

## Chapter 11

# Congress



**Figure 11.1** While the Capitol is the natural focus point of Capitol Hill and the workings of Congress, the Capitol complex includes over a dozen buildings, including the House of Representatives office buildings (left), the Senate office buildings (far right), the Library of Congress buildings (lower left), and the Supreme Court (lower right). (credit: modification of work by the Library of Congress)

### Chapter Outline

- 11.1 The Institutional Design of Congress
- 11.2 Congressional Elections
- 11.3 Congressional Representation
- 11.4 House and Senate Organizations
- 11.5 The Legislative Process

### Introduction

When U.S. citizens think of governmental power, they most likely think of the presidency. The framers of the Constitution, however, clearly intended that Congress would be the cornerstone of the new republic. After years of tyranny under a king, they had little interest in creating another system with an overly powerful single individual at the top. Instead, while recognizing the need for centralization in terms of a stronger national government with an elected executive wielding its own authority, those at the Constitutional Convention wanted a strong representative assembly at the national level that would use careful consideration, deliberate action, and constituent representation to carefully draft legislation to meet the needs of the new republic. Thus, Article I of the Constitution grants several key powers to Congress, which include overseeing the budget and all financial matters, introducing legislation, confirming or rejecting judicial and executive nominations, and even declaring war.

Today, however, Congress is the institution most criticized by the public, and the most misunderstood. How exactly does Capitol Hill operate (**Figure 11.1**)? What are the different structures and powers of the House of Representatives and the Senate? How are members of Congress elected? How do they reach their decisions about legislation, budgets, and military action? This chapter addresses these aspects and more as it explores “the first branch” of government.

## 11.1 The Institutional Design of Congress

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### Learning Objectives

By the end of this section, you will be able to:

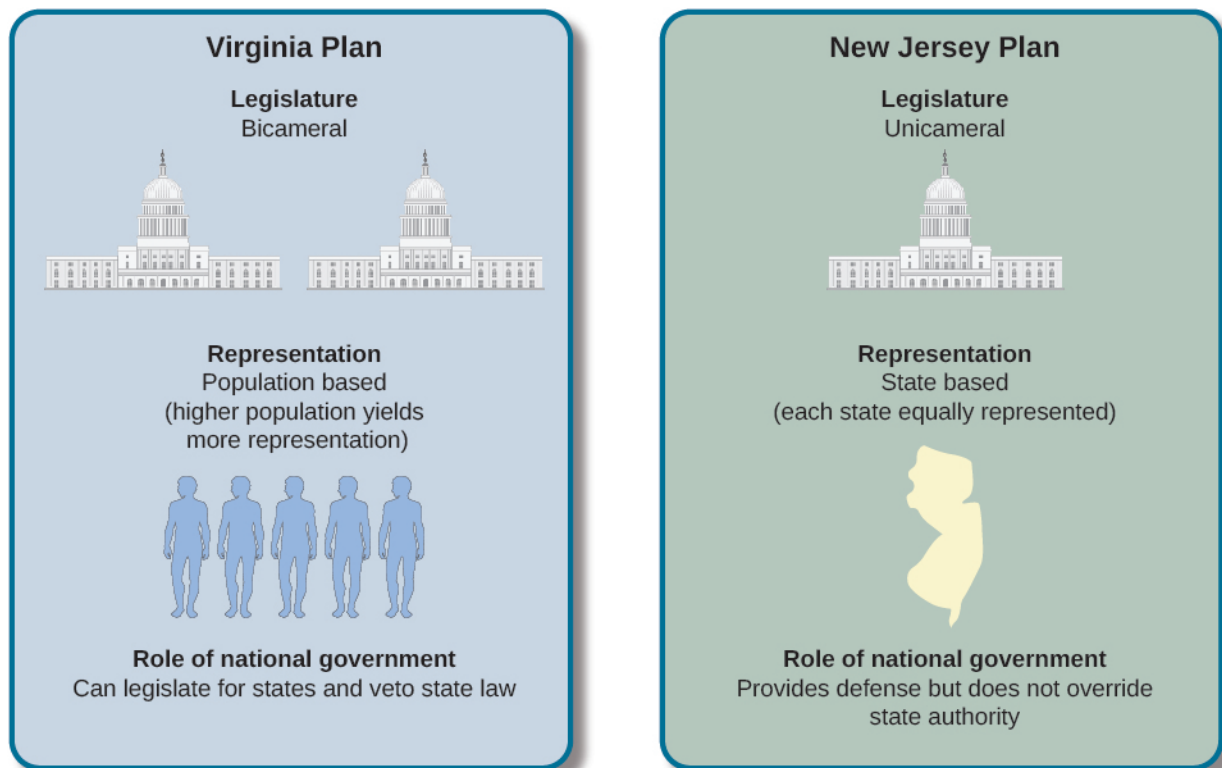
- Describe the role of Congress in the U.S. constitutional system
  - Define bicameralism
  - Explain gerrymandering and the apportionment of seats in the House of Representatives
  - Discuss the three kinds of powers granted to Congress
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The origins of the U.S. Constitution and the convention that brought it into existence are rooted in failure—the failure of the Articles of Confederation. After only a handful of years, the states of the union decided that the Articles were simply unworkable. In order to save the young republic, a convention was called, and delegates were sent to assemble and revise the Articles. From the discussions and compromises in this convention emerged Congress in the form we recognize today. In this section, we will explore the debates and compromises that brought about the bicameral (two-chamber) Congress, made up of a House of Representatives and Senate. We will also explore the goals of bicameralism and how it functions. Finally, we will look at the different ways seats are apportioned in the two chambers.

### THE GREAT COMPROMISE AND THE BASICS OF BICAMERALISM

Only a few years after the adoption of the Articles of Confederation, the republican experiment seemed on the verge of failure. States deep in debt were printing increasingly worthless paper currency, many were mired in interstate trade battles with each other, and in western Massachusetts, a small group of Revolutionary War veterans angry over the prospect of losing their farms broke into armed open revolt against the state, in what came to be known as Shays' Rebellion. The conclusion many reached was that the Articles of Confederation were simply not strong enough to keep the young republic together. In the spring of 1787, a convention was called, and delegates from all the states (except Rhode Island, which boycotted the convention) were sent to Philadelphia to hammer out a solution to this central problem.

The meeting these delegates convened became known as the Constitutional Convention of 1787. Although its prescribed purpose was to revise the Articles of Confederation, a number of delegates charted a path toward disposing of the Articles entirely. Under the Articles, the national legislature had been made up of a single chamber composed of an equal number of delegates from each of the states. Large states, like Virginia, felt it would be unfair to continue with this style of legislative institution. As a result, Virginia's delegates proposed a plan that called for **bicameralism**, or the division of legislators into two separate assemblies. In this proposed two-chamber Congress, states with larger populations would have more representatives in each chamber. Predictably, smaller states like New Jersey were unhappy with this proposal. In response, they issued their own plan, which called for a single-chamber Congress with equal representation and more state authority (**Figure 11.2**).



**Figure 11.2** The Virginia or “large state” plan called for a two-chamber legislature, with representation by population in each chamber. The plan proposed by smaller states like New Jersey favored maintaining a one-house Congress in which all states were equally represented.

The storm of debate over how to allocate power between large and small states was eventually calmed by a third proposal. The Connecticut Compromise, also called the Great Compromise, proposed a bicameral congress with members apportioned differently in each house. The upper house, the Senate, was to have two members from each state. This soothed the fears of the small states. In the lower house, the House of Representatives, membership would be proportional to the population in each state. This measure protected the interests of the large states.

In the final draft of the U.S. Constitution, the bicameral Congress established by the convention of 1787 was given a number of powers and limitations. These are outlined in Article I (**Appendix B**). This article describes the minimum age of congresspersons (Section 2), requires that Congress meet at least once a year (Section 4), guarantees members’ pay (Section 6), and gives Congress the power to levy taxes, borrow money, and regulate commerce (Section 8). These powers and limitations were the Constitutional Convention’s response to the failings of the Articles of Confederation.

Although the basic design of the House and Senate resulted from a political deal between large and small states, the bicameral legislature established by the convention did not emerge from thin air. The concept had existed in Europe as far back as the medieval era. At that time, the two chambers of a legislature were divided based on class and designed to reflect different types of representation. The names of the two houses in the United Kingdom’s bicameral parliament still reflect this older distinction today: the House of Lords and the House of Commons. Likewise, those at the Constitutional Convention purposely structured the U.S. Senate differently from the House of Representatives in the hopes of encouraging different representative memberships in the two houses. Initially, for example, the power to elect senators was given to the state legislatures instead of to the voting public as it is now. The minimum age requirement is also lower for the House of Representatives: A person must be at least twenty-five years old to serve in the House, whereas one must be at least thirty to be a senator.

The bicameral system established at the Constitutional Convention and still followed today requires the two houses to pass identical **bills**, or proposed items of legislation. This ensures that after all amending and modifying has occurred, the two houses ultimately reach an agreement about the legislation they send to the president. Passing the same bill in both houses is no easy feat, and this is by design. The framers intended there to be a complex and difficult process for legislation to become law. This challenge serves a number of important and related functions. First, the difficulty of passing legislation through both houses makes it less likely, though hardly impossible, that the Congress will act on fleeting instincts or without the necessary deliberation. Second, the bicameral system ensures that large-scale dramatic reform is exceptionally difficult to pass and that the status quo is more likely to win the day. This maintains a level of conservatism in government, something the landed elite at the convention preferred. Third, the bicameral system makes it difficult for a single faction or interest group to enact laws and restrictions that would unfairly favor it.

### Link to Learning



The [website of the U.S. Congress Visitor Center \(https://openstaxcollege.org//29VisitCong\)](https://openstaxcollege.org//29VisitCong) contains a number of interesting online exhibits and informational tidbits about the U.S. government's "first branch" (so called because it is described in Article I of the Constitution).

## SENATE REPRESENTATION AND HOUSE APPORTIONMENT

The Constitution specifies that every state will have two senators who each serve a six-year term. Therefore, with fifty states in the Union, there are currently one hundred seats in the U.S. Senate. Senators were originally appointed by state legislatures, but in 1913, the Seventeenth Amendment was approved, which allowed for senators to be elected by popular vote in each state. Seats in the House of Representatives are distributed among the states based on each state's population and each member of the House is elected by voters in a specific congressional district. Each state is guaranteed at least one seat in the House ([Table 11.1](#)).

**The 114th Congress**

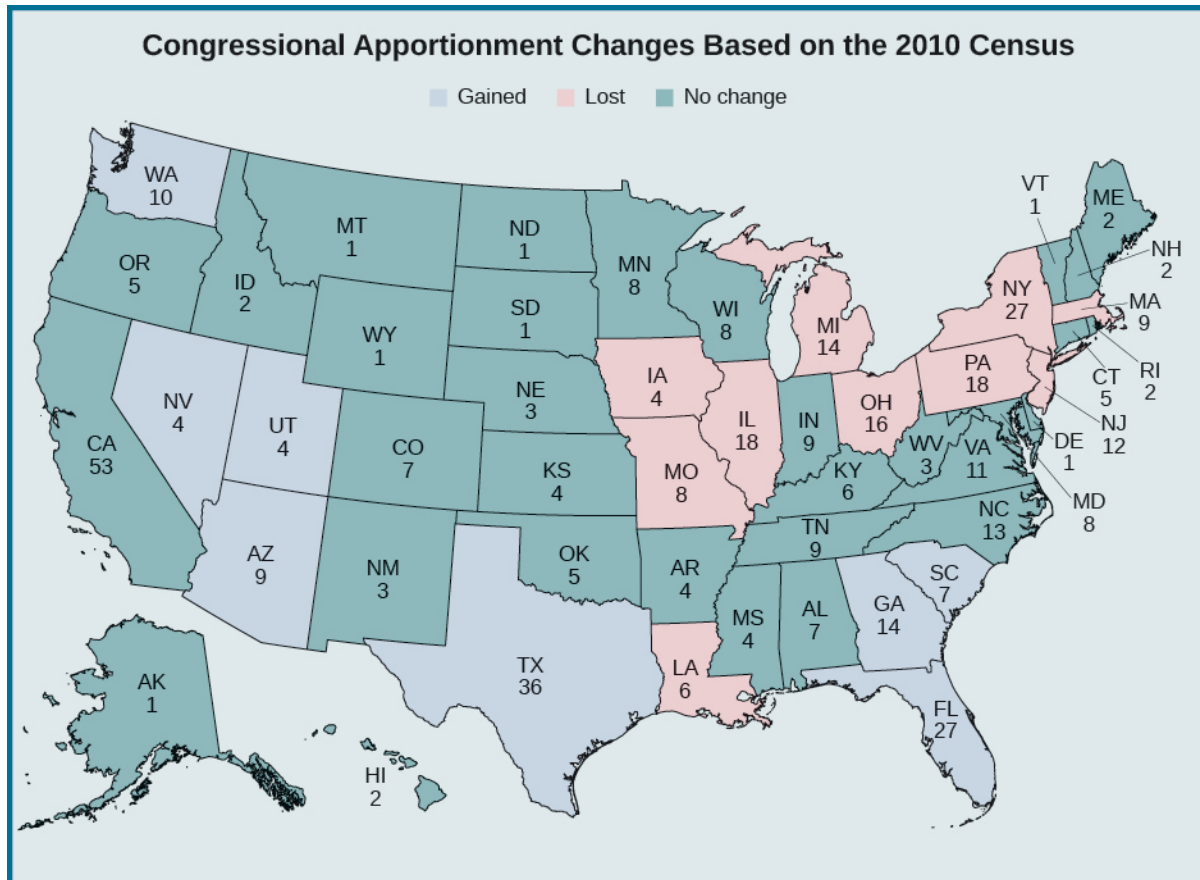
	House of Representatives	Senate
Total Number of Members	435	100
Number of Members per State	1 or more, based on population	2
Length of Term of Office	2 years	6 years
Minimum Age Requirement	25	30

**Table 11.1**

Congressional **apportionment** today is achieved through the *equal proportions method*, which uses a mathematical formula to allocate seats based on U.S. Census Bureau population data, gathered every ten years as required by the Constitution. At the close of the first U.S. Congress in 1791, there were sixty-five representatives, each representing approximately thirty thousand citizens. Then, as the territory of the United States expanded, sometimes by leaps and bounds, the population requirement for each new district increased as well. Adjustments were made, but the roster of the House of Representatives continued to grow until it reached 435 members after the 1910 census. Ten years later, following the 1920 census and

with urbanization changing populations across the country, Congress failed to reapportion membership because it became deadlocked on the issue. In 1929, an agreement was reached to permanently cap the number of seats in the House at 435.

Redistricting occurs every ten years, after the U.S. Census has established how many persons live in the United States and where. The boundaries of legislative districts are redrawn as needed to maintain similar numbers of voters in each while still maintaining a total number of 435 districts. Because local areas can see their population grow as well as decline over time, these adjustments in district boundaries are typically needed after ten years have passed. Currently, there are seven states with only one representative (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming), whereas the most populous state, California, has a total of fifty-three congressional districts (**Figure 11.3**).



**Figure 11.3** Although the total number of seats in the House of Representatives has been capped at 435, the apportionment of seats by state may change each decade following the official census. In this map, we see the changes in seat reapportionment that followed the 2010 Census.

Two remaining problems in the House are the size of each representative's **constituency**—the body of voters who elect him or her—and the challenge of Washington, DC. First, the average number of citizens in a congressional district now tops 700,000. This is arguably too many for House members to remain very close to the people. George Washington advocated for thirty thousand per elected member to retain effective representation in the House. The second problem is that the approximately 675,000 residents of the federal district of Washington (District of Columbia) do not have voting representation. Like those living in the U.S. territories, they merely have a non-voting delegate.<sup>1</sup>

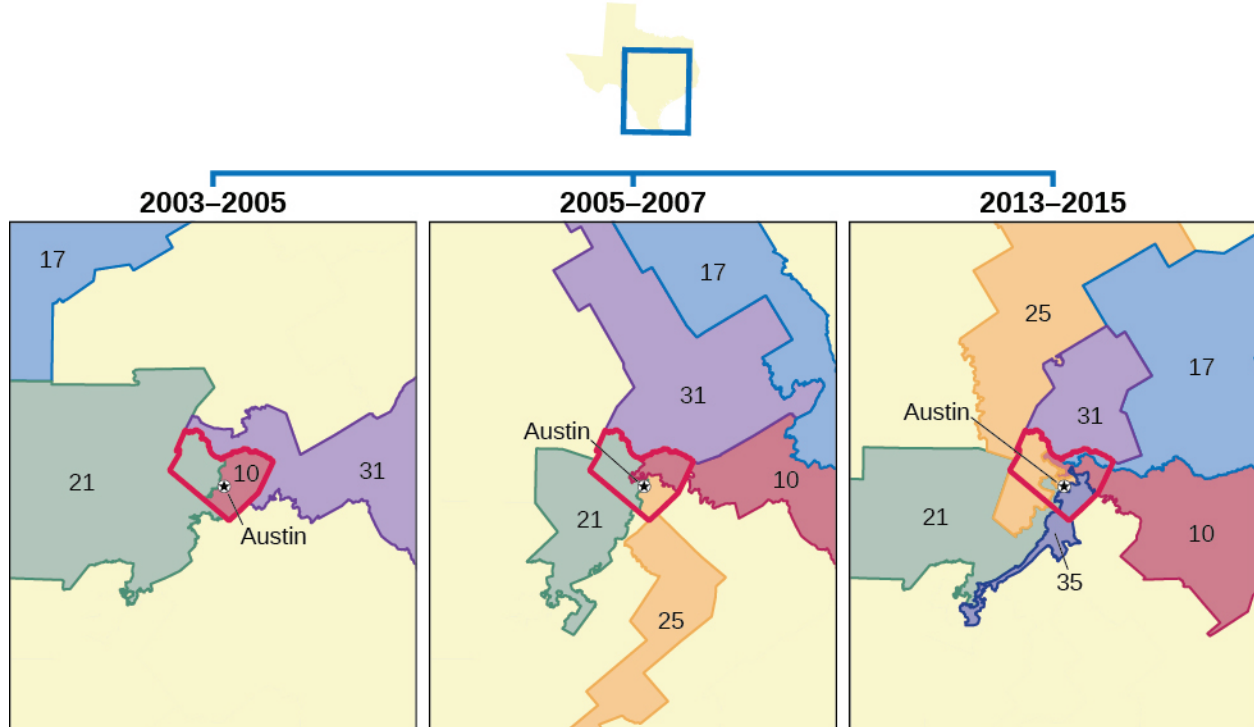
The stalemate in the 1920s wasn't the first time reapportionment in the House resulted in controversy (or the last). The first incident took place before any apportionment had even occurred, while the process was

being discussed at the Constitutional Convention. Representatives from large slave-owning states believed their slaves should be counted as part of the total population. States with few or no slaves predictably argued against this. The compromise eventually reached allowed for each slave (who could not vote) to count as three-fifths of a person for purposes of congressional representation. Following the abolition of slavery and the end of Reconstruction, the former slave states in the South took a number of steps to prevent former slaves and their children from voting. Yet because these former slaves were now free persons, they were counted fully toward the states' congressional representation.

Attempts at African American disenfranchisement continued until the civil rights struggle of the 1960s finally brought about the Voting Rights Act of 1965. The act cleared several final hurdles to voter registration and voting for African Americans. Following its adoption, many Democrats led the charge to create congressional districts that would enhance the power of African American voters. The idea was to create *majority-minority districts* within states, districts in which African Americans became the majority and thus gained the electoral power to send representatives to Congress.

While the strangely drawn districts succeeded in their stated goals, nearly quintupling the number of African American representatives in Congress in just over two decades, they have frustrated others who claim they are merely a new form of an old practice, gerrymandering. *Gerrymandering* is the manipulation of legislative district boundaries as a way of favoring a particular candidate. The term combines the word salamander, a reference to the strange shape of these districts, with the name of Massachusetts governor Elbridge Gerry, who in 1812, signed a redistricting plan designed to benefit his party. Despite the questionable ethics behind gerrymandering, the practice is legal, and both major parties have used it to their benefit. It is only when political redistricting appears to dilute the votes of racial minorities that gerrymandering efforts can be challenged under the Voting Rights Act. Other forms of gerrymandering are frequently employed in states where a dominant party seeks to maintain that domination. As we saw in the chapter on political parties, gerrymandering can be a tactic to draw district lines in a way that creates "safe seats" for a particular political party. In states like Maryland, these are safe seats for Democrats. In states like Louisiana, they are safe seats for Republicans (**Figure 11.4**).

### Gerrymandering in Austin, TX, 2003–2015



**Figure 11.4** These maps show examples of gerrymandering in Texas, where the Republican-controlled legislature has redrawn House districts to reduce the number of Democratic seats by combining voters in Austin with those in surrounding counties, sometimes even several hundred miles away. Today, Austin is represented by six different congressional representatives.

## Finding a Middle Ground

### Racial Gerrymandering and the Paradox of Minority Representation

In Ohio, one skirts the shoreline of Lake Erie like a snake. In Louisiana, one meanders across the southern part of the state from the eastern shore of Lake Ponchartrain, through much of New Orleans and north along the Mississippi River to Baton Rouge. And in Illinois, another wraps around the city of Chicago and its suburbs in a wandering line that, when seen on a map, looks like the mouth of a large, bearded alligator attempting to drink from Lake Michigan.

These aren't geographical features or large infrastructure projects. Rather, they are racially gerrymandered congressional districts. Their strange shapes are the product of careful district restructuring organized around the goal of enhancing the votes of minority groups. The alligator-mouth District 4 in Illinois, for example, was drawn to bring a number of geographically autonomous Latino groups in Illinois together in the same congressional district.

While the strategy of creating majority-minority districts has been a success for minorities' representation in Congress, its long-term effect has revealed a disturbing paradox: Congress as a whole has become less enthusiastic about minority-specific issues. How is this possible? The problem is that by creating districts with high percentages of minority constituents, strategists have made the other districts less diverse. The representatives in those districts are under very little pressure to consider the interests of minority groups. As a result, they typically do not.<sup>2</sup>

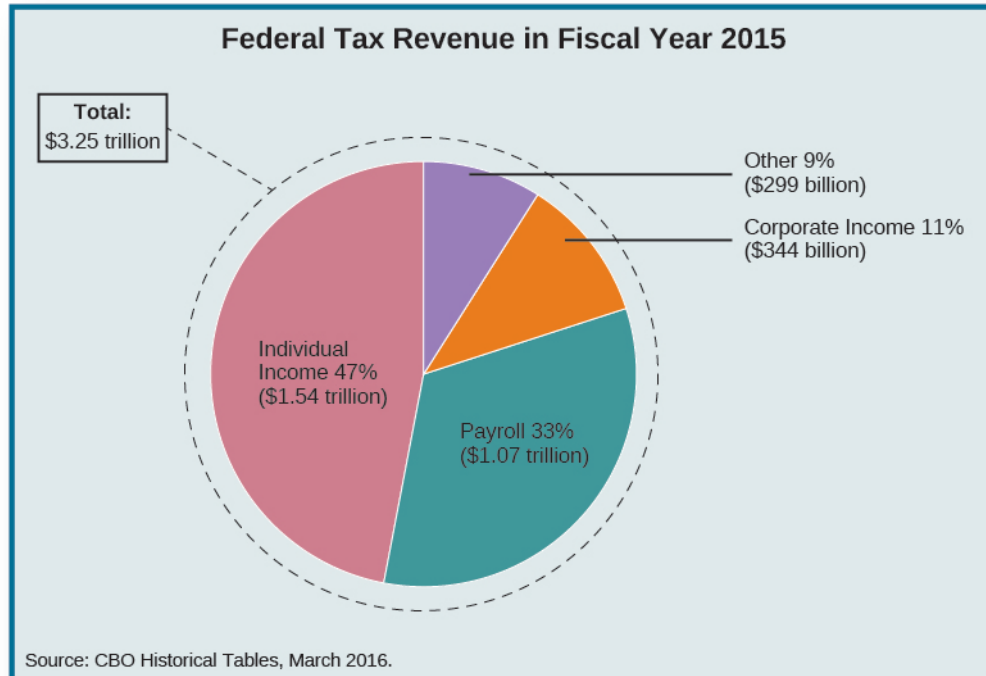
*What changes might help correct this problem? Are majority-minority districts no longer an effective strategy for increasing minority representation in Congress? Are there better ways to achieve a higher level of minority representation?*

## CONGRESSIONAL POWERS

The authority to introduce and pass legislation is a very strong power. But it is only one of the many that Congress possesses. In general, congressional powers can be divided into three types: enumerated, implied, and inherent. An **enumerated power** is a power explicitly stated in the Constitution. An **implied power** is one not specifically detailed in the Constitution but inferred as necessary to achieve the objectives of the national government. And an **inherent power**, while not enumerated or implied, must be assumed to exist as a direct result of the country's existence. In this section, we will learn about each type of power and the foundations of legitimacy they claim. We will also learn about the way the different branches of government have historically appropriated powers not previously granted to them and the way congressional power has recently suffered in this process.

Article I, Section 8, of the U.S. Constitution details the enumerated powers of the legislature. These include the power to levy and collect taxes, declare war, raise an army and navy, coin money, borrow money, regulate commerce among the states and with foreign nations, establish federal courts and bankruptcy rules, establish rules for immigration and naturalization, and issue patents and copyrights. Other powers, such as the ability of Congress to override a presidential veto with a two-thirds vote of both houses, are found elsewhere in the Constitution (Article II, Section 7, in the case of the veto override). The first of these enumerated powers, to levy taxes, is quite possibly the most important power Congress possesses. Without it, most of the others, whether enumerated, implied, or inherent, would be largely theoretical. The power to levy and collect taxes, along with the appropriations power, gives Congress what is typically referred to as "the power of the purse" (**Figure 11.5**). This means Congress controls the money.





**Figure 11.5** The ability to levy and collect taxes is the first, and most important, of Congress's enumerated powers. In 2015, U.S. federal tax revenue totaled \$3.25 trillion.

Some enumerated powers invested in the Congress were included specifically to serve as checks on the other powerful branches of government. These include Congress's sole power to introduce legislation, the Senate's final say on many presidential nominations and treaties signed by the president, and the House's ability to impeach or formally accuse the president or other federal officials of wrongdoing (the first step in removing the person from office; the second step, trial and removal, takes place in the U.S. Senate). Each of these powers also grants Congress **oversight** of the actions of the president and his or her administration—that is, the right to review and monitor other bodies such as the executive branch. The fact that Congress has the sole power to introduce legislation effectively limits the power of the president to develop the same laws he or she is empowered to enforce. The Senate's exclusive power to give final approval for many of the president's nominees, including cabinet members and judicial appointments, compels the president to consider the needs and desires of Congress when selecting top government officials. Finally, removing a president from office who has been elected by the entire country should never be done lightly. Giving this responsibility to a large deliberative body of elected officials ensures it will occur only very rarely.

Despite the fact that the Constitution outlines specific enumerated powers, most of the actions Congress takes on a day-to-day basis are not actually included in this list. The reason is that the Constitution not only gives Congress the power to make laws but also gives it some general direction as to what those laws should accomplish. The "necessary and proper clause" directs Congress "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Laws that regulate banks, establish a minimum wage, and allow for the construction and maintenance of interstate highways are all possible because of the implied powers granted by the necessary and proper clause. Today, the overwhelming portion of Congress's work is tied to the necessary and proper clause.

Finally, Congress's inherent powers are unlike either the enumerated or the implied powers. Inherent powers are not only not mentioned in the Constitution, but they do not even have a convenient clause in

the Constitution to provide for them. Instead, they are powers Congress has determined it must assume if the government is going to work at all. The general assumption is that these powers were deemed so essential to any functioning government that the framers saw no need to spell them out. Such powers include the power to control borders of the state, the power to expand the territory of the state, and the power to defend itself from internal revolution or coups. These powers are not granted to the Congress, or to any other branch of the government for that matter, but they exist because the country exists.

## Finding a Middle Ground

### Understanding the Limits of Congress's Power to Regulate

One of the most important constitutional anchors for Congress's implicit power to regulate all manner of activities within the states is the short clause in Article I, Section 8, which says Congress is empowered to "to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes." The Supreme Court's broad interpretation of this so-called commerce clause has greatly expanded the power and reach of Congress over the centuries.

From the earliest days of the republic until the end of the nineteenth century, the Supreme Court consistently handed down decisions that effectively broadened the Congress's power to regulate interstate and intrastate commerce.<sup>3</sup> The growing country, the demands of its expanding economy, and the way changes in technology and transportation contributed to the shrinking of space between the states demanded that Congress be able to function as a regulator. For a short period in the 1930s when federal authority was expanded to combat the Great Depression, the Court began to interpret the commerce clause far more narrowly. But after this interlude, the court's interpretation swung in an even-broader direction. This change proved particularly important in the 1960s, when Congress rolled back racial segregation throughout much of the South and beyond, and in the 1970s, as federal environmental regulations and programs took root.

But in *United States v. Lopez*, a decision issued in 1995, the Court changed course again and, for the first time in half a century, struck down a law as an unconstitutional overstepping of the commerce clause.<sup>4</sup> Five years later, the Court did it again, convincing many that the country may be witnessing the beginning of a rollback in Congress's power to regulate in the states. When the Patient Protection and Affordable Care Act (also known as the ACA, or Obamacare) came before the Supreme Court in 2012, many believed the Court would strike it down. Instead, the justices took the novel approach of upholding the law based on the Congress's enumerated power to tax, rather than the commerce clause. The decision was a shock to many.<sup>5</sup> And, by not upholding the law on the basis of the commerce clause, the Court left open the possibility that it would continue to pursue a narrower interpretation of the clause.

*What are the advantages of the Supreme Court's broad interpretation of the commerce clause? How do you think this interpretation affects the balance of power between the branches of government? Why are some people concerned that the Court's view of the clause could change?*

In the early days of the republic, Congress's role was rarely if ever disputed. However, with its decision in *Marbury v. Madison* (1803), the Supreme Court asserted its authority over judicial review and assumed the power to declare laws unconstitutional.<sup>6</sup> Yet, even after that decision, the Court was reluctant to use this power and didn't do so for over half a century. Initially, the presidency was also a fairly weak branch of government compared with the legislature. But presidents have sought to increase their power almost from the beginning, typically at the expense of the Congress. By the nature of the enumerated powers provided to the president, it is during wartime that the chief executive is most powerful and Congress least powerful. For example, President Abraham Lincoln, who oversaw the prosecution of the Civil War, stretched the bounds of his legal authority in a number of ways, such as by issuing the Emancipation Proclamation that freed slaves in the confederate states.<sup>7</sup>

In the twentieth century, the modern tussle over power between the Congress and the president really began. There are two primary reasons this struggle emerged. First, as the country grew larger and

more complex, the need for the government to assert its regulatory power grew. The executive branch, because of its hierarchical organization with the president at the top, is naturally seen as a more smoothly run governmental machine than the cumbersome Congress. This gives the president advantages in the struggle for power and indeed gives Congress an incentive to delegate authority to the president on processes, such as trade agreements and national monument designations, that would be difficult for the legislature to carry out. The second reason has to do with the president's powers as commander-in-chief in the realm of foreign policy.

The twin disasters of the Great Depression in the 1930s and World War II, which lasted until the mid-1940s, provided President Franklin D. Roosevelt with a powerful platform from which to expand presidential power. His popularity and his ability to be elected four times allowed him to greatly overshadow Congress. As a result, Congress attempted to restrain the power of the presidency by proposing the Twenty-Second Amendment to the Constitution, which limited a president to only two full terms in office.<sup>8</sup> Although this limitation is a significant one, it has not held back the tendency for the presidency to assume increased power.

In the decades following World War II, the United States entered the Cold War, a seemingly endless conflict with the Soviet Union without actual war, and therefore a period that allowed the presidency to assert more authority, especially in foreign affairs. In an exercise of this increased power, in the 1950s, President Harry Truman effectively went around an enumerated power of Congress by sending troops into battle in Korea without a congressional declaration of war (**Figure 11.6**). By the time of the Kennedy administration in the 1960s, the presidency had assumed nearly all responsibility for creating foreign policy, effectively shutting Congress out.

Following the twin scandals of Vietnam and Watergate in the early 1970s, Congress attempted to assert itself as a coequal branch, even in creating foreign policy, but could not hold back the trend. The War Powers Resolution (covered in the foreign policy chapter) was intended to strengthen congressional war powers but ended up clarifying presidential authority in the first sixty days of a military conflict. The war on terrorism after 9/11 has also strengthened the president's hand. Today, the seemingly endless bickering between the president and the Congress is a reminder of the ongoing struggle for power between the branches, and indeed between the parties, in Washington, DC.



**Figure 11.6** President Truman did not think it necessary to go through Congress to prosecute the war in Korea. This action opened the door to an extended era in which Congress has been effectively removed from decisions about whether to go to war, an era that continues today.

## 11.2 Congressional Elections

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### Learning Objectives

By the end of this section, you will be able to:

- Explain how fundamental characteristics of the House and Senate shape their elections
  - Discuss campaign funding and the effects of incumbency in the House and Senate
  - Analyze the way congressional elections can sometimes become nationalized
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The House and Senate operate very differently, partly because their members differ in the length of their terms, as well as in their age and other characteristics. In this section, we will explore why constitutional rules affect the elections for the two types of representatives and the reason the two bodies function differently by design. We also look at campaign finance to better understand how legislators get elected and stay elected.

### UNDERSTANDING THE HOUSE AND SENATE

The U.S. Constitution is very clear about who can be elected as a member of the House or Senate. A House member must be a U.S. citizen of at least seven years' standing and at least twenty-five years old. Senators are required to have nine years' standing as citizens and be at least thirty years old when sworn in. Representatives serve two-year terms, whereas senators serve six-year terms. Per the Supreme Court decision in *U.S. Term Limits v. Thornton* (1995), there are currently no term limits for either senators or representatives, despite efforts by many states to impose them in the mid-1990s.<sup>9</sup> House members are elected by the voters in their specific congressional districts. There are currently 435 congressional districts in the United States and thus 435 House members, and each state has a number of House districts roughly proportional to its share of the total U.S. population, with states guaranteed at least one House member. Two senators are elected by each state.

The structural and other differences between the House and Senate have practical consequences for the way the two chambers function. The House of Representatives has developed a stronger and more structured leadership than the Senate. Because its members serve short, two-year terms, they must regularly answer to the demands of their constituency when they run for election or reelection. Even House members of the same party in the same state will occasionally disagree on issues because of the different interests of their specific districts. Thus, the House can be highly partisan at times.

In contrast, members of the Senate are furthest from the demands and scrutiny of their constituents. Because of their longer six-year terms, they will see every member of the House face his or her constituents multiple times before they themselves are forced to seek reelection. Originally, when a state's two U.S. senators were appointed by the state legislature, the Senate chamber's distance from the electorate was even greater. Also, unlike members of the House who can seek the narrower interests of their district, senators must maintain a broader appeal in order to earn a majority of the votes across their entire state. In addition, the rules of the Senate allow individual members to slow down or stop legislation they dislike. These structural differences between the two chambers create real differences in the actions of their members. The heat of popular, sometimes fleeting, demands from constituents often glows red hot in the House. The Senate has the flexibility to allow these passions to cool. Dozens of major initiatives were passed by the House and had a willing president, for example, only to be defeated in the Senate. In 2012, the Buffett Rule would have implemented a minimum tax rate of 30 percent on wealthy Americans. Sixty senators had to agree to bring it to a vote, but the bill fell short of that number and died.<sup>10</sup> Similarly, although the ACA became widely known as "Obamacare," the president did not send a piece of legislation to Capitol Hill; he asked Congress to write the bills. Both the House and Senate authored their own versions of the legislation. The House's version was much bolder and larger in terms of establishing a national health care system. However, it did not stand a chance in the Senate, where a more moderate

version of the legislation was introduced. In the end, House leaders saw the Senate version as preferable to doing nothing and ultimately supported it.

## CONGRESSIONAL CAMPAIGN FUNDING

Modern political campaigns in the United States are expensive, and they have been growing more so. For example, in 1986, the costs of running a successful House and Senate campaign were \$776,687 and \$6,625,932, respectively, in 2014 dollars. By 2014, those values had shot to \$1,466,533 and \$9,655,660 (**Figure 11.7**).<sup>11</sup> Raising this amount of money takes quite a bit of time and effort. Indeed, a presentation for incoming Democratic representatives suggested a daily Washington schedule of five hours reaching out to donors, while only three or four were to be used for actual congressional work. As this advice reveals, raising money for reelection constitutes a large proportion of the work a congressperson does. This has caused many to wonder whether the amount of money in politics has truly become a corrupting influence. However, overall, the lion's share of direct campaign contributions in congressional elections comes from individual donors, who are less influential than the political action committees (PACs) that contribute the remainder.<sup>12</sup>



**Figure 11.7** The most expensive House race in 2014 was that of Speaker of the House John Boehner (right), a Republican from Ohio, who spent over \$17 million to hold his seat. He later resigned in 2015 and was replaced as Speaker by Paul Ryan (left) of Wisconsin's 1st District.<sup>13</sup>

Nevertheless, the complex problem of funding campaigns has a long history in the United States. For nearly the first hundred years of the republic, there were no federal campaign finance laws. Then, between the late nineteenth century and the start of World War I, Congress pushed through a flurry of reforms intended to bring order to the world of campaign finance. These laws made it illegal for politicians to solicit contributions from civil service workers, made corporate contributions illegal, and required candidates to report their fundraising. As politicians and donors soon discovered, however, these laws were full of loopholes and were easily skirted by those who knew the ins and outs of the system.

Another handful of reform attempts were therefore pushed through in the wake of World War II, but then Congress neglected campaign finance reform for a few decades. That lull ended in the early 1970s when the Federal Election Campaign Act was passed. Among other things, it created the Federal Election Commission (FEC), required candidates to disclose where their money was coming from and where they were spending it, limited individual contributions, and provided for public financing of presidential campaigns.

Another important reform occurred in 2002, when Senators John McCain (R-AZ) and Russell Feingold (D-WI) drafted, and Congress passed, the Bipartisan Campaign Reform Act (BCRA), also referred to as the McCain-Feingold Act. The purpose of this law was to limit the use of "soft money," which is raised for purposes like party-building efforts, get-out-the-vote efforts, and issue-advocacy ads. Unlike "hard

money” contributed directly to a candidate, which is heavily regulated and limited, soft money had almost no regulations or limits. It had never been a problem before the mid-1990s, when a number of very imaginative political operatives developed a great many ways to spend this money. After that, soft-money donations skyrocketed. But the McCain-Feingold bill greatly limited this type of fundraising.

McCain-Feingold placed limits on total contributions to political parties, prohibited coordination between candidates and PAC campaigns, and required candidates to include personal endorsements on their political ads. Until 2010, it also limited advertisements run by unions and corporations thirty days before a primary and sixty days before a general election.<sup>14</sup> The FEC’s enforcement of the law spurred numerous court cases challenging it. The most controversial decision was handed down by the Supreme Court in 2010, whose ruling on *Citizens United v. Federal Election Commission* led to the removal of spending limits on corporations. Justices in the majority argued that the BCRA violated a corporation’s free-speech rights.<sup>15</sup>

The *Citizens United* case began as a lawsuit against the FEC filed by Citizens United, a nonprofit organization that wanted to advertise a documentary critical of former senator and Democratic hopeful Hillary Clinton on the eve of the 2008 Democratic primaries. Advertising or showing the film during this time window was prohibited by the McCain-Feingold Act. But the Court found that this type of restriction violated the organization’s First Amendment right to free speech. As critics of the decision predicted at the time, the Court thus opened the floodgates to private soft money flowing into campaigns again.

In the wake of the *Citizens United* decision, a new type of advocacy group emerged, the super PAC. A traditional PAC is an organization designed to raise hard money to elect or defeat candidates. Such PACs tended to be run by businesses and other groups, like the Teamsters Union and the National Rifle Association, to support their special interests. They are highly regulated in regard to the amount of money they can take in and spend, but super PACs aren’t bound by these regulations. While they cannot give money directly to a candidate or a candidate’s party, they can raise and spend unlimited funds, and they can spend independently of a campaign or party. In the 2012 election cycle, for example, super PACs spent just over \$600 million dollars and raised about \$200 million more.<sup>16</sup>

At the same time, several limits on campaign contributions have been upheld by the courts and remain in place. Individuals may contribute up to \$2700 per candidate per election. Individuals may also give \$5000 to PACs and \$33,400 to a national party committee. PACs that contribute to more than one candidate are permitted to contribute \$5000 per candidate per election, and up to \$15,000 to a national party. PACs created to give money to only one candidate are limited to only \$2700 per candidate, however (**Figure 11.8**).<sup>17</sup> The amounts are adjusted every two years, based on inflation. These limits are intended to create a more equal playing field for the candidates, so that candidates must raise their campaign funds from a broad pool of contributors.

CONTRIBUTION LIMITS FOR 2015-2016 FEDERAL ELECTIONS					
DONORS	RECIPIENTS				
	Candidate Committee	PAC <sup>1</sup> (SSF and Nonconnected)	State/District/Local Party Committee	National Party Committee	Additional National Party Committee Accounts <sup>2</sup>
Individual	\$2,700* per election	\$5,000 per year	\$10,000 per year (combined)	\$33,400* per year	\$100,200* per account, per year
Candidate Committee	\$2,000 per election	\$5,000 per year	Unlimited Transfers	Unlimited Transfers	
PAC-Multicandidate	\$5,000 per election	\$5,000 per year	\$5,000 per year (combined)	\$15,000 per year	\$45,000 per account, per year
PAC-Nonmulticandidate	\$2,700 per election	\$5,000 per year	\$10,000 per year (combined)	\$33,400* per year	\$100,200* per account, per year
State/District/Local Party Committee	\$5,000 per election	\$5,000 per year	Unlimited Transfers		
National Party Committee	\$5,000 per election <sup>3</sup>	\$5,000 per year			

\*- Indexed for inflation in odd-numbered years.

<sup>1</sup> "PAC" here refers to a committee that makes contributions to other federal political committees. Independent-expenditure-only political committees (sometimes called "super PACs") may accept unlimited contributions, including from corporations and labor organizations.

<sup>2</sup> The limits in this column apply to a national party committee's accounts for: (i) the presidential nominating convention; (ii) election recounts and contests and other legal proceedings; and (iii) national party headquarters buildings. A party's national committee, Senate campaign committee and House campaign committee are each considered separate national party committees with separate limits. Only a national party committee, not the parties' national congressional campaign committees, may have an account for the presidential nominating convention.

<sup>3</sup> Additionally, a national party committee and its Senatorial campaign committee may contribute up to \$46,800 combined per campaign to each Senate candidate.

Source: Federal Election Commission. "Contribution Limits for 2015–2016 Federal Elections." June 25, 2015.

**Figure 11.8** The Federal Election Commission has strict federal election guidelines on who can contribute, to whom, and how much.

### Link to Learning

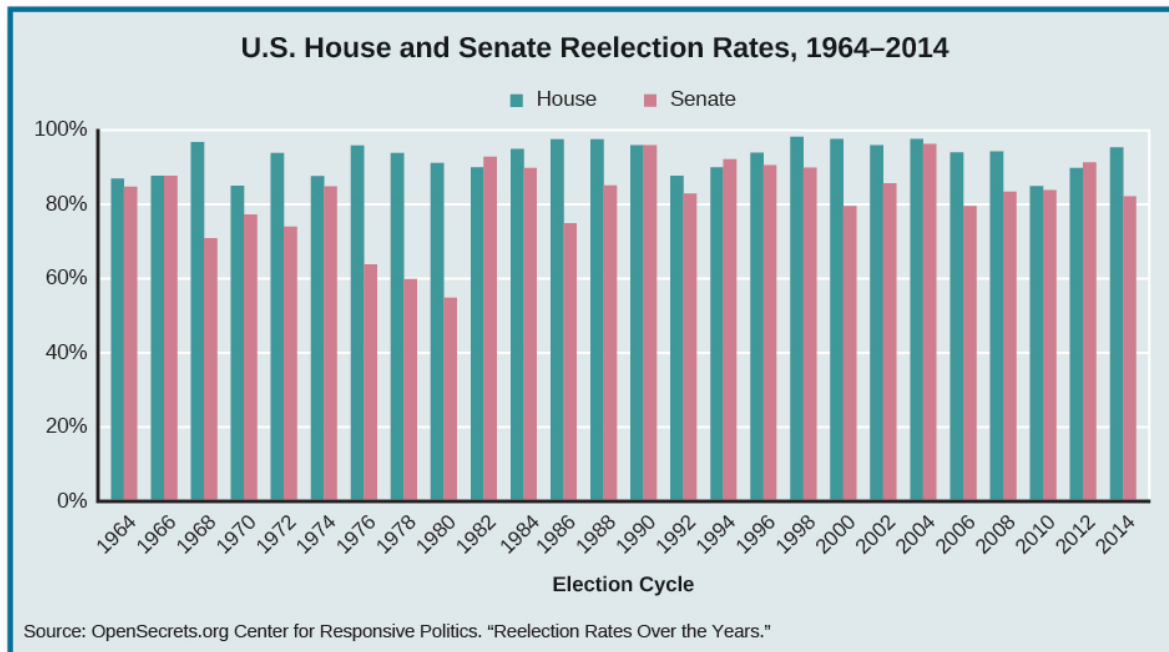


The **Center for Responsive Politics** (<https://openstaxcollege.org//29OpnSecret>) reports donation amounts that are required by law to be disclosed to the Federal Elections Commission. One finding is that, counter to conventional wisdom, the vast majority of direct campaign contributions come from individual donors, not from PACs and political parties.

## INCUMBENCY EFFECTS

Not surprisingly, the jungle of campaign financing regulations and loopholes is more easily navigated by incumbents in Congress than by newcomers. Incumbents are elected officials who currently hold an office. The amount of money they raise against their challengers demonstrates their advantage. In 2014,

for example, the average Senate incumbent raised \$12,144,933, whereas the average challenger raised only \$1,223,566.<sup>18</sup> This is one of the many reasons incumbents win a large majority of congressional races each electoral cycle. Incumbents attract more money because people want to give to a winner. In the House, the percentage of incumbents winning reelection has hovered between 85 and 100 percent for the last half century. In the Senate, there is only slightly more variation, given the statewide nature of the race, but it is still a very high majority of incumbents who win reelection (**Figure 11.9**). As these rates show, even in the worst political environments, incumbents are very difficult to defeat.



**Figure 11.9** Historically, incumbents in both the House and the Senate enjoy high rates of reelection.

The historical difficulty of unseating an incumbent in the House or Senate is often referred to as the *incumbent advantage* or the *incumbency effect*. The advantage in financing is a huge part of this effect, but it is not the only important part. Incumbents often have a much higher level of name recognition. All things being equal, voters are far more likely to select the name of the person they recall seeing on television and hearing on the radio for the last few years than the name of a person they hardly know. And donors are more likely to want to give to a proven winner.

But more important is the way the party system itself privileges incumbents. A large percentage of congressional districts across the country are “safe seats” in uncompetitive districts, meaning candidates from a particular party are highly likely to consistently win the seat. This means the functional decision in these elections occurs during the primary, not in the general election. Political parties in general prefer to support incumbents in elections, because the general consensus is that incumbents are better candidates, and their record of success lends support to this conclusion. That said, while the political parties themselves to a degree control and regulate the primaries, popular individual candidates and challengers sometimes rule the day. This has especially been the case in recent years as conservative incumbents have been “primaried” by challengers more conservative than they.



## Insider Perspective

### The End of Incumbency Advantage?

At the start of 2014, House majority whip Eric Cantor, a representative from Virginia, was at the top of his game. He was handsome, popular with talk show hosts and powerful insiders, an impressive campaign fundraiser and speaker, and apparently destined to become Speaker of the House when the current speaker stepped down. Four months later, Cantor lost the opportunity to run for his own congressional seat in a shocking primary election upset that shook the Washington political establishment to its core.

What happened? How did such a powerful incumbent lose a game in which the cards had been stacked so heavily in his favor? Analyses of the stunning defeat quickly showed there were more chinks in Cantor's polished armor than most wanted to admit. But his weakness wasn't that he was unable to play the political game. Rather, he may have learned to play it too well. He became seen as too much of a Washington insider.

Cantor's ambition, political skill, deep connections to political insiders, and ability to come out squeaky clean after even the dirtiest political tussling should have given him a clear advantage over any competitor. But in the political environment of 2014, when conservative voices around the country criticized the party for ignoring the people and catering to political insiders, his strengths became weaknesses. Indeed, Cantor was the only highest-level Republican representative sacrificed to conservative populism.

Were the winds of change blowing for incumbents? Between 1946 and 2012, only 5 percent of incumbent senators and 2 percent of House incumbents lost their party primaries.<sup>19</sup> In 2014, Cantor was one of four House incumbents who did so, while no incumbent senators suffered defeat. All evidence suggests the incumbent advantage, especially in the primary system, is alive and well. The story of Eric Cantor may very well be the classic case of an exception proving the rule.

*If you are a challenger running against an incumbent, what are some strategies you could use to make the race competitive? Would Congress operate differently if challengers defeated incumbents more often?*

Another reason incumbents wield a great advantage over their challengers is the state power they have at their disposal.<sup>20</sup> One of the many responsibilities of a sitting congressperson is *constituent casework*. Constituents routinely reach out to their congressperson for powerful support to solve complex problems, such as applying for and tracking federal benefits or resolving immigration and citizenship challenges.<sup>21</sup> Incumbent members of Congress have paid staff, influence, and access to specialized information that can help their constituents in ways other persons cannot. And congresspersons are hardly reticent about their efforts to support their constituents. Often, they will publicize their casework on their websites or, in some cases, create television advertisements that boast of their helpfulness. Election history has demonstrated that this form of publicity is very effective in garnering the support of voters.

## LOCAL AND NATIONAL ELECTIONS

The importance of airing positive constituent casework during campaigns is a testament to the accuracy of saying, "All politics is local." This phrase, attributed to former Speaker of the House Tip O'Neill (D-MA), essentially means that the most important motivations directing voters are rooted in local concerns. In general, this is true. People naturally feel more driven by the things that affect them on a daily basis. These are concerns like the quality of the roads, the availability of good jobs, and the cost and quality of public education. Good senators and representatives understand this and will seek to use their influence and power in office to affect these issues for the better. This is an age-old strategy for success in office and elections.

Political scientists have taken note of some voting patterns that appear to challenge this common assumption, however. In 1960, political scientist Angus Campbell proposed the **surge-and-decline theory** to explain these patterns.<sup>22</sup> Campbell noticed that since the Civil War, with the exception of 1934, the president's party has consistently lost seats in Congress during the midterm elections. He proposed that

the reason was a surge in political stimulation during presidential elections, which contributes to greater turnout and brings in voters who are ordinarily less interested in politics. These voters, Campbell argued, tend to favor the party holding the presidency. In contrast, midterm elections witness the opposite effect. They are less stimulating and have lower turnout because less-interested voters stay home. This shift, in Campbell's theory, provides an advantage to the party not currently occupying the presidency.

In the decades since Campbell's influential theory was published, a number of studies have challenged his conclusions. Nevertheless, the pattern of midterm elections benefiting the president's opposition has persisted.<sup>23</sup> Only in exceptional years has this pattern been broken: first in 1998 during President Bill Clinton's second term and the Monica Lewinsky scandal, when exit polls indicated most voters opposed the idea of impeaching the president, and then again in 2002, following the 9/11 terrorist attacks and the ensuing declaration of a "war on terror."

The evidence does suggest that national concerns, rather than local ones, can function as powerful motivators at the polls. Consider, for example, the role of the Iraq War in bringing about a Democratic rout of the Republicans in the House in 2006 and in the Senate in 2008. Unlike previous wars in Europe and Vietnam, the war in Iraq was fought by a very small percentage of the population.<sup>24</sup> The vast majority of citizens were not soldiers, few had relatives fighting in the war, and most did not know anyone who directly suffered from the prolonged conflict. Voters in large numbers were motivated by the political and economic disaster of the war to vote for politicians they believed would end it (**Figure 11.10**).



**Figure 11.10** Wars typically have the power to nationalize local elections. What makes the Iraq War different is that the overwhelming majority of voters had little to no intimate connection with the conflict and were motivated to vote for those who would end it. (credit: "Lipton sale"/Wikimedia Commons)

Congressional elections may be increasingly driven by national issues. Just two decades ago, straight-ticket, party-line voting was still relatively rare across most of the country.<sup>25</sup> In much of the South, which began to vote overwhelmingly Republican in presidential elections during the 1960s and 1970s, Democrats were still commonly elected to the House and Senate. The candidates themselves and the important local issues, apart from party affiliation, were important drivers in congressional elections. This began to change in the 1980s and 1990s, as Democratic representatives across the region began to dwindle. And the South isn't alone; areas in the Northeast and the Northwest have grown increasingly Democratic. Indeed, the 2014 midterm election was the most nationalized election in many decades. Voters who favor a particular party in a presidential election are now much more likely to also support that same party in House and Senate elections than was the case just a few decades ago.

## 11.3 Congressional Representation

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### Learning Objectives

By the end of this section, you will be able to:

- Explain the basics of representation
  - Describe the extent to which Congress as a body represents the U.S. population
  - Explain the concept of collective representation
  - Describe the forces that influence congressional approval ratings
- 

The tension between local and national politics described in the previous section is essentially a struggle between interpretations of representation. Representation is a complex concept. It can mean paying careful attention to the concerns of constituents, understanding that representatives must act as they see fit based on what they feel best for the constituency, or relying on the particular ethnic, racial, or gender diversity of those in office. In this section, we will explore three different models of representation and the concept of descriptive representation. We will look at the way members of Congress navigate the challenging terrain of representation as they serve, and all the many predictable and unpredictable consequences of the decisions they make.

### TYPES OF REPRESENTATION: LOOKING OUT FOR CONSTITUENTS

By definition and title, senators and House members are representatives. This means they are intended to be drawn from local populations around the country so they can speak for and make decisions for those local populations, their constituents, while serving in their respective legislative houses. That is, **representation** refers to an elected leader's looking out for his or her constituents while carrying out the duties of the office.<sup>26</sup>

Theoretically, the process of constituents voting regularly and reaching out to their representatives helps these congresspersons better represent them. It is considered a given by some in representative democracies that representatives will seldom ignore the wishes of constituents, especially on salient issues that directly affect the district or state. In reality, the job of representing in Congress is often quite complicated, and elected leaders do not always know where their constituents stand. Nor do constituents always agree on everything. Navigating their sometimes contradictory demands and balancing them with the demands of the party, powerful interest groups, ideological concerns, the legislative body, their own personal beliefs, and the country as a whole can be a complicated and frustrating process for representatives.

Traditionally, representatives have seen their role as that of a delegate, a trustee, or someone attempting to balance the two. A representative who sees him- or herself as a delegate believes he or she is empowered merely to enact the wishes of constituents. Delegates must employ some means to identify the views of their constituents and then vote accordingly. They are not permitted the liberty of employing their own reason and judgment while acting as representatives in Congress. This is the **delegate model of representation**.

In contrast, a representative who understands their role to be that of a trustee believes he or she is entrusted by the constituents with the power to use good judgment to make decisions on the constituents' behalf. In the words of the eighteenth-century British philosopher Edmund Burke, who championed the **trustee model of representation**, "Parliament is not a congress of ambassadors from different and hostile interests . . . [it is rather] a deliberative assembly of one nation, with one interest, that of the whole."<sup>27</sup> In the modern setting, trustee representatives will look to party consensus, party leadership, powerful interests, the member's own personal views, and national trends to better identify the voting choices they should make.

Understandably, few if any representatives adhere strictly to one model or the other. Instead, most find themselves attempting to balance the important principles embedded in each. Political scientists call this the **politico model of representation**. In it, members of Congress act as either trustee or delegate based on rational political calculations about who is best served, the constituency or the nation.

For example, every representative, regardless of party or conservative versus liberal leanings, must remain firm in support of some ideologies and resistant to others. On the political right, an issue that demands support might be gun rights; on the left, it might be a woman's right to an abortion. For votes related to such issues, representatives will likely pursue a delegate approach. For other issues, especially complex questions the public at large has little patience for, such as subtle economic reforms, representatives will tend to follow a trustee approach. This is not to say their decisions on these issues run contrary to public opinion. Rather, it merely means they are not acutely aware of or cannot adequately measure the extent to which their constituents support or reject the proposals at hand. It could also mean that the issue is not salient to their constituents. Congress works on hundreds of different issues each year, and constituents are likely not aware of the particulars of most of them.

## DESCRIPTIVE REPRESENTATION IN CONGRESS

In some cases, representation can seem to have very little to do with the substantive issues representatives in Congress tend to debate. Instead, proper representation for some is rooted in the racial, ethnic, socioeconomic, gender, and sexual identity of the representatives themselves. This form of representation is called **descriptive representation**.

At one time, there was relatively little concern about descriptive representation in Congress. A major reason is that until well into the twentieth century, white men of European background constituted an overwhelming majority of the voting population. African Americans were routinely deprived of the opportunity to participate in democracy, and Hispanics and other minority groups were fairly insignificant in number and excluded by the states. While women in many western states could vote sooner, all women were not able to exercise their right to vote nationwide until passage of the Nineteenth Amendment in 1920, and they began to make up more than 5 percent of either chamber only in the 1990s.

Many advances in women's rights have been the result of women's greater engagement in politics and representation in the halls of government, especially since the founding of the National Organization for Women in 1966 and the National Women's Political Caucus (NWPC) in 1971. The NWPC was formed by Bella Abzug (**Figure 11.11**), Gloria Steinem, Shirley Chisholm, and other leading feminists to encourage women's participation in political parties, elect women to office, and raise money for their campaigns. For example, Patsy Mink (D-HI) (**Figure 11.11**), the first Asian American woman elected to Congress, was the coauthor of the Education Amendments Act of 1972, Title IX of which prohibits sex discrimination in education. Mink had been interested in fighting discrimination in education since her youth, when she opposed racial segregation in campus housing while a student at the University of Nebraska. She went to law school after being denied admission to medical school because of her gender. Like Mink, many other women sought and won political office, many with the help of the NWPC. Today, EMILY's List, a PAC founded in 1985 to help elect pro-choice Democratic women to office, plays a major role in fundraising for female candidates. In the 2012 general election, 80 percent of the candidates endorsed by EMILY's List won a seat.<sup>28</sup>



**Figure 11.11** Patsy Mink (a), a Japanese American from Hawaii, was the first Asian American woman elected to the House of Representatives. In her successful 1970 congressional campaign, Bella Abzug (b) declared, “This woman’s place is in the House... the House of Representatives!”

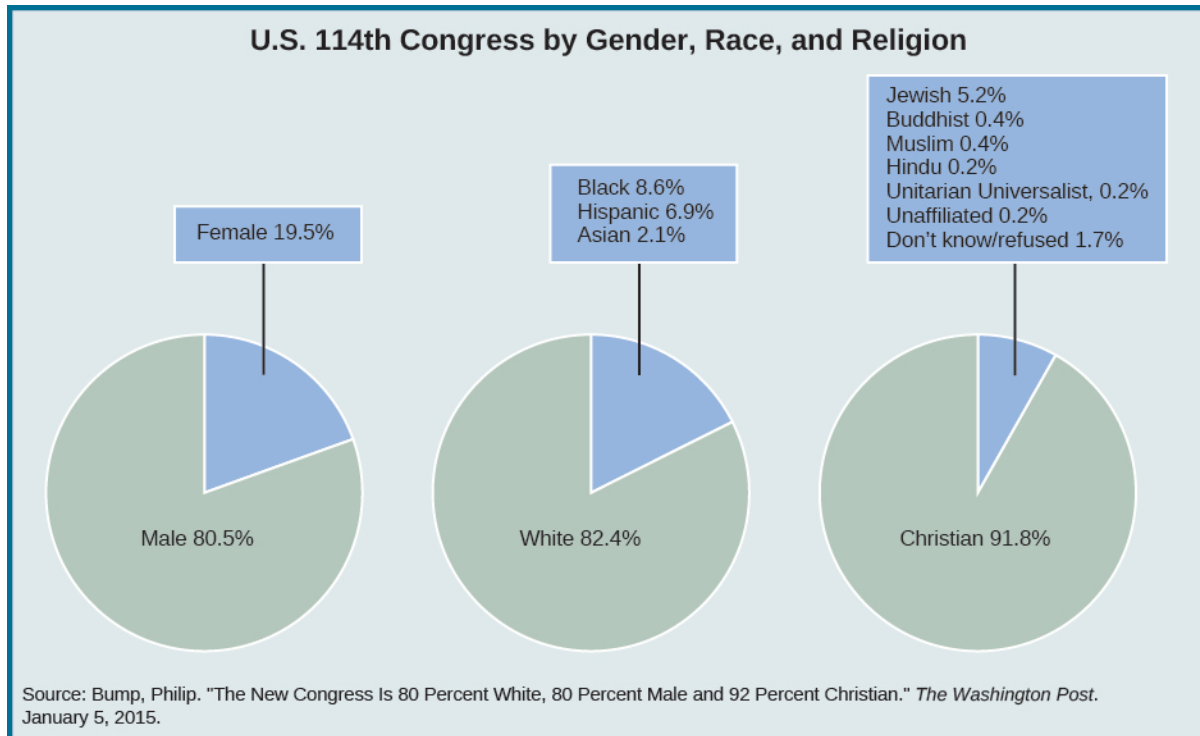
In the wake of the Civil Rights Movement, African American representatives also began to enter Congress in increasing numbers. In 1971, to better represent their interests, these representatives founded the Congressional Black Caucus (CBC), an organization that grew out of a Democratic select committee formed in 1969. Founding members of the CBC include John Conyers (D-MI), currently the longest-serving member of the House of Representatives, Charles Rangel (D-NY), and Shirley Chisholm, a founder of the NWPC and the first African American woman to be elected to the House of Representatives (**Figure 11.12**).



**Figure 11.12** This photo shows the founding members of the Congressional Black Caucus, which at the time of its founding in 1971 had only thirteen members. Currently, forty-six African Americans serve in Congress.

In recent decades, Congress has become much more descriptively representative of the United States. The 114th Congress, which began in January 2015, had a historically large percentage of racial and ethnic

minorities. African Americans made up the largest percentage, with forty-eight members, while Latinos accounted for thirty-two members, up from nineteen just over a decade before.<sup>29</sup> Yet, demographically speaking, Congress as a whole is still a long way from where the country is and remains largely white, male, and wealthy. For example, although more than half the U.S. population is female, only 20 percent of Congress is. Congress is also overwhelmingly Christian (**Figure 11.13**).



**Figure 11.13** The diversity of the country is not reflected in the U.S. Congress, whose current membership is approximately 80 percent male, 82 percent white, and 92 percent Christian.

## REPRESENTING CONSTITUENTS

Ethnic, racial, gender, or ideological identity aside, it is a representative's actions in Congress that ultimately reflect his or her understanding of representation. Congress members' most important function as lawmakers is writing, supporting, and passing bills. And as representatives of their constituents, they are charged with addressing those constituents' interests. Historically, this job has included what some have affectionately called "bringing home the bacon" but what many (usually those outside the district in question) call **pork-barrel politics**. As a term and a practice, pork-barrel politics—federal spending on projects designed to benefit a particular district or set of constituents—has been around since the nineteenth century, when barrels of salt pork were both a sign of wealth and a system of reward. While pork-barrel politics are often deplored during election campaigns, and earmarks—funds appropriated for specific projects—are no longer permitted in Congress (see feature box below), legislative control of local appropriations nevertheless still exists. In more formal language, *allocation*, or the influencing of the national budget in ways that help the district or state, can mean securing funds for a specific district's project like an airport, or getting tax breaks for certain types of agriculture or manufacturing.

## Get Connected!

### Language and Metaphor

The language and metaphors of war and violence are common in politics. Candidates routinely “smell blood in the water,” “battle for delegates,” go “head-to-head,” “cripple” their opponent, and “make heads roll.” But references to actual violence aren’t the only metaphorical devices commonly used in politics. Another is mentions of food. Powerful speakers frequently “throw red meat to the crowds;” careful politicians prefer to stick to “meat-and-potato issues;” and representatives are frequently encouraged by their constituents to “bring home the bacon.” And the way members of Congress typically “bring home the bacon” is often described with another agricultural metaphor, the “earmark.”

In ranching, an earmark is a small cut on the ear of a cow or other animal to denote ownership. Similarly, in Congress, an earmark is a mark in a bill that directs some of the bill’s funds to be spent on specific projects or for specific tax exemptions. Since the 1980s, the earmark has become a common vehicle for sending money to various projects around the country. Many a road, hospital, and airport can trace its origins back to a few skillfully drafted earmarks.

Relatively few people outside Congress had ever heard of the term before the 2008 presidential election, when Republican nominee Senator John McCain touted his career-long refusal to use the earmark as a testament to his commitment to reforming spending habits in Washington.<sup>30</sup> McCain’s criticism of the earmark as a form of corruption cast a shadow over a previously common legislative practice. As the country sank into recession and Congress tried to use spending bills to stimulate the economy, the public grew more acutely aware of its earmarking habits. Congresspersons then were eager to distance themselves from the practice. In fact, the use of earmarks to encourage Republicans to help pass health care reform actually made the bill less popular with the public.

In 2011, after Republicans took over the House, they outlawed earmarks. But with deadlocks and stalemates becoming more common, some quiet voices have begun asking for a return to the practice. They argue that Congress works because representatives can satisfy their responsibilities to their constituents by making deals. The earmarks are those deals. By taking them away, Congress has hampered its own ability to “bring home the bacon.”

*Are earmarks a vital part of legislating or a corrupt practice that was rightly jettisoned? Pick a cause or industry, and investigate whether any earmarks ever favored it, or research the way earmarks have hurt or helped your state or district, and decide for yourself.*

*Follow-up activity: Find out where your congressional representative stands on the ban on earmarks and write to support or dissuade him or her.*

Such budgetary allocations aren’t always looked upon favorably by constituents. Consider, for example, the passage of the ACA in 2010. The desire for comprehensive universal health care had been a driving position of the Democrats since at least the 1960s. During the 2008 campaign, that desire was so great among both Democrats and Republicans that both parties put forth plans. When the Democrats took control of Congress and the presidency in 2009, they quickly began putting together their plan. Soon, however, the politics grew complex, and the proposed plan became very contentious for the Republican Party.

Nevertheless, the desire to make good on a decades-old political promise compelled Democrats to do everything in their power to pass something. They offered sympathetic members of the Republican Party valuable budgetary concessions; they attempted to include allocations they hoped the opposition might feel compelled to support; and they drafted the bill in a purposely complex manner to avoid future challenges. These efforts, however, had the opposite effect. The Republican Party’s constituency interpreted the allocations as bribery and the bill as inherently flawed, and felt it should be scrapped entirely. The more Democrats dug in, the more frustrated the Republicans became (**Figure 11.14**).



**Figure 11.14** In 2009, the extended debates and legislative maneuvering in Congress over the proposed health care reform bill triggered a firestorm of disapproval from the Republicans and protests from their supporters. In many cases, hyperbole ruled the day. (credit: "dbking"/Flickr)

The Republican opposition, which took control of the House during the 2010 midterm elections, promised constituents they would repeal the law. Their attempts were complicated, however, by the fact that Democrats still held the Senate and the presidency. Yet, the desire to represent the interests of their constituents compelled Republicans to use another tool at their disposal, the symbolic vote. During the 112th and 113th Congresses, Republicans voted more than sixty times to either repeal or severely limit the reach of the law. They understood these efforts had little to no chance of ever making it to the president's desk. And if they did, he would certainly have vetoed them. But it was important for these representatives to demonstrate to their constituents that they understood their wishes and were willing to act on them.

Historically, representatives have been able to balance their role as members of a national legislative body with their role as representatives of a smaller community. The Obamacare fight, however, gave a boost to the growing concern that the power structure in Washington divides representatives from the needs of their constituency.<sup>31</sup> This has exerted pressure on representatives to the extent that some now pursue a more straightforward delegate approach to representation. Indeed, following the 2010 election, a handful of Republicans began living in their offices in Washington, convinced that by not establishing a residence in Washington, they would appear closer to their constituents at home.<sup>32</sup>

## COLLECTIVE REPRESENTATION AND CONGRESSIONAL APPROVAL

The concept of **collective representation** describes the relationship between Congress and the United States as a whole. That is, it considers whether the institution itself represents the American people, not just whether a particular member of Congress represents his or her district. Predictably, it is far more difficult for Congress to maintain a level of collective representation than it is for individual members of Congress to represent their own constituents. Not only is Congress a mixture of different ideologies, interests, and party affiliations, but the collective constituency of the United States has an even-greater level of diversity. Nor is it a solution to attempt to match the diversity of opinions and interests in the United States with those in Congress. Indeed, such an attempt would likely make it more difficult for Congress to maintain collective representation. Its rules and procedures require Congress to use flexibility, bargaining, and concessions. Yet, it is this flexibility and these concessions, which many now interpret as

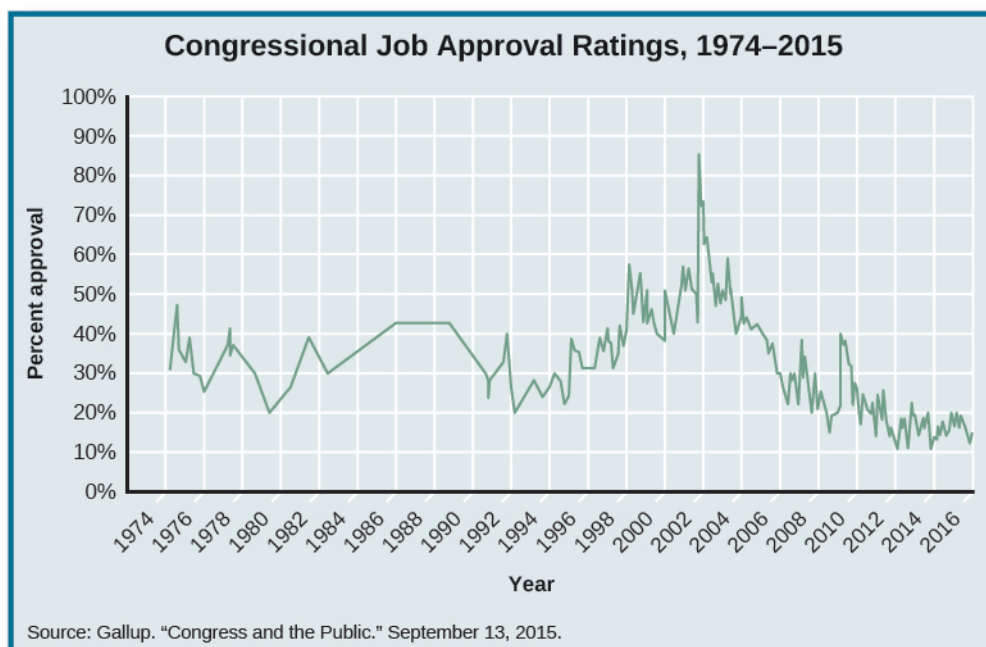


corruption, that tend to engender the high public disapproval ratings experienced by Congress.

After many years of deadlocks and bickering on Capitol Hill, the national perception of Congress is near an all-time low. According to Gallup polls, Congress has a stunningly poor approval rating of about 16 percent. This is unusual even for a body that has rarely enjoyed a high approval rating. For example, for nearly two decades following the Watergate scandal in the early 1970s, the national approval rating of Congress hovered between 30 and 40 percent.<sup>33</sup>

Yet, incumbent reelections have remained largely unaffected. The reason has to do with the remarkable ability of many in the United States to separate their distaste for Congress from their appreciation for their own representative. Paradoxically, this tendency to hate the group but love one's own representative actually perpetuates the problem of poor congressional approval ratings. The reason is that it blunts voters' natural desire to replace those in power who are earning such low approval ratings.

As decades of polling indicate, few events push congressional approval ratings above 50 percent. Indeed, when the ratings are graphed, the two noticeable peaks are at 57 percent in 1998 and 84 percent in 2001 (Figure 11.15). In 1998, according to Gallup polling, the rise in approval accompanied a similar rise in other mood measures, including President Bill Clinton's approval ratings and general satisfaction with the state of the country and the economy. In 2001, approval spiked after the September 11 terrorist attacks and the Bush administration launched the "War on Terror," sending troops first to Afghanistan and later to Iraq. War has the power to bring majorities of voters to view their Congress and president in an overwhelmingly positive way.<sup>34</sup>



**Figure 11.15** Congress's job approval rating reached a high of 84 percent in October 2001 following the 9/11 terrorist attacks. It has declined fairly steadily ever since, reaching a low of 9 percent in November 2013, just after the federal government shutdown in the previous month.

Nevertheless, all things being equal, citizens tend to rate Congress more highly when things get done and more poorly when things do not get done. For example, during the first half of President Obama's first term, Congress's approval rating reached a relative high of about 40 percent. Both houses were dominated by members of the president's own party, and many people were eager for Congress to take action to end the deep recession and begin to repair the economy. Millions were suffering economically, out of work, or losing their jobs, and the idea that Congress was busy passing large stimulus packages, working on finance

reform, and grilling unpopular bank CEOs and financial titans appealed to many. Approval began to fade as the Republican Party slowed the wheels of Congress during the tumultuous debates over Obamacare and reached a low of 9 percent following the federal government shutdown in October 2013.

One of the events that began the approval rating's downward trend was Congress's divisive debate over national deficits. A deficit is what results when Congress spends more than it has available. It then conducts additional deficit spending by increasing the national debt. Many modern economists contend that during periods of economic decline, the nation should run deficits, because additional government spending has a stimulative effect that can help restart a sluggish economy. Despite this benefit, voters rarely appreciate deficits. They see Congress as spending wastefully during a time when they themselves are cutting costs to get by.

The disconnect between the common public perception of running a deficit and its legitimate policy goals is frequently exploited for political advantage. For example, while running for the presidency in 2008, Barack Obama slammed the deficit spending of the George W. Bush presidency, saying it was "unpatriotic." This sentiment echoed complaints Democrats had been issuing for years as a weapon against President Bush's policies. Following the election of President Obama and the Democratic takeover of the Senate, the concern over deficit spending shifted parties, with Republicans championing a spendthrift policy as a way of resisting Democratic policies.

### Link to Learning



Find your representative at the **U.S. House website** (<https://openstaxcollege.org//29FndHReps>) and then explore his or her website and social media accounts to see whether the issues on which your representative spends time are the ones you think are most appropriate.

## 11.4 House and Senate Organizations

### Learning Objectives

By the end of this section, you will be able to:

- Explain the division of labor in the House and in the Senate
- Describe the way congressional committees develop and advance legislation

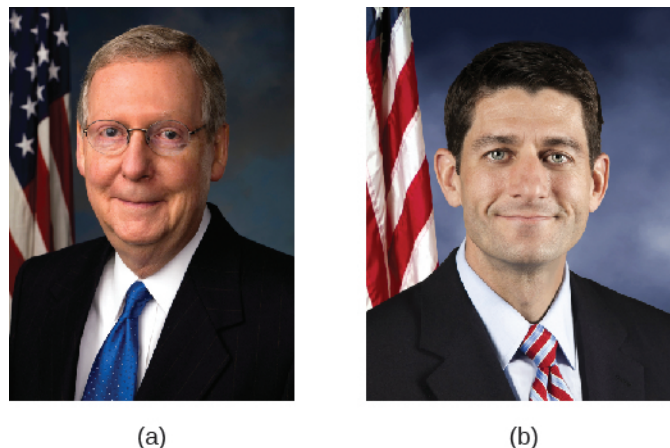
Not all the business of Congress involves bickering, political infighting, government shutdowns, and Machiavellian maneuvering. Congress does actually get work done. Traditionally, it does this work in a very methodical way. In this section, we will explore how Congress functions at the leadership and committee levels. We will learn how the party leadership controls their conferences and how the many committees within Congress create legislation that can then be moved forward or die on the floor.

### PARTY LEADERSHIP

The party leadership in Congress controls the actions of Congress. Leaders are elected by the two-party conferences in each chamber. In the House of Representatives, these are the House Democratic Conference and the House Republican Conference. These conferences meet regularly and separately not only to elect their leaders but also to discuss important issues and strategies for moving policy forward. Based on the number of members in each conference, one conference becomes the majority conference and the other becomes the minority conference. Independents like Senator Bernie Sanders will typically join one or the

other major party conference, as a matter of practicality and often based on ideological affinity. Without the membership to elect their own leadership, independents would have a very difficult time getting things done in Congress unless they had a relationship with the leaders.

Despite the power of the conferences, however, the most important leadership position in the House is actually elected by the entire body of representatives. This position is called the **Speaker of the House** and is the only House officer mentioned in the Constitution. The Constitution does not require the Speaker to be a member of the House, although to date, all fifty-four Speakers have been. The Speaker is the presiding officer, the administrative head of the House, the partisan leader of the majority party in the House, and an elected representative of a single congressional district (**Figure 11.16**). As a testament to the importance of the Speaker, since 1947, the holder of this position has been second in line to succeed the president in an emergency, after the vice president.



**Figure 11.16** Republican Mitch McConnell of Kentucky (a), the majority leader in the Senate, and Republican Paul Ryan of Wisconsin (b), the Speaker of the House, are the most powerful congressional leaders in their respective chambers.

The Speaker serves until his or her party loses, or until he or she is voted out of the position or chooses to step down. Republican Speaker John Boehner became the latest Speaker to walk away from the position when it appeared his position was in jeopardy. This event shows how the party conference (or caucus) oversees the leadership as much as, if not more than, the leadership oversees the party membership in the chamber. The Speaker is invested with quite a bit of power, such as the ability to assign bills to committees and decide when a bill will be presented to the floor for a vote. The Speaker also rules on House procedures, often delegating authority for certain duties to other members. He or she appoints members and chairs to committees, creates **select committees** to fulfill a specific purpose and then disband, and can even select a member to be speaker *pro tempore*, who acts as Speaker in the Speaker's absence. Finally, when the Senate joins the House in a joint session, the Speaker presides over these sessions, because they are usually held in the House of Representatives.

Below the Speaker, the majority and minority conferences each elect two leadership positions arranged in hierarchical order. At the top of the hierarchy are the floor leaders of each party. These are generally referred to as the majority and minority leaders. The **minority leader** has a visible if not always a powerful position. As the official leader of the opposition, he or she technically holds the rank closest to that of the Speaker, makes strategy decisions, and attempts to keep order within the minority. However, the majority rules the day in the House, like a cartel. On the majority side, because it holds the speakership, the **majority leader** also has considerable power. Historically, moreover, the majority leader tends to be in the best position to assume the speakership when the current Speaker steps down.

Below these leaders are the two party's respective **whips**. A whip's job, as the name suggests, is to whip up votes and otherwise enforce party discipline. Whips make the rounds in Congress, telling members the position of the leadership and the collective voting strategy, and sometimes they wave various carrots and

sticks in front of recalcitrant members to bring them in line. The remainder of the leadership positions in the House include a handful of chairs and assistantships.

Like the House, the Senate also has majority and minority leaders and whips, each with duties very similar to those of their counterparts in the House. Unlike the House, however, the Senate doesn't have a Speaker. The duties and powers held by the Speaker in the House fall to the majority leader in the Senate. Another difference is that, according to the U.S. Constitution, the Senate's president is actually the elected vice president of the United States, but he or she may vote only in case of a tie. Apart from this and very few other exceptions, the president of the Senate does not actually operate in the Senate. Instead, the Constitution allows for the Senate to choose a **president pro tempore**—usually the most senior senator of the majority party—who presides over the Senate. Despite the title, the job is largely a formal and powerless role. The real power in the Senate is in the hands of the majority leader (**Figure 11.16**) and the minority leader. Like the Speaker of the House, the majority leader is the chief spokesperson for the majority party, but unlike in the House he or she does not run the floor alone. Because of the traditions of unlimited debate and the filibuster, the majority and minority leaders often occupy the floor together in an attempt to keep things moving along. At times, their interactions are intense and partisan, but for the Senate to get things done, they must cooperate to get the sixty votes needed to run this super-majority legislative institution.

## THE COMMITTEE SYSTEM

With 535 members in Congress and a seemingly infinite number of domestic, international, economic, agricultural, regulatory, criminal, and military issues to deal with at any given moment, the two chambers must divide their work based on specialization. Congress does this through the committee system. Specialized committees (or subcommittees) in both the House and the Senate are where bills originate and most of the work that sets the congressional agenda takes place. Committees are roughly approximate to a bureaucratic department in the executive branch. There are well over two hundred committees, subcommittees, select committees, and joint committees in the Congress. The core committees are called **standing committees**. There are twenty standing committees in the House and sixteen in the Senate (**Table 11.2**).

**Congressional Standing and Permanent Select Committees**

House of Representatives	Senate
Agriculture	Agriculture, Nutrition, and Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Budget	Banking, Housing, and Urban Affairs
Education and the Workforce	Budget
Energy and Commerce	Commerce, Science, and Transportation
Ethics	Energy and Natural Resources
Financial Services	Environment and Public Works
Foreign Affairs	Ethics (select)
Homeland Security	Finance
House Administration	Foreign Relations

**Table 11.2**

### Congressional Standing and Permanent Select Committees

House of Representatives	Senate
Intelligence (select)	Health, Education, Labor and Pensions
Judiciary	Homeland Security and Governmental Affairs
Natural Resources	Indian Affairs (select)
Oversight and Government Reform	Intelligence (select)
Rules	Judiciary
Science, Space, and Technology	Rules and Administration
Small Business	Small Business and Entrepreneurship
Transportation and Infrastructure	Veterans' Affairs
Veterans' Affairs	
Ways and Means	

**Table 11.2**

Members of both parties compete for positions on various committees. These positions are typically filled by majority and minority members to roughly approximate the ratio of majority to minority members in the respective chambers, although committees are chaired by members of the majority party. Committees and their chairs have a lot of power in the legislative process, including the ability to stop a bill from going to the floor (the full chamber) for a vote. Indeed, most bills die in committee. But when a committee is eager to develop legislation, it takes a number of methodical steps. It will reach out to relevant agencies for comment on resolutions to the problem at hand, such as by holding hearings with experts to collect information. In the Senate, committee hearings are also held to confirm presidential appointments (**Figure 11.17**). After the information has been collected, the committee meets to discuss amendments and legislative language. Finally, the committee will send the bill to the full chamber along with a committee report. The report provides the majority opinion about why the bill should be passed, a minority view to the contrary, and estimates of the proposed law's cost and impact.



**Figure 11.17** On July 13, 2009, Supreme Court justice Sonia Sotomayor began the first day of her confirmation hearings before the U.S. Senate Committee on the Judiciary. The Senate Judiciary Committee is one of the oldest of the sixteen standing committees in the Senate.

Four types of committees exist in the House and the Senate. The first is the standing, or permanent, committee. This committee is the first call for proposed bills, fewer than 10 percent of which are reported out of committee to the floor. The second type is the **joint committee**. Joint committee members are appointed from both the House and the Senate, and are charged with exploring a few key issues, such as the economy and taxation. However, joint committees have no bill-referral authority whatsoever—they are informational only. A **conference committee** is used to reconcile different bills passed in both the House and the Senate. The conference committees are appointed on an ad hoc basis as necessary when a bill passes the House and Senate in different forms. Finally, ad hoc, special, or select committees are temporary committees set up to address specific topics. These types of committees often conduct special investigations, such as on aging or ethics.

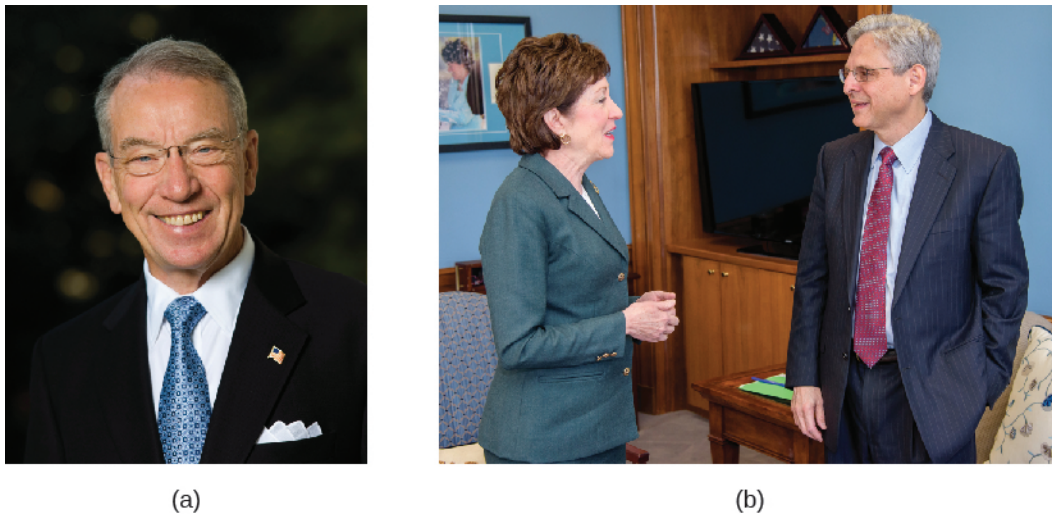
Committee hearings can become politically driven public spectacles. Consider the House Select Committee on Benghazi, the committee assembled by Republicans to further investigate the 2011 attacks on the U.S. Consulate in Benghazi, Libya. This prolonged investigation became particularly partisan as Republicans trained their guns on then-secretary of state Hillary Clinton, who was running for the presidency at the time. In two multi-hour hearings in which Secretary Clinton was the only witness, Republicans tended to grandstand in the hopes of gaining political advantage or tripping her up, while Democrats tended to use their time to ridicule Republicans (**Figure 11.18**).<sup>35</sup> In the end, the long hearings uncovered little more than the elevated state of partisanship in the House, which had scarcely been a secret before.



**Figure 11.18** On October 22, 2015, former Secretary of State Hillary Clinton testified for the second time before the House Select Committee on Benghazi, answering questions from members for more than eight hours.

Members of Congress bring to their roles a variety of specific experiences, interests, and levels of expertise, and try to match these to committee positions. For example, House members from states with large agricultural interests will typically seek positions on the Agriculture Committee. Senate members with a background in banking or finance may seek positions on the Senate Finance Committee. Members can request these positions from their chambers' respective leadership, and the leadership also selects the committee chairs.

Committee chairs are very powerful. They control the committee's budget and choose when the committee will meet, when it will hold hearings, and even whether it will consider a bill (**Figure 11.19**). A chair can convene a meeting when members of the minority are absent or adjourn a meeting when things are not progressing as the majority leadership wishes. Chairs can hear a bill even when the rest of the committee objects. They do not remain in these powerful positions indefinitely, however. In the House, rules prevent committee chairs from serving more than six consecutive years and from serving as the chair of a subcommittee at the same time. A senator may serve only six years as chair of a committee but may, in some instances, also serve as a chair or ranking member of another committee.



**Figure 11.19** In 2016, Republican Chuck Grassley of Iowa (a), the chair of the Senate Judiciary Committee, refused to hold hearings on the nomination of Merrick Garland to the Supreme Court, despite the urging of his committee colleagues. In the meantime, Garland met with numerous senators, such as Republican Susan Collins of Maine (b). As of Election Day, no hearings had been held. Given the election of Republican Donald Trump, it would be logical to presume that none will ever be held on this nominee. The Republican Senate will welcome a Trump nominee in early 2017.

Because the Senate is much smaller than the House, senators hold more committee assignments than House members. There are sixteen standing committees in the Senate, and each position must be filled. In contrast, in the House, with 435 members and only twenty standing committees, committee members have time to pursue a more in-depth review of a policy. House members historically defer to the decisions of committees, while senators tend to view committee decisions as recommendations, often seeking additional discussion that could lead to changes.

### Link to Learning



Take a look at the **scores of committees** (<https://openstaxcollege.org//29SenComms>) in the **House** (<https://openstaxcollege.org//29HosComms>) and Senate. The late House Speaker Tip O'Neill once quipped that if you didn't know a new House member's name, you could just call him Mr. Chairperson.

## 11.5 The Legislative Process

### Learning Objectives

By the end of this section, you will be able to:

- Explain the steps in the classic bill-becomes-law diagram
- Describe the modern legislative processes that alter the classic process in some way

A dry description of the function of congressional leadership and the many committees and subcommittees in Congress may suggest that the drafting and amending of legislation is a finely tuned process that has become ever more refined over the course of the last few centuries. In reality, however, committees are more likely to kill legislation than to pass it. And the last few decades have seen a dramatic



transformation in the way Congress does business. Creative interpretations of rules and statutes have turned small loopholes into the large gateways through which much congressional work now gets done. In this section, we will explore both the traditional legislative route by which a bill becomes a law and the modern incarnation of the process. We will also learn how and why the transformation occurred.

## THE CLASSIC LEGISLATIVE PROCESS

The traditional process by which a bill becomes a law is called the *classic legislative process*. First, legislation must be drafted. Theoretically, anyone can do this. Much successful legislation has been initially drafted by someone who is not a member of Congress, such as a think tank or advocacy group, or the president. However, Congress is under no obligation to read or introduce this legislation, and only a bill introduced by a member of Congress can hope to become law. Even the president must rely on legislators to introduce his or her legislative agenda.

Technically, bills that raise revenue, like tax bills, must begin in the House. This exception is encoded within the Constitution in Article I, Section 7, which states, “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.” Yet, despite the seemingly clear language of the Constitution, Congress has found ways to get around this rule.

Once legislation has been proposed, however, the majority leadership consults with the parliamentarian about which committee to send it to. Each chamber has a *parliamentarian*, an advisor, typically a trained lawyer, who has studied the long and complex rules of the chamber. While Congress typically follows the advice of its parliamentarians, it is not obligated to, and the parliamentarian has no power to enforce his or her interpretation of the rules. Once a committee has been selected, the committee chair is empowered to move the bill through the committee process as he or she sees fit. This occasionally means the chair will refer the bill to one of the committee’s subcommittees.

Whether at the full committee level or in one of the subcommittees, the next step is typically to hold a hearing on the bill. If the chair decides to not hold a hearing, this is tantamount to killing the bill in committee. The hearing provides an opportunity for the committee to hear and evaluate expert opinions on the bill or aspects of it. Experts typically include officials from the agency that would be responsible for executing the bill, the bill’s sponsors from Congress, and industry lobbyists, interest groups, and academic experts from a variety of relevant fields. Typically, the committee will also accept written statements from the public concerning the bill in question. For many bills, the hearing process can be very routine and straightforward.

Once hearings have been completed, the bill enters the **markup** stage. This is essentially an amending and voting process. In the end, with or without amendments, the committee or subcommittee will vote. If the committee decides not to advance the bill at that time, it is tabled. *Tabling a bill* typically means the bill is dead, but there is still an option to bring it back up for a vote again. If the committee decides to advance the bill, however, it is printed and goes to the chamber, either the House or the Senate. For the sake of example, we will assume that a bill goes first to the House (although the reverse could be true, and, in fact, bills can move simultaneously through both chambers). Before it reaches the House floor, it must first go through the House Committee on Rules. This committee establishes the rules of debate, such as time limits and limits on the number and type of amendments. After these rules have been established, the bill moves through the floor, where it is debated and amendments can be added. Once the limits of debate and amendments have been reached, the House holds a vote. If a simple majority, 50 percent plus 1, votes to advance the bill, it moves out of the House and into the Senate.

Once in the Senate, the bill is placed on the calendar so it can be debated. Or, more typically, the Senate will also consider the bill (or a companion version) in its own committees. Since the Senate is much smaller than the House, it can afford to be much more flexible in its rules for debate. Typically, senators allow each other to talk and debate as long as the speaker wants, though they can agree as a body to create time limits. But without these limits, debate continues until a motion to table has been offered and voted on.

This flexibility about speaking in the Senate gave rise to a unique tactic, the **filibuster**. The word “filibuster” comes from the Dutch word *vrijbuitter*, which means pirate. And the name is appropriate, since a senator who launches a filibuster virtually hijacks the floor of the chamber by speaking for long periods of time, thus preventing the Senate from closing debate and acting on a bill. The tactic was perfected in the 1850s as Congress wrestled with the complicated issue of slavery. After the Civil War, the use of the filibuster became even more common. Eventually, in 1917, the Senate passed Rule 22, which allowed the chamber to hold a **cloture** vote to end debate. To invoke cloture, the Senate had to get a two-thirds majority. This was difficult to do, but it generally did prevent anyone from hijacking the Senate floor, with the salient exception of Senator Strom Thurmond’s record twenty-four-hour filibuster of the Civil Rights Act.

In 1975, after the heightened partisanship of the civil rights era, the Senate further weakened the filibuster by reducing the number needed for cloture from two-thirds to three-fifths, or sixty votes, where it remains today (except for judicial nominations for which only fifty-five votes are needed to invoke cloture). Moreover, filibusters are not permitted on the annual budget reconciliation act (the Reconciliation Act of 2010 was the act under which the implementing legislation for Obamacare was passed).

## Milestone

### The Noble History of the Filibuster?

When most people think of the Senate filibuster, they probably picture actor Jimmy Stewart standing exasperated at a podium and demanding the Senate come to its senses and do the right thing. Even for those not familiar with the classic Frank Capra film *Mr. Smith Goes to Washington*, the image of a heroic single senator sanding up to the power of the entire chamber while armed only with oratorical skill naturally tends to inspire. Unfortunately, the history of the filibuster is less heartwarming.

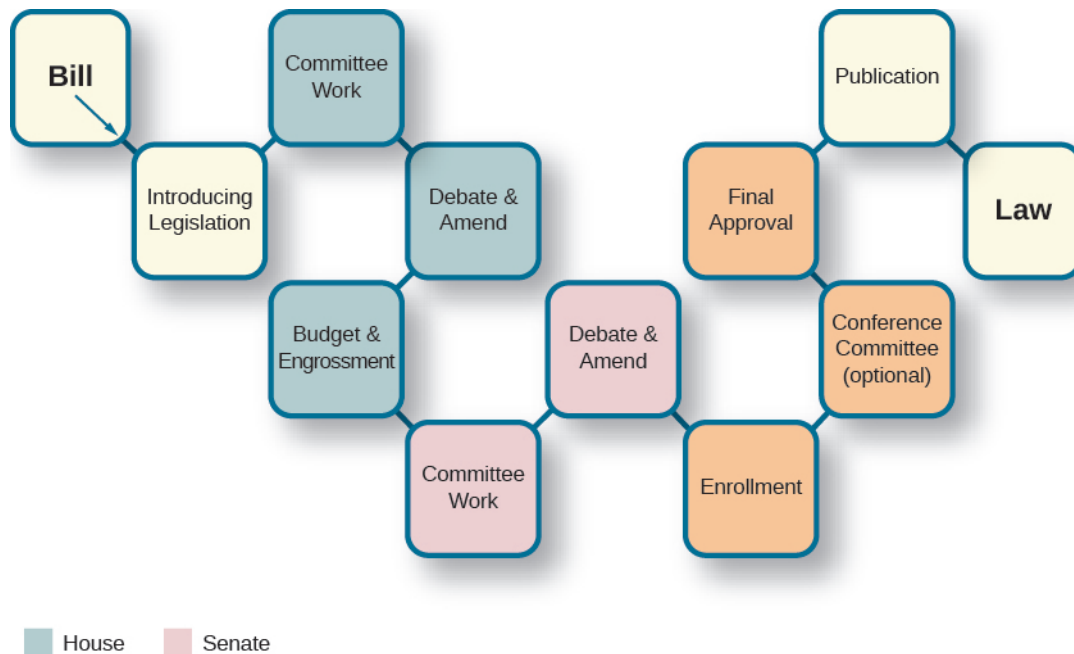
This is not to say that noble causes haven’t been championed by filibustering senators; they most certainly have. But they have largely been overshadowed by the outright ridiculous and sometimes racist filibusters of the twentieth century. In the first category, the fifteen-and-a-half-hour marathon of Senator Huey Long of Louisiana stands out: Hoping to retain the need for Senate confirmation of some jobs he wanted to keep from his political enemies, Long spent much of his filibuster analyzing the Constitution, talking about his favorite recipes, and telling amusing stories, as was his custom.

In a defining moment for the filibuster, Senator Strom Thurmond of South Carolina spoke for twenty-four hours and eighteen minutes against a weak civil rights bill in 1957. A vocal proponent of segregation and white supremacy, Thurmond had made no secret of his views and had earlier run for the presidency on a segregationist platform. Nor was Thurmond the first to use the filibuster to preserve segregation and prevent the expansion of civil rights for African Americans. Groups of dedicated southern senators used the filibuster to prevent the passage of anti-lynching legislation on multiple occasions during the first half of the twentieth century. Later, when faced with the 1964 Civil Rights Act, southern senators staged a fifty-seven-day filibuster to try and kill it. But the momentum of the nation was against them. The bill passed over their obstructionism and helped to reduce segregation.

*Is the filibuster the tool of the noble minority attempting to hold back the tide of a powerful minority? Or does its history as a weapon supporting segregation expose it as merely a tactic of obstruction?*

Because both the House and the Senate can and often do amend bills, the bills that pass out of each chamber frequently look different. This presents a problem, since the Constitution requires that both chambers pass identical bills. One simple solution is for the first chamber to simply accept the bill that ultimately makes it out of the second chamber. Another solution is for first chamber to further amend the second chamber’s bill and send it back to the second chamber. Congress typically takes one of these two options, but about one in every eight bills cannot be resolved in this way. These bills must be sent to a conference committee that negotiates a reconciliation both chambers can accept without amendment.

Only then can the bill progress to the president's desk for signature or veto. If the president does veto the bill, both chambers must muster a two-thirds vote to overcome the veto and make the bill law without presidential approval (**Figure 11.20**).



**Figure 11.20** The process by which a bill becomes law is long and complicated, but it is designed to ensure that in the end all parties are satisfied with the bill's provisions.

### Link to Learning



For one look at the classic legislative process, visit **YouTube** (<https://openstaxcollege.org//29SRjaBill>) to view "I'm Just a Bill" from the ABC *Schoolhouse Rock!* series.

## MODERN LEGISLATION IS DIFFERENT

For much of the nation's history, the process described above was the standard method by which a bill became a law. Over the course of the last three and a half decades, however, changes in rules and procedure have created a number of alternate routes. Collectively, these different routes constitute what some political scientists have described as a new but unorthodox legislative process. According to political scientist Barbara Sinclair, the primary trigger for the shift away from the classic legislative route was the budget reforms of the 1970s. The 1974 Budget and Impoundment Control Act gave Congress a mechanism for making large, all-encompassing, budget decisions. In the years that followed, the budget process gradually became the vehicle for creating comprehensive policy changes. One large step in this transformation occurred in 1981 when President Ronald Reagan's administration suggested using the budget to push through his economic reforms.

The benefit of attaching the reforms to the budget resolution was that Congress could force an up or down (yea or nay) vote on the whole package. Such a packaged bill is called an *omnibus bill*.<sup>36</sup> Creating and voting for an omnibus bill allows Congress to quickly accomplish policy changes that would have taken many votes and the expending of great political capital over a long period of time. This and successive

similar uses of the budget process convinced many in Congress of the utility of this strategy. During the contentious and ideologically divided 1990s, the budget process became the common problem-solving mechanism in the legislature, thus laying the groundwork for the way legislation works today.

An important characteristic feature of modern legislating is the greatly expanded power and influence of the party leadership over the control of bills. One reason for this change was the heightened partisanship that stretches back to the 1980s and is still with us today. With such high political stakes, the party leadership is reluctant to simply allow the committees to work things out on their own. In the House, the leadership uses special rules to guide bills through the legislative process and toward a particular outcome. Uncommon just a few decades ago, these now widely used rules restrict debate and options, and are designed to focus the attention of members.

The practice of multiple referrals, with which entire bills or portions of those bills are referred to more than one committee, greatly weakened the different specialization monopolies committees held primarily in the House but also to an extent in the Senate. With less control over the bills, committees naturally reached out to the leadership for assistance. Indeed, as a testament to its increasing control, the leadership may sometimes avoid committees altogether, preferring to work things out on the floor. And even when bills move through the committees, the leadership often seeks to adjust the legislation before it reaches the floor.

Another feature of the modern legislative process, exclusively in the Senate, is the application of the modern filibuster. Unlike the traditional filibuster, in which a senator took the floor and held it for as long as possible, the modern filibuster is actually a perversion of the cloture rules adopted to control the filibuster. When partisanship is high, as it has been frequently, the senators can request cloture before any bill can get a vote. This has the effect of increasing the number of votes needed for a bill to advance from a simple majority of fifty-one to a super majority of sixty. The effect is to give the Senate minority great power to obstruct if it is inclined to do so.

### Link to Learning



The Library of Congress's **Thomas website** (<https://openstaxcollege.org//29LibofCong>) has provided scholars, citizens, and media with a bounty of readily available data on members and bills for more than two decades.

## Key Terms

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**apportionment** the process by which seats in the House of Representatives are distributed among the fifty states

**bicameralism** the political process that results from dividing a legislature into two separate assemblies

**bill** proposed legislation under consideration by a legislature

**cloture** a parliamentary process to end a debate in the Senate, as a measure against the filibuster; invoked when three-fifths of senators vote for the motion

**collective representation** the relationship between Congress and the United States as a whole, and whether the institution itself represents the American people

**conference committee** a special type of joint committee that reconciles different bills passed in the House and Senate so a single bill results

**constituency** the body of voters, or constituents, represented by a particular politician

**delegate model of representation** a model of representation in which representatives feel compelled to act on the specific stated wishes of their constituents

**descriptive representation** the extent to which a body of representatives represents the descriptive characteristics of their constituencies, such as class, race, ethnicity, and gender

**enumerated powers** the powers given explicitly to the federal government by the Constitution to regulate interstate and foreign commerce, raise and support armies, declare war, coin money, and conduct foreign affairs

**filibuster** a parliamentary maneuver used in the Senate to extend debate on a piece of legislation as long as possible, typically with the intended purpose of obstructing or killing it

**implied powers** the powers not specifically detailed in the U.S. Constitution but inferred as necessary to achieve the objectives of the national government

**inherent powers** the powers neither enumerated nor implied but assumed to exist as a direct result of the country's existence

**joint committee** a legislative committee consisting of members from both chambers that investigates certain topics but lacks bill referral authority

**majority leader** the leader of the majority party in either the House or Senate; in the House, the majority leader serves under the Speaker of the House, in the Senate, the majority leader is the functional leader and chief spokesperson for the majority party

**markup** the amending and voting process in a congressional committee

**minority leader** the party member who directs the activities of the minority party on the floor of either the House or the Senate

**oversight** the right to review and monitor other bodies such as the executive branch

**politico model of representation** a model of representation in which members of Congress act as either trustee or delegate, based on rational political calculations about who is best served, the constituency or the nation

**pork-barrel politics** federal spending intended to benefit a particular district or set of constituents

**president *pro tempore*** the senator who acts in the absence of the actual president of the Senate, who is also the vice president of the United States; the president *pro tempore* is usually the most senior senator of the majority party

**representation** an elected leader's looking out for his or her constituents while carrying out the duties of the office

**select committee** a small legislative committee created to fulfill a specific purpose and then disbanded; also called an ad hoc, or special, committee

**Speaker of the House** the presiding officer of the House of Representatives and the leader of the majority party; the Speaker is second in the presidential line of succession, after the vice president

**standing committee** a permanent legislative committee that meets regularly

**surge-and-decline theory** a theory proposing that the surge of stimulation occurring during presidential elections subsides during midterm elections, accounting for the differences we observe in turnouts and results

**trustee model of representation** a model of representation in which representatives feel at liberty to act in the way they believe is best for their constituents

**whip** in the House and in the Senate, a high leadership position whose primary duty is to enforce voting discipline in the chambers and conferences

## Summary

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### 11.1 The Institutional Design of Congress

The weaknesses of the Articles of Confederation convinced the member states to send delegates to a new convention to revise them. What emerged from the debates and compromises of the convention was instead a new and stronger constitution. The Constitution established a bicameral legislature, with a Senate composed of two members from each state and a House of Representatives composed of members drawn from each state in proportion to its population. Today's Senate has one hundred members representing fifty states, while membership in the House of Representatives has been capped at 435 since 1929. Apportionment in the House is based on population data collected by the U.S. Census Bureau.

The Constitution empowers Congress with enumerated, implied, and inherent powers. Enumerated powers are specifically addressed in the text of the Constitution. Implied powers are not explicitly called out but are inferred as necessary to achieve the objectives of the national government. Inherent powers are assumed to exist by virtue of the fact that the country exists. The power of Congress to regulate interstate and intrastate commerce has generally increased, while its power to control foreign policy has declined over the course of the twentieth century.

### 11.2 Congressional Elections

Since the House is closest to its constituents because reelection is so frequent a need, it tends to be more easily led by fleeting public desires. In contrast, the Senate's distance from its constituents allows it to act more deliberately. Each type of representative, however, must raise considerable sums of money in order to stay in office. Attempts by Congress to rein in campaign spending have largely failed. Nevertheless, incumbents tend to have the easiest time funding campaigns and retaining their seats. They also benefit from the way parties organize primary elections, which are designed to promote incumbency.