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# Trump's plan to pay the military during the government shutdown should worry every American

By **Christopher Mirasola**, Contributor

Oct 17, 2025





California National Guard troops and U.S. Marines guard the entrance to the Federal Building in Los Angeles on June 13. During the government shutdown, military personnel are not being paid.

Stephen Lam/S.F. Chronicle



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On Wednesday, President Donald Trump purported to authorize Secretary of Defense Pete Hegseth to repurpose unspent Defense Department funds for military personnel salaries.

While it may seem laudable to pay military personnel who otherwise would have missed this week's paycheck due to the government shutdown, this act was a brazen repudiation of the Constitution's construct of separated powers. It imperils one of the few practical constraints on the president's domestic uses of the military. And it opens up a bevy of political and career government officials to future prosecution.

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In his memo to Hegseth, Trump claims to rely on his authority as commander-in-chief, under Article II of the Constitution, to repurpose Defense Department funds. But there is no plausible argument that the commander-in-chief's authority includes an implied power to redirect congressionally appropriated funds for whatever the president desires.



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In Article I's enumeration of congressional powers, the authority to decide how federal funds are used is among the very first. If this weren't enough, the Constitution is even more specific about Congress's power of the purse over the military establishment. Section 8 of Article I provides that Congress, not the president, is authorized "to raise and support Armies," even limiting appropriations for the Army to a two-year term (a limitation that Congress and presidents, sadly, conspired to relax over a century ago). Section 8 is similarly specific about Congress's authority to "provide and maintain" a Navy.

The Constitution's principal drafters were emphatic about why it is essential that the power over the purse be entrusted to Congress. James Madison wrote that the appropriations power was "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

Alexander Hamilton urged that the two-year limitation on Army appropriations was an essential bulwark against the dangers of maintaining a standing Army. By requiring that Congress review appropriations for the Army every two years, he wrote, "the public attention will be roused and attracted to the subject, by the party in opposition; and if the majority should be really disposed to

exceed the proper limits, the community will be warned of the danger, and will have an opportunity of taking measures to guard against it.”

By usurping Congress’s power to fund the armed forces, the president is attacking the foundations of our constitutional protections against executive tyranny. And this comes when the stakes could not be more consequential. President Trump has directed an ever-expanding campaign of military force against cities in the United States.

While the Trump administration has faced some setbacks in the litigation over each of these deployments, they have thus far been modest. The 9th U.S. Circuit Court of Appeals in San Francisco has declined to meaningfully review Trump’s decision to federalize members of the California National Guard sent to Los Angeles. A separate panel of the Ninth Circuit seems poised to take much the same approach to a lawsuit over the deployment in Portland, Ore., though we are still waiting for a decision in that case. National Guard troops remain deployed in Washington, D.C. Only the Seventh U.S. Circuit Court of Appeals in Chicago has affirmed a temporary order restraining the president from deploying National Guard to that city’s streets.

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In the face of the judiciary’s unwillingness to rein in the president, we must rely on more practical limits. One of the most important is the amount of money Congress has appropriated to the

Defense Department. Congressional appropriations are incredibly specific, going so far as to allocate how much may be spent for different types of ammunition, classes of warships, etc. What's more, Congress provides relatively limited authority for the president to modify spending.

When presidents have faced unexpected crises requiring the use of the military, there is an established process for filling the budgetary deficit — asking Congress for additional funds. We have little insight into how expensive the deployments to Los Angeles, Washington, D.C., and Portland have been. But similar missions have historically been incredibly costly. By ignoring the limits imposed by appropriations law, the administration is sidestepping one of the most consequential practical constraints on continuing, or expanding, these deployments.

The president's end-run around Congress's constitutional powers puts government officials at risk of future criminal prosecution. The Anti-Deficiency Act prohibits federal employees from obligating funds “before an appropriation is made unless authorized by law” or from authorizing an expenditure in excess of “an amount available in an appropriation or fund.”

Federal officials implicated in such acts can face administrative or criminal penalties. That is how seriously Congress has historically taken its power over appropriations. Perhaps recognizing the frailty of its legal arguments, the presidential memo instructs that the redirected funds should have “a reasonable, logical relationship to the pay and allowances of military personnel” and that “every effort should be made” to readjust accounts after the lapse in appropriations ends. But taking steps

to mitigate wantonly disregarding core provisions of the Constitution does not excuse what remains a violation of the law.

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Of course, we should not expect this administration to sanction federal employees implementing Trump's memorandum. But we might expect it of a future administration. Unless, of course, the president issues a pardon for these individuals, thus bringing full circle a pattern of illegality striking at the heart of civilian control over the armed forces.

It has become somewhat hackneyed to urge that Congress do something, anything, to stand up for its place in our system of constitutional governance. But if we care about living under a government of laws and not men, we must continue that call.

*Chris Mirasola is an assistant professor at the University of Houston Law Center and previously served as attorney-adviser at the Defense Department Office of General Counsel.*

Oct 17, 2025

## Christopher Mirasola

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