

## Comments of the International Center for Law & Economics

### *OLPI82: RFI on State Laws Having Significant Adverse Effects on the National Economy or Interstate Commerce*

September 15, 2025

#### Authored by:

**Geoffrey A. Manne** (President and Founder, International Center for Law & Economics)

**Ian Adams** (Executive Director, International Center for Law & Economics)

**Dirk Auer** (Director of Competition Policy, International Center for Law & Economics)

**Kristian Stout** (Director of Innovation Policy, International Center for Law & Economics)

**Brian Albrecht** (Chief Economist, International Center for Law & Economics)

**Eric Fruits** (Senior Scholar, International Center for Law & Economics)

**Daniel Gilman** (Senior Scholar, International Center for Law & Economics)

**Julian Morris** (Senior Scholar, International Center for Law & Economics)

**Lazar Radic** (Senior Scholar, International Center for Law & Economics)

**Ben Sperry** (Senior Scholar, International Center for Law & Economics)

**Mario Zúñiga** (Senior Scholar, International Center for Law & Economics)

## I. Introduction

Thank you for the opportunity to respond to the U.S. Justice Department (DOJ) and the National Economic Council’s (NEC) request for information on state laws, regulations, policies, and practices that adversely affect interstate commerce and business activities in other states.

The request correctly identifies a critical and growing threat to the American common market: the growing tendency of individual states—particularly those with large economies—to enact regulations that project their policy preferences nationwide. This practice imposes significant economic burdens on out-of-state businesses and consumers, creating negative externalities, stifling innovation, and undermining the principles of federalism and the Commerce Clause, which have been the bedrock of U.S. economic prosperity for more than two centuries. This phenomenon can be described as a form of regulatory protectionism achieved through market power. It represents a fundamental challenge to the constitutional design of a unified national economy.

The International Center for Law & Economics (ICLE) is a nonprofit, nonpartisan research organization whose core mission is to promote the application of law & economics methodologies to inform public-policy discussion. Our work focuses on developing intellectually rigorous, data-driven analyses to foster efficient policy solutions that enhance consumer welfare and global economic growth. Earlier this year, ICLE submitted comments to the DOJ and the Federal Trade Commission (FTC) regarding anticompetitive regulatory barriers, which are included as an appendix to these comments.<sup>1</sup>

From the perspective of law & economics, the optimal legal regime is one that minimizes transaction costs and allows for the efficient allocation of resources across jurisdictions. A patchwork of conflicting state regulations governing national markets achieves the opposite; it erects barriers to trade, dramatically increases compliance costs, and leads to a fragmentation of the national economy. Such regulatory fragmentation prevents firms from achieving economies of scale, distorts investment decisions, and ultimately harms consumers through higher prices and reduced choice.

The frequent thread across these disparate regulatory areas is commonly known as the “California Effect,” referring to that state’s strategic use of its immense population (12% of U.S. population) and market power (14% of U.S. GDP) as leverage to impose its regulatory will on the entire nation. Out-of-state firms are faced with a coercive choice: either adopt California’s standards for all of their national operations or forfeit access to the nation’s largest state economy. This dynamic creates *de-facto* national standards without national consensus or congressional deliberation, fundamentally distorting the principles of federalism.

---

<sup>1</sup> Eric Fruits, Daniel J. Gilman, Ben Sperry, Kristian Stout, & Mario A. Zúñiga, *ICLE Comments to FTC and DOJ on Anticompetitive Regulations*, Department of Justice Anticompetitive Regulations Task Force, Docket No. ATR2025-0001, Federal Trade Commission Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers (May 27, 2025), available at <https://laweconcenter.org/wp-content/uploads/2025/05/DOJ-FTC-Competition-Comments-2025.pdf> [hereafter “Appendix”].

For instance, the DOJ was right to file suit against California for its burdensome regulations on the production of eggs.<sup>2</sup> California laws effectively drive up the price of eggs for the whole nation by regulating the allowable space of confinement for chickens, and making it illegal to sell eggs produced out of state that do not conform to these laws. This is despite the California Department of Food and Agriculture admitting there being no basis in science that these regulations “reduce food-borne illnesses... or [address] other human or safety concerns.”<sup>3</sup>

The California Effect is not limited to California, however, as the strategy is now employed by numerous states seeking to establish themselves as “leaders” in advancing specific social or environmental policies. The dynamic is most visible in vehicle emissions, where 17 states and the District of Columbia have voluntarily adopted California’s stricter standards, creating a regulatory bloc that controls more than 40% of the U.S. auto market and effectively sets a national standard. This pattern extends to other areas, as well. Numerous states have followed California’s lead by enacting their own data-privacy and climate-disclosure requirements.

Officials in states like New York, New Jersey, and Maryland have openly celebrated their adoption of California’s standards as a means to achieve their own policy goals. This trend illustrates a broader shift in federalism, where multiple states—driven by their own policy ambitions—are willing to create regulatory patchworks that impose their preferences on the national economy, leading to the very balkanization that the Commerce Clause was designed to prevent.

Compounding this problem is a clear trend of judicial reticence. Recent Supreme Court jurisprudence, particularly in *National Pork Producers Council v. Ross*<sup>4</sup> and in the denial of *certiorari* in the challenge to California’s Assembly Bill 5,<sup>5</sup> signals a significant retreat from the judiciary’s traditional role in policing state laws with extraterritorial effects under the Dormant Commerce Clause or many federal preemption statutes.

The Court has shown a reluctance to weigh a state law’s asserted local benefits against its out-of-state economic harms, effectively weakening a key constitutional check on state overreach. This judicial deference implicitly shifts the primary venue for resolving such disputes from the courts to Congress and the executive branch. The political branches must therefore act to reassert federal authority over interstate commerce.

---

<sup>2</sup> See Complaint for Declaratory and Injunctive Relief, *United States v. State of California*, 25-cv-06230 (Jul. 9, 2025), available at <https://www.justice.gov/opa/media/1407446/dl>.

<sup>3</sup> Animal Confinement Notice of Proposed Action 16, CAL. DEP’T OF FOOD & AGRIC., available at [https://www.cdffa.ca.gov/ahfss/pdfs/regulations/AnimalConfinement1stNoticePropReg\\_0\\_5252021.pdf](https://www.cdffa.ca.gov/ahfss/pdfs/regulations/AnimalConfinement1stNoticePropReg_0_5252021.pdf) (last visited Sep. 15, 2025).

<sup>4</sup> 598 US \_\_ (2023).

<sup>5</sup> *California Trucking Association v. Bonta*, 34 F.4th 604 (9th Cir. 2022), cert. denied, 142 S. Ct. 2883 (2022).

## II. A Practical Note on Tactical Considerations

The DOJ, in particular, has an important role to play in promoting a common market and economic growth through the use of advocacy and litigation. Workshops and research on the national effects of state laws could go a long way toward establishing a record for future legislation and litigation.

The DOJ should also engage in strategic litigation of its own, and submit *amicus* briefs in cases brought by others, targeting state laws with negative extraterritorial effects. As noted above, the DOJ's intervention against California's laws regulating the egg industry could, if successful, have positive effects on the pocketbooks of Americans nationwide.

In order to be most effective in litigation, the DOJ should focus on federal laws and regulatory schemes that offer field preemption or something like the “significant interference” standard from federal banking law.<sup>6</sup> In these situations, courts are much more likely to find federal law preempts harmful extraterritorial state laws. As noted above, Dormant Commerce Clause arguments have been significantly weakened by recent Supreme Court jurisprudence. Similarly, Supremacy Clause arguments based on conflict preemption are also much more difficult to sustain, as states need only to show that affected parties can comply with both federal and state law in order to survive.

For instance, the Federal Meat Inspection Act preemption clause has been found to “sweep[] widely” and, as such, it “prevents a State from imposing additional or different—even if non-conflicting—requirements that fall within the scope of the Act.”<sup>7</sup> In that case, preemption applies “[w]here under federal law a slaughterhouse may take one course of action in handling a nonambulatory pig, [but] under state law the slaughterhouse must take another.”<sup>8</sup> Similarly, as detailed further below,<sup>9</sup> federal banking laws like the National Banking Act allow nationally chartered banks to exercise certain powers that state law cannot prevent and with which it cannot significantly interfere.

The DOJ should also continue to advocate for the application of the Dormant Commerce Clause against state laws that would fail the *Pike* balancing test accepted by the plurality of the Supreme Court in *National Pork Producers Council*. The DOJ should also advocate for a stronger Dormant Commerce Clause in select cases where the harms caused by state laws are especially clear.

Below, in addition to legislative solutions, we offer examples of laws that the DOJ and other executive agencies should consider in their efforts to restore a common market and promote economic growth.

---

<sup>6</sup> See, e.g., *Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024).

<sup>7</sup> *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 459–60 (2012).

<sup>8</sup> *Id.* at 460.

<sup>9</sup> See *infra* State Interchange Fee Regulations.

### III. Automobile-Dealer Franchise Laws

State automobile-dealer franchise laws are anachronistic, anticompetitive, and unconstitutional relics of a market that ceased to exist more than half a century ago. They serve no legitimate public-policy purpose. Instead, they function as a classic example of crony capitalism, where a politically powerful special interest group has captured the legislative process to protect itself from competition and innovation. The costs of this protectionist regime are borne by the entire nation in the form of higher prices, reduced consumer choice, suppressed technological advancement, and a fragmented national market.<sup>10</sup>

To wit, this section details the economic harms and legal infirmities of these protectionist statutes. It urges the DOJ and NEC to pursue a coordinated federal strategy to dismantle these barriers and restore competition to the U.S. automobile market.

The origins of franchise laws trace to a period from the 1930s to the 1950s when the U.S. automobile market was overwhelmingly dominated by the “Big Three” domestic manufacturers.<sup>11</sup> In this environment, manufacturers were perceived to be abusing their superior bargaining power to pursue exploitative practices. States responded by passing rules governing automotive franchise laws, ultimately leading to statutes in all 50 states. Critically, the intent behind these state laws was to rebalance power in interbrand relationships: that is, the laws were intended to address the carmakers’ vertical power over their own network of franchised dealers.

State laws from this period included bars on various activities, from compelling dealers to accept otherwise unwanted vehicles, to terminating franchise status without cause, to granting additional franchises within an existing dealer’s franchise area. Yet among the vestigial prohibitions, the ban on manufacturers selling directly to consumers is at once the most obviously disruptive to commerce and the most unmoored from the laws’ original rationale. Indeed, the entire legal regime was premised upon the interaction between a manufacturer and a franchisee, and the relative power in that relationship.

The contemporary automobile marketplace bears no resemblance to its mid-20th Century antecedent. The relative market share of the “Big Three” has dropped from roughly 90% in the 1950s to just 40% today.<sup>12</sup> Interbrand competition has come to define the market and has rendered effectively moot concerns about powerful franchisors coercing dealers—an industry that has itself evolved from “mom and pop” operations to large publicly traded conglomerates.

---

<sup>10</sup> Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101(2) IOWA L. REV. 573-607 (2016), <https://repository.law.umich.edu/articles/1721>.

<sup>11</sup> *Brief of Legal and Economic Scholars, Lucid Group USA, Inc. v. State of Georgia*, Ga. S25A1139 (Jul. 10, 2025), <https://laweconcenter.org/resources/brief-of-legal-and-economic-scholars-to-the-georgia-supreme-court-in-lucid-v-georgia>.

<sup>12</sup> JAMES M. RUBENSTEIN, *MAKING AND SELLING CARS: INNOVATION AND CHANGE IN THE U. S. AUTOMOTIVE INDUSTRY* (The Johns Hopkins University Press, 2001), at 188.

The persistence of dealer franchise laws, despite the utter evaporation of the market conditions that led to their adoption, is a textbook example of regulatory capture, as predicted by Public Choice Theory. In this case, the interest group (auto dealers) has hijacked the policy process to generate rents, while distributing the associated costs broadly to consumers. For example, in Michigan, the state passed an update to its franchise act at the behest of dealers specifically to preclude Tesla from the market.<sup>13</sup>

Blocking new entrants from the automotive marketplace on the basis of their preference for direct sales is legally unworkable. Indeed, the market's new entrants—such as Tesla, Lucid, Rivian, and Scout—have no franchisees to protect. There is simply no interbrand relationship to regulate, as has been recognized by at least one state supreme court.<sup>14</sup> The core analytical flaw in every defense of dealer franchise laws is this fundamental category error: they conflate the legitimate (albeit outdated) regulation of an existing vertical relationship with the illegitimate prohibition of a competing business model.

The Dormant Commerce Clause prohibits states from enacting laws that facially discriminate against, or place an undue burden upon, interstate commerce. State dealer franchise laws discriminate against interstate commerce by dictating a specific business structure that an out-of-state manufacturer must adopt to access that state's market. Arguments about public health and safety offered by dealers are clearly pretextual, and have been consistently debunked by legal scholars, economists, and FTC staff.<sup>15</sup>

Even if found not to be discriminatory, dealer franchise laws still fail the balancing test the Supreme Court articulated in *Pike v. Bruce Church, Inc.*, which held that a state law may be held invalid if “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”<sup>16</sup>

The burden of dealer franchise laws bears considerable weight, since it impacts both consumers and the development of an entirely new set of entrants to the automotive market, and thereby price-moderating competition. The costs borne by the latter were highlighted in a 2009 paper by a DOJ economist, citing a Goldman Sachs report. The report estimated that direct distribution could reduce the cost of a new vehicle by as much as 8.6% (more than \$2,200 per vehicle) through efficiencies in matching supply with demand, lower inventory costs, and reduced sales

---

<sup>13</sup> Dan Crane, *Car Dealer Bill Restricts Competition and Limits Consumer Choice*, MACKINAC CENTER (Sep. 21, 2020), available at <https://www.house.mi.gov/Document/?DocumentId=43595&DocumentType=CommitteeTestimony>.

<sup>14</sup> *Mass. State Auto. Dealers Ass'n, Inc. v. Tesla Motors MA, Inc.*, 15 N.E. 3d 1152 (Mass. 2014), <https://law.justia.com/cases/massachusetts/supreme-court/2014/sjc-11545.html>.

<sup>15</sup> Press Release, *FTC Staff: Missouri and New Jersey Should Repeal Their Prohibitions on Direct-to-Consumer Auto Sales by Manufacturers*, FED. TRADE COMM'N (May 16, 2014), <https://www.ftc.gov/news-events/news/press-releases/2014/05/ftc-staff-missouri-new-jersey-should-repeal-their-prohibitions-direct-consumer-auto-sales>.

<sup>16</sup> *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

commissions.<sup>17</sup> In effect, in agitating to uphold such laws, dealers seek to mandate a hidden tax on most vehicle purchases in the nation.

To address these issues, the DOJ should take action. Specifically, the DOJ's Anticompetitive Regulations Task Force should:

1. issue a formal report detailing the anticompetitive harms of state direct-sales prohibitions;
2. file statements of interest and *amicus curiae* briefs in ongoing private litigation challenging these laws, lending the federal government's legal weight to the cause of competition, much as legal and economic scholars have done in cases like *Lucid v. Georgia*; and
3. explore direct legal challenges against states, arguing that their laws are unconstitutional under the Dormant Commerce Clause or are otherwise preempted by federal policy.

#### **IV. State and Local Land-Use Regulations**

While land-use regulation is traditionally a local prerogative, a growing body of economic research demonstrates that the cumulative effect of overly restrictive local zoning and development policies, particularly in the nation's most productive metropolitan areas, has created a formidable barrier to interstate commerce. These regulations—including urban growth boundaries (UGBs), inclusionary zoning mandates, restrictive design reviews, and excessive system-development charges (SDCs)—artificially constrain the supply of housing and inflate its cost.

The primary interstate burden of these local policies is the impediment to labor mobility. By making it prohibitively expensive for Americans to move to areas with the greatest economic opportunity, these regulations misallocate the nation's most valuable resource—its human capital. Workers in lower-productivity regions are effectively trapped, unable to access higher-wage jobs in more dynamic economies, which in turn suppresses national economic growth, reduces overall productivity, and exacerbates regional inequality.

Restrictive land-use regulations directly drive up housing costs to levels far exceeding the physical cost of construction. Research demonstrates that these policies are a primary cause of housing unaffordability in highly regulated markets, such as those on the West Coast.<sup>18</sup> For example, Oregon's UGBs have been shown to constrain land supply and contribute to housing-price increases. Since Portland, Oregon's adoption of its UGB, the local home-price index has increased at an annual rate 27% higher than the national average.<sup>19</sup>

---

<sup>17</sup> Gerald R. Bodisch, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers*, ECONOMIC ANALYSIS GROUP, (May 2009), available at <https://www.justice.gov/sites/default/files/atr/legacy/2009/05/28/246374.pdf>.

<sup>18</sup> Joseph Gyourko, Jonathan S. Hartley, & Jacob Krimmel, *The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index*, 124 J. URBAN ECON. 103337 (2021).

<sup>19</sup> S&P Dow Jones Indices LLC, S&P CoreLogic Case-Shiller U.S. National Home Price Index [CSUSHPINSA], (retrieved from FRED, Federal Reserve Bank of St. Louis, Sep. 15, 2025); S&P Dow Jones Indices LLC, S&P CoreLogic Case-Shiller

Similarly, inclusionary zoning ordinances, which require developers to sell or rent a percentage of new units below market rates, function as a tax on new construction. This can reduce the overall supply of housing and increase the cost of market-rate units. Portland’s implementation of such an ordinance was followed by an immediate and significant drop in new multifamily housing permits, from an annual average of 3,915 to just 1,709 in the first full year.<sup>20</sup> Excessive SDCs and lengthy design-review processes add further costs and uncertainty.

The most significant interstate consequence of these inflated housing costs is the creation of a barrier to labor mobility. High housing prices in the nation’s most productive cities prevent workers from moving to take advantage of better job opportunities. This geographical misallocation of labor has a depressive effect on aggregate economic growth. Businesses in high-cost areas struggle to attract and retain workers, while the national economy suffers from a less efficient allocation of talent.

Direct federal preemption of local zoning is politically difficult and faces legal challenges, as land use is a power traditionally reserved to the states and delegated to localities. This does not, however, render the problem intractable to federal action. The federal government has a long and established history of using its spending power to influence state and local policy, particularly in the realm of housing and infrastructure.

Congress and the executive branch should condition federal funding from programs such as the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships Program, and federal transportation grants on state and local governments implementing meaningful reforms to their land-use and zoning regulations. Such reforms should include, but not be limited to, eliminating or expanding UGBs; legalizing higher-density housing “by right” (especially near transit); streamlining permitting processes; and ensuring that development fees are proportional to the marginal cost of providing new services.<sup>21</sup> This creates a powerful reason for localities to internalize the national economic costs of their restrictive policies.

The U.S. Department of Housing and Urban Development (HUD) is the agency with the primary expertise and programmatic infrastructure to administer such an incentive-based system. The U.S. Transportation Department (DOT) should also be involved to ensure that its grantmaking encourages transit-oriented development and corresponding zoning reform.

## **V. Prevailing-Wage Laws**

We noted in our earlier comments to the DOJ and FTC that prevailing-wage laws and project labor agreements (PLAs) represent significant regulatory interventions in construction-labor markets that

---

OR-Portland Home Price Index [POXRSA], (retrieved from FRED, Federal Reserve Bank of St. Louis, Sep. 15, 2025), <https://fred.stlouisfed.org/graph/?g=1MjE9>.

<sup>20</sup> Noel Johnson & Mike Kingsella, *The Cautionary Tale of Portland’s Inclusionary Housing Policy*, UP FOR GROWTH (Apr. 15, 2019) available at <https://web.archive.org/web/20210924152240/https://upforgrowth.org/news/cautionary-tale-portlands-inclusionary-housing-policy>.

<sup>21</sup> See, e.g., *Sheetz v. El Dorado County*, 601 U.S. \_\_ (2024).

substantially distort competition, inflate costs, and create artificial barriers to market entry.<sup>22</sup> These regulations—including the federal Davis-Bacon Act (1931), state “Little Davis-Bacon” acts, and government-mandated PLAs—fundamentally alter market dynamics by imposing wage floors and labor terms that would not emerge under competitive conditions.

Traditionally, prevailing-wage laws and PLAs have had little effect on interstate commerce. This year, however, Oregon enacted HB 2688, which will have far-reaching effects on interstate—and possibly international—commerce.<sup>23</sup> The law extends state-specific prevailing-wage requirements to offsite manufacturing, regardless where that manufacturing occurs. While such laws apply to labor performed at the physical jobsite of a public project, the Oregon law expands this mandate to cover the offsite fabrication of “bespoke” or custom-made components, such as HVAC systems, structural elements, and plumbing systems.

This is a clear attempt by a state to regulate economic activity far beyond its borders. This extraterritorial application of state law violates the principles of the Commerce Clause, creates economic protectionism that harms Oregon-based businesses, and could impose substantial costs on public-infrastructure projects nationwide.

The critical issue of federal concern is the law’s explicit extraterritorial reach. Under HB 2688, a manufacturing firm producing a custom part for an Oregon public-works project in another state would be legally required to pay its workers Oregon’s prevailing wage for that work. This is a direct attempt by one state to impose its labor and wage standards on businesses operating entirely within the jurisdiction of other states.

The Dormant Commerce Clause prohibits states from enacting laws that unduly burden or discriminate against interstate commerce. HB 2688 is a clear violation of this principle. It is not an incidental effect, as the law is explicitly designed to control the wages paid for manufacturing that occurs outside of Oregon. This creates a direct burden on out-of-state firms, forcing them to comply with Oregon’s wage scales, which may differ significantly from the wages and economic conditions in their own localities.

Federal intervention is necessary to prevent Oregon from setting a precedent that could lead to a fractured national economy, where every state attempts to apply its own labor laws to any product that crosses its borders. The DOJ should challenge the law in federal court before its July 1, 2026 effective date by seeking an injunction to prevent its enforcement. The legal argument should focus on the law’s explicit extraterritoriality and its discriminatory effect on interstate commerce. Congress could also enact legislation clarifying that state prevailing-wage laws cannot be applied to manufacturing and fabrication that occurs outside the state’s geographic boundaries.

---

<sup>22</sup> See Appendix.

<sup>23</sup> H.B. 2688, 2025 Reg. Sess. (Or. 2025), <https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2688>.

The U.S. Labor Department (DOL) has primary subject-matter expertise in this area, as it administers the federal Davis-Bacon Act, which governs prevailing wages on federally funded projects. The DOL can provide essential analysis on the burdens that extraterritorial state wage laws place on the national labor and manufacturing markets. The DOJ would be the appropriate agency to initiate legal action to enjoin the law.

## **VI. Certificates of Convenience and Necessity and Certificates of Need**

We noted in our earlier comments to the DOJ and FTC that certificates of convenience and necessity (CCNs) and certificate-of-need (CON) laws represent some of the most formidable government-imposed barriers to market entry across numerous regulated industries.<sup>24</sup> CCNs and CONs are formal authorizations that permit companies to initiate operations or construct facilities in specific geographic areas. They effectively create government-sanctioned monopolies or oligopolies that undermine basic economic principles of competition.

CCNs are commonly required for private firms to provide various utilities—such as electric, gas, and water services—but may also be required to provide various services deemed to be common carriers. Health-care facilities may be subject to CONs and certificates of public advantage (COPAs). Each of these “certificate” laws are explicitly designed to protect incumbent, in-state providers from new competition—including from out-of-state businesses—thereby creating direct and substantial burdens on the national market.

The primary adverse impact of these laws is the erection of anticompetitive barriers to entry. CON laws, which apply to the health-care sector in 35 states and the District of Columbia, prevent out-of-state medical providers from establishing new facilities or offering innovative services unless they can prove to a state board—often composed of their potential competitors—that their service is “needed.” This process is notoriously burdensome and expensive, often taking years and costing tens of thousands of dollars in fees. It effectively insulates existing hospitals and providers from competition. The Institute for Justice has argued that the system violates the Dormant Commerce Clause by restricting the interstate market in medical equipment and services, as an out-of-state medical-device manufacturer may be unable to sell its products to a Virginia provider who is denied a CON to use them.<sup>25</sup>

Similarly, CCN laws grant exclusive, monopolistic territories to utilities providing services like water, sewer, or telecommunications. This framework prevents out-of-state or alternative providers from entering a market to offer more competitive pricing or innovative services, locking consumers into a single, state-protected provider.

---

<sup>24</sup> See Appendix.

<sup>25</sup> *Virginia Certificate of Need*, INSTITUTE FOR JUSTICE, <https://ij.org/case/vacon-2> (last visited Sep. 15, 2025).

This suppression of competition leads directly to higher costs and lower quality for consumers. A large body of economic research demonstrates that CON laws are associated with higher health-care prices, increased per-capita spending, and worse patient outcomes.<sup>26</sup> We reported in our earlier comments that the FTC and DOJ have both concluded that these laws can suppress supply, misallocate resources, and enable anticompetitive agreements among providers, without delivering on their stated goals of lowering costs or improving quality.<sup>27</sup>

Congress has clear authority under the Commerce Clause to regulate interstate markets for health care and utilities. The federal government has also previously intervened in this area; the National Health Planning and Resources Development Act of 1974 once mandated that states adopt CON laws, but Congress repealed this mandate in 1986, as evidence of their failure mounted. Congress should now act to explicitly preempt state CON and CCN laws that create barriers to entry for out-of-state providers, or otherwise burden the interstate flow of services and capital. Such legislation would dismantle these state-level cartels and restore competition to these critical sectors.

The DOJ and FTC have long recognized the anticompetitive nature of CON laws and should continue to challenge them through antitrust enforcement and advocacy. These agencies can file *amicus* briefs in support of private litigation challenging these laws under the Dormant Commerce Clause and can launch their own investigations into how these regulatory schemes facilitate anticompetitive conduct.

The federal government also provides substantial funding to states for health care through the U.S. Department of Health and Human Services (HHS) and for various utility and infrastructure projects. The administration should condition receipt of these funds on the full repeal of a state's CON and CCN laws. This would create a powerful financial reason for states to eliminate these protectionist policies that harm the national economy.

The relevant federal agencies with subject-matter expertise are HHS, the FTC, and the DOJ for CON laws, and the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC) for CCN laws related to energy and telecommunications, respectively.

## **VII. Corporate Practice of Medicine**

The corporate practice of medicine (CPOM) doctrine refers to regulations that restrict both standard corporations and other nonphysician entities from employing physicians or directly engaging in medical practice. Initially, CPOM regulations were driven by concerns that corporate involvement in medicine would prioritize financial interests over patient care. But CPOM regulations were never based on empirical assessments of problems that were (or were not) associated with one or another

---

<sup>26</sup> Matthew D. Mitchell & Christopher Koopman, *40 Years of Certificate-of-Need Laws Across America*, MERCATUS CENTER (Sep. 27, 2016), <https://www.mercatus.org/research/data-visualizations/40-years-certificate-need-laws-across-america>.

<sup>27</sup> See Appendix.

model of health-care delivery or practice management. Whatever their historical rationale, the CPOM policy solution appears to be a poor fit to the complexities of modern health care.

At best, the CPOM doctrine represents an early attempt to address theoretical market failures in health care—specifically, concerns about information asymmetries between providers and patients, and potential principal-agent problems that might arise when corporate interests influence medical decisionmaking. The modern CPOM landscape does not, however, serve to address any such concerns because, in practice, the laws see extreme variance in their application—undermining their coherence and predictability.

For instance, many of the distinctions between entities that are or are not permitted to employ or supervise physicians have little to no empirical foundation. Not a few seem the product of rent-seeking rather than research-based policy reform. Consider that, in New York, some recent cases involving CPOM have essentially amounted to business disputes among private parties, rather than public enforcement. Physicians have even used the doctrine as a defense against contract claims filed by corporations.<sup>28</sup>

To the extent that the primary goal of CPOM doctrine is to ensure quality care, it may paradoxically hinder this objective by stifling innovation. For example, the corporate business form plays a crucial role in facilitating industry expansion. Unlike other entity structures—such as sole proprietorships, general partnerships, and limited partnerships—the corporate form offers limited liability, a formalized structure, and liquidity. These traits are key features that attract investors and enable the efficient raising of capital, which in turn fosters business growth.

In an era in which innovation is essential to improving health-care accessibility and efficiency, CPOM restrictions hinder the adoption of corporate structures and emerging technologies in the provision of health care. Reforming these regulations could unlock significant advancements, fostering a health-care system better equipped to meet patients’ needs in the modern age.

Toward this end, the DOJ should seek to collaborate with the FTC to assess the empirical case for CPOM restrictions, as applied, in order to assess the extent to which the intended benefits actually accrue, in light of the tremendous costs associated with foregone investment and, at best, compliance efforts. In the event that the research supports moving away from the existing patchwork of CPOM laws, federal competition agencies would do well to support state legislation geared toward reform.

### **VIII. Marijuana Trafficking**

The growing conflict between state laws legalizing recreational marijuana and its continued prohibition under the federal Controlled Substances Act (CSA)<sup>29</sup> has created a significant negative externality: large-scale, illicit interstate trafficking. This problem stems directly from a failure of

---

<sup>28</sup> See, e.g., *Andrew Carothers, M.D., P.C. v. Progressive Ins. Co.*, 979 N.Y.S. 2d 439 (2013).

<sup>29</sup> 21 U.S. Code § 801 *et seq.*

federal enforcement policy to manage the predictable consequences of a state-by-state legalization patchwork.

In 2013, the DOJ issued the “Cole Memorandum,” which established a policy of discretionary non-enforcement of the CSA in states that had legalized marijuana, provided those states implemented “strong and effective regulatory and enforcement systems” to prevent certain harms.<sup>30</sup> A key federal priority identified in the memo was “[p]reventing the diversion of marijuana from states where it is legal under state law in some form to other states.” While the Cole Memo was rescinded in 2018,<sup>31</sup> subsequent administrations have largely continued a similar policy of prosecutorial discretion, creating *de-facto* tolerance for state-legal markets.

The interstate commerce burden arises because this policy of federal deference has failed. States with legalized markets have become source hubs for a massive illicit trade that supplies marijuana to states where it remains illegal. Criminal organizations exploit price differentials between legal markets, where supply is abundant, and prohibition states, where black-market prices are higher. These organizations operate under the cover of state-legal systems to produce marijuana for illegal export, directly contravening a core premise of the federal government's permissive stance.

The primary adverse impact of this failed federal policy is borne by the citizens and governments of states that have chosen not to legalize marijuana. These states are forced to expend significant public resources to contend with an influx of illegal drugs originating from states with legal markets. Law-enforcement agencies in neighboring states report a dramatic increase in marijuana-related enforcement actions tied directly to diversion. In Nebraska, which borders Colorado, law-enforcement agencies have noted a significant rise in traffic stops and seizures of marijuana being transported east on Interstate 80.<sup>32</sup> Similarly, the Kansas Highway Patrol has engaged in a practice of targeting vehicles with Colorado license plates—a practice that, while found to be unconstitutional, highlights the perceived scale of the trafficking problem.<sup>33</sup>

States with newly liberalized marijuana laws have become magnets for transnational criminal organizations. The Oklahoma Bureau of Narcotics has conducted numerous large-scale busts of illegal grow operations run by Chinese crime syndicates and Mexican drug cartels that were established after the state legalized medical marijuana.<sup>34</sup> These operations produce marijuana not

---

<sup>30</sup> Memorandum from James. M. Cole, Deputy Attorney General to United States Attorneys re: Guidance Regarding Marijuana Enforcement (Aug. 29, 2013), available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

<sup>31</sup> Memorandum from Jefferson B. Sessions, Attorney General to United States Attorneys re: Marijuana Enforcement (Jan. 4, 2018), available at [https://upload.wikimedia.org/wikipedia/commons/7/7d/DOJ\\_Sessions\\_memo\\_20180104.pdf](https://upload.wikimedia.org/wikipedia/commons/7/7d/DOJ_Sessions_memo_20180104.pdf).

<sup>32</sup> See, e.g., Elaine Grant, *Nebraska Cops Continue to Complain About Burden of Colorado Pot*, COLORADO PUBLIC RADIO (Jan. 22, 2015), <https://www.cpr.org/show-segment/nebraska-cops-continue-to-complain-about-burden-of-colorado-pot>.

<sup>33</sup> *Interstate 80 Traffic Stops Targeting Out-of-State Drivers*, PETERSEN LAW, <https://www.criminaldefensene.com/interstate-80-traffic-stops-targeting-out-of-state-drivers> (last visited Sep. 15, 2025).

<sup>34</sup> Press Release, Oklahoma Attorney General, *More than 40,000 Marijuana Plants, 1,000 Lbs. of Processed Marijuana Seized in Organized Crime Task Force Sting in Mayes, Craig Counties*, OKLAHOMA ATTORNEY GENERAL'S OFFICE (Jun. 26, 2025),

for the Oklahoma medical market, but for illicit trafficking throughout the country. This demonstrates that the regulatory systems in legalizing states are not preventing diversion, as the Cole Memo framework presumed they would.

The illicit trade imposes substantial social and economic costs on receiving states, including increased burdens on their criminal-justice systems, public-health services, and child-welfare agencies. These costs represent a direct transfer of the negative consequences of one state's policy choice onto the citizens of another—a classic negative externality that the federal government has a duty to address.

This issue is exceptionally amenable to federal action, as the underlying conduct—the cultivation, distribution, and possession of marijuana—remains illegal under federal law. The CSA provides the federal government with clear and undisputed authority to regulate interstate drug trafficking. The current problem is not a lack of federal authority, but a failure to exercise that authority in ways that respect the federalist system and protect non-legalizing states from the spillover effects of their neighbors' policies.

The policy of deference outlined in the Cole Memo was an exercise of prosecutorial discretion, not a change in the law. The executive branch can, at any time, revise its enforcement priorities to address the documented failure of legalizing states to prevent interstate diversion. This does not require new legislation; it requires the enforcement of existing law to mitigate the interstate harms that the current policy enabled. The federal government's constitutional authority to regulate commerce among the states includes the power—and the responsibility—to prevent the policy choices of one state from inflicting direct economic and social costs on another.

The DOJ should formally reestablish and vigorously enforce the federal priority of preventing the diversion of marijuana from states with legal markets to other states. This should involve targeting, investigating, and prosecuting individuals and criminal organizations that exploit state-legal regimes to traffic marijuana across state lines. This policy should be clearly communicated to U.S. attorneys and to officials in states with legal marijuana, making it clear that the federal government's continued policy of general noninterference is contingent on those states demonstrating effective control over diversion.

The DOJ, including its components such as the Drug Enforcement Administration (DEA) and the U.S. Attorneys' Offices, is the agency with the sole jurisdiction, expertise, and responsibility for enforcing the Controlled Substances Act and addressing illicit interstate drug trafficking.

## IX. State Antitrust and Unfair-Competition Laws

In some cases, state antitrust or unfair-competition laws diverge from federal competition law. This creates problems not only by raising compliance costs, but also—when state rules are more stringent—by potentially restricting competition itself. Paradoxical as it may sound, an overly stringent reading of antitrust law can stifle efficient contracts or business models, deter integrations that lower costs and prices, and ultimately harm the very consumers they are meant to protect.

California’s Unfair Competition Law presents a paradigmatic example of state legislation that significantly affects interstate commerce and imposes substantial economic costs beyond California’s borders. The statute—codified at California Business & Professions Code § 17200—prohibits “any unlawful, unfair or fraudulent business act or practice,” with courts interpreting the “unfair” prong to reach conduct that may not violate federal antitrust law.<sup>35</sup> When applied to businesses operating in national markets—particularly digital platforms—the UCL effectively compels nationwide changes to business practices, product designs, and contractual relationships, thereby imposing California’s regulatory preferences, which may well run counter to federal antitrust law, on the entire country.

The recent *Epic Games v. Apple* litigation illustrates how California’s UCL can supersede federal antitrust policy through nationwide injunctions. In that case, the district court rejected Epic’s federal antitrust claims, finding that Apple’s restrictions on third-party app stores and in-app payment systems did not violate the Sherman Act.<sup>36</sup> Nevertheless, the same court held that Apple’s anti-steering provisions violated the UCL’s “unfair” prong and issued a permanent injunction requiring Apple to modify its App Store policies nationwide.<sup>37</sup> The 9th U.S. Circuit Court of Appeals affirmed both holdings, creating an incongruous result in which conduct explicitly found lawful under federal antitrust law was enjoined across the United States based on California’s broader unfairness standard.<sup>38</sup>

This outcome generates significant interstate economic costs through multiple channels. First, platforms and other businesses operating nationally must harmonize their products and services to comply with California’s standards. As Lazar Radic and Daniel Gilman note, “this discrepancy effectively enables a single state’s unfair competition law to undermine federal antitrust policy nationwide.”<sup>39</sup> This renders the UCL a *de-facto* federal regulation without the procedural safeguards or democratic input that federal lawmaking requires. The situation presents precisely the type of state law that warrants federal attention: one that imposes substantial compliance costs on out-of-

---

<sup>35</sup> Cal. Bus. & Prof. Code § 17200.

<sup>36</sup> *Epic Games, Inc. v. Apple, Inc.*, 559 F. Supp. 3d 898, 933-1033 (N.D. Cal. 2021).

<sup>37</sup> *Id.* at 1049-50.

<sup>38</sup> *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023), *cert. denied*, No. 23-344 (U.S. Jan. 16, 2024).

<sup>39</sup> Lazar Radic & Daniel J. Gilman, *Four Problems with the Supreme Court’s Refusal to Hear the Epic v Apple Dispute*, TRUTH ON THE MARKET (Jan. 18, 2024), <https://truthonthemarket.com/2024/01/18/four-problems-with-the-supreme-courts-refusal-to-hear-the-epic-v-apple-dispute>.

state businesses, creates negative externalities for consumers nationwide, and undermines the coherence of federal competition policy.

Second, the UCL's expansive reach creates risks of conflicting state mandates that cannot be reconciled in a single national product or service. If other states adopt divergent unfairness standards with different requirements for platform operations, businesses face mutually inconsistent obligations that increase legal uncertainty, operational complexity, and barriers to entry. This regulatory fragmentation is particularly problematic in digital markets, where platform operations are inherently interstate and cannot easily be segregated by geography.

Third, the availability of UCL claims enables strategic forum shopping, allowing litigants to circumvent federal antitrust standards by pursuing state law claims in California courts. Our brief on the *Epic Games v. Apple* case warned that the panel's decision, if left standing, "risks chilling procompetitive conduct by deterring investment in efficiency-enhancing business practices, such as Apple's 'walled-garden' iOS."<sup>40</sup> This undermines the coherence and predictability of federal competition policy, as conduct deemed procompetitive under federal law can nevertheless be enjoined nationwide under California's more expansive standard. More fundamentally, it "risks creating a fundamental contradiction by enjoining conduct under the UCL that is benign—and even beneficial—under antitrust law."<sup>41</sup> This allows California to effectively override federal competition policy through state unfair-competition law, creating a patchwork of potentially conflicting standards that businesses operating nationally must navigate.

The theoretical constraint on the UCL's reach—the requirement that unfair conduct be tethered to antitrust law—has proven insufficient to prevent these extraterritorial effects. Under *Cel-Tech Communications, Inc. v. L.A. Cellular Telephone Co.*, the UCL's unfair prong for competitor suits requires conduct that "threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law."<sup>42</sup> But as *Epic v. Apple* demonstrates, courts have interpreted this tethering requirement broadly enough to condemn conduct that federal courts have explicitly found promotes competition and consumer welfare.

The economic impacts extend beyond direct compliance costs. When California law forces changes to national platform policies, it affects the entire ecosystem of businesses and consumers who rely on those platforms. In *Epic v. Apple*, the injunction's effects ripple through to the millions of app developers who must adapt to new payment systems and policies, potentially increasing transaction

---

<sup>40</sup>

Amicus Brief of the International Center for Law & Economics, *Epic Games, Inc. v. Apple Inc.*, Nos. 21-16506, 21-16695 (9th Cir., Jun. 20, 2023), available at <https://laweconcenter.org/wp-content/uploads/2023/06/File-Stamp-FINAL-2023-06-20-ICLE-Rehearing-En-Banc-Amicus-Brief-in-Epic-Apple.pdf>.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 186-87 (1999).

costs and reducing the security benefits that the district court recognized as legitimate procompetitive justifications for Apple's original policies.<sup>11</sup> These spillover effects demonstrate how a single state's competition law can reshape entire industries operating in interstate commerce.

This situation presents the type of state law that warrants federal attention under this RFI. The UCL's application to national digital markets creates negative externalities for out-of-state businesses and consumers, invites regulatory balkanization, and undermines the uniformity of federal competition policy. Federal legislative or regulatory intervention may be necessary to clarify the relationship between state unfair-competition laws and federal antitrust standards, particularly in markets where business operations are inherently interstate and cannot be effectively segregated by state boundaries.

California has also been at the forefront of fragmenting federal antitrust law in other ways. For example, the California Law Revision Commission (CLRC) is currently reviewing proposed amendments to the state's antitrust statutes, particularly the Cartwright Act, with a major goal of distancing California from the perceived constraints of federal antitrust law that limit liability for single-firm conduct under Section 2 of the Sherman Antitrust Act.<sup>43</sup> This initiative risks fragmenting U.S. antitrust law by proposing amendments to the Cartwright Act that systematically contravene federal antitrust principles.<sup>44</sup> These proposed changes aim to achieve this by abandoning the traditional error-cost framework, which prioritizes avoiding false positives (Type I errors) in favor of preventing underenforcement based on unsubstantiated assumptions.

Furthermore, California seeks to overturn key Supreme Court precedents: relaxing standards for refusals to deal, moving closer to the more interventionist EU approach and risking chilled innovation; allowing antitrust liability based on harm to only one side of a two-sided market, thereby neglecting the holistic economic analysis required for platform economies and shifting away from the consumer-welfare standard; and removing the recoupment requirement for predatory pricing, thus lowering the evidentiary standard and risking the deterrence of pro-competitive, low-price behavior. This collective departure from the established U.S. antitrust framework, driven by an "unexamined assumption" that more enforcement is inherently better, risks deterring pro-competitive behavior, harming consumers and innovation, and dismantling decades of settled doctrine—ultimately threatening the predictability and coherence of U.S. antitrust law.

Because California's market is so large, firms cannot realistically confine their practices to one state. In other words, stricter Cartwright Act rules would effectively shape business conduct nationwide, forcing companies to adjust policies across state lines beyond what federal antitrust law requires. This legal fragmentation also invites forum shopping and raises compliance costs, undermining the

---

<sup>43</sup> Staff Memorandum, *2025-21 Draft Language for Single Firm Conduct Provision*, CALIF. LAW REVIS. COMM. (Mar. 24, 2025), available at <https://clrc.ca.gov/pub/2025/MM25-21.pdf>.

<sup>44</sup> See Lazar Radic, *California Leads the Charge in Systematically Dismantling US Federal Antitrust Law*, TRUTH ON THE MARKET (May 28, 2025), <https://truthonthemarket.com/2025/05/28/california-leads-the-charge-in-systematically-dismantling-us-federal-antitrust-law>.

predictability of a unified federal antitrust system and chilling pro-competitive behavior beyond California.

There are also some instances where states, either through legislation or judicial precedent, continue to treat certain vertical restraints as *per-se* unlawful, even after the Supreme Court made clear that such restraints should be evaluated under the rule of reason, in light of their potential pro-competitive and pro-consumer benefits. Since the 1970s, federal antitrust law has recognized that vertical restrictions may generate efficiencies—*e.g.*, when the Court abandoned the *per-se* rule against non-price vertical restraints, emphasizing their role in promoting interbrand competition.<sup>45</sup>

The Court later extended this reasoning to resale price maintenance, holding that such agreements are not automatically illegal but must be judged under the rule of reason.<sup>46</sup> The Court found that such agreements can have procompetitive benefits, such as encouraging retailers to invest in services or promotional efforts that enhance interbrand competition and allowing manufacturers to compete not just on price, but on quality and service. In response to *Leegin*, however, some states—such as Maryland and New York—enacted laws declaring resale price maintenance illegal or unenforceable.<sup>47</sup> Some states, like Utah, have enacted specific sectoral regulation, such as the Contact Lens Consumer Protection Act (2015), which bans minimum resale-price maintenance practices in the contact-lens sector.<sup>48</sup>

These rules not only directly contradict a Supreme Court precedent; in their eagerness to protect specific competitors, they prohibit business practices that promote efficiency. They therefore undermine the very essence of the market economy that has allowed the United States to become the largest and most innovative economy in the world. In order to promote greater economic growth, these regulations should be repealed.

## **X. Automotive and Fuel Markets**

The most profound examples of the “California Effect” can be found in the state’s influence over the national automotive and fuel markets. This influence stems from a suite of interlocking state regulations that project California’s policy preferences across the country.

The foundation of this influence was a unique waiver from federal preemption under the Clean Air Act that allowed the state to set its own, more stringent vehicle-emissions standards. This authority was magnified by Section 177 of the act, which permits other states to adopt California’s standards. Currently, 17 states and the District of Columbia have adopted California’s light-duty vehicle

---

<sup>45</sup> *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 54–59 (1977).

<sup>46</sup> *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 889–907 (2007).

<sup>47</sup> Elai Katz, *Resale Price Maintenance Examined Under State Laws*, 247(95) N.Y. LAW J. (May 17, 2012).

<sup>48</sup> Utah Code Ann. § 58-16a-905.1.

standards. Meanwhile, 10 states have adopted its heavy-duty standards, creating a regulatory bloc that effectively sets national policy for more than 40% of the U.S. population.

This *de-facto* national standards-setting for vehicles is complemented by a series of state-specific fuel regulations that create a fragmented national energy market, including:

- **California Reformulated Gasoline (CaRFG) Program:** This program establishes stringent specifications for fuel parameters like sulfur and benzene content that are unique to California. To access the state’s large market, out-of-state fuel producers must incur significant costs to modify their refining processes to meet these standards.<sup>49</sup>
- **Low Carbon Fuel Standard (LCFS):** The LCFS directly regulates extraterritorial conduct by assigning a “carbon intensity” score to fuels based on their entire lifecycle, from extraction to consumption. This calculation includes emissions produced during production and transportation that occur entirely outside of California’s borders, directly penalizing producers in other states that may have higher transport-related emissions due to their geographic location.<sup>50</sup>
- **Import Reporting Mandates:** The California Energy Commission requires fuel importers to file comprehensive marine-import reports with detailed information about their cargo, ownership, and transport, imposing new and extensive compliance costs on out-of-state market participants.<sup>51</sup>

The combined effect of these vehicle and fuel regulations is the splintering of what should be integrated national markets, imposing substantial costs on businesses and consumers nationwide. The vehicle-emissions standards create a classic Dormant Commerce Clause problem, wherein one state’s regulatory preferences become the *de-facto* national standard, forcing manufacturers to design their entire vehicle fleets to meet California’s requirements.

This fragmentation is mirrored in the fuel market. The unique CaRFG and LCFS standards effectively separate California’s fuel market from the rest of the country. This isolation disrupts national supply dynamics and raises costs for producers, who must invest in specialized refining processes and complex compliance tracking to serve the California market. These costs are ultimately passed on to consumers—not just in California, but nationwide—as the national fuel supply chain becomes less efficient and more fragmented.

---

<sup>49</sup> Andrew Morris, *Gasoline, Markets, and Regulators* 8(3) ENGAGE 4-13 (2003), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=989827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=989827).

<sup>50</sup> David Deerson, *PLF and Friends Ask SCOTUS to Review Extraterritorial Fuel Regulations*, PACIFIC LEGAL FOUNDATION (Feb. 8, 2019), <https://pacificlegal.org/plf-and-friends-ask-scotus-to-review-extraterritorial-fuel-regulations>.

<sup>51</sup> David R. Carpenter, Maureen F. Gorsen, & Jack Raffetto, *California Issues Major New Gasoline Regulations for Refiners, Traders, and Brokers Through Emergency Rulemaking*, SIDLEY AUSTIN (Jun. 5, 2024), <https://www.sidley.com/en/insights/newsupdates/2024/06/california-issues-major-new-gasoline-regulations-for-refiners-traders-and-brokers>.

The LCFS, in particular, creates a direct burden on out-of-state producers by penalizing them based on factors inherent to their location, such as the distance their product must travel to reach California. This dynamic is exacerbated as more states opt in to California's emissions standards, further solidifying a patchwork of regulations that undermines a unified national economy.

The legal foundation for California's regulatory regime is the waiver provision in the Clean Air Act, a statutory authority granted by Congress. This authority has been the subject of significant legal and political conflict. Legal challenges to the extraterritorial effects of these regulations, particularly under the Dormant Commerce Clause, have had limited success in the courts. Notably, the 9<sup>th</sup> U.S. Circuit Court of Appeals rejected a Dormant Commerce Clause claim against the LCFS in *Rocky Mountain Farmers Union v. Corey*,<sup>52</sup> deferring to the state's regulatory authority, despite the clear out-of-state impacts.

This judicial reticence to scrutinize the extraterritorial burdens of state environmental laws places the responsibility for a solution squarely on the political branches. Because California's unique authority is a product of federal statute, not a constitutional right, it is exceptionally amenable to federal action. Congress possesses plenary power under the affirmative Commerce Clause to amend or repeal the waiver provision entirely. Likewise, the Environmental Protection Agency (EPA) retains administrative authority to grant, deny, or reconsider these waivers, providing an executive-branch pathway to restore a single national standard.

Congress should enact legislation to repeal California's unique waiver authority under Section 209 of the Clean Air Act. This action would establish a single, uniform national market for new motor vehicles and eliminate the foundation upon which California's fragmented fuel market is built. It would reduce the immense compliance costs currently borne by manufacturers and fuel producers, enhance consumer choice, and ensure that standards for national industries are set at the national level based on a holistic assessment of costs and benefits.

The EPA and DOT, acting through the National Highway Traffic Safety Administration (NHTSA), are the federal agencies with the statutory authority and technical expertise to set and enforce a single, cohesive national standard for vehicle emissions and fuel economy. Restoring their exclusive jurisdiction would bring much-needed certainty and efficiency to these critical, interconnected sectors of the U.S. economy.

## **XI. State Interchange-Fee Regulations**

Many states have seen proposals for laws that would regulate interchange fees for credit- and debit-card transactions. To date, only Illinois has passed such a law. In June 2024, Illinois enacted the Illinois Interchange Fee Prohibition Act (IFPA), a first-of-its-kind law aimed at reshaping the

---

<sup>52</sup> No. 12-15131 (9th Cir. 2013).

economics of credit- and debit-card transactions in the state, but with implications far beyond.<sup>53</sup> The IFPA prohibits payment-card issuers, networks, and processors from charging or collecting interchange fees on those portions of a transaction that represent gratuities or state or local sales taxes.

It is clear that the IFPA's reach extends well beyond Illinois' borders. Under the IFPA, an Illinois merchant's credit-card transaction processed by a national bank must exclude interchange on the sales tax and gratuity portions, regardless where the issuer is based. Since the vast majority of credit- and debit-card issuers are headquartered or chartered in other states—or even outside the United States—the act would compel these institutions to adjust their fee structures for transactions completed in Illinois. They will also have to collaborate with acquirers, networks, and Illinois-based merchants to adjust the way that transactions are reported.

The IFPA thus imposes substantial additional compliance costs on issuers, acquirers, and networks. When combined with loss of part of the interchange-fee revenue from transactions within Illinois, this means out-of-state issuers will almost certainly be forced to undertake some combination of 1) reduced card rewards and benefits, 2) new or increased annual fees, 3) higher interest rates, and/or 4) higher interchange fees to be paid for by out-of-state merchants.

These compensatory actions would affect most or even all U.S. cardholders, the vast majority of whom live outside Illinois. Reduced rewards and increased fees would diminish the attractiveness of card use, leading to lower consumer spending, thereby harming merchants as well. There would thus be harmful extraterritorial effects across the value chain. While banks, payment processors, and networks would suffer concentrated costs and losses, at least some of these would be passed on to consumers and merchants.

For good reason, the law currently faces serious legal challenges. In August 2024, the Illinois Bankers Association, American Bankers Association, America's Credit Unions, the Illinois Credit Union League, and the Illinois Retail Merchants Association brought a motion for pre-enforcement injunctive relief from the IFPA.

Each set of plaintiffs in the case was able to assert a relevant federal law or constitutional principle the IFPA violated. Nationally chartered banks pointed to the National Banking Act (NBA) and various federal regulations that apply specifically to them. Federal savings associations cited the Home Owners' Loan Act (HOLA), which similarly empowers and regulates them. Federal credit unions asserted preemption under the Federal Credit Union Act (FCUA), because it gives the National Credit Union Administration exclusive authority to regulate them. State banks chartered in Illinois pointed to state laws that give banks the same powers as nationally chartered banks. Out-

---

<sup>53</sup> See Julian Morris & Ben Sperry, *Regulating State Interchange Fees: Evaluating the Likely Effects of the IFPA*, INT'L CTR. LAW ECON. (Jul. 7, 2025), available at <https://laweconcenter.org/wp-content/uploads/2025/07/IFPA-Paper-2025.pdf>. Much of this subsection is adapted from that white paper.

of-state banks brought both Dormant Commerce Clause and federal law claims that they have the right to be treated similarly to in-state banks and nationally chartered banks, respectively.

The district court issued two rulings, first finding that the NBA and HOLA likely preempt the IFPA under Supreme Court jurisprudence holding state laws are preempted if they “prevent or significantly interfere with the exercise of a national bank’s powers.”<sup>54</sup> This is different from normal conflict preemption, which requires showing that an entity can’t comply with both sets of laws. Instead, it only requires a showing of significant interference with their ability to exercise their powers under national law. Here, IFPA’s significant interference is clear: it forbids national banks and savings associations from collecting a category of fees they would otherwise collect in the normal course of offering card services.

In a later opinion, the district court found that federal law demanded similar treatment for out-of-state banks as national banks. And “because the Court granted the preliminary injunction with respect to nationally chartered banks, forcing out-of-state state banks to comply with the IFPA would run afoul” of the law.<sup>55</sup>

On the other hand, the court rejected other arguments made by plaintiffs. The Dormant Commerce Clause arguments made by out-of-state banks were rejected on grounds that they were held to the same law as in-state banks. And both the federal credit unions and credit-card networks were unsuccessful in asserting federal preemption, as their relevant statutes were subject only to conflict preemption and it was possible to comply with both sets of laws.

Thus, the court found that the IFPA was likely preempted by federal law as to federally chartered banks and savings associations and to out-of-state banks, and issued a preliminary injunctions as to those parties. This leaves Illinois in an unusual position of only being able to enforce its law against its own in-state banks, federal credit unions, and credit-card networks. Litigation in this case remains ongoing.

The DOJ should consider joining the *amici* work of the Office of the Comptroller of the Currency (OCC)<sup>56</sup> in favor of the plaintiffs in this case in order to make clear that federal law preempts the IFPA and similar laws that would effectively raise the cost of payment cards nationwide.

## **XII. Digital Privacy**

The digital economy is, by its nature, an interstate and global marketplace. Yet it is increasingly being subject to a fragmented and conflicting set of state-level regulations. This trend was initiated by

---

<sup>54</sup> *Illinois Bankers Association et al. v. Kwame Raoul*, 2024 WL 5186840 (N.D. Ill., Aug. 15, 2024). See also *Cantero v. Bank of America, N.A.*, 602 U.S. 205, 213-14 (2024); *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 33 (1996).

<sup>55</sup> *Illinois Bankers Ass’n v. Kwame Raoul*, 2025 WL 409060, at 7-8 (N.D. Ill., Feb. 6, 2025).

<sup>56</sup> Brief of the Office of the Comptroller of the Currency, *Illinois Bankers Association et al v. Raoul*, No. 1:2024cv07307 (N.D. Ill. Oct. 2, 2024), available at <https://www.occ.treas.gov/topics/laws-and-regulations/litigation/amicus-curiae-brief-illinois-bankers-assoc-v-raoul.pdf>.

passage of the California Consumer Privacy Act (CCPA) in 2018, which was subsequently amended and expanded by the California Privacy Rights Act (CPRA). The CCPA/CPRA created a comprehensive data-privacy regime that applies not only to businesses in California but to any for-profit entity nationwide that does business in California and meets certain thresholds, such as having gross annual revenue of more than \$25 million or buying, selling, or sharing the personal information of 100,000 or more California residents.

In the absence of a preemptive federal privacy law, California's statute has served as a catalyst for other states to enact their own versions. This has resulted in a rapidly growing patchwork of similar but substantively different privacy laws across the country. As of mid-2025, 20 states have passed comprehensive data-privacy laws, each with their own unique definitions, scope, consumer rights, and enforcement mechanisms. This creates a bewildering and costly compliance landscape for any business that operates online and serves customers in multiple states, as these laws generally apply to personal information about residents of that specific state. As noted by Jennifer Huddleston and Ian Adams:

While these laws purport to apply only inside each state's borders, they burden an inherently interstate—indeed, global—media, and the direct and indirect costs and effects of state laws and regulations are significant. ... Notably, the CCPA's costs impact not only companies in the technology sector but a wide range of industries: from retail and entertainment to construction and mining.<sup>57</sup>

The compliance costs associated with this regulatory patchwork are extraordinary. Businesses must dedicate significant legal, engineering, and administrative resources to track, interpret, and implement the varying requirements of each state's law. Economic analysis by the Information Technology and Innovation Foundation (ITIF) estimates that, if all 50 states were to enact their own privacy laws, the total out-of-state compliance costs imposed on the U.S. economy would be between \$98 billion and \$112 billion annually.<sup>58</sup> Over a 10-year period, this cost would exceed \$1 trillion. A substantial portion of this burden—estimated at more than \$200 billion over 10 years—would fall on small and medium-sized businesses, which lack large tech firms' resources to navigate this complex environment. California's law alone is estimated to impose \$32 billion in annual costs on out-of-state businesses.

This costly and uncertain regulatory environment stifles innovation and harms competition. The high fixed costs of compliance function as a significant barrier to entry for startups and smaller firms, entrenching the market position of large, established technology companies that can afford large compliance departments. Furthermore, overly prescriptive rules—such as aggressive data-

---

<sup>57</sup> Jennifer Huddleston & Ian Adams, *Potential Constitutional Conflicts in State and Local Data Privacy Regulations*, REGULATORY TRANSPARENCY PROJECT (Dec. 2, 2019), <https://rtp.fedsoc.org/paper/potential-constitutional-conflicts-in-state-and-local-data-privacy-regulations>.

<sup>58</sup> Daniel Castro, Luke Dascoli, & Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION (Jan. 24, 2022), <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws>.

minimization requirements—can impede the development of new data-driven technologies like artificial intelligence (AI), which rely on access to large datasets for training and improvement. This puts U.S. firms at a competitive disadvantage in the global technology race.

Rather than empowering consumers, the patchwork of differing rights, definitions, and disclosure requirements across states leads to confusion and “notice fatigue.”<sup>59</sup> Consumers are inundated with a constant stream of lengthy and legalistic privacy policies and pop-up notices that they cannot reasonably be expected to read or understand, undermining the goal of genuine transparency and meaningful control over personal information. There is a broad and powerful consensus across the political and economic spectrum—from industry groups and consumer advocates to policymakers and academics—that the current state-level patchwork is untenable and that a federal solution is urgently needed.

The primary legal challenge to these state laws rests on the Dormant Commerce Clause, which prohibits states from enacting laws that unduly burden interstate commerce. Because data transmissions do not abide state borders, a single online action can involve multiple states. This means that state laws purporting to regulate the internet trigger Dormant Commerce Clause scrutiny due to their extraterritorial impact. The application of these laws to businesses not physically located in the regulating state raises significant constitutional problems.

The primary point of contention in the federal debate revolves around the preemptive effect of a federal law. One approach advocates for a federal “ceiling,” which would create a single, uniform national standard for data privacy and explicitly preempt all state laws in the field. An alternative approach argues for a federal “floor,” which would establish a baseline of privacy protections but would explicitly permit states to enact and enforce stronger or more specific laws.

While appealing to some states’ rights advocates, the “floor” approach fails to solve the fundamental economic problem. It would not alleviate the crushing compliance costs of this regulatory patchwork, as businesses would still have to comply with the most stringent provisions of every state in which they operate, in addition to the federal baseline.

Rather than imposing a single, top-down, one-size-fits-all federal privacy statute, a more innovative and market-oriented solution exists, grounded in the principles of competitive federalism. This approach, developed by scholars at ICLC and the American Enterprise Institute (AEI), proposes that Congress enact a targeted federal statute requiring states to recognize and enforce contractual choice-of-law provisions in privacy policies.<sup>60</sup>

---

<sup>59</sup> See, e.g., Sarah E Carter, *A Value-Centered Exploration of Data Privacy and Personalized Privacy Assistants*, 1 DIGIT SOC. 27 (2022).

<sup>60</sup> Geoffrey A. Manne & Jim Harper, *A Choice-of-Law Alternative to Federal Preemption of State Privacy Law*, INT’L. CTR. LAW ECON. & AM. ENTERPRISE INST. (Mar. 2024), available at <https://laweconcenter.org/wp-content/uploads/2024/03/2024-03-Manne-and-Harper.proof43.pdf>.

The mechanism for this proposal is straightforward. A business operating nationally would be permitted to select the comprehensive privacy law of a single state—for example, the Virginia Consumer Data Protection Act or the Utah Consumer Privacy Act—and designate in its terms of service that this law governs its relationship with all its U.S. customers. The federal statute would ensure that this contractual choice is honored and enforced by courts and regulators in all other states.

This choice-of-law framework provides numerous benefits. It immediately solves the patchwork problem for businesses, allowing them to comply with a single, coherent legal regime rather than a morass of 50 different ones. At the same time, it preserves a meaningful and dynamic role for state regulation, avoiding the risks of a static and potentially ill-fitting federal mandate. Most importantly, as the authors argue, this approach would foster a “double competition” that would ultimately benefit consumers:

1. **Competition Among States:** States would be encouraged to compete to develop the most efficient, innovative, and effective privacy laws. A state that enacted a well-balanced, clear, and effective law could attract businesses to choose its regime, much as Delaware has become the preferred state for corporate charters. This would turn states into true “laboratories of democracy” for privacy regulation.
2. **Competition Among Firms:** Businesses would compete to offer privacy policies that are aligned with the preferences of different segments of the consumer market. A firm could choose to adopt a more stringent privacy regime as a competitive differentiator to attract privacy-conscious consumers, while another might choose a more flexible regime that enables more personalized services. This market competition would allow for more accurate discovery of consumers’ true valuation of different aspects of privacy versus other product features and benefits.

The ICLE-AEI approach offers a path forward to resolve the economic harms inherent in the current patchwork without resorting to heavy-handed federal preemption that would stifle state innovation. The FTC, with its long history of consumer protection and privacy enforcement, and the U.S. Commerce Department, with its expertise in the digital economy, are the federal agencies best positioned to help craft and oversee such a choice-of-law framework.

### **XIII. Artificial Intelligence**

Following the pattern established with data privacy, states are now racing to regulate AI, threatening to create a new and even more complex regulatory patchwork before a national market for this transformative technology can fully mature. In 2024 alone, state lawmakers introduced more than 600 AI-related bills, with nearly 100 enacted into law.<sup>61</sup> In 2025, that number is expected to grow significantly, with all 50 states having introduced legislation on the topic.

---

<sup>61</sup> *Artificial Intelligence (AI) Legislation*, MULTISTATE, <https://www.multistate.ai/artificial-intelligence-ai-legislation> (retrieved Sep. 15, 2025).

These state-level efforts are not uniform. They address a wide range of issues, from the use of AI in employment and housing decisions to “deepfake” generation and consumer disclosures. Colorado, for example, enacted a comprehensive law governing “high-risk” AI systems, while California is advancing regulations on automated decisionmaking technology through its privacy agency, and Illinois has mandated new disclosures for AI in employment.<sup>62</sup>

The extraterritorial mechanism of these laws is inherent to the nature of AI and the internet. AI models are developed and deployed in a digital environment that knows no state borders. A single AI system developed by a company in one state, trained on data from across the country, and deployed via the cloud to users in all 50 states may become subject to a morass of conflicting state-level mandates. A law in one state governing algorithmic discrimination or requiring specific disclosures has the practical effect of regulating the design, development, and deployment of that AI system for the entire national market. This creates a direct burden on interstate commerce, as developers are forced to either build their systems to the most restrictive state standard or attempt the costly and technically difficult task of walling off their products from residents of certain states.

The premature fragmentation of AI regulation will impose immense economic costs, stifle American innovation, and create an untenable compliance environment, particularly for the startups and smaller firms that are driving much of the nation’s technological progress.

The compliance costs of a 50-state AI regulatory patchwork would be enormous. As demonstrated by the experience with state privacy laws, which are projected to impose more than \$1 trillion in out-of-state costs over a decade, a similar patchwork for the more complex field of AI would create a compliance nightmare.<sup>63</sup> Businesses would be forced to divert substantial resources from research and development into legal and compliance departments simply to navigate the labyrinth of conflicting state definitions, mandates, and disclosure requirements. This burden falls disproportionately on smaller innovators, who lack the vast legal resources of established tech giants, creating a significant barrier to entry and chilling competition.

This regulatory uncertainty actively harms innovation. The development of advanced AI is an iterative process that requires experimentation. A fragmented legal landscape, where the rules can change from one state to the next, discourages the long-term capital investment necessary for foundational research and development. As ICLE has noted in the context of other emerging technologies, attempting to create a single regulatory scheme for a broad and diverse category like “AI” commits the error of “regulatory overaggregation,” creating an ill-fitting legal regime that fails

---

<sup>62</sup> Annette Tyman & Jason Priebe, *Artificial Intelligence Legal Roundup: Colorado Postpones Implementation of AI Law as California Finalizes New Employment Discrimination Regulations and Illinois Disclosure Law Set to Take Effect*, SEYFARTH SHAW (Sep. 12, 2025), <https://www.seyfarth.com/news-insights/artificial-intelligence-legal-roundup-colorado-postpones-implementation-of-ai-law-as-california-finalizes-new-employment-discrimination-regulations-and-illinois-disclosure-law-set-to-take-effect.html>.

<sup>63</sup> Daniel Castro, Luke Dascoli, & Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, ITIF (2022), <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws>.

to account for the vast differences between various applications.<sup>64</sup> This approach risks prohibiting beneficial technologies before they have a chance to mature.

A fragmented domestic market also undermines U.S. competitiveness in a critical area of national security and economic importance. As other global actors, such as the European Union, move forward with unified regulatory frameworks like the EU AI Act, a fragmented U.S. market creates a competitive disadvantage. American firms will be forced to contend with 50 different sets of rules at home, hindering their ability to scale and compete effectively on the global stage. This concern is reflected in the White House’s AI Action Plan, which seeks to discourage state-level AI regulation that could hinder American AI development.<sup>65</sup>

The emerging patchwork of state AI laws is exceptionally amenable to federal action, and the legal basis for such action is firmly grounded in the Constitution. The Commerce Clause grants Congress the authority to regulate interstate commerce, and there is no question that AI development and deployment constitute such commerce.

The primary constitutional challenge to these state laws rests on the Dormant Commerce Clause, which prohibits states from enacting laws that unduly burden or discriminate against interstate commerce.<sup>66</sup> State AI laws that have extraterritorial effects—such as those that attempt to regulate the design of AI models that operate nationally—are vulnerable to challenge under this doctrine. As one analysis notes, “There is no natural reason for data to stop at state borders, meaning virtually all economic activity involving AI is interstate commerce.”<sup>67</sup>

As with data privacy, Congress should enact a federal statute requiring states to recognize and enforce contractual choice-of-law provisions for AI systems. This approach would allow an AI developer to select the regulatory framework of a single state to govern its system’s operation nationwide. This immediately solves the patchwork problem for businesses, allowing them to comply with one coherent set of rules, rather than 50 conflicting ones. At the same time, it preserves the role of states as “laboratories of democracy” and fosters a “double competition” that benefits the entire economy.

---

<sup>64</sup> Kristian Stout, Brian Albrecht, Mikołaj Barczentewicz, Eric Fruits, Geoffrey A. Manne, & Julian Morris, *ICLE Response to the AI Accountability Policy Request for Comment*, INT’L CTR. LAW ECON. (Jun. 12, 2023), available at <https://laweconcenter.org/wp-content/uploads/2023/06/NTIA-AI-Comments-final.pdf>.

<sup>65</sup> Kristian Stout, *The White House’s AI Action Plan*, INT’L CTR. LAW ECON. (Jun. 24, 2025), available at <https://laweconcenter.org/wp-content/uploads/2025/07/tldr-White-House-AI-Action-Plan.pdf>.

<sup>66</sup> Matt Perault & Jai Ramaswamy, *The Commerce Clause in the Age of AI: Guardrails and Opportunities for State Legislatures*, ANDREESEN HOROWITZ (2025), <https://a16z.com/the-commerce-clause-in-the-age-of-ai-guardrails-and-opportunities-for-state-legislatures>.

<sup>67</sup> Max Gulker & Marc Scribner, *A Moratorium on State Laws Targeting AI Would Safeguard Innovation and Interstate Commerce*, REASON (Aug. 7, 2025), <https://reason.org/commentary/a-moratorium-on-state-laws-targeting-ai-would-safeguard-innovation-and-interstate-commerce>.

This choice-of-law framework offers a durable solution that could prevent the economic damage of a splintered AI market without resorting to a rigid federal mandate that could quickly become obsolete.

The U.S. Commerce Department—through its component agencies like the National Institute of Standards and Technology (NIST) and the National Telecommunications and Information Administration (NTIA)—and the FTC, with its expertise in consumer protection and competition, are the agencies best positioned to provide the technical and policy guidance necessary to implement this federalist approach to AI governance.

The DOJ has tools at its disposal to prevent states from imposing extraterritorial regulatory effects that exceed their proper jurisdiction. The DOJ has long played a role in ensuring that state laws do not impede the flow of interstate commerce, whether through antitrust enforcement, intervention in preemption litigation, or filing statements of interest in private suits that raise constitutional questions.<sup>68</sup> In the AI context, the DOJ could intervene in cases where state statutes effectively regulate conduct occurring wholly outside of state borders—such as the design, training, or deployment of models that serve a national or global user base. By articulating the limits of state authority under the Dormant Commerce Clause, the DOJ could also help to clarify the constitutional boundaries of state AI regulation and prevent any single state from dictating standards for the entire country.

In addition, the DOJ could issue guidance that emphasizes the federal government’s interest in preserving a national market for AI technologies, much as it has done in the past when states attempted to regulate extraterritorially in fields like transportation.<sup>69</sup> Such guidance, particularly if coordinated with the White House and federal agencies charged with AI policy, would provide courts with a clear statement of executive-branch priorities. It would also serve as a deterrent, signaling to state legislatures that extraterritorial mandates are likely to invite federal opposition and constitutional challenge.

By combining litigation interventions with policy guidance, the DOJ could play a crucial role in cabining state overreach, ensuring that AI regulation develops within a coherent national framework, rather than a patchwork that undermines innovation and interstate commerce.

---

<sup>68</sup> See, e.g., Press Release, *Justice Department Files Complaints Against Hawaii, Michigan, New York and Vermont Over Unconstitutional State Climate Actions*, DEP’T JUST. (May 1, 2025), <https://www.justice.gov/opa/pr/justice-department-files-complaints-against-hawaii-michigan-new-york-and-vermont-over>.

<sup>69</sup> See, e.g., *Memorandum in Support of Motion to Intervene as Plaintiffs by the United States and the U.S. Environmental Protection Agency*, Case No. 2:25-cv-02255-DC-AC (E.D. Cal. Aug. 14, 2025), available at <https://www.justice.gov/atr/case-document/file/1459366/dl>; see also 28 U.S. Code § 516-517 (DOJ authority to file statements of interest in cases related to important federal interests).

## **XIV. Conclusion**

These comments identify a clear pattern of individual states increasingly weaponizing their economic power to impose regulatory preferences on the entire nation, creating a fundamental threat to the constitutional structure of American federalism and the efficiency of interstate commerce. The “California Effect” and similar dynamics represent a profound departure from the traditional understanding that states possess sovereign authority within their borders, not beyond them. When large states leverage their market share to compel nationwide compliance with their regulatory schemes—whether in vehicle emissions, data privacy, AI governance, or payments—they effectively nullify other states’ policy choices and usurp Congress’ constitutional role in regulating interstate commerce.

The economic costs of this regulatory balkanization are substantial and measurable. State data-privacy laws alone impose an estimated \$98-112 billion in annual out-of-state compliance costs, with the burden falling disproportionately on smaller businesses that lack the resources to navigate multiple regulatory regimes. Similar patterns emerge across sectors: automobile-dealer franchise laws add thousands of dollars to vehicle prices through mandated inefficiencies; land-use restrictions trap workers in low-productivity regions; and certificate-of-need laws insulate incumbents from competition while raising health-care costs. These are not merely theoretical concerns but documented market failures that reduce economic growth, suppress innovation, and ultimately harm consumers nationwide.

The current judicial reluctance to enforce constitutional limits on state overreach—exemplified by cases like *National Pork Producers Council v. Ross*—places the primary responsibility for addressing these problems squarely on the political branches. Congress possesses clear constitutional authority under the Commerce Clause to restore uniformity to interstate markets, whether through direct preemption, conditional spending requirements, or innovative approaches like mandating recognition of contractual choice-of-law provisions. The executive branch can pursue strategic litigation targeting the most egregious examples of extraterritorial regulation, particularly where federal preemption doctrines provide strong legal foundations for challenge.

The urgency of federal action cannot be overstated. Each year of delay allows this regulatory fragmentation to become more entrenched, raising the political and economic costs of reform. As emerging technologies like AI face the same pattern of premature state-level regulation that has already damaged other sectors, the window for preventing a comprehensive balkanization of the U.S. economy continues to narrow.

The choice before policymakers is clear: restore the constitutional principles that have underwritten American economic prosperity for more than two centuries, or accept a future where the largest states dictate national policy through market coercion rather than democratic consensus.

The solutions outlined in these comments offer practical pathways forward that respect legitimate state interests, while protecting the national economy from destructive regulatory competition. Federal intervention in this context does not represent an expansion of government power but rather

a restoration of constitutional limits that prevent any single state from imposing its will on the entire nation. The economic and constitutional stakes demand immediate and sustained federal attention to preserve both the efficiency of U.S. markets and the integrity of American federalism.