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ARTIFICIAL AUTHORITY: FEDERALISM, PREEMPTION, AND THE CONSTITUTIONAL STRUCTURE OF AI REGULATION

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Executive Order 14,179 (?EO 14,179?), signed by President Donald J. Trump in January 2025, heralds a new federal approach to artificial intelligence (?AI?) governance focused on deregulation and national competitiveness. This Article analyzes EO 14,179's sweeping changes ? notably its revocation of President Biden's AI executive order (?EO 14,110?) and its directive to produce America's AI Action Plan?and contrasts them with emerging state-level AI regulations. The July 2025 AI Action Plan emphasizes deregulation, infrastructure expansion, and international competition, even directing federal agencies to consider withholding funds from states enacting burdensome or restrictive AI laws.[1] Such measures set the stage for a federalism clash with states like Colorado, which passed a landmark Colorado AI Act (SB 24-205) to regulate ?high-risk? AI systems, which becomes effective February 1, 2026.[2] This Article explores the resulting legal tensions under the Spending Clause, Dormant Commerce Clause, and preemption doctrines. It argues that the Administration's attempt to preempt or penalize state AI regulations by executive fiat raises constitutional red flags under the Spending Clause and tests the limits of executive authority. Simultaneously, state laws like Colorado's invite scrutiny under Dormant Commerce Clause jurisprudence as potential burdens on interstate commerce. The analysis reviews these constitutional dimensions, including the applicability of Spending Clause constraints and Dormant Commerce Clause precedents, and examines whether federal preemption could override state AI laws. Finally, the Article offers a balanced policy discussion weighing the imperative of innovation and AI leadership against the need for risk mitigation and accountability.

I. Introduction

In early 2025, the United States government dramatically pivoted its approach to AI governance. Upon taking office, President Donald Trump issued Executive Order 14,179 titled ?Removing Barriers to American Leadership in Artificial Intelligence,? (?EO 14,179?) signaling a decisive shift toward deregulation and rapid innovation.[3] EO 14,179 explicitly revoked prior federal AI policies deemed impediments to innovation ? most notably rescinding President Biden's October 2023 executive order on the ?Safe, Secure, and Trustworthy Development and Use of AI? (?EO 14,110?).[4] In its place, EO 14,179 set a national policy of sustaining American ?global AI dominance? and directed the creation of a comprehensive federal AI Action Plan to accelerate U.S. AI leadership.[5]

This federal push for unfettered AI development soon met resistance at the state level. As Washington promoted a light-touch regulatory stance, several states had begun crafting their own rules to address emerging risks perceived in AI. For example, in May 2024, Colorado became one of the first states to enact a broad AI governance law, Senate Bill 24-205, known as the Colorado Artificial Intelligence Act (?Colorado AI Act? or ?CAIA?).[6] Set to take effect on February 1, 2026, the Colorado AI Act imposes transparency, fairness, and accountability obligations on ?high-risk? AI systems used in ?consequential decisions? like employment, lending, or healthcare.[7] Colorado's law?and similar initiatives in states such as Utah and draft proposals in California ? reflect growing concern over ?algorithmic discrimination? and other AI caused harms in the absence of federal regulation.[8]

This divergence between a deregulatory federal agenda and proactive state regulations has teed up a classic federalism fight, this time over AI. To be sure, the Trump Administration's America's AI Action Plan, released in July 2025 pursuant to EO 14,179, not only lays out a national strategy favoring innovation and infrastructure, but also pointedly targets state laws that try to regulate AI as potential ?barriers? to progress.[9] Trump's AI Action Plan recommends that federal agencies consider a state's AI regulatory climate when allocating discretionary funds, and to limit funding if state regulations are deemed ?unduly restrictive.?[10] It also directs the Federal Communications Commission (?FCC?) to evaluate whether state AI rules interfere with federal mandates, hinting at possible preemption efforts.[11] These measures invert the usual federalism model ? instead of enticing states to raise standards through funding, the federal government is pressuring states not to regulate AI in hopes that deregulation will spur innovation.[12]

The collision course is set: a deregulation-first federal policy versus state-level proactive risk regulation. This Article

examines the constitutional and legal implications of this conflict. **Part I** provides background on Executive Order 14,179 and its corresponding AI Action Plan. **Part II** discusses Colorado's AI Act as a case study in state AI regulation and its potential burden on interstate commerce. **Part III** analyzes the conflict through constitutional lenses ? the Spending Clause's limits on conditioning federal funds, the Dormant Commerce Clause's constraints on state laws affecting interstate commerce, and principles of federal preemption and executive power. **Part IV** offers a policy analysis, weighing the benefits of innovation and national uniformity against the values of experimentation and public protection. The Article concludes by considering paths forward to reconcile innovation with governance, positing that a balanced national framework may be needed to avoid protracted federal-state conflict in the AI arena.

[1]See Winning the Race: America's AI Action Plan, White House Office of Sci. & Tech. Pol'y (July 23, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf (hereinafter ?America's AI Action Plan').

[2]An Act Concerning Consumer Protections in Interactions with Artificial Intelligence Systems, ch.?198, §§?1?10, 2024 Colo. Sess. Laws 198 (enacted May 17, 2024, to be codified at Colo. Rev. Stat. §?6-1-1701 et seq. (eff. Feb.?1,?2026)).

[3] See Exec. Order No.?14,179, 90 Fed.?Reg.?8741?(Jan.?23,?2025).

[4] Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023) (revoked by Exec. Order No. 14,148, 90 Fed. Reg. 75192 (Jan. 20, 2025)).

[5] Exec. Order 14,179, supra note 3, at § 2.

[6] An Act Concerning Consumer Protections in Interactions with Artificial Intelligence Systems, ch.?198, §§?1?10, 2024 Colo. Sess. Laws 198 (enacted May 17, 2024, to be codified at Colo. Rev. Stat. §?6-1-1701 et seq.) (eff. Feb.?1,?2026)).

[7] Id.

[8] Artificial Intelligence Policy Act, S.B. 149, 2024 Gen. Sess. (Utah 2024) (enacted March 13, 2024) (codified at Utah Code Ann. §?13-2-12)(establishing transparency and disclosure requirements for AI interactions); Cal. Assemb. B. 331, 2023?24 Leg., Reg. Sess. (Cal. 2024) (proposing oversight for automated decision systems in sensitive contexts).

[9] See America's AI Action Plan, supra note 1, at 1.

[10] See id. at 3.

[11] Id.

[12] See South Dakota v. Dole, 483?U.S.?203,?211 (1987) (upholding a conditional highway?funding incentive for states to adopt a minimum drinking age of 21).

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