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HEARING ON

"AI AT A CROSSROADS: A NATIONWIDE STRATEGY OR CALIFORNICATION?"

BEFORE THE

U.S. HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE INTERNET

Chairman Issa, Ranking Member Johnson, and Distinguished Members of the Committee. Thank you for the opportunity to appear before you.

My name is Neil Richards and I am the Koch Distinguished Professor in Law at Washington University in St. Louis, where I direct the Joseph & Yvonne Cordell Institute for Policy in Medicine & Law, a policy center whose focus includes the precise issues we are discussing this morning. My testimony today draws on more than thirty years of experience as a scholar, teacher, and practicing lawyer. My work covers the relationships between law, technology, and our most precious rights, including free expression, the right to privacy, and consumer protection. My opinions today, however, are my own, and I am appearing in my personal capacity.

The stated purpose of this hearing is to address whether Congress should consider pre-empting state laws that touch on artificial intelligence technologies. It is my firm and considered opinion that denying states the ability to regulate novel technology issues going forward would be a huge mistake. Such pre-emption would be contrary to our best traditions of federalism; more importantly, it would also be a grievous and avoidable error that would not be in the best interests of American industry or the people of this country. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on regulating anything people do using a computer, a smartphone, or the so-called internet of things. In our networked, digital society that is increasingly mediated by computers, that would be potentially everything we do.

Artificial intelligence ("AI") has the potential to be a transformative set of technologies, similar to the technologies that fueled the industrial revolution of the late 1800s and early 1900s, or the changes brought about by the rise of the internet in the late twentieth century. However, as with all such massively disruptive technological changes, society must successfully navigate the grave risks involved to reap the potential benefits. This process includes determining what regulations should exist around these emerging technologies. In our federal system, this means deciding whether and to what extent federal laws should preempt state laws. In the case of AI, in particular at this early moment in its development, my answer is emphatically that state laws should not be preempted, and that they should be allowed to continue to experiment on ways to guide AI in a direction that benefits us all. Contrary to the general myth that regulations "stifle innovation," to deprive states of their ability to regulate AI would be harmful both to innovation and to the public. In fact, law creates and enables innovation by stabilizing the marketplace and ensuring the consumer trust that is the essential precondition before they become willing to adopt emerging technologies.

My argument against federal preemption of AI regulation can be summarized in three simple propositions. First, AI is still in its early stages, and its potential harms and

benefits are still uncertain. Preemption now of state laws touching AI would be reckless and leave consumers exposed to great harm. Second, state regulation, as opposed to federal regulation, has been the primary driver of sensible tech regulation over the past three decades of our Internet age. States have proven capable of adapting and reacting to these novel issues, and federal preemption now would prevent the states from being to respond and experiment to solve both current problem we know about, and future problems that have not yet become understood. Third, industry claims that state regulation stifles innovation are historically and empirically unsound. The states have proven effective at navigating technology regulation. They have done so in a manner that has helped foster the explosive growth of the American technology industry while also building out protections for, and thereby driving the confidence of, American consumers in these new technologies. Additionally, caution and measured action now does not preclude Congress's taking up broad AI or technology bills in the future, when the dangers around these new technologies and the merits and costs of the various state approaches have become clearer. Broad preemption today would deprive our country of the kinds of state laws that will be essential to build the necessary trust that AI systems—like the internet before them—need to become widely adopted and fulfill their potential. Thus, preemption would be a danger to the kinds of broad adoption of useful AI technologies that I understand this Congress seeks to encourage.

I. The Recklessness of Preempting State AI Regulation

AI is not a single, fixed technology but a cluster of related and changing technologies. Even now we hear of new developments such as agentic AI that industry claims will be transformative for its users. Yet these claims are poorly-defined in terms of what these technologies will actually do, not to mention the potentials risks and impacts they will have on Americans. Any attempt to define AI for a broad singular federal law at this point would be impractical at best, and at worst would leave Americans open to exploitation and the harms of innovative technologies that were not considered. This is especially true if Congress preempts states from attempting to address these issues themselves where these gaps emerge. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on anything people do using a computer—which is to say most things in our modern, networked society.

AI is new, but we have been in this situation before. Industrialization in the nineteenth century created economic growth, but also massive workplace health and safety issues and severe environmental consequences. More recently, the internet helped revolutionize commerce and social interaction, but it also created new types of crime, social isolation, and political polarization and radicalization. With this history in mind, AI will also likely create revolutionary new benefits, but it will also usher in new

dangers. These risks are already manifesting in the form of AI psychosis,[1] AI chatbots potentially encouraging young people to commit suicide,[2] legal proceedings being tainted with fake "AI-hallucinated" cases,[3] the theft of intellectual property,[4] and the potential for the development of dangerous new methods for computer hacking or even the creation of biological weapons.[5] These examples are only what we have seen thus far in the evolution of AI technologies. While industry promises much more in terms of AI's potential benefits in the future, history teaches us we can expect similar growth in its potential harms. Critically, while we can foresee some of these potential harms (such as making sure the medical uses of AI align with state negligence and medical licensing laws), the current state of the technology means that many of its challenges and harms are currently unforeseeable. This uncertainty should give us all great pause.

While there will be new and unintended harms produced by AI, the past offers some sage wisdom on how we should think about our federal system's ability to react to the problems of technological change. As Justice Brandeis famously explained in the case of *New State Ice v. Liebman* (1932), states offer us the opportunity to learn in their roles as "laboratories of democracy":

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.[6]

More recently in its *TikTok* decision, the current Supreme Court reminded us of Justice Frankfurter's wise words that when we are applying legal principles to revolutionary new

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[1] Wei, Marlynn, The Emerging Problem of "AI Psychosis," Psychology Today (last visited September 16, 2025), https://www.psychologytoday.com/us/blog/urban-survival/202507/the-emerging-problem-of-ai-psychosis.
[2] Hill, Kashmir, A Teen Was Suicidal. ChatGPT Was the Friend He Confided In, The New York Times, August 26, 2025, https://www.nytimes.com/2025/08/26/technology/chatgpt-openai-suicide.html
[3] Damien Charlotin, AI Hallucination Cases (last visited September 16, 2025), https://www.damiencharlotin.com/hallucinations/.
[4] Metz, Cade, Anthropic Agrees to Pay $1.5 Billion to Settle Lawsuit With Book Authors, New York Times, September 5, 2025, https://www.nytimes.com/2025/09/05/technology/anthropic-settlement-copyright-ai.html.
[5] Benjamin, Victor, The dark side of AI democratization: You no longer need to be a hacker to hack, The Hill, September 21, 2024, https://thehill.com/opinion/4891452-ai-hacking-tools-threats/; Drexel, Bill and Withers, Caleb, AI and the Evolution of Biological National Security Risks, Center for New American Security, August 13, 2024, https://www.cnas.org/publications/reports/ai-and-the-evolution-of-biological-national-security-risks.
[6] See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

technologies, we should take care not to "embarrass the future."[7] We have a federal system precisely because it allows government to respond flexibly and innovatively to evolving threats. Especially when the full scope and quality of these threats is not yet known, we should not foreclose one of the best tools our nation's founders gave us by barring state regulation of AI's consequences.

II. States as Pioneers of Sensible Technology Regulation

Over the last three decades, state legislatures have consistently led the way in regulating emerging technologies, particularly when Congress has for varied reasons been unwilling to act. If states had been banned from regulating the internet, there would be no mandatory privacy policies in e-commerce,[8] no data breach notification requirements,[9] no laws preventing employers from demanding employees' social media passwords,[10] no restrictions on facial recognition without consent,[11] and no comprehensive privacy statutes at the state level.[12] California's Consumer Privacy Act, for example, has become a model for digital privacy protections nationwide.[13] But critically, many other states—big and small, Red and Blue—have taken the mantle of tech regulation to protect their citizens from tech harms. Guided by state regulations putting guardrails in place to secure essential consumer trust, these past thirty years have also seen the explosive success of Silicon Valley. Without state privacy and security laws, for example, we would still be afraid to give out our credit card details online. In this way, state digital laws have tamed some of the worst excesses of the internet and helped make it a safer place for innovation, connection, free expression, and business. Today, the internet is seen as both a normal and desirable tool to use thanks to state law, and state law has enabled the more careful development of digital business models—which have produced the wealthiest companies in human history. A moratorium would reverse all of that instantly for AI and threaten to nip in the bud the trust that is essential for AI to be adopted in ways that make people's lives better.

With the preemption of state AI regulation, Congress would effectively be declaring a moratorium on the source of sensible technological governance that has guided the digital revolution for three decades.

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[7] TikTok v. Garland, 604 U.S. ___ (2025) (quoting Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 300 (1944)).
[8] Cal. Bus. & Prof. Code § 22575.
[9] Cal. Civ. Code § 1798.82.
[10] 820 Ill. Comp. Stat. 55/10.
[11] 740 Ill. Comp. Stat. 14/15.
[12] See, e.g. C.R.S. Title 6, Art. 1, Pt. 13 (Colorado Privacy Act), Cal. Civ. Code §§ 1798.100–.199 (California Consumer Privacy Act), et al.
[13] Cal. Civ. Code §§ 1798.100–.199 (California Consumer Privacy Act).

III. The Myth That Regulation "Stifles Innovation"

A favorite argument of some in the tech industry is that state regulations "stifle innovation." These claims are historically nonsensical and practically misguided. Law is fundamentally an enabler of innovation. As Microsoft Vice Chairman Brad Smith put it succinctly, "people won't use technology they don't trust."[14] Law creates the fundamental framework for that trust and allows it to flourish. When consumers know that they have protection against digital harms, that regulations exist that limit the most egregious uses of emerging technologies, and that there are consequences beyond nebulous claims that "the market will punish them" for bad actors in emerging technologies, those technologies are able to thrive.

Contrary to its libertarian origin myth, in reality Silicon Valley was shaped by laws from the beginning, from government defense contracts to intellectual property laws, and from securities laws to the FTC Act's prohibition on unfair and deceptive trade practices.[15] Law has always played a role in preventing scammers and thieves, and in shaping corporate business practices so that they benefit society as a whole. It is the presence of sensible regulation—including state regulation—that has led to America being a leader in digital technologies and services. Technological innovation does not occur in a vacuum; it requires a functioning marketplace in which property rights are respected and consumers feel safe, and in which corporations compete fairly. Regulation creates the framework and guardrails for such markets to exist. Regulations can even serve as the necessary impetus for technology to evolve in ways that are both profitable and socially beneficial in the long run, even when there may be shortcuts or externalities that companies seek to foist off onto the public without these protections.

The same principles apply to AI. Effective regulation, including at the state level, can guide businesses toward responsible practices without smothering their capacity to innovate. Just as too much regulation could be problematic, no regulation could also spell disaster. The solution is the right kind of regulation that is both reasonable but able to respond to new unforeseen problems as they arise. State experimentation in this area should be seen (to use a phrase popular among software developers) as a feature of our system rather than as a bug. Thus, any suggestion that AI innovation can only occur in the absence of regulation is not only historically inaccurate but dangerously misleading. Thus, rather than talking in terms of "stifling" innovation (whatever that actually means), we should consider a much older piece of wisdom, that necessity (here, the necessity produced by democratically-accountable state laws) is the mother of invention.

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[14] Nick Wingfield, General Counsel Brad Smith's influence grows beyond Microsoft, Seattle Times, July 29, 2014. See also Neil Richards & Woodrow Hartzog, Taking Trust Seriously in Privacy Law, 19 STAN. TECH. L. REV. 431 (2016).

[15] See generally Margaret O'Mara, The Code: Silicon Valley and the Remaking of America (2019).

Conclusion

My argument is not that AI is bad, or that we should have an irrational fear of AI, but that (1) sensible, reasonable, and responsive regulation of AI is needed, and (2) taking away the ability of states to regulate effectively removes one of the best tools that our system of government has to react to evolving technological dangers. Additionally, caution, thoughtfulness, and measured action now will certainly not preclude Congress from taking up broad AI or technology bills in the future, once the dangers around these new technologies and the merits and costs of the various state approaches have become clearer. Now is the time to learn rather than act in a hasty way.

Congress faces a stark choice. It can deny "the right to experiment" the exists within the American federal system through premature preemption, or it can allow states to continue their crucial role as laboratories of "social and economic experiments" in regulating technology.[16] I would submit that regulatory innovation will be just as important as technological innovation if we want to have a set of AI technologies that maximize their benefits, are widely adopted, and which minimize their harms. As I have argued, preemption at this point would be premature. States have led the way in providing meaningful, productive, positive regulations during the digital age, and they are in position to do so again for its next stage, the development of AI. Congress should also reject the false premise that sensible, measured regulation is an enemy of innovation rather than its foundation.

Congress should resist the call for broad federal preemption of state AI regulation. Because AI is being built into seemingly every computer system, a prohibition on state AI regulation would likely be a prohibition on anything people do using a computer—which is to say pretty much everything in our modern, networked society. By allowing states to act, our system can remain responsive, resilient, and protective of both innovation and the public good. Broad preemption today would deprive our country of the kinds of state laws that will be essential to build the necessary trust that AI systems—like the internet before them—need to become widely adopted and fulfill their potential. Preemption now would thus jeopardize the safe and beneficial development of one of the most powerful and disruptive technologies of our time in a way that risks embarrassing the future.

[16] See supra note 2.