Kilpatrick

Insights: Alerts

AI Post-Election – Initial Government Insights

November 18, 2024

Written by **Stephen M. Anstey, John C. F. Loving, Joseph Petersen, Keval V. Patel**

As of the end of last week, the Republican party had secured control of the White House and both Chambers of Congress, paving the way for significant government change. As the Trump administration sets out its priorities, much of the focus has been on trade, social policy, and government appointments. That said, and in some ways unexpectedly, artificial intelligence ("AI") is already emerging as a key component of the Trump administration, and broader Republican, agenda.

Take for example President-elect Trump's announcement concerning North Dakota Governor Doug Burgum. On November 15, President-elect Trump issued a statement announcing that Governor Burgum would be joining the administration "as both Secretary of the Interior and, as Chairman of the newly formed, and very important, National Energy Council, which will consist of all Departments and Agencies involved in the permitting, production, generation, distribution, regulation, transportation, of ALL forms of American Energy." The announcement went on to discuss international diplomacy, inflation, and other matters. Notably the announcement also addressed AI, stating,

> We will also undo the damage done by the Democrats to our Nation's Electrical Grid, by dramatically increasing baseload power. This will reduce the cost of electrical bills that continue to skyrocket for citizens and small businesses under Biden-Harris and ensure that America has the power to serve all of our needs without the devastation of blackouts and brownouts, **and to WIN the battle for A.I. superiority, which is key to National Security and our Nation's Prosperity.**

AI has also been a focus of the emerging Republican Congressional agenda. With the election of John Thune (R-SD) to Senate Republican leader, Senator Ted Cruz (R-TX) will now serve as Chair on the influential U.S. Senate Commerce, Science, and Transportation Committee. Senator Cruz has noted that he intends to prioritize AI development as he leads the Committee. Senator Cruz has continually focused on U.S. AI policy throughout the Biden administration, publicly criticizing its handling of AI and asserting that it has hindered American AI development, speech, and global competitiveness. Senator Cruz has also introduced and supported AI specific legislation, including S.4569 the TAKE IT DOWN Act, which would restrict deepfake pornography.

AI may also play a key role in the Trump administration's efficiency efforts. On November 12, 2024, President-elect Trump announced that Elon Musk and Vivek Ramsey would lead the "Department of Government Efficiency ('DOGE')." The asserted purpose of the DOGE is to "dismantle government bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure federal agencies;" it will also, "provide advice and guidance from outside of Government, and will partner with the White House and Office of Management &

Budget [("OMB")] to drive large scale structural reform, and create an entrepreneurial approach to Government never seen before." The administration has a stated goal of cutting trillions of dollars from the federal government's budget. However, critics note that such cuts could significantly impact government services. One proposed strategy for securing budget cuts while minimizing the impact on government capabilities is to expand the use of AI in government agencies. The model of greater utilization of AI in agencies, including emerging technologies like generative AI, was addressed by the Biden administration and discussed in recent government guidance including the OMB Memorandum on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence and Memorandum on Advancing the Responsible Acquisition of Artificial Intelligence in Government.

During the election, President-elect Trump and the Republican party clearly voiced the intent to repeal President Biden's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence ("Executive Order 14110"). Specifically, it was stated that, "[w]e will repeal Joe Biden's dangerous Executive Order that hinders AI Innovation and imposes Radical Leftwing ideas on the development of this technology. In its place, Republicans support AI Development rooted in Free Speech and Human Flourishing."

In response to, and as required by Executive Order 14110, numerous federal agencies have developed guidance, crafted reports, and issued rules regarding AI development and use. These efforts include the National Institute of Standards and Technology ("NIST") publishing final frameworks on managing generative AI risks and securely developing generative AI systems and dual-use foundation models, the Department of Energy ("DOE") utilizing testbeds to evaluate AI model safety and security, the Department of Defense ("DoD") and Department of Homeland Security ("DHS") reporting findings from their AI pilots to address vulnerabilities in government networks used for national security purposes and for civilian government, and the U.S. Patent and Trademark Office ("USPTO") publishing guidance on evaluating the eligibility of patent claims involving inventions related to AI technology. With the election of a new administration and Congress as well as the revocation of Executive Order 14110, numerous questions arise regarding the effects on existing AI-related agency actions and the creation of new AI-focused federal guidance.

Changes to the federal government's approach to AI are also likely to impact state AI legislative development. States, including Utah, Colorado, Illinois, and Tennessee have already enacted targeted legislation concerning AI. More recently, California passed 18 AI-related laws, including SB-942 the California AI Transparency Act. As the new administration begins to implement regulation and legislation concerning AI, it is expected that states will take a more active approach, with the potential to pass comprehensive AI legislation like California's ill-fated SB-1047 the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act, which was ultimately vetoed by Governor Newsom.

In addition to the outright revocation of Biden administration Executive Orders, the Trump administration can leverage various tools to impact federal AI regulation – and agency regulation more broadly. These include the Congressional Review Act ("CRA"), which allows the incoming Congress, through a simple majority, to review and revoke final agency rules published since, roughly, August of 2024. The administration can also implement new agency rulemakings, though they must meet Administrative Procedure Act ("APA") requirements. Finally, the administration can influence agency rules through judicial action, which has increased importance now that courts enjoy greater discretion over agency decisions post-*Chevron* deference.

The Trump administration's early focus on AI as a key component of its agenda is of critical importance to the development of the technology as well as those entities that utilize AI. The administration's signaled commitment to leveraging AI for national security, economic efficiency, and competitive advantage, along with the anticipated repeal of Executive Order 14110 and subsequent regulatory changes, signals a new direction in American AI development which purports to prioritize innovation and global competitiveness. As federal agencies and states adjust to these policy shifts, stakeholders across various sectors must remain vigilant and adaptive to navigate the evolving landscape of AI regulation and implementation. The emphasis on AI within the Trump administration not only highlights its potential impact on government operations but also sets the stage for broader federal and state legislative and regulatory developments that will shape the future of AI in the United States.

Kilpatrick Connect – AI Legal Consulting
There is no development as consequential or with more legally significant implications for your business as the recent advancements in AI. Kilpatrick Connect is a legally focused AI consulting and advisory offering built upon Kilpatrick's AI, legal, and industry expertise and delivered through a confidential attorney-client relationship. We understand the transformative capabilities of AI and its profound impact on your business, and Kilpatrick Connect provides a safe, secure, and economical hub to address AI-related questions, issue resolution, and strategy development.

For more information on Kilpatrick Connect, please visit our website, Kilpatrick Connect – AI Legal Consulting.

Kilpatrick – Government & Regulatory
Kilpatrick's Government and Regulatory practice provides comprehensive lobbying services and legal guidance on policy, legislative, agency, compliance, and rulemaking matters. It addresses broad and industry-specific issues, including artificial intelligence, energy, Tribal, manufacturing, trade, finance, distributed ledger technology (including blockchain), and digital assets (cryptocurrency, stablecoin, tokenization, and central bank digital currency (“CBDC”)).

For more information, please visit our website: Kilpatrick – Government & Regulatory.

Related People

Stephen M. Anstey

t 202.824.1427

sanstey@ktslaw.com

John C. F. Loving

t 202.508.5826

jloving@ktslaw.com

Joseph Petersen

t 650.614.6427

jpetersen@ktslaw.com

Keval V. Patel

t 202.824.1426

kpatel@ktslaw.com