BROOKINGS

COMMENTARY

# How the 2026 midterms could reshape data center policy

**Nicol Turner Lee and Darrell M. West**

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- → The results of the midterm elections may lead to more policy shifts around data center development and the broader tech sector itself.
- → States and localities have embraced moratoriums and community engagement, but the new Congress and other lawmakers may take up by-right development, nondisclosure agreements, tax exemptions, and more.
- → Organizers across the country have turned to ballot referenda, campaigns for public office, and protests designed to slow or stop data center development, demonstrating how the policy environment will remain complicated for tech developers for the foreseeable future.

This year's blue-wave election ↗ could have a dramatic impact on data center policy at the national, state, and local levels. New leadership for major congressional committees and a different political environment in many states and localities likely will shift policy debates in ways that are tougher for data center construction and operations. Several dozen cities and counties across the country held referenda on bans or major zoning restrictions, and in many places, those limits were approved ↗ by more than three-quarters of the vote.

Some of the policy levers available in the new year include tougher permitting reform rules, an expansion of moratoriums, a stronger Ratepayer Protection Act ↗, the construction of data centers on federal lands, limiting by-right development,

mandatory disclosure of rogue artificial intelligence (AI), repeal of sales tax exemptions, excise taxes, abolition of nondisclosure agreements (NDAs) for data center deals, strengthened community engagement, and lawsuits or political action. Taken together, these shifts would dramatically alter the future policy environment affecting data center infrastructure as well as the broader tech sector itself.

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## Permitting reform

A bipartisan group of senators is supporting a bill promising expedited reviews ↗ of energy and infrastructure projects amid a pledge from President Donald Trump that he would reduce his attacks on wind and solar energy. Over the past two years, his administration blocked several offshore projects ↗, cut subsidies ↗ for wind and solar, and encouraged ↗ oil and gas production.

The U.S. House of Representatives is likely to vote ↗ on the legislation in November, but it is unclear whether there will be enough votes to speed up environmental reviews and limit opportunities for local community input into data center infrastructure in the aftermath of the elections. Democrats may be inclined to wait until their majority is sworn in and chairs top committees, and some legislators do not trust Trump ↗ to deliver on his wind and solar commitments and feel they should drive a harder bargain with the chief executive. Some Republicans also may be reluctant to embrace permitting reform given the defeat of some of their more visibly pro-data center representatives. They may argue it is better to slow down rather than speed up data center construction.

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## Construction moratoriums or pauses

With rising ↗ public opposition ↗ to data centers, some states and localities enacted moratoriums or pauses ↗ on construction so leaders could gauge the energy, water, and land use needs of data centers. Local officials want to make sure ↗ developers cover the full energy costs ↗ of their projects and that there is sufficient water in areas already facing scarcities.

While meant as a short-term fix that buys leaders time to figure out their longer-term policies, these bills could become more widely adopted and perhaps even extended. A number of ↗ Democrats hammered Republicans ↗ for supporting tax breaks for data centers, and with the defeat of many Republicans in 2026, the political environment going forward likely will become tougher for data center developers. Local leaders will need to determine what they want their actual policies to be once moratoriums lapse.

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## Ratepayer Protection Act

Trump issued an executive order calling for data center developers to cover the new energy costs ↗ of their proposed projects instead of passing them on to consumers.

But many of these requirements are voluntary and apply to future projects, not those which already are in operation or have been approved by local authorities. In addition, there are concerns that federal legislation in this area would preempt state prerogatives on energy utilization and land use. Historically, many of those rules have been at the local or state level.

The new political landscape after the midterms could shift these rules from voluntary to mandatory. With most Americans ↗ expressing concerns about data centers, especially around energy ↗, any new ratepayer protection bills are likely to be tougher on industry than what has been the case over the past year. There could be efforts to get tech firms to pay not only for the added energy costs but for infrastructure improvements and/or electric grid modernization. A step in either of those directions will increase construction and operational costs and affect the models of relevant businesses.

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## Data centers on federal lands

Facing growing opposition to data center construction, the Trump administration has proposed ↗ building facilities on federally owned land. Administration officials have pushed plans ↗ for data center-related development in Arizona, Oregon, Utah, and

Nevada. The last proposal ↗ includes the Townsite Data Center ↗ on 88.5 acres of land owned by the Bureau of Land Management. That possibility became a significant issue ↗ in the Nevada gubernatorial election, and similar proposals are likely to become a lightning rod in many Western states since much of the area is under federal control ↗.

From the standpoint of the administration, the virtue of this shift is it bypasses the need for local approval and local construction permits. Instead, the projects need approval from agencies like the Bureau of Land Management, which the Trump administration is pushing to speed up construction.

However, local communities are likely to perceive ↗ these projects as efforts to bypass local control, sparking outage among those who don't want data centers in their areas.

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## Limiting by-right development

Some areas are limiting by-right development that allows large data centers to be built without local approval. For example, Prince William County ↗ in Virginia voted in September to end automatic approvals for data centers once a 90-day grace period ends. The rationale was that the county already has a number of data centers, and it wants to make sure the board of supervisors gets a chance to examine and vote on those proposals.

The Virginia legislature also voted down a provision allowing state agencies to bypass local zoning or permitting requirements. A legislative proposal ↗ there would have forbidden localities from adding rezoning restrictions, having special exceptions, or offering conditional use permits for certain development projects. It was designed to expedite approvals and make sure local jurisdictions weren't able to block projects through new requirements, but legislators rejected the bill.

In general, data center opponents worry that by-right approvals erode local authority ↗, bypass community groups, and remove procedural protections ↗ that encourage citizen involvement.

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## Mandatory disclosure of rogue AI

The debates over data centers have become part of a broader discussion about AI safety ↗ and security. Many recent headlines discuss AI agents going rogue ↗ and engaging in unauthorized or unapproved actions, but right now, we only know about possible misdeeds through the voluntary disclosure of these activities.

Given public concerns about the impact of AI on jobs, human safety, and cybersecurity, policymakers will likely move toward mandatory disclosure of rogue AI agents and raise questions regarding federal preemption of state laws. Stronger disclosure will give decisionmakers more concrete data regarding the scope of the problem and how to combat the most important AI problems.

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## Repeal of sales tax exemptions

Many states exempt data center equipment ↗ purchases from sales taxes to encourage economic development and provide the same benefits to data centers that are already in place for manufacturing and industrial equipment. But with public concern over tax abatements for tech companies, some places are proposing ↗ to repeal these exemptions. This is likely to become a vigorous debate between economic development and tax fairness advocates.

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## Excise taxes

Sen. Ron Wyden (D-Ore.) announced a plan to impose an excise tax ↗ on the gross receipts of data center services. It would apply to activities such as data processing, cloud services, and AI, with the revenue going to unemployment benefits for workers displaced by digital technologies. He has not specified the amount of the tax but indicated his proposal would only cover large data centers using 25 megawatts or more. Company officials already pushed back on this idea claiming it will stifle innovation and restrict economic growth.

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## Abolition of nondisclosure agreements

As we noted last year, the widespread use of NDAs between data center developers and local officials has fueled public opposition to data centers and encouraged suspicions of private deals benefitting insiders. This has corroded public sentiment, and as a result, several large tech firms announced ↗ they will no longer use NDAs ↗ for data center construction. This could create pressure for other companies to adopt similar policies as a way to rebuild public trust and provide greater transparency regarding large-scale development projects.

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## Lawsuits and political action

Tech and social media companies used to feel they had limited legal liability due to a clause in the 1996 Communications Decency Act ↗ that shields certain online activities from judicial claims. The clause, known as Section 230, was thought to limit litigants from suing platforms for users' behavior that took place on "interactive computer services." The idea was that internet platforms were not publishers so shouldn't be held liable for what users post on their sites.

However, in recent years, lawyers have discovered they can use tort law and consumer protection rules to hold social media firms accountable for features that harmed users. One case in California resulted in large fines ↗ for Meta and YouTube for child safety harms stemming from platform design features, including algorithmic recommendation systems and infinite scroll. Plaintiffs argued such features were addictive and therefore harmful to young people. Another case in New Mexico produced a $375 million fine ↗ for Meta. In that trial, the firm was held liable for misleading consumers on features that resulted in the exploitation of young children. A second New Mexico case led to a $25 billion ↗ assessment against that social media platform for privacy violations linked to 2018 Cambridge Analytics ↗ abuses of online data.

Legal and political action directed at data centers is starting to take advantage of this shift. Residents in Lorain County, Ohio ↗, for example, are fighting local officials who support zoning for a new data center on agricultural land.

In the South, the NAACP has sued SpaceXAI over one of its data centers. The nonprofit claims the firm's use of gas turbines ↗ outside Memphis, Tennessee, violated the Clean Air Act and alleges the turbines endanger the health and safety of people living in surrounding areas.

But it is not just residents and nonprofits filing suits. In Urbana, Ohio, a data center developer ↗ sued the city after it worked closely on a data center project but then imposed a moratorium to stop the development amid growing opposition. The company says it lost investments ↗ because of the city's actions and that the project was rejected ↗ "on grounds that don't match the city's own zoning code."

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## Strengthened community engagement

Given the recent rush of state and local moratoriums, community approval will be vital to data center development going forward. Protocols advancing mandatory community meetings from preplanning to deployment will be more intentionally integrated into state and municipal processes. In some instances, communities will probably draw straws on whether a data center application will even be entertained. Recently, Loudon County, Virginia—an epicenter of data center development—put forth a special exception ↗ for new or planned projects, triggering a community review through public hearings. It is anticipated that more communities will review their local zoning and ordinance agreements to prompt more community engagement when it comes to reviewing and approving sites.

With the continued contentiousness surrounding data centers, it is likely both legal and political action will continue in future years. Organizers across the country have turned to ballot referenda ↗, campaigns for public office, and protests designed to slow or stop data center development. In Ohio this month, more than a dozen communities enacted bans ↗ or major zoning restrictions on data center construction, often by more than 75% of the vote. There were similar large votes ↗ in other states such as Florida, Illinois, and Wisconsin. These efforts mean tech developers will likely face a complicated policy environment for the foreseeable future.

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