#KeepMarching

MomsRising Primer on Government and Civics

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The Constitution of the United States divides the federal government into three branches, in a system of checks and balances, to ensure a central government in which no individual or group gains too much control:

- **Executive** – Carries out laws (President, Vice President, Cabinet)
- **Legislative** – Makes laws (Congress)
- **Judicial** – Evaluates laws (Supreme Court and other courts)
EXECUTIVE BRANCH

The executive branch carries out and enforces laws. It includes the President, the Vice President, the Cabinet, the United States Federal Executive Departments (whose Secretaries belong to the Cabinet, and which includes: the Department of Justice, Environmental Protection Agency, the Department of Health and Human Services, and the Department of Labor), as well as other boards, commissions, and committees.

American citizens have the right to vote for the President and Vice President through free, confidential ballots.

**Key roles of the executive branch include:**

**President:**
The President leads the country. He/she is the head of state, leader of the federal government, including of all the United States Federal Departments, and is also the Commander in Chief of the United States Armed Forces. The President also nominates U.S. Supreme Court Justices, which the U.S. Senate must then confirm or reject. In addition, the President is also involved in the national budget process. (See below for more details on the budget process.) The President serves a four-year term and can be elected no more than two times.

**Vice President:**
The Vice President supports the President. If the President is unable to serve, the Vice President becomes President. In addition, as President of the Senate, the Vice President has two primary duties: to cast a vote in the event of a Senate deadlock, and to preside over and certify the official vote count of the U.S. Electoral College. The Vice President can be elected and serve an unlimited number of four-year terms as Vice President, even under different presidents.

**The Cabinet:**
Cabinet members serve as advisors to the President. They include the Vice President and the heads of the United States Federal Executive Departments. Secretaries of the Federal Executive Departments, who serve on the Cabinet, are nominated by the President and must be approved by the Senate (with at least 51 votes). In addition, the President can unilaterally designate senior White House staffers, heads of other federal agencies and the Ambassador to the United Nations as members of the Cabinet, although these are symbolic status markers and do not, apart from attending cabinet meetings, confer additional powers.

LEGISLATIVE BRANCH

The legislative branch enacts legislation, confirms or rejects Presidential appointments, and has the authority to declare war.

This branch includes Congress (the U.S. Senate and the U.S. House of Representatives) and several agencies that provide support services to Congress. American citizens have the right to vote for U.S. Senators and U.S. Representatives through free, confidential ballots.

**U.S. Senate:**
There are two elected U.S. Senators per state, totaling 100 U.S. Senators in our nation. A Senate term is six years and there is no limit to the number of terms an individual can serve.
U.S. House of Representatives:
There are 435 elected U.S. Representatives, which are divided among the 50 states in proportion to their total population. There are additional non-voting delegates who represent the District of Columbia and the territories. A U.S. Representative serves a two-year term, and there is no limit to the number of terms an individual can serve.

JUDICIAL BRANCH
The judicial branch interprets the meaning of laws, applies laws to individual cases, and decides if laws violate the Constitution.

The judicial branch is comprised of the U.S. Supreme Court and other federal courts.

U.S. Supreme Court:
The U.S. Supreme Court is the highest court in the United States. The Justices of the Supreme Court are nominated by the President and must be approved by the Senate.

- The court is comprised of nine members — a Chief Justice and eight Associate Justices. Currently, there is one Associate Justice vacancy. A minimum or quorum of six justices is required to decide a case.
- If there is an even number of Justices and a case results in a tie, the lower court’s decision stands.
- There is no fixed term for Justices. They serve until their death, retirement, or removal in exceptional circumstances.

Other Federal Courts:
The Constitution grants Congress the authority to establish other federal courts.

JUDGE / JUSTICE CONFIRMATION PROCESS:
Appointments for U.S. Supreme Court Justices & other federal judgeships follow the same basic process:

- The President nominates a person to fill a vacant judgeship.
- The U.S. Senate Judiciary Committee holds a hearing on the nominee and votes on whether to forward the nomination to the full U.S. Senate.
- If the nomination moves forward, the Senate can debate the nomination. Debate must end before the Senate can vote on whether to confirm the nominee. A Senator will request unanimous consent to end the debate, but any Senator can refuse.
- Without unanimous consent, the Senate must pass a cloture motion to end the debate. For most federal judgeships, the cloture motion requires a simple majority—51 votes—to pass.
- For Supreme Court nominees, cloture requires a three-fifths majority—60 votes—to pass.
- If the cloture motion doesn’t pass, debate continues in what’s known as a filibuster. The filibuster can effectively stall the process of voting on confirmation indefinitely.
- Once the debate ends and the Senate votes on confirmation, just 51 votes are needed to confirm the nominee for Supreme Court justice or any other federal judgeship.
The U.S. Supreme Court is:
- The highest court in the country
- Located in Washington, DC
- The head of the judicial branch of the federal government
- Responsible for deciding whether laws violate the Constitution
- In session from early October until late June or early July

How a Case Gets to the Supreme Court

Most cases reach the Court on appeal. An appeal is a request for a higher court to reverse the decision of a lower court. Most appeals come from federal courts. They can come from state courts if a case deals with federal law. Rarely, the Court hears a new case, such as one between states.

1. Dissatisfied parties petition the Court for review
   Parties may appeal their case to the Supreme Court, petitioning the Court to review the decision of the lower court.

2. Justices study documents
   The Justices examine the petition and supporting materials.

3. Justices vote
   Four Justices must vote in favor for a case to be granted review.

What Happens Once a Case is Selected for Review?

1. Parties make arguments
   The Justices review the briefs (written arguments) and hear oral arguments. In oral arguments, each side usually has 30 minutes to present its case. The Justices typically ask many questions during this time.

2. Justices write opinions
   The Justices vote on the case and write their opinions.
   - The majority opinion shared by more than half of the Justices becomes the Court's decision.
   - Justices who disagree with the majority opinion write dissenting or minority opinions.

3. The Court issues its decision
   Justices may change their vote after reading first drafts of the opinions. Once the opinions are completed and all of the Justices have cast a final vote, the Court “hands down” its decision. All cases are heard and decided before summer recess. It can take up to nine months to announce a decision.

Every year:

The Court receives 7,000-8,000 requests for review and grants 70-80 for oral argument. Other requests are granted and decided without argument.

About the Justices

There are nine Justices:
- A Chief Justice, who sits in the middle and is the head of the judicial branch.
- Eight Associate Justices

When a new Justice is needed:
- The President nominates a candidate, usually a federal judge.
- The Senate votes to confirm the nominee.
- The Court can continue deciding cases with less than nine Justices, but if there is a tie, the lower court’s decision stands.

Justices are appointed for life, though they may resign or retire.
- They serve an average of 16 years.
THE FEDERAL BUDGET PROCESS

There are five key steps in the budget process that involve both the President and Congress:

1. The President submits a budget request to Congress. This is non-binding and more like a suggestion, since Congress can choose to follow the President’s lead, reject it all together, or something in the middle. (It’s important to note that new presidents often don’t submit a full budget when they take office, but instead something like an outline that is often referred to as the “skinny budget”).

2. The House and Senate pass budget resolutions.

3. The House and Senate subcommittees “markup” appropriations bills.

4. The House and Senate vote on appropriations bills and reconcile the differences.

5. The President signs each appropriations bill and the budget becomes law. (Note: Lately Congress has not been completing its job by the end of the fiscal year (October 1st) when the budget from the previous year runs out. Instead of shutting down the government, which is what happens when a budget is not passed, they have been passing Continuing Resolutions (CRs) which continues the level of funding from the year before, or omnibus bills, which is a bunch of appropriations bills rolled into one giant bill.)
II. State and Local Government

Under the Tenth Amendment to the U.S. Constitution, all powers not granted to the federal government are reserved for the states and the people. All state governments are modeled after the federal government and consist of three branches: executive, legislative, and judicial.

CHECKS AND BALANCES

Each branch of government can change acts of the other branches as follows:

- The President can veto laws passed by Congress.
- Congress confirms or rejects the President’s appointments and can remove the President from office in exceptional circumstances.
- The Justices of the Supreme Court, appointed by the President and confirmed by the Senate, can overturn unconstitutional laws.
EXECUTIVE BRANCH

In every state, the executive branch is headed by a governor who is directly elected by the people. In most states, the other leaders in the executive branch are also directly elected, including the lieutenant governor, the attorney general, the secretary of state, and auditors and commissioners. States reserve the right to organize in any way, so they often vary greatly with regard to executive structure. No two state executive organizations are identical.

LEGISLATIVE BRANCH

All 50 states have legislatures made up of elected representatives, who consider matters brought forth by the governor or introduced by its members to create legislation that becomes law. The legislature also approves a state’s budget and initiates tax legislation and articles of impeachment. The latter is part of a system of checks and balances among the three branches of government that mirrors the federal system and prevents any branch from abusing its power.

Except for one state, Nebraska, all states have a bicameral legislature made up of two chambers: a smaller upper house and a larger lower house. Together the two chambers make state laws and fulfill other governing responsibilities. (Nebraska is the lone state that has just one chamber in its legislature.) The smaller upper chamber is always called the Senate, and its members generally serve longer terms, usually four years. The larger lower chamber is most often called the House of Representatives, but some states call it the Assembly or the House of Delegates. Its members usually serve shorter terms, often two years.

JUDICIAL BRANCH

State judicial branches are usually led by the state supreme court, which hears appeals from lower-level state courts. Court structures and judicial appointments/elections are determined either by legislation or the state constitution. The state supreme court focuses on correcting errors made in lower courts and therefore holds no trials. Rulings made in state supreme courts are normally binding. However, when questions are raised regarding consistency with the U.S. Constitution, matters may be appealed directly to the United States Supreme Court.

LOCAL GOVERNMENT

Local governments generally comprise two tiers: counties (also known as boroughs in Alaska and parishes in Louisiana), and municipalities (or cities/towns). In some states, counties are divided into townships. Municipalities can be structured in many ways, as defined by state constitutions, and are called, variously, townships, villages, boroughs, cities, or towns. Various kinds of districts also provide functions in local government outside county or municipal boundaries, such as school districts or fire protection districts.

Municipal governments — those defined as cities, towns, boroughs (except in Alaska), villages, and townships — are generally organized around a population center and in most cases correspond to the geographical designations used by the United States Census Bureau for reporting of housing and population statistics. Municipalities vary greatly in size, from the millions of residents of New York City and Los Angeles to the 287 people who live in Jenkins, Minnesota.
Municipalities generally take responsibility for parks and recreation services, police and fire departments, housing services, emergency medical services, municipal courts, transportation services (including public transportation), and public works (streets, sewers, snow removal, signage, and so forth).

Whereas the federal government and state governments share power in countless ways, a local government must be granted power by the state. In general, mayors, city councils, and other governing bodies are directly elected by the people.

### III. “How Did THAT Happen?” Some Federal Legislative Maneuvers to Watch Out For

Lately, Congress and the President have been using a number of maneuvers that fall outside of the typical “how a bill becomes a law” structure. While many of these legislative strategies have existed for a long time, and have been used by both political parties to their own benefits, their current use complicates the process, and helps push through policies that we oppose (or in some cases, overturn policies we like). The terms you may hear on the news or from politicians sound wonky and complicated. They do that for a reason: They hope that the public will be so confused that they won’t notice what is going on.

We are going to walk you through four major strategies being used by members of Congress and the President to push through their policies that are damaging to women, families, and children.

**BLOCK GRANTS**

You may hear the term block grants (or other euphemisms like “merging funding streams,” “per capita caps,” or “super waivers”) come up in a variety of places. Right now major programs that assist struggling families are at risk of being block granted, in particular Medicaid and SNAP (food stamps).

**What is a block grant?**

A block grant is a set amount of money determined (usually by a formula) by the federal government for a specific program (usually a safety net program like food stamps, Medicaid, WIC, etc.), which is given to states and local governments. States have broad discretion on how they spend the funding with little oversight from the federal government. The formula that determines the funding is often capped and set based on data provided from the previous year, so the amount a state gets might not reflect its current economy or take into account unexpected needs such as a crisis.

**Why are block grants bad policy?**

1. Safety net programs as they are currently designed have the flexibility to respond to recessions, natural disasters, and spikes in need. With a block grant this goes away.
For example, when Hurricane Katrina occurred, we saw a spike in SNAP applications in the states affected. Many families were displaced or out of work for a period of time, and in order to feed their families they went on SNAP. With a block grant, that type of flexibility would no longer be available. If there was a sudden recession, a natural disaster (like a hurricane or tornado) or even a factory closing in a specific city, states would be unable to respond to the increase in need and families would be harmed.

The funding for most major low-income programs such as SNAP, Medicaid, and child nutrition programs, is determined by preset eligibility standard and benefit amounts. Anyone who meets the requirements of the program gets help. With a block grant this no longer happens. With the flexibility of the program taken away, the safety net breaks.

2. Under a block grant, assistance can vary dramatically state to state.

Federal entitlement programs are a promise to everyone in the U.S. that there’s a threshold below which they can’t fall. Block grants break that promise, with states having the freedom to set their own requirements with no accountability to the federal government.

It is simply unfair and does not make sense to for one state to provide wonderful healthcare or nutrition, while another state falls significantly short and provides subpar care. We need a basic level of care throughout the country.

3. These programs are already losing funding and are more likely to lose funding in the future.

Historically, block granting a program is the first step in long-term budget cuts. We have already seen major funding cuts and future threats to programs like SNAP and Medicaid. Further reducing funding and creating a major structural change like a block grant would almost guarantee that those previously served would see a reduction in case or lose assistance all together. This would result in poorer health and nutrition for families.

RESOURCES ON BLOCK GRANTS:

RECONCILIATION

Reconciliation is the budget process for fast-tracking revenue and spending legislation into law. It is often used to pass difficult or controversial pieces of legislation. This form of legislation is passed through an expedited process. Congressional budget committees used reconciliation to ensure tax laws and mandatory spending programs are revised according to the budget resolutions revenue and spending targets.

Reconciliation has been around since 1980 and was used to enact major spending cuts during the Reagan years, and most recently in 2010 to help pass the Affordable Care Act (ACA). You can only use it to make changes to legislation that has to do with spending, revenues, and the federal debt limit. For example, you can use reconciliation to make changes to Medicaid or federal civilian retirement plans but not banning flag burning. It can only be used for mandatory funding as well. It currently is being used by the Republicans to repeal the ACA. There are rumors that reconciliation will also be used this year for tax reform or a SNAP block grant.

Reconciliation bills are subject to special rules in the Senate, making it easier to pass more controversial pieces of legislation. Debate on reconciliation bills is limited to 20 hours. If the law is free of points of order, it can be passed in the Senate by a simple majority.

RESOURCES ON RECONCILIATION:


EXECUTIVE ORDERS

An executive order is a directive from the President that has much of the same power as federal law. It is protected under Article II of the Constitution. There are no direct definitions of executive orders, presidential memoranda, and proclamations in the U.S. Constitution, therefore no specific provision authorizing their issuance, yet the Constitution says the President “shall take Care that the Laws be faithfully executed” and ex-
Executive orders are believed to fall under that category. The President cannot create new laws under an executive order — that is the job of Congress. Instead what the president is able to do is work within existing law and create a legally binding mandate about how the federal agencies he or she oversees are to use their resources.

Executive orders have been used by a great many presidents. Some of them have taken the form of good/positive policy. For example, in 2015, President Obama signed an executive order providing paid sick days to federal employees, and in 1957, President Eisenhower issued Executive Order 10730 to dispatch federal troops to Little Rock, Arkansas, to maintain order during the desegregation of Central High School. But executive orders have also been used to bypass Congress and pass controversial or bad policies. During WWII, President Franklin Roosevelt used an executive order to establish internment camps. And most recently, President Trump has been attempting to use executive orders to pass a travel ban against Muslims from certain countries.

Presidents throughout history, from George Washington forward, have used executive orders. The president with the most executive orders was Jimmy Carter, who averaged around 80 orders per year for his four-year term.

The check on executive orders is the judicial system. Courts can strike down an order if it is believed to be unconstitutional or outside the bounds of the Executive Branch. An executive order can also be overturned by the Congressional Review Act (see below). A public perception problem also at times exists with an executive order: It could appear that the policy does not have far reaching support and therefore could not be passed through the regular process in Congress.

**RESOURCES ON EXECUTIVE ORDERS:**


**CONGRESSIONAL REVIEW ACT**

The Congressional Review Act (CRA) is an arcane tool used by Congress to overturn a final rule issued by a federal agency. Previously, only one rule had ever been overturned under the CRA (in 2001, the outgoing Clinton Administration’s ergonomics rule was overturned), but in the current Congress, Republicans are turning to the CRA roll back a number of Obama Administration rules: Congress has already repealed the Stream Protection Rule that required coal firms to clean up waste from mountaintop removal mining and prevent it from going into local waterways, and overturned a requirement that the Social Security Administration (SSA) submit people deemed to have dangerous mental health conditions to the National Instant Criminal Background Check System (NICS) to deny them access to firearms.
How it works:

1. Before any rule can take effect, an agency (like the Department of Labor or Environmental Protection Agency) must provide notice to Congress. Upon receipt of the final rule, the House and the Senate have 60 calendar days to introduce a resolution of disapproval. The resolution of disapproval is fast tracked and in the Senate only needs a majority to pass.

2. Both chambers must pass a resolution of disapproval. Once that is signed by the President, the regulation is struck down.

A resolution of disapproval can only be used to strike down an entire rule (not partially). If the resolution of disapproval is enacted and signed by the President, it strikes down the rule and prevents the agency from ever promulgating “substantially the same” rule without explicit authorization from Congress—so basically the President can’t keep issuing the same rule over and over again.

Senate Republicans have currently identified at least 50 rules for potential CRA challenges. They range from rules about methane emissions to teacher preparation. Not all of President Obama’s rules are available for a resolution of disapproval—any rule finalized before June 13, 2016 is not subject to the CRA, so it is only the rules at the tail end of his administration. The time constraint on when a resolution can be issued is the only check on this type of procedure.

RESOURCES ON CRA:


MomsRising.org is an online and on-the-ground grassroots organization of more than a million people who are working to achieve economic security for all families in the United States.

MomsRising is working for paid family leave, flexible work options, affordable childcare, and for an end to the wage and hiring discrimination which penalizes so many others. MomsRising also advocates for better childhood nutrition, health care for all, toxic-free environments, and breastfeeding rights so that all children can have a healthy start.

Established in 2006, MomsRising and its members are organizing and speaking out to improve public policy and to change the national dialogue on issues that are critically important to America’s families. In 2013, Forbes.com named MomsRising's web site as one of the Top 100 Websites For Women for the fourth year in a row and Working Mother magazine included MomsRising on its “Best of the Net” list.

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