

## **THE SENATE**

### **THE PRIVILEGES OF MEMBERSHIP**

The Senate enjoys two constitutional prerogatives that set it apart from the House of Representatives. It alone has the authority to advise and consent on the president's appointments and treaties, as well as to conduct impeachment trials for federal officials. Both powers are exercised sparingly, but with dramatic impact.

#### ***The Power to Advise and Consent***

The "advise and consent" provision in the Constitution is the Senate's most powerful check on the president. Over the years, it has been a steady source of friction between the upper chamber and the White House.

Since 1789, the Senate has rejected 21 treaties, the most notable being the Treaty of Versailles, which it voted against in 1919 and 1920. As a consequence, the United States did not join the League of Nations, which was the precursor to the United Nations. This was a huge defeat and embarrassment for President Woodrow Wilson, who had helped create the League following World War I.

During each session of Congress, the Senate approves thousands of presidential appointments — ambassadors, federal judges, Supreme Court justices, cabinet members, and other executive branch officials. Over the course of a single term, a president can make up to 35,000 military and civilian appointments that require Senate confirmation.

In recent years, the confirmation process for presidential nominations has become more contentious. For a long time, the Senate focused solely on the qualifications and competency of presidential appointments when considering approval, with the result being that very few nominees were rejected. But with the rise in partisan tension and the growing trend toward divided government, the confirmation process has become more politicized. Such was the situation for Judge Robert Bork, who was nominated to the Supreme Court and rejected by the Senate because his viewpoints were considered by some to be out of the mainstream. A couple of years later, Justice Clarence Thomas narrowly avoided a similar fate in one of the most vitriolic and divisive confirmation hearings in history. In many ways, the confirmation power has become the most potent political weapon the Senate wields against the president.

For most appointments, the Senate follows an unwritten practice known as "Senatorial courtesy," whereby the senators from the nominee's state have great influence over the final vote. Should a senator be opposed to a nominee from his home state, chances are the rest of the Senate will follow suit. Often, the president will consult

with the home state senators before making a nomination.

#### ***Trial by Senate***

While the House of Representatives has the sole ability to impeach federal officials, the Senate has exclusive domain over trial and conviction. Impeachment trials have been held only sixteen times in Senate history, with the result being seven convictions, seven acquittals, and two officials stepping down before the proceedings concluded. All seven convicted officials were federal judges. No president has ever been removed from office. Richard Nixon would have been the first president convicted by the Senate had he not resigned in August of 1974.

### **WHO RUNS THIS PLACE?**

The nature and style of leadership in the Senate is dramatically different than that of the lower chamber. As you learned in Chapter 4, the House requires a rigid hierarchy of leaders and deputy leaders enforcing strict discipline to get anything accomplished. The Senate takes the opposite approach. With only 100 members, leadership can be more collegial and informal. Members are on a first-name basis with their colleagues, and they're accustomed to working together on unanimous consent and other agreements.

#### ***Floor Leaders***

Although the Constitution provides that the vice president shall serve as the Senate president, it's mostly a symbolic title. The only time the vice president presides over the Senate is to cast the occasional tie-breaking vote.

During his eight years as vice president, Al Gore cast four tie-breaking votes, the most notable being the one that passed President Clinton's 1993 budget. John Adams holds the record for breaking the most ties, casting 29 votes while serving as vice president under George Washington.

When the vice president is absent, which is usually the case, the Senate President pro tempore (also known as the pro tem) presides over the chamber. The pro tem position is typically held by the member of the majority party with the longest continuous service in the Senate. Like the role of the vice president, it is mostly a ceremonial position. However, it does carry one important function: The pro tempore is fourth in line to the presidency behind the vice president and the Speaker of the House.

Real leadership in the Senate is provided by the majority and minority leaders elected by their party's caucus,

along with whips, who serve as their deputies. Given the shortage of formal rules, and the ability of the minority to obstruct floor action, the two leaders are forced to work more closely together than their House counterparts.

The most important power the leaders enjoy is the right of first recognition, meaning they are allowed to speak first during floor debate. It gives leaders the ability to outflank their adversaries by shaping the debate, offering amendments, and making other motions to reconsider.

In addition, leaders control the scheduling of floor debates, help determine committee assignments, select conference committee members, work closely with committee chairpersons to set legislative priorities, and act as one of the party's chief spokespersons. When the majority leader is a member of the president's party, he acts as the legislative point man for the White House, and is expected to mobilize support for the president's agenda. The opposition leader is expected to thwart the president's agenda, more so than the House opposition leader, who has few tools at his disposal to derail the majority.

### ***Committee Chairmen***

The Senate first established standing committees shortly after the War of 1812. At first, committee chairmen were appointed by the vice president. Then, in 1846, party leaders began making the selection. Today, committee chairmen are elected by a majority of their caucuses, although their election is in keeping with the seniority system. Typically, the majority member with the longest tenure on a committee is automatically elevated to chairman, subject to caucus approval.

Currently, the Senate has seventeen standing committees (two fewer than the House):

- Agriculture, Nutrition, and Forestry
- Appropriations
- Armed Services
- Banking, Housing, and Urban Affairs
- Budget
- Commerce, Science, and Transportation
- Energy and Natural Resources
- Environment and Public Works
- Finance
- Foreign Relations
- Governmental Affairs
- Health, Education, Labor, and Pensions
- Indian Affairs
- Judiciary
- Rules and Administration
- Small Business
- Veterans' Affairs

These committees are ranked in importance by class: Class A (the most important), Class B, and Class C. Chairmanship of the Judiciary, Budget, and Foreign Relations committees are particularly coveted posts.

## **SUBJECT TO DEBATE**

The Senate's tradition of unlimited debate dates back to the first Congress, when a handful of senators used stalling tactics to defeat a proposal to move the capital from New York City to Philadelphia. Since then, the practice of unlimited debate has been one of the most cherished rights in the Senate, and is the most distinguishing characteristic that sets it apart from the House of Representatives.

### ***What's a Filibuster?***

When unlimited debate is used to defeat a bill, it is called a filibuster. Filibustering typically involves endless speech on the Senate floor by a member or members, and may also include a series of delaying tactics such as calling for consecutive roll calls, raising points of order, and offering nongermane (not relevant) amendments.

Filibustering is a highly effective mechanism for senators to defeat legislation or win concessions on nonrelated issues, especially if employed late in the session when there is insufficient time to break it. If timed correctly, the mere threat of a filibuster can be an effective negotiating tool. In some cases, senators will block legislation simply by asking their party leaders not to schedule the matter. This is called a hold, and using the hold is a custom honored by Senate leaders. In the last few years, the use of holds has been modified and curtailed.

In 1917, at the urging of President Woodrow Wilson, the Senate amended its rules to provide a means for cutting off debate. Cloture is invoked when three-fifths of the members present vote in favor of ending debate. Once cloture is adopted, senators have thirty hours of remaining debate before a final vote is taken.

The late Senator Strom Thurmond of South Carolina holds the record for the longest solo filibuster. He spoke for twenty-four hours and eighteen minutes against the Civil Rights Act of 1957. Throughout the late 1950s and early '60s, southern Democrats repeatedly filibustered a series of civil rights initiatives until cloture was finally invoked and the historic Civil Rights Act of 1964 became law.

### ***Unanimous Consent Agreements***

One way the Senate avoids the cycle of endless filibusters and cloture is through unanimous consent agreements. These are agreements that the majority and minority leaders make regarding the length of debate, the number and types of amendments that can be offered, and the time of final vote for a particular piece of legislation. As its name suggests, a unanimous consent agreement requires the full consent of every senator present — one "nay" vote kills the agreement. Most Senate business is conducted according to unanimous consent agreements.