

# CRS Report for Congress

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## District of Columbia Delegates to Congress

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### Summary

District of Columbia voting rights and representation in Congress is an issue of perennial concern, as it raises the question of how to balance constitutional dictates and representative democracy. The office of Delegate to Congress has existed since 1787. The District of Columbia has had elected Delegates during two periods: from 1871 to 1875, and since 1971. The role of Delegates was the subject of considerable debate at one point because the Constitution is silent on the position. The District of Columbia Delegate Act of 1970 established the current position of D.C. Delegate. Since passage of the Act, District residents have elected two individuals to serve in Congress.

### Background, 1787-1970: What is a Delegate to Congress?

The position of Delegate to Congress, which predates the Constitution, was created when the Congress of the Confederation enacted what has come to be known as the Northwest Ordinance of 1787. The ordinance established what Congress anticipated would be a temporary territorial government; and it created and authorized the territorial legislature “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>1</sup> The United States Constitution itself, however, is silent on the matter, but upon ratification of the Constitution, Congress gave full statutory effect to the Northwest Ordinance through reenactment in 1789.

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<sup>1</sup> U.S. Congress of the Confederation, An Ordinance for the government of the territory of the United States northwest of the river Ohio, July 13, 1787. In U.S. Congress, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, Francis Newton Thorpe, ed. 59<sup>th</sup> Cong., 2d sess., House Document 59-357 (Washington: GPO, 1909), vol. 2, p.960. Earlier ordinances provided for territorial representation in Congress, but they were never put into effect. See, for example, an ordinance of 1784 discussed in Julian Boyd, ed., *The Papers of Thomas Jefferson*, vol. 6, (Princeton, NJ: Princeton University Press, 1952), pp. 613-615. Earlier proposals are discussed in Archer Butler Hulbert, ed., *Ohio in the Time of the Confederation*, (Marietta, OH: Marietta Historical Commission, 1918), pp. 1-12.

The newly reenacted Ordinance was slightly modified to adapt to the Constitution and to allow for the popular election of a territorial house of representatives who, along with an appointed legislative council, would elect a Delegate to Congress. While the Ordinance clearly stated that the Delegate could not vote—though it did not distinguish between voting on the floor and committees—it was silent on the full nature of the Delegate’s duties, privileges, and obligations. This silence arguably leave’s the Delegate’s role open to interpretation, which was further complicated because the Constitution allows each House to determine the rules of its proceedings.<sup>2</sup>

Committee service was one area in which Delegate participation was unclear.<sup>3</sup> Beginning in 1795, Delegates were members of select committees and conference committees. By 1841, Delegates’ roles in the House were becoming institutionalized:

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>4</sup>

Toward the close of the 19<sup>th</sup> Century, Delegates become more integrated into the congressional system. Assignment of Delegates to standing committees occurred in 1871 under a House rule which called for a Delegate to serve on the Committee on the Territories and the D.C. Delegate to serve on the Committee for the District of Columbia. Additional committee assignments were authorized in 1876, 1880, and 1887.<sup>5</sup>

Until 1970, Delegates generally represented territories on their way to statehood. An exception is the District of Columbia, which elected a Delegate to Congress who served from 1871<sup>6</sup> to 1874.<sup>7</sup> In 1970, however, Congress began authorizing Delegates from areas for which statehood did not appear to be imminent: From the District of Columbia in

<sup>2</sup> U.S. Constitution, Article I, Section 5, Clause 2.

<sup>3</sup> For a detailed discussion on committee service for Delegates to Congress, see *Territorial Delegates to the U.S. Congress: A Brief History*, by Andorro Bruno, CRS Report 97-143 GOV (Washington: Jan. 23, 1997), 11 pp.; and Jo Tice Bloom, “Early Delegates in the House of Representatives,” in John Porter Bloom, ed., *The American Territorial System* (Athens, OH: Ohio University Press, 1973), pp. 65-76.

<sup>4</sup> U.S. Congress, House of Representatives, H. Rept. 10, 27<sup>th</sup> Cong., 1<sup>st</sup> Sess. Quoted in Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol. 2, Sec. 1301, p. 865.

<sup>5</sup> *Hinds’ Precedents*, vol. 2, Sec. 1297, p. 864.

<sup>6</sup> 16 Stat. 419.

<sup>7</sup> 18 Stat. 116. In 1874, Congress eliminated the locally elected District government and with it the position of Delegate to Congress. Norton P. Chipman served as delegate from April 21, 1871, until the close of the 43<sup>rd</sup> Congress on March 3, 1875. During his tenure, he sat on the House Committee on the District of Columbia.

1970;<sup>8</sup> from the U.S. Virgin Islands and Guam in 1972;<sup>9</sup> and from American Samoa in 1978.<sup>10</sup> Puerto Rico has been represented in Congress by a Resident Commissioner since 1902, and the Philippines were represented in Congress by a Resident Commissioner until independence in 1946. The Northern Marianas Islands, also a U.S. Territory, is not represented in Congress.

## District of Columbia Delegate to Congress

The District of Columbia Delegate Act of 1970 gave District residents the right to elect one person to represent them in the House of Representatives:

The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.<sup>11</sup>

Thus, the rights and prerogatives of the District's Delegate in parliamentary matters are like those of other Delegates. Former House Parliamentarian Wm. Holmes Brown describes the role of Delegates in practice as follows:

### Sec. 1. In General

The Delegates and Resident Commissioners are those statutory officers who represent in the House the constituencies of territories and properties owned or administered by the United States but not admitted to statehood. (Deschler Ch. 7 Sec. 3.) The Virgin Islands, Guam, and American Samoa, as well as the District of Columbia, are represented in the House by a Delegate, while Puerto Rico is represented by a Resident Commissioner. (Manual Sec. 740.) The rights and prerogatives of a Delegate in parliamentary matters are not limited to legislation affecting his own territory (6 Cannon Sec. 240.).

### Sec. 2. In the House

The floor privileges of a Delegate or a Resident Commissioner in the House include the right to debate (2 Hinds Sec. 1290), make motions (2 Hinds Sec. 1291), and raise points of order (6 Cannon Sec. 240); but he cannot vote in the House nor serve as its presiding officer. See Manual Sec. 740. He may make any motion a Member may make (2 Hinds Sec. 1292) including the motion to adjourn (97-1, Jan. 9, 1981, p 248), but not the motion to reconsider (2 Hinds Sec. 1292), which is itself dependent on the right to vote. He may make reports for committees (Manual Sec. 740) and may object to the consideration of a bill (6 Cannon Sec. 241; Deschler Ch 7 Sec. 3.7). Impeachment proceedings have been moved by a Delegate (2 Hinds Sec. 1303.).

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<sup>8</sup> P. L. 91-405, 84 Stat. 845. The House bill H.R. 18725, 91<sup>st</sup> Cong. (H. Rept. 91-1385), passed the House on Aug. 10, 1970. The Senate passed H.R. 18725 (S. Rept. 91-1122) on Sept. 9, 1970. It was signed into law on Sept. 22, 1970.

<sup>9</sup> P.L. 92-271; 86 Stat. 118.

<sup>10</sup> P.L. 95-556; 92 Stat. 2078.

<sup>11</sup> P.L. 91-405, Sec. 202; 84 Stat. 845.

### Sec. 3 . In Committees

The House rules now extend to Delegates and the Resident Commissioner all the powers in committee held by constitutional Members of the House. They are elected to serve on standing committees in the same manner as Members of the House and possess in such committees the same powers and privileges as the other Members. (Rule XII. Manual Sec. 740.) They have the right to vote in committees on which they serve. Seniority accrual rights on committees have also been extended to the Delegates and Resident Commissioner. (Deschler Ch 7 Sec. 3.11.) They may be appointed by the Speaker to any conference committee. The Speaker also now has the authority to appoint them to any select committee (Manual Sec. 701g), an appointment that previously required the permission of the House (94-2, Sept. 21, 1976, p 31673).

### Sec. 4 . In Committee of the Whole

Under a rule adopted in 1993, when the House was sitting in Committee of the Whole, the Delegates and Resident Commissioner had the same powers and privileges as Members. In the same year, the Speaker was given authority to appoint a Delegate or Resident Commissioner as Chairman of the Committee of the Whole. These provisions were stricken from the rules as adopted in January 1995. (104-1, H. Res. 6.)<sup>12</sup>

At the start of the 103<sup>rd</sup> Congress, the House approved a number of rules changes, including a controversial move to allow Delegates to vote in the Committee of the Whole. The rules change was proposed by District Delegate Norton who argued:

[There is no] constitutional barrier to extending the vote in the Committee of the Whole to all the House delegates. Article I, Section 5, Clause 2 provides that “Each House may determine the Rules of its Proceedings.” House rules have long interpreted this clause to permit delegates to vote in standing committees. Like the standing committees, the Committee of the Whole, into which the full House resolves itself, is a creature of the House rule-making power. Both are organizational expedients, nowhere mentioned in the Constitution, that are used to facilitate the legislative process. Voting by delegates in committees—whether subject-matter panels, such as Armed Services or Judiciary, or the largest of all, the Committee of the Whole—is permissible because committees do not pass final legislation and their actions are not binding on the House of Representatives.<sup>13</sup>

A lawsuit challenged the constitutionality to the amendment to Rule XII.<sup>14</sup> The claim of unconstitutionality was on the ground that “these rules unconstitutionally vest the Delegates with legislative power, and that they dilute the legislative power of Members of

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<sup>12</sup> Wm. Holmes Brown, *House Practice*, 104th Congress, 2<sup>nd</sup> Session (Washington: GPO, 1996), pp. 431, 432.  
[[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104\\_house\\_practice&docid=hp-18](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_house_practice&docid=hp-18)], visited Mar. 26, 2001]

<sup>13</sup> Eleanor Holmes Norton, “Law, Politics, and Voting by Delegates: Bringing Democracy to the House,” *Legal Times*, Jan. 4, 1993, pp. 22-23.

<sup>14</sup> *Michel v. Anderson*, No. 93-0039.

the House.”<sup>15</sup> Ultimately, the provision allowing Delegate voting was upheld, provided that an immediate and automatic second ballot would occur in cases where Delegate votes provided the margin of victory on a particular question. Delegates would be prohibited from participating in the second ballot.

The rule change was reversed at the start of the 104<sup>th</sup> Congress.

Since passage of the District of Columbia Delegate Act in 1970, the District has elected two Delegates. The Rev. Dr. Walter E. Fauntroy was elected Delegate to Congress from the District on March 23, 1971, and took his seat in the 92<sup>nd</sup> Congress on April 19, 1971. Delegate Fauntroy served in the House of Representatives through the 101<sup>st</sup> Congress.<sup>16</sup> He served on the House Committee on the District of Columbia, where he chaired the Subcommittee on Fiscal Affairs and Health. He also served on the Committee on Banking, Finance and Urban Affairs where, for six years, he chaired the Subcommittee on International Development, Finance, Trade and Monetary Policy. At the time of his retirement from the House, Delegate Fauntroy was the third-ranking Democrat on the House Committee on Banking, Finance, and Urban Affairs.

Eleanor Holmes Norton succeeded Dr. Fauntroy as Delegate and has served in the House since the start of the 102<sup>nd</sup> Congress. Delegate Norton currently serves on the Committee on Government Reform, where she is the ranking Democrat on the Subcommittee on the District of Columbia, and also serves on the Subcommittee on Civil Service and Agency Organization. Delegate Norton is a member of the House Committee on Transportation and Infrastructure, where she serves on two subcommittees: Aviation; and Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation.

## District of Columbia Representation in Congress: Legislation

Legislation regarding District of Columbia representation in Congress has come, primarily, in four forms: bills to grant statehood to the District; bills to retrocede the District to the state of Maryland; bills calling for District residents to vote in Maryland for their representatives to the Senate and House; and bills seeking voting representation in the House proportional to the District’s population.<sup>17</sup>

**Statehood.** Since the 98<sup>th</sup> Congress, 13 statehood bills have been introduced.<sup>18</sup> On two occasions, the bills were reported out of the committee of jurisdiction, resulting in one

<sup>15</sup> 817 F. Supp. 126, at 2.

<sup>16</sup> Del. Fauntroy did not seek reelection to the 102<sup>nd</sup> Congress.

<sup>17</sup> For a detailed discussion of local governance of the District of Columbia, see *Governance of the District of Columbia: A Brief History*, by Michael K. Fauntroy, CRS Report RL30897.

<sup>18</sup> In the 98<sup>th</sup> Congress, Del. Fauntroy introduced H.R. 3861 on Sept. 12, 1983 and, Sen. Kennedy introduced S. 2672 on May 15, 1984. In the 99<sup>th</sup> Congress, Fauntroy introduced H.R. 325 on Jan. 3, 1985; Kennedy introduced S. 293 on Jan. 24, 1985. In the 100<sup>th</sup> Congress, Fauntroy introduced H.R. 51 on Jan. 6, 1987; Kennedy introduced S. 863 on Mar. 26, 1987. In the 101<sup>st</sup> Congress, Fauntroy introduced H.R. 51 on Jan. 3, 1989; Kennedy introduced S. 2647 on May 17, 1990. In the 102<sup>nd</sup> Congress, Del. Norton introduced H.R. 2482 on May 29, 1991; Kennedy introduced S. 2023 on Nov. 22, 1991. In the 103<sup>rd</sup> Congress, Norton introduced H.R. 51 on Jan. 5, 1993; Kennedy introduced S. 898 on May 5, 1993. In the 104<sup>th</sup> Congress, Norton introduced H.R. 51 on Jan. 4, 1995.

floor vote. The first of these two bills was introduced by Delegate Walter E. Fauntroy in 1987 to create a state that would have encompassed only the non-federal land in the District of Columbia.<sup>19</sup> While the bill was reported out of the House District Committee, no vote was taken on the House floor. On the second such statehood bill, introduced by Delegate Eleanor Holmes Norton in 1993, a vote was held that year, and the House voted 277-153 against passage.

**Retrocession.** Since the 101<sup>st</sup> Congress, there have been six bills that would retrocede the District to the state of Maryland.<sup>20</sup> The bills would maintain exclusive legislative authority and control of Congress over the National Capital Service Area in the District of Columbia. There have been no hearings or votes on these bills.

**District Residents Voting in Maryland.** Since the 101<sup>st</sup> Congress, one bill has been introduced to allow District residents to vote in federal elections as Maryland residents: H.R. 4193, introduced by Representative Stan Parris on March 6, 1990. The bill would have allowed, for the purposes of representation in the Congress and election of the President and Vice President, the right of the people of the District of Columbia to be treated as residents of the State of Maryland and to be eligible to participate in federal elections as Maryland residents, in accordance with the laws of the State of Maryland. The bill would have allowed residents of the District of Columbia to have one Representative in the House of Representatives and have their vote counted in the election of the two Senators from Maryland. Further, for purposes of determining eligibility to serve as a member of the House of Representatives or the Senate, a resident of the District of Columbia would have been considered an inhabitant of the State of Maryland. No hearings were held on the bill.

**Voting Representation in Congress.** Bills in this category sought votes on the House floor for the District's Delegate, two Senators, and proportional representation in the House for the District, or some variation thereof. On July 14, 1998, Delegate Eleanor Holmes Norton introduced H.R.4208 (105<sup>th</sup> Congress), a bill to provide for full voting representation in the Congress for the District of Columbia. On June 9, 1998, Norton introduced H. Res.464 (105<sup>th</sup> Congress), which sought to amend House rules and provide a vote in the Committee of the Whole to the Delegate to the House from the District of Columbia.<sup>21</sup> None of the bills passed.

<sup>19</sup> Del. Fauntroy introduced H.R. 51 on Jan. 6, 1987. On Sept. 17, 1987, the bill was reported to House, with amendments, by House Committee on District of Columbia, Report No: 100-305 and placed on Union Calendar No. 188.

<sup>20</sup> In the 101<sup>st</sup> Congress, Rep. Regula introduced H.R. 4195 on Mar. 6, 1990. In the 102<sup>nd</sup> Congress, Regula introduced H.R. 1204 on Feb. 28, 1991. In the 103<sup>rd</sup> Congress, Regula introduced H.R. 1205 on Mar. 3, 1993. In the 104<sup>th</sup> Congress, Regula introduced H.R. 1028 on Feb. 23, 1995. In the 105<sup>th</sup> Congress, Regula introduced H.R. 831 on Feb. 25, 1997. In the 106<sup>th</sup> Congress, Regula introduced H.R. 558 on Feb. 3, 1999.

<sup>21</sup> At the start of the 103<sup>rd</sup> Congress, House rules were amended allowing Delegates from the District of Columbia and Territories of the U.S. Virgin Islands, Guam, American Samoa, and the Resident Commissioner from Puerto Rico to vote on the House floor. The rule change was repealed at the start of the 104<sup>th</sup> Congress.