

# The Legislative Branch

## I. POWERS OF CONGRESS

- A. Congressional authority is limited to those powers enumerated, or expressed, in the text of the Constitution. They may also be referred to as delegated powers. The enumerated powers of Congress are found in Article 1, Section 8.
- B. Additionally, congressional power extends to legislation that is necessary and proper in order to effect policy under one or more of the enumerated powers. The Necessary and Proper (Elastic) Clause allows Congress to make laws related to a wide range of public policy issues using its implied powers.

### Powers of Congress

Enumerated Power	Description	Examples of Implied Powers
1. The power to tax and spend.	Congress may collect money through taxes and may spend money to pay down the national debt, provide for the common defense and general welfare of the United States.	<ul style="list-style-type: none"> <li>– Every year, Congress creates and approves a budget for federal expenditures.</li> <li>– Congress provides funding for medical care programs for the elderly (Medicare) and persons whose income falls below a minimum threshold (Medicaid).</li> <li>– Federal funds are used for infrastructure projects, such as roads, bridges, and dams.</li> </ul>

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**Powers of Congress (continued)**

Enumerated Power	Description	Examples of Implied Powers
2. To borrow money on the credit of the United States.	Congress may borrow money that the United States is then obligated to repay.	– The U.S. Treasury Department issues marketable securities (such as bonds) that guarantee a specific return.
3. To regulate commerce with foreign nations, among the several states, and with the Indian tribes (Commerce Clause).	Congress may make rules and laws to protect and promote the economic health of the United States as it relates to the stream of economic activity among the states and with other countries.	<ul style="list-style-type: none"> <li>– The Civil Rights Act of 1964 allowed the federal government to prohibit discrimination based on race, color, religion, sex, or national origin.</li> <li>– Congress may ban the production of marijuana (Controlled Substances Act).</li> </ul>
4. To establish uniform rules for naturalization and to establish a uniform system of bankruptcy.	<ul style="list-style-type: none"> <li>a. Congress creates rules and procedures for non-citizens to acquire United States citizenship.</li> <li>b. Congress creates a system of bankruptcy, which allows individuals or corporations to discharge their debts when they cannot pay.</li> </ul>	<ul style="list-style-type: none"> <li>– Federal law prohibits the granting of U.S. citizenship to persons advocating world communism or the violent overthrow of the United States government.</li> <li>– The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was passed in order to protect creditors. It places restrictions on people and companies filing for bankruptcy.</li> </ul>
5. To coin money and regulate its value.	Only the national government may make U.S. currency. This function is carried out by the United States Mint.	– In 1791, the federal government chartered a federal bank to produce a standard form of currency.

Enumerated Power	Description	Examples of Implied Powers
6. To provide for the punishment of counterfeiting the coin or securities of the United States.	In order to protect the value and integrity of U.S. currency, Congress has enacted criminal laws to try and punish counterfeiters.	– Crimes relating to the crime of counterfeiting include possession or passing of a counterfeit document or possessing counterfeiting tools.
7. To establish post offices and post roads.	Congress may create and fund a system of post offices for the distribution of mail.	– Numerous federal crimes, such as fraud and mailing controlled substances, relate to illegal uses of the postal service.
8. To promote science and the useful arts by guaranteeing to scientists, inventors, authors, and artists the exclusive right to profit from their creation for a period of time.	Congress has created protections for various types of intellectual property, including copyrights, patents, and trademarks. The purpose is to encourage technological growth and cultural expression.	– Under Title 35 of the U.S. Code, patent holders may sue violators for patent infringement. – Internet file sharing without the permission of the copyright holder is a crime under federal law.
9. To create lower federal courts.	Congress may and has created numerous federal courts below the United States Supreme Court.	– Congress may set judicial salaries, make administrative decisions about the location and operations of courts, and fund judicial administration.

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## Powers of Congress (continued)

Enumerated Power	Description	Examples of Implied Powers
10. To define and punish piracy, crimes committed on the high seas, and offenses against the Law of Nations.	Danger on the seas has always presented a threat to national security and commercial traffic. Congress has also been historically concerned with upholding international law.	<ul style="list-style-type: none"> <li>- The Foreign Sovereign Immunities Act creates guidelines for when foreign governments or their agents may be sued in U.S. courts.</li> <li>- The Torture Victim Protection Act allows torture victims to file suit against foreign governments in U.S. courts.</li> </ul>
11. To declare war	Only Congress may declare war on another country. The president, however, may commit military forces without congressional authorization under the War Powers Act.	<ul style="list-style-type: none"> <li>- The War Powers Act clarifies the relationship and powers of Congress v. the president with regard to use of the armed forces.</li> </ul>
12. To raise and support an army; and 13. To raise and support a navy. 14. To administer the armed forces. 15. To make rules for calling forth the militia as necessary. 16. To organize, arm, and discipline the militia.	<ul style="list-style-type: none"> <li>- Congress holds the power to establish and maintain a military force. The power to fund military activities is an important check on the executive branch.</li> <li>- The militia (local groups of armed volunteers) were considered part of the national defense apparatus at the time the Constitution was written.</li> </ul>	<ul style="list-style-type: none"> <li>- Congress has created other branches of the military to carry out specialized functions. Examples include the Air Force and the Coast Guard.</li> <li>- The GI Bill (Servicemen's Readjustment Act of 1944) funded educational benefits for veterans and their families.</li> </ul>

Enumerated Power	Description	Examples of Implied Powers
17. To govern the territory of the seat of the U.S. government.	This provision removed control of the seat of the federal government (what would become Washington, D.C.) from any state. It required that the seat of the U.S. government would be a separate territory, governed directly by Congress.	– The District of Columbia Home Rule Act (1973) allocated direct governing responsibility for the District of Columbia to an elected mayor and city council.

- C. Inherent powers are those held by Congress that are neither enumerated nor implied. This category can be defined as those powers that obviously and automatically belong to the government of every sovereign state. They are understood to inherently (by nature) belong to every nation's government. Examples include the powers to:
1. control national borders
  2. acquire new territory
  3. put down revolutions
- D. The Constitution, in Article I Section 9, specifically prohibits the national government taking certain actions that are referred to as denied powers. For example, Congress is denied the authority to:
1. tax exports
  2. pass ex post facto laws or bills of attainder or violate the Bill of Rights
  3. suspend habeas corpus other than during times of rebellion or invasion
  4. grant titles of nobility
- E. Article I, Section 9, also contains the Emoluments Clause, which states that federal officials may not "accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State," without the approval of Congress.
1. An emolument is a payment or any thing of value.
  2. The prohibition is broadly interpreted as barring any gift or thing of value "of any kind whatever."

- F. In addition, the Constitution, in Article I Section 10, outlines the specific powers that are denied to the states. The states may not:
1. tax imports or exports
  2. pass ex post facto laws, bills of attainder, or violate the Bill of Rights
  3. make treaties with other nations or declare war
  4. print money
  5. grant titles of nobility



*The many names for the different types of powers are often confusing for students (and teachers!). Enumerated, or expressed, powers are those that are specifically listed in the Constitution. These are also sometimes called delegated powers, because they were delegated or given to the federal government by the states. The term implied powers refers to the thousands of powers that are not explicitly listed in the Constitution, but that are suggested by those powers that are listed. Also, keep in mind that every implied power must be reasonably related to one or more of the enumerated powers. If Congress wants to claim an implied power under the Necessary and Proper Clause, it must be clearly related to at least one enumerated power. Many implied powers are based on multiple enumerated powers.*

## II. CONGRESSIONAL STRUCTURE AND ELECTIONS

### A. SENATE

1. Senate Qualifications to Serve
  - a. 30 years old
  - b. 9 years' citizenship
  - c. residency in the state represented
2. Term length: 6-year term (Senate = Six); there are no limits on the number of terms that a senator may serve.
3. Senators are elected at-large, that is, they are elected by voters throughout an entire state. Senators serve as representatives of

all people living within the geographic boundaries of their state, rather than as representatives of smaller divisions within the state.

4. Rather than hold elections for all 100 Senate seats every 6 years, the Framers designed a staggered election scheme in which one-third of Senate seats are up for election every 2 years. This concept created a continuous body, a system that promotes stability by ensuring that at least two-thirds of the membership would not change in any given election cycle.

## **B. HOUSE OF REPRESENTATIVES**

1. House Qualifications to Serve
  - a. 25 years old
  - b. 7 years citizenship
  - c. residency in state (not district) in which their district is located
2. Term length: 2-year term; there are no limits on the number of terms a representative may serve.
3. Unlike the Senate, the House is not designed as a continuous body; all 435 seats are up for election every 2 years. Since most members are reelected, massive membership changes do not generally occur.
4. Representatives (also sometimes called Congress members) are elected from single-member districts within states. They represent the residents of their districts.

## **C. CONGRESSIONAL DISTRICTS**

1. The Constitution directs that each state shall receive in the House a number of seats proportional to its share of the population. Beyond this, states have the reserved power to determine the "Times, Places and Manner of holding Elections for Senators and Representatives."
2. The number of House seats allocated to each state is recalculated every 10 years, based on the census count. The census is a national survey designed to quantify and collect data on the United States population.
3. Following each census, the number of House seats allocated to each state is reapportioned, or redistributed, based on the percentage of the population living in each state. States may gain or lose seats.

4. Each state legislature then divides the state into congressional districts, a number of geographical areas with roughly equal populations, corresponding to the number of House seats held by the state. For the least populated states, with only one House seat, the district is the entire state.
5. State legislatures have broad discretion in how district boundaries are constructed. Districts must be roughly equal in population and drawn based on racial considerations that are subject to strict scrutiny.
6. Because state legislatures draw district maps, a party holding a majority in a given state legislature may draw the map to its advantage. That is, a majority party in a state legislature may manipulate district boundaries to elect to Congress a disproportionate number of members of that party. This practice is called gerrymandering.
7. Gerrymandering is based on two basic principles: packing and cracking. Packing is the process of creating districts that include a large proportion of opposition voters, limiting their voting power by concentrating them in one or a small number of districts. Cracking is the process of spreading opposition voters among many districts, preventing them from having a majority in any of them.
8. Some states use independent commissions to conduct the process of redistricting and avoid partisan gerrymandering.



*Be sure you know and understand the difference between reapportionment, redistricting, and gerrymandering. Reapportionment is the redistribution of the 435 House seats among the 50 states following the census. Redistricting is the drawing of new district boundaries within states. Gerrymandering is redistricting in such a way as to create an advantage for a party.*

#### D. THE SUPREME COURT AND GERRYMANDERING

1. **Baker v. Carr (1962)**
  - a. **Facts of the Case:** The district boundaries for the state legislature in Tennessee in the 1950s were based on outdated census data that did not reflect population shifts. As a result, there were substantial differences in the population

sizes of each district, with rural districts having significantly smaller populations than urban districts. The Tennessee state constitution required redrawing districts every 10 years based on population shifts, but that requirement had not been followed. This resulted in malapportionment, or the creation of voting districts with significantly unequal populations. Because the votes of residents of different districts were of unequal weight in selecting political representation, Charles Baker, a resident of an urban district, argued that he and other voters in his district were being denied “equal protection” guaranteed by the Fourteenth Amendment.

- b. **Constitutional Issue(s):** Does a Fourteenth Amendment equal protection challenge to a legislative districting plan represent a political question, which cannot be decided by the Court?
- c. **Holding:** A Fourteenth Amendment equal protection challenge to the constitutionality of a districting plan does not present a political question. The federal district court may hear the case.
- d. **Reasoning:** A political question is one that may not be decided by the courts for a variety of reasons. For example, the Constitution may grant final authority on a matter to another branch of government, or the courts may not be able to offer an appropriate remedy (solution). Although the Court had previously declined to decide the merits of cases related to redistricting, here the Court held that the issue of malapportionment did not present a political question. Because the case had been dismissed by the District Court without a trial, the Supreme Court did not consider whether the Tennessee districting scheme actually violated the plaintiffs’ rights in this case. Importantly, *Baker v. Carr* established the precedent that districting plans could be challenged as a violation of the Equal Protection Clause of the Fourteenth Amendment, leading to the “one person, one vote” principle later articulated in *Reynolds v. Sims* (1964), which stated that electoral districts in state legislatures must be equal in population. The equal population precedent would later be applied to congressional districts in *Wesberry v. Sanders* (1964).

## 2. *Shaw v. Reno* (1993)

- a. **Facts of the Case:** Following the 1990 census, North Carolina gained one seat in the House of Representatives, and a new congressional district map was drawn consisting of 12 districts. Under the Voting Rights Act of 1965, states, counties, and

municipalities with a history of racial discrimination in voting rules were required to obtain the approval of the United States Attorney General before implementing new voting rules, including new congressional districts. (This provision of the Voting Rights Act of 1965 is no longer in effect.) In this case, North Carolina attempted to create two *majority-minority districts*, or districts in which a racial minority (African Americans) would compose more than half of the district. One of these districts was 160 miles long, primarily following a highway. The district bisected several existing communities and was, in some places, only as wide as the highway it followed. Five white voters sued, claiming that the district was drawn based on racial motivation in violation of the Equal Protection Clause.

- b. **Constitutional Issue(s):** Does a plan of congressional redistricting drawn with the purpose of favoring a racial minority group violate the Equal Protection Clause of the Fourteenth Amendment?
- c. **Holding:** Congressional districts drawn solely on the basis of race violate the Equal Protection Clause of the Fourteenth Amendment.
- d. **Reasoning:** Although racial considerations may be a legitimate concern in many state-level decisions, efforts to segregate the voting public based on race alone may be divisive and have unintended negative consequences. The drawing of district boundaries based solely on race is a violation of the Fourteenth Amendment. The test for determining whether a district is based on race alone is whether its design can be reasonably understood as being based on other factors.

**Note:** In *Rucho v. Common Cause* (2019), SCOTUS ruled that *partisan* gerrymandering claims (those involving districts drawn purely to advantage a political party) are political questions and may not be decided by federal courts. Federal courts may address districting cases involving population disparities (*Baker*) and racial gerrymandering claims (*Shaw*) because these violate Equal Protection guarantees. Partisan gerrymandering claims are nonjusticiable because a judicially manageable standard for resolving such claims does not exist. Furthermore, the Constitution assigns responsibility for districting decisions to state legislatures and Congress.



Expect to encounter questions asking you to differentiate between the two required Supreme Court cases related to redistricting and the Equal Protection Clause of the Fourteenth Amendment:

- **Baker v. Carr (1962):** Courts may hear cases involving redistricting, leading ultimately to the one person one vote rule that district populations be roughly equal.
- **Shaw v. Reno (1993):** Race may not be the only factor in drawing district boundaries.

### III. HOW CONGRESS FUNCTIONS

#### A. UNIQUE POWERS AND DUTIES OF EACH CHAMBER

1. Although both houses have similar legislative duties and follow broadly similar procedures, the Framers allocated to each house of Congress specific duties related to its unique nature.
2. The Senate represents broader constituencies (entire states) and offers more experience and stability, while House members are regarded as being closer, and therefore more responsive, to the people.

#### Unique Constitutional Powers and Duties of the Senate and the House of Representatives

Senate	House of Representatives
ratifies treaties with a two-thirds vote	initiates all revenue bills (taxes)
conducts trials of impeached officials (needs a two-thirds vote for removal from office)	has the authority to charge officials with impeachment by a majority vote
chooses the vice president in case the Electoral College fails to produce a winner	chooses the president in case the Electoral College fails to produce a winner
ratifies presidential appointments (e.g., judges, ambassadors, cabinet secretaries) by majority vote	

**B. THE COMMITTEE SYSTEM**

1. The vast majority of the work related to the development of legislation is the result of work in congressional committees, especially standing committees.
2. Every member of Congress is assigned to at least one standing committee. Long-term participation in specific standing committees allows members of Congress to develop expertise around particular policy areas.
3. Note that the majority party holds a majority of votes in every committee, and a member of the majority party is always the chair of each committee.
4. Committees also conduct hearings related to both the lawmaking and oversight functions of Congress.

**Committees in Congress**

Type of Committee	Functions
<b>Standing (permanent)</b>	<p>Permanent groups that continue from one Congress to the next and focus on all bills related to a particular policy area. Membership in standing committees allows members to develop expertise around specific issues.</p> <p>Examples: Agriculture, Armed Forces, Budget, Education, Foreign Relations, Judiciary, Veterans Affairs</p>
<b>Subcommittee</b>	<p>Smaller specialized divisions of larger committees that are created to divide the work and more efficiently work out details in bills.</p>
<b>Joint (permanent)</b>	<p>A limited number of committees with members from both chambers that have limited authority and frequently handle administrative housekeeping tasks or keep tabs on specific policy areas. They inform Congress, but do not introduce legislation.</p> <p>Examples: Joint Economic Committee, Joint Committee on the Library of Congress, Joint Committee on Taxation</p>
<b>Conference (temporary)</b>	<p>Temporary groups composed of members of both the House of Representatives and the Senate created to reconcile different versions of the same bill. This is necessary because bills must pass the House and Senate with identical wording.</p>

Type of Committee	Functions
<b>Select or Special (generally temporary)</b>	<p>Usually temporary groups formed for specific purposes such as to investigate a particular issue and that rarely work on legislation. Often focus on collecting data and examining potential policy options. Some select committees are more permanent in nature such as the ones on Aging, Ethics, and Intelligence.</p> <p>Examples: The Watergate Select Committee (officially the Select Committee on Presidential Campaign Activities, established in 1973) and the House Select Committee on Energy Independence and Global Warming, which existed from 2007–2011.</p>



*It is important that you are familiar with a few of the important standing committees in Congress. There will definitely be questions related to them on the exam.*

**Important Standing Committees in Congress**

House of Representatives	Senate
<p><b>Rules:</b> responsible for putting bills on the calendar; setting limits for the amount of time for debate; and specifying whether amendments can be added</p>	<p><b>Armed Services:</b> oversees issues relating to the military and Department of Defense</p>
<p><b>Ways and Means:</b> responsible for reviewing all bills that would raise or lower revenue (taxes)</p>	<p><b>Foreign Relations:</b> plays a key role in establishing international policy, evaluating treaties, and approving appointments related to foreign policy and diplomacy</p>
<p><b>Judiciary:</b> responsible for beginning the process for impeachment of federal officials</p>	<p><b>Judiciary:</b> responsible for the initial steps in the confirmation of all federal judges</p>

### C. LEADERSHIP

1. Before each new Congress convenes, the Democratic Caucus and the Republican Conference (membership of each party in each house) meet to select leaders and committee chairs. Leadership positions in Congress are then determined by strict party votes. The majority party holds all of the key leadership positions, including committee chairs, and the majority party has the most members on every committee. The leadership teams of each party work to advance the party's platform and coordinate deal-making efforts when issues result in a division within the party or within the House or Senate.
2. **Leadership of the House of Representatives**
  - a. The presiding officer is the Speaker of the House, who controls the calendar, sets the agenda, and assigns bills to committees. The Speaker is second in the order of presidential succession according to the Twenty-Fifth Amendment.
  - b. The majority floor leader manages the legislative process and coordinates the party strategy to get bills important to the party caucus passed.
  - c. The majority whip assists the party by building coalitions, counting potential votes, and influencing members to vote with party leadership. No vote is held before the whip informs party leadership of the likely outcome.
  - d. Committee chairs are the powerful leaders of the standing committees who have the power to kill a bill by not reporting it to the full House.
  - e. The minority party leadership consists of a minority party floor leader and a minority whip that coordinate the legislative strategy of the party out of power.
3. **Leadership of the Senate**
  - a. The presiding officer of the Senate, according to the Constitution, is the president of the Senate, who is also the U.S. vice president. The position of president of the Senate is largely ceremonial. The U.S. vice president appears in the Senate on opening day and for the State of the Union Address, and casts a vote only in the instance of a tie.
  - b. The president pro tempore ("for the time") presides over the Senate in the absence of the vice president (almost always) and is third in the order of presidential succession, after the vice president and the Speaker of the House. This largely

symbolic role is typically given to the longest-serving member of the majority party.

- c. The most powerful position in the Senate is the majority party leader, who schedules legislation and coordinates the majority party strategy along with the majority whip.
- d. Committee chairs are the leaders of the standing committees who have the power to kill a bill by not reporting it to the full Senate.
- e. The Senate minority party leadership consists of a minority party floor leader and a minority whip that coordinate the legislative strategy of the party out of power.

## IV.

### THE LEGISLATIVE PROCESS: HOW A BILL BECOMES A LAW

- A. Bills may only be introduced by members of Congress. (The president may not introduce legislation; he or she may only request that Congress do so.) Both houses follow similar procedures in processing legislation. Each house, however, has its own unique rules and procedures, so the path that legislation follows from introduction to passage can vary widely.
  1. Bills may be introduced in either house, although revenue bills, those that propose to generate government income through the imposition of taxes or fees, must constitutionally be introduced first in the House.
  2. Members of the House introduce bills by putting them into the *hopper*, a box on the floor of the House. In the Senate, bills are introduced by submission to clerks on the Senate floor.
  3. A bill must be passed by each house of Congress in identical form before it may be submitted to the president to be signed into law.
  4. Incumbent members of both houses derive an advantage in campaigning for re-election as a result of their ability to direct federal funds to their states and districts. The practice of generating legislation that produces income for their districts is known as *pork barrel spending*, as it is often excessive and unnecessary, but proves a member's ability to "bring home the bacon."
  5. The term *logrolling* refers to trading votes, or "you vote for my bill and I will vote for yours." This practice is a feature of both chambers.

- B.** In both houses, bills are next assigned to the standing committee with the appropriate jurisdiction and subject matter expertise to evaluate and work on the bill. Occasionally, most often in the House, multiple committees may work on parts of bills.

**C. Committee Consideration**

1. Committee chairs set each committee's agenda. That is, they decide which bills the committee will attempt to pass through Congress during the session. Committees are always chaired by a member of the majority party in the chamber.
  2. For practical and political reasons, most bills are not reported by the committee. Bills that are not placed on a committee's agenda (or pigeonholed) normally die in committee. In the House, a bill can be removed from committee and brought directly to the floor using an instrument called a discharge petition, which requires majority support of the full membership. The process is rarely successful, however, as it requires disloyalty to the party agenda on the part of at least some majority party members.
  3. Committee action generally begins with a hearing, during which policy experts and interested parties may give testimony about the subject under consideration. Hearings inform members of Congress, the press, and the public about proposed legislation and its impact. Committee members, of course, also seek input on legislation from other sources.
  4. Subcommittees—smaller, more specialized subgroups within committees—may play roles in revising proposed bills.
  5. A *markup* follows. This is a meeting in which the committee discusses the proposed legislation, makes changes, and produces a final draft for floor consideration. The bill that comes out of the committee may be essentially the same as the original bill, or it may be substantially rewritten in committee.
- D.** Following committee consideration, bills are placed on calendars for floor debate. This is done through different mechanisms in each house, but in both cases, the process is directed by the majority party.
- E.** Procedures for debating and passing bills on the floor of each chamber are similar. In both houses, a quorum, or a majority of the membership, must be present in order to conduct business. Each

chamber, however, has its own set of procedural rules. Following are the most significant differences in debate between the two houses of Congress.

### 1. House Procedures

- a. Procedures in the House, because of its membership size (435), are more formal and debate more limited than in the Senate.
- b. Most bills are considered under the suspension of the rules procedure, which limits debate to 40 minutes, does not allow members to propose amendments to bills, and requires two-thirds approval for passage of legislation.
- c. Other bills are debated under a special rule created by the House Rules Committee, sometimes called the traffic cop committee of the House.
- d. Each special rule sets forth specific limitations on debate for the bill in question, including time limits and restrictions on offering amendments.
- e. After a special rule is adopted, the House generally considers the bill as the Committee of the Whole. That is, the entire House becomes a committee, allowing for consideration of amendments under a more relaxed and efficient set of rules. (This procedure also allows for work to take place without a quorum present.) The Committee of the Whole then reports to the full House of Representatives (itself) where amendments may be adopted and the bill voted on.
- f. In the House, some votes may be taken by voice (members vote "aye" or "nay" in response to the question, and the Speaker announces the winner of the vote), but most votes are taken via an electronic voting system, which records each member's vote.

### 2. Senate Procedures

- a. Procedures in the Senate are characterized by less formality than those of the House. In fact, there is no formal limit on debate in the Senate, which proudly considers itself to be the most democratic body in the world.
- b. In terms of legislative procedure, the Senate must first agree to bring a bill to the floor, usually through unanimous consent.

- c. Because Senate rules do not allow for a simple majority to terminate debate, senators may engage in a filibuster. The filibuster is a tactic by which one or more senators may threaten to extend debate on an issue to prevent a vote. A senator signals the intent to filibuster by placing a hold—a request to delay floor debate—on a bill.
- d. Originally, a filibuster would bring a halt to Senate business through sustained debate. Starting in 1970, however, Senate rules were changed to create a two-track system, under which the chamber could consider other business while filibustered bills are pending.
- e. A filibuster may be ended using cloture, a procedure under which debate may be terminated by a 60-vote supermajority. The practical effect of these procedures, particularly in a partisan environment, is that bills frequently require sixty votes for passage in the Senate.
- f. Votes may be taken by voice, standing, or by roll call, in which each senator's vote is on the record.



*You may encounter a question that requires you to identify constitutional powers unique to each house. Be aware that most House and Senate procedures and rules, e.g., filibuster, cloture, Committee of the Whole procedures, Rules Committee procedures, discharge petitions, and others, are not discussed in the Constitution. How the houses of Congress conduct business is only broadly described in the Constitution. For unique constitutional powers of each house, see the "Unique Constitutional Powers and Duties of the House and the Senate" chart earlier in this chapter.*

- F. Before a bill can become law, it must be passed in identical form in both houses. Most often, however, House and Senate versions of a bill have differences, which must then be reconciled. This is done in a conference committee, a committee made up of members of both houses who work out a compromise bill that can be passed in identical form in both houses.
- G. Once a bill has been passed in identical form in both houses, it goes to the president for a signature. There are four possible scenarios at this point.

1. If the president signs the bill, it becomes law.
2. The president may veto the bill, or refuse to sign the bill and return it to Congress with an explanation of his or her objections. A veto may be overridden by a two-thirds vote of both houses. In the event of an override, the bill becomes law without the president's signature. Otherwise, the bill dies.
3. The president may refuse to sign or veto the bill, in which case it will become law in 10 days without his or her signature.
4. If Congress adjourns within the 10-day period, however, the bill dies. This is called a pocket veto.

### Comparing the Senate and the House

	Senate	House of Representatives
Representation	states	population
Membership	100	435
Election	at-large	single-member districts
Qualifications	30 years old 9 years' citizenship resident of state	25 years old 7 years' citizenship resident of state
Term Length	6 years	2 years
Unique Powers	advice & consent: ratifies treaties, confirms judicial appointments, confirms other executive appointments, conducts impeachment trials	revenue bills, brings impeachment charges, chooses president in event of Electoral College failure
Debate Rules	filibuster, cloture, holds, unanimous consent	Rules Committee, Committee of the Whole, discharge petitions
Procedures	less formal	more formal
Partisanship	less partisan	more partisan
Policy Focus	focus on foreign policy	focus on taxes and revenues
	proposed amendments to bills generally do not need to be related to bill content	proposed amendments must be related to bill content



Questions that ask you to integrate material from different units are common on the AP® exam, so be aware of these relationships as you study. Also, certain themes, or principles, are applicable to many areas of content. For example, be prepared to describe examples of majoritarian and pluralist features of Congress today.

**Majoritarian examples:**

- A majority (of those present) is required for the passage of a bill in the House and Senate.
- Quorum in the form of a majority is needed for debate and vote.
- The majority party in each chamber holds the chairs of all committees and dominates the legislative process.

**Pluralist examples:**

- Lawmaking often depends on compromise between competing interests through logrolling, bargaining, and coalition building.
- Pork barrel legislation benefits only specific groups rather than the majority.
- The filibuster allows minority interests in the Senate to have a greater influence.
- Standing committee memberships and the formation of iron triangles leads members to focus on specific policy areas and influences them to support specific interests.

## V. THE FEDERAL BUDGET

### A. BUDGET PROCESS

1. Working with the executive branch, Congress must generate a budget each year to fund all of the activities, programs, and services carried out by the federal government. The budget includes three broad categories of spending.
  - a. Discretionary spending, or federal agency spending, is funding for various agencies and programs, which the government is not obligated to fund to a certain level. Congress has discretion, or the ability to decide how much federal money

should be spent. Discretionary spending accounts for about one-third of federal spending.

- b. Interest on the national debt, which Congress must pay and cannot change, generally makes up less than 10 percent of the budget.
  - c. Mandatory spending is spending required by law. It includes Social Security, Medicare, veterans' benefits, and other entitlements, or benefits to which certain people are guaranteed by law, and makes up over half of all funding.
2. **The Office of Management and Budget (OMB):** The OMB, part of the executive branch, begins the budget process by reviewing all of the monetary requests from each of the federal agencies and combining them into the president's proposed budget. The OMB estimates, based on taxes and spending, whether the government will have a surplus or budget deficit and sends the proposed budget to Congress. Although Congress has the power to reduce entitlements, this is extremely politically difficult and rarely done.
  3. **Congressional Budget Office (CBO):** The CBO, which was created by Congress, analyzes the president's proposed budget and provides economic data to Congress.
  4. **Congressional Review:** Standing budget committees in each chamber make changes and create budget resolutions. Budget resolutions are passed by each house.
  5. House and Senate versions of the budget go to conference committee for reconciliation (compromise).
  6. The budget resolution is not a law. It provides guidelines or goals for spending. Spending bills, also called appropriations bills, are passed to fulfill the budget targets.
  7. Appropriations bills are then sent to the president for approval.

## **B. FACTORS INFLUENCING THE BUDGET**

1. All money the government spends must come from either revenue (government income, mostly produced by taxes) or borrowing (the government takes on debt).
2. Each annual budget passed by Congress produces either a surplus (the government spends less than it is generating in revenue) or a deficit (the government spends more than it is generating in revenue).

3. A defining feature of the modern budget process is the tension between mandatory spending, which increases over time, and discretionary spending.
4. As entitlement costs increase, discretionary spending must decrease unless taxes are raised, or the government is willing to take on more debt.
5. Reducing discretionary spending is unpopular because discretionary spending pays for many important programs that benefit citizens and businesses.
6. Taking on debt is politically difficult because both debt and interest must be paid in the future and this may hamper economic growth.
7. Raising taxes is unpopular.



*Students are sometimes confused by the relationship between "deficit" and "debt." A budget deficit is the amount by which the government's expenditures exceed its revenues in a given year. The national debt is the total amount the government owes. Each year of deficit spending contributes to the national debt.*

## VI. IDEOLOGY IN THE POLITICAL PROCESS

### A. IDEOLOGICAL DIVISIONS (PARTISANSHIP)

1. Members of Congress usually try to support their political party's goals if possible, and partisanship in Congress has been increasing.
2. Congress is organized by political party. The majority party leaders dominate the workings of Congress and ensure most benefits come to majority party members.

### B. DIVIDED GOVERNMENT

1. When the majority party in Congress is different from the party of the president, it is often difficult to pass legislation, resulting in gridlock.
2. The president may convince members of Congress to compromise on legislation because it is unlikely that Congress would have the two-thirds supermajority needed to override a veto.

### C. COALITIONS IN CONGRESS

1. Coalitions are formed when groups and individuals within Congress join together to advance a set of policy goals that they could not successfully promote alone. Coalitions may be based on ideology, economics, geography, or other factors. Winning alliances are able to place issues on the legislative agenda and guide their policies through Congress.
2. Coalitions tend to form more readily in the Senate than in the House. This is due in part to term lengths. House members count on being re-elected every two years and may be more hesitant to displease their constituencies, which may be more partisan. Senators, on the other hand, serve for six years, and they serve entire states, which may encompass greater diversity of opinion.

### D. VIEWS OF THE PROPER ROLE OF A REPRESENTATIVE

1. **Delegate:** A member of the House or Senate votes based on the preferences of the majority of his or her constituents. This view reflects participatory democracy.
2. **Trustee:** A member of the House or Senate votes based on his or her conscience in the best interest of society, even if this results in choices that do not please a majority of his or her constituency. Members of Congress may have more access to information about issues from hearings and debate and may be better informed than their constituents. This view reflects elite democracy.
3. **Politico:** This model is a hybrid of the trustee and delegate models of representation. A member of the House or Senate follows the preferences of his or her constituents (delegate model) or his or her conscience and informed decision (trustee model), depending on the issue and the degree of public concern about a particular policy decision.



*Members of Congress may not always be acting on some combination of the delegate and trustee models. You may encounter questions relating to the motivations of legislators in various situations. Be aware that lawmakers are also influenced by the goals of their political party (partisanship) and the effect of interest groups. However, be cautious of answers that appear cynical (distrustful of the integrity or sincerity of a person or thing). For example, legislators are not "bribed" by interest groups; interest group campaign donations help them to gain "access" to lawmakers.*