

CHAPTER

8

The Legislative Branch

IN THIS CHAPTER

Summary: Article I of the United States Constitution creates a **bicameral**, or two-house, legislature consisting of the House of Representatives and the Senate. The current structure of the Congress was the result of the Great (Connecticut) Compromise, reached at the Constitutional Convention. The Founding Fathers based their compromise in part on the belief that each house would serve as a check on the power of the other house. The House of Representatives was to be based on the population in the states, representative of the people, with its members chosen by popular vote. The Senate was to represent the states equally, with each state having the same number of senators, chosen by the state legislatures.

Key Terms

bicameral
apportionment
reapportionment
congressional districting
gerrymandering
majority-minority district
Baker v. Carr
Shaw v. Reno
at-large
incumbency effect
casework
constituents
constituency service
Speaker of the House
majority leader

president pro tempore
floor leaders
seniority system
standing committee
select committee
joint committee
conference committee
Committee of the Whole
Rules Committee
legislative caucus
delegate
trustee
politico
franking privilege
oversight powers

bills
discharge petition
mark-up
filibuster
cloture
hold
pork barrel legislation
logrolling
riders
amendments
lobbying
legislative veto
divided government
political polarization

Structure of Congress

Figure 8-1 shows the structure of the two houses of Congress.

Structure of Congress: A Comparison of the House and Senate

	House of Representatives	Senate
Membership	435 members (apportioned by population)	100 members (two from each state)
Term of office	2 years; entire House elected every 2 years	6 years; staggered terms with one-third of the Senate elected every 2 years
Qualifications	At least 25 years of age; citizen for 7 years; must live in state where district is located	At least 30 years of age; citizen for 9 years; must live in state
Constituencies	Smaller, by districts	Larger, entire state
Prestige	Less prestige	More prestige

Figure 8-1

Organization of Congress

- Two houses meet for terms of two years beginning on January 3 of odd-numbered years; each term is divided into two one-year sessions
- The president may call special sessions in cases of national emergency
- Each house of Congress chooses its own leadership and determines its own rules

Election to Congress

Getting Elected to the House of Representatives

The Constitution guarantees each state at least one representative. Members are chosen from districts within each state. Some practices related to determining congressional representation are:

- **apportionment**—Distribution among the states based on the population of each of the states.
- **reapportionment**—The redistribution of congressional seats after the census determines changes in population distribution among the states.
- **congressional districting**—The drawing by state legislatures of congressional districts for those states with more than one representative.
- **gerrymandering**—Drawing congressional districts to favor one political party or group over another.



Gerrymandering and the Supreme Court

Gerrymandering can be based on partisanship, with districts being drawn to benefit candidates of one party and hurt the candidates of the other party. Sometimes district lines are drawn to benefit incumbents, or certain individuals such as state officials who run for the House of Representatives. Redistricting may also be based on helping or hurting the chances of minority candidates. Racial gerrymandering occurs when district lines are drawn to prevent racial minorities from electing their chosen candidate. This has led to the creation of

majority-minority district, districts in which a racial minority group or groups comprise a majority of the district's total population. Federal law allows majority-minority districts to be created to prevent the weakening of minorities' voting strength in compliance with the Voting Rights Act of 1965 and its amendments.

The Supreme Court has ruled on several cases involving the fairness of reapportionment and redistricting:

- ***Baker v. Carr* (1962)**—The Supreme Court ruled that reapportionment challenges are not political questions if brought under the Equal Protection Clause of the Fourteenth Amendment.
- ***Wesberry v. Sanders* (1964)**—The Supreme Court ruled that districts must be drawn to approximately the same population size as other districts. This opened the door to challenges to redistricting and the development of the “one-man, one-vote principle.”
- ***Shaw v. Reno* (1993)**—The Supreme Court ruled that legislative redistricting must be mindful of race and compliance with the Voting Rights Act of 1965 and its amendments.

Getting Elected to the Senate

The Constitution guarantees that “no state, without its consent, shall be deprived of its equal suffrage in the Senate” (Article V).

- Members were originally chosen by the state legislatures in each state.
- Since 1913, the Seventeenth Amendment allows for the direct election of senators by the people of the state.
- Election of senators is by the people **at-large**. All voters of the state elect the senators from the state.

Incumbency Effect

The **incumbency effect** is the tendency of those already holding office to win reelection. The effect tends to be stronger for members of the House of Representatives and weaker for the Senate. Advantages may include:

- ***name recognition***—Voters are more likely to recognize the office holder than the challenger.
- ***credit claiming***—The office holder may have brought government projects and money into the state or district.
- ***casework for constituents***—Office holders may have helped constituents solve problems (**constituency service**) involving government and the bureaucracy.
- ***more visible to constituents***—Members can use the “perks” of the office to communicate with constituents. Franking, the privilege of sending official mail using the incumbent's signature as postage, provides communication with constituents.
- ***media exposure***—Incumbents are more likely to gain “free” publicity during a campaign through the media.
- ***fundraising abilities***—It is generally greater for incumbents.
- ***experience in campaigning***—Incumbents have already experienced the campaign process.
- ***voting record***—Voters can evaluate their performance based on their record.

Term Limits

Although several states have passed legislation establishing term limits for members of Congress, the Supreme Court has ruled that neither the states nor Congress may impose term limits without a constitutional amendment. Therefore, today, there are no limitations on the number of terms a member of Congress may serve.

Leadership of Congress

The majority political party in each house controls the leadership positions of Congress.

House of Representatives



- The **Speaker of the House** is the presiding officer and most powerful member of the House. Major duties include assigning bills to committee, controlling floor debate, and appointing party members to committees. The speaker is elected by members of his or her political party within the House.
- Majority and minority leaders
 - The **majority leader** serves as the major assistant to the speaker, helps plan the party's legislative program, and directs floor debate.
 - The minority floor leader is the major spokesperson for the minority party and organizes opposition to the majority party.
- Whips help floor leaders by directing party members in voting, informing members of impending voting, keeping track of vote counts, and pressuring members to vote with the party.

Senate

- The U.S. vice president, although not a Senate member, is the presiding officer of the Senate, according to the Constitution. The vice president may not debate and only votes to break a tie.
- The **president pro tempore** is a senior member of the majority party chosen to preside in the absence of the Senate president. This is a mostly ceremonial position lacking real power.
- Majority and minority **floor leaders**
 - The majority floor leader is the most influential member of the Senate and often the majority party spokesperson.
 - The minority floor leader performs the same role as the House minority leader.
- Whips serve the same role as whips in the House of Representatives.

The Committee System

Most of the work of Congress is accomplished through committees. Committees permit Congress to divide the work among members, thus allowing for the study of legislation by specialists and helping speed up the passage of legislation.

Leadership of Committees

Committee chairpersons are members of the majority party in each house chosen by party caucus. They set agendas, assign members to subcommittees, and decide whether the committee will hold public hearings and which witnesses to call. They manage floor debate of the bill when it is presented to the full House or Senate. Traditionally chairpersons were chosen based on the **seniority system**, with the majority party member having the longest length of committee service chosen as chairperson. Today, reforms allow for the selection of chairpersons who are not the most senior majority-party member on the committee. However, most are long-standing members of the committee.

Membership on Committees

The percentage of each committee's membership reflects the overall percentage of Democrats and Republicans in each house. Members try to serve on committees where they can influence public policy relating to their district or state (for example, a Kansas senator on the agriculture committee) or influence important national public policy.

Types of Committees

- A **standing committee** is a permanent committee that deals with specific policy matters (agriculture, energy and natural resources, veterans' affairs).
- A **select committee** is a temporary committee appointed for a specific purpose. Most are formed to investigate a particular issue, such as the Senate Watergate Committee.
- A **joint committee** is made up of members of both houses of Congress. It may be a select committee (Iran-Contra Committee) or perform routine duties (Joint Committee on the Library of Congress).
- A **conference committee** is a temporary committee of members from both houses of Congress, created to resolve the differences in House and Senate versions of a bill. It is a compromise committee.

Important Committees

HOUSE OF REPRESENTATIVES	SENATE
Committee of the Whole—a committee on which all representatives serve, and which meets in the House Chamber for the consideration of measures	Appropriations—responsible for all spending of the federal budget
Rules Committee—responsible for determining under what rules other committees' bills will come to the floor; the committee decides for how long and under what rules the full body will debate bills	Foreign Relations—oversees the foreign policy agencies of the U.S. government such as funding foreign aid programs and arms sales; reviews and considers all diplomatic nominations and international treaties and legislation relating to U.S. foreign policy
Ways and Means Committee—a committee that, along with the Senate Finance Committee, writes the tax codes, subject to the approval of Congress as a whole; jurisdiction over all taxation, tariffs, and other revenue raising measures	Judiciary—conducts hearings prior to the Senate vote on whether to confirm prospective federal judge nominations by the president; provides oversight of the Department of Justice and all the agencies under the Department of Justice

Caucuses

A **legislative caucus** is an informal group formed by members of Congress who share a common purpose or set of goals (Congressional Black Caucus, Women's Caucus, Democratic or Republican Caucus).

Congressional Staff and Support

- Personal staff work directly for members of Congress in Washington, D.C., and their district offices in their home states.
- Committee staff work for committees and subcommittees in Congress, researching problems and analyzing information.
- Support agencies provide services to members of Congress (Library of Congress, Government Printing Office).

Roles of Members of Congress

Members of Congress have several roles:

- *policymaker*—Make public policy through the passage of legislation.
- *representative*—Represent constituents.
 - **delegate**—Members vote based on the wishes of constituents, regardless of their own opinions.
 - **trustee**—After listening to constituents, members vote based on their own opinions.
 - **politico**—Members vote based on party loyalty.
- *constituent servant*—Help constituents with problems.
- *committee member*—Serve on committees.
- *politician/party member*—Work to support their political party platform and get reelected.

Privileges of Members of Congress

Members of Congress enjoy several privileges, including:

- allowances for offices in their district or home state
- travel allowances
- the **franking privilege** allows members of Congress to send mailings to constituents postage free
- immunity from arrest while conducting congressional business
- immunity from libel or slander suits for their speech or debate in Congress

Powers of Congress

Congress has legislative and nonlegislative powers.



1. Legislative powers—Power to make laws.

- *expressed (enumerated) powers*—Powers specifically granted to Congress, mostly found in Article I, Section 8 of the Constitution (enacting legislation, coining money, passing the federal budget, raising revenue, declaring war, raising and maintaining an armed forces).
- *implied powers*—Powers that may be reasonably suggested to carry out the expressed powers; found in Article I, Section 8, Clause 18, “necessary and proper” or elastic clause; allows for the expansion of Congress’s powers (expressed power to raise armies and navy implies the power to draft men into the military).
- *limitations on powers*—Powers denied Congress by Article I, Section 9 and the Tenth Amendment.

2. Nonlegislative powers—Duties other than lawmaking.

- *electoral powers*—Selection of the president by the House of Representatives and/or vice president by the Senate upon the failure of the electoral college to achieve a majority vote.
- *amendment powers*—Congress may propose amendments by a two-thirds vote of each house or by calling a national convention to propose amendments if requested by two-thirds of the state legislatures.
- *impeachment*—The House may bring charges, or impeach, the president, vice president, or any civil officer; case is tried in the Senate with the Senate acting as the jury (Andrew Johnson and Bill Clinton were both impeached by the House but not convicted by the Senate).
- *executive powers of Senate*—The Senate shares the appointment and treaty-making powers with the executive branch; the Senate must approve appointments by majority vote and treaties by two-thirds vote.
- *investigative/oversight powers*—Investigate matters falling within the range of its legislative authority; often involves the review of policies and programs of the executive branch.

The Lawmaking Process



Figure 8-2 shows the steps involved for a bill to become a law.

How a Bill Becomes a Law

Bills, or proposed laws, may begin in either house, except revenue bills, which must begin in the House of Representatives.

HOUSE OF REPRESENTATIVES

A bill is introduced, numbered, and assigned to a committee.

The bill may be assigned to a subcommittee for further study.

The bill is returned to committee, where it is approved or rejected.

The **rules committee** sets terms of debate for the bill.

The bill is debated by the House.

A vote is taken, where the bill is passed or defeated. Bills that pass the House are sent to the Senate.

SENATE

A bill is introduced, numbered, and assigned to a committee.

The bill may be assigned to a subcommittee for further study.

The bill is returned to committee, where it is approved or rejected.

No rules committee!

The bill is debated by the Senate.

A vote is taken, where the bill is passed or defeated. Bills that pass the Senate are sent to the House.

Conference committee resolves differences between House and Senate versions of a bill. Compromise versions may not contain any new material.

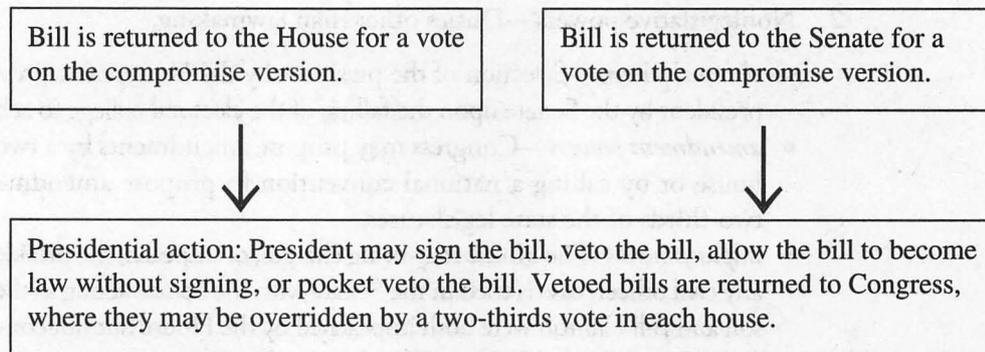


Figure 8-2

Legislative Tactics



Legislative tactics are the strategies and devices used by Congress and others in an attempt to block legislation or to get legislation passed.

- *caucuses*—May form voting blocs.
- the *committee system*—Plays a major role in the passage of legislation; bills may die if committees fail to act upon them or reject them.
- *discharge petition*—A discharge petition is a method of bringing a bill out of committee and to the floor for consideration without a report from the committee. It becomes necessary when a committee chair refuses to place the bill or on the committee's agenda: by never reporting a bill, the bill will never leave the committee, and the full House will not be able to consider it. The discharge petition, or the threat of one, gives more power to individual members of the House and takes a small amount of power from the leadership and committee chairs.
- *mark-up*—rewrite a bill into its final form after hearings have been held on it.
- *filibuster and cloture*—Filibuster is unlimited debate in an attempt to stall action on a bill. It occurs in the Senate only, and is possible because the Senate's rules for debate are almost unrestricted. Cloture is the method by which the Senate limits a filibuster. It involves a petition to end debate and requires the vote of at least 60 senators.
- *hold*—informal practice by which a senator informs his or her floor leader that he or she does not wish a particular bill or other measure to reach the floor for consideration; the majority leader need not follow the senator's wishes, but is on notice that the opposing senator may filibuster any motion to proceed to consider the bill.
- *pork barrel legislation*—An attempt to provide funds and projects for a member's home district or state. When the funds are directed to a specific purpose or project, they are known as *earmarks*.
- *logrolling*—An attempt by members to gain the support of other members in return for their support on the member's legislation; "I'll support your bill, if you will support mine."
- *riders*—Additions to legislation which generally have no connection to the legislation; generally legislation that would not pass on its own merit; when a bill has lots of riders it becomes a "Christmas tree bill."
- *amendments*—Additions or changes to legislation that deal specifically with the legislation.
- *lobbying*—Trying to influence members of Congress to support or reject legislation.
- *conference committees*—May affect the wording and therefore the final intent of the legislation.

- **legislative veto**—The rejection of a presidential or executive branch action by a vote of one or both houses of Congress, used mostly between 1932 and 1980 but declared unconstitutional by the Supreme Court in 1983 (*Immigration and Naturalization Service v. Chadha*) stating that Congress cannot take any actions having the force of law unless the president agrees.

Influences on Congress

Various individuals and groups influence Congress members.

- **constituents**—Members, especially those who hope to win reelection, often take into consideration the opinions of their constituents and voters back home in their district or state.
- **other lawmakers and staff**—More senior members often influence newer members; committee members who worked on legislation often influence other members; and staff often research issues and advise members.
- **party influences**—Each party’s platform takes a stand on major issues, and loyal members often adhere to the “party line.” Members in the House are more likely to support the party position than are Senators.
- **president**—Presidents often lobby members to support legislation through phone calls, invitations to the White House, or even appeals to the public to gain support from voters to bring pressure on members.
- **lobbyists and interest groups**—Often provide members with information on topics relating to their group’s interest or possible financial support in future campaigns.

Divided Government

Divided government occurs when one party controls the executive branch (White House) and another party controls one or both houses of the legislative branch (Congress). Two factors increase the chances of divided government: an increasing number of independent voters, and an increase in split-ticket voting. One major disadvantage of divided government is partisanship and gridlock.

Political Polarization and Gridlock

In recent years, members of the House and Senate have gained a reputation for their ability to create partisan gridlock. Divided by issues like health care, immigration, and gun control, they have been ineffective in reaching compromises, hindering the political process.

Political polarization—one factor leading to this gridlock—has become very noticeable. Increasing ideological differences between the parties has created a distance where members of political parties vote along party line; therefore, they are less likely to cross party lines to vote with the other party. This can lead to gridlock, a political stalemate making it difficult to pass legislation.

> Review Questions

Multiple-Choice Questions

1. After a national census has been taken, changes in population distribution cause the changing of congressional seats among the states. This effect is commonly called
 - (A) congressional districting
 - (B) apportionment
 - (C) gerrymandering
 - (D) reapportionment
2. Which of the following is NOT true of the Congress?
 - (A) Each house determines its own leadership and rules.
 - (B) Terms of Congress last for two years.
 - (C) Congress is unicameral in nature.
 - (D) Only the president may call special sessions of Congress.
3. Which of the following is true about the officers of the House of Representatives?
 - (A) It is the responsibility of the party whip to keep track of vote counts and pressure members to vote with the party.
 - (B) The presiding officer is the majority leader.
 - (C) Minority leaders direct floor debates.
 - (D) The major duty of the majority leader is to assign bills to committee.
4. Temporary committees appointed for the specific purpose of investigating a particular issue are called
 - (A) joint committees
 - (B) select committees
 - (C) standing committees
 - (D) investigating committees
5. Which of the following is NOT true of members of Congress?
 - (A) Members of Congress act as policymakers and make public policy through the passage of legislation.
 - (B) Members of Congress are constituent servants.
 - (C) Members of Congress work to support their political party platform.
 - (D) After listening to constituents, members vote based on the opinions of those constituents; that is, they become the trustee of the constituent.
6. Which of the following best describes a nonlegislative power of Congress?
 - (A) power to declare war
 - (B) power to tax
 - (C) impeachment power
 - (D) power to regulate commerce
7. Which of the following is NOT a step that a proposed bill would encounter on its journey through Congress?
 - (A) The bill is debated.
 - (B) The bill is voted on, at which time it may pass or be defeated.
 - (C) The bill may be assigned to a subcommittee.
 - (D) The bill is introduced by a president or by a member of the executive branch.
8. After a presidential veto of a bill, Congress may
 - (A) sign the bill, and it becomes law
 - (B) override the bill if one house of Congress approves it
 - (C) override the president's veto with a two-thirds vote of both houses of Congress
 - (D) pocket veto the bill, thereby allowing it to become law without the president's signature.

9. Which legislative tactic is most effectively used only in the Senate?
- (A) filibustering
 - (B) logrolling
 - (C) caucusing
 - (D) riders
10. Which of the following is NOT considered to be a contributing factor to the incumbency effect?
- (A) name recognition
 - (B) voting record
 - (C) educational background
 - (D) experience in campaigning

11. Which of the following is an accurate comparison of the House of Representatives and the Senate?

	HOUSE OF REPRESENTATIVES	SENATE
(A)	The Speaker of the House may only vote to break a tie in the House	The president of the Senate may vote on any legislation before the Senate
(B)	Members can delay the vote on legislation by filibustering	Members must send all legislation through the Rules Committee
(C)	Members represent the entire state	Members represent districts within the state
(D)	The Speaker of the House is the most powerful position in the House	The majority leader is the most powerful position in the Senate

Free-Response Question

12. (A) Describe the primary role of Congress.
 (B) Describe the role of each of the following in the lawmaking process:
- Hold
 - Discharge petition
- (C) Define divided government and explain how divided government impacts the lawmaking process.

> Answers and Explanations

1. **D.** Reapportionment is the change in the number of congressional seats per state based on state population changes. Gerrymandering (C) is the drawing of congressional electoral districts in order to give an advantage to a group or party.
2. **C.** Congress is a bicameral legislature composed of the House of Representatives and the Senate. The other responses are correct descriptions of Congress.
3. **A.** The minority and majority whips are responsible for keeping track of vote counts and pressuring members to support the party vote. The presiding officer is the Speaker of the House (B). The speaker directs floor debates (C) and largely controls the assignment of bills to committee (D).
4. **B.** Select committees are temporary committees responsible for investigating specific issues. Some select committees investigate issues (D). Joint committees (A) are made up of members of both houses of Congress. Standing committees (C) are permanent committees that deal with specific policy matters.
5. **D.** Members of Congress who vote according to constituent wishes are delegates of the constituents. The remaining answer choices accurately reflect the duties of members of Congress.
6. **C.** The impeachment power of Congress is a nonlegislative power, having nothing to do with the passage of legislation. The powers to declare war (A), to tax (B), and to regulate commerce (D), deal with the passage of legislation. They are, therefore, among the legislative powers of Congress.
7. **D.** Although bills may be suggested by members of the executive branch, they may be introduced only by members of Congress. The remaining answer choices are correct and occur in the following order: (C), (A), (B).
8. **C.** Congress may override a presidential veto with a two-thirds vote of both houses of Congress. Congress cannot sign a bill into law (A) and neither house may override a veto by itself (B). Only the president may pocket veto a bill; therefore it does not become law (D).
9. **A.** Filibustering is a stalling tactic used only in the Senate. Logrolling (B), caucuses (C), and riders (D), are used in both houses of Congress.
10. **C.** The incumbency effect is the tendency of those already holding office to win reelection because of advantages of holding that office. A candidate's educational background does not contribute to the incumbency effect. Name recognition (A), voting record (B), and campaign experience (D), are factors that contribute to the incumbency effect.
11. **D.** The Speaker of the House may vote at any time, and the president of the Senate (the vice-president of US) may only vote to break a tie (A). Members of the House send legislation through the Rules Committee, and members of the Senate may delay a vote by filibustering (B). Members of the House represent districts within a state, and members of the Senate represent the entire state (C).
12. **A.** The primary role of Congress is to make laws or pass legislation.
B. A hold is an informal practice that allows a senator to inform his or her floor leader that he or she does not wish a particular bill to reach the floor for debate and vote. This practice allows senators to block or threaten to block legislation and can slow the legislative process. A discharge petition is a method of bringing a bill out of committee and to the floor for consideration without a report from the committee. It becomes necessary when a committee chair refuses to place the bill or on the committee's agenda: By never reporting it, a bill will never leave the committee, and the full House will not be able to consider it. The discharge petition, or the threat of one, gives more power to individual members of the House and takes a small amount of power from the leadership and committee chairs.

C. Divided government exists when one party controls the executive branch (White House) and another party controls one or both houses of the legislative branch (Congress). Divided government impacts the lawmaking system by creating a heightened sense of partisanship, which can lead to gridlock and a slowdown of government.

It can increase voters' sense of frustration with government if they believe that nothing is being accomplished. Divided government can also lead to more extremes in government and less willingness to compromise.

› Rapid Review

- Congress is bicameral in nature.
- Members of the House of Representatives are chosen from districts within a state. The number of representatives per state is based on state population.
- Members of the Senate are elected from the state. States are equally represented, with two senators from each state.
- Reelection to Congress is often a consequence of the incumbency effect. Several factors may contribute to the incumbency effect.
- There are no term limits in Congress.
- Leaders of the House of Representatives include the Speaker of the House, the floor leaders, and the whips. Leaders of the Senate include the president of the Senate (vice president), the president *pro tempore*, the floor leaders, and the whips.
- Most of the legislative work of Congress is accomplished through committees. Membership on committees is based on party strength. Types of committees include standing, joint, select, and conference committees.
- Personal staff, committee staff, and support agencies aid members of Congress and the committees.
- Congresspeople serve in many roles.
- Congress has both legislative and nonlegislative powers. Legislative powers include expressed, implied, and denied powers. Nonlegislative powers include electoral powers, amendment powers, impeachment powers, executive powers of the Senate, and oversight powers.
- Congress has a specific process for how a bill becomes a law.
- Legislative tactics are used in the process of passing, stopping, or slowing legislation.
- Constituents, other lawmakers, party influences, the president, lobbyists, and interest groups influence members of Congress.