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# Title 36 Charters: The History and Evolution of Congressional Practices

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## Title 36 Charters: The History and Evolution of Congressional Practices

Title 36 of the *United States Code* includes a codification of statutes of federal incorporation, or charters, for more than 90 private or quasi-governmental nonprofit organizations.

Beginning with the Bank of the United States in 1791, Congress has incorporated both public and private organizations. Historically, it incorporated for-profit and nonprofit organizations within the District of Columbia as part of its constitutional role in the governance of that jurisdiction. In 1901, Congress vested incorporation authority in the District government for organizations located within District bounds, obviating the need for Congress to continue to perform this function.

Many national, private, nonprofit groups—even some that had already been incorporated at the state level or by the District—continued to seek charters from Congress after 1901. Congress granted charters to a variety of such groups with charitable, patriotic, fraternal, cultural, social, educational, and historical missions. These charters are generally codified in Title 36.

These groups have sometimes perceived that the congressional recognition implied by a Title 36 charter would confer a special status that might attract members and donors. A Title 36 charter does not, per se, confer special rights or privileges under federal law. In the past, Veterans Administration (VA) rules gave chartered veterans' groups special recognition in the presentation of veterans' claims before the agency, but this is no longer the case.

Congress has also chartered quasi-governmental independent nonprofit corporations for national or regional public policy purposes, many with connections to federal government agencies. Some of these charters have been classified in Title 36, while others have been classified in other sections of the *United States Code*.

Members of the Judiciary Committees in the House and Senate, to which charter bills have most often been referred, have expressed concern about the volume of organizations seeking charters and the capacity of these committees to continuously oversee congressionally chartered organizations. Periodically, the committees have tried to define the purpose of, and standards for, such charters. At times they have adopted, formally or informally, chartering standards. The committees sought, and received, auditing assistance from GAO as part of their oversight efforts. The committees also considered, but did not report, legislation that would have vested the authority to grant and oversee charters in the Department of Justice.

At times, the committees have determined that the congressional recognition that charters conferred on meritorious groups was outweighed by committee resource costs and the potential for unsupervised chartered groups to engage in activities that might harm the public and reflect poorly on Congress. On several occasions, they adopted years-long formal or informal moratoria on committee consideration of new ones.

Between 1989 and 2018, the House Judiciary Committee subcommittee of jurisdiction adopted a moratorium on consideration of new charters. During the first 22 years of the moratorium, at least eight new charters were enacted, usually through processes that did not require the subcommittee's support. Title 36 charter legislation has not been a matter of active legislative debate during recent Congresses, and none was enacted from 2011 through 2021.

Should the committees resume former chartering practices, they might consider the purpose and value of Title 36 charters; the standards a group must meet; how the committees would assess whether a group has met these standards; whether the same committee practices should be used to consider charter bills for quasi-government organizations as for private, nonprofit organizations; and the role of the committees in the oversight of chartered organizations. Congress might consider whether the House and Senate Judiciary Committees should continue to have jurisdiction over the granting and oversight of Title 36 charters or whether charters should be granted and overseen according to their subject matter.

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In 1926, Congress established the *United States Code* as an authoritative compilation and codification of the permanent federal laws then in force. Title 36 of this publication, “Patriotic Societies and Observances,” included previously enacted chartering statutes for eight organizations.<sup>1</sup> Over the succeeding decades, statutes were added to, and occasionally removed from, Title 36, and it now includes the charters of more than 90 organizations.<sup>2</sup> Although the title continues to include many private, nonprofit corporations that appear to be of a patriotic character or national in scope, it also includes nonprofit corporations with diverse purposes and differing relationships with federal government agencies.

Throughout the 20<sup>th</sup> century, Congress periodically grappled with defining the authority, purpose, and standards for the congressional charters that came to be grouped in Title 36. Some Members expressed doubt about the constitutionality of these charters. Others voiced concern about the apparent congressional sanctioning of certain organizations over others of seemingly equal merit. Members also questioned whether Congress had the resources to investigate the validity of groups seeking this status and to monitor chartered corporations on an ongoing basis. In one effort to address these concerns, the House subcommittee of jurisdiction in this area repeatedly adopted a moratorium on consideration of new charters between 1989 and 2018.<sup>3</sup> In taking this action, the subcommittee cited the implied federal government support for groups receiving such charters, a shortage of subcommittee resources for appropriate oversight of chartered groups, and no apparent “valid purpose” for Title 36 charters.

Title 36 charters have not been a matter of active legislative debate during recent Congresses. Notwithstanding the House subcommittee moratorium, however, groups continued to seek Title 36 charters, and Members have continued to introduce legislation on behalf of those they support. Such legislation has sometimes been enacted, usually through processes that did not require the subcommittee’s support. Consequently, Member offices, the House and Senate committees of jurisdiction, and other congressional committees periodically face decisions about individual charter requests that raise questions about the history of Title 36 charters and related congressional practices.

This report first traces the evolution of Title 36 charters as a distinct group of statutes that establish quasi-governmental and private organizations. It then describes charter establishment and oversight issues that began to arise early in the 20<sup>th</sup> century and subsequent congressional efforts to set standards and monitoring mechanisms for such groups. Following this, the report discusses an unsuccessful effort in the late 1980s to delegate chartering responsibilities to the Department of Justice (DOJ) and the subsequent moratorium on the consideration of charters. Potential benefits and drawbacks of such charters for groups and for Congress are also identified. The report then discusses the legislative processes generally used for establishing new statutory Title 36 charters and amending existing ones. The report ends with concluding observations.

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<sup>1</sup> *The Code of the Laws of the United States of America of a General and Permanent Character in Force December 7, 1925*, Title 36 (Washington: GPO, 1926).

<sup>2</sup> 36 U.S.C. Subtitle II, Part B.

<sup>3</sup> As discussed further below, it appears that a similar posture was formally adopted by the Senate Judiciary Committee and informally adopted by the House Judiciary Committee during the 1920s.

## Origins and Evolution of Congressional Charters

In the United States, the states have generally had the authority over the creation and oversight of corporate entities within their boundaries. Beginning with the Bank of the United States in 1791,<sup>4</sup> however, Congress has also incorporated both public and private organizations.<sup>5</sup> Most such congressional charters<sup>6</sup> fall into one of three categories: corporations organized in the District of Columbia, corporations organized to carry out some regional or national public purpose, and nonprofit corporations at the national level.

### District of Columbia-Based Corporations

Congress issued charters to organizations located within the District, mostly during the 19<sup>th</sup> century, as part of its role in the governance of that jurisdiction.<sup>7</sup> When the District became the seat of the federal government in 1790, it had neither a general incorporation law nor a legislature that could grant charters. Congress, instead, assumed responsibility for incorporation within the District.<sup>8</sup> Congressionally chartered District-based organizations included public entities, such as the City of Washington,<sup>9</sup> as well as private entities, such as the Bank of Washington;<sup>10</sup> the Washington, Alexandria, and George Town Steam Packet Company;<sup>11</sup> and the Georgetown Gaslight Company.<sup>12</sup> Congress also chartered some District-based charitable organizations, such as the Washington City Orphan Asylum.<sup>13</sup> The first comprehensive legal code for the District, enacted in 1901, vested incorporation authority in the District's commissioner-led government.<sup>14</sup>

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<sup>4</sup> The enabling act was enacted during the third session of the first Congress. Act of February 25, 1791, ch. 10, §3, 1 Stat. 192.

<sup>5</sup> A list of such charters through 1944 may be found in U.S. Congress, Senate Committee on the Judiciary, *Establishing and Effectuating a Policy with Respect to the Creation or Chartering of Certain Corporations by Act of Congress*, report to accompany S. 503, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., February 19, 1947, S.Rept. 80-30 (Washington: GPO, 1947), pp. 4-13.

<sup>6</sup> As used in this report, a congressional or federal charter is a federal statute that establishes a corporation. Such a charter typically provides the following characteristics for the corporation: official name; purpose(s); duration of existence; governance structure (e.g., executives, board members); powers of the corporation; and federal oversight powers. Beyond conferring the powers needed to achieve its statutorily assigned goal, a charter usually provides a corporation with a set of standard operational powers such as the power to sue and be sued; to contract and be contracted with; and to acquire, hold, and convey property. Many of the charters in Title 36 supplement, by reference, a group's pre-existing state-level charter.

<sup>7</sup> U.S. Constitution, Article I, Section 8, clause 17, provides that Congress shall have the power "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

<sup>8</sup> In 1830, the House Committee for the District of Columbia reported that, since the 1801 statutory establishment of jurisdictional units within the district, "numerous laws have been passed by Congress, related to city charters, public buildings, bank and bridge companies, to the militia, to the incorporation of various societies and institutions, and to other local matters." U.S. Congress, House Committee for the District of Columbia, *Laws for the District of Columbia*, 21<sup>st</sup> Cong., 1<sup>st</sup> sess., March 3, 1830, H.Rept. 31-269 (Washington: GPO, 1830), p. 7.

<sup>9</sup> Act of May 3, 1802, 2 Stat. 195-197.

<sup>10</sup> Act of February 15, 1811, 2 Stat. 625-628.

<sup>11</sup> Act of March 3, 1829, 6 Stat. 398-400.

<sup>12</sup> Act of July 20, 1854, 10 Stat. 786-788.

<sup>13</sup> Act of May 24, 1828, ch. 88, §2, 6 Stat. 381.

<sup>14</sup> Chap. 854, Act to establish a code of law for the District of Columbia, Chapter 18, Corporations; 31 Stat. 1189, at 1280. For a description of the formation of the DC Code, see "Historical," *District of Columbia Code, Annotated*, vol. 1

This seemingly relieved Congress of this duty, although some viewed early implementation of this authority as problematic.<sup>15</sup>

## Corporations with Quasi-Governmental Functions

Congress has also chartered quasi-governmental independent nonprofit corporations for national or regional public policy purposes, such as the National Institute of Building Sciences<sup>16</sup> and the National Center for Research in Advanced Information and Digital Technologies.<sup>17</sup> Unlike private corporations, such entities are statutorily mandated to carry out functions that are thought to be in the public interest. For example, the 1863 congressional charter of the National Academy of Sciences stipulated that

the academy shall, whenever called upon by any department of the Government, investigate, examine, experiment, and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments, and reports, to be paid from appropriations which may be made for the purpose, but the academy shall receive no compensation whatever for any services to the Government of the United States.<sup>18</sup>

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(Washington: GPO 1973), p. XVII. For a discussion of the early evolution of DC governance, see Luis M. Acosta, “The Legal History of the District of Columbia Prior to Home Rule: A Bibliographic Essay,” *Legal Reference Services Quarterly*, vol. 23, no. 4 (2004), pp. 43-74.

<sup>15</sup> For example, in a 1905 message to Congress, President Theodore Roosevelt noted that “the attention of Congress has been drawn to the defects of the law authorizing the formation of corporations in the District of Columbia.” U.S. Congress, Senate Committee on the District of Columbia, *Formation of Corporations in the District of Columbia*, Message from the President of the United States inviting the attention of Congress to certain defects in the law which authorizes the formation of corporations in the District of Columbia, 58<sup>th</sup> Cong., 3<sup>rd</sup> sess., January 30, 1905, S.Doc. 58-126 (Washington: GPO, 1905).

Within a month of this message, a Member expressed similar concern during House floor debate on legislation to grant a charter:

In 1901 we passed a general law authorizing the formation of corporations for the District of Columbia, and we all know the extent to which it has been carried and abused, and that the President in a special message recently called the attention of Congress to the fact. I hold in my hand an advertising letter head of one of these corporations claiming to be incorporated by the act of Congress of March 3, 1901, which reads:

“American Corporation Company, incorporated under act of Congress approved March 3, 1901. Capital, \$2,500,000. 32 Broadway, N.Y. Railroads and municipal enterprises financed. Stocks and bonds underwritten and guaranteed. Miscellaneous securities negotiated and purchased. Bank stocks, commercial paper, etc.”

In other words, under the general law passed in 1901, authorizing corporations and bodies politic in the District of Columbia, we have now all over the United States corporations like this, which are nothing more than bucket shops-companies engaged in speculation.

Representative Charles L. Bartlett, “American Academy, Rome,” House debate, *Congressional Record*, vol. 39, part 4 (February 28, 1905), p. 3668.

<sup>16</sup> 12 U.S.C. §1701j-2. Congress established the National Institute of Building Sciences in 1974 when it “recognized the need for an organization to serve as an interface between government and the private sector—one that serves as a resource to those who plan, design, procure, construct, use, operate, maintain, renovate, and retire physical facilities” (<https://nibs.org/about>).

<sup>17</sup> 20 U.S.C. §9631. Although statutorily named the National Center for Research in Advanced Information and Digital Technologies, this entity was renamed as “Digital Promise.” See <https://digitalpromise.org/about/our-history/>. Digital Promise’s statutory purpose is “to support a comprehensive research and development program to harness the increasing capacity of advanced information and digital technologies to improve all levels of learning and education, formal and informal, in order to provide Americans with the knowledge and skills needed to compete in the global economy” (20 U.S.C. §9631(b)).

<sup>18</sup> Act of March 3, 1863, ch. 111, §3, 12 Stat. 806-807. The statute was later included as part of Title 36, and this

Notwithstanding their public interest missions, these organizations do not have a federal government agency's authority to direct or regulate private behavior or to otherwise enforce the law.

### Charters for Public Policy Purposes

The quasi-governmental organizations discussed here are statutorily established to carry out functions specified in the statute. For example, the statute establishing the National Institute of Building Sciences provides, "The Institute shall exercise its functions and responsibilities in four general areas, relating to building regulations, as follows: (A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical provisions for maintenance of life, safety, health, and public welfare suitable for adoption by building regulating jurisdictions and agencies, including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials with due regard for consumer problems. (B) Evaluation and prequalification of existing and new building technology in accordance with subparagraph (A). (C) Conduct of needed investigations in direct support of subparagraphs (A) and (B). (D) Assembly, storage, and dissemination of technical data and other information directly related to subparagraphs (A), (B), and (C)" (12 U.S.C. §1701j-2(e)). In contrast, the charter for the Boys and Girls Clubs of America states that the group's general purposes are "to promote the health, social, educational, vocational, and character development of youth throughout the United States [and] to receive, invest, and disburse funds and to hold property for the purposes of the corporation" (36 U.S.C. §31103).

## National Nonprofits

As the seat of the national government, the District has been the home of many nonprofit organizations with purposes that are national in scope but not of a national or regional public policy nature. Congress has provided charters for a variety of nonprofits, including those with charitable, patriotic, cultural, social, educational, and historical missions. In a few cases these charters have served as the original act of incorporation of the entity. In most instances, however, organizations already incorporated at the state level have sought and received a supplementary congressional charter. One early example is the Columbian Institute for the Promotion of the Arts and Sciences,<sup>19</sup> an organization that some have seen as an antecedent of the Smithsonian Institution, in spirit if not in accomplishments.<sup>20</sup> Other organizations that received congressional charters include, for example, Howard University,<sup>21</sup> the American Historical Association,<sup>22</sup> the Society of American Florists and Ornamental Horticulturalists,<sup>23</sup> and the National Education Association of the United States.<sup>24</sup>

## Adoption of *United States Code*, Including Title 36

In 1926, Congress adopted the *United States Code* as a consolidation and codification of most statutes then in effect.<sup>25</sup> Title 36 of this code, entitled "Patriotic Societies and Observances," was a compilation of previously enacted statutes that chartered a subset of eight national nonprofit

provision may be found at 36 U.S.C. §150303.

<sup>19</sup> Act of April 20, 1818, ch. 125, 12 Stat. 214-215.

<sup>20</sup> Richard Rathbun, *The Columbian Institute for the Promotion of Arts and Sciences* (Washington: GPO, 1917).

<sup>21</sup> Act of March 2, 1867, ch. 162, 14 Stat. 438-439.

<sup>22</sup> Act of January 4, 1889, ch. 20, 25 Stat. 640.

<sup>23</sup> Act of March 3, 1901, ch. 876, 31 Stat. 1453-1454.

<sup>24</sup> Act of June 30, 1906, ch. 3929, 34 Stat. 804-808.

<sup>25</sup> P.L. 69-440; 44 Stat. 1.

organizations. The missions of seven of these were related to war and its aftermath, and all but one were established as nonprofit corporations:<sup>26</sup>

1. American National Red Cross (chartered in 1900),
2. Boy Scouts of America (1916),
3. American Legion (1919),
4. Belleau Wood Memorial Association (1923),
5. Grand Army of the Republic (1924),
6. United States Blind Veterans of World War (1924),
7. American War Mothers (1925), and
8. American Battle Monuments Commission (1923).<sup>27</sup>

In addition to these charters, two other provisions were included that pertained to recognition of Mother's Day.<sup>28</sup> Title 36 did not include all congressional charters for private organizations that had previously been enacted and were then in effect.<sup>29</sup>

Title 36 did not include all statutes then in effect that had conferred congressional charters. Nor does Title 36 presently include all statutes now in effect that have conferred congressional charters.

## **Title 36 Organizations: Coherence and Diversity**

During the 95 or more years since this initial edition of Title 36 was issued, charters were added and, less frequently, removed. By 1958, Title 36 included charters for more than 40 national organizations.<sup>30</sup> Although most of the organizations appear to have had missions pertaining to wars and their aftermath, as had been the case in 1926, the 1958 edition of Title 36 included a broader array of national organizations overall, including, for example, the National Safety Council, the National Music Council, Big Brothers of America, the Conference of State Societies, Future Farmers of America, and the United States Olympic Association.<sup>31</sup> This diversity of missions prompted one observer to write, in 1957, "Judging by the variation in the declared purposes and principal powers and duties of these different corporations, the conception of 'Patriotic Societies' of Title 36, is both broad and vague."<sup>32</sup>

Notwithstanding this characterization, this scholar noted the cohesion of Title 36 corporations relative to other incorporated entities established by Congress:

These "patriotic societies" are readily distinguished in a variety of particulars from another group of corporations enacted by the Congress to carry on sundry types of business, commerce and finance. The latter corporations are frequently referred to as government

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<sup>26</sup> Only the Boy Scouts of America did not have a connection to war or its aftermath. The American Battle Monuments Commission was the only entity included in Title 36 in 1926 that was not organized in corporate form.

<sup>27</sup> *The Code of the Laws of the United States of America of a General and Permanent Character in Force December 7, 1925*, Title 36 (Washington: GPO, 1926), §§1-133.

<sup>28</sup> *Ibid.*, §§141 and 142.

<sup>29</sup> At least three other national organizations that had been statutorily established in the 19<sup>th</sup> century were not included in the initial edition of Title 36 but were later added to the title: the National Academy of Sciences (1863), the American History Association (1889), and the National Society of the Daughters of the American Revolution (1896).

<sup>30</sup> *United States Code*, 1958 Edition, vol. 7, Title 36 (Washington: GPO, 1959).

<sup>31</sup> *Ibid.*

<sup>32</sup> Wesley A. Sturges, "The Legal Status of the Red Cross," *Michigan Law Review*, vol. 56, no. 1 (November 1957), p. 22.



business corporations. They are fashioned more or less like corresponding private corporations with capital structures, capital stock issues and authorization to engage in designated lines of enterprise for profit (or at least break-even returns) to the corporation. Generally the United States is the sole or principal stockholder....

Unlike the business corporations enacted by the Congress, its “patriotic societies” are created as membership corporations. The acts creating these societies follow a common pattern. A group of persons is named therein and the statute declares that they, their associates and successors, “are created a body corporate and politic.” ...

None of the acts creating these societies contemplates the carrying on of any commercial enterprise for profit to the incorporators or members; some of the enactments do, some do not, expressly disclaim such purpose. According to some of the acts, membership is limited to designated classes of persons; this is true, for example, of the veterans’ organizations. Some, like the [Daughters of the American Revolution], have no statement of membership qualifications or limitations.<sup>33</sup>

Title 36 organizations are now catalogued in subtitle II, “Patriotic and National Organizations.”<sup>34</sup> The subtitle includes the charters of more than 90 national organizations. About half of these are private, nonprofit corporations that appear to have missions related to the military or veterans, such as the Naval Sea Cadet Corps,<sup>35</sup> the Gold Star Wives of America,<sup>36</sup> the Jewish War Veterans of the United States of America,<sup>37</sup> and the Veterans of Foreign Wars of the United States.<sup>38</sup> Other nonprofit corporations listed in the subtitle have differing relationships with federal government agencies and diverse purposes, including, for example, the following:

- Federal-government-affiliated organizations, such as the National Film Preservation Foundation and the National Recording Preservation Foundation, which is affiliated with the Library of Congress;<sup>39</sup> the Corporation for the Promotion of Rifle Practice and Firearms Safety, which is affiliated with the U.S. Army;<sup>40</sup> the National Academy of Sciences;<sup>41</sup> and Former Members of Congress.<sup>42</sup>

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<sup>33</sup> Sturges, “The Legal Status of the Red Cross,” pp. 22-23.

<sup>34</sup> 36 U.S.C. Subtitle II, Part B. Title 36 as a whole is entitled “Patriotic and National Observances, Ceremonies, and Organizations.” As this name would suggest, other parts of the title cover statutes pertaining to related observances and ceremonies. These provisions, however, are generally outside the scope of this report. In 1998, P.L. 105-225 (112 Stat. 1253) enacted Title 36 as positive law. Prior to this enactment, Title 36 had been a non-positive law title of the *United States Code*. That is, it was essentially “an editorial compilation of Federal statutes.” As a positive law title, Title 36 is now an enacted statute itself. This distinction might sometimes have implications in legal contexts that are beyond the scope of this report. For more, see U.S. House of Representatives, Office of the Law Revision Counsel, “United States Code: Positive Law Codification,” <https://uscode.house.gov/codification/legislation.shtml>.

<sup>35</sup> 36 U.S.C. Ch. 1541.

<sup>36</sup> 36 U.S.C. Ch. 805.

<sup>37</sup> 36 U.S.C. Ch. 1101.

<sup>38</sup> 36 U.S.C. Ch. 2301.

<sup>39</sup> 36 U.S.C. Ch. 1517 and 36 U.S.C. Ch. 1524.

<sup>40</sup> 36 U.S.C. Ch. 407.

<sup>41</sup> 36 U.S.C. Ch. 1503.

<sup>42</sup> 36 U.S.C. Ch. 703.

- Youth-oriented organizations, such as Big Brothers-Big Sisters of America,<sup>43</sup> Boy Scouts of America,<sup>44</sup> Girl Scouts of the United States of America,<sup>45</sup> and Little League Baseball, Incorporated.<sup>46</sup>
- Professional or avocational associations, such as the American Academy of Arts and Letters,<sup>47</sup> the Society of American Florists and Ornamental Horticulturists,<sup>48</sup> the American Symphony Orchestra League,<sup>49</sup> and the National Ski Patrol System, Incorporated.<sup>50</sup>
- National history or historical-event-related groups, such as the National Society of the Daughters of the American Revolution,<sup>51</sup> the American Historical Association,<sup>52</sup> the Theodore Roosevelt Association,<sup>53</sup> and the United States Capitol Historical Society.<sup>54</sup>
- Other organizations of national purpose, such as the United States Olympic and Paralympic Committee,<sup>55</sup> the National Academy of Public Administration,<sup>56</sup> and the National Conference on Citizenship.<sup>57</sup>

## **Evolving Chartering and Oversight Issues**

The emergence of issues concerning congressional chartering and oversight of private, nonprofit organizations predated the classification of these charters into Title 36. Questions about the constitutional authority of Congress to incorporate any private entity were considered at the nation's founding, and the extent of such authority continued to be debated in Congress well into the 20<sup>th</sup> century. Some Members have also raised concerns about the purposes and standards for granting such charters. As the number of Title 36 organizations has grown, some Members have also expressed doubt that congressional committees have the capacity to oversee their administrative practices and activities.

Even as these concerns have sometimes led congressional committees of jurisdiction to suspend or attempt to discontinue consideration of charter legislation, organizations have continued to seek congressional charters. Although the tangible benefits of a congressional charter are few, some national nonprofit groups have perceived that the prestige associated with this distinction might improve their standing, expand their membership rolls, and increase their fundraising. In

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<sup>43</sup> 36 U.S.C. Ch. 301.

<sup>44</sup> 36 U.S.C. Ch. 309.

<sup>45</sup> 36 U.S.C. Ch. 803.

<sup>46</sup> 36 U.S.C. Ch. 1305.

<sup>47</sup> 36 U.S.C. Ch. 203.

<sup>48</sup> 36 U.S.C. Ch. 2001.

<sup>49</sup> 36 U.S.C. Ch. 223.

<sup>50</sup> 36 U.S.C. Ch. 1527.

<sup>51</sup> 36 U.S.C. Ch. 1531.

<sup>52</sup> 36 U.S.C. Ch. 213.

<sup>53</sup> 36 U.S.C. Ch. 2101.

<sup>54</sup> 36 U.S.C. Ch. 2203.

<sup>55</sup> 36 U.S.C. Ch. 2205.

<sup>56</sup> 36 U.S.C. Ch. 1501.

<sup>57</sup> 36 U.S.C. Ch. 1507.

some cases, organizations have sought charters for more specific benefits, such as official recognition by the Department of Veterans Affairs or special treatment by the state in which the group was originally incorporated, both discussed below.<sup>58</sup>

## Early Concern: Constitutional Authority

Some of the earliest questions about congressional chartering pertained to Congress's powers under the Constitution. As the 1<sup>st</sup> Congress (1789-1791) considered, and passed, legislation to establish a Bank of the United States in 1791, the Jeffersonians and the Federalists, led by Alexander Hamilton, vigorously debated the question of whether Congress had the constitutional authority to incorporate.<sup>59</sup> After the first charter expired, Congress chartered a second Bank of the United States in 1816. This charter was challenged in federal court, and the Supreme Court upheld its constitutionality in *McCulloch v. Maryland*.<sup>60</sup> Congressional practice during the 1800s also bolstered the position that Congress did have this power, at least with regard to incorporation of private entities that would carry out certain government functions.<sup>61</sup>

At the turn of the 20<sup>th</sup> century, some in Congress were not persuaded that, whatever incorporation authority Congress might have, it extended to private organizations with no government purpose. In 1905, one Member raised this issue in the context of House floor debate on a bill to incorporate the American Academy in Rome:

When this bill was before the House on a former occasion, believing as I then did, and believing as I now do, that the Congress of the United States ought not to exercise, and in fact has not the constitutional power to exercise, the power to grant indiscriminately charters except in the jurisdiction over which the Congress has sole jurisdiction, the District of Columbia and the Territories. ...

In a number of cases the court has declared that Congress has no general power to grant charters to corporations, and can only grant them where the Congress at the same time confers upon the corporation some governmental function, such as issuing money, building railroads that are to be equipped and used as great public highways, or in the transportation of mail for the Government or the transportation of its armies. Even that for a while was disputed until it was decided, in the famous case of *McCulloch v. Maryland*, that Congress could incorporate the United States Bank.<sup>62</sup>

At the conclusion of his remarks, the Member dropped his objection to the bill under debate, differentiating from the charters he objected to from “the incorporation of these very worthy and distinguished gentlemen into a body politic, for the laudable and charitable purposes stated in the bill.” Notwithstanding his acquiescence in this case, he noted that this instance would not “be binding upon me as a precedent in the future when other bills are sought to be passed like it.”<sup>63</sup> These remarks perhaps reflect the dilemma sometimes faced by Members with regard to Title 36 charters: They might be opposed to the general practice, but they support a specific organization whose charter is at hand.

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<sup>58</sup> See “Role of Charters in Federal Recognition of Veterans’ Organizations” and “Executive Branch Study: Legal Benefits of Congressional Charters.”

<sup>59</sup> Richard G. Handler and Thomas F. Liotti, “An Historical Survey of Federal Incorporation,” *Delaware Journal of Corporate Law*, vol. 1, no. 2 (1976), pp. 370-390.

<sup>60</sup> Handler and Liotti, “An Historical Survey of Federal Incorporation,” pp. 374-375.

<sup>61</sup> Handler and Liotti, “An Historical Survey of Federal Incorporation,” pp. 374-375.

<sup>62</sup> Bartlett, “American Academy, Rome,” p. 3668.

<sup>63</sup> Bartlett, “American Academy, Rome,” p. 3668.

## Charter Volume and Congressional “Seal of Approval”

Incorporation of nonprofit organizations such as those listed in Title 36 has generally been within the jurisdiction of the House and Senate Judiciary Committees,<sup>64</sup> and much of the discussion and debate about the chartering and oversight of these entities has occurred within these two committees. For example, in the context of a 1918 Senate Judiciary Committee hearing on a bill to charter an American Committee for Relief in the Near East, a Senator raised the following questions:

My view has been that the Congress has no power to give a charter of this character or a charter of any character except to some governmental agency or instrumentality like the Emergency Fleet Corporation, which is building vessels for the Government, or this new War Finance Corporation, which is organized to perform a distinctly governmental function. A corporation that does not perform a distinctly governmental function, in my opinion may not be created by Congress. I do not think that this comes within the category of distinctly governmental purposes....

[T]here are very many corporations that are knocking at the doors of Congress for charters. They seem to think—and in that, I am afraid, they may be somewhat mistaken—that if they can get a charter from the Federal government it is going to give them a prestige and standing that will enable them to get more money to carry on their charitable and philanthropic purposes than if they continue their activities as a corporation under a State or as a voluntary association, and that very fact that they think they will get some advantages by a Federal charter will give them prestige and standing is one reason why I should be opposed to it.<sup>65</sup>

Concern about the volume of charter requests and the perception that the prestige of a congressional charter could enhance fundraising continued to arise as additional groups of veterans and their supporters sought this status after the First World War. During a 1924 joint hearing of the House and Senate Committees on the Judiciary regarding a bill to incorporate the National American War Mothers, one Member appeared to bristle at the assertion by one of the group’s leaders that a congressional charter would give the group public recognition that would yield more public support. Following a brief exchange with the witness on what was meant by *support*, the Member countered:

That is the trouble.... We are receiving many requests for charters from all kinds of organizations and associations, and the committee has heretofore been very much disinclined to grant these charters unless they can serve some good purpose. I mean by that some purpose pertaining to the country as a whole. If by Congress granting this charter it will serve a good purpose, we have favored it; but we have not, speaking for myself, been in favor of granting these charters generally. It is a bad thing, in my opinion, and I think we should be told just how you are going to help the country generally; how it is going to be of service to the country generally.<sup>66</sup>

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<sup>64</sup> Chartering legislation has sometimes been referred to, and reported by, other committees, as well. See, for example, referral practices discussed under “Title 36 Chartering Practices Following the 1965 Veto,” below.

<sup>65</sup> U.S. Congress, Senate Committee on the Judiciary, *Government Incorporation of American Committee for Relief in the Near East*, hearing on S. 4785, 65<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 1, 1918, (unpublished hearing transcript accessed through ProQuest Congressional), p. 9.

<sup>66</sup> U.S. Congress, Joint Committees on the Judiciary, *To Incorporate the American War Mothers*, hearing on H.R. 8980 and H.R. 9095, 68<sup>th</sup> Cong., 1<sup>st</sup> sess., May 6, 1924 (Washington: GPO, 1924), pp. 4-5. The question of Congress’s constitutional authority to charter this organization was not explicitly raised during this hearing. As reflected in this excerpt, some Members instead raised the question of whether the group would serve a beneficial national purpose. Charter supporters repeatedly noted the linkage of the group’s purposes with the then-recently concluded World War.

## Committee Resistance to Charters

By 1926—the year the *United States Code* was first issued—it appears that the two judiciary committees had largely stopped reporting congressional charter bills. In the course of a subcommittee hearing in the House, one Member noted that “the Senate Judiciary Committee has passed a resolution declaring it to be the policy of the committee not to report favorably on any Federal charters, unless it is necessary for the organization seeking the charter to obtain the Federal charter in order to carry out” governmental functions.<sup>67</sup> The subcommittee chair added that the resolution “is largely the policy of this committee, too.”<sup>68</sup> These policies—formal or informal—appear to have continued through the following Congresses.<sup>69</sup> The committees made certain exceptions during the two decades that followed, typically noting in committee reports the reason for doing so.<sup>70</sup>

## Role of Charters in Federal Recognition of Veterans’ Organizations

Some groups have perceived that the prestige of a congressional charter could provide an edge in the competition for membership and fundraising. Following the end of World War II, the Veterans’ Administration (VA) provided veterans’ service organizations (VSOs) with an additional incentive for seeking a congressional charter by linking charters with the right to represent veterans seeking benefits.<sup>71</sup> Some groups saw such representational services as an

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<sup>67</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee No. III, *To Incorporate the American Citizenship Foundation*, hearing on H.R. 11319, 69<sup>th</sup> Cong., 1<sup>st</sup> sess., May 21, 1926 (Washington: GPO, 1926), p. 3.

<sup>68</sup> *Ibid.*, p. 4.

<sup>69</sup> See, for example, remarks of the chairman of the House Judiciary Committee during a hearing on a bill to incorporate the Disabled American Veterans of the World War: “The heart of this question ... lies in the fact that we have practically abandoned granting these charters. I believe that for eight years there has not been one granted.... It means, if we are to grant your request, receding from a policy that has been in operation for a number of years ... that we have to sit in judgment and try out the merits of the various applicants for Federal charters.” U.S. Congress, House Committee on the Judiciary, *To Incorporate the Disabled American Veterans of the World War*, hearing on H.R. 4738, 72<sup>nd</sup> Cong., 1<sup>st</sup> sess., April 1, 1932 (Washington: GPO, 1932), p. 18. See, also, Member remarks in U.S. Congress, House Committee on the Judiciary, *Incorporate the National Theater and Academy*, hearing on H.R. 8214, 74<sup>th</sup> Cong., 1<sup>st</sup> sess., June 11, 1935 (Washington: GPO, 1935), p. 3; U.S. Congress, Senate Committee on the Judiciary, *A Bill Providing for Incorporation of the National Council of Negro Veterans*, hearing on S. 1497, 78<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 28, 1944 (unpublished hearing transcript accessed through ProQuest Congressional), p. 11. Notwithstanding the sentiments expressed in these hearings, it is unclear whether the policy was continually adopted or adhered to throughout the 1926-1946 period.

<sup>70</sup> For example, in support of a charter for the American National Theater and Academy, the House Judiciary Committee report stated, “The passage of the bill constitutes an official governmental recognition of the enormous benefits and values flowing from the development of the finest in art and literature, including the theater.... One of the recognized problems of social and economic importance in the United States today is the proper use of leisure time. [This] incorporation ... will permit a study of the problem of the use of leisure time in the many ways made possible through patronage of the arts including the theater. The presentation of theatrical productions of the finest sort will, in the opinion of the committee, make the use of leisure time a thing of benefit to the Nation. The committee ... was impressed with the need for such a movement as is set forth in this bill, of the great potential contribution that it could make to America and of the ability and earnest devotion of its endorsers. The committee is of the opinion that should the Congress incorporate the National Theater and Academy it would render a great service to the Nation” (U.S. Congress, House Committee on the Judiciary, *Incorporate the American National Theater and Academy*, report to accompany H.R. 8214, 74<sup>th</sup> Cong., 1<sup>st</sup> sess., June 15, 1935, S.Rept. 74-1240 (Washington: GPO, 1935), p. 2). The charter was enacted (49 Stat. 457). See, also, U.S. Congress, House Committee on the Judiciary, *To Incorporate the Disabled American Veterans of the World War*, report to accompany H.R. 4738, 72<sup>nd</sup> Cong., 1<sup>st</sup> sess., May 10, 1932, H.Rept. 72-1271 (Washington: GPO, 1932), p. 1. The charter for this organization also was enacted (47 Stat. 320).

<sup>71</sup> In 1988, the Veterans’ Administration was redesignated as the Department of Veterans Affairs and elevated to department status by P.L. 100-527 (102 Stat. 2635). Like its predecessor, the Department of Veterans Affairs is

essential part of their work on behalf of their members, as discussed by the executive director of one such organization at a 1971 hearing:

It is important that the Paralyzed Veterans of America receive a Federal charter. Without it, we are denied the right to do for the paraplegic and quadriplegic veteran what we feel is our most important function: prosecution of veterans claims before the Veterans Administration. In the present circumstance, our National Service Officers must turn over adjudication to another veterans' organization. While most appreciative of the cooperation of these groups in the past Mr. Chairman, we feel we would best serve our members and the Nation if we could control the entire process. There are many things regarding these veterans' conditions and problems that we know. We know because we have been there ourselves.<sup>72</sup>

Pursuant to statutory authority first enacted in 1924,<sup>73</sup> VA regulations had long provided for the “recognition of organizations, associations, and other agencies in the presentation and adjudication of claims for benefits” by veterans.<sup>74</sup> The statute and regulations had included a short list of specified organizations and “such other organizations as the Administrator of Veterans Affairs shall approve.”<sup>75</sup>

The regulations were amended in 1946 to further limit the organizations that could be afforded this status:

In general, no additional organizations will be recognized after January 1, 1947 except (1) State or governmental services, or (2) organizations granted a charter or recognition by act of Congress.<sup>76</sup>

Looking back on this decision in 1961, the VA administrator explained the reasoning behind the rule change:

Under existing regulations, with the exception of State or governmental services, as a matter of policy we do not extend recognition to an organization for the purposes specified

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commonly referred to as the VA.

<sup>72</sup> U.S. Congress, Senate Committee on the District of Columbia, Subcommittee on Business, Commerce, and Judiciary, *Estates, Utilities, Assaults on Firemen, and Incorporation*, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., June 11, 1971 (Washington: GPO, 1971), p. 79.

<sup>73</sup> World War Veterans' Act, 1924; P.L. 68-242, Sec. 19; 43 Stat. 607, 612-613. The provision restricted the recognition of attorneys who could act on behalf of veterans in presenting claims to the United States Veterans' Bureau for specified programs to “recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars and such other organizations as shall be approved by the Director.” The act was later amended to specify additional organizations. The United States Veterans' Bureau was a predecessor of the Veterans' Administration. As articulated by a representative of the Disabled American Veterans at a Senate hearing on the bill, the purpose of the provision was to aid returning veterans with navigating the federal bureaucracy: “The object of that is this: Our veterans' organizations are maintaining in the Veterans' Bureau our liaison officers—I am describing conditions that exist in all veteran organizations—who act as attorneys for these men without charge. We have one in every one of the 14 districts, as well as in the central office. These men go there with some of the men who are so illiterate they cannot properly present their cases, some of whom become hopelessly enmeshed in this red tape, and our man is their man to fight their battle for them and I think it should be put in there that these liaison men should be accepted. This service is maintained by us at great expense to our organization, and it has done a lot of good work, just as liaison officers in other organizations have done, and they should be encouraged.” U.S. Congress, Senate Committee on Finance, Subcommittee, *Veterans' Bureau Codification Act*, hearings on S. 2257, 68<sup>th</sup> Cong., 1<sup>st</sup> sess., February 21, 25, and 27, March 5 and 6, 1924 (Washington: GPO, 1924), pp. 41-42.

<sup>74</sup> 38 C.F.R. §1.300, 1938 edition.

<sup>75</sup> 38 C.F.R. §1.300, 1938 edition.

<sup>76</sup> VA, “Part 20—Guardianship and Legal Administration; Miscellaneous Amendments,” 11 *Federal Register* 8596, August 8, 1946.

in section 3402, unless the organization has been granted a charter or recognition by act of Congress. This policy was adopted soon after the end of World War II and was based, in part, on the flood of applications for recognition received from the large number of organizations growing out of the war and the lack of facilities or information necessary to determine the qualifications of all such organizations. Another consideration was the practical problem raised by the provision of law authorizing the furnishing of space and office facilities for the use of representatives of recognized organizations.<sup>77</sup>

As discussed in detail below, the administrative nexus between a congressional charter and the authority of a national organization to represent veterans in the VA claims process was modified in the late 1970s and 1980s and discontinued in 1992.<sup>78</sup>

## **Search for a Workable Process**

During the post–World War II period, as numerous groups of veterans and their supporters, among others, requested charters, Congress sought to establish standards by which such requests could be evaluated and an audit process through which already-chartered groups could be monitored.

During a 1946 hearing of a subcommittee of the Senate Judiciary Committee, the chair reflected on the difficulties associated with granting charters and overseeing chartered organizations:

Here is the problem ... that has faced this subcommittee all the way through now for the past 4 years. We have been beset by applications for charters. All States ... have machinery under which charters are issued.... I know in my State, the secretary of state has the right to supervise and look after everything, and the committees of Congress simply do not have the time.

We have bills here—many of them. Here are some of them. These were all issued prior to 5 years ago. Since that time everything has been held in this committee because the committee felt, as a whole, that some machinery should be set up in which these charters could be filed; records kept of who their officers were, and these audits made to see that we were not lending the cloak of congressional authority to an unworthy enterprise....

For instance, we had a terrible contest here last year between four mothers' groups as to who would get a charter. We were not in a position to go down and investigate who were the backers of these groups; who was promoting them; what the purpose was, and we knew we would have no knowledge, once we granted the charter, as to what the group did; whether they kept their officers, or what they did.<sup>79</sup>

During the 79<sup>th</sup> Congress (1945-1947), the chair of the Senate Subcommittee on Incorporation Bills, Harley M. Kilgore, introduced a bill that would have established congressional chartering policy.<sup>80</sup> The policy would have limited charters of private organizations to “nonprofit

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<sup>77</sup> Letter from J. S. Gleason Jr., Administrator of Veterans' Affairs, to Olin E. Teague, Chair, House Committee on Veterans' Affairs, April 25, 1961. Obtained, by subscription, from ProQuest Congressional, an online database of congressional publications. Gleason's explanation implies that the process of obtaining a congressional charter could serve as a proxy for VA VSO screening. The Senate and House committees with the greatest expertise on veterans issues and, therefore, arguably the best ability to screen VSOs did not have jurisdiction over such congressional charters. The Senate and House Judiciary Committees have usually been the committees of jurisdiction for Title 36 charter bills in their respective chambers, regardless of the policy area related to the organization.

<sup>78</sup> See “End to VA Linkage of Charters and Recognition,” below.

<sup>79</sup> U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Incorporation Bills, *Corporation Charter Bills*, hearings on 13 corporation charter-related bills, 79<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 28 and March 22, 1946 (Washington: GPO, 1946), pp. 4-5.

<sup>80</sup> S. 2223 (79<sup>th</sup> Congress), “To establish and effectuate a policy with respect to the creation or chartering of certain

corporations, organized and operated for charitable, educational, patriotic, or civic-improvement purposes.”<sup>81</sup> DOJ would have “carefully investigated the proposed incorporators and the proposed purposes of the corporation.”<sup>82</sup> Private corporations with congressional charters would then have been “subjected to an annual audit of their financial transactions by the General Accounting Office at the expense of the corporation audited in each case; and a report on each such audit [would have been] made to the Congress.”<sup>83</sup> The Senate passed the measure, but the House did not take it up.<sup>84</sup>

Similar bills were introduced in succeeding Congresses. Although the beginning of the 80<sup>th</sup> Congress (1947-1949) saw a shift in party control in the Senate, the new Judiciary Committee chair reintroduced the legislation that had passed the Senate the year before.<sup>85</sup> But the legislation appears to have faced criticism from some existing chartered organizations, and it was not taken up by either chamber.<sup>86</sup> When a similar bill was considered in the Senate during 81<sup>st</sup> Congress (1949-1951),<sup>87</sup> it was amended to address these concerns and passed.<sup>88</sup> The Senate passed a similar measure during the 82<sup>nd</sup> Congress (1951-1953).<sup>89</sup> The House did not take up the legislation during either Congress. Similar bills were introduced, but not passed by either chamber, during the 83<sup>rd</sup> and 84<sup>th</sup> Congresses (1953-1957).<sup>90</sup>

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corporations by Act of Congress, and for other purposes.”

<sup>81</sup> U.S. Congress, Senate Committee on the Judiciary, *Establishing and Effectuating a Policy with Respect to the Creation or Chartering of Certain Corporations by Act of Congress*, report to accompany S. 2223, 79<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 11, 1946, S.Rept. 1451 (Washington: GPO, 1946), p. 1.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*; “Policy with Respect to Chartering of Certain Nonprofit Corporations by Act of Congress,” Senate debate, *Congressional Record*, vol. 92, part 6 (June 14, 1946), p. 6920.

<sup>85</sup> S. 503 (80<sup>th</sup> Congress).

<sup>86</sup> The Senate Judiciary Committee quickly reported the measure, but the bill’s sponsor soon asked that it be sent back to committee, stating, “Apparently now the Red Cross and other organizations are concerned about features of this bill.” U.S. Congress, Senate Judiciary, *Establishing and Effectuating a Policy with Respect to the Creation or Chartering of Certain Corporations by Act of Congress*, report to accompany S. 503, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., February 19, 1947, S.Rept. 30 (Washington: GPO, 1947); and Sen. Alexander Wiley, “Creation or Chartering of Certain Corporations-Recommendation of a Bill,” remarks in the Senate, *Congressional Record*, vol. 93, part 2 (March 12, 1947), p. 1936.

<sup>87</sup> S. 1290 (81<sup>st</sup> Congress). During the 81<sup>st</sup> Congress, other chartering-process-related legislation was also introduced in both the House and the Senate but not acted upon in either chamber. H.R. 2555 and S. 958 would have established an independent commission in the executive branch to grant federal charters to certain categories of organizations, among other functions.

<sup>88</sup> U.S. Congress, Senate Committee on the Judiciary, *Establishing and Effectuating a Policy with Respect to the Creation or Chartering of Certain Corporations by Act of Congress*, report to accompany S. 1290, 81<sup>st</sup> Cong., 1<sup>st</sup> sess., May 16, 1949, S.Rept. 81-390 (Washington: GPO, 1949); “Creation or Chartering of Certain Corporations,” Senate debate, *Congressional Record*, vol. 95, part 8 (July 26, 1949), pp. 10186-10187; and “Establishment of Policy with Respect to Creation or Chartering of Certain Corporations,” Senate debate, *Congressional Record*, vol. 95, part 8 (August 9, 1949), pp. 11027-11028.

<sup>89</sup> S. 1898 (82<sup>nd</sup> Congress); U.S. Congress, Senate Committee on the Judiciary, *Establishing and Effectuating a Policy with Respect to the Creation or Chartering of Certain Corporations by Act of Congress*, report to accompany S. 1898, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., July 30, 1951, S.Rept. 82-588 (Washington: GPO, 1951); and “Creation or Chartering of Certain Corporations by Act of Congress,” Senate debate, *Congressional Record*, vol. 97, part 7 (August 9, 1951), pp. 9696-9698.

<sup>90</sup> S. 3675 (83<sup>rd</sup> Congress) and S. 1596 (84<sup>th</sup> Congress).



Although this legislation was not enacted, it appears that a portion of it was the de facto Senate Judiciary Committee policy during this period. This practice was discussed during a subcommittee hearing on a charter bill:

Mr. Collins [a committee staff member]: Mr. Chairman, might I point out for the record also that our Committee has for a number of years had a uniform charter policy. That policy is contained in this present bill of Senator Kilgore, S. 1596 of the 84<sup>th</sup> Congress and this bill sets out certain uniform provisions which must be incorporated in every charter bill which receives favorable consideration of this Committee, and Section 3 of Senator Kilgore's bill sets out a number of points which must be incorporated in any bill conferring the prestige of a Federal charter.

Senator O'Mahoney: I was unaware of the fact that such a proposal had been made. When was it first adopted by the Committee?

Mr. Collins: In the 81<sup>st</sup> Congress.

Senator O'Mahoney: Was it written into a bill?

Mr. Collins: Senator, it passed the Senate in the 81<sup>st</sup> and 82<sup>nd</sup> Congress, and our full Committee has always observed that as a fixed policy.

Senator O'Mahoney: Has it passed the House?

Mr. Collins: No; the House has never acted on it.<sup>91</sup>

## **Uniform Audit and Report Requirements**

Efforts during the 1940s and 1950s to enact a comprehensive bill on processes for granting Title 36 charters and overseeing chartered organizations were not successful. During the 88<sup>th</sup> Congress (1963-1965), however, legislation establishing uniform audit and report requirements for most Title 36 corporations was enacted.<sup>92</sup> The statute also provided the General Accounting Office (GAO—now called the Government Accountability Office) with a formal role in oversight of chartered organizations.

By the late 1950s, many of the individual charters in Title 36 required annual audits and reports to Congress on the corporations' finances.<sup>93</sup> Under these arrangements, the oversight committees were placed in the position of reviewing the reports—or not. House Judiciary Committee Chair Emanuel Celler judged that his committee lacked the technical expertise to evaluate the audit reports it had received. In a 1959 letter to the Comptroller General, Celler requested that GAO review them instead:

It has become customary to include in Federal charters a provision requiring the chartered organization to submit a financial report to the Congress each year. Many of these are

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<sup>91</sup> U.S. Congress, Senate Committee on the Judiciary, Standing Subcommittee on Charters, Holidays, and Celebrations, hearing on S. 1311, 84<sup>th</sup> Cong., 1<sup>st</sup> sess., June 22, 1955 (unpublished hearing transcript accessed through ProQuest Congressional), p. 8.

<sup>92</sup> P.L. 88-504; 78 Stat. 635.

<sup>93</sup> *United States Code*, 1958 Edition, vol. 7, Title 36 (Washington: GPO, 1959). See, for example, §235 (Reserve Officers Association), §284 (Future Farmers of America), §349 (American Society of International Law), §416 (Conference of State Societies), §444 (National Conference on Citizenship), §475 (National Safety Council), §514 (Board for Fundamental Education), §545 (Sons of Union Veterans of the Civil War), §584 (Foundation of the Federal Bar Association), §614 (National Fund for Medical Education), §644 (Army and Navy Legion of Valor), §674 (National Music Council), §704 (Boys' Clubs of America), §775 (Veterans of World War I), §804 (Congressional Medal of Honor Society), §834 (Military Order of the Purple Heart), §864 (Blinded Veterans Association), §894 (Big Brothers of America), and §923 (Jewish War Veterans, U.S.A., National Memorial, Inc.).

referred to the Committee on the Judiciary. Unfortunately, we do not have a staff accountant to examine these reports. I feel that it is most important that these reports be examined by a skilled accountant. For that reason, I should appreciate it if the General Accounting Office would examine the enclosed reports which we have received since the beginning of this congress and such others as are received subsequently.

I am particularly concerned with ascertaining whether these statements comply with the terms of the reporting requirement in the charters of the reporting organizations, and whether the statements meaningfully reflect the operations and financial status of these organizations.<sup>94</sup>

The Comptroller General agreed that GAO would review the reports as well as “such others as are subsequently referred to us.”<sup>95</sup> Though not yet set in statute, the exchange appears to have established an ongoing process for GAO review of these reports.<sup>96</sup>

After several years of these arrangements, GAO staff identified deficiencies in the diverse auditing and report requirements in Title 36 charters.<sup>97</sup> In the view of the auditors, some requirements were too relaxed, while others were too stringent. They worked with House Judiciary Committee staff to craft legislation to bring uniformity to these requirements by repealing each of the existing provisions and establishing a single process that would apply across 48 chartered groups.

First introduced during the 87<sup>th</sup> Congress (1961-1963),<sup>98</sup> the legislation—“To provide for audit of accounts of private corporations established under Federal law”—was reintroduced and enacted in the 88<sup>th</sup> Congress (1963-1965).<sup>99</sup>

## Executive Branch Study: Recommendations on Chartering Criteria and Standards

With the enactment of this statute, a long-sought uniform auditing mechanism for Title 36 corporations was established. At the same time, legislation providing for chartering criteria and standards, which had also been called for during the 1940s and early 1950s, had not been enacted. Meanwhile, the charters included in Title 36 grew from 19 to 48 between 1946 and 1964.<sup>100</sup>

In 1965, President Lyndon B. Johnson took the unusual step of vetoing a congressional charter bill, bringing renewed attention to the absence of chartering standards in his veto message. The

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<sup>94</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee No. 4, “A Bill to Provide for Audit of Accounts of Private Corporations Established under Federal Law,” hearing on H.R. 4223, 88<sup>th</sup> Cong., 1<sup>st</sup> sess., March 28, 1963, (unpublished hearing transcript accessed through ProQuest Congressional), p. 5 of the transcript that follows the bill text.

<sup>95</sup> *Ibid.*, p. 6.

<sup>96</sup> *Ibid.*, p. 5.

<sup>97</sup> U.S. Congress, House Committee on the Judiciary, *Uniform Audit Requirements for Federally Chartered Corporations*, report to accompany H.R. 4223, 88<sup>th</sup> Cong., 1<sup>st</sup> sess., May 14, 1963, H.Rept. 88-298 (Washington: GPO, 1963), p. 2.

<sup>98</sup> H.R. 10758 (87<sup>th</sup> Congress).

<sup>99</sup> P.L. 88-504; 78 Stat. 635. This statute was incorporated into Title 36 as Section 10101 when the title was enacted as positive law in 1998 (P.L. 105-225; 112 Stat. 1253).

<sup>100</sup> *United States Code*, 1946 edition, vol. 3, Title 36 (Washington: GPO, 1946); and *United States Code*, 1964 edition, vol. 7, Title 36 (Washington: GPO, 1964).

bill would have granted a charter to the Youth Councils on Civic Affairs.<sup>101</sup> He did not find the organization unworthy but rather found the congressional chartering process lacking:

For some time I have been concerned with the question of whether we were granting Federal charters to private organizations on a case-by-case basis without the benefit of clearly established standards and criteria as to eligibility. Worthy civic, patriotic, and philanthropic organizations can and do incorporate their activities under State law. It seems obvious that Federal charters should be granted, if at all, only on a selective basis and that they should meet some national interest standard.

Other questions indicate the desirability of further study of this matter. For example, does the granting of Federal charters to a limited number of organizations discriminate against similar and worthy organizations and possibly stifle their growth? Should federally chartered corporations be more carefully supervised by an agency of the Federal Government? Does Federal rather than State chartering result in differences in the legal or tax status of the corporation, and are any differences appropriate ones?<sup>102</sup>

The President directed DOJ and the Bureau of the Budget (BOB)<sup>103</sup> to study, and make recommendations regarding, chartering issues. In response, DOJ and BOB issued a joint memorandum to the House Judiciary Committee in 1966<sup>104</sup> that included the following findings:

- Congress had shown “discipline in granting charters.”
- There was no “generally agreed-upon comprehensive set of standards to guide congressional action” on charter requests.
- Notwithstanding required audit reports, chartered organizations were free from ongoing federal oversight.
- Executive branch agencies had not been incorporated into the charter consideration process in any consistent and meaningful way.
- Congressional chartering responsibilities were “fragmented,” with charter proposals sometimes referred to committees other than the respective judiciary committees.<sup>105</sup>

With regard to potential standards for conferring charters, the memorandum included a variety of recommendations:

Such standards should provide that any organization granted a Federal charter should:

Be organized and operated only for charitable, literary, education, scientific, patriotic, or civic-improvement purposes;

Be nonpartisan;

Be nonsectarian;

Be nonprofit;

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<sup>101</sup> H.R. 3329 (89<sup>th</sup> Congress).

<sup>102</sup> “Incorporated the Youth Councils on Civic Affairs—Veto message from the President of the United States,” receipt of communication from the President, *Congressional Record*, vol. 111, part 17 (September 13, 1965), p. 23623. The President also urged Congress give the matter further study.

<sup>103</sup> Reorganization Plan No. 2 of 1970 (84 Stat. 2085) reorganized the Bureau of the Budget as the Office of Management and Budget.

<sup>104</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Oversight on Federal Incorporations*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 11, 1975 (Washington: GPO, 1975), p. 3.

<sup>105</sup> *Ibid.*

Conduct activities which are of national scope and importance;

Have a name which is not substantially similar to the name of any other corporation holding a Federal charter;

Be of such unique character that a Federal charter is the only appropriate form of incorporation, or require a Federal charter in order to obtain tangible legal benefits not obtainable under charters granted by the States or the District of Columbia;

First have operated under a charter granted by a State or the District of Columbia for a sufficient length of time to demonstrate that its activities are clearly in the public interest. (Exceptions to this particular standard might have to be made, of course, for organizations of such unique character that a Federal charter is the only appropriate form of incorporation.)<sup>106</sup>

The memorandum suggested that Congress strictly adhere to these standards. It noted that, in most cases, federal charters were unnecessary and provided little benefit while increasing congressional workload. Charters seemingly implied government approval while little meaningful government supervision was being conducted. To the degree the public interest would be served through increased public awareness of an organization and its activities, resolutions and public statements might be used instead.

## **Executive Branch Study: Legal Benefits of Congressional Charters**

DOJ also issued a report on the legal status of Title 36 corporations, which was provided to the House Judiciary Committee in 1966.<sup>107</sup> The document presented the findings of a DOJ study of the “Federal laws relating to [Title 36 corporations], the impact of selected state laws, and the background of congressional charters.”

The study found “very few benefits of a congressional charter under federal law” and “no special recognition of *all* congressionally-chartered corporations in federal law.”<sup>108</sup> It found that Title 36 corporations were treated differently under federal tax law only where a charter specified that the organization was an instrumentality of the United States. It noted the special recognition chartered organizations received from the VA, discussed above,<sup>109</sup> but found that the VA could also approve other organizations.

The study’s discussion of Title 36 corporations under state law distinguished between “national corporations,” which were “established as a ‘body politic’ without any reference to specific domicile,” and D.C. corporations, which were “established as ‘a body corporate and politic of the District of Columbia.’”<sup>110</sup> Although recognizing this distinction, the study pointed out that varied wording used in related provisions of Title 36 charters created ambiguity for some Title 36 corporations.

After a review of then-current case law and the laws of 10 states, the study found:

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<sup>106</sup> *Ibid.*, pp. 3-4.

<sup>107</sup> *Ibid.*, pp. 4-11. The findings are briefly summarized here to provide context related to the evolution of congressional charters, rather than to inform readers about the evolution of statutes and case law affecting Title 36 corporations. The current federal and state legal status of such corporations is beyond the scope of this report.

<sup>108</sup> *Ibid.*, p. 5 (emphasis added).

<sup>109</sup> See “Role of Charters in Federal Recognition of Veterans’ Organizations,” above, and “End to VA Linkage of Charters and Recognition,” below.

<sup>110</sup> *Oversight on Federal Incorporations*, p. 4.

The benefits of a congressional charter under the laws of the various states depend upon several factors: (1) whether the congressional charter provides national or D.C. incorporation; (2) whether there is evidence of congressional intent to supersede state corporation laws; (3) whether state law recognizes a national corporation as foreign or domestic; and (4) whether state law confers special benefits on congressionally-chartered corporations.<sup>111</sup>

The study concluded that any legal benefits associated with a Title 36 charter would not be broadly available to all organizations with this status:

The corporations found in Title 36 did not depend upon congressional charters for their existence. Nor are there any certain legal benefits derived from congressional charters. Organizations chartered as D.C. corporations are domestic corporations in the District and foreign corporations elsewhere. Any legal benefits flowing from national incorporation are entirely dependent upon state laws, and the law in this area is largely uncertain. There are some state laws conferring special benefits on congressionally-chartered veterans' organizations, but for the most part, the only advantage of a congressional charter is the prestige value of that charter.<sup>112</sup>

## **Committee Adoption of Chartering Standards**

Following the DOJ/BOB memorandum and the DOJ report, the subcommittees of the House and Senate Judiciary Committees with jurisdiction over Title 36 charters jointly agreed to a set of standards for granting federal charters,<sup>113</sup> and these were published at the outset of the 91<sup>st</sup> Congress in 1969.<sup>114</sup> Under these standards, an organization requesting a charter was required to show that it was

- (1) Operating under a charter granted by a State or the District of Columbia and that it has so operated for a sufficient length of time to demonstrate its permanence and that its activities are clearly in the public interest;
- (2) Of such unique character that chartering by the Congress as a Federal corporation is the only appropriate form of incorporation;
- (3) Organized and operated solely for charitable, literary, educational, scientific, patriotic, or civic improvement purposes;
- (4) Organized and operated as a nonpartisan and nonprofit organization; and
- (5) Organized and operated for the primary purpose of conducting activities which are of national scope and responsive to a national need, which need cannot be met except upon the issuance of a Federal charter.<sup>115</sup>

The adopted document also noted that meeting these standards “shall not—(1) Be considered as justification in itself for the granting of a Federal charter; or (2) Preclude or limit the Congress from imposing additional criteria or standards with respect to the granting of a charter to any organization.”

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<sup>111</sup> *Ibid.*, p. 5.

<sup>112</sup> *Ibid.*, p. 11.

<sup>113</sup> Testimony of Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, *ibid.*, p. 11.

<sup>114</sup> U.S. Congress, Senate Committee on the Judiciary, *Standards for the Granting of Federal Charters to Nonprofit Corporations*, committee print, 91<sup>st</sup> Cong., 1<sup>st</sup> sess., 1969 (reprinted 98<sup>th</sup> Cong., 1<sup>st</sup> sess.), S.Prt. 98-82 (Washington: GPO, 1983).

<sup>115</sup> *Ibid.*, p. 1.

Although agreed to at the subcommittee level, the standards were not adopted by the full House or Senate.<sup>116</sup> Inasmuch as the standards were not enacted into law or adopted as part of House or Senate rules, they were not binding on future Congresses or committees.

The House subcommittee of jurisdiction included chartering standards similar to the 1969 requirements as part of subcommittee rules adopted at the beginning of the 95<sup>th</sup> Congress (1977-1979).<sup>117</sup>

## Title 36 Chartering Practices Following the 1965 Veto

Following President Johnson's 1965 veto,<sup>118</sup> it appears that no additional Title 36 charters were enacted until 1971. That year, a Title 36 chartering bill—for the Paralyzed Veterans of America (PVA)—was referred to the Committees on the District of Columbia in the two chambers, reported by those committees, and enacted. The Judiciary Committees appear to have resumed consideration of chartering legislation during the 95<sup>th</sup> Congress (1977-79).

### Enactment of Chartering Legislation Referred to the Committees on the District of Columbia

The 1971 enactment of a charter for PVA was successful only after the legislation was referred to the Committees on the District of Columbia in the two chambers, rather than the Committees on the Judiciary, as had more typically been the case for chartering legislation.<sup>119</sup>

Legislation to grant PVA a charter was introduced and referred to the Committees on the Judiciary during the 85<sup>th</sup>, 86<sup>th</sup>, 87<sup>th</sup>, 88<sup>th</sup>, and 89<sup>th</sup> Congresses (1957-1966).<sup>120</sup> None of these bills was reported. During the 90<sup>th</sup> Congress (1967-1969), two House PVA charter bills were referred to the Judiciary Committee,<sup>121</sup> where they saw no further action. In addition, two bills were

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<sup>116</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Oversight on Federal Incorporations*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 11, 1975 (Washington: GPO, 1975), p. 14.

<sup>117</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Rules*, committee print, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., January 1977, p. 27. Although similar, the newly adopted standards differed from the earlier standards in a few substantive ways: The requirement of “unique character” was not included; demonstration of the group’s permanence was defined as a duration “not less than ten consecutive years in length;” the group was required to maintain federal tax exempt status; and the group was to be organized “with terms of membership and requirements for holding office within the organization which are not discriminatory on the basis of race, color, religion, or national origin.”

<sup>118</sup> See “Executive Branch Study: Recommendations on Chartering Criteria and Standards,” above.

<sup>119</sup> Although Title 36 charter legislation has most often been referred to the Judiciary Committee in the House, it has sometimes been referred to the Committee on the District of Columbia (during its existence) or other committees. During the 92<sup>nd</sup> Congress, when the PVA charter was considered by the Committee on the District of Columbia and enacted, 11 bills pertaining to corporate charters were referred to the committee. During the same period, 44 corporate-charter-related bills were referred to the Committee on the Judiciary (U.S. Congress, House Select Committee on Committees, *Committee Reform Amendments of 1974*, report to accompany H.Res. 988, 93<sup>rd</sup> Cong., 2<sup>nd</sup> sess., March 21, 1974, H.Rept. 93-916, Part II [Washington: GPO, 1974], pp. 309 and 318). These referral patterns were reflected in the two committees’ jurisdictions under House rules. The District of Columbia Committee’s jurisdiction included “all measures relating to the municipal affairs of the District of Columbia ... including ... [i]ncorporation and organization of societies,” and the Judiciary Committee’s jurisdiction included “matters relating to trusts and corporations” (U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, prepared by Lewis Deschler, Parliamentarian, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H.Doc. [Washington: GPO, 1973], pp. 342 and 357).

<sup>120</sup> H.R. 11314 (85<sup>th</sup> Congress); H.R. 3161 and S. 2290 (86<sup>th</sup> Congress); H.R. 10366, H.R. 10686, and S. 2941 (87<sup>th</sup> Congress); H.R. 6484, H.R. 6505, and S. 381 (88<sup>th</sup> Congress); and H.R. 8845 (89<sup>th</sup> Congress).

<sup>121</sup> H.R. 7533 and H.R. 8540.

referred to the Committee on the District of Columbia.<sup>122</sup> Of these two bills, one was reported by the District of Columbia Committee and passed by the House. In the Senate, the House-passed bill was referred to the Judiciary Committee, where it saw no action.<sup>123</sup> A similar sequence occurred in the 91<sup>st</sup> Congress (1969-1971).<sup>124</sup>

During the 92<sup>nd</sup> Congress (1971-1973), a single PVA charter bill was introduced in the House, and it was referred to the Committee on the District of Columbia.<sup>125</sup> The committee reported the bill, and it was passed by the House.<sup>126</sup> In the Senate, the bill was also referred to the Committee on the District of Columbia. The committee's report explicitly took the position that the committee should apply the 1969 Judiciary Committee-adopted standards to charter bills under its consideration. After considering these criteria with regard to the PVA, it concluded that the organization met the standards.<sup>127</sup> The Senate passed the bill, and it was signed into law.<sup>128</sup>

Although other chartering legislation was introduced during the 92<sup>nd</sup> Congress—some referred to the Committees on the District of Columbia and some referred to the Committees on the Judiciary—none was enacted.<sup>129</sup>

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<sup>122</sup> H.R. 11050 and H.R. 11131. The latter bill was reported by committee and passed by the House. The Committee on the District of Columbia hearing record and written report regarding the legislation did not comment on this atypical referral. As discussed above (“Executive Branch Study: Recommendations on Chartering Criteria and Standards”), a 1966 DOJ “Memorandum on the Standards for Federal Chartering of Private, Non-Profit Organizations” had reported that “Congressional responsibility for Federal charters is fragmented. Charter proposals are sometimes referred to committees other than the Judiciary Committees” (U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Oversight on Federal Incorporations*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 11, 1975 [Washington: GPO, 1975], p. 3).

<sup>123</sup> Another PVA charter bill, S. 1850, was similarly referred to the Senate Judiciary Committee and saw no further action.

<sup>124</sup> See H.R. 1783, referred to the House Committee on the District of Columbia, reported, passed by the House, referred to the Senate Judiciary Committee, and not further acted upon; H.R. 4504, referred to the House Committee on the District of Columbia with no further action; H.R. 7439, referred to the House Judiciary Committee with no further action; and S. 1096, referred to the Senate Judiciary Committee, and not further acted upon.

<sup>125</sup> H.R. 2894.

<sup>126</sup> U.S. Congress, House Committee on the District of Columbia, *Incorporate the Paralyzed Veterans of America*, report to accompany H.R. 2894, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., April 20, 1971, H.Rept. 92-129 (Washington: GPO, 1971).

<sup>127</sup> U.S. Congress, Senate Committee on the District of Columbia, *Incorporate the Paralyzed Veterans of America*, report to accompany H.R. 2894, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., July 30, 1971, S.Rept. 92-323 (Washington: GPO, 1971), pp. 6-7.

<sup>128</sup> P.L. 92-93; 85 Stat. 317.

<sup>129</sup> For example, the following Title 36 charter bills were referred to the House Committee on the District of Columbia: H.R. 6105, Merchant Marine War Veterans Association; H.R. 8309, National Association Legions of Honor; H.R. 10677, Gold Star Wives of America; H.R. 14171, American Ex-Prisoners; H.R. 14468, Mid-Continent Railway Historical Society; H.R. 15188, Pop Warner Little Scholars, Inc.; and H.R. 15453, National Inconvenienced Sportsmen's Association. Examples of bills referred to the Committee on the Judiciary in the respective chamber include the following: H.R. 278, College Benefit System of America; H.R. 3646, Junior Sea Knights of America, Inc.; H.R. 4918, Gold Star Wives of America; H.R. 5011 and S. 303, Historic Naval Ships Association; H.R. 5340, Navy Wives Clubs of America; H.R. 7470, Retired Enlisted Association, Inc.; H.R. 8486, Fleet Reserve Association; H.R. 10764 and S. 2509, Pop Warner Little Scholars, Inc.; H.R. 13917, Malden Veterans of Irish Ancestry, Inc.; S. 2337, Recovery, Inc.; S. 2529, Junior Achievement, Inc.; and S. 3563, World War I Overseas Flyers, Inc.

## Enactment of Chartering Legislation Referred to the Committees on the Judiciary

In 1978, Congress passed legislation to provide a charter for the United States Capitol Historical Society.<sup>130</sup> This Title 36 charter bill appears to have been the first since the 1965 veto to be reported by both Judiciary Committees and enacted. During the House Judiciary Committee markup on the measure, a Member noted the infrequency of the action, the special connection between Congress and the work of the society, and the bill's requirement that the group also maintain its incorporation under DC law:

[I]t is rare that the subcommittee recommends or that the House grants a charter to a corporation, as a Federal charter is substantially a meaningless document. It's more or less a feather in the hat of the organization which is being chartered....

We have a unique situation with the United States Capitol Historical Society. All of its functions are located not only within the District of Columbia, but right here on Capitol Hill....

Its whole function is to preserve and maintain and to conduct continuing research on the United States Capitol. We thought that this would be a unique enough situation to justify a Federal charter, though we have insisted that the Society maintain its incorporation under the laws of, I believe, the District of Columbia in this case.<sup>131</sup>

On the House floor, a supporter of the measure noted that the group had also met the "rigorous standards" that had been adopted by the House Judiciary Committee subcommittee of jurisdiction at the beginning of the Congress.<sup>132</sup>

During the ensuing Congresses, additional Title 36 charter bills were reported by one or both Judiciary Committees and enacted.<sup>133</sup> The reports for these bills suggest the committees applied the chartering standards that had been adopted in 1969 and 1977. In addition, in an effort to guarantee that the charter legislation was nonpartisan, it appears the Senate Judiciary Committee had, in 1979, adhered to informal guidelines that "such legislation must have not less than 40 cosponsors and at least 15 Democrats and 15 Republicans."<sup>134</sup> Formal rules and informal guidelines of these kinds continued to inform the committees' consideration of charter legislation through most of the 1980s.<sup>135</sup>

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<sup>130</sup> P.L. 95-493; 92 Stat. 1643.

<sup>131</sup> U.S. Congress, House Committee on the Judiciary, *Markup, Pending Legislation*, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 26, 1978, pp. 42-43.

<sup>132</sup> Rep. Carlos J. Moorhead, "U.S. Capitol Historical Society," House debate, *Congressional Record*, vol. 124, part 24 (October 2, 1978), p. 32882. For more on subcommittee standards, see "Committee Adoption of Chartering Standards," above.

<sup>133</sup> See, for example, these three charters enacted during the 96<sup>th</sup> Congress (1979-1981): P.L. 96-165 (93 Stat. 1267), granting a charter to United Service Organizations; P.L. 96-497 (94 Stat. 2595), granting a charter to the Gold Star Wives of America; and P.L. 96-489 (94 Stat. 2553), granting a charter to the National Ski Patrol System.

<sup>134</sup> U.S. Congress, Senate Committee on the Judiciary, *Incorporating the National Ski Patrol System*, report to accompany S. 43, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., November 8, 1979, S.Rept. 96-411 (Washington: GPO, 1979), p. 2. The report states that this requirement was part of "informal guidelines" on charter legislation that were adopted by the committee.

<sup>135</sup> See, for example, rules for subcommittee consideration of charter legislation that were adopted at the beginning of the 100<sup>th</sup> Congress (1987-1989) by the House Committee on the Judiciary. These rules largely maintained the requirements set out in the rules adopted for the 95<sup>th</sup> Congress (1977-1979), cited above. In addition, the rules stated that the "Subcommittee will not consider any legislation which grants a federal charter to any organization unless and until such legislation has a minimum of 218 cosponsors ... which grants a federal charter which was adversely reported by it at a previous consideration and tabled by the Committee ... [or] which grants a federal charter unless it contains a



From the 96<sup>th</sup> Congress through the 100<sup>th</sup> Congress (1979-1989), more than 20 new Title 36 charter bills were enacted.

## Proposal to Delegate Chartering Responsibilities

During the 100<sup>th</sup> Congress, the House Judiciary Committee subcommittee with jurisdiction over Title 36 charters considered legislation that would have delegated to the Attorney General the authority to grant, oversee, and terminate such charters.<sup>136</sup>

Although the bill was not reported, the committee identified perceived problems with Title 36 charters during an associated hearing:

- Deficiencies in the statutorily required auditing regime, GAO's implementation limitations, and the uneven compliance of Title 36 corporations;<sup>137</sup>
- Legal questions about the ability of states to audit and oversee federally chartered entities within their borders as they would state-chartered entities;<sup>138</sup>
- Lack of subcommittee resources to investigate charter applicants and to oversee chartered organizations;<sup>139</sup>
- Potential misuse of charters over time;<sup>140</sup> and
- Unclear purposes and criteria for granting charters.<sup>141</sup>

The proposed legislation would have authorized the Attorney General to grant federal charters to private organizations that met criteria similar to those adopted by the committees of jurisdiction in 1969.<sup>142</sup> The Attorney General would also have been charged with ongoing oversight of chartered organizations and termination of charters for non-compliance or inactivity.

The bill would have also required that charter bills include provisions directing that (1) the organization maintain its state-level incorporation and compliance with the state's laws; (2) the constitution, bylaws, and articles of incorporation of the organization not be substantially altered without the Attorney General's approval; (3) the organization's income and assets not be used for the benefit of any member, officer, or director of the corporation beyond reasonable compensation

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provision which requires the organization to retain and maintain its existing State or District of Columbia charter for the life of its Federal charter." Chartering legislation was also required to include provisions regarding annual independent audits. U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Rules*, committee print, 100<sup>th</sup> Cong., 1<sup>st</sup> sess., 1987 (Washington: GPO, 1987), pp. 10-11.

<sup>136</sup> H.R. 3897 (100<sup>th</sup> Congress).

<sup>137</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Granting Federal Charters*, hearing on H.R. 2248, S. 1397, H.R. 1259, and H.R. 3897, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. and 2<sup>nd</sup> sess., November 10, 1987, and March 3, 1988, Serial No. 56 (Washington: GPO, 1988), pp. 10-11 (hereinafter, *Granting Federal Charters*).

<sup>138</sup> *Granting Federal Charters*, pp. 17-22.

<sup>139</sup> *Granting Federal Charters*, p. 82.

<sup>140</sup> *Granting Federal Charters*.

<sup>141</sup> The Deputy Assistant Attorney General for the Tax Division at DOJ testified, "In other words, the central question in this area of the law has been evident for some time: Given the negligible legal benefits of federal charters and the inconsistent way in which they are awarded, what is the point of having federally chartered private corporations?" (*Granting Federal Charters*, p. 96). The subcommittee chair later commented to the witness that "we have a bill here which tells you to charter corporations but does not tell you on what basis. I must say to you that if we knew we would have told you. But we do not know either. Nobody knows. We do not know where these things came from. I do not know whose idea it was."

<sup>142</sup> The text of the bill is available at *Granting Federal Charters*, pp. 62-70.

or reimbursement; (4) the organization not be politically active or lobby for legislation; and (5) the organization not claim or imply that it is acting on behalf of, or with the approval of, the government.<sup>143</sup>

DOJ opposed the bill.<sup>144</sup> Among the concerns raised by a DOJ witness were these:

- The bill would have transferred “sweeping powers regarding these entities to the Attorney General without giving any clear idea as to how or why these corporations are to be given this status in the future.”<sup>145</sup>
- “Federal charters typically confer little in the way of legal benefits, and are almost entirely honorific in nature. However, the bill uses the status of possessing a Federal charter as a vehicle for intrusive types of regulations of these private corporations’ affairs.”<sup>146</sup>
- Congress had granted federal charters on a case-by-case basis, “with elected representatives weighing whether each particular corporation deserves to be federally chartered.” DOJ would not be able to make decisions on the same basis and “would not have reasonable grounds for denying a charter to *any* corporation that was arguably ‘national in scope’ and plausibly claimed to fulfill a ‘national need.’”<sup>147</sup>
- Were DOJ to apply more restrictive standards, litigation under the Administrative Procedure Act might ensue.<sup>148</sup>
- Arguably, a charter conferred by DOJ would carry less prestige, even more so if it conferred a large number of charters as a result of broad criteria.<sup>149</sup>
- Future chartered organizations would face greater restrictions on political activity and lobbying—“a set of activities that [had] been considered central to the mission of many previous federally chartered organizations.”<sup>150</sup>

Instead, the DOJ witness encouraged the subcommittee to consider two other potential reforms:

One would simply be to tighten up the financial standards that apply to the types of reports these corporations now submit. We endorse the kinds of reforms made by the GAO in thoughtful testimony both last November and today.

The second area of reform is that Title 36 should be clarified to make it more clear that States can regulate Federally chartered private corporations. There appears to be some confusion in this area now, and there is no need for that type of confusion.<sup>151</sup>

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<sup>143</sup> *Granting Federal Charters*, pp. 62-70.

<sup>144</sup> *Granting Federal Charters*, pp. 92-113.

<sup>145</sup> *Granting Federal Charters*, p. 92.

<sup>146</sup> *Granting Federal Charters*.

<sup>147</sup> *Granting Federal Charters*, p. 97.

<sup>148</sup> *Granting Federal Charters*, p. 98.

<sup>149</sup> *Granting Federal Charters*.

<sup>150</sup> *Granting Federal Charters*, p. 99.

<sup>151</sup> *Granting Federal Charters*, p. 92.

## End to VA Linkage of Charters and Recognition

By the late 1970s, VA regulations had long provided for the “recognition of organizations, associations, and other agencies in the presentation and adjudication of claims for benefits” by veterans.<sup>152</sup> VA amended the regulations in 1946 to limit its recognition of additional organizations, in general, to “(1) State or governmental services, or (2) organizations granted a charter or recognition by act of Congress.”<sup>153</sup> This administrative nexus between a national organization’s congressional charter and its authority to represent veterans in the VA claims process continued through 1977.<sup>154</sup>

In 1978, VA amended these regulations to allow additional organizations to seek recognition from VA for representational purposes in a new category of “other organizations.” The category of “national organizations” was, by definition, limited to those groups that had congressional charters.<sup>155</sup> Non-chartered organizations had to demonstrate to VA that they met specified requirements.<sup>156</sup> The amended regulations also authorized the VA administrator to “furnish space and office facilities, if available, for the use of paid full-time representatives of recognized national organizations” but not state or other organizations.<sup>157</sup> Additional amendments finalized in 1988 specified that new congressionally chartered organizations seeking VA recognition as “national organizations” must meet certain size and capability requirements and requirements that had been applied to “other organizations” since 1978.<sup>158</sup>

In 1992, references to congressional charters were removed from the regulation, ending the linkage between charter status and recognition by the VA.<sup>159</sup> The VA explained:

Under the provisions of 36 U.S.C. 5902(a)(2), only those VA-recognized service organizations qualifying as “national” may be provided VA office space and facilities on a space available basis. VA’s regulation at 38 CFR 14.628(a), defining the criteria for recognition of a national organization, as opposed to a “state” or “other” organization, requires that organizations other than those recognized by VA prior to October 10, 1978, have a Federal charter in order to be considered “national” in character.

Congressional chartering has largely lost its significance for VA recognition purposes since VA amended its recognition criteria in 1988 to add specific requirements concerning the size and scope of organizations recognized as national. These criteria provide a more complete and appropriate test of whether an organization may be considered “national” for VA purposes. Further, the Department has been advised by Congressmen Barney Frank, Chairman of the House Judiciary Committee’s Subcommittee on Administrative Law and

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<sup>152</sup> 38 C.F.R. §1.300, 1938 edition. See “Role of Charters in Federal Recognition of Veterans’ Organizations,” above. For more information about VSOs, see CRS Report R46412, *Veterans Service Organizations (VSOs): Frequently Asked Questions*, by Tamar B. Breslauer and Carol D. Davis; and CRS Report R46428, *Veterans Accredited Representatives: Frequently Asked Questions*, by Heather M. Salazar and Tamar B. Breslauer.

<sup>153</sup> VA, “Part 20—Guardianship and Legal Administration; Miscellaneous Amendments,” 11 *Federal Register* 8596, August 8, 1946.

<sup>154</sup> 38 C.F.R. §14.626, 1977 edition.

<sup>155</sup> *Ibid.*, “§14.627 Definitions,” at 46535.

<sup>156</sup> VA, “§14.628 Requirements for recognition of organizations,” 43 *Federal Register* 46535, October 10, 1978.

<sup>157</sup> *Ibid.*, “§14.637 Space and office facilities,” at 46537.

<sup>158</sup> VA, “Recognition of Organizations, Representatives, Attorneys, and Agents,” 52 *Federal Register* 8472, March 18, 1987; VA, “Recognition of Organizations, Representatives, Attorneys, and Agents,” 53 *Federal Register* 52416, December 28, 1988. The congressionally chartered organizations subject to these requirements were those chartered after October 10, 1978.

<sup>159</sup> VA, “Recognition of Organizations,” 57 *Federal Register* 33877, July 31, 1992.

Governmental Relations, and G.V. (Sonny) Montgomery, Chairman of the House Committee on Veteran's Affairs, that Congressman Frank's Subcommittee, which is responsible for matters relating to issuance of such charters, is ceasing action on such charters. The Committee reportedly receives many requests for charters, but does not have the resources to investigate or monitor numerous organizations to determine if they are worthy of receipt or continued receipt of such charters. Under such circumstances, it appears that Federal chartering has lost whatever significance it may have had for VA recognition purposes.

This proposed amendment, by removing the requirement that service organizations recognized on or after October 10, 1978, have a Federal charter in order to qualify as a "national" organization, would result in more organizations potentially being able to qualify for "national" status so that they might request space at VA facilities.<sup>160</sup>

## **Moratorium on Considering New Title 36 Charter Legislation**

At the outset of the 101<sup>st</sup> Congress, the House Judiciary Committee subcommittee with jurisdiction over the matter approved a moratorium on the consideration of new Title 36 charter legislation. This was not the first time the congressional committees with primary chartering jurisdiction had sought to set limits on the practice. As discussed above, the Committees on the Judiciary of the House and Senate had eschewed consideration of most chartering legislation from approximately 1926 until 1946.<sup>161</sup> Committee reporting of Title 36 charters had again dropped off from 1965 until 1978 following President Johnson's 1965 veto message, discussed above,<sup>162</sup> in which he suggested that the congressional chartering process lacked meaningful criteria and standards.

However, the House subcommittee moratorium was perhaps the most explicit limit on consideration of new Title 36 charters. The House Judiciary Committee report at the end of the 101<sup>st</sup> Congress (1989-1991) included a summary of the subcommittee's reasoning and actions at the end of the Congress:

On February 23, 1989, the Subcommittee on Administrative Law and Governmental Relations held an organizational meeting at which it considered the adoption of rules for granting federal charters.

In considering whether to adopt such rules (which had governed the Subcommittee consideration of charters since the mid-1970's), the Subcommittee discussed the growing problems regarding the granting of federal charters. The primary problem with federally chartered organizations is that the charter leads to the public perception that an organization and its activities carry a congressional "seal of approval" and worthwhileness for all of the organization's activities. Despite this perception, in fact Congress does not have facilities to monitor the activities and operations of the existing 87 federally chartered organizations spread throughout the country. Moreover, a number of State agencies have withheld their regulatory authority over these organizations with the mistaken belief that the federal government was monitoring these groups. Also, if a chartered organization changes or in some way acts inappropriately after its federal charter is granted, Congress has no direct way to know about these developments, and only another law passed by Congress can repeal or alter the charter that was granted.

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<sup>160</sup> VA, "Recognition of Organizations," 57 *Federal Register* 8852, March 13, 1992.

<sup>161</sup> See "Committee Resistance to Charters."

<sup>162</sup> See "Executive Branch Study: Recommendations on Chartering Criteria and Standards."

In response to these concerns, the Subcommittee decided not to adopt rules for the granting of federal charters. The Subcommittee approved instead a motion to impose a moratorium on the granting of federal charters.

The Subcommittee's decision is not based on a decision that the organizations seeking federal charters are not worthwhile, but rather is based on the fact that federal chartering does not serve a valid purpose and therefore ought not to be continued. This, of course, in no way reflects adversely on any particular organization, nor does it in anyway prevent organizations from accomplishing, under their State charters, all of the goals for which they were established.<sup>163</sup>

This moratorium persisted through the end of the 115<sup>th</sup> Congress (2017-2019). Although the subcommittee does not appear to have formally readopted this policy since then, the committee did not report new Title 36 charter legislation during the 116<sup>th</sup> Congress (2019-2021) or during the first session of the 117<sup>th</sup> Congress (2021-2023).

The moratorium did not bring a complete end to bills seeking charters while it was in effect, and some of these bills were enacted without the subcommittee's involvement. Examples of new charters enacted and added to Title 36 during the moratorium period, although not reported by the House Judiciary Committee, include the following:

- The charter for the Corporation for the Promotion of Rifle Practice and Firearms Safety was included in the National Defense Authorization Act for FY1996.<sup>164</sup>
- The Fleet Reserve Association was chartered through the National Defense Authorization Act for FY1997.<sup>165</sup>
- The Air Force Sergeants Association was chartered as part of the National Defense Authorization Act for FY1998.<sup>166</sup>
- The American GI Forum of the United States was chartered, in 1998, by an act with that sole purpose.<sup>167</sup>
- The National Recording Preservation Foundation was chartered as part of the National Recording Preservation Act, enacted in 2000.<sup>168</sup>
- The Korean War Veterans Association was given a federal charter, in 2008, by an act with that sole purpose.<sup>169</sup>
- The Military Officers Association of America was chartered, in 2009, by an act with that sole purpose.<sup>170</sup>
- The National Foundation on Fitness, Sports, and Nutrition was chartered, in 2010, by an act with that sole purpose.<sup>171</sup>

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<sup>163</sup> U.S. Congress, House Committee on the Judiciary, *Report on the Activities of the Committee on the Judiciary of the House of Representatives during the One Hundred First Congress*, pursuant to Clause 1(d) Rule XI of the Rules of the House of Representatives, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., January 3, 1991, H.Rept. 101-1015 (Washington: GPO, 1991), p. 157.

<sup>164</sup> P.L. 104-106, Title XVI; 110 Stat. 515.

<sup>165</sup> P.L. 104-201, Title XVIII; 110 Stat. 2760.

<sup>166</sup> P.L. 105-85, Title XV; 111 Stat. 1963.

<sup>167</sup> P.L. 105-231; 112 Stat. 1530.

<sup>168</sup> P.L. 106-474, Title II; 114 Stat. 2091.

<sup>169</sup> P.L. 110-254; 122 Stat. 2419.

<sup>170</sup> P.L. 111-95; 123 Stat. 3001.

<sup>171</sup> P.L. 111-332; 124 Stat. 3576.

No new Title 36 charters were enacted from 2011 through 2021. It appears that the National Foundation on Fitness, Sports, and Nutrition Establishment Act, signed into law on December 22, 2010, is the most recently enacted federal charter in Title 36. In 2018, Title 36 was amended to recognize the United States Center for Safe Sport “as the independent national safe sport organization for the United States.”<sup>172</sup> However, the amendment did not explicitly grant the organization a federal charter.

## Potential Benefits and Drawbacks of Title 36 Charters

Certain nonprofit organizations and some Members of Congress have valued and sought Title 36 charters for their perceived benefits.<sup>173</sup> Seemingly, such charters could also impose costs on chartered organizations and Congress.

Leaders of organizations seeking charters have sometimes perceived that a Title 36 charter would give their group a special status, tantamount to a congressional seal of approval, which might attract members and donors.<sup>174</sup> In the past, some veterans’ groups sought Title 36 charters because VA rules long gave chartered groups special recognition in the presentation of veterans’ claims before the agency.<sup>175</sup> Although VA rules no longer provide a special status for veterans’ groups with Title 36 charters,<sup>176</sup> the historical association of Title 36 veterans’ organizations with a special VA status might continue to confer some greater prestige on a group that has such a charter.<sup>177</sup>

Seeking and having a Title 36 charter might also have drawbacks for an organization. Obtaining a charter from Congress might be time and resource consuming for an organization, particularly one without an advocate in Congress, and the potential benefits are unlikely to be clear and immediate to the group’s supporters. In addition, chartered organizations might face greater future oversight risks if congressional committees were to conduct more active Title 36 charter oversight than they have in the past. A Title 36 charter does not, per se, require a corporation to be more responsive to congressional oversight. Should the committees find such a group to be

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<sup>172</sup> 36 U.S.C. §220541(a)(1).

<sup>173</sup> Notwithstanding the general downward trend in enactment of Title 36 charter bills in recent decades, legislation to grant new charters has continued to be introduced. See, for example, H.R. 1839 (117<sup>th</sup> Congress), a bill to “amend title 36, United States Code, to grant a Federal charter to the National Lighthouse Museum.”

<sup>174</sup> As stated in 2017 by the House subcommittee of jurisdiction, “The primary reasons that organizations seek Federal charters are to have the honor of Federal recognition and to use this status in fundraising. These charters grant no new privileges or legal rights to organizations.” U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, “Subcommittee Policy on New Federal Charters,” 115<sup>th</sup> Cong., adopted March 21, 2017, available at <https://web.archive.org/web/20170427090455/https://judiciary.house.gov/wp-content/uploads/2017/03/Federal-Charters-Policy-115th.pdf>.

<sup>175</sup> See “Role of Charters in Federal Recognition of Veterans’ Organizations,” above.

<sup>176</sup> See “End to VA Linkage of Charters and Recognition,” above.

<sup>177</sup> As discussed above (“Executive Branch Study: Legal Benefits of Congressional Charters”), a 1966 study by DOJ found “some state laws conferring special benefits on congressionally-chartered veterans’ organizations” (U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Oversight on Federal Incorporations*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., June 11, 1975 [Washington: GPO, 1975], p. 11). The current status of potential legal benefits under state law is beyond the scope of the research for this report.

unresponsive, however, they might elect to review its charter for potential amendment or repeal.<sup>178</sup>

### Congressional Oversight

In general, it does not appear that organizations with Title 36 charters have been subject to closer scrutiny than other organizations have. The United States Olympic and Paralympic Committee (USOPC—prior to 2019 known as the United States Olympic Committee or USOC) and the American National Red Cross (ANRC) are two well-known exceptions.

A House Energy and Commerce Committee subcommittee and the Senate on Commerce, Science, and Transportation Committee each held multiple hearings in 2003 to review the operations and management of the USOC following reports of perceived leadership dysfunction.<sup>179</sup> Subsequently, several USOC reform bills were introduced, including one that was passed by the Senate.<sup>180</sup>

Committees of Congress have held multiple hearings on the ANRC during its more than 120 years. In 2005, for example, the Subcommittee on Oversight of the House Committee on Ways and Means held a hearing on the response of the ANRC, among other organizations, to the devastation wrought by Hurricane Katrina.<sup>181</sup> The ANRC charter has been amended at least 10 times.<sup>182</sup>

Unlike many Title 36 chartered organizations, the USOPC and the ANRC are statutorily vested with specified jurisdiction or status in service of national purposes. This might account, at least in part, for the level of congressional oversight they receive. One purpose of the USOPC, for example, is “to exercise exclusive jurisdiction, directly or through constituent members of committees, over - (A) all matters pertaining to United States participation in the Olympic Games, the Paralympic Games, the Pan-American Games, and the Parapan American Games, including representation of the United States in the games; and (B) the organization of the Olympic Games, the Paralympic Games, the Pan-American Games, and the Parapan American Games when held in the United States.”<sup>183</sup> Congress chartered the ANRC in 1900 for the purposes of fulfilling some of the duties of the United States under specified international treaties.<sup>184</sup>

Another potential Title 36 charter drawback, from the perspective of the chartered organization, is that any changes to that charter require the enactment of amendments. Such amendments might be enacted as standalone legislation or as a rider to a larger bill. Either way, the measure must go through the legislative process, which can sometimes be protracted. Title 36 charters enacted in recent decades have sometimes been worded so as to permit the organization to establish and make changes to its rules of governance through its state-level incorporation documents and its bylaws, obviating the need to return to Congress for such changes.<sup>185</sup>

<sup>178</sup> As discussed below, at least one Title 36 charter for an active organization has been repealed.

<sup>179</sup> See, for example, U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Commerce, Trade and Consumer Protection, *Does the U.S. Olympic Committee's Organizational Structure Impede Its Mission?*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., March 19, 2003 (Washington: GPO, 2003); and U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *United States Olympic Committee (USOC) Reform*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., February 13, 2003, S.Hrg. 108-895 (Washington: GPO, 2006).

<sup>180</sup> See S. 1404 (108<sup>th</sup> Congress), the United States Olympic Reform Act.

<sup>181</sup> U.S. Congress, House Committee on Ways and Means, Subcommittee on Oversight, *The Response of Charities to Hurricane Katrina*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., December 13, 2005 (Washington: GPO, 2006).

<sup>182</sup> See historical and revision notes in 36 U.S.C. Ch. 3001.

<sup>183</sup> 36 U.S.C. §220503(3).

<sup>184</sup> 36 U.S.C. §300102.

<sup>185</sup> See, for example, the charter for the Military Officers Association of America, which includes the specification that “[t]he composition of the board of directors of the corporation, and the responsibilities of the board, are as provided in the articles of incorporation and bylaws of the corporation” (36 U.S.C. §140404(a)).

For Congress, Title 36 charters can be a tangible way for Members to assist constituent groups or to support the groups' public policy aims. Many successful chartering efforts have been championed by one or two Members in each chamber.

Title 36 charters also pose potential drawbacks for Congress. As discussed above, the public might perceive Title 36 charters as congressional "seals of approval."<sup>186</sup> But congressional committees of jurisdiction have often noted that they lack the resources to investigate all organizations seeking such charters and to exercise ongoing oversight after a charter has been granted. Even if such resources could be made available, it is unclear how investigating and overseeing groups with a broad array of purposes and activities would be connected to the central work of these committees. By providing a perceived seal of approval to certain organizations without advance investigation and ongoing oversight, Congress and individual Members face a reputational risk in the event of a scandal.

## Quasi-Governmental Corporation Charters: Drafting Decisions and Referral Patterns

As previously discussed, legislation to establish quasi-governmental independent nonprofit corporations with national or regional public policy purposes has been drafted in a variety of ways. These drafting decisions have implications for how each bill, if enacted, would be classified to the *United States Code*. Some bills have amended Title 36, while others have amended other titles. Still others have been drafted as "freestanding" provisions that do not amend the *Code*, leaving to the Office of the Law Revision Counsel the determination of whether or where they would be classified.<sup>187</sup> These legislative differences appear to have influenced the bills' referral in the House. Legislation to grant Title 36 charters has generally been referred to the House Judiciary Committee in recent decades.<sup>188</sup> However, chartering legislation that has not amended Title 36 has generally been referred to other committees. During the 90<sup>th</sup> Congress (1967-1969), for example, charter legislation for the National Park Foundation, which supports the work of the National Park Service, was referred to the House and Senate Committees on Interior and Insular Affairs, the committee now known as the Committee on Natural Resources.<sup>189</sup>

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<sup>186</sup> See "Charter Volume and Congressional 'Seal of Approval'" and "Moratorium on Considering New Title 36 Charter Legislation."

<sup>187</sup> See "Corporations with Quasi-Governmental Functions." According to the Office of the Law Revision Counsel, if "a provision amends a section or statutory note in the Code, it is classified to that section or note." The office makes a determination about whether and where "freestanding provisions" are to be classified in the *United States Code*. See U.S. House of Representatives, Office of the Law Revision Counsel, "United States Code: About Classification of Laws to the United States Code," [https://uscode.house.gov/about\\_classification.xhtml](https://uscode.house.gov/about_classification.xhtml). In recent decades, most chartering legislation that has become part of Title 36 has explicitly amended the title. One exception is the National Foundation on Fitness, Sports, and Nutrition Act, which was classified to the front matter of Title 36, Subtitle II, Part B, as a statutory note. One example of a statute that established a quasi-governmental corporation by amending another section of law is Title II of the Preventative Health Amendments of 1992, which established the National Foundation for the Centers for Disease Control and Prevention. This statute amended Title III of the Public Health Service Act, which is classified to 42 U.S.C. §§241 et seq. In contrast, the statute that established the quasi-governmental National Center for Research in Advanced Information and Digital Technologies did not amend a section or statutory note in the *United States Code*, and it was classified to 20 U.S.C. §9631.

<sup>188</sup> There have been exceptions to this practice. During the 106<sup>th</sup> Congress, for example, legislation to establish a National Recording Preservation Foundation through an amendment to Title 36 was referred to the Committee on House Administration and the Committee on the Judiciary in the House as well as the Committee on Rules and Administration in the Senate. See S. 1927, H.R. 3379, and H.R. 4846 for the 106<sup>th</sup> Congress.

<sup>189</sup> See H.R. 10921, S. 3676, H.R. 10835, and S. 814 for the 90<sup>th</sup> Congress.



During the 102<sup>nd</sup> Congress, House legislation to establish the National Foundation for the Centers for Disease Control and Prevention was referred to the House Committee on Energy and Commerce.<sup>190</sup> The National Institute of Building Sciences, a quasi-governmental entity vested with national purposes, was established by non–Title 36 charter legislation enacted during the 93<sup>rd</sup> Congress (1973-1975) that had been referred to the House Committee on Banking and Currency (now Financial Services) and the Senate Committee on Banking, Housing, and Urban Affairs.<sup>191</sup>

### Title 36 Charters for Quasi-Governmental Corporations

Congress has sometimes used a Title 36 charter to establish a quasi-governmental organization, such as a foundation, that supports the work of a federal agency. Examples of such groups include federal-government-affiliated organizations, such as the National Film Preservation Foundation and the National Recording Preservation Foundation, which are affiliated with the Library of Congress; the Corporation for the Promotion of Rifle Practice and Firearms Safety, which is affiliated with the U.S. Army; the National Foundation on Fitness, Sports, and Nutrition, which is affiliated with the Office of the President’s Council on Sports, Fitness and Nutrition; and the National Academy of Sciences, which conducts research that is responsive to the needs or concerns of Congress and federal agencies. Other organizations of national purpose with less direct ties to specific federal agencies include the ANRC, the USOPC, the National Academy of Public Administration, and the National Conference on Citizenship. Such groups often operate with greater flexibility than would be the case if they were established as federal agencies that were subject to government management laws. As a private organization, this kind of chartered group can potentially expand the resources available to a federal agency without increasing the size of government.

The determination about which committee(s) will receive a particular bill to charter a new quasi-governmental corporation might also influence whether that bill receives committee consideration given the House and Senate Judiciary Committees’ Title 36 charter moratorium policies and practices. Seemingly, the moratorium on consideration of Title 36 charter bills was intended to apply to any legislation pertaining to a private, nonprofit organization that was referred to the House Judiciary Committee and its Subcommittee on Administrative Law and Governmental Relations.<sup>192</sup> It is not clear, however, whether the moratorium was intended to apply to consideration of bills to charter new quasi-governmental organizations that were referred to this committee and subcommittee.<sup>193</sup>

The referral decision might also determine what standards and criteria would be used to evaluate, amend, and report such a bill. The House and Senate Judiciary Committees’ standards and criteria for considering charter legislation evolved during a decades-long history of considering requests for Title 36 charters. Other committees, which generally do not share that experience, might or might not apply similar standards and criteria during consideration of a particular bill to charter a new quasi-governmental corporation.<sup>194</sup>

<sup>190</sup> See H.R. 3635 (102<sup>nd</sup> Congress).

<sup>191</sup> See S. 2103 and S. 3066 (93<sup>rd</sup> Congress).

<sup>192</sup> The moratorium policy for the 115<sup>th</sup> Congress (2017-2019) stated, “The subcommittee will not consider any legislation to grant new Federal Charters.... This policy represents a continuation of the Subcommittee’s informal policy, which was put in place at the start of the 101<sup>st</sup> Congress, *against granting new Federal charters to private, non-profit organizations.*” (Emphasis added. A copy of this policy is available to congressional offices from the author of this report.) By the 115<sup>th</sup> Congress, the subcommittee of the House Judiciary Committee with this jurisdiction was named the Subcommittee on Immigration and Border Security.

<sup>193</sup> Few such bills were referred to the subcommittee during the moratorium period. For one example, however, see “Referral Variation Example for Quasi-Governmental Corporations.”

<sup>194</sup> Although other committees could adopt the practices used by the House and Senate Judiciary Committees when considering charters for corporations of national purpose, it is not clear whether they would elect to do so. The 20<sup>th</sup> century debates about Title 36 charters pertained, for the most part, to those granted to private charitable, patriotic, and

### Example of Variations in the Referral of Legislation Establishing Quasi-Governmental Corporations

The legislative history of the American Indian Education Foundation Act of 2000 broadly illustrates some of the variations that have occurred in the referral of legislation to charter a quasi-governmental corporation. Three similar bills to establish an American Indian Education Foundation, which was to be affiliated with the Office of Indian Education Programs of the Bureau of Indian Affairs, were introduced during the 106<sup>th</sup> Congress. In the Senate, S. 1290, which would have established the foundation as a Title 36 chartered corporation, was introduced on June 28, 1999, and was referred to the Committee on Indian Affairs. The committee held hearings on the bill and reported it without amendment. The measure passed in the Senate on November 4, 1999. After receipt in the House, S. 1290 was referred to the Committee on the Judiciary and its Subcommittee on Immigration and Claims. This legislation saw no further congressional action. In the House, H.R. 2661, which would have also established the foundation as a Title 36 chartered corporation, was introduced on July 30, 1999. The bill was also referred to the Committee on the Judiciary and its Subcommittee on Immigration and Claims. It saw no further congressional action. A third bill, H.R. 3080, which proposed to establish a similar foundation by amending the Indian Self-Determination and Education Assistance Act,<sup>195</sup> was introduced on October 14, 1999. This bill was referred to the Committee on Education and the Workforce, which did not act on it, and the Committee on Resources, which reported the bill on December 14, 2000. The language of H.R. 3080 was subsequently included as Title XIII of the Omnibus Indian Advancement Act, which was enacted on December 27, 2000.<sup>196</sup>

## Legislative Process for Enacting and Amending Charters

Title 36 charters are public laws, and the process for their enactment follows that of many other legislative initiatives. It has generally begun with the drafting, introduction, and referral of a bill in either chamber. Such charter bills are generally structured as amendments to Title 36 of the *United States Code*, included as a note to Title 36, or written as an amendment to a different title of the *United States Code*, at the discretion of the Office of the Law Revision Counsel.<sup>197</sup>

The Senate and House Judiciary Committees have usually been the committees of jurisdiction for Title 36 charter bills in their respective chambers regardless of the policy area related to the organization. In the House, the Subcommittee on Immigration and Citizenship and its predecessor subcommittees have had jurisdiction within the Judiciary Committee. As discussed above, these committees have sometimes had formal or informal requirements or moratoria related to consideration of new Title 36 charter legislation.<sup>198</sup>

The same process has been used to make changes to existing charters. As public laws, charters may be changed through enactment of other public laws. At least one existing charter has been repealed through this process. The 1907 congressional charter of the National German-American

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fraternal nonprofit organizations. The debates generally did not address whether Congress should continue to charter, under Title 36, quasi-governmental organizations that support federal agencies' missions or that are statutorily vested with authorities and functions that are intended to address national needs.

<sup>195</sup> 25 U.S.C. §§5301 et seq.

<sup>196</sup> See Rep. Don Sherwood, "Omnibus Indian Advancement Act," House debate, *Congressional Record*, daily edition, vol. 146, part 136 (October 26, 2000), pp. H11327-H11349, at H11348. In 2004, P.L. 108-267 renamed this foundation as the National Fund for Excellence in American Indian Education. See 25 U.S.C. §5421.

<sup>197</sup> See U.S. Congress, House of Representatives, Office of the Law Revision Counsel, "About Classification of Laws to the United States Code," [https://uscode.house.gov/about\\_classification.xhtml](https://uscode.house.gov/about_classification.xhtml).

<sup>198</sup> See "Committee Adoption of Chartering Standards" and "Moratorium on Considering New Title 36 Charter Legislation," above.

Alliance of the United States of America was repealed in 1918 following extensive Senate Judiciary Committee hearings.<sup>199</sup>

## Concluding Observations

Congress has long granted charters to private organizations. Historically, it incorporated for-profit and nonprofit organizations within the District of Columbia under its constitutional authority to legislate for that jurisdiction.<sup>200</sup> Early in the 20<sup>th</sup> century, Congress vested incorporation authority in the District government, obviating the need for Congress to continue to perform this function. However, private charitable, patriotic, and fraternal nonprofit organizations, particularly those with a national reach, continued to seek charters from Congress. More than 80 of the charters in Title 36 were granted after Congress had given the District government this authority.

The House and Senate Judiciary Committees have periodically tried to define the purpose of, and standards for, Title 36 charters.<sup>201</sup> At times they have adopted, formally or informally, chartering standards. Some Members have also expressed concern about the capacity of these committees to continually oversee the organizations that have received these charters. The committees sought, and received, auditing assistance from GAO as part of their oversight efforts. The committees also considered, but did not report, legislation that would have vested the authority to grant and oversee charters in DOJ.

At times, the committees determined that the congressional recognition that charters conferred on meritorious groups was outweighed by the resource costs and the potential for unsupervised chartered groups to engage in activities that might harm the public and reflect poorly on Congress. On several occasions, they adopted years-long formal or informal moratoria on consideration of new ones.

Between 1989 and 2018, the House Judiciary Committee subcommittee of jurisdiction in this area adopted a moratorium on consideration of new charters.<sup>202</sup> During the first 22 years of the moratorium, at least eight new charters were enacted, usually through processes that did not require the subcommittee's support. Title 36 charter legislation has not been a matter of active legislative debate during recent Congresses, and none was enacted from 2011 through 2021.

## Potential for Resumption of Title 36 Charters

The recent period during which Title 36 chartering was held in disfavor is the longest of any period of formal or informal moratoria since the beginning of the 20<sup>th</sup> century. Groups continue to seek these charters, however, and some Members have continued to introduce legislation on behalf of those they support. Absent any formal rules in the House or Senate that prevent enactment of such measures, the possibility of a return to former chartering practices exists. Consequently, Member offices, the House and Senate committees of jurisdiction, and other

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<sup>199</sup> P.L. 65-206; 40 Stat. 917, repealing P.L. 59-113; 34 Stat. 928. See, also, U.S. Congress, Senate Committee on the Judiciary, Subcommittee on S. 3529, *National German-American Alliance*, hearings on S. 3529, a bill to repeal the act entitled "An Act to Incorporate the National German-American Alliance," approved February 25, 1907, 65<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 23, 25, and 28, 1918; March 2, 4, 9, 11, 19, 20, 21, and 22, 1918; and April 1, 9, 10, 11, 13, 1918 (Washington: GPO, 1918).

<sup>200</sup> See "Origins and Evolution of Title 36 Charters," above.

<sup>201</sup> See "Evolving Chartering and Oversight Issues," above.

<sup>202</sup> See "Moratorium on Considering New Title 36 Charter Legislation," above.

congressional committees might again face decisions about this practice as well as individual charter requests.

If the committees of jurisdiction in Congress were to consider a resumption of former chartering practices, they might review some of the related considerations that have arisen in the past:

- What would be the purpose and value of Title 36 charters?
- What would be the standards that a group should meet in order to be granted a charter, and how would committees assess whether a group has met these standards?
- Would legislation to grant a Title 36 charter to a quasi-government corporation be subject to the same committee practices as such legislation for private, nonprofit organizations?
- What would be the congressional role in oversight of chartered organizations?
- Should the House and Senate Judiciary Committees continue to have jurisdiction over the granting and oversight of Title 36 charters, or should charters be granted and overseen according to their subject matter (e.g., veterans' affairs, international sports, federal-agency-affiliated foundations)?

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