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Why Trump can't federalize Baltimore law enforcement

By Paul Bardack and Patrick Nichols

Claiming that Baltimore City is “so far gone,” President Trump recently suggested that he was considering federalizing the National Guard to increase police presence in that city, much as he did in Los Angeles and Washington, DC. Indeed, he has also suggested doing the same thing in such cities as Oakland, Chicago, and New York.

He cannot.

The Second Amendment to the U.S. Constitution states that “a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Maintaining and deploying such militias --- what we today call state National Guards --- were clearly envisioned by our nation’s Founders as essential state, rather than federal, functions. As such, they were typically to be under the authority of a state’s Governor, not under the authority of a President.

This is the case in Maryland, certainly. The Maryland Constitution begins with a “Declaration of Rights” which at Article 4 asserts “That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.”

Article II, Section 1 of the Maryland Constitution further vests executive powers in the Governor. Those powers include appointment of an Adjutant General of the militia and authority to suspend or arrest any military officer of the state for disobedience of orders or other military offense.

The Founders of our nation certainly understood that there may be times when such militias could be placed under federal control. Article II, Section 2 of the US Constitution states that “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

What does that mean?

The National Guard of each state has dual status. Primarily, it is deployed by a state's Governor to preserve public safety or protect property within a state's borders, such as supporting the police or emergency service providers during natural disasters or civil disturbances.

The Guard also serves as a reserve component to the U.S. military. The U.S. Constitution explicitly states that Congress has the power over this reserve component to provide for "calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Further, Title 10 of the U.S. Code allows the President to call the National Guard of any state into federal service when the nation is invaded, in danger of invasion, or during a rebellion. And the Insurrection Act of 1807 grants the President the power to deploy troops domestically to suppress an insurrection, domestic violence, or conspiracy that obstructs the enforcement of laws, even without a Governor's consent.

But the power to federalize the Guard is not unlimited. Both Title 10 and the Insurrection Act make clear that there is a high threshold for federalization of the Guard to be legally permissible, and that routine law enforcement is not at all what is envisioned. And the Posse Comitatus Act of 1878 prohibits the use of federal military personnel to enforce domestic policies except when explicitly authorized by law.

This is consistent with the founders' original vision. The "originalists" so admired by President Trump assert that constitutional provisions must be understood within the context of the time and place in which they were written. And urban riots, mob actions, robbery, and episodic lethal violence were not at all unknown to the founders at the time the US Constitution was written.

Crime records were inconsistently reported in colonial times, but it appears that in Philadelphia during the decades just before and during the time in which the Constitution was written, for example, homicide indictments were as high as 7 per 100,000 residents. (In 2024 that figure was closer to 17 per 100,000 residents.)

In New York, to cite another example, colonial-era homicide indictments ranged from 2 to 11 per 100,000 residents. (In 2023 that figure was roughly 4-5 per 100,000 residents.)

And, still, aware that crime exists in cities, the Framers rejected federalization of the police function in their conception of our republic, other than in the rarest of circumstances. States and localities would police their own populations, not nationalized troops.

Baltimore today is in the midst of an historic reduction in crime. Compared to 2024, homicides are down by nearly 25%, auto thefts down 33%, and robberies down 22%. This is not an invasion, or a rebellion, or an insurrection. It is commendable progress.

And, as such, there is no constitutional justification whatsoever for President Trump to federalize Baltimore's policing power. Our Founding Fathers would be aghast that it is even being suggested.

Paul Bardack and Patrick Nichols are co-founders of the State and Local Human Rights Center, a Washington, DC based nonprofit designed to assert state constitutional protection of rights now under increasing federal assault.