

AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, ARTIFICIAL INTELLIGENCE, AND
THE INTERNET

OF THE

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Thursday, September 18, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND
ARTIFICIAL INTELLIGENCE, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

Members present: Representatives Issa, Massie, Fitzgerald, Cline, Gooden, Kiley, Lee, Fry, Baumgartner, Johnson, Lofgren, Lieu, Neguse, Ross, Swalwell, and Kamlager-Dove.

Also present: Representatives Correa and Raskin.

Mr. ISSA. The Committee will come to order. Actually, I do have to—the Subcommittee will come to order. Without objection, the Chair is recognized to declare a recess at any time. We welcome everyone here today for a hearing on the future of AI policy. I will note that this will be perhaps the last in a long series of AI hearings before several pieces of legislation will be marked up.

I encourage the Members on both sides of the aisle to make sure that this panel of witnesses are asked questions that may be germane to proposed legislation, or legislation already offered.

I now recognize myself for an opening statement. Literally a generation ago, or in technology, ten generations ago, a sharp young man graduated from Cal State San Marcos in my Congressional district. He joined a company that I then was CEO of Directed Electronics, which had an inherent inventory problem.

The inventory problem was that we had a few SKUs that sold well, and we managed, and hundreds of SKUs that were constantly either out or over supply. It wasn't anyone's fault, we had simply grown quickly, and there was a certain amount of inconsistency in what was being sold in a given month.

That bright young man took all that inventory in the records, and put it into SuperCalc, a precursor to Microsoft Excel. Within weeks, we had reduced our out of stock, increased our same day delivery, trimmed inventory to a level that actually saved us over a million dollars a year in inventory maintenance costs. That bright young man continued to work at the company for many years.

He did not continue to use SuperCalc for long, because technology quickly gave better and better tools. The man, the program, and the machine. Both are necessary to implement and make AI a reality. It was the man who made the machine that made the man a success. Over the last century the U.S. has led the way in virtually every area of technology because of our pro-innovation bias.

We are the innovators, while China are the duplicators, and Europe, yes, are the regulators. As we speak, though, my home State of California, with an economy larger than that of Italy, is rivaling the European Union when it comes to trying to lead on regulation. This wouldn't be such an ironic occurrence, except we are the home of innovation, and yes, the new bastion of regulation.

Just as in the 1990s when America led the internet revolution, a light touch such as that offered by the President in his initiative, in fact must be the direction we go. Anything else will give us a problem that I will describe. If we in fact are not innovating ten times faster than we are regulating, if the speed of innovation in the U.S. is not at least months or if possibly years ahead of China, their speed of duplication, some of it actually using AI to duplicate what we are doing will, in fact, cause us to lose our edge.

My home State is part of the problem, the European Union is part of the problem, but as you will see from our witnesses today, all fifty States have implemented some form of AI regulation, and in fact there are in the neighborhood of a thousand pieces of legislation spread over fifty States, that will create, if allowed to continue, a patchwork of indecision by the AI industry.

Given conflicting regulations, given the inability to roll out with certainty, technology, that technology will simply not be a priority. Let there be no doubt though. Either we win in innovation, and we win in AI, or we lose our edge on the international stage. Vice President Vance said it best, "America's AI technology must remain the gold standard worldwide."

We must continue to produce the next generation AI, and we cannot do it with a patchwork of conflicting State laws. As of now, we are ahead, let there be no doubt. We are ahead in hardware, and we are ahead in software development. We are also on the leading edge of having the solutions for the energy problems. That includes modular nuclear reactors, it includes a willingness to provide innovative solutions.

During the last break I went to one of Apple's facilities, almost 17 hundred acres located near Sparks, Nevada. What I saw there were some of the most impressive, simple buildings, filled with endless rows of various levels of chips for both AI and conventional data storage. What I also saw was a system that used zero conventional air conditioning to maintain that cooling.

They had managed to beat one of the major causes of unrelated energy consumption, which was air conditioning, through an innovative system of evaporative coolers from locally available water, and a filtration system that allowed those to operate twenty-four seven without in any way being damaged by the high flow of air.

They are making advances. This is over and above the innovation that we see in chips, and the ones that we plan to, and the additional power. I am going to contrast just over the border from Cali-

ifornia, this location in Sparks, Nevada. Because it has 64 gigawatts of generation power. Why would they need it? Well, they would only need it in case of a power failure.

Not so, the first time all was operational to prevent blackout in California, because California lacked the power, and by their going offline, Nevada was able to export power into my home State. That tells you a lot about the innovation in California, but not the ability to have those great new centers located there. In fact, Virginia, just a mile from here, is the No. 1 location, and other States are competing aggressively for it, and if nothing changes, they will win.

These new laws will also affect early stage development because technical experts, let alone lawmakers, are not capable today of predicting where we will be tomorrow. Earlier this year in fact, overnight, the thinking on AI development and power needed took a sharp change, and everyone on both sides of the Atlantic and Pacific are learning from what was released, and that will continue.

Of course, I don't want to be just a nay sayer, because in fact I am from an innovative State. I am from a State that is second to none in finding the best, the brightest, and bringing them here. Although this Subcommittee does not have jurisdiction over immigration, I want to make it clear here that AI development will also be about this Committee working in a bipartisan basis to find ways to not just attract, but to retain the best and the brightest for that development.

Let there be no doubt, there are three hundred thousand Chinese students studying in America, and most of them are being told to come home and bring with them what they are learning here. The release of the new AI Action Plan signaled to the world that the Trump Administration needs Congress to legislate America first AI. Now, I know that sounds pejorative, but it isn't.

The fact is that whether it was catching up on, if you will, the interstate superhighway under Al Gore, Sr., or it was leading on taking the ARPANET, and turning it into the internet, we have worked together in the past. We have worked to limit States, and to limit restraining our own over regulation for the benefit of our economy, and it has worked.

I want to welcome the President's leadership and look forward to working again to promote it. I want to additionally say that we have partners on both sides of the aisle. This Committee, including—she is not here right now, but Zoe Lofgren and others have been great partners in this in the past, and I expect they will be. Again, I just want to leave us with one truism.

America has innovated and out innovated the countries around the world for generations. Europe has become a regulator, and an admirer of our technology without embracing the way you get it. China has become the most efficient stealer of technology, and the term duplication, if it was truly innovation, would be a compliment, but it isn't.

With that, I recognize the Ranking Member for his opening statement.

Mr. JOHNSON. Thank you, Chair. I say thank you to the witnesses for your testimony today. When I drive from Georgia to Washington, DC, about once every six months or so, and I get a chance to listen to the radio, scan, and listen to all my favorite sta-

tions and tunes, I have got to pass through three States. I go through Virginia, I go through South Carolina, I go through North Carolina, and then I hit Georgia.

We all have had experiences in crossing State lines before, and you will have different speed limits, and different levels of enforcement. You have the experience of figuring out what are the rules. In other words, because you are going 79 miles an hour at the State line, and then flip to another State, and boom, all of a sudden the speed limit is 65.

You have got to do 74 to stop getting pulled over, and hope that officers won't stop you. Anyway, when some suggested earlier that we in Congress should preempt all State AI laws, they would not just have done away with State's nascent generative AI consumer protections, they would have preempted common law causes of action against AI companies as well.

When the doctrine of caveat emptor, or buyer beware ruled American jurisprudence, consumers had minimal protection and were expected to thoroughly inspect products themselves. Judicial interpretations began to change in the early middle 20th century as products became less straight forward, and more complicated. Common law is developed to better protect consumers, products liability, and negligence cases.

Today, most Americans can hardly imagine taking apart a toaster, let alone an AI chat box to make sure that it works correctly. Caveat emptor is effectively what advocates of a moratorium are suggesting we revert to when we talk about an AI moratorium. When you preempt an entire field of law, you are preempting the common law right along with it.

Supreme Court law has repeatedly found as it did in *Riegel v. Medtronic*, that a Federal law's reference to a State's requirements include its common law duties. In plain language that means if Congress preempts State AI laws, we also preempt State common law, unless the legislation explicitly says something else. Common law cases to protect consumers are already being filed against generative AI platforms.

Two days ago, Senator Holly held a hearing on the harms to children using AI technology, calling witnesses whose children died or were hospitalized after interacting with artificial intelligence chat bots. I know some of the parents and families are in the room today. Kristin Bride, Juliana Arnold, Manny Fernesse, and Megan Garcia. I am so sorry for what you all have been through, and I admire your commitment to justice.

Common law is crucial to the protection of Americans because it exists no matter whether there are comprehensive State laws on the books, or no laws governing new technology on the books. Even when there are no statutes, Common law helps us set a floor for a standard of care as a society. When some of my colleagues across the aisle talk about a moratorium, preempting common law is exactly what they are talking about.

Carve outs might be offered for some areas of the law, others may get a loose regulatory structure, but what many don't realize is that the glue that holds the law together would be wiped out in almost every scenario. By protecting common law, we can protect

that floor that ensures every person harmed can seek to have their case heard before a court of law.

This basic standard of care can spur innovation by preventing a race to the bottom, and it can offer a level of security as the Federal Government and States determine what the best next steps are for AI in the United States.

With that, Mr. Chair, I yield back.

Mr. ISSA. I thank the gentleman. Does the gentleman from California seek to be waived onto the Committee?

Mr. CORREA. I do, sir.

Mr. ISSA. Without objection, the gentleman will be waived on, even though he is not a Member of the Subcommittee, and if others yield time to him, he will be permitted to ask questions. Without objection, so ordered. It is now my pleasure, notwithstanding the Chair and Ranking Members arriving, to introduce our distinguished panel of witnesses.

Dr. David Bray is a distinguished fellow and Chair of the accelerator at the Alfred Lee Loomis, Innovative Consul at the Stimson Center, he previously served as IT Chief at Bioterrorism Preparation and Response Program at the CDC, and in the intelligence community. Dr. Bray is the recipient of a Joint Civilian Civil Commendation Award, and National Intelligence Exceptional Achievement medal. Welcome.

Mr. Kevin Frazier is the AI innovation and law fellow at the University of Texas law school. His research focuses on how to design regulatory regimes that increase adoption and use of AI. Mr. Frazier also leads the AI innovation and law program, which prepares students for careers related to artificial intelligence. Thank you for being here.

Mr. Adam Thierer is the Senior Fellow for technology and innovation at the R Street Institute, a free market think tank. His work focuses on cultivating emerging technologies. He previously was Senior Fellow at the Mackinac Center, and was President of the Progress and Freedom Foundation. Professor Neil Richards is the Koch Distinguished Professor at Washington University School of law.

Where he also codirects the Cordell Institute for Policy in Medicine and Law. His work focuses on privacy law, information law, and freedom of expression. We welcome all our witnesses here, and as you may have seen on C-Span, it is the rule of the Committee that all witnesses be sworn in. Would you please rise to take the oath, and raise your right hand?

Do you solemnly swear or affirm under penalty of perjury that the testimony you are about to give will be true and correct to the best of your knowledge, information, and belief, so help you God? Please be seated. Let the record reflect that all witnesses answered in the affirmative.

As you also have heard many times, your true entire statement, including reasonable, even if expansive additional information you submit will be placed in the record. As a result, if you are going to go past five minutes, do so by extension, and summarize what you do, so we can leave time for questions.

With that, we will begin. I want to make sure I get the right name, Dr. Bray. After this it gets easy, we just go across.

STATEMENT OF DR. DAVID BRAY

Dr. BRAY. Thank you, Chair Issa, Ranking Member Johnson, and the Members of the Committee. I appreciate the opportunity to testify today. I am Dr. David Bray, Chair of the Looms Accelerator at the Stimson Center, Principle at LeadDoAdapt Ventures, Senior Advisor of General Catalyst Institute, and a Fellow with the National Academy of Public Administration.

I work on tech, data, and geopolitical issues to help startups scale, communities adapt, and legacy organizations transform themselves amidst rapid global changes. My testimony focuses on advancing reliable, trustworthy AI consistent with the values of free societies and free markets from these perspectives.

I place my comments in the context that the United is experiencing multiple tech revolutions in addition to AI. Advances in space technology, biotech, quantum tech, and the nature of relation of sensors and robots all impacting U.S. companies, our workforce, and our communities. With respect to AI, I would like to mention three noteworthy advances to inform our discussion.

First, active inference AI models themselves demonstrate faster learning, and use less data, and less energy. Such approaches can be bound by spatial or temporal limitations in ways that are human readable, and interpretable across AI systems. Each of us as individuals could in the future restrict what AI systems do on our behalf.

Second, open weight AI models with open-source code have shown that we can transform currently complicated processes, such as a Veterans Affairs form, into a conversational interface, dramatically reducing the time to complete, and speeding access to care.

Third, federated learning allows AI systems to learn on datasets where they exist with proper consent.

Empowering both individuals and organizations to choose if their datasets and intellectual property are usable by AI and negotiate a beneficial contractual relationship in return. Given these advances, three guiding principles drive my recommendations to the Subcommittee:

First principle: U.S. strategies for advancing AI should recognize interdependencies between AI and other tech advancements.

This requires a light touch policy framework. Recently, the National Academy of Public Administration has illuminated methods for sufficiently agile policy approaches to achieve measurable goals at the pace necessary given global changes.

Second principle: Different AI methods carry different risks and benefits. For example, AI approaches to computer vision and expert systems follow predictable outcomes.

Whereas generative AI produces less predictable results. As such, AI policies should reflect these differences in AI methods.

Third principle: There have been multiple ways of AI improvement over the years. We should expect continued advancement, which means U.S. policy approaches must adapt accordingly. For example, the Stimson Center's Loomis Council intentionally brings together industry leaders to adapt projects to new AI developments.

Even with different AI methods, and the need for continuous adaptation, groups tied to specific domain applications of AI, for example, healthcare, transportation, and finance, can promote data level interoperability across AI systems, avoiding silos. When electronic health record systems advanced in the 2000s, the United States encouraged the nonprofit Health Level Seven to evolve an open standard framework for interoperable clinical data with privacy controls.

We should do something similar now for health and AI. We each deserve a choice as to when AI uses our data, and medical doctors should not be hindered by noninteroperable AI systems. Given these principles, my recommendations are as follows:

First recommendation: Our principles and policies should help advance freedom, human agency, and individual liberties.

We face global competition from the Chinese Communist Party regarding AI's future, including their AI Plus initiative. The U.S. AI strategy must simultaneously encourage the advancements of the entire U.S. AI industry, and encourage the industry to advance individual freedoms.

Second recommendation: Upgrading existing domain specific laws is more pragmatic than adapting new, sweeping AI regulations.

I recommend a domain specific approach, because the risk of different AI methods vary by application. Examples include updating the Privacy Act of 1974, revisiting HIPAA, and reviewing other existing laws where the speed, scale, and scope of AI methods impact different risk calculus. Congress' recent efforts to upgrade banking laws with respect to stable coins is another example of updating existing statutes given to new technologies.

Third recommendation: Assess what actions consistent with U.S. values of freedom, human agency, and individual liberties may need light touch policy to ensure AI advances freedoms across our Nation. When updating policies that already exist, we should bid on Justice Brandeis' concept of a right to be left alone as law abiding citizens.

Including choices about when personal datasets are and are not used by an AI, as well as when AI and any associated intellectual property shared is processed locally as opposed to a cloud-based incidence. Any national AI strategy should ensure we do not stifle advancements toward reliable, trustworthy AI, consistent with the values of both free societies and free markets.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Bray follows:]

Testimony of Dr. David Bray, Chair of the Loomis Accelerator and Distinguished Fellow at the non-partisan Stimson Center before the House of Representatives, Judiciary Committee, Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

Thursday, 18 September 2025

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify today. I am Dr. David Bray, Chair of the Loomis Accelerator at the Stimson Center, Principal at LeadDoAdapt Ventures, Senior Advisor to the General Catalyst Institute, and a Fellow with the National Academy of Public Administration. I work on tech, data, and geopolitical issues to help:

- startups scale,
- communities adapt, and
- legacy organizations transform themselves amid rapid global changes.

My testimony focuses on advancing reliable, trustworthy AI consistent with the values of free societies and free markets from these perspectives.

I place my remarks in the context that the United States is experiencing multiple tech revolutions in addition to AI: advances in space tech, biotech, quantum tech, and the miniaturization of sensors and robots - all impacting U.S. companies, our workforce, and communities.

With respect to AI, I would like to mention three noteworthy advances to inform our discussion:

First, Active Inference AI models demonstrate faster learning and use less data and less energy. Such approaches can be bound by spatial or temporal limitations in ways that are human readable and interoperable across AI systems. Each of us as individuals could, in the future restrict, what AI systems do on our behalf.

Second, Open-Weight AI models with open-source code have shown we can transform currently complicated processes, such as a Veteran Affairs form, into a conversational interface, dramatically reducing time to complete and speeding access to care.

Third, Federated Learning allows AI systems to learn on datasets where they exist with proper consent, empowering both individuals and organizations to choose if their data sets and intellectual property are usable by AI - and negotiate a beneficial contractual relationship in return.

Given these advances, three guiding principles drive my recommendations to this subcommittee:

First principle: U.S. strategies for advancing AI should recognize interdependencies between AI and other tech advancements. This requires a light-touch policy framework. Recently, the National Academy of Public Administration has illuminated methods for sufficiently agile policy approaches to achieve measurable goals at the pace necessary given global changes.

Second principle: Different AI methods carry different risks and benefits. For example, AI approaches to computer vision and expert systems follow predictable outcomes, whereas generative AI produces less predictable results. As such, AI policies should reflect these differences in AI methods.

Third principle: There have been multiple waves of AI improvements over the years. We should expect continued advancements, which means U.S. policy approaches must adapt accordingly. For example, the Stimson Center's Loomis Council intentionally brings together industry leaders to adapt projects to new AI developments.

Even with different AI methods and the need for continuous adaptation, groups tied to specific domain applications of AI (for example: healthcare, transportation, finance) can promote data-level interoperability across AI systems, avoiding silos. When electronic health systems advanced in the 2000s, the U.S. encouraged the non-profit Health Level Seven to evolve an open standard framework for interoperable

clinical data with privacy controls. We should do something similar now for health and AI. We each deserve a choice as to when an AI uses our data, and medical doctors should not be hindered by non-interoperable AI systems.

Given these principles, my recommendations are as follows:

First recommendation: Our policies should help advance freedom, human agency, and individual liberties. We face global competition from the Chinese Communist Party regarding AI's future, including their "AI+" initiative. U.S. AI strategy must simultaneously encourage the advancement of the entire U.S. AI industry - and encourage the industry to advance individual freedoms.

Second recommendation: Upgrading existing domain-specific laws is more pragmatic than attempting new, sweeping AI regulations. I recommend a domain-specific approach because the risks of different AI methods vary by application. Examples include updating the Privacy Act of 1974, revisiting HIPAA, and reviewing other existing laws where the speed, scale, and scope of AI methods impact different risk metrics. Congress' recent efforts to update banking laws with respect to stablecoins is another example of updating existing statutes given new tech.

Third recommendation: Assess what actions, consistent with U.S. values of freedom, human agency, and individual liberties, may need light-touch policy to ensure AI efforts advance freedoms across our nation. When updating policies that already exist, we should build on Justice Brandeis's concept of a "right to be left alone" as law-abiding citizens, including choices about when personal data sets are (and are not) used by an AI as well as when any associated IP shared with an AI is processed locally vs. in a cloud-based instance.

Any national AI strategy should ensure we don't stifle advancements toward reliable, trustworthy AI consistent with the values of both free societies and free markets.

Thank you, and I look forward to your questions.

Additional Materials Submitted as part of the Written Testimony

Topics:	Article:
On U.S. Export Controls tied to AI, and the Importance of "Red Teaming" the 2 nd , 3 rd Additional Consequences	01 - Hybrid AI and Human Red Teams_ Critical to Preventing Policies from Exploitation by Adversaries.pdf
On Companies Navigating the Complexities of Existing AI Rules, and Potential Solutions	02 - AI-Human Red Teaming article Dr David Bray
On Navigating AI's Impact on Education, Media, and Communities	03 - 7 leadership lessons for navigating the AI turbulence _ ZDNET
On Navigating AI's Impact on People, Companies, and the Workforce	04 - When deploying GenAI at scale, people must come first. Here's how _ ZDNET
On How Public and Private Boards Can Approach AI Governance	05 - Your board needs no-nonsense AI leadership - these experts explain why _ ZDNET
On How AI and Policies Can Help Advance Better Health and Healthcare Outcomes in the United States	06 - US-Healthcare-That-Works- Whitepaper
Lessons from Responding to 9/11 and the 2001 Anthrax Events, Why AI and Biology Require Us to Think Different	07 - Artificial Intelligence and Synthetic Biology Are Not Harbingers of Doom • Stimson Center
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Additional Materials Submitted as part of the Written Testimony is available at
<https://docs.house.gov/meetings/JU/JU03/20250918/118623/HHRG-119-JU03-Wstate-BrayD-20250918.pdf>

Mr. ISSA. Thank you. Mr. Frazier?

STATEMENT OF KEVIN FRAZIER

Mr. FRAZIER. Chair Issa, Ranking Member Johnson, and the distinguished Members of the Committee, thank you for the opportunity to testify. My name is Kevin Frazier, I am the AI innovation and law fellow at the University of Texas School of Law. Outside of teaching students, I believe there is no greater purpose for academics than sharing knowledge with policymakers.

This purpose is all more paramount when it comes to complex challenges like harnessing AI to unleash human flourishing. A few months ago, Dr. Jensen came before this Committee and announced that the Nation that leads in AI will shape the future. Nothing has changed in the interim. What remains uncertain however is whether the U.S. will retain its leading position.

My goal today is to address the proper role of the States and the Federal Government in shaping AI policy. On governing the use of AI, the Tenth Amendment reserves extensive authority to the States to regulate within their borders. On the matter of AI development, the founders offered their answer in abandoning the Articles of Confederation and adopting a strong centralized government capable of protecting and advancing the national interest.

As I will explain in the rest of my testimony, the founders infused three principles into our Constitution that when applied to the AI discussion resolve debates about the authority of each actor to shape AI development. Subsequent changes in related areas of the law, namely the Commerce Clause, have given rise to the false impression that muddy judicial interpretation somehow relaxed these principles.

However, they remain as foundational today as they were two hundred years ago. Adherence to these principles is essential both as a matter of fidelity to the founders' vision, as well as to securing an AI regulatory posture that aligns with our Federal system.

The first principle is that the Federal Government alone is responsible for matters that implicate the economic and political stability of our country.

The emerging threats to national security and economic stability posed by advances in AI place regulation of training frontier AI models squarely in the authority of the national government. To focus on one of many examples, AI has lowered the barriers to the creation and deployment of bioweapons by bad actors. Defensive measures have not progressed at the same rate.

Experts warn that with significant technical progress the Nation would still need to adopt extreme measures to ready ourselves for a near future in which synthetic pathogens go undetected. That effort will flounder with second rate AI. Training frontier AI models, and by extension safeguarding our national health and prosperity cannot be waylaid by State laws, no matter how well intentioned.

Second, the extensive authorities reserved to each State end at their respective borders. As the Supreme Court has specified on multiple occasions, the equal sovereignty of the States is a fundamental principle of our Constitution. Our constitutional order does not condone one State to intentionally and substantially interfere with the liberty and freedom of another.

Political clout, economic might, more population grants one State the authority to project its legislation into another. Whether a State is the fourth largest economy in the world, or the 104th largest has no bearing on its authority to shape the lives of Americans beyond its borders.

Though the Supreme Court has tolerated the inevitability of some regulatory spillover, its recent holding in *National Port Producers v. Ross* does not permit the sorts of regulations pending before many State legislatures, regulations that may deny all Americans access to a good itself because of the preferences of one political community.

Building new pig pens to satisfy the preferences of Californians is technically and financially feasible. Training two AI frontier models, one to comply with the preferences of a single State, and one for the rest of us, is a billion dollar undertaking that rests on uncertain and evolving realities.

Contradictory and vague State laws that impact AI development may thwart the sort of technological progress that has long fueled the American dream. Under a patchwork of State laws that impact AI development, we will see that Americans may never experience the education and healthcare that could have been realized by a national approach to pursuing the AI frontier.

The third principle is that the ultimate authority in our constitutional system rests with the people. Our founders aspired for every American to exercise meaningful control over their daily lives. Extraterritorial regulation of AI jeopardizes these and other features of individual agency.

The nature of AI development means that if labs are compelled to comply with one State's regulations for model training, those requirements will be imposed on the rest of the country, rendering us all less likely to realize the benefits of AI advances. Americans may be able to move as freely as they like, but they would still find themselves using AI tailored by State legislators over which they have no control.

Such a world is the antithesis of liberty. Denial or delay of the most sophisticated AI as the result of flawed State legislation is not a matter of mere inconvenience. It is a question of access to the greatest driver of human flourishing we have yet to develop.

Thank you again for inviting me here today, I look forward to your questions.

[The prepared statement of Mr. Frazier follows:]



SUBMITTED STATEMENT OF
KEVIN FRAZIER
AI INNOVATION AND LAW FELLOW
THE UNIVERSITY OF TEXAS SCHOOL OF LAW

BEFORE THE
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND
THE INTERNET OF THE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
“AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?”

SEPTEMBER 18, 2025

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

Chairman Issa, Ranking Member Johnson, and distinguished Members of the Subcommittee, thank you for the opportunity to testify.

My name is Kevin Frazier. I am the inaugural AI Innovation and Law Fellow at The University of Texas School of Law. Throughout my time in the academy as well as in the private sector, I have examined the intersection of constitutional law, regulatory design, and innovation policy. Outside of teaching students, I believe there is no greater purpose for academics than sharing their knowledge with the public and policymakers.

This purpose is all the more paramount when it comes to solving complex and novel challenges. How to govern artificial intelligence (AI) qualifies as such a challenge. If our builders, innovators, and entrepreneurs receive the support and space required to drive technological progress, AI can facilitate human flourishing and help sustain and spread the American Dream. If parochial, unneighborly state laws instead stall AI development, Americans will miss out on realizing the full benefits of tools that continue to become more reliable and capable.

A few months ago, Dr. Jensen testified before this same subcommittee and announced unequivocally that the nation that leads in AI will shape the future.¹ Nothing has changed in the interim.² What remains uncertain, however, is whether the U.S. will retain its leading position as our adversaries bend their laws and levy their resources to relentlessly pursue technological horizons.³

That uncertainty is partially the result of an unsettled question: the proper role of the states and federal government in regulating AI.⁴ The founders offered a clear answer in their decision to abandon the Articles of Confederation and adopt the Constitution.

My testimony today examines three principles the founders deliberately infused into our Constitution that, when applied to the current AI discussion, resolve debates about the authority of each actor. Subsequent developments in related areas of the law—namely, the Commerce Clause—have given rise to the false impression that muddled judicial interpretations somehow relaxed or

¹ Protecting Our Edge: Trade Secrets and the Global AI Arms Race Hearing Before the Subcomm. on Courts, Intellectual Property, Artificial Intelligence, and the Internet of the H. Comm. on Judiciary, 119th Cong. 1 (2025) (statement of Dr. Benjamin Jensen).

² See, e.g., Hal Brands, How the US Could Lose the AI Arms Race to China, AEI (Aug. 12, 2025), <https://www.aei.org/op-eds/how-the-us-could-lose-the-ai-arms-race-to-china/>; Reading between the lines of the dueling US and Chinese AI action plans, Atlantic Council (Aug. 7, 2025), <https://www.atlanticcouncil.org/blogs/new-atlanticist/reading-between-the-lines-of-the-dueling-us-and-chinese-ai-action-plans/>.

³ See, e.g., Rebecca Arcesati, China’s AI Development Model in an Era of Technological Deglobalization, Mercator Institute for China Studies (May 2, 2024), <https://merics.org/en/report/chinas-ai-development-model-era-technologicaldeglobalization> (investigating China’s whole-of-nation approach to AI development, deployment, and diffusion); Kathryn Armstrong, Ex-Google engineer charged with stealing AI secrets, BBC (Mar. 6, 2024), <https://www.bbc.com/news/world-us-canada-68497508> (describing allegations that a former Google email shared trade secrets with two Chinese companies).

⁴ This is not a new question. Resolution of which issues “belong” to the states and the federal government is a seemingly perpetual inquiry. Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 502 (2008).

KEVIN FRAZIER TESTIMONY,
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blurred these principles.⁵ However, they remain as foundational today as they were more than 200 years ago. Adherence to these principles is essential both as a matter of fidelity to the founders’ vision and as a means to secure an AI regulatory posture that does not directly run afoul of the Constitution.⁶

THE ROLE OF THE FEDERAL GOVERNMENT

The first is that the federal government alone is responsible for matters that implicate the economic and political stability of the country,⁷ while states maintain considerable discretion to address local concerns. Within this framework, it cannot be the case that the absence of an affirmative federal response to such a national issue invites or permits state action.⁸ The idea that “each state has the authority to set for itself the limit of its regulatory powers”⁹ invites the serial testing of state authority—an exercise that, if replicated by 50 states, will result in jurisdictional squabbles at a minimum and, potentially, national discord with respect to issues of national concern.¹⁰

Worry about states interfering with national affairs animated the transition from the Articles of Confederation to the Constitution. While policy experimentation by states has received praise in more recent times,¹¹ Hamilton lamented experiments that undermine uniformity with respect to areas like trade and diplomacy.¹² He and other—namely, the coauthors of *The Federalist Papers*—acknowledged that “different regulations of the different states” over things such as currency could undermine the nation’s economic competitiveness.¹³ Such concerns drove them to intentionally and explicitly allocate to the federal government the powers necessary to “provide for the harmony and proper intercourse among the states.”¹⁴ This distribution was all the more important when it came to securing the national interest during crises. Jefferson lamented “a want of sufficient means at their disposal [Congress] to answer the public exigencies and of vigor to draw forth those means.”¹⁵ Matters such as contagions, wars, and economic collapse surely qualified as such exigencies.

⁵ Ruth Mason & Michael S. Knoll, *Bounded Extraterritoriality*, 122 MICH. L. REV. 1623, 1627-28 (2024) (highlighting doubts among scholars over the extraterritoriality doctrine); Dawnider Sidhu, *Interstate Commerce v. Due Process*, 106 IA. L. REV. 1801, 1816-22 (2021) (walking through the existing ambiguity surrounding the scope of the dormant Commerce Clause territoriality doctrine).

⁶ Erbsen, *supra* note 4, at 508.

⁷ Ribert D. Cooter & Neil S. Siegel, *Collective Action Federalism: A General Theory of Article I, Section 8*, 63 STAN. L. REV. 115, 117 (2010).

⁸ *Contra* Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 NOTRE DAME L. REV. 1133, 1134 (2010).

⁹ *Id.*

¹⁰ See THE FEDERALIST NO. 22 (Hamilton).

¹¹ *See, e.g.*, Scott Kohler, *Technology Federalism: U.S. States at the Vanguard of AI Governance*, Carnegie (Feb. 10, 2025), <https://carnegieendowment.org/research/2025/02/technology-federalism-us-states-at-the-vanguard-of-ai-governance?lang=en>.

¹² THE FEDERALIST NO. 22 (Hamilton).

¹³ THE FEDERALIST NO. 42 (Madison).

¹⁴ *Id.*

¹⁵ Alexander Hamilton to James Duane, 3 Sept. 1780 via Founders on the Defects of the Articles of Confederation, *America in Class* (last accessed Sept. 12, 2025), <https://americainclass.org/sources/makingrevolution/constitution/text1/foundersdefectsarticlesconf.pdf>.

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The emerging threats to national security and economic stability posed by AI advances place regulation of frontier AI models squarely and exclusively in the authority of the national government. To focus on one example, AI has lowered the barriers to the creation and deployment of bioweapons by bad actors.¹⁶ Defensive measures, however, have not progressed at the same rate. Researchers from Georgia Tech and Yale recently concluded that the technical countermeasures to identify and mitigate such harms rest on unfounded assumptions.¹⁷ They warn that even with significant technical progress, the nation must pursue alternative strategies to ready ourselves for a near-future in which synthetic pathogens go undetected and uncontained.¹⁸ This is a national endeavor that cannot be waylaid by state laws, no matter how well intentioned.¹⁹

EXTRATERRITORIAL LIMITS ON STATE LAW

Second, the extensive authorities reserved to each state end at their respective borders.²⁰ As the Supreme Court has specified on multiple occasions, the equal sovereignty of the states is a fundamental principle of our Constitution.²¹ Our constitutional order does not condone one state to intentionally and substantially interfere with the liberty and freedom of another.²² Political clout, economic might, and sheer population does not grant any state the authority to step into the shoes of the federal government. At the Founding, Virginians made up about 20 percent of the nation’s population and was home to several of the country’s current and future leaders.²³ Then and now, it had no more authority to directly or indirectly steer national matters than Delaware (or any other state, small or otherwise).²⁴

The constitutional order designed by the founders renders all states “equal in power, dignity, and authority.”²⁵ They had experience with large states leveraging their economic might and geographic advantages as a means to benefit from their neighbors. By way of example, the “king of New

¹⁶ Charting the Future of Biotechnology, National Security Commission on Emerging Biotechnology (Apr. 2025), <https://www.biotech.senate.gov/final-report/chapters/executive-summary/><https://www.biotech.senate.gov/final-report/chapters/> (Warning that “[f]hrough the United States’ advantage was once though unassailable, China has emerged as a powerhouse in AI-enabled biotechnology.”).

¹⁷ Jonathan Feldman & Tal Feldman, Resilient Biosecurity in the Era of AI-Enabled Bioweapons, arxiv (Aug. 20, 2025), <https://www.arxiv.org/pdf/2509.02610>.

¹⁸ *Id.*

¹⁹ See THE FEDERALIST NO. 23 (Hamilton) (specifying the extensive and indeterminate authority that the federal government must exercise to ensure the common defense).

²⁰ Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511, 521 (1935); see Erbsen, *supra* note 4, at 507-08 (analyzing the principle of coequality between states).

²¹ Shelby County v. Holder, 133 S. Ct. 2612 (2013); Northwest Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193 (2009).

²² Donald H. Regan, *Siamese Essays*. (I) CTS Corp. v. Dynamics Corp. of America and Dormant Commerce Clause Doctrine, (II) Extraterritorial State Legislation, 85 MICH. L. REV. 1865, 1884 (1987); see Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 NOTRE DAME L. REV. 1057, 1061 (2009) (summarizing Supreme Court jurisprudence on efforts by states to directly govern non-residents).

²³ Population and Constitution-Making, 1774–1792, Center for the Study of the American Constitution (Aug. 1, 2022), <https://csac.history.wisc.edu/2022/08/01/population-and-constitution-making-1774-1792/>.

²⁴ But see Elizabeth Beske, *Horizontal Federalism & The Big State “Problem,”* 65 BOS. COL. L. REV. 2685 (2024) (examining the extent to which the Constitution addresses regulatory spillover created by larger states).

²⁵ Coyle v. Smith, 221 U.S. 559, 567 (1911).

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York”²⁶ drew the ire of early Americans for requiring that all vessels transiting through its waters pay an entrance and clearance fee.²⁷ It comes as no surprise that the founders celebrated constitutional provisions that would foreclose this sort of big state tyranny. As was later recognized by the Supreme Court, “[o]ne cardinal rule, underlying all the relations of the States to each other, is that of equality of right. Each state stands on the same level with all the rest.”²⁸ That rule is fundamentally broken if states can effectively compel non-residents to bend to the preferences of their respective people. In short, such an outcome would be “inconsistent with the spirit of a Constitution written in the wake of revolution against an imperial power.”²⁹

Whether a state is the fourth largest economy in the world or the one hundredth and fourth should have no bearing on its authority to shape the lives of Americans beyond its borders. Though the Supreme Court has acknowledged and tolerated the inevitability of some regulatory spillover, cases like *National Pork Producers Council v. Ross*³⁰ do not permit the sorts of regulations pending before many state legislatures—regulations that may deny all Americans access to a good itself because of the preferences of one political community. The state law at issue in that case—a prohibition in California on the sale of pork raised under certain conditions³¹—did not compel out-of-state producers to wholly change their entire production process nor alter the nature of the underlying product.³² That is not the case when it comes to state regulation addressing the development of frontier AI models.³³

Whereas a pig is a pig; a model trained to comply with state A’s requirements will differ from one trained under state B’s mandates. Labs cannot afford to conduct 50 different training runs, each of which may last for several months³⁴ and involves an incredible amount of data and compute.³⁵ Any changes they make to that process as a result of state regulation will impact the model made

²⁶ Jared Walczak, *How Failed Tax Policy Led to the Constitutional Convention*, Tax Foundation (Sept. 16, 2016), <https://taxfoundation.org/blog/constitution-day-tax-policy-constitutional-convention/> (quoting Fisher Ames)

²⁷ *Id.*

²⁸ *Kansas v. Colorado*, 206 U.S. 46, 97 (1907).

²⁹ Erbsen, *supra* note 4, at 508.

³⁰ 598 U.S. 356 (2023).

³¹ *Id.* at 363.

³² *Id.* at 367.

³³ Matt Perault, *Regulate AI Use, Not AI Development*, Andreesen Horwitz (Jan. 27, 2025), <https://a16z.com/regulate-ai-use-not-ai-development/>; see Ben Cottier et al., *The rising costs of training frontier AI models*, arxiv (May 31, 2024), <https://arxiv.org/html/2405.21015v1> (enumerating the staggering financial costs associated with training a frontier AI model).

³⁴ Luke Emberson & Yafah Edelman, *Frontier training runs will likely stop getting longer by around 2027*, Epoch AI (July 25, 2025), <https://epoch.ai/data-insights/longest-training-run>.

³⁵ Ben Cottier et al., *How Much Does It Cost to Train Frontier AI Models?*, Epoch AI (Jan. 13, 2025), <https://epoch.ai/blog/how-much-does-it-cost-to-train-frontier-ai-models>.

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available to the rest of the country³⁶ (and, in some cases, billions of people around the world).³⁷ Contradictory and vague laws in California, Colorado, and New York may thwart the sort of technological progress that has long fueled the American Dream by forcing labs to alter their training schedules.³⁸ Non-residents of those states will bear considerable costs as a result; progress delayed is progress denied.³⁹ Some Americans may never experience the improvements in education, healthcare, and transportation that could have been realized by a national approach to AI development.⁴⁰

States can and should implement regulations responsive to the demands of their political community and demonstrated to achieve those ends. Finding that fine line will be an iterative approach through which states can assess if such laws operate as intended, while also not infringing on the rights of non-residents nor impeding national AI progress. State legislators can facilitate that approach through the adoption of retrospective review requirements, sunset clauses, and frequent independent evaluations. Moreover, states can first test interventions with little to no odds of interfering with the actual AI tools, such as increased training for end users, AI literacy programs, and procurement standards that align with the state’s values.

The Paramount Significance of Individual Liberty

The third principle, related to the second, is that the ultimate authority in our constitutional system rests with the people. Our founders labored to develop a system in which every citizen could exercise meaningful control over their daily lives.⁴¹ This included freedom of movement and of political autonomy, and, more generally, a social contract with the government.⁴²

Consent was, is, and must be an aspect of that social contract.⁴³ Under the weak authority of the central government, however, citizens living at the time of the Articles of Confederation found their lives being dictated by decisions made in other states. As previously mentioned, states often imposed significant financial impositions on non-residents, who struggled to receive any protection from their state or the national government. They also often had their ability to enforce legal rights foreclosed because of an unwillingness of some states to recognize judgments rendered by another

³⁶ Helen Toner & Timothy Fist, *Regulating the AI Frontier: Design Choices and Constraints*, Center for Security and Emerging Technology (Oct. 26, 2023), <https://cset.georgetown.edu/article/regulating-the-ai-frontier-design-choices-and-constraints/> (detailing the centralized process of training leading AI models).

³⁷ *See, e.g.*, Shawn Carolan et al., 2025: The State of Consumer AI, Menlo Ventures (June 26, 2025), <https://menlovc.com/perspective/2025-the-state-of-consumer-ai/> (providing an overview of AI adoption around the world).

³⁸ Chris Lehane, *OpenAI Statement: Response for Information to Office of Science and Technology Policy*, OpenAI (Mar. 13, 2025) (forecasting how a patchwork of state laws could impact frontier AI development).

³⁹ *See* Rufus Pollock, *Cumulative Innovation, Sampling and the Hold-Up Problem*, Cambridge University (Aug. 10, 2007), https://rufuspollock.com/papers/holdup_and_sampling.pdf.

⁴⁰ *See, e.g.*, Rebecca Janßen et al., *GDPR and the Lost Generation of Innovative Apps*, NBER (May 2022), <https://www.nber.org/papers/w30028>

⁴¹ 1 Zephaniah Swift, *A Digest of the Laws of the State of Connecticut* 15 (New Haven, S. Converse 1822).

⁴² Jud Campbell, *Republicanism and Natural Rights at the Founding*, 32 CONST. COMM. 85, 88 (2017).

⁴³ *Id.*

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state’s courts.⁴⁴ These and related issues animated the founders to consolidate power in the federal government, clarify the role of the states, and constrain the extent to which one state could interfere with another.

Extraterritorial regulation of AI jeopardizes these and other core features of individual agency. The nature of AI development means if labs are compelled to comply with one state’s requirements for model training and release, those requirements will be imposed on the rest of the country—rendering us all less likely to realize the benefits of AI advances in as affordable and expeditious fashion as possible. Americans may be able to move as freely as they’d like, but they will still find themselves under the thumbs of state legislators over which they have no control. Such a world is the antithesis of liberty. Though we’ve seen this dynamic play out in other contexts such as emissions regulations,⁴⁵ AI is distinct. Denial or delay of the most sophisticated AI as a result of flawed state legislation is not a matter of inconvenience; it’s a question of access to the greatest driver of human flourishing we’ve yet to develop.

In closing, the question before you is not whether to protect Americans from the genuine risks posed by advanced AI, but how to do so while preserving the constitutional design that has long powered American prosperity. The founders centralized those matters that make or break the nation’s economic and political stability, reserved to the states the authority to govern local conduct, and rejected any arrangement that let one state rule another by virtue of the size of its economy or its voting power. Applied here, that design yields a clear rule of decision: the development of frontier AI models is a national undertaking; the uses of those systems within a state are a proper subject of deployment rules tailored to local concerns.

The path forward is to protect people where harms actually occur, at the point of use, while governing the direction and pace of AI advances uniformly at the federal level. States should be empowered—indeed, encouraged—to police unfair and deceptive practices, to adopt procurement standards, and to specify disclosure obligations in particular contexts. Congress should take up the regulatory tasks with nationwide consequences.

⁴⁴ See Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 VA. L. REV. 1201, 1221-26 (2009).

⁴⁵ Darian Woods & Adrian Ma, *The impact of California’s environmental regulations ripples across the U.S.*, NPR (Sept. 9, 2022), <https://www.npr.org/2022/09/09/1121952184/the-impact-of-californias-environmental-regulations-ripples-across-the-u-s>.

Mr. ISSA. Thank you. Mr. Thierer?

STATEMENT OF ADAM THIERER

Mr. THIERER. Chair Issa, Ranking Member Johnson, and the Members of the Subcommittee, thank you for the invitation to participate in this hearing. My name is Adam Thierer, and I am a Senior Fellow at the R Street Institute, where I cover emerging technology policy. My message here today boils down to one simple point.

Congress needs to act promptly to formulate a clear national policy framework for artificial intelligence to ensure our Nation is prepared to win the computational revolution. If we get this wrong, the consequences could be profound in terms of geopolitical competitiveness, national security, economic growth, small business innovation, and human flourishing.

Unfortunately, America's AI innovators are currently facing the prospect of many State governments importing European style technocratic regulatory policies across America. As you noted, Mr. Chair, more than one thousand AI related bills are already pending across the Nation. Some States are far more aggressive and influential on national market outcomes than others.

Almost 50 AI related laws are currently pending in California and New York is currently considering almost triple that number. Sacramento and Albany should not be dictating AI policy for the entire Nation. That approach is especially problematic for so-called little tech innovators who will struggle with confusing, costly compliance burdens.

America would not have become the global leader in digital technology it has if we had had 50 State computer bureaus, or even a single California Computer Commission allowed to license every single aspect of interstate computing, and treat the internet as a regulated utility. Thankfully, America avoided that fate because of wise bipartisan decisions that this Congress made in the 1990s.

Which let digital technology be born free, as opposed to being born into a regulatory cage. Laws like the Telecommunications Act of 1996, and the Internet Tax Freedom Act of 1998 included important provisions preempting and facilitating a national digital marketplace. The U.S. is now the global leader in almost every segment of computing and digital commerce, thanks to this wise policy approach.

Now, is the time for Congress to work the same magic for AI by creating a national framework to prevent a patchwork of State mandates from undermining AI innovation. Colorado Governor Jared Polis has called on Congress to preempt State AI laws such as the one his own State passed last year, and he has even endorsed the idea of a State AI regulatory moratorium like the one Congress considered this summer.

Other Governors have raised similar concerns, Connecticut Governor Ned Lamont has warned of quote, "Every State going out and doing their own thing, a patchwork quilt of regulations." Just last week, New York Governor Kathy Hochul noted how quote, "It is hard when one State has a set of rules, another State does, and another State. I don't think that is a model for inspiring innovation."

Congress could again try to implement a moratorium, or could formally preempt specific State and local regulatory enactments that impose an undue burden on interstate algorithmic commerce. If Congress chooses the latter option, Federal law makers should first preempt State regulations of AI frontier models, because the cost associated with such regulations would outweigh any local benefits.

Such rules would create spill overs and undermine development of the systems the Nation needs to compete globally. State officials also lack technical expertise and information about national security matters that could be relevant to AI safety considerations.

Second, for issues related to so called algorithmic bias or AI discrimination, Congress should preempt State efforts to regulate the development of AI systems and applications through cumbersome and confusing mechanisms such as AI audits or algorithmic impact assessments.

To the extent any such regulations are imposed, it should be done at the Federal level, and existing Federal civil rights laws and nondiscrimination standards should apply.

Finally, Congress should also require the National Institute of Standards and Technology, and the new Center for AI Standards and Innovation within NIST to oversee a new standing AI working group to coordinate and work to resolve other Federal and State AI policy matters.

NIST and CAISI could help devise more workable, consistent standard for AI policy matters not already preempted by Federal law. Even where the scoping of Federal preemption proves difficult, everyone should agree that AI development will be discouraged if America has dozens of different definitions of key concepts. Inconsistent standards will undermine market certainty, and hurt investment, innovation, and competition.

Ongoing, Congressional oversight of this process will be essential, and Congress can simultaneously consider what sort of new light touch rules might be necessary at the Federal level to address various AI safety concerns. Meanwhile, State governments still have a role to play, and will have plenty of room to act using a diverse policy toolkit of generally applicable laws to address any real world harms that might come about from AI applications.

In closing, the time has come for Congress to exercise its constitutional responsibility, to protect the interstate marketplace and the national interest in the development of robust AI capabilities that will ensure the United States remains at the forefront of this technological revolution.

Thank you for holding this hearing, and I look forward to any questions you may have.

[The prepared statement of Mr. Thierer follows:]



SUBMITTED STATEMENT OF
ADAM THIERER
RESIDENT SENIOR FELLOW, TECHNOLOGY AND INNOVATION
R STREET INSTITUTE

BEFORE THE
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY,
ARTIFICIAL INTELLIGENCE, AND THE INTERNET
COMMITTEE ON THE JUDICIARY
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SEPTEMBER 18, 2025

**ADAM THIERER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?”**

Chairman Issa, Ranking Member Johnson, and members of the subcommittee:

Thank you for the invitation to participate in this hearing. My name is Adam Thierer, and I am a senior fellow at the R Street Institute, where I cover emerging technology policy.

My message today boils down to one simple point: Congress needs to act promptly to formulate a clear national policy framework for artificial intelligence (AI) to ensure our nation is prepared to win the computational revolution.

If we get this wrong, the consequences could be profound in terms of geopolitical competitiveness, national security, economic growth, small business innovation, and human flourishing.¹

CONGRESS MUST STOP THE EUROPEANIZATION OF AMERICAN TECHNOLOGY POLICY

Unfortunately, America’s AI innovators are currently facing the prospect of many state governments importing European-style technocratic regulatory policies to America and, even worse, applying them in a way that could end up being even more costly and confusing than what the European Union has done.²

Euro-style tech regulation is heavy-handed with highly detailed rules that are both preemptive and precautionary in character.³ In other words, Europe’s tech policy model is “regulate-first” while America’s philosophy is “try-first.”⁴

At the heart of the European regulatory approach lies the implicit assumption that emerging tech entrepreneurs are essentially “guilty until proven innocent” of some theoretical future crime.⁵ When this mentality inspires technology policy, it translates into mountains of red tape that suffocate innovation and investment. The evidence shows this approach devastated the European digital economy.⁶

This regulatory vision is especially problematic for so-called “Little Tech” innovators because they struggle with the confusing and costly compliance requirements.⁷ As scholars note,

¹ Adam Thierer, “Winning the AI Future: Why America Should Double Down on the Freedom to Innovate,” R Street Institute *In the News*, Aug. 28, 2025. <https://www.rstreet.org/commentary/winning-the-ai-future-why-america-should-double-down-on-the-freedom-to-innovate>.

² Will Rinehart, “The Hidden Price Tag of California’s AI Oversight Bill,” *Exformation*, Sept. 9, 2025, <https://exformation.williamrinehart.com/p/the-hidden-price-tag-of-californias>. Will Rinehart, “How much might AI legislation cost in the U.S.?” *Exformation*, Mar. 19, 2025. <https://exformation.williamrinehart.com/p/how-much-might-ai-legislation-cost>.

³ Mohamed Moutii, “Europe’s Precautionary Principle Is Killing the Next Big Thing,” *The Daily Economy*, July 30, 2025. <https://thedailyeconomy.org/article/europes-precautionary-principle-is-killing-the-next-big-thing>.

⁴ Adam Thierer, “Trump AI Action Plan Charts Pro-Innovation Path Forward to Beat China,” *R Street Analysis*, July 23, 2025. <https://www.rstreet.org/commentary/trump-ai-action-plan-charts-pro-innovation-path-forward-to-beat-china>.

⁵ Adam Thierer, “A Global Clash of Visions: The Future of AI Policy,” *The Hill*, May 4, 2021. <https://thehill.com/opinion/technology/551562-a-global-clash-of-visions-the-future-of-ai-policy>.

⁶ Greg Ip, “Europe Regulates Its Way to Last Place,” *Wall Street Journal*, Jan. 31, 2024. <https://www.wsj.com/economy/europe-regulates-its-way-to-last-place-2a03c21d>. Tom Fairless & David Luhnow, “The Tech Industry Is Huge — and Europe’s Share of It Is Very Small,” *Wall Street Journal*, May 19, 2025. <https://www.wsj.com/tech/europe-big-tech-ai-1f3f862c>.

⁷ Colin McCune, “The Precautionary Empire: Why Policymakers Fail Builders,” *a16z*, Sept. 4, 2025. <https://a16z.com/the-precautionary-empire-why-policymakers-fail-builders>.

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“paperwork favors the powerful. The more paperwork that’s required, people with resources will get through it and people without them will not.”⁸

THE NATIONAL PRO-GROWTH AI FRAMEWORK AMERICA NEEDS

Congress must not allow European-style regulation to come to our shores.⁹ We instead need to double-down on freedom, growth, and technological opportunity to ensure America reaps the benefits of the next great technological revolution.¹⁰

The Constitution assigns Congress the lead role in protecting interstate commerce. The Founders wisely provided Congress with this power so that it could facilitate commerce between the states by eliminating barriers that states might otherwise be inclined to erect if left to their own devices.¹¹ It is essential that Congress exercise that responsibility promptly to ensure the robust development of the national AI marketplace.

Specifically, Congress needs to ensure that parochial AI mandates do not have extraterritorial reach that undermine interstate algorithmic commerce.¹² Courts have been clear that state laws may be unconstitutional if they impose costs on interstate commerce that substantially outweigh their in-state benefits.¹³

But Congress should not wait for courts to clarify which new state AI laws are unconstitutional on these grounds. Instead, it should assert its lead role in protecting interstate commerce to avoid a “regulatory cacophony” of conflicting policies that chill nationwide AI competition, choice, and investment.¹⁴ AI systems, like other digital technologies and markets, exhibit strong economies of scale and network effects such that they become more effective and valuable as more people use them. “Fragmented state regulation can impede these effects by creating artificial barriers to data sharing, user acquisition, and system interoperability.”¹⁵

⁸ The Ezra Klein Show, “Transcript: Ezra Klein Interviews Jennifer Pahlka,” *The New York Times*, June 6, 2023. <https://www.nytimes.com/2023/06/06/podcasts/transcript-ezra-klein-interviews-jennifer-pahlka.html>

⁹ Adam Thierer, “Eurocrats plot to hobble US AI leadership on our own shores,” *The Hill*, Sept. 28, 2024. <https://thehill.com/opinion/4904165-europe-eu-regulation-tech>.

¹⁰ Adam Thierer, “Defending Technological Dynamism & the Freedom to Innovate in the Age of AI,” University of Texas at Austin Civitas Institute, *Dynamism Outlook*, June 4, 2025. <https://www.civitasinstitute.org/research/defending-technological-dynamism-the-freedom-to-innovate-in-the-age-of-ai>.

¹¹ Adam Thierer, “The AI Regulatory Moratorium and the Proper Understanding of American Federalism,” *Medium*, June 28, 2025. <https://medium.com/@AdamThierer/the-ai-regulatory-moratorium-and-the-proper-understanding-of-american-federalism-b1b57b9c8b3e>.

¹² Kevin Frazier, “Extraterritorial Limits on States as Laboratories of AI Policy,” *The Regulatory Review*, Aug. 25, 2025. <https://www.theregreview.org/2025/08/25/frazier-extraterritorial-limits-on-states-as-laboratories-of-ai-policy>.

¹³ Matt Perault and Jai Ramaswamy, “The Commerce Clause in the Age of AI: Guardrails and Opportunities for State Legislatures,” *a16z*, Sept. 2, 2025. <https://a16z.com/the-commerce-clause-in-the-age-of-ai-guardrails-and-opportunities-for-state-legislatures>.

¹⁴ Kristian Stout, “Federal Preemption and AI Regulation: A Law and Economics Case for Strategic Forbearance,” Washington Legal Foundation, *WLF Legal Pulse*, May 30, 2025. <https://www.wlf.org/2025/05/30/wlf-legal-pulse/federal-preemption-and-ai-regulation-a-law-and-economics-case-for-strategic-forbearance>.

¹⁵ *Ibid.*

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A national framework is also crucial to ensuring that America has the computational capabilities needed to square off against China and other global adversaries in what some call an “AI Cold War.”¹⁶ Allowing a patchwork of confusing and costly parochial AI policies to develop in the U.S. would be tantamount to shooting ourselves in the foot as this race is just getting underway.¹⁷

With more than 1,000 AI-related bills already pending across the nation, this danger is real.¹⁸ Some states are far more aggressive and influential on national markets than others, however. Almost 50 AI-related laws are pending in California currently and New York is considering over 130 AI measures. Sacramento and Albany should not be dictating AI policy for the entire nation.¹⁹ The “laboratories of the states” ideal does not work when just one or two large states are effectively imposing their heavy-handed regulatory standard on the entire nation and firms nationally will be forced to comply with the most aggressive regulatory baseline.²⁰

This is why during a speech in July announcing the administration’s new “AI Action Plan,” President Trump warned of “lowest common denominator” AI regulation by one state and called for “one commonsense federal standard that supersedes all states.”²¹ America would not have become the global leader in digital technology had the nation let 50 State Computer Bureaus or even just one hypothetical California Computer Commission license every aspect of interstate computing and treat the entire internet as a regulated public utility.²² Thankfully, America avoided that fate because of wise bipartisan decisions that Congress made in the 1990s, which let digital technology be “born free” instead of into a regulatory cage.²³ The U.S.

¹⁶ Arthur Herman, “China and Artificial Intelligence: The Cold War We’re Not Fighting,” *Commentary*, July/Aug. 2024. <https://www.commentary.org/articles/arthur-herman/china-artificial-intelligence-cold-war>.

¹⁷ Seung Yeon Lee, “The Growing Risks of Fragmented State AI Laws,” Center for Data Innovation, Aug. 28, 2025. <https://datainnovation.org/2025/08/the-growing-risks-of-fragmented-state-ai-laws>.

¹⁸ Kevin Frazier and Adam Thierer, “1,000 AI Bills: Time for Congress to Get Serious About Preemption,” *Lawfare*, May 9, 2025. <https://www.lawfaremedia.org/article/1-000-ai-bills-time-for-congress-to-get-serious-about-preemption>.

¹⁹ Evangelos Razis and James C. Cooper, “The Federalist’s Dilemma: State AI Regulation & Pathways Forward,” George Mason University Law & Economics Research Paper Series, 25-07, (June 2025): p. 42. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5283472. [Noting that “the ‘California effect’ appears alive and well with respect to AI regulation.”]

²⁰ Dan L. Burk, “How State Regulation of the Internet Violates the Commerce Clause,” *Cato Journal*, 17:2 (1997): 158-9. “However, from the perspective of competitive federalism, the situation is far more grave than the traditional balancing test might suggest. If the ‘lowest common denominator’ prevails among on-line services, then the ‘laboratory of the states’ is disabled. No state wishing to experiment with a lesser level of regulation will be able to do so. Similarly it goes almost without saying that the ‘laboratory’ is disabled in the situation where on-line services are driven out of business by conflicting requirements. [. . .] This constitutes an enormous problem for horizontal federalism. A particular state cannot be permitted to dictate to the entire country the regulatory standards for any activity.”

²¹ C-Span, “User Clip: President Trump Calls for End of AI State Patchwork,” July 23, 2025. <https://www.c-span.org/clip/white-house-event/user-clip-president-trump-calls-for-end-of-ai-state-patchwork/5168519>.

²² Kevin Frazier and Adam Thierer, “No Single State Should Dictate National AI Policy,” *Governing*, Aug. 28, 2028. <https://www.governing.com/artificial-intelligence/no-single-state-should-dictate-national-ai-policy>.

²³ Adam Thierer, “Getting AI Innovation Culture Right,” R Street Institute *Policy Study* No. 281 (March 2023). <https://www.rstreet.org/research/getting-ai-innovation-culture-right>.

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is now the undisputed global leader in almost every segment of computing and digital commerce thanks to this policy approach.²⁴

Now is the time for Congress to work the same magic for AI markets.

CONGRESS HAS TAKEN STEPS TO OVERSEE INTERSTATE TECH MARKETS BEFORE & SHOULD DO SO AGAIN FOR AI

Congress has played an active role in shaping national policy for previous information and communications technologies through important laws like the Copyright Act of 1976, the Telecommunications Act of 1996,²⁵ and the Internet Tax Freedom Act of 1998.²⁶ The Clinton administration also promoted a national framework for the internet and electronic commerce and speech in the late 1990s.²⁷ These policies brought greater uniformity and certainty to markets and encouraged the robust development and diffusion of many important new information age innovations.²⁸ Congress has also preempted state and local policies that interfere with the flow of commerce or create policy conflicts within important national sectors such as aviation,²⁹ railroads,³⁰ and food and drug safety.³¹

Today, a confusing patchwork of state and local legislative proposals threatens to undermine similar objectives on the AI front. Colorado Governor Jared Polis (D) has called upon Congress to preempt state AI laws such as the one his own state passed last year, which he correctly argued would “create a complex compliance regime for all developers and deployers

²⁴ Adam Thierer, “Statement for the Record on ‘Artificial Intelligence: Risks and Opportunities,’” U.S. Senate Homeland Security and Governmental Affairs Committee, March 8, 2023. <https://www.rstreet.org/outreach/testimony-on-artificial-intelligence-risks-and-opportunities>.

²⁵ In the Telecommunications Act of 1996, Congress specified that, “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253. The law also included other specific preemptions as well as a provision instructing federal and state regulators to forbear from regulating in certain instances to enhance competition.

²⁶ Bryan L. Adkins, Alexander H. Pepper, and Jay B. Sykes, Congressional Research Service, “Federal Preemption: A Legal Primer,” May 18, 2023. <https://www.congress.gov/crs-product/R45825>.

²⁷ White House, “The Framework for Global Electronic Commerce,” 1997. <https://clintonwhitehouse4.archives.gov/WH/New/Commerce>.

²⁸ Adam Thierer, “The Policy Origins of the Digital Revolution & the Continuing Case for the Freedom to Innovate,” R Street *Real Solutions*, Aug. 15, 2024. <https://www.rstreet.org/commentary/the-policy-origins-of-the-digital-revolution-the-continuing-case-for-the-freedom-to-innovate/>

²⁹ In the Airline Deregulation Act of 1978, Congress specified that “A State... may not enact or enforce a law... related to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1).

³⁰ In the Federal Railroad Safety Act, Congress specified that, “Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.” 49 U.S.C. § 20106(a)

³¹ In the Federal Food, Drug, and Cosmetic Act, Congress specified that, “no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement which is different from, or in addition to, any requirement applicable under this chapter.” 21 U.S.C. § 360k(a).

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of AI.”³² Colorado lawmakers recently voted to delay that law because of its costs and confusing provisions.³³

But that Colorado AI law is still set to go into effect next year and will raise the problems Polis rightly warned of when he noted how, “[g]overnment regulation that is applied at the state level in a patchwork across the country can have the effect to tamper innovation and deter competition in an open market.”³⁴ Gov. Polis even endorsed the idea of a state AI regulatory moratorium, like the one Congress considered this summer.³⁵

Other Democratic governors have raised similar concerns. In May, Connecticut Governor Ned Lamont (D) said, “I just worry about every state going out and doing their own thing, a patchwork quilt of regulations,” and the burdens on AI development that might create.³⁶ Meanwhile, just last week, New York Governor Kathy Hochul (D) noted how, “it’s hard when one state has a set of rules, another state does, another state. I don’t think that’s a model for inspiring innovation.”³⁷

With the recent failure of the AI regulatory moratorium, however, it is open season for still more parochial AI regulations that would give rise to the sort of patchwork problem that Governors Polis, Lamont, and Hochul worry about.³⁸ Congress could try again to implement such a moratorium to address this problem, or it could move to formally preempt specific state and local regulatory enactments that would impose an undue burden on the free flow of interstate algorithmic commerce or undermine other important national interests in AI developments.³⁹

SCOPING AI PREEMPTION

If Congress chooses the latter option, federal lawmakers should take the following actions in legislation to formulate a national AI policy framework and make clear its intent to affirmatively preempt a patchwork of parochial AI regulations:

³² Governor Jared Polis, Signing Statement for Senate Bill 24-205, May 17, 2024. <https://drive.google.com/file/d/1i2cA3IG93VViNbzXu9LPgbTrZGqhyRgM/view>.

³³ Mariam Baksh, “Colorado legislature delays enforcement of AI law as employer coalition pursues developer liability,” *Inside AI Policy*, Aug. 26, 2025. <https://insideaipolicy.com/ai-daily-news/colorado-legislature-delays-enforcement-ai-law-deployer-coalition-pursues-developer>. Kevin Frazier & Adam Thierer, “Colorado’s AI Law Is a Cautionary Tale for the Nation,” *Reason*, Aug. 15, 2025. <https://reason.com/2025/08/15/colorados-ai-law-is-a-cautionary-tale-for-the-nation>.

³⁴ Governor Jared Polis, Signing Statement for Senate Bill 24-205, May 17, 2024. <https://drive.google.com/file/d/1i2cA3IG93VViNbzXu9LPgbTrZGqhyRgM/view>.

³⁵ Zach Williams, “Colorado Gov. Polis Supports Federal Moratorium on State AI Laws,” *Bloomberg Government*, May 13, 2025. <https://news.bgov.com/bloomberg-government-news/colorado-gov-polis-supports-federal-moratorium-on-state-ai-laws>.

³⁶ Mark Pazniokas, “Last minute deal wins bipartisan passage of AI bill in CT Senate,” *CT Mirror*, May 15, 2025. <https://ctmirror.org/2025/05/15/ct-ai-artificial-intelligence-bill-passes-senate>.

³⁷ Governor Kathy Hochul, “Audio & Rush Transcript: Governor Hochul is a Guest on Bloomberg TV,” Sep. 10, 2025. <https://www.governor.ny.gov/news/audio-rush-transcript-governor-hochul-guest-bloomberg-tv-0>.

³⁸ Adam Thierer, “The AI Regulatory Moratorium Fails: What Comes Next?” *Medium*, July 1, 2025.

<https://medium.com/@AdamThierer/the-ai-regulatory-moratorium-fails-what-comes-next-9bd80e14f36b>.

³⁹ Matt Perault and Jai Ramaswamy, “The Commerce Clause in the Age of AI: Guardrails and Opportunities for State Legislatures,” *a16z*, Sept. 2, 2025. <https://a16z.com/the-commerce-clause-in-the-age-of-ai-guardrails-and-opportunities-for-state-legislatures>.

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- First, Congress should expressly preempt state regulations related to AI frontier labs and models because the costs associated with such parochial regulations would outweigh any local benefits. Such state regulation would have extraterritorial spillover effects and undermine the development and deployment of the powerful algorithmic systems and capabilities the nation needs to compete globally. State officials also lack the technical expertise and classified intelligence about national security matters to which federal officials have access and that could be relevant to AI safety considerations.⁴⁰ The National Institute of Standards and Technology (NIST) and the new Center for AI Standards and Innovation (CAISI) within NIST should oversee frontier model safety and security issues, and Congress can give them additional authority and funding to do so.
- Second, for issues related to “algorithmic bias” or discrimination, Congress should preempt state efforts to preemptively regulate the *development* of AI systems and applications through cumbersome and confusing mechanisms such as AI audits or algorithmic impact assessments.⁴¹ To the extent any such *ex ante* discrimination regulations are imposed, it should be done at the federal level and existing federal civil rights laws and non-discrimination standards should apply. Importantly, however, states will continue to be able to police harmful *uses* of AI within their borders in an *ex post* fashion through various generally applicable laws. This distinction between development versus use is a useful way for Congress to address federal versus state roles for AI policy more generally, although Congress might choose to carve out some areas where additional state action would be permissible on the development side.
- Finally, Congress should also require NIST and CAISI to oversee a new standing AI working group to coordinate and work to resolve other federal-state AI policy matters. This can be done on an ongoing basis and supplemented by multistakeholder processes, workshops, and other gatherings and collaborative efforts. NIST and CAISI could help devise more workable, consistent standards for AI policy matters not already preempted by federal law. For example, this would be a good way to coordinate consistent standards and common definitions for any new child safety-related policies being considered at the state level, which have been multiplying rapidly recently. To the extent Congress allows states to take the lead on some of these or other issues, those governments could be encouraged to first consider less-restrictive alternatives to regulation, such as AI training and educational efforts.

Even where the scoping of formal preemption proves difficult, everyone should agree that AI development will be discouraged if America has dozens of different definitions of the key terms like what constitutes “high risk” AI, or a “substantial factor” in making a “consequential decision.”⁴² The proliferation of new regulatory categories in these bills like deployers, developers, distributors, and integrators will also create confusion. Even the term “artificial

⁴⁰ Dean W. Ball and Alan Z. Rozenshtein, “Congress Should Preempt State AI Safety Legislation,” *Lawfare*, June 17, 2024. <https://www.lawfaremedia.org/article/congress-should-preempt-state-ai-safety-legislation>.

⁴¹ Adam Thierer, “Comments of the R Street Institute to the National Telecommunications and Information Administration (NTIA) on ‘AI Accountability Policy,’” June 9, 2023. <https://www.rstreet.org/outreach/comments-of-the-r-street-institute-to-the-national-telecommunications-and-information-administration-ntia-on-ai-accountability-policy>.

⁴² Dean Ball, Greg Lukianoff, and Adam Thierer, “How state AI regulations threaten innovation, free speech, and knowledge creation,” *The Eternally Radical Idea*, Apr. 3, 2025. <https://eternallyradicalidea.com/p/how-state-ai-regulations-threaten>.

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intelligence” itself is sometimes defined differently in many proposals.⁴³ America cannot let AI policy unfold like this and, once again, lawmakers should consider how such a confusing governance regime would have undermined the development of the internet and electronic commerce had it been imposed through a patchwork of differing state standards a generation ago.

This is where the “S” in NIST and CAISI matters and can be helpful. At a minimum, innovators and markets need clear and consistent standards to minimize confusion and costly compliance burdens where the field is left open for some future state and local regulation. Inconsistent standards will undermine market certainty and hurt investment, innovation, and competition. The NIST’s *AI Risk Management Framework* has provided a baseline for previous standards and best practices in this arena, and it offers a flexible, multistakeholder-driven process that can help solve jurisdictional problems and conflicts in an agile fashion.⁴⁴ The Federal Trade Commission and Department of Justice might also be able to play a role in investigating future state AI regulatory enactments that might have anti-competitive effects and which could give rise to a potential dormant commerce clause case.⁴⁵

Ongoing congressional oversight of this process will be essential and Congress can determine when it needs to revisit the formal scoping of AI preemption should unforeseeable issues and laws give rise to new interstate burdens or conflict with national priorities.

Both Congress and the States Will Have Continuing Roles & Responsibilities

Regardless of whether Congress chooses to utilize a moratorium or formal preemption to create a more coherent national AI policy framework for America, federal lawmakers can simultaneously consider what sort of new “light-touch” rules might be necessary at the federal level to address various AI safety concerns. This could include new transparency requirements or tailored liability rules.⁴⁶

Congress should simultaneously exercise greater oversight of how various federal agencies are already regulating algorithmic systems both to ensure development continues but that safety objectives are addressed. In some cases, existing policies may need to be reformed to achieve the first objective, while in other contexts there may be a need to supplement existing regulatory processes. In both cases, existing or new policies should be subjected to strict cost-benefit analysis to ensure they minimize burdens on innovation.⁴⁷ Greater technical training or resources may be needed at some federal agencies to carry out that mission. Meanwhile, state

⁴³ Sam Crombie and Jack Nicastro, “Defining “Artificial Intelligence” in State Legislation: An Analysis of the Current Landscape,” *Now + Next*, July 17, 2024. <https://nowandnext.substack.com/p/defining-artificial-intelligence>.

⁴⁴ National Institute of Standards and Technology, *Artificial Intelligence Risk Management Framework (AI RMF 1.0)*, NIST AI 100-1 (Jan. 2023). <https://www.nist.gov/news-events/news/2023/01/nist-risk-management-framework-aims-improve-trustworthiness-artificial>.

⁴⁵ Neil Chilson and Josh T. Smith, “Comment on Request for Information on the Development of an Artificial Intelligence (AI) Action Plan,” March 14, 2025. <https://files.nitrd.gov/90-fr-9088/Abundance-Institute-AI-RFI-2025.pdf>.

⁴⁶ Adam Thierer, “AI Policy in Congress Mid-2025: Where Are We Headed Next?” *R Street Real Solutions*, June 25, 2025. <https://www.rstreet.org/commentary/ai-policy-in-congress-mid-2025-where-are-we-headed-next>.

⁴⁷ Adam Thierer, “Comments of the R Street Institute in Request for Information on the Development of an Artificial Intelligence (AI) Action Plan,” *R Street Institute Regulatory Comments*, Mar. 15, 2025. <https://www.rstreet.org/outreach/comments-of-the-r-street-institute-in-request-for-information-on-the-development-of-an-artificial-intelligence-ai-action-plan>.

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governments still have a role to play and will have plenty of room to act.⁴⁸ To reiterate, every state government already possesses a diverse policy toolkit of generally applicable laws to address any real-world harms that might come from AI applications.⁴⁹ As the Massachusetts Office of the Attorney General stated in 2024, “existing state consumer protection, anti-discrimination, and data security laws apply to emerging technology, including AI systems, just as they would in any other context.”⁵⁰

States can also continue to focus their efforts on other areas of clear parochial concern, where local knowledge and experience is more relevant. This includes the use of AI in law enforcement, educational systems, and election processes.⁵¹ States can also focus on AI development opportunities and how to use experimental “sandboxes” and “learning labs” to encourage creative governance approaches in sectors that are already regulated.⁵² Finally, states might also consider “right to compute” legislation like a measure that already passed in Montana, which would protect the public’s ability to access and use computational resources.⁵³

Conclusion

In closing, the time has come for Congress to exercise its constitutional responsibility to protect the interstate marketplace and the national interest in the development of robust AI capabilities. This is a once-in-a-generation moment when we need to make sure we get policy right to spur the computational revolution and ensure that the United States remains at the forefront of it.

Thank you for holding this hearing and I look forward to any questions you may have.

⁴⁸ Will Rinehart, “The Best AI Law May Be One That Already Exists,” *AEI Ideas*, Feb. 03, 2025. <https://www.aei.org/articles/the-best-ai-law-may-be-one-that-already-exists>.

⁴⁹ J. Scott Babwah Brennen, Kevin Frazier, and Anna Vinals Musquera, “Are Existing Consumer Protections Enough for AI?” *Lawfare*, Sept. 3, 2025. <https://www.lawfaremedia.org/article/are-existing-consumer-protections-enough-for-ai>.

⁵⁰ Massachusetts Office of the Attorney General, “AG Campbell Issues Advisory Providing Guidance On How State Consumer Protection And Other Laws Apply To Artificial Intelligence,” Apr. 16, 2024. <https://www.mass.gov/news/ag-campbell-issues-advisory-providing-guidance-on-how-state-consumer-protection-and-other-laws-apply-to-artificial-intelligence>.

⁵¹ Matt Perault, “Setting the Agenda for Global AI Leadership: Assessing the Roles of Congress and the States,” *a16z*, Feb. 4, 2025. <https://a16z.com/setting-the-agenda-for-global-ai-leadership-assessing-the-roles-of-congress-and-the-states>.

⁵² Beth Do and Stacey Gray, “Balancing Innovation and Oversight: Regulatory Sandboxes as a Tool for AI Governance,” *Future of Privacy Forum Blog*, Aug. 4, 2025. <https://fpf.org/blog/balancing-innovation-and-oversight-regulatory-sandboxes-as-a-tool-for-ai-governance>. Neil Chilson and Adam Thierer, “A Sensible Approach to State AI Policy,” *Federalist Society Regulatory Transparency Project Blog*, Oct. 9, 2024. <https://rtp.fedsoc.org/blog/a-sensible-approach-to-state-ai-policy>.

⁵³ Bill Kramer, “Montana is the First State to Guarantee Computational Freedom,” *Multistate.AI*, Apr. 25, 2025. <https://www.multistate.ai/updates/vol-59>. Taylor Barkley, “Protecting our right to compute — A new frontier for freedom,” *The Mercury*, Mar. 18, 2025. https://themercury.com/commentary-protecting-our-right-to-compute-a-new-frontier-for-freedom/article_caa5093e-040c-11f0-b3d0-63929ef4e745.html.

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Appendix: Additional reading on AI & preemption

- Frazier, Kevin & Adam Thierer, “[No Single State Should Dictate National AI Policy.](#)” *Governing*, Aug. 28, 2028.
- Frazier, Kevin & Adam Thierer, “[1,000 AI Bills: Time for Congress to Get Serious About Preemption.](#)” *Lawfare*, May 9, 2025.
- Thierer, Adam, “[Don’t Let Blue States Control Our AI Future.](#)” *City Journal*, July 25, 2025.
- Thierer, Adam, “[The AI Regulatory Moratorium and the Proper Understanding of American Federalism.](#)” *Medium*, June 28, 2025.
- Thierer, Adam, “[The Blackburn-Cruz AI Regulatory Pause Compromise Offers a Path Forward.](#)” *R Street Analysis*, June 30, 2025.
- Thierer, Adam, “[Comments of R Street Institute on a Learning Period Moratorium for AI Regulation in Response to Request for Information \(RFI\) Exploring a Data Privacy and Security Framework.](#)” *R Street Institute Regulatory Comments*, Apr. 3, 2025.
- Thierer, Adam, “[Getting AI Policy Right Through a Learning Period Moratorium.](#)” *R Street Real Solutions*, May 29, 2024.

Mr. ISSA. Thank you. Particularly thank you for mentioning our former colleague, Mr. Polis.
Professor Richards?

STATEMENT OF NEIL RICHARDS

Mr. RICHARDS. Chair Issa, Ranking Member Johnson, and the distinguished Members of the Committee, thank you for the opportunity—

Mr. ISSA. Could you either put it closer, or turn it on, or both?

Mr. RICHARDS. Sorry, Mr. Chair.

Mr. ISSA. Fantastic, not a problem at all. We are talking tech here, so we will go high tech and turn them on.

Mr. RICHARDS. We have the automatic ones in St. Louis, so.

Mr. ISSA. Of course you do.

Mr. RICHARDS. Chair Issa, Ranking Member Johnson, and the distinguished Members of the Committee, thank you for the opportunity to appear before you this morning. My name is Neil Richards, and I am the Koch Distinguished Professor in Law at Washington University in St. Louis, where I direct the Cordell Institute.

This hearing is about whether Congress should consider preempting State laws that touch on artificial intelligence technologies, and it is my firm and considered opinion that denying States the ability to regulate novel technology issues going forward would be a grievous and avoidable error that would not be in the best interests of American industry, or the American people.

I would like to offer three high-level points this morning.

First, Federal preemption of State laws touching AI would be reckless, and expose consumers to great risk of harm. Artificial intelligence, as we have already heard this morning, is not just one technology, it is a cluster of related and changing technologies that would be nearly impossible for a general preemption law to define with care.

In addition, AI technologies will likely affect every aspect of human life, just as industrialization did start in the 19th century, and as the internet did starting in the 20th. Like those before them, AI technologies will produce many good things, but also many bad ones, like kids becoming emotionally dependent on chat bots, generative AI hallucinations affecting our courts by making up false citations.

New ways to hack systems, and other harm critically that we cannot foresee today. At a time when we cannot be sure what harms will result—I am sorry, at a time when we can be sure that harms will result, but we cannot be sure how, depriving States of the ability to adapt to, and try to mitigate these harms would be to disregard a clear and obvious risk, and that is the legal definition of recklessness.

Second, States have been pioneers of sensible tech regulation over the past three decades that has built essential digital trust for tech companies. If States had been banned from regulating the internet in 2000, we would have no broad requirement for website privacy policies, no data breach notification laws, no laws banning employers from demanding the social media passwords of their employees.

No laws regulating facial recognition technology, no substantive data security statutes, no comprehensive privacy statutes, no laws preventing kids from accessing hardcore digital pornography, or other dangerous content. No laws limiting the ability of tech companies to peddle addictive business models to children, and much less enforcement of digital fraud, abuse, crime, hacking, and data breaches.

Guided by these State legal guardrails in place to secure essential consumer trust, the past 30 years have seen the explosive success of Silicon Valley. Without State privacy and security laws for example, we would still be afraid to give our credit card numbers to Amazon. The State digital laws have tamed the worst excesses of the internet and helped to make it a trustworthy place for innovation, connection, free expression, and business.

Broad AI preemption would have the opposite effect for artificial intelligence.

Third, I would like to address a claim frequently made by industry that State regulations somehow stifle innovation. As history makes clear, these arguments are, in my opinion, mistaken and misguided. Law creates and enables innovation by stabilizing the marketplace.

It sets the ground rules for fair and robust competition, making the market safe and sustainable for consumers. Contrary to its libertarian origin myth, Silicon Valley was shaped by laws from the beginning, from government defense contracts to intellectual property laws, and from securities laws to Federal and State prohibitions on unfair and deceptive trade practices.

Law has always played a role in preventing scammers and thieves, and in shaping corporate business practices so that they benefit society as a whole. It is the presence of State regulation, including State regulation that has led to America being a leader in digital technologies and services. While we can certainly, and I am sure we will this morning, debate how much regulation, and what kind is appropriate, having no new regulations at a time of rapid change would be a disaster.

If innovation is as magical as industry says it is, it can still do good things while respecting the policy choices of the people's elected representatives. In this way the necessity required by reasonable regulation has been and should continue to be the mother of invention. In conclusion, stripping our States of any power to regulate AI, potentially anything done with a computer would be a reckless and grievous error. The State regulations have always played an essential role in building consumer trust and shaping the digital revolution for the better.

Thank you, and I welcome your questions.

[The prepared statement of Mr. Richards follows:]

WRITTEN TESTIMONY OF

PROFESSOR NEIL RICHARDS

KOCH DISTINGUISHED PROFESSOR IN LAW AT WASHINGTON UNIVERSITY SCHOOL OF
LAW AND CO-DIRECTOR OF THE CORDELL INSTITUTE

on behalf of himself and based on research with scholars from the Cordell Institute
for Policy in Medicine & Law, Washington University in St. Louis:

WOODROW HARTZOG

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WASHINGTON UNIVERSITY IN ST. LOUIS

September 18, 2025

HEARING ON

“AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?”

BEFORE THE

U.S. HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE,
AND THE INTERNET

Chairman Issa, Ranking Member Johnson, and Distinguished Members of the Committee. Thank you for the opportunity to appear before you.

My name is Neil Richards and I am the Koch Distinguished Professor in Law at Washington University in St. Louis, where I direct the Joseph & Yvonne Cordell Institute for Policy in Medicine & Law, a policy center whose focus includes the precise issues we are discussing this morning. My testimony today draws on more than thirty years of experience as a scholar, teacher, and practicing lawyer. My work covers the relationships between law, technology, and our most precious rights, including free expression, the right to privacy, and consumer protection. My opinions today, however, are my own, and I am appearing in my personal capacity.

The stated purpose of this hearing is to address whether Congress should consider pre-empting state laws that touch on artificial intelligence technologies. It is my firm and considered opinion that denying states the ability to regulate novel technology issues going forward would be a huge mistake. Such pre-emption would be contrary to our best traditions of federalism; more importantly, it would also be a grievous and avoidable error that would not be in the best interests of American industry or the people of this country. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on regulating anything people do using a computer, a smartphone, or the so-called internet of things. In our networked, digital society that is increasingly mediated by computers, that would be potentially everything we do.

Artificial intelligence (“AI”) has the potential to be a transformative set of technologies, similar to the technologies that fueled the industrial revolution of the late 1800s and early 1900s, or the changes brought about by the rise of the internet in the late twentieth century. However, as with all such massively disruptive technological changes, society must successfully navigate the grave risks involved to reap the potential benefits. This process includes determining what regulations should exist around these emerging technologies. In our federal system, this means deciding whether and to what extent federal laws should preempt state laws. In the case of AI, in particular at this early moment in its development, my answer is emphatically that state laws should not be preempted, and that they should be allowed to continue to experiment on ways to guide AI in a direction that benefits us all. Contrary to the general myth that regulations “stifle innovation,” to deprive states of their ability to regulate AI would be harmful both to innovation and to the public. In fact, law creates and enables innovation by stabilizing the marketplace and ensuring the consumer trust that is the essential precondition before they become willing to adopt emerging technologies.

My argument against federal preemption of AI regulation can be summarized in three simple propositions. First, AI is still in its early stages, and its potential harms and

benefits are still uncertain. Preemption now of state laws touching AI would be reckless and leave consumers exposed to great harm. Second, state regulation, as opposed to federal regulation, has been the primary driver of sensible tech regulation over the past three decades of our Internet age. States have proven capable of adapting and reacting to these novel issues, and federal preemption now would prevent the states from being to respond and experiment to solve both current problem we know about, and future problems that have not yet become understood. Third, industry claims that state regulation stifles innovation are historically and empirically unsound. The states have proven effective at navigating technology regulation. They have done so in a manner that has helped foster the explosive growth of the American technology industry while also building out protections for, and thereby driving the confidence of, American consumers in these new technologies. Additionally, caution and measured action now does not preclude Congress's taking up broad AI or technology bills in the future, when the dangers around these new technologies and the merits and costs of the various state approaches have become clearer. Broad preemption today would deprive our country of the kinds of state laws that will be essential to build the necessary trust that AI systems—like the internet before them—need to become widely adopted and fulfill their potential. Thus, preemption would be a danger to the kinds of broad adoption of useful AI technologies that I understand this Congress seeks to encourage.

I. The Recklessness of Preempting State AI Regulation

AI is not a single, fixed technology but a cluster of related and changing technologies. Even now we hear of new developments such as agentic AI that industry claims will be transformative for its users. Yet these claims are poorly-defined in terms of what these technologies will actually do, not to mention the potentials risks and impacts they will have on Americans. Any attempt to define AI for a broad singular federal law at this point would be impractical at best, and at worst would leave Americans open to exploitation and the harms of innovative technologies that were not considered. This is especially true if Congress preempts states from attempting to address these issues themselves where these gaps emerge. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on anything people do using a computer—which is to say most things in our modern, networked society.

AI is new, but we have been in this situation before. Industrialization in the nineteenth century created economic growth, but also massive workplace health and safety issues and severe environmental consequences. More recently, the internet helped revolutionize commerce and social interaction, but it also created new types of crime, social isolation, and political polarization and radicalization. With this history in mind, AI will also likely create revolutionary new benefits, but it will also usher in new

dangers. These risks are already manifesting in the form of AI psychosis,¹ AI chatbots potentially encouraging young people to commit suicide,² legal proceedings being tainted with fake “AI-hallucinated” cases,³ the theft of intellectual property,⁴ and the potential for the development of dangerous new methods for computer hacking or even the creation of biological weapons.⁵ These examples are only what we have seen thus far in the evolution of AI technologies. While industry promises much more in terms of AI’s potential benefits in the future, history teaches us we can expect similar growth in its potential harms. Critically, while we can foresee some of these potential harms (such as making sure the medical uses of AI align with state negligence and medical licensing laws), the current state of the technology means that many of its challenges and harms are currently unforeseeable. This uncertainty should give us all great pause.

While there will be new and unintended harms produced by AI, the past offers some sage wisdom on how we should think about our federal system’s ability to react to the problems of technological change. As Justice Brandeis famously explained in the case of *New State Ice v. Liebman* (1932), states offer us the opportunity to learn in their roles as “laboratories of democracy”:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.⁶

More recently in its *TikTok* decision, the current Supreme Court reminded us of Justice Frankfurter’s wise words that when we are applying legal principles to revolutionary new

¹ Wei, Marlynn, The Emerging Problem of “AI Psychosis,” *Psychology Today* (last visited September 16, 2025), <https://www.psychologytoday.com/us/blog/urban-survival/202507/the-emerging-problem-of-ai-psychosis>.

² Hill, Kashmir, A Teen Was Suicidal. ChatGPT Was the Friend He Confided In, *The New York Times*, August 26, 2025, <https://www.nytimes.com/2025/08/26/technology/chatgpt-openai-suicide.html>

³ Damien Charlotin, AI Hallucination Cases (last visited September 16, 2025), <https://www.damiencharlotin.com/hallucinations/>.

⁴ Metz, Cade, Anthropic Agrees to Pay \$1.5 Billion to Settle Lawsuit With Book Authors, *New York Times*, September 5, 2025, <https://www.nytimes.com/2025/09/05/technology/anthropic-settlement-copyright-ai.html>.

⁵ Benjamin, Victor, The dark side of AI democratization: You no longer need to be a hacker to hack, *The Hill*, September 21, 2024, <https://thehill.com/opinion/4891452-ai-hacking-tools-threats/>; Drexel, Bill and Withers, Caleb, AI and the Evolution of Biological National Security Risks, *Center for New American Security*, August 13, 2024, <https://www.cnas.org/publications/reports/ai-and-the-evolution-of-biological-national-security-risks>.

⁶ See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

technologies, we should take care not to “embarrass the future.”⁷ We have a federal system precisely because it allows government to respond flexibly and innovatively to evolving threats. Especially when the full scope and quality of these threats is not yet known, we should not foreclose one of the best tools our nation’s founders gave us by barring state regulation of AI’s consequences.

II. States as Pioneers of Sensible Technology Regulation

Over the last three decades, state legislatures have consistently led the way in regulating emerging technologies, particularly when Congress has for varied reasons been unwilling to act. If states had been banned from regulating the internet, there would be no mandatory privacy policies in e-commerce,⁸ no data breach notification requirements,⁹ no laws preventing employers from demanding employees’ social media passwords,¹⁰ no restrictions on facial recognition without consent,¹¹ and no comprehensive privacy statutes at the state level.¹² California’s Consumer Privacy Act, for example, has become a model for digital privacy protections nationwide.¹³ But critically, many other states—big and small, Red and Blue—have taken the mantle of tech regulation to protect their citizens from tech harms. Guided by state regulations putting guardrails in place to secure essential consumer trust, these past thirty years have also seen the explosive success of Silicon Valley. Without state privacy and security laws, for example, we would still be afraid to give out our credit card details online. In this way, state digital laws have tamed some of the worst excesses of the internet and helped make it a safer place for innovation, connection, free expression, and business. Today, the internet is seen as both a normal and desirable tool to use thanks to state law, and state law has enabled the more careful development of digital business models—which have produced the wealthiest companies in human history. A moratorium would reverse all of that instantly for AI and threaten to nip in the bud the trust that is essential for AI to be adopted in ways that make people’s lives better.

With the preemption of state AI regulation, Congress would effectively be declaring a moratorium on the source of sensible technological governance that has guided the digital revolution for three decades.

⁷ *TikTok v. Garland*, 604 U.S. ____ (2025) (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944)).

⁸ Cal. Bus. & Prof. Code § 22575.

⁹ Cal. Civ. Code § 1798.82.

¹⁰ 820 Ill. Comp. Stat. 55/10.

¹¹ 740 Ill. Comp. Stat. 14/15.

¹² See, e.g. C.R.S. Title 6, Art. 1, Pt. 13 (Colorado Privacy Act), Cal. Civ. Code §§ 1798.100–199 (California Consumer Privacy Act), et al.

¹³ Cal. Civ. Code §§ 1798.100–199 (California Consumer Privacy Act).

III. The Myth That Regulation “Stifles Innovation”

A favorite argument of some in the tech industry is that state regulations “stifle innovation.” These claims are historically nonsensical and practically misguided. Law is fundamentally an enabler of innovation. As Microsoft Vice Chairman Brad Smith put it succinctly, “people won’t use technology they don’t trust.”¹⁴ Law creates the fundamental framework for that trust and allows it to flourish. When consumers know that they have protection against digital harms, that regulations exist that limit the most egregious uses of emerging technologies, and that there are consequences beyond nebulous claims that “the market will punish them” for bad actors in emerging technologies, those technologies are able to thrive.

Contrary to its libertarian origin myth, in reality Silicon Valley was shaped by laws from the beginning, from government defense contracts to intellectual property laws, and from securities laws to the FTC Act’s prohibition on unfair and deceptive trade practices.¹⁵ Law has always played a role in preventing scammers and thieves, and in shaping corporate business practices so that they benefit society as a whole. It is the presence of sensible regulation—including state regulation—that has led to America being a leader in digital technologies and services. Technological innovation does not occur in a vacuum; it requires a functioning marketplace in which property rights are respected and consumers feel safe, and in which corporations compete fairly. Regulation creates the framework and guardrails for such markets to exist. Regulations can even serve as the necessary impetus for technology to evolve in ways that are both profitable and socially beneficial in the long run, even when there may be shortcuts or externalities that companies seek to foist off onto the public without these protections.

The same principles apply to AI. Effective regulation, including at the state level, can guide businesses toward responsible practices without smothering their capacity to innovate. Just as too much regulation could be problematic, no regulation could also spell disaster. The solution is the right kind of regulation that is both reasonable but able to respond to new unforeseen problems as they arise. State experimentation in this area should be seen (to use a phrase popular among software developers) as a feature of our system rather than as a bug. Thus, any suggestion that AI innovation can only occur in the absence of regulation is not only historically inaccurate but dangerously misleading. Thus, rather than talking in terms of “stifling” innovation (whatever that actually means), we should consider a much older piece of wisdom, that necessity (here, the necessity produced by democratically-accountable state laws) is the mother of invention.

¹⁴ Nick Wingfield, General Counsel Brad Smith’s influence grows beyond Microsoft, *Seattle Times*, July 29, 2014. See also Neil Richards & Woodrow Hartzog, Taking Trust Seriously in Privacy Law, 19 *STAN. TECH. L. REV.* 431 (2016).

¹⁵ See generally Margaret O’Mara, *The Code: Silicon Valley and the Remaking of America* (2019).

Conclusion

My argument is not that AI is bad, or that we should have an irrational fear of AI, but that (1) sensible, reasonable, and responsive regulation of AI is needed, and (2) taking away the ability of states to regulate effectively removes one of the best tools that our system of government has to react to evolving technological dangers. Additionally, caution, thoughtfulness, and measured action now will certainly not preclude Congress from taking up broad AI or technology bills in the future, once the dangers around these new technologies and the merits and costs of the various state approaches have become clearer. Now is the time to learn rather than act in a hasty way.

Congress faces a stark choice. It can deny “the right to experiment” that exists within the American federal system through premature preemption, or it can allow states to continue their crucial role as laboratories of “social and economic experiments” in regulating technology.¹⁶ I would submit that regulatory innovation will be just as important as technological innovation if we want to have a set of AI technologies that maximize their benefits, are widely adopted, and which minimize their harms. As I have argued, preemption at this point would be premature. States have led the way in providing meaningful, productive, positive regulations during the digital age, and they are in position to do so again for its next stage, the development of AI. Congress should also reject the false premise that sensible, measured regulation is an enemy of innovation rather than its foundation.

Congress should resist the call for broad federal preemption of state AI regulation. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on anything people do using a computer—which is to say pretty much everything in our modern, networked society. By allowing states to act, our system can remain responsive, resilient, and protective of both innovation and the public good. Broad preemption today would deprive our country of the kinds of state laws that will be essential to build the necessary trust that AI systems—like the internet before them—need to become widely adopted and fulfill their potential. Preemption now would thus jeopardize the safe and beneficial development of one of the most powerful and disruptive technologies of our time in a way that risks embarrassing the future.

¹⁶ See *supra* note 2.

Mr. ISSA. Thank you. I understand the Ranking Member would like to make an opening statement.

Mr. RASKIN. If that is all right with you, Mr. Chair.

Mr. ISSA. It is always good to hear from you.

Mr. RASKIN. Well, thank you kindly.

Mr. ISSA. The gentleman is recognized.

Mr. RASKIN. I am very grateful to you for putting together this really important hearing, and thanks to the witnesses for your statements. When commercially available AI debuted three years ago, the consequences were breathtaking from the start. Generative AI spurred scientific research and provided astonishing new tools to creators.

The massive jump starts to American innovation swept from social and economic domain to social and economic domain, from pharmaceutical research and quantum computing to sound recording and film editing. Generative AI has also raised profound legal, practical, even philosophical problems, such as whether individuals have a right to their name, their image, their likeness, and their voice when they are used in other people's deep fakes.

If government has unlimited power to engage in AI enabled surveillance of our citizens, and what are the appropriate standards of care if any for AI platforms to protect users against harmful consequences? While Congress takes time to absorb the shock of these changes and these problems, and examines the technology, the States have already begun to enact the first regulations on AI.

We often talk about creation of rules for the road when crafting legislation to govern new technology, but I think this way of talking about consumer safety and technological ethics suggests that a road without speed limits would get us to where we are going faster. For generative AI, it is not about creating speed, and safety laws, and building highway guardrails.

Rather building a road system in the first place. Some of my colleagues would argue that the construction of local roads is unnecessary. They say that without broad preemption, without clearing the field of all State based legal encumbrances, AI companies and fledgling startups will have trouble complying with State laws, and will be put to a disadvantage, and wither on the vine.

I have heard little to suggest that broad preemption is in fact the appropriate solution to his problem. Proponents of preemption present Americans with a series of false choices, telling us we must chose a side between AI innovation or State powers and federalism, between business and consumers, or national security and safe innovation. In 1816, Jefferson wrote laws and institutions must go hand in hand with the progress of the human mind.

As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, manners and implements change, with the change of circumstances institutions must advance also to keep pace with the times. What we see across America is individual States looking at these amazing technological developments, and asking whether and how their laws need to change to protect their citizens and advance the common good.

Today, you might think that the issue has some kind of necessary partisan valence to it, Republicans on one side, Democrats on the other, but opposition to an AI moratorium is broad and bi-

partisan. In fact, when some of my Republican colleagues tried to pass a moratorium through our last spending bill, attorneys general from across the States red, white, and blue sent a letter to Congress saying please don't do this to our State laws.

In another letter, 17 Republican Governors wrote to Majority Leader Thune and Speaker Johnson praising their quote "Big Beautiful Bill," but explaining that the moratorium provision stripping the right of any State to regulate this technology in any way without a thoughtful public debate was quote, "the antithesis of what our founders envisioned."

I surely disagree with these Governors on many things, but I think that they are right and should indeed be free to create what they call quote, "Smart regulations of the AI industry that simultaneously protect consumers, while also encouraging this ever developing and critical sector."

In a statement submitted for this hearing, AI startup Bria wrote the moratorium on State laws would create a giant vacuum, and strip away the rules needed to quote, "raise capital, form partnerships, and build safely in order to win consumer trust." Without a road on which to travel forward, startups are cut out of the market in favor of large companies with the legal and fundraising teams necessary to deal with a barren legal landscape.

Finally, some argue we need unrestrained AI development to properly compete with China. This Subcommittee has held many bipartisan hearings on the threat to innovation, AI supremacy, and IP from China. It would be amazing, even dangerous, to posit that we need to become more like China to compete with China.

In fact, it seems more plausible to me that to believe that stronger, better products developed in America while protecting Americans and their data through American political processes and the passage of American laws will ensure that AI is both more advanced, more durable, and more internationally competitive.

Protecting American innovation, investing in American research, developing American laws to deal with problems like deep fakes, political deep fakes, discrimination through AI and so on, and investing in our workforce, I believe is the right way to win the so-called AI arms race. American safety is not at odds with AI innovation, that should be the baseline for any conversation we have about the best way moving forward. I very much look forward to this conversation, I have already learned a lot from it.

Back to you, Mr. Chair.

Mr. ISSA. I thank the gentleman. Without objection all other opening statements will be placed on the record.

It is now my pleasure to go to the gentleman from Virginia, Mr. Cline, for five minutes.

Mr. CLINE. Thank you, Mr. Chair. I want to thank the Ranking Member for referencing our third President, the gentleman from Virginia, Mr. Jefferson, and one of our great inventors from the earliest days of our republic, and for the Chair referencing the work of our current Governor, Governor Youngkin, who is working to make sure that Virginia is the leader in data center development.

We continue to be the leader nationally, and we intend to stay that way as AI grows and develops. Mr. Frazier, you have written

that the Constitution's intellectual property clause is first and foremost a directive to advance and spread knowledge, I think that was on X a couple weeks ago. How should Congress strike the right balance between protecting copyright owners and ensuring that AI regulation continues to promote the spread of knowledge consistent with that constitutional purpose?

Mr. FRAZIER. Thank you very much for the question, and thanks for the follow, or at least perhaps the like. In this regard the Constitution is clear that the IP Clause has always been grounded in progressing the promotion of science and useful arts. Here, if you go back to the founding articles, as well as subsequent interpretation by the Supreme Court, the focus has always been on making sure that there is the spread of knowledge across the country.

The IP laws grant an exclusive right to creators to attempt to incentivize that creation. What we need is to make sure that there is an economic analysis of the extent to which those laws are working as intended. The purpose of the IP Clause is not the profit of creators it is the progress of society.

What we need to get back to are those first principles when it comes to examining copyright law and patent law. Right now, if you look at an analysis from scholars such as Richard Watt, you will see that the preponderance of copyright benefits is not going to your average Joe and Jane author, but to large publishers, and so we need more analysis on that front.

Mr. CLINE. Would you agree that ensuring transparency in AI systems such as being able to trace what data was used to train a model is essential both for protecting IP rights, and for maintaining public trust in AI platforms?

Mr. FRAZIER. I would agree that broad overviews of the sources of training data are important to get an understanding of where and how models are being trained.

Mr. CLINE. In that same spirit, could giving creators a private right of action for tampering with content credentials help strike the right balance between protection and innovation?

Mr. FRAZIER. My own estimation is that granting that sort of right would be a significant barrier to AI innovation given the centrality of access to data for innovation. We have seen that many courts and many scholars have regarded the use of data as a transformative purpose under copyright law, and denying the ability to train on wide swaths of data would be a real hindrance to our ability to leverage AI.

As many folks have said on many occasions, bad data leads to bad AI. If you want better AI, you want better quality information, and if we throw many legal gears into that equation, we won't get the AI we deserve.

Mr. CLINE. Thank you. Dr. Bray, as we consider whether, and how best to regulate AI platforms, do you believe that we must avoid the same mistakes we made in the early days of the internet with broad safe harbors that gave platforms a free pass for enabling copyright infringement and countless other harms?

Dr. BRAY. Thank you for that question, Representative Cline, and as a fellow Virginian, glad to be here. I was around, and actually working in the 1990s on the early days of the World Wide Web. My observations would be we did fit for purpose for the 1990s. Now,

in the two decades since, we have seen the rise of applications on top of that technology where we may need to make adjustments.

What we need to separate is the desire to roll out the technology so that the entire Nation could have access to the internet, and at the same time if we see that the applications need adjustments for the law, that would make more sense to adjust. However, I would say what we need to recognize as well as we go forward here, where we are trying to advance the technology so it can be used by startups, it can be used by communities, it can be used by legacy organizations that haven't gone AI native yet.

At the same time, if we see there are applications where we want to prevent harm to individuals, to children, things like that, adjust the applications while not limiting innovation on the technology.

Mr. CLINE. Just like other businesses, bad actors have to be accountable for the harm that they cause, in addition, if we consider some type of temporary pause for State level AI specific regulation, we have to ensure that other generally applicable State and Federal laws continue to apply, with copyright law being one example. Do you think AI platforms should be held to the same standard of accountability as any other business, including when it comes to respecting copyright?

Dr. BRAY. Absolutely, and I would actually say that is why I am so excited about federated learning, because there actually could be the opportunity where whether you are a recording artist, you are a musician, you are an individual, you could actually say here is the data that I have pooled, you can learn on my data in situ as opposed to shipping it somewhere, and we can have that actually recorded as a transaction.

Then, in return I am getting benefit, whether it be financial or otherwise, it is a new model that is actually quite possible. It has been possible for more than five or six years, and we can motivate people to do it.

Mr. CLINE. Great, thank you. I yield back.

Mr. ISSA. Gentleman yields back. Who seeks recognition?

The gentleman from Georgia is recognized for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair. Professor Richards, I mentioned in my opening statement my concern that broad Federal preemption of State AI laws would also preempt common law causes of action. How does common law, particularly tort law help protect Americans from harm?

Mr. RICHARDS. Thank you for the question, Representative Johnson. Common law is the foundation of American law, it is all over the United States, it goes back to the colonies, to the English tradition. Common law has flexibility to the law. If we think about my own specialty, privacy law, there was a reference earlier by one of the other witnesses to Justice Brandeis' right to be left alone.

Privacy law in America was originally a product of common law, where the law adjusted to realize that data about people, information was being collected without their willingness, or it was being disclosed. An important line of cases relevant to this subject today, to protect the names or likenesses of people whose pictures and names were being used to sell products without their consent.

Common law is a tremendous source of flexibility and vitality in our law that allows the law to adjust to change circumstances like

the advent of technological revolutions such as artificial intelligence.

Mr. JOHNSON. Thank you. Can common law be used to protect Americans even in the absence of explicit statutes?

Mr. RICHARDS. Absolutely, sir. That is sort of the nature of the common law, that judges can apply the existing rooted principles of tort law, contract law, and property law, and they can, from those general principles, divine specific applications that can provide new protections so that the law continues as it always has, to evolve alongside technological invention.

As the Ranking Member referred to Mr. Jefferson's statement from 1816, which as a proud graduate of UVA I also endorse.

Mr. JOHNSON. Some of the current lawsuits against AI companies are being brought under common law to hold companies accountable for the harm that their products have caused to children. For example, Megan Garcia is suing Character Technologies and Google after her 14-year-old son Sewell Setzer died by suicide.

She testified before our colleagues in the Senate this week that his death was quote "The result of prolonged abuse by AI chat bots on a platform called Character AI." The chat bot sent Sewell sexual messages and asked him to "come home to me as soon as possible." Others have filed lawsuits against Character Technologies and Open AI for wrongful death, negligence, and other causes under both common law and State laws about deceptive or unfair trade practices.

These tragic cases show some of the worst possible harm that can arise from AI technologies. Professor Richards, does an AI moratorium run the risk of impeding these lawsuits that seek to hold companies accountable?

Mr. RICHARDS. It would, particularly if it were defined broadly. Let me also say in response to your question, Representative Johnson, as a parent myself, my heart goes out to the families who have lost their children. When we think about laws like negligence, or rules like negligence, negligence was the great innovation of the common law to respond to industrialization.

It means that anybody acting against other people must behave in a reasonable way and not cause unreasonable harm. I am sure that the car companies, the railway companies, and the industrial companies of the 19th and 20th century would have argued that the common law developing the law of negligence would have impeded innovation, but actually it safeguarded the development of those technologies by enabling us to be able to drive cars, ride on the rails, and fly on airplanes.

Otherwise, enjoy the benefits of our inventions knowing that we are safe, and we are protected, and where those technologies or their deployers overstep the line, we have a right of action to defend our rights, and protect our families.

Mr. JOHNSON. Thank you. It was States that developed the common law. Professor Richards, beyond common law, are there some areas where it is appropriate for States to lead the way on laws about AI technologies? If so, what sectors or use cases should continue to be the providence of the States?

Mr. RICHARDS. I think the answer to that question is yes, and I think particularly where there is deployment of AI rather than

generation of AI, the use of AI in point-of-sale devices, employment discrimination, consumer protection, the traditional provinces of State regulation. Let me also, if I could add one additional thing, Representative?

Mr. ISSA. Briefly.

Mr. RICHARDS. The States have filled the gap that this Congress, which did not regulate the internet, did not regulate privacy generally, have done so. With AI technologies, if Congress is for whatever reason not able to pass comprehensive legislation protecting Americans, States will continue to fill that gap as they have in the internet age.

Mr. ISSA. Thank you. We now go to the gentleman from Texas, Mr. Gooden, for five minutes.

Mr. GOODEN. Thank you, Mr. Chair. Mr. Frazier, as a trend it seems like every State is jumping to regulate AI, and perhaps some of them are doing it just to show early participation, do you think that is well thought out? Also, what are the long term effects of having a decentralized patchwork of laws, how does this help or hinder new entrants?

Mr. FRAZIER. Thank you very much for the question, Representative, always good to talk to a fellow Texan, hook em. In any prior setting we have seen of the impact of a rush to regulate among states, there is a real, noticeable impact on small businesses. If we look at research for example from Engine done in conjunction with the Michigan Ford Public Policy School, we see that just changing a privacy policy statement.

Maybe \$6,000 in funds to outside counsel. That is \$6,000 out of \$55,000 of monthly revenue and operational expenses. From a small business perspective, the rush to regulate is a real hindrance on innovation. I also think that the rush to regulate among the States creates a patchwork, and a huge risk of extraterritoriality in terms of application.

We have talked a lot about Virginia today, which is welcome. At the time of the founding Virginia had around 700,000 residents, Delaware and Rhode Island, something around 30,000. The founders didn't say there was a Virginia privilege, or we should have a Virginia effect. They did not want to see that happen, instead they made sure that States stayed in their respective borders when it came to regulation.

Mr. GOODEN. Thank you. Is it possible for bad actors to misuse inconsistencies, especially in terms of violating intellectual property rights?

Mr. FRAZIER. That we have seen a documented effect of what is referred to as regulatory overload, as folks at the Mercatus Center have written about. When we have endless litigation, endless labels, endless warnings, actually what we get is less safety, because people don't know what law to adhere to.

If you talk to a lot of startups today, they don't have a public policy person, they don't have a general counsel. Just adding more laws to the equation actually reduces the odds of user safety.

Mr. GOODEN. Thank you, I appreciate that.

I yield the balance of my time to Mr. Correa from California.

Mr. CORREA. Thank you, Mr. Gooden. Gentlemen, listening to your debate today reminds me of what General Patton used to say,

which is lead, follow, or get out of the way. AI is moving faster than we imagined, or even expected just last year, touching every aspect of our lives. Most of our constituents, like many of us here, don't know a lot about it, but they know enough to expect that we here will protect them, their jobs, children, and intellectual property.

The debate about whether it is local control or Federal control, is second to the fact that we just can't move on this stuff at the Federal level. Mr. Frazier, you are from Texas, I am from California, fourth largest economy in the world. How do you coordinate Federal and State action to make sure that we respond to our constituents responsibly? Thank you.

Mr. FRAZIER. Thank you for the question, and I was a Beckley Law grad, so I shared some California ties. I want to emphasize that we do need to see regulation in this space, and we need to see that Americans are protected, and especially our vulnerable communities and children. What I am concerned about are laws like AB1046 out of California, for example, that impose on AI companions a desire to prioritize factual accuracy over a user's preferences, specifically—

Mr. CORREA. The laws 1047 or 1046?

Mr. FRAZIER. The AB1046, prioritizing factual accuracies over the preferences of the user, in this case a child. To which I ask who gets to define factual accuracy? Is it California State government? Who is going to answer the question of whether Santa is real for a seven-year old? Who is going to make factual determinations about religion for that child user? Those questions shouldn't be answered by California for the rest of the country.

Mr. CORREA. I would ask you to also look at SB53 that is now being addressed in the California State legislature, and see what you opine on that as well.

Mr. FRAZIER. I think SB53 is the least bad option I have seen with respect to AI development regulation. As we have discussed in this hearing, AI development in my opinion, and in the opinion of many should be left to the national government as a core—

Mr. CORREA. Anything you agree with in SB53?

Mr. FRAZIER. I very much agree with the whistleblower protections, that is an important mark. I also agree with the fact that it calls on regulators to revisit definitions and terms frequently to make sure they are working as intended.

Mr. CORREA. Thank you, Mr. Gooden and Mr. Chair, I yield.

Mr. ISSA. Thank you. We now go to the Ranking Member of the Full Committee, the gentleman from Maryland.

Mr. RASKIN. Thank you very much, Mr. Chair. I don't understand the attack on the patchwork of laws. Maybe that is because I am a quilt person, I like patchworks, but isn't that what federalism is? federalism is a patchwork. That is how, that is the glory of the American governmental system.

To be sure that the Congress gets it together to adopt a national law eventually on everything from the Clean Air Act, to the Clean Water Act, to the National Labor Relations Act, and the Fair Labor Standards Act, but it would have made no sense to say before those Federal laws were passed, let us wipe out the State laws that exist

on child labor, minimum wage, not polluting the water, or not polluting the air.

In fact, that contradicts what I thought the central dynamic of federalism was, which is the States are the laboratories of democracy, that was Brandeis, and then the different changes that they make are compared to each other, and then they bubble up, and Congress takes all it into account when it decides to attempt a nationwide approach. Is that a fair statement of the situation, Professor Richards?

Mr. RICHARDS. Absolutely. I also have a degree in early American history from the University of Virginia. My studies in early Federal history—

Mr. RASKIN. Virginia is getting a lot of play today, I don't know, as a Maryland guy I have got some questions about that.

Mr. RICHARDS. Would you like me to continue?

Mr. RASKIN. Please.

Mr. RICHARDS. Absolutely, the goal of federalism is to have laws that are more responsive to the people who are closer to those representatives that the legislatures of particular States can adapt to that particular State's problems, strengths, and also to protect, to experiment.

Mr. RASKIN. OK, so just to restate the obvious, there is an attempt to impose a moratorium on State laws, or to wipe out State laws. How is that different from the way that Federal preemption has taken place in the other cases that came to mind for me?

Mr. RICHARDS. Well, sometimes Federal preemption can, just through the Supremacy Clause, preempt particular laws, or laws that are inconsistent with a Federal mandate. In addition, Congress is allowed to operate in ways to set a general national standard but still allows States to experiment with stronger standards so that the innovation in regulation can continue at pace with the innovation in technology as you and Mr. Jefferson put it so well.

Mr. RASKIN. In addition to those differences, isn't it the case that a moratorium today would just wipe out State laws without substituting anything, without imposing a national law?

Mr. RICHARDS. Absolutely—

Mr. RASKIN. Is there any precedent for just doing that, saying we don't want any State laws at all while we think it over, or while we are stuck in some kind of legislative paralysis?

Mr. RICHARDS. I can't think of one, and that is why I think it would be disastrous.

First, depending on how the law is defined, it could sweep very, very broadly, and take out laws that are important and protective, that everybody on this panel would agree are good laws.

Second, if you have a broad preemption, this would be a defense that tech companies could make in every piece of litigation, increasing the cost of the litigation system as the contours of that preemption definition could continue to affect litigation years into the future.

Mr. RASKIN. Yes. Some people are with us today who are involved in, or have been involved in different kinds of litigation, and my heart goes out to them, being a father who has lost a son, and these are all people who have lost children in different kinds of interactions with chat bots, and other kinds of AI technology.

I just want to recognize Kristin Bride from Oregon, who lost her son Carson, he was sixteen, in 2020, the same year we lost our son Tommy. Juliana Arnold who lost her 17-year-old daughter Coco to fentanyl poisoning after she purchased a counterfeit pill online. Megan Garcia from Florida, who lost her 14-year-old son Sewell, who took his life in February after months of abusive interactions with a Character AI chat bot.

Jane Doe from Texas, whose son, JF, suffered severe physical and mental health harm after multiple chat bots instructed and encouraged him to engage in self-harm and self-violence. All of which is to say in my mind there are profound problems here that we really do need to deal with.

The last thing I would want to do is to try to nullify States that have already addressed the problem in response to constituents dealing with a nightmare like that without replacing it with something. I am not averse to the idea that there might be a national law that works, but certainly imposing a legislative vacuum on the country would be a really dangerous way to go.

Thank you, Mr. Chair, I yield back.

Mr. ISSA. You are most welcome. With that, we go to the gentlelady from Florida for five minutes.

Ms. LEE. Thank you, Mr. Chair. Mr. Frazier, I would like to return to you, I appreciate so much your discussion of the Commerce Clause, and you made some important distinctions for us already in your testimony when you talked about the need for the Federal Government to intervene, and think about preemption when we are talking about a subject that affects the economic or political stability of the United States.

You drew a distinction between pig sties and artificial intelligence. Would you elaborate for us please, about why you believe the things that we are discussing here today do go to the heart of the economic and political stability of the United States, and should be distinct from those areas where the laboratories of democracy concept actually works?

Mr. FRAZIER. Thank you for the question, Representative Lee. It is profoundly important to get back to that Brandeis quote about laboratories of democracy. There is a forgotten portion of that quote, which is “without risk to the Nation.” You can run an experiment without risk to the Nation. Many of these experiments that we are seeing proposed and enacted in California do pose a risk to the Nation, because they try to impede AI innovation itself.

When we see individual States reach into the AI development process, they are not just tinkering with a modular process, there is not an AI specific training ground for California that Open AI does. Anthropic doesn’t train its models 50 times over for each State.

While there may be a lane for State regulation, and I believe there is a lane for State regulation with respect to AI use, we have to followup and ask the question of what does a real experiment look like? That experiment can’t be one that exceeds the borders of that State. Yet, California’s bills time and time again would result in labs having to change their practices the Nation over.

I have lived in California, I have lived in Florida, I have lived in Texas, I have lived in Oregon, I have lived in Massachusetts,

and in D.C., and I can tell you in each of those places they don't want Californians to dictate the terms of their AI.

Ms. LEE. I also need to followup on this question. You said something interesting when you were talking about current copyright law, how it operates, and really ensuring that we are still honoring the concepts of content creators and intellectual property, you suggested an economic analysis of what is happening with the use of this content and training models.

Would you elaborate for us a bit more on how that would look, and how we can get to the bottom of how to properly compensate those content creators?

Mr. FRAZIER. Happily, and thank you for the question. If you look at current settlements, for example in the *Bartz v. Anthropic* decision, and you begin to analyze who those funds actually go toward, a large number of that fee is going to go to publishers. It is not going to go to the actual authors themselves. If we are trying to incentivize the creation of new art, and new discoveries, and new scientific discoveries, copyright may not be the vehicle we need.

It is not serving the same purpose it did in 1789, back when it was just limited to 14 years with the possibility of a 14-year renewal. It is now 70 years plus the life of the author. That is an incredibly long time, especially when you consider that the founders really hate monopolies.

The fact that we ended up in a world in which a handful of publishers may be able to dictate the quality of our AI is antithetical to the original purpose of the AI Clause.

Ms. LEE. Thank you. Mr. Thierer, one of the things that you touched on was the idea that Congress could explore giving NIST or CAISI more authority to develop standards for AI frontier models. Would you share more on your perspective of how we might do that? Should we designate a single Federal entity to try to develop those standards? Share with us a little more of your thoughts there, please.

Mr. THIERER. Yes, absolutely, thank you for the question, Congresswoman. Let us be clear that the reason that NIST needs to play a role here in this new CAISI body is because they have the ability to address exactly what the problem is here, which is that many States are attempting to impose a very technocratic type of design on artificial intelligence models and systems preemptively, in an almost European style way.

That is a huge problem, I will just again quote from Governor Jerry Polis, who said,

Government regulation as applied at the State level in a patchwork across the country can have the effect to tamper innovation and deter competition in an open market.

It is not just that, these States lack the technical capability to do some of this in certain circumstances, and lack the information needed to do it properly.

We have set up this body, I should remind the Committee, setup under President Biden and retained by President Trump in a bipartisan move and just renamed to focus more on standards and innovation, that is a good plan. Once again, we have a bipartisan agreement here, we have got a new technical body, and they can

handle it in conjunction with other existing policies, both Federal and State.

Ms. LEE. Thank you. Mr. Chair, I yield back.

Mr. ISSA. Thank you. We now go to the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chair. Before I make remarks or questions, I would like to ask unanimous consent to put into the record a letter from the California Privacy Protection Agency.

Mr. ISSA. Without objection, so ordered.

Ms. LOFGREN. Thank you. The title of this hearing, "A Nationwide Strategy or Californication," I take a little bit of exception to. I get it, people brought up California because we set the pace, but it is worth noting that my colleague from California Mr. Correa mentioned California is the fourth largest economy in the world with over 4.1 trillion in GDP.

It surpassed Japan last year, and trailed only Germany, China, and the United States as a whole. It is No. 1, California is the No. 1 State for manufacturing. It is home to the most Fortune 500 companies in any State, more than forty are in Silicon Valley, my home. It also has the highest agricultural output of any State.

It is home to five of the Nation's top ten public universities, UCLA, UC Berkeley, UC San Diego, UC Davis, and UC Irvine. It accounts for over 12 percent of all university R&D expenditures in the United States, with the University of California system alone spending more than 12.1 billion.

It receives more NIH funding than any other university system in the United States. Now, these aren't just vanity stats, they are the foundation of the modern innovation economy that California has built. World class universities, labs, investors, entrepreneurs, workers who turn ideas into jobs, into growth, California has been, and remains the leader in technology, and the engine that built our economy now powers our AI leadership.

California leads the world with 32 of the top 50 AI companies based here. Although it is always fun to criticize the most successful State, we must be doing something right to have achieved all this. Now, this is a hearing on AI, and some of the comments made by the witnesses I agree with.

Mr. Bray, you mentioned that upgrading existing domain specific laws is more pragmatic than attempt sweeping new regulations, and I very much agree with that. That is also going to need room for regulations that are specific, or laws that are specific to each State. There are things that are the proper purview of States, and there are things that are the proper purview of the Federal Government.

Certainly, I was a critic of Mr. Weiner's bill from the last session, and that it overreached in the national security effort. I also agree, Mr. Thierer, that the E.U. approach is incorrect. To try and micro-manage the workings of the AI system is doomed to failure it seems to me. However, the recommendations that we simply preempt while we have nothing put together now are problematic.

I have just got to say, Mr. Chair, and you are also a Member of the Science Committee along with me, we had a pretty effective bipartisan task force on AI in the last Congress Chaired by Mr. Obernolte from California, as well as Ted Lieu from California.

They took the first step, they didn't finish the job, but they haven't even been reconstituted in this Congress.

We do heavily rely on NIST, an agency that is widely respected in the Congress, and in the technological world, but we have got to look at what has happened to NIST. They have been eviscerated by the DOGE people, and I fail to see how they are going to be able to perform the tasks we are hoping that they can perform, given what has happened to them.

I would just like to say that we ought to be working on a bipartisan basis again. The Science Committee staff task force, I would urge the speaker and whatever influence the Chair can have to re-establish that AI task force as a super Subcommittee of the Science Committee, so that we can get more work done, and get to where we need to be to have the guardrails and the standards that are appropriate at a national level.

While also recognizing there are things that are of value at the State levels. The note from Open IA just mentioned that online age verification is something they support. There are things that the States can do, there is things that the Federal Government can do, but we are not going to do anything unless we can get our act together, and reinstitute that task force, and get some more work done.

With that, Mr. Chair, I yield back.

Mr. ISSA. I thank the gentlelady, and I note that both sides of the title reflect California as the home of the innovation that is driving it. I might also take an opportunity to completely agree with your comments related to the need for us to act, that a preempting without a solution, without some of the work that is being currently worked on both here in the House and Senate would not be well received.

We have the ground work for a lot of the kind of work that you and I have done together, and I look forward to very much this hearing being the beginning of us launching bipartisan legislation, because we do need to act in some cases, and you have always been a good partner in that acting.

With that, we continue, with deference to my great State the Commonwealth of Virginia, we will continue with the California effort.

Go to Mr. Kiley for five minutes.

Mr. KILEY. Thank you, Mr. Chair, and I wholeheartedly agree with my colleague from California, that our State continues to be the center of breathtaking innovation worldwide. However, the competency of our State government is another matter entirely.

Not to impugn the competence of any of my former colleagues in the Sacramento legislature, but this is a body that struggles with things like building roads, delivering electricity, managing forests, building dams, and getting water to come out of hoses. The notion that this is the right body to regulate the most powerful technology in human history, whose workings are actually largely beyond the understanding even of technology's creators is a fairly fantastical notion.

Not only that, but we are also faced with technology that continues to accelerate in capability, in an exponential way, in a way that is unlike anything we have seen before. Just to take one very

specific example, you have leading models who have recently gotten the gold medal on the International Math Olympiad, something that most experts thought was still going to be years away.

I do think the risk that California is going to drive AI policy for the entire country is a very real one. That a national framework that seeks to stop that from happening is needed and appropriate. More specifically, I see the Federal role as including the following.

First, of course, we need to be prepared to combat concrete harm, as they arise, and harm where the use of AI tools can sort of accentuate the risk.

Second, there needs to be risk assessment type tools, and as much as I have been giving California a hard time, there are some decent ideas in this latest bill, incident reporting, transparency as far as safety protocols.

Of course, there is a tremendous role for the Federal Government when it comes to the infrastructure needs behind the ever escalating investment in data centers. Beyond that, it is very important that policymakers continue to be apprised as to the capabilities of these models. In fact, both sides of it, the risks, as well as the capabilities.

There are of course channels that exist both between the government, and among the labs themselves, but that most of us as policymakers, unless you are out looking for it, are not kept up to speed on exactly where the leading edge is. I think that is all very important. I think there could also be a lot more investment in actually safety, and alignment related research.

The labs do this themselves, but they are not necessarily incentivized to do it, and so there could be more of a Federal role for promoting basic cutting-edge safety related and alignment related research. Then, finally, and maybe most importantly, I think that part of this conversation that we have been focusing a lot on when it comes to discussions of AI, there have been more of them happening here lately, but they have been really oriented on the aspects of the issue that are familiar.

OK, the issues related to energy, issues related to water, some of the risks that are of a familiar kind. The discussion has not focused much on the broader question of how we are going to prepare society for the enormous changes that are likely to be ushered in the coming years? When we get to this idea of States as laboratories of democracy, or of experimentation, this actually is maybe the context in which that idea is most relevant.

Because when it comes to sort of regulating the capabilities and constraining the capabilities of the systems themselves, the laboratories of democracy idea aren't really fitting. (1) There is an enumerated Federal power when it comes to interstate commerce. (2) You talk about experimentation, this is sort of something that we have to get right, and we only get one shot at.

There is a widely shared view that once AI capability crosses a certain threshold, whether that be recursive self-improvement or some other threshold, there is sort of going to be an escape velocity, so that has implications for the sort of narrower geopolitical context of which country leads in the technology.

Also, for the broader idea, is this technology going to be aligned with and beneficial to humanity? I do think that States can play

a role when it comes to preparing society for using this technology for good in various domains. For example education, that you are seeing States already experimenting with ways that AI can be used to close achievement gaps, and to bring tools to students unlike anything we have ever had before.

Transportation, States can take a lead, and some States have taken a lead in preparing our transportation systems for the increasing capacity for autonomy within various modalities. Finally, there are various other examples, but a final example I will mention is the use of AI itself in government, to improve government processes.

We are seeing some of here at the Federal level, we are seeing some experimentation with States and other countries across the world. When it comes to being laboratories of democracy and the role of States here, that is probably where States can be most valuable, and our role in Congress should be to pursue some sort of Federal framework.

I yield back.

Mr. ISSA. I thank the gentleman. We now go to the patient gentlelady from North Carolina for her five minutes, Ms. Ross.

Ms. ROSS. Thank you very much, Mr. Chair. I have a unanimous consent request. I ask unanimous consent to enter into the record a letter by Frank Cullen, Executive Director of the Council of Innovation Promotion to you and the Ranking Member dated September 18, 2025, which expresses the council's concern regarding recent proposals for Congress to impose a moratorium on State level regulation of AI.

Mr. ISSA. Without objection, so ordered.

Ms. ROSS. Thank you again to both the Chair and the Ranking Member for organizing this very important hearing, and to the witnesses for your testimony. I am glad that we are talking about how Congress and other lawmakers can responsibly legislate and regulate around AI. I represent the research triangle in North Carolina.

I have seen the incredible things that AI can do, particularly in the medical area, and in biopharma. I am just blown away by the powerful and positive use of AI. I have also seen the negative effects of AI, and I am thrilled that one of those issues has been brought up by Representative Cline, and Representative Lee, and that is the ongoing necessary litigation that is happening with content creators and copyright.

I was with the head of Anthropic this morning talking about how much money they are having to pay for what they did that was illegal, flat out illegal. I hope and look forward to working with Mr. Chair and the Ranking Member to make a hearing on that issue, and we have had a couple of those hearings happen again, but do it in a way that we can promote good behavior by AI companies.

I also love California, and I know we are talking about California, but I want to bring up some crucial areas where other States have regulated AI in necessary ways. I know that we have parents of children who have been hurt by AI here. The States are ahead of Congress in protecting our children.

Given our inaction, many States have stepped up, passing legislation covering topics that run the gamut from expanding CSAM laws to cover AI generated material in Alabama, to prohibiting AI

from being used to provide mental healthcare services in Nevada. Then, we have been talking about democracy, prohibiting the use of AI during an election to create political messaging that contains deep fakes of candidates for office in New Hampshire.

We have been talking about federalism, but sometimes the States have to act. I also have some concerns, I fully agree with the Chair, and a lot of the sentiment here that Congress does need to come together in a bipartisan way. Some of the AI companies want this preemption because they know that they can muck up the Congressional situation.

Which isn't that hard to do and create the inaction so they can do whatever they want to do for as long as they possibly can do it. With that long introduction, Professor Richards, the Federal Government often regulates in particular areas that affect interstate commerce like air travel. The States have areas where they traditionally take the lead, like insurance.

When it comes to the States making laws that affect AI deployment, what sectors or use cases should continue to be within the State's purview, where the Federal Government shouldn't get in the way?

Mr. RICHARDS. Thank you for your question, Representative Ross. There are numerous lists of them, and I hope that the Committee will indulge me, if I forget one, there are too many to count. I would say in healthcare, in the provision of medicine, I work a lot with our physician scientists at Washington University through the Cordell Institute, and they are concerned about having access to AI technologies to treat their patients.

Also, to be sure that the delivery of those treatments, and the development of those treatments is done in a way which is consistent with the ethical, and sustainably ethical practice of medicine. I mentioned in my opening remarks the problem we have in the courts of hallucinated citations, that States should be able to safeguard the integrity of their judicial systems and the litigation processes by AI specific laws.

That general laws will not be enough in these cases given the particular fraudulences and applications that AI produces. I think about education, I believe it was Mr. Kiley that spoke about that a moment ago. AI does have the potential to help people in education, but it also does tend to create massive plagiarism problems. I am being indicated to wrap up by the Chair, so I will pause there.

Ms. ROSS. Thank you very much, and I yield back.

Mr. ISSA. Professor, you are knowledgeable, and we appreciate, and that is why I didn't stop it at the bell by any means, I wanted you to finish what you were working on.

With that, we go to the gentleman from Wisconsin for five minutes.

Mr. FITZGERALD. Thank you, Mr. Chair. Mr. Thierer, you have written previously about California taking a European style approach to regulation. Chair Jim Jordan of the Full Judiciary Committee, and Mr. Kiley, and I were just in Europe last month talking with businesses, both European businesses, and then American businesses with headquarters in Europe now, within the EU, many of them in Dublin actually.

What they told us was that this type of ex-ante regulation where anticompetitive practices are regulated before they exist, it typically undermines or overburdens companies before they can scale, and it kills a lot of the small businesses before they are up and running. It is exactly what Europe has, it is why they have no gatekeepers.

We are the gatekeepers. America innovates, China duplicates, and then the E.U. regulates, that is where we are at right now on a grand scale. If the U.S. were to follow the EU's model of over regulating AI before it is understanding the risks, what impact would that have on AI development and competition?

Because I believe that the E.U. is trying to create a space for themselves, just like they are with the seven American corporations for the most part created in California, there is one other one called ByteDance, you might have heard of it, but now we have the E.U. telling us with the DMA, the Digital Markets Act, how we can function, and how we can advance ourselves as an American economy. It is very frustrating.

Mr. THIERER. Yes, you have got it exactly right, Congressman, let us actually put some numbers on this. I often when I am lecturing to students or other audiences, I ask them, can you name any leading global digital technology innovators that are headquartered in the European Union today? I am usually met with silence.

There are a couple, but actually 18 of the 25 largest digital technology companies in the world by market cap are American based companies, only two are European, most people can't name them. When I ask that question, most people say companies that are now defunct like Skype, and others.

Innovation has died in the European Union; they have committed essentially continental wide technological suicide with a regulatory model that is based on a sort of guilty until proven innocent mind set. Where every single technology or innovation is somehow nefarious, and must be bottled up, and preemptively regulated.

This is why compared to the past, where the United States and Europe were very, very even situated in the early 1990s, we went down two very different paths. Our path, our more pro-innovation, pro-growth path that really the Clinton/Gore Administration unlocked with a Republican Congress in a bipartisan way, that yielded incredible benefits for our Nation, which made us the global leader.

The household names in digital technology in the European Union today are American companies. What is the European Union exporting on the digital technology front? Red tape. That is about all I have got left.

Mr. FITZGERALD. Mr. Frazier, what would be some of the appropriate regulations that States could do a good job on? Then, how would we fold that into kind of at the Federal level having some oversight, what are your thoughts on that?

Mr. FRAZIER. Yes, thank you very much for the question, Congressman. That dividing authority on AI development versus AI use threshold is very important. If States want to regulate the use of AI, the application AI in schools for example, in healthcare situations for example, those are instances in which States can truly

run experiments, because they are finite, they are within their own borders, and they are specific to their residents.

When we see States beginning to enact proposals that are going to impact how AI models are trained and developed, that is necessarily going to bleed into other States, raising profound extraterritoriality concerns. That a moratorium in Congress focusing on the difference between AI use and application versus AI development is a very helpful place to begin.

What I would also encourage Congress to consider is the creation of a cause of action that allows non-State residents more means to contest the extraterritoriality of different State AI regulations, so that we are not just waiting for California to regulate, and just hope no one challenges it. Empowering Americans to say AI is too essential to allow one big State to set the terms for the rest of us.

Mr. FITZGERALD. Thank you for that answer. Chair, before I yield back, I just wanted to make the comment that, I mean one of the concerns on many different fronts is how do you strike this balance between State development, and economies, and not seeing an overreach like we have seen here in D.C. many times.

With that, I yield back.

Mr. ISSA. I thank the gentleman; the gentleman yields back. We now go to yet another gentleman from California.

Mr. LIEU. Thank you, Mr. Chair. I am a recovering computer science major, and when I was studying computer science, I thought neural networks, they are never going to work. Just take whatever I say with a grain of salt. I would like to just note for the record what happened. Congress established in the House of Representatives a bipartisan AI task force, I was the Co-Chair.

There were 12 Democrats, 12 Republicans, and we all agreed on over 80 recommendations in a bipartisan manner, a number of which will be turned into legislation. Instead, the Trump Administration basically says no, we don't want Congress doing anything, and we will go into States and not have them do anything, we are going to have zero regulation.

The Trump Administration tried to put in a 10-year moratorium ban on States that was opposed by 17 Republican Governors, 20 Republican Attorney Generals, and 130 Republican State lawmakers. Then, that 10-year proposed ban failed 99 to one in the U.S. Senate, a spectacular rejection of what the administration was trying to do.

Now, we are in a place where the actual reality is it is not whether we are going to regulate AI, it is do you want 17 States doing it, or do you want Congress to do it? With that lead in, Mr. Thierer, I know you were in support of the AI moratorium, your approach failed, so now we are in this new sort of position since it has failed.

I am curious what areas do you think Congress should regulate in? Because it is clear we are not going to preempt with nothing, right? What are the things that you think that would be helpful and further American innovation?

Mr. THIERER. Sure. Well, first, Congressman, I want to thank you for your leadership on this with Representative Obernolte, with the House AI task force, and then also the legislation that you did

mention, that you sponsored on this. That was a good starting building block for what we can do.

We have heard many other Members here today talk about the sort of things that NIST could be doing, or the new CAISI, which again is a carryover from the AI Safety Institute. We could take some of the ideas that have already been percolating at the State level, including in California, and New York and others, to basically build on what can be done in Federal legislation.

You can combine that with other sort of targeted actions, I want to remind everyone here, people say Congress doesn't do anything, has everybody already forgotten about the Take it Down Act? Passed overwhelmingly, right? We can take targeted approaches to this, and we can take broad approaches. The point is that we can't have the technocratic design of regulation being done in a patchwork like this.

That is going to create serious problems for American innovators as we continue to try to race against China to build our capacity. We have to balance safety and innovation at the same time. We do need to have some preemption, in my testimony I spelled it out in detail how to do this, but reserve certain powers to the State.

I want to agree with the Democratic attorney general of Massachusetts, who said quote,

Existing State consumer protection antidiscrimination data security laws still apply to emerging technology, including AI systems, as they would in any other context.

That is exactly right. States can continue to do that, but we need to have a Federal framework to make sure we get this done right.

Mr. LIEU. Thank you. Just as a side, there may have been some disparagement of California. I just want to note Apple was headquartered in California, Google, Meta, Anthropic, and Nvidia, turns out that California does pretty darn well with the laws that we have. Professor Richards, I have a question for you. California is now proposing SB53, have you looked at that in the California legislature at all?

Mr. RICHARDS. Not at the level of detail that I want to answer questions under oath on it.

Mr. LIEU. OK, that is fine. Now, you in your testimony, thinks that—

Mr. ISSA. Gentlemen, before you came in, Mr. Frazier actually has studied, and is quite favorable in many areas of it, if you—

Mr. LIEU. Tell me about SB53, what is your view of it?

Mr. FRAZIER. Earlier in my remarks I said that SB53 is the least bad State bill I have seen with respect to AI development. That it gets right a lot of the emphasis on information sharing that we know is essential to leading to better AI policy. The sorts of disclosures that SB53 calls for from labs is a very positive step.

I would like to see it done at a Federal level, and not at the State level. I also think that the whistleblower protections called for in SB53 are important to contribute more information sharing. I will note that, for example, Senator Grassley has a whistleblower bill pending before Congress that I would prefer to be the vehicle for those sorts of protections.

Mr. LIEU. Thank you, I appreciate that. Professor Richards, let me go back to you. Your view is there should be no preemption

whatsoever, so let me just sort of ask you this question, and you can answer because my time will be up soon. When a large language model comes out that goes through this enormous amount of training and post training, and all this, and you have a model.

Let us say one State says we are going to mandate testing, another State says we are not going to mandate testing. A third States not only are we going to mandate testing, we are going to mandate the 27 specific areas you have to test. Then, another State says we are going to go even further than that, and do 35 specific areas, and be very specific what you have to disclose, and on and on.

How does even technically an AI company deal with that when they have one model? Do they just say we are just not going to be able to allow this to happen, for example, in Missouri, California, or Florida? How does it even work if you have 17 States regulating one AI model?

I will yield back and let him answer.

Mr. ISSA. I was giving you all that extra time so you can let him answer, and if there is a followup within reason I will let you have it.

Mr. LIEU. Thank you.

Mr. ISSA. It is the advantage of being nearly at the end.

Mr. LIEU. There we go, thank you.

Mr. RICHARDS. Under that hypothetical, Congressman, it would be very challenging for a company to apply it, but it is not my position that there should be no preemption, just that we should not consider broad preemption of State AI laws. Under appropriate circumstances, a sensible Federal law would be naturally preemptive, and I would welcome a reasonable Federal AI statute.

Just as I have welcomed and advocated for a reasonable Federal privacy statute, which the United States is the only advanced economy that does not have one.

Mr. LIEU. Great, thank you, I yield back.

Mr. ISSA. We now go right to the gentleman from California, what does the hat say, Eric?

Mr. SWALWELL. Jimmy Kimmel Live.

Mr. ISSA. Of course. The gentleman is recognized for five minutes.

Mr. SWALWELL. Thank you, Chair. I will get to AI in a moment, but I am not going to miss the opportunity to ask my colleagues, the proponents of free speech across the aisle, and the champions who sit with me, to condemn in the harshest terms what is happening right now from our administration. The second late night comedian has been taken off the air because the President did not like a joke.

I want to first condemn in the harshest tones the murder of Charlie Kirk, he should be with his family right now, he should be with his children. He had a right to say what he wanted to say to who he wanted to say it without any physical violence being brought his way. Jimmy Kimmel had a right to say what he said.

Which didn't in any way suggest that somebody in the MAGA world had been responsible for the murder of Charlie Kirk. He was just pointing out what folks online were doing as Twitter detectives

before any investigation had been completed, were talking about the assassination of Charlie Kirk.

Then, he pointed out that Donald Trump, who did not go to Kirk's memorial service at the Kennedy Center over the weekend, when he was asked how he was feeling about the assassination, did not address it, but rather went right to a construction project. For that, Jimmy Kimmel was taken off the air. That is not who we are, that is what it looks like in China, that is what it looks like in Russia, that can't be what it looks like in America.

The foundation of this, the genesis of this was the President's FCC Chair Brandon Carr sending a tweet that said essentially, and giving an interview to a podcaster where he said essentially, if ABC doesn't want to do this the easy way and suspend Jimmy Kimmel, we will do it the hard way, and it would be government censorship.

Maybe, I was not loud enough in the past when Republicans spoke out against government censorship, and if that is the case I will go back and revisit whether I could have been louder. That does not mean that today Republicans are silent just in an effort to own the libs. If you didn't like cancel culture when you thought it was happening in prior administrations, you certainly can't look at what just happened in our country and accept that this is something we should live with, and we should tolerate.

I want to make it clear, there is going to be a democratic majority in just over a year, and to the FCC Chair, and anyone involved in these dirty deals, get a lawyer, and save your records, because you are going to be in this room, and you are going to be answering questions about the deals that you struck, and who benefited, and what the cost was to the American people because that happened.

I want to now move, Chair, and I appreciate you holding this hearing, to AI, and ask our witnesses first, and I will start with Professor Richards. Professor Richards, what is the risk to the country if, particularly to children if the government does absolutely zero on AI as far as legislation, as far as what they see, privacy that is taken, biases that are reinforced, what do you see the risk could be?

Mr. RICHARDS. Thank you, Congressman. There are a number of risks, some of them are known, and some of them are unknown, which is why it is essential to preserve regulatory flexibility by the States as well as the Federal Government to deal with these questions. We have already discussed, and at some length, but perhaps we can't discuss it enough that the losses that the parents who are seated behind me have suffered.

When we have the, in some cases, the reckless, or the rash deployment of software agents in children's lives, there were discussions about telling them about Santa, but they have done much, much worse, that is one of the risks, exacerbating the mental health epidemic. There are risks to children in schools, children don't read books anymore because of AI models.

The States should be able to address that pedagogically, with particular consequences for our critical thinking skills that are necessary for our democracy.

Mr. SWALWELL. Thank you. Also, Mr. Thierer, I just want to; coming in from another meeting, I want to thank you for your re-

marks earlier about the FCC Chair, and his hypocrisy about censorship.

With that, Chair, I will yield back.

Mr. ISSA. Does the gentleman yield for a second?

Mr. SWALWELL. Yes.

Mr. ISSA. As often happens there is a nuance of total agreement here, and I just want to speak well of your championing free speech, and perhaps those who leave broadcast like our mutual friend Bill Marr might find an even greater place, an even greater amount, I do agree with you that we need to continue to promote free speech.

Your kind words related both in defense of one, but also on Charlie Kirk is very much appreciated, and I look forward to continuing to work with you—

Mr. SWALWELL. You and I have worked on a lot of issues, and this is one we can work on as well. Thank you, Chair.

Mr. ISSA. Thank you, appreciate it. That only leaves me. My job here is not just to ask questions, but perhaps to try to close on as positive a note as I can of what we seem to agree on. I am going to use question comment combination, I only ask that if I am accurate, you agree that I am somewhat accurate as briefly as possible.

I will start primarily with Mr. Frazier, but I want to make sure I have total agreement. If Congress authors laws, and does it normally, not by definition unless we expressly trample on common law, common law remains a tool of the States, is that correct, Mr. Frazier?

Mr. FRAZIER. That is correct, absent very clear language, yes.

Mr. ISSA. OK, so that is one of our challenges, to make sure that any preemption does not challenge existing laws. In the case of, if you will, existing laws in States, for example product liability laws, we never preempted those, even though we do have some Federal laws. The reality is an unsafe product, a product that injures people has a myriad of State laws that already affect it.

For example, when we went from a man striking someone, to a man on a horse striking someone, to a man in a car striking someone, we didn't necessarily have to make major changes in the law, they all fell, and none of them were federally preempted.

Mr. FRAZIER. Correct, and there is a reason why law professors laugh at the idea of the law of the horse.

Mr. ISSA. The law of the horse, exactly. Professor Richards, you gave us a great deal of caution, is it fair to say that if we clearly carve around any question of common law preemption, and at the same time do not stop causes of action which are, although perhaps automated by a bot and the like, still in fact follow that horse example that in fact for the most part don't we meet the requirement of allowing the States to continue to protect their citizens as they have for 250 years?

Mr. RICHARDS. I believe, Chair Issa, that States should have the ability to continue to experiment with their own laws in addition to the common law.

Mr. ISSA. I fully agree with you, and I will go to Mr. Thierer, because this is both law and policy. You mentioned a number of times, ingestion versus output. Ingestion, which cannot easily be

done, 50 different States and 210 different countries around the world.

Isn't that also a case in which the Federal Government must both lead on where the standards are, particularly as to patent, copyright, other intellectual property, and to have a single voice speaking around the world to other countries?

Mr. THIERER. Yes, that is right, Mr. Chair, and let us be clear. We wouldn't be here suggesting that we should have 50 FDAs for food and drug standards, or 50 FAAs for different aviation standards by every State such that planes had to change every State, that would be crazy, right? We don't want that model for AI either. We don't want—

Mr. ISSA. A death by fentanyl, every State has a right to have—

Mr. THIERER. Absolutely, you said it, and let us just be clear, let us just check off the generally applicable laws that would be exempt from either moratorium or preemption, civil rights law and discrimination, unfair and deceptive practices, and antifraud, competition policy laws at the State level, other consumer protections—

Mr. ISSA. In fact, the Lanham Act actually helps the States.

Mr. THIERER. We can go on down this list, and then we can get into the lawsuits. The one thing America doesn't lack is an active trial bar, right? There are going to be a lot of ongoing lawsuits, and we should throw the book at bad actors. There are always going to be bad actors regardless of technology, we have the capability to go after them.

Mr. ISSA. Dr. Bray, I don't want to leave you out of this. Isn't one of the greatest cautions we heard today that we in fact have to make sure that when harm is done to anyone in a given State that they have a reasonable cause of action? If it doesn't exist federally, it must be available in the States, is that correct?

Dr. BRAY. That is fully correct, Chair, thank you.

Mr. ISSA. OK, Mr. Frazier, I am going to sort of guide this another way. From the standpoint of Federal laws, it is fair to say that for all practical purposes, patent, trademark, and copyright, these are bastions of Federal law because under the recognition that they all travel interstate, they have to have one standard rules of the road, correct?

Mr. FRAZIER. It was very apparent to the founders that they did not want a patchwork approach to copyright and patent law, correct.

Mr. ISSA. They also said that no State could erect basically a draw bridge and charge a toll to pass from one State to the other, they specifically understood that States might do that.

Mr. FRAZIER. It is a lesson we have learned throughout history with respect to, for example, attempts to change the length of a truck before it enters another State by 100 was declared unconstitutional, we have been here before, we don't want a patchwork when it comes to national goods.

Mr. ISSA. OK, well I am going to not far exceed, because we have the agreement that helps us in the guidelines. Certainly, in the case of one that was mentioned briefly, PADRA, which does deal with deep fakes, with digital likenesses and the like, and which we do have bipartisan support, and we look to move, that was an element today.

I would like any of you that want to comment further for the record to do so. I guess the last thing that we all have to do is recognize for the families that came here, that we, from this Chair, and I think you heard it from both sides of the aisle, we want to make sure that if we pass a law that further helps protect against the losses that you had, that it consider exactly what happened in the case of your families.

That if we pass a law that in no way should it stop the causes of actions that may exist. If anything, we at a Federal level for example, a death by fentanyl, we want to hold those who knowingly deceive and sell pills purported to be some kind of drug when in fact they are a deadly poison, that they be able to be charged with murder, as in some cases have been done at the State level.

I can assure you from this standpoint, and I think the Ranking Member would not nod in any way but yes, that this is a common goal, and that we heard that message loud and clear. I want to thank those who are here today for their presence.

I want to recognize Mr. Johnson for something he wants to place on the record.

Mr. JOHNSON. Thank you. I have a couple of unanimous consent requests. I would ask—

Mr. ISSA. I know I am going to like them.

Mr. JOHNSON. I would ask unanimous consent to enter into the record a letter by Alejandra Montoya-Boyer, the Vice President for the Center for Civil Rights and Technology at the Leadership Conference on Civil and Human Rights. A letter to you, Chair Issa, and Ranking Member, myself, dated September 18, 2025, which expresses the conference's views regarding the potential preemption of State's efforts to regulate AI—

Also, to enter into the record a statement by Vered Horesh, the Chief of Strategic AI partnerships at Bria AI titled, "Don't Ban State AI Laws." As well as a letter from 17 Republican Governors to Speaker Johnson and Majority Leader Thune dated June 27, 2025, opposing the AI moratorium and the big ugly bill.

Mr. ISSA. Without objection, so ordered.

In closing, I too have unanimous consents. I ask unanimous consent that an extensive report and letter from the organization known as Engine to both of us, which is a coalition of small startups, been around since I think 2011. Without objection, will be ordered.

An additional letter from the Americans for Prosperity detailing the benefits versus the risks of fifty separate States. That will be placed on the record without objection.

An article from *Politico* dated—there we go, dated yesterday, and it is the "California–Washington Tech Fight Heats Up," will be placed in the record without objection.

Additionally, a *Politico* article entitled "We Don't Want California to set the Rules for AI across the Country Trump, Advisor Says," but also in spite of that being placed in the record.

Last, I want to thank our witnesses. You have been informative, you have been helpful, and I think that this has in fact furthered our understanding of, quite frankly, our need to act, and our need to act with a restraint from some of the warnings that were given

by Professor Richards. With that—I have two more, and then we are done.

I would ask unanimous consent that the President's AI initiative to be placed in the record in its full. Additionally, the recent speech by Vice President Vance delivered in Europe be placed in the record. Without objection, those both will be ordered.

Just to make it clear, additionally there will be general leave for similar items not specifically spoken to by Members on both sides of the aisle. They will have five days in which to submit those. As such, we stand adjourned.

[Whereupon, at 12:06 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118623>.

