontier models, developers must disclose a transparency report, outlining the model's capabilities.[65] Additionally, S.B. 53 requires frontier developers to disclose critical safety incidents to the California Office of Emergency Services.[66]

3. New York

New York's RAISE Act was the first state AI law signed after President Trump's Executive Order on a national AI policy framework.[67] The law, signed by Governor Kathy Hochul, established an office with AI rule-making authority and the ability to mandate additional reporting by technology companies.[68] The law also permits New York's Attorney General to bring civil actions against companies found to have violated the law, with fines starting at $1 million.[69] Much of the RAISE Act was modeled on California's AI regulations, and the two statutes are largely identical in scope and in their core aims.[70] This was not accidental.[71]

Some AI safety advocates wanted New York's law to go further.[72] Specifically, advocates had hoped the law would cover a wider swath of companies, impose harsher financial penalties on violators, and prevent the release of models that fail standard safety tests.[73] These provisions were not included in California's law, and Governor Hochul and companies such as Meta, OpenAI, and Google persuaded New York state lawmakers to remove them, with the goal of aligning more closely with California and avoiding a patchwork effect.[74]

4. Additional Forthcoming State Laws Regulating AI

Building on the laws in California and New York, Illinois Governor JB Pritzker signed S.B. 315, also known as the Artificial Intelligence Safety Measures Act, which will require developers to publish their assessments of catastrophic risks and notify the state government of any model-related incidents that could cause catastrophic harm.[75] Illinois's law

64. Lima-Strong, *supra* note 61.

65. *Id.*

66. *Id.*

67. Benjamin Oreskes, *Hochul Reaches Deal on A.I. Regulation in New York*, N.Y. TIMES (Dec. 19, 2025), https://www.nytimes.com/2025/12/19/nyregion/ai-bill-regulations-ny.html (on file with the *Journal of Corporation Law*).

68. *Id.*

69. *Id.*

70. Gluck, *supra* note 48.

71. Oreskes, *supra* note 67.

72. *Id.*

73. *Id.*

74. *Id.*

75. Marcus Schuler, *Anthropic Pushes Tougher State AI Rules After Illinois Mandates Annual Audits*, IMPLICATOR.AI: AI NEWS (July 15, 2026), https://www.implicator.ai/anthropic-pushes-tougher-state-ai-rules-after-illinois-mandates-annual-audits/ [https://perma.cc/88PT-FHPP]; Maggie Dougherty, *Pritzker Signs Landmark AI Regulation Bill that Aims to Mitigate Risks*, WTTW: POLITICS (July 6, 2026),

goes a step further than New York's and California's by requiring developers to undergo an annual independent safety audit.[76]

Meanwhile, in Massachusetts, backed by AI developer Anthropic, lawmakers have introduced legislation requiring AI firms to rely on assessments from independent evaluators.[77]

C. Basic Doctrinal Frameworks Relevant to AI Regulation

The developing tension between state and federal policymakers discussed above illustrates that the defining question of the early AI regulatory era is who can and should decide on the most effective policy frameworks. Fortunately, the Constitution provides principles to guide this debate.

1. Federal Preemption

Under the Supremacy Clause of the Constitution, federal law may supersede state law in several forms.[78] Express preemption occurs when Congress explicitly states its intent to displace state regulation.[79] Field preemption arises when federal regulation is so pervasive that it leaves no room for supplementary state law, indicating Congress's intent to occupy the entire field.[80] Conflict preemption applies when compliance with both state and federal law is impossible, or when state law frustrates federal objectives.[81]

A related category, sometimes called "deregulatory preemption," occurs when Congress grants private actors a federal right to engage in certain conduct free from state interference.[82] In such cases, federal law displaces inconsistent state restrictions because it directly regulates private parties.[83] Courts distinguish deregulatory preemption from attempts to prohibit states from regulating in the absence of any federal regulation of private actors—a distinction central to the anti-commandeering doctrine discussed below.

For instance, in *Murphy*, the Court discussed the Airline Deregulation Act as a canonical example of deregulatory preemption.[84] Under the Act, states are prohibited from regulating an air carrier's rates, routes, or services.[85] But critically, this prohibition is situated against the backdrop of a comprehensive federal scheme to regulate the airline industry; airlines are not operating in a policy vacuum.[86] In other words, Congress conferred on air

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https://news.wttw.com/2026/07/06/pritzker-signs-landmark-ai-regulation-bill-aims-mitigate-risks [https://perma.cc/4RX7-LF5M]; *see also* 430 Ill. Comp. Stat. 185/5 (2026) (defining '[c]atastrophic risk').

76. Dougherty, *supra* note 75.

77. Schuler, *supra* note 75.

78. U.S. CONST. art. VI, cl. 2.

79. Mo. Pet Breeders Ass'n v. Cnty. of Cook, 106 F. Supp. 3d 908, 917 (N.D. Ill. 2015).

80. *Id.*

81. *Id.*

82. David S. Rubenstein, *AI Governance Needs Federalism, Not a Federally Imposed Moratorium*, JUST SEC. (May 30, 2025), https://www.justsecurity.org/113728/ai-governance-federalism-moratorium/ [https://perma.cc/2QRH-NCMN].

83. *Id.*

84. *Murphy*, 584 U.S. at 478.

85. *Id.*

86. *Id.* at 478–79.

carriers the right to operate free from state regulation, but subject to a federal regulatory scheme.[87]

At present, because Congress has not enacted a comprehensive statute governing AI development, there is no existing federal field in which preemption could operate. Any future federal legislation would need to specify whether and to what extent it preempts state AI laws.

2. Anti-Commandeering Doctrine

The anti-commandeering doctrine, rooted in the Tenth Amendment and elaborated in *Murphy*, prohibits Congress from issuing direct commands to state governments.[88] The Constitution empowers the federal government to regulate individuals, not to require states to enact, amend, or refrain from enacting particular laws.[89] Congress may preempt state law when regulating private conduct, but it may not compel state legislative silence where Congress itself has declined to regulate.[90]

Murphy reaffirmed that this prohibition applies equally to affirmative commands and to federal laws that bar states from regulating entirely.[91] A federal statute that prevents states from enacting certain laws without imposing federal rules on private actors constitutes unconstitutional commandeering.[92] This principle sets the limits on any federal attempt to prohibit or suspend state AI regulation absent a broader federal regime.

While the anti-commandeering doctrine restricts how the federal government may constrain state legislatures, this limitation does not resolve the separate question of how far states themselves may go in regulating frontier AI; that inquiry is governed by the Dormant Commerce Clause, which imposes its own constraints on state laws that affect interstate markets.

3. Dormant Commerce Clause

The Constitution vests Congress with the power to "regulate Commerce . . . among the several states."[93] Congress's authority under the Commerce Clause provides the federal government with broad authority to regulate economic activities that affect interstate commerce.[94] Just as the Commerce Clause provides a broad affirmative grant of authority to Congress, it also limits the states, preventing them from enacting legislation that favors in-state companies at the expense of out-of-state businesses.[95] Courts have broadly struck down state laws where a state has been found to have preferenced an in-state business,

87. *Id.*

88. *Id.* at 470.

89. Rubenstein, *supra* note 41, at 1047.

90. *Id.*; *see also* Morales v. Trans World Airlines, Inc., 504 U.S. 374, 386 (1992) (holding that the federal government conferred on covered carriers a federal right to engage in certain conduct subject only to federal constraints).

91. *See Murphy*, 584 U.S. at 475 (holding that a distinction between precluding state action and affirmatively commanding state action is an "empty" distinction).

92. Rubenstein, *supra* note 41, at 1047.

93. U.S. CONST. art. I, § 8, cl. 3.

94. W. Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 192 (1994).

95. *Id.*

concluding that facially discriminatory laws "face 'a virtual *per se* rule of invalidity.'"[96] In rare instances, despite facially discriminatory provisions, courts may uphold a state law if no reasonable, nondiscriminatory alternatives exist.[97]

If a court concludes that a state's law does not facially discriminate, the court must then determine whether the law results in impermissible extraterritorial effects.[98] Extraterritorial effects will exist where a state's law has the functional impact of controlling commerce outside the state's boundaries.[99] Specifically, extraterritorial effects have been ruled impermissible where they represent "price affirmation."[100] For example, in *Brown-Forman*, a New York statute required liquor distributors to affirm that their in-state prices were no higher than their lowest out-of-state price, effectively controlling a distributor's prices outside New York.[101] Spill-over effects from state law, on the other hand, are often permitted, and even considered inevitable.[102]

In *National Pork Producers Council v. Ross*, for instance, the petitioners, pork producers, argued ambitiously on the grounds of the so-called "extraterritoriality doctrine."[103] In essence, the pork producers claimed that the Dormant Commerce Clause prohibited state laws that have the practical effect of controlling commerce outside the state.[104] In their case, it was argued that the challenged California law would impose additional costs on out-of-state pork producers seeking to sell their products in California.[105] The Court rejected this argument, refusing to find an implied invalidity based on extraterritorial effects, writing that such a finding "would cast a shadow over laws long understood to represent valid exercises of the States' constitutionally reserved powers."[106] The Court reasoned that, given the size and scope of California's economy, almost any in-state measure would influence how out-of-state firms choose to operate.[107] If that fact were determinative, it would mean that states with smaller economies—where regulation would not have the same far-reaching effects—would have greater latitude to regulate than states with larger economies.[108]

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96. Granholm v. Heald, 544 U.S. 460, 476 (2005); *see also* Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504, 518 (2019) (holding that the Commerce Clause "restricts state protectionism").

97. *Compare* Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 353 (1977) (concluding that North Carolina had not met its burden to prove that there were no other non-discriminatory regulatory options available), *with* Maine v. Taylor, 477 U.S. 131, 151 (1986) (finding that no reasonable nondiscriminatory alternatives were available to protect against ecological harm).

98. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 371 (2023) (concluding that context must be given when considering the extraterritorial effects of a state law; that extraterritorial effects are impermissible only in limited, specific circumstances).

99. *See* Healy v. Beer Inst., Inc., 491 U.S. 324, 343 (1989) (holding that retrospective affirmation statutes, like other affirmation statutes, have the inherent practical extraterritorial effect of regulating other states' liquor prices); *see also* Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 582 (1986) (finding that a law impermissibly interfered with a distiller's ability to change its prices in other states).

100. *Id.*

101. *Id.*

102. *See Nat'l Pork Producers Council*, 598 U.S. at 374 ("In our interconnected national marketplace, many (maybe most) state laws have the 'practical effect of controlling' extraterritorial behavior.").

103. *Id.* at 371.

104. *Id.*

105. *Id.*

106. *Nat'l Pork Producers Council*, 598 U.S. at 375.

107. *Id.* at 388.

108. *Id.*

Instead, the Court cabined impermissible extraterritoriality to specific instances, like when an out-of-state firm has been deliberately deprived of competitive advantages or prevented from engaging in competitive pricing.[109] If the law is nondiscriminatory and does not create impermissible extraterritorial effects, the court will perform a balancing test, first articulated in *Pike v. Bruce Church, Inc.*[110] The so-called *Pike* balancing test assesses whether the burden imposed on interstate commerce is clearly excessive relative to the putative local benefits.[111] In short, the court is tasked with weighing the law's burdens against its benefits.[112] The Court has rarely struck down state laws on traditional *Pike* balancing grounds, sparingly finding a state law's burdens were clearly excessive in relation to its benefits.[113]

Raymond Motor Transportation v. Rice illustrates how rarely the Court finds an excessive burden.[114] Even in that unusually successful challenge, the Court emphasized the "strong presumption" of validity that attaches to state safety regulations and overturned the law only because the challenger produced a "massive array" of empirical evidence demonstrating inefficacy.[115]

III. ANALYSIS

As AI continues to evolve, judges, lawyers, and policymakers must determine which institutions are best positioned to regulate the technology. The answer to this question must be guided simultaneously by both normative judgments and by our nation's federalist framework.

This Note's analysis first focuses on a normative, policy-based assessment of whether Congress should preempt state governments from regulating AI—independent of whether and how Congress could do so.

This Note concludes that state governments, as laboratories of democracy, are uniquely positioned to respond nimbly to the emerging harms of AI and, in doing so, can enhance consumer confidence in the technology and provide invaluable information to federal lawmakers as they craft a federal framework.[116]

Irrespective of whether Congress *should* preempt state governments' regulation of AI, does our federalist framework permit Congress to prohibit state action? This Note provides an answer: the Tenth Amendment prohibits Congress from silencing states that choose to

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109. *Id.* at 374.

110. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970) (a state law that "regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental . . . will be upheld unless the burden imposed . . . is clearly excessive in relation to the putative local benefits").

111. *Id.*

112. *Id.*

113. Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 447 (1978) (holding that a Wisconsin regulation that prohibited the use of 65-foot double semitruck trailers placed a substantial burden on interstate commerce but had only a speculative contribution to highway safety); Kassel v. Consol. Freightways Corp. of Delaware, 450 U.S. 662, 678 (1981) (holding that deference traditionally accorded a State's safety judgment was not warranted regarding an Iowa semitruck regulation).

114. *Id.* at 430.

115. *Id.* at 444; *see also* Andrew Jordan, *What on Earth Is a Burden on Interstate Commerce?*, 120 NW. U.L. REV. 245, 290 (2025) (articulating why cases involving functional, instrumentalities of interstate commerce, like semitrucks and trains, often come out differently).

116. *See* discussion *infra* Part III.A (noting that policy interventions often increase consumer confidence).

legislate against the dangers posed by AI in the absence of a federal regulatory framework.[117]

Finally, this analysis supports the conclusion that the Dormant Commerce Clause is not a vehicle to block facially neutral state-level laws regulating AI. The Court's modern Dormant Commerce Clause decisions have erected a steep hurdle for opponents of state-level intervention, one they can likely clear only by showing discriminatory intent or glaring inefficacy.[118]

A. Should Congress Preempt States from Regulating Artificial Intelligence?

1. States Are The "Laboratories of Democracy"

The United States' constitutional republic separates power between the federal and state governments horizontally.[119] The Constitution grants Congress significant power, but this power is not unlimited.[120] The powers designated for the federal government, in other words, are not plenary, but specifically enumerated, with "all other legislative power . . . reserved for the States, as the Tenth Amendment confirms."[121] This provides the states with latitude, whereby a "single courageous state may . . . serve as a laboratory; and try novel social and economic experiments."[122] This is a virtue, not a vice, of the country's constitutional system; policy experimentation trades national uniformity for the states' ability to respond nimbly to emerging issues, make policy choices that reflect the cultural and political preferences of their people, and discover both effective and ineffective measures to address society's challenges.

2. Innovation, Consumer Trust, and Regulatory Feedback Benefits

Opponents of state-by-state regulation, particularly frontier AI developers, warn that a "patchwork" of state laws would impose heavy compliance costs and suppress innovation.[123] But this narrative overlooks historical experience. State regulation has often facilitated, rather than hindered, technological progress by building the consumer trust necessary for widespread adoption. Early internet governance illustrates this dynamic: state governments led efforts to regulate the internet, issuing mandatory privacy policies for e-commerce, a move that reassured consumers and accelerated the growth of online transactions.[124] States also pioneered data breach notification requirements and enacted restrictions on the use of facial recognition technology without consent.[125] These measures

117. *See* discussion *infra* Part III.B (analyzing the anti-commandeering doctrine and the Tenth Amendment).

118. *See* discussion *infra* Part III.C (illustrating the Court's recent Dormant Commerce Clause decisions).

119. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 376 (2023).

120. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 471 (2018).

121. *Id.*

122. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

123. *See* GOOGLE, *supra* note 8 (articulating the need for a regulatory regime that promotes innovation); Lehane, *supra* note 8 (arguing for the same).

124. *AI at a Crossroads: A Nationwide Strategy or Californication?: Hearing on Preempting a Patchwork of State-Level Regulations Before the Subcomm. on Ct., Intell. Prop., AI, and the Internet*, 119th Cong. (2025) 5 (statement from Neil Richards) [hereinafter *Richards testimony*].

125. *Id.*

did not stall innovation; they created a more stable environment in which new technologies could flourish.

Contemporary research shows the importance of trust. International surveys report that 61% of respondents believe the pace of technological change is too fast, and 66% report that their governments lack the requisite understanding to regulate emerging technologies effectively.[126] And declining trust threatens to limit the benefits of digitization—a trend that should concern frontier AI laboratories, whose business models depend on widespread adoption and confidence in the safety of their products.[127] Regulation, in this context, does not merely set limits; it provides institutional assurances that enable technological integration.

Public sentiment regarding AI underscores the challenges lawmakers and firms face in ensuring public trust. A September 2025 survey found that half of Americans are more concerned than excited about AI's increasing role in daily life, a substantial rise from 2021.[128] As Microsoft Vice Chair Brad Smith has observed, "people won't use technology they don't trust," and law provides the foundation for that trust by establishing protections against digital harms and limiting the most egregious uses.[129] A credible regulatory framework is therefore a necessary condition for building public confidence in AI systems.

State-level experimentation is essential to this task. By developing and testing regulatory approaches, states can supply empirical feedback for federal lawmakers and help identify strategies that effectively address consumer concerns. For this reason, the Trump Administration's 2025 proposal to withhold federal funding from states that adopt "burdensome" AI regulations has the relationship between regulation and innovation precisely backward.[130] Federal policy should *encourage*—not penalize—state efforts to construct the guardrails that enable responsible innovation and restore public trust.

3. State-Level Experimentation as a Source of Policy Information

State experimentation offers a critical informational benefit in areas where Congress lacks clarity about the risks, costs, and institutional design of a regulatory framework. A bipartisan report from the U.S. House of Representatives emphasized this point, observing that when "information on the relative advantages, drawbacks, and costs of different regulatory approaches is unknown or unclear," the most efficient way to acquire that information is to permit state-level experimentation.[131] State action generates comparative data that Congress cannot obtain through uniform, top-down policymaking alone.

Historical experience demonstrates the value of this decentralized learning. State governments have repeatedly served as early testbeds for innovation in consumer protection

126. CHEW HAN EI, JEANNE TAN & CAROL SOON, DIGITAL TRUST AND WHY IT MATTERS 7 (2023), https://ctic.nus.edu.sg/resources/CTIC-WP-05(2023).pdf [https://perma.cc/4KQA-SYGB].

127. *Id.*

128. Brian Kennedy et al., *How Americans View AI and Its Impact on People and Society*, PEW RSCH. CTR.: REP. (2025), https://www.pewresearch.org/science/2025/09/17/how-americans-view-ai-and-its-impact-on-people-and-society/ [https://perma.cc/GN9V-HXYZ].

129. *Richards testimony*, *supra* note 124, at 6.

130. THE WHITE HOUSE, *supra* note 23, at 3.

131. UNITED STATES HOUSE OF REPRESENTATIVES, BIPARTISAN HOUSE TASK FORCE REPORT ON ARTIFICIAL INTELLIGENCE 26 (2024), https://www.speaker.gov/wp-content/uploads/2024/12/AI-Task-Force-Report-FINAL.pdf [https://perma.cc/5JBK-QXKB].

and technology law. California's data privacy law, for example, became a touchstone for legislative debates nationwide, with other states selectively adopting, adapting, or rejecting its core elements.[132] Marijuana legalization provides an even clearer illustration of policy diffusion. When Colorado became the first state to legalize recreational marijuana, it produced a rich evidentiary record on issues ranging from personal cultivation to social consumption and vertical integration.[133] The "Colorado model" influenced legalization frameworks in Oregon, Alaska, and the District of Columbia, each of which modified specific elements in response to observed successes and challenges.[134] Of course, there are fundamental differences between consumable and digital products, but the diffusion of policy lessons transcends a particular product type or industry-specific regulation.

AI regulation presents the same opportunity for iterative learning and refinement. As states adopt varying approaches to transparency, liability, and safety assessment, they will generate empirical evidence about which regulatory structures meaningfully mitigate risks and which impose unnecessary burdens. States can observe and learn from one another's legislative choices. At the same time, Congress—should it eventually pursue a nationwide framework—will have a menu of tested options rather than legislating in an informational vacuum.

B. Can Congress Preempt States from Regulating Artificial Intelligence?

1. Express Preemption and the Anti-Commandeering Doctrine

When President Trump's signature domestic legislation—commonly referred to as the "Big, Beautiful Bill"—initially passed the House of Representatives, it included a provision that would have expressly preempted state and local governments from "limiting, restricting, or otherwise regulating" AI models or automated decision systems for ten years.[135] Aside from generally applicable consumer-protection laws, states would have been categorically barred from enacting AI-specific regulations.[136]

After the preemption language was dropped from the "Big, Beautiful Bill," the Trump administration revisited the concept in its AI Action Plan and subsequent Executive Order, "Ensuring a National Policy Framework for Artificial Intelligence."[137]

President Trump's "Framework" is an executive order; it's not *law*.[138] Although executive orders bind the federal government, for the federal government to preempt state

132. Anupam Chander, Margot E. Kaminski & William McGeveran, *Catalyzing Privacy Law*, 105 MINN. L. REV. 1733, 1802 (2021).

133. Sam Kamin, *Colorado Marijuana Regulation Five Years Later: Have We Learned Anything At All*, 96 DENV. L. REV. 221, 226 (2024).

134. DANIEL KNIERIM, THE RECREATIONAL CANNABIS INDUSTRY'S EMERGING PUBLIC POLICIES: BEST PRACTICES IN PUBLIC SAFETY, CONSUMER PROTECTION, ENVIRONMENTAL PROTECTION, AND PUBLIC RESEARCH 10 (2018), https://cannabis.uci.edu/wp-content/uploads/paper-knierim-emerging-cannabis-policy.pdf [https://perma.cc/C9U3-LHZJ].

135. Kohler, *supra* note 12.

136. *Id.*

137. *See* THE WHITE HOUSE, *supra* note 23, at 3 (advocating for the displacement of "burdensome" AI regulations); *see also* Ensuring a National Policy Framework for Artificial Intelligence, *supra* note 27 (establishing an AI litigation task force to challenge state-level AI laws).

138. Olivier Sylvain, *Why Trump's AI EO Will be DOA in Court*, TECH POL'Y.PRESS: PERSP. (Dec. 12, 2025), https://www.techpolicy.press/why-trumps-ai-eo-will-be-doa-in-court/ [https://perma.cc/FDV7-FX7R].

law, there must be a conflict between state and federal *laws* governing private actors.[139] The "Framework," then, is unlikely to be grounds for displacing all state AI laws currently in effect, and the order appears to acknowledge this on its face.[140]

More uncertain is whether the preemption language originally included in the House version of the "Big Beautiful Bill" would have passed constitutional muster if challenged, and this Note argues that it would not have, because the provision would have violated the anti-commandeering doctrine.

The anti-commandeering principle, rooted in the Tenth Amendment, prohibits Congress from issuing direct orders to state legislatures.[141] As the Court explained in *New York v. United States*, even when Congress may regulate "certain acts, it lacks the power directly to compel the States to require or prohibit those acts."[142] *Murphy* reaffirmed this structural limitation, emphasizing that the doctrine preserves political accountability, prevents Congress from shifting regulatory costs onto states, and protects the balance of dual sovereignty.[143] Thus, the anti-commandeering doctrine protects the balance between the state and federal governments and reinforces political accountability by ensuring that Congress cannot circumvent its own legislative gridlock by silencing states that choose to legislate against AI-related harms.[144]

Proponents of preemption are likely to argue that prohibiting state legislation is less intrusive than requiring a state to affirmatively regulate. The *Murphy* decision rejected that distinction outright.[145] Whether Congress commands a state to legislate or forbids it from legislating, the constitutional defect is the same: the federal government is issuing a direct order to a state legislature.[146] A federal ban that merely tells states what they may not regulate is still an unconstitutional intrusion into state legislative authority.

2. Deregulatory Preemption vs. Unconstitutional State-Silencing

Murphy also distinguished impermissible commandeering from permissible deregulatory preemption.[147] Deregulatory preemption occurs when Congress creates a federal

139. *See* Puerto Rico Dep't of Consumer Affs. v. Isla Petroleum Corp., 485 U.S. 495, 503 (1988) (holding "[t]here is no federal pre-emption *in vacuo*"); *see also In re* Nat'l Sec. Agency Telecomms. Recs. Litig., 633 F. Supp. 2d 892, 908 (N.D. Cal. 2007) (stating "[e]xecutive orders, in and of themselves, do not preempt state law"); Rubenstein, *supra* note 41, at 1040.

140. *See* Ensuring a National Policy Framework for Artificial Intelligence, *supra* note 27 (declaring that "[advisors to the President] shall jointly prepare a legislative recommendation establishing a uniform Federal policy framework for AI that preempts State AI laws").

141. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 470 (2018).

142. New York v. United States, 505 U.S. 144, 166 (1992).

143. *See Murphy*, 584 U.S. at 473–74.

144. Rubenstein, *supra* note 41, at 1048; *see also* Georgia R. Carroll, *'Consistency is all I ask!': Leveling the Playing Field of Online Sports Gambling*, 47 J. CORP. L. 215, 224 (2021) ("PASPA was introduced to force regulation onto states . . . . [t]his was an issue because . . . [citizens did not know] who to hold accountable.").

145. *See Murphy*, 584 U.S. at 475 (holding that a distinction between precluding state action and affirmatively commanding state action is an "empty" distinction).

146. *Id.*

147. Rubenstein, *supra* note 41, at 1047.

right for private actors to engage in conduct free from state interference.[148] In such cases, Congress regulates individuals, not states, and may preempt inconsistent state laws.

A moratorium on state AI regulation would not constitute deregulatory preemption. It would not confer rights on private developers or impose federal standards on the development or deployment of AI systems. As Professor David Rubenstein notes, the proposed ten-year moratorium "did not even purport to regulate private AI development," and no federal framework currently governs AI development in private markets.[149] In the absence of such a scheme, Congress cannot silence state regulatory efforts by fiat.[150]

3. Conflict and Field Preemption Do Not Apply

Other forms of preemption do not presently apply either. Conflict preemption requires that state law either make compliance with federal law impossible or obstruct federal objectives.[151] Because Congress has enacted no substantive AI regulatory standards, there is no federal objective for state AI laws to frustrate.

Field preemption similarly requires a pervasive federal regulatory scheme so comprehensive that it leaves no room for state supplementation.[152] No such federal framework exists for AI. States imposing transparency, safety, or liability obligations on frontier model developers are legislating in a domain where Congress has chosen not to act. Without a comprehensive federal program, there is no "field" for state laws to intrude upon.

4. Constitutional Implications for Federal Attempts to Restrict State AI Regulation

Taken together, these principles support the proposition that Congress may not prohibit state AI regulation unless it enacts a substantive federal regulatory framework governing private conduct. In the absence of such a framework, any attempt to bar states from legislating would violate the anti-commandeering doctrine. And because no comprehensive federal scheme exists, neither conflict nor field preemption applies.

In effect, the Constitution protects states' authority to regulate AI until Congress affirmatively chooses to regulate private actors directly. Congress cannot compensate for its reluctance or inability to legislate by silencing states that are willing to act. State AI regulation is therefore not only permissible but also constitutionally safeguarded.

C. Does the Dormant Commerce Clause Prohibit State Regulation of AI?

Irrespective of preemption, frontier AI companies and their advocates argue that proposals like those in California, New York, and Colorado violate the Dormant Commerce Clause.[153] These arguments contend that state laws regulating AI will inevitably have impermissible extraterritorial effects and that any local benefits of the regulation pale in

148. *Murphy*, 584 U.S. at 478; *see also* Morales v. Trans World Airlines, Inc., 504 U.S. 374, 390 (1992) (holding that the federal government conferred on covered carriers a federal right to engage in certain conduct subject only to federal constraints).

149. Rubenstein, *supra* note 41, at 1047.

150. *Id.*

151. *Murphy*, 584 U.S. at 477.

152. *Id.* at 479.

153. *Contrast Frazier testimony*, *supra* note 40, *with* Rubenstein, *supra* note 82 (illustrating the debate that where advocates are unable to persuade Congress to act, they will turn to Dormant Commerce Clause arguments).

comparison to the excessive burden on interstate commerce.[154] Modern Dormant Commerce Clause doctrine, however—particularly after *National Pork*—suggests that such challenges are unlikely to succeed.[155]

1. No Facial or Practical Discrimination

A state law violates the Dormant Commerce Clause most readily when it discriminates against out-of-state economic interests, either facially or in practical effect.[156] None of California's, Colorado's, or New York's AI regulations facially discriminates against out-of-state interests or imposes different burdens based on geographic origin, and it's not credibly suggested that they do. Instead, arguments that these regulations violate the Dormant Commerce Clause hinge on the spillover effects.

Because discrimination is the "very core" of the Dormant Commerce Clause, the absence of discriminatory purpose or effect creates a steep uphill battle for challengers.[157]

2. Extraterritoriality Claims After National Pork

The Supreme Court's recent decision in *National Pork* suggests a willingness to apply heightened deference to state regulation of facially neutral state laws.[158] This deference to state regulation ultimately supports the conclusion that it's unlikely that laws like those of California, New York, or Colorado violate the Dormant Commerce Clause.

National Pork illustrated that the Court's priority in Dormant Commerce Clause challenges is to assess whether a law is motivated by economic protectionism and imposes unequal burdens on in-state and out-of-state competitors.[159] "[T]his antidiscrimination principle lies at the 'very core' of [the Court's] dormant Commerce Clause jurisprudence."[160] This imposes a heavy burden on frontier AI companies and their supporters to meet when arguing that state regulations that do not facially discriminate nonetheless violate the Dormant Commerce Clause.

Arguments brought forward by frontier AI companies are likely to fail on extraterritorial grounds for the same reason that the pork producers were unsuccessful: it's not enough that a state's law imposes new costs for firms hoping to operate within the state. Nor is it enough for AI companies to argue that a state's law has reach beyond its borders. If extraterritoriality were determinative, as in *National Pork*, smaller states—where

154. Charlie Bullock, *Legal Issues Raised by the Proposed Executive Order on AI Preemption*, INST. FOR L. & A.I.: COMMENT. (Nov. 2025), https://law-ai.org/legal-issues-raised-by-the-proposed-executive-order-on-ai-preemption/ [https://perma.cc/6F37-ZAQL] (noting that President Trump's AI order's "reference to the commerce clause refers to the dormant commerce clause argument laid out by Andreessen Horowitz in September 2025").

155. *See* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 417 (7th ed. 2023) (discussing how modern Dormant Commerce Clause doctrine is highly deferential to nondiscriminatory state laws).

156. *Id.*

157. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 369 (2023).

158. Case Comment, *Dormant Commerce Clause—Interstate Commerce—State Law—Extraterritoriality—* National Pork Producers Council v. Ross, 137 HARV. L. REV. 330, 339 (2023) [hereinafter *Unsigned Dormant Commerce Clause Comment*].

159. *Id.* at 332.

160. *Nat'l Pork Producers Council*, 598 U.S. at 369.

regulation would not have the same far-reaching effects—would have greater latitude to regulate the technology.

3. Pike *Balancing and Frontier AI*

Under *National Pork*, AI companies are also unlikely to succeed by arguing that the burden imposed by a state's regulation is excessive in relation to its benefit. *Pike* balancing holds that, where a state statute regulates even-handedly to protect a legitimate state interest, it will be upheld unless the burden imposed on interstate commerce is clearly excessive.[161] *Pike* balancing was met with skepticism from some members of the Court in *National Pork*.[162] Nonetheless, the test survived, and the *National Pork* opinion concluded that "'no clear line' separate[d] the *Pike* line of cases from [the Court's] core antidiscrimination precedents."[163] The Court reasoned that the *Pike* balancing test was another way to identify discriminatory purposes, with the result that the absence or presence of discrimination in practice will likely be determinative.[164] In other words, though it may not be a categorical rule, without economic discrimination—either facial or in practice—a party will have difficulty establishing that a state statute violates the Dormant Commerce Clause.[165]

Moreover, as noted earlier, *Raymond Motor* exemplifies how rarely Courts have found that state laws represented an excessive burden. Because AI is a relatively new technology and state-level efforts to regulate it are even newer, there is not the "massive array" of empirical evidence to show the inefficacy of AI regulations, as in *Raymond Motor*.

4. The Dormant Commerce Clause Is Not a Vehicle for Blocking State Action on AI Regulation

Just as California's law in *National Pork* did not violate the Dormant Commerce Clause, neither would California's, Colorado's, or New York's AI laws, which would, for example, impose transparency requirements on frontier models. None of these laws evidences a discriminatory intent, either facially or in practice. For this reason, AI companies are unlikely to succeed in arguing that the states' laws are excessive relative to their benefits under the *Pike* balancing framework. Moreover, AI companies are unlikely to overcome the strong presumption of validity discussed in *Raymond Motor*. This is because, even if proposals like those in California, New York, and Colorado impose some sort of measurable burden on interstate commerce—which is, itself, debatable—the benefit to the state is unlikely to be negligible or nonexistent, like in the case of *Raymond Motor*.[166]

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161. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

162. *See Unsigned Dormant Commerce Clause Comment*, *supra* note 158, at 330 (writing that "*Pike* has fallen out of favor with Justices Thomas, Gorsuch, Barrett, and due to the 'incommensurable' nature of competing interests").

163. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 377 (2023).

164. *See Unsigned Dormant Commerce Clause Comment*, *supra* note 158, at 332 (writing that the antidiscrimination principle is central to modern Dormant Commerce Clause doctrine).

165. *Nat'l Pork Producers Council*, 598 U.S. at 379–80; *see also* W. Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 200 (1994) ("Nondiscriminatory measures . . . are generally upheld, in spite of any adverse effects on interstate commerce, in part because '[t]he existence of major in-state interests adversely affected . . . is a powerful safeguard against legislative abuse.'").

166. Nat'l Pork Producers Council, 598 U.S. at 398.

That is not to say that AI companies couldn't petition Congress for a regulatory regime they prefer. In fact, they already have and continue to do so. In the absence of federal legislation, however, the Dormant Commerce Clause is not a vehicle for AI firms to prevent regulation that they find burdensome.

IV. RECOMMENDATION

The federal government's abdication of regulatory leadership on AI development has created a governance vacuum that many state governments have attempted to fill. States are uniquely situated to act as first responders to the social, economic, and ethical risks posed by rapidly advancing AI technologies. Their capacity for policy experimentation—the same quality that Justice Brandeis celebrated when he described states as laboratories of democracy—should be regarded as a constitutional strength, not an administrative inconvenience.[167] Of course, Congress should ultimately establish a collaborative federalism framework for AI regulation.[168] But until it does, it must not stand in the way of state efforts to build guardrails around this transformative and potentially destabilizing technology.

A patchwork of state approaches is not a constitutional flaw but a pragmatic necessity in an era of technological uncertainty. Indeed, the history of modern regulatory innovation demonstrates that effective national frameworks often emerge from diverse state initiatives.[169] The same process should govern the evolution of AI policy. Until Congress enacts a comprehensive regulatory framework, it should treat state innovation not as an obstacle to efficiency but as an indispensable stage in the policymaking life cycle; a stage that generates empirical evidence, tests competing approaches, and enables democratic accountability to operate more closely to the citizens most affected by the technology. In short, Congress should resist calls to preempt state AI regulation and instead empower states to continue experimenting with governance models for frontier AI development.

This Note does not advocate a single model of state AI regulation; instead, it argues that a diverse set of responses will best position the nation to discover what works. This pluralistic process is consistent with the federal design and necessary to confront the novelty and uncertainty inherent in frontier AI systems. In experimenting, states can strive to design AI regimes that both reflect their distinctive policy priorities and contribute to a shared national project of empirical learning.

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167. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

168. *See* Mary Hallock Morris, *Cooperative Federalism*, CTR. FOR THE STUDY OF FEDERALISM (2006), https://federalism.org/encyclopedia/no-topic/cooperative-federalism/ (defining "cooperative federalism" as "a model of intergovernmental relations" with overlapping functions and shared authority between the national and state governments).

169. *See* Chander, Kaminski & McGeveran, *supra* note 132, at 1743–44 (describing the diffusion of auto emissions policy); Kamin, *supra* note 133, at 226–27 (noting that Colorado's marijuana legalization scheme informed the policies of other states); *see also History*, CAL. AIR RES. BD., https://ww2.arb.ca.gov/about/history [https://perma.cc/8WJD-FY7T] (noting California adopted the nation's first tailpipe-emissions standards in 1966 and that Congress "recognized California's earlier efforts" by authorizing its distinct, stricter vehicle-emissions regime in the 1970 Clean Air Act); Soc. Sec. Admin., Wisconsin's Role in the History of Unemployment Compensation (explaining Wisconsin's 1932 UI law "was the starting point for the federal unemployment insurance program" in the 1935 Social Security Act).

A. Setting a Collaborative Federalism Framework

1. Federal Baselines with State Freedom to Exceed Them

Rather than suppressing state policymaking, Congress should design a cooperative federalism framework that establishes minimum national standards while preserving state authority to exceed them. Environmental law and consumer protection provide effective models: federal law sets baseline requirements, and states remain free to innovate above the federal floor.[170] Such an approach respects constitutional structure, promotes political accountability, and allows regulation to evolve with technological change.

A cooperative federalism posture also recognizes that governance in emerging technological domains cannot rely solely on centralized expertise. States are positioned to respond swiftly to localized harms—from algorithmic discrimination in hiring to autonomous system failures in transportation.[171] Treating state regulations as prototypes rather than nuisances allows the federal government to benefit from the states' agility while retaining ultimate authority to harmonize standards if necessary.

2. Creating an AI Regulatory Clearinghouse

As part of this framework, Congress should assign the Department of Commerce or the National Institute of Standards and Technology (NIST) to establish an AI regulatory clearinghouse.[172] This clearinghouse would standardize definitions, track compliance outcomes, and synthesize lessons from state-led initiatives, converting experimentation into actionable insights for federal policymakers. The model finds precedent in NIST's existing role in cybersecurity and data privacy, where voluntary standards have gradually informed both federal guidance and international best practices.[173] By capturing lessons from state regulation, the federal government could accelerate the development of an evidence-based national framework without prematurely foreclosing state-level innovation.

3. Incentivizing State Innovation Without Mandating It

Beyond passive observation, the federal government should actively support well-designed state AI regimes by leveraging funding and technical expertise. For example, states adopting transparent, testable, and periodically reviewed safety standards should receive targeted grants and access to federal data infrastructure. These incentives would align state experimentation with federal objectives while avoiding unconstitutional coercion. They would also promote a regulatory ecosystem in which information flows both upward and downward. States could inform federal design, and federal agencies could support state

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170. *See id.* and accompanying text.

171. SCOTT KOHLER, TECHNOLOGY FEDERALISM: U.S. STATES AT THE VANGUARD OF AI GOVERNANCE 4–12 (2025), https://assets.production.carnegie.fusionary.io/static/files/Kohler_Technology%20Federalism.pdf [https://perma.cc/2WEX-N7BA] (detailing the increase in state-level AI regulation).

172. This Note uses "clearinghouse" to describe a hub that would collect and catalogue policy frameworks, risk-management tools, case studies, and serve as a reference point and resource for state lawmakers.

173. *See* NAT'L INST. OF STANDARDS & TECH., THE NIST CYBERSECURITY FRAMEWORK (CSF) 2.0 2 (2024), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf [https://perma.cc/7NAZ-H9BD] (stating the CSF "may be adopted voluntarily and through governmental policies and mandates" and noting that prior versions "have been leveraged successfully by many governments . . . outside of the United States").

enforcement. Cooperative federalism in the AI domain thus represents a constitutional compromise and a policy mechanism that can balance innovation with accountability.

B. Upholding the Virtues of Murphy and Judicial Deference to State Policymaking

Absent a comprehensive federal AI regime, any statute prohibiting state regulation should be held unconstitutional under the anti-commandeering doctrine reaffirmed in *Murphy*.[174] The Court has foreclosed the possibility that Congress may dictate state legislative silence.[175] Congress's authority lies in regulating private actors, not commanding state governments.[176] Allowing Congress to bar the states from acting in areas where Congress has declined to legislate would invert the structure of dual sovereignty and undermine political accountability. Anti-commandeering thus serves not only as a doctrinal boundary but also as a safeguard of democratic accountability: citizens must know whom to blame or credit for the policies that govern them.

With states' authority to regulate AI preserved, then, Courts reviewing AI-related state laws should apply the deferential principles reaffirmed in *National Pork Producers*.[177] A state's decision to impose disclosure, safety, or transparency obligations on AI developers does not constitute impermissible extraterritorial regulation merely because compliance imposes costs beyond the state's borders. The Supreme Court has made it clear that the Dormant Commerce Clause does not prohibit laws with incidental economic effects outside the state, provided they are not protectionist in purpose or effect.[178] Unless a law facially or practically discriminates against out-of-state interests, it should be presumed valid under the *Pike* balancing framework.[179] Particularly where the regulation advances safety, consumer protection, or transparency, and it cannot be shown that the burdens on interstate commerce are "clearly excessive."[180]

Deference to state policymaking in this context would be doctrinally sound and institutionally prudent. As *Raymond Motor* recognized, courts should extend a "strong presumption of validity" to state laws designed to promote safety, intervening only when the evidence of inefficacy is overwhelming.[181] Frontier AI systems—whose risks remain largely unquantified—fall squarely within this domain of legitimate safety regulation. Courts that respect this presumption preserve the experimental spirit of federalism and avoid prematurely entrenching the interests of a few dominant firms. Judicial humility is therefore essential to constitutional balance: it allows states to regulate emerging technologies responsibly while preventing the federal judiciary from freezing policy innovation under the guise of economic uniformity.

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174. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 475 (2018).

175. *Id.*; *see also* Rubenstein, *supra* note 41, at 1048 (writing that Congress cannot compensate for its inability or unwillingness to regulate AI by silencing states that can).

176. New York v. United States, 505 U.S. 144, 166 (1992).

177. *Unsigned Dormant Commerce Clause Comment*, *supra* note 158, at 330.

178. Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 369, (2023); *see also* Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970) (noting that a state law that "regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental . . . will be upheld unless the burden imposed . . . is clearly excessive in relation to the putative local benefits").

179. *Pike*, 397 U.S. at 142.

180. *Id.*

181. Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 444 (1978).

In sum, Congress should not silence the states willing to act, courts should not second-guess their good-faith experiments, and the states themselves should seize this opportunity to prove that decentralized governance can meet the demands of technological transformation. A federalist model that embraces cooperation rather than conflict offers the surest path toward a coherent, democratic, and resilient framework for AI regulation.

V. CONCLUSION

The rapid evolution of artificial intelligence has exposed both the dynamism and the dysfunction of the American regulatory process. While AI promises to transform economic productivity, social interaction, and even democratic governance, it has also revealed a familiar gap between technological advancement and governmental capacity. The federal government's regulatory inaction has created a policy vacuum that many states have attempted to fill. This Note has argued that such state leadership is not merely permissible under the Constitution but essential to the responsible governance of frontier AI.

As this Note has illustrated, under *Murphy*, Congress may not silence state legislatures absent a comprehensive federal framework, and under *National Pork Producers Council*, evenhanded state safety and transparency laws do not violate the Dormant Commerce Clause simply because they impose incidental costs on multistate firms.[182] These constitutional principles carry profound policy implications. Together, they preserve a vital space for state action at a moment when federal inaction leaves significant risks unaddressed. Far from threatening uniformity or innovation, the active participation of states in regulating AI represents the most constitutionally faithful and pragmatic path forward.

State experimentation is not a threat to regulatory coherence but represents one stage in the policymaking life cycle. Historically, national regulatory frameworks have emerged from diverse state initiatives that tested ideas, generated evidence, and revealed best practices. AI regulation fits squarely within that tradition. Congress should view these state initiatives as capable of informing a national consensus and generating the empirical record Congress will eventually require to legislate responsibly.

In the coming years, the question will not be whether AI should be regulated, but how—and by whom. A cooperative model of governance, grounded in the anti-commandeering principle and informed by the Dormant Commerce Clause's respect for evenhanded state regulation, offers the most legitimate and effective path forward. Congress should resist the impulse to centralize control prematurely. Courts should decline invitations to invalidate good-faith state experimentation. And the states, for their part, should continue to act—deliberately, transparently, and collaboratively. The balance of innovation and accountability, progress and restraint, depends on their willingness to lead.

182. Rubenstein, *supra* note 41, at 1047; *Nat'l Pork Producers Council*, 598 U.S. at 371.