

stitutionality, and then go ahead with the vote, but we are entitled to that, and so are the people we represent, Mr. Speaker. I would hope that the Chair would rule in my favor.'"

The SPEAKER ruled that the resolution submitted did not present a question of the privileges of the House under rule IX, and said:

"The gentleman from New York [Mr. SOLOMON] was kind enough to furnish the Chair a copy of his resolution and his supporting arguments citing certain precedents.

"On August 15, 1978, Speaker O'Neill ruled that a question of the privileges of the House may be based on an assertion that the immediate determination of an extraordinary procedural question is indispensable to the integrity of its impending proceedings, where that procedural question was not otherwise addressed in the rules of the House.

"In that case, the question of the vote required to pass a joint resolution proposing an extension of the ratification deadline for a constitutional amendment already passed by Congress and submitted to the State legislatures was not directly addressed in the rules of the House. Indeed, on that occasion the House had not otherwise made a separate determination on that procedural question either in the context of the adoption of its rules for that Congress or of any specific rule.

"In that case, there was no prior House determination of the procedural question being challenged. The uncertainty of the very nature of the extension joint resolution on that occasion—that is, whether it represented legislation passable by a majority or was more tantamount to a constitutional amendment, and whether it required presentation to the President—belied the argument that the rules of the House clearly addressed the procedure.

"In the instant case, the provisions of clause 2 of rule XII and clauses 1(a) and 2(d) of rule XXIII adopted as part of House Resolution 5 on January 5, 1993, specifically address the procedures complained of and sought to be delayed in the pending resolution. A delay in the implementation of a rule is in essence a change in that rule.

"The precedents are clear that the validity of an existing rule of the House may not be challenged under the guise of a question of privilege, whether or not that existing rule was separately adopted by a vote of the House or as part of a package of rules adopted by the House.

"As cited in section 664 of the House rules and manual, the Speaker ruled on January 23, 1984, that a resolution directing that the party ratios of all standing committees, subcommittees, and staffs of the House be changed within a time certain to reflect overall party ratios in the House was held to constitute a change in the rules of the House and not to constitute a proper question of the privileges of the House, since House rules already provided mechanisms for changing the selection

of committee members and staff. The Speaker ruled that because the rules complained of could be properly addressed by proposed rules changes which could be presented to the House in a privileged manner, that is, by resolution reported from the Committee on Rules or discharged therefrom, or in that case by privileged resolutions from the respective party caucuses relating to committee membership, it was not in order to collaterally challenge the fairness of an adopted rule under the guise of a question of privilege.

"By contrast, the ruling of October 2, 1984, cited by the gentleman from New York, involved a situation where the rules of the House did not address the alleged unfairness complained of—subcommittee ratios—and where the resolution offered as a question of privilege only admonished the House to respect the representational rights of minority committee members and did not constitute a directive or admonition to change any rule. That precedent does not support the proposition that the House may as a question of privilege collaterally challenge the fairness or validity of an adopted rule.

"The Chair rules that the resolution does not state a question of privilege under rule IX.'"

Mr. SOLOMON appealed the ruling of the Chair.

Mr. GEPHARDT moved to lay the appeal on the table.

The question being put, viva voce, Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER announced that the yeas had it.

Mr. SOLOMON demanded that the vote be taken by the yeas and nays, which demand was supported by one-fifth of the Members present, so the yeas and nays were ordered.

The vote was taken by electronic device.

It was decided in the { Yeas 251
affirmative { Nays 174

¶9.8 [Roll No. 14]
YEAS—251

Abercrombie	Cardwell	Dixon
Ackerman	Cardin	Dooley
Andrews (ME)	Carr	Durbin
Andrews (NJ)	Chapman	Edwards (CA)
Andrews (TX)	Clay	Edwards (TX)
Applegate	Clayton	Engel
Bacchus (FL)	Clement	English (AZ)
Baessler	Clyburn	English (OK)
Barcia	Coleman	Eshoo
Barlow	Collins (IL)	Evans
Barrett (WI)	Collins (MI)	Fazio
Becerra	Condit	Fields (LA)
Beilenson	Conyers	Filner
Berman	Cooper	Fingerhut
Bevill	Coppersmith	Flake
Bilbray	Costello	Foglietta
Bishop	Coyne	Ford (MI)
Blackwell	Cramer	Frank (MA)
Bonior	Danner	Frost
Borski	Darden	Furse
Boucher	de la Garza	Gejdenson
Brewster	Deal	Gephardt
Brooks	DeFazio	Gibbons
Browder	DeLauro	Glickman
Brown (CA)	Dellums	Gonzalez
Brown (FL)	Derrick	Gordon
Brown (OH)	Deutsch	Green
Bryant	Dicks	Gutierrez
Byrne	Dingell	Hall (OH)

Hall (TX)	McCurdy	Sanders
Hamburg	McDermott	Sangmeister
Hamilton	McHale	Sarpaluis
Harman	McKinney	Sawyer
Hastings	McNulty	Schenk
Hayes	Meehan	Schroeder
Hefner	Meek	Schumer
Hilliard	Menendez	Scott
Hinchey	Mfume	Serrano
Hoagland	Miller (CA)	Shepherd
Hochbrueckner	Mineta	Sisisky
Holden	Minge	Skaggs
Hoyer	Mink	Skelton
Hughes	Moakley	Slattery
Hutto	Mollohan	Slughter
Inslee	Montgomery	Slaughter (IA)
Jacobs	Moran	Spratt
Jefferson	Murphy	Stark
Johnson (GA)	Murtha	Stenholm
Johnson (SD)	Nadler	Stokes
Johnson, E. B.	Natcher	Strickland
Johnston	Neal (MA)	Studds
Kanjorski	Neal (NC)	Stupak
Kaptur	Oberstar	Sweet
Kennedy	Obey	Swift
Kennelly	Olver	Synar
Kildee	Ortiz	Tanner
Kleczka	Orton	Tauzin
Klein	Owens	Taylor (MS)
Klink	Pallone	Tejeda
Kopetski	Parker	Thornton
Kreidler	Pastor	Thurman
LaFalce	Payne (NJ)	Torres
Lambert	Payne (VA)	Torricelli
Lancaster	Pelosi	Towns
Lantos	Penny	Trafcant
LaRocco	Peterson (FL)	Tucker
Laughlin	Peterson (MN)	Unsoeld
Lehman	Pickett	Valentine
Levin	Pickle	Velazquez
Lewis (GA)	Pomeroy	Vento
Lipinski	Poshard	Visclosky
Lloyd	Price (NC)	Volkmer
Long	Rahall	Waters
Lowey	Rangel	Watt
Maloney	Reed	Waxman
Mann	Reynolds	Wheat
Manton	Richardson	Whitten
Margolies-	Roemer	Williams
Mezvinisky	Rose	Wilson
Markey	Rostenkowski	Wise
Martinez	Rowland	Woolsey
Matsui	Roybal-Allard	Wyden
Mazzoli	Rush	Wynn
McCloskey	Sabo	Yates

NAYS—174

Allard	Emerson	Kim
Archer	Everett	King
Armey	Ewing	Kingston
Bachus (AL)	Fawell	Klug
Baker (CA)	Fields (TX)	Knollenberg
Baker (LA)	Fish	Kolbe
Ballenger	Fowler	Kyl
Barrett (NE)	Franks (CT)	Lazio
Bartlett	Franks (NJ)	Leach
Barton	Gallely	Levy
Bateman	Gallo	Lewis (CA)
Bentley	Gekas	Lewis (FL)
Bereuter	Gilchrest	Lightfoot
Bilirakis	Gillmor	Linder
Bliley	Gilman	Livingston
Blute	Gingrich	Machtley
Boehlert	Goodlatte	Manzullo
Boehner	Goodling	McCandless
Bonilla	Goss	McCollum
Bunning	Grams	McCrery
Burton	Grandy	McDade
Buyer	Greenwood	McHugh
Callahan	Gunderson	McInnis
Calvert	Hancock	McKeon
Camp	Hansen	McMillan
Canady	Hastert	Meyers
Castle	Hefley	Mica
Clinger	Herger	Michel
Coble	Hobson	Miller (FL)
Collins (GA)	Hoekstra	Molinari
Combest	Hoke	Moorhead
Cox	Horn	Morella
Crane	Houghton	Myers
Crapo	Huffington	Nussle
Cunningham	Hunter	Oxley
DeLoach	Hutchinson	Packard
Diaz-Balart	Hyde	Paxon
Dickey	Inglis	Petri
Doolittle	Inhofe	Pombo
Dornan	Istook	Porter
Dreier	Johnson (CT)	Pryce (OH)
Duncan	Johnson, Sam	Quillen
Dunn	Kasich	Quinn

Ramstad	Sensenbrenner	Talent
Ravenel	Shaw	Taylor (NC)
Regula	Shays	Thomas (CA)
Ridge	Shuster	Thomas (WY)
Roberts	Skeen	Torkildsen
Rogers	Smith (MI)	Upton
Rohrabacher	Smith (NJ)	Vucanovich
Ros-Lehtinen	Smith (OR)	Walker
Roth	Smith (TX)	Walsh
Roukema	Snowe	Weldon
Royce	Solomon	Wolf
Santorum	Spence	Young (AK)
Saxton	Stearns	Young (FL)
Schaefer	Stump	Zeliff
Schiff	Sundquist	Zimmer

NOT VOTING—5

Ford (TN)	Henry	Washington
Geren	Sharp	

So the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

¶9.9 COMMISSION ON CIVIL RIGHTS

The SPEAKER, pursuant to the provisions of section 2(b) of Public Law 98-183, reappointed to the Commission on Civil Rights, Ms. Mary Frances Berry from private life, on the part of the House.

Ordered, That the Clerk notify the Senate of the foregoing appointment.

¶9.10 FAMILY AND MEDICAL LEAVE

The SPEAKER, pursuant to House Resolution 58 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1) to grant family and temporary medical leave under certain circumstances.

The SPEAKER designated Mrs. KENNELLY as Chairman of the Committee of the Whole; and after some time spent therein,

The SPEAKER pro tempore, Ms. LONG, assumed the Chair.

When Mrs. KENNELLY, Chairman, reported that the Committee, having had under consideration said bill, had come to no resolution thereon.

¶9.11 HOUR OF MEETING

On motion of Mr. REED, by unanimous consent,

Ordered, That when the House adjourns today, it adjourn to meet at 12 o'clock noon on Thursday, February 4, 1993.

¶9.12 FAMILY AND MEDICAL LEAVE

The SPEAKER pro tempore, Ms. LONG, pursuant to House Resolution 58 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 1) to grant family and temporary medical leave under certain circumstances.

Mrs. KENNELLY, Chairman of the Committee of the Whole, resumed the chair; and after some time spent therein,

¶9.13 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. GOODLING:

Add at the end of section 102 the following:

(g) REQUIREMENTS TREATED AS SATISFIED IF CAFETERIA PLAN PROVIDES FOR LEAVE.—The requirements of this Act shall be treated as satisfied with respect to any eligible employee if—

(1) such employee is a participant in a cafeteria plan (as defined in section 125(d) of the Internal Revenue Code of 1986) which is maintained by the employer and meets the requirements of section 125 of the Internal Revenue Code of 1986,

(2) one of the benefits such employee may choose under the plan is leave with respect to which the plan provides at least the rights and protections provided under this Act, and

(3) such plan provides reasonable methods for the valuation of such leave.

It was decided in the } Yeas 187
negative } Nays 244

¶9.14 [Roll No. 15]
AYES—187

Allard	Dornan	Inglis
Archer	Dreier	Inhofe
Armey	Duncan	Istook
Bachus (AL)	Dunn	Johnson (CT)
Baker (CA)	Edwards (TX)	Johnson, Sam
Baker (LA)	Emerson	Kasich
Ballenger	Everett	Kim
Barcia	Ewing	King
Barrett (NE)	Fawell	Kingston
Bartlett	Fields (TX)	Knollenberg
Barton	Fowler	Kolbe
Bateman	Franks (CT)	Kopetski
Bentley	Gallegly	Kyl
Bereuter	Gallo	Lancaster
Bilirakis	Gekas	Lazio
Bliley	Geren	Leach
Blute	Gilchrest	Levy
Boehner	Gillmor	Lewis (CA)
Bonilla	Gingrich	Lewis (FL)
Brewster	Goodlatte	Lightfoot
Bunning	Goodling	Linder
Burton	Goss	Livingston
Buyer	Grams	Lloyd
Callahan	Grandy	Manzullo
Calvert	Greenwood	McCandless
Camp	Gunderson	McCollum
Canady	Hall (TX)	McCrery
Carr	Hamilton	McDade
Castle	Hancock	Upton
Clinger	Hansen	Valentine
Coble	Hastert	Volkmer
Collins (GA)	Hayes	Vucanovich
Combest	Hefley	Walker
Condit	Herger	Walsh
Cox	Hobson	Weldon
Crane	Hoekstra	Whitten
Crapo	Hoke	Wolf
Cunningham	Horn	Young (AK)
de la Garza	Houghton	Young (FL)
Deal	Huffington	Zeliff
DeLay	Hunter	Zimmer
Dickey	Hutchinson	
Doolittle	Hyde	

NAYS—204

Abercrombie	Clyburn	Filner
Ackerman	Coleman	Fingerhut
Andrews (ME)	Collins (IL)	Foglietta
Andrews (NJ)	Collins (MI)	Ford (MI)
Baesler	Conyers	Frank (MA)
Barcia	Coppersmith	Frost
Barlow	Costello	Furse
Barrett (WI)	Coyne	Gejdenson
Becerra	Danner	Gephardt
Beilenson	Darden	Gibbons
Berman	de la Garza	Glickman
Bishop	DeFazio	Gonzalez
Blackwell	DeLauro	Gordon
Bonior	Dellums	Green
Borski	Derrick	Gutierrez
Boucher	Deutsch	Hall (OH)
Brooks	Dicks	Hamburg
Brown (CA)	Dingell	Hamilton
Brown (FL)	Dixon	Harman
Brown (OH)	Dooley	Hastings
Bryant	Durbin	Hefner
Byrne	Edwards (CA)	Hilliard
Cantwell	Engel	Hinchey
Cardin	English (AZ)	Hoagland
Chapman	Eshoo	Hochbrueckner
Clay	Evans	Holden
Clayton	Fazio	Hoyer
Clement	Fields (LA)	Hughes

Inslee	Menendez	Sawyer
Jefferson	Mfume	Schenk
Johnson (GA)	Miller (CA)	Schroeder
Johnson (SD)	Mineta	Schumer
Johnson, E. B.	Mink	Scott
Johnston	Moakley	Serrano
Kanjorski	Mollohan	Shepherd
Kennedy	Moran	Slaughter
Kennelly	Murphy	Smith (IA)
Kildee	Murtha	Stark
Klecзка	Nadler	Stokes
Klein	Natcher	Strickland
Klink	Neal (MA)	Studds
Kopetski	Oberstar	Stupak
Kreidler	Obey	Swett
LaFalce	Olver	Swift
Lantos	Ortiz	Synar
LaRocco	Owens	Tejeda
Lehman	Pallone	Thurman
Levin	Pastor	Torricelli
Lewis (GA)	Payne (NJ)	Towns
Lipinski	Pelosi	Traficant
Lloyd	Peterson (FL)	Tucker
Long	Peterson (MN)	Unsoeld
Lowey	Pickle	Velazquez
Maloney	Pomeroy	Vento
Mann	Poshard	Visclosky
Manton	Price (NC)	Washington
Margolies-	Rahall	Waters
Mezvinsky	Rangel	Watt
Markey	Reed	Waxman
Martinez	Reynolds	Wheat
Matsui	Richardson	Williams
Mazzoli	Roemer	Wilson
McCloskey	Rose	Wise
McDermott	Rostenkowski	Woolsey
McHale	Roybal-Allard	Wyden
McKinney	Rush	Wynn
McNulty	Sabo	Yates
Meehan	Sanders	
Meek	Sangmeister	

NOT VOTING—5

Flake	Henry	Torres
Ford (TN)	Lambert	

So the amendment was not agreed to. After some further time,

¶9.15 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. GOODLING:

Amend section 101(2)(B) to add a new clause as follows:

(iii) any employee of an employer whose absence during leave would clearly result in substantial and grievous economic injury to the operations of the employer or substantial endangerment to the health and safety of other employees of the employer or the public.

Amend section 101(2)(C) to read as follows: (c) DETERMINATION.—

(A) CLAUSE (ii).—For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(B) CLAUSE (iii).—The exception in subparagraph (A)(iii) shall apply only if—

(i) the employer notices the employee of intent of the employer to deny leave on such basis at the time the employer determines that such injury or endangerment would occur; and

(ii) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

In section 104, strike out subsection (b) and redesignate subsection (c) as subsection (b).

It was decided in the } Yeas 185
negative } Nays 238

¶9.16 [Roll No. 16]
AYES—185

Allard	Baker (CA)	Bartlett
Archer	Baker (LA)	Barton
Armey	Ballenger	Bateman
Bachus (AL)	Barrett (NE)	Bentley