



POTUS Executive Order on Artificial Intelligence

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What is an executive order?

- It is a unilateral order issued by the President that may instruct agencies and officials within the Executive Branch how to carry out policy
 - It is *not* a statute or law passed by Congress
 - There are no limits to what a President can write into an executive order ("EO"). BUT, for it to survive a court challenge, the EO must be a Constitutional use of the President's authority
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What is an executive order?

- A President can unilaterally revoke an EO of a previous President (most do this)
 - Congress can undermine an EO by passing a law that directly contradicts it (but the President would have to sign the bill)
 - Courts can judicially review an EO to ensure it's a Constitutional use of authority
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What is in the AI executive order?

- President Trump signed the EO "**Ensuring a National Policy Framework for Artificial Intelligence**" on December 11, 2025
 - This was his second AI-related EO
 - The first revoked former President Biden's EO on AI and removed barriers for the federal government to research and use AI
 - This EO is much more controversial than the first, as it purports to control how states enforce AI laws
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What is in the AI executive order?

- **Sections 1 and 2: Purpose and Policy statements**
 - *"The resulting framework must forbid State laws that conflict with the policy set forth in this order. That framework should also ensure that children are protected, censorship is prevented, copyrights are respected, and communities are safeguarded."*
 - *"It is the policy of the United States to sustain and enhance the United States' global AI dominance through a minimally burdensome national policy framework for AI."*
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What is in the AI executive order?

- **Section 3: AI Litigation Task Force**
 - *"...whose sole responsibility shall be to challenge State AI laws inconsistent with the policy set forth in section 2 of this order, including on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing Federal regulations, or are otherwise unlawful in the Attorney General's judgment, including, if appropriate, those laws identified pursuant to section 4 of this order..."*
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What is in the AI executive order?

- **Section 4: Evaluation of State AI Laws**
 - *"...evaluation of existing State AI laws that identifies onerous laws that conflict with the policy set forth in section 2 of this order, as well as laws that should be referred to the Task Force established pursuant to section 3 of this order. That evaluation of State AI laws shall, at a minimum, identify laws that require AI models to alter their truthful outputs, or that may compel AI developers or deployers to disclose or report information in a manner that would violate the First Amendment or any other provision of the Constitution"*
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What is in the AI executive order?

- **Section 5: Restrictions on State Funding**
 - *"...issue a Policy Notice specifying the conditions under which States may be eligible for remaining funding under the Broadband Equity Access and Deployment (BEAD) Program..."*
 - *"...must provide that States with onerous AI laws identified pursuant to section 4 of this order are ineligible for non-deployment funds, to the maximum extent allowed by Federal law."*
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What is in the AI executive order?

- **Section 5: Restrictions on State Funding (con't)**
 - *"Executive departments and agencies (agencies) shall assess their discretionary grant programs ... and determine whether agencies may condition such grants on States either not enacting an AI law that conflicts with the policy of this order, including any AI law identified pursuant to section 4 or challenged pursuant to section 3 of this order, or, for those States that have enacted such laws, on those States entering into a binding agreement with the relevant agency not to enforce any such laws during the performance period in which it receives the discretionary funding"*
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What is in the AI executive order?

- **Section 6: Federal Reporting and Disclosure Standard**
 - *"the Chairman of the Federal Communications Commission shall... initiate a proceeding to determine whether to adopt a Federal reporting and disclosure standard for AI models that preempts conflicting State laws"*
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What is in the AI executive order?

- **Section 7: Preemption of State Laws Mandating Deceptive Conduct in AI Models**
 - *"the Chairman of the Federal Trade Commission shall... issue a policy statement on the application of the Federal Trade Commission Act's prohibition on unfair and deceptive acts or practices under 15 U.S.C. 45 to AI models"*
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What is in the AI executive order?

- **Section 8: Legislation**
 - *"The Special Advisor for AI and Crypto and the Assistant to the President for Science and Technology shall jointly prepare a legislative recommendation establishing a uniform Federal policy framework for AI that preempts State AI laws that conflict with the policy set forth in this order."*
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Legal analysis of order

- **Commerce Clause**

- In other words, are states prohibited from enforcing AI laws due to the dormant commerce clause? Probably not, as these AI laws don't seem to purposefully discriminate against out-of-state interests

- **Preemption**

- Section 3 of the EO claims that some state AI laws are preempted by existing federal regulations
 - An EO cannot directly preempt a state law, but a federal regulation can
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Legal analysis of order

- **BEAD non-deployment funding restricted (Sec. 5)**
 - Unclear if the National Telecommunications and Information Administration (NTIA) has the authority to hold back these funds
 - Does it matter?
 - **Other discretionary agency funding restricted (Sec. 5)**
 - Even more unclear because no funding source or program is listed in EO
 - The authority of an agency to withhold funds will vary from program to program (Ex: is the Administrative Procedure Act in play?)
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Legal analysis of order

- **Federal reporting and disclosure standard for AI (Sec. 6)**
 - The Federal Communications Commission (FCC) has not been granted clear regulatory authority over AI development by Congress
 - The FCC regulates telecommunications, not AI
 - **FTC prohibition on "unfair and deceptive acts"**
 - Is a state's enforcement of AI laws preempted by the FTC's authority to prohibit unfair and deceptive acts?
 - Probably not, as unless an AI law required that something be unfair or deceptive
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