



The University of Texas at Austin
School of Law

SUBMITTED STATEMENT OF
KEVIN FRAZIER
AI INNOVATION AND LAW FELLOW
THE UNIVERSITY OF TEXAS SCHOOL OF LAW

BEFORE THE
**SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND
THE INTERNET OF THE COMMITTEE ON THE JUDICIARY**
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
“AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?”

SEPTEMBER 18, 2025

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

Chairman Issa, Ranking Member Johnson, and distinguished Members of the Subcommittee, thank you for the opportunity to testify.

My name is Kevin Frazier. I am the inaugural AI Innovation and Law Fellow at The University of Texas School of Law. Throughout my time in the academy as well as in the private sector, I have examined the intersection of constitutional law, regulatory design, and innovation policy. Outside of teaching students, I believe there is no greater purpose for academics than sharing their knowledge with the public and policymakers.

This purpose is all the more paramount when it comes to solving complex and novel challenges. How to govern artificial intelligence (AI) qualifies as such a challenge. If our builders, innovators, and entrepreneurs receive the support and space required to drive technological progress, AI can facilitate human flourishing and help sustain and spread the American Dream. If parochial, unneighborly state laws instead stall AI development, Americans will miss out on realizing the full benefits of tools that continue to become more reliable and capable.

A few months ago, Dr. Jensen testified before this same subcommittee and announced unequivocally that the nation that leads in AI will shape the future.¹ Nothing has changed in the interim.² What remains uncertain, however, is whether the U.S. will retain its leading position as our adversaries bend their laws and levy their resources to relentlessly pursue technological horizons.³

That uncertainty is partially the result of an unsettled question: the proper role of the states and federal government in regulating AI.⁴ The founders offered a clear answer in their decision to abandon the Articles of Confederation and adopt the Constitution.

My testimony today examines three principles the founders deliberately infused into our Constitution that, when applied to the current AI discussion, resolve debates about the authority of each actor. Subsequent developments in related areas of the law—namely, the Commerce Clause—have given rise to the false impression that muddled judicial interpretations somehow relaxed or

¹ Protecting Our Edge: Trade Secrets and the Global AI Arms Race Hearing Before the Subcomm. on Courts, Intellectual Property, Artificial Intelligence, and the Internet of the H. Comm. on Judiciary, 119th Cong. 1 (2025) (statement of Dr. Benjamin Jensen).

² See, e.g., Hal Brands, How the US Could Lose the AI Arms Race to China, AEI (Aug. 12, 2025), <https://www.aei.org/op-eds/how-the-us-could-lose-the-ai-arms-race-to-china/>; Reading between the lines of the dueling US and Chinese AI action plans, Atlantic Council (Aug. 7, 2025), <https://www.atlanticcouncil.org/blogs/new-atlanticist/reading-between-the-lines-of-the-dueling-us-and-chinese-ai-action-plans/>.

³ See, e.g., Rebecca Arcesati, China’s AI Development Model in an Era of Technological Deglobalization, Mercator Institute for China Studies (May 2, 2024), <https://mercics.org/en/report/chinas-ai-development-model-era-technologicaldeglobalization> (investigating China’s whole-of-nation approach to AI development, deployment, and diffusion); Kathryn Armstrong, Ex-Google engineer charged with stealing AI secrets, BBC (Mar. 6, 2024), <https://www.bbc.com/news/world-us-canada-68497508> (describing allegations that a former Google email shared trade secrets with two Chinese companies).

⁴ This is not a new question. Resolution of which issues “belong” to the states and the federal government is a seemingly perpetual inquiry. Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 502 (2008).

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

blurred these principles.⁵ However, they remain as foundational today as they were more than 200 years ago. Adherence to these principles is essential both as a matter of fidelity to the founders' vision and as a means to secure an AI regulatory posture that does not directly run afoul of the Constitution.⁶

THE ROLE OF THE FEDERAL GOVERNMENT

The first is that the federal government alone is responsible for matters that implicate the economic and political stability of the country,⁷ while states maintain considerable discretion to address local concerns. Within this framework, it cannot be the case that the absence of an affirmative federal response to such a national issue invites or permits state action.⁸ The idea that “each state has the authority to set for itself the limit of its regulatory powers”⁹ invites the serial testing of state authority—an exercise that, if replicated by 50 states, will result in jurisdictional squabbles at a minimum and, potentially, national discord with respect to issues of national concern.¹⁰

Worry about states interfering with national affairs animated the transition from the Articles of Confederation to the Constitution. While policy experimentation by states has received praise in more recent times,¹¹ Hamilton lamented experiments that undermine uniformity with respect to areas like trade and diplomacy.¹² He and other—namely, the coauthors of *The Federalist Papers*—acknowledged that “different regulations of the different states” over things such as currency could undermine the nation’s economic competitiveness.¹³ Such concerns drove them to intentionally and explicitly allocate to the federal government the powers necessary to “provide for the harmony and proper intercourse among the states.”¹⁴ This distribution was all the more important when it came to securing the national interest during crises. Jefferson lamented “a want of sufficient means at their disposal [Congress] to answer the public exigencies and of vigor to draw forth those means.”¹⁵ Matters such as contagions, wars, and economic collapse surely qualified as such exigencies.

⁵ Ruth Mason & Michael S. Knoll, *Bounded Extraterritoriality*, 122 MICH. L. REV. 1623, 1627-28 (2024) (highlighting doubts among scholars over the extraterritoriality doctrine); Dawinder Sidhu, *Interstate Commerce x Due Process*, 106 IA. L. REV. 1801, 1816-22 (2021) (walking through the existing ambiguity surrounding the scope of the dormant Commerce Clause territoriality doctrine).

⁶ Erbsen, *supra* note 4, at 508.

⁷ Ribert D. Cooter & Neil S. Siegel, *Collective Action Federalism: A General Theory of Article I, Section 8*, 63 STAN. L. REV. 115, 117 (2010).

⁸ *Contra* Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 NOTRE DAME L. REV. 1133, 1134 (2010).

⁹ *Id.*

¹⁰ *See* THE FEDERALIST NO. 22 (Hamilton).

¹¹ *See, e.g.*, Scott Kohler, *Technology Federalism: U.S. States at the Vanguard of AI Governance*, Carnegie (Feb. 10, 2025), <https://carnegiecendowment.org/research/2025/02/technology-federalism-us-states-at-the-vanguard-of-ai-governance?lang=en>.

¹² THE FEDERALIST NO. 22 (Hamilton).

¹³ THE FEDERALIST NO. 42 (Madison).

¹⁴ *Id.*

¹⁵ Alexander Hamilton to James Duane, 3 Sept. 1780 via Founders on the Defects of the Articles of Confederation, *America in Class* (last accessed Sept. 12, 2025), <https://americainclass.org/sources/makingrevolution/constitution/text1/foundersdefectsarticlesconf.pdf>.

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

The emerging threats to national security and economic stability posed by AI advances place regulation of frontier AI models squarely and exclusively in the authority of the national government. To focus on one example, AI has lowered the barriers to the creation and deployment of bioweapons by bad actors.¹⁶ Defensive measures, however, have not progressed at the same rate. Researchers from Georgia Tech and Yale recently concluded that the technical countermeasures to identify and mitigate such harms rest on unfounded assumptions.¹⁷ They warn that even with significant technical progress, the nation must pursue alternative strategies to ready ourselves for a near-future in which synthetic pathogens go undetected and uncontained.¹⁸ This is a national endeavor that cannot be waylaid by state laws, no matter how well intentioned.¹⁹

EXTRATERRITORIAL LIMITS ON STATE LAW

Second, the extensive authorities reserved to each state end at their respective borders.²⁰ As the Supreme Court has specified on multiple occasions, the equal sovereignty of the states is a fundamental principle of our Constitution.²¹ Our constitutional order does not condone one state to intentionally and substantially interfere with the liberty and freedom of another.²² Political clout, economic might, and sheer population does not grant any state the authority to step into the shoes of the federal government. At the Founding, Virginians made up about 20 percent of the nation's population and was home to several of the country's current and future leaders.²³ Then and now, it had no more authority to directly or indirectly steer national matters than Delaware (or any other state, small or otherwise).²⁴

The constitutional order designed by the founders renders all states “equal in power, dignity, and authority.”²⁵ They had experience with large states leveraging their economic might and geographic advantages as a means to benefit from their neighbors. By way of example, the “king of New

¹⁶ Charting the Future of Biotechnology, National Security Commission on Emerging Biotechnology (Apr. 2025), <https://www.biotech.senate.gov/final-report/chapters/executive-summary/https://www.biotech.senate.gov/final-report/chapters/> (Warning that “[t]hrough the United States' advantage was once though unassailable, China has emerged as a powerhouse in AI-enabled biotechnology.”).

¹⁷ Jonathan Feldman & Tal Feldman, Resilient Biosecurity in the Era of AI-Enabled Bioweapons, arXiv (Aug. 20, 2025), <https://www.arxiv.org/pdf/2509.02610>.

¹⁸ *Id.*

¹⁹ See THE FEDERALIST NO. 23 (Hamilton) (specifying the extensive and indeterminate authority that the federal government must exercise to ensure the common defense).

²⁰ *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935); see Erbsen, *supra* note 4, at 507-08 (analyzing the principle of coequality between states).

²¹ *Shelby County v. Holder*, 133 S. Ct. 2612 (2013); *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

²² Donald H. Regan, *Siamese Essays*: (I) *CTS Corp. v. Dynamics Corp. of America* and *Dormant Commerce Clause Doctrine*; (II) *Extraterritorial State Legislation*, 85 MICH. L. REV. 1865, 1884 (1987); see Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 NOTRE DAME L. REV. 1057, 1061 (2009) (summarizing Supreme Court jurisprudence on efforts by states to directly govern non-residents).

²³ Population and Constitution-Making, 1774–1792, Center for the Study of the American Constitution (Aug. 1, 2022), <https://csac.history.wisc.edu/2022/08/01/population-and-constitution-making-1774-1792/>.

²⁴ But see Elizabeth Beske, *Horizontal Federalism & The Big State "Problem,"* 65 BOS. COL. L. REV. 2685 (2024) (examining the extent to which the Constitution addresses regulatory spillover created by larger states).

²⁵ *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

York”²⁶ drew the ire of early Americans for requiring that all vessels transiting through its waters pay an entrance and clearance fee.²⁷ It comes as no surprise that the founders celebrated constitutional provisions that would foreclose this sort of big state tyranny. As was later recognized by the Supreme Court, “[o]ne cardinal rule, underlying all the relations of the States to each other, is that of equality of right. Each state stands on the same level with all the rest.”²⁸ That rule is fundamentally broken if states can effectively compel non-residents to bend to the preferences of their respective people. In short, such an outcome would be “inconsistent with the spirit of a Constitution written in the wake of revolution against an imperial power.”²⁹

Whether a state is the fourth largest economy in the world or the one hundredth and fourth should have no bearing on its authority to shape the lives of Americans beyond its borders. Though the Supreme Court has acknowledged and tolerated the inevitability of some regulatory spillover, cases like *National Pork Producers Council v. Ross*³⁰ do not permit the sorts of regulations pending before many state legislatures—regulations that may deny all Americans access to a good itself because of the preferences of one political community. The state law at issue in that case—a prohibition in California on the sale of pork raised under certain conditions³¹—did not compel out-of-state producers to wholly change their entire production process nor alter the nature of the underlying product.³² That is not the case when it comes to state regulation addressing the development of frontier AI models.³³

Whereas a pig is a pig; a model trained to comply with state A’s requirements will differ from one trained under state B’s mandates. Labs cannot afford to conduct 50 different training runs, each of which may last for several months³⁴ and involves an incredible amount of data and compute.³⁵ Any changes they make to that process as a result of state regulation will impact the model made

²⁶ Jared Walczak, How Failed Tax Policy Led to the Constitutional Convention, Tax Foundation (Sept. 16, 2016), <https://taxfoundation.org/blog/constitution-day-tax-policy-constitutional-convention/> (quoting Fisher Ames)

²⁷ *Id.*

²⁸ *Kansas v. Colorado*, 206 U.S. 46, 97 (1907).

²⁹ Erbsen, *supra* note 4, at 508.

³⁰ 598 U.S. 356 (2023).

³¹ *Id.* at 363.

³² *Id.* at 367.

³³ Matt Perault, Regulate AI Use, Not AI Development, Andreesen Horwitz (Jan. 27, 2025), <https://a16z.com/regulate-ai-use-not-ai-development/>; see Ben Cottier et al., The rising costs of training frontier AI models, arxiv (May 31, 2024), <https://arxiv.org/html/2405.21015v1> (enumerating the staggering financial costs associated with training a frontier AI model).

³⁴ Luke Emberson & Yafah Edelman, Frontier training runs will likely stop getting longer by around 2027, Epoch AI (July 25, 2025), <https://epoch.ai/data-insights/longest-training-run>.

³⁵ Ben Cottier et al., How Much Does It Cost to Train Frontier AI Models?, Epoch AI (Jan. 13, 2025), <https://epoch.ai/blog/how-much-does-it-cost-to-train-frontier-ai-models>.

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

available to the rest of the country³⁶ (and, in some cases, billions of people around the world).³⁷ Contradictory and vague laws in California, Colorado, and New York may thwart the sort of technological progress that has long fueled the American Dream by forcing labs to alter their training schedules.³⁸ Non-residents of those states will bear considerable costs as a result; progress delayed is progress denied.³⁹ Some Americans may never experience the improvements in education, healthcare, and transportation that could have been realized by a national approach to AI development.⁴⁰

States can and should implement regulations responsive to the demands of their political community and demonstrated to achieve those ends. Finding that fine line will be an iterative approach through which states can assess if such laws operate as intended, while also not infringing on the rights of non-residents nor impeding national AI progress. State legislators can facilitate that approach through the adoption of retrospective review requirements, sunset clauses, and frequent independent evaluations. Moreover, states can first test interventions with little to no odds of interfering with the actual AI tools, such as increased training for end users, AI literacy programs, and procurement standards that align with the state’s values.

The Paramount Significance of Individual Liberty

The third principle, related to the second, is that the ultimate authority in our constitutional system rests with the people. Our founders labored to develop a system in which every citizen could exercise meaningful control over their daily lives.⁴¹ This included freedom of movement and of political autonomy, and, more generally, a social contract with the government.⁴²

Consent was, is, and must be an aspect of that social contract.⁴³ Under the weak authority of the central government, however, citizens living at the time of the Articles of Confederation found their lives being dictated by decisions made in other states. As previously mentioned, states often imposed significant financial impositions on non-residents, who struggled to receive any protection from their state or the national government. They also often had their ability to enforce legal rights foreclosed because of an unwillingness of some states to recognize judgments rendered by another

³⁶ Helen Toner & Timothy Fist, *Regulating the AI Frontier: Design Choices and Constraints*, Center for Security and Emerging Technology (Oct. 26, 2023), <https://cset.georgetown.edu/article/regulating-the-ai-frontier-design-choices-and-constraints/> (detailing the centralized process of training leading AI models).

³⁷ See, e.g., Shawn Carolan et al., 2025: The State of Consumer AI, Menlo Ventures (June 26, 2025), <https://menlovc.com/perspective/2025-the-state-of-consumer-ai/> (providing an overview of AI adoption around the world).

³⁸ Chris Lehane, *OpenAI Statement: Response for Information to Office of Science and Technology Policy*, OpenAI (Mar. 13, 2025) (forecasting how a patchwork of state laws could impact frontier AI development).

³⁹ See Rufus Pollock, *Cumulative Innovation, Sampling and the Hold-Up Problem*, Cambridge University (Aug. 10, 2007), https://rufuspollock.com/papers/holdup_and_sampling.pdf.

⁴⁰ See, e.g., Rebecca Janßen et al., *GDPR and the Lost Generation of Innovative Apps*, NBER (May 2022), <https://www.nber.org/papers/w30028>

⁴¹ 1 Zephaniah Swift, *A Digest of the Laws of the State of Connecticut* 15 (New Haven, S. Converse 1822).

⁴² Jud Campbell, *Republicanism and Natural Rights at the Founding*, 32 CONST. COMM. 85, 88 (2017).

⁴³ *Id.*

**KEVIN FRAZIER TESTIMONY,
HEARING ON “AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION**

state’s courts.⁴⁴ These and related issues animated the founders to consolidate power in the federal government, clarify the role of the states, and constrain the extent to which one state could interfere with another.

Extraterritorial regulation of AI jeopardizes these and other core features of individual agency. The nature of AI development means if labs are compelled to comply with one state’s requirements for model training and release, those requirements will be imposed on the rest of the country—rendering us all less likely to realize the benefits of AI advances in as affordable and expeditious fashion as possible. Americans may be able to move as freely as they’d like, but they will still find themselves under the thumbs of state legislators over which they have no control. Such a world is the antithesis of liberty. Though we’ve seen this dynamic play out in other contexts such as emissions regulations,⁴⁵ AI is distinct. Denial or delay of the most sophisticated AI as a result of flawed state legislation is not a matter of inconvenience; it’s a question of access to the greatest driver of human flourishing we’ve yet to develop.

In closing, the question before you is not whether to protect Americans from the genuine risks posed by advanced AI, but how to do so while preserving the constitutional design that has long powered American prosperity. The founders centralized those matters that make or break the nation’s economic and political stability, reserved to the states the authority to govern local conduct, and rejected any arrangement that let one state rule another by virtue of the size of its economy or its voting power. Applied here, that design yields a clear rule of decision: the development of frontier AI models is a national undertaking; the uses of those systems within a state are a proper subject of deployment rules tailored to local concerns.

The path forward is to protect people where harms actually occur, at the point of use, while governing the direction and pace of AI advances uniformly at the federal level. States should be empowered—indeed, encouraged—to police unfair and deceptive practices, to adopt procurement standards, and to specify disclosure obligations in particular contexts. Congress should take up the regulatory tasks with nationwide consequences.

⁴⁴ See Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 VA. L. REV. 1201, 1221-26 (2009).

⁴⁵ Darian Woods & Adrian Ma, The impact of California's environmental regulations ripples across the U.S., NPR (Sept. 9, 2022), <https://www.npr.org/2022/09/09/1121952184/the-impact-of-californias-environmental-regulations-ripples-across-the-u-s>.