

Comments of Jennifer Huddleston in response to Request for Information regarding State Laws Having Significant Adverse Effects on National Economy or Significant Adverse Effects on Interstate Commerce

I appreciate the opportunity to provide comments related to the Department of Justice (DoJ) and National Economic Council (NEC)'s Request for Information regarding State Laws Having Significant Adverse Effects on National Economy or Significant Adverse Effects on Interstate Commerce. This comment does not represent the views of any particular party or special interest group but is intended to assist regulators in considering the ways state level technology regulations related to consumer data privacy, artificial intelligence (AI), and online speech and content moderation.

In that regard, I seek to discuss the requested information as it has related to state-level actions on technology policy issues that are likely to have or have significant adverse effects including the following key points:

- State laws that seek to regulate naturally interstate technology policy issues including artificial intelligence (AI) and data privacy can raise costs and disrupt markets with a particular impact on smaller players;
- With regards to online speech laws are likely already preempted by Section 230; however, more generally due to the interstate nature of data and the internet the federal government should consider preempting certain disruptive state level technology regulation through its existing interstate commerce powers;
- If regulation is necessary on these technology policy issues, a federal framework enacted by Congress is the appropriate level of regulation to both prevent potential disruptions and economic costs while addressing the concerns of consumers and innovators;
- If agencies are delegated authority, it should come with clear direction from Congress. Agencies may be able to regulate the specific applications within their purview or expertise, but they should refrain from broad regulation without explicit delegation from Congress particularly for general purpose technologies.

**State Tech Policy Laws Burden the Interstate Nature of a Technology and Raise the Costs for Innovators and Consumers**

One of the advantages of many technologies is the ability to connect us to those around the world and around the nation. By their very nature, technologies like the internet and AI are interstate and even international. This means that, if regulation is necessary, the appropriate level of regulation will often be at a federal level as state level regulation is likely to create a disruptive patchwork that limits the options available to consumers and significantly increase

costs, particularly for smaller players. This section will examine three areas where such a disruptive patchwork is emerging: data privacy, online speech, and AI.

Data is often formed in interactions that almost inherently cross state borders, making data privacy an inherently interstate issue. Despite this interstate nature, more than 19 states have already passed some form of comprehensive consumer data privacy regulation.<sup>i</sup> Such laws not only create confusion for consumers and innovators but can have significant economic costs.

Under the current patchwork, a small business trying to develop a website will have to contend with the complex, and at times conflicting, requirements of various states.<sup>ii</sup> In many cases it does not matter if that business is located in the state with the data privacy legislation, but rather if enough consumers from such states are accessing its products and services. This translates into tens of thousands of dollars in additional compliance cost, something which will effectively bar many small businesses from creating and running their own websites or online services.<sup>iii</sup>

Even though small businesses are the most vulnerable to the emerging patchwork, the long-term costs to the economy as a whole will prove to be colossal. A study conducted by the Information Technology & Innovation Foundation projected that the current patchwork of laws will cost the economy over \$1 trillion by 2032.<sup>iv</sup> Even a single state's law can have significant economic impact, as seen in California's own analysis of its data privacy law where the state found that initial compliance costs could exceed \$55 billion.<sup>v</sup> Such impacts compound in a growing patchwork where each state yields additional compliance costs.

While the patchwork may be most detailed and quantifiable in the large number of states with data privacy laws, that is not the only context of technology policy regulation where state regulation risks creating a patchwork that could have consequences beyond its borders.

Emerging AI model regulation in states risks not only increasing the costs of this important technology but could prevent certain developments entirely. For example, Colorado recently delayed implementation of its first-in-the-nation AI law due in part to the law's cost.<sup>vi</sup> Yet, other states like New York,<sup>vii</sup> California,<sup>viii</sup> and Texas<sup>ix</sup> have considered such legislation as well. Similar to data privacy laws, a state-by-state patchwork would raise the costs for small businesses, but in the case of AI legislation, a patchwork could derail or deter potentially lifesaving applications and limit innovation more generally.<sup>x</sup>

When it comes to a state-by-state approach to interstate technology policy issues, state level regulation, particularly around data privacy and AI, raises costs and limits the availability of products and services.

### **Potential existing pre-emption**

In the case of online speech and content moderation laws, despite attempts to regulate at a state level, there is clear pre-emption already in place. Section 230 preempts any inconsistent laws when it comes to the regulation of content moderation.<sup>xi</sup> While states have tried to regulate online content moderation for reasons ranging from concerns about ideological bias to hate speech, such laws are inconsistent with Section 230 and thus pre-empted. State laws that have been upheld with regards to online speech and content moderation have tended to be those that are generally applicable to all advertising or information, or those that apply to speech by the platform itself.<sup>xii</sup>

### **Federal legislative or regulatory means for addressing problematic state technology patchworks**

Notably there have been attempts to consider federal frameworks that would pre-empt emerging state patchworks in both data privacy and AI legislation.

The most notable of these were the attempts to include a state AI policy moratorium earlier in 2025. The moratorium would have limited the ability of states to pass potentially disruptive legislation that would increase costs and deter legislation while still allowing generally applicable law.<sup>xiii</sup> This approach provides an opportunity for the necessary federal debate around any potential AI policy without risking a costly patchwork developing in the interim.<sup>xiv</sup> While there is certainly a role for states to play in regulating on issues like government procurement or law enforcement use, the U.S. cannot afford to stifle American innovators in such a globally competitive field. By allowing 50 different states to approach the issue in 50 different ways, the U.S. risks cultivating a culture of compliance, not innovation. A more balanced approach could allow states to determine intrastate uses or limitations of the technology such as law enforcement or the state government's own use of the technology but recognize that the impact on interstate activity should be from Congress or appropriately delegated regulators and not California or Texas.

Despite repeated attempts, a federal data privacy framework has not made it as far and has varied with regards to its preemption of existing state laws. For example, in 2022 the American Data Privacy and Protection Act (ADPPA) <sup>xv</sup> would have preempted new laws but left in place many state laws with significant regulatory burdens or have given rise to costly innovation.<sup>xvi</sup> Particularly for smaller players who are more likely to struggle with the compliance costs of a patchwork, it is important that a federal law provides a ceiling not a floor on such issues.<sup>xvii</sup>

### **Delegation at a federal level and tech policy**

Of course, regulation at a federal level also runs risks, particularly in the case of fast-moving innovative technologies. Law and regulation are static while technology and its applications are dynamic. In the case of many technologies, a broad delegation could risk giving an agency significant power to intervene in many aspects of both business and consumer choices.

With this in mind, any delegations to agencies should be clear and come with appropriate guardrails. Rather than delegating complete authority over a general-purpose technology, both agencies and Congress should consider how that specific application of the technology may play out within an agency's existing purview. For example, questions about the application of existing regulations to autonomous vehicles are appropriately within the expertise of the Department of Transportation,<sup>xviii</sup> but this authority should not be interpreted to extend to chatbots just because they could provide traffic or vehicle repair information.

The Children's Online Privacy Protection Act (COPPA) provides an example of what such a delegation might look like. Rather than broadly delegating the ability to regulate data, it provides the Federal Trade Commission (FTC) with specific authorities under the law and a particular harm or concern that this authority is designed to protect.<sup>xix</sup> In contrast, a broad delegation over a category such as data or AI could risk significant expansion of the administrative state.<sup>xx</sup>

## Conclusion

While states may be the "laboratories of democracy," they can also create problematic consequences with significant economic impacts. This is observed in many general-purpose technologies like the internet and AI where the technology is naturally interstate. As such, these policies are best and constitutionally handled at a federal level with appropriate actions by Congress.

---

<sup>i</sup> See C Kibby et al., [US State Privacy Legislation Tracker](#), July 7, 2025 .

<sup>ii</sup> ["Which States Have Consumer Data Privacy Laws?"](#) Bloomberg Law, April 7, 2025.

<sup>iii</sup> Castro, Daniel, Luke Dascoli, and Gillian Diebold. ["The Looming Cost of a Patchwork of State Privacy Laws."](#) Information Technology and Innovation Foundation, January 24, 2022.

<sup>iv</sup> *Id.*

<sup>v</sup> Lauren Feiner, ["California's New Privacy Law Could Cost Companies a Total of \\$55 Billion to Get in Compliance,"](#) CNBC, October 8, 2019

<sup>vi</sup> Shawn Zeller and Erin Schumaker, ["Why Colorado Is Rethinking Its AI Law - Politico,"](#) Politico, accessed September 11, 2025

<sup>vii</sup> N.Y. S.B. 1169, ["An Act to Amend the Executive Law, in Relation to Establishing the New York Artificial Intelligence Task Force,"](#) 2025 Leg., Reg. Sess., *New York State Senate*.

<sup>viii</sup> Cal. S.B. 1047, ["Safe and Secure Innovation for Frontier Artificial Intelligence Models Act,"](#) 2023–2024 Reg. Sess., *California Legislative Information*.

<sup>ix</sup> Tex. H.B. 149, ["Texas Responsible Artificial Intelligence Governance Act,"](#) 89th Leg., Reg. Sess., *Texas Legislature Online*.

<sup>x</sup> Adam Thierer et al., ["California and Other States Threaten to Derail the AI Revolution,"](#) R Street Institute, September 16, 2024.

<sup>xi</sup> See Valerie C. Brannon and Eric N. Holmes, ["Section 230: An Overview | Congress.Gov | Library of Congress,"](#) Congressional Research Service, April 1, 2024.

<sup>xii</sup> *Id.*

<sup>xiii</sup> See Kevin Frazier and Adam Thierer, ["Understanding the Proposed AI Moratorium: Answers to Key Questions,"](#) R Street Institute, June 3, 2025.

<sup>xiv</sup> See Jennifer Huddleston, ["Preventing the Patchwork Promotes Innovation: Why a Moratorium on State AI Policy Makes Sense,"](#) Cato at Liberty (blog), June 12, 2025.

<sup>xv</sup> Congress.gov. ["H.R.8152 - 117th Congress \(2021-2022\): American Data Privacy and Protection Act."](#) December 30, 2022.

---

<sup>xvi</sup> See Alexander I. Schneider, “[New Bipartisan Federal Privacy Bill – Breakthrough, Too Late, or Both](#),” Kelley Drye & Warren LLP, June 7, 2022.

<sup>xvii</sup> Jennifer Huddleston and Emma Hopp, “[Comments of Jennifer Huddleston and Emma Hopp in Response to Request for Information \(RFI\) on Exploring a Data Privacy and Security Framework](#),” Cato Institute, April 7, 2025.

<sup>xviii</sup> “[Trump’s Transportation Secretary Sean P. Duffy Advances AV Framework with Plans to Modernize Safety Standards](#),” NHTSA, September 4, 2025.

<sup>xix</sup> See Ariel Fox Johnson, “[Protecting Kids’ Privacy, Post-Chevron Deference](#),” Tech Policy Press, July 16, 2024.

<sup>xx</sup> See Adam Thierer and Neil Chilson, “[The Problem with AI Licensing & an ‘FDA for Algorithms’](#),” The Federalist Society, June 5, 2023.