AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

MR. ALBERT: Mr. Speaker, on rollcall No. 54 there were listed as live pairs the names of sundry Members. These should have been listed as general pairs.

Mr. Speaker, I ask unanimous consent that the permanent Record be corrected accordingly.

THE SPEAKER:[8] Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

§ 5. Tie Votes; Supermajority Votes

Under a rule in effect since the First Congress, a question which results in a tie vote is lost.[9] The Speaker, who ordinarily does not vote on all legislative propositions before the House, has the prerogative of voting; and in Rule I clause 6, he is "required to vote . . . where his vote would be decisive." In the days preceding the advent of electronic voting, when the yeas and nays were taken by a call of the roll, the Speaker's name was not on the roll and was not called unless the Speaker directed that it be called. However, the Speaker can count himself on a division vote, can submit his card where a vote is taken by tellers with clerks, and can exercise his responsibility to be the decisive vote on a vote taken by electronic device.[10]

The majority required to pass an amendment to the Constitution, to override a veto, or to adopt a motion to suspend the rules is two-thirds of the Members voting, a quorum being present.[11]

§ 5.1 Before announcing the result of a vote taken by electronic device, the Speaker may cast a decisive vote by advising the tally clerk of his vote to break a tie and verifying that vote for the record by submitting an appropriate ballot card.

On Oct. 17, 1990,[12] Speaker Thomas S. Foley, of Washington, cast the decisive vote on an amendment reported from the Committee of the Whole. The proceedings were as follows:

THE SPEAKER PRO TEMPORE: Under the rule, the previous question is ordered.

8. John W. McCormack (Mass.).

9. Rule I clause 6: He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in cases of a tie vote the question shall be lost. *House Rules and Manual* § 632 (1995).

10. See § 5.1, infra.

11. See § 5.2, infra.

12. 136 CONG. REC. 30229, 30230, 101st Cong. 2d Sess.

Is a separate vote demanded on any amendment?

MR. [HENRY J.] HYDE [of Illinois]: Mr. Speaker, I demand a separate vote on the so-called Solarz amendment, as amended.

THE SPEAKER PRO TEMPORE: Is a separate vote demanded on any other amendment?

If not, the Chair will put them en gros.

The amendments were agreed to.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Page 25, after line 18, add the following:

TITLE VI—INCENTIVES FOR PEACE IN ANGOLA . . .

THE SPEAKER PRO TEMPORE: The question is on the amendment.

The question was taken; and the Speaker Pro Tempore announced that the noes appeared to have it.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 207, nays 206, not voting 21, as follows: . . .

THE SPEAKER: On this vote the yeas are 206, and the nays are 206.

The Chair votes "aye."

The yeas are 207.

So the amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

Two-thirds Votes

§ 5.2 The majority required in the House to pass an amendment to the United States Constitution is, like the majority required to pass a bill over the President's veto[13] and to adopt a motion to suspend the rules,[14] two-thirds of those Members voting either in the affirmative or negative, a quorum being present, and Members who only indicate that they are "present" are not counted in the computation.

On Nov. 15, 1983,[15] Mr. Robert H. Michel, of Illinois, propounded a parliamentary inquiry pertaining to the vote required on an amendment to the Constitution, to which Speaker Pro Tempore James C. Wright, Jr., of Texas, responded. The proceedings were as follows:

MR. MICHEL: In the short time available to us, Mr. Speaker, I have reviewed the precedents on the subject of the consideration by this House of a proposed amendment to the Constitution under a motion to suspend the rules.

Mr. Speaker, precedents are rare on this question, although I believe it to be of profound significance to the deliberations we are about to embark upon.

13. See 7 Cannon's Precedents § 1111.

14. See Speaker Thomas P. O'Neill's Dec. 16, 1981, ruling at 127 CONG. REC. 31856, 97th Cong. 1st Sess.

15. 129 CONG. REC. 32667, 32668, 98th Cong. 1st Sess.

The question which I would like the Chair to address is the question as to whether those Members voting present on any proposed constitutional amendment are included in determining whether two-thirds have voted in the affirmative. With the indulgence of the Chair, I would like to review the applicable provision under which this question is raised.

Mr. Speaker, there are no precedents, at least none available to this Member, under the provisions of rule XXVII of the rules of the House—the so-called suspension of the rules provisions—which address the question of counting those Members voting present on the passage of a constitutional amendment.

There are no precedents under the provisions of article V of the Constitution, the article which delineates the manner and mode of proposing and ratifying amendments to the Constitution.

There is only one precedent which is available on this question, Mr. Speaker, and that precedent occurred on August 13, 1912. I refer specifically to section 1111 of volume 7, Cannon's Precedents of the House of Representatives, which states:

> The two-thirds vote required to pass a bill notwithstanding the objections of the President is two-thirds of the Members voting and not two-thirds of those present.

That precedent addressed the question of whether those answering "present" should be taken into consideration or excluded in determining whether two-thirds have voted for passing a bill over the President's veto. That question should be considered separate and distinct from the one we have before us today.

If the Chair were to examine that one precedent to which I refer, he will find that it is based wholly on the language of article I, section 7 of the Constitution, which states in part:

> If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

Matters of law are measured and judged on every word, comma, and period of our great Constitution.

The provisions providing for the passage of a vetoed bill and only those voting for and against being entered upon the Journal of the House are substantially different from the provisions of article V dealing with those instances "whenever two thirds of both Houses shall deem it necessary" to propose amendments to our Constitution.

I think this question requires the closest examination, as do all matters involving our Constitution.

I will state my inquiry one more time, if I might, Mr. Speaker.

On the question of the House of Representatives proposing an amendment to the Constitution, should those answering "present" be taken into consideration in determining whether two-thirds shall have deemed it necessary to propose such an amendment?

And the most important language upon which our only precedent is based is that which states:

> But in all such Cases the Votes of the Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal . . .

That is a profound distinction from the procedure required under the provision of article V dealing with constitutional amendments. The one precedent is founded on the requirement of a yea and nay vote, and that only those votes be entered on the Journal. Article I, section 7, does not contemplate "present" votes, but article V is silent on this question, and because we have no precedent, at least that this Member could find, we need a ruling that would apply to the situation we are facing today.

That is why, Mr. Speaker, I have propounded this parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The distinguished gentleman from Illinois, the minority leader, has requested the Chair to interpret the requirement of article V of the U.S. Constitution that a two-thirds vote of the House is necessary to propose an amendment to the Constitution.

It is a well-settled rule, as indicated by the precedents cited in section 192 of the Constitution and *House Rules and Manual*, that the vote required on a joint resolution proposing a constitutional amendment is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership.

The Supreme Court of the United States has addressed the same issue and concluded in 1920, in the National Prohibition cases, volume 253 of the U.S. Reports, page 386, that—

> The two-thirds vote in each House which is required in proposing an amendment is a vote of two-thirds of the members present—assuming the presence of a quorum—and not a vote of two-thirds of the entire membership, present and absent.

Now, as to the status of Members who vote present on a rollcall vote on a proposition which requires a two-thirds majority for passage, the Chair has no doubt that under the rules and under the practices and precedents of the House, and under parliamentary law in general, Members who indicate their presence only and do not vote either yea or nay on a question of this type are not to be counted, as they are not counted on any other question, in determining whether the proposition has been approved by the appropriate or required majority.

Speaker Champ Clark delivered an extensive ruling in 1912, in the 62d Congress, on that precise issue. It involved the passage of a bill over Presidential veto. Although the passage of a bill over Presidential veto requires a vote by the yeas and nays, the two-thirds majority which is required for that action, under article II, section 7, clause 2 of the Constitution is the same, identical two-thirds majority required to propose a constitutional amendment. In 1912 the issue before the Chair was stated as follows:

> On a roll call on passing a bill over the President's veto, in determining whether two-thirds have voted for it, should those answering "present" be taken into consideration or excluded therefrom?

Speaker Clark ruled as follows, and I quote from his ruling:

> The Constitution does not provide for a Member voting "present," but

> the rules of the House in order to eke out a quorum, have provided that they can vote "present." They have to answer "aye" or "nay" on the roll call in order to be counted on passing a bill over the President's veto. That is a requirement of the Constitution, and if the contention were on a proposition which required only a majority it would be the same way. In fact, that is one unvarying rule of procedure whenever the roll is called on any proposition. The Chair announces: "so many ayes, so many nays, so many present; the ayes-or nays, as the case may be—have it." Those voting "present" are disregarded except for the sole purpose of making a quorum.

Speaker Clark went on to say:

> These gentlemen were here simply for the purpose of making a quorum. It is clear that to count them on this vote would be to count them in the negative, and the Chair does not believe that any such contention as that is tenable.

Now, the distinguished gentleman from Illinois has emphasized the requirement of article I, section 7, that the names of the persons voting for and against a bill over Presidential veto be entered on the Journal, in order to distinguish the status of Members only recording their presence on a veto override as opposed to Members only recording their presence on passage of a constitutional amendment.

It appears to the Chair that the requirement of the Journal entry on veto override merely emphasizes that the vote in that circumstance must be taken by the yeas and nays, with the names of the Members recorded. If the yeas and nays are ordered by one-fifth of the Members present on any other question, article I, section 5, clause 3 requires that the yeas and nays of the Members be entered on the Journal, and makes no mention of Members who are present for the vote but do not cast their votes on one side or the other. The fact that the House has determined to authorize Members to be present and record that fact without taking a position affords no constitutional status to such a decision except to be counted for a quorum.

The Chair would also point out that the present Speaker, Mr. O'Neill, has ruled on the status of Members who vote "present" on a motion to suspend the rules. On December 16, 1981, Speaker O'Neill ruled, in response to a parliamentary inquiry, following a roll-call vote on a motion to suspend the rules and pass H.R. 5274, that a motion to suspend the rules may be agreed to by two-thirds of the Members voting yea or nay, a quorum being present, and Members voting "present" are only counted to establish a quorum and not to determine a two-thirds majority.

Thus, as stated in chapter 21, section 9.21 of Deschler's Precedents of the House of Representatives, a motion to suspend the rules is an appropriate parliamentary method for consideration of a constitutional amendment and has previously been utilized for that purpose.

MR. MICHEL: Mr. Speaker, I thank the Chair for responding to my parliamentary inquiry and I am sure that will clarify much more clearly and demonstrate a precedent for the future.

I thank the Chair.

§ 5.3 Debate on issues surrounding constitutionality of supermajority votes.

In the 104th Congress, the House adopted a new provision in Rule XXI which required a three-fifths vote of the Members voting to pass any bill, joint resolution, amendment, or conference report carrying a tax rate increase.[16] Under the provisions of House Resolution 5, 104th Congress, providing for the consideration of House Resolution 6, establishing the rules for that Congress, section 106 of the rules package, which contained the new requirement for the supermajority vote of three-fifths, was subject to separate debate and a separate vote.[17] When this provision was reached during the consideration of House Resolution 6, questions regarding the constitutionality of the provision were raised in the debate. The proceedings related to this constitutional issue were as follows:[18]

THE SPEAKER PRO TEMPORE:[19] Section 106 of the resolution is now debatable for 20 minutes. The gentleman from Pennsylvania [Mr. Fox] will be recognized for 10 minutes, and the gentleman from Georgia [Mr. Lewis] will be recognized for 10 minutes.

MS. [MAXINE] WATERS [of California]: Mr. Speaker, I have an amendment at the desk.

THE SPEAKER PRO TEMPORE: The Chair does not recognize the gentlewoman at this time for an amendment. The gentleman from Pennsylvania [Mr. Fox] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

MS. WATERS: Parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentlewoman will state her inquiry.

MS. WATERS: Mr. Speaker, I have an amendment at the desk in this section. This is a section that increases the vote requirement for raising taxes from a simple majority to a three-fifths majority. I wish to protect Social Security from being cut by a simple majority. Why can I not add this amendment at this time?

THE SPEAKER PRO TEMPORE: The gentlewoman should be advised that under the rule that amendment is not in order at this time. . . .

MR. [JON D.] FOX [of Pennsylvania]: . . . Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. Saxton].

MR. [JIM] SAXTON [of New Jersey]: Mr. Speaker, I commend the gentleman for bringing this amendment to our attention.

As you know, this amendment to the House Rules provides for a three-fifths or 60 percent vote as a necessity to pass any income tax increase. I first introduced this concept in the form of a rule change on Tax Freedom Day, May 8, 1991. I recognized then, as I do now, that our choices in methods used to balance the budget involve two very difficult types of decisions. First, do we raise taxes, or second, do we hold down spending to bring the budget into balance.

---

16. Rule XXI clause 5(c), *House Rules and Manual* § 846c (1995).

17. 141 CONG. REC. p. ____, 104th Cong. 1st Sess., Jan. 4, 1995.

18. *Id.* at p. ____.

19. Jim Kolbe (Ariz.).

History shows quite clearly that when faced with those two difficult options, this House has historically opted to increase taxes. Why? Simply because it has always been the easier of the two. . . .

Some have indicated a concern regarding the constitutionality of this measure. Let me put those concerns to rest. I would like to quote from an article that appeared in the Washington Times on December 20, 1994 by Bruce Fein.

> Supermajority voting rules are constitutional and legislative commonplaces.
>
> The U.S. Supreme Court blessed the constitutionality of supermajority restraints on the tax and spending propensities of government in Gordon vs. Lance (1971). At issue were provisions of West Virginia laws that prevented political subdivisions from incurring bonded indebtedness or increasing tax rates beyond limits fixed in the West Virginia Constitution without the approval of 60 percent of the voters in a referendum election. Writing for the majority, Chief Justice Warren Burger stressed the political incentive for prodigality when the cost can be saddled on future generations without any political voice: "It must be remembered that in voting to issue bonds voters are committing, in part, the credit of infants and of generations yet unborn, and some restriction on such commitment is not an unreasonable demand." . . .

MR. [JOHN] LEWIS of Georgia: Mr. Speaker, for the purposes of debate only, I yield 21/2 minutes to the gentleman from Colorado [Mr. Skaggs].

MR. [DAVID E.] SKAGGS [of Colorado]: Mr. Speaker, civilization depends upon civility, and civility rests upon an implicit trust that we each abide by a shared sense of bounds, of what is within the rules. Each of us must be able to expect of the others that we will play by the rules, and not play with the rules.

The proposed rule does violence to this essential aspect of a civil society. It is a proposal to go beyond the bounds, to play with the rules, instead of by them. And in a most uncivil way, it would abuse the discretion given this House by the Constitution to determine the rules of its proceedings, by using the rules of the House to subvert part of the Constitution: the principle of majority rule that is central to the operation of the legislative branch. . . .

The Constitution is the most fundamental statement of American values, the very charter of our democracy. The oath of office we took this afternoon was to support and defend the Constitution and to bear true faith and allegiance to it. The first responsibility of our job in Congress is to honor that charter and remain true to its basic principles.

The gentleman from New York, the new chairman of the Rules Committee, has written that the Constitution says the House may write its own rules. Yes. And the gentleman has quoted an 1892 Supreme Court decision, United States versus Ballin, which says this rulemaking power "is absolute and beyond the challenge of any other body or tribunal" so long as it does "not ignore constitutional constraints or violate fundamental rights."

But there's the rub. The rulemaking power of the House does not give us a license to steal other substantive provisions of the Constitution, especially not

one so central as the principle of majority rule.

The gentleman from New York conveniently failed to point out that a unanimous Supreme Court in that very same case determined that one constitutional constraint that limits the rulemaking power is the requirement that a simple majority is sufficient to pass regular legislation in Congress. To quote the Court:

> The general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body is assembled have prescribed specific limitations. *** No such limitation is found in the Federal Constitution, and therefore the general law of such bodies obtains.
>
> The Court expressed the same understanding as recently as 1983, when, in *Immigration and Naturalization Service* v. *Chadha*, it stated:
>
> *** Art. II, sect. 2, requires that two-thirds of the Senators present concur in the Senate's consent to a treaty, rather than the simple majority required for passage of legislation.
>
> This principle, while not written into the text of the Constitution, was explicitly adopted by the Constitutional Convention. It was explicitly defended in The Federalist, the major contemporary explanation of the Framer's intent. It was followed by the first Congress on its first day, and by every Congress for every day since then. And, as I've already indicated, this principle has been explicitly found by the Supreme Court to be part of our constitutional framework.

The Framers were very much aware of the difference between a supermajority and a simple majority. They met in Philadelphia against the historical backdrop of the Articles of Confederation, which required a supermajority in Congress for many actions, including the raising and spending of money. It was the paralysis of national government caused by the supermajority requirement, more than any other single cause, that led to the convening of the Constitutional Convention.

In that Philadelphia Convention, the delegates repeatedly considered, and rejected, proposals to require a supermajority for action by Congress, either on all subjects or on certain subjects. In only five instances did they specify something more than a majority vote. These are for overriding a veto, ratifying a treaty, removing officials from office, expelling a Representative or Senator, and proposing amendments to the Constitution. Amendments to the Constitution later added two others: restoring certain rights of former rebels, and determining the existence of a Presidential disability. . . .

Some argue that a three-fifths requirement to raise taxes would be like a two-thirds vote requirement to suspend the rules and pass a bill, or the 60-vote requirement to end debate in the Senate. Wrong. Those rules address procedural steps. A bill not approved under suspension of the rules in the House can be reconsidered and passed by a simple majority. After debate is over in the Senate, only a simple majority is required to pass any bill.

So this proposed rule is not like any rule adopted in the 206 years in which we have operated under our Constitution. As 13 distinguished professors of

constitutional law recently said in urging the House to reject this rule:

> This proposal violates the explicit intentions of the Framers. It is inconsistent with the Constitution's language and structure. It departs sharply from traditional congressional practice. It may generate constitutional litigation that will encourage Supreme Court intervention in an area best left to responsible congressional decision. . . .
>
> What is at stake here is the Constitution. Have respect for this foundation document of our democracy. Don't return us to the failed approach of the Articles of Confederation. Don't subvert the Constitution's basic principles. And don't ask us to break the oath of office we just took.

Mr. Speaker, I call on my colleagues to support and defend the Constitution of the United States.

The provision was adopted on a separate vote by a majority of 279–152.[20]

Representative Skaggs and other Members filed a suit in the U.S. District Court challenging the constitutionality of the supermajority requirement contained in section 106 of the rules. (See *Skaggs* v *Carle*, 898 F Supp. 1, DDC, 1995). The court concluded that the appellants lacked standing to challenge Rule XXI clause 5(c), stating, in part:

> They [the appellants] argued that the three-fifths majority required by Rule XXI(5)(c) is repugnant to the principle of majority rule they see embodied in the presentment clause of Article I, § 7 of the Constitution ("Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States"). . . .

Robin H. Carle, the Clerk of the House, moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court granted the motion, concluding that prudence counsels against deciding the merits of a partisan political dispute:

> Whether expressed in terms of a failure of standing, or "equitable" or "remedial" discretion, the fundamental consideration underlying those decisions is one of prudent self-restraint: federal courts should generally refrain, as a matter of policy, from intruding in the name of the Constitution upon the internal affairs of Congress at the behest of lawmakers who have failed to prevail in the political process. . . .

The appellants call upon the court to consider the constitutionality of two rules governing the internal workings of a coordinate branch of the Government. . . . The Clerk responds, among other things, that the appellants lack standing because they have suffered no concrete injury.

A. Rule XXI(5)(c)

According to the appellants, the presentment clause establishes that a simple majority of the Members voting in each House of the Congress is all that is needed to pass a bill. Therefore, we are told, by providing that legislation carrying an income tax increase will not be considered to have passed in the House even if it receives the support of a majority (but not of a three-fifths majority), Rule XXI(5)(c) runs afoul of the presentment clause.

20. 141 CONG. REC. p. _____, 104th Cong. 1st Sess., Jan. 4, 1995.

The Clerk contends that the appellants lack standing to raise this challenge because they have suffered no injury by reason of Rule XXI(5)(c) and are unlikely ever to do so. The House has never failed to deem passed a bill that has received the support of a simple majority and it is unclear whether the House will ever do so. . . .

In sum, the appellants claim that they face imminent injury because a simple majority of the House of Representatives cannot commit the House to raising income tax rates. We are unpersuaded, however, that Rule XXI(5)(c) prevents a simple majority from doing just that. At most the appellants have shown that Rule XXI(5)(c) could, under conceivable circumstances, help to keep a majority from having its way—perhaps, for example, because a simple majority in favor of an income tax increase might not be prepared, for its own political reasons, to override the preference of the House leadership against suspending or waiving the Rule in a particular instance. But that prospect appears to be, if not purely hypothetical, neither actual nor imminent. We conclude therefore that the appellants lack standing to challenge Rule XXI(5)(c).

Corrections Calendar; Three-fifths Vote Requirement

§ 5.4 The House amended its rules to create a Corrections Calendar. Measures called up from the Corrections Calendar are considered in the House under special procedures including a three-fifths affirmative vote requirement for passage.

On June 20, 1995,[1] the House adopted House Resolution 168 to create an expedited procedure which, according to the chairman of the Rules Committee,[2] "would repeal or correct laws, rules, and regulations that are obsolete, ludicrous, duplicative, burdensome, or costly."

The amended Rule XIII clause 4,[3] governing the Corrections Calendar, provides the Speaker the authority, in consultation with the Minority Leader, to place bills already on the House or Union Calendars on the Corrections Calendar and to call the Corrections Calendar at his discretion on the second or fourth Tuesday of each month. The rule provides for consideration in the House for one hour equally divided between the chair and ranking member of the primary committee of jurisdiction. It restricts amendments to those recommended by the committee or offered by its chairman; provides for one motion to recommit with or without instructions; and re-

1. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
2. Gerald B. H. Solomon (New York) at *Id.*
3. *House Rules and Manual* § 745a (1995).

quires a three-fifths affirmative vote for passage.

Corrections Calendar Procedure First Used

§ 5.5 The Speaker ordered the call of the Corrections Calendar and the House adopted a bill under the three-fifths affirmative vote passage requirement.

On July 25, 1995,[4] the Speaker Pro Tempore[5] directed the Clerk to call the Corrections Calendar and H.R. 1943, the San Diego Coastal Corrections Act of 1995, was considered as the first item on the calendar. The conclusion of the proceedings on that bill follow:

> THE SPEAKER PRO TEMPORE: The question is on the passage of the bill.
>
> The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.
>
> RECORDED VOTE
>
> MR. [NORMAN Y.] MINETA [of California]: Mr. Speaker, I demand a recorded vote.
>
> A recorded vote was ordered.
>
> The vote was taken by electronic device, and there were—ayes 269, noes 156, not voting 9, as follows: . . .
>
> So—three-fifths having voted in favor thereof—the bill was passed.
>
> The result of the vote was announced as above recorded.
>
> A motion to reconsider was laid on the table.

Federal Income Tax Rate Increase Requires Three-fifths Vote

§ 5.6 As part of its first-day proceedings, the House adopted a requirement that any bill or joint resolution, amendment, or conference report carrying a federal income tax rate increase shall not be considered as passed or agreed to unless three-fifths of the Members vote in the affirmative. During the debate over adoption of this provision, the constitutionality of such a requirement was contested.

On Jan. 4, 1995,[6] the House considered and adopted House Resolution 6, section 106 of which provided for the tax rate increase voting requirement.

The question of the requirement's constitutionality[7] was taken to the District Court for the District of Columbia. Mr. David E. Skaggs, of Colorado, several other Members, six of their constituents and the League of Women Voters filed suit against Robin E. Carle,

4. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
5. Scott McInnis (Colo.).
6. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
7. See § 5.3, supra.

Clerk of the House, to invalidate the rule on Feb. 8, 1995.[8] The court granted a motion filed on Ms. Carle's behalf to dismiss the suit concluding that prudence counseled against deciding the merits of a partisan political dispute.

Mr. Skaggs and his fellow complainants, appealed the decision of the district court to the Court of Appeals for the District of Columbia Circuit. The appellate court affirmed the lower courts decision on a 2–1 vote finding that the appellants lacked standing.[9]

The requirement for a three-fifths vote is contained in Rule XXI clause 5(c).[10]

§ 5.7 The three-fifths affirmative vote requirement for federal income tax rate increases was first applied to an amendment in the nature of a substitute containing a provision to raise the top corporate income tax rate.

On Mar. 24, 1995,[11] the Committee of the Whole had under consideration H.R. 4, the Personal Responsibility Act. During consideration of the bill, the following transpired:

> AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MRS. MINK OF HAWAII
>
> MRS. [PATSY] MINK of Hawaii: Mr. Chairman, pursuant to the rule, I offer an amendment in the nature of a susbstitute.
>
> THE CHAIRMAN:[12] The Clerk will designate the amendment in the nature of a substitute.
>
> The text of the amendment in the nature of a substitute is as follows:
>
> > Amendment in the nature of a substitute offered by Mrs. Mink of Hawaii:
> > Strike all after the enacting clause and insert:
> >
> > SECTION 1. SHORT TITLE.
> >
> > This Act may be cited as the "Family Stability and Work Act of 1995". . . .
> >
> > SEC. 501. INCREASE IN TOP MARGINAL RATE UNDER SECTION 11.
> >
> > (a) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are amended by striking "35" and inserting "36.25": . . . .

During the debate, Mrs. Mink inserted a statement into the record, a section of which follows:

> Corporate America benefits from billions of dollar [sic] worth of corporate welfare—subsidies, tax breaks, credits, direct federal spending—every major corporation and business receives some kind of benefit from the Federal gov-

8. *Skaggs* v *Carle*, Action No. 95–00251 (D.D.C.).
9. *Skaggs* v *Carle*, Action No. 95–5323 (D.C. Cir.).
10. *House Rules and Manual* § 846c (1995).
11. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
12. John Linder (Ga.).

ernment. Corporations must do their share in investing in our nation's most vulnerable in our society.

The Mink bill is financed through raising the top corporate income rate by 1.25% to 36.25 percent. This is estimated to raise $20.25 billion over 5 years.

After further debate, the Chair put the question, as follows:

THE CHAIRMAN: All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentlewoman from Hawaii [Mrs. Mink].

The question was taken; and the Chairman announced that three-fifths of those present not having voted in the affirmative, the noes appeared to have it.

RECORDED VOTE

MRS. MINK of Hawaii: Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 96, noes 336, not voting 2, ...

So, three-fifths of those present not having voted in the affirmative, the amendment in the nature of a substitute was rejected.

The result was announced as above recorded.

§ 5.8 A special order reported by the Committee on Rules, adopted by a majority vote, may waive the three-fifths requirement for passage of a measure containing a federal income tax rate increase.

On Oct. 26, 1995,[13] the Speaker Pro Tempore,[14] responded to a parliamentary inquiry regarding the application of Rule XXI clause 5(c)[15] to H.R. 2491, Seven-Year Balanced Budget Reconciliation Act of 1995, being considered under the provisions of House Resolution 245, a special order reported by the Committee on Rules. The inquiry and the Speaker Pro Tempore's response follow:

MR. [MICHAEL D.] WARD [of Kentucky]: My inquiry is, I have studied the rules and rule XXI applies to bills. This is a bill, and it is a tax increase. Why does rule XXI not apply to this bill?

THE SPEAKER PRO TEMPORE: The Chair will state that the House, by adopting House Resolution 245, has waived that requirement of the rule. Therefore, the Chair's response at this point would be purely hypothetical, and the Chair cannot respond further at this point.

§ 6. Finality of Votes Once Cast

When a vote is cast by a system where there is human intervention in recording the result, such as a vote cast by a roll call or by

13. 141 CONG. REC. p. _____, 104th Cong. 1st Sess.
14. Dan Burton (Ind.).
15. *House Rules and Manual* § 846c (1995).