



**Before the
Department of Justice
Washington, DC 20530**

In the Matter of)
)
Request for Information on State Laws Having)
Significant Adverse Effects on the National)
Economy or Significant)
Adverse Effects on Interstate Commerce) Docket No. OLP182
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**Comments on the Notice of Request for Information
By Digital Liberty**

James Erwin

Executive Director

Introduction

Digital Liberty appreciates this opportunity to submit comments on state regulations that inhibit the growth of the national economy. There are a number of reforms that ought to be enacted at the state and local level on housing, energy, zoning, business regulation, etc. that would improve national economic harmonization and spur Gold Age growth.

Some of these can be addressed through federal preemption, such as preemption of local pole attachment rules that do little more than create rent-seeking opportunities for cities and counties when federal broadband programs come to town. This and similar preemption tied to specific federal programs, such as attaching zoning reform as a condition of receiving housing grants, can be achieved through such means. Outright preemption without a conditional funding program, however, is restrained by the 10th Amendment to only that which falls under the Commerce Clause. One example is the Internet Tax Freedom Act, which asserted Congress's exclusive right to tax the internet and then Congress declined to do so, leading to a digital boom that has fueled most of our recent growth in America.

Similarly, a matter of grave importance to the future of the American economy and our leadership in the world is the growing threat of state-level artificial intelligence regulations that threaten to strangle innovation and balkanize our national market. The Department of Justice, as the guardian of our nation's laws and the integrity of its commerce, must recognize this emergent crisis for what it is—a fundamental challenge to the principles of the Commerce Clause and a direct impediment to our ability to compete in a generational contest for technological supremacy with the Chinese Communist Party.

State efforts to regulate AI, exemplified by Colorado's disastrous legislative foray, threatened to create a patchwork of conflicting, burdensome, and ultimately unworkable mandates. In the case of Colorado, the legislature was reconvened before the law took effect for the purpose of revision. Left unchecked, this approach will crush startups, deter investment, and cede our lead in AI to our primary geopolitical adversary, the People's Republic of China. The fear of the unknown is driving parochial state interests to erect regulatory walls around a technology that is, by its very nature, borderless. This is not a legitimate exercise of states' rights; it is a regression to the very economic fragmentation the framers of our Constitution sought to prevent. One of the chief purposes of the Constitution was to create a continental free trade zone, which was effected by Article I Section 9.

Our comments will argue that this patchwork of state AI laws represents an unnecessary burden on interstate commerce. We will use Colorado's law as a case

study in how such regulations create legal uncertainty and economic stagnation, as similar laws are under consideration in California and New York. We will further contend that allowing this balkanization to proceed amounts to unilateral disarmament in our technological competition with China. We urge the Department of Justice to exercise its authority to defend the principle of a unified national market and challenge these ill-conceived state laws before they inflict irreparable damage on one of our nation's most vital industries, just as we have repeatedly urged Congress to pass a federal preemption of state AI laws.

The Constitutional Framework: A National Market for National Innovation

The framers of the Constitution were not naive idealists; they were practical men who had witnessed firsthand the chaos of a weak central government under the Articles of Confederation. They understood that for a nation to prosper, it required a single, unified economic market, free from the interference of parochial state interests. It was for this reason that some of them convened the Annapolis Convention which, proving otherwise a failure, resulted in the Philadelphia Convention to revise the articles. Both Washington and Hamilton were veterans of the commercial disputes that impelled our wise forebears to action.

Ultimately, they vested in Congress the power to “regulate Commerce... among the several States.” They furthermore explicitly prohibited states from obliging vessels from one state “to enter, clear, or pay Duties in another.” The Commerce Clause was not a mere technical provision; it was the foundational pillar of American economic power, designed explicitly to prevent states from imposing tariffs, creating trade barriers, and otherwise impeding the free flow of goods and services across state lines. It was also conceived as an antidote to the then-common practice of states concluding trade agreements with foreign powers, which would have picked apart slowly the confederation that reformed into these United States.

Today, we face a 21st-century version of this same threat. AI is not a product manufactured and sold within a single state. An AI model may be designed by engineers in California, trained on massive datasets using cloud computing infrastructure located in Virginia and Ohio, and deployed to serve customers in every state from Maine to Hawaii. The data, the algorithms, and the services themselves flow seamlessly across state lines. To pretend that a single state, like Colorado, can impose a comprehensive regulatory regime on this inherently national and international enterprise is to ignore both technical reality and constitutional principle.

Allowing a patchwork of state laws to govern AI would be akin to allowing each state to set its own railroad gauge in the 19th century—a reality in the South that made it more difficult to move Union troops to victory in the Civil War, and whose

preemption resulted in the explosive growth of the transcontinental railroad after the war. The result is not a flourishing of "laboratories of democracy," but a cacophony of contradiction and a quagmire of compliance. A startup in Texas cannot possibly navigate 50 different definitions of "algorithmic discrimination" or 50 different sets of risk assessment requirements. The inevitable outcome of such a system is not safety, but paralysis. The Commerce Clause was designed precisely to prevent this kind of economic disintegration. It also raises significant privacy concerns, another area of law where a federal standard is badly needed for multinational tech firms and nationally-chartered banks to effectively serve their customers.

The Colorado Precedent: A Case Study in Economic Stagnation

To understand the tangible threat posed by state-level AI regulation, one need look no further than Colorado. The Colorado Artificial Intelligence Act (CAIA) serves as a perfect blueprint for how to destroy a nascent industry through vague mandates, impossible compliance burdens, and a legal framework that presumes guilt and chills innovation.

The law imposes onerous duties on developers and deployers of "high-risk" AI systems to avoid "algorithmic discrimination." While this goal may sound noble, the law's definition is so broad and its requirements so ill-defined as to be functionally impossible to satisfy. It creates a standard that forces companies to prove a negative—that their system will never, under any circumstances, produce a disparate outcome. This is not a standard of reasonable care; it is a standard of perfect prescience that no technology or human endeavor could ever hope to achieve.

The result is a devastating chilling effect on investment and deployment. Venture capitalists will not invest millions of dollars into a startup knowing that its entire business model could be rendered illegal by the shifting interpretations of a Colorado state regulator. Large, established companies may have the legal teams to attempt compliance, but they will do so by deploying only the most cautious, watered-down versions of their technologies, depriving Coloradans and, ultimately, all Americans of the full benefits of AI. Small innovators, the very engines of our economic dynamism, will be crushed before they even begin, buried under the weight of compliance costs they cannot possibly bear.

And it will affect all Americans, since AI developed in one state will not stay there. Liability standards triggered in Colorado will apply to developers regardless of where they work. To avoid the legal headache and the costs associated with compliance, developers will simply close up shop.

This is not "consumer protection." It is innovation prevention, born of a Luddite's fear of new technology. Rather than targeting malicious uses of AI, the law preemptively punishes the creators of the tools themselves, holding them liable for outcomes they cannot fully control. This approach is as absurd as holding a hammer manufacturer liable for every bent nail. It fundamentally misunderstands the nature of technology development and creates a climate of legal risk so profound that the rational choice for any innovator is to simply avoid the Colorado market altogether, or worse, to abandon their projects entirely. If the Colorado model is allowed to proliferate, it will not protect consumers; it will rob them of life-saving medical diagnostics, productivity-enhancing tools, and a universe of innovations we cannot yet even imagine.

The Balkanized Future: A Race to the Bottom that China Wins

The damage, however, will not be confined to Colorado. As other states follow suit, each with its own unique twist on definitions, disclosure requirements, and liability standards, the United States will transform from a single, dynamic market for innovation into a fractured and stagnant regulatory minefield. The "California effect," where one state's onerous regulations become a de facto national standard, will create a race to the bottom, where the most restrictive and anti-innovation policies prevail. We have already seen this in another field the Department might consider, which California's exemption from many EPA regulations allowing it to instead impose invasive environmental laws with which industries must comply to penetrate the largest state market.

Imagine a world where an AI developer must navigate a 50-state compliance matrix before launching a single product. The resources that should be dedicated to research and development, to hiring engineers, and to out-competing our global rivals will instead be diverted to an army of lawyers and compliance officers. This is a recipe for national economic suicide. It is a system that consolidates power in the hands of a few tech giants who can afford the overhead, while extinguishing the startups that are the lifeblood of our competitive edge.

And while we are engaged in this self-inflicted regulatory war, the Chinese Communist Party will be moving with singular purpose. The CCP is not debating 50 different sets of rules. It is pouring state resources into AI development, integrating it across its military and industrial base, and exporting its technology to the developing world. By allowing our domestic market to become balkanized, we are handing them an unearned and potentially insurmountable advantage. We are unilaterally disarming in the most critical technological race of the 21st century.

This is the grim future that awaits if the Department of Justice stands idly by. The principles of federalism are a cornerstone of our republic, but they were never

intended to permit states to dismantle the national economy or compromise national security. When state actions create a direct and substantial burden on interstate commerce and threaten our ability to lead on the world stage, the federal government has not only the right, but the obligation, to intervene.

Conclusion

The Department of Justice stands at a crossroads. It can watch as a patchwork of ill-conceived state laws dismantles the world's most vibrant innovation ecosystem, or it can act to defend the constitutional principle of a unified national market. The proliferation of state AI regulations, led by Colorado's misguided example, is an existential threat to American technological leadership. These laws impose unconstitutional burdens on interstate commerce, create a climate of fear that stifles investment, and will ultimately cede the future of AI to the Chinese Communist Party.

This is not a matter of partisan politics, but of national interest. The ability to innovate without asking permission from 50 different sets of bureaucrats is fundamental to American prosperity and security. We urge the Department of Justice to use all the tools at its disposal to challenge these unconstitutional state overreaches. The Department must affirm the supremacy of the Commerce Clause and ensure that the United States remains a single, open market where the technologies of the future can be born and flourish. The health of our economy and the security of our nation depend on it.

Digital Liberty once again thanks the Department for the opportunity to comment on this vital matter. We are confident that if you choose to defend the principles of free commerce and permissionless innovation, you will be securing a future of prosperity and leadership for all Americans.