



**The Journal of Robotics,
Artificial Intelligence & Law**

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Publishing Staff

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Editorial Office

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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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David Nayer, Publisher, Full Court Press at david.nayer@clio.com or at
202.999.4777

For questions or Sales and Customer Service:

Customer Service

Available 8 a.m.–8 p.m. Eastern Time
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202.999.4777 (phone)
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Executive Preemption and Artificial Intelligence: President Trump's Bet on Deregulatory Federalism

Bepi Pezzulli*

This article analyzes President Trump's artificial intelligence (AI) policy as articulated in two executive orders: Executive Order 14179, which dismantles key elements of the prior administration's federal AI governance architecture and directs a new AI Action Plan, and Executive Order 14365, which seeks to curb state-level AI regulation through coordinated federal litigation, conditional spending leverage, and the promotion of federally preemptive standards. The article argues that the two orders together embody a distinctive regulatory strategy and concludes that the president's executive AI program is best understood as a deregulatory federal industrial strategy: it aims to centralize the regulatory playing field and increase speed to scale, while leaving unresolved the question whether a "minimally burdensome" national framework can adequately address AI externalities without either a statutory settlement from Congress or a stable, judicially sustained theory of federal supremacy over state AI governance.

Introduction

President Donald Trump's second-term artificial intelligence (AI) policy, as expressed in two cornerstone executive orders (EOs), is best understood as a bid to convert the president's signature deregulatory agenda into a national market-design project. EO 14179, Removing Barriers to American Leadership in Artificial Intelligence, functions as the constitutional and administrative "reset": it revokes Biden-era AI governance architecture, directs a new federal AI Action Plan, and reorients the executive branch toward accelerating deployment and scaling innovation. All while framing "ideological bias" as a policy failure rather than a mere political talking point.¹ EO 14365, Ensuring a National Policy Framework for Artificial Intelligence, is the federalism "squeeze": it mobilizes the Department of Justice (DOJ) to challenge state AI laws, uses broadband funds and discretionary grants as leverage

to discourage state regulation, and pushes the Federal Communications Commission (FCC) and Federal Trade Commission (FTC) toward preemptive national standards. Simultaneously, it asks Congress to legislate a uniform framework that would forbid conflicting state rules.²

Taken together, the two EOs outline a coherent theory of AI governance: the United States wins the “AI race” by reducing compliance friction; compressing regulatory variance across 50 jurisdictions; and using federal procurement, competition policy, and communications infrastructure spending to create a single permissive national environment for AI development and rollout.

That theory rests on three legal moves and three economic claims.

Legally, the administration:

1. re-centers AI governance inside the executive branch by rescinding and revising prior directives and agency guidance;
2. pursues preemption primarily through litigation, agency action, and conditional funding rather than through immediate substantive federal regulation; and
3. frames certain state requirements, particularly those said to compel disclosure, alter outputs, or embed “ideological bias,” as unconstitutional extraterritorial regulation, burdens on interstate commerce, or conflicts with federal statutes such as the FTC Act.³

Economically, the administration claims:

1. fragmented state regulation raises fixed costs and deters entry, especially for start-ups;
2. compliance uncertainty slows investment and diffusion, undermining the buildout of broadband and data-center infrastructure required for AI adoption; and
3. in a strategic competition with adversaries, the nation that scales fastest, under a “minimally burdensome” framework, captures security and productivity gains.⁴

This article analyzes the policy as law and as economics. The legal analysis reviews what these orders can do, what they cannot do, and where litigation is likely to concentrate. The economic analysis asks whether the administration’s core trade—speed and scale

in return for fewer ex ante constraints—agrees with the political economy of American federalism and the industrial structure of AI.

Executive Order 14179: The Administrative “Reset” and the Reorientation of Federal AI Governance

EO 14179 is short, but its structure matters. It declares a national policy “to sustain and enhance America’s global AI dominance” for “human flourishing, economic competitiveness, and national security,” while also insisting that AI systems should be “free from ideological bias or engineered social agendas.”⁵ It defines “AI” by incorporating the statutory definition set in 15 U.S.C. § 9401(3), thereby anchoring the order to an existing congressional taxonomy rather than introducing an ad hoc executive definition.⁶

The operative mechanism is twofold. First, the order commands the Assistant to the President for Science and Technology, the Special Advisor for AI and Crypto, and the National Security Advisor to develop an AI Action Plan within 180 days, coordinating across domestic, economic, and budget offices.⁷

Second, it orders an immediate review of “all policies, directives, regulations, orders, and other actions” taken under President Joe Biden’s EO 14110, *Safe, Secure and Trustworthy Development and Use of Artificial Intelligence*,⁸ identifying anything inconsistent with the new policy and directing agencies to suspend, revise, or rescind such actions, while supplying exemptions where final rescission cannot be immediate.⁹ It further directs the Office of Management and Budget (OMB) to revise OMB memoranda, specifically M-24-10¹⁰ and M-24-18,¹¹ within 60 days to conform to the new policy.¹²

As administrative law, this is an attempt to accomplish quickly what notice-and-comment rulemaking accomplishes slowly:¹³ a shift in the internal governance of the federal bureaucracy. Yet it also reveals an important limit. An EO cannot repeal statutes, and it cannot, by itself, erase regulations that were issued through legally required procedures.¹⁴ Its practical effect, therefore, depends on the kind of “actions” it targets. Where the prior administration relied on guidance documents, procurement standards, risk frameworks, voluntary commitments, or internal directives, the new administration can unwind them quickly. Where it relies on formal rules,

rescission must comply with the Administrative Procedure Act's requirements for reasoned decision-making and, typically, notice-and-comment.¹⁵ EO 14179 implicitly acknowledges that constraint by directing agencies to "propose" rescissions where necessary and to use exemptions where available until rescissions are finalized.¹⁶

The more novel element is the order's insistence that "ideological bias" is a governmental concern.¹⁷ Here, the legal relevance is indirect but substantial. If the executive branch frames bias as a procurement and performance issue—government should not buy systems that are unreliable, distorted, or compelled to produce false outputs—then the claim is not (only) about viewpoint discrimination; it becomes an argument about the integrity of federal spending and the rationality of government contracting. That reframing will become explicit in later 2025 actions and guidance,¹⁸ but the conceptual foundation is already present in EO 14179's statement of purpose.¹⁹

EO 14179 thus sets the administration's baseline: accelerate deployment, reduce internal federal friction, treat certain "bias" concerns as operational defects, and treat AI leadership as a national security and economic imperative. EO 14365 then attempts to export that baseline outward, constraining states that might choose a different risk tolerance.

Executive Order 14365: Preemption by Litigation, Funding Leverage, and Agency Standard-Setting

EO 14365 is a longer instrument with a clear target: "excessive State regulation" and the "patchwork of 50 different regulatory regimes" that, in the administration's view, burdens compliance, embeds ideology, and regulates beyond state borders.²⁰ The order names Colorado's "algorithmic discrimination" law²¹ as an example of state policy that may force models "to produce false results" to avoid differential impact.²² It also articulates what a national framework should do: protect children, prevent censorship, respect copyrights, and safeguard communities.²³ Yet, crucially, it insists that the framework be "minimally burdensome" and that it "forbid State laws that conflict with the policy set forth in this order."²⁴

The order's operative provisions implement a three-pronged strategy.

First, it establishes a DOJ "AI Litigation Task Force," within 30 days, whose "sole responsibility" is to challenge state AI laws

inconsistent with the order's policy, including on the grounds that state laws unconstitutionally regulate interstate commerce, are preempted by existing federal regulations, or are otherwise unlawful in the Attorney General's judgment.²⁵ This action is not merely symbolic. A dedicated litigation unit signals that federal-state conflict is not a hypothetical. The order makes preemption a program.

Second, it requires the Secretary of Commerce, within 90 days, to publish an "evaluation" identifying "onerous" state AI laws that conflict with federal policy and recommending which should be referred for DOJ challenge.²⁶ The evaluation must, at minimum, identify laws that require models to alter truthful outputs or that compel disclosures that would violate the First Amendment or other constitutional provisions.²⁷ The Secretary acts "consistent with" authority under 47 U.S.C. § 902(b), tying the evaluation to the statutory responsibilities of the Assistant Secretary for Communications and Information and the National Telecommunications and Information Administration (NTIA).²⁸

Third, it leverages funding and agency action. Through NTIA, Commerce must issue a policy notice specifying conditions under which states remain eligible for certain BEAD (Broadband Equity, Access, and Deployment Program) broadband funds, providing that states with "onerous" AI laws are ineligible for "non-deployment funds," to the maximum extent allowed by federal law, and explaining how fragmented state regulation threatens BEAD deployments and AI applications reliant on high-speed networks.²⁹ Agencies are also directed to assess discretionary grants to determine whether grants can be conditioned on states not enacting conflicting AI laws, or on states entering binding agreements not to enforce such laws during the funding performance period.³⁰ The FCC is told to consider a federal reporting and disclosure standard for AI models that would preempt conflicting state laws.³¹ The FTC is instructed to issue a policy statement about how state laws that require alterations to truthful outputs may be preempted by the FTC Act's ban on deceptive practices.³² Finally, the Special Advisor for AI and Crypto and the president's science advisor must prepare a legislative recommendation establishing a uniform federal framework that preempts conflicting state laws, while explicitly carving out certain categories that should not be preempted: child safety protections; certain infrastructure topics; and state procurement and use of AI, among others.³³

The architecture is notable because it treats preemption as a policy instrument rather than a doctrinal endpoint. The administration

is not waiting for Congress to enact a full national AI statute; it is instead using litigation and agency signaling to deter state activity and shape the bargaining range for future federal legislation.

The Central Legal Question: What Kind of “National Framework” Can an Executive Order Create?

The Constitution’s Supremacy Clause makes federal law supreme, but it does not make federal “policy” supreme.³⁴ Constitutional preemption ordinarily requires a federal statute, or a valid federal regulation issued under statutory authority.³⁵ An EO can direct federal agencies how to use their lawful authorities, but it cannot, by itself, displace state law simply by declaring a national preference.³⁶ The EO 14365 strategy therefore turns on whether the administration can locate (or generate) preemptive force in three places: existing federal statutes and regulations, constitutional limits on state power (especially the dormant Commerce Clause³⁷ and extraterritoriality principles³⁸), and conditional spending arrangements tied to federal funds.³⁹

EO 14365 is drafted with those constraints in mind. It does not claim that the order preempts state law. Instead, it establishes mechanisms to challenge state laws “including on grounds” of preemption by “existing Federal regulations,” unconstitutional interstate commerce regulation, or other unlawfulness.⁴⁰ That phrasing concedes the point: preemption will be argued case by case, grounded in a particular statute or constitutional doctrine, and litigated.

However, the order also seeks to build the raw materials for future preemption. It directs two federal agencies to begin building the regulatory predicates on which future preemption arguments could rest.

First, it instructs the FCC to open a proceeding to develop a uniform federal reporting and disclosure standard for AI-generated content in communications services.⁴¹

Second, it calls on the FTC to issue a policy statement addressing when state-mandated disclosures or labelling requirements for AI content may themselves be deceptive or misleading under the FTC Act.⁴²

The FCC proceeding toward a federal reporting and disclosure standard, if adopted pursuant to the Communications Act and related statutes, could carry preemptive effect, either because Congress has expressly preempted state rules in a domain, or because a federal standard conflicts with state requirements.⁴³ The FTC policy statement is subtler: agency policy statements do not themselves have the force of law, but they can indicate enforcement priorities and, more importantly, can articulate a theory that certain state mandates compel deception—hence, conflict with the FTC Act’s prohibition on deceptive acts and practices.⁴⁴ If the administration can pair that policy statement with enforcement actions or rulemaking, it can attempt to convert “policy” into law.

The legislative recommendation provision underscores that the administration knows the limits of executive unilateralism. It is asking Congress to create the actual preemptive framework, while trying to ensure, through interim litigation and funding leverage, that states do not fill the vacuum with aggressive regulation before Congress acts.⁴⁵

Litigation Pathways: Dormant Commerce Clause, Extraterritoriality, and the Patchwork Problem

The order’s litigation program will likely concentrate on dormant Commerce Clause doctrines, including balancing tests and extraterritoriality.⁴⁶ Even after doctrinal retrenchment and disagreement within the Supreme Court, dormant Commerce Clause law remains a real constraint on state regulations that discriminate against interstate commerce or impose substantial burdens relative to local benefits.⁴⁷ AI regulation is unusually vulnerable to these claims because AI services, model training, and deployment typically occur across state lines: cloud-hosted models serve users nationwide, training data and compute resources are geographically distributed, and compliance designs are hard to localize without redesigning entire products.

EO 14365 explicitly asserts that some state laws “impermissibly regulate beyond State borders.”⁴⁸ That language anticipates extraterritoriality arguments associated with cases like *Healy v. Beer Institute*⁴⁹ and *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*,⁵⁰ where states effectively controlled pricing or conduct beyond their borders. It also anticipates the post-*National Pork*

Producers Council v. Ross debate about how far extraterritoriality and balancing arguments can go when state laws have upstream effects on national markets.⁵¹ The administration can be expected to argue that certain AI disclosure, risk management, auditing, or output-modification mandates function as de facto national standards because firms will not build 50 different models.

Still, dormant Commerce Clause litigation is not automatic victory. States will argue that consumer protection, civil rights, and transparency mandates apply evenhandedly, that burdens are speculative or manageable, and that local benefits, such as reducing discrimination, preventing deception, protecting children, are substantial. The Supreme Court's recent skepticism toward aggressive balancing in *National Pork Producers* suggests that courts may be reluctant to strike down state laws simply because national firms prefer uniformity.⁵² The best targets for the administration will be laws that:

1. explicitly condition liability on algorithmic outcomes defined in ways that are hard to reconcile with model uncertainty;
2. impose disclosure mandates that require revealing proprietary information in ways that burden interstate commerce; or
3. attempt to regulate model design and training choices extraterritorially.

The order's focus on state laws that require models to "alter their truthful outputs" is a strategic litigation choice.⁵³ If a state rule compels a model to output something the developer believes is false, the administration can reframe the claim from "industry dislikes regulation" to "state compels deception," connecting to First Amendment-compelled speech arguments and to the FTC Act theory of conflict. That is a legally more aggressive posture, but it is also a more narratively powerful one for courts.

Preemption Proper: Where Federal Statutes Might Do the Work

The cleanest preemption cases are those grounded in statutes with express preemption clauses. AI, however, lacks a comprehensive

federal statute that expressly preempts state AI regulation. EO 14365 therefore looks for conflict preemption and field preemption through existing federal regulatory frameworks, particularly communications and consumer protection.

The FCC proceeding contemplated in § 6 aims at a “Federal reporting and disclosure standard for AI models that preempts conflicting State laws.”⁵⁴ Whether the FCC can lawfully create such a standard depends on statutory jurisdiction. The Communications Act and related provisions empower the FCC over communications networks and certain services, but AI model reporting is not obviously communications regulation unless framed as a network-integrity, consumer disclosure, or broadband-related issue. The administration’s likely approach is to connect AI disclosure to the deployment and use of AI over broadband networks and to treat reporting as necessary to protect network users and to facilitate infrastructure investment. Even if jurisdiction exists, an FCC “standard” may preempt only within the FCC’s domain; it cannot become a general AI code by agency fiat.

The FTC strategy is more plausible but still contested. The FTC Act prohibits “unfair or deceptive acts or practices” in or affecting commerce.⁵⁵ EO 14365 instructs the FTC to explain when state laws requiring alterations to truthful outputs are preempted by the FTC Act’s prohibition on deception.⁵⁶ A policy statement alone does not preempt anything. Yet it can set up a conflict preemption argument if the FTC takes the position that certain compelled output alterations constitute deception, and if the FTC then enforces that position through adjudication or rule-making in a way that courts accept. The idea would be that state laws compelling deception create an obstacle to federal objectives under the FTC Act, or that compliance with both state and federal requirements is impossible.⁵⁷ The obstacle preemption route is doctrinally available, but it runs into judicial caution: courts do not lightly infer preemption in areas of traditional state police power, and the FTC Act is not typically treated as a sweeping preemption instrument.⁵⁸

The deeper legal point is that EO 14365 tries to manufacture preemption by aligning federal enforcement narratives with constitutional values, truthfulness, First Amendment limits, interstate commerce, and then using those narratives to argue that state regulation is not merely different, but unlawful.

The Spending Clause Strategy: BEAD Funds, Discretionary Grants, and the *Dole/NFIB* Constraints

EO 14365's most immediate coercive potential lies not in litigation but in money. Section 5(a) directs Commerce, via NTIA, to condition eligibility for remaining BEAD funds (specifically "non-deployment funds") on whether states have "onerous" AI laws.⁵⁹ Section 5(b) directs agencies to consider conditioning discretionary grant programs on states refraining from enacting conflicting AI laws or agreeing not to enforce such laws during the grant term.⁶⁰

These are classic conditional spending moves, but they are not unconstrained. Under *South Dakota v. Dole*, conditions on federal grants must generally be unambiguous, related to the federal interest in the program, and not independently unconstitutional; coercion is a limiting principle.⁶¹ Under *NFIB v. Sebelius*, the line from inducement to coercion can be crossed when the federal government threatens to withdraw large existing funding streams in a way that leaves states with no real choice.⁶² EO 14365 attempts to mitigate these risks by focusing BEAD-related conditions on "remaining funding" and "non-deployment funds," and by repeatedly qualifying that conditions apply only "to the maximum extent allowed by Federal law."⁶³ It also grounds the BEAD logic in a programmatic connection: fragmented AI regulation allegedly threatens broadband deployment and network-based AI applications.⁶⁴

Whether that "relatedness" argument succeeds will depend on how courts conceptualize the relationship between broadband infrastructure funding and state AI regulation. If AI applications are major projected drivers of broadband demand and productivity, the administration can argue that state restrictions on AI directly undermine BEAD's objectives, making the condition sufficiently related. States will respond that BEAD's purpose is connectivity, not AI regulation; that conditioning funds on AI policy is an end-run around federalism; and that "binding agreements not to enforce" duly enacted state laws resemble commandeering or coercive interference with core state governance. Anti-commandeering doctrine prevents Congress from directly compelling states to legislate or enforce federal policy.⁶⁵ Conditional spending is not commandeering, but when conditions effectively force states to suspend enforcement of their own laws, courts may look harder at coercion and relatedness.⁶⁶

This spending strategy is also politically revealing. The administration is not merely seeking to win doctrinal preemption cases; it is attempting to change state incentives in advance of litigation, thereby preventing the regulatory patchwork from hardening while Congress remains uncertain.

The First Amendment Thread: Compelled Disclosures, Output “Truth,” and the State’s Regulatory Vocabulary

EO 14365 requires Commerce’s evaluation to identify state laws that may compel developers to disclose or report information “in a manner that would violate the First Amendment.”⁶⁷ That language sets up a two-track challenge: compelled speech and compelled disclosure. The compelled speech doctrine is robust when the state forces private actors to affirm contested messages.⁶⁸ Disclosure mandates receive more deferential review in commercial contexts, at least when they are factual and uncontroversial and tied to preventing consumer deception.⁶⁹ But AI regulation often requires more than factual disclosures; it can require risk assessments, impact statements, documentation of training data categories, or explanations of model behavior that are contestable, probabilistic, and deeply intertwined with proprietary information. That makes the First Amendment a plausible litigation vehicle.

The “truthful outputs” framing is both a rhetorical and legal weapon. Courts are unlikely to accept a simplistic view that a model’s outputs are either true or false in the way human testimony is. Yet if a state law forces an AI system to alter outputs to satisfy statistical parity rules, the administration can argue that the law compels falsehoods or suppresses accurate information, shifting the case into a compelled speech posture. The counterargument is that fairness constraints are not compelled falsehoods but policy constraints on automated decision systems; the “truth” of a hiring recommendation is not a factual assertion but a normative decision rule. This clash is not merely doctrinal; it is about how law describes AI systems, whether as speakers, products, decision tools, or infrastructure.

EO 14179’s insistence on removing “ideological bias” interacts with this in a complicated way. If the federal government itself begins to require ideological neutrality tests for procurement, critics

may argue that the government is imposing viewpoint conditions. The administration will respond that procurement is government speech and government contracting, and that the government is entitled to choose tools that meet performance specifications.⁷⁰ The boundary between government-as-buyer and government-as-regulator will matter as AI becomes embedded in public services.

The Economic Rationale: Fixed Costs, Entry Barriers, and the Governance of General Purpose Technology

The economic case for a “minimally burdensome national framework” is straightforward: when regulation is fragmented across jurisdictions, firms face fixed compliance costs that do not scale down for small entrants. AI markets exhibit high fixed costs and strong scale economies:⁷¹ training frontier models requires large computing power and data investments, and even deploying smaller models requires compliance engineering, monitoring, and documentation. Under a patchwork of state laws, a firm must either build state-by-state compliance pathways or conform to the strictest jurisdiction, effectively letting one state write the national rule. Either way, fixed costs rise, and entry becomes harder.

EO 14365 makes this argument explicitly, noting that compliance is “more challenging, particularly for start-ups.”⁷² From an industrial organization perspective, the argument has merit: compliance costs often operate as entry barriers that entrench incumbents. Ironically, then, state regulation designed to constrain large firms can, if poorly designed, strengthen them by raising rivals’ costs. A federal preemption strategy can therefore be defended not only as pro-industry but as pro-competition, at least in the narrow sense of entry and diffusion.

But there is a second-order problem. AI is a general purpose technology with spillovers and externalities: discrimination harms, privacy risks, security vulnerabilities, misinformation, and labor displacement.⁷³ When externalities are large, “minimally burdensome” regulation can undercorrect. If the federal government preempts state rules without replacing them with workable federal standards, the result can be a regulatory vacuum, not a streamlined framework. EO 14365 tries to avoid that charge by pointing to future legislation and by directing the FCC and FTC toward

standard setting.⁷⁴ Yet the timeline is uncertain, and agency jurisdiction is contested. Economically, a vacuum can produce private ordering,⁷⁵ but private ordering in AI can be dominated by a few platform firms, with standards set by market power rather than public accountability.

The administration's third economic claim is geopolitical. The order frames AI as a "race with adversaries for supremacy."⁷⁶ In a strategic competition model, speed matters: first movers can lock in supply chains for chips, attract global talent, set technical standards, and shape platform ecosystems.⁷⁷ The administration's view is that compliance drag is not merely a domestic cost but a national security vulnerability. EO 14179 similarly grounds the policy in "national security."⁷⁸

Here, the economics becomes less about classic consumer welfare and more about industrial policy. The administration is effectively prioritizing a rapid scale-up strategy: maximize investment, build infrastructure, diffuse adoption, and use federal power to prevent subnational actors from slowing the process. That strategy is not grounded in *laissez-faire* in the strict sense. It may be seen as a national market-making project with a deregulatory aesthetic.

Broadband, Data Centers, and the Infrastructure Link: Why Bead Appears in an AI Preemption Order

The insertion of the Broadband Equity, Access, and Deployment Program into EO 14365 is not accidental; it is the connective tissue between AI governance and physical infrastructure.⁷⁹ Modern AI deployment is network- and compute-intensive. Training and inference demand data center capacity, grid power, and high-speed connectivity. If states impose regulatory burdens that slow AI investment, the administration argues that the demand-side rationale for broadband buildouts weakens, and the supply side planning for network upgrades becomes riskier.⁸⁰

Economically, this is a complementarity story: broadband, data centers, and AI applications are complementary goods. When complementary goods must be deployed together, policy that slows one can reduce returns on investment in the others. Conditioning broadband funds on AI policy therefore attempts to align state incentives across complementary domains.

Legally, however, this is where conditional spending doctrine bites. The more attenuated the link between the grant program and the condition, the more vulnerable the condition is to challenge under *Dole's* relatedness principle.⁸¹ A state may plausibly argue that BEAD is meant to remedy connectivity gaps, and that using it to punish AI regulation is unrelated, vague, or coercive. The administration will respond that AI applications are integral to the economic rationale for high-speed networks and that fragmented AI laws threaten the very “mission of delivering universal, high-speed connectivity” because they inhibit the services that will ride on those networks.⁸² Courts will be forced to decide whether “relatedness” is a narrow programmatic test or a broader economic systems test.

Federalism as Policy Variable: Laboratories of Democracy Versus the National Market for AI

The deepest conflict exposed by EO 14365 is not doctrinal, but institutional. Federalism can be a brake, but it can also be an engine. States experiment, and the federal government later learns. In technology policy, state action has often preceded federal action, whether in privacy, consumer protection, or environmental regulation. EO 14365 treats this dynamic as a threat: state “experimentation” becomes fragmentation, and fragmentation becomes loss.

From an economic federalism perspective, uniform national rules are attractive when markets are national, externalities cross borders, and firms cannot practicably tailor products by jurisdiction.⁸³ AI fits that description. Yet states will insist that they are responding to localized harms (employment discrimination, educational impacts, consumer fraud) and that absent federal legislation, state police power fills a vacuum. The order’s response is to claim that the vacuum is itself part of a national strategy: leaving room for state rules risks losing the AI race.⁸⁴

The administration’s carve-outs in § 8(b) are an attempt to make this centralization more palatable. It instructs that a future preemptive federal statute should not preempt “otherwise lawful” state AI laws on child safety protections, certain infrastructure topics (with a qualification), and state procurement and use of AI.⁸⁵ Those carve-outs perform two functions. They concede that not all state AI regulation is hostile to federal objectives, and they attempt to narrow the political opposition by preserving state authority

in morally resonant and administratively practical domains. At the same time, they underscore the administration's theory of the proper locus of AI governance: the private market should operate under one national rule, while states retain limited autonomy largely within their own government operations and child protection frameworks.

The Legal Framing and the Practical Business Implications

Legal commentary on EO 14365 has emphasized its attempt to centralize AI policy by mobilizing DOJ challenges, discouraging state enactment and enforcement through funding conditions, and pushing federal preemption through litigation and agency action.⁸⁶ That framing is accurate, but incomplete unless one sees how the order creates a regulatory bargaining game.⁸⁷ If you are a state contemplating an AI law, EO 14365 raises the expected cost: DOJ scrutiny, possible loss of certain federal funds, and uncertainty over future preemption. If you are a firm, the order lowers expected compliance costs if it succeeds but raises short-term legal uncertainty because the national standard is not yet a statute and litigation outcomes are uncertain. Firms may delay some compliance investments while accelerating lobbying for a federal statute that locks in preemption.

This uncertainty is an economic cost, even for firms that support federal preemption.⁸⁸ A litigation-driven transition can create a period where state laws remain on the books, enforcement risk persists, and federal agencies signal potential preemption without delivering it. That can produce a “regulatory whiplash” problem:⁸⁹ firms face the costs of preparing for state compliance while betting that preemption will soon arrive. The administration appears to accept this transitional cost as the price of achieving the longer-term goal of a single national regime.

Conclusion: Trump's AI Policy as Deregulatory Federal Industrial Strategy

The unifying theme across EO 14179 and EO 14365 is that “AI dominance” is treated as a national security objective that warrants restructuring the regulatory environment. EO 14179 clears

the federal administrative deck, directs a coordinated executive action plan, and orders agencies to unwind barriers linked to the prior administration's safety-oriented framework.⁹⁰ EO 14365 attacks the next constraint: state-level risk regulation, which the administration characterizes as costly, ideologically distorting, and constitutionally suspect.⁹¹

Legally, the policy is ambitious but bounded. The orders can reorganize executive priorities, direct agency proceedings, and coordinate litigation strategy. They cannot, without statutory support, impose a comprehensive national AI code or categorically preempt state regulation. The administration's likely path is therefore incremental: select high-leverage cases that highlight extraterritorial regulation and burdens on interstate commerce, use grant conditions to chill enforcement, push agencies toward standards that can generate conflict preemption, and pressure Congress to enact a statute that converts "policy" into binding law.

Economically, the policy is coherent in a world where AI is characterized by scale economies, high fixed costs, and winner-take-most dynamics. Uniformity can reduce entry barriers created by compliance fragmentation, thereby increasing innovation and diffusion. Yet uniformity also risks underregulating externalities if "minimally burdensome" becomes a euphemism for insufficient accountability. In that scenario, preemption might entrench incumbents through market power rather than through regulation, leaving consumers and workers exposed to harms that states attempted to mitigate.

The decisive question, then, is not whether the administration has a theory. It does. The decisive question is whether the legal instruments it has chosen, litigation-centered preemption and conditional spending pressure, coupled with selective agency moves, can produce a stable national equilibrium before courts, states, and Congress fracture the project. If Congress enacts a national framework aligned with the order's priorities, President Trump's AI policy becomes a durable restructuring of American technology governance. If Congress does not, and if courts resist aggressive preemption theories or funding conditions, the orders may still succeed politically by deterring the most aggressive state experimentation, but they will do so at the cost of prolonged uncertainty. Either way, the policy's animating wager is unmistakable: the Administration is willing to risk the messiness of federal-state

conflict and transitional legal instability in exchange for speed, scale, and a single national market for AI.

That calculation rests on a blunt premise: in AI, the country that scales first writes the rules later.

Notes

* Bepi Pezzulli is a Solicitor in England & Wales and an Avvocato in Italy, specialized in cryptofinance. He also qualified as an attorney-at-law in New York (1999-2019). He may be contacted at bepi.pezzulli@italiaatlantica.org.

1. Exec. Order No. 14179, 90 Fed. Reg. 8741 (Jan. 31, 2025).
2. Exec. Order No. 14365, 90 Fed. Reg. 58499 (Dec. 16, 2025).
3. *Id.*, §§ 3-7.
4. *Id.*, § 1.
5. Exec. Order No. 14179, 90 Fed. Reg. 8741, §§ 1-2.
6. *Id.* § 3; 15 U.S.C. § 9401(3).
7. Exec. Order No. 14179, 90 Fed. Reg. 8741, § 4(a).
8. Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).
9. *Id.* § 5(a).
10. Office of Management and Budget, Memorandum M-24-10: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence (Mar. 28, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/03/M-24-10-Advancing-Governance-Innovation-and-Risk-Management-for-Agency-Use-of-Artificial-Intelligence.pdf>.
11. Office of Management and Budget, Memorandum M-24-18: Advancing the Responsible Acquisition of Artificial Intelligence in Government (Sept. 24, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/10/M-24-18-AI-Acquisition-Memorandum.pdf>.
12. Exec. Order No. 14179, 90 Fed. Reg. 8741 § 5(b).
13. Administrative Conference of the United States, Information Interchange Bulletin No. 014, Notice-and-Comment Rulemaking (May 17, 2021), <https://www.acus.gov/sites/default/files/documents/IIB014-Rulemaking.pdf>.
14. See Sam Callahan et al., Deregulatory Executive Orders: Issues Under the Administrative Procedure Act, Arnold & Porter (Apr. 16, 2025), <https://www.arnoldporter.com/en/perspectives/advisories/2025/04/deregulatory-eos-issues-under-the-apa>.
15. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, [463 U.S. 29](#), 42-43 (1983); *FCC v. Fox Television Stations, Inc.*, [556 U.S. 502](#), 515-516 (2009).
16. Exec. Order No. 14179, 90 Fed. Reg. 8741, § 5(a).
17. Exec. Order No. 14179, 90 Fed. Reg. 8741, § 1 (stating that the United States must develop AI systems “free from ideological bias or engineered social agendas”).

18. President Trump reframed the debate around the integrity of federal spending and the rationality of government contracting through a series of early-2025 directives and regulatory initiatives that translate this premise into operational policy. Specifically, the actions include executive orders and subsequent executive guidance aimed at overhauling how federal dollars are spent, how contracts are awarded, and how agencies justify and record spending. One central example is EO 14222, Implementing the President's Department of Government Efficiency "Cost Efficiency Initiative", signed on February 26, 2025. That order directs federal agencies to build centralized systems that record every payment, require written justification from officials before disbursing funds, and mandate comprehensive reviews of existing contracts and grants with the possibility of termination or modification to improve efficiency and reduce waste. It also calls for agencies to issue guidance on signing and modifying contracts consistent with the new oversight regime. Another part of this broader policy shift was EO 14275, Restoring Common Sense to Federal Procurement, signed on April 16, 2025, which pushes the Office of Federal Procurement Policy and the Federal Acquisition Regulation Council to revise the FAR. It directs the elimination of unnecessary regulatory requirements in the procurement system, emphasizing simplicity, cost-effectiveness, and value in government purchases. Together these actions and the accompanying guidance from the Office of Management and Budget and agency leaders make explicit Trump's reframed argument that federal contracting and spending should be transparent, justified, and aligned with taxpayer interests, rather than trapped in what his administration views as overly complex, inefficient bureaucratic procedures.

19. Exec. Order No. 14179, 90 Fed. Reg. 8741, § 1.

20. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

21. See Stuart D. Levi et al., *Colorado's Landmark AI Act: What Companies Need to Know*, Skadden, Arps, Slate, Meagher & Flom (June 24, 2024), <https://www.skadden.com/insights/publications/2024/06/colorados-landmark-ai-act>.

22. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

23. *Id.* § 8(a)(i)-(iii).

24. *Id.* § 1.

25. *Id.* § 3.

26. *Id.* § 4.

27. *Id.*

28. *Id.*

29. *Id.* § 5(a); 47 U.S.C. § 1702(e)-(f).

30. *Id.* § 5(b).

31. *Id.* § 6.

32. *Id.* § 7; 15 U.S.C. § 45.

33. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 8.

34. Bradford R. Clark, “The Supremacy Clause as a Constraint on Federal Power,” *George Washington Law Review* 71 (2003): 91-134.

35. U.S. Const. art. VI, cl. 2.; see *Arizona v. United States*, [567 U.S. 387](#), 399-400 (2012); *Wyeth v. Levine*, [555 U.S. 555](#), 565-566 (2009).

36. See Joel L. Fleishman & Arthur H. Aufses, “Law and Orders: The Problem of Presidential Legislation,” *Law and Contemporary Problems* 40(3) (1976): 1-45.

37. Congress Research Service, Overview of Dormant Commerce Clause, Constitution of the United States: Analysis and Interpretation, https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/.

38. Congress Research Service, Overview of the Commerce Clause, Constitution of the United States: Analysis and Interpretation, https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/.

39. See Victoria L. Killion, Funding Conditions: Constitutional Limits on Congress’s Spending Power, Congress Research Service R46827 (July 1, 2021), <https://www.congress.gov/crs-product/R46827>.

40. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 3.

41. *Id.* § 6.

42. *Id.* § 7.

43. *Id.* § 6.

44. *Id.* § 7; 15 U.S.C. § 45.

45. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 8.

46. See, e.g., Brannon P. Denning, “Reconstructing the Dormant Commerce Clause Doctrine,” *William & Mary Law Review* 50(2) (2008): 417-516.

47. See *Pike v. Bruce Church, Inc.*, [397 U.S. 137](#), 142 (1970); *Dep’t of Revenue v. Davis*, [553 U.S. 328](#), 337-38 (2008).

48. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

49. *Healy v. Beer Institute*, [491 U.S. 324](#), 336-37 (1989).

50. *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, [476 U.S. 573](#), 582-84 (1986).

51. See *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 369-70 (2023).

52. *Id.* at 372-76.

53. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 4.

54. *Id.* § 6.

55. 15 U.S.C. § 45(a)(1).

56. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 7.

57. See *Crosby v. Nat’l Foreign Trade Council*, [530 U.S. 363](#), 372-73 (2000) (obstacle preemption); *Florida Lime & Avocado Growers, Inc. v. Paul*, [373 U.S. 132](#), 142-43 (1963) (impossibility).

58. See *Wyeth*, 555 U.S. at 565-66.

59. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 5(a).

60. *Id.* § 5(b).

61. *South Dakota v. Dole*, [483 U.S. 203](#), 207-08 (1987).

62. Nat'l Fed. of Independent Bus. v. Sebelius, [567 U.S. 519](#), 575-85 (2012) (opinion of Roberts, C.J.).

63. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 5(a).

64. *Id.*

65. Congress Research Service, Constitution of the United States: Analysis and Interpretation ("Constitution Annotated"), Anti-Commandeering Doctrine, https://constitution.congress.gov/browse/essay/amdt10-4-2/ALDE_00013627/.

66. See *Murphy v. NCAA*, 584 U.S. 453, 475-477 (2018); *Printz v. United States*, [521 U.S. 898](#), 935 (1997).

67. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 4.

68. See *Wooley v. Maynard*, [430 U.S. 705](#), 714 (1977).

69. See *Zauderer v. Office of Disciplinary Counsel*, [471 U.S. 626](#), 651 (1985).

70. See *Rust v. Sullivan*, [500 U.S. 173](#), 192-93 (1991).

71. Anton Korinek & Jai Vipra, "Concentrating Intelligence: Scaling and Market Structure in Artificial Intelligence," *Economic Policy* 40(121) (2025), 225-56.

72. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

73. Juan C. Mateos-Garcia, "The Complex Economics of Artificial Intelligence," available at SSRN 3294552 (2018); Daron Acemoglu, Harms of AI, No. w29247, National Bureau of Economic Research (2021).

74. Exec. Order No. 14365, 90 Fed. Reg. 58499, §§ 6-8.

75. See Avery Katz, "Taking Private Ordering Seriously," *University of Pennsylvania Law Review* 144(5) (1996): 1745-63.

76. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

77. Gonalo Pacheco-de-Almeida et al., "The Right Speed and Its Value," *Strategic Management Journal* 36(2) (2015): 159-76.

78. Exec. Order No. 14179, 90 Fed. Reg. 8741, § 2.

79. BEAD is a \$42.45 billion federal grant program created by the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58, §§ 60101-60102), administered by the NTIA (National Telecommunications and Information Administration). Its purpose is to fund U.S. states and territories to build out high-speed broadband infrastructure in unserved and underserved areas, with priority for:

1. locations lacking 25/3 Mbps (unserved),
2. then below 100/20 Mbps (underserved),
3. then community anchor institutions.

States receive allocations, design their own grant programs under NTIA rules, and award funds to private providers to deploy fiber or equivalent networks. BEAD is the largest broadband expansion program in U.S. history and a core pillar of federal digital infrastructure policy.

80. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 5(a).

81. Dole, 483 U.S. at 207-08.
82. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 5(a).
83. See Joel P. Trachtman, "Regulatory Competition and Regulatory Jurisdiction," *Journal of International Economic Law* 3(2) (2000): 331-348.
84. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.
85. Id. § 8(b).
86. Colleen Theresa Brown et al., Unpacking the December 11, 2025 Executive Order: Ensuring a National Policy Framework for Artificial Intelligence, *Sidley Austin* (Dec. 23, 2025), <https://www.sidley.com/en/insights/newsupdates/2025/12/unpacking-the-december-11-2025-executive-order>.
87. See John C. Cross, "A Theory of the Bargaining Process," *The American Economic Review* 55(1/2) (1965): 67-94.
88. See, e.g., Maria-Florina Balcan et al., "The Price of Uncertainty," *ACM Transactions on Economics and Computation (TEAC)* 1(3) (2013): 1-29.
89. See, e.g., The Federalist Society for Law and Public Policy Studies, on "Regulatory Whiplash" Webinar (July 19, 2023), <https://fedsoc.org/events/on-regulatory-whiplash>.
90. Exec. Order No. 14179, 90 Fed. Reg. 8741, §§ 4-5.
91. Exec. Order No. 14365, 90 Fed. Reg. 58499, § 1.

