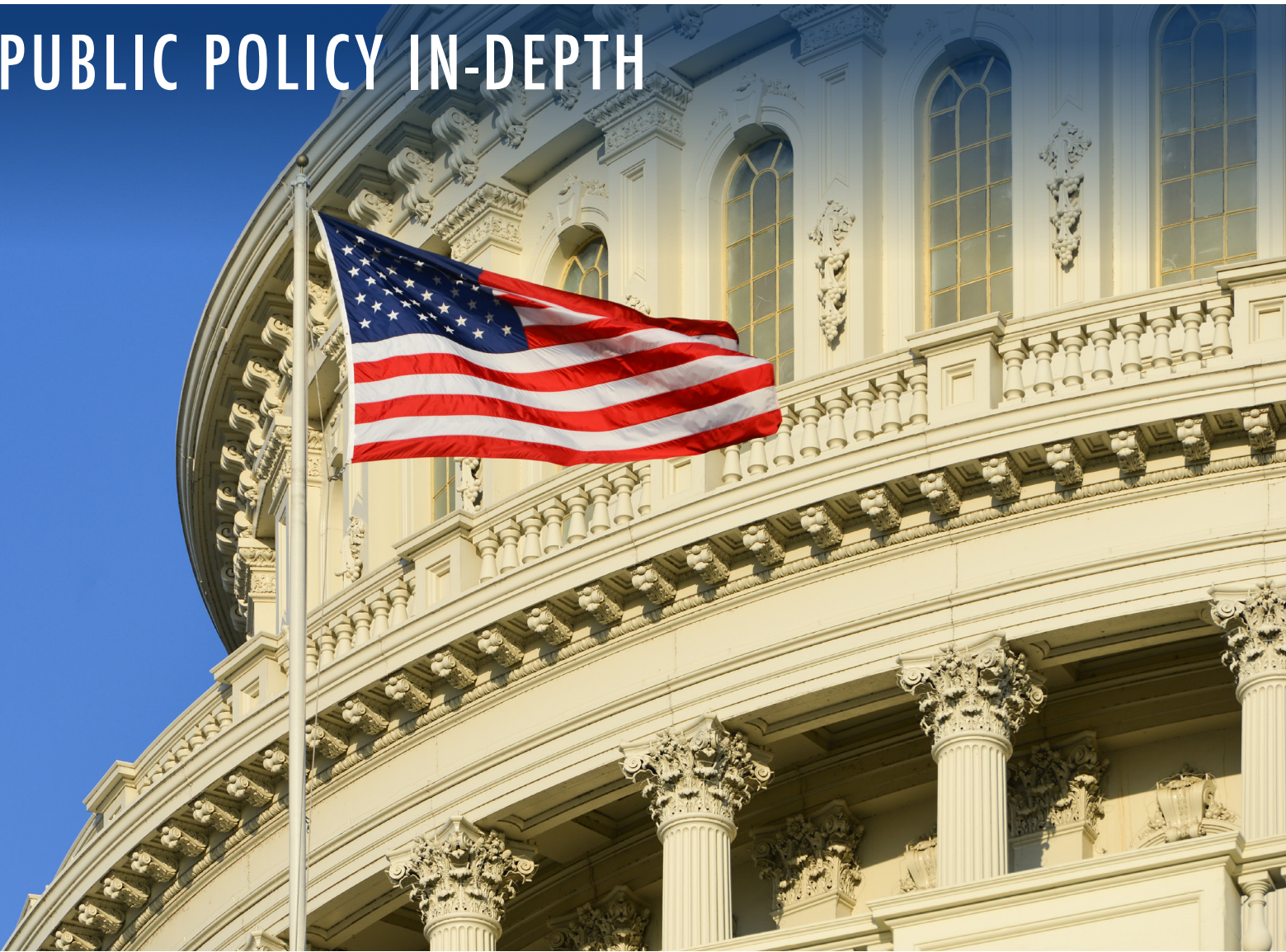


U.S. GOVERNMENT

PUBLIC POLICY IN-DEPTH



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U.S. GOVERNMENT

INTRODUCTION



The United States is not a finished project. The Constitution, drafted in 1787, established a blueprint for constructing the federal government. But this blueprint was the work of 55 architects, each with his own notions of how the government should be structured, empowered, and limited.¹ As a result, the Constitution is a compromise document that incorporates competing ideas about power, democracy, and the role of government—ideas that foster both balance and tension.

Over the centuries, as Americans have interpreted and changed the Constitution through Supreme Court decisions and amendments, the United States has created a stable—but still contested—form of democracy. In this chapter, we will examine the structure of the federal government, introduce several long-standing tensions that exist within the Constitution, and work to inform your understanding of the political and policy debates in this book.

*“I know no safe
depository of the
ultimate powers of
the society but the
people themselves.”*
—Thomas Jefferson

THE DRAFTING OF THE CONSTITUTION



In the aftermath of the Declaration of Independence and in the midst of the American Revolution, the United States adopted the Articles of Confederation as its first constitution in 1781. This system established a weak central government and allotted a majority of power to the sovereign states, making it difficult for the new nation to conduct foreign policy, regulate foreign trade, and reach agreement on laws.²

*“And it is long since I
have learned to hold
popular opinion of no
value.”*

—Alexander Hamilton

Responding to calls for a stronger federal government, a group of 55 state delegates gathered in Philadelphia in 1787 to take part in the Constitutional Convention. Between May and September, the delegates drafted a new founding document for the nation—one that divided federal authority between legislative, executive, and judicial branches and established a series of checks and balances.³

But the delegates did not naturally agree about how to create this system. Throughout the Constitutional Convention, delegates argued about which branch of government, if any, should be the most powerful, which citizens should have the right

to vote, how government officials should be chosen, and whether or not to list the rights of citizens in the document. Delegates from small states feuded with those from large states over how to allocate representation in government, eventually reaching a Great Compromise to form a legislature with an upper house (with equal representation for each state) and a lower house (with proportional representation for each state). Northern and southern delegates also argued about how to count slaves when apportioning representation in government, eventually settling on a compromise to count three-fifths of the slave population.⁴

By September 28, 1787, the delegates had submitted the Constitution to the 13 states for ratification. The document was ratified by the required nine states in 1788, and it officially replaced the Articles of Confederation as the law of the land on March 4, 1789.⁵ In the end, the finished Constitution included many ideas and procedures that were ahead of their time. The process of making amendments, for example, paved the way for the first ten—the Bill of Rights—to be proposed, ratified, and adopted by 1791.⁶ The Constitution also outlined two guiding principles that have shaped life in the United States for centuries: separation of powers and federalism.

Separation of Powers. In the wake of their successful rebellion against the British monarchy, the framers of the Constitution were deeply concerned about vesting too much authority in any one person or institution. This concern led them to establish three co-equal branches of government: the legislative, the executive, and the judicial.

To maintain balance between the three branches, the framers enshrined a system of checks and balances in the Constitution. For example, the president has the power to veto bills passed by Congress, preventing them from being enacted. Congress has the authority to override a presidential veto with a two-thirds vote in both chambers. The Supreme Court can check the power of the legislative and executive branches by declaring a law unconstitutional. And the authority of the Court is checked by both the president (who nominates justices) and the Senate (which confirms those nominations).⁷

“If men were angels, no government would be necessary,” wrote James Madison, a leading figure in the framing of the Constitution, in 1788. “If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”⁸

Federalism. In addition to establishing three branches to limit the power of the government, the framers of the Constitution constructed a system that divides power between the federal government and state governments. This two-level system of government is called federalism.⁹

The Constitution gives the federal government the authority to address issues of national concern. This includes, but is not limited to, the powers to:

- Lay and collect taxes
- Borrow on the credit of the United States
- Regulate commerce between states and with foreign nations
- Mint money
- Declare war
- Raise and support an army and navy
- Constitute tribunals inferior to the Supreme Court
- Establish post offices
- Make all laws which shall be necessary and proper¹⁰

The powers of the federal government are enumerated, meaning they are limited to the authorities outlined in the Constitution. State powers, in contrast, are broad and undefined.¹¹ The Tenth Amendment to the Constitution reads, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”¹²

Under this system, states establish their own forms of government consistent with the Constitution, enact laws to address local concerns, levy taxes to support themselves, oversee public schools, and build and maintain roads.¹³ This system of federalism has built the nation as a federation of individual states, operating together under certain guiding principles of democracy and individual rights.

“The powers delegated by the proposed Constitution to the Federal Government, are few and defined,” Madison wrote in 1788. “Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.”¹⁴

With two levels of government at work, the system of federalism has provoked an ongoing national debate about the appropriate roles of the federal and state governments. For example, the United States does not have one federal system of public education. Instead, it is up to state and local officials to establish schools, develop curriculum standards, determine teacher qualifications, and establish enrollment and graduation requirements.¹⁵ Advocates of this system argue that states are best equipped to tailor schools and curricula to the needs of local populations. But critics insist that Americans would be better served by a uniform set of learning standards that apply to every state.

THE LEGISLATIVE BRANCH



Article I of the Constitution established the legislative branch, creating a Congress with two chambers—the Senate and the House of Representatives.¹⁶ It is the responsibility of the legislative branch to write and pass legislation that becomes law.



What is the party breakdown of the 115th Congress?

The Senate. The composition of the Senate is based on equal representation for every state. There are two senators from each of the 50 states, and 100 senators in total. The vice president serves as the president of the Senate, although the vice president has no vote except to break a tie. Senators are elected to six-year terms, and every two years, one-third of senators are up for reelection.¹⁷



Who are the senators in the 115th Congress?

The House of Representatives. The composition of the House is based on proportional representation for every state. In other words, a state’s population determines how many seats it has in the House. California, the most populous state, has 53 representatives in the 115th Congress. Wyoming, the least populous state, has one representative, as do Alaska, Delaware, Montana, North Dakota, South Dakota, and Vermont.¹⁸ The results of the U.S. Census can change the number of representatives per state over time, but the total number of representatives—435—has been set in law since 1911. Representatives are elected to two-year terms, and the entire House faces reelection every two years.¹⁹



Who are the representatives in the 115th Congress?

So, what exactly are the duties of Congress? Article I outlines a range of powers for the legislative branch, including the authorities to declare war, to regulate interstate and foreign commerce, to ratify treaties, and to confirm presidential nominations.²⁰ But two of Congress’ most significant duties arise from its powers to approve federal spending projects and to propose legislation that becomes law.

The Process of Making Laws. In order to prevent Congress from gaining too much power to create laws, the framers of the Constitution established a lawmaking process that involves the House, the Senate, and the president of the United States. The process typically begins when a representative or a senator proposes a bill. According to the Constitution, all bills that raise revenue must originate in the House, but other bills can begin in either chamber.²¹ If the chairperson of the relevant congressional committee believes the bill to be worthy of consideration, he or she may choose to hold public hearings to question experts and witnesses, and work within the committee to amend the bill's language and hold a vote. If the committee approves the bill, it may be sent to the floor of the House or the Senate for debate.

Once the entire body of the House or the Senate has debated and, if necessary, amended the bill, the chamber holds a final vote. If the bill is rejected, it is sent back to its original committee. If the bill passes in both chambers, a conference committee meets to reconcile any differences between the two versions of the bill, eventually sending the compromise bill back to each chamber for a final debate and vote. A conference committee is not necessary if the House and the Senate pass the same version of the bill.

If the bill is approved by both chambers, it goes to the president, who has ten days to sign the bill into law or veto it. If the president issues a veto, Congress can override that action by securing a two-thirds majority vote in both chambers. The president also has the option of issuing a pocket veto. If the president has not signed the bill after ten days, it becomes law; if Congress adjourns during that ten-day period, the bill does not become law.²²

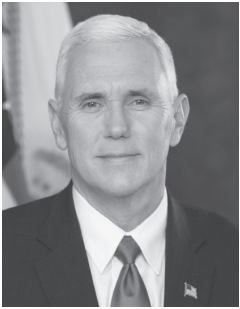
With so many players and interests involved in creating legislation, the vast majority of bills never become law. In any given two-year session of Congress, representatives and senators may propose upward of 10,000 bills, but only about four percent of them become law.²³ This happens for a variety of reasons. The powerful chairperson of a congressional committee may decline to consider a bill, or a committee may change the intent of a bill by adding amendments. Party leaders, industry lobbyists, and constituents may pressure lawmakers to oppose a bill, or lawmakers with opposing viewpoints may employ delaying tactics. A filibuster, for example, is an effort by a minority of senators to delay or block the Senate from voting on a bill or a confirmation. Senators may stage a filibuster by speaking on the floor of the Senate for an extended period of time or by refusing to vote to end debate on an issue.²⁴



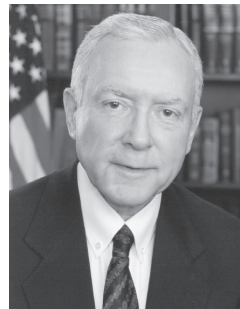
How many bills introduced in Congress become law?

One example of the difficulties that exist in passing legislation is the prolonged effort to reform the immigration system. Ever since the 1990s, Republicans in Congress have introduced immigration bills that largely focus on bolstering border security, while Democrats have favored bills that create a pathway to citizenship for undocumented immigrants in the United States.²⁵ In 2013, a bipartisan group of eight senators put forward a compromise bill to address both concerns, and the bill passed the Democrat-controlled Senate. But the Republican-controlled House never took up the bill, thus stalling the momentum for comprehensive immigration reform.²⁶

SENATE LEADERSHIP



President of the Senate
Michael R. Pence
Vice President of the
United States



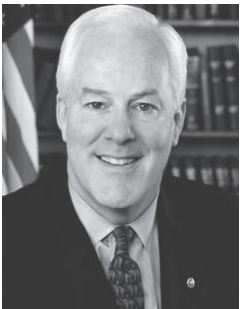
Senate President Pro Tempore
Orrin Hatch
Republican, Utah



Senate Majority Leader
Mitch McConnell
Republican, Kentucky



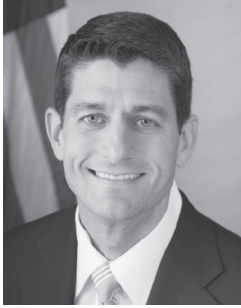
Senate Minority Leader
Charles Schumer
Democrat, New York



Senate Majority Whip
John Cornyn
Republican, Texas



Senate Minority Whip
Richard Durbin
Democrat, Illinois



Speaker of the House
Paul Ryan
Republican, Wisconsin



House Majority Leader
Kevin McCarthy
Republican, California



House Minority Leader
Nancy Pelosi
Democrat, California



House Majority Whip
Steve Scalise
Republican, Louisiana



House Minority Whip
Steny Hoyer
Democrat, Maryland

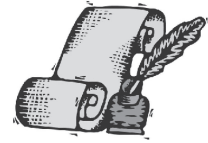
THE LEGISLATIVE PROCESS



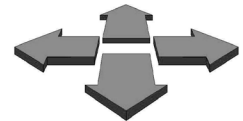
IDEA: A person or group has an idea for improving the way the federal government could address an issue they are concerned about.



BILL IS PROPOSED: A bill is written up in proper legislative language and is formally proposed to Congress. Only a member of Congress can have a bill placed on the legislative agenda.



COMMITTEE ASSIGNMENT: The bill is assigned to committee(s) with legislative jurisdiction over the issue. In the House, the speaker exercises strong control over assignments to committee(s); in the Senate, this is worked out by the committee chairs and the majority leader.



COMMITTEE HEARINGS: Experts, interest groups, and/or individuals are given time to express their views on the bill.



MARKUP: The committee works out changes to the language and provisions of the original bill. The committee can decide (by a majority vote of committee members) to kill or “table” the bill (indefinitely postpone further action), amend it, or approve it as is.



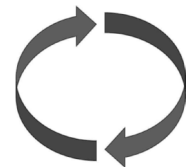
RULES ARE SET: The bill is scheduled for debate; time limits and procedures for proposing amendments from the floor are set. In the House, the powerful Committee on Rules sets specific rules covering all aspects of debate time and amendments from the floor (if it decides to allow any amendment proposals at all). In the Senate, individual senators are traditionally given much greater freedom to debate and propose amendments as they wish.



FLOOR DEBATE: The whole body debates the merits and drawbacks of the bill and votes on passage. At this stage, the whole body can vote to kill or table the bill, pass it as is, or (if the rules allow amendments from the floor) pass an amended version.



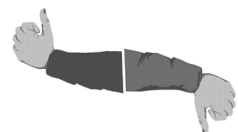
THE OTHER CHAMBER ACTS: The other chamber of Congress must take the bill through the same process. The Constitution requires all “money bills” to originate in the House; other types of bills can originate in either chamber.



CONFERENCE COMMITTEE: A conference committee composed of members from both chambers comes together to work out differences between the two versions of the bill. This is typically a time of intense negotiations and lobbying.



CONGRESS CONSIDERS THE CONFERENCE BILL: Both chambers of Congress must vote on the final version of the bill. Members may debate the final version, but no amendments are allowed; each chamber must cast a straight up or down vote.



TO THE PRESIDENT! The president may either sign the bill into law or veto it. The president may also use a procedure known as the “pocket veto.”





Article II of the Constitution established the executive branch and created the office of president of the United States.²⁷ The executive branch employs more than four million Americans, including the president, the White House staff, the military, civil servants, and political appointees in hundreds of agencies and commissions. It is the responsibility of the executive branch to carry out the laws passed by Congress.²⁸

The Constitution outlines several specific duties of the president, including the authorities to serve as commander in chief of the army and navy, to make treaties (by and with the advice and consent of the Senate), to nominate and appoint ambassadors and public ministers (by and with the advice and consent of the Senate), and to receive ambassadors and public ministers.²⁹ The president also oversees the executive branch in its efforts to issue regulations, administer programs, and execute laws.

In order to carry out this complex task, the president relies upon a vast network of staff members, advisors, and agency directors. The most prominent advisors to the president are cabinet officials—a group that comprises the leaders of the executive departments. The original cabinet formed by President George Washington had only four members—Secretary of State Thomas Jefferson, Secretary of the Treasury Alexander Hamilton, Secretary of War Henry Knox, and Attorney General Edmund Randolph.³⁰ Over the past two centuries, the cabinet has expanded to include the vice president and the heads of 15 executive departments.



What are the central offices and departments of the executive branch?

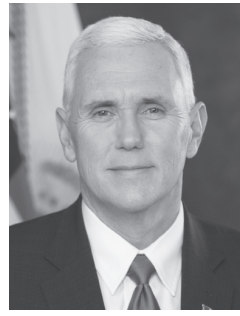
Under Article II, the president submits all cabinet nominations to the Senate, which in turn holds committee hearings to question the nominees and then votes on their confirmation.³¹ The president is also responsible for appointing ambassadors, agency directors, special assistants, and advisors to more than 4,000 positions in the executive branch—1,242 of which require Senate approval.³² The executive bureaucracy also includes uniformed military personnel and career civil servants whose tenure does not depend on the occupant of the White House.

So, how exactly does the executive branch work with Congress? At times, when the executive and legislative branches are controlled by the same political party, Congress is able to pass—and the president signs—far-reaching government initiatives, programs, reforms, and policy changes, as there are fewer threats of a presidential veto. In 2017, Republicans assumed control of the White House and both chambers of the 115th Congress. The last time the same party simultaneously controlled the White House and Congress was 2009–2011, when Democrats passed priorities such as the Patient Protection and Affordable Care Act, the 2010 health care law known as Obamacare. Prior to 2017, Republicans last controlled both the White House and Congress in 2003–2007, when they passed wide-ranging tax cuts and funding for the Iraq War during the administration of President George W. Bush.

At other times, the priorities of the president are at odds with those put forward by Congress, underscoring the constitutional checks on executive and legislative power. These differences can push the president and Congress to find compromise, or they can lead to disagreements and gridlock. In 2014, for example, President Barack Obama responded to gridlock on immigration policy by issuing a series of executive actions. If implemented, these actions would have made millions of undocumented immigrants eligible for work permits and deferred deportation. A coalition of 26 states sued, arguing that the president abused his executive authority by circumventing Congress. In 2016, the Supreme Court let stand a lower court ruling that blocked President Obama's program from moving forward.³³



President of the United States
Donald J. Trump



Vice President of the
United States
Michael R. Pence

CABINET MEMBERS



Secretary of State

Mike Pompeo

Secretary of the Treasury

Steven T. Mnuchin

Secretary of Defense

James Mattis

Attorney General

Jeff Sessions

Secretary of the Interior

Ryan Zinke

Secretary of Agriculture

Sonny Perdue

Secretary of Commerce

Wilbur L. Ross, Jr.

Secretary of Labor

Alexander Acosta

Secretary of Health and Human Services

Alex Azar

Secretary of Housing and Urban Development

Benjamin S. Carson, Sr.

Secretary of Transportation

Elaine L. Chao

Secretary of Energy

James Richard Perry

Secretary of Education

Elisabeth Prince DeVos

Secretary of Veterans Affairs

Robert Wilkie

Secretary of Homeland Security

Kirstjen Nielsen



Article III of the Constitution established the Supreme Court and the federal judiciary.³⁴ It is the responsibility of the judicial branch to interpret the Constitution.

The Supreme Court. The Supreme Court is the highest court in the United States, and its exact organization is determined by Congress. Over the years, Congress has altered the number of justices who serve on the Court from a low of five to a high of ten. But ever since the late 19th century, there have been nine justices on the Court—one chief justice and eight associate justices. These justices serve for life (unless they choose to retire or are impeached)—a restriction intended to preserve judicial independence and allow justices to issue judgments free of political pressure. Like all federal judges, the justices are nominated by the president and confirmed by the Senate.³⁵

The Supreme Court has original jurisdiction (which means the case is tried before the Court) over suits between two or more states and cases involving ambassadors and other public ministers. The Court has appellate jurisdiction (which means the Court can hear the case on appeal) over almost any other case that involves a point of constitutional or federal law.³⁶

The most well-known power of the Supreme Court is that of judicial review. This doctrine, established by the Court in *Marbury v. Madison* (1803), gives the Court the ability to declare a legislative or executive action to be in violation of the Constitution.³⁷ Each year, 7,000 to 8,000 petitions are filed with the Court during its term, which begins on the first Monday in October. Of these petitions, the Court agrees to hear oral arguments in roughly 80 cases.³⁸ When the Court issues a ruling on a constitutional issue, that judgment is essentially final; it can be altered only by a new Court ruling or a constitutional amendment. When the Court interprets a federal law passed by Congress, new legislative action can still be taken.³⁹



What is on the docket for the Supreme Court's October 2018 term?

Because Supreme Court decisions carry so much weight, Americans are constantly debating how the justices should interpret the Constitution. Some favor a strict interpretation of the Constitution—one that uses the text of the document to remain faithful to the framers' original intentions. Others believe in a loose interpretation of the Constitution—one that treats the charter as a living document and applies the spirit of the framers' ideas to modern circumstances.

These conflicting ideologies have, at times, created disagreements between the president and the Senate about who is best suited to serve on the Supreme Court. In March 2016, for example, President Obama nominated Judge Merrick Garland, the chief judge of the U.S. Court of Appeals for the District of Columbia, to fill a vacancy on the Court following the death of Justice Antonin Scalia, a champion of interpreting the Constitution as it was originally intended.⁴⁰ Concerned that President Obama's nominee would shift the ideological balance of the Court in the opposite direction, the Republican-controlled Senate declined to consider Judge Garland's nomination. Republicans argued that it was too close to a presidential election to nominate and confirm a new justice, and they insisted that the public should weigh in at the ballot box first (since 1912, five justices have been nominated and confirmed in a presidential election year).⁴¹ This tactic allowed the seat to remain empty until President Donald Trump assumed office in 2017 and put forward his own nominee, Judge Neil Gorsuch of the U.S. Court of Appeals for the Tenth Circuit. Justice Gorsuch was confirmed by the Senate in April 2017.



Chief Justice
John Roberts, Jr.
Appointed by President
George W. Bush, 2005



Associate Justice
Samuel Alito, Jr.
Appointed by President
George W. Bush, 2006



Associate Justice
Clarence Thomas
Appointed by President
George H. W. Bush, 1991



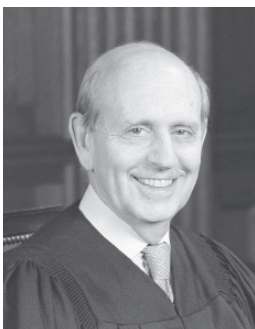
Associate Justice
Sonia Sotomayor
Appointed by President
Barack Obama, 2009



Associate Justice
Ruth Bader Ginsburg
Appointed by President
Bill Clinton, 1993



Associate Justice
Elena Kagan
Appointed by President
Barack Obama, 2010



Associate Justice
Stephen Breyer
Appointed by President
Bill Clinton, 1994



Associate Justice
Neil M. Gorsuch
Appointed by President
Donald Trump, 2017



Judge Brett Kavanaugh
Nominated by President
Donald Trump and Awaiting a
Confirmation Vote, 2018



Ever since the founding of the United States, Americans have debated the proper size and scope of the federal government. Whereas the size of government can be measured by the number of federal employees, the number of federal programs, and the size of federal revenues and expenditures, the scope of government is more abstract. Which issues should the government address? How active a regulatory role should the government assume? Which policies should the government promote?

In many ways, the argument over the size and scope of government forms the very basis of American politics. Conservatives tend to believe that the government should play a reduced role in the marketplace and in the lives of citizens. Social conservatives tend to argue that the government has a sizable role to play in banning same-sex marriage, limiting access to abortion, and other social issues. Liberals tend to believe that the government should play an active role in the marketplace and in programs that promote equality. Social liberals tend to argue that the government should play a reduced role in social issues.

But conservative or liberal, the federal government routinely takes a wide variety of actions—some of which are not specifically outlined in the Constitution. The authority to do this lies in several vague clauses of Article I, Section 8, of the Constitution, and in the 14th Amendment.

The Necessary and Proper Clause. The Constitution gives Congress the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof.”⁴² This clause was most famously interpreted by the Supreme Court in *McCulloch v. Maryland* (1819), in which the Court gave Congress broad authority to determine what is “necessary” for implementing federal powers. Although the Court’s interpretations have varied in subsequent years, no law passed by Congress has ever been ruled unconstitutional on the stated ground that it was not “necessary” to the federal government.⁴³

The Commerce Clause. The Constitution gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”⁴⁴ Over the years, lawmakers have debated the meaning of “commerce” in this clause, as it is not defined in the Constitution. Some scholars have argued that commerce refers to trade or exchange; others have insisted that it includes broad commercial and social intercourse between residents of different states. When passing the Civil Rights Act of 1964, Congress relied on the commerce clause to prohibit racial segregation and discrimination in places of public accommodation involved in interstate commerce.⁴⁵

The Taxing and Spending Clause. The Constitution gives Congress the power “to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”⁴⁶ This clause was central in the landmark case *National Federation of Independent Business v. Sebelius* (2012), in which the Supreme Court upheld the Obamacare individual mandate under Congress’ authority to levy taxes.⁴⁷

The Equal Protection Clause. Section 1 of the 14th Amendment reads, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁴⁸ This clause has played a central role in the federal protection of civil rights and in debates about affirmative action programs.

CONCLUSION



Ever since the framers drafted the Constitution in the summer of 1787, the understanding of the founding document has shifted and evolved. It is up to all Americans to discuss, deliberate, and take action to shape our government today. In so doing, we play the most fundamental role required in a democracy—that of the citizen.



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- ³ *Encyclopedia Britannica*. "Constitutional Convention." 16 Feb. 2017. Web. 5 Apr. 2017.
- ⁴ Ibid.
- ⁵ *Encyclopedia Britannica*. "Constitution of the United States of America." Web. 5 Apr. 2017.
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- ⁹ Legal Information Institute. "Federalism." Cornell University Law School. Web. 5 Apr. 2017.
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- ¹¹ Legal Information Institute. "Federalism." Cornell University Law School. Web. 5 Apr. 2017.
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- ²⁷ U.S. Constitution. Article II.
- ²⁸ WhiteHouse.gov. "The Executive Branch." Web. 5 Apr. 2017.
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- ³⁵ U.S. Courts. "About the Supreme Court." Web. 5 Apr. 2017.
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