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# Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico

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## **Summary**

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 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 115<sup>th</sup> Congress (2017-2018), the delegates and resident commissioner may not vote in, but are permitted to preside over, the Committee of the Whole.

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 afforded Members. 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, 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: the right to question witnesses, debate, offer amendments, vote, offer motions, raise points of order, include additional views in committee reports, accrue seniority, and chair committees and subcommittees. The same rule 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 in or preside over the House.<sup>1</sup> 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—and offer any motion that a Representative may make, except the motion to reconsider.<sup>2</sup> A delegate or resident commissioner may raise points of order and 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 115<sup>th</sup> Congress (2017-2018), the delegates and the resident commissioner may not vote in the Committee of the Whole House on the State of the Union. In a change from the rules of the prior Congress, however, they may preside over the Committee of the Whole.<sup>3</sup>

Under Rules III and XVIII, as adopted in both the 110<sup>th</sup> and 111<sup>th</sup> Congresses (2007-2010), when the House was sitting as the Committee of the Whole, the delegates and resident commissioner

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<sup>1</sup> 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 Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by (name redacted)

<sup>2</sup> 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.

<sup>3</sup> Subsection (t) of H.Res. 5 (115<sup>th</sup> Congress) amended clause 1 of House Rule XVIII to permit the Speaker to appoint a delegate or the resident commissioner to preside over the Committee of the Whole.

had the same ability to vote as Representatives, subject to immediate reconsideration in the House when their recorded votes had been “decisive” in the committee. These prior House rules also authorized the Speaker to appoint a delegate or the resident commissioner to preside as chairman of the Committee of the Whole.

These rules of the 110<sup>th</sup> and 111<sup>th</sup> Congresses were identical in effect to those in force in the 103<sup>rd</sup> Congress (1993-1994), which permitted the delegates and the resident commissioner to vote in, and to preside over, the Committee of the Whole. These provisions were stricken from the rules as adopted in the 104<sup>th</sup> Congress (1995-1996) and remained out of effect until readopted in the 110<sup>th</sup> Congress.<sup>4</sup> They were again removed from House rules at the beginning of the 112<sup>th</sup> Congress (2011-2012).<sup>5</sup> At the time of the adoption of the 1993 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. The constitutionality of the rule was ultimately upheld on appeal based on its inclusion of the mechanism for automatic reconsideration of votes in the House.<sup>6</sup>

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 103<sup>rd</sup> Congress.<sup>7</sup> There were no instances identified in the 110<sup>th</sup> Congress in which the votes of the delegates and the resident commissioner were decisive. In the 111<sup>th</sup> Congress, the votes of the delegates were decisive, and subject to an automatic revote, on one occasion.<sup>8</sup>

The prior rule governing voting in the Committee of the Whole by delegates and the resident commissioner was not interpreted to mean that any recorded vote with a difference of six votes or fewer was subject to automatic reconsideration. In determining whether the votes of the delegates and the resident commissioner were decisive, the chair followed a “but for” test—namely, would the result of a vote have been different if the delegates and the commissioner had not voted?<sup>9</sup> If the votes of the delegates and resident commissioner on a question were determined to be decisive by this standard, the committee automatically rose and the Speaker put the question to a vote. The vote was first put by voice, and any Representative could, with a sufficient second, obtain a record vote. Once the final result of the vote was announced, the Committee of the Whole automatically resumed its sitting.<sup>10</sup>

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<sup>4</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 113-181, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2015), §985.

<sup>5</sup> See H.Res. 5, 112<sup>th</sup> Congress.

<sup>6</sup> Michel v. Anderson, 14 F.3d 623 (D.C. Cir. 1994).

<sup>7</sup> 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.

<sup>8</sup> See roll call #360, June 18, 2009. The result of the roll call did not change when the question was revoted.

<sup>9</sup> 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 18, 2007), pp. H1350-H1351.

<sup>10</sup> It should be noted that these provisions, by which the House automatically reconsidered such decisive votes, were a different procedure apart 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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