

# 11

# The Congress



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## Learning Outcomes

After reading this chapter, you should be able to:

- LO 11-1 Explain how seats in the House of Representatives are apportioned among the states.
- LO 11-2 Describe the power of incumbency.
- LO 11-3 Identify the key leadership positions in Congress, describe the committee system, and indicate some important differences between the House of Representatives and the Senate.
- LO 11-4 Summarize the specific steps in the lawmaking process.
- LO 11-5 Identify Congress's oversight functions, and explain how Congress fulfills them.
- LO 11-6 Indicate what is involved in the congressional budgeting process.

# America at Odds

## Should It Take Sixty Senators to Pass Important Legislation?



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The number of Senate votes required to force an end to a *filibuster* is sixty. A filibuster takes place when senators use the chamber's tradition of unlimited debate to block legislation. In years past, filibustering senators would speak for hours on a proposed bill. In recent decades, however, Senate rules have permitted filibusters in which actual continuous floor speeches are not required. Senators merely announce that they are filibustering.

The threat of a filibuster has created an *ad hoc* rule that important legislation needs the support of sixty

senators. (There are exceptions. Budget bills can be handled using a special *reconciliation* rule that does not permit filibusters.) If one party can elect sixty or more U.S. senators, and if they all follow the party line, they can force through any legislation they want. The Democrats, in fact, enjoyed a supermajority in the Senate for seven months, from July 7, 2009, until February 4, 2010, when they lost a seat in a special election.

Are sixty votes an appropriate requirement for passing important legislation in the Senate?

### Don't Let the Majority Trample on the Minority

In the course of our history, the filibuster in the U.S. Senate has served us well. Filibusters provide the minority with an effective means of preventing the majority from ramming legislation down the throats of American voters.

A simple majority does not signify an adequate degree of consensus. It takes two-thirds of both chambers of Congress to override a veto by the president. That's another supermajority. Changing the Constitution requires three-quarters of the state legislatures. If these supermajority rules were good enough for the founders, then the principle still is good enough for the Senate.

In the past, the American public has supported the filibuster in public opinion polls, for good reason. One of the most important characteristics of our political system is that it is not easy to create new laws. The existence of two chambers of Congress—and the president's veto power—ensures this. The Senate was always meant to be a body that could delay legislation. Further, in 2013, the Senate changed the rules so that filibusters don't apply to votes on whether to approve most presidential appointees. In 2017, filibusters of Supreme Court nominees were ruled out as well. That should be more than enough reform.

### Don't Let Obstructionists Determine Legislation

Supermajority rules allow a minority to block the preference of the majority. Even James Madison, who worried about the tyranny of the majority over the minority, recognized the opposite possibility. He said that "the fundamental principle of free government" might be reversed by requiring supermajorities. "It would be no longer the majority that would rule: The power would be transferred to the minority."

Madison's warning has been amply justified. At one time, the filibuster was reserved for the defense of major principles. Not all of these principles were laudable—the filibuster was used to defend Jim Crow laws and to prevent African Americans from voting in much of the South. Still, the procedure was rare. Today, it is used for most legislation.

In recent years, the major parties have become politically unified and monolithic. Members of the minority are prepared to cast party-line votes to frustrate the will of the majority on most legislation. Such votes make governance almost impossible. Congress has never passed so few bills in each session as it has in recent years.

The Senate should reduce the votes required to end a filibuster to a majority of those present.

### Where do you stand?

1. Why might it be appropriate to require supermajority voting for important legislation?
2. Under what circumstances do supermajority voting rules prevent democracy from being fully realized?

### Explore this issue online:

- You can find out more about the filibuster by entering "filibuster" into a search engine.
- For discussions on how the filibuster has been limited recently, search on "nuclear option."

## Introduction

Congress is the lawmaking branch of government. When someone says, “There ought to be a law,” at the federal level it is Congress that will make that law. The framers had a strong mistrust of powerful executive authority. Consequently, they made Congress—not the presidency—the central institution of American government. Still, the founders created a system of checks and balances to ensure that no branch of the federal government, including Congress, could exercise too much power.

Many Americans view Congress as a largely faceless, anonymous legislative body that is quite distant and removed from their everyday lives. Yet the people you elect to Congress represent and advocate for your interests at the very highest level of power.

Furthermore, the laws created by the men and women in the U.S. Congress affect the daily lives of every American in one way or another. Learning about your congressional representatives and how they are voting in Congress on issues that concern you is an important step toward becoming an informed voter. Even the details of how Congress makes law—such as the Senate rules described in the chapter-opening *America at Odds* feature—should be of interest to the savvy voter.

## The Structure and Makeup of Congress

**LO 11-1** Explain how seats in the House of Representatives are apportioned among the states.

The framers agreed that the Congress should be the “first branch of the government,” as James Madison said, but they did not immediately agree on its organization. Ultimately, they decided on a *bicameral legislature*—a Congress consisting of two chambers. This was part of the Great Compromise during the drafting of the Constitution.

**apportionment** The distribution of House seats among the states on the basis of their respective populations.

**congressional district** The geographic area that is served by one member in the House of Representatives.

The framers favored a bicameral legislature so that the two chambers, the House and the Senate, might serve as checks on each other’s power. The House was to represent the people. The Senate was to represent the states and would protect the

interests of small states by giving them the same number of senators (two per state) as the larger states.

## Apportionment of House Seats

The Constitution provides for the **apportionment** (distribution) of House seats among the states on the basis of their respective populations. States with larger populations, such as California, have many more representatives than states with smaller populations, such as Wyoming. California, for example, currently has fifty-three representatives in the House. Wyoming has only one.

Every ten years, House seats are reapportioned based on the outcome of the decennial (ten-year) census conducted by the U.S. Census Bureau. Each state is guaranteed at least one House seat, no matter what its population. Today, seven states have only one representative.<sup>1</sup> The District of Columbia, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands all send nonvoting delegates to the House. Puerto Rico, a self-governing possession of the United States, is represented by a nonvoting resident commissioner.

## Congressional Districts

Whereas senators are elected to represent all of the people in a state, representatives are elected by the voters of a particular area known as a **congressional district**. The Constitution makes no provisions for congressional districts. In the early 1800s, each state had the right to decide whether to have districts at all.

Most states set up single-member districts, in which voters in each district elected one of the state’s representatives. In states that chose not to have districts, representatives were chosen at large, from the state as a whole. In 1842, however, Congress passed an act that required all states to send representatives to Congress from single-member districts.

**The Size of the House** For many years, the number of House members increased as the population expanded. In 1929, however, a federal law fixed House membership at 435. Thus, today the 435 members of the House are chosen by the voters in 435 separate congressional districts across the country. If a state’s population allows it to have only one representative, the entire state is one congressional district. In contrast, states with large populations have many districts. California’s population, for example, entitles it to send fifty-three representatives to the House, so it has fifty-three congressional districts. As a result of the rule

limiting the size of the House to 435 members, U.S. congressional districts on average now have very substantial populations—about 765,000 people each. Of course, some are much smaller and some are much larger than the average.

### The Requirement of Equal Representation

By default, the lines of the congressional districts are drawn by state legislatures. Alternatively, the task may be handed off to a designated body such as an independent commission. In 2015, the Supreme Court upheld the right of state voters to transfer redistricting to independent commissions. Voters can do this even if the state legislature objects.<sup>2</sup> States must meet certain requirements in drawing district boundaries. To ensure equal representation in the House, districts in a given state must contain, as nearly as possible, equal numbers of people. Additionally, each district must have contiguous boundaries and must be “geographically compact,” although this last requirement is not enforced very strictly.

**Past Abuses.** If congressional districts are not made up of equal populations, people’s votes are not equally valuable. In the past, state legislators often used this fact to their advantage. For example, traditionally, many state legislatures were controlled by rural areas. By drawing districts that were not equal in population, rural leaders attempted to curb the number of representatives from growing urban centers. At one point in the 1960s, in many states the largest district had twice the population of the smallest district. In effect, this meant that a person’s vote in the largest district had only half the value of a person’s vote in the smallest district.

**The Supreme Court Addresses the Issue.** For some time, the United States Supreme Court refused to address this problem. In 1962, however, the Court ruled that the Tennessee state legislature’s **malapportionment** was an issue that could be heard in the federal courts because it affected the constitutional requirement of equal protection under the law.<sup>3</sup> Two years later, the Supreme Court held that congressional districts must have equal populations.<sup>4</sup> This principle



**Image 11.1** Senator Mazie Hirono (D-HI) speaking at a Senate hearing. She is a Japanese immigrant who grew up in Hawaii. *Does Congress have many members who were not born in the United States?*

SOPA Images Limited/Alamy Stock Photo

has come to be known as the “**one person, one vote**” rule. In other words, one person’s vote has to count as much as another’s vote.

**Gerrymandering** Although in the 1960s the Supreme Court ruled that congressional districts must be equal in population, it continued to be silent on the issue of gerrymandered districts. **Gerrymandering** occurs when a district’s boundaries are drawn to maximize the influence of a certain group or political party.

Where a party’s voters are scarce, the boundaries of a district can be drawn to include as many of the party’s voters as possible. Where the party is strong, the lines are drawn so that the opponent’s supporters are spread across two or more districts, thus diluting the opponent’s strength. (The term *gerrymandering* was originally used to describe the district lines drawn to favor the party of Governor Elbridge Gerry of Massachusetts prior to the 1812 elections—see Figure 11.1.)

**malapportionment** A situation in which the voting power of citizens in one district is greater than the voting power of citizens in another district.

**“one person, one vote” rule** A rule, or principle, requiring that congressional districts have equal populations so that one person’s vote counts as much as another’s vote.

**gerrymandering** The drawing of a legislative district’s boundaries in such a way as to maximize the influence of a certain group or political party.

**Figure 11.1 The First “Gerrymander”**

Prior to the 1812 elections, the Massachusetts legislature divided up Essex County in a way that favored Governor Elbridge Gerry’s party. The result was a district that looked something like a salamander (a mythical monster, not the amphibian). A newspaper editor of the time referred to it as a “gerrymander,” and the name stuck. *Gerry was a Federalist, and that party was in rapid decline nationally in 1812. Just how much can extreme measures help a party in such circumstances?*



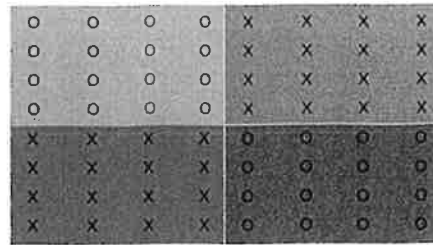
Source: *Congressional Quarterly's Guide to Congress*, 3d ed. (Washington, D.C.: Congressional Quarterly Press, 1982), p. 695.

Although there have been constitutional challenges to political gerrymandering, the practice continues.<sup>5</sup> It was certainly evident following the 2010 census. Sophisticated computer programs were now able to analyze the partisan leanings of individual neighborhoods and city blocks. District lines were drawn to “pack” the opposing party’s voters into the smallest number of districts or “crack” the opposing party’s voters into several different districts. Packing and cracking make congressional races less competitive.

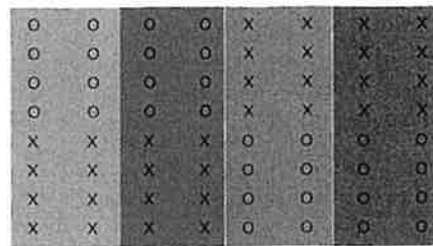
**How Gerrymandering Works.** For a better understanding of how gerrymandering works, look at the examples in Figure 11.2. In the examples, sixty-four voters must be distributed among four districts, each of which will have a population of sixteen. The two political parties are the O Party and the X Party.

**Figure 11.2 Examples of Voter Distribution**

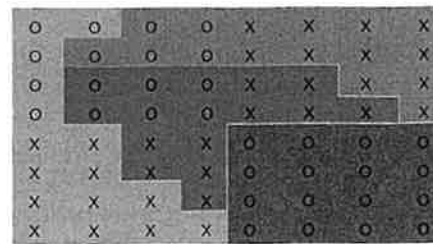
*Why might a state legislature oppose Example 2?*



**Example 1:** A bipartisan gerrymander that protects incumbents of both parties.



**Example 2:** An unstable system. All districts have the same number of voters from each party.



**Example 3:** A classic partisan gerrymander. The X Party should carry three districts.

In Example 1, each district contains only one kind of voter. This type of gerrymander is sometimes created when a state legislature is more interested in preserving the seats of incumbents than in benefiting a particular party. In this case, it would be almost impossible for a sitting member to lose in a general election.

In Example 2, every district is divided evenly between the parties. The slightest swing toward one of the parties could give that party all four seats. A legislature would almost never come up with these boundaries, but an independent redistricting board might do so.

Example 3 is a partisan gerrymander favoring the X Party. The district in the lower right is an example of packing—the maximum possible number of O voters is packed into the district. In the other three districts,



O Party supporters are cracked apart so that they do not have a majority in any of the districts. In these districts, the X Party has majorities of eleven to five, ten to six, and eleven to five.

**Gerrymandering After the 2010 Census.** The 2010 elections were a Republican triumph, and the party won control of state legislatures across the country. These victories occurred just before the states were required to redraw the boundaries of congressional districts following the 2010 census. The result was a large number of Republican gerrymanders, which had a substantial effect on the 2012 elections. In these elections, Democratic candidates for the U.S. House actually collected more votes than Republican candidates. The Democrats picked up only eight seats, however. In the end, the partisan breakdown was 200 Democrats and 235 Republicans.

Consider Pennsylvania, which went for Barack Obama by 5.4 percentage points in 2012. Pennsylvania voters cast 2.72 million votes for Democratic House candidates and 2.65 million votes for Republicans. These votes elected five Democratic representatives and thirteen Republicans—even though more votes were cast for Democrats.

As you might expect, the Democrats also engaged in gerrymandering when they had a chance. Illinois is one example. The geography of that state, however, limited the effects of the Democratic gerrymander. So many Democrats are concentrated in Chicago that it was impossible to draw district boundaries that would let the city elect any more Democrats than it was already electing. The concentration of Democrats in large cities was a problem for the party in many other states as well.

**Racial Gerrymandering.** Although political gerrymandering has a long history, gerrymandering to empower minority groups is a relatively new phenomenon. In the early 1990s, the U.S. Department of Justice instructed state legislatures to draw district lines to maximize the voting power of minority groups. As a result, several **majority-minority districts** were created. Many of these districts took on bizarre shapes. For example, North Carolina's newly drawn Twelfth Congressional District was 165 miles long—a narrow strip that, for the most part, followed Interstate 85.

**Limits on Racial Gerrymandering.** The practice of racial gerrymandering has generated heated arguments on both sides of the issue. Some groups

contend that majority-minority districts are necessary to ensure equal representation of minority groups, as mandated by the Voting Rights Act of 1965. They further contend that these districts have been instrumental in increasing the number of African Americans holding political office. Before 1990, redistricting plans in the South often created only white-majority districts.<sup>6</sup>

Opponents of racial gerrymandering argue that such race-based districting is unconstitutional because it violates the equal protection clause. In a series of cases in the 1990s, the Supreme Court agreed and held that when race is the dominant factor in the drawing of congressional district lines, the districts are unconstitutional and must be redrawn.<sup>7</sup>

In 1996, for example, the Supreme Court rejected North Carolina's Twelfth District as unconstitutional. In 2001, the Court backed off somewhat and accepted a redrawn version of the district. In 2017, however, the Court toughened its position and rejected both North Carolina's Twelfth District and the First District as well.<sup>8</sup>

In 2019, however, the Court also clarified that it does not object to purely partisan gerrymanders. In *Rucho v. Common Cause*, the Court found that gerrymandering was a purely political question in which the court system should not intervene.<sup>9</sup> This ruling led some Democrats to accuse the Court of partisan bias in favor of Republicans.

## The Representation Function of Congress

Of the three branches of government, Congress has the closest ties to the American people. Members of Congress represent the interests and wishes of the constituents in their home states. At the same time, they must also consider larger national issues, such as the economy and the environment. Often, legislators find that the interests of their constituents are at odds with the demands of national policy.

For example, limits on emissions of carbon dioxide may help reduce climate change, to the benefit of all Americans and the people of the world generally. Yet consider members of Congress who come from states where most electricity comes from coal-burning power plants. These legislators may fear that new laws would hurt the local economy and cause companies to lay off workers.

**majority-minority district** A district in which minority groups make up a majority of the population.

All members of Congress face difficult votes that set representational interests against lawmaking realities. There are several views on how legislators should decide such issues.

**The Trustee View of Representation** Some believe that representatives should act as **trustees** of the broad interests of the entire society, rather than serving only the narrow interests of their constituents. Under the trustee view, legislators should act according to their conscience and perception of national needs. For example, a senator from North Carolina might support laws regulating cigarette sales, even though the state's economy could be negatively affected.

**The Instructed-Delegate View of Representation** In contrast, others believe that members of Congress should behave as **instructed delegates**. The instructed-delegate view requires representatives to mirror the views of their constituents, regardless of their opinions. Under this view, a senator from Nebraska would strive to obtain subsidies for corn growers, and a representative from the Detroit area would seek to protect the automobile industry.

Legislators who are acting as instructed delegates are particularly likely to try to insert language into various bills that would benefit special interests back home. Such provisions are called **earmarks**, or pork barrel legislation. We provide greater detail on earmarks in this chapter's *Join the Debate* feature.

### The Partisan View of Representation

Because the political parties often take different positions on legislative issues,

there are times when members of Congress are very attentive to the wishes of the party leadership. Especially on matters that are controversial, the Democratic members of Congress will be more likely to vote in favor of policies endorsed by a Democratic president, while Republicans will be more likely to oppose them.

**trustee** A representative who tries to serve the broad interests of the entire society and not just the narrow interests of his or her constituents.

**instructed delegate** A representative who deliberately mirrors the views of the majority of his or her constituents.

**earmarks** Spending provision inserted into legislation that benefits only a small number of people.

Typically, members of Congress combine these three approaches to representation. Legislators may take a trustee approach on some issues, adhere to the instructed-delegate view on other matters, and follow the party line on still others.

### Critical Thinking

- Some states have tried to prevent gerrymandering by establishing independent redistricting commissions. What kinds of individuals should serve on such commissions? Why?

## Congressional Elections

LO 11-2 Describe the power of incumbency.

The U.S. Constitution requires that representatives to Congress be elected every second year by popular vote. Senators are elected every six years, also by popular vote (since the ratification of the Seventeenth Amendment). Under Article I, Section 4, of the Constitution, state legislatures control the "Times, Places and Manner of holding Elections for Senators and Representatives." Congress, however, "may at any time by Law make or alter such Regulations." You can see the results of the 2020 House elections in Figure 11.3.

### Who Can Be a Member of Congress?

The Constitution sets forth only a few qualifications that those running for Congress must meet. To be a member of the House, a person must have been a citizen of the United States for at least seven years before their election, must be a legal resident of the state from which they are to be elected, and must be at least twenty-five years of age.

To be elected to the Senate, a person must have been a citizen for at least nine years, must be a legal resident of the state from which she or he is to be elected, and must be at least thirty years of age. The Supreme Court has ruled that neither the Congress nor the states can add to these three qualifications.<sup>10</sup>

Once elected to Congress, a senator or representative receives an annual salary from the government—\$174,000 for rank-and-file members as of 2020. Members of Congress also enjoy certain perks and privileges. Additionally, if a member wants to run for reelection in the next congressional elections, that person's chances are greatly enhanced by the power that incumbency brings to a reelection campaign.



## Join The Debate

# Was Banning Pork Barrel Spending a Mistake?

Congress has voted to fund a “bridge to nowhere” in Alaska and a program to combat wild hogs in Missouri. Such special interest legislation is called pork barrel spending—members of Congress “bring home the bacon” this way to benefit local businesses and workers.

Formally, an item of pork is called an earmark. The Congressional Research Service defines earmarks as spending provisions that apply to a very limited number of individuals or entities. The Office of Management and Budget defines earmarks as direct allocations of funds that bypass merit-based or competitive processes of the executive branch. In 2010, after winning control of the U.S. House, Republicans announced that they would ban earmarks that benefited specific individuals or corporations. (Earmarks that benefit local governments are still allowed.) This ban was widely applauded at the time. Since then, however, some people have had second thoughts.

### **Pork Is a Necessary Part of a Democratic System**

Those who defend earmarks contend that Congress has a right to determine who benefits from government

spending. After all, directing money to particular purposes is a core constitutional function of Congress. Senators and members of the House know their states and districts. Why shouldn't they play a role in funding local projects?

Another argument for pork is that it can help heal a broken Congress. Political polarization between Republicans and Democrats is not the only problem. Both parties are also divided internally between moderate and more radical members. This was a special problem for the Republicans in the last years of the Obama administration. Republican Speakers found it hard to pass legislation acceptable to both wings of the party. As former Speaker John Boehner said, “It’s not like the old days. Without earmarks to offer, it’s hard to herd the cats.” Earmarks used to be the lubricant that allowed Congress to do its work. We need them back.

### **No Thanks—Pork Is Corruption**

Opponents of earmarks reject a system in which legislators can be bribed to vote with the leadership. Laws should stand or fall on their own merits. Further, pork is a key

component of excessive government spending. The cost of the earmarks themselves may not seem that large. But as former Senator Tom Coburn (R-OK) has put it, earmarks are “the gateway drug to spending addiction in Washington.”

Advocates of pork forget that the pork ban wasn't imposed on a reluctant Congress by outside reformers. Republicans in the House were responsible for the ban. These Republicans are typically elected from safe seats and don't need to bribe the voters back home. Rather, they worry about primary challenges from more conservative opponents. What better way to show that you are a conservative purist than by refusing pork? Further, the restrictions are not even that strict—many legislators have found ways around the pork ban.

### **Critical Analysis**

**If the president inserts special requests into executive funding proposals, is that also pork? Why or why not?**

## **The Power of Incumbency**

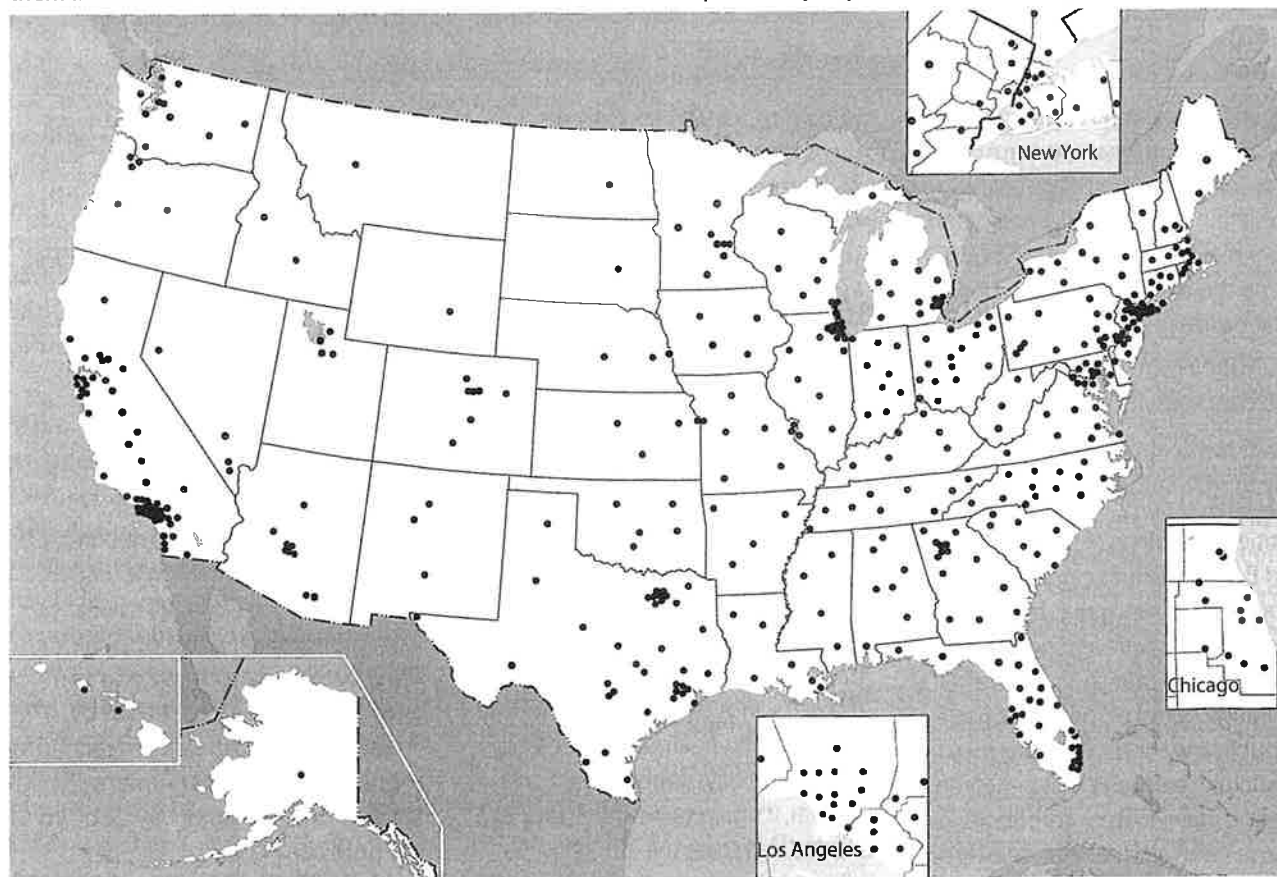
An *incumbent* is someone who is already in office. The power of incumbency has long been noted in American politics. Typically, incumbents win often and by large margins. As you can see in Figure 11.4, most incumbents in Congress are reelected if they run.

Incumbent politicians enjoy several advantages over their opponents. A key advantage is their fundraising ability. Most incumbent members of Congress have a much larger network of contacts, donors, and lobbyists than their opponents have. Incumbents raise, on average, twice as much in campaign funds as



**Figure 11.3** Members of The U.S. House Following the 2020 Elections

Each dot represents one congressional district. Red dots show a Republican representative, and blue dots show a Democrat. In three metropolitan areas—Chicago, Los Angeles, and New York—the dots on the main map overlap so much that many of them are hidden. That is the reason for the three metro area close-ups. *Which party does better in urban areas?*



their challengers. Other advantages that incumbents can put to work to aid their reelection include the following:

- ▶ **Professional staffs.** Members have large administrative staffs both in Washington, D.C., and in their home districts.
- ▶ **Lawmaking power.** Members can back legislation that will benefit their states or districts and then campaign on that legislative record in the next election.
- ▶ **Access to the media.** Because they are elected officials, members have many opportunities to stage events for the press and thereby obtain free publicity.
- ▶ **Name recognition.** Incumbent members are usually far better known to the voters than are challengers.

Critics argue that the advantages enjoyed by incumbents reduce the competition necessary for a healthy democracy. These incumbency advantages also

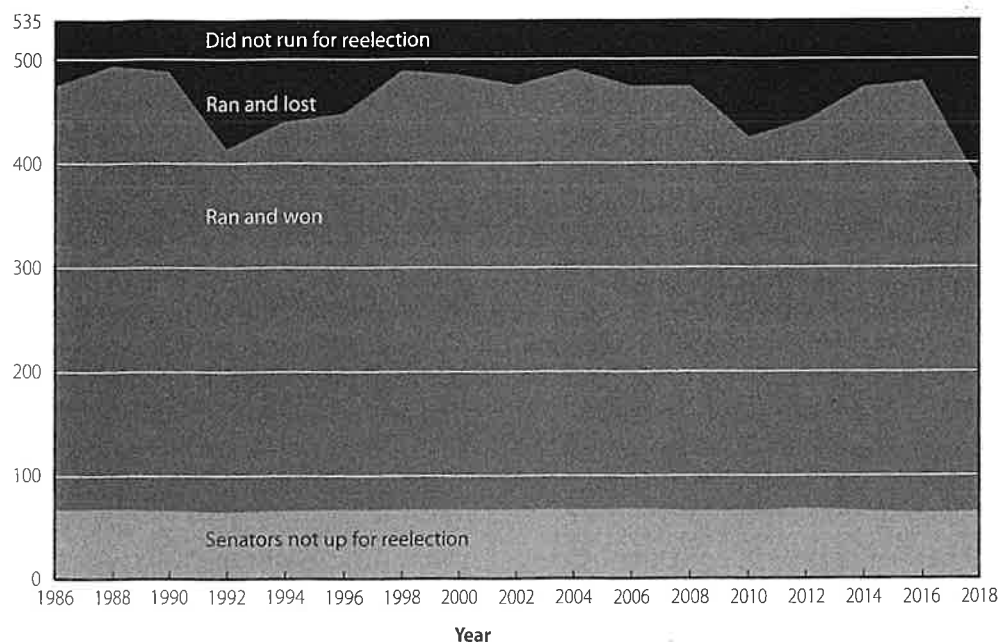
serve to reduce voter turnout. Voters are less likely to turn out when an incumbent candidate is practically guaranteed reelection.

### Congressional Terms

As noted earlier, members of the House of Representatives serve two-year terms, and senators serve six-year terms. This means that every two years we hold congressional elections: The entire House of Representatives and a third of the Senate are up for election. In January of every odd-numbered year, a “new” Congress convenes (of course, two-thirds of the senators are not new, and most House incumbents are reelected, so they are not new to Congress either). Each Congress has been numbered consecutively, dating back to 1789. The Congress that convened in 2021 was the 117th.

**Figure 11.4 The Power of Incumbency**

While incumbents who run are usually reelected, this chart reveals occasional periods of some turbulence when fewer incumbents than usual won reelection. *In what years did that turbulence occur?*



Sources: Norman Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress, 2005–2006* (Washington, D.C.: The AEI Press, 2006); and authors' updates.

**Congressional Sessions** Each congressional term is divided into two regular sessions, one for each year. Until about 1940, Congress remained in session for only four or five months, but the complicated rush of legislation and the public's increased demand for services in recent years have forced Congress to remain in session through most of each year.<sup>11</sup> Both chambers, however, schedule short recesses, or breaks, for holidays and vacations. The president may call a *special session* during a recess, but because Congress now meets on nearly a year-round basis, such sessions are rare.

**Term Limits** Due to the Twenty-second Amendment, the president can serve for no more than two terms in office. There is no limit on the number of terms a senator or representative can serve, however. For example, John Dingell, Jr. (D-MI) served more than fifty-nine years in the U.S. House, from 1955 until 2015. (He was preceded by his father and succeeded by his wife.) Some observers favor term limits for members of Congress. The Supreme Court, however, has ruled that state-level attempts to impose term limits on members of the U.S. House or Senate are unconstitutional.<sup>12</sup>

### Critical Thinking

- What benefits could a state hope to gain from representation by a long-serving legislator?

## Congressional Leadership, the Committee System, and Bicameralism

**LO 11-3** Identify the key leadership positions in Congress, describe the committee system, and indicate some important differences between the House of Representatives and the Senate.

The Constitution provides for the presiding officers of both the House and the Senate, and each chamber has added other leadership positions as it has seen fit. Leadership and organization in both chambers are based on membership in the two major political parties. The majority party in each chamber chooses the major officers of that chamber, controls debate on the floor, selects all committee chairpersons, and has a majority on all committees.



## Elections 2020

## The Congress

In the November 2020 congressional elections, the Republicans had a net loss of one seat in the Senate. They gained seats in the House, but not by enough to gain control of the chamber. The Senate count in November was 50 Republicans and 48 Democrats (and independents who caucus with the Democrats). Control of the Senate would be decided by run-off elections for two Georgia Senate seats, to take place on January 5, 2021. Republicans were favored in both races. If the Democrats were able to take both seats, however, they would have control of the Senate. Vice President Kamala Harris, who serves as president of the Senate, could break a 50–50 tie in the Democrats’ favor. Even if Democrats were that successful, however, they would almost certainly not have the necessary votes to abolish the legislative filibuster. And if they did not have 50 votes, the Democrats would not even be able to pass a reconciliation measure, which would allow them to make some changes to taxing and spending. Prospects for bipartisan legislation appeared poor.

Agreement on another coronavirus relief bill, in principle supported by both sides, seemed uncertain. The State of Maine provided a clear example of the Democrat’s problems in the Senate. Biden carried the state overall with a 10 percentage point margin—but Republican senator Susan Collins won re-election by 8 percentage points. Women, LGBTQ persons, and members of most racial and ethnic minority groups continued to add to their representation in Congress. Interestingly, the entire increase in the number of women was due to the Republicans, who added at least eleven new women to their House delegation (possibly more when the very last races are called). Republican leaders had worried that their congressional delegation did not include enough women, and they made a deliberate and successful attempt to recruit more female candidates. New York elected the first gay African American man ever to serve in Congress—two of them, in fact. New Mexico’s House delegation now consisted entirely of women of color: two Native Americans and one Latina.

### House Leadership

The Constitution states that members of the House are to choose their Speaker and other officers but says nothing more about these positions. Today, important “other officers” include the majority and minority leaders and whips.

**Speaker of the House** Chief among the leaders in the House of Representatives is the **Speaker of the House**. This office is filled by a vote taken at the beginning of each congressional term. The Speaker has traditionally been a member of the majority party who has risen in rank and influence through years of service in the House. The candidate for Speaker is

**Speaker of the House** The presiding officer in the House of Representatives. The Speaker is a member of the majority party and is the most powerful member of the House.

selected by the majority-party caucus. The House as a whole then approves the selection.

**Powers of the Speaker.** As the presiding officer of the House and the leader of the majority party, the Speaker has a great deal of power. In the nineteenth century, the Speaker had even more authority. Speakers known by such names as “Uncle Joe Cannon” and “Czar Reed” ruled the House with a firm hand. A revolt in 1910 reduced the Speaker’s powers and gave some of them to various committees. Nevertheless, the Speaker still has many important powers, including the following:

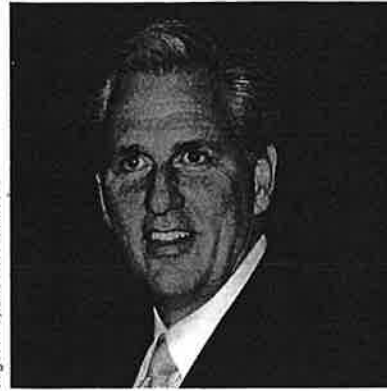
- ▶ The Speaker has substantial control over what bills are assigned to which committees.
- ▶ The Speaker may preside over the sessions of the House, recognizing or ignoring members who wish to speak.



Alexandros Michalidis/Shutterstock.com



SOPA Images Limited/Alamy Stock Photo



Jaguar PS/Shutterstock.com

**Image 11.2** From left to right: Nancy Pelosi (D-CA), Steny Hoyer (D-MD), and Kevin McCarthy (R-CA). Following the House leadership elections in late November 2020, Pelosi is expected to continue as the Speaker, Hoyer as the Democratic leader, and McCarthy as the Republican leader. *How much power do these individuals have?*

- ▶ The Speaker votes in the event of a tie, interprets and applies House rules, rules on points of order (questions about procedures asked by members), puts questions to a vote, and interprets the outcome of most of the votes taken.
- ▶ The Speaker plays a major role in making important committee member assignments.
- ▶ The Speaker schedules bills for action.

**When the Speaker Votes.** Speaker may choose whether to vote on any measure. If the Speaker chooses to vote, he or she appoints a temporary presiding officer (called a Speaker *pro tempore*), who then occupies the Speaker's chair. The Speaker does not often vote. Under the House rules, the only time the Speaker *must* vote is to break a tie. Otherwise, a tie automatically defeats a bill. On rare occasions, this rule creates an opportunity for the Speaker. If, by choosing to vote, the Speaker actually *creates* a tie, the proposal will be defeated.

**Majority Leader** The **majority leader** of the House is elected by the majority-party caucus to act as spokesperson for the party and to keep the party together. The majority leader's job is to help plan the party's legislative program, organize other party members to support legislation favored by the party, and make sure the chairpersons on the many committees finish work on bills that are important to the party.

**Minority Leader** The House **minority leader** is the leader of the minority party. Although not as

powerful as the majority leader, the minority leader has similar responsibilities. The primary duty of the minority leader is to maintain solidarity within the minority party. The minority leader persuades members to follow the party's position and organizes fellow party members in criticism of the majority party's policies and programs.

**Whips** The leadership of each party includes assistants to the majority and minority leaders known as **whips**. Whips originated in the British House of Commons, where they were named after the "whipper in," the rider who keeps the hounds together in a fox hunt. The term is applied to assistant party leaders because of the pressure that they place on party members to uphold the party's positions.

Whips try to determine how each member is going to vote on an issue and then advise the party leaders on the strength of party support. Whips also try to see that members are present when important votes are to be taken and that they vote with the party leadership. For example, if the Republican leadership strongly supports a tax-cut bill, the Republican Party whip might meet with other Republican Party members in the House to try to ensure that they will show up and vote with the party.

**majority leader** The party leader elected by the majority party in the House or in the Senate

**minority leader** The party leader elected by the minority party in the House or in the Senate.

**whip** A member of Congress who assists the majority or minority leader in the House or in the Senate in managing the party's legislative program.



Source: McConnell, Senate.gov/Official\_Photos.cfm



Source: schumer.senate.gov



**Image 11.3** After the 2020 elections, it was expected that Mitch McConnell (R-KY), left, and Charles “Chuck” Schumer (D-NY), right, would be reelected to their positions as the Republican and Democratic leaders of the Senate. *What would happen if a leader disagreed with a majority of his or her caucus on an important issue?*

**Party Leaders** The real power in the Senate is held by the majority leader, the minority leader, and their whips. The majority leader is the most powerful individual and chief spokesperson of the majority party. The majority leader directs the legislative program and party strategy. The minority leader commands the minority party’s opposition to the policies of the majority party and directs the legislative strategy of the minority party.

## Senate Leadership

The Constitution makes the vice president of the United States the president of the Senate. As presiding officer, the vice president may call on members to speak and put questions to a vote. The vice president is not an elected member of the Senate, however, and may not take part in Senate debates. The vice president may cast a vote in the Senate only in the event of a tie.

**President Pro Tempore** Because vice presidents are rarely available—and do not often desire—to preside over the Senate, senators elect another presiding officer, the *president pro tempore* (“pro tem”), who serves in the absence of the vice president. The president pro tem is elected by the whole Senate and is ordinarily the member of the majority party with the longest continuous term of service in the Senate. The current president pro tem is Chuck Grassley (R-IA).

In the absence of both the president pro tem and the vice president, a temporary presiding officer is selected from the ranks of the Senate, usually a junior member of the majority party.

### standing committees

A permanent committee in Congress that deals with legislation concerning a particular area, such as agriculture or foreign relations.

## Congressional Committees

Thousands of bills are introduced during every session of Congress, and no single member can possibly be adequately informed on all the issues that arise. The committee system is a way to provide for specialization, or a division of the legislative labor. Members of a committee concentrate on just one area or topic—such as agriculture or transportation—and develop sufficient expertise to draft appropriate legislation when needed. The flow of legislation through both the House and the Senate is determined largely by the speed with which these committees act on bills and resolutions.

**Standing Committees** The permanent and most powerful committees of Congress are called **standing committees**. Their names are listed in Table 11.1. Normally, before any bill can be considered by the entire House or Senate, it must be approved by a majority vote in the standing committee to which it was assigned.

As mentioned, standing committees are controlled by the majority party in each chamber. Committee membership is generally divided between the parties according to the number of members in each chamber. In both the House and the Senate, committee *seniority*—the length of



**Table 11.1 Standing Committees In the 117th Congress, 2021–23**

House Committees	Senate Committees
Agriculture	Agriculture, Nutrition, and Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Budget	Banking, Housing, and Urban Affairs
Education and Labor	Budget
Energy and Commerce	Commerce, Science, and Transportation
Ethics	Energy and Natural Resources
Financial Services	Environment and Public Works
Foreign Affairs	Finance
Homeland Security	Foreign Relations
House Administration	Health, Education, Labor, and Pensions
Judiciary	Homeland Security and Governmental Affairs
Natural Resources	Judiciary
Oversight and Reform	Rules and Administration
Rules	Small Business and Entrepreneurship
Science, Space, and Technology	Veterans' Affairs
Small Business	
Transportation and Infrastructure	
Veterans' Affairs	
Ways and Means	

continuous service on a particular committee—typically plays a role in determining the committee chairpersons.

### Subcommittees and Other Committees

Most House and Senate committees also have **subcommittees** with limited areas of jurisdiction. Today, there are more than two hundred subcommittees.

**Select Committees and Joint Committees.** Congress also has other types of committees. Special, or select, committees are formed to study specific problems or issues. These committees may be either permanent or temporary.

Joint committees are created by the concurrent action of both chambers of Congress and consist of members from each chamber. Joint committees have dealt with the economy, taxation, and the Library of Congress.

**Conference Committees.** A **conference committee**, which also includes members from both chambers, is formed for the purpose of achieving agreement between the House and the Senate on the exact wording of a legislative act when the two chambers pass legislative proposals in different forms. No bill can be sent to the White House to be signed into law unless it first passes both chambers in identical form.

If the leadership in either chamber believes that an acceptable compromise with the other chamber is impossible, it can block legislation simply by refusing to appoint members to a conference committee. When Obama was president, the Republicans employed this technique on several bills.

## The Differences Between the House and the Senate

To understand what goes on in the chambers of Congress, we need to look at the effects of bicameralism. Each chamber has developed certain distinct features. The major differences between the House and the Senate are listed in Table 11.2.

**Size Matters** Obviously, with 435 voting members, the House cannot operate in the same way as the Senate, which has only 100 members. With its larger size, the House needs both more rules and more formality—otherwise, no work would ever get done. The most obvious formal rules have to do with debate on the floor.

The Senate normally permits extended debate on all issues that arise before it. In contrast, the House uses an elaborate system: The **House Rules Committee** provides special rules governing how particular bills will be considered and debated by the House. The Rules Committee

**subcommittees** A division of a larger committee that deals with a particular part of the committee's policy area. Most standing committees have several subcommittees.

### conference committee

A temporary committee that is formed when the two chambers of Congress pass differing versions of the same bill. The conference committee consists of members from the House and the Senate who work out a compromise bill.

### Rules Committee

A standing committee in the House of Representatives that provides special rules governing how particular bills will be considered and debated by the House. The Rules Committee normally proposes time limits on debate for any bill.

**Table 11.2 Major Differences Between the House and the Senate**

House	Senate
Members chosen from local districts	Members chosen from entire state
Two-year term	Six-year term
Always elected by voters	Originally (until 1913) elected by state legislatures
May impeach (accuse, indict) federal officials	May convict federal officials of impeachable offenses
Larger (435 voting members)	Smaller (100 members)
More formal rules	Fewer rules and restrictions
Debate limited	Debate extended
Floor action controlled	Unanimous consent rules
Less prestige and less individual notice	More prestige and media attention
Originates bills for raising revenues	Has power of "advice and consent" on presidential appointments and treaties
Local or narrow leadership	National leadership

\*Some of these differences, such as term of office, are provided for in the Constitution, while others, such as debate rules, are not.

normally proposes time limits on debate for any bill. The rules are then accepted or modified by the House. Despite its greater size, as a consequence of its stricter time limits on debate, the House is often able to act on legislation more quickly than the Senate.

**The "Hastert Rule" in the House** One informal rule adopted by House Republicans can prevent consideration of legislation even if it has passed in the Senate. That is the *Hastert Rule*, named after a former Republican Speaker. Under the rule, when the Republicans have a majority in the House, the Speaker will not allow any measure to reach the floor unless it has the support of a majority of the Republican members of the House. Democratic Speakers also have the power to block legislation in this way, but they have not turned this ability into an informal rule. The Hastert Rule came under considerable pressure in late 2012 and 2013, when Republican Speaker John Boehner felt compelled to violate it repeatedly. For example, Boehner waived the rule to end a government shutdown that took place in October 2013.

**filibustering** Using the Senate tradition of unlimited debate to prevent action.

**cloture** A procedure for ending filibusters in the Senate and bringing the matter under consideration to a vote.

**reconciliation** A Senate rule under which revenue bills received from the House that meet certain requirements cannot be filibustered.

**The Filibuster in the Senate** At one time, both the House and the Senate allowed unlimited debate, but the House ended this practice in 1811. The use of unlimited debate in the Senate to obstruct legislation is called **filibustering** (as discussed in the chapter-opening America at Odds feature). Until 2013, the filibuster could also be used to hold up presidential nominations for judicial or executive positions, as we explain later in this chapter.

**Cloture.** Today, under Senate Rule 22, filibusters may be ended by invoking **cloture**—a procedure for closing debate and bringing the matter under consideration to a vote in the Senate. Sixteen senators must sign a petition requesting cloture. Then, after two days have elapsed, three-fifths of the entire membership must vote for cloture. Normally, that means sixty senators. Once cloture is invoked, each senator may speak on a bill for no more than one hour before a vote is taken. Additionally, a final vote must take place within one hundred hours after cloture has been invoked.

**Reconciliation.** Another limit on the filibuster is a Senate rule known as **reconciliation**. This rule applies to revenue bills passed by the House under its constitutional obligation to initiate such laws, and which are then sent to the Senate. A reconciliation bill must meet three requirements:

- ▶ It must be limited to the topics of taxing and spending;
- ▶ It must not otherwise involve changes to regulations or laws; and
- ▶ It must reduce the budget deficit at the end of a ten-year period (a requirement that can be met through creative accounting).

A reconciliation bill cannot be filibustered. Reconciliation became highly attractive to Republicans in Congress following the inauguration of President Trump, because as long as Republicans remained united, they could easily pass any law that met the reconciliation rules. As an additional attraction, it would be much easier to loosen the rules governing reconciliation than it would be to abolish the filibuster. A problem for the Republicans in 2017, however, was that they



## Perception vs. Reality

# Cutting Back Our Gigantic Tax Code

A poll by the Pew Research Center shows that only a little more than a quarter of respondents consider themselves to be significantly overtaxed. Almost half, however, believe that our tax system is too complicated.

### The Perception

The House Ways and Means Committee contends that the tax code is 70,000 pages long and has tripled in length over the last thirty years. A unit within the Internal Revenue Service (IRS) itself estimates that individuals and businesses spend more than 6 billion hours each year to prepare their taxes. Clearly, this is a system that needs reform.

### The Reality

Several of these perceptions are misleading. Many businesses must indeed devote major resources to their taxes, but the same IRS unit that came up with the estimate of 6 billion hours also contends that the average individual taxpayer spends only thirteen hours at the job. That's an average—people with only wage or salary income should be able to finish up much more quickly. The contention that the tax code is 70,000 pages long is also off. In fact, the current tax

code is about 2,600 pages. That's still a lot, but nowhere near the headline number.

The 70,000-page collection referred to is not the tax code, but a privately produced publication called the *CCH Standard Federal Tax Reporter*, issued by CCH Group (formerly the Commerce Clearing House). This encyclopedic reference work includes not only the tax code itself, but also all previous tax laws, plus all court decisions and regulatory rulings dealing with taxes dating back to the creation of the income tax. It is, in part, a historical record. By definition, this is not a document that anyone can shorten. Nothing is ever deleted from it, even if the tax code itself becomes simpler.

The reason that the tax code is even 2,600 pages long is that it is filled with tax breaks for special interests. Each industry with a special break knows all about its own little piece of the tax law and doesn't pay much attention to the breaks enjoyed by others. Economists have long argued that the nation as a whole would be better off if there were fewer tax breaks. We could then lower overall tax rates and still collect the same

amount of money. The problem is that those who benefit from each break will fight like rabid wolves to defend it.

Still, it is at least possible for Congress to reform and simplify the tax system. The last major simplification was undertaken in 1986—more than three decades ago. That reform required a herculean effort and bipartisan cooperation, neither of which are much in evidence today. In December 2017, Republicans in Congress adopted a major reform to the tax code. Some of the provisions of the reform benefitted businesses, and others benefitted salaried workers. While this measure was a major reform, it did not simplify the tax code.

### Blog On

*The news and commentary site [www.vox.com](http://www.vox.com) explains the myth of the 70,000-page tax code—search for “vox taxes 70,000.” For the Pew Research Center poll mentioned earlier, search on “pew taxes bothered.”*

had considerable difficulty in coming to agreement even within their own party. One type of legislation that could easily meet the reconciliation requirements was comprehensive tax reform, and Congress was in

fact able to pass new tax legislation in 2017. Tax reform does not necessarily mean tax simplification, however, as we explain in this chapter's *Perception vs. Reality* feature.

**The Senatorial Hold** Senators have another tool in addition to the filibuster that they can use to delay legislation. Individual senators may place a *hold* on a particular bill. A senator simply informs the leader of his or her party of the hold. Party leaders do not announce who has placed a hold, so holds are often anonymous. Recent rule changes designed to curb anonymous holds have been ineffective. Cloture can be used to lift a hold.

Senators often place holds on nominees for executive or judicial positions in an attempt to win concessions from the executive branch. For example, in 2010, Senator Richard Shelby (R-AL) placed holds on at least seventy of President Obama's nominations in an attempt to force the administration to support two military spending programs in Alabama.

**The Senate Wins the Prestige Race, Hands Down** Because of the large number of representatives, few can garner the prestige that a senator enjoys. Senators have relatively little difficulty gaining access to the media. Members of the House, who run for reelection every two years, have to survive many reelection campaigns before they can obtain such recognition. Usually, a representative must become an important committee leader to enjoy the consistent attention of the national news media.

One consequence of the prestige difference is that it has been very difficult for a member of the House to win a presidential nomination. In contrast, the parties have often nominated senators, and a number of senators have gone on to become president.

Clearly, the Senate is the more powerful of the two chambers, given its control over presidential appointments and treaties. The right of the House to originate revenue bills does not, in practice, give that chamber an advantage. The Senate can effectively initiate a revenue bill by taking a House-passed spending measure, stripping out the language, and inserting entirely different text.

(Such a step is uncommon, but it has happened from time to time.) In most other nations, however, it is the “lower house”—equivalent to our House of Representatives—that has most of the power.

**regular order** The traditional method by which Congress passes a new law. It includes the referral of bills to standing committees, which can alter the bill, “pigeon-hole” it, or report it to the full chamber.

## Critical Thinking

- Vice presidents typically avoid presiding over the Senate, even though that is their chief constitutional responsibility. Why might they be so reluctant?

## The Legislative Process

**LO 11-4** Summarize the specific steps in the lawmaking process.

Look at Figure 11.5. It shows the normal process through which a bill becomes law at the national level. This process is referred to as the **regular order**. Not all of the complexities of the process are shown, to be sure. For example, the figure does not indicate the extensive lobbying and media politics that are often involved in the legislative process, nor does it mention the informal negotiations and “horse trading” that occur to get a bill passed. A final complication is that the regular order is not always followed, as we explain later.

### The Regular Order

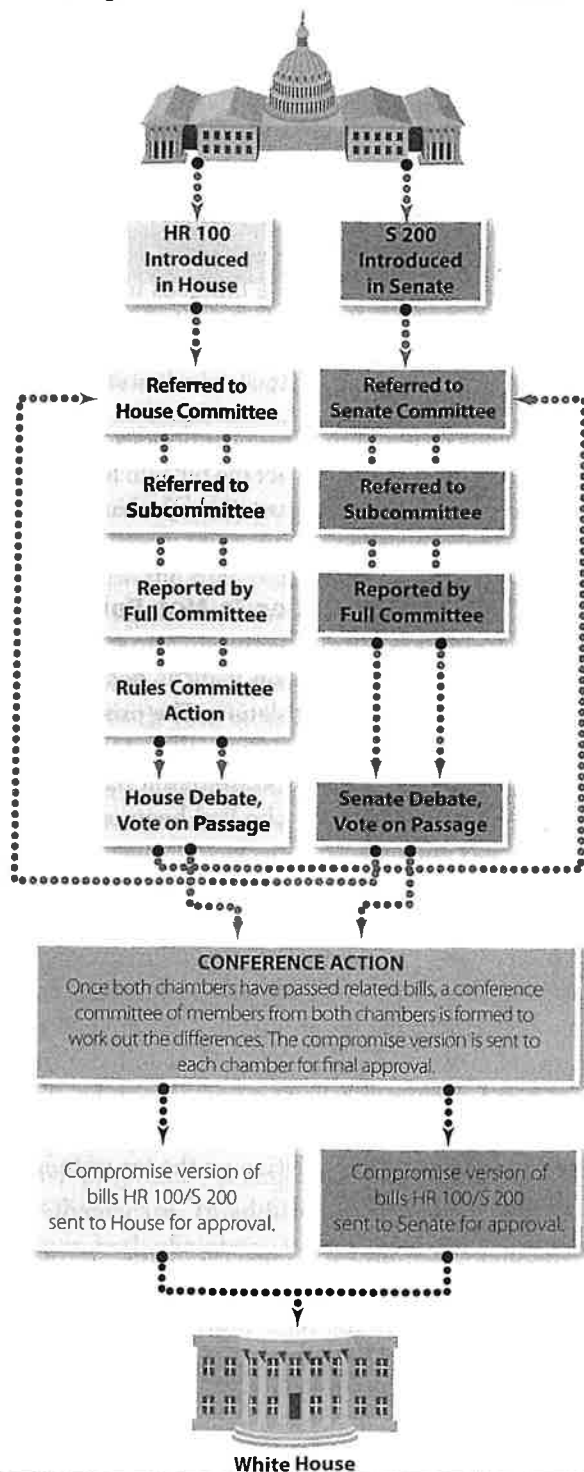
The basic steps in the regular order are as follows:

1. *Introduction of legislation.* Although individual members of Congress or their staffs—as well as private citizens and lobbying groups—may come up with ideas for new legislation, most bills are proposed by the executive branch. Only a member of Congress can formally introduce legislation, however. In reality, many bills are proposed, developed, and even written by the White House or an executive agency. Then a “friendly” senator or representative introduces the bill in Congress. Such bills are rarely ignored entirely, although they are often amended or defeated.
2. *Referral to committees.* As soon as a bill is introduced and assigned a number, it is sent to the appropriate standing committee. In the House, the Speaker assigns the bill to the committee. In the Senate, the presiding officer does so. For example, a farm bill in the House would be sent to the Agriculture Committee, and a gun control bill would be sent to the Judiciary Committee.

A committee chairperson will typically send the bill on to a subcommittee. For example, a Senate bill concerning NATO (the North Atlantic Treaty Organization), which allies the United States and Canada with most European nations, would be

## Figure 11.5 How a Bill Becomes a Law

This illustration shows the most typical way in which proposed legislation is enacted into law. It follows two hypothetical bills, House bill No. 100 (HR 100) and Senate bill No. 200 (S 200). The path of HR 100 is traced by an orange line, and that of S 200 by a green line. In practice, most bills begin as similar proposals in both chambers. Bills must be passed by both chambers in identical form before they can be sent to the president. *How does Congress ensure that the bills are identical in form?*



sent to the subcommittee dealing with European affairs. Alternatively, the chairperson may decide to put the bill aside and ignore it. Most bills that are pigeonholed in this manner receive no further action.

If a bill is not pigeonholed, committee staff members go to work researching it. The subcommittee may hold public hearings during which people who support or oppose the bill can express their views. Subcommittees also have the power to order witnesses to testify at public hearings. Witnesses may be executive agency officials, experts on the subject, or representatives of interest groups concerned about the bill.

The subcommittee must meet to approve the bill as it is, add new amendments, or draft a new bill. This meeting is known as the **markup session**. If members cannot reach a consensus on changes, a vote on the changes is taken.

When a subcommittee completes its work, the bill goes to the full standing committee, which then meets for its own markup session. The committee may hold its own hearings, amend the subcommittee's version, or simply approve the subcommittee's recommendations.

3. *Reports on a bill.* Finally, the committee will report the bill back to the full chamber. It can report the bill favorably, report the bill with amendments, or report a newly written bill. It can also report a bill unfavorably, but usually such a bill will have been pigeonholed earlier instead. Along with the bill, the committee will send to the House or Senate a written report that explains the committee's actions, describes the bill, lists the major changes made by the committee, and gives opinions on the bill.
4. *The Rules Committee and scheduling.* Scheduling is an extremely important part of getting a bill enacted into law. A bill must be put on a chamber's calendar. Typically, in the House the Rules Committee plays a major role in the scheduling process. This committee, along with the House leaders, regulates the flow of the bills through the House. The Rules Committee also specifies how much time can be spent on debate and whether amendments can be made by a floor vote.

### markup session

A meeting held by a congressional committee or subcommittee to approve, amend, or redraft a bill.



In the Senate, a few leading members control the flow of bills. The Senate brings a bill to the floor by “unanimous consent,” a motion by which all members present on the floor set aside the formal Senate rules and consider a bill. In contrast to the procedure in the House, individual senators have the power to disrupt work on legislation—refusing to agree to unanimous consent is the way in which a senatorial hold is enforced.

5. *Floor debate.* Because of its large size, the House imposes severe limits on floor debate. The Speaker recognizes those who may speak and can force any member who does not “stick to the subject” to give up the floor. Normally, the chairperson of the standing committee reporting the bill will take charge of the session during which it is debated. You can often watch such debates on C-SPAN. Sometimes, clips from C-SPAN go viral and are viewable on YouTube.

Only on rare occasions does a floor debate change anybody’s mind. The written record of the floor debate completes the legislative history of the proposed bill in the event that the courts have to interpret it later on. Floor debates also give the full House or Senate the opportunity to consider amendments to the original version of the bill.

6. *Vote.* In both the House and the Senate, the members present generally vote for or against the bill. There are several methods of voting, including voice votes, standing votes, and recorded votes (also called roll-call votes). Since 1973, the House has had electronic voting. The Senate does not have such a system, however.
7. *Conference committee.* To become a law, a bill must be passed in identical form by both chambers. When the two chambers pass differing versions of the same bill, the measure is turned over to a conference committee—a temporary committee with members from the two chambers, as mentioned earlier.

#### **conference report**

A report submitted by a conference committee after it has drafted a single version of a bill.

**pocket veto** A special type of veto power used by the chief executive after the legislature has adjourned. Bills that are not signed die after a specified period of time.

Most members of the committee are drawn from the standing committees that handled the bill in both chambers. In theory, the conference committee can consider only those points in a bill on which the two chambers disagree.

No proposals are supposed to be added. In reality, however, the conference committee sometimes makes important changes in the bill or adds new provisions. Traditionally, these included “pork barrel” provisions.

Once the conference committee members agree on the final compromise bill, a **conference report** is submitted to each chamber. The bill must be accepted or rejected by both chambers as it was written by the committee, with no further amendments. If the bill is approved by both chambers, it is ready for action by the president.

8. *Presidential action.* All bills passed by Congress must be submitted to the president for approval. The president has ten days to decide whether to sign the bill or to veto it. If the president does nothing, the bill goes into effect unless Congress adjourns before the ten-day period expires. In that case, the bill dies in what is called a **pocket veto**.
9. *Overriding a veto.* If the president decides to veto a bill, Congress can still enact the bill into law. With a two-thirds majority vote in both chambers, Congress can override the president’s veto.

### **When the Regular Order Is Not Followed**

The regular order is a time-consuming process. This is deliberate. The Constitution itself is designed to slow the progress of new legislation. The existence of two chambers is part of that design. In a story that is probably apocryphal, George Washington had breakfast with Thomas Jefferson, who had been out of the country as our ambassador to France during the Constitutional Convention. Washington explained the reason for the Senate: “we pour our legislation into the senatorial saucer to cool it.”<sup>13</sup> The committee system involves further delays to promote deliberation. Public hearings allow interest groups, invited experts, and executive branch staff to testify on the merits or deficiencies of a proposed bill. The process can be especially lengthy when a bill is long and complicated, as has been the case with legislation on the tax system or health care insurance.

**The Regular Order and Obamacare.** After the inauguration of President Obama in 2009, Democrats in Congress made use of the regular order for legislation such as the Affordable Care Act (Obamacare). This was the traditional procedure, and Democrats as yet saw no reason to abandon it. The delays imposed by the committee system, however, almost doomed health



**Image 11.4** Representative Debbie Lesko (R-AZ) speaks at a bipartisan Congressional Caucus for Women's Issues briefing. *Why would both Democrats and Republicans participate in this briefing?*

care reform. The Republicans were dead set against any Democratic health care legislation, and they were able to use the time that the bill was in committee to organize against it. Obamacare also needed a filibuster-proof sixty-vote majority to pass the Senate. Unfortunately for the Democrats, a special election cost them their sixtieth vote before the legislative process was complete. Obamacare passed only because House Democrats accepted the Senate version of the legislation without amendment, thereby eliminating the need for a conference committee and a final Senate vote.

#### **2017: The Republicans Abandon the Regular Order.**

Following the 2016 elections that put Donald Trump in the White House, the Republicans had majorities in both the House and the Senate. Their Senate majority was nowhere close to sixty votes, however. Republicans were able to bypass the filibuster by employing reconciliation for their two major legislative proposals—a major tax reform and the repeal of Obamacare. In addition, the Republican leadership in both chambers decided to bypass the regular order as well. Such a step would deprive Democrats of time they might use to organize opposition to the proposals.

Normally, with legislation that is important to one of the parties, that party's leadership assumes control of the process as soon as the bill reaches the floor

of the chamber in question. With the tax legislation and Obamacare repeal, however, the leadership took control immediately. The bills were written by the leadership, and ordinary members of the relevant committees were cut out of the process. Democrats were also cut out, as was the general public. In the end, the tax bill passed, but Obamacare repeal failed because a few Republican senators refused to support it.

In 2020, Congress also rejected the regular order in passing major legislation to combat the effects of the coronavirus pandemic. In this case, however, the regular order was abandoned solely

for the purpose of speeding up the legislation. The multi-trillion-dollar relief proposals were negotiated on a bipartisan basis. This was a startling development given how politically polarized Congress had become, and it demonstrated that members of Congress from both parties were genuinely rattled by the public health crisis then underway.

### **Critical Thinking**

- Why do debates on the floor of the House or the Senate almost never change anyone's mind?

### **Investigation and Oversight**

**LO 11-5** Identify Congress's oversight functions, and explain how Congress fulfills them.

One of the most important functions of Congress is its oversight (supervision) of the executive branch and its many federal departments and agencies. The executive bureaucracy, which includes the president's cabinet departments, wields tremendous power. Congress can rein in that power by choosing not to provide the money necessary for the bureaucracy to function. (The budgeting process will be discussed later in this chapter.)



**Image 11.5** During the COVID-19 pandemic, Congressional committees had numerous hearings. Here, Dr. Anthony Fauci of the National Institute of Allergy and Infectious Diseases answers questions in front of the Senate Health, Education, Labor, and Pensions Committee. *What is the goal of such hearings?*

## The Investigative Function

Congress also has the authority to investigate the actions of the executive branch, the need for certain legislation, and even the actions of its own members. The numerous congressional committees and subcommittees regularly hold hearings to investigate the actions of the executive branch.

**Neglecting Oversight** A widely held belief is that between 2001 and 2007, when Republicans controlled both chambers of Congress and the presidency, Congress neglected its oversight function out of deference to President Bush. Many also believe that Congress neglected its oversight function from 2009 to 2011, when the Democrats controlled both chambers of Congress and the presidency.

The issue of neglect became more important than ever after President Trump took office. Allegations had been raised that members of the Trump campaign may have engaged in improper communications with the Russian government during the 2016 election season (later proved false). In particular, the FBI was investigating whether the Trump campaign discussed or even encouraged Russian hacking of Democratic campaign organizations. Congressional Republicans blocked Democratic demands for a special bipartisan investigation and instead planned investigations through the existing House and Senate Intelligence Committees. In the House, however, the Republican chair of the

Intelligence Committee, who was leading the investigation, appeared to be so biased in favor of the Trump administration that he was forced to step down. A Republican with less seniority took over this task.

**Going Overboard** Many people believe that Congress may also go overboard in its investigations when Congress and the White House are controlled by different parties. For example, in 2015 a House committee grilled former Secretary of State Hillary Clinton about the death of four Americans in Benghazi, Libya, in 2012. The efforts of

the committee were undermined when House majority leader Kevin McCarthy observed that one goal of the investigation was to reduce Clinton's public opinion poll numbers as a presidential candidate.

Republicans argued that Democrats in the House also went overboard while investigating President Trump in 2019, after the Democrats took control of the House. Certainly, Democrats initiated an enormous number of investigations. By the middle of 2019, fourteen House committees had launched at least 50 investigations into Trump's businesses, his campaigns, and his presidency.

**The Congressional Budget Office** One way in which Congress has "kept itself honest" is by establishing oversight bodies separate from—but responsible to—Congress. One such body is the Congressional Budget Office (CBO), which evaluates the impact of proposed legislation on the federal budget and the budget deficit. The CBO has frequently been in the news in recent years due to its "scoring" of various proposals considered by the House and the Senate. Members of Congress have found themselves tailoring measures to earn a better score from the CBO.

## Impeachment Power

Congress has the power to impeach and remove from office the president, vice president, and other "civil officers," such as federal judges. To *impeach* means

to accuse a public official of—or charge him or her with—improper conduct in office. The House of Representatives is vested with this power. After a vote to impeach in the full House, the accused official is then tried in the Senate. If convicted by a two-thirds vote, the official is removed from office.

**Impeaching Presidents** The House has exercised its impeachment power against a president three times. It voted to impeach Andrew Johnson in 1868, Bill Clinton in 1998, and Donald Trump in December 2019. All three presidents were acquitted by the Senate. A vote to impeach President Richard Nixon was pending before the full House of Representatives in 1974 when Nixon chose to resign. Nixon is the only president ever to resign from office.

**The Impeachment of Donald Trump** As soon as Donald Trump was sworn in as president, there were Democratic members of the House that called for his impeachment. But Republicans controlled the House. In contrast, following the Democratic takeover of the House in 2019, an increasing number of Democrats called for the impeachment of President Trump on a variety of charges. These members of Congress did not have majority support within their own caucus, however, and they certainly had no support among the leadership, including Speaker Nancy Pelosi. She and the other leaders knew that even if Trump were impeached, the Republican Senate would never vote to convict him. Further, the danger existed that voters would view impeaching the president as overreach, and he might actually gain support as a result.

Leading Democrats began to re-evaluate their position in September 2019, when it was alleged that Trump had engaged in questionable interactions with the president of Ukraine. A leaker declared that Trump had refused to supply Ukraine with congressionally approved military aid that it needed to confront Russian aggression. The aid would be released if Ukraine opened an investigation of Hunter Biden, son of Joe Biden, one of Trump's potential opponents in the 2020 elections. (Of course, eventually, Joe Biden did become the only opponent.) The younger Biden, with no experience in the oil and gas industry, earned large sums while sitting on the board of a Ukrainian

energy company, presumably because his father was vice president at the time.

In short, it was alleged that Trump had asked a foreign power to interfere in the 2020 elections. These purported revelations convinced Pelosi and other Democratic leaders that they needed to “go on the record” against Trump, even if a conviction were impossible. In fact, the Senate acquitted Trump in February 2020. One Republican senator voted to convict—Mitt Romney (R-UT), the 2012 Republican candidate for president.

Trump refused to let any of his staff respond to congressional **subpoenas** (orders to appear). Some staff members testified anyway. Several House committees sued to enforce the subpoenas, but it soon became clear that the courts were unlikely to decide these issues in time for them to be relevant to the impeachment. Rather than waiting for the courts to act, the House simply added an obstruction of Congress charge to the initial one covering the Ukraine

issue. In July 2020, the Supreme Court rejected a House request to speed up the enforcement of committee subpoenas of Trump's financial records.<sup>14</sup>

### Impeaching Other Officers

Congress has taken action to remove officials other than the president. For example, the House of Representatives voted to impeach district court judge Thomas Porteous in 2010 on charges of bribery and perjury. The Senate then convicted Porteous and

disqualified him from ever holding any “office of honor or profit under the United States,” as the formal language puts it. Only one United States Supreme Court justice has ever been impeached. The House impeached Samuel Chase in 1804, but he was later acquitted by the Senate.

### Senate Confirmation

Article II, Section 2, of the Constitution states that the president may appoint ambassadors, justices of the Supreme Court, and other officers of the United States “with the Advice and Consent of the Senate.” The Constitution leaves the precise nature of how the Senate will give this “advice and consent” up to the lawmakers.

**“Laws are like sausages.  
It is better if the public  
does not see how they  
are made.”**

~ John Godfrey Saxe, American  
Poet, 1816–87 (Misattributed  
to Otto Von Bismarck, Chancellor  
of Germany, 1871–90)

**subpoenas** An order by a court or legislative committee requiring that an individual appear and testify.

## The Traditional Confirmation Process

Traditionally, the Senate either confirms or fails to confirm the president's nominees for the Supreme Court, other federal judgeships, members of the president's cabinet, and other top executive branch officers. Nominees appear first before the appropriate Senate committee—the Judiciary Committee for federal judges or the Foreign Relations Committee for the secretary of state, for example. If the individual committee approves the nominee, the full Senate will vote on the nomination.

Senate confirmation hearings have been very politicized at times. Judicial appointments often receive the most intense scrutiny by the Senate, because federal judges serve for life. The president has a somewhat freer hand with cabinet appointments, because the heads of executive departments (unlike federal judges) are expected to be loyal to the president. Nonetheless, Senate confirmation has always been an important check on the president's power.

## Appointment Delays and the “Nuclear Option”

Throughout American history, the Senate has often rejected nominees for executive and judicial positions. In recent decades, however, a new pattern has taken hold. Senators from one party have begun delaying nominations as part of an ideological struggle with a president from the other party. Given Senate traditions, such tactics have been available to both the minority and the majority party. The filibuster has often been the tool used in delaying nominations. This practice was first employed on a large scale in the 1990s by the Republicans in their battles with President Bill Clinton. Democrats then adopted it against George W. Bush. Under Obama, the Republicans resumed the practice. In

2013, however, the use of the filibuster to delay appointments was substantially curbed when the Senate exercised what has been called the *nuclear option*.

### nuclear option

Changing Senate rules—in particular, rules that require a supermajority—by a simple majority vote. Also known as the constitutional option.



Alex Wong/Bloomberg/Getty Images

**Image 11.6** In April 2017, the Senate confirmed the appointment of Judge Neil Gorsuch (center) to the Supreme Court. Gorsuch filled a seat once held by Justice Antonin Scalia. Here he is flanked by Senate majority leader Mitch McConnell (left) and Vice President Mike Pence (right). *Why were Republicans so enthusiastic about Gorsuch?*

**The Nuclear Option.** Senate rules that require supermajority votes for such steps as ending a filibuster have no basis in the Constitution. That document allows senators to pass legislation and approve nominees by a majority vote of those present. The filibuster—and the senatorial hold discussed earlier—exist because a Senate majority approved these rules. It follows that a majority can repeal them. In the past, such a violation of tradition would have been unthinkable. Given current political polarization, however, the unthinkable has become possible. Changing Senate rules through a simple majority vote has been called the *constitutional option*. It is also known as the **nuclear option**, an analogy to the ultimate weapon.

**The Option Is Employed.** In 2005, after Senate Democrats filibustered many Bush nominees, Republicans threatened to use the nuclear option to move the nominations forward. At the last minute, a bipartisan group called the “gang of fourteen” engineered a compromise under which the filibuster would be reserved for “extraordinary circumstances.” In 2013, with a large number of Obama nominees blocked, the Democrats claimed that the Republicans had violated this agreement. No settlement was reached, and in November the Senate voted to eliminate the use of the filibuster against all executive and judicial nominees



other than those to the Supreme Court. While this step made it easier to approve candidates, the Republicans continued to use other Senate rules to delay nominations.

**Extending the Nuclear Option to the Supreme Court.** Of course, when the Republicans took control of the Senate after the 2014 elections, they no longer needed the filibuster to block nominations. Following the death of conservative Supreme Court justice Antonin Scalia in February 2016, Senate majority leader Mitch McConnell announced that the Republicans would refuse to hold confirmation hearings on any nominee that Obama might submit. Filling the empty seat would be delayed until after a new president took office in January 2017.

This unusual tactic met with success. Obama nominee Merrick Garland, a respected and moderate Democrat and federal judge, was blocked from the Court. In November 2016, Donald Trump was elected president, and McConnell's gamble paid off. A Republican president would nominate Scalia's replacement. Trump nominated Neil Gorsuch, a respected and strictly conservative Republican. Angry over the Republican treatment of Garland, Senate Democrats planned to filibuster Gorsuch's nomination. In April 2017, however, Republican senators, on a party-line vote, abolished the filibuster as applied to Supreme Court nominations. The Senate then confirmed Gorsuch.

### Critical Thinking

- It is still possible for a senator to temporarily block a president's appointment through the hold process. Should such an act be considered a legitimate political tactic? Why or why not?

## The Budgeting Process

**LO 11-6** Indicate what is involved in the congressional budgeting process.

The Constitution makes it very clear that Congress has the power of the purse, and this power is significant. Only Congress can impose taxes, and only Congress can authorize expenditures. To be sure, the president submits a budget, but all final decisions are up to Congress.

The congressional budget is, of course, one of the most important determinants of what policies will or will not be implemented. For example, the

president might order executive agencies under presidential control to undertake specific programs, but these orders are meaningless if there is no money to pay for their execution. For any program that receives an annual appropriation, Congress can nullify a president's ambitious plans simply by refusing to allocate the necessary money to executive agencies to implement the program. President Trump proved to be unusually successful in bypassing these congressional powers, but he could do so only because he had the support of most congressional Republicans.

## Authorization and Appropriation

The budgeting process is a two-part procedure. **Authorization** is the first part. It involves the creation of the legal basis for government programs. In this phase, Congress passes authorization bills outlining the rules governing the expenditure of funds. It may place limits on how much money can be spent and for what period of time.

**Appropriation** is the second part of the budgeting process. In this phase, Congress determines how many dollars will actually be spent in a given year on a particular government activity. Appropriations must never exceed the authorized amounts, but they can be less.

An exception to this process involves **entitlement programs**, which require the government to provide benefits, such as Social Security benefits and veterans' benefits, to persons who qualify under entitlement laws. Many such programs operate under open-ended authorizations that, in effect, place no limits on how much can be spent (although it is usually possible to estimate the cost of a particular entitlement program fairly accurately). The Affordable Care Act, also known as Obamacare, is, for the most part, an entitlement program. For this reason, repeated votes by the Republican-led House during Obama's presidency to "defund" Obamacare had no practical effect.

**authorization** A part of the congressional budgeting process—the creation of the legal basis for government programs.

**appropriation** A part of the congressional budgeting process—the determination of how many dollars will be spent in a given year on a particular government activity.

**entitlement programs** A government program (such as Social Security) that allows, or entitles, a certain class of people (such as older persons) to receive benefits.

The remaining federal programs fall into the category of discretionary spending, and so they can be altered at will by Congress. National defense is the most important item in the discretionary-spending part of the budget. Discretionary spending also includes earmarks, or pork, which we described earlier in this chapter in the *Join the Debate* feature.

## The Actual Budgeting Process

Figure 11.6 outlines the lengthy budgeting process. The process runs from January, when the president submits a proposed federal budget for the next **fiscal year**, to the start of that fiscal year on October 1. In actuality, about eighteen months prior to October 1, the executive agencies submit their requests to the Office of Management and Budget (OMB), and the OMB outlines a proposed budget. If the president approves it, the budget is officially submitted to Congress.

The legislative budgeting process begins eight to nine months before the start of the fiscal year. The **first budget resolution** is supposed to be passed in May. It sets overall revenue goals and spending targets and, by definition, the size of the federal budget deficit or surplus.

**fiscal year** A twelve-month period that is established for accounting purposes. The government's fiscal year runs from October 1 through September 30.

**first budget resolution** A budget resolution, which is supposed to be passed in May, that sets overall revenue goals and spending targets for the next fiscal year, beginning on October 1.

**second budget resolution** A budget resolution, which is supposed to be passed in September, that sets "binding" limits on taxes and spending for the next fiscal year.

**continuing resolutions** A temporary resolution passed by Congress that enables executive agencies to continue working with the same funding that they had in the previous fiscal year.

The **second budget resolution**, which sets "binding" limits on taxes and spending, is supposed to be passed in September, before the beginning of the fiscal year on October 1. When Congress is unable to pass a complete budget by October 1—which is very common—it usually passes **continuing resolutions**, which enable the executive agencies to keep doing whatever they were doing the previous year with the same amount of funding. But even continuing resolutions have not always been passed on time. If a continuing resolution is not passed, various parts of the federal government may have to shut down temporarily. Under President Obama, Republicans twice attempted to gain legislative advantage by refusing to pass such resolutions.

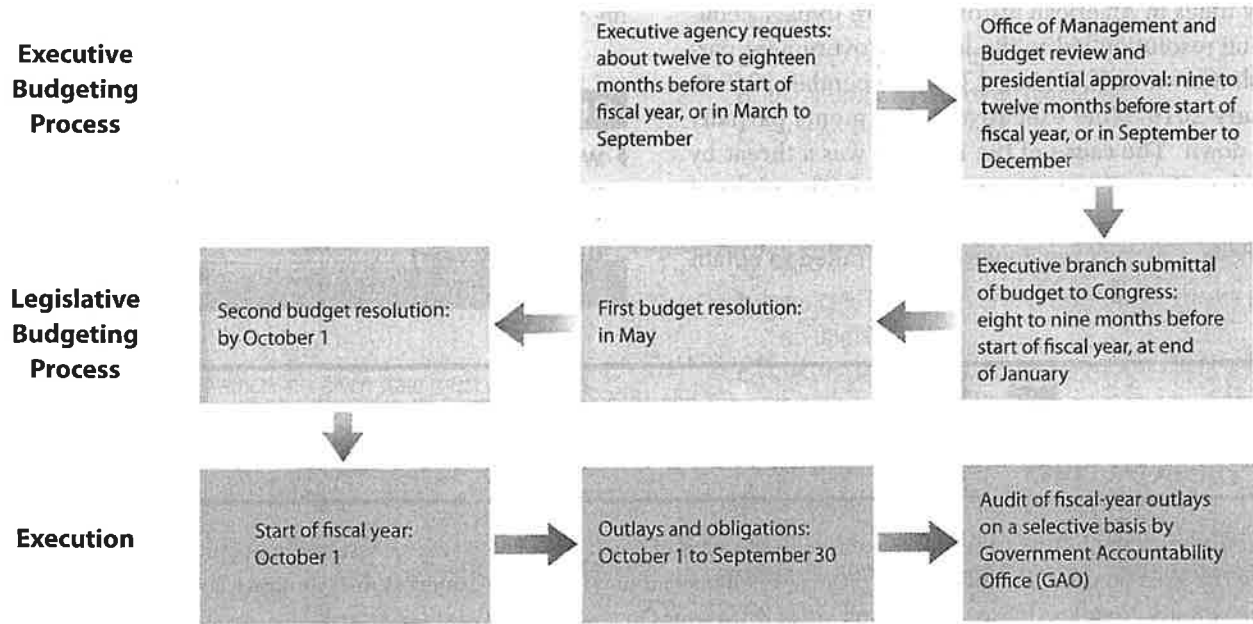
**Budget Projections** The budget process involves making predictions about the state of the U.S. economy for years to come. This process is necessarily very imprecise. Since 1996, both Congress and the president have attempted to make ten-year **projections** for income (**from** taxes) and spending, but **no one** can really know **what** the financial picture of the United States will look like in ten years. While one- or two-year predictions are often fairly realistic, long-term projections have never come close to being accurate.



**Image 11.6** Senator Cory Booker (D-NJ) talks during hearings of the Judiciary Committee. Typically, each party's members sit together. *What are some of the subjects that might be discussed during such hearings?*

Bloomberg/Getty Images

**Figure 11.6 The Budgeting Process**



**The Debt Ceiling Issue** In any year in which the federal government spends more than it takes in, the resulting deficit adds to the national debt. U.S. law sets a ceiling on the size of the national debt. It is popularly believed that votes to raise the debt ceiling, which take place regularly, are ways of authorizing additional, future spending. This belief is incorrect. Congress has traditionally appropriated sums that would force the government to breach the ceiling and has then raised the ceiling at a later date.

In the past, members of Congress often took advantage of the vote to raise the ceiling to “grandstand,” to show off their opposition to federal spending. They did so knowing that in the end, the ceiling would inevitably be raised. In 2011, however, Republicans in the House threatened to refuse to raise the debt ceiling unless the Obama administration made major spending concessions. If the debt ceiling was not raised, the government would not be able to pay out on already-established obligations. Bankers and economists warned that such a default would result in disaster. In the end, the Republicans were at least partially successful. A deal with the Obama administration led to a variety of restraints on spending.

House Republicans attempted to repeat the tactic in 2013, with the added pressure of refusing to pass a continuing resolution to fund the government. Democrats, believing they had been taken advantage of in 2011, refused to budge. The House tactics were very unpopular, and Republicans were forced to abandon them.

**“You’ve got to work things out in the cloakroom, and when you’ve got them worked out, you can debate a little before you vote.”**

~ Lyndon B. Johnson, Senate Majority Leader, 1955–61, President of the United States, 1963–69

### **Failure to Pass Continuing Resolutions**

Given the unpopularity of such practices, many observers thought that they would not be revived any time soon. In fact, the debt ceiling maneuver has not been used. The tactic of rejecting a continuing resolution has

continued, however. Unlike the debt ceiling tactic, the continuing resolution maneuver has been employed many times in American history. Failure to pass a continuing resolution led to the longest government partial shutdown in U.S. history from December 2018 to January 2019. Nine executive departments partially shut down. The cause of the impasse was a threat by president Trump to veto any resolution that did not include funding for a wall on the Mexican border. The shutdown was very unpopular. Trump failed to obtain

congressional support for the wall, but he later declared a national emergency to free up funds, thereby bypassing Congress.

### Critical Thinking

- Why do you think Congress created entitlement programs that operate under open-ended authorizations instead of reauthorizing each of them every year?

## America at Odds

### The Congress

The founders thought that Congress would be the branch of government that was closest to the people. Yet Congress is one of the least popular institutions in America. It seems that anything that Congress does annoys a substantial share of the electorate. Needless to say, Americans are at odds over Congress on a variety of issues:

- *Is the Senate's filibuster rule a legitimate safeguard of minority rights—or a disastrous handicap on Congress's ability to address the nation's problems?*
- *Is political gerrymandering just a normal part of the political game—or does it deprive voters of their rights?*
- *Does racial gerrymandering allow the voices of minority groups to be heard—or is it an unconstitutional violation of the equal protection clause?*
- *When voting on legislation, should members of Congress faithfully represent the views of their constituents—or should they stay true to their own beliefs about what is good for the nation?*
- *Should legislative earmarks, or "pork," be banned as a waste of taxpayers' resources—or is it appropriate for members of Congress to use pork to support specific projects in their own districts?*

## Test Yourself

### Fill-In

#### LO 11-1

1. Every \_\_\_\_\_ years, seats in the House of Representatives are reapportioned based on the outcome of the census.
2. Under the trustee view of representation, a legislator should try to \_\_\_\_\_.

#### LO 11-2

3. Incumbent members of Congress enjoy several advantages over their challengers in elections, including \_\_\_\_\_.

#### LO 11-3

4. The Speaker of the House has the power to \_\_\_\_\_.
5. Filibusters may be ended by invoking \_\_\_\_\_.

#### LO 11-4

6. A markup session is \_\_\_\_\_.
7. In the House, the \_\_\_\_\_ Committee plays a major role in the scheduling process and also specifies the amount of time to be spent on debate.

**LO 11-5**

8. In practice, the Senate's power of "advice and consent" means that the Senate confirms or fails to confirm the president's nominees to \_\_\_\_\_.

**LO 11-6**

9. The budgeting process is a two-part procedure that includes \_\_\_\_\_.

**Multiple Choice****LO 11-1**

10. Congressional districts in a given state must contain, as nearly as possible, equal numbers of
- a. men and women.
  - b. Republicans and Democrats.
  - c. people.

**LO 11-2**

11. The U.S. Constitution requires that members of the House of Representatives be elected every
- a. second year by popular vote.
  - b. six years by popular vote.
  - c. second year by state legislatures.

**LO 11-3**

12. In the Senate, the \_\_\_\_\_ is typically the most powerful individual and directs the legislative program and strategy of his or her party.
- a. vice president
  - b. majority leader
  - c. president pro tempore

**LO 11-4**

13. As soon as a bill is introduced in either the House or the Senate, it is sent to
- a. the floor of the chamber.
  - b. the appropriate standing committee.
  - c. a conference committee.

**LO 11-5**

14. The Senate
- a. voted to impeach Richard Nixon.
  - b. convicted Bill Clinton of impeachable offenses by a two-thirds vote.
  - c. tries officials who have been impeached in the House.

**LO 11-6**

15. When Congress is unable to pass a budget by the beginning of the fiscal year, it usually passes \_\_\_\_\_, which lets executive agencies keep on doing whatever they were doing the previous year with the same funding.
- a. continuing resolutions
  - b. entitlement programs
  - c. earmarks