SULLIVAN & CROMWELL

July 16, 2026

Dec. 2025 Executive Order on AI and Implications for State Insurance Regulation

Executive Order 14365

PRESIDENTIAL ACTIONS

ENSURING A NATIONAL POLICY FRAMEWORK FOR ARTIFICIAL INTELLIGENCE

Executive Orders | December 11, 2025

EXECUTIVE ORDER 14365

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. United States leadership in Artificial Intelligence (AI) will promote United States national and economic security and dominance across many domains. Pursuant to Executive Order 14179 of January 23, 2025 (Removing Barriers to American Leadership in Artificial Intelligence), I revoked my predecessor's attempt to paralyze this industry and directed my Administration to remove barriers to United States AI leadership. My Administration has already done tremendous work to advance that objective, including by updating existing Federal regulatory frameworks to remove barriers to and encourage adoption of AI applications across sectors. These efforts have already delivered tremendous benefits to the American people and led to trillions of dollars of investments across the country. But we remain in the earliest days of this technological revolution and are in a race with adversaries for supremacy within it.

To win, United States AI companies must be free to innovate without cumbersome regulation. But excessive State regulation thwarts this imperative. First, State-by-State regulation by definition creates a patchwork of 50 different regulatory regimes that makes compliance more challenging, particularly for start-ups. Second, State laws are increasingly responsible for requiring entities to embed ideological bias within models. For example, a

Federal Preemption Doctrine

- Federal preemption doctrine is grounded in the Supremacy Clause of the Constitution.
  - A federal statute or regulation can preempt state law expressly or impliedly (through field or conflict preemption).
  - Preemption must originate from ***Congressional* action**; a regulation or agency action without empowering legislation cannot on its own preempt state law.
- But under the **McCarran-Ferguson Act**, state regulation of insurance is unique.
  - "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b).
  - The Act works as an *anti-preemption* statute and authorizes a state law to "reverse preempt" a federal statute when certain conditions are met.

Key EO Provisions

Federal Policy (Sec. 2)

It is the policy of the United States to sustain and enhance the United States' global AI dominance through a minimally burdensome national policy framework for AI.

AI Litigation Taskforce (Sec. 3)

Responsible for challenging state AI laws inconsistent with the policy of the EO, including on interference with interstate commerce, federal preemption, and equal protection grounds.

Evaluation of State AI Laws (Sec. 4 & 5)

Secretary of Commerce directed to evaluate state AI laws to identify "onerous" laws that conflict with the stated EO policy or should be referred to the litigation task force. Commerce also directed to issue a policy notice restricting eligibility for Broadband Equity Access and Deployment (BEAD) grants for states with such laws.

FCC and FTC Preemption (Sec. 6 & 7)

FCC directed to examine whether to adopt a federal reporting and disclosure standard for AI models that preempts State laws. FTC directed to issue a policy statement on the application of the FTC Act's prohibition on unfair and deceptive acts or practices and when State laws are preempted.

Federal Legislation (Sec. 8)

Directs task force to prepare recommendation to Congress for a uniform Federal policy framework that preempts conflicting state AI laws and regulations.

What does EO 14365 do?

Key Takeaway: EO 14365 does not (and cannot) preempt state law. The order is precatory.

- EO sets forth federal executive policy on AI regulation and provides a roadmap for actions that the federal government can take to carry out those aims
- Little appetite for broad Congressional action to preempt state AI regulation (and extra protection for insurance regulation under McCarran-Ferguson)
- Minimal risk to State insurance regulation from FCC and FTC directives
- Other strategies to unpack and monitor:
  - Evaluation of state AI laws
  - Litigation task force

Evaluation of State AI Laws

<u>Sec</u>. <u>4</u>. <u>Evaluation of State AI Laws</u>.

Within 90 days of the date of this order, the Secretary of Commerce, consistent with the Secretary's authorities under 47 U.S.C. 902(b), shall, in consultation with the Special Advisor for AI and Crypto, the Assistant to the President for Economic Policy, the Assistant to the President for Science and Technology, and the Assistant to the President and Counsel to the President, publish an evaluation of existing State AI laws that identifies onerous laws that conflict with the policy set forth in section 2 of this order, as well as laws that should be referred to the Task Force established pursuant to section 3 of this order . . . .

The Commerce Department has not yet published a list of state AI laws pursuant to Section 4.

Federal funding will likely be a key tool used to influence state AI policy.

- Sec. 5 instructs Commerce to develop a policy for withholding BEAD funding to states with "onerous AI laws" identified in Sec. 4 and directs other agencies to examine discretionary grant programs.

Litigation Task Force

Sec. 3. AI Litigation Task Force.

Within 30 days of the date of this order, the Attorney General shall establish an AI Litigation Task Force (Task Force) whose sole responsibility shall be to challenge State AI laws inconsistent with the policy set forth in section 2 of this order, including on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing Federal regulations, or are otherwise unlawful in the Attorney General's judgment, including, if appropriate, those laws identified pursuant to section 4 of this order. The Task Force shall consult from time to time with the Special Advisor for AI and Crypto, the Assistant to the President for Science and Technology, the Assistant to the President for Economic Policy, and the Assistant to the President and Counsel to the President regarding the emergence of specific State AI laws that warrant challenge.

Litigation task force is up and running.

Three main litigation strategies:

1. Preemption
2. Dormant Commerce Clause
3. Equal Protection

Dormant Commerce Clause

Typically, a state law can violate the "dormant commerce clause" if it does not have a legitimate local purpose or if it imposes burdens on interstate commerce that are clearly excessive in relation to the putative local benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

- Although the Commerce Clause restricts States' ability to restrict the flow of interstate commerce, Congress can confer upon the States the ability to do so. Courts have read the McCarran-Ferguson Act to do exactly that.
  - The Supreme Court has held that "Congress removed all Commerce Clause limitations on the authority of the States to regulate and tax the business of insurance when it passed the McCarran-Ferguson Act." *W. & S. Life Ins. Co.* v. *State Bd. of Equalization of Cal*., 451 U.S. 648, 653 (1981).
  - So long as the McCarran-Ferguson Act applies to the state insurance law in question—*i.e.*, the state law was enacted "for the purpose of regulating the business of insurance," 15 U.S.C. § 1012(b)—then Supreme Court precedent would foreclose dormant Commerce Clause challenges.

Equal Protection Clause

Fourteenth Amendment

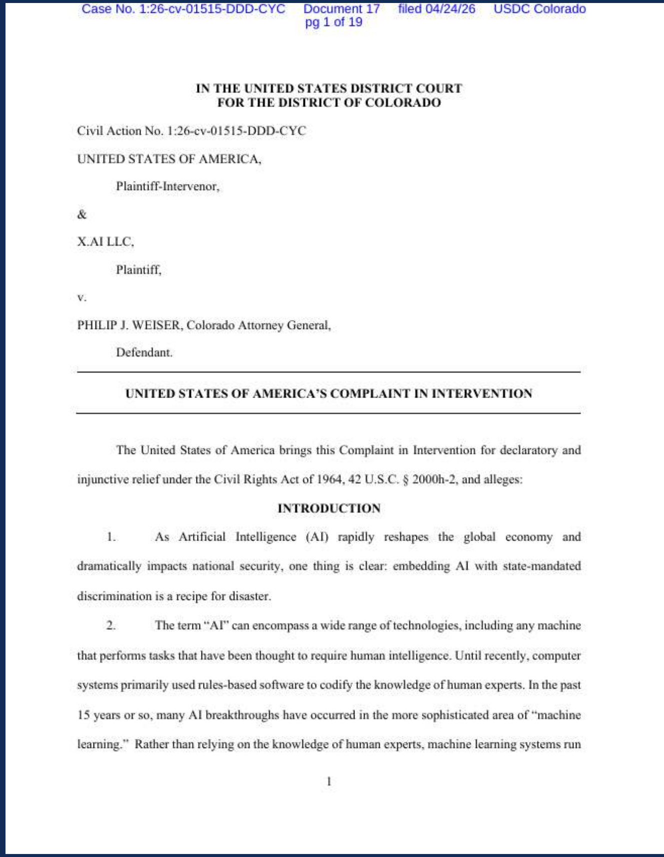
Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws**.

- Under the Equal Protection Clause, State laws that discriminate against certain classes of people are constitutionally suspect. Laws that discriminate based on suspect classifications (like race or national origin) are subject to “heightened scrutiny.”

- Some States have passed laws and regulations aimed at preventing discriminatory impacts from the use of AI (*e.g.*, Colorado’s since-revised “Algorithmic Discrimination” law). These laws and regulations may be challenged by private litigants or the federal government on the basis that they violate Equal Protection.

Colorado-xAI Litigation



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-01515-DDD-CYC

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

&

X.AI LLC,

Plaintiff,

v.

PHILIP J. WEISER, Colorado Attorney General,

Defendant.

UNITED STATES OF AMERICA'S COMPLAINT IN INTERVENTION

The United States of America brings this Complaint in Intervention for declaratory and injunctive relief under the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2, and alleges:

INTRODUCTION

1. As Artificial Intelligence (AI) rapidly reshapes the global economy and dramatically impacts national security, one thing is clear: embedding AI with state-mandated discrimination is a recipe for disaster.

2. The term "AI" can encompass a wide range of technologies, including any machine that performs tasks that have been thought to require human intelligence. Until recently, computer systems primarily used rules-based software to codify the knowledge of human experts. In the past 15 years or so, many AI breakthroughs have occurred in the more sophisticated area of "machine learning." Rather than relying on the knowledge of human experts, machine learning systems run

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x.AI LLC **v.** ***Weiser,*** **No. 1:26-cv-01515 (D. Colo. Apr. 24, 2026).**

- Colorado's algorithmic discrimination law—SB 24-205—sought to regulate the use of AI tools in "high risk" areas such as employment, housing, credit, health care, and insurance.
  - The law required AI developers and users to exercise reasonable care to prevent discrimination, including disparate impacts on protected groups.
- xAI filed suit in federal court to block enforcement. The federal government intervened, arguing the law violated Equal Protection.
  - "By requiring developers and deployers to prevent the 'risk' of disparate outcomes based on demographic characteristics, SB24-205 effectively requires developers and deployers to expressly use demographic characteristics, including race, sex, and religion when building and using algorithmic models."
  - "In 'zero-sum' games such as hiring and student admissions, the intentional creation of a white-friendly algorithm necessarily entails intentionally creating an algorithm that discriminates against non-whites." *See SFFA* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

Application to State Insurance Regulations

State insurance regulations that impose duties to prevent discriminatory impact could face similar legal challenges.

- States have issued laws and regulations to prevent discrimination in insurance through the use of AI tools and ECDIS and that use similar language requiring users to take steps to prevent disparate impact.
- These mandatory requirements could invite similar constitutional challenges.
- Case law interpreting the application of Equal Protection doctrine to these types of regulations is still developing and legislators should continue to monitor the legal landscape.