Attorney Advertising

SAPRONOV & ASSOCIATES, P.C.
ATTORNEYS AT LAW

info@wstelecomlaw.com
www.wstelecomlaw.com

1300 I STREET, NW, SUITE 400
WASHINGTON, D.C. 20005
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR SUITE 200
ATLANTA, GEORGIA 30342
TEL. 770.399.9100

CLIENTS & FRIENDS ALERT[1]

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An Inchoate AI Preemption Conflict: Trump 2.0 and the State of Georgia

As it accelerates, state artificial intelligence (AI) regulation is resurrecting an old jurisdictional conflict: federal preemption of state control over U.S. technology policies. This is playing out in multi-state AI legislation, Congressional AI bills, and, most recently, the President's threat to preempt state laws inconsistent with the Administration's deregulatory AI agenda.

This alert examines a narrowly related issue: could threatened federal preemption invalidate recently passed legislation in Georgia (the author's home state) that criminalize certain AI-enabled misconduct? At least for now, the answer appears to be no.

I. Federal–State AI Policy Tensions

Consistent with its "delete, delete, delete" purge of outdated or unnecessary regulations, the Trump Administration has signaled a similar, "hands-off" approach to AI regulation.[2] This is increasingly at odds with multi-state AI initiatives by state legislatures and attorneys general seeking to regulate AI use in social media, technology, employment, and healthcare. The President has responded with threatened federal preemption.[3] In parallel, he has instructed federal agencies—including the

[1] While accurate to the best of our knowledge, this alert is for tutorial purposes only, not a legal opinion and is not to be treated as legal advice. Please contact us if you have any questions regarding this disclaimer.
[2] For an overview of these divergent federal state AI policy perspectives, see pershttps://commlawgroup.com/2025/icymi-issue-2-september-2025/.
[3] Exec. Order No. 14365, *Ensuring a National Policy Framework for Artificial Intelligence*, § 8, 90 Fed. Reg. 58499, 58504 (Dec. 16, 2025) available at https://www.govinfo.gov/content/pkg/FR-2025-12-16/pdf/2025-23092.pdf. "Executive AI Order").

Department of Justice, the Federal Communications Commission, and the Federal Trade Commission—to examine how to override state AI regulation**.**

II. Georgia's AI Legislation

On our home front, there were several AI legislative initiatives in the Georgia General Assembly last year, all consistent with trending state AI legislation nationwide. But only two were passed in 2025: HB 171 and SB 9, both amending Georgia's criminal code.[4] HB 171 criminalizes the creation or distribution of AI-generated obscene material involving minors. SB 9 establishes criminal penalties for the knowing dissemination of materially deceptive AI-generated political content intended to influence elections. Both measures amend Georgia's criminal code and narrowly address conduct long subject to state police power—child exploitation and election integrity.

III. Preemption Analysis

We have seen this movie before. In the years predating the 1996 telecommunications reform legislation, the Federal Communications Commission (FCC) grappled with conflicting state telecommunications regulation over customer premises equipment, telephone carrier depreciation, accounting of telephone utility plant, and, utility regulation of information (a/k/a "enhanced") services. The seminal decision, *Louisiana Public Service Comm'n v. FCC*, sharply cut off the FCC's preemption authority over state depreciation of jointly used plant for interstate and intrastate telecommunications, famously stating in dicta that the FCC as an agency "has no power to act, much less preempt a sovereign state " without express Congressional approval.[5]

Fast forward to the instant controversy, that authority remains persuasive. Under the Supremacy Clause, federal law may preempt state law only where Congress has expressly provided for preemption, where federal regulation occupies an entire field, or where state law conflicts with or poses an obstacle to federal objectives. Courts apply a strong presumption against preemption where states legislate in areas of traditional police power, including criminal law and election integrity.

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[4] *Georgia Senate Bill 9 (2025-2026 Session)* — amending OCGA Title 16 and Title 17. *Georgia House Bill 171 (2025-2026 Session)* — amending OCGA Title 16 (Crimes and Offenses) and Title 17 related to sentencing and punishment.

[5] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986) ("Louisiana PSC").

Importantly, mere executive orders (such as the one issued by President Trump) do not alone preempt state law without express authorization from Congress.[6] Nor may federal agencies preempt state laws without such authority.[7]

Finally, while the 119th Congress introduced numerous AI bills, only a few even mention preemption, and proposed AI legislation imposing a temporary five-year moratorium on state AI regulation expressly preserves state criminal law enforcement.[8] None appears sufficient to preempt existing state law.

IV. Why Preemption of Georgia AI Criminal Statutes Is Unlikely (For Now)

So, Georgia regulators rest easy. At least based on our preliminary (and by no means binding) analysis —and further assuming no future intervening federal AI legislation—HB 171 and SB 9 would arguably survive federal preemption challenges. Here is why.

1. No express preemption - None of the AI bills introduced in Congress expressly even mentions federal preemption. One that does, proposing a temporary moratorium on state AI regulation, expressly preserves state criminal enforcement.

2. No field preemption - Congress has not enacted a comprehensive federal AI regulatory scheme sufficient to occupy the field. HB 171 and SB 9 apply narrowly to criminal law, an area of state authority traditionally reserved to the states.

3. No conflict preemption - Georgia's AI bills do not conflict with federal objectives or stand as an obstacle to federal policy.[9] To the contrary, they are consistent with longstanding federal interests in preventing child exploitation and protecting election integrity.[10]

4. The *AI Executive Order* alone does *not* preempt state law.

5. *Louisiana PSC* is distinguishable from today's AI conflict. AI is not regulated by the FCC (at least for now). Nor is AI a "jurisdictionally mixed" telecommunications service or facility falling under the Communications Act's federal-state jurisdictional dichotomy.[11] So the

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[6] *See Medellín v. Texas*, 552 U.S. 491 (2008); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585–89. (1952).

[7] *Louisiana PSC,* 476 U.S at 374 (("a federal agency may preempt state law only when and if it is acting within the scope of its congressionally delegated authority").

[8] H.R. 5388 § 6(b) (119th Cong. 2025) (currently pending in committee).

[9] *See Hines v, Davidowitz*, 312 U.S. 52, 67 (1941)

[10] *Arizona v, United States*, 567 U.S. 387, 399 (2012); *Chamber of Commerce v. Whiting*, 563 U.S. 582, 607 (2011)

[11] 47 U.S.C. 152(b(1) (explicitly preserving state authority to regulate local, intrastate telephone and telecommunications services and separating it from federal interstate authority).

"thwart or impede" test for federal preemption authority following post-Louisiana's case law is arguably inapplicable to state AI regulation.[12]

V. Bottom Line.

This analysis is, of course, hypothetical. The Georgia AI bills have not yet been signed into law, and Federal preemption would require a case or controversy, none so far on the horizon. Nor has the Trump administration, to our knowledge, suggested any such preemption of state criminal laws.

But if the Georgia AI bills (as expected) become law, future federal-state conflicts may well emerge. The State of Georgia is no stranger to such disputes, notably including the landmark *Memorycall* preemption battle between the FCC and the Georgia Public Service Commission.[13] This case and other early internet-era federalism battles were comprehensively described by our late friend and colleague, Michael J. Zpevak, whose work remains instructive today. We cite it here in his memory. [14]

[12] See *infra* Note 13.

[13] *In the Matter of the Commission's Investigation into Southern Bell Telephone Company's Provision of MemoryCall Service*, 7 FCC Rcd. 1619 (1992). The FCC granted BellSouth's petition for emergency declaratory relief and held that the Georgia PSC's freeze on the expansion of its MemoryCall voice messaging service (Georgia Docket No. 4000-U) was preempted on federal jurisdiction grounds. Our Firm served as counsel for the competitor that had sought this freeze, initially successfully but was subsequently preempted by the FCC.

[14] "Michael J. Zpevak," FCC Preemption After Louisiana PSC", TELECOMMUNICATIONS LAW, REGULATION, AND POLICY (Sapronov & Read, ed. 1988) (available at https://www.amazon.com/Telecommunications-Regulation-Contemporary-Communication-Information/dp/156750325X