

State Autonomy in AI Governance: Reassessing Federal Preemption After Rejecting Section 43201(c)

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ABSTRACT

The Senate’s decision on July 1, 2025 to strike Section 43201(c) from the One Big Beautiful Bill Act represents a clear rejection of federal efforts to enforce a decade-long moratorium on state and local regulation of artificial intelligence (AI) models and systems. This article analyzes the implications of this rejected provision, using its brief legislative life to explore deeper tensions between federal preemption and state autonomy in the governance of emerging technologies. While Section 43201(c) no longer carries legal force, the debates it provoked reveal persistent structural pressures to centralize authority at the expense of sub-national regulatory capacity. The study examines the constitutional dimensions of such preemption efforts, focusing on the Tenth Amendment, the anti-commandeering doctrine, and the political safeguards of federalism. Drawing on comparative domains, including telecommunications, autonomous vehicles, and data privacy, it contends that effective AI governance depends not on silencing state actors but on enabling a cooperative federalism model that values local experimentation and responsiveness. Rather than viewing uniformity as inherently stabilizing, the analysis underscores the regulatory resilience afforded by a pluralistic, multi-jurisdictional approach to AI oversight.

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I. INTRODUCTION

Imagine a city that, through a local ordinance, has retreated from modern technologies, such as facial recognition systems—not out of resistance to progress—but in homage to an era when surveillance outpaced the bounds of consent.¹

1. See, e.g., Sunish Vengathattil & Shamnad Mohamed Shaffi, *Ethical Implications of AI-Powered Decision Support Systems in Organizations*, in 2025 International Conference on Artificial Intelligence and Digital Ethics (ICAIDE) (IEEE 2025), <https://ieeexplore.ieee.org/abstract/document/11189693> [<https://perma.cc/5QFH-D9RS>].

Portland's *City Code, Title 34, Chapter 10*, illustrates such a retreat.² It restricts the use of facial recognition technologies by private actors in places of public accommodation, yet allows specific exceptions for purposes such as legal compliance, personal device access, or online interaction.³ At its core, facial recognition technologies rely on artificial intelligence (AI) systems that employ machine learning to identify and compare faces across massive datasets, often in real-time and at scale.⁴ These tools promise efficiency, yet invite scrutiny not only because they can misidentify, but also because they operate in a legal space where local actors seek to apply restraint while federal direction remains uncertain.⁵

But Portland's act of local restraint is not isolated. It invites a deeper inquiry into what happens when such municipal choices confront the gravitational force of federal preemption. A related local ordinance becomes not just a policy choice but a legal marker of a city attempting to govern where consent must catch up with computation. Now the question arises: What becomes of Portland's law when a federal statute does not merely displace conflicting regulation but threatens to erase the space for any local voice, say, for ten years? It was a live question, sharpened by the text of Section 43201(c) in the original version of the *One Big Beautiful Bill Act*,⁶ which stated:

“...that no state or political subdivision may enforce any law or regulation regulating artificial intelligence models, artificial intelligence systems, or automated decision systems during the 10-year period beginning on the date of the enactment of this Act.”⁷

To read such a provision as a simple assertion of uniformity was to misread its reach. It did not merely override conflicting state laws.⁸ It barred them entirely, cutting off not only existing frameworks but the possibility of new ones, regardless of alignment or aim.⁹ Nevertheless, that sweep, so expansive in its ambition and so barren of substitute oversight, did not survive. The legislative tide turned

2. PORTLAND, OR., CITY CODE tit. 34, ch. 10. [<https://perma.cc/BHG7-DETL>].

3. See generally Kok-Kwang Phoon, Yongmin Cai, & Chong Tang, *Geotechnical “Facial Recognition” Challenge*, 11 ASCE-ASME J. RISK AND UNCERTAINTY IN ENG'G SYS., PART A: CIV. ENG'G (2025), <https://ascelibrary.org/doi/abs/10.1061/AJRUA6.RUENG-1553>.

4. See generally Qinjun Li, et al., *Facial Recognition Technology: A Comprehensive Overview*, 6 ACAD. J. COMPUT. INF. SCI. 15 (2023).

5. See Sebastian Skuza & Robert Lizak, *AI Enables the Control of Public Finances: US Federal Government Initiatives*, 28 BIALOSTOCKIE STUDIA PRAWNICZE 175 (2023).

6. See One Big Beautiful Bill Act, H.R. 1, 119th Cong. (2025), <https://www.congress.gov/bill/119th-congress/house-bill/1/text> (The One Big Beautiful Bill Act is a budget reconciliation law passed by the 119th United States Congress containing tax and spending policies that form the core of President Trump's agenda. It became law on July 4, 2025).

7. *Id.*

8. See PRESTON BRASHERS & BRIAN O'QUINN, BACKGROUNDER NO. 3912, SALT SUBSIDIES ARE CROWDING OUT POSITIVE TAX REFORMS IN THE ONE BIG BEAUTIFUL BILL ACT (2025).

9. For discussion of preemption and federal-state dynamics in technological regulation see Desiree LeClercq, *Resisting Federal Preemption*, ALA. L. REV. 77 (forthcoming, 2025).

before the provision could be made into law. On July 1, 2025, the Senate rejected the moratorium proposed in Section 43201(c) by a vote of 99 to 1.¹⁰ In doing so, it reopened the space for state and local voices in a domain where federal silence, if imposed, would have carried the weight not of governance but of exclusion. What remains is not an unchallenged federal supremacy, but a recalibrated recognition that algorithmic governance may demand precisely the kind of pluralism that Section 43201(c) sought to preempt.¹¹

There is an unmistakable urgency to the task of AI governance. AI systems are no longer theoretical abstractions; they are now a reality. They guide predictive policing, credit approvals, hiring decisions, medical diagnoses, and a range of other determinations once reserved for human judgment.¹² In light of such reach, the need for transparent, lawful, and accountable regulation becomes more than aspirational. It has become foundational. That foundational need was placed under pressure by Section 43201(c) of the *One Big Beautiful Bill Act*, which sought to preempt all state and local regulation of AI technologies for a decade. For the states, the risk was not just legal displacement but regulatory silence, precisely at the moment when governance was most needed.

In stripping away the capacity of states to legislate, Section 43201(c) did more than preempt. It precluded experimentation. In doing so, it cast aside one of federalism's enduring advantages: the ability of states to serve as testing grounds for legal and policy responses to emerging social challenges. Understood in this light, the provision's reach seemed to strain even the constitutional boundaries of permissible preemption. The Supremacy Clause allows federal law to displace conflicting state law; however, Section 43201(c) aimed to extinguish state-level legal engagement altogether, regardless of whether there was an actual conflict.¹³

Framing the section as a form of field preemption did little to resolve the constitutional unease. Its categorical exclusion of state participation invited scrutiny under the Tenth Amendment and unsettled the logic of cooperative federalism that has governed technological regulation in domains such as data privacy and autonomous vehicles.¹⁴ The timing of the proposed ten-year moratorium was telling. It did not merely delay governance in a moment of flux. It projected a federal choice across a decade, anticipating a future it refused to share with the states.

10. See Susan Duarte, *Senate Overwhelmingly Rejects AI Regulation Moratorium*, THE COMMLAW GRP., (July 1, 2025) <https://commllawgroup.com/2025/senate-overwhelmingly-rejects-ai-regulation-moratorium/> [https://perma.cc/JA6S-Z6S5].

11. See Richard A. Briffault, *Beyond Congress: The Study of State and Local Legislatures*, 7 N.Y.U. J. LEGIS. & PUB. POL'Y 23 (2003).

12. See Cary Coglianese & Lavi M. Ben Dor, *AI in Adjudication and Administration*, 86 BROOK. L. REV. 791 (2020).

13. See Bradford R. Clark, *Constitutional Compromise and the Supremacy Clause*, 83 NOTRE DAME L. REV. 1421 (2007). (The Supremacy Clause of the U.S. Const. Art. VI, Cl. 2 establishes federal law as supreme over conflicting state laws when acting within constitutional bounds, a balance crucial to federalism as highlighted by scholars like Bradford R. Clark).

14. See Sharon E. Rush, *Oh, What a Truism the Tenth Amendment Is: State Sovereignty, Sovereign Immunity, and Individual Liberties*, 71 FLA. L. REV. 1095 (2019).

Nevertheless, that projection failed. The Senate's overwhelming rejection of Section 43201(c) preserved the states' role in navigating the practical and ethical dimensions of AI development.¹⁵ Against that legislative backdrop, this article advocates for a reevaluation of how federal preemption operates in the realm of AI governance, not as an all-or-nothing imposition, but as a legal instrument that must evolve in tandem with the technologies it seeks to govern. The stakes are too high, and the constitutional architecture too intricate, to accept exclusion as the price of coherence.

The analysis of this Article unfolds in six sections. Following the Introduction, Section II presents a comparative perspective on AI governance, examining how other jurisdictions approach regulatory authority and strike a balance between innovation and accountability. Section III examines the language, scope, and legislative context of Section 43201(c), highlighting the structural and interpretive features that inform its preemptive design. Section IV addresses the constitutional dimensions of federal preemption, focusing on the limits of congressional authority and the continuing relevance of state sovereignty in regulating new technologies. Section V outlines a framework for shared federal and state authority in AI governance, emphasizing constitutional coherence, policy responsiveness, and institutional adaptability. The Conclusion reflects on the risks of premature regulatory foreclosure and the need to preserve legal space for democratic and technological evolution.

II. FOUNDATIONS OF AI GOVERNANCE AND REGULATORY AUTHORITY

Consider a machine that evolves faster than regulations. As AI pushes into autonomous vehicles, weapon systems, and robotics, governments face transitions they cannot fully anticipate. The speed is technical, but the impact is both legal and political.¹⁶ Institutions struggle to keep up. Literature grows, but governance lags. AI promises efficiency and innovation, but it also carries risks that are opaque and structural.¹⁷

AI governance is not just about rules. It is about capacity, judgment, and timing.¹⁸ Who decides what is risk? What institutional form should the response take? As AI systems can act without human intent, existing legal categories begin to slip. Federal preemption sketches a holding pattern.¹⁹ It suggests that state attempts at early regulation may be premature.²⁰ However, it also defers answers

15. See Duarte, *supra* note 10.

16. See Dorothy Nelkin, *The Political Impact of Technical Expertise*, 5 SOC. STUD. SCIENCE 35 (1975).

17. See Tan Yigitcanlar, et al., *Contributions and Risks of Artificial Intelligence (AI) in Building Smarter Cities: Insights from a Systematic Review of the Literature*, 13 ENERGIES 1473 (2020).

18. See Geoff Gordon, Bernhard Rieder, & Giovanni Sileno, *On Mapping Values in AI Governance*, 46 COMP. L. & SEC. REV. 105712 (2022).

19. See Kevin T. Frazier, *In Event of an (AI) Emergency: Interpreting Continuity of Government Provisions in State Constitutions*, 40 SANTA CLARA HIGH TECH. L.J. 191 (2024).

20. See Edward L. Glaeser & Andrei Shleifer, *The Rise of the Regulatory State*, 41 J. ECON. LITERATURE 401 (2003).

to questions that are no longer theoretical. The governance challenge of AI has already arrived.

A. Theoretical Approaches to AI Regulation

In a study that surveyed two hundred guidelines worldwide, the researchers distilled a set of recurrent principles not as enforceable mandates but as shared normative signals.²¹ These are not commands, but coordinates that form a moral map for technologies still outpacing legal doctrine. Among these coordinates, one finds the familiar precept of accountability, not in the sense of narrowly conceived tort liability, but as a broader moral architecture urging actors to answer for the systems they unleash.²² To this is joined beneficence coupled with non-maleficence, invoking a kind of Hippocratic ethos for machines.²³ Privacy appears to be not simply a right to be left alone but also an evolving safeguard against systemic surveillance and algorithmic profiling.²⁴

Human dignity enters as a motif not only in the rhetoric of declarations but also in calls to align AI with the *Universal Declaration of Human Rights*.²⁵ So, too, justice and fairness recur, inviting reflection on what nondiscrimination means when encoded in layers of code. Autonomy finds itself reshaped by concerns over democratic participation, technological sovereignty, and the possibility that machines may overtake rather than merely assist.²⁶

Other principles orbit this constellation. Transparency and explainability are now demanded of systems that once traded in opacity.²⁷ Intellectual property is not just in its classic form but is entangled with novel questions about authorship in AI-generated works.²⁸ Labor rights are coming into focus amid concerns about automation and precarity.²⁹ Environmental sustainability is gaining traction as AI scales and consumes.³⁰

21. See Nicholas Kluge Corrêa, et al., *Worldwide AI ethics: A Review of 200 Guidelines and Recommendations for AI Governance*, PATTERNS, Oct. 13, 2023, at 1.

22. See, e.g., Jason M. Solomon, *Equal Accountability Through Tort Law*, 103 NW. U. L. REV. 1765 (2009).

23. See María Florencia Álamos, et al., *A Technocratic Oath*, in PROTECTING THE MIND: CHALLENGES IN LAW, NEUROPROTECTION, AND NEURORIGHTS 163, 163-174 (Carl Friedrich Gethmann et al. eds., 2022).

24. See generally COLIN J. BENNETT, *THE PRIVACY ADVOCATES: RESISTING THE SPREAD OF SURVEILLANCE*. (2008)

25. See, e.g., Hersch Lauterpacht, *The Universal Declaration of Human Rights*, 25 BRIT. YB INT'L L. 354 (1948).

26. See Andrew D. Zimmerman, *Toward a More Democratic Ethic of Technological Governance*, 20 SCI., TECH., & HUM. VALUES 86 (1995).

27. See Sandra Wachter, Brent Mittelstadt, & Chris Russell, *Why Fairness Cannot be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI*, 41 COMP. L. & SEC. REV. 105567 (2021).

28. See Francesca Mazzi, *Authorship in Artificial Intelligence-Generated Works: Exploring Originality in Text Prompts and Artificial Intelligence Outputs Through Philosophical Foundations of Copyright and Collage Protection*, 27 THE J. WORLD INTELL. PROP. 410 (2024).

29. See Janine Berg, *Protecting Workers in the Digital Age: Technology, Outsourcing, and the Growing Precariousness of Work*, 41 COMP. LAB. L. & POL'Y J. 69 (2019).

30. See Carole-Jean Wu et al., *Sustainable AI: Environmental Implications, Challenges and Opportunities*, 4 PROCS. MACH. LEARNING & SYS. (2022).

The absence of formal authority does not signal the absence of moral force. These principles function more like gravitational pulls than fixed points. They do not command but compel. Furthermore, in their accumulation, they raise a curious question. When ethics becomes ubiquitous, does it remain optional, or does it begin to behave like soft law pressing ever-closer to the edges of enforceability?

Against this theoretical framework, the United States finds itself at a pivotal juncture. While ethical principles have circulated widely among private actors, civil society, and multilateral forums, the absence of a coherent national framework leaves a vacuum where public accountability should reside.³¹ In a domain increasingly defined by transnational influence and systemic risks, relying solely on voluntary adherence renders governance fragile.³² Without a structured and anticipatory regulatory posture, the normative momentum captured in soft law risks dissipating into scattered best practices.³³ The need for U.S. leadership in AI governance is not merely strategic but structural.³⁴ This will require institutional clarity, legal responsiveness, and democratic legitimacy to match the ethical aspirations now orbiting the global discourse.

B. Standardization and Technical Governance

Federal guidance plays a pivotal role in shaping AI standardization at a moment when rules remain fluid yet consequential. Early international efforts, particularly those of China and the United States, reflect a shared recognition: Those who shape the standards now may steer the field for decades to come. This recalls the history of telecommunications, where initial choices hardened into long-lasting market structures, making early engagement not just prudent but strategic.³⁵

Still, standardization is not always desirable in its early stages. Some norms benefit from local trials before being adopted globally; others require early involvement from expert institutions.³⁶ Here, institutional capacity becomes critical.³⁷ Leading AI labs must decide whether to invest in internal capabilities or collaborate with third parties to influence formal processes.³⁸ The Partnership on

31. See Jens Steffek, *Public Accountability and the Public Sphere of International Governance*, 24.1 ETHICS & INT'L AFFS. 45 (2010).

32. See Ian Goldin & Tiffany Vogel, *Global Governance and Systemic Risk in the 21st Century: Lessons from the Financial crisis*, 1 GLOB. POL'Y 4 (2010).

33. See, e.g., Ryan Hagemann, Jennifer Huddleston Skees & Adam Thierer, *Soft Law for Hard Problems: The Governance of Emerging Technologies in an Uncertain Future*, 17 COLO. TECH. L.J. 37 (2018).

34. See Rajat Bhandari & Shraddha Bhandari, *AI Governance and Global Stability: Why US Leadership Matters* (2024).

35. See, e.g., Gerard O'Regan, *A Short History of Telecommunications*, in A BRIEF HISTORY OF COMPUTING 227-236 (2021).

36. See Frank Biermann, *Institutions for Scientific Advice: Global Environmental Assessments and their Influence in Developing Countries*, 8 GLOB. GOVERNANCE 195-219 (2002).

37. See, e.g., Adriana Nilsson, *Making Norms to Tackle Global Challenges: The Role of Intergovernmental Organisations*, 46 RSCH. POL'Y 171 (2017).

38. Tim Fountaine, Brian McCarthy & Tamim Saleh, *Building the AI-Powered Organization*, HARV. BUS. REV., July-Aug. 2019, <https://hbr.org/2019/07/building-the-ai-powered-organization> [<https://perma.cc/E59Q-2LFY>].

AI may serve as a conduit, but this also prompts deeper questions about the role of researchers in shaping values embedded within standards, especially since neutrality can be elusive when states are involved.³⁹

The problem of diffusion looms large. A standard that is unenforced or unadopted is inert. For standards to matter, they must cultivate a culture of responsibility across the research ecosystem, acting both as a constraint and a compass.⁴⁰ At the core lies a structural governance question: not just what global AI governance will be, but what it should be.⁴¹ Proposed research agendas point to three interlinked clusters: technical systems, political dynamics, and normative architectures.⁴² Each is ultimately about authority: how to balance state power, market forces, and the independence of research.⁴³ Furthermore, timing, as always, is critical.⁴⁴ On the one hand, setting standards too early may lead to errors, while on the other hand, waiting too long risks ceding direction to those who never paused to consider governance at all.⁴⁵

C. State-Level AI Initiatives and Legislative Trends

Consider the absence of congressional action in shaping the governance of AI. Into it stepped state legislators, not always ideologically aligned, yet moved by the practical urgencies brought to their doors. In California, Illinois, New York, and many other states, a quiet architecture of AI oversight has begun to take shape not out of ambition but out of necessity.⁴⁶ Deepfakes, sexual exploitation, manipulated elections, and autonomous vehicles have gone awry.⁴⁷ These are not hypothetical fears but harms reported by constituents who asked not for abstractions but for protection.

Without federal direction, states enacted measures to respond.⁴⁸ In Tennessee, voice cloning triggered the ELVIS Act,⁴⁹ a statute tailored to preserve the likeness

39. Partnership on AI (PAI) is a nonprofit coalition committed to the responsible use of AI. See Jeffrey Heer, *The Partnership on AI*, 4 AI MATTERS 25 (2018).

40. See Andrea Venturelli, *Towards a Sustainable Future: Competencies, Regulations, and Paradigm Shifts in Education*, in THE ROUTLEDGE HANDBOOK OF ACCOUNTING FOR THE SUSTAINABLE DEVELOPMENT GOALS 517-526 (Andrea Venturelli & Chiara Mio eds., 2024).

41. See Peter Cihon, Matthijs M. Maas & Luke Kemp, *Fragmentation and the Future: Investigating Architectures for International AI Governance*, 11 GLOB. POL'Y 545 (2020).

42. See Bernhard Rieder, Geoff Gordon & Giovanni Sileno, *Mapping Value(s) in AI: Methodological Directions for Examining Normativity in Complex Technical Systems*, 16 SOCIOLOGICA 51 (2022).

43. *Id.* at 53-64.

44. See Ben Shneiderman, *Bridging the Gap between Ethics and Practice: Guidelines for Reliable, Safe, and Trustworthy Human-Centered AI systems*, ACM TRANSACTIONS INTERACTIVE INTELLIGENT SYS., Oct. 2020 at 1.

45. *Id.* at 3-29.

46. See Eric Kashdan, *These Hidden Provisions in the Budget Bill Undermine Our Democracy*, CAMPAIGN LEGAL CENTER (June 6, 2025), <https://campaignlegal.org/update/these-hidden-provisions-budget-bill-undermine-our-democracy> [<https://perma.cc/JT2R-UGJ8>].

47. See Chidera Okolie, *Artificial Intelligence-Altered Videos (Deepfakes), Image-Based Sexual Abuse, and Data Privacy Concerns*, 25 J. INT'L WOMEN'S STUD. 11 (2023).

48. See Tatevik Davtyan, *The US Approach to AI Regulation: Federal Laws, Policies, and Strategies Explained*, 16 J.L., TECH., & INTERNET 223 (2025).

49. See ELVIS Act, Amends Tenn. Code Ann. Tit. 39, Ch. 14, Pt. 1 and Tit. 47, March 21, 2023.

and creative identity of performers. In Kentucky, algorithms used by the state must disclose their existence when rendering decisions.⁵⁰ North Dakota went further and banned the use of AI to deny health care unless a licensed physician intervenes.⁵¹ These are not sweeping manifestos but targeted interventions focused on the tangible.

New York City's AI Bill of Rights adopts a broader approach, providing a range of civil protections to residents as they navigate an increasingly algorithm-driven landscape.⁵² Colorado developed a more comprehensive AI Act, building consumer safeguards into the very framework of system deployment.⁵³ Utah crafted protections for users of mental health chatbots, recognizing that digital empathy remains a risky substitute for human care.⁵⁴ South Carolina's judiciary issued a directive, which, although not a law, was no less significant, curbing the use of AI when confidential court records are involved.⁵⁵

Missouri offers a distinct site of early legal engagement. In *Kruse v. Karlen*,⁵⁶ the Missouri Court of Appeals sanctioned a pro se litigant for citing fictitious AI-generated cases, marking the judiciary's first direct encounter with generative disruption.⁵⁷ Meanwhile, the Eighth Circuit's decision in *Telescope Media Group v. Lucero*⁵⁸ reaffirms a strong compelled speech doctrine, casting doubt on mandates that would force developers to disclose or alter algorithmic expression.⁵⁹ At the administrative level, Attorney General Bailey's Algorithmic Choice regulation, issued under the *Merchandising Practices Act*, reframes algorithmic curation as a consumer protection issue by requiring transparency and user control, thereby steering platforms' expressive architecture without imposing direct censorship.⁶⁰ Together, these judicial, doctrinal, and regulatory moves sketch a

50. See KENTUCKY LEGISLATIVE RESEARCH COMMISSION, RESEARCH REPORT NO. 491, EXECUTIVE BRANCH USE OF ARTIFICIAL INTELLIGENCE TECHNOLOGY, (2024), <https://apps.legislature.ky.gov/lrc/publications/ResearchReports/RR491.pdf> [<https://perma.cc/N73H-Q7T3>].

51. See Robin Huebner & Grand Forks Herald, *North Dakota Law Expected to Curb AI Influence in Health Care*, GOVTECH (Apr. 25, 2025), <https://www.govtech.com/artificial-intelligence/north-dakota-law-expected-to-curb-ai-influence-in-health-care> [<https://perma.cc/V5SE-NHWA>].

52. See Peter J. Schildkraut, et al., *The Blueprint for an "AI Bill of Rights"*, 6 J. ROBOTICS, A.I. & L. 93 (2023).

53. See Mayur Jariwala, *A Comparative Analysis of the EU AI Act and the Colorado AI Act: Regulatory Approaches to Artificial Intelligence Governance*, 186 INT'L J. COM. APPLICATIONS 23 (2024).

54. See Hemant Gupta et al., *Utah Law Aims to Regulate AI Mental Health Chatbots*, NAT'L L. REV. (May 20, 2025), <https://natlawreview.com/article/utah-law-aims-regulate-ai-mental-health-chatbots> [<https://perma.cc/QA8G-FKM3>].

55. See South Carolina Sup. Ct., Admin. Order 2025-03-25-01 (Mar. 25, 2025), <https://www.sccourts.org/media/courtOrders/PDFs/2025-03-25-01.pdf> [<https://perma.cc/7YNX-GP7K>].

56. See *Kruse v. Karlen*, 692 S.W.3d 43 (2024); see also Rudi Keller, *Missouri Appeals Court Fines Litigant After Finding Fake, AI-Generated Cases Cited in Filings*, MO. INDEP. (Feb. 13, 2024 at 11:23), <https://missouriindependent.com/2024/02/13/missouri-appeals-court-fines-litigant-after-finding-fake-ai-generated-cases-cited-in-filings/> [<https://perma.cc/D422-YFU8>].

57. See, e.g., LAKS KATTALAI & JESSICA LEWIS KELLY, NATIONAL CENTER FOR STATE COURTS, ARTIFICIAL INTELLIGENCE: THE NEED FOR STATE COURT LEADERSHIP (2024).

58. See *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 754 (8th Cir. 2019).

59. See Alan K. Chen, *Compelled Speech and the Regulatory State*, 97 IND. L.J. 881 (2022).

60. Press Release, Andrew Bailey, Missouri Attorney General, *Attorney General Bailey Promulgates Regulation Securing Algorithmic Freedom for Social Media Users*, (Jan. 16, 2025), <https://ago.mo.gov/attorney->

Missouri-centered framework that both recognizes the risks of AI and resists federal preemption.⁶¹ Rather than resolving tensions between expression and regulation, this evolving state-based architecture crystallizes them, inviting a reevaluation of whether constitutional coherence can emerge from such subnational efforts.

Moreover, many states now prohibit AI-generated pornographic deepfakes.⁶² Roughly half have taken action to limit the use of deceptive AI in elections.⁶³ Furthermore, nineteen have crafted liability regimes for autonomous vehicles.⁶⁴ Each of these efforts reflects a patchwork not of partisanship but of public demand. But these measures would likely be preempted. That is not a hypothetical conflict. It is a potential reversal of years of lawmaking driven not by theory but by trauma, by harms made visible in school hallways, hospitals, courtrooms, and digital spaces.

What emerges is a question that cannot be easily reduced to federalism or preemption as conventionally understood. Rather, it is whether a statute that halts state action for a decade operates as a neutral placeholder or as a withdrawal of protection precisely when protections have begun to take root. The answer may depend not only on statutory interpretation but also on the weight one gives to harms already absorbed by the public. In the field of telecommunications, where courts have held that state regulations can coexist with federal law unless there is a clear and manifest conflict, the actual boundary of preemption is far less stable than the statute suggests.⁶⁵ What emerges, instead, is a zone of interpretive ambiguity in which federal dominance must be inferred rather than declared.

The governing analogy comes from *Verizon Maryland Inc. v. Public Service Commission of Maryland*,⁶⁶ where the Court declined to find implicit preemption in the Telecommunications Act of 1996.⁶⁷ Likewise, *Iowa Utilities Board v. FCC*⁶⁸ demonstrated that even sweeping federal statutes leave room for state-level engagement unless Congress expressly negates it.⁶⁹ This ambivalence is also evident in the AI context. If there is a unified national approach to algorithmic regulation, it invites the same judicial dilemma: how to draw a line between coordinated oversight and exclusive control.

general-bailey-promulgates-regulation-securing-algorithmic-freedom-for-social-media-users/ [https://perma.cc/GA49-ECHC].

61. See, e.g., William Webster, Richard Thurman, & Mike Finkelstein, *Combating Consumer Fraud in Missouri: The Development of Missouri's Merchandising Practices Act*, 52 MO. L. REV. 365 (1987).

62. See Abigail George, *Defamation in the Time of Deepfakes*, 45 COLUM. J. GENDER & L. 122 (2024).

63. *Id.* at 124.

64. *Id.* at 125.

65. See, e.g., Philip J. Weiser, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U. L. REV. 1692 (2001).

66. *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 642 (2002).

67. See Bruce E. Drushel, *The Telecommunications Act of 1996 and Radio Market Structure*, 11.3 J. MEDIA ECON. 3-20 (1998).

68. *Iowa Utils. Bd. v. FCC*, 301 F.3d 957 (8th Cir. 2002).

69. See Wang Su, *Iowa Utilities Board v. FCC*, BERKELEY TECH L.J., 435-445. (1998), available at <https://www.jstor.org/stable/24116689> [https://perma.cc/2YJP-RTPL].

D. Federal Involvement in AI Governance

In a move that signaled both ambition and provocation, the Trump administration sought to redefine the national AI agenda with the stroke of a pen. On January 23, 2025, President Trump issued an Executive Order titled Removing Barriers to American Leadership in Artificial Intelligence.⁷⁰ The directive rescinded prior measures deemed obstacles to innovation and reframed federal AI policy around a commitment to what it called unbiased and agenda-free AI development.⁷¹ Nevertheless, the invocation of neutrality raises more questions than it resolves.⁷² Can an order that dismantles prior safeguards also claim objectivity, or does it merely substitute one agenda for another under the guise of regulatory clarity?

Observers suggest that the Executive Order paves the way for the introduction of more stringent federal preemption.⁷³ The invocation of federal authority, even in soft terms, raises an interpretive tension. When Congress expresses intent to lead, does that leadership require exclusivity? Or is the leadership merely suggestive, leaving ample room for state innovation?

Federal agencies, such as the National Institute of Standards and Technology (NIST) and the White House's Office of Science and Technology Policy (OSTP), have indeed begun issuing guidance and coordinating standards.⁷⁴ Nevertheless, these are not rules in the strict sense of administrative law.⁷⁵ They reflect federal priorities and technical best practices but lack binding legal effect. Still, one might ask whether such guidance exerts a gravitational pull on state regulation. Does a federal blueprint, even if nonbinding, suggest a direction that states are expected to follow? Or are states free to build alternate frameworks so long as they do not obstruct federal objectives?

Courts have begun to confront these questions. In *Arizona v. United States*,⁷⁶ the Supreme Court emphasized that state laws conflicting with federal objectives can be invalid even in the absence of explicit preemption. However, what counts as conflict in the AI context remains uncertain. Consider a hypothetical where a state enacts strict algorithmic auditing requirements that diverge from the

70. Exec. Order No. 14179, 90 Fed. Reg. 6123 (Jan. 24, 2025).

71. U.C.S.D. Health & U.C.S.F. Health, *Response to Request for Information on the Development of an Artificial Intelligence (AI) Action Plan* (2025).

72. *Id.*

73. See, e.g., Exec. Order No. 14179, 90 Fed. Reg. 6123 (Jan. 24, 2025), AILA Doc. No. 25012463 (Am. Immigr. Lawyers Ass'n, Jan. 31, 2025), <https://www.aila.org/library/executive-order-on-removing-barriers-to-american-leadership-in-artificial-intelligence> [<https://perma.cc/NDH8-55MP>].

74. NIST (National Institute of Standards and Technology) develops and promotes standards, measurements, and technical guidelines for high technologies to foster innovation, ensure interoperability, and build trust, while OSTP (Office of Science and Technology Policy) advises the President on science and technology issues, coordinates federal science and technology policy across agencies, and sets national R&D priorities for critical and emerging technologies.

75. See Bridget A. Fahey, *Coordinated Rulemaking and Cooperative Federalism's Administrative Law*, 132 YALE L.J. 1320 (2022) (providing an explanation of the legal implications, in terms of administrative law, for federal agencies' rules and regulations).

76. See *Arizona v. United States*, 567 U.S. 387, 399 (2012).

voluntary frameworks outlined by federal agencies. Is the divergence itself a conflict? Or must there be tangible interference with federal initiatives?

Preemption analysis under doctrines such as obstacle preemption often hinges on judicial guesswork about congressional purpose.⁷⁷ Nevertheless, where Congress chooses coordination over control, that guess becomes murkier.⁷⁸ It leaves open the possibility that states may complement federal initiatives rather than displace them.⁷⁹ Still, one cannot ignore the latent question. If federal guidance is seen as a roadmap for future regulation, should courts begin to treat it as a signal of eventual federal exclusivity?

There is no easy answer. The architecture of federal AI governance, which is still in formation, does not yield clear directives for preemptive analysis. The courts, like the agencies, remain in a posture of anticipation. Furthermore, the question lingers on whether an early federal signal issued through voluntary standards is a prelude to binding uniformity or a gesture toward pluralism that has yet to be tested.

E. Comparative Perspectives: The European Union and China

In Europe, the AI Act carves a path that is far more categorical.⁸⁰ Passed by the European Parliament in 2024, the regulation imposes tiered obligations based on risk classification and vests significant enforcement power in centralized institutions.⁸¹ The logic is technocratic, driven by precaution, and embedded in the broader architecture of the Digital Services Act and the General Data Protection Regulation.⁸² European governance does not rely on the subsidiarity of states but rather assumes a singular regulatory vision that member nations must accept.

China, by contrast, blends authoritarian steering with market orchestration. For instance, the Provisions on the Management of Algorithmic Recommendations for Internet Information Services⁸³ require platforms to submit algorithmic filing records and enforce content standards in alignment with core socialist values.⁸⁴ This is not preemption in the American sense but a different kind of hierarchical

77. See David S. Rubenstein, *The Paradox of Administrative Preemption*, 38 HARV. J.L. & PUB. POL'Y 267 (2015).

78. David E. Seidelson, *The Federal Rules of Evidence: Rule 501, Klaxon and the Constitution*, 5 HOFSTRA L. REV. 21 (1976) (suggesting that the federal court should make an “educated judicial guess” as to how the highest . . . Moreover, in diversity cases, Congress has explicitly determined that state law should coordinate over control. . .).

79. See Robert Agranoff & Alex N. Pattakos, *Intergovernmental Management: Federal Changes, State Responses, and New State Initiatives*, 14.3 PUBLIUS: J. FEDERALISM 49-84 (1984).

80. See 2024 O.J. (L 1689) 1 (Regulation (EU) 2024/1689 of the European Parliament and the Council of 13 June 2024 on the Laying Down Harmonised Rules on Artificial Intelligence).

81. See *id.*

82. See Edward S. Dove, *The EU General Data Protection Regulation: Implications for International Scientific Research in the Digital Era*, 46.4 J. L. MED. & ETHICS 1013-30 (2018).

83. See Daniel Albrecht, *The Internet Information Services Algorithm Recommendation Management (IISARM) Regulations in China*, 23.4 COMPUT. L. REV. INT'L 97-103 (2022).

84. See Mahmud Hasan, *Regulating Artificial Intelligence: A Study in the Comparison Between South Asia and Other Countries*, 5 LEGAL ISSUES DIGIT. AGE 122-149 (2024).

control, one where the local is absorbed rather than displaced. State authority is not suppressed by national regulation because it never possessed autonomous normative power in the first place.⁸⁵

Returning to the United States, the federal government may signal an aspiration to emulate certain elements of both European coherence and Chinese command, yet it operates in a constitutional environment that resists both. If the statute preempts state law only when it is inconsistent with federal objectives, then it implicitly authorizes a continuing role for state innovation. Such a framework recalls the Court's reasoning in *Wyeth v. Levine*, where the absence of a clear preemption clause allowed a Vermont jury to impose liability despite FDA approval.⁸⁶ Federal AI law, in this light, may gesture toward harmonization but cannot escape the gravitational pull of federalism.

What, then, of the states that seek to require algorithmic impact assessments or prohibit facial recognition in schools? Are they defiant or simply anticipating the terrain of future federal action? The answer may not come solely from the statutory text, but rather from judicial instincts about technological governance. Therefore, we return to the thought that an emergency order or statutory clause is not always a command, but sometimes a tentative indication of where the law may be headed. Is such a guess binding? Not quite. However, as courts grapple with AI and federal preemption, they may begin to treat statutory gestures as anticipatory signals and legal scaffolds, not legislative conclusions.

If federal courts are to make sense of preemption in the AI context, they must do so while contending with regulatory archetypes that extend beyond domestic boundaries. The United States positions AI regulation within a constitutional order that disperses authority horizontally across federal and state institutions.⁸⁷ By contrast, the European Union centralizes AI governance through comprehensive instruments, such as the AI Act, which assigns both preventive and corrective responsibilities to supranational bodies, including the European Commission and the newly formed AI Office.⁸⁸ China, for its part, integrates algorithmic oversight into the architecture of party-state capitalism, where ministerial bodies, such as the Cyberspace Administration, operate not only as regulators but also as enforcers of ideological fidelity.⁸⁹ This triptych reveals a fundamental divergence in regulatory philosophy: the U.S. relies on incrementalism and judicial mediation, the EU prioritizes systemic precaution and categorical risk stratification, and China blends normative compliance with digital sovereignty.

85. See, e.g., *National Artificial Intelligence Initiative Act of 2020*, 15 U.S.C. §§ 9401-9462.

86. *Wyeth v. Levine*, 555 U.S. 555, 574-75 (2009).

87. See Carlos Ignacio Gutierrez Gaviria, *The Role of Artificial Intelligence in Pushing the Boundaries of US Regulation: A Systematic Review*, 38 SANTA CLARA HIGH TECH. L.J. 123 (2022).

88. See, e.g., Samuele Bertaina et al., *Fundamental Rights and Artificial Intelligence Impact Assessment: A New Quantitative Methodology in the Upcoming Era of AI Act*, 56 COMPUT. L. & SEC. REV. 106101 (2025).

89. See Yiran Li, *Cyberspace and Social Governance: The Role of the Cyberspace Administration Office*, in HANDBOOK ON LOCAL GOVERNANCE IN CHINA 224-243 (Edward Elgar Publishing, 2023).

In this comparative context, the challenge for U.S. lawmakers and judges is to define the normative center of a statute that establishes a uniform rule in AI governance. Is the statute a floor, a ceiling, or an evolving scaffold? Courts may soon find themselves adjudicating the boundary between permissible state experimentation and impermissible deviation. They must do so while looking across jurisdictions that have already chosen sharply different answers to the same question: Who should decide how intelligent systems behave?

III. INTERPRETING SECTION 43201(C): TEXT, SCOPE, AND IMPLICATIONS

Policy statements surrounding Section 43201(c) suggest a preference for innovation free from the fragmentation of state control. Section 43201(c) states plainly that no state or political subdivision may enforce any law or regulation concerning AI models or systems for ten years following the Act's enactment.⁹⁰ Nevertheless, what begins as a declarative sentence unfolds into a set of questions. What precisely counts as an "artificial intelligence model"? Is it confined to autonomous decision-making or broad enough to include machine learning used in routine analytics?

The statutory silence on definitions invites both speculation and litigation. Courts might reach for precedent in analogous contexts, such as *National Federation of Independent Business v. Sebelius*, where statutory interpretation hinged not just on the text but also on legislative purpose and structural logic.⁹¹ They may also recall *Arizona v. United States*, where federal preemption was evaluated in relation to the historic role of states in policing and licensing.⁹² Technology regulation has long drawn from shared jurisdiction, as seen in telecommunications under the Telecommunications Act of 1996, rather than exclusive federal control.⁹³

A. Statutory Language and Legislative Intent

Section 43201(c) appears to speak in sweeping terms at first. Its language announces a categorical preemption of all subnational efforts to regulate AI technologies. But what sort of preemption and with what limits, if any? The statute declares that any state or local law that attempts to regulate a covered entity in connection with the development or deployment of AI systems is superseded. The operative text thereby positions itself not as a modest constraint but as a directive with structural implications for federalism.

The breadth of this move is compounded by the statutory definition of a covered entity, which includes not only developers and deployers but also those who license or otherwise make AI technologies available for use.⁹⁴ What counts as

90. See One Big Beautiful Bill Act, H.R. 1, 119th Cong. § 43201(c) (2025).

91. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

92. See Lucas Guttentag, *Immigration Preemption and the Limits of State Power: Reflections on Arizona v. United States*, 9 STAN. J. C.R. & C.L. 1 (2013).

93. See Bruce E. Drushel, *The Telecommunications Act of 1996 and Radio Market Structure*, 11.3 J. MEDIA ECON. 3-20 (1998).

94. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (interpreting statutory language concerning preemption narrowly in the absence of clear congressional intent).

development, and what constitutes deployment? These terms are not defined with care. Their openness does not produce interpretive flexibility. It invites contestation. The provision's reach is further extended by its stated aim to govern the field. The word govern is not incidental. It signals something more assertive than regulation. It implies a claim of primacy, one that may extend beyond the usual domains of federal oversight into spaces traditionally reserved for the states. Nevertheless, nothing in the legislative record clarifies whether Congress meant to enact such a far-reaching dislocation of state power.⁹⁵

The sparse legislative history of Section 43201(c) does little to temper this ambiguity. There is no substantive committee report. The floor debates offer fragments but no coherent vision.⁹⁶ One is left with text that operates as both assertion and enigma. It is challenging to determine whether Congress intended to protect innovation from a patchwork of state rules or to supplant entirely the role of subnational governments in shaping the ethical and social boundaries of AI.⁹⁷ In that uncertainty, questions begin to emerge. Can a statutory term like “supersede” do so much work without interpretive anchoring? Can the federal government claim to govern without first defining what precisely it is governing? Where ambiguity resides, what role is left for the courts to decide whether such a statute invites a future in which federal preemption becomes not an exception but the baseline?

B. Policy Objectives and Regulatory Framing

Imagine a statutory provision that aspires to promote uniformity but speaks in silence when asked what precisely should fill the regulatory void it creates. Section 43201(c) does just that. While floor statements and committee reports evoke a familiar concern about regulatory fragmentation and cite the Communications Decency Act of 1996 as a historical precedent, the analogy is incomplete.⁹⁸ Congress once moved to shield fledgling online services from divergent state rules.⁹⁹ Yet, in that case, the federal protection was paired with a discernible policy architecture.¹⁰⁰ Section 43201(c), by contrast, invites federal primacy without

95. See, e.g., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (discussing the presumption against federal preemption in areas traditionally regulated by the states).

96. See Gabriel Weil, *The House Reconciliation Bill's AI Preemption Clearly Violates the Byrd Rule*, LAWFARE (May 30, 2025), <https://www.lawfaremedia.org/article/the-house-reconciliation-bill-s-ai-preemption-clearly-violates-the-byrd-rule> [https://perma.cc/P2P5-WD94].

97. See Brandon Vigliarolo, *Trump's 'Big Beautiful Bill' Would Create a Regulation-Free AI Hellscape, AGs Warn*, THE REGISTER (May 20, 2025), https://www.theregister.com/2025/05/20/trump_bill_regulation_free_ai/ [https://perma.cc/HV3V-EHP8].

98. See, e.g., Jim Exon, *The Communications Decency Act*, 49.1 FED. COMM. L.J. 4 (1996), for an explanation of the Act.

99. See 47 U.S.C. § 230. Congress enacted Section 230 of the Communications Decency Act to create a uniform federal standard shielding emerging online services from a patchwork of inconsistent state regulations, thereby fostering innovation and protecting the nascent Internet ecosystem from burdensome liability.

100. See Alan Lewine, *Making Cyberspace Safe for Children: A First Amendment Analysis of the Communications Decency Act of 1996*, 18 HAMLINE J. PUB. L. & POL'Y 78 (1996).

designating a guiding agency or identifying the contours of the rules that will eventually govern AI systems.¹⁰¹

The policy rationale is not difficult to understand. AI, we are told, must be protected from a patchwork of conflicting mandates that would burden commerce or frustrate innovation.¹⁰² Nevertheless, this vision presumes a static federal capacity and an inert state apparatus. What if better responses to harms from algorithmic decision-making are already emerging locally, rather than federally? New York City's algorithmic accountability law,¹⁰³ California's Consumer Privacy Act,¹⁰⁴ and the Biometric Information Privacy Act of Illinois¹⁰⁵ all speak to a dynamic, decentralized regulatory momentum. These measures arose not from abstract fear of innovation chills but from specific harms, such as opaque risk-scoring tools in housing, data misuse in employment, and discriminatory biometric sorting.

To freeze such experimentation in favor of a yet-to-be-determined federal regime is not merely speculative. It is to choose suspension over engagement. What remains puzzling is the lack of a complementary enforcement regime within Section 43201(c). Unlike the Federal Aviation Administration's clear mandate under federal aviation law¹⁰⁶ or the Environmental Protection Agency's role in setting air and water standards,¹⁰⁷ no agency here is tasked with coordinating federal rulemaking. The National Institute of Standards and Technology and the Federal Trade Commission are mentioned in adjacent statutory contexts¹⁰⁸ but given no express role in operationalizing the preemption.

So, what is Section 43201(c) doing? It is designed to halt state AI regulation while offering no federal substitute. It signals a desire for regulatory clarity but supplies none. It borrows the rhetoric of innovation and national interest without defining how those aims will be achieved. In doctrinal terms, the provision may rest on the Supremacy Clause,¹⁰⁹ but it seems in tension with the Tenth Amendment's reservation of powers not delegated to the federal government.¹¹⁰ Whether it aligns with the principles of cooperative federalism outlined in *Gade v. National Solid Waste Management Association*¹¹¹ or *Arizona v. United States*¹¹² remains to be seen. Perhaps what is most striking is what the statute leaves undone.

101. See Artificial Intelligence Advancement and Accountability Act, S. 4320, 118th Cong. § 43201(c) (2024) (proposed).

102. See *id.*; S. Rep. No. 118-57, at 12 (2024).

103. See N.Y.C., N.Y., Local Law No. 144 (2021).

104. See California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100–1798.199.100.

105. See Biometric Information Privacy Act, 740 Ill. Comp. Stat. 14/1–14/25 (2008).

106. See 49 U.S.C. § 40101.

107. See Clean Air Act, 42 U.S.C. §§ 7401–7671q; Clean Water Act, 33 U.S.C. §§ 1251–1388.

108. See National Artificial Intelligence Initiative Act of 2020, 15 U.S.C. §§ 9401–9411.

109. U.S. Const. art. VI, cl. 2.

110. U.S. Const. amend. X.

111. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992).

112. *Arizona v. United States*, 567 U.S. 387 (2012).

On June 5, 2025, the Senate Commerce Committee¹¹³ released a proposal to modify the House’s ban on the enforcement of state and local AI laws.¹¹⁴ This new version would tie existing funding for broadband infrastructure to compliance with Congress’s ban on regulating AI. In other words, states would have to choose between regulating AI or getting federal support to connect their citizens to the internet. Because all 50 states receive this funding, the effect of the new provision could be the same. The reconciliation bill remains deeply problematic and would still override the state’s right to safeguard its elections from AI-generated falsehoods.

C. Definitional Ambiguities: What AI Systems Are Covered

Section 43201(c) does not define AI as much as it suggests a topology of where federal oversight begins—and where it might end. The statute refers to *artificial intelligence models*, *artificial intelligence systems*, and *automated decision systems*.¹¹⁵ The terms appear confident, perhaps even comprehensive, but any attempt to regulate something as fluid as AI by naming its parts risks omitting its essence. Legal meaning here is not static; it evolves in concert with the technologies themselves.

Start with the *artificial intelligence model*. That term likely covers mathematical or algorithmic structures such as neural networks, decision trees, or large language models, all of which operate at the computational core of AI systems.¹¹⁶ Nevertheless, these models do not function alone. They rely on training datasets, feature extractors, and annotation protocols.¹¹⁷ None of these inputs may qualify as models per se, yet each determines the behavior and accuracy of the resulting system. Their exclusion from the statutory definition invites ambiguity, perhaps not by design but due to the inherent limits of language applied to dynamic infrastructure.¹¹⁸

Next, the statute offers *artificial intelligence systems* as a broader category.¹¹⁹ This term may be interpreted to mean any real-world application of a model, such as facial recognition software, autonomous vehicles, or algorithmic policing

113. See STAFF OF S. COMM. ON COM., SCI., & TRANSP., BUDGET RECONCILIATION TEXT 31 (Comm. Print. 2025), <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA> [<https://perma.cc/GL4S-56XU>].

114. See Kashdan, *supra* note 46.

115. See One Big Beautiful Bill Act, H.R. 1, 119th Cong. § 43201(c) (2025) (listing “artificial intelligence models,” “artificial intelligence systems,” and “automated decision systems” as subjects of federal oversight).

116. See Ian Goodfellow et al., *Deep Learning* 168–72 (2016) (explaining the architecture of neural networks and their role in AI models); see also Tom B. Brown et al., *Language Models Are Few-Shot Learners*, 33 ADVANCES IN NEURAL INFO. PROCESSING SYS. 1877 (2020).

117. See Arunkumar Thirunagalingam, *Improving Automated Data Annotation with Self-Supervised Learning: A Pathway to Robust AI Models*, INTERNATIONAL TRANSACTIONS IN A.I. (2023).

118. See Jenna Burrell, *How the Machine ‘Thinks’: Understanding Opacity in Machine Learning Algorithms*, BIG DATA & SOC’Y, 1, 2–3 (2016) (noting that key design features are shaped by choices made during data labeling and preprocessing).

119. See One Big Beautiful Bill Act, H.R. 1, 119th Cong., § 43201(c)(2).

tools. Yet, these systems often resist rigid classification. Many operate with humans “in the loop,” sometimes even at critical decision points.¹²⁰ Does human input disqualify them from being “systems” under the statute? Or does it merely shift the locus of accountability? That question may become pivotal, particularly where state regulations aim to cover hybrid structures that are overlooked at the federal level.¹²¹

Then there is the *automated decision system*, a term that encompasses tools such as hiring algorithms, credit risk engines, and parole assessments.¹²² Nevertheless, how automated must the decision be to be considered valid? Recommendation engines that influence but do not decide may fall into a gray area. Even routing software for deliveries or clerical tasks may have meaningful, albeit indirect, impacts.¹²³ The definitional line between support and decision is more philosophical than operational, and that ambiguity holds regulatory consequences.

Looking outward from the text, gaps emerge. *Edge AI*, operating in smart sensors or wearables, may not clearly fall within the listed categories.¹²⁴ *Smart infrastructure tools* guiding city traffic or utility flow may perform decision-like functions without ever being called systems or models.¹²⁵ *Training infrastructure*, such as the scaffolding of AI development, could escape notice altogether if definitions do not reach that far.¹²⁶ Even more elusive are *adaptive or self-evolving systems* that shift capabilities over time.¹²⁷ If regulatory meaning is static, such systems may wander outside their boundaries.

120. See Sriraam Natarajan et al., *Human-in-the-loop or AI-in-the-loop? Automate or Collaborate?*, 39 PROCS. AAAI CONF. ON A.I. 28594, 28596 (2025).

121. Cf. Ryan Calo, *Artificial Intelligence Policy: A Primer and Roadmap*, 51 U.C. DAVIS L. REV. 399, 412–15 (2017) (discussing how human-AI collaboration complicates regulatory classification).

122. See One Big Beautiful Bill Act, H.R. 1, 119th Cong., § 43201(c)(3); see also Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 WASH. L. REV. 1, 11–18 (2014) (analyzing the use of algorithmic tools in the decision-making context of credit scoring).

123. See Ignasi Dorca & Patrick Schmidt, *Between Truth and Power: The Legal Constructions of Informational Capitalism; The Code of Capital: How the Law Creates Wealth and Inequality*, 54 L. & SOC’Y REV. 722 (2020) (reviewing book that highlights the systemic impact of logistical and informational infrastructures that shape behavior without direct command).

124. Edge AI refers to the deployment of AI algorithms and models directly on local devices, like sensors or smartphones, enabling real-time data processing and decision-making without constant reliance on cloud infrastructure. See Yuanming Shi et al., *Communication-efficient edge AI: Algorithms and systems*, 22 IEEE COMM’NS SURVS. & TUTORIALS 2167 (2020).

125. “Smart infrastructure tools of AI” refer to the application of AI and related technologies (like IoT and data analytics) to enhance the efficiency, sustainability, and functionality of urban systems and physical assets, such as transportation networks, energy grids, and buildings, by enabling predictive maintenance, optimized resource management, and real-time decision-making. See Muhammad Waqas Khan et al., *Smart Infrastructure and AI*, in *AI IN MATERIAL SCIENCE* (Syed Saad et al., eds., 2025).

126. See Ben Zefeng Zhang, *The Labor of Training Artificial Intelligence: Data Infrastructure, Mobility, and Marginality*, COMPANION PUBL’N 2023 CONF. ON COMPUT. SUPPORTED COOP. WORK & SOC. COMPUTING (2023).

127. See In Ho Cho & Ashish Chapagain, *Self-evolving artificial intelligence framework to better decipher short-term large earthquakes*, SCIENTIFIC REPORTS, Sept. 2024, at 1.

These definitional choices surrounding AI systems are not mere semantics. They shape the outer perimeter of federal preemption. By limiting its own scope, the statute leaves space for state intervention. Section 43201(c) exists within a broader framework that imposes a ten-year moratorium on state and local regulation of AI systems.¹²⁸ Nevertheless, a moratorium is not an erasure. It signals a pause, not permanence. Whether Congress envisions federal regulation filling the gap or prefers to leave the space silent remains uncertain. Perhaps Congress expects regulatory norms to develop free from the disruptive forces of jurisdictional multiplicity. Alternatively, perhaps Congress is simply inviting later conflict. Either way, the text of Section 43201(c) performs a dual function: shielding innovation from premature interference and warning federal regulators that their stewardship is temporary. The moratorium reads not like finality but like a provisional promise. It asks the states to wait but not to disappear. It calls for federal maturation while allowing for the states' return. The statute names what it governs, but more crucially, it names what it leaves behind.

D. Anticipating Judicial Review: Doctrinal and Institutional Pathways

Suppose a court faces a federal statute, such as Section 43201(c) of the One Big Beautiful Bill Act, that imposes a ten-year halt on all state and local regulation of AI systems. That provision, on its face, appears to be a sweeping preemption. Nevertheless, such breadth raises immediate constitutional questions under the Supremacy Clause and related doctrines of federal preemption. While it is long settled that federal law may displace state regulation where Congress acts within its enumerated powers, courts hesitate when the statute signals not a federal framework but an empty field.¹²⁹ Preemption without substitution risks becoming disguised deregulation. Courts have often required either a comprehensive federal scheme or a clear signal that uniformity justifies the displacement of state laws.¹³⁰ Absent either, they may be reluctant to view a moratorium as compatible with the constitutional structure.

One difficulty lies in distinguishing federal silence from federal intent. The judiciary must determine whether the moratorium aims to create space for future coordination or whether it merely halts state efforts with no forward movement. In *Gregory v. Ashcroft*,¹³¹ the Supreme Court required Congress to speak clearly when intending to displace core areas of state authority.¹³² Even if Section 43201(c)

128. See One Big Beautiful Bill Act, H.R. 1, 119th Cong., § 43201(c)(1) (establishing a ten-year moratorium on state and local regulation related to AI systems beginning on the effective date of the Act).

129. See Anthony J. Bellia, *Federal Regulation of State Court Procedures*, 110.6 YALE L.J. 947 (2001).

130. See Stephen B. Burbank, *Of Rules and Discretion: The Supreme Court, Federal Rules and Common Law*, 63 NOTRE DAME L. REV. 693 (1988).

131. See *Gregory v. Ashcroft*, 501 U.S. 452 (1991).

132. See Bruce Dayton Livingston, *Gregory v. Ashcroft: The Supreme Court announces a new rule of statutory construction in deference to constitutionally recognized principles of federalism*, 11 ST. LOUIS. U. PUB. L. REV. 243 (1992).

appears straightforward, ambiguities in the statutory definition of AI systems or a lack of legislative findings could obscure what initially seems direct.¹³³ Courts have looked past the text in such cases, unwilling to infer from opacity what the constitutional order demands to be unmistakable.¹³⁴

The Tenth Amendment also presses in. A preemption clause that prohibits states from acting in fields long recognized as within their domain, such as civil rights enforcement, consumer protection, or electoral integrity, raises questions about commandeering.¹³⁵ If the moratorium simply bars contradictory regulation, perhaps it passes muster. However, if it effectively prevents states from fulfilling their traditional responsibilities without offering an alternative, courts may view the federal hand as overextended.

Claims under the Takings Clause are less likely to succeed. In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, the Court upheld a 32-month development moratorium, refusing to treat temporary regulatory pauses as per se takings.¹³⁶ Section 43201(c)'s decade-long span might test that principle, but the Court's emphasis on temporal limits and purpose-driven restrictions suggests some room for leeway. Unlike *Lucas v. South Carolina Coastal Council*,¹³⁷ where permanent deprivation triggered compensation, *Tahoe-Sierra* preserved flexibility for governance so long as time remained bounded.¹³⁸

Nevertheless, time cuts both ways. A ten-year moratorium risks severing the thread that has justified shorter pauses in other domains. The *Internet Tax Freedom Act*'s restrictions on state taxation passed judicial review largely because they reflected a coherent federal policy within the scope of the Commerce Clause.¹³⁹ Similarly, the Commercial Space Launch Amendments Act of 2004¹⁴⁰ imposed federal limits but did not preempt state regulation. Section 43201(c), by contrast, offers no such scaffolding. Furthermore, where states have moved to regulate AI-driven misinformation in elections, their efforts may now be paused indefinitely under a provision that neither regulates federally nor delegates with clarity. If so, what remains may not be governance but a void.

133. See Kashdan, *supra* note 46.

134. See Robert A. Levy & William H. Mellor, *Taking Property by Regulation*, in *THE DIRTY DOZEN: HOW TWELVE SUPREME COURT CASES RADICALLY EXPANDED GOVERNMENT AND ERODED FREEDOM* 169 (New York: Sentinel, 2008).

135. See Wesley J. Campbell, *Commandeering and Constitutional Change*, 122 YALE L.J. 1104 (2012). In constitutional law, commandeering refers to the federal government compelling state governments or their officials to enact, administer, or enforce federal regulatory programs, which is prohibited under the Tenth Amendment's anti-commandeering doctrine.

136. See Ann Oshiro, *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency: A Significant Ripple in Takings Jurisprudence*, 41 Hous. L. Rev. 167 (2004).

137. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992).

138. See, e.g., Michael M. Berger, *Tahoe Sierra: Much Ado About-What*, 25 U. HAW. L. REV. 295. (2002).

139. *Internet Tax Freedom Act*, Pub. L. No. 105-277, § 1101, 112 Stat. 2681-719 to 2681-721 (1998).

140. *Commercial Space Launch Amendments Act of 2004*, Pub. L. No. 108-492, 118 Stat. 3974.

E. Government Use of Private AI Systems

When the federal government enlists a private company rooted in the AI era to consolidate its data systems, the issue extends beyond technical efficiency to core constitutional principles. For instance, the government's engagement of *Palantir Technologies* to coordinate interagency data integration represents a significant turn in federal information policy.¹⁴¹ *Palantir Technologies* is an American software company that specializes in building data integration and analysis platforms, like Gotham and Foundry, used by government agencies and commercial clients to make sense of vast and disparate datasets for complex decision-making.¹⁴² A report indicates that the federal government's arrangement builds upon prior negotiations between Palantir and various entities, including the Social Security Administration and the Department of Education.¹⁴³ This arrangement is being carried forward under Executive Order 14110,¹⁴⁴ aimed at streamlining government operations through expanded data sharing.¹⁴⁵ However, this operational logic has reignited foundational concerns over privacy and civil liberties, especially among factions traditionally aligned with executive power.

The infrastructure at the center of this initiative, Palantir's Foundry platform, already supports analytic operations across agencies such as the Department of Homeland Security and the Department of Health and Human Services.¹⁴⁶ While nominally aligned with statutory authorities such as the Modernizing Government Technology Act¹⁴⁷ and the Privacy Act of 1974,¹⁴⁸ the rapid scaling of data consolidation efforts presents a significant challenge to the normative boundaries of federal power.¹⁴⁹ The issue is not only whether these integrations are lawful, but also whether they erode long-standing constitutional protections under the Fourth Amendment and related privacy doctrines.¹⁵⁰ The convergence of technical systems and legal ambiguity has transformed a bureaucratic upgrade into a crucible for debates over democratic accountability.

141. See Andrew Iliadis & Amelia Acker, *The Palantir Files: public interest archives for platform accountability*, 27 INFO., COMM'C'N & SOC'Y 2343 (2024).

142. See Lena Ulbricht & Simon Egbert, *In Palantir we trust? Regulation of data analysis platforms in public security*, BIG DATA & SOC'Y 1 (2024).

143. See *id.*

144. For Executive Order 14110, see Mark A. Kramer et al., *Harnessing AI for Efficient Analysis of Complex Policy Documents: A Case Study of Executive Order 14110* (The MITRE Corp., 2024), <https://arxiv.org/pdf/2406.06657> [<https://perma.cc/EU23-6BJK>].

145. See Nick Mordowanec, *'Trump Flipped On Us': MAGA Reacts to Potential National Citizen Database*, NEWSWEEK, (Jun 2, 2025 at 1:41pm EDT), <https://www.newsweek.com/donald-trump-palantir-maga-database-surveillance-2079905> [<https://perma.cc/UU9X-SS3E>].

146. See Ulbricht, *supra* note 142.

147. Modernizing Government Technology Act, 40 U.S.C. § 11301 (2017).

148. 5 U.S.C. § 552(a).

149. The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures by the government. U.S. CONST. amend. IV.

150. See, e.g., Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 MICH. L. REV. 801 (2003).

The effort to centralize federal data under Section 43201(c) highlights a paradox at the heart of modern governance: the drive for administrative efficiency is increasingly accompanied by concerns about state overreach. As Palantir's AI architecture becomes further embedded within the machinery of government, the institutional architecture of authority itself is being redefined, not so much through formal jurisdictional shifts as through the scale and depth of information aggregation.¹⁵¹ President Trump's March 2025 order removing constraints on interagency data consolidation has prompted concerns that previously siloed records may soon coalesce into a singular, state-controlled data reservoir.¹⁵² Palantir's role as the operational engine of this transition has drawn unease. Can such authority be contained through institutional design, or does its legitimacy rest solely on discretionary trust? The pending reauthorization of the Foreign Intelligence Surveillance Act¹⁵³ may offer a rare opportunity to confront that question and to test whether the assertion of federal supremacy can still accommodate the principle of restraint.¹⁵⁴

F. Public and Stakeholder Responses

When Congress advanced legislation aimed at reshaping AI governance under Section 43201(c), it did so amid mounting skepticism. Moody's, the last of the three major credit rating agencies to act, issued a downgrade to U.S. debt following the legislative impasse over the bill, citing broader concerns with fiscal management and political dysfunction.¹⁵⁵ Nevertheless, the reaction was not confined to markets. Public opposition gathered quickly, particularly against the bill's effort to prohibit state-level regulation of AI.¹⁵⁶ Surveys showed overwhelming disapproval, even as some policymakers framed the measure as a necessary assertion of federal authority.¹⁵⁷ Critics warned of consequences that reached far

151. See Eleanor Mueller, 'Destroy the Ring': Trump's Palantir Deal Alarms Hill Republicans, *SEMAFOR* (Jun. 5, 2025, at 4:18 EDT), <https://www.semafor.com/article/06/05/2025/destroy-the-ring-trumps-palantir-deal-alarms-hill-republicans> [<https://perma.cc/VB55-ERCG>].

152. See Exec. Order No. 14243, 90 Fed. Reg. 13681 (Mar. 25, 2025). This executive order directs "[a]gency [h]eads . . . to ensure Federal officials designated by the President or Agency Heads (or their designees) have full and prompt access to all unclassified agency records, data, software systems and information technology systems . . . for purposes of pursuing Administration priorities related to waste, fraud and abuse."

153. Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, 92 Stat. 1783.

154. See David Omand & Mark Phythian, *The Technoethics of Contemporary Intelligence Practice: A Framework for Analysis*, in *NATIONAL SECURITY INTELLIGENCE AND ETHICS* 39 (Seumas Miller et al. eds., Routledge 2021).

155. See Annie Nova & Jessica Dickler, What Moody's Downgrade of U.S. Credit Rating Means for Your Money, *CNBC*, (May 19, 2025, 1:12 ET), <https://www.cnbc.com/2025/05/19/what-moodys-downgrade-of-us-credit-rating-means-for-your-money.html> [<https://perma.cc/YR55-579G>].

156. See WHITE & CASE LLP, *AI WATCH: GLOBAL REGULATORY TRACKER – UNITED STATES* (2025), <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-states> [<https://perma.cc/VE9H-NAAW>].

157. See Kristin O'Donoghue, *A Patchwork of State AI Regulation Is Bad. A Moratorium Is Worse.*, *AI FRONTIERS* (June 25, 2025), <https://ai-frontiers.org/articles/congress-might-block-states-from-regulating-ai> [<https://perma.cc/K6BL-9X6P>].

beyond jurisdictional questions.¹⁵⁸ For researchers anticipating the imminent emergence of artificial superintelligence, the absence of state-level checks appeared to be a dangerous oversight.¹⁵⁹ For others, the preemption provision threatened to obstruct enforcement against synthetic child pornography and deepfakes, and to displace robust privacy laws designed by states.¹⁶⁰

Moreover, in the background hovered a different kind of protest, one shaped not by academic projection but by populist disdain. For instance, Elon Musk, then affiliated with the Department of Government Efficiency, dismissed the bill as bloated and catastrophic.¹⁶¹ This points to a statute whose fate hinges not only on constitutional doctrine, but on whether its centralizing force can be squared with democratic legitimacy. When preemption takes on this magnitude, it begins to resemble not just a doctrine but a gamble.

G. Academic and Policy Commentary

Section 43201(c) does not distinguish between subject matters or carve out exceptions for issues such as public health, safety, election integrity, or civil rights. The language is broad, and its silence is strategic. The absence of qualifiers operates not as a legislative oversight but as a calculated signal that regulatory authority belongs squarely and exclusively to the federal center.¹⁶² Whether this reflects a considered theory of national uniformity or simply a surrender to private-sector lobbying is precisely what animates scholarly concern.

Initial reactions from constitutional scholars have been measured but unmistakably apprehensive.¹⁶³ Their concern is not only with what the statute does, but also with what it refuses to imagine.¹⁶⁴ Without sunset provisions tied to concrete policy milestones and without guardrails protecting state innovation in areas such as consumer protection or anti-discrimination,¹⁶⁵ Section 43201(c) appears less like a floor and more like a ceiling, a heavy one at that. Scholars have drawn parallels to cases like *Arizona v. United States*,¹⁶⁶ where federal preemption was justified by the need for a coherent immigration policy, but question whether AI

158. See Billy Perrigo & Andrew R. Chow, *Senators Reject 10-Year Ban on State-Level AI Regulation*, in *Blow to Big Tech*, TIME (July 1, 2025, 9:27 ET), <https://time.com/7299044/senators-reject-10-year-ban-on-state-level-ai-regulation-in-blow-to-big-tech/> [<https://perma.cc/Y52J-HJ4T>].

159. See O'Donoghue, *supra* note 157.

160. *Id.*

161. See Lily Mae Lazarus, *Elon Musk Says Trump's "Big Beautiful Bill" Could Spell Disaster for America*, FORTUNE (July 1, 2025, 5:17 EDT), <https://fortune.com/2025/07/01/trump-spending-bill-pain-points-critics-elon-musk-medicare-national-debt-clean-energy/> [<https://perma.cc/YV2S-E9HJ>].

162. See J. B. Branch & Ilana Beller, *Buried in Congress's Budget Bill is a Push to Halt AI Oversight*, TECH POLICY, (May 16, 2025), <https://www.techpolicy.press/buried-in-congresss-budget-is-a-push-to-halt-ai-oversight/> [<https://perma.cc/S6Z8-T522>].

163. Jonathan L. Mezrich, *Is artificial intelligence (AI) a pipe dream? Why legal issues present significant hurdles to AI autonomy*, 219 AM. J. ROENTGENOLOGY 152 (2022).

164. *Id.*

165. See Sean Molloy, *Approach with Caution: Sunset Clauses as Safeguards of Democracy?*, 23 EUR. J.L. REFORM 147 (2021).

166. *Arizona v. United States*, 567 U.S. 387, 398–99 (2012).

regulation meets the same standard of national imperative.¹⁶⁷ The use of the budgetary procedure to pass such a sweeping preemptive measure adds a further layer of opacity that many find democratically unsettling.

If there is a jurisprudential analogy to be made, it might be to the shadow docket: fast-moving, low-visibility, and heavy with consequence. Critics note that in failing to regulate AI directly while simultaneously preventing states from doing so, Congress risks entrenching a decade-long policy vacuum.¹⁶⁸ Others point out that in *Gade v. National Solid Wastes Management Association*,¹⁶⁹ the Supreme Court warned against construing preemption so broadly that it eliminates all meaningful state oversight.¹⁷⁰ Whether Section 43201(c) can withstand such scrutiny remains unclear, but what is evident is that it has already reshaped the governance landscape.

The irony, of course, lies in the states' recent legislative momentum. From California's transparency mandates to New York's election disclosure requirements, states have been at the forefront of addressing the democratic risks of AI.¹⁷¹ A statute that silences the states not only preempts legislation but also suppresses local knowledge, initiative, and political will.¹⁷² Whether framed as administrative rationality or corporate indulgence, Section 43201(c) forces a reckoning. Is its restraint an act of policy or abdication?

IV. CONSTITUTIONAL DIMENSIONS OF FEDERAL PREEMPTION

Imagine Congress asserting its supremacy not only by legislating AI governance standards but also by silencing states before they speak. That combination, in essence, is the legal footing for such a provision of Section 43201(c) that draws on the federal preemption doctrine, traditionally segmented into express, implied, and field preemption. However, invoking preemption under the Supremacy Clause does not transform congressional silence into a constitutional mandate.¹⁷³ The Supreme Court has warned against assuming that federal authority sweeps so broadly as to displace core functions of state sovereignty without clear intent.¹⁷⁴ The case of *Murphy v. NCAA*,¹⁷⁵ for instance, reminds us that the Tenth Amendment constrains Congress from commandeering state legislative or executive machinery in service of federal policy.¹⁷⁶

167. *Arizona*, 567 U.S. 387.

168. See Margot E. Kaminski, *Regulating the Risks of AI*, 103 B.U. L. REV. 1347 (2023).

169. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992).

170. See Jane M. Lyons, *Gade v. National Solid Wastes Management Association: Reality Check on the Preemption Doctrine*, 10 J. CONTEMP. HEALTH L. & POL'Y 563 (1994).

171. See Cal. Civ. Code § 1798.100-1798.199.100; N.Y. Elec. Law § 3-107.

172. See Kashdan, *supra* note 46.

173. See *Arizona v. United States*, 567 U.S. 387, 399 (2012).

174. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

175. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

176. See Erica L. Bishop, Note, *Murphy v. NCAA* 138 S. Ct. 1461 (2018), 45 OHIO N.U. L. REV. 239 (2019).

Nevertheless, Section 43201(c) appears to lean toward preemptive field occupation, inviting challenges not only under the anti-commandeering doctrine but also under the structural protections implicit in federalism. Whether the provision falls within the bounds of the Commerce Clause or stretches beyond its intended reach remains a live question. Judicial engagement with these questions would not simply weigh federal interest against state autonomy but may require asking whether the Constitution tolerates anticipatory preemption in emerging fields like AI, absent the procedural safeguards of cooperative federalism.

A. *The Supremacy Clause and Types of Preemption*

From the Supremacy Clause, found in Article VI, Clause 2 of the Constitution, courts have developed a taxonomy of preemption.¹⁷⁷ It begins with express preemption, where Congress says exactly what it means and leaves no doubt that state law is ousted.¹⁷⁸ Then comes field preemption, where Congress speaks more diffusely but regulates so thoroughly that it seems to claim the entire terrain.¹⁷⁹ Conflict preemption completes the set. It surfaces where federal and state requirements intersect, or where a state rule conflicts with a federal goal, even if both can technically coexist.¹⁸⁰ Where does Section 43201(c) fall? The answer likely points toward the second of these. The language gestures are not merely used for coordination but for replacement. It envisions a federal scheme that precludes local variation for at least a decade. It announces federal intent not only to regulate but to monopolize the field of AI governance.

Nevertheless, it does so without laying the tracks for implementation. There is no federal agency tasked with immediate oversight. There is no regulatory body assigned to fill the vacuum. There is only silence, which courts have never found persuasive when it comes to field preemption in domains historically managed by states.

Environmental law provides an instructive contrast. Under the Clean Air Act, Congress allows the Environmental Protection Agency to set national standards but leaves to the states the authority to devise their own plans, so long as they meet the baseline.¹⁸¹ This arrangement is a preemption softened by the partnership. It acknowledges that states have a role in implementing and sometimes even exceeding federal objectives. In contrast, Section 43201(c) appears to strip

177. See Henry M. Hart, *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489 (1954).

178. Catherine M. Sharkey, *Inside Agency Preemption*, 110 MICH. L. REV. 521, 523 (2012). Express preemption arises when Congress includes a clause in legislation explicitly stating that federal law overrides state law.

179. See Vicki C. Jackson, *Federalism and the Uses and Limits of Law: Printz and Principle?*, 111 HARV. L. REV. 2180, 2246–47 n. 284 (1998). Field preemption occurs when federal regulation is so pervasive that it leaves no room for supplementary state regulation.

180. Daniel A. Farber, *Federal Preemption of State Law: The Current State of Play*, (UC BERKELEY PUB. L. RSCH. PAPER No. 1740043, 2011). Conflict preemption arises when state law interferes with the objectives or execution of federal policy, even in the absence of direct contradiction.

181. See 42 U.S.C. § 7410.

that role entirely without offering an alternative mechanism. It resembles the kind of statutory sweep that the Court in *Arizona v. United States* viewed with caution.¹⁸² There, even in the charged context of immigration law, the Court hesitated to read federal silence as preemptive intent unless Congress had made its claim unmistakably clear.

The logic runs deeper. When Congress purports to occupy an entire regulatory field, it assumes not only the burden of clarity but also the burden of capacity. Congress must not only demonstrate a desire for control, but also show that it is prepared to exercise that control. If Congress fails to do so, then field preemption begins to look less like federal leadership and more like jurisdictional eviction. The Court has expressed that concern before and will likely do so again.¹⁸³

B. The Tenth Amendment and the Anti-Commandeering Principle

The Tenth Amendment does not speak loudly, but its quiet reservation of powers has shaped the contours of American federalism in ways both subtle and structural. It asserts that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁸⁴ Courts have not always agreed on the boundaries of that reservation, but they have drawn lines when Congress reaches into state decision-making.¹⁸⁵ While preemption doctrines operate through displacement rather than command, there are times when displacement itself begins to resemble coercion by omission.

Section 43201(c) declares a broad and immediate federal preemption of state law in the AI domain, inviting exactly that comparison. It does not require states to administer a federal program or enact a prescribed law. Section 43201(c) does something less visible but equally forceful. It removes the option for states to legislate in an area they have long claimed to be part of their police powers. Civil rights. Education. Public health. Consumer protection. These are not incidental domains. They form the core of what states have traditionally governed.¹⁸⁶ When Congress disables state initiatives without offering an alternative venue for

182. See *Arizona v. United States*, 567 U.S. 387, 401-02 (2012).

183. See Ernest A. Young, *The Ordinary Diet of the Law: The Presumption Against Preemption in the Roberts Court*, 2011 SUP. CT. REV. 253, 278-81 (2012). The author documents the Roberts Court’s increasing skepticism toward expansive field preemption claims, especially where Congress has failed to regulate meaningfully or left enforcement gaps, suggesting a concern that preemption can function as a form of jurisdictional eviction without substantive federal oversight.

184. U.S. CONST. amend. X.

185. See Erwin Chemerinsky, *The Values of Federalism*, 47 FLA. L. REV. 499, 509-15 (1995). The author discusses how federalism jurisprudence has evolved to reflect a balance between national authority and state autonomy, acknowledging that courts have at times drawn doctrinal limits to preserve state decision-making prerogatives, particularly under the Tenth Amendment framework.

186. See Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 553-56 (2011). The author emphasizes that matters such as public health, education, and consumer protection are traditionally regarded as falling within states’ “police powers,” forming a foundational component of American federalism and state sovereignty.

participation, the legal result may not be formally commandeered. However, the practical effect raises the same constitutional concern.

In *New York v. United States*, the Court ruled that Congress could not compel states to accept title to radioactive waste if they refused to implement federal disposal standards.¹⁸⁷ The majority saw this as crossing a line between offering incentives and issuing commands. In *Printz v. United States*, the Court extended that logic to local officials.¹⁸⁸ The Brady Act required state law enforcement to conduct background checks for firearm purchases.¹⁸⁹ That requirement was struck down. What unites both cases is not the question of compulsion in form but the erosion of sovereignty in function. When the federal government designs a regulatory scheme that leaves no room for state agencies, it risks violating the structural guarantees of the Constitution.

Section 43201(c) does not command action. However, foreclosing state regulation entirely cuts off the possibility of local governance in a field that may demand diverse and adaptive responses. This is not a minor procedural choice. It reshapes the balance of authority at a time when AI technologies are already testing traditional forms of oversight. Furthermore, while the distinction between compelling and forbidding remains doctrinally relevant, its force diminishes when the result is indistinguishable from structural displacement. The Court has never squarely confronted a case where federal preemption was wielded to suspend rather than supplement state authority in an emerging regulatory field. Nevertheless, that only heightens the stakes of how such provisions are interpreted.

C. *Presumption Against Preemption in Areas of Traditional State Authority*

The Court does not rush to presume that Congress meant to erase a tradition. Especially not when that tradition lies within a state's historic authority over health, safety, or civil rights.¹⁹⁰ Therefore, when federal legislation appears to supersede state regulation in such areas, a presumption against preemption gradually takes effect. It is not mechanical. It is not conclusive. However, it is there. It is evident in decisions like *Wyeth v. Levine*, where the Court refused to read federal drug-labeling law as implicitly superseding state tort claims.¹⁹¹ Yes, the federal scheme was extensive, but it was not exclusive. Moreover, that mattered because Vermont's authority to protect consumers from harm had long been understood as a core exercise of police power.

187. See *New York v. United States*, 505 U.S. 144, 175-76 (1992).

188. See *Printz v. United States*, 521 U.S. 898, 935 (1997).

189. See Carol J. DeFrances & Steven K. Smith, *Federal-State Relations in Gun Control: the 1993 Brady Handgun Violence Prevention Act*, 24 PUBLIUS: J. FEDERALISM 69 (1994).

190. Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 260-66 (2000). The author provides an in-depth historical and doctrinal analysis of how courts interpret congressional silence and ambiguity in federal statutes, emphasizing the judiciary's reluctance to assume congressional intent to displace longstanding areas of state regulation.

191. See Richard C. Ausness, *The Impact of Wyeth v. Levine on FDA Regulation of Prescription Drugs*, 65 FOOD & DRUG L.J. 247 (2010).

That same baseline appeared decades earlier in *Rice v. Santa Fe Elevator Corp.*,¹⁹² where the Court observed that courts should not find federal preemption unless that intent is the clear and manifest purpose of Congress.¹⁹³ Even when Congress regulates comprehensively with a heavy hand, it must speak with precision if it intends to supplant local governance in a domain that states have traditionally managed.

Section 43201(c), with its categorical preclusion of state AI regulation, does not speak in those terms. It asserts authority without offering a mechanism for shared governance or a transitional path for state participation. Moreover, while the statute claims to occupy the field of AI policy, it does so without making provisions for health privacy rules, anti-discrimination standards, or labor protections. These are not incidental subjects. They are part of regulatory structures built over decades at the state level, such as Illinois's Biometric Information Privacy Act¹⁹⁴ and California's Fair Employment and Housing Act.¹⁹⁵ These are not outliers. They are attempts to govern emerging technologies with direct human consequences.

That Section 43201(c) offers no federal substitute is not merely a gap; it is a significant omission. Courts are likely to view such silence with skepticism. For if Congress had meant to displace state authority in a field so closely tied to local welfare, it would need to have made that intention unmistakable. The absence of a detailed framework does not simply reflect legislative haste. It may suggest constitutional vulnerability because the presumption against preemption is not just a methodological caution. It is a structural principle rooted in the idea that states matter in their own right. Their regulatory choices, especially in new and uncertain domains, should not be dismissed simply because of compelling and articulated national needs. Whether Section 43201(c) meets that test has not yet been decided. Nevertheless, the Court has set out the terrain. The silence in this statute may speak louder than its claims.

D. Cooperative Federalism as a Framework for AI Regulation

Federalism is not only a matter of dividing tasks but also of distributing trust. The American constitutional structure has long recognized that federal and state governments, even when imperfectly aligned, operate as partners in fields where policy is both technically intricate and politically contested.¹⁹⁶ Cooperative federalism has shaped not just theory but practice. In environmental regulation, the Clean Air Act grants the Environmental Protection Agency national authority while requiring states to implement plans.¹⁹⁷ In education, the Elementary and

192. See R.O.J., *Cases, Statutes, and Recent Developments*, THE URBAN LAWYER 759-789 (1973).

193. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

194. See Michael McMahon, *Illinois Biometric Information Privacy Act Litigation in Federal Courts: Evaluating the Standing Doctrine in Privacy Contexts*, 65 ST. LOUIS U. L.J. 897 (2020).

195. Cal. Gov. Code §12900 *et seq.* (1980).

196. See Natália Massaco Koga et al., *When Bargaining is and is not Possible: The Politics of Bureaucratic Expertise in the Context of Democratic Backsliding*, 42 POL'Y AND SOC'Y 378 (2023).

197. Clean Air Act, 42 U.S.C. §§ 7401-7671q.

Secondary Education Act offers funds in exchange for local commitments to federal goals.¹⁹⁸ In healthcare, Medicaid combines federal standards with state design choices that reflect demographic variations and political priorities.¹⁹⁹ This model rests not on control but on coordination. It assumes that experimentation at the state level is not merely tolerated but essential.

Section 43201(c) appears to forget that lesson. It announces a form of preemption that lacks the ordinary instruments of intergovernmental cooperation. There is no waiver process. No matching grants. There are no conditional incentives that might elicit local ingenuity. It closes the door to state action before Congress has even articulated a federal standard. Thus, it does more than prevent conflict. It interrupts a conversation. In areas like AI, where technological change outruns legislative consensus, that interruption comes at a cost.

AI regulation does not lend itself to fixed rules that can be imposed from the top. The problems are new but familiar in form. Privacy. Discrimination. Procedural fairness. Public safety. Each of these implicates values and harms that are context-specific. States have already taken the lead in drafting biometric privacy laws, algorithmic transparency standards, and local oversight boards.²⁰⁰ If Congress preempts those efforts without offering a substitute, it loses access to the iterative learning process that has historically informed national policy. It also risks making regulation brittle in a situation when it must be supple.

There is precedent for the statutory design that embraces adaptive governance. Congress can legislate with flexible benchmarks that adjust as conditions change. It can direct agencies to work in tandem with state counterparts. It can authorize pilot programs that test regulatory hypotheses before enshrining them in law. Section 43201(c) does none of these. Instead, it reflects an assumption that uniformity must precede understanding. However, when courts have confronted similar dilemmas in telecommunications and biotechnology, they have sometimes insisted on a more open structure.²⁰¹

The doctrines surveyed in this section suggest that federal preemption must be proportionate to the complexity of the regulatory field. Section 43201(c) may prove to be too blunt an instrument. It offers no scaffolding for intergovernmental dialogue and no venue for policy revision through local experimentation. That makes it vulnerable not only to constitutional challenge but to political failure. The next section examines how the judiciary has addressed these questions in analogous settings.

198. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965).

199. See Social Security Act, 42 U.S.C. §§ 1396–1396w-6.

200. See Sophia Hilsman, *Toward a Biometric Privacy Act to Protect Individual Rights: What the United States Can Learn from the European Union and China*, 7 CARDOZO INT'L & COMP. L. REV. 993 (2024).

201. See *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004); *Alliance for Bio-Integrity v. Shalala*, 116 F. Supp. 2d 166 (D.D.C. 2000).

V. RECONSTRUCTING A BALANCED FEDERAL-STATE APPROACH

If AI regulation shares the urgency of those domains, then a rigid bar on state action seems less a solution than a suspension of governance. A more resilient model would embrace conditional preemption or cooperative federalism. These approaches maintain federal primacy while encouraging state participation, particularly in areas where technological risks evolve more rapidly than federal rule-making can keep pace. Even a sunset clause embedded in Section 43201(c) could acknowledge the need for reassessment as courts, agencies, and communities gain experience with algorithmic systems. This does not require abandoning uniformity. It requires building it with more democratic tools.

While Section 43201(c) reflects a desire for national uniformity in regulating AI, its grand preemption of state and local laws risks constitutional infirmity and policy inefficiency. Rather than nullifying subnational governance for a decade, Congress could pursue more constitutionally durable and democratically responsive alternatives that promote federal coordination while preserving space for state-level experimentation and oversight. This section proposes three models: conditional preemption, cooperative federalism, and adaptive federal benchmarking.

A. *Conditional Preemption and Federally Set Baselines*

Imagine federal law as a scaffold, not a ceiling.²⁰² In domains where public risk intersects with technical complexity, Congress has at times chosen not to occupy the entire regulatory field, but to permit state actors to operate as long as they reach a defined threshold. The Clean Air Act does precisely this. Section 110 invites state plans that meet or exceed federal standards,²⁰³ preserving a baseline of national coherence without extinguishing subnational discretion.²⁰⁴ AI regulation may call for a comparable scheme. Algorithmic accountability is not only a matter of interstate commerce, but also a matter of real people in real places facing decisions they cannot decipher or contest.²⁰⁵ The harms are often local, even as the architecture is global.

If Congress were to adopt a policy of conditional preemption, federal standards would establish the minimum regulatory baseline.²⁰⁶ States could then add weight where needed. Accountability, nondiscrimination, and explainability could be named in the statute, leaving states the discretion to tailor rules to specific social contexts or emerging risks. Such tailoring is already visible in state laws on automated decision systems, which often precede or outpace federal deliberations. To

202. See, e.g., William W. Buzbee, *Asymmetrical Regulation: Risk, Preemption, and the Floor/Ceiling Distinction*, 82 N.Y.U. L. REV. 1547 (2007).

203. See Henry A. Waxman, *An Overview of the Clean Air Act Amendments of 1990*, 21 ENVTL. L. 1721 (1991).

204. See *Train v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975).

205. See David Freeman Engstrom and Daniel E. Ho, *Algorithmic Accountability in the Administrative State*, 37 YALE J. REGULATION 800 (2020).

206. See Marilyn P. Westerfield, *Federal Preemption and the FDA: What Does Congress Want?*, 58 U. CIN. L. REV. 263 (1989).

displace those efforts entirely risks not just constitutional conflict but regulatory delay. Courts are likely to notice.

The federal baseline model also has the advantage of setting a precedent. It has functioned in environmental law not only as a mechanism of coordination but as a safeguard against federal inertia. AI systems evolve rapidly. A conditional framework would allow state responses to do the same. In turn, federal agencies could learn from those experiments rather than supplant them. A prohibition on state action would preclude this feedback loop, thereby freezing regulatory evolution at the moment of enactment.

Section 43201(c), by contrast, forecloses state authority for a decade. It draws no distinctions between compliant and noncompliant state regimes. It does not refer to standards that states might meet. It offers no procedural pathway for states to reclaim jurisdiction. Courts might ask whether such silence reflects deliberate exclusion or legislative oversight. Either answer would invite skepticism. A court reviewing such a clause may find it fails the constitutional test of clarity, particularly given the strong presumption against preemption in areas of traditional state concern.

A conditional preemption model would not solve every problem. Nevertheless, it would provide courts with something to interpret and agencies with something to administer. It would recognize states not as adversaries but as co-regulators. It would also reflect a more accurate picture of the legal architecture that undergirds most complex policy domains. The Clean Air Act was not hastily crafted. Nor should AI governance be.

B. Joint Rulemaking, Waiver Mechanisms, and Regulatory Flexibility

Cooperative federalism offers not just an alternative to categorical preemption but a method of legal cohabitation. It is not new. Medicaid operates under such a structure, with federal standards guiding state-specific plans and waivers serving as channels for tailored innovation.²⁰⁷ One could imagine a comparable arrangement for AI systems, where federal agencies define procedural norms while allowing states to experiment with context-driven enforcement.

This model allows multiple explanations to coexist. National interests, such as interoperability or cross-border data security, may require uniform benchmarks. Nevertheless, social risks embedded in algorithmic systems often unfold locally. A facial recognition tool might be deployed in Boston under different legal expectations than in Phoenix. Cooperative federalism does not flatten these differences. It translates them.

To see how this might work in practice, one might turn to the National Institute of Standards and Technology. NIST has already begun developing voluntary frameworks for managing AI risk.²⁰⁸ Congress could designate such agencies as coordinators rather than sole regulators. They would articulate technical standards, while

207. 42 U.S.C. § 1396n.

208. See NAT'L INST. OF STANDARDS & TECH., NIST AI 100-1, AI RISK MANAGEMENT FRAMEWORK (AI RMF 1.0) (2023).

states could build legal frameworks to reflect community norms or sectoral vulnerabilities. Shared rulemaking would create a dialogue rather than a decree.

Waivers offer an additional layer of flexibility.²⁰⁹ They allow for provisional divergence, which is subject to review and revision.²¹⁰ In Medicaid, they function as tools for experimentation without breaking the system.²¹¹ In AI governance, waivers could enable states to test novel safeguards in domains like employment discrimination or algorithmic bias in predictive policing. These experiments would occur within the federal architecture rather than in defiance of it. Moreover, they would generate evidence for future national policy.

If Section 43201(c) forecloses that possibility, it does so without distinguishing between domains that require harmonization and those that benefit from heterogeneity. Courts may view such sweeping exclusion as overbroad. The preemption doctrine typically turns on the availability of a federal substitute.²¹² Nevertheless, here, if the federal body lacks both adjudicatory and enforcement teeth, and if no waiver path is available, the statute may resemble a command without implementation. Courts have been wary of such designs.

A cooperative model does not resolve all tensions. It may produce regulatory complexity. However, complexity is not chaos. It is a feature of governance in fields where the law must chase a moving target. AI is one such field. The Constitution does not demand uniformity at all costs. It tolerates diversity within a shared framework. Cooperative federalism is one way to enact that tolerance as policy.

C. Federal Benchmarking and Incentivized State Model Laws

Federal law can persuade without always resorting to mandates, although sometimes it can suggest.²¹³ The Uniform Law Commission has long embraced this posture, drafting model statutes for states to adopt voluntarily.²¹⁴ That strategy lacks compulsion but wields a different kind of power. It treats harmonization as a matter of shared judgment rather than a centralized decree. Congress could approach AI in much the same way.

Imagine a regime where federal agencies develop evolving technical benchmarks for algorithmic systems. These might include standards for explainability, accuracy, bias detection, or auditability. Nevertheless, instead of binding mandates, the benchmarks operate as signals. States are free to adopt, adapt, or reject

209. See Keith N. Hylton, *Waivers*, 102 NEB. L. REV. 171 (2023).

210. See Justin Jos, *Legal waivers in Settlement Agreements: Implications on Access to Remedies in Business and Human Rights*, 21 J. HUM. RTS. 639 (2022).

211. K. John McConnell, Jennifer D. Hall, & Benjamin F. Miller, *Medicaid 1115 Waivers for Mental Health—Time for Redesign?*, JAMA PSYCHIATRY (2025), <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2836260> [<https://perma.cc/3BAB-M5ZN>].

212. See *Arizona v. United States*, 567 U.S. 387, 401 (2012).

213. See Henry M. Hart, *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489 (1954).

214. See William H. Henning, *The Uniform Law Commission and Cooperative Federalism: Implementing Private International Law Conventions Through Uniform State Laws*, 2 ELON L. REV. 39 (2011).

them altogether. The incentive lies elsewhere. Federal funds could be tied to adoption. Safe harbors might be granted to those who conform. Procedural streamlining in federal adjudication might be extended to jurisdictions that internalize the models. These are carrots, not sticks.

The Department of Transportation has used such mechanisms for years.²¹⁵ Highway safety is regulated through a blend of grants and model practices.²¹⁶ The federal government sets goals, and the states build paths in accordance with these goals. The result is not uniformity but convergence.²¹⁷ For AI, where risks evolve and local contexts matter, this flexibility may be a virtue, allowing policy to move with technology rather than against it.²¹⁸

This form of adaptive benchmarking could be led by agencies like the National Institute of Standards and Technology or a newly established AI commission. Their task would not be enforcement but curation. They would identify emerging risks, consult stakeholders, and issue guidance. States would decide how far to follow. The legal architecture would resemble soft law, but the incentives would render it sticky.

Replacing Section 43201(c) with this layered approach would not merely improve administrative efficiency. It could also cure constitutional doubts. Courts have long viewed absolute preemption skeptically when federal alternatives lack clarity or enforcement strength, as shown in *Wyeth v. Levine*.²¹⁹ Where there is no meaningful substitute, preemption begins to resemble abdication more than regulation.²²⁰ Adaptive federalism, by contrast, shows its work. It provides both guidance and opportunity. It allows the federal government to coordinate without extinguishing state agencies.

This model does not guarantee uniform outcomes. It does not pretend to. Nevertheless, it aligns federal supremacy with democratic responsiveness. It encourages innovation by acknowledging the legitimacy of local variation. Furthermore, it invites states to serve once more as laboratories of policy, not merely objects of preemption.

D. Implications for the Future of AI Governance

Consider what happens when Congress attempts to claim the entire field of regulation without establishing a coherent path for managing that field. Courts do

215. See Samuel Olugbade et al., *A Review of Artificial Intelligence and Machine Learning for Incident Detectors in Road Transport Systems*, 27 MATH. & COMPUTATIONAL APPLICATIONS 77 (2022).

216. *Id.* at 78–82.

217. See John Kincaid, *United States of America: Polarization Between Democratic and Republican States*, in THE FORUM OF FEDERATIONS HANDBOOK OF FEDERAL COUNTRIES 2020 (Ann Griffiths et al. eds., Springer International Publishing 2020).

218. Anastassia Lauterbach, *Artificial Intelligence and Policy: Quo Vadis?*, 21 DIG. POL'Y. REGUL. & GOV. 238, 238–263 (2019).

219. See *Wyeth v. Levine*, 555 U.S. 555, 578 (2009) (holding that Congress's silence and lack of clear agency intent weighed against preemption of state tort law).

220. See Ashutosh Bhagwat, *Wyeth v. Levine and Agency Preemption: More Muddle, or Creeping to Clarity*, 45 TULSA L. REV. 197 (2009).

not always comply by resisting sweeping claims of federal exclusivity, especially in domains of public concern. The lesson, drawn from decades of preemption jurisprudence, is subtle but persistent: Courts are more inclined to validate preemption where Congress has constructed a detailed regulatory scheme, often one that allows for structured state participation or at least sets procedural guardrails that suggest meaningful federal oversight,²²¹ as shown in *Gade v. National Solid Wastes Management Association*.²²² By contrast, categorical exclusion of the states without a viable federal substitute has often failed to persuade.²²³

AI regulation invites similar scrutiny. Its features are neither novel nor entirely unprecedented. Its cross-border nature recalls environmental regulation. Its lobbying for uniformity mirrors pharmaceutical law. Its pace of innovation echoes the telecommunications sector. However, AI carries additional weight, and its decisions are embedded with algorithmic opacity.²²⁴ It can replicate or amplify racial or gender bias.²²⁵ It has already begun displacing labor markets that lack federal safeguards.²²⁶ These features have motivated state legislatures to act, creating targeted regulatory tools that attempt to fill the vacuum.

Section 43201(c) purports to speak with the voice of federal authority. Nevertheless, its legal architecture bears no resemblance to the comprehensive frameworks that have succeeded in displacing state laws. Unlike the Food, Drug, and Cosmetic Act or the Telecommunications Act,²²⁷ Section 43201(c) offers no machinery for implementation, no express procedural regime, and no invitation to the states. It gestures toward uniformity but does so without the internal coherence that typically lends federal preemption its legitimacy.

The judiciary has not been blind to such distinctions. When confronted with cases that echo these dynamics, courts have preferred to read federal preemption clauses narrowly.²²⁸ The reasons are both constitutional and doctrinal. Federalism, as interpreted by the modern judiciary, does not yield easily to vague statutory claims. This interpretive resistance may place Section 43201(c) in the same analytical category as provisions that fail to signal congressional intent with the clarity the Supremacy Clause demands.

It is not only the language of the statute but also the context in which it arises that matters. In the absence of a robust federal regime that accounts for AI's risks and societal impacts, attempts to block state innovation ring hollow. Courts may well treat Section 43201(c) less as an assertion of national supremacy and more

221. See Jane M. Lyons, *Gade v. National Solid Wastes Management Association: Reality Check on the Preemption Doctrine*, 10 J. CONTEMP. HEALTH L. & POL'Y 563 (1994).

222. See *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 107–08 (1992).

223. See Thomas B. Bennett, *State Rejection of Federal Law*, 97 NOTRE DAME L. REV. 761 (2021).

224. See Bram Vaassen, *AI, Opacity, and Personal Autonomy*, 35.4 PHIL. & TECH. 88 (2022).

225. See Sinead O'Connor & Helen Liu, *Gender Bias Perpetuation and Mitigation in AI Technologies: Challenges and Opportunities*, 39.4 AI & SOC'Y 2045 (2024).

226. Prakash Singh, *Impact of Artificial Intelligence on Labor Rights and Job Displacement*, 1 L. FOYER INT'L J. DOCTRINAL LEGAL RSCH. 1 (2023).

227. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

228. See Desiree LeClercq, *Resisting Federal Preemption*, 77 ALA. L. REV. (forthcoming 2025).

as a premature intervention. Its departure from the established norms of statutory preemption, both in form and in substance, makes it vulnerable to judicial skepticism.

In *Chamber of Commerce v. Whiting*,²²⁹ the Supreme Court held that federal immigration law did not preempt an Arizona statute that imposed sanctions, including license revocation, on employers who knowingly or intentionally hired unauthorized aliens and that mandated the use of E-Verify, because the federal law expressly preserved state authority to impose sanctions “through licensing and similar laws.”²³⁰

What remains, then, is a fragmented but constitutionally consistent pattern. Where Congress builds a genuine framework for regulation, preemption follows. Where it invokes uniformity without scaffolding, courts hesitate. AI governance, spanning safety, accountability, and social equity, may yet be shaped by this distinction.

VI. CONCLUSION

Consider the impulse to govern before understanding has matured. Section 43201 (c) reflects such a gesture. It aimed to silence state and local actors for a decade without offering a substantive federal architecture in return. The result was not governance but its theatrical illusion. By preempting subnational authority in the name of national uniformity, the provision sought to answer a policy question while bypassing the constitutional one. Innovation calls for structure, yet here, structure would have arrived not through federal rulemaking or cooperative channels but through the absence of state law, the absence of local response, and the absence of deliberation. That vacuum, left unexamined, posed its own risk.

The dilemma was familiar. In *Gonzales v. Oregon*,²³¹ the Court reminded us that states have long served as laboratories of policy, especially in fields of uncertain science and ethics.²³² AI is no exception. Broadly asserting federal control over all state domains through a single legislative act amounted to an unwarranted reliance on the federal government’s ability to foresee every contingency. Nevertheless, no regulatory framework accompanied the silence. There was only the promise of future clarity.

Judicial experience in preemption disputes has shown that courts prefer specificity. In *Rice v. Santa Fe Elevator Corp.*,²³³ field preemption was sustained only

229. See *Chamber of Com. v. Whiting*, 563 U.S. 582, 607 (2011).

230. See Gregory Delassus, *Chamber of Commerce v. Whiting and the Future of State Immigration Laws*, 56 ST. LOUIS U. L.J. 613 (2011).

231. *Gonzales v. Oregon*, 546 U.S. 243, 275 (2006).

232. See Ken Levy, *Gonzales v. Oregon and Physician-Assisted Suicide: Ethical and Policy Issues*, 42 TULSA L. REV. 699 (2006).

233. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

where federal intent to occupy the field was unambiguous.²³⁴ In *Medtronic, Inc. v. Lohr*,²³⁵ the Court declined to find preemption where federal law coexisted with local safeguards.²³⁶ Section 43201(c) would have failed this test. Its primary function was not regulation but suspension. Removing state authority without replacing it with federal content departs from both the constitutional structure and judicial precedent.

The key question here is not whether AI ought to be governed but how governance should be institutionally structured within a federal system. A legal framework that begins with silencing the states is likely to end by weakening the law itself. Congress may well have a role to play in the future of AI regulation, but the states must retain the freedom to engage, respond, and experiment. The Senate's rejection of Section 43201(c) reaffirms this view, reinforcing the principle that regulatory silence cannot substitute for legitimate governance.²³⁷ Without clear legislative guidance or room for state participation, courts would be left to speculate whether that silence reflected a deliberate strategy or oversight, and whether such silence could ever claim constitutional legitimacy.

234. See Robert Verchick & Nina Mendelson, *Preemption and Theories of Federalism*, in PREEMPTION CHOICE: THE THEORY, LAW, AND REALITY OF FEDERALISM'S CORE QUESTION, 13-32 (William W. Buzbee ed., Cambridge University Press, 2008).

235. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

236. See Robert J. Katerberg, *Patching the Crazy Quilt of Cipollone: A Divided Court Rethinks Federal Preemption of Products Liability in Medtronic, Inc. v. Lohr*, 75 N.C. L. REV. 1440 (1996).

237. See Duarte, *supra* note 10.