



**Comments of**

**TechFreedom**

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**In the Matter of**

*Request for Information on the Development of an Artificial Intelligence (AI) Action Plan*

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## INTRODUCTION

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C. It is dedicated to promoting technological progress that improves the human condition. It seeks to advance public policy that makes experimentation, entrepreneurship, and investment possible and thus unleashes the ultimate resource: human ingenuity. TechFreedom champions a light-touch approach to artificial intelligence regulation<sup>1</sup> that promotes open-source development,<sup>2</sup> protects consumers from concrete harms,<sup>3</sup> and upholds free speech under the First Amendment.<sup>4</sup>

The Request for Information lays out two laudable goals: “to sustain and enhance America's AI dominance, and to ensure that unnecessarily burdensome requirements do not hamper private sector AI innovation.”<sup>5</sup> In furtherance of these goals, TechFreedom recommends that the AI Action Plan pursue the following priority policy actions: dispel the myth that AI is unregulated, lay out a light-touch approach to AI regulation grounded in existing laws, promote open-source AI, and uphold free speech under the First Amendment.

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<sup>1</sup> Corbin Barthold, *397: AI Policy Potpourri (Part One)*, Tech Policy Podcast (Feb. 17, 2025), <https://podcast.techfreedom.org/episodes/397-ai-policy-potpourri-part-one>; Andy Jung, *Don't California My Texas: Stargate Edition*, TECHFREEDOM (Jan. 24, 2025), <https://techfreedom.substack.com/p/dont-california-my-texas-stargate>.

<sup>2</sup> TechFreedom, Comment on Managing Misuse Risk for Dual-Use Foundation Models (Sept. 9, 2024), <https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-NIST-AI-800-1-Comments.pdf>; Andy Jung, *California's AI Bill Threatens To Derail Open-Source Innovation*, REASON (Aug. 8, 2024), <https://reason.com/2024/08/13/californias-ai-bill-threatens-to-derail-open-source-innovation/>; *TechFreedom Delivers Remarks at FTC's August Open Commission Meeting*, TECHFREEDOM (Aug. 1, 2024), <https://techfreedom.org/techfreedom-delivers-remarks-at-ftcs-august-open-commission-meeting/> (Remarks of Andy Jung).

<sup>3</sup> TechFreedom, Public Comment on CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations (Feb. 19, 2025), <https://techfreedom.org/wp-content/uploads/2025/02/TF-Public-Comment-on-CCPA-Updates-Cyber-Risk-ADMT-and-Insurance.pdf>; *TechFreedom Delivers Remarks at FTC Open Commission Meeting*, TECHFREEDOM (May 19, 2023), <https://techfreedom.org/techfreedom-delivers-remarks-at-ftc-open-commission-meeting-2/> (Remarks of Santana Boulton).

<sup>4</sup> TechFreedom, Comment on Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements (Sept. 19, 2024), <https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-FCC-AI-Comments.pdf>; Letter from TechFreedom to the Senate Committee on Rules and Administration Re: S. 2770, The Protect Elections from Deceptive AI Act (May 14, 2024), <https://techfreedom.org/wp-content/uploads/2024/05/Coalition-Letter-S.-2770-The-Protect-Elections-from-Deceptive-AI-Act.pdf>; Ari Cohn, *A.I. Panic is Causing First Amendment Hallucinations...in Humans*, TECHFREEDOM (Jan. 29, 2024), <https://aricohn.substack.com/p/ai-panic-is-causing-first-amendment>.

<sup>5</sup> Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, 90 Fed. Reg. 9088-89 (Feb. 6, 2025).

## **I. The AI Action Plan Should Dispel Once and For All the Myth that AI is Unregulated**

AI is already regulated.<sup>6</sup> Existing laws and regulations apply to AI:<sup>7</sup> to quote the Federal Trade Commission, “there is no AI exemption from the laws on the books.”<sup>8</sup> Discriminating against a potential tenant is illegal, for example, regardless of whether the housing provider uses AI to screen applicants.<sup>9</sup> The AI Action Plan should state up-front that AI is already regulated. Next, the Plan should explain how existing laws and regulations apply to AI.

## **II. The AI Action Plan Should Lay Out a Light-Touch Approach to AI Regulation Grounded in Existing Laws**

Rather than creating new rules for AI, the federal government should enforce existing laws, which already address most policy concerns related to AI. The federal government does not need to create a new, complex regulatory framework for AI. Instead, the Department of Justice, Federal Trade Commission, and other federal agencies should use existing authority to police AI practices that harm consumers.

On the one hand, this approach is light-touch: rather than creating a new national regulator for AI, the federal government would use a sectoral approach based on existing authority. On the other hand, the federal government would continue to enforce the laws already on the books to remedy AI-related harms and punish bad actors. This approach would allow the federal government to regulate the technology while “ensur[ing] that unnecessarily burdensome requirements do not hamper private sector AI innovation.”<sup>10</sup>

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<sup>6</sup> Andy Jung, ‘Unregulated AI’ is a myth, OC REGISTER (Apr. 1, 2024), <https://www.oregister.com/2024/04/01/unregulated-ai-is-a-myth/>; Alvaro M. Bedoya, Comm’r, Fed. Trade Comm’n, Remarks Before the International Association of Privacy Professionals: Early Thoughts on Generative AI (Apr. 5, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Early-Thoughts-on-Generative-AI-FINAL-WITH-IMAGES.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Early-Thoughts-on-Generative-AI-FINAL-WITH-IMAGES.pdf).

<sup>7</sup> See, e.g., Andy Jung, *Drake vs. Kendrick Lamar Proves AI Music Is Regulated*, TECHDIRT (June 5, 2024), <https://www.techdirt.com/2024/06/05/drake-vs-kendrick-lamar-proves-ai-music-is-regulated/>.

<sup>8</sup> Press Release, Fed. Trade Comm’n, FTC Chair Khan and Officials from DOJ, CFPB and EEOC Release Joint Statement on AI (Apr. 25, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai>.

<sup>9</sup> ROHIT CHOPRA, U.S. CONSUMER FIN. PROT. BUREAU, KRISTEN CLARKE, U.S. DEP’T OF JUST., CHARLOTTE A. BURROWS, U.S. EQUAL EMP. OPPORTUNITY COMM’N., & LINA KAHN, U. S. FED. TRADE COMM’N., JOINT STATEMENT ON ENFORCEMENT EFFORTS AGAINST DISCRIMINATION AND BIAS IN AUTOMATED SYSTEMS (2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf).

<sup>10</sup> Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, *supra* note 5, at 9088.

The AI Action Plan should identify key areas of AI policy, such as consumer protection and AI in Education.<sup>11</sup> For each key area, the Plan should enumerate relevant federal laws and regulations that apply to AI and explain how those rules address harms caused by AI in that sector.

The Federal Trade Commission, for example, has broad authority over unfair and deceptive acts or practices that harm consumers.<sup>12</sup> The Commission is already using this consumer protection authority successfully to crack down on AI-powered scams and fraud.<sup>13</sup> Meanwhile, the National Institute of Standards and Technology and the U.S. AI Safety Institute manage more technical and esoteric AI concerns, such as “developing the testing, evaluations, and guidelines that will help accelerate trustworthy AI innovation in the United States ... with a keen focus on helping to prevent misuse of this technology by those who seek to undermine our public safety and national security.”<sup>14</sup> This sectoral approach of using existing laws and institutions to regulate AI is already in-place and working.<sup>15</sup> The AI Action Plan should formalize the approach across the federal government.

#### **A. The AI Action Plan Should Consider the Feasibility of a Federal Regulatory Sandbox for AI**

Regulatory sandboxes are regulatory frameworks which allow qualifying companies to offer products and services without complying with the red tape governing that industry. Sandbox companies are not exempt from all regulations: regulatory sandboxes may explicitly provide, for example, that consumer protection and antidiscrimination laws still apply. Regulatory sandboxes may expire after a set period, and companies automatically exit their sandbox once they outgrow the applicable criteria.

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<sup>11</sup> The AI Action Plan could borrow categories from the NAIAC Insights for the Administration of President Donald J. Trump report: 1. AI and the Workforce; 2. AI Awareness and Literacy; 3. AI in Education; 4. AI in Science; 5. AI in Health; 6. AI in Government; 7. AI to Empower Small Business, Entrepreneurs & Nonprofits; 8. AI Governance; 9. AI for the American People; 10 AI in Law Enforcement. U.S. NAT’L ARTIFICIAL INTEL. ADVISORY COMM., NAIAC INSIGHTS FOR THE ADMINISTRATION OF PRESIDENT DONALD J. TRUMP: DRAFT REPORT (2025), [https://www.nist.gov/system/files/documents/noindex/2025/01/24/NAIAC\\_New\\_Administration\\_Report-Draft\\_2025.01.22.pdf](https://www.nist.gov/system/files/documents/noindex/2025/01/24/NAIAC_New_Administration_Report-Draft_2025.01.22.pdf).

<sup>12</sup> 15 U.S.C. § 45(a)(1).

<sup>13</sup> See, Press Release, Fed. Trade Comm’n, FTC Announces Crackdown on Deceptive AI Claims and Schemes (Sept. 25, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes> (describing the FTC’s Operation AI Comply which launched law enforcement actions against companies which sell AI tools that can be used in unfair and deceptive manners).

<sup>14</sup> Nat’l Inst. of Standards and Tech., *U.S. Artificial Intel. Safety Inst.*, <https://www.nist.gov/aisi> (last visited Mar. 14, 2025).

<sup>15</sup> CHOPRA ET AL., *supra* note 9.

Legislatures create regulatory sandboxes to reduce legal pressure on growing industries and to encourage experimentation and innovation.<sup>16</sup> Regulators then collaborate with sandbox companies to collect data on the industry, and, in turn, the sandbox data inform legislative changes that better serve the industry and consumers.

Fourteen states have created regulatory sandboxes for various industries,<sup>17</sup> and Texas is considering a regulatory sandbox for AI.<sup>18</sup> At the federal level, Senators Mike Rounds (R-SD) and Martin Heinrich (D-NM) introduced a bill last year to establish a sandbox for AI in banking.<sup>19</sup> Representatives Frech Hill (R-AR) and Ritchie Torres (D-NY) introduced the House companion bill.<sup>20</sup>

The European Union's AI Act requires each EU member state to establish a regulatory sandbox for AI,<sup>21</sup> and Spain recently launched the first EU AI sandbox in partnership with the European Commission.<sup>22</sup> Regulatory sandboxes, however, are not new: over 50 countries have experimented with using regulatory sandboxes for digital financial services.<sup>23</sup>

The details and logistics of a federal regulatory sandbox are outside the scope of this Request for Information. For now, the AI Action Plan should introduce and examine the idea of regulatory sandboxes for AI, using the states and European Union as case studies. The AI Action Plan should also initiate a new round of public comment specifically on a federal regulatory sandbox for AI.

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<sup>16</sup> Andy Jung, *Shifting Sands in the Tech Sector*, TECHDIRT (Apr. 7, 2022, 3:31 PM), <https://www.techdirt.com/2022/04/07/shifting-sands-in-the-tech-sector/>.

<sup>17</sup> INST. FOR REFORMING GOV'T, REMOVING BARRIERS TO INNOVATION: HOW REGULATORY SANDBOXES CAN SOLVE KITCHEN TABLE ISSUES 8 (2024), [https://reforminggovernment.org/wp-content/uploads/2024/05/IRG\\_SandboxReport.pdf](https://reforminggovernment.org/wp-content/uploads/2024/05/IRG_SandboxReport.pdf).

<sup>18</sup> H.B. 1709, 89th Leg., (Tex. 2025). See also, Jen Sidorova, *Proposed Artificial Intelligence Legislation Would Drive Innovation out of Texas*, REASON (Mar. 3, 2025), <https://reason.org/commentary/artificial-intelligence-legislation-is-going-to-drive-innovation-out-of-texas/>.

(explaining how "Texas House Bill 1709's exemptions for small businesses and experimental AI sandboxes are well-intentioned but ultimately insufficient.").

<sup>19</sup> Unleashing AI Innovation in Financial Services Act, S.4951, 118th Cong. (2024). See also Matthew J. Rogers & Maxwell J. Black, *United States: Child's Play: Congress Proposes Allowing Sandboxes for AI Within the Financial Services Industry*, K & L GATES GLOB. INV. L. WATCH, <https://www.investmentlawwatch.com/2024/08/07/childs-play-congress-proposes-allowing-sandboxes-for-ai-within-the-financial-services-industry/> (last visited Mar. 14, 2025).

<sup>20</sup> Unleashing AI Innovation in Financial Services Act, H.R. 9309, 118th Cong. (2024).

<sup>21</sup> Regulation 2024/1689, art. 57, 2024 O.J. 88-89.

<sup>22</sup> *First Regulatory Sandbox on Artificial Intelligence Presented*, EUR. COMM'N. (June 27, 2022), <https://digital-strategy.ec.europa.eu/en/news/first-regulatory-sandbox-artificial-intelligence-presented>.

<sup>23</sup> Alex Engler, *The AI Regulatory Toolbox: How Governments can Discover Algorithmic Harms*, BROOKINGS INST. (Oct. 9, 2023), <https://www.brookings.edu/articles/the-ai-regulatory-toolbox-how-governments-can-discover-algorithmic-harms/>.

## **B. The AI Action Plan Should Call for Federal Preemption of State AI Laws**

Across the country, states are considering hundreds of potential bills related to AI, and states like California and Colorado have already passed state AI legislation.<sup>24</sup> While federalism sometimes benefits innovation, AI services are offered nationwide, so one state's regulation will inevitably demand compliance by all American companies. The result would be a patchwork of inconsistent legislation, with each state's laws layering on multiple sets of conflicting obligations.

America needs a national approach to AI policy "to sustain and enhance America's AI dominance, and to ensure that unnecessarily burdensome requirements do not hamper private sector AI innovation."<sup>25</sup> Europe and China, our principal rivals in the AI race, both have national approaches, offering their companies the clarity of a single model.

Nancy Pelosi (D-CA) explained that Congress is taking a more thorough and measured approach to AI regulation:

AI has been a central policy focus of the President and the Congress for the past few years...In the House of Representatives and the U.S. Senate, we early on brought in academics, entrepreneurs and leaders from the public, private and non-profit sectors to express AI's opportunities and challenges.

The review is coming down to if and what standards and guardrails should Congress legislate. In addition to focusing on protections, we wanted to pursue improving AI. This work continues under the Bipartisan Task Force on Artificial Intelligence under the leadership of co-chairs Congressman Ted Lieu and Congressman Jay Obernolte.<sup>26</sup>

Federal Trade Commission Chair Andrew Ferguson stated the risk of overregulating AI more bluntly: "Such regulation could strangle this nascent technology in its cradle, or move the development of the technology to foreign states hostile to our national interests."<sup>27</sup> Allowing

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<sup>24</sup> Devin McCormick, *State AI Policy in 2024: What Happened, What Didn't, and Where do we go From Here?*, LIBERTAS INST. (Jan. 7, 2025), <https://libertas.institute/tech-innovation/state-ai-policy-in-2024-what-happened-what-didnt-and-where-do-we-go-from-here/>.

<sup>25</sup> Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, *supra* note 5, at 9088.

<sup>26</sup> Press Release, Nancy Pelosi, Pelosi Statement in Opposition to California Senate Bill 1047 (Aug. 16, 2024), <https://pelosi.house.gov/news/press-releases/pelosi-statement-opposition-california-senate-bill-1047>.

<sup>27</sup> Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Regarding the FTC Staff Report on AI Partnerships & Investments 6(b) Study Matter P246201 (Jan. 17, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-ai-6b-statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-ai-6b-statement.pdf).

states to take charge on AI policy threatens to create a complicated patchwork of laws that will burden the private sector and harm national interests.<sup>28</sup>

The AI Action Plan should call on Congress to preempt state AI laws. The Plan should describe the various types of AI laws states have enacted or considered and create an AI law taxonomy.<sup>29</sup> From there, federal law makers can have an informed conversation about the contours of national AI policy and decide the types of laws the federal government should control rather than states.<sup>30</sup> The AI Action Plan should also initiate a new round of public comment specifically on federal preemption of state AI laws.

### III. The AI Action Plan Should Promote Open-Source AI

In July 2024, NTIA released a *Report on Dual-Use Foundation Models with Widely Available Model Weights*, finding that “innovation and research” are likely “the main benefits of openness.”<sup>31</sup> That same month, the Federal Trade Commission concluded that “open-weights models have the potential to drive innovation, reduce costs, increase consumer choice, and generally benefit the public – as has been seen with open-source software.”<sup>32</sup> The Cybersecurity and Infrastructure Security Agency joined in on the praise of open-source models: “we see significant value in open foundation models to help strengthen cybersecurity, increase competition, and promote innovation.”<sup>33</sup> In short: open-source AI benefits innovation, competition, *and* cybersecurity.

The AI Action Plan should promote open-source AI in several ways. First, the Plan should highlight research and strive to educate the public on the benefits of open-source AI—while dispelling myths about open technologies. To that end, the Plan should implement across the federal government a marginal risk analysis framework for evaluating open-source AI

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<sup>28</sup> See Dean W. Ball & Alan Z. Rozenshtein, *Congress Should Preempt State AI Safety Legislation*, LAWFARE (June 17, 2024, 2:00 PM), <https://www.lawfaremedia.org/article/congress-should-preempt-state-ai-safety-legislation> (discussing reasons Congress should preempt State AI Safety laws to protect American innovation).

<sup>29</sup> *Id.*

<sup>30</sup> CONG. RSCH. SERV., FEDERAL PREEMPTION: A LEGAL PRIMER 1-10 (2023), <https://www.congress.gov/crs-product/R45825>.

<sup>31</sup> NAT’L TELECOMM. & INFO. ADMIN., DUAL-USE FOUNDATION MODELS WITH WIDELY AVAILABLE MODEL WEIGHTS (2024), <https://www.ntia.gov/sites/default/files/publications/ntia-ai-open-model-report.pdf>.

<sup>32</sup> *On Open-Weights Foundation Models*, U.S. FED. TRADE COMM’N OFF. OF TECH. BLOG (July 10, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/07/open-weights-foundation-models>.

<sup>33</sup> Jack Cable & Aeva Black, *With Open Source Artificial Intelligence, Don’t Forget the Lessons of Open Source Software*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (July 29, 2004), <https://www.cisa.gov/news-events/news/open-source-artificial-intelligence-dont-forget-lessons-open-source-software>.



systems.<sup>34</sup> For example, when assessing the overall risk of open-source models, the U.S. AI Safety Institute should use a “marginal risk and benefit analysis framework” to weigh “the additional risks and benefits” of open models “compared to those that come from” closed models or “other technologies more generally.”<sup>35</sup> This approach recognizes that, because open-source software has unique risks and benefits, open-source developers must tailor their risk mitigation strategies accordingly:

Risks from open models and closed models should both be managed, though the particular mitigations required may vary. In some cases, managing the risk of open models may pose unique opportunities and challenges to reduce risk while maintaining as many of the benefits of openness as possible.<sup>36</sup>

Overall, the Cybersecurity and Infrastructure Security Agency has concluded: “While AI capabilities introduce new threats into the landscape, leading academics have proposed that the marginal risk from open as opposed to closed source models is low.”<sup>37</sup> Meanwhile, open-source AI boasts many benefits. The AI Action plan should recognize the upside of open-source technologies and promote open-sourcing models domestically.

#### **IV. The AI Action Plan Should Uphold Free Speech Under the First Amendment**

The AI Action Plan should protect the free speech rights of Americans and AI-focused firms. Given the vast potential of AI, people are reasonably concerned about the accuracy of AI outputs. This concern is a reason to promote competition and to encourage firms to adopt clear standards, but it does *not* justify infringing on firms’ First Amendment rights. The Plan should not attempt to define what is or is not ideological because such definitions are inherently political, content-based, and would prescribe certain acceptable, government-favored outcomes.

The Executive Order directs firms to develop AI systems that “are free from ideological bias or engineered social agendas.”<sup>38</sup> But like individual speech, a corporation’s speech is

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<sup>34</sup> See TechFreedom, *supra* note 2 (supporting the use of marginal risk and benefit analysis to open-source AI development).

<sup>35</sup> See NAT’L TELECOMM. & INFO. ADMIN., *supra* note 31, at 10.

<sup>36</sup> *Id.*

<sup>37</sup> Memorandum from Jen Easterly, CISA Director, to the Nat’l Telecomm. & Info. Admin. (June 18, 2024), [https://downloads.regulations.gov/NTIA-2023-0009-0335/attachment\\_1.pdf](https://downloads.regulations.gov/NTIA-2023-0009-0335/attachment_1.pdf). See, e.g., Bommasani et al., Considerations for Governing Open Foundation Models (2023), <https://hai-production.s3.amazonaws.com/files/2023-12/Governing-Open-Foundation-Models.pdf> (suggesting that policymakers focus on centering marginal risk).

<sup>38</sup> Exec. Order No. 14179, § 1, 90 Fed. Reg. 8741 (Jan. 23, 2025), <https://www.federalregister.gov/documents/2025/01/31/2025-02172/removing-barriers-to-american-leadership-in-artificial-intelligence>.

protected by the First Amendment,<sup>39</sup> and AI models are the speech of their creators. Companies have the First Amendment right to create AI systems that reflect their preferred ideological biases and social agendas. Companies, and the individuals that make them up, make specific choices about what data to use to train AI models and rigorously define the kinds of responses models should put out. “The choices companies ... make,” write constitutional scholars, “about what sources to train on and what results to modify using human feedback directly or indirectly influence the output of their AIs.”<sup>40</sup> Training, in other words, is an exercise of editorial judgment protected by the First Amendment—like any other act of selection of content.<sup>41</sup>

Firms make choices about how to train their models: whether to include books or papers, and how to prioritize responses, especially to topics of social concern. Training choices on politically charged topics constitute firms’ political *speech*. The government does not get to tell private companies what political views to have or promote, or to stop their political speech.<sup>42</sup> The AI Action Plan should preserve this free speech, not attempt to mandate so-called non-ideological speech: “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>43</sup>

Indeed, the government cannot define what is non-ideological, what is biased, or what an “engineered social agenda” is. It is not the business of the state to say what is true, nor what acceptable political beliefs are. “The First Amendment reflects,” the Supreme Court has said, “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”<sup>44</sup> The state cannot establish a set of acceptable, true, *non-ideological* beliefs because defining such speech entails privileging certain speech over

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<sup>39</sup> See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 365 (2010) (holding that the government “may not suppress political speech on the basis of the speaker’s corporate identity”); *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 797-98 (1978) (Burger, J., concurring) (reasoning that the First Amendment protects corporate speech).

<sup>40</sup> Eugene Volokh, Mark A. Lemley, & Peter Henderson, *Freedom of Speech and AI Output*, 3 J. FREE SPEECH L. 651, 652 (2023), <https://www.journaloffreespeechlaw.org/volokhlemleyhenderson.pdf>.

<sup>41</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707, 717 (2024) (“Traditional publishers and editors also select and shape other parties’ expression into their own curated speech products. And we have repeatedly held that laws curtailing their editorial choices must meet the First Amendment’s requirements.”).

<sup>42</sup> See *Citizens United*, 558 U.S. at 324 (“The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation.”).

<sup>43</sup> *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

<sup>44</sup> *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

others—and such content-based restrictions are presumably unconstitutional.<sup>45</sup> To respect the First Amendment, the Plan should avoid defining acceptable political beliefs.

### CONCLUSION

In order “to sustain and enhance America's AI dominance, and to ensure that unnecessarily burdensome requirements do not hamper private sector AI innovation,”<sup>46</sup> the AI Action Plan should: dispel the myth that AI is unregulated, lay out a light-touch approach to AI regulation grounded in existing laws, promote open-source AI, and uphold free speech under the First Amendment. Overall, public comment is a comprehensive and democratic method for developing a national AI strategy. TechFreedom celebrates the initiative and looks forward to helping the administration craft national AI policy that fosters innovation.

Respectfully submitted,

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<sup>45</sup> See *Mosley*, 406 U.S. at 95.

<sup>46</sup> Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, *supra* note 5.