

The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?

Executive Summary

Garry Young
Center for Washington Area Studies
George Washington University

Contact: YoungG@gwu.edu

A Report for the Trellis Fund

July 2009

The full report is available at www.gwu.edu/~gwipp/dcrep.

The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?

EXECUTIVE SUMMARY

1. Introduction

Representation underpins the American democracy. Yet, residents of the nation's capital lack full representation before Congress. So what? Does it matter? Do the laws passed by Congress differ substantively and substantially because the District of Columbia lacks full representation? Has the lack of full voice in Congress rendered the District and its citizens worse off?

This report addresses the substantive policy implications of the District's under-representation in Congress. It addresses the implications from a variety of angles including the distribution of power within Congress, the ability of the District to stop unwanted federal legislation, the ability of the District to garner useful benefits from the federal government, the ability of District residents to receive help with their federally-related problems, the impact of the District's status on the political participation of its citizens, and a comparison of the District's representation in Congress to the national capital cities in all the world's democracies.

2. Institutional Power and the District's Representation in Congress

This section provides an overview of the rights and powers of the DC delegate with an emphasis on committee membership and opportunities for leadership positions. In addition the section explains how the U.S. Senate differs dramatically from the House, especially in the way it protects small states.

Within the rules of the U.S. House the DC delegate (as well as the various territorial delegates) enjoy most of the same formal rights and powers as regular representatives. Delegates serve and vote on committees, can serve as committee and subcommittee chairs, and receive about the same representational allowance as regular members. Notably delegates have only what amounts to symbolic voting powers at the chamber level. Delegates also do not fully participate in the election of the Speaker, cannot act as presiding officers, cannot sign petitions to discharge legislation from committee, and cannot offer motions to reconsider a vote on a measure.

Generally speaking the crucial business of the House goes on in committee. No delegate – either from DC or one of the territories – has ever served on the most coveted and powerful committees, such as Ways and Means or Appropriations. In contrast, many representatives from small states have served on these key committees. (See Table 1 in the main report.)

Delegates are not prevented from serving as full committee or subcommittee chairs. No DC or territorial delegate has ever served as a full committee chair. However, no delegate with the necessary seniority or party status has been skipped over for a chairship. Many delegates have served as chair of a subcommittee. This includes both the current and former DC delegate. (See Table 2 in the main report.)

Does it matter that the DC delegate lacks a full vote on the House floor? The report provides a mixed answer on this front. Determined majorities manipulate the rules to limit the impact of individual votes. This effectively limits the importance of individual voting power. However, lacking the vote helps delegitimize the delegates in subtle ways and lacking the vote prevents delegates from vote trading for present or future considerations in return.

The respective party caucuses do treat delegates as full members. This is important as the caucuses – especially the majority party caucus – are forums for crucial policymaking decisions in the House. Notably it is within the caucus that party leadership decisions are made. Delegates vote on these party leadership positions. Indeed, Rep. Eleanor Holmes Norton (D-DC) was an important supporter in the leadership race that ultimately led to Nancy Pelosi's (D-CA) election as Speaker.

The District of Columbia lacks representation in the United States Senate. The Senate is enormously important in the American political system and the typical senator wields far more power than the typical House member. The power of individual senators derives not so much from their fewer numbers, but from the way Senate procedures enable individual senators to obstruct the legislative process. This ability gives individual senators considerable leverage to protect his or her state from legislative harm and obtain for his or her state a fair share of federal largesse.

The report lays out in detail ways that lacking even a single senator undermines District influence over federal legislation. While its representation in the House provides the District some minor influence over legislation, it utterly lacks influence in the areas that the House does not affect: federal treaties, confirmation of executive branch appointees, and confirmation of judicial branch appointees. This latter limitation is especially telling as individual senators through senatorial courtesy have direct influence over the appointment of federal judges who oversee the courts in their states. Unlike every state, the District has no say over who is appointed to sit on the relevant federal district court and appeals court.

Finally, the nature of the U.S. Senate provides special advantages to small states, advantages that the District would enjoy were it a state. On a per capita basis small states fare better than big states in obtaining federal funding. Small states also are more likely to produce senate leaders. For example, all the Senate Majority Leaders since 1970 came from a small state with the exception of two leaders from mid-sized Tennessee.

3. An Overview of Representational Scenarios

To provide context for much of the report this section describes several different representational scenarios that might apply to the District. These include upgrading the delegate position to a

regular representative, allowing DC citizens to vote in Maryland elections, or giving the District full representation of its own in both the House and Senate. Rather than focus directly on the legal and political hurdles facing adopting any of these scenarios, the report addresses some issues related to what would happen in each scenario if it were adopted.

The most likely scenario is the one currently under debate: converting the DC delegate to a full-fledged member of the House. Current legislation before Congress would achieve this by expanding the House to 437 representatives, with the District receiving one representative and Utah receiving the other (at least until the next decennial redistricting).

Under this scenario the restrictions on the DC delegate described earlier will be lifted. However, under the proposed law the District could not expand its delegation beyond the one representative, even if eligible by population to do so. Realistically this is a weak constraint as the District would have to grow at an incredibly dramatic pace to ever reach the two-representative threshold. The smallest state to receive two representatives after the 2000 Census was Rhode Island with its 1,048,319 residents. The District's population in that census was 572,059. (See Table 3 in the main report.)

Inclusion of District voters in Maryland elections, presumably through retrocession, raises questions about the size of the overall House delegation and the drawing of district lines for House elections. In the short run, adding the District's population to Maryland's will increase Maryland's delegation by one seat to nine. Also Maryland voters will see the average size of their congressional districts decrease, thus the typical Maryland voter will share a representative with fewer people. (The long run impact on delegation sizes will depend on Maryland and District population growth.) This assumes that the District will not be a stand-alone congressional district.

Adding the District's heavily Democratic voters will make Maryland a more solidly Democratic state. It seems likely that eight of the Maryland/District House seats will be safe Democratic seats and Democrats will increase their hold over the two U.S. Senate seats. Based on recent turnout numbers, District voters will comprise about 12% of the electorate in Maryland's state Democratic primary. While this will not give District voters the dominant say in the nomination of Maryland's senators (or other state seats), it will give District voters substantial influence; candidates for office will quickly recognize the need to curry favor with District voters.

The final scenario considered in the report is that the District receives full representation in both the House and Senate. Presumably this would occur through statehood and/or a Constitutional amendment. Under this scenario the District receives two senators. Barring radical increases in the District's population or increases in the size of the House of Representatives, the District will receive only a single House representative for many decades. Giving District voting trends, both Senate seats and the House seat will be held by Democrats for the foreseeable future.

4. Policy Benefits of Negative Power

Policymaking can be as much about stopping a policy that hurts one's constituency as it is about creating a policy that helps one's constituency. The ability to stop or obstruct unwanted policies is a *Negative Policy Benefit*. Under the U.S. Constitution Congress has the legal authority to dictate policy to the District. Yet, in American politics legal authority does not necessarily translate into the political power. Congress's broad legal authority in regard to the District under current constitutional and statutory law is not under question. The point of this section, however, is to approach the District-Congress relationship from the perspective of representation. Regardless of Congress's legal authority over District policy, how would congressional actions change if the District had full representation in Congress?

Over the period 1995-2008 Congress imposed a large list of policies on the District. A few examples of major policies include limitations on the power of the DC delegate, prohibitions of domestic partner benefits, restrictions on the District's political efforts, creation of the Control Board, restrictions on abortion, and prohibition of needle exchange programs. (See Table 4 in the Main Report for a longer list of major laws imposed on the District by Congress.) Aside from outright interference by Congress is a deterrence effect where the threat of congressional action alone prevents the District government from acting on a given issue. (A classic example is the recognition of gay marriages from other states.)

Congress uses the District as an arena for the contentious social issues of the day. Imposing these policies on the District gives members of Congress a low cost, low risk way to claim credit with important constituencies, at home and across the nation. Similarly Congress likes to use the District as a laboratory for experiments in policymaking.

The report argues that few if any of the major legislation imposed on the District would have happened if the District had representation in the U.S. Senate, either on its own or as part of Maryland. Senators can fight fire with fire. Any senator who tried to impose the sorts of policies seen in the report would have faced a future of objections to his or her requests for unanimous consent, as well as holds and filibusters against pet legislation. By and large senators who interfere with another senator's constituency quickly find it hard to serve their own constituents. Likewise restrictive measures originating from the House would face serious procedural obstacles once they reached the Senate.

5. Positive Power and Distributive Benefits to the District

Every year all the members of the House and Senate aggressively pursue pieces of the huge federal funding pie for their individual constituencies. Given its lack of institutional leverage in Congress how well does the District of Columbia fare in the pursuit of federal support? This report examined a small piece of federal funding: the distribution of earmarks for higher education. Over the last two decades the amount of earmarks directed towards higher education has sky-rocketed and many colleges and universities rely on earmarks to fund critical aspects of their research and teaching missions.

The District's colleges and universities suffer a major disadvantage in the competition for earmarks. Local universities, most notably Georgetown and George Washington, carefully cultivate relations with alumni who serve in Congress. Yet while the alumni of these universities may help, they have no electoral connection with District universities. Their incentives to help are limited. It is not an accident that both Georgetown and George Washington universities now have substantial campuses in Virginia.

The report demonstrates that overall the District fares from the middle to the bottom of the states in garnering earmarks over the last decade or so. Georgetown accounts for most of those earmarks. A statistical model in the report demonstrates that expressly political factors, such as a state's presence on the Appropriations Committee, largely determined the distribution of higher education earmarks. Factors more directly related to the nature of a state's universities – such as the number of students or the number of research universities – proved unimportant.

The model predicts that the District would receive far more in higher education earmarks each year if it had representation in the Senate. For example, representation in the Senate including a member on the Senate Appropriations Committee would yield a predicted \$2 million more per year just in higher education earmarks. Higher education earmarks are just a slice of just a slice (all earmarks) of federal spending (now more than \$3 trillion per year). But how higher education earmarks are distributed gives us a nice window into the larger spending picture. While the District of Columbia perhaps does better than expected given its dearth of representation in Congress, it does far worse than it could if it had full representation in the Senate.

In the interests of fairness and completeness the report also identifies legislation that Congress passed that was directly beneficial to the District. For example, the District of Columbia College Access Act makes some District residents eligible for in-state tuition at public universities around the nation. The Revitalization Act is another example though it came with strings attached that would not have happened if the District had fuller representation in Congress.

6. Constituency Service and Extra-Constituency Representation

Congressional observers naturally focus on the explicitly policy-related actions of legislators, such as their roll call votes and the legislation they sponsor or co-sponsor. Less publically visible is the constituency service role that members of the House and Senate play. Voters frequently turn to their representative or a senator for help negotiating bureaucratic red tape or resolving problems with federal benefits. The specific problems vary considerably but family immigration issues, veteran's benefits, social security, Medicare and Medicaid, government regulation, and taxes generate an enormous amount of casework for members of Congress and, especially, their staffs.

District residents suffer an enormous disadvantage when it comes to seeking assistance from the federal government. A resident of a state has three federal legislators to help. However, since members of Congress rarely render aid to non-constituents, residents of the District can turn just to their single delegate. A small state such as Wyoming has a far lower residents-to-legislator ratio (164,594) than the District (572,059). Thus Wyoming's federal delegation (as well as the

federal delegations from most other states) carries a much lower potential casework burden than the DC delegate. Looking at the monetary allowances given members of Congress to represent their constituents reveals an even more dramatic disadvantage for the District. In 2008 Congress allocated a representational allowance of \$2.31 for each DC resident. For Wyoming it was \$13.38 per resident (see Table 10 in the main report). Adding DC voters to Maryland or giving the District full representation in Congress would dramatically lower the District's disadvantage.

The DC disadvantage is even worse than the federal numbers suggest. Citizens of states have a multi-layered representational government extending from city councils to county commissions to state legislatures to the congressional delegation. For the District this is all compressed into a city council and the DC delegate. Consequently both the city councilors and the DC delegate find themselves addressing the types of issues usually handled by other governing actors, such as state legislators.

Observers and sometimes even members of Congress claim that the District already enjoys exceptional levels of representation given that all 535 members of Congress work in the District and many of them live there part-time. No doubt some members of Congress do develop an interest in District affairs. But the notion that members of Congress act in any substantive capacity as *representatives* of District interests contradicts the basic design and practice of the American legislative system.

To achieve any of their goals as a legislator, members of Congress must first get re-elected. The re-election motive forces legislators to hew closely to the parochial needs and interests of their districts. This parochial focus limits the ability of legislators to accommodate the views and needs of non-constituents. DC residents collectively lack the fundamental currency necessary for influence over members of Congress, the ability to hire and fire these representatives through the vote.

7. Political Participation and Ambition in the District of Columbia

Political participation takes many forms but voting is the crucial tool given to us by the the writers of the Constitution. Turnout in the United States is generally low, but it varies from election to election. One major factor that influences turnout levels is the importance of the offices on the ballot. Presidential elections produce the highest turnout by far. In midterm elections the presence of a U.S. Senate race on the ballot boosts turnout in both primary and general elections. Thus it is reasonable to conclude that the lack of senate races suppresses District voter turnout somewhat. Likewise it may be the case that the lack of a regular representative in the U.S. House somewhat suppresses turnout as well.

It may also be the case that the District's lack of political opportunities deters some from entering public service. The DC Mayor and the DC delegate represent the pinnacle of a very sparse set of elective targets available in the District. We know from political ambition theory that the choice to run for office is greatly affected by the opportunity structure. If few opportunities exist then the ambitious will choose to do something else.

8. The District and Presidential Elections

District of Columbia residents do participate fully in presidential elections. The 23rd Amendment gives District voters three votes in the Electoral College. (Were the District a state it still qualify for just three electoral votes due to its small population.) While the District population makes up only 0.20% of the nation's population, its percentage of the Electoral College is 0.56%. Thus the District is *relatively* advantaged – almost three times more advantaged – under the current system than it would be were the nation to shift to a direct popular vote. That said, the states that receive attention (and promises) from presidential candidates are the states that are competitive, especially the states that are both competitive and large. The District is neither large nor competitive and thus receives no attention in the general election. Likewise, despite past efforts to enhance its impact on the Democratic nomination campaign, the District's small size and late placement on the primary calendar render its voters insignificant. Thus the District lacks significant influence over presidential nominations and elections.

9. Representation in National Capitals

According to Freedom House there are 90 democracies in the world today. Of those 90 democracies only the United States denies its capital residents full representation before its national legislature. Of those 90 democracies only the United States restricts the legislative authority of its capital representatives. Finally, other democracies that once restricted representation for their capital residents largely removed those restrictions. The last holdout was Brazil which granted full representation to the citizens of Brasilia in 1986.