

# DOJ Joins xAI in Lawsuit Challenging Colorado AI Act

## Client Alerts

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For much of the last year, the Trump Administration has signaled its opposition to state AI regulation that, in its view, could stifle innovation and impede the country's ability to win the AI race. In its most recent salvo, the US Department of Justice (DOJ) on Friday, April 24, intervened in a lawsuit brought by xAI challenging Colorado's SB24-205 (the Colorado AI Act). The DOJ alleges that the Colorado AI Act violates the Equal Protection Clause of the US Constitution, both by compelling AI developers to discriminate based on protected characteristics and by allowing AI developers to discriminate in the interest of promoting diversity. The DOJ's intervention could indicate a new effort to preempt state AI laws through litigation (as the Administration previewed last year) and could encourage challenges to other state AI laws by private actors.

## The Colorado AI Act

Colorado's landmark Senate Bill 24-205, otherwise known as the Colorado AI Act, imposes requirements on developers and deployers of "high-risk" AI systems—i.e., systems that make or are a substantial factor in making "consequential decisions" in areas such as employment, housing, financial lending, and education. The Act requires developers and deployers of these systems to exercise reasonable care to protect consumers from risks of algorithmic discrimination, which comprises discriminatory impact or treatment based on protected characteristics. Developers are required to make disclosures about their systems, including how the system was trained and what risks of algorithmic discrimination might arise from the intended uses of the system. Deployers are required to implement a risk management policy and program, conduct impact assessments, and notify consumers when the system is involved in making a consequential decision that affects them.

Since its enactment in May 2024, the Act has faced criticism from across the political spectrum. Colorado Governor Jared Polis and Attorney General Phil Weiser have both expressed reservations about the Act, noting that a "state-by-state patchwork of regulation poses significant challenges to the cultivation of a strong technology sector." Despite efforts to amend the Act, Colorado lawmakers have so far been unable to reach consensus—aside from agreeing to push back the Act's effective date. Absent further intervention by the Colorado General Assembly, the Act is slated to take effect on June 30, 2026.

## **xAI's Lawsuit**

On April 9, Elon Musk's xAI filed suit in the US District Court for the District of Colorado seeking to enjoin the Colorado AI Act on several different theories. The company alleges that the Act (1) violates the First Amendment by compelling speech, discriminating based on content and viewpoint, and burdening users' speech rights; (2) violates the Commerce Clause by impermissibly regulating out-of-state actors and burdening interstate commerce; (3) is unconstitutionally vague as to key provisions; and (4) violates the Equal Protection Clause.

The complaint marks xAI's most recent effort to challenge state AI regulations in court. In December, xAI sued to enjoin AB 2013, California's AI training data transparency law. That suit is currently pending before the Ninth Circuit Court of Appeals, after the district court denied xAI's motion for a preliminary injunction.

## **DOJ's Intervention**

On Friday, April 24, the DOJ moved to intervene in xAI's lawsuit and join the challenge to the Colorado AI Act. The government's complaint in intervention argues that the Act violates the Equal Protection Clause in two ways. First, the government argues the Act "compels discrimination" by imposing disparate-impact liability, thus "distort[ing] AI model outputs in a manner that effectively requires developers and deployers to discriminate based on race, sex, religion, and other protected characteristics." Second, the government also alleges the Act "authorizes discrimination" because of a provision in the Act exempting AI systems that have the sole purpose of "expanding an applicant, customer, or participant pool to increase diversity or redress historical discrimination." Section 6-1-1701(1)(b). The government argues that this provision licenses AI developers and deployers to intentionally discriminate based on protected characteristics. The Colorado AI Act has been in the federal government's crosshairs for months. In a December executive order, President Trump criticized "cumbersome regulation" that could "embed ideological bias within models" and called out the Colorado AI Act, accusing the Act of "forc[ing] AI models to produce false results in order to avoid a 'differential treatment or impact' on protected groups." The DOJ generally framed its intervention as part of the Administration's efforts to challenge "woke ideology"—Assistant Attorney General Harmeet K. Dhillon criticized the Act for attempting to "coerce our nation's technological innovators into producing harmful products that advance a radical, far left worldview at odds with the Constitution," and Assistant Attorney General Brett A. Shumate echoed President Trump's executive order by claiming that the Act threatened national and economic security by promoting "ideological bias."

## **Looking Ahead**

The DOJ's intervention creates further uncertainty for the future of the Colorado AI Act. The lawsuit may spur renewed efforts to amend the Act or push back its effective date once again. Attorney General Weiser, already skeptical of the Act, may also opt to forego enforcement of the Act and pursue rulemaking to address industry concerns and mollify the federal government. Indeed,

following the DOJ’s intervention, xAI agreed to submit a motion for preliminary injunction after Attorney General Weiser completed rulemaking proceedings, and agreed not to enforce the Act against xAI pending the court’s resolution of that motion. Thus, AI developers and deployers potentially covered by the Act will need to continue monitoring this litigation to determine whether and how they will need to comply in the coming months.

More broadly, the DOJ’s intervention may signal the start of new efforts by the federal government to preempt state AI laws through litigation—especially given that legislative preemption efforts have so far been unsuccessful. In his December executive order, President Trump ordered the DOJ to establish an AI Litigation Task Force to challenge state AI laws for violating the Commerce Clause, on preemption grounds, or through other legal theories. Although the DOJ’s press statement accompanying its April 24 intervention made no mention of the Task Force (and its complaint makes no mention of the potential interstate impacts of the Act), the intervention could well be a product of President Trump’s directive. Other state AI laws may also be subject to legal challenges by the DOJ (through intervention or directly), although it is uncertain precisely what other laws may be next on the list: despite being directed to publish “an evaluation of existing State AI laws that identifies onerous laws” by March 11, 2026, the Commerce Department has yet to publicly release such a list. Finally, the DOJ’s decision to put its weight behind xAI may also spur additional lawsuits by other private actors that, like xAI, now know the federal government is watching.

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