

How Congress Stopped Working

Today's legislative branch, far from the model envisioned by the founders, is dominated by party leaders and functions as a junior partner to the executive, according to an analysis by The Washington Post and ProPublica.

by Derek Willis, ProPublica, and Paul Kane, The Washington Post
Nov. 5, 2018 10 a.m. EST

For more than 200 years, Congress operated largely as the country's founders envisioned — forging compromises on the biggest issues of the day while asserting its authority to declare war, spend taxpayer money and keep the presidency in check.

Today, on the eve of a closely fought election that will determine who runs Capitol Hill, that model is effectively dead.

It has been replaced by a weakened legislative branch in which debate is strictly curtailed, party leaders dictate the agenda, most elected representatives rarely get a say and government shutdowns are a regular threat due to chronic failures to agree on budgets, according to a new analysis of congressional data and documents by The Washington Post and ProPublica.

The study found that the transformation has occurred relatively fast — sparked by the hyperpolarized climate that has enveloped politics since the 2008 election of President Barack Obama and the subsequent dawn of the tea party movement on the right. During that time, as the political center has largely evaporated, party leaders have adhered to the demands of their bases, while rules and traditions that long encouraged deliberative dealmaking have given way to partisan gridlock, the analysis found.

While few of these changes made headlines, taken together they have fundamentally altered the way Congress operates — and morphed this equally powerful branch of government into one that functions more as a junior partner to the executive, or doesn't function at all when it comes to the country's pressing priorities.

Immigration — a major flashpoint in recent elections — has been formally debated only a few days in Congress over the past five years with no resolution. Efforts to reach a bipartisan agreement on health care markets — an issue both parties considered urgent — stalled.

And in July, Senate Majority Leader Mitch McConnell, R-Ky., declined to allow debate on a proposal that sought to limit foreign influence in U.S. elections, warning colleagues such a bill could become a “two-week ordeal,” according to the sponsor of one proposal, Sen. Marco Rubio, R-Fla.

Instead, the Senate spent most of the next three months confirming President Donald Trump's judicial and administrative nominees.

“That's why I left. You couldn't do anything anymore,” said Tom Coburn, the former Oklahoma Republican senator who resigned in 2014.

Tuesday's elections could bring big changes to the Capitol, particularly if Democrats win control of the House and launch aggressive investigations of the Trump administration, but there is little evidence that the leaders of either party are prepared to rebuild the old system.

“If this continues, they're going to evolve, or devolve, into irrelevancy very quickly,” said former Senate Majority Leader Tom Daschle, D-S.D.

The election of Obama set off partisan moves, and then countermoves, that drove the institution into ideological corners — followed by the election of Trump and a reverse set of moves.

To document this transformation, the Post and ProPublica analyzed publicly available data from the House and Senate, committees, and members of Congress, dating back several decades.

Some institutional decline began 25 years ago, but the study showed that the steepest institutional drop came in just the past 10 years.

The study showed that:

- Junior senators have fewer opportunities to wade into the issues of the day, largely because Senate leaders limit the number of votes on amendments to proposed legislation. The number of such votes has shrunk to an all-time low under McConnell, less than 20 percent of all roll calls, down from 67 percent 12 years ago.
- House Speaker Paul Ryan, R-Wis., has logged an all-time high in his two years of leadership for the number of “closed rules,” when leaders eliminate any chance for rank-and-file amendments. Ryan closes off discussion four times as often as former speaker Newt Gingrich, R-Ga., did 20 years ago.
- Committees meet to consider legislation less than ever. As recently as 2005 and 2006, House committees met 449 times to consider actual legislation, and Senate committees met 252 times; by 2015 and 2016, those numbers plummeted to 254 and 69 times, respectively, according to data compiled by the Policy Agendas Project at the University of Texas.

Even newcomers recognize the futility.

As heated Senate hearings on a Supreme Court nominee kicked off in early September, Sen. Ben Sasse, R-Neb., devoted his opening statement to explaining why the judiciary confirmation wars have become so rancorous. His argument: Presidents fill the void when Congress cannot act, leading to lawsuits and leaving the courts to resolve disputes.

“More and more legislative authority is delegated to the executive branch every year. Both parties do it. The legislature is impotent. The legislature is weak,” Sasse, in just his fourth year in office, said.

Executive branch agencies now make law, not Congress, he said. “There’s no verse of Schoolhouse Rock that says give a whole bunch of power to the alphabet soup agencies.”

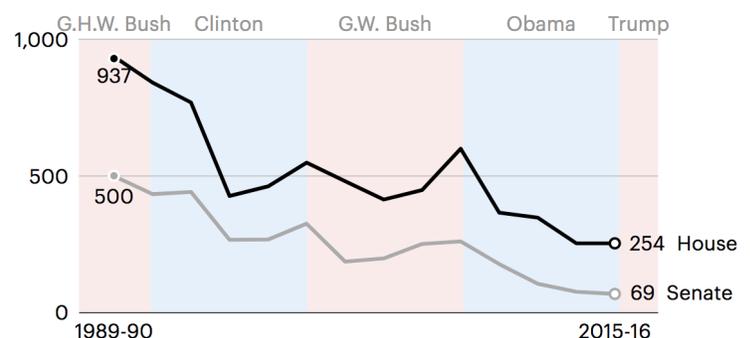
It’s true. That 1970s Saturday morning jingle “I’m Just A Bill” would have to be rewritten for today’s Congress. The regular order that the character explained — start in committee, passage in each body and then a compromise between the House and Senate versions — only occurs on noncontroversial bills with sweeping support.

Some of today’s leaders reject the idea that there is anything wrong with Congress, particularly McConnell. He points to overwhelming bipartisan passage of a bill to battle the opioid epidemic at the same time as the bitter partisan fight over Brett Kavanaugh’s Supreme Court nomination.

“We were both able to have a big robust fight over something both sides felt deeply about and still work together on other issues at the very same time,” McConnell said.

Pressed about the findings, Republican leaders insisted that this nearly two-year session of Congress has been one of the most productive, highlighting GOP passage of a \$1.5 trillion tax cut and arguing that the media pays little attention to passage of bipartisan legislation.

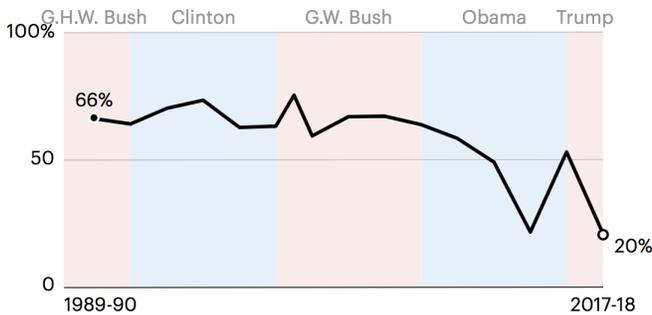
Committee Hearings Dealing With Legislation



Note: Data for 2015-16 is incomplete. (Brittany Mayes/The Washington Post)

McConnell’s office offered a list of accomplishments, most notably the confirmation of 84 judges. The office also highlighted completion of a bipartisan water infrastructure bill and a five-year reauthorization of the Federal Aviation Administration.

Amendment Votes as Percentage of Votes in the Senate



Brittany Mayes/The Washington Post

out to most Republicans. Reid either tried to get all 60 votes from his caucus — for six months in 2009 and 2010 they held a filibuster-proof 60 seats — or only negotiated with a couple of moderate Republicans to lock down deals.

The former leader, who retired at the end of 2016, agrees that Democratic success played a role in changing Congress, but because so few Republicans were left who were willing to broker compromise.

“The moderates either all lost or changed parties,” said David Krone, Reid’s chief of staff as majority leader.

In turn, Republicans began using parliamentary weapons that had been rarely, if ever, used before, deeply souring the relationship between Reid and McConnell.

Reid countered by increasingly shutting down the avenues for anyone to offer amendments in the ensuing years.

In 2013, Reid ended the 60-vote filibuster hurdle for all presidential nominees except for the Supreme Court. Old-time senators warned that it was the “nuclear option” and would lead to repercussions.

In 2017, faced with Democratic opposition to Trump’s Supreme Court nominee Neil Gorsuch, McConnell changed the rules, ending the filibuster hurdle for high-court picks.

The result is a Senate that is primarily just there to confirm the president’s selections — “personnel business,” according to McConnell.

Almost as soon as he became House speaker in 2011, Republican John Boehner faced an internal revolt from conservative purists who opposed any deals with Obama. Boehner had the title — and yet none of the real power of his predecessors.

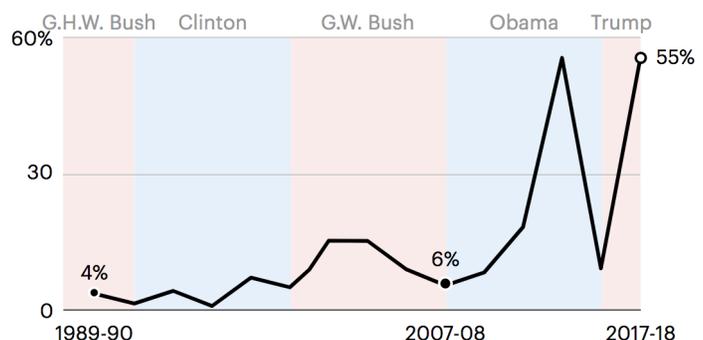
He controlled the floor, but he could not move on big deals with Obama that he pursued on federal debt or immigration.

McConnell’s aides say that in passing bills to combat opioid abuse and on aviation, committee chairmen worked with rank-and-file lawmakers to include many of their proposals before the legislation reached the Senate floor.

“This has been the most accomplished Congress in decades,” Don Stewart, McConnell’s spokesman, said in a statement.

Coburn blamed the Democratic landslides of 2006 and 2008 for building up such a majority that Reid stopped reaching

“Personnel” Business as a Percentage of Senate Business



Brittany Mayes/The Washington Post

Finally, in July 2015, Rep. Mark Meadows, R-N.C., filed a motion to eject Boehner as speaker, only the second time in the nearly 230-year history of the House anyone ever used that parliamentary tool. Originally intended as a quick way to oust a corrupt speaker, the rebels used it for political gain.

Two months later, rather than put the House through such a vote, Boehner quit.

A decade ago, a fringe character like Meadows would have been relegated to lower-tier committees. Today, he is a regular on Fox News who chats with the president several times a week.

One solution, offered by longtime Washington hands, is to break away from the now-accepted weekly schedule of being in session just two full days a week.

“Stay in session. I think if we stayed here longer, that would be good,” said Sen. Richard Shelby, R-Ala., who is finishing his 40th year in Congress.

While campaigning for Republicans this fall, Ryan also touted the accomplishments of this Congress, but he acknowledged dysfunction in more reflective moments. “I really think this budget process is irreparably broken,” he said in an interview in April after announcing his plans to retire.

Congress used to regularly approve several spending bills by the deadline and then throughout the fall pass the rest. But when Republicans took over the House in 2011, their showdowns with Obama left the process in tatters.

In 2013, Republicans forced a 16-day partial government shutdown in an unsuccessful effort to get Obama to defund the health-care law. Democrats forced a three-day shutdown this past January over their disagreement with Trump on immigration.

Over seven years, not a single spending bill passed on time, almost always leading to a huge measure funding every federal agency. The process hit rock bottom in late March, almost halfway through the fiscal year: Rank-and-file lawmakers had less than 24 hours to review the more than 2,000-page legislation funding the government.

This summer and fall, with support from Democratic leaders, Ryan and McConnell tried to pass as many of the 12 annual bills that fund the government through regular order. And, by the statutory deadline of Sept. 30, Congress had enacted five spending bills, the most in 20 years.

But leaders achieved that goal by limiting rank-and-file involvement, shutting down the process to all but a few powerful lawmakers. And Trump is threatening another partial shutdown in December if he does not get funds for a border wall.

One \$854 billion bill covered the departments of Defense, Health and Human Services, and Education — it received less than four days of debate in mid-August, and senators were only allowed to offer five amendments, four of which were so noncontroversial they passed unanimously.

Every new congressional leader promises rank-and-file members they will return the place to its glory years, working from the ground up through the committee process.

“It’s time to start moving America forward,” Sen. Harry Reid, D-Nev., declared in January 2007, upon becoming majority leader. He even held a brief joint news conference with McConnell to profess their friendship — before they went on to spend the next decade in a bitter feud.

“If you have ideas, let’s hear them,” Ryan told his colleagues three years ago upon taking the speaker’s gavel.

Perhaps no one promised a more wide-open process than McConnell, who delivered several speeches ahead of the 2014 midterm elections vowing to end Reid’s reign of institutional dictatorship. He singled out one senator, Democrat Mark Begich of Alaska, for having never gotten a vote on a single amendment that he offered in his entire six-year term.

“Our constituents should have greater voice in the process,” McConnell said.

Four years later, Sen. Dan Sullivan, a Republican who defeated Begich, has received just one vote on an amendment.

The initial culprit is well-known: political polarization in a divided nation.

“I don’t really worry about the Senate so much. I do worry about the fact that our country itself is where it is,” said Sen. Bob Corker, R-Tenn., who is retiring after 12 years in office. “The Senate very much mirrors the American people.”

Each side, seeing the chance of claiming the majority in the next election, focuses first on trying for the political wins by driving up turnout from their most loyal partisans.

Compromise legislation, crafted over many months and allowing dozens of amendments and input from both sides, does not excite either party’s base.

But the Post-ProPublica examination revealed that Congress mostly functioned in a traditional manner all the way into Obama’s first year in office.

Twenty years ago, the House leadership permitted debates to occur on about half of all bills. Rep. Nancy Pelosi, D-Calif., began to tighten the leash on amendments during the latter half of her speakership in 2009 and 2010. Today, Ryan and his GOP leadership have the final say on amendments to almost every bill.

The result is that, on major issues, the average member of Congress waits for leadership to emerge from behind closed doors and instruct them how to vote.

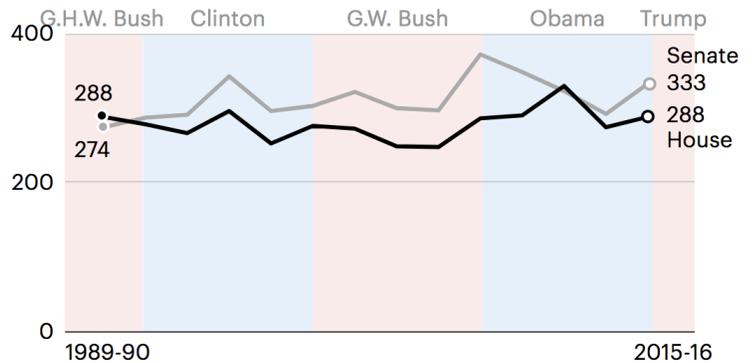
The Senate has seen an even more precipitous drop in rank-and-file participation.

Eight years ago, more than half of the votes in the chamber came on amendments — meaning that much of the action on the Senate floor revolved around accepting or rejecting legislative provisions offered by members. By 2013 and 2014, under Reid’s leadership, that rate plummeted to 20 percent. And McConnell is on course to break Reid’s record.

Daschle thinks of Congress as an institution that needs to be rebuilt from the ground up, starting with new campaign laws and a different work attitude.

“It’s kind of like a bombed building,” he said. “The rubble is there, and we just have to reconstruct the building with as much appreciation for what it once was.”

Number of House and Senate Days in Session



Brittany Mayes/The Washington Post