



An Evenly Divided Senate

An evenly split United States Senate has only happened three times since the 1st Congress convened in 1789. The first, referred to as the “Great Senate Deadlock of 1881,” was a special session to approve the nominations of Republican President James Garfield. Normally a formality, with political leaders in deadlock, the session lasted for eleven weeks instead of the normal eleven days. In 1954, the death of a Senator created a second brief evenly divided Senate with then Vice President Richard Nixon ready, but never required, to break deadlock. The third happened in 2001 but unlike 1881, Senate leaders worked together in advance and carefully crafted a power sharing agreement that was presented when they convened and agreed to by both parties. Now, twenty years later, an evenly divided Senate appears to be on the horizon.

In the November 2000 presidential election, George W. Bush beat then Vice President Al Gore. This set the stage for Democrats to control the Senate from January 3, when they convened and Vice President Al Gore was Senate President, until Inauguration Day, when Republican Vice President Cheney would become the deciding vote. The leaders of each party, Senator Trent Lott (R-MS) and Senator Tom Daschle (D-SD), recognized this unique situation and began negotiations in late November to negotiate and carefully craft a power sharing agreement that was accepted by both caucuses. The Senate successfully operated under this agreement, modifying as issues arose, until June 6, 2001, when Senator James Jeffords (R-VT) switched parties becoming an Independent caucusing with the Democrats giving them a 51-seat majority.

It is important to note the relationship between Senators Lott and Daschle was crucial for the agreement to be formed and for the chamber to operate during this period of time. Having worked as colleagues in the Senate since the late 1980s, with each serving as the leader of their respective parties for the prior four years, the two were not only collegial but they were friends as well. They could disagree without being disagreeable and each represented their respective caucuses while still respecting each other. The political climate of 2001, even post a contentious Supreme Court deciding presidential election, was nothing like what exists in 2021.

SENATE RESOLUTION 8 (S.Res.8)

Under the established rules of the Senate, the composition of the chamber dictates much more than just control of the Senate floor. The Senate convenes and adopts organizing resolutions to determine committee ratios for members and staff and the budgets for each, office space, and more. These normally routine resolutions are offered by the majority party with procedures in place allowing for amendments and even a filibuster by the minority. This is complicated when there is no clear majority. The 2001 resolution provided a power sharing agreement (S.Res.8) covering these major organizational decisions with control decided by the President of the Senate but the general powers shared by both parties. Highlights included:

- Republican chairs of all Senate Committees after Inauguration Day
- Equal representation on all Senate committees
- Equal division of committee staff, budget and office space
- Procedures for discharging measures with tie votes in committee
- Restriction on cloture motions on amendable matters
- Restrictions on floor amendments offered by party leaders
- Eligibility of all Senators to preside over the Senate



Senator Daschle, as majority leader, had the power to replace the incumbent Republican administrative officers with Democrats but he did not. In fact, the Senate elected Senator Robert C. Byrd (D-WV) President *pro tempore* and elected Senator Strom Thurmond (R-SC) President *pro tempore* effective noon January 20, 2001. The chairs of each standing committee were named with Democratic chairs to serve until noon as well, when Republican chairs took over the gavel. The floor schedule and consideration of Senate business required both leaders “to seek to attain an equal balance of the interests of the two parties.” While maintaining control of the motion to proceed by the Majority Leader, the agreement stated, “Senate Rules do not prohibit the right of the Democratic Leader, or any other Senator, to move to proceed to any item.”

While not perfect and not comprehensive, the intent of both leaders to operate with shared powers while equally divided by party allowed for the resolution of issues to be handled by informal agreements, negotiations for unanimous consent agreements, and other collegial means. Senator Lott has recently said, “I could have been a horse’s rear, and said, ‘We have the majority, the hell with you.’” But he did not want to bring the Senate to gridlock and by giving the Democrats some influence, he was able to avoid “daily warfare.”

2021

The political landscape of the United States has changed dramatically since 2001. The relationship between Senators Mitch McConnell and Chuck Schumer is not the same and the tenor of the Senate has changed dramatically over the past 20 years. The probability that McConnell and Schumer are able to come to an agreement in any sort of expedited fashion is highly unlikely. The Senate has been gridlocked for years and established procedures have been modified to erode the rights of the minority because the majority is unable to move their agenda. Then Majority Leader Harry Reid (D-NV), frustrated over Republican procedural roadblocks on judicial nominations, pulled the “nuclear option” in 2013 and eliminated the 60-vote requirement on executive branch nominations and federal judicial appointments. Senate Majority Leader McConnell extended the “nuclear option” to Supreme Court nominations in 2017 and President Trump has appointed over 220 judicial nominees and three Supreme Court Justices.

With the chaotic aftermath of the 2020 election, in the midst of a global pandemic, the political divisions represented in the United States Senate will make negotiations difficult at best in an even split. In 1881, when the Democrats ground the proceedings to a stalemate, it took substantial political maneuvering to bring them to agreement on moving forward. It is uncertain what it will take in 2021 to bring the factions within each party, much less the two parties, to move forward. Leader McConnell stated earlier this year that he would follow the Lott-Daschle playbook but that was before the U.S. Capitol was stormed, and how Schumer and the Democrats in the Senate respond is unknown. Also, with the composition of the Senate being determined by a January run-off, the advantage of time like in 2001 is just not there. It is possible President-Elect Joe Biden, having served in the Senate over 30 years, and Vice-President Elect Kamala Harris, currently a sitting Senator who will be President of the Senate once inaugurated, could set the tone with Senate Democrats urging them to compromise so they can push to move their nominations, appointments and top legislative priorities.

Sources: <https://crsreports.congress.gov/product/pdf/RS/RS20785>,
https://www.senate.gov/artandhistory/history/common/briefing/Senate_Deadlock_1881.htm