

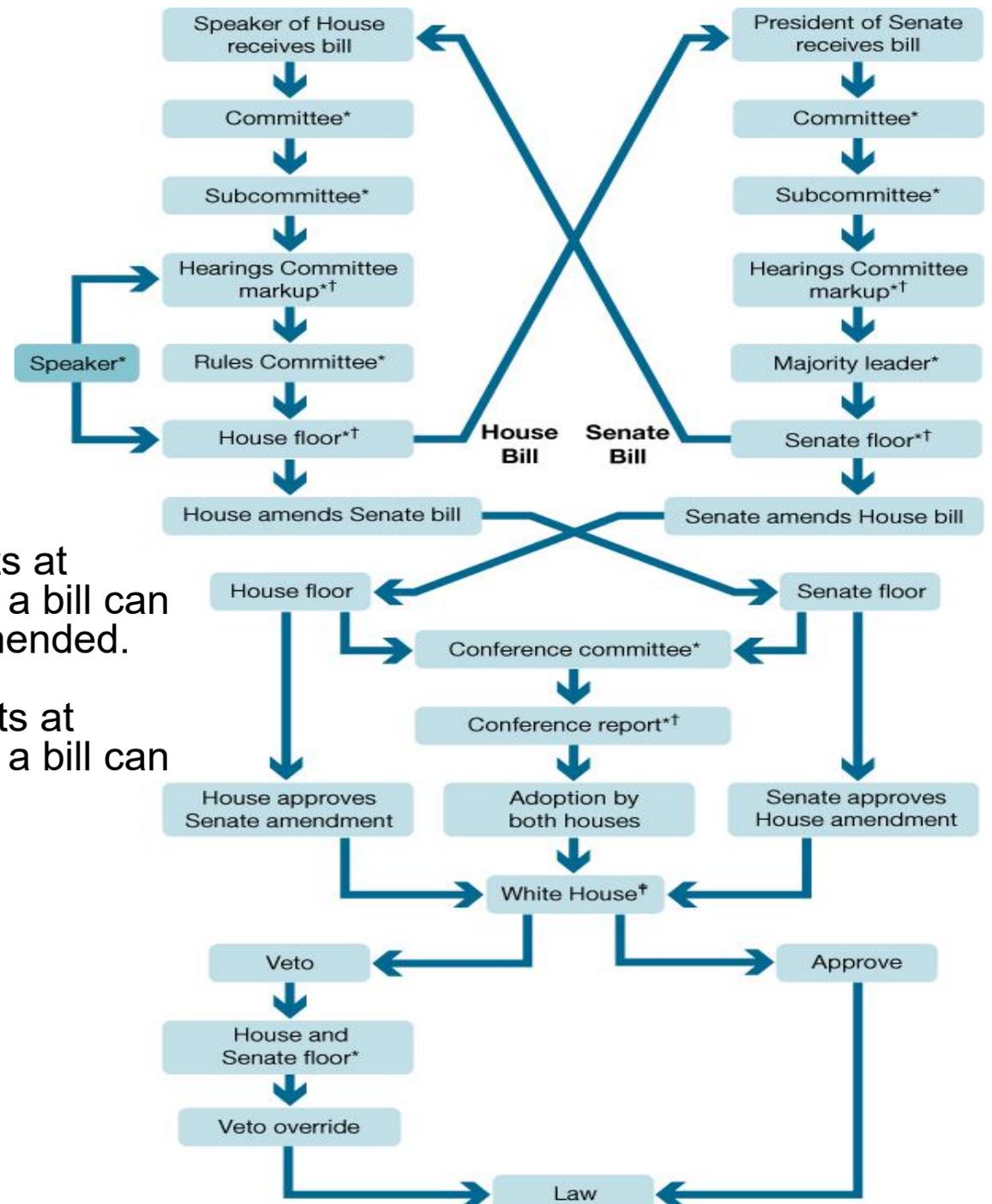
# Understanding Congress

Week 3

- <https://youtu.be/SZ8psP4S6BQ?si=iLLarxWGAa4fhhYg>

- So- with this system- is 'gridlock' really a bad thing? Or was that the design?

- <https://www.congress.gov/legislative-process>



\*Points at which a bill can be amended.

†Points at which a bill can die.

# Law Making Process- part 1

- Legislator(s) are the only ones who can introduce a bill
  - CAN introduce legislation that was ‘prepped’ by special interest/lobbyists
- Speaker of the House assigns it to a committee (with guidance from house parliamentarian)
  - In the Senate it’s technically the President Pro Tempore/Vice President, but realistically the non-partisan parliamentarian assigns it to the appropriate committee
- Up to the committee chair whether/when to hold hearings/markup etc.
  - If house/senate is unhappy with the committee’s inaction can pull it from committee & reassign it/take action themselves
    - Discharge petition to do so- how the Epstein Files Transparency Act happened
- IF committee votes to send it to the floor then the speaker/majority leader then may schedule it for debate/vote
  - They can be forced to schedule it by the members if they are unwilling to do so

# Law Making Process- Part 2

- If passes one chamber, goes through entire process in 2<sup>nd</sup> chamber.
- Then conference committee must reconcile any language differences
  - Conference committee members chosen by leadership (must be formally approved by each chamber)
    - Often senior members on the committee that originally passed the bill
  - Then both chambers must vote again
- Once same language is passed, goes to President
- President has 3 options
  - Sign, veto, do nothing (bill becomes law unless it's a pocket-veto)
    - 10 days (excluding Sunday) to do something

# Probability-

- **Enactment Rate:** Only about 7% of the 10,000+ bills introduced in each Congress actually become law.
- **Committee Failure:** A high percentage of legislation fails to even receive a committee hearing.
- **Senate Inaction:** The Senate serves as a primary obstacle, often not taking a final vote on legislation that has already passed the House.
  - About 45% of bills that reach the Senate floor do not pass

<https://www.govtrack.us/congress/bills/statistics>

# Congress is more than just Making the Law

## Oversight

- Congress is expected to oversee the activities of the executive branch in order to ensure funding is spent and laws are enforced properly.
- Also have oversight duties of the judicial branch
- <https://history.house.gov/Institution/Origins-Development/Investigations-Oversight/> if you want details
- Through Implied powers (impeachment etc.) and the necessary & proper clause the Courts continually agree Congress has this power.
- Recent Example- DHS secretary called to Congress to testify
  - Congress has the power and obligation to ensure the laws they passed are being executed properly.
  - Gives chance to determine whether laws need to be modified

# Other Job of Congress-

## Advice and consent

- The Senate must confirm top-level executive appointments, ambassadors, and federal judges.
- Approves all treaties/only one to declare war etc.
- Current example-
  - 28 U.S.C. § 541, enacted in 1966 states all district attorneys (“us attorneys”) (there are 93) must be confirmed by the Senate
    - <https://www.law.cornell.edu/uscode/text/28/541>
  - 28 U.S.C. § 546 states exactly how they should be picked, the process for confirmation AND what happens if they aren’t confirmed within 120 days
    - Originally rooted in 1898, the statute was heavily amended in 1986 and 2006
  - Allows the judges to appoint an interim- NY and VA have done this

# Advise & Consent

- Of the ~4,000 political appointments, about 1,200 require senate confirmation
  - Official list is published in the United States Government Policy and Supporting Positions, commonly known as the "Plum Book"
- Senate must ratify treaties- otherwise just agreements the sitting president can choose to remove us from

# Delegating Power

- Congress takes a long time to act, and is never unanimous
- Certain situations require quick cohesive decision-making
  - Congress has chosen to transfer some of its Constitutionally mandated powers to the executive/judicial via codified law
    - **Every power delegated must be specific, clear, and the law must specify under what conditions they delegate the power**
- Congress CANNOT delegate its legislative duties  
([https://constitution.congress.gov/browse/essay/artI-S1-4-1/ALDE\\_00001315/](https://constitution.congress.gov/browse/essay/artI-S1-4-1/ALDE_00001315/))

# Delegating Power

- US Supreme Court currently deciding whether one branch/part of government exceeded their authority by using the “Major Questions Doctrine” (first came about in 1980s)-
  - Court argues that statutes must not be interpreted as delegating power to decide major questions unless the text clearly grants such power
  - Defines ‘major questions’ as- “issues of vast economic and political significance”
- Tariff example-
  - International Emergency Economic Powers Act (IEEPA) 1977 the law in question (<https://www.law.cornell.edu/uscode/text/50/chapter-35>)
  - Did that law specifically delegate Congress’s power to impose a tariff to the executive?
  - Supreme Court ruled no- a tariff is a ‘tax’ not comparable to an embargo or import ban (which is allowed when an ‘emergency’ is declared)

# Reasons Congress is “broken”

- First- I would argue it’s not necessarily broken. It was meant to be slow and deliberative.
  - If no agreement, then do nothing
- Society has changed in 240 years
  - Transient society
  - Population growth
  - Communications easier
- Parties wrote rules to entrench their power
  - Gerrymandering with new technologies
  - **Finance laws**
  - Other ‘incumbent advantages’
- Procedural abuses by party in power

# Reasons Cont.

- Since WWI power has been shifting to the executive branch
  - Government has grown
- Being a legislator was not meant to be a ‘full time job’
  - Founders anticipated part-time/short-term legislators
  - No term limits (they are unconstitutional)
- Unwilling/unable to make hard decisions
  - Compromise is a thing of the past
- Performative politics over deliberative decision-making

# Reforms

- What is the goal of reform?
  - increasing efficiency
  - redistributing power
  - fostering transparency
  - boosting public perception
  - attaining policy outcomes
  - reinforcing congressional authority

# Potential reforms

- Term Limits are NOT allowable
  - The Supreme Court ruled in [\*U.S. Term Limits, Inc. v. Thornton\*](#) (1995) that states cannot add qualifications, such as term limits, for federal representatives
  - Court ruled only a constitutional amendment to change Article 1 would allow this
  - There are LEGITIMATE downsides to term limits
    - Institutional memory lost & only sits with the bureaucracy
- Campaign finance reform is very problematic with the *Citizens United* decision
- States re-write rules to increase competition for seats
  - Stop gerrymandering

# Potential reforms

- States re-write rules to increase competition for seats
  - Stop gerrymandering
  - Change to ranked choice voting or runoff election and require winner to get over 50%
    - Proven to increase competitiveness. Allows 3<sup>rd</sup> party candidates a chance
    - Would still follow the constitution as 1 person would represent 1 district
- End the filibuster, change committee assignment rules
- Change who sets the agenda for floor deliberation
- Change how committee chairs are chosen
- Penalties for not showing up- attendance rules
- <https://www.congressionalinstitute.org/congressional-reform-ideas/> has all kinds of ideas on elections to operations

# Thank you!

- Please fill out your evaluation forms
  - Include ideas on future classes you'd like to see
- If you have questions or there was something I didn't get to cover you're welcome to email me
- If you want the slidedeck email me

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