Season 26

Debating the 2025-2026 NCFCA Policy Resolution

Policy debaters always benefit by understanding the history of the year's topic of study. The purpose of this article is to give competitors some background on the resolution:

The United States Federal Government should significantly reform Congress.

Table of Contents

History & Background

NCFCA 2025-2026 Policy Resolution:

The United States Federal Government should significantly reform Congress.

When the Founders wrote the Constitution, they put the Legislative Branch, Congress, in Article I as the first order of business in describing how our nation's government would function. It was first for a reason: It was designed to be the center, though not the sole repository, of power in the federal government.

It often does not take that place in our minds and our speech. We often say things like "President X raised taxes." But the Constitution gives Congress the power to raise or lower taxes, and they can do it with (easier) or even without (more difficult) the President's agreement. The President on his own initiative or decision cannot raise or lower anyone's taxes by even $1.

In this chapter we will define the resolution, then trace some of the highlights of the background events of the topic throughout history. In the upcoming second chapter, we will survey issues and proposals for change that are common in the literature today.

Defining Key Terms

US Federal Government

This is the typical actor for the majority of policy debate resolutions. However, in this case, it will not be the federal government reforming a policy. It will be the federal government reforming part of the federal government.

The NCFCA web site[1] explains some of the topicality limitations they intended by this term. One of them is that constitutional amendments are forbidden, since they require ratification by the States, which are not part of the US federal government. There are lots of proposed reforms to the composition, behavior, size, etc. of Congress that would require a constitutional amendment to change. Examples include:
Voting representation for unrepresented non-state territories (DC, Puerto Rico, etc.)
Term limits, or any other change in the qualifications of who is eligible to serve in Congress.[2]
Repealing "direct election of Senators" (the 17th Amendment) is another idea we've done debates on in the past but cannot do under this resolution without a constitutional amendment.

Significantly reform

Merriam-Webster's Online Dictionary[3] gives, among others, two definitions of "significant":

- "having or likely to have influence or effect"
- "of a noticeably or measurably large amount"

If I were Affirmative, I would use the first one. If I were Negative, I'd use the second.

And it defines[4] "reform" among others as:

"to put or change into an improved form or condition"

This phrase is sure to conjure up the age-old policy debate struggle over the size of the reform versus the size of its effects.

---

[1] https://ncfca.org/wp-content/uploads/2025-26-Policy-Resolution-Background-Paper-Google-Docs.pdf
[2] Even the States cannot change the qualifications for Senators or Representatives in the Status Quo. ""In the absence of a properly passed constitutional amendment, allowing individual States to craft their own qualifications for Congress would thus erode the structure envisioned by the Framers." (Justice John Paul Stevens, decision of the Supreme Court in 1995 case of *US Term Limits v. Thornton*)
[3] https://www.merriam-webster.com/dictionary/significant
[4] https://www.merriam-webster.com/dictionary/reform

The size of the reform is measured by the size or scope of the policy in the Status Quo as the denominator of a fraction, with the size of change the Affirmative is making as the numerator. Borrowing a simple example from another resolution, a foreign aid policy that currently sends $1 million/day in aid, if it were cut by $10,000/day, would only be a 1% change in policy (10,000 / 1 million).

The AFF, however, might argue that this 1% change would reap massive benefits, and thus its effects make it topical. Classical debate theory would disagree with this analysis, arguing that the plan should be looked at "in a vacuum," that is, examining only the plan text itself as to whether the words of the plan meet the words of the resolution. We don't care what the effects are until we determine first whether the plan is topical. To do otherwise would make the plan's topicality dependent on its solvency, since if it doesn't achieve the benefits, it's also not a "significant" reform. And we shouldn't be wasting time debating solvency if the plan wasn't topical in the first place.

Others would argue that "considerable" is one definition of "significant," and considerable means "worth considering." A plan that accomplishes great things is worth considering, and therefore significant. You can debate this to the extent of your and the judge's patience.

Congress

Congress consists of the federal Senate and House of Representatives that meet in Washington, DC. They are part of, but not completely synonymous with, the "Legislative Branch." In other words, the Legislative Branch includes Congress, but it also includes other things as well, which are not part of Congress and whose reform would therefore not be topical. Examples include:

- The Library of Congress
- Congressional Research Service
- Congressional Budget Office

Potential Pitfalls

It will be tempting for Affirmatives to want to reform bills passed by Congress or policies enacted (or not yet enacted) by Congress rather than Congress itself. This would be every Affirmative debater's dream: Resolved that we should reform a policy enacted by Congress. Negatives will have to be watchful and forceful in their argumentation (and well briefed in their preparation) to keep Affirmatives limited. Affirmative plans must change something about Congress itself, not about the policies Congress enacts for the country or world outside.

Consider briefing "bright line" tests like "What is different about Congress after this plan is enacted?" or "Could we do this plan without affirming the resolution?" Is this plan asking Congress to "do something" or is it acting to "change Congress" itself?

Another challenge with plans to reform "how Congress operates," specifically for those wanting to obtain some specific legislative outcomes, is that acts of Congress are not binding on any future Congress. For example, Congress can vote today that "all future budgets must be balanced with income and expenditure." And then six months later, they can vote to approve a budget with a massive deficit, because their new vote is a vote to change their prior vote. No one can stop them from doing that. The only recourse is the voters back home, if they disapprove of this backtracking on their commitment. Congress voting to tell itself to balance the budget in the future will not, in any way, ensure that budgets get balanced. And that's a reform of a policy (budget policy), not of Congress itself.

The House of Representatives – Overview & Qualifications

The US House of Representatives was designed by the Founders to be the part of the federal government closest to "the people." Its members were intended to be the only part of the three branches of government that were directly elected by the citizenry.[5] And their term is only for two years. The Founders expected that the House would have its finger on the pulse of the people and react quickly and responsively to the popular will. They also expected that its reactivity would be tempered, cooled, and checked by the powers of the Senate and the President.

Members of the House must be elected "by the People of the several States."[6] This means territories that are not "States" cannot send anyone to Washington as an official member of that body. This leaves numerous US citizens without any form of representation in Congress, such as in the District of Columbia, Puerto Rico, Guam, and other territories. The Status Quo has worked around this problem by creating non-voting "delegates" who are elected in the territories and attend sessions of the House, their committees (where they can vote[7]), and other functions. Any change to give these delegates official voting capability would require a constitutional amendment.

---

[5] Federal judges are appointed by the President. The President is elected by the Electoral College, not the popular vote. And the Senate was originally, until the 17th Amendment, elected by the States' Legislatures, not the citizens.
[6] Constitution, Article I, Sec. 2
[7] Because congressional committees are not mentioned in, required by, nor regulated by the Constitution.

Representatives are also required to be at least 25 years old. They can be native born or immigrants, but must have had citizenship for at least seven years. And they must be residents of the State they are representing. These qualifications are specified in Article 1 Sec. 2 and cannot be changed by debaters in Affirmative plans.

The presiding officer is the Speaker[8] of the House, who is chosen by and from among the members themselves. Since the Speaker is an elected Representative from one of the states, he or she is a voting member of the body and can vote in all cases on pending questions.

The House is assigned some unique responsibilities by the Constitution. First, they are responsible for considering the impeachment of federal officials, including the President, but also including federal judges and Cabinet appointees. Impeachment is like an indictment, where a decision is made as to whether there is enough evidence to go to trial, which will be held in the Senate.

Second, Art. 1 Sec. 7 requires all federal legislation that raises revenue to originate in the House rather than the Senate. The Founders believed it was a prudent measure to connect raising of taxes to the chamber that was directly elected by the people, given that "taxation without representation" had been one of the rallying cries that had ignited the recent Revolution.

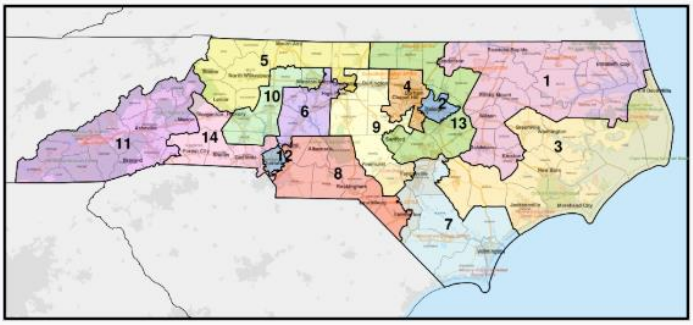
The House of Representatives – Apportionment

House members are apportioned to the states based on each state's population, provided that every state, no matter how small its population, is entitled to a minimum of one representative. The Founders from big population states (then like Virginia and Pennsylvania) naturally favored a legislature that would consist of lawmakers in proportion to a state's population. The House fulfils their wish. Small state Founders, of course, feared their interests would be overwhelmed, since they would get outvoted on everything that came up. The Senate was the answer to their concerns, where each state is represented equally.

The original design of the House was for each State to have representation that would "not exceed one for every thirty thousand" people. Congress has the power to set the level of representation or size of the House as long as they don't have more than one for every thirty thousand people. No worries, we are nowhere near that. The House currently has 435 members, while the US population is around 340 million, for an average of around 781,000 persons per

[8] The unusual term "Speaker" for the presiding officer (rather than "president" or "chairman") derives from the British Parliament's House of Commons. In the Commons, one of the members was elected as the chamber's spokesman to "speak" to the king to deliver to him the official decrees and decisions of that House.

representative. Keeping in mind that the original design of the House was for it to be in touch with the people, it is possible that this goal can no longer be met at the current ratio.



North Carolina sends 14 members to the House of Representatives. As required by the Uniform Congressional District Act, they are elected separately in each of the districts labeled on the map above. The NC state legislature draws the lines that define the 14 congressional districts.

Note that the US Constitution imagines the members of the legislature representing areas of land where people live. They are (were) not (officially) representatives of parties nor ideologies. The Founders wanted to think of political interests in terms of regions and land rather than political parties: Farms versus cities, North versus South, small states versus large states, etc. A member of the House is, theoretically, representing all of the citizens, whether of his party or ideology or not, who live in the land area of his district. Of course, all the members of his state or district who disagree with his political views would argue that he does NOT, in fact, represent them, since he will vote the exact opposite of the way they would want him to, contrary to their interests.

Interesting side note: The Constitution only requires a House member to be a resident of the "state" he or she represents. Nothing requires them to actually live in the "district" that elected them. There are several Congressmen currently serving who live outside the boundaries of their district (and who thus are not eligible to vote for themselves). Changing this would require a constitutional amendment.

The Uniform Congressional District Act of 1967 requires the States to elect all members of their House delegation from single member geographic districts. This, of course, doesn't matter in small population states like Wyoming, which elect their one and only representative in an at-large election across the entire state. But prior to 1967, some larger states chose House members in at-large elections, sometimes alongside other members chosen in smaller congressional districts within the state. There are advantages and disadvantages to this requirement, which we will explore in the next chapter on proposals for reform, but let's note here that this is something the federal government (and thus Affirmative debaters) could change with simple legislation.

The Constitution requires the federal government to conduct a census every 10 years, with the results to determine the apportionment of seats in the House to the states. Originally the size of the House was expected to grow as the population of the country grew, but this was ultimately

realized to be an impossible goal. In 1911, Congress fixed the size of the House at its current number.

To keep the representation of each state proportional to its population, the fixed number of 435 seats must be reapportioned after each census. After giving each state one representative, the remaining seats must be allocated using one of the possible mathematical formulas for the closest possible fit of seats to state populations. States that have grown in population since the last census will gain seats at the expense of states that have either not grown as fast, or have not grown at all, or have shrunk in population. The fixed number of 435 means that the census creates a zero-sum game: One state's gain is another state's loss. For example, in the 1920 election, the state of New York sent 43 representatives to the House, while Florida sent four. But times changed. After adjustments made during each of 10 following census enumerations, the relative population, and resulting representation, changed significantly. In the 2024 election, New York elected 26 representatives, while Florida elected 28. Many other states saw similar gains and losses and each census brings further adjustments.

Cartoon of a state senate districting map approved by Massachusetts Gov. Elbridge Gerry in 1812. Its odd shape, resembling a salamander, came to be known as a "Gerrymander."

Every 10 years after the census, in the states whose representation count is changed by reapportionment, it is almost guaranteed that a political fight will break out over drawing the new district lines. That job falls to the state legislature, which will attempt to draw the district lines in ways that benefit the political party affiliation of the legislators that are drawing them.

Federal courts are often dragged into the controversy as they try to assess whether the rights of voters, particularly ethnic minorities but also political minorities, are being infringed by the proposed congressional district maps. Many believe that the politically motivated drawing of strange district boundary lines, or "gerrymandering," is a threat to the integrity of democratic representation and the rights of citizens for their votes to equally count. On its face, it would appear that the politicians are choosing the voters rather than the voters choosing the politicians. In the following chapter we will describe some possible solutions to this concern.

The House of Representatives – Leadership

We mentioned earlier the presiding officer known as the Speaker of the House. Whenever the House convenes its first session after new members arrive in Washington in January of the year following the November elections, their first order of business is electing the Speaker. Since the position carries great power and influence,[9] the party that holds the majority in the House will always have the motivation and the ability to elect one of its own[10] to that post.

What they may lack in accomplishing that task is unity. The majority party must coalesce around a single member whose ideology and temperament can get enough of the majority party members' votes to support them against all of the opposing votes that will uniformly be cast by the other party. For example, if the Blue Party has 235 seats in the House, and the Red Party has 200 seats, the Blue Party must ensure that at least 218 of their party members will vote for their Speaker candidate, else he will be defeated when the House conducts its Speaker election, since all 200 of the Red Party (and 17 of his own party) will vote against him.

Sometimes the majority party has trouble finding a candidate that is supported by 218 of its own members, especially when their majority in the House isn't much larger than 218. For example, if the Blue Party has 220 seats in the House, and 3 of those members disagree with their party's prospective nominee, they can block the nomination. This problem of a divisive intra-party nomination process for Speaker has flared up several times recently in the modern House.

Each of the two major political parties also have their own internal leadership. They each have leadership positions designated as follows:

Majority Leader — Sets the legislative agenda (what bills will take priority on the calendar), because his party has the majority of the votes in the House. Leading spokesperson for their party's position on the House floor.

Majority Whip — Also known as "Assistant Majority Leader," their job is to "whip" the members of his party into line to round up votes for the party's legislative agenda.

Minority Leader — Leads the minority party in the positions they will take on pending legislation and leading spokesperson for their party's position on the House floor.

---

[9] And even more: the Speaker of the House is next in line for the presidency, if the President and Vice President should both be unavailable. No Speaker has ever been elevated to the presidency that way, but there have been some close calls.

[10] It should be noted, although it has never happened, that the Constitution does not require the Speaker to actually be elected from among the members of the House.

Minority Whip Also known as Assistant Minority Leader. Rounds up votes from the party members to align them on the party's position on legislation.

Each of these positions is elected by the House members in a private caucus of only their party. None of them are based on any constitutional text and they do not exercise any power regulated by that founding document. The members chosen for these roles often are considered leading candidates for Speaker when the post becomes open.

Committees & Subcommittees

The House and Senate do much of the hard work of crafting legislation, not on the floor of the chamber, but in meetings of congressional committees and subcommittees. Committees review proposed legislation, write amendments, and either approve it for consideration by the full chamber or reject it to the dust bin of history without ever getting a vote on the floor. They are divided up according to subject matter, such that bills are sent to the committee most closely associated to their subject matter. Subcomittees are made up of a subset of the full committee for consideration of bills relating to the very specific area handled by that subcommittee.

Committees and subcommittees will have a majority of members from the party that controls a majority in the chamber. The Chair of the committee will be of the majority party. The most senior member of the minority party (who would be the chair if his party had the majority) is referred to as the "Ranking Member."

Committees also hold hearings to take testimony from witnesses on matters of public interest. This can involve bringing in outside experts to give their opinions. It can also involve calling government officials (for example, military generals or regulatory agency officials) as Congress exercises its oversight responsibility over the other branches. Committees tend to investigate things that are of interest to the majority party and ignore issues of concern to the minority. They often call a majority of their witnesses who will either agree with the ideology of the majority or will be individuals under investigation or criticism by the majority party to embarrass them publicly. The minority party, however, is able to get witnesses onto the agenda to offer opposing points of view.

Committees have the power to subpoena[11] witnesses and evidence to be brought into their hearings. Witnesses who refuse to show up or refuse to provide the required evidence can be found in contempt of Congress and punished with criminal penalties. As in all testimony demanded of witnesses by any agent of government, the witnesses are required to show up but are not required to make any statements that could incriminate them, as they are protected by the 5th Amendment.

Frank "Lefty" Rosenthal on Sept. 7, 1961, took the 5th Amendment and refused to answer when asked about his alleged involvement in illegal gambling by the Senate Rackets Subcommittee

Congress sometimes creates "select" committees often on a temporary basis. These are committees commissioned to investigate and report to Congress on some specific issue that is temporary or urgent in nature and may not fall under the purview of any existing committee.

https://www.congress.gov/legislative-process/committee-consideration

The Senate – Overview & Qualifications

The Constitution originally mandated the Senators to be chosen by the legislatures of the states, rather than directly by the citizens. The Founders' intent was to have the state governments themselves represented inside the national government as a check on federal power that could encroach on the prerogatives of the states.

For example, in the famous "Lincoln-Douglas" debates, many have forgotten that what they were competing for was, not the presidency, but a seat in the US Senate to represent the state of Illinois. And the voters to whom they were appealing in the audience could not even vote for them! Lincoln and Douglas were trying to win the favor of the people in hopes the citizens would pressure their representatives in the Illinois State Legislature to elect them to the US Senate.

[11] SUBPOENA: "a writ commanding a person designated in it to appear in court under a penalty for failure" – Merriam Webster.

The Founders intentionally or unintentionally ignored the possibility of political parties and the risk that they would intrude into this process (or many other processes, for that matter). Since all but one state[12] has a bicameral (two-house) legislature, the rise of political parties created a difficult problem that sometimes left Senate seats vacant. Imagine the problem when a state's House has a majority of one party, while the state's Senate has a majority of the other party. They might never agree on who to elect as their Senator. Congress attempted to remedy this in 1866 with legislation instructing the states to use joint sessions of the legislature (where the state House and state Senate meet as one body and all vote together) to resolve conflicted Senate elections. But even this failed to solve the problem. For example, Delaware had one of its Senate seats vacant for four years from 1899 to 1903.

There were also allegations of corruption and bribery being involved in the negotiations between Senate candidates and state legislators. Recognizing these problems, the Progressive movement in the early 20th century moved for and achieved the passage of the 17th Amendment in 1913 when, contrary to self-interest, the 36th state legislature voted to ratify the Amendment and give up its own power to choose Senators.[13] Senators in all the states must now be elected by the voters in at-large statewide elections. Since this is part of the Constitution, it cannot be modified by Affirmative debate plans this year.

Senators' terms last for six years, but they are staggered so that about a third of the Senate is up for election at any given two-year election cycle. The six-year term, three times the length of a Representative's term, was given to allow the Senators to be more detached, less driven by fads and popular hot-headed fancy, allowing cooler heads to prevail in the management of public policy.

The qualifications of Senators remain today as they were set by the Founders. Senators must be at least 30 years old, have been a US citizen for at least nine years, and live in the state they represent. Changing these would require constitutional amendment. And Article V of the Constitution mandates that not even a constitutional amendment can change the equal representation of each state in the Senate.

The presiding officer of the Senate is the Vice President of the United States. Until a couple generations ago, the Vice President took an active role in doing just that, holding the gavel and

[12] Nebraska is the exception.

[13] And, if you're keeping score, Rhode Island happily, though only ceremonially with no legislative effect, became the 41st state to ratify it in 2014. As part of the Constitution for over 100 years, it was binding on the States all this time whether the stragglers ever ratify it or not. Massachusetts and Connecticut ratified the Bill of Rights (Amendments 1-10) in 1939, about 150 years after they took effect.

overseeing sessions on the Senate floor. In the last couple generations, this is rarely any longer the case. The Senate (under the direction of its majority party) chooses a President Pro Tempore who presides over the Senate when the VP is absent, which is most of the time.

The Constitution gives the Vice President the right to vote in the Senate only on the rare occasion when a tie vote is occurring. This limitation is because the Vice President is not elected to represent any state (unlike the Speaker of the House, who was elected by the people of his state to represent them, and thus should vote on their behalf). Political leaders keep a close eye on the Senate and how votes are lining up for important legislation on the floor and will have the Vice President close on hand to rush in and cast the deciding vote when needed.

Senate Constitutional Duties

The Senate has constitutional responsibility (Article II Section 2 Clause 2) to confirm major Executive Branch appointments and federal judges, including the Supreme Court. Presidential nominees to the Cabinet (the Secretaries of major departments in the Executive Branch like the Secretary of State, Secretary of Defense, etc.) require the approval of the majority of the Senate. The Senate must also approve appointments of ambassadors to foreign countries.

The Senate has committees that interview the nominees to evaluate their fitness for the high offices to which the President wants to appoint them, before they can proceed to a vote before the full Senate. The nominee for Secretary of Agriculture or Ambassador to Botswana may not attract much attention. But these committee hearings have been known to become rancorous and descend into partisan brawls when the stakes are high, as for Supreme Court seats. Televised hearings bring out salacious details, slanderous allegations, gossip and innuendo as the minority Senators try to derail the nomination of a judge of the opposite party.

Chairman Joe Biden and the Senate Judiciary Committee interrogate Judge Clarence Thomas about sexual harassment allegations during his confirmation hearings for his nomination to the Supreme Court. 11 Oct 1991

Political games may be played with the process as well. For example, in the spring of 2016, following the death of Supreme Court Justice Antonin Scalia, Pres. Barack Obama nominated Judge Merrick Garland to fill the vacancy. Senate Majority Leader Mitch McConnell and the Republican members of the Senate Judiciary Committee all declared that they would not schedule a committee hearing to even consider Garland's nomination. The presidential elections were eight months away, and the Republican Senators expressed the desire to wait until after a new (possibly Republican) president would be elected, in hopes of getting a different nominee of their own party to fill the vacancy. They argued that being an election year, the voters should decide the fate of the Court seat by their decision in the November elections. As it turned out, the gambit worked, as Donald Trump was elected and he appointed a Republican to fill the seat.

The same Senators changed their viewpoint four years later when a Supreme Court seat opened up in 2020, a few months before the presidential election. In October, just a month before the election, they agreed to hold hearings and confirm Trump's nominee Amy Coney Barrett to fill a vacancy, rather than "let the voters decide" in a few weeks.

Ratification of treaties signed by the President is also a critical constitutional duty of the Senate (Art II Sec 2). Treaties, according to the Constitution (Article VI), become the supreme law of the land when ratified by the Senate, superceding anything else to the contrary, so the duty to examine them is critical. A 2/3 vote of the Senate is required to ratify treaties.

The Senate is also constitutionally mandated to conduct trials of impeached federal officials, including, but not limited to, the President. The Senate has conducted four trials of impeached Presidents (Andrew Johnson, Bill Clinton, and Donald Trump twice), but has yet to find one guilty by a 2/3 vote to remove them from office. Removal from office and disqualification from future office are the only punishments the Senate can impose by a vote of guilty. Historically, including the four mentioned already, there have been a total of 21 impeachment trials in the US Senate, of which eight (all of them federal judges) were found guilty and removed from office.

Rules, Ethics & Accountability

Article I, Section 6, Clause 1:

> *The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.*

Privileged from Arrest

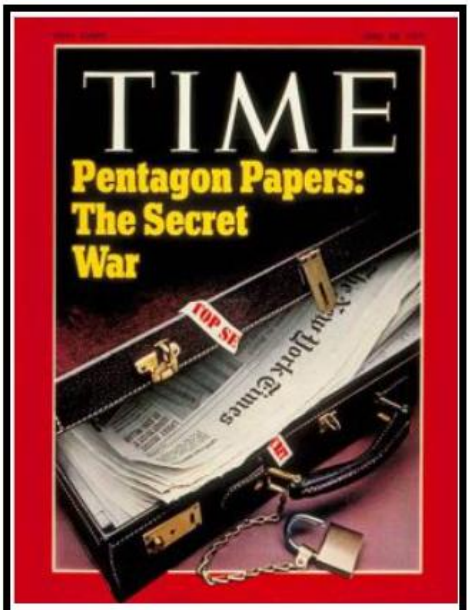
The protection against being arrested, except for treason, felony and breach of the peace, is a lot more limited than it sounds. It does not guarantee members of Congress immunity from any and all arrests for crimes at any time. The privilege exists only when Congress is in session, and as it relates to their travel to and from the Capitol and their actions while they are participating in the deliberations of their chamber. And, while it lists three specific criminal charges that are exempted from the privilege, in practice, the US Supreme Court (*Williamson v. United States*, 1908) has ruled that these three encompass all criminal charges (based on the commonly understood use of those terms in the 1700's and in British Parliamentary custom). A congressman speeding at 100 mph on the freeway to get to the Capitol in time for an important vote could, indeed, be stopped by police and get a ticket, and the Constitution would not excuse him.

What protection, then, does this privilege against arrest provide? The arrests under consideration are for civil cases (lawsuits, disputes between individuals) rather than criminal cases. For example, back in the days when debtors' prisons existed, a person could be arrested for failure to pay their bills. But arrests in civil cases don't really exist any more in this country, so this clause, while sounding pretty powerful, is now mostly a dead letter. Other forms of legal process, like getting served with a subpoena or being served with papers for a divorce or lawsuit, can legally be performed on a member of Congress without exemption by the Constitution.

The "Speech and Debate" clause

The Founders knew from English history that things said in Parliament had a way of getting out into the public domain and into the ears of the King. The Speaker of the House (of Commons) often reported to the King details about their proceedings. While the King could not sit in

Parliament, if he didn't like what he heard said about him or his policies, he could always round up the offending legislators later on and put a stop to their opposition. And their lives.



The revelation of the Pentagon Papers in 1971 led to a test of the "Speech & Debate Clause" of the Constutition in the case of *Gravel v. U.S.*

"Being in [the English] parliament during the Middle Ages … could be dangerous work. Eight speakers of the House of Commons were beheaded or murdered between 1399 and 1535. Many more regular members of the Commons were executed or imprisoned in the Tower of London. Free speech, particularly during parliamentary sessions, was not guaranteed."[14]

Art. 1 Sec. 6 of the Constitution guarantees that no one can file any kind of legal action, civil or criminal, against any member of Congress for anything they say on the floor of their chamber. They can't get hit with a lawsuit for slander or any other similar legal response. They can't be prosecuted for any kind of crime that their words might conceivably commit. This guarantees them the independence to be able to freely debate legislation without reservation that their speech will somehow create backlash from political opponents weaponizing the legal system against them. The only accountability members of Congress should fear for their speech on the floor is from their voters back home.

Note carefully, however, that this does not apply to any and all speeches made by members of Congress. If a congressman gives a speech back in his home state (not on the floor of the House) and slanders someone, falsely damaging their reputation, he can indeed be sued in civil court for the harm caused to the slander victim.

Two interesting questions arising from the Speech and Debate Clause were presented in the 1972 Supreme Court case of *Gravel v. U.S.* In 1971, Alaska Senator Mike Gravel obtained a copy of some documents that came to be known as "The Pentagon Papers." They contained a "top secret" study funded by the Defense Department and their exposure led to astonishing revelations previously unknown to Congress and the public. They revealed deceptions and

[14] https://history.house.gov/Blog/Detail/15032391986 (brackets added)

coverups at the highest levels regarding US actions in the Vietnam War during the administration of Pres. Lyndon B. Johnson.

Sen. Gravel decided that the public needed to know about the contents of the Pentagon Papers. He tried to read them into the Congressional Record from the floor of the Senate, but couldn't because a quorum was not available. So instead, as chairman of the Senate Subcommittee on Public Buildings & Grounds (!), he convened a meeting of the subcommitte and started reading the Papers into the record there.

Despite the fact that the Papers covered events during the previous administration, the Nixon Administration nonetheless took the position that the breach of secrecy was a grave security threat and tried to stop public exposure of them and to prosecute those involved in their exposure. Prosecutors convened a federal grand jury that subpoenaed an aide to Sen. Gravel to testify about his role in obtaining the secret papers. Sen. Gravel argued that the Speech & Debate Clause prohibited this subpoena against his aide, since the aide was acting on behalf of and in concert with the Senator on something the Senator was doing that was protected by the Constitution.

In parallel, Sen. Gravel also contracted with a book publisher to publish in their entirety (7,000 pages!) the text of the Pentagon Papers. When they did, federal law enforcement and Defense Dept. agents started going after them for illegally revealing the classified information.

These two events posed two questions for the Supreme Court to resolve when the case finally made its way to them.

1. Could the Senate aide claim the protections of the Speech & Debate Clause when carrying out the instructions and intentions of Sen. Gravel in obtaining the material for his statements into the record of the subcommittee? The Court ruled "YES" – the aide's actions were covered by that constitutional protection. The aide could not be subpoenaed to testify nor prosecuted for his actions.

2. Did Sen. Gravel benefit from the protections of the Speech & Debate Clause when he contracted with the book publisher? The Court ruled "NO" – because the private publisher was not part of the Senator's speech in the context of any congressional activity.[15]

[15] Ultimately, after extensive harassment and investigation by federal authorities, the publisher was never actually charged with a crime for publishing the papers. Nor was Sen. Gravel.

Gravel v. U.S. was decided by 5-4 decision in 1972. Keep in mind that the Supreme Court is part of the "US Federal Government" named as the agency in your resolution.

Discipline

"Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."
– Article 1 Section 5 Clause 2

The House and Senate have the power, with a 2/3 majority vote, to expel any of their members for behavior they consider rising to a level meriting that severe response. The Constitution does not define what offenses or behaviors might be considered as such. The Founders were aware of a similar rule in the British House of Commons, which only required a majority vote and was commonly abused to punish members with unpopular opinions or religious beliefs.

The Founders believed the 2/3 majority requirement would overcome the temptation to use expulsion frivolously, and it appears they were successful. In US history, only six members have been expelled from the House of Representatives, and three of those were in 1861 for members who joined the forces of the Confederacy and fought against the US government. The Senate has expelled a total of 15 members in its history, of which 14 were for joining the Confederacy during the Civil War.[16]

Congress also has the power to impose discipline less extreme than full expulsion. In the House, they can also issue a censure, which is read out loud in the presence of the offender, who is required to stand in the well of the chamber to hear it. They can also issue the lesser discipline of a reprimand (no need to come down to the front and get chewed out verbally), and they can even issue a monetary fine. Representatives can also be disciplined by having their membership or chairmanship of a committee or subcommittee taken away.

The Senate can also expel members and has similar processes but sometimes uses different terminology for a discipline less than expulsion. They use multiple words interchangeably for censure, reprimand, condemn, denounce, etc.

There are two other disciplinary measures the House or Senate could take on its members which, while legal, are unlikely to be used. One is to expel a member for infractions committed before the member was elected. This runs against the general principle that the voters should be the

[16] Although there were several others who were in process of being considered for expulsion and might well have been, but resigned before the process was completed.

judges of the severity of the candidate's actions. If a candidate's evil behavior before the election doesn't bother the voters, then the members of his chamber will be reluctant to intervene. The second is imprisonment. Yes, although it's unlikely to happen, members of Congress can vote to send one of their members to jail for violating a rule.

"As we have already said, the Constitution expressly empowers each House to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order."[17]

Both houses also have the power of "exclusion." This refers to their ability to judge whether an individual who was (or claims to have been) elected to office is duly elected and qualified to take their seat (Art I Sec 5 Clause 1). It's not a disciplinary issue because it's not (supposed to be) a punishment for wrongdoing while acting as a member, but rather a judgment about whether the erstwhile member truly meets the constitutional qualifications of office, was properly elected by the voters of his district, and is eligible to be sworn in.

Ethical Standards

Each house of Congress is responsible for policing itself, and there is no outside judge of their ethics other than the voters. While many believe "Congressional Ethics" is an oxymoron, there have been at least some attempts to construct guardrails to keep members of Congress honest.

Until the 1960's, the House handled ethical concerns sparingly and on a case-by-case basis.

"Events of the 1960s, including the investigation of Representative Adam Clayton Powell for alleged misuse of Education and Labor Committee funds, prompted the creation of a permanent ethics committee and the writing of a Code of Conduct for Members, officers, and staff of the House.

[17] Supreme Court Justice Samuel Miller, decision of the Court in *Kilbourn v. Thompson* 1880.

Begun as a select committee in the 89th Congress (1965-1966), the House created a 12-member panel to "recommend to the House … such … rules or regulations … necessary or desirable to insure proper standards of conduct by Members of the House and by officers and employees of the House, in the performance of their duties and the discharge of their responsibilities." Acting on the select committee's recommendations, the House created a permanent Committee on Standards of Official Conduct in the 90th Congress (1967-1968). In the 112th Congress (2011-2012), the committee was renamed the Committee on Ethics."[18]

Exclusion or Expulsion? The Complex Case of Rep. Adam Clayton Powell

"While exclusion and expulsion both bar an individual from holding a seat in Congress, the two actions exist for different purposes and occur at different times. For example, in Powell v. McCormack, the Court explored the constitutionality of Representative Adam Clayton Powell's exclusion from the House of Representatives. The impetus for the case was an investigation of expenditures authorized by Powell during the 89th Congress, which concluded that, as chairman of a House committee, the Member had engaged in improper activities, including deceiving House authorities with regard to travel expenses and directing illegal payments to his wife. The House took no formal action with regard to those findings during that Congress but refused to administer the oath of office to Powell at the start of the 90th Congress the following year. Subsequently, a Select Committee, which was appointed at the outset of the 90th Congress to determine Powell's eligibility to be seated as a Member, recommended that Powell be sworn into office as a Member and subsequently disciplined. However, the House rejected that recommendation and instead adopted a resolution that would exclude Powell, which it approved by a vote of 307 to 116.

Rep. Adam Clayton Powell, Jr. 1908-1972

Powell sued to be reinstated, and on appeal the Supreme Court held that Powell's exclusion was unconstitutional, explaining that exclusion and expulsion are not fungible proceedings. While the Court recognized that the Constitution grants broad authority to each of the houses of Congress regarding expulsion and other discipline, it explained that Congress's authority regarding exclusion was limited to the enumerated qualifications requirements. Because of the distinct nature of each action, the Court emphasized that the vote to exclude Powell, despite exceeding a two-thirds majority, could not substitute for his expulsion." -- *https://constitution.congress.gov/browse/essay/artI-S5-C2-2-1/ALDE_00013580/*

Powell ended up regaining his seat in Congress following the Court ruling in 1969. The following year, he lost in the primaries in his run for re-election to a challenger, Charles Rangel, who took over the seat after winning the general election in November, 1970.

"Under House rules, the [Ethics] Committee has the jurisdiction to administer travel, gift, financial disclosure, outside income, and other regulations; advise members and staff; issue advisory opinions and investigate potential ethics violations."[19]

In its list of rules of the House, one of them is Rule XXIII "Official Code of Conduct."[20] It contains 22 rules, many with subcomponents and multiple items underneath, defining rules

[18] https://www.congress.gov/crs-product/98-15#:~:text=Prior%20to%20the%20creation%20of,and%20discipline%20Members%20and%20staff.

[19] (brackets added) https://ethics.house.gov/committee-history/#:~:text=In%201977%2C%20the%20House%20adopted%20the%20first,gifts%2C%20the%20franking%20privilege%20and%20foreign%20travel.&text=In%202008%2C%20the%20House%20created%20the%20Office,submit%20recommendations%20to%20the%20Committee%20on%20Ethics.

[20] You can find it here: https://ethics.house.gov/publications/code-official-conduct/

Representatives must comply with. The Senate has one as well[21] along with its own ethics committee. Before writing any Affirmative case to make things illegal for members of Congress, check to make sure they're not already against the rules. These rules cover things like:

- Gifts given to members while in office
- Compensation for outside work and limits on outside employment
- Promoting legislation benefiting one's own business interests
- Reimbursement for office and travel expenses
- Separating campaign activities from congressional duties
- Employment of staff
- Interactions with lobbyists
- Financial disclosure

The Filibuster

The Senate has a special rule different from the House regarding limitation of debate. While the House has limits on speaking privileges, in the Senate, a Senator can talk endlessly on any topic until 3/5 of the members can be found to support a motion for "cloture." This practice, known as the "filibuster," is used to delay or derail debate on legislation opposed by a minority.

The parliamentary rule allowing this behavior in the Senate is not mentioned anywhere in the Constitution. It came about by an accident of history in 1806 when Vice President Aaron Burr, as presiding officer of the Senate, suggested removing a parliamentary motion known as the "Previous Question" from the Senate rules, without realizing all the effects it would have. After a few years, Senators figured out the implications and started using the loophole to talk to death bills they opposed, with no parliamentary motion available to stop them.

There are no limits on the topics the filibustering Senator may discuss, and they need not be germane to the actual bill under discussion. Senators have been known to read their favorite recipes or lengthy passages from Shakespeare, just to fill the time. The motion to close debate was finally resurrected in 1917, but it required a 2/3 vote to pass. It's hard to get 2/3 of the Senate to agree on what day of the week it is, much less anything else, so it remained very difficult to stop longwinded Senators. During the civil rights movement of the 1950's-1960's, Southern Senators opposed to such reforms were known for resorting to the filibuster to block

[21] You can find it here: https://www.ethics.senate.gov/public/_cache/files/3507e6ae-2525-40ac-9ec8-7c6dbfe35933/2021---red-book---the-senate-code-of-official-conduct.pdf

such legislation. For example, Sen. Strom Thurmond of South Carolina filibustered against the Civil Rights Act of 1957 for over 24 hours.

A rule change in 1972 allowed for the business of the Senate to continue even if one piece of legislation was subject to filibuster. This in effect created a "silent filibuster." A Senator who opposes a measure need only notify the leadership that he intends to filibuster it, and it is put aside until and unless a cloture vote brings it back. He doesn't actually have to speak continuously to maintain a filibuster on the Senate floor. Despite the availability of the silent filibuster, there is still no limit on the length of speeches, as demonstrated by New Jersey Sen. Cory Booker, who on March 31, 2025, began a 25 hour speech that set a new record for Senate verbosity.

In 1975, the Senate reduced the threshold for cloture to 3/5 of the members, which means that effectively legislation requires 60 votes to pass the Senate, rather than the simple majority of 51 votes. Additional reforms have also been done to the Senate rules that have ended the use of the filibuster on confirmation of federal judge nominations (including the Supreme Court) and on "reconciliation" bills, which pertain to modifications to the federal budget.

Elections

"*The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators*[22]*."*
– US Constitution, Article 1 Sec. 4

States and Congress both have jurisdiction over "time, place and manner" for holding congressional elections. States normally make such laws, but Congress has power to override them with federal legislation. While neither the States nor Congress may change the qualifications for office (that would require a constitutional amendment), other changes can be made by normal legislation. There are numerous details of how elections are conducted that can be modified, and we will explore them in the next chapter on proposals for change.

"The Supreme Court has interpreted the Elections Clause expansively, enabling states to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns."[23]

"The full sweep of the history of the Clause—from its drafting to the current day—tells a clear story. It was understood from the start to give Congress extraordinary power over federal elections. Some derided it for this reason; others welcomed that federal oversight; all took it for granted. It was an important, if narrow, aspect of the Constitution's federalist clockwork machinery. From the start, the Elections Clause was motivated by great and still-relevant constitutional goals: to guarantee and amplify basic democratic rights by ensuring fair and accurate representation, and by precluding tactics that could be used by incumbent factions and parties to blunt representation and exclude voters."[24]

The first time Congress enacted any legislation under this constitutional authority was in 1842, in which they required the use of contiguous single-member districts for the election of Representatives.[25] During Reconstruction after the Civil War (1865-1877), Congress enacted

---

[22] The restriction against modifying the place of "chusing" Senators is no longer applicable since the passage of the 17th Amendment took the job of electing Senators out of the hands of state legislators.
[23] https://constitution.congress.gov/browse/essay/artI-S4-C1-2/ALDE_00013577/
[24] Eliza Sweren-Becker and Michael Waldman 2021 WASHINGTON LAW REVIEW https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=5183&context=wlr
[25] Some states simply ignored the regulation and continued having at-large elections for Representatives notwithstanding. Later congressional legislation carved out exceptions that allowed some at-large elections. The practice was finally ended for good after the 1967 Uniform Congressional District Act.

legislation to uphold the rights of formerly enslaved Blacks to vote, based on rights promised in the 15th Amendment. The federal government, at least nominally, viewed itself as responsible for ensuring the integrity of elections and overcoming prejudice, state interference, vigilante violence, or other impediments to voting rights. The 15th Amendment expanded the scope of responsibility taken by the federal government in accordance with the "time, place and manner" clause of Art I Sec 4.

Campaigns

Along with regulating the manner in which elections are held, Congress has also taken on the job of regulating some aspects of political campaigns that lead up to elections. The need for money to finance the travel and advertising associated with campaigns for federal office has dramatically increased over the decades, to a point far beyond anything the Founders imagined. For one thing, keep in mind that the number of voters each Representative or Senator is tasked with representing has exponentially grown since the founding of the Republic. It costs a lot of money to reach millions of voters with a campaign message. Also, since the role of the federal government is far higher in today's world than originally, the stakes are much higher, increasing the "value" of a House or Senate seat to being worth spending a lot of money on by the various interests who would benefit from the influence it brings.

Congress began intervening in campaign financing in 1907 when it passed the Tillman Act, which barred national banks and corporations from donating to federal election campaigns. Other regulations have been enacted over the years, including the Federal Election Campaign Act of 1971, which limits contributions by individuals and political organizations to $3,300 in a primary election and another $3,300 in the general election. Other entities have been added to the list of those banned from contributing to election campaigns, to include labor unions and foreign citizens.

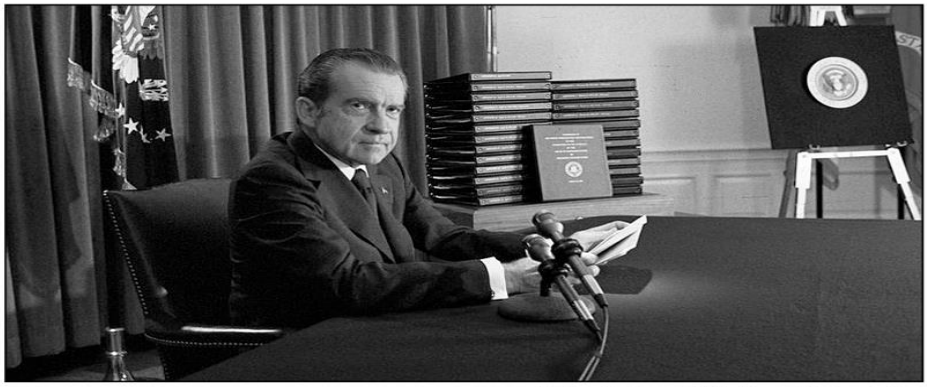
Of course, this led to numerous efforts to find other ways to promote candidates without donating directly to their campaign. And this led to further legislation to defeat those efforts. Consider for example the effects of:
- Wealthy candidates spending large amounts of their own (not donated) money on a campaign
- Limits on the total a candidate can spend on a campaign, regardless of the source of funds
- Restrictions on "independent" advocacy, where a person or entity not officially part of the candidate's campaign spends money to advocate for the candidate or against his opponent. For example, a "Political Action Committee" (PAC) might raise money from individuals or corporations and then spend it on political advocacy.

But government efforts to stop people from paying for advertising to promote a candidate run the risk of infringing on First Amendment protection of freedom of speech, and these regulations routinely get challenged in court whenever they are enacted. In 1976, the Supreme Court made a landmark ruling in the case of *Buckley v. Valeo* that reached the following conclusions:

1. Dollar limits on donations to political campaigns do not violate the 1st Amendment and are justified by the need to protect the integrity of government.
2. The 1st Amendment prohibits restrictions on:
   - Candidates spending their own or their family's money
   - "Independent" advocacy not paid by the campaign itself
   - Total amount of campaign money the candidate may spend

"The Supreme Court struck down many of FECA's key provisions in *Buckley v. Valeo* (1976). Although upholding the cap on campaign contributions on the grounds that it served a "compelling governmental interest" in "limiting the actuality or the appearance of corruption," the Court held that limits on independent expenditures unconstitutionally burdened the right to political speech. The Court also narrowed the disclosure rules so that only political advertisements that used expressed words of advocacy (so-called "magic words" such as "vote for" or "vote against") were regulated."[26]

[26] Timothy J. O'Neill "McConnell v. Federal Election Commission (2003)" https://firstamendment.mtsu.edu/article/mcconnell-v-federal-election-commission/



http://en.wikipedia.org/wiki/File:Nixon_edited_transcripts.jpg

But 1972 was the year of the famous Watergate burglary, in which operatives working for Pres. Nixon's re-election campaign were caught breaking into the Democratic Party's headquarters at the Watergate Hotel in Washington. The investigations that followed uncovered multitudes of campaign shenanigans that went far beyond the burglary, including lots of cash illegally and secretly donated to the Nixon re-election effort. Following the 1972 elections and the Watergate revelations, Congress passed the 1974 amendments to the FECA, which created the Federal Election Commission (FEC), expanded the role of PACs and set strict limits on both contributions and expenditures for campaigns. The law was immediately challenged by Senator Buckley and in Buckley v. Valeo (1976). The Supreme Court ruled that limits on campaign contributions were permissible, but found unconstitutional the limits on campaign expenditures because they limited a candidate's right to free speech. *- Robert A. Parks 2013 NCFCA Blue Book*

In 2002, Congress passed the Bipartisan Campaign Reform Act, also known as "McCain-Feingold," to again try to reform campaign financing.

"It was intended to address two major issues:

1. "Soft Money" – cash raised by the national political parties that wasn't subject to federal limits.

2. Phony "issue advocacy ads" – these were broadcast ads paid for by corporations that claimed to be about "issues" but were really attempts to circumvent previous legislation restricting corporations from advertising for specific candidates. The ads would come on the air right before an election, and say something like: "Senator Moocher favors offshore oil drilling on our fragile coastline. Call Senator Moocher today and tell him you oppose his dangerous plan to spoil our beaches!" Although the ad never said "Don't vote for Senator Moocher," it was clearly the intended message.

BCRA banned messages paid for by corporations (including non-profit groups and unions) that named a specific federal candidate, if they were broadcast within 30 days of a primary election or within 60 days of a general election. Such advertising is part of what's known as "independent" campaign spending, because it's not part of the candidate's official campaign and neither the candidate nor his registered campaign fund is paying for it. In fact, the candidate may not even know it is occurring or going to occur, and has no control over it.[27]

[27] Wink/nod. Some doubt that "independent" campaign activity is truly independent.

Citizens United v. FEC

The *Citizens United* case was a 5-4 Supreme Court decision in 2010 that overturned key provisions of the Bipartisan Campaign Reform Act. The most important issue decided in Citizens United was that corporations and unions have the same right to "freedom of speech" under the First Amendment as ordinary citizens do, in the context of political campaign advertising. This was, to many, a surprising reversal of many past Court decisions that had previously upheld limits on corporate advertising for and against specific candidates for office. After Citizens United, corporations can spend unlimited amounts on advertising to influence elections (although they still may not donate money directly to political candidates' campaigns)."[28]

Lobbyists

Washington has a lucrative industry devoted to influencing members of Congress to favor or oppose legislation under consideration. These paid influencers are known as "lobbyists," and they are hired by labor unions, corporations, industry associations, or other organizations to reach out to members of Congress on their behalf.

Top spending on lobbyists - 2024

Top Spenders

Lobbying Client	Total Spent
National Assn of Realtors	$86,385,941
US Chamber of Commerce	$76,280,000
Pharmaceutical Research & Manufacturers of America	$31,720,000
American Hospital Assn	$28,997,803
American Fuel & Petrochem Manufacturers	$27,650,000
Blue Cross/Blue Shield	$27,246,300
American Medical Assn	$24,782,000

https://www.opensecrets.org/federal-lobbying/top-spenders

Over the years there have been numerous concerns about the types and degrees of their influence. Even their very existence raises suspicion among many because, by definition, they represent a "special interest" – the benefit of the group that is paying them, at the expense of the general public.

> "The average senator has to pull in more than $14,000 dollars every single day, just to stay in office. One of the easiest ways to raise that kind of cash is to turn to lobbyists, who make big donations and organize swanky fundraisers for elected officials in order to buy influence for their clients.
>
> *"You can't take a congressman to lunch for $25 and buy him a steak. But you can take him to a fundraising lunch and not only buy him that steak, but give him $25,000 extra and call it a fundraiser."* – Former lobbyist Jack Abramoff
>
> Here's how it works. Let's say you're a big bank. You want to buy influence with a senator on the banking committee so he'll vote your way on an upcoming bill. The easiest way would be to just give $100,000 directly to the senator's reelection campaign. But alas,

[28] Robert A. Parks, 2013 NCFCA Blue Book, Monument Publishing

that would be illegal — federal law prohibits companies from making direct donations to candidates. So instead, you hire a lobbying firm.

Here's where things get corrupt. That lobbying firm can legally organize a swanky fundraiser that brings in $100,000 for the senator's reelection campaign. At the fundraiser, your lobbyist just happens to have a friendly chat about your feelings on banking policy with the senator's staff.

At the end of the day, the senator is still up $100,000, he still knows exactly where the money came from, and he knows which way to vote if he wants the money to keep flowing. But this time, nobody's broken any laws!

One recent study found that "on average, for every dollar spent on influencing politics, the nation's most politically active corporations received $760 from the government." That's a 76,000% return on investment. And it works on both sides of the aisle — top lobbying firms raise big money for Republicans and Democrats at the same time."[29]

Concerns about lobbyists extend beyond their fundraising ability. Sometimes members of Congress let lobbyists write the text of proposed legislation and then pass it as their own. For example, more than 70 lines of an 85-line bill on banking regulation enacted by Congress in 2013 were written by lobbyists working for Citigroup bank and copied word for word into the bill.[30]

Lobbying firms also tend to hire people who are known by and have influence among members of Congress. Who would that be? Former congressmen. They can often get jobs lobbying that pay far more than they make while serving in Congress, but those job offers may depend on how well they served the interests of the lobbyists while they were in power.

[29] https://represent.us/action/5-facts-lobbyists/
[30] https://archive.nytimes.com/dealbook.nytimes.com/2013/05/23/banks-lobbyists-help-in-drafting-financial-bills/

Salaries & Compensation

It's the rare employee who gets to set his own salary, but members of Congress have such power, according to Art. 1 Sec. 6 of the Constitution. Congress can vote itself any level of compensation they want. The Constitution does not hint at how much or how little it should be.

The only constitutional restriction on it comes from the 27th Amendment, proposed by James Madison in 1789 and finally ratified by enough states to take effect in 1992. Congress can vote to raise its salary but the raise doesn't take effect until after the next Congressional election, giving the voters a chance to express their disapproval, if the Congress is willing to risk their wrath.

The Twenty-seventh Amendment

September 25, 1789

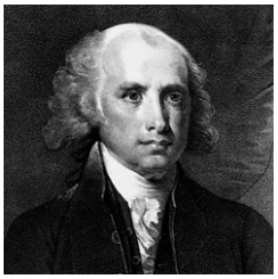


Image courtesy of Library of Congress

James Madison of Virginia served as a Delegate, Representative, and Fourth President of the United States.

On this date, the First Congress (1789–1791) submitted the original 12 amendments to the Constitution, crafted by Representative James Madison of Virginia, to the states for ratification. Two years later, the states approved 10 of the amendments and, thus, created the Bill of Rights. The states, however, did not approve the other two amendments, one of which pertained to congressional pay. Two hundred years later, the proposed congressional pay amendment resurfaced with wide public support and the law worked its way through the remaining state legislatures. The measure stipulated that, "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Its provision fulfilled Madison's belief that Congress should not be permitted to vote itself pay raises arbitrarily without constituents being able to register their approval or disapproval. With no time limit on ratification, the Twenty-seventh Amendment was ratified in May 7, 1992, when Michigan approved it.

https://history.house.gov/Historical-Highlights/1700s/The-27th-Amendment/

The standard pay for members of Congress is $174,000 per year, with extra pay for the Speaker of the House, President Pro Tem of the Senate and the Majority and Minority Leaders. While this may sound like a lot (it's more than 90% of all Americans earn), there are several things to keep in mind. First, most members of Congress must maintain two residences: one in their home state and one in the very expensive real estate market of the Washington, DC, area. Their travel costs to and from their home state to the capital are covered by the government outside their salary. In 2023, Congress allocated a reimbursement of up to $34,000/year for their cost for housing in DC.

Second, their pay should be considered along with the hours they work and the responsibilities they bear. Managing the business of a multi-trillion dollar enterprise with global responsibilities and life or death decisions is a huge responsibility. In the business world, people with a lot less responsibility get paid a lot more.

Congressional pay has not been raised since 2009, despite significant inflation in the cost of living since then. Members of Congress are limited (by rules made by Congress, not by the Constitution) in how much they can earn from outside work to $34,815, and there are restrictions on what types of outside employment they may accept. For example, they are not allowed to sit on the board of directors of any corporation. They are also not allowed to accept honoraria payments (for example, getting paid for delivering a speech).

> During the Philadelphia Constitutional Convention, congressional pay was a central topic, one that took up several days of discussion. Benjamin Franklin's initial speech to the Convention was on the topic of public salaries: he was against them. Public servants should not get paid at all, Franklin argued, or we would get representatives with "bold and the violent" personalities, engaged in "selfish pursuits." Franklin's extreme argument did not prevail because the Framers wisely did not want only the wealthy to be able to afford to hold federal offices. This is a very good thing.
>
> *https://constitutioncenter.org/the-constitution/amendments/amendment-xxvii/interpretations/165#the-twenty-seventh-amendment-by-steven-calabresi-and-zephyr-teachout*

The Constitution (Art I Sec 6) prohibits members of Congress from being employed in or appointed to any other federal office during their time in Congress. This means, for example, that a Representative or Senator could not also be serving as Secretary of State or Director of the Environmental Protection Agency. If they want the other job, they would have to resign from Congress.

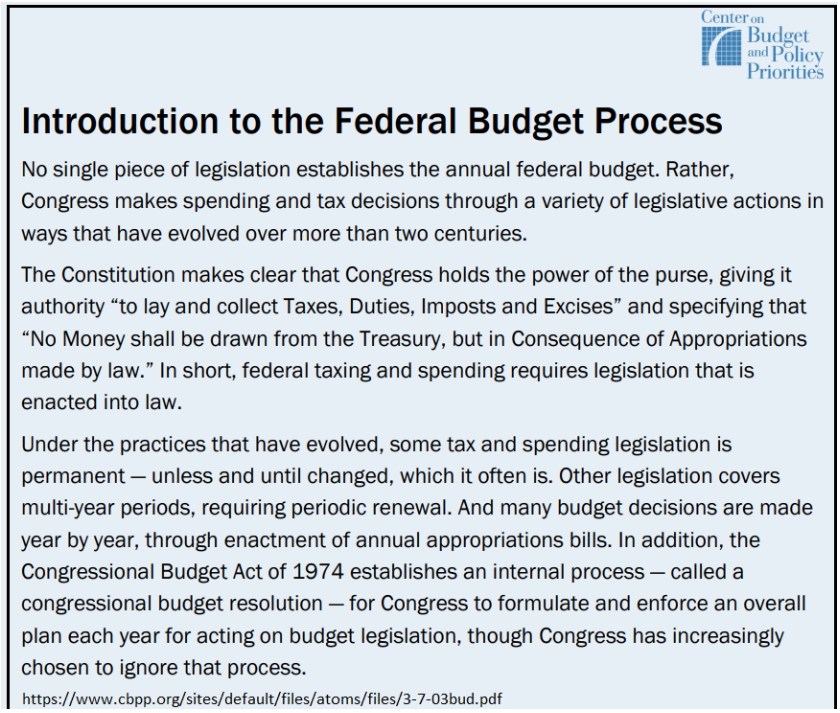
Members of Congress are provided with budgets for office space and staff. They also have the ability to mail things at public expense, known as the "franking" privilege. Until the 1990's, franking (mailing things without stamps or postal fee) was frequently done on a nearly unlimited basis by members of Congress. Reforms in the '90s led to the establishment of a budget allowance for each member to conduct mailings to their constituents at public expense until the allowance is used up.

They are covered by health insurance plans they can choose from among those offered by the provisions of the Affordable Care Act. Since 1984, members of Congress have been required to pay Social Security taxes for their ultimate retirement. They are also eligible for federal employee retirement pensions if they have at least five years of service.

The Budget Process & Government Shutdowns

The federal budget now spends over $6.7 trillion per year, some 23% of the US economy. In 2024, the federal deficit was $1.8 trillion, meaning the federal government spends far more money than it collects in tax revenues each year. The federal government borrows the missing money to make up the difference by selling bonds. The national debt, the sum total of all the unpaid borrowed money from all the budget deficits from Pres. Washington to today, is over $36 trillion.

People often look to and blame or praise the President for federal spending. He does, indeed, submit a proposed budget to Congress. But the Constitution puts control of federal funds squarely in the hands of Congress. Congress is responsible for enacting annual budgets to manage the inflow and expenditure of these funds, and by any measure they have done a poor job.



Center on Budget and Policy Priorities

Introduction to the Federal Budget Process

No single piece of legislation establishes the annual federal budget. Rather, Congress makes spending and tax decisions through a variety of legislative actions in ways that have evolved over more than two centuries.

The Constitution makes clear that Congress holds the power of the purse, giving it authority "to lay and collect Taxes, Duties, Imposts and Excises" and specifying that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." In short, federal taxing and spending requires legislation that is enacted into law.

Under the practices that have evolved, some tax and spending legislation is permanent — unless and until changed, which it often is. Other legislation covers multi-year periods, requiring periodic renewal. And many budget decisions are made year by year, through enactment of annual appropriations bills. In addition, the Congressional Budget Act of 1974 establishes an internal process — called a congressional budget resolution — for Congress to formulate and enforce an overall plan each year for acting on budget legislation, though Congress has increasingly chosen to ignore that process.

https://www.cbpp.org/sites/default/files/atoms/files/3-7-03bud.pdf

Without even getting into the details of the quality of their output, one can judge Congress' efforts simply by their failure to produce budgets on time. The federal fiscal year (the time covered by a federal budget) begins on Oct. 1 and ends on Sept. 30 of the following year. Thus, when you read in the literature about "Fiscal Year 2026" (FY2026), it refers to the period between Oct. 1, 2025 to Sept. 30, 2026. Congress has its own target of April 15 to define a budget for the year beginning the upcoming October. They rarely, if ever, meet that goal. If they don't enact legislation authorizing federal spending by Oct. 1, then programs, agencies, and activities of the federal government become unfunded and start shutting down.

> For example, a dispute between President Trump and congressional Democrats over border wall funding led to a 35-day shutdown of federal agencies within nine different departments starting December 22, 2018. A dispute between President Obama and congressional Republicans over the funding of health reform legislation led to a 16-day shutdown of ordinary government operations beginning October 1, 2013. And a dispute between President Clinton and congressional Republicans in the winter of 1995-96 resulted in a 21-day shutdown of substantial portions of the federal government.
>
> https://www.cbpp.org/sites/default/files/atoms/files/3-7-03bud.pdf

Congress can enact temporary extensions of spending authorization to keep things running until formal budget legislation can be passed. But sometimes political differences become so sharp that Congress cannot agree, and a government shutdown occurs, where workers in agencies that are unfunded are sent home.