

The AI Moratorium

January 17, 2026 – Dorsey Law & Policy Notebook

by Troy M. Keller

During 2025, lawmakers across the 50 states opened over 1,000 AI-related bills. Congress became justifiably worried that local lawmakers would go overboard, and came very close to passing an AI regulatory moratorium that would preclude states from weighing in. Many states pushed back firmly on this. On Dec. 11, the White House took matters into its own hands with an executive order laying out a plan for discouraging state laws that regulate AI in ways that are imprudent.

The order does several things, such as instructing the DOJ to create a litigation task force to challenge state laws under preemption and/or interstate commerce clause principles wherever possible. It also threatens to withhold federal money (broadband and other federal grants) to states that enforce onerous AI laws. The Department of Commerce will publish its evaluation of such state laws within 90 days.

It also directs the FTC to issue a policy statement on how laws that force AI to change its outputs (bias mitigation rules) could qualify as deceptive practices under federal law, allowing the FTC to override them.

The FCC is given a job too. It is directed to work through whether its existing authority to regulate telecommunications systems (on which the internet and AI models run) would give it the ability to preempt certain state laws on AI.

The EO explicitly does **not** target state laws regarding child safety, infrastructure (e.g., data center zoning) or state government procurement of AI technologies.

The real test will come over the course of the year as states move ahead to roll out AI related laws or regulations anyway. The EO is not directly binding on the states. Rather, it is a framework of action the agencies might take, so expect there to be some test cases if federal agencies take action under the new policy.

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