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COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

FEDERAL TRADE COMMISSION

Re: Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems

Matter No. P264200

July 31, 2026

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## I. Introduction

The Electronic Privacy Information Center (EPIC) submits these comments[1] in response to the Federal Trade Commission (FTC)'s "Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems."[2]

EPIC is a public interest research center in Washington, D.C., established in 1994 to focus public attention on emerging civil liberties issues and to secure the fundamental right to privacy in the digital age for all people through advocacy, research, and litigation.[3] EPIC advocates for transparent, equitable, and commonsense AI policies and regulations to protect individuals against AI systems being used in harmful, opaque, and unaccountable ways.[4]

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[1] EPIC Clerks

[2] Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems; Matter No. P264200 (Jul. 7, 2026), https://www.federalregister.gov/documents/2026/07/07/2026-13628/policy-statement-concerning-the-suppression-of-accuracy-in-artificial-intelligence-systems [hereinafter "policy statement"].

[3] EPIC, *About Us* (2025), https://epic.org/about/.

[4] *AI & Human Rights,* EPIC (2026), https://epic.org/issues/ai/; *AI Policy*, EPIC (2026), https://epic.org/issues/ai/ai-policy/; Alan Butler, *The Preemption Fight Goes Far Beyond AI. States Must Persist.*, Tech Policy Press (Dec. 15, 2025), https://www.techpolicy.press/the-preemption-fight-goes-far-beyond-ai-states-must-persist/; *White House AI Framework Protects AI Companies, Not People*, EPIC (Mar. 20, 2026), https://epic.org/white-house-ai-framework-protects-ai-companies-not-people/; Kara Williams & Ben Winters, *Debunking Myths About AI Laws and the Proposed Moratorium on State AI Regulation*, Tech Policy Press (May 28, 2025), https://www.techpolicy.press/debunking-myths-about-ai-laws-and-the-proposed-moratorium-on-state-ai-regulation/.

The FTC's policy statement makes the false suggestion that companies may violate Section 5 of the FTC Act's prohibition on deceptive acts or practices by complying with state AI laws. The FTC's suggestion is untrue. Complying with state AI laws passed to protect consumers from AI harms is not deceptive, and, in fact, companies' failure to comply with these laws is more likely to meet Section 5's standard for deceptive acts and practices. By making this suggestion, the FTC discourages companies from following state AI laws by threatening to bring a Section 5 enforcement action against companies that dare to comply with the law. This policy statement is an inappropriate and impermissible attempt by the FTC to circumvent the legislative process. If the federal government wishes to preempt state laws regulating AI, it must do so through the legislative process rather than through an administrative policy statement. We urge the FTC to rescind this policy statement.

## II. In the Absence of Federal AI Legislation, State Legislators Have Enacted Laws to Protect Consumers From AI-powered Harm.

Unchecked AI development—particularly generative AI—poses grave risks to civil liberties including:

- The propagation of mis- and disinformation;
- Fraud;
- Economic loss;
- Employment discrimination;
- Individual harms like harassment, impersonation, extortion, and data degradation;
- Intellectual property infringement; and
- National security threats.[5]

[5] Grant Fergusson et al., *Generating Harms: Generative AI's Impact & Paths Forward (I and II)*, EPIC (May 2024), https://epic.org/generating-harms/.

Regulation can mitigate these risks while establishing clear rules that level the playing field for innovators, small firms, and Big Tech companies alike. Big Tech companies like Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI all pledged to voluntarily self-regulate amid a wave of public concern about AI harms.[6] However, each of these companies failed to live up to their own commitments,[7] necessitating that state legislators step in to protect their constituents from AI-powered harm. As AI technology continues to proliferate, so too do the risks it imposes on consumers, making it even more important to establish guardrails around this industry.[8]

Today, more than half of all states have enacted some kind of AI legislation,[9] yet these laws are hardly "anti-innovation," nor do they require companies to "embed ideological bias within [their AI] models" as the Commission stated within the policy statement. Instead, states across the board have made it a priority to enact legislation that protects their constituents from AI-fueled harm absent federal regulation.[10]

In 2025, over 1200 bills related to AI technology were introduced. So far in 2026, around 1400 have already been introduced.[11] The policy statement insinuated that states are rushing to pass overburdensome AI laws pushing a certain ideology. In actuality, more than 80% of the AI bills introduced ultimately returned to the drawing board, and most of the bills only address limited, sectoral uses of AI. The bills under consideration by state legislators cover a variety of AI-related

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[6] Christopher Escobedo Hart, *Seven Major U.S. Tech Organizations Voluntarily Commit to A.I. Safeguards*, Foley Hoag (July 28, 2023), https://foleyhoag.com/news-and-insights/blogs/security-privacy-and-the-law/2023/july/seven-major-u-s-tech-organizations-voluntarily-commit-to-a-i-safeguards/.
[7] Melissa Heikkilä, *AI Companies Promised the White House to Self-Regulate One Year Ago. What's Changed?*, MIT Tech. Review, (July 22, 2024), https://www.technologyreview.com/2024/07/22/1095193/ai-companies-promised-the-white-house-to-self-regulate-one-year-ago-whats-changed/.
[8] E.g., Kate Conger, *OpenAI Says its A.I. Models Went Rogue and Attacked a Digital Library*, N.Y. Times (July 22, 2026), https://www.nytimes.com/2026/07/21/technology/openai-attack-hugging-face.html.
[9] *US State-by-State AI Legislation Snapshot*, BCLP Law (2026), https://www.bclplaw.com/en-US/events-insights-news/us-state-by-state-artificial-intelligence-legislation-snapshot.html.
[10] Sophia Fox-Sowell, *States are Racing to Legislate AI as the Tech Outpaces Federal Action, Report Shows*, StateScoop (Nov. 19, 2025), https://statescoop.com/states-legislate-ai-csg-report-2025/.EPIC, *AI Policy*, https://epic.org/issues/ai/ai-policy/.
[11] *Artificial Intelligence Legislation Database*, Nat'l Conf. of State Legislatures (July 1, 2026), https://www.ncsl.org/financial-services/artificial-intelligence-legislation-database.

activities and would establish reasonable oversight and protections for consumers in the AI sector, such as:

- Establishing legislative task forces on AI;[12]
- Criminalizing digital impersonation with computer generated deepfakes;[13]
- Imposing additional penalties for the use of deepfakes to generate and distribute material of a sexual nature;[14]
- Appropriating funding for government use of AI;
- Establishing a process to investigate and act against fraud in real estate conveyances through the use of deepfakes;[15]
- Supporting digital literacy and computer science education in public schools,[16] including educating students about digital violence;[17]
- Addressing the risks of harm associated with chatbots, especially for children;[18] and
- Recognizing regions like "CyberBay" within the Tampa Bay area as a cybersecurity and AI innovation region.[19]

Other states have considered or enacted more comprehensive AI bills such as Connecticut, Colorado, California, New York, Utah, and Washington.[20] These laws generally build upon the states' existing consumer protection and civil rights laws to clarify when AI systems pose a high-risk

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[12] AI Legislative Task Force, HCR 3, 34th Legis. (Alaska 2025), https://www.akleg.gov/basis/Bill/Detail/34?Root=HCR%20%203.
[13] S.B. 1295, 57th Legis., 1st Reg. Sess. (Ariz. 2025), https://legiscan.com/AZ/bill/SB1295/2025.
[14] H.B. 1529, 95th Gen. Assembly (Ark. 2025), https://legiscan.com/AR/bill/HB1529/2025.
[15] Alabama Property Protection Act, S.B. 292, 2026 Reg. Sess. (Ala. 2026), https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2026RS/SB292-int.pdf.
[16] H.B. 329, 2026 Reg. Sess. (Ala. 2026), https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2026RS/HB329-int.pdf.
[17] A.B. 1792, 2025-2026 Reg. Sess. (Cal. 2025), https://legiscan.com/CA/bill/AB1792/2025.
[18] S.B. 1546, 2026 Reg. Sess. (Or. 2026), https://olis.oregonlegislature.gov/liz/2026R1/Measures/Overview/SB1546.
[19] CyberBay, S.R. 1816, 2026 Legis. Sess. (Fla. 2026), https://www.flsenate.gov/Session/Bill/2026/1816.
[20] David Botero & Cobun Zweifel-Keegan, *US State AI Legislation Tracker*, IAPP (April 28, 2026), https://iapp.org/resources/article/us-state-ai-governance-legislation-tracker.

to consumers and which practices are unlawfully discriminatory. Some laws such as New York's AI Act, currently awaiting the governor's signature, impose specific obligations on deployers and developers of AI tools which can actually make development less risky, as compliance becomes less uncertain.[21] Most enacted laws such as those in Utah, New York, Washington, Colorado, and California, require disclosures to consumers about how AI tools will be used in a decision, or disclosures where AI-generated content is being shown.[22] California's S.B. 53, for example, establishes similar requirements for transparency and accountability—only for frontier AI model developers, however—and specifically creates a consortium called CalCompute to promote ethical AI development "by fostering research and innovation."[23]

In the policy statement, the FTC regurgitates Big Tech's claims that state-level AI regulation hampers innovation and is overburdensome. On the contrary, states have been and continue to be at the forefront of protecting privacy and online safety in relation to AI, especially because the federal government has been unable to do so nationwide.[24] California—a state with one of the largest number of AI laws on the books—continues to be the home of most of the United States' technology and AI companies.[25] Industry rhetoric fails to acknowledge that most proposed AI bills are narrow in either scope or applicability, generally just reinforcing the state's existing ability to protect consumers from harmful or discriminatory practices, even when they are algorithmically generated.

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[21] *See, e.g.*, New York AI Act, S1169A, 2025-2026 Legis. Sess. (N.Y. 2026) (passed by Senate on June 3, 2026), https://www.nysenate.gov/legislation/bills/2025/S1169/amendment/A.

[22] *See* S.B. 149, 2024 Gen. Sess. (Utah 2024), https://le.utah.gov/%7E2024/bills/static/SB0149.html; A6453B, 2025-2026 Legis. Sess. (N.Y. 2025); H.B. 1170, 2025 Reg. Sess. (Wash. 2026), https://app.leg.wa.gov/billsummary?BillNumber=1170&Year=2025&Initiative=false; S.B. 24-205, 2024 Reg. Sess. (Colo. 2024), https://leg.colorado.gov/bills/sb24-205;A.B. 2013 (Cal. 2024), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2013.

[23] *Governor Newsom Signs SB 53, Advancing California's World-Leading Artificial Intelligence Industry*, Gov. Gavin Newsom (Sept. 29, 2025), https://www.gov.ca.gov/2025/09/29/governor-newsom-signs-sb-53-advancing-californias-world-leading-artificial-intelligence-industry/.

[24] Alan Butler, *The Preemption Fight Goes Far Beyond AI. States Must Persist*, Tech Policy Press (Dec. 15, 2025), https://www.techpolicy.press/the-preemption-fight-goes-far-beyond-ai-states-must-persist/.

[25] *See* Reply Comments of EPIC to Federal Communications Commission in the Matter of Build America: Eliminating Barriers to Wireless Deployments (Jan. 15, 2026), https://www.fcc.gov/ecfs/document/10116881611170/1.

## III. The Federal Trade Commission Cannot Preempt State AI Legislation with a Policy Statement.

Federalism is one of the central tenets of the United States' legal system, expressly allowing states to be the laboratories of democracy. States have taken different approaches to regulating AI and have learned from each other in crafting their respective bills. Federal lawmakers can similarly learn from states' experiences in drafting legislation to cover the AI industry nationwide.[26]

Preempting *all* state AI regulation creates a myriad of risks and leaves millions of Americans subject to the very risks that their states sought to protect them from. Congress has not been able to pass a moratorium or ban on state AI regulation, and each of their efforts to do so has been wildly unpopular. In 2025, when Senator Ted Cruz first introduced the idea of a ten-year AI Moratorium, the idea was so widely opposed across the aisle that Republican Governors,[27] State Attorneys General,[28] State Legislators,[29] and others spoke out in opposition. Prohibiting states from regulating AI prematurely halts the ongoing, iterative process of policy innovation, instead creating a vacuum of AI regulation while leaving novel harms unchecked and existing protections unraveled.

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[26] Kara Williams & Ben Winters, *Debunking Myths About AI Laws and the Proposed Moratorium on State AI Regulation*, Tech Policy Press (May 28, 2025), https://www.techpolicy.press/debunking-myths-about-ai-laws-and-the-proposed-moratorium-on-state-ai-regulation/.

[27] Letter from Seventeen Republican Governors to Hon. John Thune and Hon. Mike Johnson (June 27, 2025), https://www.rga.org/wp-content/uploads/2025/06/FINAL-Joint-Governors-Letter-on-OBBB-AI-Protections-06.27.25.pdf; Andrew Atterbury, *'We Have a Right to Do This': DeSantis Wants Florida to Move Ahead with AI Policies*, Politico (Dec. 15, 2025), https://www.politico.com/news/2025/12/15/we-have-a-right-to-do-this-desantis-wants-florida-to-move-ahead-with-ai-policies-00690680.

[28] Reply Comments of Multiple State Attorneys General, WC 25-253 (Dec. 17, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/1217194355542; National Association of Attorneys General (NAAG) Letter from 36 State Attorneys General to Hon. Mike Johnson, Hon. John Thune, Hon. Hakeem Jeffries,Hon. Chuck Schumer (Nov. 25, 2025), https://portal.ct.gov/-/media/ag/press_releases/2025/letter-to-congress-ai-moratoriumfinal-corrected.pdf.

[29] Letter from Coalition of 300 State Policymakers to Members of the U.S. House of Representatives and the United States Senate (Nov. 24, 2025), https://ari.us/wp-content/uploads/2025/11/NDAA-State-Policymaker-Coalition-Letter-11-23-25-Oppose-AI-Preemption.pdf; Press Release, Joint Statement by NCSL Officers (Nov. 20, 2025), https://www.ncsl.org/press-room/details/joint-statement-by-ncsl-officers; Letter from NCSL Leadership to Majority Leader Thune, Speaker Johnson, Minority Leader Schumer and Minority Leader Jeffries (Oct. 22, 2025), https://www.ncsl.org/resources/details/ncsl-reaffirms-opposition-to-ai-preemption.

In light of Congress' inability to stop states from passing laws that establish guardrails for the AI industry, the FTC has issued this policy statement in an attempt to discourage AI companies from following state laws. While the federal government has been unable to stop states from enacting protections against AI-powered harm through the appropriate legislative process, it now attempts to do so with an impermissible administrative policy statement. The FTC does not have the authority to preempt state law by taking on a senseless, politically charged interpretation of its authority under Section 5 of the FTC Act to regulate unfair and deceptive practices.

This policy statement is an inappropriate circumvention of the legislative process. The Constitution places all lawmaking power in the legislative branch, and the FTC does not have the authority to directly preempt state law. As of now, Congress has not passed any federal law preempting state AI legislation. In fact, Congress's earlier attempts at AI moratoriums have failed.[30] Meanwhile, there is significant activity at the state and local levels in the AI safety space. This suggests there is real political will by state and local lawmakers to place rules on AI, and it is up to those legislators to decide how those rules are shaped. As EPIC has previously stated, the White House cannot dictate legislative action.[31] It cannot do so through an executive order. It cannot do so through administrative actions.[32]

## IV. AI Companies' Compliance with State AI Legislation Would Not Constitute a Violation of Section 5 of the FTC Act.

Companies are required to comply with state AI laws, and their compliance cannot constitute a Section 5 FTC Act violation. In fact, the very practices that these laws aim to regulate likely

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[30] Colin Wood, *Senate kills off proposed moratorium on state AI law enforcement*, StateScoop (July 1, 2025), https://statescoop.com/state-ai-moratorium-dies-senate/ ; see also Ashley Belanger, *Republicans drop Trump-ordered block on state AI laws from defense bill*, ArsTechnica (Dec. 3, 2025), https://arstechnica.com/tech-policy/2025/12/republicans-once-again-thwart-trumps-push-to-block-state-ai-laws/

[31] Alan Butler, *The Preemption Fight Goes Far Beyond AI. States Must Persist.*, Tech Policy Press, (Dec. 15, 2025) https://www.techpolicy.press/the-preemption-fight-goes-far-beyond-ai-states-must-persist/

[32] *See* Reply Comments of EPIC, Surveillance Technology Oversight Project (S.T.O.P.), & Free Press, *In re* Build America: Eliminating Barriers to Wireline Deployments, FCC WC Docket No. 25-253 (Dec. 18, 2025), https://www.fcc.gov/ecfs/document/121987076930/1 regarding FCC's attempt to preempt state level AI policy.

constitute violations of the FTC Act. First, the policy statement provides that when companies comply with state laws, this compliance is a deceptive act, but the Commission fails to demonstrate how this compliance meets the Commission's standard for a deceptive practice. Moreover, many of the state laws that the Commission seeks to prohibit regulate algorithmic discrimination or biased AI. These discriminatory practices themselves are likely unfair practices under the Commission's unfairness test.

A deceptive trade practice includes a "representation, omission or practice that is likely to mislead the consumer."[33] Under the FTC's 1983 policy statement on deception, the practice must be evaluated from the perspective of a reasonable consumer, and it must be material.[34] A deceptive practice occurs when a business makes representation to consumers but "lacks a 'reasonable basis' to support the claims made."[35]

An unfair practice is one that is "likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."[36] A substantial injury can be "a small harm to a large number of people" or by raising a "significant risk of concrete harm."[37] A substantial injury can also result when consumers are "injured by a practice for which they did not bargain."[38] The "not reasonably avoidable" prong examines the relative bargaining power of the consumer and the seller and the

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[33] FTC, *Policy Statement on Deception* (1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.
[34] *Id.*
[35] *Daniel Chapter One v. FTC*, 405 F. App'x 505, 506 (D.C. Cir. 2010) (quoting *Thompson Med. Co., Inc., v. FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986)).
[36] 15 U.S.C. § 45(n).
[37] A*m. Fin. Servs. Ass'n. V. FTC*, 767 F.2d 957, 972 (D.C. Cir. 1985).
[38] *FTC v. Windward Mktg. Inc.*, 1997 WL 33642380, at *11 (N.D. Ga. Sept. 30, 1997) (citing *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1364–65 (11th Cir. 1988)). The FTC brings these types of cases "not to second-guess the wisdom of particular consumer decisions, but rather to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision making." Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U.L. Rev. Online 793, 848 (2021),

consumer's freedom of choice.[39] Finally, a balancing test is employed to inquire as to whether a practice is "injurious in its net effects."[40]

While this authority provides the Commission with strong authority to protect consumers, it does not allow the Commission to singlehandedly upend decades of civil rights law and state regulation of emerging technologies.

*a. A reasonable consumer expects companies to follow the law.*

As provided above, the Commission determines that a practice is deceptive when it is likely to mislead a reasonable consumer under the circumstances.[41] This determination examines whether a consumer's interpretation or reaction is reasonable.[42] A consumer, inherently, expects that the companies they interact with are complying with the law. This includes federal, state, and local laws. In certain states, this includes state laws that regulate the development and testing of AI to reduce bias and discriminatory impacts. It would be highly unreasonable for a consumer to expect that a company is not following state laws, especially those related to civil rights and consumer rights that have been in place for decades.

Additionally, a consumer reasonably expects that they are not being discriminated against when interacting with an AI system. Generally, consumers reasonably expect not to experience impermissible discrimination. When consumers sign up for housing screening, complete a credit application, or apply to a job, they reasonably expect to be treated without discrimination in that process. This includes the reasonable expectation that they will not face an adverse outcome or

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[39] *See* Info. Comm'r's Off., *Overview of Data Protection Harms and the ICO's Taxonomy*, 6 (2022), https://ico.org.uk/media/about-the-ico/documents/4020144/overview-of-data-protection-harms-and-the-ico-taxonomyv1-202204.pdf ("[E]conomic circumstances such as market power or barriers to switching can mean that harms are hard to avoid even if informed and unbiased consumers are unable to discipline providers by switching to alternatives.").
[40] FTC, *Policy Statement on Unfairness* (1980), https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness.
[41] FTC, *Policy Statement on Deception* (1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.
[42] *Id.*

decision because of a protected characteristic, such as age, veteran status, race, gender, sex, or disability. This is reasonable for consumers to assume because discrimination based on a protected characteristic is illegal and the law has prohibited this for decades. Not only do consumers expect AI companies to follow the law, but preventing AI bias and discrimination is also popular among consumers. Recent polling shows that 75 percent of individuals support requiring companies that use AI for decisions about jobs, loans, and housing to prove that their AI systems do not discriminate based on race, gender, or disability,[43] and 66 percent of people support testing AI systems for racial and gender bias before they can be used in hiring, housing, and lending decisions.[44] Yet, time and time again, consumers are subjected to algorithmic discrimination,[45] so states have begun to step in to ensure AI companies are following civil rights laws.

*b. Companies violating civil rights laws is an unfair or deceptive practice.*

Implementing this policy statement would present a sharp departure from the Commission's historical understanding of its Section 5 authority. For years, the Commission has worked to address bias and discrimination in algorithms, including recommending companies take specific steps in order to prevent discrimination.[46] The Commission has used its unfair and deceptive acts or practices

[43] Leadership Conference on Civil and Human Rights, *POLL: American Public Supports Policies Preventing AI Discrimination and Bias*, (July 2026), https://civilrights.org/ai-civil-rights-polling/.
[44] *Id*.
[45] *See* Johana Bhuiyan, *She Didn't Get an Apartment Because of an AI-Generated Score – and Sued to Help Others Avoid the Same Fate*, Guardian (Dec. 14, 2024), https://www.theguardian.com/technology/2024/dec/14/saferent-ai-tenant-screening-lawsuit; Elizabeth Napolitano, *UnitedHealth Uses Faulty AI to Deny Elderly Patients Medically Necessary Coverage*, Lawsuit Claims, CBS News (Nov. 20, 2023), https://www.cbsnews.com/news/unitedhealthlawsuit-ai-deny-claims-medicare-advantage-health-insurance-denials/; Charlotte Lytton, *AI Hiring Tools May Be Filtering out the Best Job Applicants*, BBC (Feb. 16, 2024), https://www.bbc.com/worklife/article/20240214-ai-recruiting-hiring-software-bias-discrimination; Kori Hale, *A.I. Bias Caused 80% of Black Mortgage Applicants to Be Denied*, Forbes (Sept. 2, 2021), https://www.forbes.com/sites/korihale/2021/09/02/ai-bias-caused-80-of-black-mortgage-applicants-to-bedenied/.
[46] FTC, *Big Data: A Tool for Inclusion or Exclusion?*, (Jan. 2016), https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf.

authority on multiple occasions to combat discriminatory business practices and protect consumers.[47] Most recently, the Commission found that Rite Aid's continued use of a facial recognition system caused "substantial injury to consumers, and especially to Black, Asian, Latino, and women consumers."[48] The Commission specifically named Rite Aid's failure to monitor, assess, or test the accuracy of the facial recognition matches to demonstrate the company's failure to protect consumers from reasonably foreseeable harms.[49]

Systems that deploy algorithmic discrimination and bias violate the FTC's three-step test for unfairness: 1) consumers face substantial injury by being denied housing, employment, or other opportunities through biased algorithms; 2) consumers cannot reasonably avoid the harms of discrimination because they likely do not have a choice in what types of technology are used to screen them for various opportunities; and 3) these injuries are not outweighed by any benefits to consumers or competition. Algorithmic discrimination itself—the subject of many of the state AI laws that the policy statement seeks to halt—likely constitutes an unfair practice that violates Section 5 of the FTC Act.

By coercing companies into not complying with local AI laws with threats of FTC investigations and enforcement actions, the Commission would be asking companies to not only violate existing civil rights laws, but also the very law that created the FTC.

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[47] *See* Complaint, *FTC v. Passport Automotive Group*, Case. No. 8:22-cv-02670-GLS (D. Md. Oct. 18, 2022) (alleging that imposing higher costs on Black and Latino consumers than on similarly situated non-Latino White consumers was unfair); Complaint, FTC v. Rite Aid Corporation, Case No. 2:23-cv-05023, (E.D. Pa. Dec. 19, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023190_riteaid_complaint_filed.pdf; *see also* Elisa Jillson*, Aiming for truth, fairness, and equity in your company's use of AI*, FTC: BUS. BLOG (Apr. 19, 2021), https://privacysecurityacademy.com/wp-content/uploads/2021/04/Aiming-for-truth-fairness-and-equity-in-your-companys-use-of-AI.pdf.

[48] Decision and Order Rite Aid Corp. FTC File No. 2023190, No. C-4308 at 6 (Mar. 8, 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/DE019-StipulatedOrderforPermanentInjunctionandOtherRelief.pdf.

[49] *See* Complaint, Rite Aid Corp. FTC File No. 2023190, No. 2:23-cv-5023 (Dec. 19, 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/2023190_riteaid_complaint_filed.pdf; Decision and Order Rite Aid Corp. FTC File No. 2023190, No. C-4308 (Mar. 8, 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/DE019-StipulatedOrderforPermanentInjunctionandOtherRelief.pdf.

## IV. Conclusion

The Commission lacks any authority to prevent states from enacting regulations aimed at protecting their constituents from AI harm. The Commission's suggestion that companies may violate Section 5 of the FTC Act by following state laws is untrue and constitutes an inappropriate attempt to circumvent the legislative process. EPIC strongly urges the Commission to rescind this policy statement and redirect its resources to uphold its Congressional mandate to protect consumers.

Sincerely,

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