

The Congress

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CONTEMPORARY CONNECTION

Speaker of the House Paul Ryan and Senate Majority leader Mitch McConnell coordinated legislative priorities with newly elected President Trump. One of their first priorities was to repeal and replace the Affordable Care Act. This chapter explores the way the Congress operates, its rules, its practices, and its lawmaking.



The Congress can be viewed as the citizens' direct link to the branch of government that is responsible for forming public policy. It has a number of functions including, but not limited to, representing the interests of constituents, lawmaking through consensus building, oversight of other governmental agencies, policy clarification, and ratification of public policies.

As the focal point of public policy development, the Congress has come under public criticism. Polls have reflected deep voter concern regarding the issues of congressional gridlock, term limits for representatives and senators, and the influence of lobbyists and PACs on representatives. Many newly elected representatives have committed themselves to reforming congressional structure, procedures, and practices.

This chapter also explores these public concerns of the Congress, the advantage of incumbency and the changing face of Congress, the structure of Congress, the lawmaking process, the constituent relationship between the voters and their representatives, the influence of lobbyists,

and the attempts at congressional reform. The issue of whether an imperial Congress is threatening our system of government will also be discussed in the sample free-response answer at the end of the chapter.

QUICK CONSTITUTIONAL REVIEW OF CONGRESS

- Basis of constitutional authority is found in Article I.
- A House member must be at least 25 years old, an American citizen for seven years, and an inhabitant of the state the representative represents. Representatives serve two-year terms.
- A senator must be 30 years old, an American citizen for nine years, and a resident of the state the senator represents. Senators serve six-year terms.
- Common powers delegated to Congress, listed in Article I Section 8 include the power to tax, coin money, declare war, and regulate foreign and interstate commerce.
- Implied congressional power comes from the “necessary and proper” clause, which has been referred to as the elastic clause.
- House of Representatives has the power to begin all revenue bills, to select president if there is no electoral college majority, and to initiate impeachment proceedings.
- Senate has the power to approve presidential appointments and treaties and to try impeachment proceedings.
- Congress may overrule a presidential veto by a two-thirds vote of each house.

STRUCTURE

The organization of the Congress relies on a seniority and party system and the use of a committee system, which facilitates day-to-day operations.

The bicameral (two-house) structure of the Congress made it a necessity to develop an organization that would result in the ability of both houses to conduct their own business, yet be able to accomplish the main function—the passage of legislation.

Each house has a presiding officer. The influence of the Speaker of the House cannot be underestimated. The speaker is selected by the majority party, and even though a House Majority Leader is also part of the unofficial structure of the House, it is the speaker who is really the leader of the majority. In 1993 Speaker

Thomas Foley and House Majority Leader Richard Gephardt worked together to pass much of President Clinton’s legislative agenda.

After the 1994 midterm elections, the Republicans chose controversial and conservative Representative Newt Gingrich as the new speaker. Promising to deliver on the Republican Contract with America (a description concludes the review portion of this chapter), he immediately consolidated control. He earned a reputation as one of the most powerful speakers since the days of Joe Cannon. His power was diminished after the 1996 elections. Facing serious ethics charges, Gingrich was forced to loosen his grip on committee chairs and Republican representatives who disagreed with him. After the Republicans lost seats in the House in the 1998 midterm elections, Gingrich resigned from the House. Representative Dennis Hastert was elected the new speaker. Hastert became the longest-serving speaker, serving until the Democrats took control of the House of Representatives in 2006. They elected Nancy Pelosi, the first female speaker of

the House. In 2015, Speaker Boehner resigned under pressure from insurgent members of his own party. Congressman Paul Ryan, 2012 Republican Vice-Presidential candidate and chairman of the powerful Ways and Means Committee was elected the new Speaker.

The speaker presides over House meetings and is expected to be impartial in the way meetings are run, even though he or she is a member of the majority party. However, in the power to preside and keep order, the speaker wields a great deal of power: recognizing speakers, referring bills to committees, answering procedural questions, and declaring the outcome of votes. The speaker also names members to all select (special) committees and conference committees (a committee that meets with the Senate to resolve differences in legislation). The speaker usually votes only to break a tie and has the power to appoint temporary speakers, called speakers pro tempore, to run meetings. The speaker is also third in line after the vice president to succeed the president.

The presiding officer of the Senate, the president of the Senate, is the vice president of the United States. It is a symbolic office, and more often than not the Senate chooses a temporary presiding officer, the president pro tempore to run the meetings. The only specific power of the vice president in the capacity of Senate presiding officer is to break ties. The president pro tempore does not have the same power or influence as the Speaker of the House. Unlike the House, the real power in the Senate lies with the Senate Majority Leader. In 2014, the Republicans took control of the Senate; and, thus, the Senate majority leader was a Republican. The Republicans retained their majority in 2016.

The Committee System

Committee chairs, those representatives who chair the standing committees of the House and Senate, wield a great deal of power. In fact, most of the work is done through the committee system. Committee chairs are selected as a result of the seniority system, an unwritten custom that established the election of committee chairs as a result of length of service and of which party holds the majority in each house. Four types of committees exist in both houses. Standing committees deal with proposed bills and are permanent, existing from one Congress to the next. Examples of standing committees are Banking, Foreign Affairs, Energy, Governmental Affairs, and Appropriations. Select committees are specially created and conduct special investigations. The Watergate Committee and Iran-Contra investigators were select Senate committees.

Joint committees are committees made up of both houses for the purpose of coordinating investigations or special studies and expedite business between the houses. Conference committees resolve legislative differences between the House and Senate. Such bills as the Crime Bill of 1994 and the Welfare Reform Act of 1996 had to go through a conference committee. Many bills, in fact, must be resolved in this manner. Committee makeup is determined by the percentage of party representation in each house. Representatives attempt to get on influential committees such as the House Ways and Means Committee (which is responsible for appropriations measures), the House Rules Committee (which determines the order in which legislation will reach the floor for a vote), and the Senate Judiciary Committee (which makes a recommendation regarding presidential judicial appointments). Most representatives are members of at least one standing committee or two subcommittees (smaller committees that are organized around specific areas). These committees influence legislation by holding hearings and voting on amendments to legislation that has been referred to their committees. The committees also provide oversight reviewing the actions of the executive branch. In the House, a key oversight committee is the Committee on Oversight and Government Reform. This committee holds hearings that investigate executive branch abuses. Two examples of this were hearings held regarding the attack on the American embassy in Benghazi and Internal Revenue Service overreach. In the Senate, the Senate Intelligence Committee

investigated conduct by the Central Intelligence Agency resulting in torture, and in 2014 released a scathing report condemning such practices. After the 1994 elections the Republican majority passed new rules that limited the terms of House committee chairs to no more than six years and reduced the number of committees and their staffs.

Along with the committee system, each house has a party system that organizes and influences the members of Congress regarding policymaking decisions. The majority and minority leaders of both houses organize their members by using whips, or assistant floor leaders, whose job is to check with party members and inform the majority leader of the status and feelings of the membership regarding issues that are going to be voted on. Whips are responsible for keeping party members in line and having an accurate count of who will be voting for or against a particular bill. The party caucus or party conference is a means for each party to develop a strategy or position on a particular issue. The majority and minority party meet privately and determine which bills to support, the type of amendments that would be acceptable, and the official party positions on upcoming business. They also deal with the selection of the party leadership and committee membership.

POLICYMAKING

Besides the legislative power of Congress, it also has nonlegislative responsibilities. Constitutional amendments, election of a president and vice president if there is no electoral college majority, impeachment, approval of executive appointments, and congressional oversight (the power used by Congress to review the operation and budgets of the executive branch) are used by Congress to influence and determine public policy. Congress uses the power of congressional oversight to gather information useful for the formation of legislation, to review the operations and budgets of executive departments and independent regulatory agencies, to conduct investigations through committee hearings, and to bring to the public's attention the need for public policy.

By far the most important function of Congress is the legislative responsibility. Before explaining the different approaches to lawmaking, it is important that you understand the way a bill becomes a law. (See display box below.)

Obviously, this is a simplified version of the process. And if the president vetoes the bill, the Congress must vote separately to determine whether each house has a two-thirds majority to override it.

It's one thing to introduce legislation, and it's another to get it passed into law. Tactics such as the Senate filibuster, an ongoing debate that needs a vote of 60 senators to cut off debate, called cloture, protect minority interests. In 2013, the senate changed its filibuster rules by passing what was called "the Nuclear Option." Instead of requiring 60 votes to approve many presidential appointments, this new rule required a simple majority. The Republican minority was against this procedural change claiming that it weakened the ability of the minority to debate the qualifications of appointees. In an attempt to increase legislative output, Congress can use several techniques to move legislation along. Logrolling (or "I'll vote for your legislation, if you vote for mine") coalitions, consensus building, and pork barrel deals often result in agreement to pass bills. An excellent example of consensus building was the passage of the North American Free Trade Agreement (NAFTA).

Congressional oversight refers to "the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation. Congress exercises this power largely through its standing committee system."

The avenues taken by Congress to achieve policymaking go beyond the mere passage of legislation.

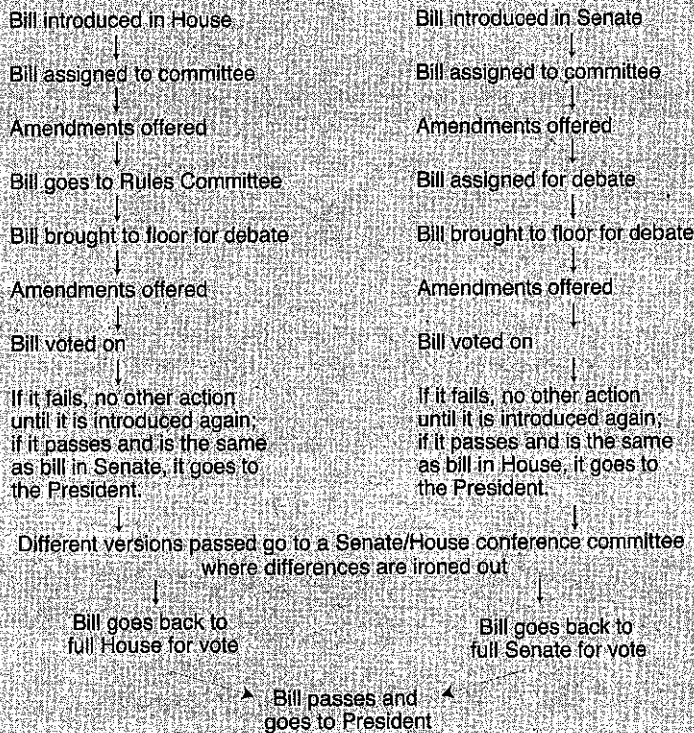
In a typical congressional session, over 10,000 bills are offered, and fewer than 10 percent of them are enacted.

The same report issued by the service in 2001 stated, "Oversight, as an outgrowth of this principle, ideally serves a number of overlapping objectives and purposes:

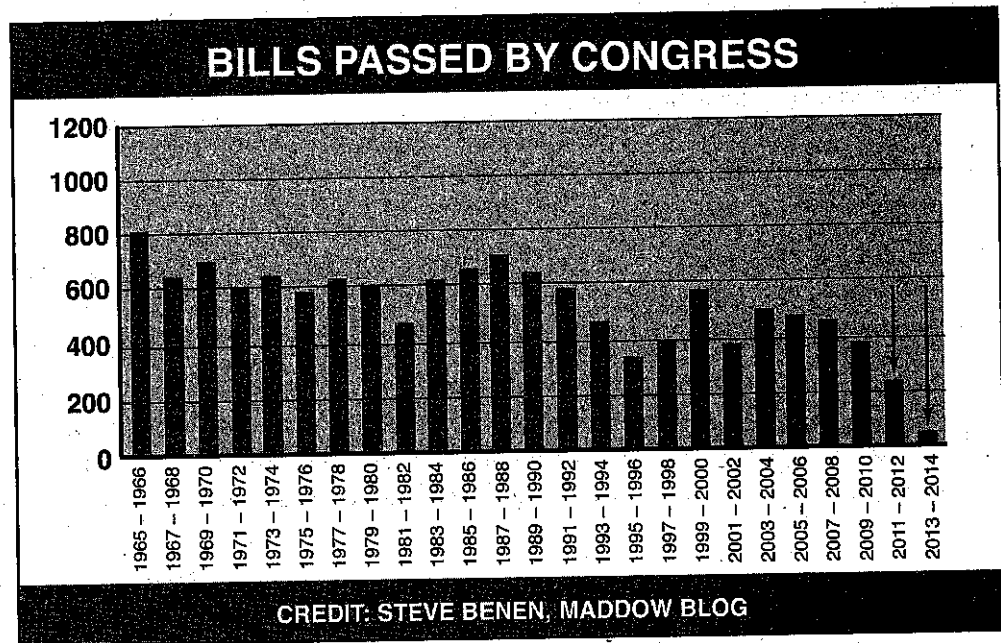
- improve the efficiency, economy, and effectiveness of governmental operations;
- evaluate programs and performance;
- detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct;
- protect civil liberties and constitutional rights;
- inform the general public and ensure that executive policies reflect the public interest;
- gather information to develop new legislative proposals or to amend existing statutes;
- ensure administrative compliance with legislative intent; and
- prevent executive encroachment on legislative authority and prerogatives."

In sum, oversight is a way for Congress to check on, and check, the executive branch of government.

HOW A BILL BECOMES A LAW



CONGRESSIONAL LEGISLATION



This graph illustrates the number of bills passed by Congress since 1965. Notice that the last Congress, the 113th Congress, passed the fewest bills of any Congress. It's critics called it the "do nothing Congress."

CONSTITUENT SERVICE

Constituency relationships provide essential information and services and are the foundation for reelection.

If the essence of a senator or representative revolves around the issue of representing one's constituency, then the elected official must define the kind of congressperson he or she will be. Once elected through the formal process of an open and free election, the definition must begin. Demographic representation mirrors the desires of the people being represented. Symbolic representation is defined by the style and message of the representative and the manner in which the people perceive the job he or she is doing. How responsive the legislator is to the constituents' wishes is the last characteristic of representation. The manner in which a representative responds to the people who elected him or her is called constituent service. The question of whether the representative should reflect the point of view of his or her constituents or vote his or her own opinion after hearing information on any issue is a long-standing problem for elected officials.

Members of Congress must represent their districts, taking into account individual constituents, organized interests, and the district as a whole. For their individual constituents, representatives set up mobile offices and respond personally to written letters. They contact federal agencies, sponsor appointments to service academies, and provide information and services. For organized groups, they introduce legislation, obtain grants and contracts, give speeches, and attend functions. For the district as a whole, representatives obtain federal projects (sometimes from pork barrel legislation), look for ways of getting legislation that will increase employment or tax benefits, and support policies that will directly benefit the geographic area of the district.

Through such public relations practices as sending out a congressional letter highlighting a reference in the Congressional Record of individuals or the achievements of people in their districts, representatives attempt to get close to the people they represent.

REFORM

Of the three branches of government, the public has given Congress the lowest approval ratings. Yet every election they send a majority of incumbents back to Congress. There seems to be a love/hate relationship between the people and their representatives and senators. Many suggestions have been made to improve and reform the organization and productivity of Congress. The poll pointed out the following beliefs:

Attempts at reforming Congress aim to clean up abuses of the people's branch of government.

- Gridlock is a problem—Congress is seen as inefficient, and because of the complicated legislative process, most bills never see the light of day. Reforms such as streamlining the committee system, improving the coordination of information between the House and the Senate, and requiring some kind of action on all bills proposed have been made.
- Congress does not reflect the views of its constituents. People have suggested that with the growth of the Internet, representatives should interactively get information from their constituents before voting on crucial issues.
- Representatives are so busy running for office, that they become beholden to special interest groups and PACs—The response has been that some states voted to establish term limits. The Supreme Court decided this issue in 1995 and ruled that it was unconstitutional for states to enact term limits for senators and representatives.
- Relations between the Congress and the president have deteriorated when one party is in control of the executive branch and the other party controls one or both houses (divided government). When there is a fiscal crisis, the conflict between the branches increases. The debt ceiling crisis in 2011 when the Republican House fought the president when the debt limit had to be raised and the fiscal cliff crisis at the end of 2012 when the Republican Congress resisted raising taxes for those couples making more than \$500,000 were examples of the conflict between the president and the Congress.

Congressional Oversight

Through the process of congressional oversight, agency heads are called before congressional committees to testify about issues related to the workings of the agency. According to the Congressional Research Service, Congressional oversight refers to “the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation. Congress exercises this power largely through its standing committee system.”

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- improve the efficiency, economy, and effectiveness of governmental operations;
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- gather information to develop new legislative proposals or to amend existing statutes;
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- prevent executive encroachment on legislative authority and prerogatives.

In sum, “oversight is a way for Congress to check on, and check, the executive branch of government.”

The House of Representatives has responded to some of the calls to reform itself through its Contract with America.

CONTRACT WITH AMERICA

As mentioned earlier in the chapter, the new Republican majority in the House of Representatives, elected in 1994, campaigned on a platform called the Contract with America. This contract became a blueprint for legislative action in the first 100 days. It promised the American people that the following items would be brought to the floor for a vote:

"In the first 100 days, we're pledging in writing to bring to a vote:

1. A balanced budget amendment and line item veto;
2. A crime bill that funds police and prisons over social programs;
3. Real welfare reform;
4. Family reinforcement measures that strengthen parental rights in education and child support enforcement;
5. Family tax cuts;
6. Stronger national defense;
7. A rise in the Social Security earnings limit to stop penalizing working seniors;
8. Job creation and regulatory reform policies;
9. Common sense legal reforms to stop frivolous lawsuits; and
10. A first-ever vote on term limits for members of Congress."

In a remarkable demonstration of party discipline, the Republican majority succeeded in bringing to a vote every item in the contract. In fact, on the first day of the 104th Congress, in a marathon session that lasted well into the early morning hours of the next day, the House voted to reform itself, cutting down the number of committees and their staffs, restricting the terms of committee chairs, and changing the rules of the House itself, making it easier to offer amendments. In many cases the Senate stymied the House's attempt to achieve legislative success with a significant number of the provisions of the contract defeated or modified in the Senate. A significant bill signed into law by President Clinton was a measure designed to mandate representatives to follow the same laws that Americans must follow such as civil rights legislation and minimum wage laws. The Contract with America hit a responsive chord with the American people as shown by a survey that suggests the approval rating of Congress increased from previous years.