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# Delegates to the U.S. Congress: History and Current Status

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## Summary

Delegates, representing territories that had not yet achieved statehood, have served in the House since the late 1700s. In the 20<sup>th</sup> century, the concept of delegate grew to include representation of territories where the United States exercises some degree of control but were not expected to become states.

In the 117<sup>th</sup> Congress (2021-2022), the U.S. insular areas of American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the federal municipality of the District of Columbia are each represented in Congress by a delegate to the House of Representatives. In addition, Puerto Rico is represented by a resident commissioner, whose position is treated the same as a delegate.

This report provides historical background on the development of the position of delegate to Congress and on the rights of a delegate once seated.

The Constitution makes no provision for territorial representation, and early laws providing for territorial delegates to Congress did not specify the duties, privileges, and obligations of these representatives. It was left to the House and the delegates themselves to define their role. On January 13, 1795, the House took an important step toward establishing the functions of delegates when it appointed James White, the first territorial representative, to membership on a select committee. In subsequent years, delegates continued to serve on select committees as well as on conference committees. The first assignment of a delegate to a standing committee occurred under a House rule in 1871, which gave delegates places as additional members on two standing committees. In these committees, the delegates exercised the same powers and privileges as they did in the House; that is, they could debate but not vote.

In the 1970s, delegates gained the right to be elected to standing committees (in the same manner as Members of the House) and to exercise in those committees the same powers and privileges as Members of the House, including the right to vote. Today, delegates enjoy powers, rights, and responsibilities identical, in most respects, to those of House Members from the states. Like these Members, delegates can speak, introduce bills and resolutions, and offer amendments on the House floor; they can speak, offer amendments, and vote in House committees. Under the rules of the 117<sup>th</sup> Congress (2021-2022), delegates may not vote in House floor sessions or preside over them. However, they may preside over the Committee of the Whole and vote in those sessions.

This report will be updated as events warrant.

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## Introduction

The office of territorial delegate predates the Constitution, having been created by the Continental Congress through the Northwest Ordinance of 1787. The Constitution itself is silent on the issue of territorial representation, but the statutory authority was continued, and territorial delegates have been a regular part of congressional operations since. Through most of the 19<sup>th</sup> century, territorial delegates represented areas that were ultimately on the way to statehood.

The United States acquired a number overseas territories following the 1898 Spanish-American War. Congress created the post of resident commissioner to represent those areas that had, by treaty or law, a different relationship to the federal government. The office of resident commissioner allowed for representation in the House in only two instances. The Philippine Islands were represented by two resident commissioners until independence was declared in 1946. Puerto Rico has been represented by a single resident commissioner since 1901.<sup>1</sup>

Puerto Rico was the only territory represented in Congress from 1959 to the 1970s. At that time, Congress returned to the concept of delegate to provide representation to other territories and the District of Columbia.

In the 117<sup>th</sup> Congress (2021-2022), American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia are each represented in Congress by a delegate to the House of Representatives.<sup>2</sup> The delegates enjoy many, but not all, of the powers and privileges of House Members from the states.

## Evolution of Territorial Delegates

### Northwest Ordinance

The office of delegate—sometimes called “nonvoting delegate”—dates to the late 1700s, when territories bound for statehood were granted congressional representation. The Northwest Ordinance of 1787, which was enacted under the Articles of Confederation in order to establish a government for the territory northwest of the Ohio River, provided for a territorial delegate.<sup>3</sup> Earlier, the Ordinance of 1784 had made provision for territorial representation in Congress, but it had never been put into effect.<sup>4</sup>

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<sup>1</sup> The first resident commissioner from Puerto Rico, Federico Degetau, was elected in 1900 and served in the position from March 4, 1901, to March 3, 1905. However, the resident commissioner position was not given floor privileges in the House until 1902 and, thus, did not represent constituents *in the House chamber* until that year. See the entry for Degetau in the Biographical Directory of the United States Congress, <https://bioguide.congress.gov/search/bio/D000196>, and the House resolution that provided floor privileges for the resident commissioner, H.Res. 169 (57<sup>th</sup> Congress).

<sup>2</sup> In the case of Puerto Rico, the congressional representative is called a resident commissioner. Today, the offices of resident commissioner and delegate are essentially the same, though the resident commissioner is elected to a four-year term, while delegates are elected to two-year terms. The term *delegates* as used in this report includes the Puerto Rican resident commissioner, unless otherwise noted.

<sup>3</sup> “The Northwest Ordinance: An Annotated Text,” in *The Northwest Ordinance, 1787*, ed. Robert M. Taylor Jr. (Indianapolis: Indiana Historical Society, 1987), pp. 51-53.

<sup>4</sup> *The Papers of Thomas Jefferson*, ed. Julian P. Boyd, vol. 6 (Princeton: Princeton University Press, 1950), p. 615. Still earlier references to territorial representation in Congress can be found in a 1776 letter from Silas Deane to the Select Committee of Congress and in Thomas Paine’s *Public Good* (1780). *Ohio in the Time of the Confederation*, ed. Archer Butler Hulbert (Marietta, OH: Marietta Historical Commission, 1918), pp. 1, 3, 6, 12.

Following ratification of the U.S. Constitution, the first Congress reenacted the Northwest Ordinance.<sup>5</sup> The ordinance specified that the government of the Northwest Territory would initially consist of a governor and other officials appointed by Congress. According to Section 9, once the free adult male population in the district<sup>6</sup> reached 5,000, qualified voters would be able to elect representatives from their counties or townships to a territorial house of representatives.<sup>7</sup> This territorial house, together with an appointed legislative council, would elect a delegate to Congress. As stated in Section 12 of the Northwest Ordinance:

As soon as a legislature shall be formed in the district, the Council and house assembled in one room, shall have authority by joint ballot to elect a Delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary Government.<sup>8</sup>

The delegate's duties, privileges, and obligations were otherwise left unspecified.

## First Delegate

In 1790, Congress extended all the privileges authorized in the Northwest Ordinance to the inhabitants of the territory south of the Ohio River and provided that “the government of the said territory south of the Ohio, shall be similar to that which is now exercised in the territory northwest of the Ohio.”<sup>9</sup> Four years later, the territory south of the Ohio River sent the first territorial delegate to Congress.<sup>10</sup> On November 11, 1794, James White presented his application to the House of Representatives for seating in the Third Congress.<sup>11</sup> A House committee reported White's application favorably and submitted a resolution to admit him, touching off a wide-ranging discussion on the House floor about the delegate's proper role.<sup>12</sup>

An immediate question arose as the House considered the issue: Should the delegate serve in the House or in the Senate? The Northwest Ordinance, which had been enacted by the unicameral Congress under the Articles of Confederation, had only specified a “seat in Congress.” Some Members of Congress argued that the proper place for Delegate White was the Senate since his method of election, by the territorial legislature, was similar to that of Senators. Others suggested that perhaps White should sit in both chambers. Proposals for seeking Senate concurrence in the matter of admitting Delegate White and for confining his right of debate to territorial matters were rejected. On November 18, 1794, the House approved the resolution to admit Delegate White to a nonvoting seat in that body.<sup>13</sup> At least one delegate or resident commissioner has served in every Congress since, with the single exception of the Fifth Congress (1797-1799).

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<sup>5</sup> Act of August 7, 1789, ch. 8, 1 Stat 50-53. The act made some modifications to the original ordinance in order to adapt it from the government operating under the Articles of Confederation to that operating under the Constitution.

<sup>6</sup> The ordinance established the territory as one district but allowed for subdivision in the future, as expedient. “The Northwest Ordinance: An Annotated Text,” p. 31.

<sup>7</sup> “The Northwest Ordinance,” pp. 36-51.

<sup>8</sup> “The Northwest Ordinance,” p. 51.

<sup>9</sup> Act of May 26, 1790, ch. 14, 1 Stat 123.

<sup>10</sup> The Northwest Territory did not send a delegate to Congress until 1799, when they sent William Henry Harrison, who later became the ninth President of the United States.

<sup>11</sup> *Annals of Congress*, vol. 4, 3<sup>rd</sup> Cong., 2<sup>nd</sup> sess., November 11, 1794, p. 873.

<sup>12</sup> Everett S. Brown, “The Territorial Delegate to Congress,” in *The Territorial Delegate to Congress and Other Essays* (Ann Arbor, MI: George Wahr Publishing Company, 1950), pp. 4-5.

<sup>13</sup> *Annals of Congress*, vol. 4, 3<sup>rd</sup> Cong., 2<sup>nd</sup> sess., November 18, 1794, pp. 884-889.

House floor debate surrounding Delegate White's taking the oath further revealed House Members' various perceptions of his status. Some Members believed that White should be required to take the oath. Representative James Madison disagreed:

The proper definition of Mr. White is to be found in the Laws and Rules of the Constitution. He is not a member of Congress, therefore, and so cannot be directed to take an oath, unless he chooses to do it voluntarily.<sup>14</sup>

Describing Delegate White as "no more than an Envoy to Congress," Representative William Smith maintained that it would be "very improper to call on this gentlemen to take such an oath." He characterized White as "not a Representative from, but an Officer deputed by the people of the Western Territory." In making the case that it "would be wrong to accept his oath," Representative Jonathan Dayton emphasized White's lack of voting power: "He is not a member. He cannot vote, which is the essential part." Representative Dayton compared Delegate White's influence in the House to that of a printer who "may be said to argue and influence, when he comes to this House, takes notes, and prints them in the newspapers."<sup>15</sup>

Ultimately, the House decided that since White was not a Member, he was not required to take the oath.<sup>16</sup> All delegates after White have taken the oath, however.<sup>17</sup>

Congress also granted to White the same franking privileges and compensation as Members of the House,<sup>18</sup> establishing several precedents for the treatment of future delegates. In 1802, Congress passed legislation that extended the franking privilege to, and provided for the compensation of, "any person admitted, or who may hereafter be admitted to take a seat in Congress, as a delegate."<sup>19</sup> Like White, all future delegates would sit in the House. This practice was written into law in 1817. The law stated, in part:

[S]uch delegate shall be elected every second year, for the same term of two years for which members of the house of representatives of the United States are elected; and in that house each of the said delegates shall have a seat with a right of debating, but not of voting.<sup>20</sup>

Subsequent statutes authorizing delegates also specified service in the House.

The question of what constituted a territory was raised in conjunction with the acquisition and control of Alaska. While the United States signed the treaty purchasing the land later known as Alaska in 1867, it was not until 1884 that Congress passed, and the President signed, legislation creating a form of government for the area.<sup>21</sup> Benjamin Harrison, then a Senator from Indiana and later the 23<sup>rd</sup> President of the United States, managed the bill on the Senate floor and noted that Congress was intentionally not establishing a full territorial government for Alaska. Because of

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<sup>14</sup> *Annals of Congress*, November 18, 1794, pp. 884-889.

<sup>15</sup> *Annals of Congress*, November 18, 1794, pp. 889-890.

<sup>16</sup> *Annals of Congress*, November 18, 1794, p. 890.

<sup>17</sup> The act of June 1, 1789, 1 Stat. 23, requires all taking federal office to swear an oath to support the Constitution. While the law does not specifically include delegates among those required to take the oath, the law is referenced in the minutes of the House just before the Speaker administered the oath to the second delegate to appear before the House, William Henry Harrison, *Annals of Congress*, December 2, 1799, pp. 187-188.

<sup>18</sup> Act of December 3, 1794, ch. 2, 1 Stat. 403-404.

<sup>19</sup> Act of February 18, 1802, ch. 5, 2 Stat. 130-131.

<sup>20</sup> Act of March 3, 1817, ch. 42, 3 Stat. 363.

<sup>21</sup> Act of May 17, 1884, ch. 53, 23 Stat. 24.

the small population in the area, there was not support for establishing a territorial government, he said. The bill explicitly barred the seating of a delegate.

I want to say to the Senate that we are attempting here some legislation that is *sui generis* in some respects in the organization of this great Territory of Alaska. It was not believed that we should confer upon the few people residing there a full territorial organization. We have described the Territory as a civil district and have organized it for a government simple in form.... We have made it simple and inexpensive because we supposed it would better meet the views of those who feel the necessity for some form of government for Alaska, but do not believe we should go to the expense of a full Territorial administration.<sup>22</sup>

From the 49<sup>th</sup> Congress forward, bills were introduced regularly to grant Alaska a delegate, and in 1906, in the 59<sup>th</sup> Congress, Congress enacted legislation to do so.<sup>23</sup>

Congress enacted legislation in 1900 creating a territorial government for the Hawaiian Islands, which included a provision for a delegate from Hawaii.<sup>24</sup> There was no floor debate in either the House or the Senate on including the delegate provision in the bill.<sup>25</sup>

## Unincorporated Territories

After the U.S. acquisition of overseas territories following the 1898 Spanish-American War, the Supreme Court put forth a new concept of territorial status. In a series of cases known as the Insular Cases (1901-1922), the Court distinguished between “incorporated” and “unincorporated” territories. Incorporated territories were considered integral parts of the United States to which all relevant provisions of the U.S. Constitution applied. They were understood to be bound for eventual statehood. The territories acquired during the Spanish-American War were considered unincorporated, not destined for statehood, and as such, only the “fundamental” parts of the Constitution applied of their own force. The political status of unincorporated territories, the Court said, was a matter for Congress to determine by legislation.<sup>26</sup>

Congress did grant representation to two of the territories acquired from Spain—Puerto Rico and the Philippines. It did so, however, in a way that distinguished their situation from statehood-bound territories. Rather than authorizing delegates, Congress provided for one resident commissioner to the United States from Puerto Rico<sup>27</sup> and two resident commissioners from the Philippines<sup>28</sup> who were to be entitled to “official recognition as such by all departments.” According to political scientist Abraham Holtzman:

[N]o reference to Congress or the House of Representatives was made in the authorizing statutes. Apparently, it was Congress’s intent that the mandate of these representatives be broader than service in the U.S. legislature.... This suggests a role for resident commissioners

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<sup>22</sup> Senator Benjamin Harrison, “Government for Alaska,” Senate debate, *Congressional Record*, vol. 15 (January 23, 1884), p. 594.

<sup>23</sup> Act of May 7, 1906, 34 Stat. 169.

<sup>24</sup> Act of April 3, 1900, 31 Stat. 148.

<sup>25</sup> Inclusion of the provision is noted in remarks on the bill, but there was no debate on the question. Rep. William Knox, “Government for the Territory of Hawaii,” House debate, *Congressional Record*, vol. 33 (April 3, 1900), p. 3709.

<sup>26</sup> Frederick R. Coudert, “The Evolution of the Doctrine of Territorial Incorporation,” *Columbia Law Review*, vol. 26 (November 1926), pp. 823-850. For more on the insular cases and Puerto Rico, see CRS Report R42765, *Puerto Rico’s Political Status and the 2012 Plebiscite: Background and Key Questions*, by R. Sam Garrett.

<sup>27</sup> Act of April 12, 1900, ch. 191, 31 Stat. 77, 86.

<sup>28</sup> Act of July 1, 1902, ch. 1369, 32 Stat. 691, 694.

more akin to that of a foreign diplomat than that of a legislator. Nevertheless, the representatives from these two territories did serve in the House.<sup>29</sup>

The resident commissioners from Puerto Rico and the Philippines did not initially enjoy the same privileges as the prior non-voting delegates. In 1902, the House granted the Puerto Rican resident commissioner the right to be present on the floor but not the right to speak.<sup>30</sup> Two years later, the Puerto Rican resident commissioner was given the “same powers and privileges as to committee service and in the House as are possessed by Delegates” and was deemed “competent to serve on the Committee on Insular Affairs as an additional member.”<sup>31</sup>

The first two resident commissioners for the Philippines began their service in 1907.<sup>32</sup> The following year, the House granted them floor privileges and the right to debate for the remainder of the 60<sup>th</sup> Congress.<sup>33</sup> In subsequent Congresses, these rights were continued via House resolutions or by unanimous consent. However, the resident commissioners from the Philippines were never permitted to serve on standing committees.

The posts of resident commissioners differed from those of delegates in other significant ways. Initially, the Philippines, owing to its substantially larger population and dispersed land mass, was authorized two resident commissioners who served for three-year terms. The second resident commissioner position was abolished as part of the Tydings-McDuffie Act of 1934,<sup>34</sup> which set a timetable leading to the ultimate independence of the Philippines. The resident commissioner from Puerto Rico was initially chosen for a two-year term, but Congress in 1917 responded to an initiative of the Puerto Rican government and extended it to four years beginning with the election of 1920.<sup>35</sup>

For 11 years following the admission of Hawaii to the Union in 1959, the resident commissioner from Puerto Rico was the only territorial representative serving in Congress. The District of

### Effort to Represent the Cherokee Nation in the House of Representatives

In August 2019, the chief of the Cherokee Nation nominated Kimberly Teehee, the tribe’s vice president of government relations, to serve as a delegate to the House. In announcing the selection, Chief Chuck Hoskin Jr. referenced the Treaty of New Echota, concluded in 1835 between the Cherokees and the United States. Article 7 of that treaty provided that the Cherokee Nation “shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same.”

According to the Cherokee Nation, since the announcement, the tribe has worked with Members of Congress “to urge support for its treaty right and to encourage the House to seat its Delegate Kim Teehee.” As of March 2022, however, Congress had not made provisions for a Cherokee Nation delegate or any other delegate that would represent a Native American tribe on the floor of the House.

**Sources:** “Delegate to Congress,” *Cherokee Nation*, updated March 22, 2021; “Chief Hoskin Announces the Appointment of a Cherokee Nation Delegate to Congress,” *Anadisgoi*, August 22, 2019; “After 184 Years, Cherokees Seek House Delegate Seat Promised in Treaty,” *Roll Call*, October 16, 2019; “Cherokee Nation Seeks to Send First Delegate to Congress,” *New York Times*, August 27, 2019; *Treaty with the Cherokees (New Echota)*, 7 Stat. 478 (1835).

<sup>29</sup> Abraham Holtzman, “Empire and Representation: The U.S. Congress,” *Legislative Studies Quarterly*, vol. 11 (May 1986), p. 253.

<sup>30</sup> See H.Res. 169 (57<sup>th</sup> Congress) and debate in House, *Congressional Record*, vol. 35 (June 28, 1902), p. 7608.

<sup>31</sup> See H.Res. 197 (58<sup>th</sup> Congress) and debate in House, *Congressional Record*, vol. 38 (February 2, 1904), pp. 1523, 1529.

<sup>32</sup> The Philippines were initially allowed two resident commissioners to serve at the same time.

<sup>33</sup> See H.Res. 190 (60<sup>th</sup> Congress) and debate in House, *Congressional Record*, vol. 42 (February 4, 1908), p. 1540.

<sup>34</sup> Formally known as the Philippine Independence Act, P.L. 73-127, 48 Stat 456.

<sup>35</sup> Act of March 2, 1917, ch. 145, 39 Stat. 951, 963.

Columbia was authorized by Congress in 1970 to elect a delegate.<sup>36</sup> The delegates' ranks grew with the authorization of congressional representation for the territories of Guam and the U.S. Virgin Islands in 1972. Through amendment of House rules, "each Delegate to the House" was given the same committee assignment rights and committee powers and privileges as Members of the House. In 1978, the territory of American Samoa gained the right to send a delegate to the House. According to the authorizing statute:

Until the Rules of the House of Representatives are amended to provide otherwise, the Delegate from American Samoa ... shall be entitled to whatever privileges and immunities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam.

Similar language was used again in the 110<sup>th</sup> Congress to authorize the Commonwealth of the Northern Mariana Islands to send a delegate to Congress, beginning with the 111<sup>th</sup> Congress.<sup>37</sup>

## Delegates' Rights and Responsibilities

Since the first delegate was sent to Congress, the House has debated the role delegates could play. Some Members, noting that the Constitution, in Article I, Section 2, requires that the House be made up of representatives "chosen every second Year by the People of the several States," have expressed concerns that allowing delegates to have the same rights and responsibilities as Members would be unconstitutional. Because delegates, by definition, do not represent states, Members have on several occasions debated what rights such delegates should exercise in the House.<sup>38</sup>

One example of this debate is the variation in the role delegates have been allowed to play in committees. For significant periods, delegates were not appointed to standing committees and could not vote during committee consideration of measures or matters even on those committees where they were permitted to serve. Which committees delegates could serve on, and their rights on those committees, have been debated periodically in Congress over the last 200 years. This debate also spread to questions about whether delegates could vote while the House was acting as the Committee of the Whole House on the State of the Union, a parliamentary device used by the House to facilitate debate and amendment of legislation. That question has been contested in the House since the 103<sup>rd</sup> Congress.<sup>39</sup>

Currently, delegates enjoy powers, rights, and responsibilities identical, in many respects, to those of House Members from the states. Delegates can speak and introduce bills and resolutions on the

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<sup>36</sup> P.L. 91-405, Sept. 22, 1970, 84 Stat. 845, 848. Congress had previously authorized a DC Delegate (Act of February 21, 1871, ch. 62, 16 Stat. 419, 426) but soon afterward repealed that provision (Act of June 20, 1874, ch. 337, 18 Stat. 116).

<sup>37</sup> P.L. 110-229, 122 Stat 868, the Consolidated Natural Resources Act of 2008 (S. 2739). During World War II, the United States took control of the Northern Mariana Islands from the Japanese. Following the war, the United States administered the Northern Mariana Islands at the request of the United Nations. In 1975, the United States and representatives of the islands reached an agreement, known as the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," and in 1986 residents of the Northern Mariana Islands were granted U.S. citizenship. See also U.S. Congress, Senate Committee on Energy and Natural Resources, *Northern Mariana Islands Covenant Implementation Act*, Report to accompany H.R. 3079, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 10, 2008, S.Rept. 110-324 (Washington: GPO, 2008).

<sup>38</sup> For a current summary of the rights of delegates and the resident commissioner, see CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico*, by Jane A. Hudiburg.

<sup>39</sup> For more on the Committee of the Whole, see CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by Christopher M. Davis.

floor of the House, offer amendments and most motions on the House floor, and speak and vote in House committees. Delegates are not, however, Members of the House. They cannot vote on the House floor; consequently, they cannot offer motions to reconsider a vote during floor debate, and they are not counted for quorum purposes in the House. In the 117<sup>th</sup> Congress—and previously in the 103<sup>rd</sup> (1993-1994), 110<sup>th</sup> (2007-2008) 111<sup>th</sup> (2009-2010) and 116<sup>th</sup> (2019-2020) Congresses—delegates have been permitted to vote in and preside over the Committee of the Whole.

## Committee Assignments and Voting

The House began to define the functions of delegates when, on January 13, 1795, it appointed White to serve as a member of a select committee to investigate better means of promulgating the laws of the United States.<sup>40</sup> During several subsequent Congresses, the House continued the practice of allowing delegates to serve on select committees. William Henry Harrison, the first delegate to represent the Northwest Territory (and later, the ninth President of the United States), served on a number of select committees—some of which had been created at his initiative—that addressed issues such as public land laws and the judiciary in the territories.<sup>41</sup> In December 1799, Harrison became the first delegate to chair a select committee.<sup>42</sup> An active participant in House debates, Delegate Harrison likewise served as a House conferee in disputes with the Senate.<sup>43</sup>

The first regular assignment of a delegate to standing committee occurred under a House rule adopted in December 1871. The rule directed the Speaker of the House to appoint a delegate as an additional member of the Committee on the Territories and to appoint the DC delegate as an additional member of the Committee for the District of Columbia.<sup>44</sup> Additional committee assignments were authorized in 1876, 1880, and 1887.<sup>45</sup> Describing the concurrent development of the delegates' non-legislative role, historian Earl S. Pomeroy wrote:

The territorial delegate increased in stature appreciably between 1861 and 1890. Without the formal powers of a congressman, he acquired more of a congressman's influence and general functions. He was disseminator of information, lobbyist, agent of territorial officers, of the territorial legislature, and of his constituency, self-constituted dispenser of patronage. He interceded at times in almost every process of control over the territories, and generally no one challenged his right to intercede.<sup>46</sup>

Along with the right to sit on a standing committee, the House has also debated what rights delegates could exercise once on the committees. Historians differ on whether delegates were

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<sup>40</sup> *Annals of Congress*, vol. 4, 3<sup>rd</sup> Cong., 2<sup>nd</sup> sess., January 13, 1795, p. 1082.

<sup>41</sup> See, for example, *Annals of Congress*, vol. 10, 6<sup>th</sup> Cong., 1<sup>st</sup> sess., December 1799-April 1800, pp. 193, 197-198, 209-210, 477, 510, 513, 660.

<sup>42</sup> Delegate Harrison was appointed chair of a select committee to inquire whether any, and, if any, what alterations are necessary in the laws authorizing the sale of the lands of the United States Northwest of the Ohio; see U.S. Congress, House, *Journal of the House of Representatives of the United States*, 6<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 543.

<sup>43</sup> U.S. Congress, House, *Journal of the House of Representatives of the United States*, 6<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 604.

<sup>44</sup> *Congressional Globe*, vol. 102, 42<sup>nd</sup> Cong., 2<sup>nd</sup> sess., December 13, 1871, pp. 117-118. This was during the short period (1871-1874) during which the District of Columbia was first granted a delegate. P.L. 91-405, September 22, 1970, 84 Stat. 845, 848. Congress had previously authorized a DC delegate (Act of February 21, 1871, ch. 62, 16 Stat. 419, 426) but soon afterward repealed that provision (Act of June 20, 1874, ch. 337, 18 Stat. 116).

<sup>45</sup> *Hinds' Precedents of the House of Representatives*, 60<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1907), vol. II, §1297, p. 864, (hereafter *Hinds' Precedents*). In committee, the delegates had the same powers and privileges as on the floor of the House (and, thus, could not vote) and could make any motion except to reconsider (which presumes that the mover had previously voted).

<sup>46</sup> Earl S. Pomeroy, *The Territories and the United States* (Philadelphia: University of Pennsylvania Press, 1947), p. 80.

allowed to vote in committees prior to the early 1970s. One account states that as “additional members” of standing committees from 1871 through 1971, delegates did not have the right to vote in committee.<sup>47</sup>

Some evidence, however, suggests that delegates were allowed to vote in committee in an earlier period. According to a September 3, 1841, report of the Committee of Elections:

With the single exception of voting, the Delegate enjoys every other privilege and exercises every other right of a Representative. He can act as a member of a standing or special committee and vote on the business before said committees, and he may thus exercise an important influence on those initiatory proceedings by which business is prepared for the action of the House. He is also required to take an oath to support the Constitution of the United States.<sup>48</sup>

Even if the delegates at one point had that right, they clearly did not have it in the 1880s. On February 23, 1884, a proposition was made in the House that delegates be allowed to vote in committee. The proposition was referred to the Committee on Rules, but no action was taken.

The right of delegates to vote in committee resurfaced as an issue in the 1930s. After a lengthy investigation, a House committee reported that neither the Constitution nor any statutes supported such a committee vote. Although a House rule provided for the appointment of territorial delegates as additional members on certain committees, the report noted that “the House could not elect to one of its standing committees a person not a Member of the House.” According to the report:

The designation “additional member” applied to a Delegate clearly indicates the character of the assignment. Expressly the Delegate shall exercise in the committee ... the same powers and privileges as in the House, to wit, the “right of debating, but not the right of voting.”<sup>49</sup>

In the 1970s, the system of territorial representation in Congress underwent significant change as more territories were granted delegates and as delegates were given increased powers.<sup>50</sup> In 1970, Congress enacted the Legislative Reorganization Act, which contained a provision to amend the House rule on delegates to read:

The Resident Commissioner to the United States from Puerto Rico shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other Members.<sup>51</sup>

The provision was offered in a floor amendment by Puerto Rico’s Resident Commissioner Jorge Cordova.

My amendment would abolish this privilege [service on a committee as an “additional member”]. It would provide for the election of the Resident Commissioner to standing committees in the same manner as Members of the House are elected. This would mean, in effect, that the Resident Commissioner may be fortunate to secure election to one of the three committees on which he now serves. But my amendment would also provide that the

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<sup>47</sup> Holtzman, “Empires and Representation,” p. 261.

<sup>48</sup> U.S. Congress, House Committee on Elections, *David Levy*, 27<sup>th</sup> Cong., 1<sup>st</sup> sess., September 3, 1841, H.Rept. 10, p. 5. This case concerned whether David Levy, from the territory of Florida, was a citizen of the United States. The committee held that Levy was not a citizen and, as such, could not serve as a delegate.

<sup>49</sup> *Hinds’ Precedents*, vol. 2, §1300, p. 865.

<sup>50</sup> Debate in House, *Congressional Record*, vol. 75 (January 18, 1932), pp. 2163-2164.

<sup>51</sup> P.L. 91-510, Oct. 26, 1970, 84 Stat. 1140, 1161.

Resident Commissioner have the same rights in committee as other members, which means, of course, that he would have the right to vote within the committee.

Representative Thomas S. Foley, who later served as Speaker of the House, supported the amendment, saying that the grant of voting rights in committee to delegates was within the power of the House.

The committees of the House of Representatives are creatures of the House of Representatives. They can be extinguished at will and created at will. It does not even require concurrence of the other body when we take such an action. Depriving members of the right to vote in a committee is fully within the power of the House, by abolishing the committee. Giving them additional rights to vote is within the power of the House by creating a new committee.... Nothing that the Resident Commissioner could do in a committee vote could become a final decision unless a majority of the elected Members of Congress supported his position. However, in the standing committee itself I think that the Member from Puerto Rico should have a vote. I think the House has the constitutional authority to give him a vote in that limited area.

The amendment was opposed by Representative B. F. Sisk, the floor manager of the bill and a senior member of the House Rules Committee. Sisk asked rhetorically whether the Cordova amendment “would be interpreted so that he would be entitled to vote in the Committee of the Whole House on the State of the Union.” In response, sometime later, Cordova observed that “The amendment which I have offered refers expressly to the standing committees. I believe the Committee of the Whole House is not a standing committee.” The Cordova amendment was agreed to by voice vote.<sup>52</sup>

In 1971, the House rewrote its rules according the rights in committee set forth in the Legislative Reorganization Act to the resident commissioner from Puerto Rico as well as to the newly authorized DC delegate.<sup>53</sup> In 1973, the House again changed its rules to provide for the election of all delegates to the House to standing committees, reflecting the creation of new delegate positions from American Samoa and Guam in 1972.<sup>54</sup>

## **Committee of the Whole Voting Rights**

Since at least the 103<sup>rd</sup> Congress, there has been debate in the House on whether delegates should vote when the House is acting as the Committee of the Whole. Delegates were first granted this right during the 103<sup>rd</sup> Congress, and it has changed several times as majority party control of the House has changed. Delegates were permitted to vote in the Committee of the Whole in the 103<sup>rd</sup> Congress, the 110<sup>th</sup> Congress, and the 111<sup>th</sup> Congress. Following a break of several Congresses, the right was reinstated in the 116<sup>th</sup> Congress and continues in the 117<sup>th</sup> Congress.

In the Congresses in which the privilege has been allowed, House rules also provided that, if the votes of the delegates were decisive—that is, if the result of the vote would have changed but for the voting of the delegates—then the Committee of the Whole would immediately rise, and the House itself, where delegates may not vote, would vote on the question. Once the question was settled, the Committee of the Whole would resume its work.<sup>55</sup>

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<sup>52</sup> The full debate on the Cordova amendment can be found in *Congressional Record*, vol. 116 (September 15, 1970), pp. 31843-31852.

<sup>53</sup> Debate in House, *Congressional Record*, 92<sup>nd</sup> Cong. 1<sup>st</sup> sess., vol. 117 (January 21, 1971), pp. 14, 143-144.

<sup>54</sup> “House Rules,” Debate in the House, *Congressional Record* (January 3, 1973), pp. 17-27.

<sup>55</sup> During the periods when the House has permitted delegate voting in Committee of the Whole, the authority has been included in House Rule III, clause 3(a), and permission for the delegates to preside over the Committee of the Whole has been located in House Rule XVIII, clause 1.

Following initial adoption of the rule allowing delegates to vote in Committee of the Whole in 1993, a group of House Members filed a lawsuit challenging the change. They argued that the rule change violated Article I of the Constitution by granting legislative power to delegates who were not “Members [of the House of Representatives] chosen every second Year by the People of the several States.” They took issue with the characterization of the Committee of the Whole as a committee and maintained, instead, that it was tantamount to the full House. In their complaint, the plaintiffs stated:

[N]on-member voting in the Committee of the Whole impairs and dilutes the constitutional rights of the plaintiff-Representatives, both as Members of the House and as voters who enjoy the right to full, fair and proportionate representation in the House of Representatives.<sup>56</sup>

They further alleged that the House did not have the authority to unilaterally expand the powers of the delegates.

The House defendants<sup>57</sup> countered that the House of Representatives was constitutionally empowered to “determine the Rules of its Proceedings.”<sup>58</sup> They argued that the Committee of the Whole, like other congressional committees, was an advisory body created by the House and was not subject to the requirements in Article I. They rejected the plaintiffs’ contention that the Committee of the Whole effectively controlled action in the House, citing both the preliminary nature of its proceedings and the provision for an automatic revote in cases in which delegate votes were decisive.<sup>59</sup>

In March 1993, Judge Harold H. Greene of the U.S. District Court for the District of Columbia upheld the changes to the House rules. As his opinion made clear, however, he did so only because of the automatic revote provision. “If the only action of the House of Representatives had been to grant to the Delegates from the District of Columbia, Guam, Virgin Islands, and American Samoa, and the Resident Commissioner from Puerto Rico the authority to vote in the Committee of the Whole,” he wrote, “its action would have been plainly unconstitutional.”<sup>60</sup> His opinion further stated:

[W]hile the action the House took on January 5, 1993 undoubtedly gave the Delegates greater stature and prestige both in Congress and in their home districts, it did not enhance their right to vote on legislation.... [B]y virtue of Rule XXIII they [the votes of the Delegates] are meaningless. It follows that the House action had no effect on legislative power, and that it did not violate Article I or any other provision of the Constitution.<sup>61</sup>

In January 1994, the U.S. Court of Appeals for the District of Columbia Circuit upheld the constitutionality of the House rule changes.<sup>62</sup>

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<sup>56</sup> Michel v. Anderson, No. 93-0039 (HHG), Complaint for Declaratory and Injunctive Relief, at 4 (D.D.C. January 7, 1993).

<sup>57</sup> The defendants were the Clerk of the House, the delegates, and the resident commissioner.

<sup>58</sup> U.S. Constitution, Art. I, §5.

<sup>59</sup> Michel v. Anderson, No. 93-0039 (HHG), House Defendants’ Memorandum in Support of Motion to Dismiss and in Opposition to Preliminary Injunction (D.D.C. February 2, 1993).

<sup>60</sup> Michel v. Anderson, 817 F.Supp. 126, 147 (D.D.C. 1993).

<sup>61</sup> Michel v. Anderson, 817 F.Supp. 126, 147 (D.D.C. 1993), pp. 147-148.

<sup>62</sup> Michel v. Anderson, 14 F.3d 623 (D.D. Cir. 1994).

**Table I. Statutes Providing for Territorial Representation in Congress**

| <b>Territory</b>            | <b>Statute</b> | <b>Year</b>       |
|-----------------------------|----------------|-------------------|
| Northwest of the river Ohio | 1 Stat. 50     | 1789 <sup>a</sup> |
| South of the river Ohio     | 1 Stat. 123    | 1790              |
| Mississippi                 | 1 Stat. 549    | 1798              |
| Indiana                     | 2 Stat. 58     | 1800              |
| Orleans                     | 2 Stat. 322    | 1805              |
| Michigan                    | 2 Stat. 309    | 1805              |
| Illinois                    | 2 Stat. 514    | 1809              |
| Missouri                    | 2 Stat. 743    | 1812              |
| Alabama                     | 3 Stat. 371    | 1817              |
| Arkansas                    | 3 Stat. 493    | 1819              |
| Florida                     | 3 Stat. 354    | 1822              |
| Wisconsin                   | 5 Stat. 10     | 1838              |
| Iowa                        | 5 Stat. 10     | 1838              |
| Oregon                      | 9 Stat. 323    | 1848              |
| Minnesota                   | 9 Stat. 403    | 1849              |
| New Mexico                  | 9 Stat. 446    | 1850              |
| Utah                        | 9 Stat. 453    | 1850              |
| Washington                  | 10 Stat. 172   | 1853              |
| Nebraska                    | 10 Stat. 277   | 1854              |
| Kansas                      | 10 Stat. 283   | 1854              |
| Colorado                    | 12 Stat. 172   | 1861              |
| Nevada                      | 12 Stat. 209   | 1861              |
| Dakota                      | 12 Stat. 239   | 1861              |
| Arizona                     | 12 Stat. 664   | 1863              |
| Idaho                       | 12 Stat. 808   | 1863              |
| Montana                     | 13 Stat. 853   | 1864              |
| Wyoming                     | 15 Stat. 178   | 1868              |
| District of Columbia        | 16 Stat. 426   | 1871              |
| Oklahoma                    | 29 Stat. 81    | 1890              |
| Puerto Rico                 | 31 Stat. 86    | 1900              |
| Hawaii                      | 31 Stat. 141   | 1900              |
| Philippine Islands          | 32 Stat. 694   | 1902              |
| Alaska                      | 34 Stat. 169   | 1906              |
| District of Columbia        | 84 Stat. 848   | 1970              |
| Virgin Islands              | 86 Stat. 118   | 1972              |
| Guam                        | 86 Stat. 118   | 1972              |

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|--|---------------|------|
| American Samoa                               | 92 Stat. 2078 | 1978 |
| Commonwealth of the Northern Mariana Islands | 122 Stat. 868 | 2008 |

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**Sources:** “Non-voting delegates to the House,” *Congressional Record*, vol. 124 (October 3, 1978), p. 33287; P.L. 110-229.

**Note:**

- a. This measure from the First Congress re-enacted the provisions of the Northwest Ordinance of 1787, with the changes made necessary by ratification of the Constitution. The original Northwest Ordinance had been enacted under the Articles of Confederation.

## Author Information

Jane A. Hudiburg  
Analyst on Congress and the Legislative Process

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