

The delegates to the Constitutional Convention vigorously debated which powers should be awarded to the new federal government. Following the suggestions of the Baron de Montesquieu, they separated the new government's powers among three branches. They hoped that each branch would act as a watchdog, making sure that the other two branches did not grow too powerful or oppressive.

Congress was viewed at the time as the most powerful branch of government. The division of Congress into two houses was seen as another way to curb its power. For a bill (*a proposed law*) to become law, a majority of both houses of Congress would be needed to approve it.

In this chapter, you will learn more about Congress, our legislative branch.

The Structure of Congress.

The Constitution created Congress as the branch to make all federal laws:

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 “All legislative powers . . . shall be vested in a Congress of the United States . . .”

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 —U.S. Constitution, Article 1, Section 1
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The new Congress consisted of two separate houses or chambers: the **House of Representatives** and the **Senate**. Because it has two chambers, Congress is often described as “**bicameral**” (*two-chambered*).



## The Active Citizen

How did this new body differ from the previous Congress under the Articles of Confederation?

## The Powers of Congress.

The Constitution gave Congress both legislative (*law-making*) and non-legislative powers.

### The “Enumerated” Powers

The specific powers of Congress are listed in Article I, Section 8 of the Constitution. These are sometimes known as the “**delegated**” or “**enumerated**” powers. These powers include:

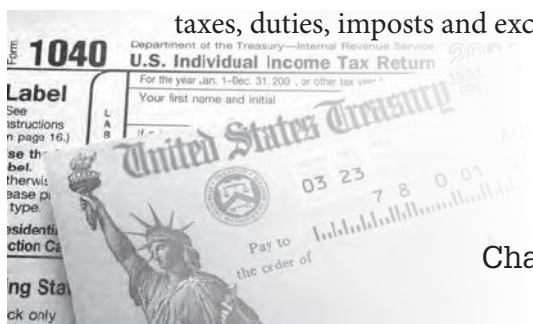
#### 1. The power to tax and to spend.

Congress has the power to “lay (*raise*) and collect taxes, duties, imposts and excises, to pay the debts

and provide for the common defense and general welfare of the United States.”

Congress thus has the power to raise money through taxes and to spend it for defense and the public welfare. This is sometimes referred to as the “taxing power” or “the power of the purse.”

Originally, Congress’s power to tax was limited to duties on imports and to excise taxes on the sale of particular goods. Such taxes had to be uniform throughout the United States. The Sixteenth Amendment, passed in 1913, then gave Congress the power to tax individual and corporate incomes. Since that time, income taxes have become the government’s chief source of revenue.



## 2. The power to borrow money.

Congress is able to borrow money. It usually does so by issuing government bonds. These bonds entitle their owners to interest payments. Government bonds also have dates of maturity, when they can be turned in for cash.

## 3. The power to regulate interstate commerce.

Under the Articles of Confederation, economic rivalries between the states had grown intense. They were restricting the free flow of goods across state lines. The Confederation Congress had no power to remedy this situation. The Constitution gave the new Congress the power “to regulate commerce with other nations, among the states, and with the Indian tribes.” **Commerce** is the buying, selling and trading of goods and services. Commerce between parties in different states of the United States, or with foreign nations is known as “**interstate commerce**.” Congress thus has the power to regulate interstate commerce. This is one of the most important powers of the federal government.

## 4. The power to regulate naturalization (*granting immigrants citizenship*).

The Constitution gave Congress the power to make laws regulating how immigrants can become citizens. These powers are held by the federal government alone and are not shared with the states.

## 6. The power to establish standard weights, coin money, and punish counterfeiters.

Congress was given the power to coin money and to “... fix the standards of weights and measures.” This provision empowered Congress to establish a common currency, ending the confusion that had existed when each state had issued its own money. Congress was also given the power to punish counterfeiting (*making false money*), which became a federal crime.

## 7. The power to establish post offices.

Communication by mail was essential in the days before the telegraph, telephone, radio and Internet. The Second Continental Congress had appointed

Benjamin Franklin as Postmaster General as early as 1775. The Articles of Confederation had given the Confederation Congress “the sole and exclusive right and power of ... establishing or regulating post offices from one State to another, throughout all the United States.” The Constitution followed this example and gave Congress the power “to establish post offices and post roads,” so that the mail might be delivered. Congress continues to regulate the U.S. Postal Service today, while tampering with the mail is a federal crime.

## 8. The power to establish patents and copyrights.

**Copyrights** provide authors with an exclusive right to their writings for a limited period of time. **Patents** give inventors similar exclusive rights to use, lease or sell their inventions for a limited period of time. These exclusive rights provide incentives to authors and inventors to develop new products and to share the fruits of their labors. Congress has the power to regulate both patents and copyrights.

## 9. The power to declare war.

Only Congress can declare war. Although this power belongs solely to Congress, the President is able to send troops overseas as Commander-in-Chief. To prevent the President from sending troops overseas for long periods of time without any declaration of war or the approval of Congress, Congress passed the War Powers Act in 1973. According to this law, the President can send troops overseas in an emergency for 60 days, but must withdraw them if the approval of Congress is not obtained within that time period.

## 10. The power to establish a system of lower federal courts.

The delegates to the Constitutional Convention could not agree on whether or not to create additional federal courts below the U.S. Supreme Court. As a compromise, it was left to the future Congress to decide. Congress was given the power to create such lower courts but was not required to exercise this right.

When it met, the very first Congress decided to create “inferior” (lower) federal courts (the U. S. District Courts and Circuit Courts) in the Judiciary Act of 1789. You will learn more about these courts in Chapter 7. Congress also has the power to determine what kinds of matters these courts can hear.

### 11. The power to raise and support armies.

The Confederation Congress had lacked the power to raise its own army. It was therefore dependent on the states. The new Constitution gave the power to

raise and support armies to the federal government. Because of its powers to tax and spend money, Congress was given the power to decide on the budget of the nation’s armed forces (the military—today, the U.S. Army, Navy, Marines and Air Force).

### 12. The power to maintain a navy.

Congress was given the power to build and maintain a navy, just as it is able to raise and support armies on land.

## The Active Citizen

- ▶ Select two of the “delegated” or “enumerated” powers above. Then explain why each is still important today. Consider the impact of the exercise of this power on the public, as well as its expense.
- ▶ Write a newspaper editorial explaining why, with “hindsight,” it was a good or bad idea to give these two powers to Congress.

### The Implied Powers: The Elastic Clause

In addition to these enumerated powers, Congress also has “**implied**” powers. These are powers that are not directly stated in the Constitution, but that are implied (*strongly suggested*) by its other provisions.

The basis for the implied powers is the “Necessary and Proper” Clause, found at the end of Article I, Section 8. This clause gave Congress the power—

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“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing [*previous*] Powers, and all other Powers vested by this Constitution in the Government of the United States . . .”
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The meaning of “necessary and proper” is not entirely clear. This clause can be interpreted narrowly or broadly. Does an action have to be absolutely necessary for it to be an implied power of Congress?

Alexander Hamilton argued that the “Necessary and Proper” Clause gave Congress the power to

charter the First National Bank because having the bank would help Congress in carrying out its enumerated powers. Others felt that that creation of such a bank, while helpful, was not absolutely “necessary.” They concluded that Congress had no power to create it.

The interpretation of the “Necessary and Proper” Clause was the subject of the case of *McCulloch v. Maryland*, decided in 1819. One of the questions before the U.S. Supreme Court was whether Congress had the power to establish the Second National Bank. The chartering of such a national bank was not one of the enumerated powers of Congress.

Those who interpreted the Constitution strictly made the following argument:

1. The power to charter a national bank was not expressly granted to Congress by the Constitution. It was not one of the enumerated powers.
2. It was not an “absolute physical necessity” for Congress to create a national bank in order to



exercise its other powers. Congress could carry them out without the bank.

3. Therefore, Congress had no implied power to charter a national bank.

The Supreme Court rejected this strict interpretation. Instead, it argued that it was “necessary and proper” for Congress to create a national bank in order to exercise many of its enumerated powers:

*“Although, among the enumerated powers of government, we do not find the word ‘bank,’ . . . we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are [e]ntrusted to its government . . .*

*But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making ‘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 in any department thereof.’ . . .*

*If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.”*

—U.S. Supreme Court, *McCulloch v. Maryland*, 1819

This broad interpretation gave Congress wide implied powers. Congress could do anything that was not prohibited, so long as it was undertaken in order to help it in the exercise of its enumerated powers.

Because the “Necessary and Proper” Clause stretched the powers of Congress, it has also come to be known as the “**Elastic Clause**.”

## The Active Citizen

- Imagine that it is 1819. You are one of the attorneys arguing before the U.S. Supreme Court in the case of *McCulloch v. Maryland*. Write a short speech to deliver to the Supreme Court. Explain your own views on the meaning of the “Necessary and Proper” Clause and whether it justifies the chartering of a national bank by Congress.
- Hold a class debate on the following resolution.

*Resolved: The great expansion of the federal government in recent times proves that the “Necessary and Proper” Clause was a mistake.*

### Non-Legislative Powers

Many of the powers of Congress are non-legislative powers. These include the following:

#### 1. Impeachment.

Congress has the “sole power of impeachment.” This is the power to accuse members of the executive and judicial branches of abuses of power or unlawful activities, and to remove them from office.

In impeachment proceedings, the House of Representatives acts first. It has the power to “impeach” or accuse. Once an official is successfully impeached in the House of Representatives, the Senate conducts an impeachment trial. If the accused official is convicted, he or she may be removed from office and be forbidden to hold office in the future. In American history, nineteen federal officials have so far been impeached. These include two Presidents, one Cabinet member, one Supreme Court Justice, and fourteen federal judges. Of these nineteen, eight were convicted and removed from office by the Senate.

## 2. Choosing a President.

Congress also plays a role in the election of the President. The Constitution provides that each state must choose a number of electors equal to its number of Senators and Representatives combined. These electors then vote for the President. The votes are counted by the President of the Senate, in the presence of the Senate and the House of Representatives. If a candidate wins a majority of the electoral votes—known as the Electoral College—then he or she becomes the next President. However, if no candidate receives a majority, then the House of Representatives chooses the President. In this case, each state is given one vote.

## 3. Advice and Consent.

**Treaties.** The Constitution requires the President to obtain the “advice and consent” of the Senate for the ratification of a treaty—a solemn agreement between two or more countries. The Senate must approve (or “ratify”) every treaty by a two-thirds vote.

**Confirmation of Appointments.** The President also nominates and appoints ambassadors, other ministers and consuls, Justices of the Supreme Court, other federal judges, and all other federal officers of the United States, including Cabinet members and military officers. In all these cases, the “advice and consent” of the Senate is again required. The Senate must **confirm** (*approve*) such appointments by a simple majority vote.

For important nominations (such as a Supreme Court Justice or Cabinet member), a Senate committee usually conducts an investigation, holds hearings, and makes recommendations. Then the nomination is taken to the floor of the Senate, where it is debated and the entire Senate votes on the confirmation.

As many as 65,000 military appointments and 2,000 civilian appointments are confirmed every two years. Most of these appointments are routinely approved. There have been occasions, however, when major Presidential nominations have failed because of Senate objections.

## 4. Propose Constitutional Amendments.

Congress proposes amendments to the Constitution. Amendments to the Constitution require a vote of two-thirds of each house of Congress. They then have to be ratified by three-fourths of the states.

## 5. Oversight and Investigative Powers.

Congress has implied powers of **oversight** and **investigation**, which are needed for Congress to perform its tasks. To write good laws, Congress needs to investigate social, economic and political conditions. Investigative powers are equally necessary for Congress to prepare its budget, to provide for the national defense, to maintain the armed forces, and to exercise its power of impeachment. The oversight and the investigative powers of Congress are essential if Congressional committees are to ensure that government officials and agencies act lawfully and do not abuse their power.

Investigation and oversight are generally conducted by Congressional committees. Congressional committees have the power to issue **subpoenas** (*written commands having the force of law*) for documents and other evidence, or for individuals to appear before them to answer questions and provide expert testimony. Congressional committees may grant immunity from prosecution to individuals who cooperate by providing them with information.

## Limitations on Congressional Power

These are several important limitations on the powers of Congress:

1. Congress can be “checked” by the other two branches. The President, for example, can veto proposed laws even though they have passed both houses of Congress. The Supreme Court can rule that laws enacted by Congress are unconstitutional and therefore invalid.
2. Congress can only exercise those enumerated and implied powers granted to it by the Constitution. Thus, if Congress passed laws establishing a national school system, setting national moral standards for local communities, or denying states the power to regulate businesses within their borders, these laws would all be considered unconstitutional unless Congress could show that these laws were somehow necessary for Congress to exercise its enumerated powers.
3. The Constitution prohibits Congress from passing laws denying specific individual rights. For example, Congress cannot pass a law that takes away freedom of religion or that denies individuals the right to petition the courts for a writ of *habeas corpus*. The Constitution also prohibits Congress from granting titles of nobility. You will learn more about some of these specific prohibitions in Chapters 9 and 12.

## Who Can Become a Member of Congress?

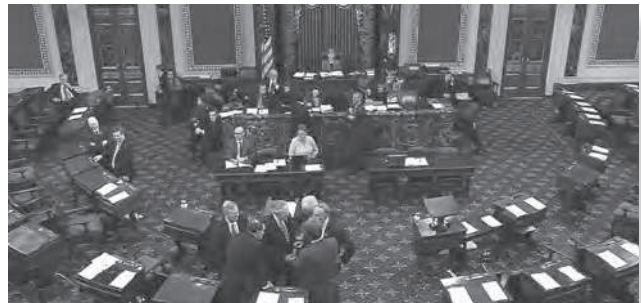
There are 435 Representatives in the House of Representatives. The number of seats in the House is fixed. It is reapportioned among the 50 states every ten years, based on their population size according to the U.S. Census.

To become a Representative, an individual must:

1. Be a U.S. citizen for at least seven years;
2. Be at least 25 years old; and
3. Be a resident of the state in which he or she is elected.

There are 100 U.S. Senators in the Senate—two for each state. To become a U.S. Senator, an individual must:

1. Be a U.S. citizen for at least nine years;
  2. Be at least 30 years old; and
  3. Be a resident of the state in which they are elected
- There are no other requirements. In fact, most members of Congress today have backgrounds in business, law, or education.



## The Active Citizen

- Search on the Internet for information about the member in the House of Representatives from your Congressional District. What is his or her background? Why did he or she enter politics? Then write a letter asking your representative these same questions. Ask if your representative feels satisfied with what he or she has achieved by being a member of Congress. Would he or she recommend becoming a member of Congress as a goal for a middle school student today? Finally, send your letter to the local office of your member of Congress and see what reply you receive.

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## Congress at Work

Each Congressional term begins in January of an odd-numbered year, such as 2015, and lasts two years. Before the new term begins, the major political parties (the Democrats and Republicans) hold private meetings, known as “**caucuses**,” to reach agreements on issues and strategies, and to choose leaders to guide their way.

### The House of Representatives on Opening Day.

The term of a member of the House is two years. All members are elected to serve their two-year terms at the same time, so they all go through the process of re-election at the end of each term.

When Congress assembles for the new term, the members of the House elect the **Speaker of the House**, who presides over their proceedings. The Speaker is actually determined in advance by the **majority party** (*the party with the larger number of members*) at its caucus. Next, the House adopts the rules that will govern its proceedings. These rules are based on tradition and history.

The House then elects its officers (such as the Clerk of the House and its Sergeant-at-Arms) and appoints its members to Congressional committees and committee chairs. These decisions have actually also been taken in advance at the caucus of the majority party. Once these tasks are completed, the House sends a message to the Senate that it is ready for the President’s State of the Union Address.

**The Senate on Opening Day.** The term of each Senator is six years. One third of all Senators face election every two years. Thus only one third of the Senators are serving new terms when the Senate opens. This method of electing its members provides continuity to the Senate. The process of swearing in the Senators and the organizational details at the beginning of a new term are similar to the House. The Vice President of the United States serves as the President of the Senate, but the Senate elects a “**President pro tempore**,” who presides over

the Senate when the Vice President is absent. The President pro tempore is the leading member of the majority party in the Senate. Senators are then assigned to fill vacancies on committees and other positions in the Senate. Both the Senate and the House choose a **majority leader**—a member of the majority party who will manage the interests of their party in their house of Congress. The minority party in each house similarly chooses a **minority leader**. The Senate is then also ready to hear the President’s State of the Union Address.

**The President’s “State of the Union” Address.** The President is required by the Constitution to give a “State of the Union Address” to Congress. Shortly after Congress notifies the President that it is ready, the President delivers the address before Congress, other dignitaries, and live television. The address covers both domestic and foreign affairs, provides an agenda for the coming term, and recommends the legislation that the President believes is needed by the nation.

### Congressional Committees

Imagine that your class is about to plan a party. It has to arrange music, food, decorations and invitations. It would be more efficient to divide students into four groups, or “committees,” to perform this work, rather than to have the whole class arrange all aspects of the party.

For greater efficiency, Congress is similarly organized into committees. Most of the work of Congress is actually performed in these committees. The three most important types of committees are:





**Standing Committees.** When Congress was first formed, a separate committee was appointed to consider each bill. Each house soon had hundreds of committees. This system was quickly replaced by the system of standing committees. Each house currently has 20 standing committees. These are by far the most important committees in Congress. Each standing committee is a permanent committee that deals with all bills on a particular subject. Standing committees continue from session to session of Congress. Each standing committee represents the entire House or Senate in miniature. Each political party has a number of seats on each committee proportional to its representation in its house as a whole. Each party is permitted to choose its own members. Party ratios on committees reflect the strength of that party in the house at large. Thus, if there were 60 Democrats and 40 Republicans in the Senate, the Democrats would have 6 of 10 seats on a standing committee in the Senate.

The chairperson of each standing committee and subcommittee belongs to the majority party. The chairperson holds important powers, such as the power to decide which of the many bills the committee will consider.

**Special Committees.** Special committees (also known as select committees) are created for a specific and temporary purpose. For example, a special committee might be formed to investigate the continuing effects of pollution in the Gulf of Mexico from the Deepwater Horizon oil spill.

**Conference Committees.** No bill can be sent to the White House to be signed into law unless it passes both houses in the exact same form. Members of

## Examples of Standing Committees

### House of Representatives

House Committee on Foreign Affairs  
House Committee on Ways and Means  
House Committee on Appropriations

### Senate

Senate Committee on Foreign Relations  
Senate Committee on the Judiciary  
Senate Committee on Finance



The U.S. House of Representatives Finance Committee

both houses therefore act together in a conference committee to eliminate inconsistencies between both versions of the bill. You will learn more about the role of the conference committee in the law-making process later in this chapter.

## The Active Citizen

- ▶ Research one of the standing committees from the Senate or House of Representatives on the Internet. Also telephone or email the office of one of the members of this committee for additional information. Then give an oral presentation, PowerPoint or Prezi presentation to your class, or make a video, on the work of this committee.
- ▶ Contact the office of your own member of Congress. Then invite a staff member to come to your class to speak about your member's participation in a standing committee.