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SUMMARY

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Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico

As officers who represent territories and properties possessed or administered by the United States but not admitted to statehood, the five House delegates and the resident commissioner from Puerto Rico do not enjoy all the same parliamentary rights as do Members of the House. They may vote and otherwise act similarly to Members in legislative committee. They may not vote on the House floor but may participate in debate and make most motions there. Under the rules of the House of Representatives for the 117th Congress (2021-2022), the delegates and resident commissioner may preside over the Committee of the Whole and may vote in the committee—subject to an automatic revote in the House in cases in which their votes were decisive. Delegates and the resident commissioner may not vote in, or preside over, the House.

This report will be updated as circumstances warrant.

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Introduction

The offices of the resident commissioner from Puerto Rico and the delegates to the House of Representatives from American Samoa, the District of Columbia, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are created by statute, not by the Constitution. Because they represent territories and associated jurisdictions, not states, they do not possess the same parliamentary rights as Members do. This report examines the parliamentary rights of the delegates and the resident commissioner in legislative committee, in the House, and in the Committee of the Whole House on the State of the Union.

In Legislative Committee

Under clause 3 of Rule III of the rules of the House of Representatives, as adopted in the 117th Congress,[1] the delegates and the resident commissioner are elected to serve on standing committees in the same manner as Representatives and have the same parliamentary powers and privileges as Representatives there, including the right to

- question witnesses,
- participate in debate and vote,
- offer amendments and motions,
- raise points of order,
- include additional views in committee reports,
- accrue seniority, and
- chair committees and subcommittees.

Rule III also authorizes the Speaker of the House to appoint delegates and the resident commissioner to conference committees as well as to select and joint committees.

In the House

The delegates and the resident commissioner may not vote on the House floor or preside over the House.[2] Although they take an oath to uphold the Constitution, they are not included on the Clerk's roll of Members-elect and may not vote for Speaker. They may not file or sign discharge petitions. They may, however

- sponsor and cosponsor legislation,
- participate in debate—including managing time,
- offer any motion that a Representative may make except the motion to reconsider,[3]

[1] U.S. Congress, House, *Constitution, Jefferson's Manual and the Rules of the House of the United States One Hundred Seventeenth Congress*, 116th Cong., 2nd sess., (Washington: GPO, 2021), §675, https://www.govinfo.gov/app/collection/hman/117/04.

[2] Legislation has been introduced in recent Congresses that would add to the House a full voting representative from the District of Columbia. For more information on this and similar proposals, see CRS In Focus IF11443, *District of Columbia Statehood and Voting Representation*, by Joseph V. Jaroscak.

[3] Recognition to offer the motion to reconsider is dependent on having voted on the prevailing side of a question—something the delegates and the resident commissioner may not do, because they cannot vote in the House.

- raise points of order,
- raise questions of personal privilege,
- call a Member to order,
- appeal rulings of the chair,
- file reports for committees,
- object to the consideration of a bill, and
- move impeachment proceedings.

In Committee of the Whole House on the State of the Union

Under the rules of the 117th Congress (2021-2022), the delegates and the resident commissioner may vote in, and preside over, the Committee of the Whole House on the State of the Union (Committee of the Whole).[4] Rules III and XVIII, as adopted in the 117th Congress, mirror rules in force during the 103rd (1993-1994), 110th (2007-2008), 111th (2009-2010), and 116th Congresses (2019-2020). Under these provisions, when the House is sitting as the Committee of the Whole, the delegates and resident commissioner have the same ability to vote as Representatives do, although the vote may be subject to immediate reconsideration in the House when their recorded votes have been "decisive" in the committee.[5] These House rules also authorize the Speaker to appoint a delegate or the resident commissioner to preside as chair of the Committee of the Whole.

Provisions permitting the delegates and the resident commissioner to vote in the Committee of the Whole were first adopted in the 103rd Congress (1993-1994). These provisions were stricken from the rules as adopted in the 104th Congress (1995-1996) and remained out of effect until readopted in the 110th Congress. They were again removed from House rules at the beginning of the 112th Congress (2011-2012).[6] The 116th Congress (2019-2020) reinstated the delegate voting provisions, and they are currently in force in the 117th Congress (2021-2022).

At the time of the adoption of the original 1993 delegate voting rule, then-Minority Leader Robert H. Michel and 12 other Representatives filed suit against the Clerk of the House and the territorial delegates seeking a declaration that the rule was unconstitutional. A federal district court judge found the rule constitutional, and the judgment was upheld by the U.S. Court of Appeals, District of Columbia Circuit, based on the inclusion of the mechanism for automatic reconsideration of votes in the House.[7]

The votes of the delegates and the resident commissioner were decisive—and thus subject to automatic revote by the House—on three occasions in the 103rd Congress.[8] There were no

[4] For a discussion on the 116th Congress's reinstatement of delegates' privileges in the Committee of the Whole, see CRS Report R45787, *House Rules Changes Affecting Floor Proceedings in the 116th Congress (2019-2020)*, by Jane A. Hudiburg.

[5] U.S. Congress, House, *Constitution, Jefferson's Manual and the Rules of the House of the United States One Hundred Seventeenth Congress*, 116th Cong., 2nd sess., (Washington: GPO, 2021), §985.

[6] See H.Res. 5, 112th Congress.

[7] Michel v. Anderson, 14 F.3d 623 (D.C. Cir. 1994).

[8] See roll call #63, March 17, 1994; roll call #267, June 23, 1994; and roll call #277, June 24, 1994. The result of roll call #267 changed when the question was revoted in the House.

instances identified in the 110th Congress in which the votes of the delegates and the resident commissioner were decisive. In the 111th Congress, the votes of the delegates were decisive—and subject to an automatic revote—on one occasion.[9] No such instances occurred in the 116th Congress or during the first session of the 117th Congress.[10]

The rule governing voting in the Committee of the Whole by delegates and the resident commissioner is not interpreted to mean that any recorded vote with a difference of six votes or fewer is subject to automatic reconsideration. In determining whether the votes of the delegates and the resident commissioner were decisive, the chair follows a "but for" test—namely, would the result of a vote have been different if the delegates and the commissioner had not voted?[11] If the votes of the delegates and resident commissioner on a question are determined to be decisive by this standard, the committee automatically rises and the Speaker puts the question to a vote. The vote is first put by voice, and any Representative may, with a sufficient second, obtain a record vote. Once the final result of the vote is announced, the Committee of the Whole automatically resumes its sitting.[12]

Author Information

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This report was originally written by Christopher M. Davis, CRS analyst on Congress and the Legislative Process.

[9] See roll call #360, June 18, 2009. The result of the roll call did not change when the question was revoted.

[10] As of February 1, 2022, the House had not resolved into the Committee of the Whole in the 117th Congress. Instead, it has conducted all business in the House under rules that permit proxy voting in the House (but not in the Committee of the Whole) during periods in which a public health emergency due to a novel coronavirus is in effect.

[11] On May 19, 1993, a series of parliamentary inquiries were directed to the chair about how the "but for" test is applied. *Congressional Record*, vol. 139 (May 19, 1993), pp. 10408-10409. The chair responded to another series of parliamentary inquiries about the mechanism on February 8, 2007. *Congressional Record*, daily edition, vol. 153 (February 8, 2007), pp. H1350-H1351.

[12] It should be noted that these provisions, by which the House automatically reconsiders such decisive votes, are separate from the right of any Member to demand a separate vote in the House on any first-degree amendment reported from the Committee of the Whole.

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