

Trump's AI Order Is More Bark than Bite

While the executive order has created uncertainty for the many states that have passed artificial intelligence policies to protect their residents, its impact falls short of its menacing rhetoric.



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The Constitution doesn't give the president the power to preempt state regulations on artificial intelligence through an executive order, and Congress hasn't delegated that authority. But that hasn't stopped President Trump from issuing an executive order that tries to strong-arm states into abandoning their AI laws. The

[order](#) ^[link-1] he signed last week seems aimed at intimidating states into backing down from enacting and enforcing laws that protect Americans from AI-related harms — from deceptive ads to deepfakes designed to mislead voters — with no federal regulation to fill the gap.

It's not a coincidence that this sop to the AI industry comes after it

poured [millions of dollars](#) [\[link-2\]](#) into campaigns and super PAC donations to support the president and members of Congress over the last year. But the fact remains that this executive order can't do much to stop states from enacting and enforcing AI safety laws — and courts and state governments should know this.

Trump's executive order instructs the Justice Department to assemble a task force to challenge state laws deemed “cumbersome” or that guard against discrimination. It directs the Commerce Department to announce that it will withhold certain broadband support funds from states that pass strong AI regulations. It also orders various “evaluations” and “assessments” by other agencies, designed to discourage states from adopting robust AI laws.

Since Congress has failed to act, it's indefensible for the administration to threaten lawsuits and the withholding of certain broadband funds from states simply for protecting their residents. The Brennan Center [found](#) [\[link-3\]](#) in July that at least 40 states had enacted more than 149 key laws regulating AI or otherwise addressing AI risks since 2019. These measures passed in states with both Republican- and Democratic-controlled governments and tackle a range of areas, such as the risks of using AI in [healthcare](#) [\[link-4\]](#) and [hiring](#) [\[link-5\]](#) .

Under the Constitution's Supremacy Clause, state laws must be consistent with the Constitution and federal statutes, regardless of White House directives. While states can challenge the AI order in court, it does not give the Justice Department or other federal

agencies new legal powers. The federal government cannot directly enforce the executive order against state AI laws through litigation, since presidential executive orders do not give the government the ability to [bring lawsuits](#) [\[link-6\]](#). To challenge a state AI regulation in court, the department would need to base the lawsuit on a federal statute or constitutional provision — not simply on the executive order itself.

Virtually all state AI laws in effect today are likely on solid legal ground. State legislators typically take care to ensure that their laws are consistent with the federal Constitution and statutes. The deep-pocketed tech industry has challenged several state regulations in court over the past three years, so laws that remain uncontested have so far survived industry lawyers' scrutiny.

Further limiting the Trump administration's power, the Supreme Court recently overturned a longstanding doctrine known as *Chevron* deference. As a result, the judiciary no longer defers to federal agencies' interpretations of the statutes they administer. The executive order's instructions to agencies such as the Federal Communications Commission and the Federal Trade Commission don't change that. And when it comes to threatening funding streams, the Trump administration cannot unilaterally alter funding terms established by Congress, as that would conflict with federal law. When the administration has attempted to illegally withhold funding in other areas, it has been met by [strong resistance](#) [\[link-7\]](#) in court.

The AI executive order is little more than political theater. In the absence of federal leadership on the issue, states should continue

protecting their citizens from the risks of unregulated AI, no matter

what exemptions the industry seeks.

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Links

link-1: order <https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/>

link-2: millions of dollars <https://www.brennancenter.org/our-work/research-reports/money-politics-roundup-october-2025>

link-3: found <https://www.brennancenter.org/our-work/analysis-opinion/congress-shouldnt-stop-states-regulating-ai-especially-no-alternative>

link-4: healthcare https://custom.statenet.com/public/resources.cgi?mode=show_text&id=ID:bill:UT2025000H452&verid=UT2025000H452_20250325_0_E&

link-5: hiring https://custom.statenet.com/public/resources.cgi?mode=show_text&id=ID:bill:IL2023000H3773&verid=IL2023000H3773_20240809_0_E&

link-6: bring lawsuits <https://www.fjc.gov/history/administration/judicial-review-executive-orders>

link-7: strong resistance <https://www.politico.com/news/2025/08/11/judge-administrations-withholding-funds-illegal-00504650>