

EDITION

14

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Essentials



CHAPTER 10

Congress

Chapter Goals

- Describe how Congress fulfills its role as a representative institution.
- Describe the factors that structure congressional business.
- Describe the regular order and new order process of how a bill becomes law.
- Identify the factors that influence which bill Congress passes.
- Describe the powers that Congress uses to influence other branches of government.

Congress Represents the American People

The Framers of the Constitution intended Congress to be the dominant branch of government.

- Half of the Constitution describes Congress and its powers.
- The other half describe the authority of congress and of the powers of the other branches of government.
- But not always first in the hearts of the people.
- Nor has it been the most respected or most trusted branch.

Congress Represents the American People

Bicameral system: two chambers

- Result of the Connecticut Compromise
- Each state has two senators.
- Each state's number of House representatives is determined by state population.

Predicated on different representation models

- Senate: states, with longer terms
- House: districts, with shorter terms

Congress Represents the American People

Members

- Made up of “almost all obscure individuals”
- Individuals who are known in their area but not in other parts of the country.
- Individuals are usually former local elected officials.

Who Can Serve? *Article 1, Section 2 & Section 3*

- Few formal restrictions
 - 25 years old to serve in House; Citizen for at least 7 years
 - 30 in the Senate; Citizen for at least 9 years.
 - Members must reside in the state from which they are elected, but House members need not reside in their districts (not likely to get elected if they do not); local identity not as critical for the Senate.

The House and Senate: Differences in Representation

Length of Service

- House – 2-year terms
- Senators – 6-year terms with one third of membership standing for election every two years.
- Serving in the Congress was considered a sacrifice in the early days
 - During Congress's first forty years, 41 percent of House members, on average, dropped out every two years.
 - Number of years of service less than today
 - Today we have Career politicians

The House and Senate: Structural Differences

House of Representatives: 435 members

- Elected by people of the district
- Two-year terms
- Population determines number per state (varies).

Note: There are also five nonvoting delegates: American Samoa, District of Columbia, Guam, U.S. Virgin Islands, and Puerto Rico.

Senate: 100 senators

- Since 1913, 17th amendment changed the voting from the state legislature to directly elected by voters statewide.
- Six-year terms
- Two per state (fixed)

Differences between the House and the Senate

TABLE 10.1 | Differences between the House and the Senate

	HOUSE	SENATE
Minimum age of member	25 years	30 years
U.S. citizenship	At least 7 years	At least 9 years
Length of term	2 years	6 years
Number representing each state	1–52 per state (depends on population)	2 per state
Constituency	Local	Statewide

The Functions of Congress

The main functions of Congress:

- Representation
- Lawmaking
- Constituent services
- Oversight.

The Functions of Congress

The main functions of Congress:

- **Representation** – Representing the desires and demand of their district's constituents.
- **Lawmaking** - making rules by which we live.
- **Constituent services** - members of congress are the brokers between the heartless faceless federal bureaucracy.
- **Oversight** - Congressional check on the bureaucracy to ensure that the laws passed by congress are enforced and administered in the way the law intended. They are also a check on the other branches of government to ensure that they are following the constitution.

The Powers of Congress

The powers of Congress are in **Article 1 Section 8** of the Constitution.

- *Enumerated powers* or explicit in the Constitution.
- *Implied powers* or necessary and proper clause

Ref: U.S. Constitution Article 1 Section 8

The Powers of Congress

- **Explicit constitutional powers:** Article 1, Section 8
 - To lay and collect taxes, coin money, declare war and raise and support a military, and regulate commerce with foreign governments and among the states.
 - Article 1 section 9 list the activities expressly prohibited to congress. Ex: No Bill of attainder, ex post facto law, no titles of nobility.
- **Implied powers:**
 - Permitted to make all laws “necessary and proper” to carry out the enumerated (explicit) powers.
 - Ended up being a tremendous grant of power.

The Powers of Congress: The Power to Remove Top Officials

- Removal of executive officials from government can occur through the process of impeachment.
- **Impeachment:** the formal charge by the House of Representatives that a government official has committed “Treason, Bribery, or other high Crimes and Misdemeanors.
- The House acts as a grand jury and levies charges against the official in question, while the Senate conducts the actual trial.

The Powers of Congress: Special Senate Powers

- The president has the power to make treaties and to appoint top officials, ambassadors, and judges.
- Article 2, Section 2, of the U.S. Constitution, however, requires the president to obtain the “Advice and Consent” of the Senate.
- For treaties, two-thirds of the senators who are present must concur.
- For appointments, a simple majority is required.

Debate Differences

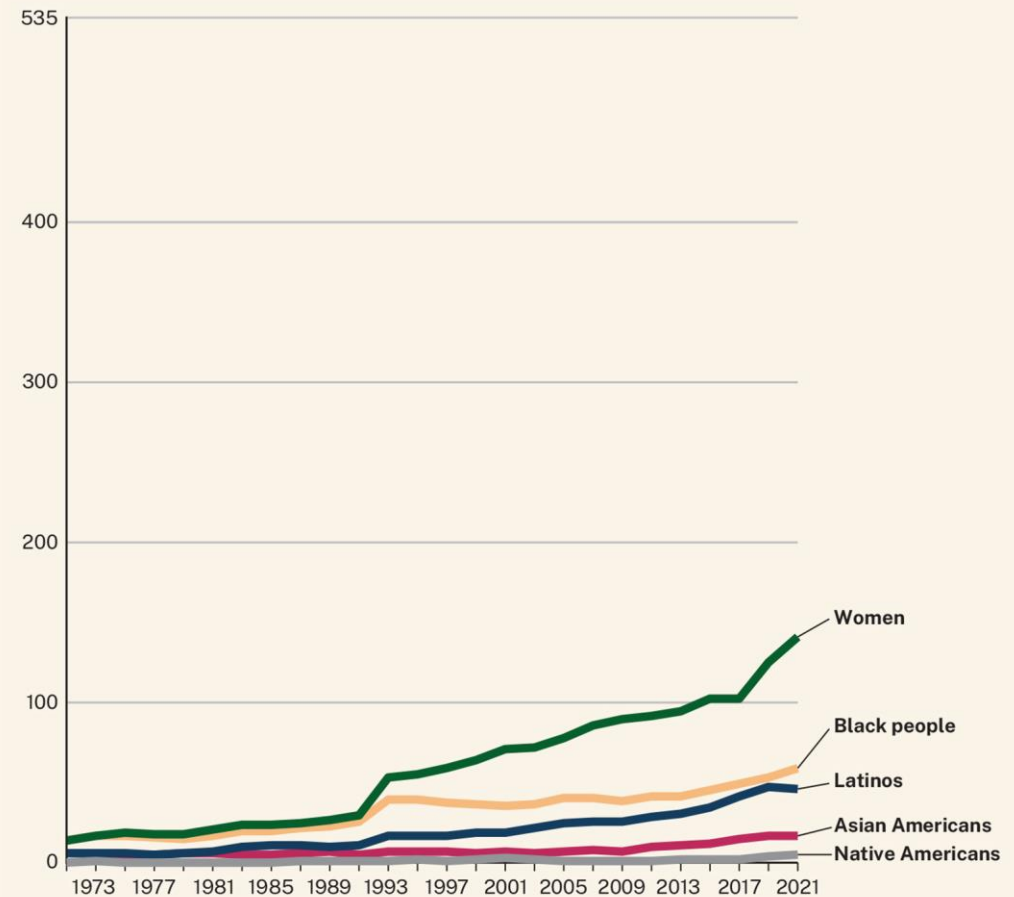
- Size and Rules
 - The House of Representatives with 435 members has formal and strict rules for debate.
 - The senate with only 100 members has informal and unlimited debate.
- Debate and Filibustering
 - The Senate tradition of unlimited debate (filibustering), dating back to 1790, has been used over the years to frustrate the passage of bills. Under Senate Rule 22, cloture can be used to halt debate on a bill.

Social Composition of the U.S. Congress

- Members of Congress are not typical American citizens. They are usually well-known individuals with a political background in activism, state legislator, holders of local political office etc.
- They are older and wealthier than most Americans.
- Disproportionately white and male.
- Blacks, women, Latinos, and Asian have increased their numbers in Congress, but their representation is not comparable to their proportions in the general population.
- Likely to be trained in professional occupations, particularly lawyers.

Diversity in Congress (1971–2020)

FIGURE 10.1 | Diversity in Congress, 1971–2021



SOURCES: Vital Statistics, “Demographics of Members of Congress,” Tables 1-16, 1-17, 1-18, 1-19, www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/; Jennifer E. Manning, *Membership of the 116th Congress: A Profile* (Washington, DC: Congressional Research Service, March 31, 2020), <https://fas.org/sgp/crs/misc/R45583.pdf> (accessed 4/8/20); authors’ updates; Katherine Schaeffer, “Racial, Ethnic Diversity Increases Yet Again with the 117th Congress,” Pew Research Center, January 28, 2021, www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/.

Congressional Elections

Candidates for Congressional Elections

Who runs?

- Candidates must “self select” to run.
- Some encouraged by parties more than others.
- Parties cannot control who runs for their nomination
- Strong candidate qualities:
 - Good name recognition
 - Success in prior elected offices
 - Ability to raise funds
 - Willingness to campaign
 - Ability to reach out to voters

Congressional Elections

Candidates for Congressional Elections

- Congressional elections are operated by state governments. The state legislature establish rules for elections. **Article 1, Section 4**
- Most candidates for Congress must win nomination through a direct primary.
- Incumbency is a strong predictor for winning elections. And incumbent has name recognition, a list of accomplishments in office and the ability to raise campaign funds.

Apportionment and Redistricting

Apportionment and redistricting also affect who wins a seat in the House of Representatives.

Apportionment- can make a congressional race complicated.

- **Reapportionment**- The allocation of seats in the House of Representatives to each state after each census.
 - Some states gain congressional seats if their populations have increased, while other lose them based if their populations have decreased.
 - Congressional districts are typically drawn in a manner that clearly benefits one party or the other.
- **Redistricting** - The redrawing of the boundaries of the congressional districts within each state.
 - Redrawing election districts and redistributing legislative representatives every 10 years to reflect shifts in population or in response to legal challenges to existing districts

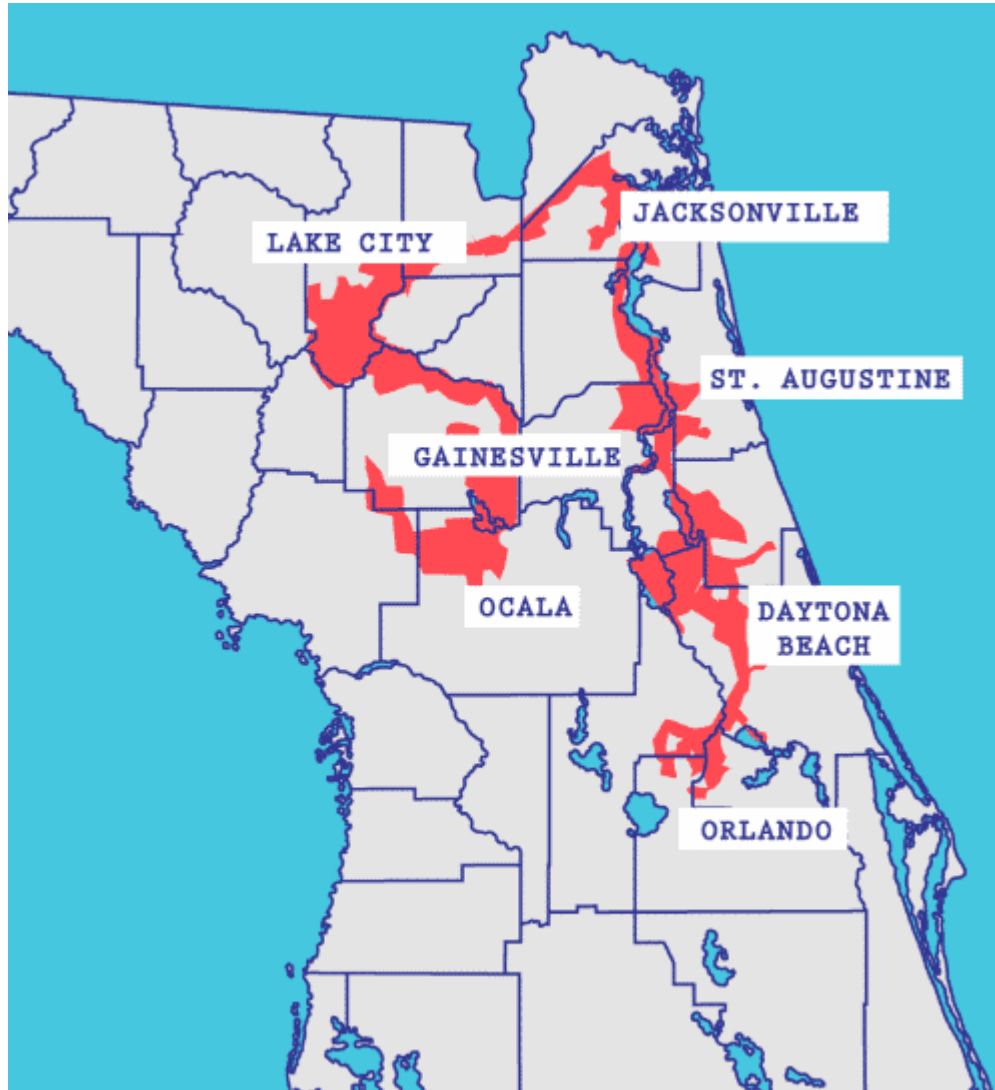
Apportionment and Redistricting

If new districts are drawn in such a way to advantage one group or party, it is known as **gerrymandering**.

Gerrymandering- The drawing of legislative district boundary lines to obtain partisan or factional advantage. A district is said to be gerrymandered when its shape is manipulated by the dominant party in the state legislature to maximize electoral strength at the expense of the minority party.

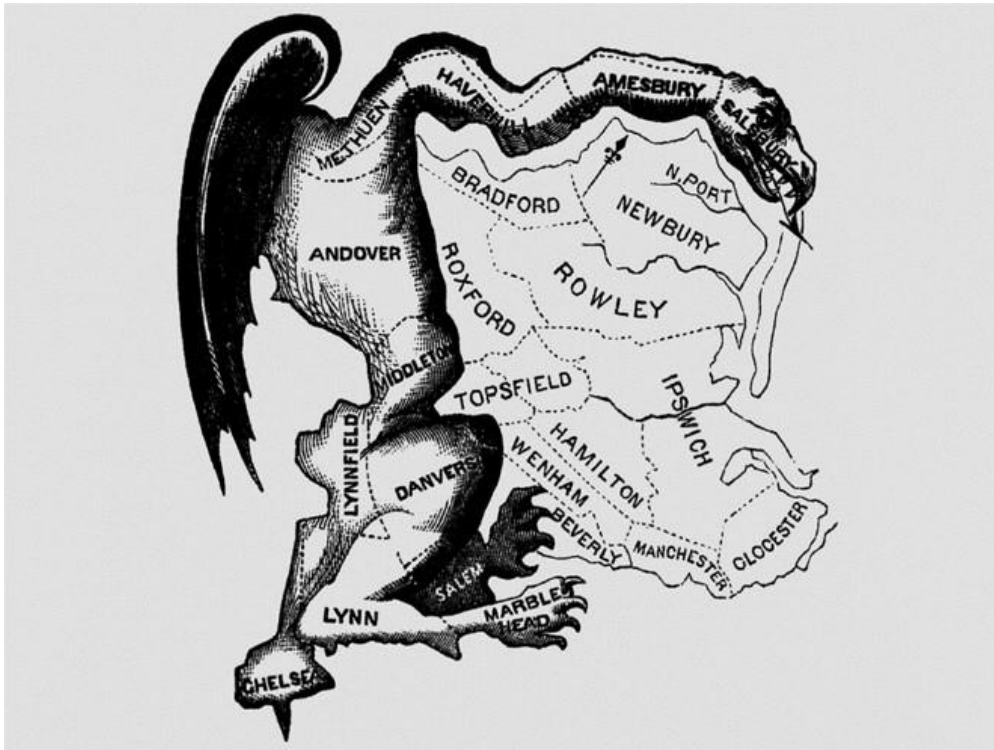
(3rd Congressional District Florida)

Apportionment and Redistricting



The most Gerrymandered district in Florida ca. 1994

The Original Gerrymander



The practice of “gerrymandering”—the excessive manipulation of the shape of a legislative district to benefit a certain incumbent or party—is probably as old as the Republic, but the name originated in 1812. In that year, the Massachusetts legislature carved out of Essex County a district that historian John Fiske said has a “dragon like contour.” When the painter Gilbert Stuart saw the misshapen district, he penciled in a head, wings, and claws and exclaimed, “That will do for a salamander!” Editor Benjamin Russell replied, “Better say a Gerrymander” (after Elbridge Gerry, then-governor of Massachusetts).

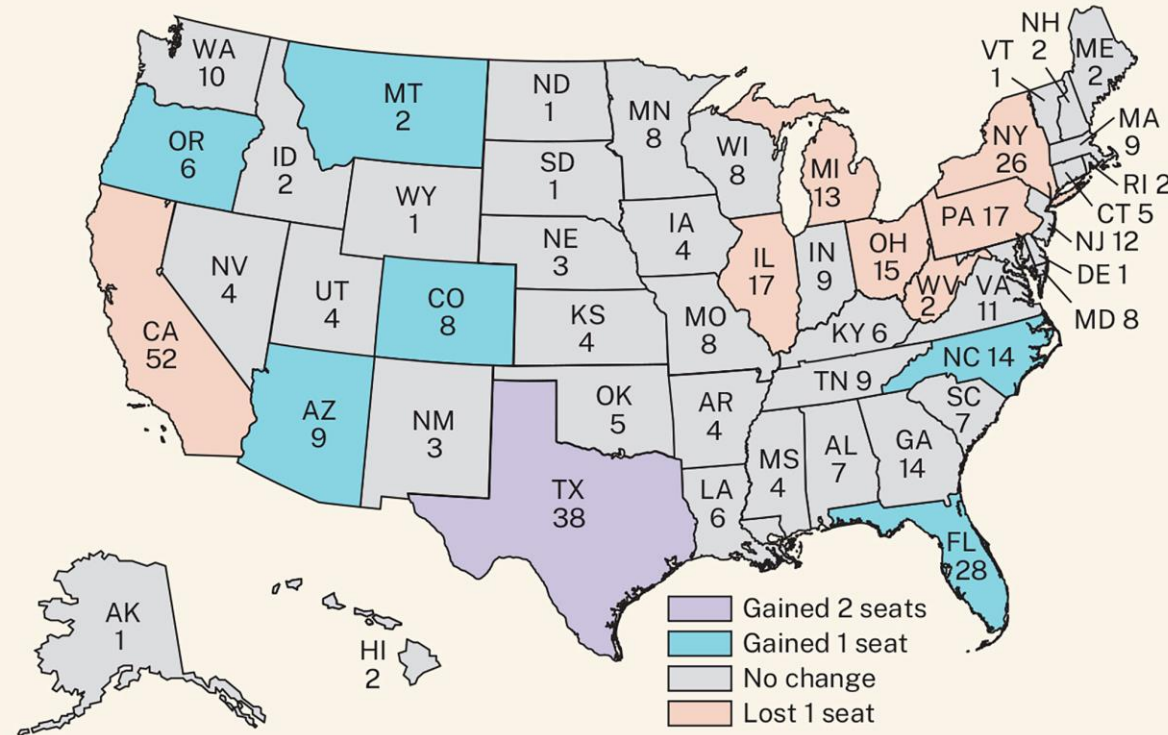
Congressional Reapportionment

Nonpartisan Redistricting



Projected Congressional Reapportionment

FIGURE 10.2 | Congressional Reapportionment, 2020



SOURCE: "Apportionment of the U.S. House of Representatives Based on the 2020 Census," www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-map01.pdf (accessed 9/9/22).

Redistricting Court Cases

The Supreme Court has heard several cases related to redistricting:

In 2019, the Court found that gerrymandering was a “political question” beyond the reach of the federal judiciary.

- This decision applied only to claims of partisan gerrymandering, not racial gerrymandering.

- ❖ State courts, however, can still intervene.
- ❖ The Supreme Court also struck down a portion of the Voting Rights Act for federal preclearance of voting laws in *Shelby County v. Holder*.

Members of Congress - Perks and Privileges

Pay and Perks of Office

- First members of Congress = \$6 a day
- Today their personal benefits:
- Salary
 - \$174,000 base pay
 - \$223,500 for Speaker
 - \$193,400 for majority/minority leaders
- Healthcare - Great healthcare plans; free out-patient care at one of two military hospitals.
- Pensions - Four pension plans from which to choose. Can collect at 50 if they have served 20 years. Only felony conviction can keep them from collecting

Members of Congress - Perks and Privileges

Pay and Perks of Office

- House members may hire staff members out of their allowance
 - \$1.5 million (on average) per year
 - 2/3 taken up for salary of staff
 - Rest used for mailing, travel, and office expenses
 - Senator's annual allowances vary with the population of their state.
 - \$3 to 5 million on average per year
- Members who serve as committee chairs or in leadership positions are allowed additional staff and more for expenses.

Members of Congress - Perks and Privileges

Other Perks of Office

- Subsidized travel abroad
- Subsidized meals in the House and Senate dining rooms
- Free parking in Washington and at airports; free car washes, and a childcare center.
- Final benefit: life insurance policies and a death benefit equal to a year's salary for each member of Congress.

Members of Congress - Perks and Privileges

Other Perks of Office

- Casework / Constituency service
 - More than 30% of senator's staffs and almost half of all representatives' staffs are located in their home state or district offices to better serve constituents.
- Mailing privileges / Franking
 - Congress spends half billion dollars for office and franking privileges (mailing costs)
- Media and technology advantages
 - Television and radio studios; websites
- Fundraising-Power of incumbency
- Pork-barrel Funding
 - "No such thing as a fiscal conservative when it comes to his district" – David Stockman

Members of Congress - Perks and Privileges

Other Perks of Office

- Privileges and Immunities under the Law
 - Member of congress cannot be detain from attending a session of their respective houses. **Article 1, Section 6**
- Congressional Caucuses: Another Source of Support
 - Party caucuses most important-composed of members of similar political views in order to provide information that may lead to legislative action. Organized around issue, ideological, party, and/or demographic traits. Some have large budgets and staffs and are capable of pressuring Congress and the executive branch.
 - Congressional Black Caucus
 - Hispanic Congressional Caucus

The Organization of Congress: Shaped by Party

Building blocks of congressional organization

- Political parties
- Committee system
- Congressional staff

While political parties are not mentioned in the Constitution, a party system has developed in Congress.

The Organization of Congress: The Committee System

Much of work of Congress is done in committee.

Party leadership determines committee assignments.

- The committee system comprises:
 - Standing committees
 - Select committees
 - Joint committees
 - Conference committees

The Organization of Congress: Standing Committees

Standing committees: permanent committees with the power to propose and write legislation.

- ❑ 20 in the House

- ❑ 16 in the Senate

Each standing committee covers a particular subject matter.

- Examples: agriculture, armed services, energy and commerce, ethics.
- The most important standing committees are in charge of finances: the House Ways and Means and Senate Finance committees. Most standing committees are broken into subcommittees that specialize in aspects of the committee's work.
- Standing committees serve an important role by conducting hearings and launching investigations.
- They vary in size with the number of seats on any committee changing from session to session.
- Party ratios determined by the majority party in the House and negotiated by the leadership of both parties in the Senate.

The Organization of Congress: Standing Committees Cont.

Most standing committees are broken into subcommittees that specialize in aspects of the committee's work.

- Committee leadership will determine which subcommittee is the most appropriate to handle the matter at question.
- Much of the work, including deliberations, hearings, and **markups**, or amending bills, take place in subcommittees.

Standing committees also conduct hearings and launch investigations

- Two types: legislative hearings to address specific bills and oversight hearings for investigations.

The Organization of Congress: Select Committees

Select committees: A temporary legislative committees set up to highlight or investigate a particular issue.

- Cannot present bills to the chamber.
- Instead, hold hearings to investigate particular problems.
- Bring attention to issues that fall outside the jurisdictions of existing committees.

The Organization of Congress: Joint Committees

Joint committees: legislative committees formed of members of both the House and Senate

There are four such committees:

- Economic
- Taxation
- Library
- Printing

These committees are permanent but cannot present legislation to Congress; they gather information and cover internal congressional issues.

The Organization of Congress: Conference Committees

Conference committees: joint committees created to work out a compromise on House and Senate versions of a piece of legislation

- Members are appointed by the Speaker of House and the presiding officer of the Senate.
- For a bill to become law, the same wording of the bill must be passed by both chambers of Congress.
- The conference committee writes the final wording when both the House and Senate pass similar bills that need to be reconciled.

The Organization of Congress: Committee Politics

Within each committee, hierarchy is based on **seniority**—the ranking given to an individual on the basis of length of continuous service on a committee.

- In general, each committee is chaired by the most senior member of the majority party.
- But the principle of seniority is not absolute.
 - In 1995, Republicans selected committee chairs based on party loyalty and fund-raising abilities.
 - In 2007, Democrats returned to the seniority principle but offered freshmen a choice of committee assignments.

Congress has changed its organizational structure and operating procedures to increase efficiency.

The Organization of Congress: Party Leadership in the House

House Leadership

- Speaker of the House
- Majority Leader
- Minority Leader
- Whips

Senate Leadership

- President pro tempore
- Majority Leader
- Minority Leader
- Whips

The Organization of Congress: Party Leadership in the House

Party leadership is determined by the members of Congress through a party election.

Speaker of the House is the leader of the majority party and chief presiding officer of the House of Representatives. [Article 1, Section 2](#)

- Presides over the house
- Appoints committee members
- Enforces debate rules
- Refers bills and resolutions to the appropriate committee.
- has the most influence over the legislative process

The Organization of Congress: Party Leadership in the House

Majority Leader- elected by the majority party to help the speaker guide the legislative priorities through the legislative process. Help maintain majority party discipline.

Minority Leader – Consults with leadership on legislative priorities and maintains party cohesion.

Whips – coordinates the party's legislative strategy, builds support for the leadership's agenda and helps leadership to gather the votes needed to ensure passage of legislation.

The Organization of Congress: Party Leadership in the Senate

- The **vice president** officially chairs the Senate, but only presides at ceremonial events and in the event of a tie vote. President of the Senate-**Article 1, Section 3**
- The **President Pro-Tempore** usually chairs the Senate, but often hands off to another member for routine business. The senator with the greatest seniority in the majority party is designated as the president pro tempore.
- **Senate Majority Leader** – Handles the day-to-day operation of the Senate and is the chief spokesperson of the majority party in the Senate who directs the legislative program and party strategy.

The Organization of Congress: Party Leadership in the Senate

- **Senate Minority Leader-** The party officer in the Senate who commands the minority party's opposition to the policies of the majority party and directs the legislative program and strategy of his or her party.
- **Senate Whip** - helps Senate leadership to gather the votes needed to ensure passage of legislation.
- The real power in the Senate lies with the majority leader and the minority leader.

The Organization of Congress: The Staff System

Every member of Congress has staff members that:

- handle constituent requests and services
- formulate and draft legislative proposals
- organize hearings
- deal with administrative agencies
- negotiate with lobbyists

Congress has also established **staff agencies**: legislative support agencies responsible for policy analysis.

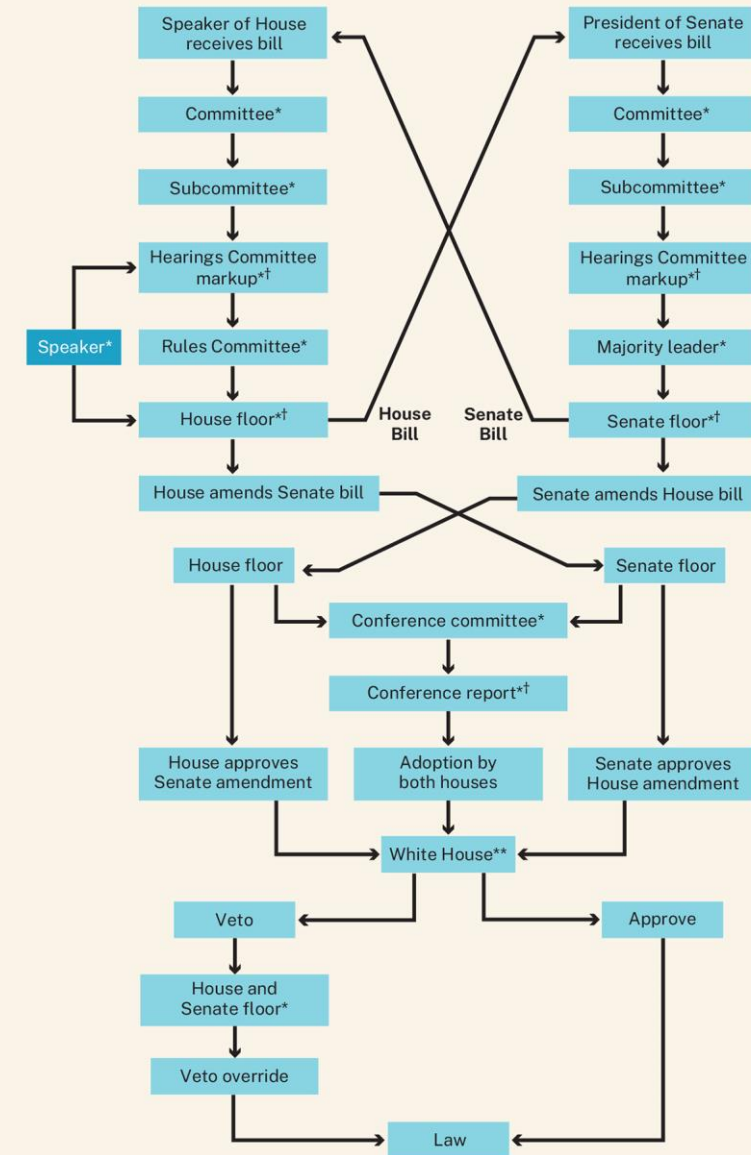
- Congressional Research Service
- Government Accountability Office
- Congressional Budget Office

How a Bill Becomes a Law: Introduction and Committees

- A bill is a proposed law that has been sponsored by a member of Congress and submitted to the clerk of the House or Senate.
- The bill is given a number and assigned to a committee, which typically refers it to a subcommittee for deliberation.
- Bills taken seriously are given a hearing.
 - Most bills (95 percent) do not get through committee.
 - Each year, only 2 to 3 percent of the total number of bills introduced become law.

How a Bill Becomes a Law: The Process

FIGURE 10.3 | How a Bill Becomes a Law: The Regular Order



*Points at which a bill can be amended.

**If the president neither signs nor vetoes a bill within 10 days, it automatically becomes law.

†Points at which a bill can die by vote.

How a Bill Becomes a Law: Regular Order

Any member of the House or Senate can introduce bill.

In the House, a bill clerk assigns the bill a number that begins with “H.R.” and in the Senate, the bill clerk assigns the bill a number that begins with “S.”

- Once this happens, the bill’s title is read on the floor of the chamber, known as “first reading of the bill.”

The Rules Committee advances party’s legislative agenda through four types of rules:

- *Open rules, modified open rules, structured rules, and closed rules.*

How a Bill Becomes a Law: Committee Action

- The subcommittee and/or full committee writes the language of the bill.
 - Subcommittees may hold hearings, listen to expert testimony, and amend proposed legislation.
 - The full committee may accept the recommendations of the subcommittee or hold its own hearings and prepare its own amendments.
- The full committee sends the bill to the floor.
 - Bill must pass through the Rules committee in the House first.
 - Rules committee gives bill an open or closed rule
 - Senate requires a consent agreement
- The House has a rule that says that any amendment to a bill must pertain to that bill, so members cannot attach military spending to a farm bill, for example. The Senate does not have this rule.

How a Bill Becomes a Law: Debate in the House

Bills that are reported out of committees then reach the floor for debate.

House:

- The Rules Committee determines the rules of debate, and the order bills are presented on the House floor.
- After the floor debate, a second reading of the bill section by section and **open** (a provision allowing amendments) or **closed** (a provision prohibiting amendments) **rules** govern the rules for debate.
- In the House, proposed amendments must be “germane” to the subject matter of the bill.

How a Bill Becomes a Law: Debate in the House

The House rule determines how much time is allocated for floor debate.

- Virtually all the time allotted for debate on a given bill is controlled by the bill's sponsors and its leading opponent.
- The debate time is divided equally between those for and against the bill.

How a Bill Becomes a Law: Debate in the Senate

The majority leader directs floor activity for a bill in coordination with committee chairs and minority party leaders.

Senate:

The Senate allows for unlimited discussion, requiring 60 votes to end a filibuster via cloture.

- The leadership has much less control over floor debate.
- **Filibuster:** tactic to prevent action on legislation by holding the floor and speaking until the majority backs down
- **Cloture:** procedure to end the filibuster; requires approval of three-fifths of the Senate

The filibuster is not the only technique senators have to block debate:

- Senators can propose virtually unlimited amendments to a bill to slow the process down.
- Senators can place “holds” on bills to anonymously delay debate, although they must now be identified after six days in the *Congressional Record*.

How a Bill Becomes a Law: Voting

- After the debate ends, leaders schedule a vote on the floor.
- Legislation rarely comes to the floor unless it is certain to pass.
- Once a bill clears one chamber it is sent to the other chamber, where the process starts over.
- If the bill is passed with the same wording, it is sent to the president; if not, it goes to a conference committee.
 - In conference committee, the bill must be reconciled and then passed by a vote of the full House and Senate, or it will die.

How a Bill Becomes a Law: Presidential Action

The president is given 10 days to sign or veto a law.

- If the president does not act while Congress is in session, the bill becomes law.
- **Veto**es can be overridden by a two-thirds vote in each chamber.
- **Pocket veto**: if there are less than ten days left in the congressional calendar and the president does not sign the bill into law, it dies and must begin again from scratch in the next session.

New Processes In Congress: Unorthodox Lawmaking

The textbook model for how a bill becomes a law is increasingly being replaced by “**unorthodox lawmaking**,” or deviation from regular order, that reflects strengthening partisanship.

These new processes allow congressional leaders to dictate what Congress does, at the expense of deliberation. This includes:

- Closed rules
- **Multiple referrals**: referring a bill to more than one committee
- **Ping-ponging**: bills or amendments sent between houses without a conference committee
- Omnibus legislation for **appropriations**: money approved by Congress
 - Especially **omnibus appropriations bills**: large bills that deal with a number of unrelated topics

How Congress Decides: Influencing Factors

Many factors influence members of Congress when they vote on legislation.

Constituents are the most important.

- Legislators take their constituents seriously if they believe it will affect their support at the next election.

Interest groups may also play a role.

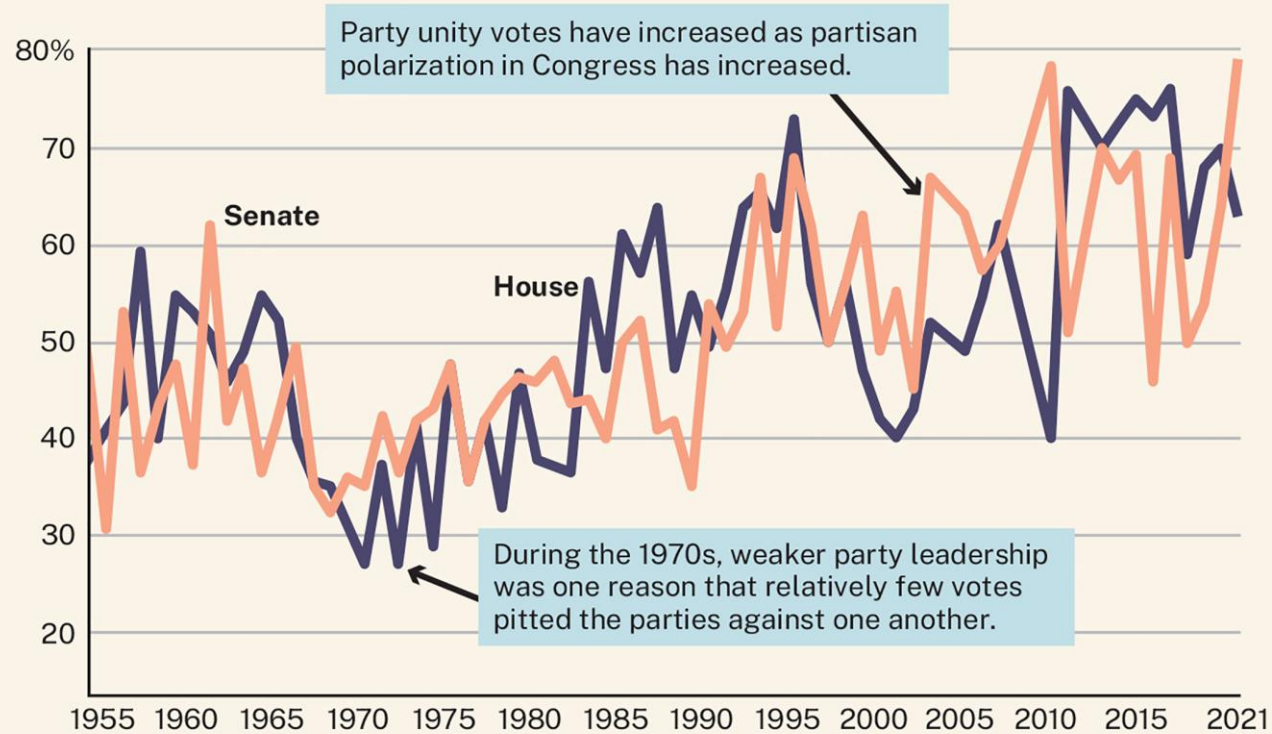
- Groups can mobilize constituents, serve as watchdogs, and supply candidates with information and money.

Party leadership often wants to maintain “party discipline.”

- This is especially true when a roll-call vote becomes a **party unity vote**.

How Congress Decides: Party Discipline

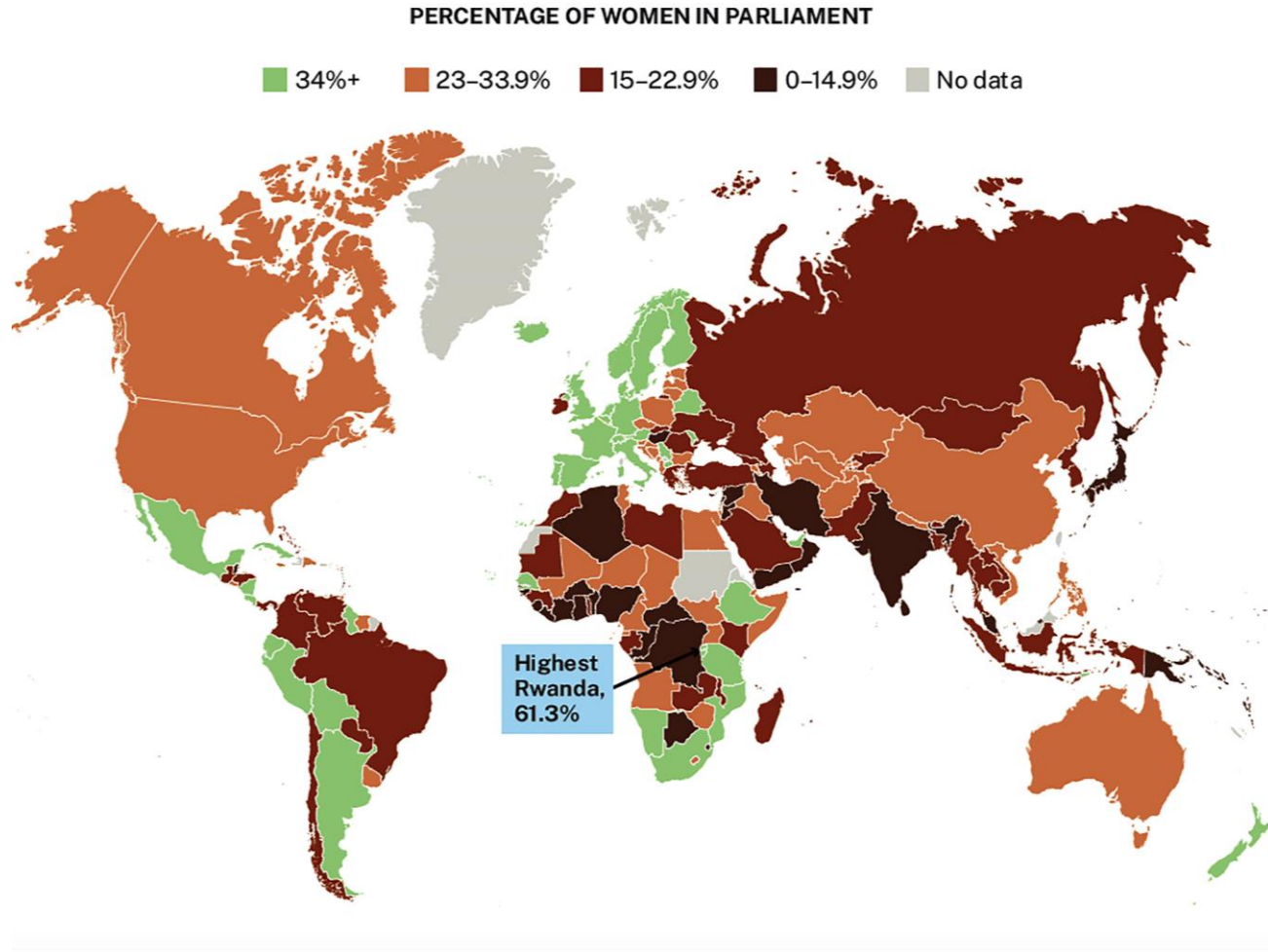
FIGURE 10.4 | Party Unity Votes in Congress



SOURCE: Niels Lesniewski and Ryan Kelly, "Party Unity Vote Studies Underscore Polarized State of the Union," Roll Call, March 1, 2022, <https://rollcall.com/2022/03/01/party-unity-vote-studies-underscore-polarized-state-of-the-union/> (accessed 11/13/22).

Readings from Faculty Website

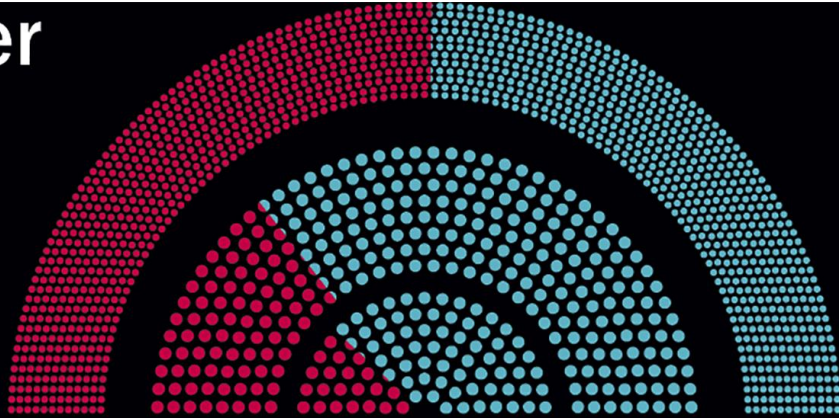
- *How laws are made*
- *Federalist No. 39 Republican Principles*
- *Federalist No. 45 Powers of the Government*
- *Legal definitions in the Constitution*
- *Impeachment Proceedings*



America Side by Side: Women's Legislative Representation

Who Are Americans?: Who Are Members of Congress?, 1 of 3

Gender



Senate House U.S. pop.

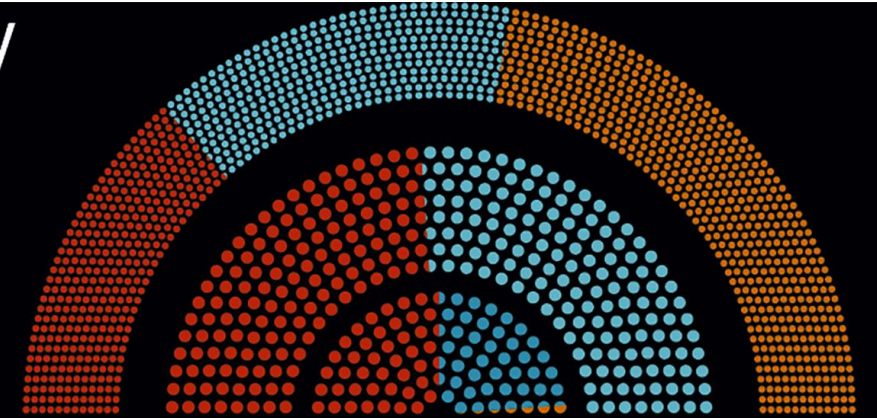
● Women

24% 29% 51%

● Men

76% 71% 49%

Party



Senate House U.S. pop.*

● Republican

50% 49% 27%

● Democratic

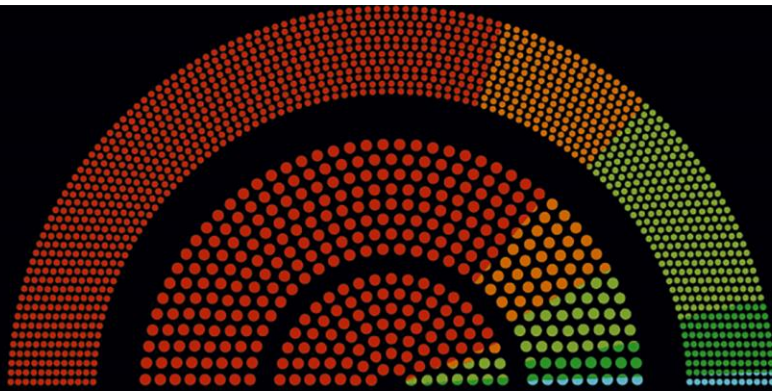
48% 51% 29%

● Independent

2% 0% 42%

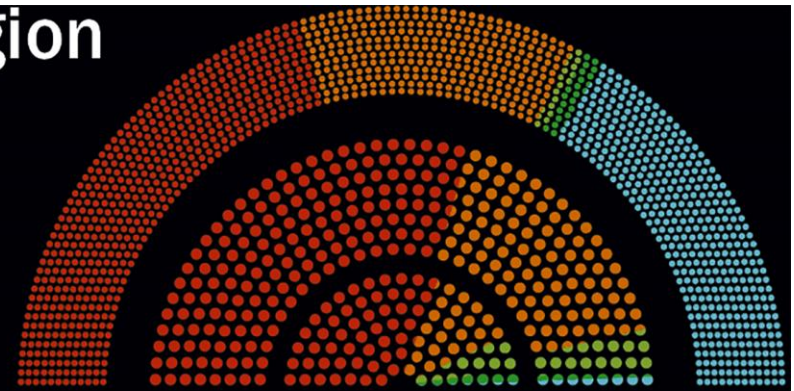
Who Are Americans?: Who Are Members of Congress?, 2 of 3

Race



	Senate	House	U.S. pop.*
● White	88%	71%	59%
● Black	3%	13%	14%
● Latino	7%	10%	19%
● Asian	2%	4%	6%
● Native American	0%	1%	1%

Religion



	Senate	House	U.S. pop.
● Protestant	58%	55%	42%
● Catholic	24%	33%	24%
● Jewish	9%	5%	1%
● Mormon	3%	1%	2%
● All others	1%	1%	32%

Who Are Americans?: Who Are Members of Congress?, 3 of 3

Foreign birth



Senate	1%
House	7%
U.S. population	14%

Military service



Senate	16%
House	17%
U.S. population	5%

Holds a law degree



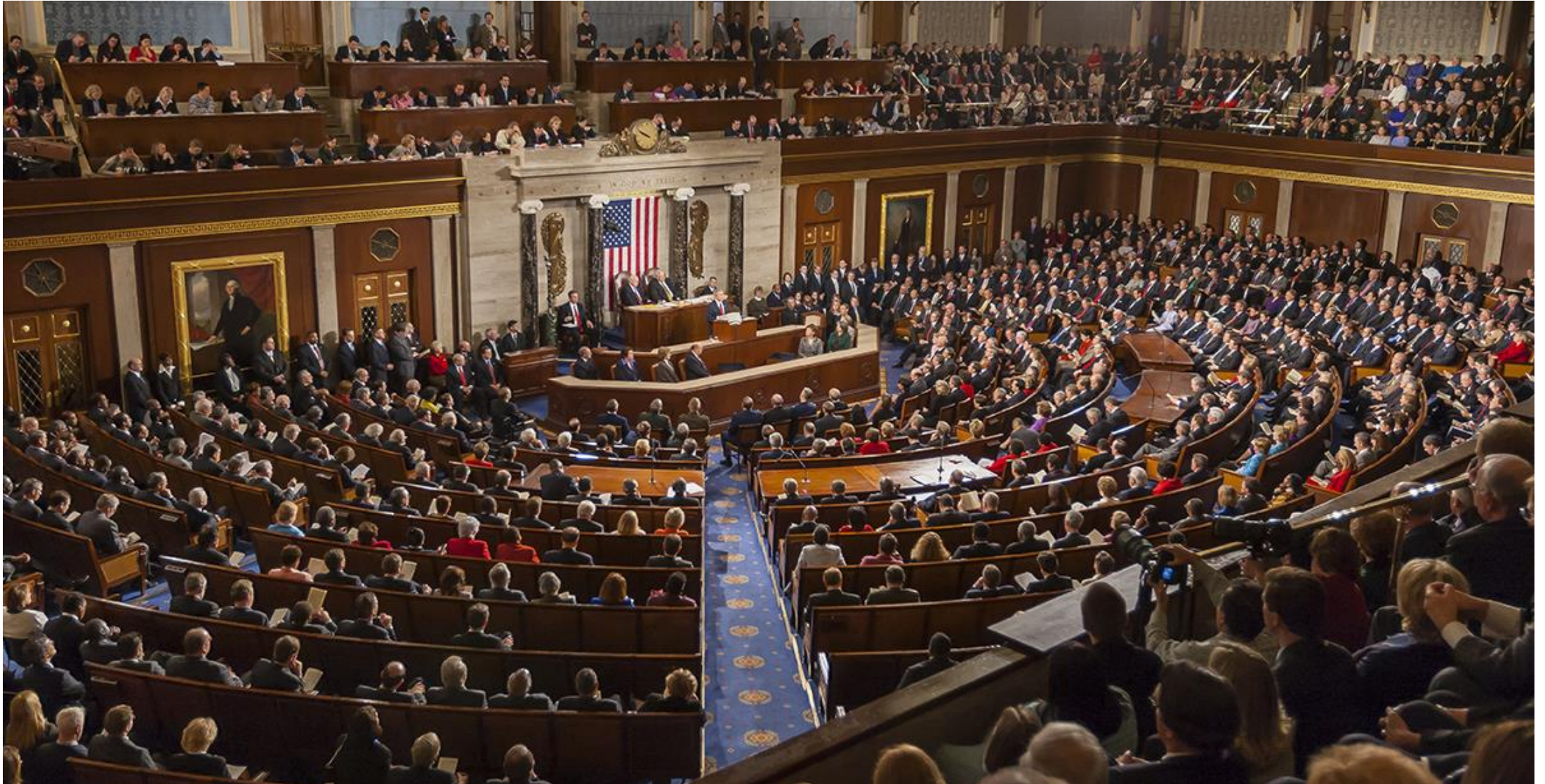
Senate	50%
House	33%
U.S. population	0.4%

Average age

Senate **64.3** House **58.4** U.S. population **38**

* Numbers may not add up to 100 percent due to rounding.

Congress – House of Representatives



Congress – The Senate

