

THE LEGISLATIVE BRANCH

Question to consider: Who directly represents you in the United States Congress and what powers do those people have?

Terms of Congress

It is said that a woman, incensed at something her senator had done, said to him, "You know, the 535 of you people in Congress meet every two years. Well, Senator, there are some of us who think that it would be much better if just two of you met every 535 years."

Whether that story is true or not, that woman's advice has never been followed. Ever since 1789, Congress has met for two-year terms.

Each term of Congress lasts for two years, and each of those two-year terms is numbered consecutively (Article I, Section 2, Clause 1). Congress began its first term on March 4, 1789. That term ended two years later, on March 3, 1791. We are currently in the 117th term of Congress.

Members of Congress are **elected** during the first week of November in even-numbered years. Congressional elections are held on the first Tuesday after the first Monday in November in even-numbered years. Confusing! The date for the start of each new term was changed by the 20th Amendment in 1933. In an earlier era, the several months from election to March 4 allowed for delays in communicating election results, and it gave newly chosen lawmakers time to arrange their affairs and travel to Washington. The March date gave Congress less time to accomplish its work each year, however, and by the 1930s travel and communications were no longer an issue. The **start** of each new two-year term is now "noon of the 3rd day of January" of every odd-numbered year. So the scheduled term of the 117th Congress runs for two years—from noon on January 3, 2021, to noon on January 3, 2023.

Who Represents You in Congress?

The United States House of Representatives is divided into 435 congressional house districts, each with a population of about 760,000 individuals. Each district elects a representative to the House for a two-year term. Representatives are also called congressmen/congresswomen. Our district in California (which includes the entire city of Visalia) is represented by Devin Nunes. He is a Republican.

The United States Senate is made up of 100 senators. Each state elects two senators for staggered 6-year terms. Senators represent the entire state. They do not divide the state in half geographically, along party lines or on any other basis. California's two senators are Dianne Feinstein and Alex Padilla. Both are Democrats.

California, just like every other state, has two senators in the United States Senate, but because of our large population we have 52 representatives in the United States House of Representatives. California is the largest state in terms of population. We have around 39 million people. Wyoming, the smallest state, has around 580,000 people. This is less than the combined population of Fresno and Clovis.

So why do House reps serve a shorter term than senators? The House of Representatives is, as the name suggests, the representative, democratic part of Congress. It has always been elected directly by the people. Because its members are re-elected every two years, they are held directly accountable by the electorate (people) - that makes them a direct expression of the will of the people. The Founding Fathers wanted the House of Representatives to be more responsive to the public. If they don't do what the people want, they will be voted out of office in two years!

The Senate has always been smaller than the House, with a membership not proportional to the population. Its members have always had longer terms which were staggered to create continuity. Originally, senators weren't even elected—they were appointed by the state legislatures. All of this serves to create a Senate that is filled with statesmen who are removed from the direct pressures of the people and can take a serious look at the long-term effects of the legislation they consider.

A Bicameral Legislature in a Separated System

The most significant organizational feature of the United States Congress is that it is a bicameral legislature. Instead of just one house, there are two, a House of Representatives and a Senate. The two bodies are important in several significant ways. First, the number of representatives each state sends to the House is based on the population of each state, while each state has the same number of Senators (two). Recall that the Constitutional Convention delegates from the small states had originally wanted the number of representatives from each state to be equal in both houses while the large states wanted representation to be

based on population in both houses. It was the "Great Compromise" of the convention that established popularly based representation in the House and the equal representation of states in the Senate.

Another significant difference between the two houses is that House members serve only two years in between elections while Senators serve six. Additionally, each House member represents about the same amount of people (about 760,000), but Senators represent anywhere from 580,000 people (in the case of Wyoming) to 39 million people (in the case of California). Such enormous differences in the scale of representation can lead to significant differences in the ways House members and Senators approach their jobs.

Not only is the legislative branch divided into two houses, but the Constitution also establishes a "separated system," in which there is a distinct executive and judicial branch. In practice, this means that the legislature must share power, or exercise it jointly, with the other branches of government. To pass a law, for example, the Congress must first approve a bill by a majority vote in both houses and then send it to the president to be signed or vetoed. If the Congress overrides a veto (a two-thirds majority vote in both houses is required to do so), it must still rely on the executive branch to implement the policy or program established by the bill. If somebody challenges the law, the Supreme Court can rule the law unconstitutional.

Why 435 Members?

Why are there 435 members in the House of Representatives? The Constitution originally set the number at 65, leaving the future size of the House up to the Congress. The only condition was that the number of representatives was not to exceed one for every thirty-thousand people. As the nation grew and more states were added to the Union, the Congress expanded the number of House members to its current size of 435, where it has remained since 1912. Every ten years, a national census is conducted and the seats in the House are "reapportioned," allotting each state a proportion of seats roughly equal to its proportion of the entire national population.

According to the 1910 Census, the population of this nation was about 92 million people. With 435 representatives, there was a House member for every 210,000 people. In the 2020 Census, with a national population of 331 million, there is one representative for every 760,000 people. There is no reason that the size of the House cannot be expanded. All it would take is an act of Congress.

Representatives of the People

Senators and representatives are elected to represent the people. What does that really mean? The members of both houses cast hundreds of votes during each session of Congress. Many of those votes involve quite routine, relatively unimportant matters; for example, a bill to designate a week in May as National Wildflower Week. But many of those votes, including some on matters of organization and procedure, do involve questions of far reaching importance.

Therefore, no questions about the lawmaking branch can be more vital than these: How do the people's representatives represent the people? On what basis do they cast their votes? In broadest terms, each lawmaker has four voting options. He or she can vote as a delegate, a trustee, a partisan, or a politico.

1. Delegates act as agents of the people who elected them and so cast their votes accordingly.

Delegates see themselves as the agents of the people who elected them. They believe that they should discover what "the folks back home" think about an issue and vote that way. They are often willing to suppress their own views, ignore those of their party's leadership, and turn a deaf ear to the arguments of their colleagues and of special interests from outside their constituencies.

2. Trustees vote on issues based on merit; this means that they vote by following their own judgment.

Trustees believe that each question they face must be decided on its merits. Conscience and judgment are their guides. They reject the notion that they must act as robots or rubber stamps. Instead, they call issues as they see them, regardless of the views held by a majority of their constituents or by any of the other groups that seek to influence their decisions.

3. Partisans vote according to what their political party wants.

Partisans believe that they owe their first allegiance to their political party. They feel duty-bound to cast their votes in line with the party platform and the views of their party's leaders. Most studies of legislators' voting behavior indicate that partisanship is the leading factor influencing lawmakers' votes on most important questions.

4. Politicos try to combine elements of the other three as well as the political pressures of the time in casting their votes.

Politicos attempt to combine the basic elements of the delegate, trustee, and partisan roles. They try to balance these often conflicting factors: their own view of what is best for their constituents and/or the nation as a whole, the political facts of life, and the peculiar pressures of the moment.

Legislative Power of Congress

The primary function of Congress is to pass laws that all Americans must obey. Congress deals in a huge range of matters, from regulating television to passing a federal budget to voting on gun control. Many of the bills considered by Congress are suggested by the executive branch, but only Congress can introduce and create laws. All bills must be passed by a majority vote of both houses of Congress and then signed by the President to become law. Political parties, interest groups, and constituents all influence members of Congress in their vote choices, and members also compromise and negotiate with one another to reach agreements.

Non-Legislative Powers of Congress

- 1. Propose amendments to the Constitution.** Congress can propose an amendment by 2/3 vote of each house.
- 2. Declare war.** Only Congress has this power. The President DOES NOT.
- 3. Impeach and remove the President and other civil officials of the government, including judges.** The most important role of this power is that it serves as a deterrent to Presidents who would abuse their powers. The House has the power to impeach (accuse) and the Senate has the power to remove the President by convicting the President on the impeachment charges. Andrew Johnson and Bill Clinton were both impeached by the House, but both were acquitted by the Senate after their trials. Richard Nixon was never impeached, but he did resign under the threat of impeachment and possible removal.
- 4. Rule on presidential disability and reinstatement.** The 25th Amendment (Section 4) gives Congress, by a 2/3 vote, the power to transfer power to the VP if the president is disabled. The first major test of the amendment was a failure when President Reagan was shot and hospitalized in very serious condition, but Congress did not consider him to be "disabled".
- 5. Selection of President and Vice President if no electoral majority.** If no candidate receives at least 270 electoral votes, then we have to use the process outlined in the 12th Amendment. The President would be chosen by the House of Representatives where each state delegation would get ONE vote. The Senate would select the Vice-President where each senator would get one vote.