

Testimony on Behalf of the National Conference of State
Legislatures

By Barrie Tabin, Legislative Director

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Committee

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Good morning, Chairwoman James, Vice Chair Campbell, Ranking Member Sibilio and members of the committee. My name is Barrie Tabin and I am a legislative director with the National Conference of State Legislatures. I lead our Technology and Financial Services advocacy in Washington, DC, before Congress, federal agencies and the administration. As many of you know, NCSL is a bipartisan organization representing the legislatures of our nation's states, territories, commonwealths and Washington, D.C.

Based on a resolution, which was unanimously approved at our Legislative Summit last August, the organization strongly opposes the 10-year moratorium on the enactment and enforcement of state artificial intelligence (AI) legislation and regulation currently included in the U.S. House of Representative's budget reconciliation bill. NCSL sent a letter to the House Energy and Commerce Committee to that effect and we plan to send a letter to the full House later this week.

Section 43201(c) of the House budget reconciliation bill specifically states, "No State or political subdivision thereof may enforce any law or regulation regulating artificial intelligence models, artificial intelligence systems, or automated decision systems during the 10-year period beginning on the date of the enactment of this Act." In our reading, and those of many other organizations concerned about this provision, such a moratorium would foreclose a state's ability to enact and enforce a host of significant AI laws for the next 10 years. This would be true of laws passed in red, blue and purple states and true for those that have been in effect for many years. The scope of such a moratorium for states is potentially enormous and means that state laws aimed at mitigating algorithmic bias, requiring transparency or disclosures, establishing consumer protections for AI-driven services, preventing exploitation, prohibiting deep fakes, curtailing scams and fraud perpetrated against older Vermonters and kids, protecting communities from noise and high energy costs associated with data centers, and, quite possibly, protecting children from harms associated with social media - to name a few - would not be enforceable unless they fall under a narrow set of exceptions outlined in the bill.

As I mentioned earlier, NCSL's membership adopted a policy resolution on AI last August exactly because the technology is so essential to enhancing or infringing on the rights and abilities of all Americans. In the resolution, NCSL urges Congress and federal agencies to consult with states as they debate and develop AI legislation and regulations, paying particular attention to how any federal law or regulation will impact state laws governing AI. We maintain that federal laws and regulations in the AI space should set a strong baseline of rights and safety protections and support states' ability to adopt additional protections in their own laws to keep pace with and respond to rapid AI technological advances. States have consistently demonstrated a greater ability to respond quickly and effectively to

emerging technologies than Congress or federal agencies—a reality that will remain true for the foreseeable future. A rigid, all-encompassing preemption of state authority would hinder innovation in public policy, limit consumer protection and prevent states from addressing rapidly evolving AI risks in real time. Congress must avoid adopting a one-size-fits-all approach that restricts state leadership and undermines their essential role in safeguarding residents and businesses.

The bill does provide exceptions to its moratorium. States may continue to enact and enforce laws designed to facilitate the deployment of AI or remove legal impediments to its use. Specifically, the bill permits laws whose “primary purpose and effect” is to streamline licensing, permitting, zoning, or procurement processes in ways that support AI adoption. Additionally, the moratorium does not apply to generally applicable technology-neutral laws that treat AI systems the same as non-AI systems performing similar functions. States are also allowed to impose reasonable, cost-based fees or bonds on AI systems, provided these financial requirements are applied uniformly to comparable technologies. Importantly, the bill exempts state laws that impose criminal penalties, such as those targeting AI-generated child sexual abuse material (CSAM). This means that state statutes criminalizing the creation or distribution of AI-generated CSAM would remain enforceable under the moratorium.

The proposed 10-year moratorium included in the House budget reconciliation package, faces mounting opposition and procedural challenges as it moves through Congress. While the measure has support from some GOP lawmakers and major tech firms advocating for a uniform federal framework, it has drawn bipartisan concern and criticism from a broad coalition of stakeholders.

NCSL, 40 state attorneys general, the Council of State Governments, the National Association of State Chief Information Officers, the North American Securities Administrators Association, and numerous state legislators have urged Congressional leaders to remove the provision, citing concerns over state sovereignty and regulatory overreach. Cybersecurity experts warn that preempting state authority could leave critical gaps in oversight, particularly given the absence of comprehensive federal AI legislation. Consumer advocacy and civil rights organizations argue that the moratorium would effectively shield corporations from accountability by nullifying existing state laws aimed at addressing algorithmic bias, transparency and misinformation.

In the Senate, the moratorium faces additional scrutiny under the Byrd Rule. Under this rule, senators can challenge and potentially remove from the bill any provision that does not have a direct budgetary impact or where the budgetary effects are merely incidental to the policy change. Given that the AI moratorium primarily serves as a regulatory measure

rather than a fiscal one, it could be found ineligible for inclusion in a reconciliation package. Senators John Cornyn (R-Texas) and Bernie Moreno (R-Ohio) have both raised concerns about using the reconciliation process to advance significant policy changes, warning it could erode legislative norms. Given the breadth of opposition and strict Senate rules, the moratorium's chances of surviving the reconciliation process remain uncertain.

Despite concern and outright opposition to the proposed moratorium, as of now, no state or organization has formally initiated a legal challenge against the proposed moratorium. Legal experts have noted that such a federal moratorium could be subject to judicial review, particularly if it is perceived to infringe upon states' rights or overstep federal authority.

Thank you, again, for inviting me to join you today. I am glad to answer any questions you might have.