

### 3.3

## The Roles of the Congress, the President, and the Courts

### Standard 3.3: The Roles of the Congress, the President, and the Courts

*Describe the respective roles of each of the branches of government.* (Massachusetts Curriculum Framework for History and Social Studies) **[8.T3.3]**

### FOCUS QUESTION: What are the Roles of Congress, the President, and the Courts in the United States Government?



The three branches of United States government - commonly referred to as **Congress**, the **President**, and the **Federal Courts** - have their own roles and powers, as outlined in [Describing the Three Branches](#), a website from the White House. You can also get more information from our wiki page: [Congress, the President, the Bureaucracy and the Courts](#).

What are the key elements of the powers and roles of the three branches of the government? The modules for this standard examine that question from the standpoint of a) the **Executive Branch** - the role of the FBI and the Post Office in American politics and whether a woman can be elected President; b) the **Legislative Branch** and the growing number of LGBTQIA legislators; and c) the **Judicial Branch** and key Supreme Court decisions should every teenager know.

## Modules for this Standard Include:

1. [The Executive Branch](#)
  - INVESTIGATE: [The Presidency and its Powers](#)
    - SPECIAL TOPIC BOX: Age of Presidents and Gerontocracy in the United States
  - [UNCOVER: The FBI and the Post Office in American Politics](#)
  - [ENGAGE: How Can a Woman Be Elected President of the United States?](#)
2. [The Legislative Branch](#)
  - INVESTIGATE: [Congress, House of Representatives, and the Senate](#)
    - SPECIAL TOPIC BOX: The Battle Over the Filibuster
  - MEDIA LITERACY CONNECTIONS: Members of Congress' Use of Social Media
  - [UNCOVER: Electing LGBTQIA Legislators](#)
3. [The Judicial Branch](#)
  - INVESTIGATE: [The Supreme Court and State Courts](#)
  - ENGAGE: [What Supreme Court Cases Should All Teenagers Know?](#)

## 1. INVESTIGATE: The Presidency and Its Powers

The **Executive Branch** is headed by the **President**, who is the head of state and Commander-in-Chief of the armed forces.



**The White House, Washington D.C.**

["WhiteHouseSouthFacade"](#) by Matt H. Wade is licensed under [CC BY-SA 3.0](#)

### Inauguration of the President

Following the 20th Amendment of the Constitution, Presidents of the United States take office every four years on January 20, Inauguration Day. **Inauguration** for a President means the beginning of a term in office. Every President takes on **oath of office** to preserve and defend the Constitution. The oath is administered by the Chief Justice of the Supreme Court. With Joe Biden's Inauguration in 2021, the oath has been administered 73 different times to 46 Presidents. William Howard Taft is the only man to have both taken and administered the oath of office.

Every President has given an inaugural address, except for the Vice-Presidents who became the chief executive when the President died or resigned. Presidential inaugural addresses by [George Washington](#), [Abraham Lincoln](#), and [John F. Kennedy](#) have become some of the most important and memorable speeches in U.S. history.

# The 2021 Inauguration Choice Board

([click here to make your own copy of the choice board](#))

<b>Plan the Day</b> You have been hired as the event planner for the 2021 Inauguration. Design a plan for the day of events, including who should attend, who should be honored, and who should serve as the entertainment. 	<b>Remix Past Speeches</b> Remix text from historical Inauguration Address speeches into a song, rap, or music video featuring at least 3 themes that are essential to the future of U.S. 	<b>Present a Tik Tok Address</b> Watch historical Inauguration speeches and then write your own 60-second Inauguration Address to inspire Americans and unify the country. Present it on TikTok, Snapchat, or Flipgrid. 	<b>Evaluate the Media</b> Analyze how different media outlets cover the 2021 Inauguration. Then, write a review (like a movie review) of the coverage as a media critic. 
<b>Photograph the Event</b> Conduct a critical visual analysis of historical Inauguration photographs. Then, capture images of key moments of the 2021 Inauguration (snap photos of the TV or screenshots from a computer/phone) and create a visual collage. 	<b>The 2021 Inauguration Choice Board</b>  <i>Building Democracy for All</i> , a free eBook by Robert Maloy & Torrey Trust explores all these topics and more		<b>Build an Inauguration Time Capsule</b> Find documents, photographs, and other artifacts leading up to and during the Inauguration to be displayed in a future Presidential Library. Compile these resources into a virtual gallery. 
<b>Design the Inaugural Platform</b> Using junk from around the house (e.g., recycle bin items) or a 3D modeling tool, design a replica of the 2021 Inaugural Platform. 	<b>Revise The Oath</b> Review the Oath of Office for the President and Vice President. What would you add or change to reflect the responsibilities of each position in the 21st century? 	<b>Compose a Poem</b> Review Inaugural Poems in History and then write a poem about the 2021 Inauguration. Use Adobe Spark Video to combine the text of your poem with visuals and audio. 	<b>Design an Inaugural Souvenir</b> Select 3 Inaugurations and design a souvenir (e.g., button, pennant, program) to reflect key moments of those Inaugurations. 

"The 2021 Inauguration Choice Board" by [Robert W. Maloy](#), Ed.D. & [Torrey Trust](#), Ph.D., College of Education, University of Massachusetts Amherst is licensed under [CC BY NC SA 4.0](#)

## Powers of the President

The President is responsible for implementing and enforcing the laws passed by Congress, or if so decided, vetoing laws passed by Congress. The President is also responsible for handling affairs with foreign nations and issuing State of the Union addresses, which are typically done in front of a joint-meeting of Congress in January.

There is more on the powers and functions of the Presidency in "Checks and Balances and the Power of the President" and "The War Powers of the President" in [Standard 3.2](#) in this book.

[Commander-in-Chief: U.S. Presidents and Their Executive Power](#), a blog post from the National Archives, lists executive actions by Presidents that advanced civil rights for Black Americans:

- President Lincoln signing the Emancipation Proclamation (1863)
- President Grant signing the Civil Rights Acts of 1866 & 1875
- President Franklin Roosevelt prohibiting discrimination in defense industries (1941)
- President Truman desegregating the military (1948)
- President Eisenhower signing an order allowing Black students to attend an all-White high school in Little Rock, Arkansas (1957)
- President Lyndon Johnson signing the Civil Rights Act of 1964 and the Voting Rights Act of 1965

## The Presidential Cabinet and the President's Chief of Staff

The President appoints the members of his **Cabinet**. These individuals direct executive branch agencies and give policy-making advice to the President. Although the Cabinet is not formerly included in the Constitution (the idea was explicitly rejected at the Constitutional Convention), every President beginning with George Washington has relied on a group of advisors to make policy decisions and manage the activities of the government (Chervinsky, 2020).

Washington's first cabinet consisted of the Secretaries of War, State, and Treasury along with the Attorney General. Abraham Lincoln famously conducted the Civil War with a "team of rivals" (Goodwin, 2006).

Today there are 25 distinct Cabinet-level appointees. The Secretaries of State, Treasury, and Defense along with the Attorney General and the Vice President make up the "inner cabinet." The "outer cabinet" consists of the Secretaries of Interior, Agriculture, Commerce, Labor, Health & Human Services, Housing & Urban Development, Transportation, Energy, Education, Veterans Affairs, and Homeland Security along with the Military Chairman of the Joint Chiefs of Staff, CIA Director, Council of Economic Advisors Chair, EPA Administrator, Office of Management & Budget Director, Small Business Administration Administrator, U.N. Ambassador, US Trade Representative, and Director of National Intelligence.

[Frances Perkins](#) (Secretary of Labor) was the first woman to serve in a Presidential cabinet in 1933; Robert Weaver became the first African American cabinet member in 1966 (Secretary of Housing & Urban Development). Joe Biden has the most women ever serve in his Cabinet, including the first-ever woman to be Secretary of the Treasury. No woman has ever served as Secretary of Defense, Head of Veterans Affairs, or Military Chief of Staff ([A Record-Breaking Number of Women Could Be in Biden's Cabinet](#), *FiveThirtyEight*, December 15, 2020).

Biden has also appointed the first Native American Cabinet member (Deb Haaland, Secretary of the Interior) and first LGBTQ member (Pete Buttigieg, Secretary of Transportation).

The members of the President's Cabinet exert enormous influence over government policy and American life. Following the lead of the President, they set the agendas for the agencies they direct, and given the size and complexity of American government, Cabinet members have considerable autonomy in what they do. If a Secretary of Interior decides to open public lands to logging and drilling, that will have lasting environmental impacts. If a Health & Human Services Secretary downplays or suppresses information about a pandemic, lives will be lost due to misinformed health policy. Alternatively, if a Secretary of State or United Nations Ambassador engages in effective international diplomacy, wars can be ended or prevented and human suffering reduced.

The **President's Chief of Staff**, another appointed position, tends to be the President's most trusted advisor, with a lot of influence of policy and day-to-day operations at the White House. [In this video](#), "Face the Nation" moderator John Dickerson sits down with former White House chiefs of staff Denis McDonough and Ken Duberstein along with author Chris Whipple for a discussion of Oval Office role of the chief of staff.

## Special Topic Box: Age of Presidents and Gerontocracy in the United States

In a trend that dates back to 1950s, the average age of United States Presidents has been growing older, contributing to a **gerontocracy**, meaning a society governed by older people. Donald Trump was 70 after being elected in 2016, making him the oldest person ever inaugurated President. Joe Biden was 78 when he became the oldest President to enter the White House in January 2021.

The average age of members of Congress as well as local political figures has also been getting older (Senator: 63.9; House Member: 58.3; City Mayors: 57; School Board members: 59 ([Young People Should Start Running for Local and Statewide Offices](#); Teen Vogue, February 15, 2022).

In many other democratic countries, reports the [Organization for Economic Cooperation and Development](#) (OECD), the average age of heads of government is growing steadily younger ([Why Does America Have Old Leaders?](#) July, 16 2020). There have been many considerably younger leaders who are in their 30s and 40s, including in 2020, Sanna Marin of Finland, Jacinda Ardern of New Zealand, and Justin Trudeau of Canada. The Pew Research Center lists the median age of heads of government in the world in 2023 as 62 (quoted in [O'Toole, January 18, 2024](#)).

To keep track of the ages of political leaders across the world, use a search engine to find "youngest head of states in the world today."

Do you think older age relates to more experience and wisdom or being more out of touch with needs of people and society?

What might be the benefits of electing an older or younger candidate in political office?

## [The Presidency in US History and Politics Choice Board](#)

[\(click here to make your own copy of the choice board\)](#)

<b>Checks and Balances</b> Select a <a href="#">social issue</a> and create a sketchnote indicating <a href="#">what role each branch of the government should play in making decisions</a> about this topic 	<b>Presidential Speeches</b> Remix text from a historical <a href="#">State of the Union</a> or <a href="#">Inaugural Address</a> speech to create one for Joe Biden to give in 2021 	<b>War Powers of Presidents</b> Write a story or movie script about life in 2020 if <a href="#">one of the presidents who entered war</a> had instead chosen not to 	<b>The Executive Branch</b> Rewrite <a href="#">Article II of the Constitution</a> (Sections 1, 2, 3, or 4) in Kid-Friendly Language 
<b>A Song about the President</b>  Listen to <a href="#">Hail to the Chief</a> & <a href="#">"You Haven't Done Nothin"</a> Write and record your own song about the President or the Presidency	<b>The Presidency in U.S. History &amp; Politics</b>  <b>Directions:</b> Complete at least 3 tasks in boxes 1-8 and then select any box in the bottom row to complete.		<b>A Woman President</b> Write/draw a children's book about <a href="#">women who ran for President</a> 
<b>If You Were President</b> Play <a href="#">Executive Command</a> and then design a game to educate younger students about the Presidency 			<b>Impeachment</b> Conduct a Mock <a href="#">Presidential Impeachment Trial</a> 
<b>The Pandemic</b> Propose Presidential actions to address the COVID-19 pandemic ( <a href="#">Pandemics and Plagues in World History</a> ) 	<b>Environment</b> Propose Presidential actions to address an <a href="#">environmental issue</a> 	<b>Technology in Schools</b> Propose Presidential actions to improve technology in schools 	<b>You Chose</b> Propose Presidential actions for an issue or topic you care about 

"The Presidency in U.S. History and Politics" Choice Board by [Robert W. Maloy](#), Ed.D. & [Torrey Trust](#), Ph.D., College of Education, University of Massachusetts Amherst is licensed under [CC BY NC SA 4.0](#)

## Suggested Learning Activities

- Design a [Jamboard](#) or [Interactive Timeline](#) about a Presidential History (using Creative Commons/Public Domain media). Use the following resources for your design:
  - [Presidencies of Washington, Adams and Jefferson](#)
  - [Abraham Lincoln's Presidency](#)
  - [Presidencies of Kennedy, Johnson, Nixon and Carter](#)
  - [Presidency of Ronald Reagan](#)
  - [Presidency of Bill Clinton](#)
  - [Presidency of Barack Obama](#)
- **Evaluate Presidents' Actions and Statements**
  - List of the 5 most important qualities of a President
  - Identify an important action or statement from a President to illustrate each of those 5 qualities
- **Propose a New Cabinet Post for the President and Your Classroom**
  - What new Cabinet post would you propose?
    - "Bureau of Youth and Student Affairs?" "Department of Technology?" "Office of Space Exploration?"
  - Create a name, logo and short description of your new organization as well as what that person should do in the job.
  - Have students to create a Classroom Cabinet to advise teachers and school administrators on school policy and climate.
    - Create a name, logo and short description of your proposed position as well as what students should do in the job.
- **Write a Presidential Report Card**
  - Choose a President and evaluate his performance with a report card grade and written explanation for your decision
    - [Report Card Time: Inviting Students to Evaluate President Trump's First Year in Office](#), *The New York Times*, January 25, 2018
- **Analyze the Data**
  - Part 1: Review Presidential performance ratings in the [C-Span Presidential Historian Survey 2017](#)
    - Some Presidents' ratings have gone up or down since 2000. Why might those ratings change in the minds of historians?
    - What criteria would you use to rate a President's performance?
  - Part 2: Review the ages of world and U.S. leaders
    - How would you explain the aging of U.S. political leadership and what do you think are its consequences?
    - What are potential advantages and possible drawbacks of older political leaders?



## Online Resources for the President and the Executive Branch

- [Understanding the President's Job](#), EDSITEment!
- ["What Makes a Good President?"](#) a series of essays from *PBS Frontline* (2004)
- [Presidential Speech Archive](#) featuring text and video of important speeches by every American President from the Miller Center of Public Affairs at the University of Virginia.
- [Presidential Recordings Program - Secret White House Tapes](#) contains more than 2500 hours of White House recordings of conversations and meetings by Presidents from 1940 to 1973.
- [Inaugural Words: 1789 to the Present](#), each Presidential Inaugural Address presented as word clouds by the *New York Times*.
- [Voices, Votes, Victory: Presidential Campaign Songs](#), Library of Congress
- [Future-Proofing the Presidency](#), The Boston Globe (June 2021).
- [Sharing White House History](#), The White House Historical Association offers resources collected from over 100 Presidential sites across the United States.

## 1.1 UNCOVER: The FBI and the Post Office in American Politics

### The Federal Bureau of Investigation

The **FBI (Federal Bureau of Investigation)** is among the most widely known and historically controversial of all federal government executive branch agencies. It was created by executive order on July 26, 1908 by Attorney General Charles J. Bonaparte (grandson of Napoleon Bonaparte's brother) as a special detective force within the U.S. Department of Justice.



["Wanted By The FBI"](#) | Public Domain

The agency was initially called the Bureau of Investigation and charged with enforcing the Mann Act (also known as the White-Slave Traffic Act). At that time, agents were involved in the [Palmer Raids in 1919](#) that were part of the [First Red Scare](#) period in American politics.

J. Edgar Hoover became director in 1924 and the agency was re-named the Federal Bureau of Investigation in 1935. Under Hoover's leadership, the FBI was involved in some of the most controversial political dramas of the 20th century, including the Osage Murders, the Rosenberg Spy Case, and the surveillance of Martin Luther King, Jr. The agency was also engaged in the pursuit of notorious criminals from the its national "most wanted list" such as John Dillinger and George "Machine Gun" Kelly.

The FBI has a documented history of being selectively used against African Americans and political dissidents ([Weiner, 2008](#)). During the anticommunist Red Scare and McCarthyism of the 1950s, virtually every Black American organization and leader was suspected by the FBI. W.E.B. Du Bois was arrested in 1951 at age 82 for being an agent of a foreign power and his passport was confiscated even after the charges were dropped. The singer Paul Robeson who criticized the United States and praised the Soviet Union had vigilantes attack his concerts and his music career ended. Later, throughout the 1960s, as historian David J. Garrow (2015) has documented, the FBI engaged in a massive surveillance and wiretapping campaign against Martin Luther King, Jr.

The following sites - [The FBI: A Brief History](#) from the Federal Bureau of Investigation, [FBI History](#) from Syracuse University, and [The FBI in American Politics](#) - provide more about the agency's history.



Two notable books about Hoover and the FBI (Read a review of the books in [Ringleader, The Nation](#), March 20/27, 2023):

- *G-Man: J. Edgar Hoover and the Making of the American Century*. Beverly Gage (Viking, 2022).
- *The Gospel of J. Edgar Hoover: How the FBI Aided and Abetted the Rise of White Christian Nationalism*. Lerone A. Martin (Princeton, 2023).

## Suggested Learning Activities

- **Research and Report on FBI Surveillance Activities**
  - Search FBI records online through a section of the agency's website known as [FBI Records: The Vault](#) that contains 6,700 documents including materials on civil rights, political figures, anti-war protestors and other citizens.
  - Create an infographic or presentation detailing key information from the FBI records about one of the following celebrities and political activists?
    - John Lennon
    - Helen Keller
    - Jazz Musicians including Max Roach, Duke Ellington, Louis Armstrong, Cab Calloway, Nat King Cole
    - Eleanor Roosevelt from [PBS American Experience](#) and from the Vault
    - Marilyn Monroe

## The Post Office in American Politics

The **Post Office** - also known as the United States Postal Service (USPS) - is an agency in the executive branch of the United States government. It is the only organization, public or private, that delivers mail and packages to every single address in the country, from the largest metropolitan districts to the smallest communities ([Postal Facts: Sizing It Up](#)). Some private companies actually pay the Post Office to handle deliveries to more remote locations.



**Delivering the Mail by Dog Sled in Alaska, 1906**  
[United States Mail dogsled team, Nome, April 8, 1906](#)

by Frank H. Nowell | Public Domain

In 2019 alone, the Postal Service delivered 143 billion pieces of mail to 160 million addresses. ([The United States Postal Service Delivers the Facts](#)).

The history of the Post Office is a fascinating one, stretching back to the beginnings of the nation. Benjamin Franklin was the first Postmaster in 1775. The first postage stamps were issued in 1847. The Pony Express started in 1860, lasting only 19 months before being made obsolete by the transcontinental telegraph. Zip codes appeared in 1963. The first Post Office iPhone app in 2009.



[Mailboxes for FedEx, University of California, UPS and United States Postal Service](#)

by Minesweeper | Public Domain

There are important hidden histories and untold stories as well:

- At the turn of the 20th century, the Post Office pioneered the use of pneumatic tubes in relaying mail across large distances in American cities. The New York City pneumatic tube system ran for 120 miles ([The Secret Innovative History of the Post Office](#)).
- For much of the 20th century, the Post Office was the largest employer of Black workers, although those individuals were confined to low-wage jobs, often in racially segregated workplaces ([African American Postal Workers in the 20th Century](#)). Today, African Americans make up 20% of postal employees nationwide, but the majority of workers in many urban centers ([U.S. Post Office cuts threaten source of black jobs](#)).
- Beginning in the 1930s, [Victor H. Green](#), a Black New Jersey postal worker, developed the "[Negro Motorist Green Book](#)," a guide used by African Americans traveling through racially segregated United States during the mid-twentieth century.

The Post Office today finds itself facing increased competition from private firms (FedEx, UPS, DHL), large budgetary shortfalls (the agency was \$11 billion in debt at the end of 2019), and heightened political debates about its ability to handle the demands of dramatic increases in mail-in voting resulting from the COVID-19 pandemic.

- Critics, including the Trump Administration, regard the Post Office as a failing organization that should be privatized and subject to direct competition in a mail and packaging delivery marketplace. In this view to save money, many Post Office locations should be closed, employees should pay more of their healthcare costs, and collective bargaining for workers should be ended ([Privatizing the Post Office](#)).
- Advocates contend that the Post Office is an essential organization for a democratic society. It was established by the U.S. Constitution ([Article 1, Section 8, Clause 7](#)). It charges everyone the same amount of money for postage and services. It delivers mail, medicine, and other essential materials to every neighborhood. It serves as a common thread helping to unite an essentially divided country. Additionally, in the midst of the coronavirus pandemic, the Post Office will be called upon to deliver mail-in ballots in communities all across the country. Voting by mail is favored by a large percentage (7 in 10) of Americans ([As States Move to Expand the Practice, Relatively Few Americans Have Voted by Mail](#), Pew Research Center, June 24, 2020).

## Suggested Learning Activities

### Critical Inquiry Question: What is the best way to save the Post Office?

1. Use this [Table of Proposals](#) to discuss the pros and cons of each proposal to save the Post Office.
2. With your partner or partners, create your own proposal, add it to the document and list the pros and cons.
3. Rank the proposals listed below (make sure to add your own) from strongest (5) to weakest (1).
  - o Increase Funding by Congress.
  - o Eliminate Saturday mail deliveries.
  - o Invest employee retirement funds in the stock market.
  - o Raise prices on stamps and delivery of packages.
4. Be prepared to justify your rankings with a detailed explanation.
5. Present your plans and rankings to the class. Encourage questions and discussion. Include a visual.
6. Vote on the plan that has the most potential to save the Post Office.

### Design a Poster:

- Keeping in view the difficulties USPS has been facing in recent times, with immense loss to their budget due to Covid-19 pandemic and possibilities of shutting it down altogether, design a poster on Canva in support of USPS. Use your own experiences with this postal system as the inspiration for the poster.

## 1.2 ENGAGE: How Can a Woman Be Elected President?

Women—who currently outnumber men in the U.S. population—hold **less than one-third of the nation's elected political offices** ([Dittmar, 2019](#)), and no woman has been elected President. In 2020, **Kamala Harris**, a Black, South Asian, and daughter of immigrants, became the first woman and first woman of color elected Vice-President of the United States.

It is true that number of women being elected to government offices at the national, state, and local level is changing. More women than ever ran for and were elected to political office in the U.S. in 2018, and again in 2020. Nevertheless, according to data from the Inter-Parliamentary Union, the United States ranked 77 out of 189 nations in the world in percentage of women in national legislatures ([Percentage of Women in National Parliaments](#), 2019). Rwanda (61%), Cuba (53%), Bolivia (53%) and Mexico (48%) have the highest percentage of women in political office.

When the 117th Congress convenes in 2021, there will be 142 (or more depending on races still being decided) women in the House of Representatives, besting the previous record of the 127 set in 2018. There are 26 (out of 100 members) in the U.S. Senate.

Historically:

- [Jeannette Rankin](#) from Montana, an outspoken women's rights activist and pacifist who was the only member to vote against American entry into World War I, was the **first woman elected to the House of Representatives** in 1916.
- [Hattie Wyatt Caraway](#) from Arkansas was the **first woman elected to the Senate** in 1932.
- Shirley Chisholm was the first African American woman elected to Congress in 1968.
- [History of Women in Congress](#) (65th Congress, 1917 to 116th Congress, 2021)
- The 2020 election saw a record number of women (35) from the Republican Party elected to the House of Representatives; in 2018 there were 22 Republican women in the House ([How a Record Number of Republican Women Will—and Won't—Change Congress](#), *FiveThirtyEight*, November 16, 2020)

At the state level, approximately 2,118 women served in the 50 state legislatures in 2019, making up 28.7% of all state legislators nationwide. Nevada became the first state legislature to have a majority of women legislators in 2019.

## A Woman President

Given this pattern of change, "What needs to happen for a woman to elected President?"

[Article II, Section 1](#) of the Constitution sets the requirements for someone to become President or Vice-President: That person must be a natural born citizen of the United States, at least 35 years old, and have been a resident of the country for 14 years. Kamala Harris, the successful 2020 Democratic Party Vice-Presidential nominee was born in Oakland, California.



**Victoria Woodhull Ran for President in 1872**

["Portrait photograph of Victoria Claflin Woodhull"](#) by Mathew Brady | Public Domain

[Victoria Woodhull](#) (1872), Margaret Chase Smith (1964), [Shirley Chisholm](#), Pat Schroeder (1988) and Hillary Clinton (2008 & 2016) were all women who unsuccessfully ran for President. Shirley Chisholm was the first Black person to run as a major party candidate for President.

Women who actively campaigned for President in 2020 included Senators Kamala Harris, Kirsten Gillibrand, Amy Klobuchar, and Elizabeth Warren; Representative Tulsi Gabbard; and author Marianne Williamson. Three women have been major party Vice-Presidential nominees: Geraldine Ferraro (Democrat: 1984); Sarah Palin (Republican: 2008); and Kamala Harris (2020: Democrat).

## Edith Bolling Galt Wilson

Many historians believe that [Edith Bolling Galt Wilson](#), second wife of Woodrow Wilson, effectively functioned as the nation's first woman President from 1919 to 1921.



Photograph of Edith Bolling Galt Wilson  
["Edith Bolling Galt Wilson"](#) | No Known Copyright Restrictions

Heavily involved with her husband's Presidency, Edith Bolling Galt Wilson accompanied him to Europe while the Allies negotiated a peace deal to end World War I. She came back to the United States to campaign for Senate approval of the peace treaty and the League of Nations Covenant. When President Wilson had a stroke in October 1919, she took over many of the routine duties and details of the government. Although she referred to her role as her "stewardship," she was essentially the nation's chief executive until her husband's second term concluded in March of 1921.

Given the history and the current dynamics of modern politics, what do you think needs to happen for a woman to be elected President?

## Suggested Learning Activities

- **Act as an Historian/Draw a Conclusion**

- Based on the historical evidence, would you designate Edith Bolling Galt Wilson as the nation's first woman President? Why or Why Not?
- For more on her role and why some call her America's first woman President, visit [Edith Wilson](#) from the American President site at the University of Virginia. There is more information at [Edith Bolling Galt Wilson](#) from the PBS film, Woodrow Wilson.

- **Compare and Contrast Gender Ratios in Jobs**

- Research the gender ratios of different occupations and professions, including politics.
- Why are there male-dominated and female-dominated professions?
- How would you encourage more women into male-dominated fields and males into women-dominated fields?
  - Here's a resource to start with: [Women in Male-Dominated Industries and Occupations](#) (February, 2020)

- **Dialog and Debate**

- Is There a "[Jill Robinson Effect](#)" for women candidates?
  - Looking at women who seek to enter jobs traditionally held by men, political scientists Sarah Anzia and Christopher Berry have identified what they call the "Jill Robinson Effect" — named after Jackie Robinson, the first African American baseball player in the modern era who became one of the game's biggest stars after breaking the color barrier in 1947. "Robinson *had* to be better than almost any white player in order to overcome the prejudice of owners, players, and fans," Anzia and Berry wrote (2010).
    - Do you think that women who go into male-dominated jobs face prejudice and feel the need to be better than everyone else?
    - What about men who go into jobs that are predominantly held by women?
    - Do you have plans to pursue a career in a male or female-dominant field?

- **Design a Women in Politics Image**

- Following the historic 2020 election, an image created by artist Bria Goeller of [Kamala Harris walking in front of the shadow of Ruby Bridges](#) in 1960 went viral. The message was that the successes of change makers today are made possible by the efforts of those who came before them in history.
- Create your own version of the Kamala Harris/Ruby Bridges image by drawing a connection between an influential woman who shaped history with someone influential today.



## Online Resources for Women Running for President and Other Political Offices

- Listing of [Women in the Senate from the U.S. Senate website](#)
  - In total, 56 Women have been elected to the Senate; 25 are serving in 2019
- [Women in State Legislatures for 2019](#)
- [When Women Run](#). 97 women from all 50 states describe in their own words what it is like to try and win an election as a woman.
- [A First: Women Take the Majority in Nevada Legislature and Colorado House](#), NPR (February 4, 2019)
- [Women Make Up 24% of Members of National Legislatures Around the World](#), Pew Research Center (March 18, 2019)
- [Women Presidential and Vice-Presidential Candidates](#): Eagleton Institute of Politics, Rutgers University
- [A New Poll Shows How Sexism and Electability Collide in 2020](#), Vox (June 17, 2019)
- [A Woman Can Be Elected President, Right?](#) *Democracy, A Journal of Ideas*

## 2. INVESTIGATE: Congress, the House of Representatives, and the Senate

The [Legislative Branch](#) consists of the House of Representatives and the Senate which make up the **United States Congress**. Congress has authority to make and enact laws and declare war on foreign nations.



United States Capitol

["US capitol building"](#) by Raul654 is licensed under [CC BY-SA 3.0](#)

For a brief overview, visit "[How Congress Works](#)" from Michigan Congressman Tim Walberg.

Who is currently in Congress?

- Locate [Members of Congress](#) at Congress.gov from the Library of Congress or use [Congress in Your Pocket](#) from the App Store.
- Here are ideas and strategies for [Contacting Congress](#) to express your views on topics that matter to you.

Explore the role and powers of Congress in the [system of checks and balances in Topic 3.2](#) of this book.

[The Changing Face of Congress in 8 Charts](#), Pew Research Research (February 7, 2023) has information about the make-up of the 118th Congress that began in January 2023.



- the [most racially and ethnically diverse](#) Congress to date,
- has [more women lawmakers](#) than any Congress before it,
- a [new high for lawmakers who are gay, lesbian or bisexual](#),
- remains overwhelmingly Christian, with 469 lawmakers identifying this way, the [lowest total since at least 2009](#).

## Who Runs for Congress?

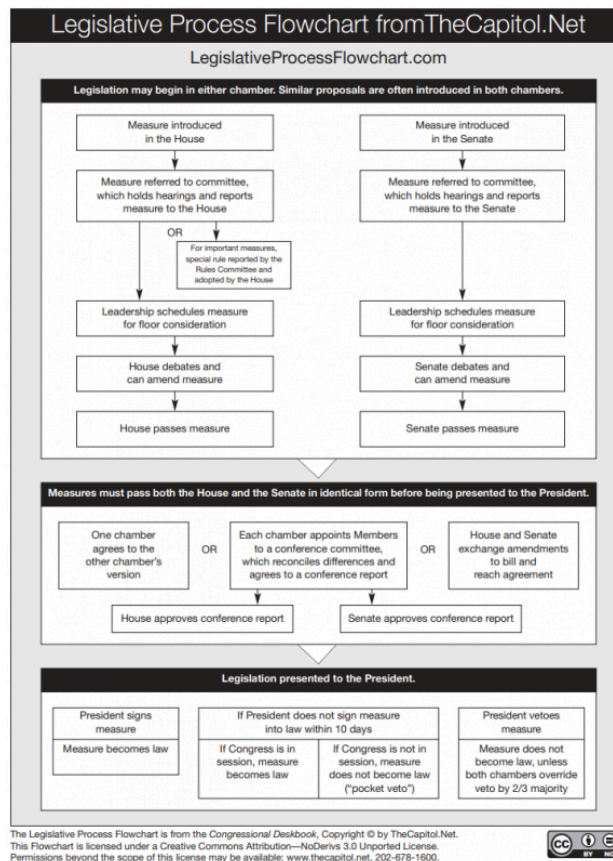
Most candidates for Congress are:

- Well-educated (71% have a college degree or more)
- Middle-aged
- White (72% of Republican candidates; 48% of Democratic candidates)
- Male (73% of congressional candidates)
- Married (50% are married)
- Not Diverse (25% of Democrats running for Congress are African American; 7% for Republicans. Latinos are 11% Democrats and 8% Republicans. In 2022, 1.6% of candidates identified as LGBTQ+ ([Statistics from Lessons from the 2022 Primaries](#), Brookings, September 7, 2022))

Most candidates also have great financial wealth. In 2020, among those who issued personal financial disclosure documents, the median worth of members of Congress was just over \$1 million ([Majority of Lawmakers in 116th Congress Are Millionaires](#)). Rick Scott (R-Florida) was the wealthiest member of the Senate with some \$260 million in assets; Greg Gianforte (R-Montana) was the wealthiest member of the House of Representatives with \$189 million in assets.

- [Review the Personal Finances](#) of members of Congress from the watchdog organization, OpenSecrets. You can explore more about the [Role of Money in Our Politics in Topic 4.13](#) of this book.

## How A Bill Becomes Law



## The Senate

The **Senate** is made up of 100 elected members, two from each state. Senators are elected for six-year terms and must be members of the state they represent. The Vice President presides over the daily meetings of the Senate. If the Vice President is absent, the President Pro Tempore (meaning "for the time being") conducts the meetings. In the 118th Congress (January 3, 2023 to January 5, 2025) [Senator Patty Murray](#) (D-Washington) became the first woman president pro tempore in the history of the Senate.

Prior to the passage of the 17th Amendment in 1913, Senators were elected not by popular vote, but by state legislatures ([United States Senate website](#)).

Many school textbooks describe the design of the Senate as the result of a compromise at the Constitutional Convention to protect the interests of states with small populations who would have fewer seats in the House of Representatives. Newer scholarship contends that the two Senators for every state requirement was intended to protect the interests of southern slave-holders, for as James Madison noted at the time that the real difference of interests between political viewpoints "lay, not between large and small but between Northern and Southern States. The institution of slavery and its consequences formed the line of discrimination" (quoted in Robin, 2020).

## Unequal Power

Now, in the 21st century, the Senate "entrenches multiple types of inequality," contends political scientist Todd Tucker ([2019, p. 4](#)).

- Senators from states with small populations (Wyoming and Vermont have the least residents) represent millions fewer people than Senators from states with large populations (California and Texas have the most people).
  - For example: Wyoming's 581,000 residents elect the same number of senators (two) as does California which has 70 times as many people with a population of nearly 40 million. Massachusetts, with two senators, has 6.87 million people, a population 12 times that of Wyoming ("A Power Shift," Kara Miller, *The Boston Globe*, June 2, 2022).
- In 2021, 15 states with 38 million people elect 30 Senators (all Republicans) while California with 40 million people elect 2 Senators, both of whom are Democrats (Berman, 2021).)
- People living in Washington, D.C., Puerto Rico, and the other U.S. territories have no voting representation in the Senate.
- The Senate is disproportionately richer, whiter, and more male than the population of the country as a whole.
- Only 11 Black Senators have served in the Senate since 1789. Hiram Revels (Mississippi) was the first in 1870; Edward Brooke (Massachusetts) was the first to be popularly elected (1967); Raphael Warnock (Georgia), the most recent in 2021.

The increasing urban/rural divide in American politics (Democrats have voting majorities in big, largely urban states; Republicans control small, largely rural states) has established control of the Senate by the Republican Party.

Following the 2020 Presidential election, Democrats represent 41.5 million more people than Republicans. Moreover, the 25 states with 25 percent of the population are represented by 40 Republican and just 8 Democratic Senators. Put differently, New York, New Jersey, California, and Massachusetts, states with the highest levels of urbanization along with large populations have the largest partisan lean toward the Democratic Party; Wyoming, Montana, South Dakota, and Alaska, states with the lowest levels of urbanization and small populations, lean most heavily Republican (Benes, 2020). Yet each state has two Senators.

Concluded one commentator, "Republicans can win a majority of Senate seats while only representing a minority of Americans" (Drutman, 2020).

## Special Topic Box: The Battle Over the Filibuster

The [filibuster](#) (a prolonged speech to delay a vote) is one of the enduring images of the United States Senate. As portrayed by actor James Stewart in the 1939 movie, *Mr. Smith Goes to Washington*, a single senator - in this case a man of high principles and great integrity - begins speaking against a proposed unfair legislative bill. He speaks and speaks, blocking a vote by continuing to talk, until his courageous actions change the hearts and minds of his colleagues and his viewpoint prevails.

You can watch the filibuster scene from [Mr. Smith Goes to Washington Filibuster on YouTube](#).



[Watch on YouTube](#)

The reality of the filibuster, historically and in today's politics, is quite different. A tradition of the Senate, but not a constitutional requirement, the filibuster began after the Civil War when White Southern senators used it to block civil rights legislation. In fact, between Reconstruction and 1964, the only legislation stopped by filibusters were civil rights bills (Jentleson, 2021). Segregationist South Carolina Senator Strom Thurmond once spoke against the Civil Rights Act of 1957 for 24 hours and 18 minutes, the longest filibuster on record. Reviewing the history, former President Barack [Obama called the filibuster a "Jim Crow relic."](#)

At first, filibustering required a senator to begin speaking and continue to do so until the legislation was withdrawn or some other compromise was reached. More recently, just a simple objection by any Senator blocks a bill from being voted on by the Senate. It now takes a supermajority vote of 60 Senators (two-thirds of the 100 members) to end a filibuster. Ending a filibuster is known as cloture.

With the modern-day Senate sharply divided between Democrats and Republicans, progressives and conservatives, it is hard to get 60 votes on any but the least controversial proposals. In the view of many, the filibuster allows the Republican Party to block most of Democratic President Joe Biden's legislative proposals and, therefore, it should be removed. Already, the Senate does not allow members to filibuster spending bills or lower court judicial appointments. The filibuster is now a flashpoint of controversy over whether this practice maintains or prevents the Senate from functioning democratically and in the best interests of the people.

The case for maintaining the filibuster rests in part on the widely held view that the Senate was designed to serve as a cautious, deliberate part of the government that endorses change only after consideration and compromise between opposing viewpoints. In that view, hot button political issues do not result in instant legislation because the filibuster allows senators to block hasty actions that lack support from members of the both political parties.

The case for eliminating the filibuster centers around its fundamentally undemocratic nature. If a single Senator can initiate a filibuster to block a vote on proposed legislation and if not enough Democrats and Republicans cannot agree to end it, then very few proposals will become laws. In effect, using a procedural maneuver, the minority can stymie the majority and legislation favored by many Americans cannot be passed.

The Brennan Center for Justice has documented how the passing of bills by the Senate has declined in recent decades. In 1947, the Senate passed 52% of the bills introduced. In 2019-2020, just over 4% of the bills introduced were passed ([The Case Against the Filibuster](#), October 30, 2020). The presence of the filibuster, along with increasing political partisanship, have contributed to the small number of bills being passed by the Senate today.

#### **Suggested Learning Activities**

- Pick a legal or public policy issue. Compete with classmates for who can talk the longest about it as an homework exercise; with an adult witness (e.g., parent, guardian, neighbor) to verify the length.
- Debate or create a Public Service Announcement about whether the filibuster should be eliminated.

## **House of Representatives**

The **House of Representatives** has 435 voting members, each of whom is elected every two years. There are 6 non-voting members, representing Washington D.C., Puerto Rico, and four U.S. territories. Each state is given a number of representatives directly proportionate to the population of that state as determined by census: the largest state, California has 52 representatives (a loss of one in the 2020 Census) while Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming have just one.

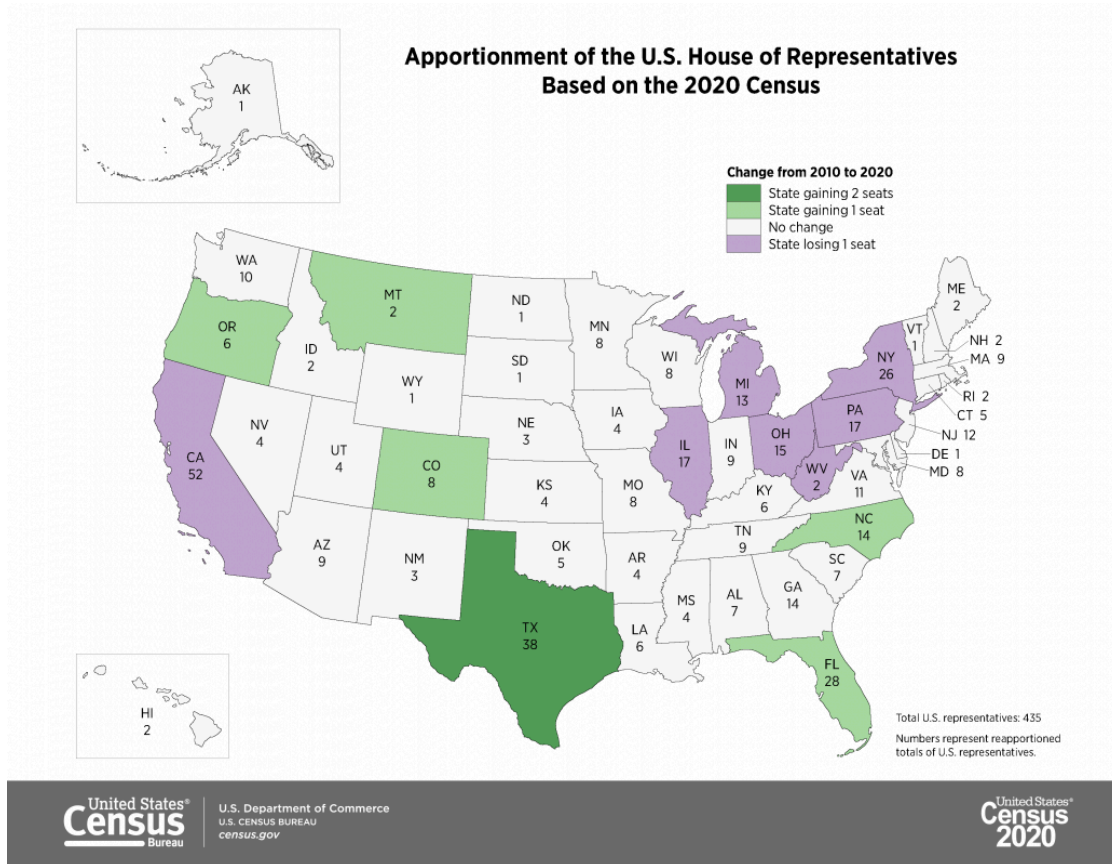
The average member of the House represents 747,184 people, many more than do the representatives of any other country in the world's national legislature. To have each member represent 50,000 people would require expanding the House to about 6,489 representatives (["The Case for Massively Expanding the US House of Representatives, in One Chart," VOX](#), June 4, 2018).

A **Speaker of the House** is elected by the members of the House of Representatives and is third in line for the presidency. The House has the exclusive power to impeach the President and elect the President in the case of an electoral vote deadlock or if no candidate receives a majority of electoral votes. This has happened twice before, in 1800 and 1824.

The **2020 Census** readjusted the distribution of seats in the House, a process known as **apportionment** that happens every 10 years. Based on the Constitution, every state has at least one seat. The number of other seats has been decided by the **method of equal proportions** since 1941. This mathematical system seeks to minimize differences in representation between states. You can see the math in [How Apportionment is Calculated](#) from the Census Bureau.

Amazingly, as reported by the [New York Times](#), a shift in only a few people in the census count can lead to the loss or gain of a House Seat. New York State lost a seat by 89 people, the number of individuals needed to fill a single New York City subway car during off-peak hours and the slimmest margin for losing a seat in U.S. history. 26 people, the number of individuals who fit in a roller coaster at the Mall of America, were enough to save a seat in Minnesota - the slimmest margin for saving a seat in history. Montana went from one seat to two based on a gain of just over 6,000 people.

The political implications of changing the number of seats is unclear, but both major political parties are eager for opportunities to gain more seats. Importantly, census-taking is far from a perfect process and **undercounts** and **overcounts** do happen. Demographers have documented that Blacks, Hispanics, and Native Americans living on tribal lands have been undercounted in at least one of the last three Census ([2020 Census: How Undercounts and Overcounts can Hurt US Communities](#)). Children too are undercounted, with Black and Hispanic youngsters most likely to be missed in the count.



[Apportionment of the U.S. House of Representatives Based on the 2020 Census](#) | Public Domain

## Congressional Committees and Caucuses

Much of the work done by members of Congress happens in committees and caucuses. **Committees** are formal House and Senate organizations that meet to hold hearings and investigations, review legislation, and more recommendations to the larger body. There are currently 250 committees; click here to [learn about each committee and its membership](#).

The word **caucus** comes from the Algonquian Indian language meaning "to meet together" and in Congress it refers to informal groups of senators and representatives who come together to discuss issues, develop strategies, and in some cases propose and promote legislation. Here is the [list of caucuses for the 116th Congress](#).

## Women of Color in Congress

Beginning in 2021, in addition to Vice President Kamala Harris, the 117th Congress will have the highest number of women of color, including Black, Asian and Pacific Islander, Hispanic, Middle Eastern and Native American representatives ([Women of Color Were Shut Out of Congress for Decades. Now They're Transforming It](#), FiveThirtyEight, January 18, 2021). The figure of 49 women of color does not include [non-voting delegates from U.S. territories](#) and the number will change when Deb Haaland and Marcia Fudge are confirmed as members of the Biden Administration's Presidential Cabinet.



A place in Congress has been a long time coming for women of color. Patsy Mink was the first woman of color in Congress, elected to the House of Representatives in 1965. She was followed by Shirley Chisholm in 1968. Carol Moseley Braun became the first woman of color senator in 1993.

Why do you think women of color have lagged so far behind White women in being elected to Congress?

## [The Congress in U.S. Government Choice Board](#)

[\(click here to make your own copy of the choice board\)](#)

<b>The Constitution</b> Rewrite <a href="#">Article I of the Constitution</a> in kid-friendly language 	<b>Amendments to the Constitution</b> Propose a <a href="#">new amendment</a> for Congress to consider 	<b>A Day in the Life</b> Record a video or podcast about what your day would be like if you were elected to Congress 	<b>Campaign for a Change</b> Create a social media campaign for the <a href="#">John R. Lewis Voting Rights Advancement Act of 2020</a> 
<b>Checks and Balances</b> Design a game to educate others about the role of <a href="#">Congress in the Checks and Balances</a> of the U.S. government 	<b>The Congress in U.S. Government</b>  <b>Digital Choice Board Activities for Students and Teachers</b> <a href="#">Building Democracy for All</a> , a free eBook by Robert Maloy & Torrey Trust explores all these topics and more		<b>Contacting Congress</b> Write an email to your <a href="#">Senator or Representative</a> to PRAISE or PROTEST their stance on an issue you care about 
<b>Congressional Website</b> Review the <a href="#">websites of at least 5 members of Congress</a> and then design your own congressional website 			<b>Title IX (1972)</b> Review academic experiences and extracurricular options at your school and propose new legislation that will expand learning for students of all genders
<b>The Social Security Act</b> Propose legislation to protect the health and welfare of everyone in America 	<b>Americans with Disability Act of 1990</b> Propose legislation to improve learning and school experiences for every student 	<b>The Environment</b> Propose legislation to address an environmental or climate issue in your community 	<b>You Choose</b> Investigate a topic you care about and then propose legislation for congressional action 

"The Congress in U.S. Government" 2021 Choice Board by [Robert W. Maloy](#), Ed.D. & [Torrey Trust](#), Ph.D., College of Education, University of Massachusetts Amherst is licensed under [CC BY NC SA 4.0](#)



## Media Literacy Connections: Members of Congress' Use of Social Media

[Congress Soars to New Heights on Social Media](#) declared the Pew Research Center in July 2020. Virtually every member of the Senate and the House of Representatives is now active on social media, including Twitter, Facebook, Instagram, and YouTube. Members of Congress share information with voters, react to events, and take positions on public policy issues, all while seeking to add more followers to their accounts.



The following activities encourage a critical in-depth exploration of how members of congress use social media:

- [Activity 1: Analyze the Social Media Activity of Members of Congress](#)
- [Activity 2: Explore Political Campaigning Through Social Media](#)

## Suggested Learning Activities

- **Research:** How Diverse is Congress?
  - [For the Fifth Time in a Row, the New Congress is the Most Racially Diverse Ever](#), Pew Research Center (February 8, 2019)
  - Who are the women, African American, Native American, Latino/a, Muslim, and LGBTQ members of the House of Representatives and the Senate?
  - What are the conditions in the country that made these elections possible?
- **Simulate the Legislative Process** with [Today's Vote in the Classroom](#)
  - This resource from the Edward M. Kennedy Institute for the Senate simulates the legislative process while examining actual legislation under consideration by Congress.

## Online Resources for the Legislative Branch

- [Legislative Branch](#), U.S. Capitol Visitor Center
- [Every Member of Congress' Wealth in One Chart](#), Roll Call (March 2, 2018)
- [Official website for Congress and federal legislative information](#)
  - View current legislative activities
  - Find current members of Congress
- [Misrepresentation in the House of Representatives](#), Brookings (February 22, 2017).
  - The Republican Party's Seat Bonus - higher percentage of seats than votes gained in elections. It is currently as high as any advantage by any political party back to 1946.

## 2.1 UNCOVER: Electing LGBTQIA Legislators

In 1974, **Kathy Kozachenko**, running as a Human Rights Party candidate for the Ann Arbor Michigan City Council, became the first openly gay person to be elected to public office in the United States.



[United States Senator Tammy Baldwin, 2013](#)

by Amy Mathers | Public Domain

One year later, **Elaine Noble**, an openly gay candidate was elected state representative in Massachusetts. [Harvey Milk](#), a gay man, was elected to the San Francisco Board of Supervisors in 1977. In 1993, Althea Garrison, a closeted trans woman was elected to the Massachusetts House of Representatives. Stacie Loughton, a self-identified trans woman was elected to the New Hampshire House of Representatives in 2012.

Since those firsts, LGBTQIA politicians have transformed United States politics, bringing gender equality and transgender rights to the forefront of people's attention and changing the definition of who can and should be elected to public office. **By 2019, an LGBTQIA person has been elected to public office in all 50 states.** Pete Buttigieg, the former mayor of South Bend, Indiana was a prominent candidate for the 2020 Democratic Party nomination for President.

Electing LGBTQIA individuals to political office is part of a much larger and wide-ranging shift in public attitudes toward gay, lesbian, and transgender people. What events and personalities helped bring about these changes?

In an interview for the NPR *Hidden Brain* podcast, sociologist Michael Rosenfeld and psychologist Mahzarin Banaji offer the following answers: Gay people became more visible as more people came out of the closet in the 1980s and 1990s; television shows began featuring realistic gay characters, the AIDS crisis and the marriage equality movement further raised awareness of gay issues and gay rights (NPR, 2019). The initiation of LGBT History Month in 1994, the beginning of National Coming Out Day in 1988 and the National Park Service's 2016 report on historic LGBT sites in the United States further propelled changes in attitudes (Waxman, 2019). At the same time, the FBI has reported a rise in gender-identity hate crimes in the country. In many schools, LGBTQIA students face hostile hallways of hateful language, bullying, and threats of assault.

## Suggested Learning Activities

- **State Your View**
  - What changes in society and culture do you think most influenced changes in the public view of LGBTQIA people and opened the door for electing gay, lesbian, and transgender individuals to public office?
- **Create a Poster**
  - Summarize the biographies, backgrounds, and legislative proposals of a current LGBTQIA legislator at the national, state or local level.
  - Begin with these resources:
    - [Meet the 10 Gay, Lesbian and Bisexual Members of the 116th Congress](#)
    - [Senator Tammy Baldwin official website](#)
    - [Oregon Governor Kate Brown official website](#)
    - [List of the first LGBT Holders of Political Offices in the United States](#)

## Online Resources for LGBTQIA Politicians

- *resourcesforhistoryteachers* wiki page for the [LGBTQIA Civil Rights Movement](#)

## 3. INVESTIGATE: The Supreme Court and State Courts

A **court** is a place where people go to resolve disputes legally and peacefully. Through an adversary process, each side presents their side of a case to an independent judge, groups of judges, or jury of citizens who impartially decide what really happened. Courts maintain and sustain the rule of law in a democracy.

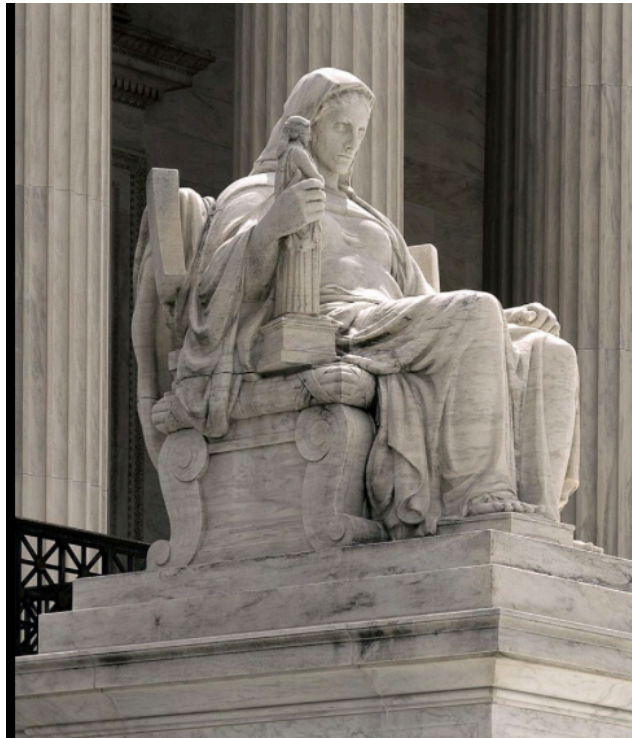
To learn more, check out [How Courts Work](#) from the American Bar Association. You can also go to our wiki page: [The Supreme Court and Other Courts in American Government](#).

Judges in this country are either appointed or elected and have been predominantly men. Florence Ellinwood Allen was the first woman elected to a judicial in the United States in 1920; Genevieve Rose Cline was the first woman appointed to the federal courts in 1928. In 1939, Jane Bolin became the first Black female to serve as a judge in the US. [Sandra Day O'Connor](#) was the first woman to serve on the Supreme Court, appointed by President Ronald Reagan in 1981. Today, about 36% of sitting judges are women, maintaining what the American Constitution Society has termed the "gavel gap" ([Women's Underrepresentation in the Judiciary](#), Represent Women, 2017).

The United States has a dual court system consisting of the federal judicial branch (that includes the Supreme Court) and state courts. The [Federal Judiciary Act of 1789](#) established the federal court system apart from state courts.

### The Federal Judicial Branch

The [Judicial Branch](#) of the federal government is made up of federal courts and the Supreme Court.



Contemplation of Justice Statue by James Earle Fraser on the Supreme Court Building's main steps  
["Contemplation Of Justice"](#) | Public Domain

In addition to the Supreme Court, there are 94 federal district courts and 13 courts of appeals (11 regional as well as the D.C. and Federal circuits) in the federal court system ([Introduction to the Federal Court System](#)).

The federal courts hold the power of interpreting the law, determining the constitutionality of that law, and then applying it to individual cases. **Once a decision is made by the Supreme Court, lower courts must apply that decision.**

## The Supreme Court

The nine Justices of the Supreme Court are appointed by the President and confirmed by the Senate. Presently, there is one Chief Justice and eight Associate Justices. A Supreme Court Justice can only be removed by impeachment from the House and conviction from the Senate.

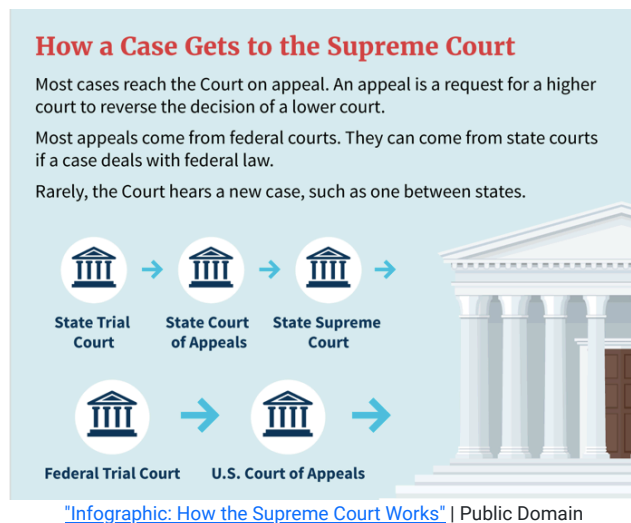
There have been 115 justices in U.S. history, 108 White men, 2 Black men, and 5 women (4 White and 1 Latina). Go here to the Supreme Court website for [biographies of current justices](#).

The **Supreme Court** has both **original jurisdiction** (in cases involving conflicts between states) and **appellate jurisdiction** (in cases involving the United States and a state; cases involving states against citizens; and cases concerning ambassadors). Original jurisdiction means the Supreme Court gets to rule first and finally on a case. Appellate jurisdiction means the Supreme Court gets to either accept or modify the rulings of lower courts. The United States Courts' [Educational Resources](#) website provides more information.

You can go here to learn more about the concepts of [judicial review, stare decisis, and super precedents](#) in Supreme Court decisions.

Each year, the Court will receive some 7,000 to 8,000 requests for review, known as a **writ of certiorari**. It will choose fewer than 80 of those requests for full review.

Within the evolving system of American Government, the Supreme Court has achieved a position of **judicial supremacy**, meaning the law is whatever the Court says it is (Whittington, 2007).



Groups from both sides of the political spectrum see the Court as a vehicle for ensuring their policies are maintained, a role the Court has not played throughout United States history. In recent decades, noted David Leonhart (2020) in the *New York Times*, the Court has intervened in the 2000 election (upsetting liberal and progressive groups), legalized same-sex marriage (upsetting conservative and religious groups). In 2023, the Court has continued to overturn laws in areas including abortion rights, vaccine mandates, affirmative action, gun rights, student debt relief and environmental regulations.

At the same time, one recent study concluded the Supreme Court under Chief Justice John Roberts is [not as politicized as one might think](#) based on media coverage of high-profile decisions (Donnelly & Leib, *The New York Times*, October 8, 2023).

- 77 out of 87 cases primarily involving ordinary statutory interpretation had conservatives and liberals voting together in a majority (and sometimes together in dissents, too) (Donnelly & Leib, 2023, para. 11).

For more information, link to [Do Supreme Court Dissents Make a Difference to the Law?](#)

## The Shadow Docket

In addition to the 60 to 70 cases that the Court hears each term with full briefings, oral arguments, and lengthy, signed opinions by the Justices, there is also a [shadow docket](#) where thousands of cases are decided by unsigned, one or two sentence opinions without public access to the arguments or which justices voted one way or the other ([Supreme Court "Shadow Docket" Under Review by the U.S. House of Representatives](#), American Bar Association, April 14, 2021).

In late August, 2021, the shadow docket received national publicity when the Supreme Court issued an unsigned, single paragraph 5 to 4 decision that allowed the state of Texas to ban nearly all abortions (in this case, the four justices in the minority did issue separate dissents). For more, go to [Rulings Without Explanations](#) from the *New York Times*.

In the past, shadow docket decisions were usually not controversial, such as granting parties more time to file briefs or deciding whether or not to grant an emergency relief hearing. More recently, the Court has begun resolving politically-charged questions about immigration policies, COVID-19 pandemic regulations, federal executions policies, and election rules via this process.

During the Trump Presidency, shadow docket cases have been largely decided along ideological lines, with conservative justices and conservative viewpoints prevailing (["The Supreme Court's Enigmatic 'Shadow Docket' Explained,"](#) Vox, August 11, 2021). It will be important to track shadow docket decisions during the Biden Presidency as a conservative justices hold a majority on the Court.



## The Gavel Gap

In a [2020 report](#), the Center for American Progress examined the **gavel gap**, the term given to the lack of women judges at different levels of the American court system. Looking across federal courts below the Supreme Court, researchers found that "female judges make up just 27 percent of all lower federal court sitting judges and 34 percent of active judges. For their part, women of color comprise just 7 percent of all sitting judges and 10 percent of all active judges serving on the lower federal courts."

## Reforming or Restructuring the Supreme Court

The Supreme Court has not always had 9 justices. Originally there were 6, a Chief Justice and 5 Associate Justices. A 7th justice was added in 1807, two more in 1837, and a 10th briefly in 1863. The Judiciary Act of 1869 set the current number of seats on the Court at nine ([Why Does The Supreme Court Have Nine Justices?](#)).

In 1937, President Franklin Roosevelt, tired of opposition to New Deal policies by what he regarded as the "nine old men" of the Supreme Court, asked Congress to appoint six new justices to the Court, an action now known as the **court-packing plan**. A constitutional crisis ensued that was averted only when one Justice began voting to uphold New Deal legislation and another retired. Roosevelt would eventually appoint nine new justices between 1937 and 1943, but the total number of justices was never increased beyond nine ([When Franklin Roosevelt Clashed with the Supreme Court--And Lost](#)).

The Trump Presidency and the death in September 2020 of Justice Ruth Bader Ginsburg have again brought the issue of reforming and/or restructuring the Supreme Court to the center of American politics. No other democracy in the world gives lifetime appointments to its supreme court judges; every other country has term limits, a mandatory retirement age, or both for its highest court judges ([Vox](#), February 16, 2016).

Progressive groups have urged reforms in light of the Court's steady set of conservative rulings on issues facing workers, people of color and the poor. Since the 1960s, the Court's membership has grown more conservative; justices appointed by Republican Presidents outnumber those appointed by Democrats 14 to 4 between 1968 and 2020 (before the appointment of Amy Coney Barrett to replace Ruth Bader Ginsburg). As Adam Cohen (2020, p. xvi) wrote in the "Introduction" to *Supreme Inequality: The Supreme Court's Fifty-Year Battle for a More Unjust America*, "The Court's decisions have lifted up those who are already high and brought down those who are low, creating millions of winners and losers."

There are multiple current proposals for reforming the Supreme Court: 1) increasing the number of justices; 2) setting term limits and/or mandatory retirement ages; 3) Congress passing legislation restricting what areas of the law the Court can review; 4) requiring a supermajority (6 or 7) votes to overturn federal or state laws. An 18 year term limit for justices is one often-proposed idea for change. That way, every 2 years a new justice would join the Court, ensuring that every sitting President would get to appoint at least one new member to the bench.

Russell Wheeler of Brookings offers a pro/con review of some of these proposals in his article, [Should We Restructure the Supreme Court?](#)

## State Courts and Racial Disparities

The United States also has a system of state courts that function along side federal courts. "State courts are courts of [general jurisdiction](#)". They hear all the cases not specifically selected for federal courts. Just as the federal courts interpret federal laws, state courts interpret state laws" (quoted in [State Courts vs. Federal Courts](#), Judicial Learning Center, 2019). State courts hear both civil and criminal cases based on the laws of the state. Since federal courts are limited in their role, most disputes are handled in state courts.

Try a [Student Challenge](#) from the Judicial Learning Center to decide whether a case would be heard in state or federal court.

Despite the ideals of impartial justice, racial differences in sentencing in state courts and the larger criminal justice system continue to be an enormous problem. **Racial disparities** occur from the dissimilar treatment of similarly situated people based on race by the criminal justice system ([Reducing Racial Disparity in the Criminal Justice System](#), The Sentencing Project, 2008). Looking at state courts in Massachusetts, a study by the Criminal Justice Policy Program at Harvard Law School found that Blacks were imprisoned at a rate of 7.9 times that of Whites; Latinx 4.9 times that of Whites ([Racial Disparities in the Massachusetts Criminal System](#), September 2020).

## Suggested Learning Activities

- **Play Online iCivics Games**
  - [iCivics](#) offers free web-based games that teach schoolchildren learn about how courts and the law function in a democratic society. Former Supreme Court Justice Sandra Day O'Connor was one of the founder of the site.
    - [Court Quest](#) has players explore state and federal court systems by helping others navigate the American judicial system.
    - ["Do I Have a Right"](#) places players as members of a law firm that advise clients about what amendment to the constitution applies to problems presented by individuals who walk into their law office.
    - ["Supreme Decision"](#) asks students to serve as a law clerk for a justice who must write an opinion in First Amendment case (Note: flash is required to play).
- **Write a Public Policy Recommendation:** Should Congress expand the number of justices on the Supreme Court?
  - **NO**
    - [Why Does the Supreme Court have Nine Justices? Why Can't the Democrats Add More?](#) *Think* (April 10, 2019)
    - [Don't Try to Expand the Number of Justices](#), National Review (July 5, 2018)
  - **YES**
    - [Court-Packing, Democrats' Nuclear Option for the Supreme Court, Explained](#), VOX (October 5, 2018)

## Online Resources for the Judicial Branch

- **WIKI Page:** [Ruth Bader Ginsburg, the Notorious RBG](#)
- **Learning Plan:** [Oyez! Oyez! Oyez!: Simulating the Supreme Court](#), EDSITEment
- [The Supreme Court's Big Rulings Were Surprisingly Mainstream This Year](#), *FiveThirtyEight* (July 13, 2020)
- [National Association of Youth Courts](#)
  - Nationally, there are more than 1000 youth or teen courts.
  - These courts are not courts of law, but human service programs intended to provide remediation and peer support for first offenders of low-level offenses. [In Teen Court, Kids Have A Right to a Jury of Their Peers](#), *Buzz Feed News* (2015).
- **VIDEO:** [The 25 Greatest Legal Movies](#), American Bar Association Journal (2008)
  - [Top Ten Trial Movies of All Time](#), LKG Attorneys at Law (2018)
    - Teachers can show short video clips from movies to engage students in how the legal system works and for whom.



### 3.1 ENGAGE: What Supreme Court Cases Should All Teenagers Know?

In 1966, a 14-year-old Arizona youth, Gerald Francis Gault, was arrested for allegedly making an obscene phone call. His parents were not notified by police at the time of the arrest. Gault was brought before a juvenile court judge and sentenced to seven years in a state industrial school detention facility; an adult convicted of the same offense would have received only a 60-day sentence. In appealing the decision, Gault contended that he did not receive due process of law under the 14th Amendment of the Constitution.



Equal Justice Under Law

Inscription at the front of the United States Supreme Court

["EqualJusticeUnderLaw"](#) by UpstateNYer is licensed under [CC BY-SA 3.0](#)

In a 1967 landmark [In re Gault](#) decision, the Court agreed, establishing the rule that juveniles facing delinquency hearings have a constitutional right to an attorney as well as the right to receive written notice of charges against them, the opportunity to call witnesses, the opportunity to cross-examine those testifying against them, and protection against self-incrimination. The due process rights of adults, the Court said, apply to teenagers as well. You can learn more about the case from the NPR podcast "[Gault Case Changed Juvenile Law](#)."

*In re Gault* is one of a number of Supreme Court cases that directly impacted the lives and rights of middle and high school students.

- *We the Students: Supreme Court Cases For and About Students* by Jamin B. Raskin (2015) is an excellent source of information.
- The North St. Paul-Maplewood-Oakdale School District in Minnesota has a [list of 10 Supreme Court cases](#) every student should know. Included on that list is [Tinker v. Des Moines which we discuss in Topic 5](#) of this book.

What other cases should all teenagers know in order to more fully understand their rights and responsibilities as citizens of the United States?

#### [Student Legal Rights in School Choice Board](#)

[\(click here to make your own copy of the choice board\)](#)

<p><b><u><a href="#">Brown v. Board of Education</a></u></b></p> <p>Evaluate whether Black and Brown students have equal learning opportunities in schools today as proposed by this landmark case</p> 	<p><b><u><a href="#">Tinker v. Des Moines</a></u></b></p> <p>Make a video or podcast about whether you feel you have the freedom to wear clothes or make statements that express charged ideas in school</p> 	<p><b><u><a href="#">LGBTQ Student Rights</a></u></b></p> <p>Prepare and present a <u><a href="#">court case briefing</a></u> about a case related to LGBTQ student rights</p> 	<p><b><u><a href="#">Mendez v. Westminster</a></u></b></p> <p>Create a stop motion animation to educate others about this landmark school desegregation case</p> 	
<p><b><u><a href="#">Rights in Conflict Searches &amp; Seizures</a></u></b></p> <p>Design a <u><a href="#">PSA</a></u> about whether or when school officials should be allowed to search a student in school</p>	<div data-bbox="651 390 984 724"> <h2 style="text-align: center;">Student Legal Rights in School</h2>  <h3 style="text-align: center;">Digital Choice Board Activities for Students and Teachers</h3> <p><b>Bonus:</b> Write a persuasive essay about which <u><a href="#">Supreme Court cases every teenager should know</a></u></p> </div>		<p><b><u><a href="#">Rights in Conflict Gun Violence</a></u></b></p> <p>Propose specific steps for communities to take to reduce gun violence and ensure student safety at school</p>	
<p><b><u><a href="#">Rights in Conflict The Flag and the Pledge of Allegiance</a></u></b></p> <p>Design a social media campaign for allowing or preventing student athletes to kneel during the National Anthem at school events</p>	<p><b>The Gavel Gap</b></p> <p>Propose one or more new classes at your school to encourage <u><a href="#">more females to study law and become judges*</a></u></p> 	<p><b>The Court and You</b></p> <p>Take an <u><a href="#">online quiz</a></u>, then design a game about how Supreme Court decisions influence the daily life of students in schools*</p> 	<p><b>Student Bill of Rights</b></p> <p>Design a mosaic with symbols, images, and colors to express one of the rights in the <u><a href="#">Student Bill of Rights*</a></u></p> 	<p><b>You Choose</b></p> <p>Select a court case or legal right that all students need to be aware of and then create a script or produce a TV mini-series to educate others about it</p> 

\*Include a Designer's Statement about how your plan, game, mosaic or mini-series will inform students about their rights in schools and society.

"Student Legal Rights in School" 2021 Choice Board by [Robert W. Maloy](#), Ed.D. & [Torrey Trust](#), Ph.D., College of Education, University of Massachusetts Amherst is licensed under [CC BY NC SA 4.0](#)

## Suggested Learning Activities

- **Sketchnote a Court Case Summary**
  - Review [10 Supreme Court Cases All Teens Should Know](#) and [Supreme Court Cases Where Students Influenced the Constitution](#)
    - Select one supreme court case and identify its main constitutional issue(s) and bottom line decision.
    - State whether if you would have decided the case differently and why.
    - Create a sketchnote revealing what you learned and your thoughts about the court case.
- **Conduct a Writing-based Study of an Important Case about Students in Schools**
  - Give students a summary of the facts of the case, but not how the Supreme Court decided it.
  - Create 3 groups within the class to play the following roles:
    - Lawyers arguing for the student(s)
    - Lawyers arguing against the student(s)
    - Judges who will decide the case
  - Each group will meet to analyze the facts and define what constitutional or legal question is at stake in the case.
    - Lawyers will submit a written summary of how they intend to defend or prosecute the case.
    - Judges will submit a written summary of how they will fairly evaluate the arguments of the lawyers to decide the case.
  - After the groups present their summaries, give them the actual case decision and selected primary source resources about what the lawyers said during the trial and what the justices said in their decision.

## Standard 3.3 Conclusion

The Executive, Legislative, and Judicial branches have specific roles and powers within the American system of government. **INVESTIGATE** outlined the functions of the President (executive), the Congress (legislative), and the Supreme Court (judicial). **UNCOVER** explored the history of the Federal Bureau of Investigation (FBI), an executive branch agency as well as the history of electing of LGBTQIA legislators. **ENGAGE** asked two questions: a) Can a woman be elected President? and b) What Supreme Court cases should all teenagers know?



This content is provided to you freely by Equity Press.

Access it online or download it at <https://equitypress.org/democracy/roles>.



