

Trump's [Executive Order](#) last Thursday on AI is a direct attack on state authority. The subject is different, but the thrust of the order is the same as his earlier attacks on [state clean energy laws](#). Both orders call for a federal assault on state laws. Trump knows that states' independent authority places a limit on his efforts to consolidate power and to impose his policies, including his anti-environmental energy dominance agenda.

To be sure, the AI order isn't squarely aimed at environmental issues. The executive order calls for new legislation preempting state law, but says the legislation wouldn't preempt "otherwise lawful State AI laws relating to ...AI compute and data center infrastructure, other than generally applicable permitting reforms." Still, that's limited comfort. Note the "otherwise lawful" and "permit reform:" provisos, which cut back the scope for states to control the impacts of data centers. And this language applies only to potential legislative proposals, not to Trump's order for DOJ lawsuits against state laws.

This litigation strategy is modeled on the earlier anti-clean energy order, "Protecting American Energy From State Overreach." It directs DOJ to sue states over laws that discourage fossil fuels. The order directs the Attorney General to bring lawsuits against "State laws purporting to address 'climate change' or involving 'environmental, social, and governance' initiatives, 'environmental justice,' carbon or 'greenhouse gas' emissions, and funds to collect carbon penalties or carbon taxes."

Both executive orders call for DOJ lawsuits based on federal preemption and interference with interstate commerce. It's unclear how successful those lawsuits would be. Liberal judges are not likely to be favorable, and conservative judges often care about federalism. As usual with the Trump Administration, though, part of the point is intimidation rather than legal results.

Putting aside Trump's particular agenda, there's a deeper question: What role *should* the states be playing in these areas? There's a clear argument for robust federal policymaking in these areas. Such federal policies might include restrictions on state regulation. But Congress hasn't enacted such federal policies. Whether Congress will eventually legislate about climate or AI is anyone's guess, but it's unlikely to happen soon.

In the meantime, there are good arguments for states to fill the regulatory gap. It is a strength of our system that states can experiment with solutions to emerging

issues before the federal government tries to formulate its own policies. That state authority isn't unlimited, but current legal doctrines give it broad scope.

As we all know, Congress now finds it extraordinarily difficult to pass laws on major issues. The executive branch, under the Supreme Court's "major questions doctrine," lacks the power to fill the gap. That leaves only the states to save us from paralysis when major new issues arise. That may not be ideal, but it's better than nothing.