

The Functions of Congress

James E. Hanley

Robert Harbaugh

Published under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International license. This work may be freely reproduced for non-commercial use under the conditions that it not be changed and attribution is given to the author. 2014.

****Draft****

This chapter addresses the most important functions of Congress: 1) Lawmaking (setting policy for the country); 2) Oversight of the executive branch; and 3) Constituent service.

Learning Objectives: In this chapter you should learn the following:

1. What the functions of Congress are;
2. What congressional oversight is, and the meanings of “police patrol oversight” and “fire alarm oversight?”
3. What constituent service is, and why it’s such an important task for congressmembers.

LAWMAKING

All legislative powers herein granted shall be vested in a Congress of the United States (Article 1, section 1, U.S. Constitution).

As the legislative power, lawmaking is Congress’s primary job. The word “legislature” derives from the latin “legis”, which means “law,” as in the word “legal.”

As the nation’s lawmaker, we look to Congress to set the policies that will resolve what we see as national problems. It is common to think of the government as forward looking, able to take a long-term view because—unlike business corporations—it does not have to worry about quarterly reports, its stock price (because unlike businesses it doesn’t issue any stock), or profits. This forward-looking perspective may be true of the executive branch agencies, where many officials have civil service protection that ensures their jobs until they retire. But Representatives must run for re-election every two years, and Senators every 6 years, so many political scientists argue that rather than looking far ahead, politicians can usually only look to the next election.

Additionally, lawmaking is not a matter of wise and thoughtful legislators gathering together to objectively consider the issues facing the nation. Instead, it is an arena of political contestation. Individual members who care deeply about a particular issue have to try to

coordinate others to also care about that issue, while those others normally have other issues that are—to them—more important. It is an arena where Democrats conflict with Republicans, and each party tries to maximize its control of the agenda and the policy output that is produced through the legislative process, while minimizing the influence and effectiveness of the other party. Sometimes the parties have internal conflicts about policy direction—as discussed above in the example of Speaker of the House John Boehner having difficulty controlling Tea Party Republicans in the House—with different factions within the party trying to dominate the party’s legislative agenda. There is an old saying that you don’t want to see how either laws or sausages are made—textbook descriptions obscure the messy, and sometimes very ugly, reality.

When the parties do unite on an issue, it is generally in response to what lawmakers perceive as a national crisis. As an example of crisis response, the Clean Water Act was passed in 1972 in large part because public awareness of how polluted the country’s waters were skyrocketed after national media reports showed the Cuyahoga River in Cleveland burning, leading people to wonder just how polluted a river has to be to catch on fire. Support in both parties was strong enough that Congress was able to override a presidential veto. Similarly, in the days after the 9/11 terrorist attacks in 2001, Congress overwhelmingly passed the USA PATRIOT Act.

The USA PATRIOT Act is an example of the dangers of crisis response legislation. The final text of the bill was substituted in the middle of the night, and legislators had no chance to review the changes before they were asked to vote on it. But in the aftermath of the worst terrorist attack in the country’s history, and with a bill cleverly titled “USA Patriot” (the title is an acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), it took a bold Congressman—or one from a very safe district—to vote against it. As it turned out, some important elements of the law were in violation of the Constitution.

The Presidential Role

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approves he shall sign it, but if not he shall return it, with his objection to that house in which it shall have originated...

President Dwight Eisenhower was known to say “I am part of the legislative process,” because he had the power of the veto. And presidential scholars agree that one of the President’s political roles is that of “Chief Legislator.” In addition to the veto, presidents can submit legislation to Congress, and can pressure congressmembers to support the President’s proposals, whether by talking to them directly or by “going public” and trying to rally citizen support for his proposals.

In all of this the President is attempting to act as an agenda-setter for Congress. This was not always the norm for American presidents, but in the past century has come to be so, and Americans expect their presidents to be active agenda setters. Of course agenda-setting is a political act, an exertion of power and control, and so the shift of agenda-setting power to the President is a shift of political power from Congress to the President, something of an upset to the Framers' vision of the proper relationship between Congress and President. In some ways Congress has explicitly given agenda-setting power to the President, by statutorily requiring him (through the Budget and Accounting Act of 1921) to propose a budget to Congress—this allows the President to (usually, not always) set the agenda on budget negotiations. The President also has legislative agenda-setting power through the constitutional requirement that he

from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient (U.S. Constitution, Article Two, §3).

This has evolved into the annual State of the Union Address, in which the President speaks directly to Congress, the country, and even the world, detailing his policy agenda for the coming year.

But the veto power, despite coming at the tail-end of the legislative process, also can be used for agenda-setting power. Normally people do not want to put effort into an activity that they know will fail, so the President's threat of a veto can sometimes deter Congress from considering a bill. Of course presidents must use this power strategically—they can only effectively deter legislation by threatening a veto when congressional support for a bill is weak enough that Congress will not have enough votes to override a veto.

To summarize this section, understanding the legislative role of Congress requires also understanding the role the President plays in legislation.

Delegation of Authority

All organizations need a body that has authority to make the rules that every member must follow, whether it is a country, a sports league, a church, or any other type of group. In the U.S. that power is given to Congress, and it cannot—in theory—delegate it to any other body. In practice, Congress often delegates substantial amount of its authority to the executive branch, by writing very broad laws and asking executive branch agencies to write regulations that fill in the details. The reasons for this type of delegation of authority are two-fold:

1. Congress often lacks the technical expertise that the specialized bureaucratic agencies have, and while they want to determine the general policy for the direction, they may prefer to defer to those with more specialized knowledge to choose the best means of getting there. For example, when Congress passed the Clean Water Act, it knew that it wanted to set a policy goal of cleaning up America's waters, which at that time were

often dumping grounds for industrial waste, but it didn't have the expertise to know how clean water needed to be for human safety (how many parts per million of PCBs can humans safely consume?) or the best methods for getting water to be that clean.

2. It is easier to get agreement on a general policy goal than to get agreement on the specific details. In order to get legislation passed, Congressmembers may prefer to settle for broad but somewhat vague policies that obscure the areas of disagreement rather than get themselves bogged down in endless debate over particular details that highlight their areas of disagreement. To refer to the Clean Water Act again, everyone wants clean water, but as a Congressmember, if I vote for rules that are so stringent they shut down businesses in my district or state, I may take a hit come next election.

The Judicial Role

The judiciary plays no direct role in legislation. The legislative process is solely a debate, negotiation, or battle between and within the two chambers of Congress and the President. Not only do bills not need to be pre-cleared for constitutionality by the judiciary, but the Supreme Court decided in the very early days of the republic that it was improper for them to give such "advisory opinions." The judiciary can only be brought into play after a bill has become a law, and they do not have the authority to bring themselves into play, but can only be brought into play by some person or organization that is harmed by a law to an extent that they decide it is worthwhile to try to challenge its constitutionality.

However the judiciary plays an indirect role in two ways, both of which can be presumed to happen, although neither can be directly observed. First, because Congressmembers can predict that controversial laws will be challenged by one or more angry citizens, they know that the federal judiciary is likely to eventually have a say in the laws they pass. Presumably they take this into account when drafting laws and try to write them in such a way that—they hope—the judiciary will decide that they are constitutionally legitimate. (This is different than Congressmembers trying to write laws that are constitutionally legitimate—while we hope they do that as well, this is more about trying to predict what the federal judges will think is constitutionally ok.)

The second indirect role of the judiciary is to provide cover for Congressmembers voting for unconstitutional legislation in order to please their constituents. For example, in 1996 the Communications Decency Act was passed, in an effort to ban internet pornography. The law was so quite obviously a violation of the First Amendment right to free speech that organized interest groups had written their legal challenges even before the bill was passed and filed them in the courts as soon as President Clinton signed it into law, and the Supreme Court struck down the unconstitutional parts of the law in a unanimous decision. So surely many Congressmembers both believed the law was unconstitutional and expected the Supreme Court to strike it down, but voted for it anyway because they didn't want to be called a pornography candidate when running for re-election. So we can assume that at least some

voted for the law knowing and even hoping it would be struck down, but they could reassure anti-pornography constituents that they tried, and put the blame on the Supreme Court.

Budgeting

No money shall be drawn from the treasury, but in consequence of appropriations made by law (U.S. Constitution, Article 1, §9).

The most important legislative task of Congress is to pass a budget that allocates federal money for different purposes. There is an old saying that if you want to know any organization's real priorities, you should look at where it spends its money. But also in every organization people have different priorities, so it is normal to fight over where money gets spent. In the U.S. Congress, this fighting breaks down along three lines, first, the different priorities of the Democratic and Republican parties, and second, conflicts with the president's budget priorities, and third, the different local interests of each member of Congress. Because each Representative gets elected from a particular district, and each Senator gets elected from a particular state, each one wants to ensure a good flow of federal money to their district or state, to create jobs and to create public amenities—bridges, swimming pools, dams, schools, etc.—for which they can take credit, and hope their constituents will take notice.

The conflicts between the parties make it difficult to get budgets passed in a timely manner. Because the *fiscal* year (the government's budgetary year) begins on October 1, the deadline for completing a budget and getting the president to sign it (or to override his veto) is September 30. But Congress frequently misses the deadline as it battles within itself and with the president over where to spend money. At these times the government would theoretically shut down, but normally Congress passes "continuing resolutions" that authorize funding to continue at the same rate as the previous year until they come to agreement on a budget. Since 1994 the budgeting process has become even more difficult. Several times Congress has been unable to agree even on a continuing resolution, and non-critical portions of the government have shut down, angering much of the public. At the time this chapter was written, the federal government has gone for several years without agreeing on an actual budget. Instead they have been operating off continuing resolutions and some ad hoc spending agreements.

The difficulties of budgeting will be discussed in a later chapter.

OVERSIGHT

Key Concepts:

- Congressional oversight
- Principal-agent theory

- The role of committees in oversight
- Formal and informal oversight
- Police-patrol and fire-alarm oversight.
- The effectiveness of the impeachment power
- Special oversight powers of the Senate, and the concept of advice and consent.

Congress exercises oversight as one part of the system of checks and balances to make sure that the executive branch stays within its proper constitutional boundaries and faithfully administers the laws. The duplication of labor we saw in legislation also occurs in oversight. That is, both chambers of Congress exercise oversight authority. However as we will see, the Senate has some specialized oversight powers that the House does not have.

Principals and Agents

A more general political concept tracks well with this constitutional checks and balances idea: *principal-agent theory* (also called just “agency theory”). The basic concept in principal-agent theory is that someone who needs to get something done (the principal) will often hire or appoint someone else (the agent) to complete the task for them. This is normally more efficient for the principal, or else she would have just completed the task herself, but comes with the problem of how to ensure the agent is really seeking to fulfill the principal’s goals instead of his own.

The fundamental problem is that agents have goals of their own. For example, suppose you hire someone to mow your lawn, and you promise to pay them \$20. Your goal, as the principal, is to have the lawn mowed well. The goal of the person you hire as your agent may be to put in as little time as possible to earn the \$20, which may result in a poorly mowed lawn. Whether your agent is buying a car for you, choosing stocks to invest in, or babysitting your kids, how do you ensure that they are not putting their goals ahead of yours?

But the principal-agent problem occurs even when agents aren’t trying to put their own goals ahead of the principal’s goals. Sometimes the directions given to the agents aren’t clear, so the agent has to use their own judgment—even when they’re trying their best, their judgment may end up conflicting with the principal’s judgment.

For these reasons, Congress *must* exercise oversight over the executive branch agencies. Congress is the principal, and the agencies are the agents (notice that “agency” and “agent” have the same root). Congress has authority to set federal policy, but sometimes the executive branch agencies attempt to substitute their own policy preferences, not usually by direct refusal to comply, but through creative—and sometimes successful—interpretations of the rules. At other times Congress makes policies that are vaguely written, so the executive agencies have to make their own interpretation, at least until Congress clarifies the policy.

The Role of Committees in Oversight

The primary arena of congressional oversight over the executive branch occurs in congressional committees. Remember that committees each have a subject matter jurisdiction, such as agriculture, or the armed services. For each of these jurisdictions there are one or more executive branch agencies tasked with carrying out the policies set by Congress, such as the Department of Agriculture or the Department of Defense. A part of the authority and responsibility of both the House Agricultural Committee and the Senate Agricultural Committees is to oversee the Department of Agriculture. Likewise, both chambers' Armed Services Committees oversee the Department of Defense. As with legislation, there is a duplication of labor in this process: *both* chambers exercise oversight.

Overwhelmingly oversight is exercised by committees. It is a rare thing for an entire chamber to be actively engaged in a particular oversight issue. An example would be the Senate conducting an impeachment trial of a president. The same specialization that leads to the creation of separate committees, each with a particular jurisdiction, leads to the specialization of oversight. So while most committees do engage in oversight, they are generally all exercising oversight over different parts of the executive branch.

Police-patrol Oversight and Fire-alarm Oversight

Related, but cutting across the formal-informal distinction, are police-patrol and fire-alarm oversight.¹ Police-patrol oversight is oversight activities initiated by members of Congress and conducted by committees acting on their own initiative, like police choosing which areas of a city to patrol. There are several forms which this can take,

such as reading documents, commissioning scientific studies, conducting field observations, and holding hearings to question officials and citizens.²

Police-patrol oversight can be either formal or informal. Formal oversight activities are those for which oversight is the "principal and official purpose,"³ while informal oversight activities are those that occur as a part of legislative activities whose main purpose is other than oversight, such as legislation and budgeting. Reading documents could occur in either a formal review of an agency, or informally as part of a process of legislation or budgeting. Commissioning studies and holding hearings are more explicitly formal oversight activities. The key for understanding the nature of police-patrol oversight is that it is congressionally-centered, and requires members of Congress to take notice and take action.

Fire-alarm oversight is a process Congress sets up to allow people *outside* Congress to call attention to problems in executive branch agencies. For example, Congress can create whistleblower laws that protect employees within those agencies who want to bring attention to violations of law or other forms of bad performance. Or it can explicitly authorize citizen lawsuits to challenge agency actions. In all cases, when issues are brought to Congress's

attention, it can engage in formal oversight of its own to investigate the criticisms of an executive branch agency.

Police-patrol oversight more closely matches the traditional conception of Congress's constitutional check on the executive, but the creators of the police-patrol/fire-alarm model—political scientists Matthew McCubbins and Thomas Schwartz—argue that fire-alarm oversight is more effective. Because there are only several hundred members of Congress, they can only look at a small set of all the executive agency actions, even with specialized committees. And without some pre-existing awareness of potential problems, they are effectively searching randomly, so that many of the agency actions they examine will not be ones that are problematic. But with the millions of eyes of average citizens, agency employees, and organized interest groups observing executive agency actions, more problems are likely to be caught, and Congress can use that awareness to better focus its own efforts on likely problems.

Impeachment

Impeachment is the “nuclear option” of oversight, in which a president's actions are considered so egregious as to meet the constitutional standard of high crimes and misdemeanors. Both chambers play a role in impeachment, but their roles are separate and distinct. The House has the power of impeachment, which is equivalent to an indictment; they file charges against a president alleging he has committed high crimes and misdemeanors. The Senate has the power of holding the trial, and of declaring the impeached president either guilty or not guilty. The judiciary even has a role here, as the Chief Justice of the Supreme Court presides over the Senate's trial.

It's not clear what constitutes high crimes and misdemeanors. While legal and presidential scholars have an extensive debate on the issue, the Constitution does not provide us any real guidance, so as a practical matter, as an issue of real-politik, the definition of high crimes and misdemeanors is whatever the House (in impeaching) and the Senate (in convicting) agree it is.

It is not at all clear that impeachment is an effective deterrent against presidential misbehavior. Only two presidents have been impeached, because it is seen as such a drastic step that Congress is reluctant to use it often. But ironically, both of those impeachments—of Andrew Johnson in 1868 and Bill Clinton in 1998—were more a product of spiteful political opponents than of great abuses of power, and so neither was convicted. No president has ever been convicted of high crimes and misdemeanors and removed from office.

However the threat of impeachment, and the great likelihood of conviction, did drive one president from office: Richard Nixon, who resigned at the recommendation of Congressmembers from his own party rather than face impeachment. So impeachment is not an entirely toothless constitutional provision. However the effective use of (impending) impeachment against Nixon did not constrain Ronald Reagan from allowing officials in his

administration to violate multiple laws in the Iran-Contra scandal. And while the back-to-back Lyndon Johnson and Richard Nixon presidencies gave rise to the term “imperial presidency,” the forced resignation of Nixon did nothing to check the continued growth of executive power, as we will see in a later chapter, and no president since has been impeached for abuse of executive power. So it remains unclear that impeachment has served as an effective check on the executive.

Special Oversight Powers of the Senate

The Senate has two specialized oversight powers that fall under the general term of “advice and consent.” This language comes from Article II, §2, paragraph 2 of the Constitution, which specifies these special Senate oversight powers.

[The President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States...

So the Senate has the power of “advice and consent” over treaties and appointments of executive branch officials (ambassadors and other public ministers—meaning a great number of officials in the executive branch agencies) and members of the federal judiciary (not only Supreme Court justices, but all other federal judges as well).

“Consent”—and the ability to withhold consent—matters much more than “advice.” Whatever the Framers of the Constitution may have expected, Presidents do not seek advice from the Senate. They do, however, have to seek its consent, so they do pay attention to whether particular treaties or appointments are likely to receive Senate approval. For example, President Clinton never bothered to submit the Kyoto Protocols to the Senate for ratification because he knew they would not consent to it—that he could not get two-thirds of the Senators to vote in favor of it.

The concept of “advice” suggests a politics of coordination, of president and Senate collaborating to enact treaties and choose appointed officials, but because the advice role is rare, and the consent (or withholding of) role dominates, this is more often a politics of conflict. Politics being a matter of “who gets what, when, and how,” if presidents can’t get what they want in one way, they’ll often try to find another way to win their battles with the Senate. One way is to make “recess appointments.” This is authorized in Article II, §2, paragraph 3.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

This does not refer to judicial appointments, because they have appointments for life, so they cannot be given temporary appointments, but it does apply to all executive branch officials, and often serves presidents as an effective end-run around the Senate's refusal to give consent. A president who cannot get Senate approval of one of his appointments can wait until Congress is in recess (not meeting for a designated period of time) and appoint his nominee—for example, to be Secretary of the Treasury, or Ambassador to China—who can then serve without Senate approval until the end of that session of Congress. (Each session of Congress is the two years between congressional elections—running from January of an odd-numbered year to the end of the following even-numbered year.) At that point, the appointment ends, and the President must re-appoint, and once again play the game of trying to get the Senate's consent.

The recess appointment rule was created at a time when people expected Congress to meet for only a few months each year, and travel time to get to the capital could be days or even a week or more. If an executive branch official resigned or died, getting all the Senators to the capital to vote on a replacement would be not worth the effort, so the Framers gave the President authority to act on his own, but only as a temporary measure. Today, Congress meets almost year-round—with breaks in August, at holidays, and for time to run for re-election—and even the most distant senators in Hawai'i can get to the capital in less than a day. Consequently, the recess appointment power has become less of a tool for maintaining effective governance and a tool for bypassing Congressional control.

Presidents have an end-run around Congress in regard to treaties, also: executive agreements. These are agreements made directly with the heads of states of other countries, and because the Constitution makes no mention of such things—the Framers never anticipated them—they do not need Senate approval. To some extent they can be said to receive *tacit* approval of the Senate, because if enough Senators strongly disapproved of an executive agreement they could potentially force a change through the legislative process.

But as much as we might expect Senators to disapprove of presidents using executive agreements instead of treaties, so that they can cut the Senate out of the process, the Senate generally approves of President's use of executive agreements because of their efficiency. They can usually be negotiated more quickly than treaties (in part because they can be more easily changed or terminated, so it's not as necessary to get all the terms precisely right), they can promote the country's international interests without getting bogged down in legislative politics, and the Senate does not have to devote time to considering whether or not to approve them. So although the innovation of executive agreements as a substitute for treaties is in effect a shift of power from the legislative to the executive branch, the Senate is happy to give away that power.

Sidenote: Ending the Filibuster on (Most) Presidential Nominations, or The Democrats Go Nuclear

From the 1980s through the early 2010s, the Senate had an proliferation of the use of filibusters to block presidential nominees. A filibuster—as will be explained more fully in the chapter on the legislative process—is when senators block a vote by refusing to vote to end debate. It takes 60 votes end a filibuster and bring an issue to a vote. This is a long-standing tradition in the Senate, but filibustering presidential nominees is more controversial than filibustering legislation, because it's no longer just an internal Senate affair; it now affects another branch of government. And one line of argument says that the Advice and Consent function of the Senate imposes a duty on the Senate to hold—and gives Presidents a right to expect—an up-or-down vote on nominees, rather than letting them remain in limbo indefinitely, neither approving nor rejecting them. Senators often make this claim as well, although they do so more vocally when they are in the majority, and it is their party's president whose vote is being blocked by a majority. In practice, over the past 20 years both parties have become more likely to filibuster presidential appointments when in the minority.

In 2013, Democratic Senate Majority Leader exercised what has been called “the nuclear option” to eliminate filibusters on most presidential nominees (with the exception of Supreme Court nominees). This was done via a simple, but momentous, parliamentary maneuver. Senate rules require that changes to rules require a 2/3 majority, or 67 senators—an impossible number to reach, given that Democrats had only 55 members in the Senate and could not even reach the 60 to end a filibuster. Majority Leader Reid raised a point of order—a parliamentary procedure that allows a person to ask a question about procedure or to argue that procedure is being used incorrectly—suggesting that the next cloture vote should require only a simple majority, instead of 3/5. The presiding officer of the Senate—a member of Reid's party, who was in on the plan, ruled the motion out of order, as not consistent with Senate rules. Reid then appealed the presiding officer's ruling, and the ruling was overturned by a vote of 52-48 (with all Republicans voting to uphold the ruling, and all but 3 Democrats voting to overrule it). A direct effort to change the rule would have required 67 votes, but this indirect method—simply overruling the presiding officer when he tried to enforce the rule—could be done with a simple majority.

This may sound like an obscure “inside baseball” procedure, and it is. It may sound like something that was very simple to do, and it was. But it was also highly controversial, and the Republicans in the minority were infuriated by what they perceived as a dirty trick, and end-run around the rules. They also threatened the Democrats that this would come back to haunt them in the future when they were in the minority once again and the Republicans had the majority and a Republican president (which will, inevitably, happen someday), because then the Republicans would enforce the same rule, limiting Democrats' ability to block Republican presidential nominations, just as they had limited Republicans' ability to block Democratic presidential nominations. Harry Reid and his party members who voted for this rule change are fully aware of that—they know that the change is a two-way street—but presumably they decided that they would prefer to limit their own future

influence than to allow Republicans the current influence they were, in the Democrats' view, abusing.

The rule change will not help presidents who face a Senate where the other party has a majority, because the majority can still refuse to hold a vote on a president's nominees (another example of negative agenda control). But in those cases where a president faces a Senate with a large minority (more than 40) of the other party, it should make getting their appointees approved much easier than it has been since the 1970s.

CONSTITUENT SERVICE

The Constitution makes no mention of constituent service—the provision of direct government assistance to constituents by their representatives in Congress—but it is one of Congressmembers' most important tasks. Because they have to win enough votes in their state or district to get re-elected, Congressmembers have to make sure they please the prospective voters in their state or district. This keen awareness of their need to be responsive to their voters is revealed in a story told by a former intern in Representative Barbara Boxer's office (before Boxer became a Senator). Boxer required her staff to answer phones by the third ring, and once, when a phone rang for a fourth time, charged out of her inner office to yell at her staff that they should never let the phones ring that long because “those are my constituents on the line.”⁴

Constituent service, also called casework, not only helps Congressmembers win re-election, but connects government as a problem-solver directly to individual citizens in need of assistance. Of course these two aspects of constituent service are not separate—solving individual citizens' problems is part of how Congressmembers keep constituents happy enough to keep voting for them instead of for a challenger. In other words, constituent service is an indicator of *democratic responsiveness* and accountability. U.S. Representative Cass Ballenger's “A Comprehensive Guide to Constituent Service” explains this from the perspective of a U.S. Representative.

Casework—or Constituent Service, as it is often called—is one of the most valuable functions of a Congressional office. It fills an important humanitarian need and gives the Member of Congress a direct line to the needs and concerns of his or her constituents.

You might think of it as the Customer Service Department for the federal government.⁵

Further explanation comes from Representative Marlin Stutzman's casework guide.

Casework in a congressional office typically involves a personal issue from a constituent. The words that come up most frequently include **need help**,

claim, response time, application, can't get an answer, and don't know where to turn.⁶

Stutzman's casework manual also explains how the amount of casework can be surprising to rookie Congressmembers.

When candidates run for office, they usually concentrate on the important policy matters which affect their constituents. Taxes, budgets, education, homeland security, and a myriad of other issues are often at the forefront.

Although shaping policy is certainly the most important function of public services in legislative offices, many elected officials are surprised at the number of requests they receive to help constituents overcome problems with the government. It is not uncommon for a Congressional office to receive thousands of requests for help each year, and casework can quickly become overwhelming if the staff is not prepared for it. Elected officials who handle casework quickly and effectively have become an important part of our system of government. Also, efficient handling of requests can build much goodwill with the constituents.⁷

But constituent service does have a link to policymaking and oversight. A Congressional Research Service report notes that

casework is seen by some as an evaluative stage of the legislative process. Some observers suggest that casework inquiries can provide Members of Congress with a micro-level view of executive branch agencies, affording Members the opportunity to evaluate whether a program is functioning as Congress intended. Constituent inquiries about specific policies, program, or benefits may also suggest areas in which programmatic or policy changes require additional oversight, or further legislative consideration.⁸

Constituent service can take a number of different forms, from helping military veterans get the Veterans' Administration (VA) benefits to which they are entitled by law when they are struggling to navigate the obstacles of the VA bureaucracy, to helping farmers get temporary work visas for immigrant agricultural workers, to helping citizens or legal residents speed up the process of getting permission for spouses who are citizens of another country to immigrate to the U.S.

Here are some other examples of constituent service.

1. An Air Force Sergeant, the mother of three small children, was less than a year from the end of her enlistment, and planning to leave the service, when she received word that she would be transferred from Texas to Florida as part of her routine rotation. In Florida she would receive about 6 weeks of training, then begin a 2 year assignment, that she would be leaving at the end of her enlistment only about 2 months after she

had completed training for it. She did not want to transfer, and leave her husband and children for several months when her primary reason for deciding to leave the service was so that she wouldn't be transferred far away from them, and she thought it was silly to spend so much time training her for a job she would be leaving so soon. All her efforts at working through the Air Force chain of command led nowhere, so as a last resort she called her Representative, and through his office her difficulty was resolved, and the Air Force agreed to let her stay where she was until the end of her enlistment.⁹

Sometimes Congressmembers reach out to their constituents to provide service, rather than wait for them to come to him.

2. A Representative hosted financial aid workshops each year, bringing U.S. Department of Education officials to his district to help parents of college-bound students figure out the federal financial aid forms.
3. During an outbreak of avian flu, a Representative hosted several meetings in his district for poultry farmers, bringing in officials from the U.S. Department of Agriculture, the Centers for Disease Control, and the U.S. Fish and Wildlife service to provide information critical to the protection of their livestock.

Of course Congressmembers do not do all this work themselves—doing so would leave them no time for lawmaking and oversight. But each office has a staff tasked specifically with doing casework, helping direct constituents in need to the correct bureaucratic agency, or contacting the agency directly on their behalf.

They are not always successful, though. Sometimes people ask for help that their Congressman cannot provide, and sometimes the best efforts of casework staff are not enough to move the bureaucracy. Bureaucracies have rules for a reason, and one of those reasons is to constraint the possibility that government services will be provided on the basis of political favoritism. That inevitably means bureaucracies cannot always respond favorably a Congressman's efforts to help a constituent.

Constituent services is arguably more important for members of the House (Representatives) than for Senators. First, House members serve 2 year terms, while Senators have a 6 year terms, and voters are more likely to remember help—or a lack of it—for two years than for 6. Second, because most House districts are smaller, both geographically and in population, than most states, a happy or angry constituent can probably influence a larger number of voters in a re-election race for the House than for the Senate. This does not mean, though, that Senators can afford to ignore constituent service. Every member of Congress, House or Senate, has a link on their website through which constituents can request assistance, and they will all respond to letters and phone calls as well.

Summary

The three primary tasks of Congress are lawmaking (setting policy for the country), oversight (keeping an eye on the bureaucracy that carries out that policy), and constituent service (ensuring citizens are able to get the services from the government to which they are legally entitled).

¹ McCubbins, Matthew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28(1): 165-179.

² *Id* at 166.

³ *Ibid*.

⁴ Paaso, Pam. Personal communication with author.

⁵ Ballenger, Cass. 2005 (Revised). "A Comprehensive Guide to Constituent Service." 9th Edition. *Congressional Management Foundation*. <http://www.congressfoundation.org/storage/documents/KL/2005-constituent-services-manual.pdf>.

⁶ Stutzman, Marlin. n.d. "Quick Guide for Casework." *Congressional Management Foundation*. <http://www.congressfoundation.org/congressional-operations/resources-by-topic/76>.

⁷ *ibid*

⁸ Petersen, R. Eric. 2014. "Casework in a Congressional Office: Background, Rules, Laws and Resources." *Congressional Research Service*. <http://fas.org/sgp/crs/misc/RL33209.pdf>.

⁹ Personal communication with author Hanley.