

December 1, 2025

The Honorable John Thune
Majority Leader
United States Senate

The Honorable Charles E. Schumer
Minority Leader
United States Senate

The Honorable Mike Johnson
Speaker
United States House of Representatives

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives

Re: Congressional Investigation of Potential Violations of the Anti-Deficiency Act
During the Fiscal Year 2026 Lapse in Appropriations

Dear Leader Thune, Minority Leader Schumer, Speaker Johnson, and Minority Leader Jeffries,

On behalf of Citizens for Responsibility and Ethics in Washington (CREW), a nonpartisan nonprofit organization dedicated to promoting accountable government, we strongly urge you to support congressional investigations of potential violations of the Anti-Deficiency Act related to the use of appropriated funds for partisan purposes during the course of the fiscal year 2026 government shutdown. Current federal law requires that government programs must be operated separate and apart from any partisan activity and imposes restrictions on the use of appropriated funds for partisan purposes. But during the lapse in appropriations, federal agencies nonetheless engaged in partisan messaging, including the following examples:

- Use of website banners announcing shutdown: Numerous federal agencies added notification banners to their agency homepages and websites that used

partisan language to pejoratively characterize the appropriations process. The Department of Housing and Urban Development posted a full-page message on the final day of funding, stating “The Radical Left are going to shut down the government and inflict massive pain on the American people unless they get their \$1.5 trillion wish list of demands. The Trump administration wants to keep the government open for the American people.”¹ During the course of the shutdown, other agencies’ websites maintained similarly partisan messaging, including “Democrats have shut down the government”;² “Senate Democrats have voted 14 times against reopening the government. This compromises not only SNAP, but farm programs, food inspection, animal and plant disease protection, rural development, and protecting federal lands. Senate Democrats are withholding services to the American people in exchange for healthcare for illegals, gender mutilation, and other unknown ‘leverage’ points”;³ “Senate Democrats voted to block a clean federal funding bill (H.R. 5371), leading to a government shutdown that is preventing the U.S. Small Business Administration (SBA) from serving America’s 36 million small businesses. Every day that Senate Democrats continue to oppose a clean funding bill, they are stopping an estimated 320 small businesses from accessing \$170 million in SBA-guaranteed funding.”⁴

- *Use of federal resources to create partisan advertisements*: The Department of Homeland Security created a video featuring Secretary Kristi Noem to be played during the shutdown in airports where the Transportation Security Administration operates.⁵ Secretary Noem tells travelers, in part, “Democrats in Congress refuse to fund the federal government and because of this, many of our operations are impacted.”⁶
- *Cabinet officials’ statements*: Cabinet secretaries made public statements in their official capacities blaming Democrats and directing their respective audiences to contact Congress regarding legislative action. During a televised interview, Secretary of Transportation Sean Duffy, referring to onscreen images of flight schedules illustrating the extent of delays, instructed viewers, “If you are delayed, if you are cancelled, there is only one mission that you have. Call [Senate Minority Leader] Chuck Schumer, and call your senator and

¹ Homepage, U.S. Dep’t of Housing and Urb. Dev. (Sept. 30, 2025), <https://web.archive.org/web/20250930152412/https://www.hud.gov/#close>.

² Homepage, U.S. Dep’t of Just. (October 10, 2025), <https://web.archive.org/web/20251010060448/https://www.justice.gov/>.

³ Homepage, U.S. Dep’t of Agriculture (Nov. 5, 2025), <https://web.archive.org/web/20251105122859/https://www.usda.gov/>.

⁴ Homepage, Small Business Admin. (Oct. 12, 2025) <https://web.archive.org/web/20251012072438/https://www.sba.gov/>.

⁵ Alexandra Skores and Hannah Park, *Multiple airports refuse to play Kristi Noem video that blames Democrats for government shutdown*, CNN (Oct. 15, 2025), <https://www.cnn.com/2025/10/13/us/kristi-noem-tsa-video>.

⁶ *Id.*

tell them to open up the government.”⁷ Separately, Secretary of the Interior Doug Burgum posted on his official X account, “It’s time to end this foolish shutdown! Call Congressional Democrats today and demand they do their job and fund the government.”⁸

- White House website parodying congressional Democrats’ shutdown positions: A White House website, “mysafespace,” featured altered photographs of congressional Democratic leaders and a simulated social media website with fabricated messages characterizing Democrats’ alleged support for the shutdown.⁹

Congressional investigation into the agency actions described above, and any similar examples that come to light, will reinforce the Congress’s intention to keep partisan politics out of the administration of federal programs. Congress’ attention to this issue is a critical exercise of its constitutional authority to conduct oversight into the misuse of taxpayer dollars by the executive branch.

The Anti-Deficiency Act Prohibits the Use of Federal Funds for Partisan Purposes

During a lapse in appropriations, a permanent appropriations restriction known as the Anti-Deficiency Act provides guardrails against the misuse of taxpayer funds.¹⁰ During the lapse, agencies are required under the statute to stop operations, which reflects the constitutional requirement that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”¹¹ and “protects Congress’s power over federal spending by preventing the executive branch from operating without funding.”¹²

The Anti-Deficiency Act effectively prohibits federal employees from making or authorizing obligations or expenditures without an appropriation from Congress and imposes administrative and potential criminal penalties on officials who violate it.¹³ Without an appropriation from Congress, an agency can incur obligations only if one of the Anti-Deficiency Act’s narrow exceptions—such as responding to emergencies that “imminently threaten the safety of human life or the protection of property”—allows the agency to do so.¹⁴

⁷ *Sec Duffy sends message to Americans as holiday travel concerns loom: ‘Call Chuck Schumer’*, Fox News, <https://www.foxnews.com/video/6384350579112>.

⁸ Secretary Doug Burgum (@SecretaryBurgum), X (Oct. 14, 2025, at 9:08 PM), <https://x.com/SecretaryBurgum/status/1978266704846200992>.

⁹ *mysafespace: a place for dems*, White House (Nov. 19, 2025), <https://perma.cc/48XK-EQV9>.

¹⁰ 31 U.S.C. § 1341(a)(1)(A).

¹¹ U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause).

¹² *Shutdowns/Lapses in Appropriations*, U.S. Gov’t Accountability Off. (Nov. 19, 2025), <https://perma.cc/48XK-EQV9>.

¹³ 31 U.S.C. §§ 1341–42, 1349–50.

¹⁴ 31 U.S.C. § 1342; *see supra* note 12.

Because no funds are available for agency activities—and, for that matter, partisan political messaging—during a shutdown, an agency would need to identify an Anti-Deficiency Act exception that permitted the activities described above. For example, the USDA would need to justify which strictly circumscribed Anti-Deficiency Act exception permitted its officials to post both about the “Radical Left Democrat shutdown” and, later, to update that message to state that “Senate Democrats have voted 14 times against reopening the government” and “are withholding services to the American people.”¹⁵ CREW cannot identify any such Anti-Deficiency Act exception that would permit these activities.

As a permanent restriction on federal appropriations, federal agencies and officials are broadly aware of the Anti-Deficiency Act requirements and the nature of limited program operations during a shutdown. A lapse in appropriations inherently limits those agencies and officials from continuing previously authorized activities without meeting an exception of the Anti-Deficiency Act. Put another way, because of the Anti-Deficiency Act, the authorized activities of federal agencies and officials are *restricted* during a lapse in congressional appropriations; they are certainly not *expanded* to include partisan messaging activities that have been barred under appropriations bills for most of the past 75 years.¹⁶

Conclusion

Congress must act as a necessary check on executive power so that executive branch agencies are not permitted to circumvent Congress’s authority to manage its power of the purse during a lapse in appropriations. A shutdown cannot translate into an opportunity to skirt the rule of law without recourse. It is therefore imperative for Congress to initiate a congressional investigation into the misuse of taxpayer dollars during a government shutdown to advance partisan messages in violation of the Anti-Deficiency Act.

¹⁵ Compare Homepage, U.S. Dep’t of Agriculture (captured Oct. 1, 2025), <https://web.archive.org/web/20251001174308/https://www.usda.gov/>, with Homepage, U.S. Dep’t of Agriculture (captured Nov. 7, 2025), <https://web.archive.org/web/20251107181212/https://www.usda.gov/>.

¹⁶ See U.S. Gov’t Accountability Off., *Principles of Federal Appropriations Law*, 4th ed., 2017, ch. 3, § D. 1. a. (1)(b), GAO-17-797SP (Washington, DC. 2017), <https://www.gao.gov/assets/2019-11/687162.pdf> (hereinafter “GAO Redbook”). Congress has historically and consistently included governmentwide restrictions on the use of appropriated funds for “publicity or propaganda” when enacting annual appropriations legislation, using effectively the same language for the better part of a century. *Id.* The legislation enacted to end the fiscal year 2026 shutdown carried forward the restriction included in previous appropriations bills, and also provided that previous conditions “shall be considered to have begun on October 1, 2025.” See Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. No. 119-37, §§ 101, 106, 119 (2025). In relevant part, the applicable restriction stated “[n]o part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.” See Further Consolidated Appropriations Act, 2025, Pub. L. No. 118-47, § 718, 138 Stat. 576 (2024), as extended by Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, § 1101(a)(5), 139 Stat. 11 (2025).

We welcome the opportunity to discuss these concerns and are available to support any efforts to investigate and address them.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sherman', with a long horizontal flourish extending to the right.

Donald Sherman
Executive Director and Chief Counsel

Cc: Senate Committee on Homeland Security and Governmental Affairs
The Honorable Rand Paul, Chair
The Honorable Gary Peters, Ranking Member

House Committee on Oversight and Government Reform
The Honorable James Comer, Chair
The Honorable Robert Garcia Ranking Member

Senate Committee on Appropriations
The Honorable Susan Collins, Chair
The Honorable Patty Murray, Vice Chair

House Committee on Appropriations
The Honorable Tom Cole, Chair
The Honorable Rosa L. DeLauro, Ranking Member