

CONGRESS

The Constitution vests legislative power in a bicameral or two-house Congress made up of the House of Representatives and the Senate. The House of Representatives was always considered to be the body more responsive to the popular will of the people because its members were up for reelection every two years and were chosen by the people. The Senate, on the other hand, was seen by the Founding Fathers as the more deliberative body. Senators are older and have a longer residency requirement than representatives; they serve a six-year term, and were originally selected by state legislatures. It was not until 1913 that the Seventeenth Amendment provided for the direct election of senators.

The Power of Congress in the Constitution

The specific powers Congress can exert are spelled out in Article I, Section 8 of the Constitution. Included in the enumerated powers are the following:

- The right to impose and collect taxes
- The right to borrow and coin money
- The right to regulate foreign and interstate trade
- The right to declare war
- The right to create post offices and federal courts below the Supreme Court
- The right to raise and maintain the army and navy

Congress also has the power to admit new states to the Union (Article IV, Section 3) and propose amendments to the Constitution (Article V). Amendments to the Constitution either gave the Congress additional power—for instance, to collect federal income taxes (Sixteenth Amendment)—or new enforcement authority as civil rights, particularly the right to vote, were extended after the Civil War (Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments).

Congress is not limited to powers specifically mentioned in the Constitution. It has a broad range of implied powers that derives from the “necessary and proper” clause, also known as the elastic clause. The Supreme Court, in *McCulloch v. Maryland* (1819), established the “necessary and proper clause,” which gave Congress implied powers by recognizing its authority to create the Second Bank of the United States. It is possible to make a strong case that most of what Congress actually does falls under its implied powers.

Although both houses of Congress must approve bills to enact legislation, the Constitution gives each house certain exclusive powers. All revenue bills, for instance, must originate in the House of Representatives (Article I, Section 7). The House also has the “sole power of impeachment.” Again, impeachment means “charging” a federal official, president, vice-president, judge, or other “civil officer” with treason, bribery, or other high crimes and misdemeanors. The Senate,

on the other hand, is responsible for trying cases of impeachment and can remove officials from office if found guilty. Quite importantly, its “advise and consent” authority, which effectively means approval, is an important check on the president. For example, a two-thirds majority vote of the Senate is necessary to ratify treaties negotiated by the president and a majority of the Senate must approve most presidential appointments as well, including members of the cabinet and the Supreme Court.

Who Serves in the Congress

There are 100 senators (two from each state), and 435 representatives in the House. The latter number was set in the Reapportionment Act of 1929 that recognized that simply adding more seats as the population grew would make the House too unwieldy. Although the total number of members in the House is fixed, the representation from each state is not. States gain or lose seats depending on population changes between the federal census conducted every 10 years. This process is known as **reapportionment**. After the 2000 census, for example, the Arizona House delegation increased by two while the New York decreased by two. This reflected a continuation of a population shift away from the so-called Rust Belt in the Northeast to the Sun Belt states of the South, Southwest, and the West. State legislatures are responsible for redrawing congressional district lines to account for population changes. In 1964, the Supreme Court ruled in *Westberry v. Sanders* that the districts have roughly the same number of people so that one person’s vote in a congressional election is the same worth as another’s. This is the “one person, one vote” principle.

The *Westberry v. Sanders* decision did not eliminate other potential problems with **redistricting**, however. The party in control of the state legislature may establish congressional and other legislative districts in such a way as to ensure its candidates have safe seats. This is called **gerrymandering**. The Court has also had to deal with racial gerrymandering, for example, the creation of districts intended to guarantee the election of minority candidates to office. In *Shaw v. Reno* (1993) the Supreme Court was extremely critical of oddly-shaped districts like North Carolina’s Twelfth Congressional District, and held that such districts could be challenged if race was the principle factor in their creation.

Racial gerrymandering is an attempt to deal with the fact that Congress does not reflect the demographic profile of the United States. Women and minorities have been elected in greater numbers over the last 30 years than previously, and the House is certainly more diverse than the Senate. But Congress as an institution remains predominately made up of white, middle-aged men. Members of Congress are much better off and more highly educated than the average American, and most have a business or law background. Another key element of the makeup of Congress is incumbency. The percentage of incumbents (persons who hold office) reelected in the House historically ranges between 85%–95%; Senate elections are somewhat more risky, but not that much. Reelection rates for incumbent senators fluctuates more dramatically, and is between 70%–90%.

An incumbent has distinct advantages over a challenger, particularly for a House seat. The **franking privilege**, which gives members of Congress free use of the mail, allows the incumbent to communicate regularly with constituents through newsletters, reports, and surveys as well as meetings and public forums back home. Representatives want to tell people about issues of consequence to them, for example, the federal highway, the additional construction on the army

base, or the new water project from which the district will benefit. Bills that bring federal money directly into a member's district are called **pork barrel legislation**. This term came into political usage after the Civil War; it refers to the practice of distributing salt pork rations to slaves from wooden barrels. "Pork" in the political sense is often equated with wasteful spending; a project funded in this way may help a congressman get reelected, but taxpayers across the country are paying for it.

Incumbents also help voters through **casework**, providing a wide range of services to people in their district. Casework might involve resolving a dispute over the benefits due a Vietnam veteran or it might mean getting family tickets for a tour of the White House. Most importantly, those who already hold office get the lion's share of campaign contributions from political action committees and other sources.

Senate Incumbency

Concern over the power of incumbency led several states to pass laws or approve initiatives that limited the number of terms a member of Congress could serve. While term limits are in effect for elected officials at the local and state level in many parts of the country, the Supreme Court ruled in 1995 that states cannot impose similar restrictions on representatives or senators (*U.S. Term Limits, Inc. v. Thornton*). Opponents see term limits as a fundamental challenge to the right to vote. They argue that if a member of Congress is doing a good job, there is no reason to artificially limit how long he/she can serve; that is a decision that must be left to the electorate. Further, term limits mean a loss of valuable legislative experience.

Several factors help explain why Senate incumbents have a somewhat more difficult time winning reelection than members of the House. A state is obviously much larger than a congressional district, and a senator's ability to satisfy all of those diverse interests is limited. It is easier for opposition to develop. Senate races certainly attract better-known challengers than the House. An incumbent senator may find himself/herself in a battle with a popular governor whose name recognition is just as high. Also, because of the size of the constituency, senators are more remote from the voters and thus may not be able to communicate their positions as effectively as representatives can.

Organization of Congress

The Constitution is largely silent on the organization of Congress. It authorizes the House and the Senate to make their own rules, and names only three congressional officers. The vice-president serves as **president of the Senate**, but only casts a vote in the event of a tie. The **president pro tempore** presides over the Senate in the absence of the vice-president; it is a ceremonial position usually given to the senior senator from the majority party. In contrast, the **Speaker of the House** does have real power. Elected from the majority party, the Speaker presides over the House, assigns bills to committees, influences committee assignments, appoints other party leaders, and controls debate on the floor. When the president is from one party and the House is controlled by the other, the Speaker is a national spokesperson for his/her party.

Political parties play an important role in Congress. Party whips assist the majority and minority leaders in both houses. In the House, the majority leader is second in command to

the Speaker and is the party's chief legislative strategist. The minority leader represents the opposition, but works with the majority leader and the Speaker to set the House agenda and schedule debate. Whips are the intermediaries between the leadership and the rank-and-file, and are responsible for making sure party members vote with the leadership on important bills. Senate whips have essentially the same tasks they do in the House. The Senate majority leader has a role in assigning members to committees, schedules legislation together with the minority leader, and has the privilege of speaking first during debate. Both parties have a network of committees in each house that develop policy, make the final decision on who serves on what committee, and provide funds and advice for those who are up for re-election.

Much of the work that Congress does is through committees: Bills are introduced, hearings are held, and the first votes are taken on proposed laws. Committees also carry out Congress' oversight and investigative functions. There are four types of committees:

- **Standing Committees:** Permanent committees that deal with legislation in their broad policy area, for example, the House Agriculture Committee or the Senate Foreign Relations Committee. Standing committees may also conduct investigations and/or oversight of federal agencies that come within their jurisdiction.
- **Joint Committees:** Made up of members of both houses, joint committees are not concerned with legislation but look into and keep Congress informed on major policy concerns. An example would be the Joint Economic Committee.
- **Select or Special Committees:** These are temporary committees that are set up for a specific purpose outside the scope of standing committees; Special committee functions can range from the Senate Select Committee on Aging to investigating the Watergate scandal.
- **Conference Committees:** These committees reconcile differences between bills passed in the House and the Senate; standing committees that originally considered the legislation appoint members.

There are 19 standing committees in the House and 17 in the Senate, and each has one or more subcommittees. The number of seats each party has on a standing committee reflects the party distribution in each house. Committee chairs, selected by the majority party (under rules established in 1995) are limited to six-year terms.

Each committee has its own staff that prepares for hearings, does research, and assumes other administrative tasks. The staff of senators and representatives has grown tremendously over the last half century as the work of Congress has become more complex. The responsibilities of staff can include helping constituents, drafting bills, helping with the campaign matters, and negotiating with other congressional staff and the White House on legislation. Assistance is also available to Congress from specialized agencies:

- **Congressional Research Service:** Part of the Library of Congress, the Congressional Research Service answers questions and provides research at the request of members.
- **General Accounting Office:** This office audits federal spending by the Executive Branch, renders legal opinions, and conducts investigations at the request of Congress.

- **Congressional Budget Office:** Created in 1974, the Congressional Budget Office examines the economic impact of federal programs and evaluates the budget that the president prepares. It also offers a second opinion on budget matters.

Although the political parties are critical to the operation of Congress, informal groups exist that are increasingly important to the legislative process. A **caucus** is made up of members, who may or may not be from the same party, that share the same policy concerns and want to further legislation in their area of interest. Indeed, caucuses are seen as a rival to parties in shaping the policy agenda. Caucuses are organized by region, ethnicity, gender, and issue. The Sunbelt Caucus, the Congressional Black Caucus, and Environmental Policy Committee are pertinent examples.

How A Bill Becomes A Law

The primary function of Congress is to enact legislation. Between 8,000–10,000 bills are introduced each term, but less than 10 percent actually become law. A **bill**, which is nothing more than a proposed law, usually has no single author. The Executive Branch develops much of the legislation that Congress considers. The president outlines the administration's legislative agenda in the State of the Union address.

Individual members working with their staff, the party leadership in either the House or the Senate, a caucus, and interest groups may all take a hand at drafting a bill. The dance of legislation goes through a complicated process in the House and the Senate; the bill that finally becomes law rarely looks anything like the bill that was originally introduced.

Step 1: A bill is introduced

With the exception of revenue or tax bills that must originate in the House, legislation can be introduced in either house or in both simultaneously. Each bill is assigned a number (with the prefix H.R. for the House or S. for the Senate; H.R. 1 is the first bill introduced in that session of Congress), and is assigned to the appropriate committee.

Step 2: The bill in committee

The full committee refers the bill to one of its subcommittees, which may decide to hold hearings. Congressional hearings provide an opportunity for the administration, federal agencies impacted by the proposed legislation, and interest groups to provide their input. Testimony is taken and written materials are submitted and published. After the hearings, a **markup** session is held either in the subcommittee or the full committee during which significant changes may be made to the bill. If the members then decide to "report the bill out," a **committee report** is prepared that contains the bill as amended, a summary of its main provisions, and the reasons for committee approval.

The committee may also table a bill, which means no further action is taken and the bill is effectively dead. If there are extensive amendments, the committee may decide to report the amended bill out as a new bill that is known as a clear bill. In rare instances, a bill can be reported out of committee with no recommendation or with a negative recommendation.

Committee reports are important to the courts. In trying to determine the meaning of language in a bill or the intent of Congress in enacting a statute, the courts often turn to the committee report as the most authoritative statement of what the bill was expected to accomplish. The reasoning is that the committee, which has sat through hearings and read submissions by a variety of interests, is the group most familiar with the legislation.

Step 3: A bill in the House Rules Committee

In the House, most bills that are reported out go to the Rules Committee that sets the scope of the debate on the floor. The Rules Committee issues a rule that establishes the amount of time allocated for debate and whether or not amendments can be made. Under a closed rule, for example, there is a strict time limit and no amendments can be offered. The **open rule** allows for a general debate and provides that any member may offer an amendment. There are variations of both rules. Only germane amendments, meaning amendments related to the substance of the bill, are allowed under the **modified open rule**. The **modified closed** (also called the **structured**) rule may limit amendments to a particular section of the bill as established by the Rules Committee.

There is no equivalent to the Rules Committee in the Senate; a bill goes from the committee directly to the Senate floor for action.

Step 4: A bill on the House and Senate floor

The Committee of the Whole debates most bills, which requires only 100 members to be present. Members of the sponsoring committee guide the debate with supporters and opponents given equal time to speak. If amendments are allowed under the rule, they must be related to the substance of the bill. While the Committee of the Whole can get the bill into final shape, it cannot pass it. That requires a quorum of the House or 218 members.

The debate in the Senate is much different. There is no time limit and no restrictions on the type of amendments that can be offered. A senator who wants to delay action on a bill or try to kill it completely may try to use a tactic called a **filibuster**. This is a marathon speech on any subject that may go on for hours with the senator only yielding the floor to members who support his/her position. A filibuster can be cut off only through **cloture**. It takes 16 senators to ask for a cloture vote, and 60 senators must actually vote for cloture to end a filibuster. Even then, each senator still can speak on the bill for an hour.

Senators can introduce amendments completely unrelated to the bill. These are known as **riders**, and provide senators with the opportunity to enact pet projects. A senator may add an amendment to a defense appropriations bill for a water project to benefit his or her state, for example. A bill that has numerous riders is called a **Christmas tree**.

There are several ways Congress votes on a bill. For a voice vote, the members simply shout out “Aye” or No,” and the outcome is determined by the volume of each. If it is difficult to determine the outcome, a member can call for a “division” or standing vote. First those in favor of the bill stand and are counted, then those opposed. The way an individual member votes is not recorded in a voice or a standing vote. Recorded votes are commonly done through electronic voting. Members insert their Vote-ID card in machines located around the House and Senate chambers. Another type of recorded vote is the teller vote. Members pass between two tellers, one for the yeas and one for the nays, and the clerks write down the names of those voting for or against the bill.

Step 5: A bill in the conference committee

In most instances, the House and the Senate pass different versions of the same bill. The conference committee, which is made up of majority and minority members of the committee that reported out the bill, is responsible for reconciling the differences. The compromise bill is sent to the House and Senate for approval, and no amendments are allowed.

Step 6: The bill goes to the president

A bill becomes law only when the president signs it. The president can veto (reject) a bill. If he does so, Congress can override the veto by a two-thirds vote of both houses. Most presidential vetoes are not overridden, however. If the president takes no action on the bill within ten days after he receives it, the bill becomes law without his signature. A **pocket veto** occurs when Congress adjourns within that ten-day period without the president signing the bill. The bill is thus effectively dead unless reintroduced in the next session of Congress.

Other Responsibilities of Congress

Congress has other responsibilities that are related to its law-making function: oversight and investigation. Oversight involves reviewing the operations of the Executive Branch to ensure that federal agencies implement laws the way Congress intends and that they use appropriated funds properly. Oversight is carried through by existing committees, often when agency heads or cabinet secretaries come to Capitol Hill to argue for their budgets. In the past, Congress could reject an executive action through a joint resolution; however, the Supreme Court declared the legislative veto unconstitutional in 1983. Today, Congress can accomplish the same goal by passing a law, and has the right to nullify a federal regulation within 60 days of issuance through a joint resolution. This is called **congressional review**. While oversight is often routine, investigations usually focus on scandals or other types of crisis. Examples of congressional investigations include Watergate, the Iran-Contra Affair during the Reagan presidency, the Savings & Loan Industry Scandal in the 1980s, and allegations of illegal campaign contributions by the Clinton administration.

How Congress Votes

There are several factors that explain how a member of Congress votes. Party considerations, constituent views, colleagues, interest groups and political action committees, and even the president may all play a role.

A clear sign of partisanship is when the majority of the Democrats vote one way and the majority of the Republicans vote the other way. Congress became increasingly partisan during the 1990s because we had a **divided government** — the president was a Democrat while the Republicans controlled both the House and the Senate for the first time in many years. A member of Congress who consistently supports the party enjoys obvious advantages, such as choice committee assignments, increasing influence with the leadership, and perhaps even more assistance from the campaign committees. Obviously, a major reason for party voting in Congress is that Democrats and Republicans have basic ideological perspectives on legislation.

Political scientists often use the terms **trustee** and **delegate** to describe the relationship between a member of Congress and his/her constituents. Trustees believe in relying on their best judgment on the myriad of issues that come before them; delegates, on the other hand, closely follow how people in their district or state feel about a particular question and vote accordingly. The line between the two is blurred more often than not, and most senators and representatives try to adopt both roles as the situation warrants. One thing is clear, however: Elected officials cannot simply ignore the voters who sent them to Washington in the first place. Incumbents may be secure, but they are not invulnerable.

You should not forget that Congress is a collegial institution. Members develop strong bonds with one another, particularly if they serve on the same committee for a number of years. A personal appeal from a close friend can sometimes win over a vote on an important piece of legislation. There is also a long tradition in the Congress of **logrolling**. Basically, one Congressperson says to another, "I'll vote for your bill, if you vote for mine." Logrolling goes far in explaining why so much pork barrel legislation passes.

Interest groups and political action committees do not buy votes; they buy access. With access comes the opportunity to explain a position on a bill to a member or his/her staff, and provide them with information that may be helpful in making a decision. Interest groups can indeed put pressure on a representative or senator by mobilizing constituent public opinion for or against legislation. The promise of campaign contributions may not fall on deaf ears on a minor bill that doesn't impact a member's state or district one way or the other.

The president can influence votes in Congress in several ways. On a close vote on a bill important to the administration, he/she can call up party members to ask for their support or even invite a few to the Oval Office for a chat. It is not easy to refuse a request from the president. The president can try to rally public opinion behind his legislative agenda much the same way an interest group might with the idea of putting pressure on Congress to vote in a certain way. Key administration officials can travel to different parts of the country to push the legislative program, and go on the Sunday morning talk shows. The president can publicly threaten to veto legislation.