2026 MIDTERM ELECTION OUTLOOK:

ARTIFICIAL INTELLIGENCE



ANALYSIS BY

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OVERVIEW: *Two Tracks, One Election*

AI policy is increasingly moving on two tracks: scrutiny of the companies building the technology, and rules governing how the technology itself can be developed and deployed. The midterms won't settle that debate so much as determine which tools Congress has to pursue it in 2027.

A Democratic House would have substantial power on the first track, and its committees would have gavels and subpoena power to investigate AI developers, data center operators, federal contracts, and the Administration's AI agenda. But oversight power isn't the same as regulatory power. The President has opposed rules he believes would slow American AI, and EO 14409 expressly rejects mandatory licensing or preclearance for new models. The next Congress may have more power to expose how AI is being built than to dictate how it's built.

The center of the debate is moving past whether advanced AI systems should be evaluated and toward what those evaluations actually do. The open questions are who evaluates, what triggers review, whether participation is mandatory, and whether a bad result can delay deployment. Evaluation is increasingly common ground. Whether it functions as a warning light or a stop sign is not.

A House majority can create pressure quickly, but changing the rules is harder. With one chamber, much of the action shifts toward hearings, investigations, federal procurement oversight, and scrutiny of executive-branch implementation. With both, legislation becomes more plausible, but presidential opposition still turns enactment into a two-thirds problem. Overriding a veto requires roughly 67 senators and 290 House members, and nothing currently under consideration has support close to that threshold.

IF THE HOUSE FLIPS

Oversight will consume 2027, with AI developers and AI infrastructure at the top of the list. A Democratic House gets subpoena power and the gavels to run a sustained investigative agenda. Energy & Commerce, Oversight, Science, and Judiciary will all want a piece of AI.

WHAT TO EXPECT:

AI developers face scrutiny on conduct and safety. Expect questions about federal contracting relationships, internal safety testing, independent evaluator access, incident reporting, whistleblower protections, public claims about model capabilities and risks, and products offered to minors. Companies should assume internal testing records and risk assessments are fair game for document requests.

Data centers turn AI into an affordability story. Oversight will focus on electricity prices, grid reliability, water use, tax incentives, permitting, and who pays for new infrastructure: developers or ratepayers. That gives members a way to tie AI directly to household costs rather than debating model governance in the abstract, and federal actions to fast-track data center construction become natural targets.

Frontier-model evaluation becomes a legislative fight, not just an oversight question. The hard questions are where thresholds sit, which agency evaluates, how proprietary information is protected, and whether a negative evaluation can delay deployment. House passage is plausible. Enactment gets much harder with a Republican Senate and presidential opposition.

The preemption fight flips sides. A Democratic House defends state AI laws and uses oversight to challenge the Administration's efforts against them, including DOJ's AI Litigation Task Force. Broad federal preemption becomes significantly harder to move.

Algorithmic accountability returns with an AI frame. Expect renewed focus on discrimination in housing, employment, lending, and health care, alongside a much louder debate over workforce displacement, job quality, and who captures the economic gains from AI heading into 2028.

Surveillance pricing draws legislative attention. Lawmakers are likely to advance legislation restricting the use of consumer data and AI-driven analytics to set individualized prices. Rep. Greg Casar's Stop AI Price Gouging and Wage Fixing Act would prohibit companies from tailoring prices based on personal data, while broader Democratic proposals would expand enforcement tools against alleged unfair and anti-competitive pricing practices.

Chatbots and kids move to the front burner. The Senate Commerce Committee advanced legislation requiring limits on kids' and teens' access to AI chatbots, but that bill has yet to have a counterpart in the House. That issue is primed for action either in the lame duck, or, more likely, in a Democratic House.

IMPLICATIONS:

- **Higher investigative and document-production risk** for AI developers, data center operators, and companies with major federal AI relationships.
- **Evaluation, transparency, and incident-reporting proposals** get sustained committee attention even without a clear path to enactment.
- **Data center policy becomes AI policy**, not a separate energy or infrastructure question.



IF BOTH CHAMBERS FLIP

A second Democratic chamber changes the scale of the oversight fight and, for the first time, gives legislation a real path through Congress. Committees in both chambers can divide the investigative work on developers, infrastructure, contracting, and Administration policy and reinforce each other's findings. Senate control opens another front around agency implementation, federal AI procurement, CAISI, the Administration's frontier-model framework, and the new White House AI czar and Super Intelligence Force, including the Force's coordination with major AI developers.

WHAT TO EXPECT:

Bills move. Enactment remains difficult. Mandatory evaluations, incident reporting, whistleblower protections, and frontier transparency could move through both chambers. The Hawley-Blumenthal AI Risk Evaluation Act offers one model for that debate, creating a federal evaluation program through the Department of Energy, while EO 14409 provides the Administration's voluntary framework for frontier-model testing and early government access. That contrast captures the larger question Congress will have to resolve: whether federal evaluation remains a source of information or becomes a condition of deployment. Even if those measures clear both chambers, they still hit the veto question and the two-thirds problem. Current proposals haven't demonstrated support approaching that threshold.

Preemption is the one trade that could materially change the math. The Administration and much of industry want a national standard that limits conflicting state AI laws. That creates a real bargaining chip: federal preemption in exchange for evaluation, transparency, or other national guardrails. Whether Democrats would give up state authority to get a federal framework is a genuinely open question, but this is the scenario to watch if the two sides ever get serious about a negotiated AI bill.

Must-pass bills are the realistic path. Provisions framed around national security, including model evaluations, cyber capabilities, export controls, procurement, China competition, and federal evaluation capacity, are the most natural candidates to ride on NDAA and appropriations.

Data center oversight expands beyond siting and permitting into utility regulation, grid investment, water, community benefits, and whether federal support for AI infrastructure should come with conditions.

IMPLICATIONS:

- **Messaging bills and veto fights** help define the Democratic AI agenda heading into 2028.
- **AI provisions with bipartisan or national-security framing have the clearest path** through must-pass vehicles.
- **A preemption-for-guardrails bargain remains difficult** but could become the basis for a broader negotiated framework.



IF NEITHER FLIPS

Republican control accelerates the direction policy is already moving. The AI agenda gets bolder rather than different.

WHAT TO EXPECT:

A light-touch national AI framework drives the broader AI agenda. The new AI czar and Super Intelligence Force give the White House a more centralized structure for driving that agenda. Republicans will keep working toward a federal standard that limits conflicting state laws, and preemption remains a central fight. The 99-1 vote to strip the 2025 reconciliation moratorium is easy to overread. It reflected the collapse of a narrower Cruz-Blackburn compromise, with carveouts for kids' safety and name, image, and likeness protections, after Blackburn walked away. It wasn't 99 senators independently rejecting preemption. Her departure also changes the negotiating coalition, although broad preemption will remain difficult.

Critical-risk legislation is more likely to target identifiable harms than the technology as a whole. Expect continued work on model evaluations, cyber capabilities, incident reporting, model security, and other frontier risks, but through a framework designed to avoid broad licensing or preclearance requirements. CAISI's evaluation work and EO 14409's classified benchmarking process give Republicans an existing architecture to build on rather than requiring Congress to start from scratch.

The national-security lane keeps expanding even as domestic regulation stays light-touch. Export controls, cyber capabilities, federal adoption, model security, and competition with China give Republicans room to support greater government involvement in AI without embracing a broader regulatory regime. The emerging distinction is between restrictions seen as slowing commercial deployment and requirements justified by national security.

Data center buildout accelerates, but the ratepayer problem doesn't go away. Permitting and power-generation efforts will continue alongside growing concern, including from Republicans, about local costs, grid reliability, and who pays for new infrastructure.

IMPLICATIONS:

- **Preemption remains a central AI fight**, but a narrower federal framework tied to specific protections is more plausible than another sweeping moratorium.
- **Critical-risk AI policy advances** through targeted requirements around security, evaluation, and identifiable harms rather than broad regulation of model development.
- **National security** remains the main avenue for more prescriptive federal AI requirements.
- **Local data center politics** remain an important source of pressure within the Republican coalition.

BOTTOM LINE

For AI, the election changes Congress's leverage more than it changes the underlying fight. A Democratic House makes 2027 an oversight year, with AI developers and data centers first in line. Democratic control of both chambers gives Congress the ability to move evaluation and transparency bills, but presidential opposition turns the normal 60-vote Senate conversation into a two-thirds problem in both chambers for enactment over a veto. A GOP hold keeps preemption, innovation, and executive-branch evaluation at the center.

Across every scenario, the most durable activity sits between those poles: national security, evaluation capacity, procurement, liability, kids' safety, workforce, and infrastructure, where the party lines are still less settled. **For clients, 2027 will matter as much for the precedents Congress sets through investigations, hearings, and agency oversight as for anything ultimately signed into law.**

MONUMENT'S ARTIFICIAL INTELLIGENCE POLICY TEAM

In an ever-changing technology landscape, Monument's Technology & Telecommunications Practice has the federal technology policy expertise and network to effectively advocate for clients on key issues like artificial intelligence, consumer data privacy, intermediary liability, and the spectrum of policies affecting the telecommunications sector.

This analysis is brought to you courtesy of Monument Advocacy's Artificial Intelligence policy experts.

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