

# **The Myth of Federal Defunding**

The core argument used by opponents of Defend the Guard is that enacting such legislation would result in the federal government defunding a state's National Guard as a punitive measure. This objection is based on a misunderstanding of federal appropriations law, statutory protections, and constitutional constraints that govern military funding. Retaliatory defunding of the National Guard would be both illegal and procedurally impossible without congressional action.

This paper provides a detailed rebuttal to the false claim that Defend the Guard legislation would jeopardize a state's National Guard funding with reference to the appropriations process, related statutes, and both constitutional and practical safeguards.

## **The Power of the Purse Belongs to Congress, Not the Executive**

The United States Constitution places control of all federal spending in the hands of Congress, not the president or the Department of Defense (DoD). Article I, Section 9, Clause 7, known as the Appropriations Clause, states:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

The executive branch lacks unilateral authority to withhold or reallocate funds appropriated by Congress. In the case of the National Guard, Congress determines how much funding each state's Guard units receive, and the DoD does not have discretionary power to revoke those funds for political or policy-related reasons.

Any attempt by the federal government, including the National Guard Bureau, to punish a state for enacting Defend the Guard legislation by withholding appropriations for their National Guard would be a violation of the Impoundment Control Act of 1974 (31 U.S.C. §§ 1511-1519) which prohibits the executive branch from withholding funds appropriated by Congress. For the DoD to legally defund a state's National Guard would require an act of Congress.

As explained by seven-term Congressman Paul Gosar (R-AZ), in relation to Defend the Guard legislation in his own state:

"There is nothing in federal law that would eliminate federal funding if Arizona passes the Defend the Guard Act. Nor would Congress pass such legislation. The federal government needs a well prepared Guard...I know the House of Representatives would not approve such dereliction and nonsense. And the House controls the purse strings."

## **National Guard Funding Is Not Arbitrary**

There are multiple statutes that protect National Guard funding from political retaliation:

- 32 U.S.C. § 101 – Defines the National Guard as a component of both the state and federal military framework.
- 32 U.S.C. § 104 – Establishes the federal-state compact that guarantees funding for state Guard units unless a state fails to meet training or organizational requirements.
- 32 U.S.C. § 108 – Outlines the specific conditions under which National Guard funding could be withheld—which are strictly related to compliance with training and readiness standards, not state policy decisions.
- 32 U.S.C. § 109 – Clarifies the dual role of the National Guard as both a state and federal entity, further protecting its funding from arbitrary revocation.

Defend the Guard legislation does not interfere with federally mandated training, readiness, or organization and does not meet the criteria under which the federal government can lawfully cut funding under 32 U.S.C. § 108.

National Guard funding is established through multiple congressional appropriations channels, including:

- National Guard and Reserve Equipment Appropriation (NGREA) – This is a dedicated congressional funding program that the DoD cannot arbitrarily withhold.
- Military Construction Appropriations (MILCON) – This provides funding for National Guard facilities and infrastructure, requiring explicit congressional approval for any reallocation.
- Operations & Maintenance (O&M) Funds – This pays for training, salaries, and readiness operations and is governed by statutory spending guidelines.

Since Congress has full control over these funding streams, the DoD lacks authority to unilaterally remove or restrict funding for a state's Guard, particularly in retaliation over policy.

### **The Title 32 Fallacy**

A frequent but erroneous claim made by opponents of Defend the Guard legislation is that 32 U.S.C. § 108 provides the federal government with a mechanism to defund a state's National Guard if the state refuses to comply with Title 10 mobilization orders. A close reading of this statute demonstrates that this argument is legally unfounded.

32 U.S.C. § 108 provides that:

"If within a time to be fixed by the President, a State or Territory, or Puerto Rico, fails to comply with any requirement of this title, the National Guard of that jurisdiction shall be barred from receiving federal funds until compliance is achieved."

This statute applies only when a state fails to meet Title 32 requirements related to training, organization, or readiness. It does not allow the federal government to defund National Guard units over disagreements related to Title 10 deployments (including combat). If a state government decides not to deploy National Guardsmen into combat under Title 10 without a congressional declaration of war, that does not constitute non-compliance under Title 32.

Defend the Guard legislation does not impede federally mandated training or drills (including overseas), prevent National Guardsmen from meeting annual training requirements, or interfere with the National Guard's ability to respond to domestic emergencies. Since all training and readiness benchmarks remain intact, there is no legal basis under 32 U.S.C. § 108 for withholding funds.

One of the most common misconceptions used to argue against Defend the Guard legislation is the idea that Title 32 and Title 10 are interchangeable. They are not:

- Title 10 governs the National Guard when it is federalized for active duty.
- Title 32 governs the National Guard when it remains under state control but receives federal support.

A Title 10 mobilization order is not a requirement under Title 32. A state does not violate Title 32 by refusing to deploy troops under Title 10 in the absence of a congressional declaration of war.

## **Unrealized Base Closures**

In addition to loss of funding, opponents have threatened that passage of Defend the Guard legislation would result in the closure of military bases, the removal of military equipment from the "offending state," and the loss of jobs. Their contention is this would occur as a rapid response and leave a state and its residents paralyzed. This threat does not comport with either political realities or Pentagon logistics.

Ret. Lt. Col. Darin Gaub, a twenty-eight year U.S. Army veteran with seven combat deployments and who worked as a strategic planner at the Pentagon, has extensive experience with Base Realignment and Closure (BRAC) procedure and has explained why this would not come to fruition:

"The real threat they are trying to leverage is the economic impact on locations that have federal military bases. Having been through this process more than once, I can guarantee it is not as easy as a phone call. It is a large movement of many agencies of government and Congress. Not only are there many people involved in these decisions that can take years, but the cost and logistics of a base closure also make the threat nearly an empty one."

There is no political capital to be found in supporting the elimination of a state's National Guard, and such a plan by the Pentagon during a future round of BRAC would be vigorously opposed by that state's congressional delegation.

## **Conclusion**

Congress controls National Guard funding, not the DoD or any part of the executive branch; this enumerated power of the U.S. Constitution is buttressed by statutes such as the Impoundment Control Act.

32 U.S.C. § 108 only applies to training and readiness, not Title 10 disputes; there is no discrepancy with Defend the Guard legislation.

There is no precedent in U.S. history or U.S. law for a state to lose its National Guard funding due to retaliation over policy disagreement.

Passage of Defend the Guard legislation does not threaten federal funding of a state's National Guard, and claims to the contrary are both irresponsible and without legal foundation.