

# ADDENDUM

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 6 1987

Clerk, U. S. District Court  
District of Columbia

JANE D. EASTON,

Plaintiff

v.

Civil Action No. 86-1863

THE OFFICE OF TECHNOLOGY  
ASSESSMENT, et al.,

Defendants

MEMORANDUM OPINION

Jane D. Easton brought this action against the Office of Technology Assessment ("OTA") and five individual OTA officials and management employees,<sup>1/</sup> to redress the injuries she allegedly suffered in connection with her dismissal from the position of Chief Budget and Finance Officer for OTA. The defendants have moved to dismiss all eleven counts of the complaint, on grounds of immunity. For the following reasons, the Court shall grant the motion.

BACKGROUNDA. The Office of Technology Assessment

Fifteen years ago, Congress found that a separate, specialized office within the legislative branch was necessary to meet its expanding need for technological information, a need

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<sup>1/</sup> These defendants, sued in their official capacities, are: John H. Gibbons, Director of OTA; Bart J. McGarry, Operations Manager of OTA; Thomas P. McGurn, Administrative Officer of OTA; William J. Norris, Personnel Manager of OTA; and Catherine Henry Singleton, Assistant to the Budget and Finance Officer of OTA. Ms. Singleton is a Virginia resident; the remaining defendants are residents of Maryland.

that had outstripped the capabilities of existing congressional staff mechanisms. 2 U.S.C. §§ 471-472. Thus, Congress created OTA in 1972 to "equip itself with new and effective means for securing competent, unbiased information concerning the physical, biological, economic, social, and political effects of [technological] applications" to use in assessing pending legislative matters. 2 U.S.C. § 471(d) (1972). OTA's policies and activities are dictated by the Technology Assessment Board ("the Board"), composed of 12 members of Congress and the Director of OTA, a non-voting member appointed by the congressional members. 2 U.S.C. §§ 473-74. OTA is entirely within - and responsible to - the legislative branch, and endeavors to provide members of Congress with the technical research and analysis needed to permit Congress to evaluate legislative matters. 2 U.S.C. § 472(a). See also 118 Cong. Rec. H3202 (daily ed. February 8, 1972) (statement of Rep. Mosher).

The functions of OTA are delineated by statute, and are directed at the development of information to assist Congress. 2 U.S.C. § 472(c). Although Congress provided for OTA's use of the services of the General Accounting Office and the Library of Congress, there is no indication that OTA's services were to be

made available to any other government agency or branch.<sup>2/</sup>  
OTA thus is an entity of the legislative branch, extending Congress' information-gathering function commensurately with the technological growth of society.

B. Jane Easton's Role at OTA

On November 15, 1982 Jane Easton was hired as the Budget and Finance Officer of OTA. She supervised a staff that collected data for OTA's annual appropriations hearings, and herself prepared financial information and "briefing books" to be used in OTA's appropriations requests. In addition, she attended the House Legislative Branch Appropriation hearings for OTA in

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<sup>2/</sup> OTA is, however, to "maintain a continuing liaison" with the National Science Foundation, 2 U.S.C. § 479. The nature of this liaison is not defined, but no provision is made for the Foundation to direct or request OTA to perform specific services; this power is retained by Congress. 2 U.S.C. § 472(d) (congressional committee chairperson, OTA Board, and OTA Director in consultation with the Board, initiate all OTA activities). In addition, OTA may under certain circumstances make available to the public information it produces. 2 U.S.C. § 472(e). Public availability of information is only incident to its provision to Congress. Id. These two sections are dwarfed by OTA's primary function as a legislative research body. Ms. Easton's duties, and her claims, do not concern the manner in which OTA discharged these two functions.

her official capacity as OTA's Budget and Finance Officer.<sup>3/</sup> On occasion, plaintiff also exercised the authority to review and approve pending appropriations requests. Her other financial duties included payroll authorizations and review of OTA employee travel and hours.

Plaintiff also produced a volume entitled "Operations Division -- Manual of Budget and Finance Procedures" for use within OTA. The volume drew from regular reports submitted concerning all the contractors operating under OTA contracts, and was used and reviewed by key OTA management as well as other staff.

As can be seen, plaintiff's duties placed her under the immediate supervision of individuals in the upper echelon of OTA's management. Further, her work was reviewed by members of Congress within and without OTA, and was necessary to their

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<sup>3/</sup> See Legislative Branch Appropriations for 1986: Hearings Before the Subcomm. on Legislative Branch Appropriations of the House Comm. on Appropriations, 99th Cong., 1st Sess. 497 (1985); Legislative Branch Appropriations for 1985: Hearings Before the Subcomm. on Legislative Branch Appropriations of the House Comm. on Appropriations, 98th Cong., 2d Sess. 409 (1984); Legislative Branch Appropriations for 1984: Hearings Before the Subcomm. on Legislative Branch Appropriations of the House Comm. on Appropriations, 98th Cong., 1st Sess. 519 (1983). Other OTA witnesses at each hearing included several congressional members of the OTA Board, OTA's Director John Gibbons, several Assistant Directors, and Thomas McGurn, the Administrative Officer. Plaintiff notes that Gibbons actually presented the financial information supporting the request to the appropriations subcommittee, but she does not dispute that she prepared the financial information, or that she attended the congressional hearings.



legislative appropriations review. Plaintiff's work is enveloped in a further fold of the legislative process: not only was it submitted to the legislature, its purpose was to establish the level of appropriations needed for a legislative agency to operate.

C. Plaintiff's Claims

Plaintiff's complaint sets forth eleven separate counts,<sup>4/</sup> all of which involve the circumstances of her discharge from OTA. In general, plaintiff asserts that her difficulties began when she challenged and attempted to correct

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<sup>4/</sup> The Complaint makes the following claims:

Count I: Due Process Violation - denial of a property interest in her job;

Count II: Due Process Violation - defamation has deprived her of a protected liberty interest;

Count III: "Bivens" claim against OTA officials for deprivation of liberty and property interests without due process;

Count IV: Civil RICO violation;

Count V: Common Law Fraud - based on false representations of job security, and false statements of her misconduct and addictions;

Count VI: Defamation - based on statements of plaintiff's alleged misconduct and addictions;

Count VII: Breach of Express Contract - based on discharge in violation of contract terms;

Count VIII: Breach of Implied Contract - (same);

Count IX: Breach of OTA's Covenant of Good Faith and Equitable Dealing by defamation and discharge without process;

Count X: Wrongful Discharge; and

Count XI: Retaliatory Discharge.



allegedly inaccurate financial data used in OTA appropriations hearings, and to rectify OTA employee misconduct in the contract award process. OTA's Director and top management officials were allegedly involved in what plaintiff describes as efforts "to defraud Congress." Complaint ¶ 8. When she attempted to bring the wrongdoings to light, plaintiff avers that OTA officials lay the blame for the errors at her feet. Further, plaintiff alleges that the named OTA defendants falsely accused her of drug addiction and alcoholism within OTA to precipitate and bolster her discharge, and made similar accusations to other agencies and private-sector employers to whom plaintiff applied for a job after her discharge. Ms. Easton also contends that the manner of her discharge is contrary to oral and written statements made during the course of her application for position at OTA, and during her tenure there. Counts III and VI are against the five individual defendants; Count IV names all defendants; and the remaining eight Counts are against OTA.

Defendants have moved to dismiss, contending that OTA is shielded by sovereign immunity, that plaintiff's claims are otherwise not actionable under the immunity provided by the Speech or Debate Clause of the Constitution, U.S. Const. art. I, § 6, cl. 1, and that the individual defendants' actions are shielded by doctrines of official immunity.

#### DISCUSSION

As a general rule, the allegations of a complaint are taken as true for purposes of a motion to dismiss. E.g., Doe v. Dept. of Justice, 753 F.2d 1092, 1102 (D.C. Cir. 1985). When a

complaint is reviewed under Fed. R. Civ. P. 12(b)(6), the Court must liberally construe its language to determine whether any ascertainable claim for relief has been stated. Id. A motion to dismiss under Rule 12(b)(1), however, calls the jurisdiction of the Court into question, and the burden is on the plaintiff to establish jurisdiction. See KVOS, Inc. v. Associated Press, 299 U.S. 269 (1936). The factual allegations of the complaint thus will bear closer scrutiny than under a Rule 12(b)(6) motion. See, e.g., Walker v. Jones, 733 F.2d 923, 935 (D.C. Cir.), cert. denied, 469 U.S. 1036 (1984) (MacKinnon, J., dissenting). The Court must accordingly strike a delicate balance in its review of the pleadings when, as here, a motion to dismiss is brought alternatively under Rule 12(b)(1) or 12(b)(6).<sup>5/</sup>

A. Sovereign Immunity

Defendants assert that sovereign immunity shields OTA from suit. The United States is immune from suit, absent an unequivocal waiver of immunity or consent to suit. United States v. Mitchell, 445 U.S. 535, 538 (1980). Further, the terms of consent "define [a] court's jurisdiction to entertain the suit." Id., quoting United States v. Sherwood, 312 U.S. 584, 586 (1941). There is no statutory waiver of immunity for OTA, and plaintiff provides no other basis overcoming this bar. Accordingly, reading the allegations of the complaint most

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<sup>5/</sup> This balance is policed by the admonition in Rule 12(b) which requires a court to convert a motion to dismiss to one for summary judgment, if matters outside the pleadings are presented and not excluded by the Court. In reviewing a 12(b)(1) motion, however, the Court may consider material outside the pleadings, such as official documents or matters of general public record. E.g., Hohri v. United States, 782 F.2d 227, 241 (D.C. Cir. 1986).

favorably to plaintiff, it states no cognizable claim for relief against OTA. Counts I, II, V, VII, VIII, IX, X, and XI shall be dismissed in their entirety, and Count IV, to the extent it names OTA, shall be dismissed.

B. Immunity Under the Speech or Debate Clause

The Speech or Debate Clause provides that "for any Speech or Debate in either House, [the Senators and Representatives] shall not be questioned in any other place." U.S. Const., art. I, § 6, cl. 1. Designed to preserve the integrity and independence of the legislative branch in the exercise of its legislative functions, the Speech or Debate Clause has been "read broadly to effectuate its purposes." United States v. Johnson, 383 U.S. 169, 180 (1966). Thus, immunity is extended for conduct essential to the legislative process, e.g., Gravel v. United States, 408 U.S. 606, 615-16 (1972), and congressional staff members are protected for activities that would be immunized if performed by the Members of Congress. Id. at 620-22; McSurely v. McClellan, 553 F.2d 1277, 1285 (D.C. Cir. 1976). Although the Supreme Court has not resolved expressly the extent to which this Clause shields employment decisions within the legislative branch, this Circuit has held that personnel decisions are "legislative" and shielded from scrutiny if the particular employee's duties "were directly related to the due functioning of the legislative process." Browning v. Clerk, U.S. House of Representatives, 789 F.2d 923, 929 (D.C. Cir.), cert. denied, 107 S.Ct. 601 (1986) (emphasis in original). Thus, Ms. Easton's duties within OTA are de-

terminative of whether the Speech or Debate Clause divests this Court of jurisdiction to provide the relief she seeks.

As discussed above, OTA is a legislative agency, involved solely in collecting and providing technological information to Congress. Investigation and the acquisition of information are "essential to informed deliberation over proposed legislation," and have been found to be within the protective reach of the Speech or Debate Clause. McSurely, 553 F.2d at 1286. See also Tavoulareas v. Piro, 527 F. Supp. 676, 680 (D.D.C. 1981) (active efforts by members of Congress to acquire information pertinent to legislation are protected). The privilege extends to congressional staff, e.g., McSurely, 553 F.2d at 1286, and thus is available to OTA employees within the same parameters. E.g., Doe v. McMillan, 412 U.S. 306, 312 & n.7 (1973) (immunity available to congressional printers under certain circumstances). Because OTA discharges the congressional informational function, employees are cloaked with Speech or Debate Clause immunity for their actions and duties directly related to this function.

Ms. Easton's duties are intimately related to OTA's "legislative" function. As Chief Budget and Finance Officer, she reviewed OTA's internal finances, and prepared an internal procedural manual to direct the financial aspects of OTA's functions. Further, she compiled and prepared data and reports that were submitted to Congress to assist its review of and deliberations concerning OTA's portion of annual legislative appropriations. Plaintiff's duties insofar as they have been



explained to the Court, do not extend beyond the legislative branch. Although the nature of many of her duties may be administrative rather than policy-making, they do not thereby lose their relationship to the due functioning of the legislative process. Accord Browning, 789 F.2d at 928 (to come within Speech or Debate Clause immunity employees' input into legislative process need not entail the exercise of discretion).

In Browning, the Court of Appeals outlined the method of analysis for Speech or Debate Clause immunity, and directed courts to inquire into the historical relationship of the functions performed by the employee to the legislative process, the source and use of any materials prepared by the employee in the discharge of his function, the relationship of this function to matters properly before Congress, and the precise scope of any evidentiary inquiries needed to resolve the plaintiff's claim. Id. at 929. As discussed above, the first three factors support defendants' claim of immunity in this case. OTA's investigatory function was originally performed by congressional staff, at the direction of Members of Congress, to aid in the development and evaluation of legislation. Ms. Easton prepared materials to be used by the legislature in its appropriations for OTA. The relationship of Ms. Easton to OTA, and of Ms. Easton's work to congressional matters is self-evidently direct.

In addition, the Court finds that the gravamen of many of the charges involve the adequacy of plaintiff's performance, and various decisions and representations allegedly made or authorized by OTA's Director, a congressional appointee. Plaintiff

provided information to Congress, and defendants represent that Members of Congress would have relevant information assessing the merit of her performance. This alone would require the Court to subject to judicial process those individuals granted immunity in the Speech or Debate Clause, a result implicating the concerns underlying the broad reading given the Clause. Thus, as to the claims involving (1) representations concerning the scope and nature of plaintiff's job before and after she was hired; (2) statements made within OTA to or by plaintiff's supervisors concerning her performance; and (3) evaluation of the basis of plaintiff's discharge, the Speech or Debate Clause precludes this Court from exercising its jurisdiction. All the conduct encompassed therein exclusively involved members of the legislative branch and cannot be scrutinized by this Court. Accordingly, Count IV is dismissed<sup>6/</sup> in its entirety, and Count III is dismissed except to the extent it is based on statements to non-legislative branch individuals.

In Count VI, plaintiff alleges that the individual defendants defamed her by false statements to non-legislative agencies and private sector employers, and in Count III, plaintiff asserts that this publication deprived her of a liberty interest pro-

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<sup>6/</sup> To the extent plaintiff can be found to have brought her claims in Counts I, II, V, VII, VIII, IX, X and XI against OTA officials, their conduct would be similarly immunized under the Speech or Debate Clause. The Court has dismissed these Counts on grounds of sovereign immunity, and addresses them here in an effort to resolve all of plaintiff's claims - express and implied at once. Thus, the Speech or Debate Clause is an alternative ground supporting dismissal of these Counts. In addition, the Court shall treat Count III as a claim of constitutional violation against the individual defendants, importing the request for a "name-clearing hearing" articulated in Count II.

tected by the fifth amendment's guarantee of due process. In Doe v. McMillan, 412 U.S. 306 (1973), the Supreme Court found that public distribution of a Committee Report, by the government printer at Congress' direction was not insulated by the Speech or Debate Clause. The Court noted that the legislative imprimatur behind the public distribution did not alone establish its relationship to the "reasonable requirements of the legislative function." Id. at 315. The legislative function would be adequately preserved, the Court found, by distribution of any reports to Members of Congress and their staff. Id. Statements made by the individual defendants to plaintiff's prospective employers are in a similar posture. Defendants have not demonstrated in what manner these statements are related to the "reasonable requirements" of the legislative function. Speech or Debate Clause protection thus does not screen these statements from judicial review. Accordingly, defendants' motion to dismiss plaintiff's claim of common-law defamation on grounds of constitutional immunity is denied.

Plaintiff also contends that these statements are redressable under the due process guarantee of the fifth amendment, and seeks a "name-clearing hearing."<sup>7/</sup> The District

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<sup>7/</sup> As noted, supra n.6, plaintiff's request for a hearing is considered, even though it was made only in connection with Count II. The complaint did not artfully plead claims for relief against the individual officers in OTA, but the Court shall not rest disposition of this matter on defects which could be cured by amendment or simply by the lenient construction afforded pleadings under the Federal Rules in this Circuit. Plaintiff's claims in Count III for reinstatement and back pay are not before the Court, as they would be available only to remedy an unlawful discharge. The Speech or Debate Clause bars this Court from review of plaintiff's claims of wrongful discharge; as a result, no relief can be granted thereon. Accordingly,



of Columbia Court of Appeals has held that a liberty interest is implicated by a government employer's "stigmatizing" charges against an employee, the employee's discharge, "and the subsequent foreclosure of future employment opportunities, including government job opportunities." Doe v. Department of Justice, 753 F.2d 1092, 1104 (D.C. Cir. 1985). Once implicated, the employee has a due process right to a "name-clearing hearing," under Codd v. Velger, 429 U.S. 624 (1977). Doe, 753 F.2d at 1102, 1104. The plaintiff in Doe, a former Justice Department attorney, had no protected property interest in her continued employment with the government. Nonetheless, the Court of Appeals found that discharge from such employment could provide the "governmental action" necessary to articulate a liberty interest claim arising from government defamation, as set forth in Paul v. Davis, 424 U.S. 693 (1976). Doe, 753 F.2d at 1106. The Supreme Court in Paul found that a governmental discharge decision may trigger review under the due process clause if sufficient reputational stigma surrounds the discharge decision. 424 U.S. at 701, 709. The damage is to an individual's reputation, and the constitutional remedy is an opportunity to refute the allegedly defamatory charges. Codd, 429 U.S. at 627-28; Doe, 753 F.2d at 1101. The Court of Appeals in Doe emphasized that the judicial

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plaintiff can state no claim for damages directly under the fifth amendment. Accord Ratliff v. City of Milwaukee, 795 F.2d 612, 627 n.4 (7th Cir. 1986) (nominal damages under Carey v. Phipps is the only monetary relief available for "reputation plus" liberty interest claim). Cf. Davis v. Passman, 442 U.S. 228, 249 (1979) (damages available in fifth amendment equal protection claim based on discriminatory discharge of congressman's employee).

review and remedy provided would not address the propriety of the employer's decision, and hence would not diminish the "at will" character of Ms. Doe's employment. It does not follow that the employer's decision is unaffected by review, however, since the only available remedy would require a substantive agency-level review that is otherwise unavailable in connection with the discharge.

The anomalous result produced becomes apparent when, as here, an immunity or privilege shields the employer's discharge decision from judicial review. Judge MacKinnon's dissenting opinion in Doe expresses concern that the majority's liberty interest analysis would produce precisely such an unanticipated, widespread result, "threaten[ing] important separation of powers values implicit in the concept of at will employment in the Executive, Legislative, and Judicial Branches." Doe, 753 F.2d at 1123 (MacKinnon, J. dissenting). The majority dismissed Judge MacKinnon's conclusions as a "parade of horrors," id., at 1113 n.25, but did indicate that separation of powers concerns may compel a different analysis if the discharge decision itself implicates a constitutionally-based privilege. Doe, 753 F.2d at 1107, n.14 (underscoring that Doe's discharge "does not in any way implicate or construe the executive's" removal power). Indeed, a Doe-type liberty interest depends in the first instance "on the existence of a special, tangible relationship between the government and the individual." Id. at 1106. In the present case, the Speech or Debate Clause precludes this Court from reviewing the "relationship" Ms. Easton had with Congress. Fur-

ther, the constitution bars judicial review of the very employment decision necessary to transform Ms. Easton's allegations of defamation into a fifth amendment liberty interest. As this "governmental action" cannot be reviewed, it is questionable whether it can be used to undergird a liberty interest claim.

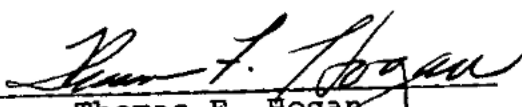
Assuming plaintiff could establish a protectible liberty interest, the Court would then have to determine the precise nature of the name-clearing procedure to be imposed. Doe, 753 F.2d at 1113. The factors set forth in Matthews v. Eldridge, 424 U.S. 3119 (1976), presumably govern this process, accord, Doe, 753 F.2d at 1113, and would require this Court to probe the existing discharge procedures. The Court would ultimately assume the constitutionally untenable position of engrafting procedures on the very employment decision it lacks jurisdiction to review. The anomaly this would produce is neither compelled nor sanctioned by this Circuit's fifth amendment liberty interest analysis in Doe, and finds no support in other case law. Accordingly, plaintiff's claim that the alleged defamatory remarks deprived her of a protected liberty interest without due process of law shall be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

The only remaining claim is that of common-law defamation in Count VI. As there is no diversity of citizenship among the parties, this claim could only be heard if it shares a "common nucleus of operative fact" with a substantial federal claim. E.g., United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); Prakash v. American University, 727 F.2d 1174, 1182-83 (D.C. Cir. 1984). The exercise of pendent jurisdiction is discretionary,

and "[i]ts justification lies in considerations of judicial economy, convenience and fairness to litigants." Dismissal of the federal claim generally warrants dismissal of the nonfederal claims as well, absent compelling reasons to exercise pendent jurisdiction. E.g., Financial General Bankshares, Inc. v. Metzger, 680 F.2d 768, 773 (D.C. Cir. 1982). No such reasons exist to support this Court's exercise of discretion to review Ms. Easton's purely common-law claim. Therefore, the Court shall dismiss Count VI pursuant to Fed. R. Civ. P. 12(b)(1).

#### CONCLUSION

Ms. Easton has raised allegations in her complaint that may well deserve judicial review. Unfortunately, the broad frontal attack launched in her initial pleading may have served her ill, as the only remaining claim is not before the proper forum. Concern for the vindication of a viable claim, however, is an insufficient basis to warrant exercise of this Court's limited jurisdiction. Further constitutional restrictions upon the jurisdiction of this Court, as discussed above, preclude review of the majority of plaintiff's claims. For the reasons stated herein, defendants' motion to dismiss under Rules 12(b)(1) and 12(b)(6) is granted. An appropriate order accompanies this opinion.

  
Thomas F. Hogan  
United States District Judge

Dated: February 6<sup>Th</sup>, 1987

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

**FEB 6 1987**

Clerk, U. S. District Court  
District of Columbia

JANE D. EASTON,

Plaintiff

v.

THE OFFICE OF TECHNOLOGY  
ASSESSMENT, et al.,

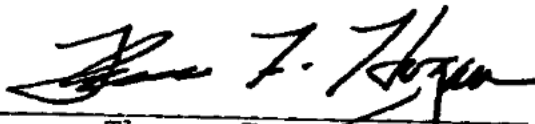
Defendants

Civil Action No. 86-1863

O R D E R

Upon consideration of defendants' motion to dismiss,  
plaintiff's opposition, defendants' reply, and the supporting  
memoranda, and for the reasons set forth in the accompanying  
opinion, it is this 6<sup>th</sup> day of February, 1987,

ORDERED that defendants' motion is granted and this  
action is dismissed in its entirety.

  
Thomas F. Hogan  
United States District Judge



Cong. Research Serv., *Congressional Commissions: Overview, Structure, and Legislative Considerations* (2013)

*Cause of Action v. Nat'l Archives & Records Admin.*, No. 13-5127 (D.C. Cir.)



# **Congressional Commissions: Overview, Structure, and Legislative Considerations**

**Matthew Eric Glassman**  
Analyst on the Congress

**Jacob R. Straus**  
Analyst on the Congress

January 22, 2013

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## Summary

Congressional advisory commissions are formal groups established to provide independent advice; make recommendations for changes in public policy; study or investigate a particular problem, issue, or event; or perform a duty. While no legal definition exists for what constitutes a “congressional commission,” in this report a congressional commission is defined as a multi-member independent entity that (1) is established by Congress, (2) exists temporarily, (3) serves in an advisory capacity, (4) is appointed in part or whole by Members of Congress, and (5) reports to Congress. These five characteristics differentiate a congressional commission from a presidential commission, an executive branch commission, or other bodies with “commission” in their names. Over 90 congressional commissions have been established since 1989.

Throughout American history, Congress has found commissions to be useful entities in the legislative process. By establishing a commission, Congress can potentially provide a highly visible forum for important issues and assemble greater expertise than may be readily available within the legislature. Complex policy issues can be examined over a longer time period and in greater depth than may be practical for legislators. Finally, the non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations more politically acceptable, both in Congress and among the public. Critics argue that many congressional commissions are expensive, often formed to take difficult decisions out of the hands of Congress, and are mostly ignored when they report their findings and recommendations.

The temporary status of congressional commissions and short time period they are often given to complete their work product makes it important that legislators craft statutes creating congressional commissions with care. A wide variety of options are available, and legislators can tailor the composition, organization, and working arrangements of a commission, based on the particular goals of Congress. As a result, individual congressional commissions often have an organizational structure and powers quite different from one another.

This report provides an overview and analysis of congressional advisory commissions, information on the general statutory structure of a congressional commission, and a catalog of congressional commissions created since the 101<sup>st</sup> Congress.

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## Introduction

Congressional commissions are formal groups established by Congress to provide independent advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty. Usually composed of policy experts chosen by Members of Congress and/or officials in the executive branch, commissions may hold hearings, conduct research, analyze data, investigate policy areas, or make field visits as they perform their duties. Most commissions complete their work by delivering their findings, recommendations, or advice in the form of a written report to Congress. Occasionally, legislation submitted by commissions will be given “fast track” authority in Congress.

Although no legal definition exists for what constitutes a “congressional commission,” in this report, a congressional commission is defined as a multi-member independent entity that (1) is established by Congress, (2) exists temporarily, (3) serves in an advisory capacity, (4) is appointed in part or whole by Members of Congress, and (5) reports to Congress. These five characteristics effectively serve to differentiate a congressional commission from a presidential commission, an executive branch commission, or other bodies with “commission” in their names. Over 90 congressional commissions have been established since 1989.

Throughout American history, Congress has found commissions to be useful tools in the legislative process and legislators continue to use them today. By establishing a commission, Congress can potentially provide a highly visible forum for important issues and assemble greater expertise than may be readily available within the legislature. Complex policy issues can be examined over a longer time period and in greater depth than may be practical for legislators. Finally, the non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations more politically acceptable, both in Congress and among the public.

Critics argue that many congressional commissions are established by legislators seeking “blame avoidance,” and take difficult decisions out of the hands of Congress. Other observers have suggested that commissions are undemocratic, with their members neither electorally accountable to the public nor their meetings and decision-making processes public. Finally, some critics see commissions as financially inefficient, arguing that the costs of establishing a commission outweigh potential benefits, especially since their findings and recommendations may be ignored by Congress.

Congressional commissions can be categorized as either policy commissions, investigatory commissions, or commemorative commissions. Most congressional commissions are policy commissions, such as the United States Commission on North American Energy Freedom,<sup>1</sup> that study particular public policy problems and typically report their findings to Congress along with recommendations for legislative or executive action. Far fewer commissions are investigative commissions, such as the National Commission on Terrorist Attacks Upon the United States,<sup>2</sup> that are established to examine past events. A small number of commissions are commemorative

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<sup>1</sup> P.L. 109-58, 119 Stat 1064, August. 8, 2005.

<sup>2</sup> P.L. 107-306, 116 Stat. 2408, November 27, 2002.

commissions, such as the Abraham Lincoln Bicentennial Commission,<sup>3</sup> that plan, coordinate, and oversee celebrations of people or events, often in conjunction with milestone anniversaries.

The temporary status of congressional commissions and short time period they are often given to complete their work product makes it important that legislators craft statutes creating congressional commissions with care. Statutes establishing congressional policy commissions generally include language that states the mandate of the commission, provides a membership structure and appointment scheme, defines member compensation and other benefits, outlines the commission's duties and powers, authorizes funding, and sets a termination date for the commission.

A variety of options are available for each of these organizational choices. Legislators can tailor the composition, organization, and arrangements of a commission, based on particular goals. As a result, individual commissions often have organizational structures and powers quite different from one another.

## Defining “Congressional Commission”

In the past, confusion has arisen over whether particular entities are “congressional commissions.” There are several reasons for this confusion. First, the term “congressional commission” is not defined by law; observers might disagree as to whether an individual entity should be characterized as such. Second, many different entities within the federal government have the word “commission” in their name, such as regulatory commissions, presidential advisory commissions, and advisory commissions established in executive agencies. Conversely, many congressional commissions do not have the word commission in their name; instead, they are designated as boards, advisory panels, advisory committees, task forces, or by other terms.

In this report, a congressional commission is defined as a multi-member independent entity that (1) is established by Congress, (2) exists temporarily, (3) serves in an advisory capacity, (4) is appointed in part or whole by Members of Congress, and (5) reports to Congress. This definition differentiates a congressional commission from a presidential commission, an executive branch commission, or other bodies with “commission” in their names, while including most entities that fulfill the role commonly perceived for commissions: studying policy problems and reporting findings to Congress.<sup>4</sup> Each of these characteristics is discussed below.

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<sup>3</sup> P.L. 106-173, 114 Stat. 14, February 25, 2000.

<sup>4</sup> Alternative definitions might be equally appealing. The wide variety of boards, task forces, panels, and commissions created by Congress, coupled with the lack of a legal definition for “congressional commission,” results in many gray areas. Consequently, some entities created by Congress that do not meet all five characteristics might be considered congressional commissions by observers using a different criteria. For example, in the 110<sup>th</sup> Congress, legislation was enacted creating a Committee on Levee Safety (P.L. 110-114, Sec. 9003, November 9, 2007). The committee is a temporary advisory body created by statutory authority, but its membership is determined by executive branch and state officials and it reports to both Congress and the Secretary of the Army. While it is not included in this report, some observers might consider it a congressional commission.

## Independent Establishment by Congress

Congressional commissions are established by Congress, usually by statute.<sup>5</sup> Not all advisory commissions established by statute, however, are congressional commissions. Congress routinely establishes advisory commissions in the executive branch by statute. Conversely, not all advisory commissions serving the federal government are established by Congress. Commissions may be established in the executive branch by the President, department heads, or individual agencies.<sup>6</sup>

Congressional commissions are also independent of Congress in function. This characteristic excludes commission-like entities established *within* Congress, such as congressional observer groups, working groups, and ad hoc commissions and advisory groups created by individual committees of Congress under their general authority to procure the “temporary services” of consultants to “make studies and advise the committee,” pursuant to 2 U.S.C. 72a.<sup>7</sup>

## Temporary Existence

Congressional commissions are established to perform specific tasks, with statutory termination dates linked to the completion of the tasks. This restriction excludes entities that typically serve an ongoing administrative purpose, do not have statutory termination dates, and do not produce reports, such as the House Office Building Commission<sup>8</sup> or Senate Commission on Fine Art.<sup>9</sup> Also excluded are entities that serve ongoing diplomatic or interparliamentary functions, such as the U.S. Group to the NATO Parliamentary Assembly,<sup>10</sup> or the Canada-United States Interparliamentary Group.<sup>11</sup> Finally, Congress has created a number of boards to oversee government entities, such as the United States Holocaust Memorial Council<sup>12</sup> and the John F. Kennedy Center Board of Trustees.<sup>13</sup> Although these entities could arguably be considered congressional commissions, their lifespan, purpose, and function differs from temporary congressional commissions.

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<sup>5</sup> An example of a commission that was widely considered a congressional commission but not established by Congress was the Iraq Study Group. Congress appropriated money to the U.S. Institute of Peace and informally arranged for the selection of the chairmen, but did not formally establish the group by statute or resolution. In addition, some bodies created by chamber resolution might be considered congressional commissions.

<sup>6</sup> Many well-known advisory commissions have been established by the President or by an agency. For example, the U.S. Commission on National Security/21<sup>st</sup> Century (the Hart-Rudman commission) and the National Commission on Social Security Reform (Greenspan Commission) were both established by executive order of the President.

<sup>7</sup> For example, the Advisory Commission to Study the Consumer Price Index was established by the Senate Committee on Finance in June 1995 and submitted its report to the committee in December, 1996. See U.S. Congress, Senate Committee on Finance, Final Report of the Advisory Commission to Study the Consumer Price Index, committee print, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Prt 104-72 (Washington: GPO, 1996).

<sup>8</sup> 2 U.S.C. 2001; P.L. 59-253; 34 Stat. 1365.

<sup>9</sup> 2 U.S.C. 2101; P.L. 100-696; 102 Stat. 4610.

<sup>10</sup> U.S.C. 1928a; P.L. 84-689; 70 Stat. 523.

<sup>11</sup> 22 U.S.C. 276(d); P.L. 86-42, 73 Stat. 72.

<sup>12</sup> 36 U.S.C. 2302; P.L. 96-388; 94 Stat. 1547.

<sup>13</sup> 20 U.S.C. 76h; P.L. 85-874; 72 Stat. 1698.

## Advisory Role

Unlike regulatory commissions, congressional commissions are not typically granted administrative authority, and they usually lack the power to implement their findings or recommendations. Instead, advisory commissions typically produce reports that present their findings and offer recommendations for either legislative or executive action.

## Inclusion of Members in the Appointment Process

Congressional commissions provide that Members of Congress, particularly the leadership, be intimately involved in the appointment process, either through direct service on a commission, or by appointing or recommending candidates for membership.

## Reporting Requirements

Congressional commissions are usually required to submit their reports to Congress, or to Congress and the President. Other advisory commissions, such as Presidential or executive branch commissions, typically submit their reports only to the President or agency head.

## Cataloging Congressional Commissions

This report attempts to identify all congressional commissions established between the 101<sup>st</sup> and 112<sup>th</sup> Congress. A large number of bills creating congressional commissions are introduced in Congress each session. During the 112<sup>th</sup> Congress, bills have been introduced that would have created more than 25 congressional commissions. Similar numbers of bills have been proposed in previous Congresses. Most of these bills proposing commissions are not enacted.

## Methodology

A database search was conducted using the Legislative Information System (LIS) for the 101<sup>st</sup> through 112<sup>th</sup> Congresses (1989-2012).<sup>14</sup> Each piece of legislation returned was examined to determine if (1) the legislation contained a commission; and (2) if the commission was an ad hoc congressional commission. If the commission was judged to be an ad hoc congressional commission, the name, public law number, Statutes-at-Large citation, and date of enactment were recorded.

## Results

A total of 96 congressional commissions were identified through this search. **Table 1** reports the number of commissions identified by the search in each Congress.

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<sup>14</sup> The search was conducted in two iterations. First, a query was run using the subject term “Federal Advisory Bodies.” Second, a query was run for various search terms, including commission, board, task force, and advisory committee.



**Table 1. Number of Congressional Commissions Created by Congress**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Congress	Number	Congress	Number
101 (1989-1990)	12	107 (2001-2002)	7
102 (1991-1992)	10	108 (2003-2004)	7
103 (1993-1994)	5	109 (2005-2006)	7
104 (1995-1996)	5	110 (2007-2008)	8
105 (1997-1998)	12	111 (2009-2010)	5
106 (1999-2000)	14	112 (2010-2012)	4
<b>Total (1989-2012)</b>			<b>96</b>

**Source:** Database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

Two caveats accompany these results. As stated above, identifying congressional commissions involves making judgment calls about particular characteristics. Second, tracking provisions of law that create congressional commissions is an inherently inexact exercise. Although many such bodies are created in easily identifiable freestanding statutes, others are contained within the statutory language of lengthy omnibus legislation.<sup>15</sup> Consequently, individual commissions may have been missed by the search algorithm.

## Types of Congressional Commissions

Congressional commissions can be generally placed into one of three categories. Most congressional commissions are *policy commissions*, temporary bodies which study particular policy problems and report their findings to Congress. Less common are *investigative commissions*, which are similar in structure to policy commissions but tasked with reviewing specific events. *Commemorative commissions* are entities established to commemorate a person or event, often to mark an anniversary. **Table 2** reports the total number and percentage of each type of commission identified in the LIS database search of the 101<sup>st</sup> through 112<sup>th</sup> Congresses.

**Table 2. Number of Congressional Commissions Created, by Type**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Commission Type	Total Number	Percentage of All Commissions
Policy	76	79%
Investigative	7	7%
Commemorative	13	14%

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

<sup>15</sup> For example, provisions for the establishment of 12 separate advisory bodies were included in the text of the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277, 112 Stat. 2681).

## Policy Commissions

The vast majority of congressional commissions, 79%, were established to study, examine, or review a particular policy problem. During the 109<sup>th</sup>, 110<sup>th</sup>, 111<sup>th</sup>, and 112<sup>th</sup> Congresses, policy commissions were established to study a range of issues, including the proliferation of weapons of mass destruction, motor fuel tax enforcement, surface transportation policy, defense policy, and the threat to the United States from Electromagnetic Pulse (EMP) attacks.<sup>16</sup>

## Investigative Commissions

Investigative commissions, established for the purpose of reviewing specific events, are much less common than policy commissions. Only seven such bodies have been established by Congress during the past 22 years. Investigative commissions, however, such as the National Commission on Terrorist Attacks Upon the United States (the 9/11 commission) often receive substantial public attention. Investigative commissions are often granted broad powers, including the power to subpoena witnesses. Most recently, the Commission on Wartime Contracting in Iraq and Afghanistan, the Congressional Oversight Panel for the Emergency Economic Stabilization Act, and the Financial Crisis Inquiry Commission were established during the 110<sup>th</sup> and 111<sup>th</sup> Congresses.<sup>17</sup>

## Commemorative Commissions

Since 1989, Congress has created 13 commemorative commissions. Five of the commissions were created to commemorate individuals<sup>18</sup> and coincided with a milestone anniversary of their birth. Seven commissions were related to the commemoration of historical events and coincided with a milestone anniversary of the event.<sup>19</sup> One commission—the Dwight D. Eisenhower Memorial Commission—was created to oversee the development of a permanent national memorial.<sup>20</sup>

## Potential Value of Congressional Commissions

Throughout American history, Congress has found commissions to be useful tools in the legislative process. Commissions may be established, among other things, to cope with increases in the scope and complexity of legislation, to forge consensus, to draft bills, to promote inter-party communication, to address issues that do not fall neatly within the jurisdictional boundaries of congressional committees, and to bring together recommendations.<sup>21</sup> These goals can be

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<sup>16</sup> P.L. 109-163, 119 Stat. 3434, January 6, 2006; P.L. 110-53, 121 Stat. 501, August 3, 2007; P.L. 109-59, 119 Stat. 1959, August 10, 2005; P.L. 109-163, 119 Stat. 3434, January 6, 2006.

<sup>17</sup> P.L. 110-181, January 28, 2008; P.L. 110-343, October 3, 2008.

<sup>18</sup> The individuals are Abraham Lincoln, James Madison, Benjamin Franklin, Thomas Jefferson, and Ronald Reagan.

<sup>19</sup> The events are the ending of the transatlantic slave trade, the construction of the Capitol, the Seneca Falls convention, the first successful airplane flight, the end of the Cold War, the Supreme Court decision in *Brown v. Board of Education*, and World War I.

<sup>20</sup> P.L. 106-79, 113 Stat. 1274, October 25, 1999.

<sup>21</sup> Colton Campbell, "Creating an Angel: Congressional Delegation to Ad Hoc Commissions," *Congress and the Presidency*, vol. 25, no. 2 (Autumn 1998), p. 162.

grouped into six categories: expertise, issue and political complexity, consensus building, non-partisanship, solving collective action problems, and visibility.

## Obtaining Expertise

Congress may choose to establish a commission when legislators and their staffs do not currently have sufficient knowledge or expertise in a complex policy area.<sup>22</sup> By assembling experts with backgrounds in particular policy areas to focus on a specific mission, legislators might efficiently obtain insight into complex public policy problems.<sup>23</sup>

## Overcoming Issue Complexity

Complex policy issues may cause time management challenges for Congress. Legislators often keep busy schedules and may not have time to deal with intricate or technical policy problems, particularly if the issues require consistent attention over a period of time.<sup>24</sup> A commission can devote itself to a particular issue full-time, and can focus on an individual problem without distraction.<sup>25</sup>

## Overcoming Political Complexity

Complex policy issues may also create institutional problems because they do not fall neatly within the jurisdiction of any particular committee in Congress.<sup>26</sup> By virtue of their ad hoc status, commissions may circumvent such issues. Similarly, a commission may allow particular legislation or policy solutions to bypass the traditional development process in Congress, potentially removing some of the impediments inherent in a decentralized legislature.<sup>27</sup>

## Consensus Building

Legislators seeking policy changes may be confronted by an array of political interests, some in favor of proposed changes and some against. When these interests clash, the resulting legislation may encounter gridlock in the highly structured political institution of the modern Congress.<sup>28</sup> By creating a commission, Congress can place policy debates in a potentially more flexible environment, where congressional and public attention can be developed over time.<sup>29</sup>

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<sup>22</sup> Ibid., p. 174. See also Robert L. Chartrand, Jane Bortnick, and James R. Price, *Legislator as User of Information* (Washington, DC: Congressional Research Service, 1987), pp. 11-15.

<sup>23</sup> Colton Campbell, *Discharging Congress: Government by Commission* (Westport, CT: Praeger, 2002), p. 51.

<sup>24</sup> Ibid., pp. 55-59.

<sup>25</sup> Morris P. Fiorina, "Group Concentration and the Delegation of Legislative Authority," in Roger G. Noll, ed., *Regulatory Policy and the Social Sciences* (Berkeley: University of California Press, 1985), p. 184. See also James E. Katz, "Science, Technology, and Congress," *Science* vol. 30, no. 4 (May 1993), pp. 41-44.

<sup>26</sup> George T. Sulzner, "The Policy Process and the uses of National Governmental Study Commissions," *Western Political Quarterly*, vol. 24, no. 3 (September 1971), pp. 438-448.

<sup>27</sup> Kenneth R. Mayer, "Closing Military Bases (Finally): Solving Collective Dilemmas Through Delegation," *Legislative Studies Quarterly*, vol. 20, no. 3 (August 1995), pp. 395-397.

<sup>28</sup> Campbell, *Discharging Congress*, p. 12.

<sup>29</sup> Ibid, p. 13; Newt Gingrich, "Leadership Task Forces: The 'Third Wave' Way to Consider Legislation," *Roll Call*, (continued...)

## Reducing Partisanship

Solutions to policy problems produced within the normal legislative process may also suffer politically from charges of partisanship.<sup>30</sup> Similar charges may be made against investigations conducted by Congress.<sup>31</sup> The non-partisan or bipartisan character of most congressional commissions may make their findings and recommendations less susceptible to such charges and more politically acceptable to a diverse viewpoints. The bipartisan or nonpartisan arrangement can potentially give their recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.<sup>32</sup> Commissions may also give political factions space to negotiate compromises in good faith, bypassing the short-term tactical political maneuvers that accompany public negotiations.<sup>33</sup> Similarly, because commission members are not elected, they may be better suited to suggesting unpopular, but necessary, policy solutions.<sup>34</sup>

## Solving Collective Action Problems

A commission may allow legislators to solve collective action problems, situations in which all legislators individually seek to protect the interests of their own district, despite widespread agreement that the collective result of such interests is something none of them prefer. Legislators can use a commission to jointly “tie their hands” in such circumstances, allowing general consensus about a particular policy solution to avoid being impeded by individual concerns about the effect or implementation of the solution.<sup>35</sup>

For example, in 1988 Congress established the Base Closure and Realignment Commission (BRAC) as a politically and geographically neutral body to make independent decisions about closures of military bases.<sup>36</sup> The list of bases slated for closure by the commission was required to be either accepted or rejected as a whole by Congress, bypassing internal Congressional politics over which individual bases would be closed, and protecting individual Members from political charges that they didn’t “save” their district’s base.<sup>37</sup>

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(...continued)

November 16, 1995, p. 5.

<sup>30</sup> Campbell, *Discharging Congress*, p. 10.

<sup>31</sup> *Ibid.*, p. 9.

<sup>32</sup> George T. Sulzner, “The Policy Process and the uses of National Governmental Study Commissions,” pp. 443-445.

<sup>33</sup> John B. Gilmour, “Summits and Stalemates: Bipartisan Negotiations in the Postreform Era,” in Roger H. Davidson, ed., *The Postreform Congress* (New York: St. Martin’s Press, 1993), pp. 247-248.

<sup>34</sup> Daniel Bell, “Government by Commission,” *Public Interest*, vol. 1, no. 3 (Spring 1966), p. 7; Campbell, *Discharging Congress*, p. 70.

<sup>35</sup> Gary W. Cox and Matthew D. McCubbins, *Legislative Leviathan: Party Government in the House* (Berkeley: University of California Press, 1993), p. 80.

<sup>36</sup> Mayer, *Closing Military Bases*, p. 398-399.

<sup>37</sup> Charles E. Cook, “Base Closing Furor: Minimal Political Impact for Members,” *Roll Call*, March 18, 1993, p. 1.

## Raising Visibility

By establishing a commission, Congress can often provide a highly visible forum for important issues that might otherwise receive scant attention from the public.<sup>38</sup> Commissions often are composed of notable public figures, allowing personal prestige to be transferred to policy solutions.<sup>39</sup> Meetings and press releases from a commission may receive significantly more attention in the media than corresponding information coming directly from members of congressional committees. Upon completion of a commission's work product, public attention may be temporarily focused on a topic that otherwise would receive scant attention, thus increasing the probability of congressional action within the policy area.<sup>40</sup>

## Criticism of Commissions

Congressional commissions have been criticized by both political and scholarly observers. These criticisms chiefly fall into three groups. First, critics often charge that commissions are an "abdication of responsibility" on the part of legislators.<sup>41</sup> Second, commissions are undemocratic, replacing elected legislators with appointed decision-makers. Third, critics also argue that commissions are financially inefficient; they are expensive and their findings often ignored by Congress.

## Abdicated Responsibility

Critics of commissions argue that they are primarily created by legislators specifically for "blame avoidance."<sup>42</sup> In this view, Congress uses commissions to distance itself from risky decisions when confronted with controversial issues. By creating a commission, legislators can take credit for addressing a topic of controversy without having to take a substantive position on the topic. If the commission's work is ultimately popular, legislators can take credit for the work. If the commission's work product is unpopular, legislators can shift responsibility to the commission itself.<sup>43</sup>

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<sup>38</sup> David S. Brown, "The Public Advisory Board as an Instrument of Government," *Public Administration Review*, vol. 15, no. 3 (Summer 1955), pp. 197-199.

<sup>39</sup> Charles J. Hanser, *Guide to Decision: The Royal Commission* (Totowa, New Jersey: Bedminster Press, 1965), pp. 222-225.

<sup>40</sup> George T. Sulzner, "The Policy Process and the uses of National Governmental Study Commissions," p. 444.

<sup>41</sup> Sen. Trent Lott, "Special Commissions," Remarks in the Senate. *Congressional Record*, daily edition, vol 148 (September 23, 2002), p. S9050. See also David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People Through Delegation* (New Haven, CT: Yale University Press, 1993), p. 100; R.W. Apple, "Keeping Hot Potatoes Out of the Kitchen," *New York Times*, February 2, 1989, D20.

<sup>42</sup> R. Kent Weaver, "The Politics of Blame Avoidance," *Journal of Public Policy*, vol. 6, no. 4 (October-December 1986), pp. 373-374. See also Douglas Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1990), p. 101.

<sup>43</sup> Campbell, *Discharging Congress*, pp. 68-69; Douglas Arnold, *The Logic of Congressional Action*, p. 101.

## Reduced Democratic Accountability

A second concern about commissions is that they are not democratic. This criticism takes three forms. First, commissions may be unrepresentative of the general population; the members of most commissions are not elected and may not reflect the variety of popular opinion on an issue.<sup>44</sup> Second, commissions lack popular accountability. Unlike Members of Congress, commission members are often insulated from the electoral pressures of popular opinion. Finally, commissions may not operate in public; unlike Congress, their meetings, hearings, and investigations may be held in private.<sup>45</sup>

## Financial Inefficiency

A third criticism of commissions is that they have high costs and low returns. Congressional commission costs vary widely, ranging from several hundred thousand dollars to over \$10 million. Coupled with this objection is the problem of congressional response to the work of a commission; in most cases, Congress is under no obligation to act, or even respond to the work of a commission. If legislators disagree with the results or recommendations of a commission's work, they may simply ignore it. In addition, there is no guarantee that any commission will produce a balanced product; commission members may have their own agendas, biases, and pressures. Or they may simply produce a mediocre work product.<sup>46</sup> Finally, advisory boards create economic and legislative inefficiency if they function as patronage devices, with Members of Congress using commission positions to pay off political debts.<sup>47</sup>

## Legislative Options for Commission Structure

Statutes establishing congressional policy commissions generally include language that states the mandate of the commission, provides a membership structure and appointment scheme, defines member compensation and other benefits, outlines the commission's duties and powers, authorizes funding, and sets a termination date for the commission.

A wide variety of options are available for each of these organizational choices. Legislators can tailor the composition, organization, and working arrangements of a commission, based on the particular goals of Congress. As a result, individual congressional commissions often have an organizational structure and powers quite different from one another.

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<sup>44</sup> R. Kent Weaver, "Is Congress Abdicating Power to Commissions?" *Roll Call*, February 12, 1989, pp. 5, 25.

<sup>45</sup> Natalie Hanlon, "Military Base Closures: A Study of Government by Commission," *Colorado Law Review*, vol. 62, no. 2 (1991), pp. 331-364.

<sup>46</sup> James Q. Wilson, "A Reader's Guide to the Crime Commission's Report," *Public Interest*, no. 9 (Fall 1967), pp. 64, 82.

<sup>47</sup> David S. Brown, "The Public Advisory Board as an Instrument of Government," p. 199.

## Establishment and Mandate

A commission's establishment is generally prescribed in a brief introductory paragraph. The proposed Commission on Catastrophic Disaster Risk and Insurance was established with a single sentence:

There is established a bipartisan Commission on Catastrophic Disaster Risk and Insurance.<sup>48</sup>

In some instances, the establishment clause will identify the commission as “established in the legislative branch.” This can often resolve confusion as to whether certain executive branch personnel and ethics laws apply to employees of the commission. For commissions not specifically established in the legislative or executive branch, the manner in which the members of the commission are appointed may determine the commission's legal status.<sup>49</sup> A commission with a majority of appointments made by the President may be treated as an executive branch entity for certain purposes; if a majority of appointments are made by Members of Congress, it may be treated as a legislative branch entity.

A bill creating a commission will sometimes provide congressional “findings” identifying the conditions justifying the creation of the panel. The bill proposing the Commission on Catastrophic Disaster Risk and Insurance includes seven specific findings related to hurricane damage and the federal government's role in catastrophe management. In other cases, legislation creating a congressional commission may simply include a short “purpose” section describing the justification for the creation of the commission, in lieu of “findings.”

## Membership and Appointment

Congressional commissions use a wide variety of membership schemes and appointment structures. The statutory scheme may require that membership of a commission be made up in whole or in part of specifically designated Members of Congress, typically Members in congressional or committee leadership positions. In other cases, selected leaders, often with balance between the parties, appoint commission members, who may or may not be Members of Congress. A third common statutory scheme is to have selected leaders, again often with balance between the parties, recommend members, who may or may not be Members of Congress, for appointment to a commission. These leaders may act either in parallel or jointly, and the recommendation may be made either to other congressional leaders, such as the Speaker of the House and President pro tempore of the Senate, or to the President.

**Table 3** presents commission appointment data from the 101<sup>st</sup> to 112<sup>th</sup> Congress. For each appointing body, the table reports the percentage of commissions to which appointments are made, the total number of appointments made, and the percentage of total appointments made.

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<sup>48</sup> Sec. 3, H.R. 537 (110<sup>th</sup> Congress).

<sup>49</sup> Office of Legal Counsel, Department of Justice. “Applicability of 18 U.S.C. §208 to National Gambling Impact Study Commission,” Memorandum for the Acting General Counsel, General Services Administration, January 26, 1999. See also *Ameron, Inc. v. U.S. Army Corp of Engineers*, 787 F.2d 875 (3d Cir. 1986); *Bowsher v. Synar*, 478 U.S. 714 (1986).



**Table 3.Appointment Authority to Congressional Commissions**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Appointing Body	Percentage of Commissions	Total Number of Appointments	Percentage of Total Appointees
Speaker	72%	194	17.2%
President Pro Tempore	16%	48	4.3%
Senate Majority Leader	59%	145	12.9%
House Minority Leader	54%	91	8.0%
Senate Minority Leader	54%	91	8.0%
Committees	24%	189	16.8%
<b>Total, Legislative Branch</b>	<b>100%</b>	<b>766</b>	<b>67.9%<sup>a</sup></b>
President	57%	252	22.3%
Other <sup>b</sup>	33%	110	9.8%
<b>Total, Other Sources</b>	<b>77%</b>	<b>362</b>	<b>32.1%</b>

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

- a. Figures do not sum total due to rounding.
- b. Includes agency and department heads, Supreme Court Members, state and local officials, and private citizens.

Some statutory provisions may have the effect of limiting the degree of autonomy a Member has in appointing or making recommendations for commission membership. For example, statutory language may require the appointing official to select members who are specifically qualified by virtue of their education, knowledge, training, experience, expertise, distinguished service, or recognized eminence in a particular field or fields.<sup>50</sup>

Statutes creating congressional commissions often include deadlines for leaders making appointments. Such deadlines can range from several weeks to several months. For example, the deadline for appointments to the Antitrust Modernization Commission<sup>51</sup> was 60 days after the enactment of the act. The deadline for appointment to the Commission on Wartime Contracting in Iraq and Afghanistan was 120 days from the date of enactment. The deadline for appointment to the National Commission on Terrorist Attacks Upon the United States was December 15, 2002, 18 days after enactment of the act.

## Compensation and Travel Expenses

Most statutorily created congressional commissions do not compensate their members, except to reimburse members for expenses directly related to their service, such as travel costs.

<sup>50</sup> For example, P.L. 109-58 prescribes that nominees for the United States Commission on North American Energy Freedom must be “knowledgeable on energy issues, including oil and gas exploration and production, crude oil refining, oil and gas pipelines, electricity production and transmission, coal, unconventional hydrocarbon resources, fuel cells, motor vehicle power systems, nuclear energy, renewable energy, biofuels, energy efficiency, and energy conservation.”

<sup>51</sup> P.L. 107-273, 116 Stat. 1758, (2002).

For example, Section 201(i) of the statute establishing the United States Commission on International Religious Freedom<sup>52</sup> reads

(i) Funding.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

Among congressional commissions that compensate their members, the level of compensation is almost always specified statutorily, and is typically set in accordance with one of the federal pay scales, prorated to the number of days of service. The most common level of compensation is the daily equivalent of Level IV of the Executive Schedule (EX), which has a basic annual rate of pay of \$155,500<sup>53</sup> in 2012.<sup>54</sup> For example, the statute establishing the Antitrust Modernization Commission states

(a) Pay.—

(1) Nongovernment employees.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) Government employees.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

(b) Travel Expenses.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.<sup>55</sup>

As shown in **Table 4**, approximately two-thirds of commissions created in the past 20 years have not paid members beyond reimbursement. The remaining commissions have paid members at the daily equivalent of level IV of the Executive schedule.

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<sup>52</sup> P.L. 105-292; 112 Stat. 2787, 2798 (10/27/1998).

<sup>53</sup> <http://www.opm.gov/oca/12tables/html/ex.asp>

<sup>54</sup> Although Level IV of the Executive Schedule is the most common compensation level, commission members could be compensated at other levels of the Executive Schedule or at particular levels of the General Schedule. Members of congressional commissions that fall under the Federal Advisory Committee Act (P.L. 92-463), however, are prohibited from receiving compensation in excess of the rate specified for Executive Schedule Level IV.

<sup>55</sup> P.L. 107-273, 116 Stat. 1768, 1858, January 2, 2002.

**Table 4. Commission Member Compensation**101<sup>st</sup> to 112<sup>th</sup> Congress

Compensation Level	Total Number of Commissions	Percentage of All Commissions
Reimbursement only	67	70%
Daily equivalent of Level IV of the Executive Schedule	28	29%
Daily equivalent of Level I of the Executive Schedule	1	1%

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

## Commission Staffing

Congressional commissions created to study a policy problem or conduct an investigation are usually authorized to hire a staff. Many of these commissions are specifically authorized to appoint a staff director and other personnel as necessary. The size of the staff is not generally specified, allowing the commission flexibility in judging its own staffing requirements. Typically, maximum pay rates will be specified, but the commission will be granted authority to set actual pay rates within those guidelines.

Most of these congressional commissions are also authorized to hire consultants and procure intermittent services. Many commissions are statutorily authorized to request that federal agencies detail personnel to assist the commission. Some commissions are also authorized to accept voluntary services.

Statutes creating congressional commissions often direct the General Services Administration (or another agency) to offer administrative support to the commission:

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act. These administrative services may include human resource management, budget, leasing, accounting, and payroll services.

## Duties and Reporting

Congressional commissions are usually statutorily directed to carry out specific tasks. These can include studying a problem, fact-finding, assessing conditions, conducting an investigation, reviewing policy proposals, crafting recommendations, and making feasibility determinations. For example, the proposed Commission on Catastrophic Disaster Risk and Insurance is directed

to assess the condition of the property and casualty insurance and reinsurance markets in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005, and the 4 major hurricanes that struck the United States in 2004; and the ongoing exposure of the United States to windstorms, earthquakes, volcanic eruptions, tsunamis, and floods; and recommend and report ... any necessary legislative and regulatory changes that will improve the domestic and

international financial health and competitiveness of such markets; and assure consumers of availability of adequate insurance coverage when an insured event occurs.<sup>56</sup>

## Final Reports

One of the primary functions of most congressional commissions is to produce a final report for Congress outlining their activities, findings, and legislative recommendations.<sup>57</sup> Most commissions are required to produce an interim, annual, or final report for transmittal to Congress, and sometimes to the President or executive department or agency heads, usually within a specified period of time. A commission may also be authorized to issue other recommendations it considers appropriate.

**Table 5. Reporting Requirements of Congressional Commissions**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Recipient	Total Number	Percentage of Total
Congress and the President	58	60%
Congress only	23	24%
Congress and an executive agency	15	16%

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

As seen in **Table 5**, the majority of commissions created in the past 20 years have submitted their work product to both Congress and the President. About one-quarter of commissions have submitted their work to Congress only. The remainder have submitted their work to both Congress and an executive branch agency.

Since the recommendations contained in a commission report are only advisory, no changes in public policy occur on the authority of a congressional commission. The implementation of such recommendations is dependent upon future congressional or executive branch action.

## Report Deadlines

Most commissions are given statutory deadlines for the submission of their final report. The deadline for the submission of final reports varies from commission to commission. Some commissions, such as the National Commission on the Cost of Higher Education,<sup>58</sup> have been given less than six months to submit their final report for Congress. Other commissions, such as the Antitrust Modernization Commission,<sup>59</sup> have been given three or more years to complete their work product. **Table 6** summarizes the deadlines for submission of final reports.

<sup>56</sup> Sec. 5, H.R. 537 (110<sup>th</sup> Congress).

<sup>57</sup> Some commissions, such as the Motor Fuel Tax Enforcement Advisory Commission (P.L. 109-59; 119 Stat. 2941) are not required to submit a final report, but instead make annual reports to Congress during the specified lifespan of the commission.

<sup>58</sup> P.L. 105-18; 111 Stat. 207 (June 12, 1997).

<sup>59</sup> P.L. 107-273; 116 Stat. 1856 (November 2, 2002).

**Table 6. Congressional Commission Final Report Deadlines**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Statutory Report Deadline	Number of Commissions
Six months or less	12
Between six months and one year	9
One year	17
Between one year and 18 months	14
Between 18 months and two years	7
Two years	17
Between two and three years	6
Three years or more	8
No specified deadline	2
No final report	4

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

As shown in **Table 6**, congressional commissions have been given a wide range of deadlines for the completion of the final reports to Congress. For the 96 identified commissions, final report deadlines ranged from 120 days to 4.5 years. Over 75% of the commissions had a final report deadline of two years or less.

### Linking Deadlines to Specific Events

The overall length of time for commissions to complete their final report also varies based on when the specified time limit begins. For the 92 commissions identified by the database search, four different events were used as the start point related to the report deadline: the enactment of the legislation, the appointment of the commission members, the date of the first meeting of the commission, or a specific calendar date. Therefore, a commission with a six month deadline from the first meeting of the commission will have more total time than a commission with a six month deadline linked to the enactment of the legislation. **Table 7** reports the frequency of use of each of these four events as starting points for report deadlines.

**Table 7. Frequency of Final Report Deadline Linked to Specific Events**  
 101<sup>st</sup> to 112<sup>th</sup> Congress

Event	Number of Commissions With Report Deadline Fixed to Event
Enactment of legislation	13
Appointment of commissioners	15
First meeting of commission	33
Specific calendar date	29
Unspecified	2
No final report	4

**Source:** CRS analysis of database query of Congressional Legislative Information System (LIS), 101<sup>st</sup> to 112<sup>th</sup> Congress.

As shown in **Table 7**, most commissions identified by the search linked the deadline for the submission of the final report to either the first meeting of the commission or a specific calendar date.

The length of time granted to a congressional commission for the completion of its work product is arguably one of the most important decisions facing legislators as they design a new commission. If the commission is given a short amount of time, the quality of its work product may suffer or the commission may not be able to fulfill its statutory mandate. Policymakers should also consider the amount of time necessary for “standing up” a new commission; the selection of commissioners, recruitment of staff, arrangement of office space, and other logistical matters may take six months or more from the date of enactment of commission legislation.

On the other hand, if the commission is given a long amount of time to complete its work product, it may undermine one of the primary legislative advantages of a commission, the timely production of expert advice on a current policy matter. If legislators seek to create a commission to address a pressing policy problem, a short deadline may be appropriate. In addition, the cost of a commission will increase with a longer deadline.

Legislators should also carefully select which event triggers the start of the deadline clock. Selecting a specific calendar date will ensure delivery of a final report at a predictable time, but may leave the commission less time to complete its work product than anticipated if there is a delay in member selection or staff hiring. Linking the deadline to a flexible date, such as the first meeting, will often give the commission a more predictable amount of time to complete its work, but may delay the actual calendar date of submission of the final report.

## Commission Powers

Most congressional commissions are directed to hold public meetings to discuss commission matters, usually at the call of the chair or the majority of the commission. In addition, most of these congressional commissions are statutorily empowered to hold fact-finding hearings and take testimony from witnesses.

Commissions are occasionally empowered to subpoena witnesses. For example, the proposed Hurricane Katrina Disaster Inquiry Commission<sup>60</sup> is authorized to issue subpoenas by agreement of the chair and vice chair, or by the affirmative vote of eight commission members.<sup>61</sup> Additional statutory language provides for the enforcement of the subpoenas in federal court.

Some commissions are empowered to secure information from federal agencies. For example, the proposed Hurricane Katrina Disaster Inquiry Commission would be authorized to

secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the government, information, suggestions, estimates, and statistics ... [e]ach department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information ... upon request made by the chairman.<sup>62</sup>

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<sup>60</sup> H.R. 265 (110<sup>th</sup> Congress).

<sup>61</sup> Sec. 6(a)(2), H.R. 265 (110<sup>th</sup> Congress).

<sup>62</sup> Sec. 6(c), H.R. 265 (110<sup>th</sup> Congress).



In addition, Congress occasionally directs specific executive branch agencies to assist a commission in the completion of its work.

Commissions may also be given the following powers: the authority to contract with public agencies and private firms, the authority to use the mails in the same manner as departments and agencies of the United States, and the authority to accept gifts and donations.

## **Commission Funding**

Congressional commission costs vary widely, ranging from several hundred thousand dollars to over \$10 million. Overall expenses for any individual commission are dependent on a variety of factors, the most important of which are the number of paid staff and duration of the commission. Many commissions have few or no full-time staff; others employ large numbers, such as the National Commission on Terrorist Attacks Upon the United States,<sup>63</sup> which had a full-time paid staff of 80. Additionally, some commissions provide compensation to members; others only reimburse members for travel expenses. Many commissions finish their work and terminate within a year of creation; in other cases, work may not be completed for several years.

Secondary factors that can affect commission costs include the number of commissioners, how often the commission meets or holds hearings, and the number and size of publications the commission produces. Although congressional commissions are primarily funded through congressional appropriations, many commissions are statutorily authorized to accept donations of money and volunteer labor, which may offset costs.

## **Rules of Procedure**

Most statutes authorizing the creation of congressional commissions do not specify how the commission should conduct its business. Instead, the statutory language is typically either silent on internal commission procedure or specifically empowers the commission to determine its own rules of procedure. For example, the statute authorizing the National Gambling Impact Study Commission provides that

The Commission may establish by majority vote any other rules for the conduct of the Commission's business, if such rules are not inconsistent with this Act or other applicable law.<sup>64</sup>

Certain rules of internal procedure, however, are found in the language of most statutes that establish commissions. For instance, many commission statutes provide that votes taken by the commission will be by simple majority, or that a quorum will consist of a particular number of commissioners.<sup>65</sup> Similarly, commissions that are given subpoena authority are usually statutorily directed as to who on the commission has the authority to issue the subpoenas.<sup>66</sup> Many

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<sup>63</sup> P.L. 107-306; 116 Stat. 2408.

<sup>64</sup> P.L. 104-169; 110 Stat. 1482 (October 3, 1996).

<sup>65</sup> For example, the statute creating the Brown vs. Board of Education 50<sup>th</sup> Anniversary Commemorative Commission (P.L. 107-41; 115 Stat. 206) provides that "a majority of members" will form a quorum, while the statute creating the Commission on the National Military Museum (P.L. 106-65; 113 Stat. 880) provides that a specific number of commissioners (six) will form a quorum.

<sup>66</sup> For example, see P.L. 107-306, which created the National Commission on Terrorist Attacks Upon the United States.

commissions provide that rules regarding staff hires will be determined by the commission. For instance, the statute authorizing the Commission on Protecting and Reducing Government Secrecy states that

The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.<sup>67</sup>

## Options for Procedural Rules

Absent statutory guidance (either in general statutes or in individual statutes authorizing commissions), commissions vary widely in how they adopt their procedures. In general, three models exist: formal written rules, informal rules, and norms. Any individual commission may make use of all three of these models for different types of decision making.

(1) **Formal Written Rules:** Some commissions choose to formalize their procedures for meetings and hearings. For example, the United States - China Economic and Security Review Commission<sup>68</sup> established written rules of procedure for the conduct of both meetings of the commission and for hearings held by the commission. The rules include procedures for: selection of chairpersons, proxy use, budgeting, expenditures of money, hiring and firing of staff, commissioner ethics, and periodic revision of the rules.<sup>69</sup> Changes to the rules require a majority vote of the commission as well as review by outside counsel.<sup>70</sup> The commission's written rules for hearings include procedures for: the hearing structure, the selection of panelists, generation of questions, opening statements, and post-hearing recommendations to Congress.<sup>71</sup>

(2) **Informal Rules:** Some commissions adopt set processes for establishing rules piecemeal as the need arises. For example, the National Surface Transportation Policy and Revenue Commission<sup>72</sup> did not establish formal written rules of procedure.<sup>73</sup> However, the members of the commission did take occasional votes to clarify particular procedures that the commission would use for meetings. For example, at the first meetings of the commission, members voted by simple majority as to whether future votes of commission members could be conducted by proxy.<sup>74</sup> Although the result of this vote was used as precedent for the remainder of the commission's existence, neither the result of the vote, the rule, or the rules governing the vote itself were formalized in a written fashion.<sup>75</sup>

(3) **Norms:** Many advisory commissions choose not to create formal rules for commission meetings or hearings. Instead, these commissions rely on a collegial relationship between

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<sup>67</sup> P.L. 103-236; 108 Stat 255 (April 30, 1994).

<sup>68</sup> P.L. 106-398; 114 Stat. 1654A-334 (October 30, 2000).

<sup>69</sup> United States-China Economic and Security Review Commission, Commission Rules, adopted June 6, 2003.

<sup>70</sup> *Ibid.*, rule 19.

<sup>71</sup> United States-China Economic and Security Review Commission, Procedures and Responsibilities of Hearing Cochairs.

<sup>72</sup> P.L. 109-59; 119 Stat. 1470 (August 10, 2005).

<sup>73</sup> Interview with Susan Binder, former Executive Director, National Surface Transportation Policy and Revenue Commission, July 10, 2008.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

commission members and staff, and conduct the meetings in a procedurally flexible manner. In some cases, deference to the wishes of the chairman is followed for procedural matters. For instance, the Congressional-Executive Commission on China does not operate within a system of formal rules of procedure.<sup>76</sup> Commission members make collective agreements about operational issues such as the recording of minutes or voting procedure, but these agreements are created and enforced by collective norms, not formal action or votes.<sup>77</sup> Similarly, the National Surface Transportation Infrastructure Finance Commission<sup>78</sup> relied on member collegiality and deference to the chair and co-chair of the commission for procedural decisions.<sup>79</sup>

## **Operational Considerations**

The choice to adopt written rules or rely on informal norms to guide commission procedure may be based on a variety of factors, such as the size of the commission, frequency of meetings, commission member preferences regarding formality, the level of collegiality among members, and the amount of procedural guidance provided by the commission's authorizing statute. Regardless of how procedural issues are handled, procedures for decision-making regarding the following operational issues may be important for the commission to consider at the outset of its existence:

- eligibility to vote and proxy rules
- staff hiring, compensation, and work assignments
- hearings, meetings, and field visits
- non-staff expenditures and contracting
- reports to Congress
- budgeting
- agenda setting
- modification of existing rules

## **Commission Termination**

Congressional commissions are usually statutorily mandated to terminate. Termination dates for most commissions are linked to either a fixed period of time after the establishment of the commission, the selection of members, or the date of submission of the commission's final report. Alternatively, some commissions are given fixed calendar termination dates.

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<sup>76</sup> Interview with Douglas Grob, Staff Director, July 10, 2008.

<sup>77</sup> Ibid.

<sup>78</sup> P.L. 109-59; 119 Stat. 1962 (August 10, 2005).

<sup>79</sup> Interview with Jack Wells, staff director, July 10, 2008.

## Key Considerations for Congress

The following are key considerations for Congress in forming a commission.

### General<sup>80</sup>

- What is the purpose of the proposed commission?
- How long will the commission have to complete its mission?

### Membership

- How will the members of the commission be appointed?
- Will commission members be compensated?

### Staffing

- Will the commission have an executive director?
- Who will have the authority to hire staff?
- Can the commission procure temporary and intermittent labor?
- Can staff be detailed to the commission?

### Duties

- Will the commission produce a final report or interim reports?
- Who will receive the work product of the commission?

### Powers

- Will the commission have the power to hold hearings?
- Can the commission enter into contracts for services?
- Will the commission have subpoena power?
- Can the commission accept gifts?

### Funding

- How much funding will the commission receive?
- Will funding be available on an annual basis or until expended?

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<sup>80</sup> These considerations are based, in part, on Campbell, *Discharging Congress*, p. 7, Table 1.3.

## Other

- Who will provide administrative support to the commission?
- What procedural rules should be statutory? What will be left to the commission?
- Where will the commission and its staff be located?

## Congressional Commissions, 101<sup>st</sup> to 112<sup>th</sup> Congress

The tables that follow provide information on the 96 congressional commissions identified by the database search of the 101<sup>st</sup> through 112<sup>th</sup> Congresses. For each commission, the following information is provided: the name of the commission; the type of commission; and the public law creating the commission and date of enactment.

**Table 8. Congressional Commissions Created During the 112<sup>th</sup> Congress**

Commission	Type	Authority
National Commission on the Structure of the Air Force	Policy	P.L. 112-239 January 2, 2013
Commission on Long-Term care	Policy	P.L. 112-240 January 2, 2013
World War I Centennial Commission	Commemorative	P.L. 112-272 January 15, 2013
Commission to Eliminate Child Abuse and Neglect Fatalities	Policy	P.L. 112-275 January 14, 2013

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 9. Congressional Commissions Created During the 111<sup>th</sup> Congress**

Commission	Type	Authority
Indian Law and Order Commission	Policy	P.L. 111-211 July 29, 2010
Financial Crisis Inquiry Commission	Investigative	P.L. 111-21 May 20, 2009
Ronald Reagan Centennial Commission	Commemorative	P.L. 111-25 June 2, 2009
Foreign Intelligence and Information Commission	Policy	P.L. 111-259 October 7, 2010
Independent Panel to Assess the Quadrennial Defense Review	Policy	P.L. 111-84 October 28, 2010

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 10. Congressional Commissions Created During the 110<sup>th</sup> Congress**

Commission	Type	Authority
Commission on the Abolition of the Transatlantic Slave Trade	Commemorative	P.L. 110-183 February 5, 2008
Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism	Policy	P.L. 110-53 August 3, 2007
Commission on Wartime Contracting in Iraq and Afghanistan	Investigative	P.L. 110-181 January 28, 2008
Congressional Commission on the Strategic Posture of the United States	Policy	P.L. 110-181 January 28, 2008
National Commission on Children and Disasters	Policy	P.L. 110-161 December 26, 2007
Genetic Nondiscrimination Study Commission	Policy	P.L. 110-233 October 3, 2008
Congressional Oversight Panel (Emergency Economic Stabilization Act)	Policy/Investigative	P.L. 110-343 October 3, 2008
Commission to Study the Potential Creation of a National Museum of the American Latino	Policy	P.L. 110-229 May 8, 2008

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 11. Congressional Commissions Created During the 109<sup>th</sup> Congress**

Commission	Type	Authority
Commission on the Implementation of the New Strategic Posture of the United States	Policy	P.L. 109-163; 119 Stat. 343 Jan 6, 2006
Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack	Policy	P.L. 109-163; 119 Stat. 3434 Jan 6, 2006
Human Space Flight Independent Investigation Commission	Investigative	P.L. 109-155; 119 Stat. 2941 December 30, 2005
Motor Fuel Tax Enforcement Advisory Commission	Policy	P.L. 109-59; 119 Stat. 1959 August 10, 2005
National Surface Transportation Infrastructure Financing Commission	Policy	P.L. 109-59; 119 Stat. 1962 August 10, 2005
National Surface Transportation Policy and Revenue Commission	Policy	P.L. 109-59; 119 Stat. 1470 August 10, 2005



Commission	Type	Authority
United States Commission on North American Energy Freedom	Policy	P.L. 109-58; 119 Stat. 1064 August 8, 2005

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 12. Congressional Commissions Created During the 108<sup>th</sup> Congress**

Commission	Type	Authority
Commission on the Abraham Lincoln Study Abroad Fellowship Program	Policy	P.L. 108-199; 118 Stat. 435 January 23, 2003
Commission on the National Guard and Reserve	Policy	P.L. 108-375; 118 Stat. 1880 October 28, 2004
Commission on Review the Overseas Military Facility Structure of the United States	Policy	P.L. 108-132; 117 Stat. 1382 November 22, 2003
Helping to Enhance the Livelihood of People Around the Globe Commission	Policy	P.L. 108-199; 118 Stat. 101 January 23, 2003
National Commission on Small Community Air Service	Policy	P.L. 108-176; 117 Stat. 2549 October 18, 2003
National Prison Rape Reduction Commission	Policy	P.L. 108-79 ; 117 Stat. 980 September 4, 2003
Veterans' Disability Benefits Commission	Policy	P.L. 108-136; 117 Stat. 1676 November 24, 2003

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 13. Congressional Commissions Created During the 107<sup>th</sup> Congress**

Commission	Type	Authority
Antitrust Modernization Commission	Policy	P.L. 107-273; 116 Stat. 1856 November 2, 2002
Benjamin Franklin Tercentenary Commission	Commemorative	P.L. 107-202; 116 Stat. 739 July 24, 2002
Brown v. Board of Education 50 <sup>th</sup> Anniversary Commission	Commemorative	P.L. 107-41; 115 Stat. 226 September 18, 2001
Guam War Claims Review Commission	Investigative	P.L. 107-333; 116 Stat. 2873 December 12, 2002
National Commission for the Review of the Research and Development Programs of the United States Intelligence Community	Policy	P.L. 107-306; 116 Stat. 2437 November 27, 2002

Commission	Type	Authority
National Commission on Terrorist Attacks Upon the United States	Investigative	P.L. 107-306; 116 Stat. 2408 November 27, 2002
National Museum of African American History and Culture Plan for Action Presidential Commission	Policy	P.L. 107-106; 115 Stat. 1009 December 28, 2001

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 14. Congressional Commissions Created During the 106<sup>th</sup> Congress**

Commission	Type	Authority
Abraham Lincoln Bicentennial Commission	Commemorative	P.L. 106-173; 114 Stat. 14 February 25, 2000
Commission on Affordable Housing and Health Care Facility Needs in the 21 <sup>st</sup> Century	Policy	P.L. 106-74; 113 Stat. 1106 October 20, 1999
Commission on Indian and Native Alaskan Health Care	Policy	P.L. 106-310; 114 Stat. 1216 October 17, 2000
Commission on Ocean Policy	Policy	P.L. 106-256; 114 Stat. 645 October 7, 2000
Commission on the National Military Museum	Policy	P.L. 106-65; 113 Stat. 880 October 5, 1999
Commission on Victory in the Cold War	Commemorative	P.L. 106-65; 113 Stat. 765 October 5, 1999
Commission to Assess United States National Security Space Management and Organization	Policy	P.L. 106-65; 113 Stat. 813 October 5, 1999
Dwight D. Eisenhower Memorial Commission	Commemorative	P.L. 106-79; 113 Stat. 1274 October 25, 1999
James Madison Commemoration Commission	Commemorative	P.L. 106-550; 114 Stat. 2745 December 19, 2000
Judicial Review Commission on Foreign Asset Control	Policy	P.L. 106-120; 113 Stat. 1633 December 3, 1999
Lands Title Report Commission	Policy	P.L. 106-568; 114 Stat. 2923 December 27, 2000
Millennial Housing Commission	Policy	P.L. 106-74; 113 Stat. 1070 October 20, 1999
National Commission for the Review of the National Reconnaissance Office	Policy	P.L. 106-120; 113 Stat. 1620 December 3, 1999
National Commission to Ensure Consumer Information and Choice in the Airline Industry	Policy	P.L. 106-181; 114 Stat. 105 April 15, 2000

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 15. Congressional Commissions Created During the 105<sup>th</sup> Congress**

Commission	Type	Authority
Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development	Policy	P.L. 105-255; 112 Stat. 1889 October 14, 1998
Commission on Military Training and Gender-Related Issues	Policy	P.L. 105-85; 111 Stat. 1750 November 18, 1997
National Bipartisan Commission on the Future of Medicare	Policy	P.L. 105-33; 111 Stat. 347 October 5, 1997
National Commission on the Cost of Higher Education	Policy	P.L. 105-18; 111 Stat. 207 June 12, 1997
National Commission on Terrorism	Policy	P.L. 105-277; 112 Stat. 2681 October 21, 1998
National Health Museum Commission	Policy	P.L. 105-78; 111 Stat. 1525 November 13, 1997
Presidential Advisory Commission on Holocaust Assets in the United States	Investigative	P.L. 105-186; 112 Stat. 611 June 23, 1998
Twenty-First Century Workforce Commission	Policy	P.L. 105-220; 112 Stat. 1087 October 7, 1998
Trade Deficit Review Commission	Policy	P.L. 105-277; 112 Stat. 2681 October 21, 1998
United States Commission on International Religious Freedom	Policy	P.L. 105-292; 112 Stat. 2797 October 27, 1998
Web-Based Education Commission	Policy	P.L. 105-244; 112 Stat. 1822 October 7, 1998
Women's Progress Commemoration Commission	Commemorative	P.L. 105-341; 112 Stat. 3196 October 31, 1998

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 16. Congressional Commissions Created During the 104<sup>th</sup> Congress**

Commission	Type	Authority
Commission on Maintaining United States Nuclear Weapons Expertise	Policy	P.L. 104-201; 110 Stat. 2843 September 23, 1996
Commission on Service members and Veterans Transition Assistance	Policy	P.L. 104-275; 110 Stat. 3346 October 9, 1996
Commission on the Advancement of Federal Law Enforcement	Policy	P.L. 104-132; 110 Stat. 1305 April 24, 1996
Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction	Policy	P.L. 104-293; 110 Stat. 2711 October 11, 1996
National Gambling Impact Study Commission	Policy	P.L. 104-169; 110 Stat. 1482 October 3, 1996

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 17. Congressional Commissions Created During the 103<sup>rd</sup> Congress**

Commission	Type	Authority
Commission on Leave	Policy	P.L. 103-3; 107 Stat. 23 February 5, 1993
Commission on Protecting and Reducing Government Secrecy	Policy	P.L. 103-236; 108 Stat. 525 April 30, 1994
Commission on the Roles and Capabilities of United States Intelligence Community	Policy	P.L. 103-359; 108 Stat. 3456 October 14, 1994
National Bankruptcy Review Commission	Policy	P.L. 103-394; 108 Stat. 4147 October 22, 1994
National Commission on Crime Control and Prevention	Policy	P.L. 103-322; 108 Stat. 2089 September 13, 1994

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 18. Congressional Commissions Created During the 102<sup>nd</sup> Congress**

Commission	Type	Authority
Commission on the Bicentennial of the United States Capitol	Commemorative	P.L. 102-392; 106 Stat. 1726 October 6, 1992
Commission on Broadcasting to the People's Republic of China	Policy	P.L. 102-138; 105 Stat. 705 October 28, 1991
Commission on Child and Family Welfare	Policy	P.L. 102-521; 106 Stat. 3406 October 25, 1992
Congressional Commission on the Evaluation of Defense Industry Base Policy	Policy	P.L. 102-558; 106 Stat. 4198 October 28, 1992
National Education Commission on Time and Learning	Policy	P.L. 102-62; 105 Stat. 306 June 27, 1991
National Commission on Reducing Capital Gains for Emerging Technology	Policy	P.L. 102-245; 106 Stat. 21 February 14, 1992
National Commission on Rehabilitation Services	Policy	P.L. 102-569; 106 Stat. 4344 October 29, 1992
National Commission on the Future Role of United States Nuclear Weapons	Policy	P.L. 102-172; 105 Stat. 1150 November 26, 1991
National Commission to Promote a Strong Competitive Airline Industry	Policy	P.L. 102-581; 106 Stat. 4891 October 31, 1992
Thomas Jefferson Commemoration Commission	Commemorative	P.L. 102-343; 106 Stat. 915 October 17, 1992

**Source:** Database query of the congressional Legislative Information System (LIS).

**Table 19. Congressional Commissions Created During the 101<sup>st</sup> Congress**

Commission	Type	Authority
Civil War Sites Advisory Commission	Policy	P.L. 101-628; 104 Stat. 4504 November 28, 1990
National Commission on Manufactured Housing	Policy	P.L. 101-625; 104 Stat. 4413 November 28, 1990
Commission on Legal Immigration Reform	Policy	P.L. 101-649; 104 Stat. 5001 November 29, 1990
Commission on Management of the Agency for International Development Programs	Policy	P.L. 101-513; 104 Stat. 2022 November 5, 1990
Commission on State and Private Forests	Policy	P.L. 101-624; 104 Stat. 3548 November 28, 1990

Commission	Type	Authority
Defense Base Closure and Realignment Commission	Policy	P.L. 101-510; 104 Stat. 1808 November 5, 1990
Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives	Policy	P.L. 101-379; 104 Stat. 478 October 18, 1990
National Commission on American Indian, Alaska Native, and Native Hawaiian Housing	Policy	P.L. 101-235; 103 Stat. 2052 December 15, 1989
National Commission on Defense and National Security	Policy	P.L. 101-511; 104 Stat. 1899 November 5, 1990
National Commission on Financial Institution Reform, Recovery, and Enforcement	Policy	P.L. 101-647; 104 Stat. 4889 November 29, 1990
National Commission on Judicial Impeachment	Policy	P.L. 101-650; 104 Stat. 5124 December 1, 1990
National Commission on Severely Distressed Public Housing	Policy	P.L. 101-235; 103 Stat. 2048 December 15, 1989

**Source:** Database query of the congressional Legislative Information System (LIS).

## Author Contact Information

Matthew Eric Glassman  
Analyst on the Congress  
mglassman@crs.loc.gov, 7-3467

Jacob R. Straus  
Analyst on the Congress  
jstrauss@crs.loc.gov, 7-6438



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# Creating an Angel: Congressional Delegation to Ad Hoc Commissions

COLTON C. CAMPBELL  
*Florida International University*

## *Abstract*

Congress has historically delegated authority to "angels" to accomplish ends the Congress could not. An increasingly popular form of congressional delegation has been to entrust temporary, independent advisory bodies to render nonpartisan recommendations and advice. Many hypotheses have been advanced to explain what motivates Congress to delegate, and few of these focus on delegation to ad hoc commissions. Most portray delegation as an advantageous way for legislators to favor constituents or shift blame in order to maximize benefits and minimize losses. Others hypothesize that desired outcomes can be achieved only by delegating authority to someone else. This perspective outlines the need to delegate as a principal-agent issue, suggesting that notable benefits, like collective action, are realized through organizations. While each perspective provides some clues as to why Congress will cede authority over policy making to an ad hoc commission, neither fully captures every decision to delegate. However, according to the architects of commissions, not every commission is created with the expectation of doing what members want to avoid or want to do but not openly. The varied reasons suggested in interviews and the resulting commissions may be classified in three basic categories: to take advantage of expertise that is unavailable through standard institutional resources or prohibitively costly to obtain; to shift the blame for unpopular decisions; and, a third factor which does not appear in existing literature, to keep legislators' workloads manageable.

An important yet under-investigated area of congressional delegation has been the creation of temporary, independent advisory bodies entrusted with the task of rendering nonpartisan recommendations. The term "commission" is a prevalent catch phrase, but these entities manifest a varied nomenclature. Whether designated as blue-ribbon commissions, committees, councils, boards, or task forces, they are composed mostly of nonelected officials and deal with major social crises, policy issues, and studies of a complex, technical nature. With variations to fit the circumstances, Congress uses commissions to deal with issues as disparate as pay raises, obsolete military bases, the MX missile, the budget, and Social Security. In recent years ad hoc commissions have proliferated, and their visibility has increased as their mandates have broadened to parallel the func-

tions of those elected to govern. Why and when does Congress formulate national policy by these groups rather than by the normal congressional process?

Commissions, sometimes referred to as the "fifth arm of government,"<sup>11</sup> are formal groups established by statute or by degree for the general purpose of obtaining advice, developing commonsense recommendations on complex policy issues, and finding broadly acceptable solutions to contentious problems. The early work of Dean (1969) provides a clear understanding of these entities and their principal characteristics as enacted by Congress: They are multi-member in composition, with each commissioner sharing equally the responsibility for findings and recommendations; they are temporary, limited more or less to a definite time to complete work and then depart; they have a policy formulation responsibility limited to a particular issue or group of related policy questions; they must have official status; they are largely advisory and rarely have true power to implement their recommendations; and they are composed in whole or in part of persons drawn from private life. In most cases ad hoc commissions hold hearings, request submitted written views of interested persons and organizations, conclude their work with publication of a report on the subject assigned to them, and terminate shortly thereafter.

The average life of a commission is between one and two years, from the time of creation to the submission of its final report to Congress. The commission's mandate includes a termination date and occurs not more than three years after the date of creation, or at a specified date, usually 30 to 90 days after submission of a written report. Membership ranges anywhere from nine to 20 commissioners—15 being the normal number of members. The final number of commissioners generally accommodates equal appointment by both the majority and minority in both the House and the Senate as well as by the president.

#### CONGRESS, DELEGATION, AND THE POLITICS OF COSTLY POLICY MAKING

There are two principal explanations for commissions—expertise and blame avoidance. Most congressional scholars who look at the question portray delegation as an advantageous way for legislators to favor constituents or shift blame in order to maximize benefits and minimize losses. Others hypothesize that desired outcomes can be achieved only by delegating authority to someone else. This perspective outlines the need to delegate as a principal-agent issue, suggesting that notable benefits, like collective action, are realized through organizations. Each of these explanations has been presented as if it alone explains commission creation. However, personal interviews and exchanges with the architects and others close to ad hoc commissions reveal a wide range of justifications for delegation. No single theory explains the creation of all commissions. The data indicate that commissions are established for expertise and blame avoidance, but they also reveal a new reason—workload management. Workload is the second most frequently cited reason mentioned by practitioners for establishing commissions, although it is a factor which does not appear in existing literature. Delegation to each of the three commission types has its own logic. Which of the three reasons dominates



depends in large part on the politics surrounding the issue and the nature of the policy problem.

The literature on delegation contains several variations on the theme that policymaking is sometimes so costly that it must be delegated to others, and that people's motives in the political arena are essentially the same as their motives in the marketplace—that is, they are based on self-interest (Mayhew 1974; Fiorina 1986; Arnold 1990). Traditional rational-choice theories and the principal-agent models are the predominant perspectives on delegation, and are firmly grounded in the conception of politicians as “utility maximizers.” They assume politicians act in ways that further their objectives in as efficient and effective a way as possible. However, the objective or “utility” takes on different meaning for each.

Modern theories of legislative behavior begin with David Mayhew's book, *Congress: The Electoral Connection*, which suggests that congressional action has a direct electoral connection, in which legislators are single-minded seekers of reelection, motivated primarily by self-interest. Individuals may enter Congress with altruistic intentions, but their behavior in office is best explained by the “electoral connection”: the need for reelection (Mayhew 1974). As a consequence lawmakers take into serious consideration the preferences of voters in their districts, especially on issues of potentially high salience—that is, highly visible to the public (Kingdon 1989; Arnold 1990). Congress is thus organized institutionally to promote the fundamental goal of reelection. Members follow conservative strategies to capitalize upon particularized benefits, to respond to organized groups, to claim as much credit as possible, and to mobilize only when they can claim credit (Mayhew 1974). The incentive to delegate, therefore, must offer legislators some sort of particularized benefit or other electoral connection.

Continuing Mayhew's logic, others developed what has come to be known as the distributive theory of legislative organization (Shepsle 1979; Fiorina 1981; Weingast and Marshall 1988; Krehbiel 1991). According to this view, the decision to delegate is a function of the political costs and benefits for which elected officials will be held electorally accountable. Legislative action is framed by a desire to maximize net benefits to districts in order to increase the chances for reelection. The advantage of delegation is that it enables individual legislators to shift blame for political costs from themselves and onto other organizations, but at the cost of legislators not being able to claim full credit for any perceived benefits. Delegation is a function of this trade-off in attributable costs and benefits. Thus, congressional decisions to delegate occur when the decrease in attributable costs is greater than the decrease in attributable benefits.

Making a similar argument, Arnold (1990) notes that legislators are ever mindful of the direct correlation between their individual performance and the voting booth. According to what he calls the “incumbent performance rule,” voters are inclined to punish legislators for undesirable effects only if there are both identifiable governmental actions and visible individual contributions. Responsibility for making unpleasant decisions is, therefore, frequently delegated to the president, bureaucrats, regulatory commissions, judges, state and local officials, or temporary commissions as a procedural strategy for “masking” legisla-

tors' individual contributions (Arnold 1990, 101). This is especially prevalent when there is a desire to shed policymaking tasks that are too onerous or with issues that are likely to provoke controversy with voters. Challengers will take full advantage of reminding citizens on an issue as traceable as legislative salaries, for example. Delegation to the Quadrennial Pay Raise Commission, for instance, was instituted to distance Congress from a politically delicate decision—going on record in favor of raising its own pay. The commission label provided a shield against public outcry and a way to explain a difficult vote back home (Davidson 1986). It also broke the chain of traceability for individual legislators.

Weaver (1987) contends that most officeholders seek, above all, not to maximize credit they receive, but to minimize blame. This results from voters' tendency to be more sensitive to their real or potential losses than to their gains. That is, persons who have suffered losses are more inclined to notice loss, to feel aggrieved and to act on that grievance, than those who gain are to notice and act on their gain. Weaver (1987) suggests four situations that may lead to blame-avoiding behavior: when there is a zero-sum conflict among the policymakers' constituents; when all possible alternatives have strong negative consequences for at least some of the policymakers' constituents; when constituency opinion is overwhelmingly on a single side of an issue; or when the personal or policy interests of the policymaker and clientele are opposed. Incentives to avoid blame lead members of Congress to adopt a distinctive set of political strategies, such as "passing the buck" or "defection," that are different from those they would follow if they were primarily interested in pursuing good policy or maximizing credit-claiming opportunities (Weaver 1987, 371). These strategies lead to important policy effects such as surrendering discretion even when it offers important credit-claiming opportunities.

The second theory attributes delegation to a series of principal-agent problems. A legislator's dilemma can be characterized as one of a broad class of phenomena known as agency problems (Lupia and McCubbins 1994). Agency problems involve at least two players: a principal, who holds the authority to take certain actions, and an agent, to whom the principal has delegated some authority. In the legislative policy-making setting Congress as a whole acts as a principal that delegates to an expert agent the task of proposing alternatives to an existing policy. Certain forms of congressional delegation, therefore, are seen as rational.

By delegating powers lawmakers can overcome some of the inefficiencies inherent in the legislative process. For example, given some of the structural and procedural flaws of Congress, the benefits of collective action are realized through delegation (Mayer 1995). Efficiency gains accrue to both principals and agents if tasks are delegated to those with a comparative advantage in performing them (Kiewiet and McCubbins 1991). So often legislators, in seeking to maximize their self-interest, have incentives to behave in ways that are not in the interest of the institution. Members are uncertain as to which strategies other members will pursue, so coordination may not always be achieved. While it is possible for uncoordinated groups of individuals to overcome collective action problems, the



benefits of collective action are most often realized by legislators through organizations to which they have delegated the authority to take action (Axelrod 1984; Taylor 1987). Therefore, within Congress, devising specific details necessary to implement rules and regulations can be delegated to specialized organizations, taking away from legislators the responsibility of developing the needed expertise, while also removing the incentive for individual legislators to shirk this responsibility. Authority is transferred to one or more agents because as Kiewiet and McCubbins (1991, 28) state: "It is the delegation of authority to a central agent to lead or manage the organization that is the key to overcoming problems of collective action. Agents performing as leaders or managers must be endowed with the resources they need to discharge their duties effectively."

The delegation of authority and responsibility from principal to agent can also be vital to the division of labor and development of specialization. Moe (1984, 756) describes this as "an analytic expression of the agency relationship, in which one party, the principal, considers entering into a contractual relationship with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal." Congressional parties have opted, for instance, to delegate authority to grapple with the contemporary complexity of the appropriations process (Kiewiet and McCubbins 1991, 19).

Previous works on delegation mostly provide generalities about delegation, and they fail to provide predictions. The rational-choice and principal-agent models only approximate congressional delegation. Moreover, they do not explain variations in Congress's decisions to delegate over time or across issue areas. Consequently, they fail to provide a consistent account of which policy areas are decided by Congress and which are handed to ad hoc commissions. Their arguments are either abstract and nonempirical or focus on post hoc rationalizations of created commissions. In short, existing theories supply an incomplete picture of the conditions under which Congress uses commissions, the nature of the policy problems which commissions must address to supply solutions, and the politics surrounding these issues.

The practicality of models of politicians as "utility maximizers" who act to further their objectives in as efficient and effective a way as possible is questionable. Among the impediments to rationality when applied to the legislative way of life are the difficulty of distinguishing facts from values and of analytically teasing out ends from means, the hard task of obtaining agreement among legislators on predominant goals, the changing and ambiguous nature of many policy goals on Capitol Hill, the time constraints of decision making, and the inability of lawmakers to handle a vast amount of information at any one time. Other problems include the inability of members of Congress to give their undivided attention to a single problem or decision, costs of information acquisition, failure to secure all possible data because of time constraints, and an inability to predict all consequences of a given choice.

How, then, can we explain situations in which we observe Congress, with sufficient information at hand to make a decision or with a definite interest in the policy selected, voluntarily delegate authority to a commission? To chart the



motives that account for Congress's delegation to commissions, we must consider conditions other than highly distasteful legislation demanding action, or the broad class of phenomena known as agency problems. We need to recognize that the circumstances that surround the creation of these bodies are quite complex and vary widely from issue to issue. Each form of delegation is seen to have its own set of circumstances.

#### RESEARCH METHOD

Data for this study was culled from approximately fifty interviews on Capitol Hill and a descriptive, analytical summary of the steps in the legislative and political history of each commission examined in the study. This methodological approach proved to be more illuminating than rational-choice models because of the natures of the various issues and the evidence available about them. Throughout the interviews, respondents were guaranteed anonymity. A set of general open-ended questions reflecting the major topics covered in the study were used as the basis for the initial set of interviews. These questions were primarily concerned with the factors that influence members of Congress to delegate. After the initial interviews, additional questions were crafted that sought to clarify both the respondents' descriptions and the previous questions.

In the 103rd Congress (1993-95) and the early part of the 104th Congress (1995-97) ninety-two congressional offices introduced legislation which included proposals for ad hoc commissions. Of these, personal and committee staff associated with thirty-eight House and nine Senate offices agreed to interviews. In the House, there was a response rate of 48 percent; twenty-five Democratic offices and thirteen Republican offices. In the Senate, there was a response rate of 69 percent: five Democratic offices and four Republican offices. The overall success rate in getting interviews was 54 percent. Additional interviews were conducted with respondents who were not a part of Congress during the course of this study but who, at some point, were a part of the commission process. For example, interviews were held with two former committee and personal staffers who had worked on legislation that led to the creation of an ad hoc commission, and with a former member of Congress. These respondents were typically recommended by other respondents.

A range of public records were also examined. Transcripts of committee and subcommittee hearings as well as the *Congressional Record* of the debates surrounding each case study commission were studied to assess the positions taken by the key legislators in the formation of each case study commission. The language of the legislative bills creating the commissions was analyzed. Major Congressional Quarterly publications were also consulted.<sup>2</sup>

#### THE DECISION TO DELEGATE

Once an issue is brought to the forefront of the congressional agenda and hence to a decision, a majority of legislators must decide what sort of action to

take. At this stage of the legislative process issues are discussed, possible solutions are explored, and winning coalitions agree on one of three choices: legislation, obfuscation (intentional inaction), or delegation.

Legislation is the most important policy-making device open to Congress. Through it Congress makes changes affecting the economic and social order of the entire nation. Legislation is the product of a combination of forces acting upon Congress. Lawmakers legislate for personal gain on a variety of issues that are visible, salient and solvable when they feel particularly well-informed about a policy area, when there is substantial agreement on the proper way to deal with a problem, when legislative action will maximize net benefits to their districts and thus help reelection, with routine reauthorizations, with issues that are noncontroversial, and as a means of modifying or correcting past policy decisions (Thomas and Lamb 1964; Davidson and Oleszek 1994).

Periodically, however, Congress cannot overcome its own shortcomings to craft legislation. In a wide variety of issue domains, Congress lacks necessary information that is either unavailable or prohibitively costly to obtain. Policy-making may, therefore, be so expansive that Congress cannot bear the costs. In such an event, the legislative branch must rely on information and expertise of others. Various pieces of a policy puzzle are given to others for resolution, and the most legislators can do may be to lay down the basic outlines of public policy and assemble the recommended solutions into a final choice. Delegation helps overcome the uncertainty that attends imperfect information.

A lack of needed information can also give Congress reason not to legislate. Imperfect information may result from considerable uncertainty (Katz 1993), which makes it difficult for a legislator to know how a selected policy will affect the country or, more importantly, his or her constituents (Martin 1995). Delegating to a panel of experts in specific situations to reduce legislators' doubt may make sense. Information may also be missing when Congress is uncertain about future contingencies, that is, about what problems are likely to arise in the future. Still another kind of information that may be missing involves the political impacts of policies and members' vulnerability to reelection pressures. Even with the needed technical information, a legislator may be uncertain about constituents' responses to the results of any particular choice of policy. For the risk-averse lawmaker, the easiest way out of this problem may be to shift responsibility for decision making.

From time to time Congress will purposely pursue the opposite course of legislation by obfuscating. An important value of forestalling precipitate action is that it allows for policy incubation, which keeps a proposal alive while it picks up support or waits for a better climate, or while consensus begins to form (Polsby 1969). This enables Congress to gestate the issue while the policy matures, but also to refine solutions to the problem. As a legislative assistant for a western Republican representative explained: "You just don't move 800-pound gorillas through Congress overnight." "If you are hasty in making decisions, you might make the wrong choice," added a legislative assistant for a southwestern Democratic representative. "Waiting may be to your advantage until cooler heads prevail."



The decision to postpone action also may be influenced by the proximity of the next election. If legislators desire to preserve their political careers, they must not behave so inconsistently with their districts that reelection chances are endangered. If an issue before Congress is politically sensitive, the closer the date of the next election, the more acutely sensitive a lawmaker becomes to local pressures. Officeholders usually need significant financial support in their campaigns, and they do not want to alienate the interests that normally support them or that hold the balance of power in their constituencies. Postponing congressional action to a more suitable time may be the safest option. Obfuscation is a way to deny responsibility for or to give a plausible defense for an unpopular political action (Light 1985). When the local interests collide irreconcilably with the larger policy needs such as closing prized military bases, members might avert making any decision until the non-election year in order to obscure any causal chain for their decisions. Or, conversely, lawmakers might want to forge long-term solutions, but as representatives of their constituents, they may be deterred from acting when most citizens see no difficulty with the immediate situation (Davidson and Oleszek 1994, 386).

Groups and constituents, however, carry little tolerance for inaction. Doing something is often the only politically feasible option for members, even when no one really knows what to do or when inaction might be just as effective. In such an event Congress looks for what a legislative aide for a western Republican representative says is "an interim or middle measure."

Interviews reveal a wide range of justifications for delegation. As with most human choices, the motivations for creating commissions are a complex mixture of the obvious and the subtle, the lofty and the crass. List 1 summarizes the many justifications Congress has found for creating commissions, according to interview respondents.

Different commissions require different answers, since each commission is uniquely crafted to meet the political needs of the moment. In some cases commissions are used for examining the inner workings of Congress. "These things are a great way for a lot of the politics to be removed from an issue," noted a legislative director whose representative proposed a commission to examine executive organization. "I felt we had to get away from the Congress," remarked a former representative about the National Commission on Judicial Discipline and Removal, "because we were making a judgment about ourselves and our own participation."

Many commissions, such as the Commission on the Airplane Crash at Gander, Newfoundland, are a symbolic response to a crisis or are used to satisfy constituencies from a member's district: "Quite frankly, the commission was kind of a knee-jerk reaction to placate a number of constituents who were trying to get some answers. A number of television shows air this story over and over and it just pumps people up," noted the legislative director for a southern Republican representative.

A commission might be a "trial balloon" to test the political waters. As one Senate staffer commented about a proposed commission on school finance and national educational goals, "We wanted to use a commission as an opportunity for comment and to find out where people stood on a variety of issues." A commission

## LIST 1.

*General "Problems" Ad Hoc Commissions Address,  
as Articulated by Practitioners*


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To investigate social crises.  
 To help formulate innovative domestic policies and facilitate their adoption.  
 To attract media attention.  
 To educate lawmakers and the public.  
 To gain public or political consensus.  
 To legitimize, conceptualize, and bring exposure and prestige to new policies and problems, and arouse and focus public concern for them.  
 To reformulate a federal program, or commitment, or for conceiving a new approach to a problem.  
 In response to national crises or to bring attention to some volatile social issue.  
 To serve as a symbolic response to a crisis.  
 To be a dilatory tactic to forestall precipitate action.  
 To be a holding action in order to keep an issue alive until Congress is ready to expend direct resources.  
 To facilitate a winning coalition.  
 To fend off criticism during political campaigns.  
 To avoid blame for unpopular decisions.  
 To set legislative agendas.  
 To convey a message to executive agencies.  
 In response to initiatives from presidents who either desire political support from Congress or want to fund commissions through the regular appropriations process.  
 To satisfy individual constituents or interest groups from the member's district or state.  
 To provide technical support and expertise to grapple with the complexity of modern-day policy problems.  
 To manage a growing workload.  
 Because of precedent.  
 As an option of last resort when Congress cannot think of anything else to do.

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might be used for personal gain, such as to fend off criticism during political campaigns or to capture personal attention. One Senate staff aide for a senator declared: "The purpose of this commission [National Commission on the Future of Disability] was to provide some historical context to [the senator's] record on these issues. Our intent was to draw attention to the senator's record on these issues by creating historical parallels. . . . The rediscovery of this commission really sort of stunned the Clinton people. They were surprised to see that [the senator] had done this before them."

Still, a commission might be created to investigate social crises; to gain public or political consensus; to legitimize, conceptualize, and bring exposure and prestige to new policies and problems, and arouse and focus public concern for them; to reformulate a federal program, or commitment, or for conceiving a new approach to a problem; in response to national crises; to facilitate a winning coalition; to convey a message to executive agencies; in response to initiatives from presidents who either desire political support from Congress or want to fund commissions through the regular appropriations process; to satisfy individual constituents or



TABLE 1.  
*Predominant Justifications Suggested for Delegating to  
Ad Hoc Commissions, as Expressed by Interview Respondents*

	Number of Times	% of
Expertise	20	40
Workload	14	28
Avoidance	7	14
Other	9	18

interest groups from the member’s district or state; because of precedent; or as an option of last resort when Congress cannot think of anything else to do.

WHY DELEGATE: WORKLOAD MANAGEMENT, EXPERTISE, AND BLAME AVOIDANCE

The data collected dismiss previous single-cause theories for delegation. Further, they provide evidence to support a third reason for delegation—workload management. Table 1 provides a breakdown of the primary justifications that explain why Congress delegates to ad hoc commissions as articulated by congressional members and staff.

In the approximately 50 interviews with congressional offices of the 103rd and 104th Congresses that proposed legislation to establish ad hoc commissions, 40 percent of the respondents noted expertise was the most common explanation for commission formation—that is, the need to comprehend various complexities of a technical policy problem. Institutional and information deficiency can result from the uncertainty of novel and technical issues, which then leaves members and their staff with insufficient knowledge to legislate intelligently. The second most common response was workload pressures. Twenty-eight percent of the respondents noted that commissions are set up to pare down Congress’s workload to more manageable dimensions or to handle and manage a problem in a timely manner. A third frequently cited response was blame avoidance, which accounted for 14 percent of the respondents. And 18 percent of the interview respondents expressed other motivations. These categories are not mutually exclusive or empirically pure types. On occasion they will compete and overlap with other policy questions. However, they do represent the most important justifications for which Capitol Hill appropriates ad hoc commissions as revealed in interviews. Table 2 provides some samples of different policy issues that are managed by the three dominant commission types, according to interview respondents.

*Delegating for Workload Purposes*

According to those interviewed, issues of negligible importance, legislative problems that overload normal congressional channels, calendar constraints (end-

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TABLE 2.  
*Commission Policy Issues*

<i>Workload</i>	<i>Expertise</i>	<i>Blame Avoidance</i>
Amateur Boxing	Air/Highway Safety	Entitlements
Business Development	Biomedical & Behavioral Research	Congressional Ethics
Child Support	Fire Protection	Closures & Realignments
Commemorative Events	Geothermal Energy	Federal Holidays
Educational Readiness	Infant Mortality	Federal Election Laws
Federal Holidays	Telemedicine	Gun Control
Judicial Discipline & Removal	Sleeping Disorders	Tax Reform
Professional Sports	Wildlife Disasters	Welfare Reform

of-Congress or end-of-session deadlines), and legislative schedule conflicts necessitate workload commissions. Despite the hard work of members and staff, the congressional workload is still overwhelming. Time spent constructing legislative proposals, holding hearings and investigations, writing reports, striking deals, and building coalitions requires the expenditure of valuable resources and involves the use of legislative and staff resources that could be used for more pressing matters. Some tasks are, by their nature, awkwardly cumbersome to manage through normal congressional channels. Where the legislative concerns confronted by early Congresses were limited in scope and simple in content, Congress's workload has today grown to huge proportions and complexity (Schick 1977; O'Donnell 1981; Davidson and Hardy 1987; Yates 1992). Congress's efforts are limited by the size of the parent chambers, which are both of fixed size. Members are stretched too thin. Committees do not always have the time to examine every measure referred to them. These limitations shape opportunities for delegation. Given its limited resources, Congress cannot possibly legislate in all governmental situations. Rather, it can only effectively manage a certain amount of public business; the rest it must either refuse to consider, or delegate to others. Various pieces of a legislative problem may be delegated to others for resolution, and the most Congress may do is assemble the recommended solutions into a final choice. As one legislative assistant for a southern Republican senator asserted: "Time and practicality require that some issues go out of the mainstream of the legislative body."

The century-long trend toward institutionalization of Congress slows down the processing of legislation. Rather than being unformed and unpredictable, the institution is characterized by structure and routine, following established traditions. While this institutionalization enables Congress and its members to cope with a certain amount of contemporary change, it can also lead to organizational rigidity which produces paralysis. Institutions that are too fragile can frustrate policy making, especially in times of rapid social or political change (Davidson and Oleszek 1994, 39). Structures that are overly complex can create multiple points of entanglement, producing delays and confusion. Such obstacles inherent in the institution obstruct even altruistic intentions; necessary information is costly to obtain;



bicameralism and supermajority requirements inhibit speedy action, and legislative logrolls can inflate the costs of even the simplest of policy initiatives (Epstein and O'Halloran 1995).

The growth of government has added work for Congress as its workload expands in scope and complexity. The plan for a commission to address the plight of the banking industry during the 1980s was occasioned by the need to assist committee members' own efforts (House Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs 1988). Repeated hearings were held in both chambers on the condition of this industry. The sheer work associated with the savings and loan problem proved too much for most members. Resolving the problem and putting the thrift industry back on its feet entailed the timely effort by thrifts, thrift regulators, the administration and Congress. Capitol Hill welcomed the strength of a single-purpose, independent commission for its capacity to coordinate these varied interests and yield detailed blueprints for the future. "When we face a problem of such magnitude, we cannot afford to work in the dark; we must have a clear idea of what we're up against before there can be any hope of finding a reasonable solution," admonished Rep. Stanford E. Parris (R-VA) during testimony before the Subcommittee on General Oversight and Investigations (House Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs 1988, 13). "The Commission will explore feasible options for dealing with the insolvent one-third of the Savings and Loan Industry," he declared on a later occasion. "It's a step in the right direction for focusing the attention of a very much needed review of the thrift industry process, and for providing additional support to prior committee efforts." Rep. Al McCandless (R-CA) continued this point: "I think the direction in which the committee is going here is certainly a way of focusing the attention of a very much needed review of the entire process" (House Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance and Urban Affairs 1988, 14).

The concern for time with the savings and loan dilemma became general across jurisdictional committees as adjournment neared, and committee members became doubtful of reporting legislation. There was a growing sense that time would inhibit committee consideration during the thrift crisis, preventing swift and comprehensive policy formulation (House Committee on Banking, Finance and Urban Affairs 1988; Senate Committee on Banking, Housing, and Urban Affairs 1988). Significant legislation would consume the energies of more than one Congress, prompting the decision to transfer authority to a commission to undertake and coordinate the tasks Congress could not. Delegating to the National Commission on the Thrift Industry laid to rest the concern for time, since the Commission alleviated the committees' overburdened agendas. Rep. Parris voiced particular concern for the encroaching end of the legislative session: "My intention is not to sidestep the jurisdiction of this committee, the responsibilities of the full committee or anything else" (House Committee on Banking, Finance and Urban Affairs 1988, 13). "We all know there are just a few legislative days remaining on the legislative calendar year and the ability of Congress to substantively address this issue before the



estimated adjournment date is highly problematical at best. We've got to get on with some resolution for this problem."

Time is a most precious commodity on Capitol Hill because, as a former staff aide contends, "It's very difficult with all the issues before Congress to spend months studying one issue." The average lawmaker's daily schedule is long on demand and short on time. Less and less time is devoted to serious or sustained study of legislation. Legislators spent only about a third of their time in the House or Senate chamber or in committee or subcommittee meetings according to a 1977 report by the House Commission on Administrative Review.

Frustration with the slow and plodding nature of the legislative process is plentiful on Capitol Hill. Despite reform efforts to decentralize the formal authority aspect of the committee system, participation in committee decision making is still relatively selective, often closed to junior members. Commissions help to circumvent this problem by managing those issues that are neither prioritized nor addressed, or that would not receive further committee action. Members and staffers alike acknowledge the commission process as an alternative apparatus frequently useful for responding to frustration with normal congressional procedures. It is a politically expedient way of getting Congress to act where it otherwise would not. Stated more pointedly by a then-minority legal counsel whose senator introduced legislation to establish the National Commission on Government Reform: "If Congress creates a commission, Congress is basically saying that it wants an end result that we on Capitol Hill are unable to achieve ourselves without outside assistance." "Generally, I would advocate a commission for something that I could not resolve in a hearing myself," added a former representative.

When legislators delegate some of their policymaking authority to a workload commission, they create a body to gather information and develop a meaningful list of possible options and to make the choices that maximize a set of values. Congress lays down the basic outlines of public policy, establishing objectives, and providing guidelines for action, but it leaves many of the details of policy to the commission. As an aide to a junior representative remarked in regard to the proposed National Commission to Eliminate Welfare: "Congress's purpose is not to deal with the nitty-gritty but to debate large, chunky things." In this way the commission is a mechanism to manage burgeoning personal and institutional demands. It augments Congress's efforts, serving as an integrative framework for multi-interest considerations of problems, and creates a future for further legislative action.

In addition, the commission provides an element of continuity by keeping attention on an issue between legislative sessions. The Rockefeller Commission is an example. Its findings on the Central Intelligence Agency's domestic operations were built on 1973 discoveries by the Senate Watergate Committee that documented White House attempts to manipulate intelligence for political purposes.

Members and their staffs are able to follow more issues and process more legislation with workload commissions. "Commissions are a form of subcontracting for particular and immediate needs," noted one Senate staff aide for a southwestern senator. "They provide free labor and data so that members and committees can look at other things that may be more pressing," added a staffer whose representa-

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tive proposed establishing the National Commission to Support Law Enforcement. "We need to move some things off 'campus'."

The problems that are given to workload commissions are generally visible to the public. The decision to delegate can be a rough calculation on an issue-by-issue basis of either minor or noncontroversial concerns. Problems that are of negligible importance to legislators and their staffs can sensibly be delegated for decision making to someone else. The policy issue given to a workload commission also may deal with broad issues that affect a wide range of multidisciplinary matters. Time constraints claimed by annual recesses, as well as adjournments or a legislative schedule structured to minimize conflicts between activities in Washington and at home, may occasion a need to transfer responsibility to a commission. According to interview respondents, federal holidays, commemorative issues, gambling (Commission on the Review of National Policies Toward Gambling), and amateur boxing (Congressional Advisory Commission on Amateur Boxing) include some examples of various policy issues Congress has seen as being trivial and has subsequently created commissions to manage.

Similar to commissions created for expertise, workload commissions often deal with policy problems that are distributive in nature (although some can involve self-regulation and/or redistributive issues), and for this reason the line between the two types of commissions is sometimes hard to draw. However, where technically complicated issues present a special challenge because of their novelty, in cases of workload management, Congress is capable of undertaking the tasks. Indeed, in many cases there is documented historical involvement. Yet the dimensions of the policy issues are such that they take a great deal of time or resources, or they are too trivial. During February, 1990 congressional hearings on a proposed advisory commission on national commemorative events, for instance, many lawmakers argued that a commission would save Congress time and money and might ensure a more rational commemorative process (U.S. House of Representatives, Advisory Commission on Commemorative Events, 101st U.S. Cong., 2d sess.). The comment by one administrative assistant for a southern Democratic senator makes this clear: "By focusing on one issue and one goal, commissioners dodge information overload and take on more directed analysis than do most committees in Congress."

#### *Delegating to Acquire Expertise*

According to those interviewed, the principal inspiration for Congress to appoint an ad hoc commission is the need to untangle policy problems about which members (and their staffs) do not have sufficient expertise to make a well informed decision. These instances occur when Congress is confronted by the uncertainty of an issue that is new to most. Acquiring expertise is often prohibitively expensive in time or resources; consequently, lawmakers are likely to remain novices on many of the issues on which they must make decisions. When the legislative branch lacks the necessary knowledge of technical detail, it looks for ways to enlist help (Chartrand, Bortnick and Price 1987). As the legislative director for one southeastern representative puts it, "There are times when it's more beneficial to the public to get a



group of people who are trained in the specific area Congress is looking at, and who don't have a political bent one way or the other, to help with a complex problem."

Where in the past a large number of lawmakers did their own legislative research and drafting, it is now a rare member who does not delegate these tasks to personal staff assistants, committee aides, or experts outside the institution. Today, the vast majority of lawmakers are generalists, not specialists (Oleszek 1989, 26). Members vary in expertise and familiarity with policy issues, and while many do have professional or specialized backgrounds, or acquire substantive knowledge through service, they are not elected on the basis of professional qualifications, nor are their positions defined in terms of professional specialties.

Additionally, most personal aides in the House and the Senate are well educated, but young and transient. They are, according to many young interviewees, fresh from college, "learned in undergraduate-level material," but lacking the advanced schooling required to examine minutely "extremely complicated issues," such as the technical nature of telemedicine, fire protection (National Commission on Wildlife Disasters), air and highway safety (National Commission to Ensure Aircraft Safety), geothermal energy (National Geothermal Energy Commission), sleeping disorders (National Commission on Sleeping Disorders Research), or other issues that might take years to understand. Many staffers are exceptionally busy "learning the ropes" of congressional work. The bulk of personal staffers explain that their positions are rarely defined by professional qualifications or specialized backgrounds. Generally, these bright and ambitious men and women draft bills, write speeches and briefing materials, suggest policy initiatives, analyze pending legislation, prepare position papers on assigned legislative issues, and act as liaisons with other House and Senate staff, government agencies, and outside groups (Hammond 1984). In a typical interview, a legislative director for a northeastern Republican senator described how his staff's limited knowledge in a particular technical area was the genesis for creating the Commission on Retirement Income Policy: "This is an area where you have a network of systems, some may work together, some may work at cross-purposes. My staff are not proficient with the skills, the background, or the information needed to comprehend and bring together all these complexities. To build a staff that had the ability in this alone would take more than just the limited resources of this office. What we are trying to do with the commission is to build our capability of dealing with each of these issues."

A legislative environment in which issues are too complex for committees to manage, and so fresh that even executive agencies are ill-equipped to do adequate analysis, is the usual condition interview respondents said compels them to seek advice from a commission of experts. Pointing to only one member in the House who had any medical background (Rep. Roy Rowland, R-GA), Rep. James Scheuer (D-NY) brought particular attention to the void in expertise regarding Acquired Immune Deficiency Syndrome (AIDS) as impeding legislative action during the 100th Congress (*Congressional Record*, August 4, 1987, H22244). Rep. Dan Burton (R-IN) added: "You know, we have 435 Members of this body and 100 Members of the other body. I will tell you from personal conversations with many of them, they are not very conversant with the problems we are facing with AIDS" (*Congressional*

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*Record*, August 4, 1987, H22247). The unprecedented nature of AIDS was so daunting that it bound discussion about legislation to generalities instead of specific issues. When Congress tried to direct an executive agency to prepare detailed briefs defining what to examine, even the agency called on Congress to seek out and establish a commission of experts. Scientists from the Institute of Medicine requested a commission created outside the administrative structure of the federal executive branch. An independent commission, according to the Institute of Medicine, would have the specialized skills to help understand the epidemic, to provide some strategic planning and direction, and to pool knowledge and expertise to formulate key recommendations for Congress (*Congressional Record*, August 4, 1987, H22248).

By delegating some of their policy-making authority to expert commissions, Congress creates institutions that reduce uncertainty. As is shown in principal-agent modeling, tremendous gains accrue by delegating tasks to other organizations with a comparative advantage in performing them. A commission brings specialized information; its members and staff are selected on the basis of their education, their training, and their experience in the area. Through a panel of experts, Congress acquires an informed baseline for decision making that is done in a timely fashion and that otherwise might be evaluated by political criteria and subject to pork-barrel politics.

The sorts of policy problems that are given to expert commissions are not always salient to the public. Generally, the policy issue offers distributive goods, imposing only general costs on society while delivering plentiful group and geographic benefits, which makes many interests better off and few, if any, obviously worse off. Constructing a comprehensive public health policy to fight a novel issue like AIDS, for instance, did not incur any direct harmful effects on constituents. To the contrary, government actions that provide for medical research are very popular with legislators and their constituents because they are perceived as being beneficial and do not take away from anyone. Distributive impulses are irresistible when they convey tangible benefits and make many interests—whether directly affected by the virus or not—better off. The distributive nature of AIDS placated the more vocal opponents of delegation to the National Commission on AIDS. Further, the complicated dimensions of AIDS reduced extreme conflict on Capitol Hill, removing a need for techniques to disguise the allocation of resources or making them more palatable. Although controversial aspects were present in the formation of the AIDS Commission, the distributive character of fighting a deadly hazard that embodied such an immense measure of novelty did not separate liberals and conservatives.

The arena that develops around distributive policies is one in which there is little basis for discriminating between those who should and those who should not be protected or indulged (Lowi 1964, 693). Generally speaking, lawmakers were responsive to considerations of equality, impartiality and moderation once the AIDS epidemic was perceived as a public health crisis.

Unlike cultural, moral, or redistributional problems that are visible public issues because they involve the most salient shifting of values and resources, tech-



nical areas such as AIDS do not display patterns in which the decentralized character of Congress comes into play when constituent interests collide with the larger policy needs. The purpose of delegating tasks to expert commissions is not to break the electoral chain and protect legislators from the wrath of their constituents, since members' individual interests are not at odds with the national interest. Rather, distributive politics of this kind are emblematic of national policy that is a mosaic of local interest.

### *Delegating to Avoid Blame*

A third reason for Congress to delegate to a commission is the political strategy of distancing itself from politically risky decisions; instances when Congress is confronted with controversial and dramatic issues like redistributive policy problems such as social security (National Commission on Social Security Reform), military base closures (Base Closure and Realignment Commission), and Medicare (National Commission on Medicare Reform). Problems of redistribution are the most difficult because legislators are confronted with issues that require them to take a clear policy position on something with greater costs to their districts than benefits, or that shift resources visibly from one group to another. Institutionally, Congress is responsible for making national policy that has a collective benefit, but the self-interest proclivities of lawmakers often keep this from happening. Members realize that their parochial interests, based on constituents' demands, may be at odds with the national interest, and this can lead to possible electoral repercussions.<sup>3</sup> Even when pursuing policies that are in the interests of the country as a whole, legislators do not want to be blamed for causing losses to their constituents. In such an event, the split characteristics of the institution come into direct conflict.

When a particular issue incurs concentrated costs to individual districts yet provides dispersed benefits to the nation, Congress often masks legislators' individual contributions by delegating responsibility for making unpleasant decisions to a commission (Weaver 1987; Arnold 1990). In this way members avoid blame and promote good policy by saying that the issue is out of their hands; they protect themselves from going on record in support of a policy that will negatively impact their district. This method allows legislators to vote for the general benefit of an issue without ever having to support a plan that directly imposes large and traceable geographic costs on their constituents.

No fights on Capitol Hill are as contested as those over whose districts lose defense dollars. Lobbying for military projects comes naturally to members who are expected to champion local interests (Davidson and Oleszek 1996, 394). Democrats and Republicans both join the fray. As post-cold war defense cuts made military expansion untenable, the number of closed defense facilities lagged behind the cuts in active-duty personnel. Strategic necessity is not the reason why so many bases were protected from budget cuts. Rather, two main roadblocks contribute to Congress's failure to close unneeded or antiquated facilities: the individual parochialism of lawmakers, rooted in the tremendous economic pain of surrendering such a prize from a congressional district, and institutional parochialism built

on the constitutional rivalry between the executive and legislative branches (Twight 1989).

People on Capitol Hill confirm their distaste for closing defense facilities. "Neither party wants to close bases," the chief of staff for a western Republican representative commented in an interview. "Regardless of what you do or say about it, in the end, members will defer. Everyone backs away from this hot issue." Parochial attention to individual districts rivals efforts for the betterment of the country. "Too often in the past obsolete and unneeded military bases have been kept open far too long by well intentioned yet parochial interests," noted Rep. Bruce F. Vento (D-MN) (*Congressional Record*, July 7, 1988, H17073). Speaking before the Senate during a floor debate, Senator John McCain (R-AZ) stated: "I think history indicates that we are incapable of acting in any other way because of the enormous political repercussions which result in each of our States as a result of a move to close a base or a military installation. We are in a situation that we cannot act in an affirmative fashion, and that we abdicate our responsibilities" (*Congressional Record*, May 10, 1988, S10225). "What we are doing here is typical of what we do every time we have a tough decision to make," added Senator William S. Cohen (R-ME) (*Congressional Record*, May 10, 1988, S10223). "Congress is taking the cowardly way out by simply shifting this off to a commission," he declared on a later occasion. "When it comes to shutting down a base, which Congress bears the responsibility of funding, we are saying, 'Don't come to us; we can't afford to bear that kind of responsibility'" (*Congressional Record*, May 10, 1988, S10223). Cohen's views were echoed in the House by Rep. Jack Brooks (D-TX) who stated: "The Constitution requires us occasionally to make tough political choices—not to set up Rube Goldberg gimmicks that are purposely crafted to let us avoid making those choices" (*Congressional Record*, July 7, 1988, H17063).

Redistributive policies are the most visible because they involve the most conspicuous long-term allocations of values and resources. Most divisive socioeconomic issues (such as affirmative action, Social Security, tax reform) and proposals to eliminate identifiable governmental actions such as related projects are redistributive problems. These are "political hot potatoes, in which a commission is a good means of putting a fire wall between you and that hot potato," the chief of staff for a northwestern Democrat representative acknowledged. Base closing has taken on a redistributive character as federal expenditures outpace revenues, and lawmakers are forced to find ways to fix the growing problem. It is marked not only by extreme conflict but also by techniques to disguise the redistributions or make them more palatable. The Base Closure Commission (1991, 1993, 1995) was created with an important provision that allowed for silent congressional approval of its recommendations. Congress required the commission to submit its report of proposed closures to the secretary of defense, and the president had fifteen days to approve or disapprove the list in its entirety. If approved, the list of recommended base closures became final unless both houses of Congress adopted a joint resolution of disapproval within forty-five days. Congress had to consider and vote on the recommendations en bloc rather than one by one, thereby giving the appearance of spreading the misery equally to affected clienteles.



## THE SIGNIFICANCE OF COMMISSIONS IN UNDERSTANDING LEGISLATIVE BEHAVIOR

Practitioners of politics are goal-oriented individuals who will use nearly any process to achieve their ends. Over the years Congress has been a remarkably adaptive institution, finding different means to address and formulate public policy. When confronted with stress brought on by external forces, the institution will pursue alternative strategies (Cooper 1981). The ad hoc commission is a tool Congress appropriates to accommodate a variety of goals, however lofty or crass. In a sense a commission grows out of the inadequacies in Congress, or, in some instances, it will develop because of the unusual nature of the policy problem. This teaches a valuable lesson about Congress: the institution is very inventive with regard to process.

We may conclude that congressional commissions will be an increasingly common political institution, whether they are designated as blue-ribbon commissions, committees, councils, boards, or task forces. They remain far too tempting a device to fall into disuse (Graham 1985), in part because they are a relatively cheap body for members of Congress to authorize. As one former legislator commented, "My own anecdotal feeling is that the several commissions that I have been a member of have been worthwhile. If you didn't have some commissions, there would be people who would think you should have one." Moreover, the reductions in legislative staff in the 104th Congress (1995-97) could increase the need to turn to outside help for both expertise and workload reasons.

The increased utilization and development of ad hoc commissions by Congress reveals a growing trend in American politics: the use of alternative mechanisms in formulating policy outside the traditional legislative process. For the most part, commissions have been established in response to the extraordinary growth in the complexity and size of the federal government's responsibility. They indicate that many contemporary situations upon which legislative action must be predicated are so complicated that a political body cannot hope to find the facts. Rather, certain modern-day problems call for analysis by more than one mind with more than one approach, and by individuals who can examine a difficult problem without prejudice. A commission set up by Congress "might have the credibility that normal legislative channels, such as a committee and that committee's hearings would not have and, therefore, could provide credibility to the rest of Congress in dealing with the particular question the commission is handling," commented a former House member. Too often congressional committees and their hearings take on the nature of adversary proceedings. A temporary, independent commission renders nonpartisan recommendations and advice on policy problems from people who are not beholden to the politics of public pressure.

In this study I examine the dominant reasons for establishing ad hoc commissions and the conditions that contribute to their formation, yet I caution the reader to recognize that there are a myriad of other situations that occasion the creation of such bodies. No definitive answer to the question of why commissions are formed is possible. Congress includes 535 voting members, each unique and individual—the river boat captain and the professor of economics, the 28-year-old and the 96-



year-old, the former welfare recipient and the self-made millionaire, and the freshman and the ten-term veteran—and each one may act for different reasons; therefore, one is not always able to establish or predict why commissions are created. Still, identifying and examining the three primary motives for delegating is of value to congressional scholars for developing a general theory of commission formation and behavior, as other research has looked at only one case study and no one has grappled with the complete question of why Capitol Hill uses commissions.

As the use of ad hoc commissions increases, so too does the criticism of them, principally on the ground that elected officials use them to shirk unwanted responsibilities, but also on the ground that decisions are made behind closed doors (Schoenbrod 1993). Practitioners I interviewed dismiss this claim as a philosophical vision of what Congress ought to be. Still, the creation of an ad hoc commission should be a well-considered decision, and better suited than the normal legislative process to resolving the policy problems in the field of its assignment. In making the decision to delegate, the advantages and disadvantages in using ad hoc commissions should be reviewed and a commission's applicability to the case at hand established with reasonable confidence (Dean 1969). Many on Capitol Hill look to the Base Closure and Realignment Commission as a template for success. But the base-closing process cannot be replicated across all issue domains, and government-by-commission is not a panacea for every public policy problem. It is important to distinguish between those commissions set up to recommend solutions to specific problems and those whose mandates are so broad that they can succeed only if lawmakers have already begun to form a consensus on the issue (Rasky 1989).

Should we cast this delegation procedure aside? The answer depends on our perception and idea of the legislative process. As Austin Ranney has noted, what was perhaps America's first commission was composed of fifty-five men who met in Philadelphia in the summer of 1787 to draft the Constitution (Rasky 1989, E4). Given this auspicious example, it is difficult to ignore the value of the ad hoc commission in formulating public policy.

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### Notes

<sup>1</sup>The term is derivative of the many federal advisory committees that began with the administrative expansion promoted by the New Deal. These groups went unchecked and as their numbers grew and their power increased they collectively became known as the "fifth arm of government."

<sup>2</sup>*Congressional Quarterly Almanac*, an annual compendium of biographical and organizational data, summaries of action taken in each session of Congress, roll-call votes and analyses of congressional voting; *Congress and the Nation*, a summary of all major legislation, biographical index to members of Congress, and list of key roll-call votes; and *Congressional Quarterly Weekly Report*, a weekly summary of important congressional news, roll-call votes, and analyses of congressional voting.

<sup>3</sup>Arnold (1990) emphasizes the importance of this perception for constituency desires and how legislators anticipate and respond to citizen policy preferences in conjunction with electoral needs. When voting, a legislator can vote as she or he chooses, possibly even for good policy, when there is little traceability. When the issue is controversial, however, the lawmaker must attempt to gauge the potential preference of the electorate and vote with them.

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