

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

NOT VOTING—8

Bateman	Payne (NJ)	Whitten
Ford (TN)	Sharp	Wilson
Henry	Washington	

So the previous question on the resolution was ordered.

The question being put, *viva voce*,

Will the House agree to said resolution?

The SPEAKER pro tempore, Mr. McNULTY, 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 affirmative	} Yeas 259
.....	

19.6 [Roll No. 13] YEAS—259

Abercrombie	Derrick	Jacobs
Ackerman	Deutsch	Jefferson
Andrews (ME)	Diaz-Balart	Johnson (GA)
Andrews (NJ)	Dicks	Johnson (SD)
Andrews (TX)	Dingell	Johnson, E. B.
Applegate	Dixon	Johnston
Bacchus (FL)	Dooley	Kanjorski
Baesler	Durbin	Kaptur
Barcia	Edwards (CA)	Kennedy
Barlow	Edwards (TX)	Kennelly
Becerra	Engel	Kildee
Beilenson	English (AZ)	Klecicka
Berman	English (OK)	Klein
Bevill	Eshoo	Klink
Bilbray	Evans	Kopetski
Bishop	Fazio	Kreidler
Blackwell	Fields (LA)	LaFalce
Boehlert	Filner	Lambert
Bonior	Fingerhut	Lancaster
Borski	Flake	Lantos
Boucher	Foglietta	LaRocco
Brewster	Ford (MI)	Laughlin
Brooks	Frank (MA)	Lehman
Browder	Franks (NJ)	Levin
Brown (CA)	Frost	Lewis (GA)
Brown (FL)	Furse	Lipinski
Brown (OH)	Gejdenson	Long
Bryant	Gephardt	Lowey
Byrne	Geren	Machtley
Cantwell	Gibbons	Maloney
Cardin	Gilman	Mann
Chapman	Glickman	Manton
Clay	Gonzalez	Margolies-
Clayton	Gordon	Mezvinsky
Clement	Green	Markey
Clyburn	Gunderson	Martinez
Coleman	Gutierrez	Matsui
Collins (IL)	Hall (OH)	Mazzoli
Collins (MI)	Hall (TX)	McCloskey
Condit	Hamilton	McCurdy
Conyers	Harman	McDermott
Cooper	Hastings	McHale
Coppersmith	Hayes	McKinney
Costello	Hefner	McNulty
Coyne	Hilliard	Meehan
Cramer	Hinchey	Meek
Danner	Hoagland	Menendez
Darden	Hochbrueckner	Mfume
de la Garza	Holden	Miller (CA)
Deal	Hoyer	Mineta
DeFazio	Hughes	Minge
DeLauro	Hutto	Mink
Dellums	Inslee	Moakley

Mollohan	Roemer	Stupak
Montgomery	Rose	Swett
Moran	Rostenkowski	Swift
Morella	Roukema	Synar
Murphy	Rowland	Tanner
Murtha	Roybal-Allard	Tauzin
Nadler	Rush	Taylor (MS)
Natcher	Sabo	Tejeda
Neal (MA)	Sanders	Thornton
Neal (NC)	Sangmeister	Thurman
Oberstar	Sarpalius	Torres
Obey	Sawyer	Torrice
Olver	Saxton	Towns
Ortiz	Schen	Traficant
Owens	Schroeder	Tucker
Pallone	Schumer	Unsoeld
Parker	Scott	Valentine
Pastor	Serrano	Velazquez
Payne (NJ)	Shays	Vento
Payne (VA)	Shepherd	Visclosky
Peterson (FL)	Sisisky	Volkmer
Peterson (MN)	Skaggs	Walsh
Pickett	Skelton	Waters
Pickle	Slattery	Watt
Pomeroy	Slaughter	Wheat
Poshard	Smith (IA)	Whitten
Price (NC)	Smith (NJ)	Williams
Quinn	Snowe	Wise
Rahall	Spratt	Woolsey
Ramstad	Stark	Wyden
Rangel	Stenholm	Wynn
Reed	Stokes	Yates
Reynolds	Strickland	Young (AK)
Richardson	Studds	

NAYS—164

Allard	Gingrich	Miller (FL)
Archer	Goodlatte	Molinari
Army	Goodling	Moorhead
Bachus (AL)	Goss	Myers
Baker (CA)	Grams	Nussle
Baker (LA)	Grandy	Orton
Ballenger	Greenwood	Oxley
Barrett (NE)	Hancock	Packard
Bartlett	Hansen	Paxon
Barton	Hastert	Pelosi
Bateman	Hefley	Penny
Bentley	Herge	Petri
Bereuter	Hobson	Pombo
Bilirakis	Hoekstra	Porter
Bilely	Hoke	Pryce (OH)
Blute	Horn	Quillen
Boehner	Houghton	Ravenel
Bonilla	Huffington	Regula
Bunning	Hunter	Ridge
Burton	Hutchinson	Roberts
Buyer	Hyde	Rogers
Callahan	Inglis	Rohrabacher
Calvert	Inhofe	Ros-Lehtinen
Camp	Istook	Roth
Canady	Johnson (CT)	Royce
Carr	Johnson, Sam	Santorum
Castle	Kasich	Schaefer
Clinger	Kim	Schiff
Coble	King	Sensenbrenner
Collins (CA)	Kingston	Shaw
Combust	Klug	Shuster
Cox	Knollenberg	Skeen
Crane	Kolbe	Smith (MI)
Crapo	Kyl	Smith (OR)
Cunningham	Lazio	Smith (TX)
DeLay	Leach	Solomon
Dickey	Levy	Spence
Doolittle	Lewis (CA)	Stearns
Dornan	Lewis (FL)	Stump
Dreier	Lightfoot	Sundquist
Duncan	Linder	Talent
Dunn	Livingston	Taylor (NC)
Emerson	Lloyd	Thomas (CA)
Everett	Manzullo	Thomas (WY)
Ewing	McCandless	Torkildsen
Fawell	McCollum	Upton
Fields (TX)	McCrery	Vucanovich
Fish	McDade	Walker
Fowler	McHugh	Waxman
Franks (CT)	McInnis	Weldon
Gallegly	McKeon	Wolf
Gallo	McMillan	Young (FL)
Gekas	Meyers	Zeliff
Gilchrist	Mica	Zimmer
Gillmor	Michel	

NOT VOTING—7

Barrett (WI)	Henry	Wilson
Ford (TN)	Sharp	
Hamburg	Washington	

So the resolution was agreed to.
A motion to reconsider the vote whereby said resolution was agreed to

was, by unanimous consent, laid on the table.

19.7 PRIVILEGES OF THE HOUSE

Mr. SOLOMON submitted the following resolution:

Whereas Article I, section 1, of the Constitution provides that, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives;" and

Whereas Article I, section 2, of the Constitution provides that, "The House of Representatives shall be composed of Members chosen every second year by the people of the several States;" and

Whereas the Committee of the Whole is a device used by the House under which all House members act together to debate and amend bills raising revenues or directly or indirectly appropriating money; and

Whereas the Committee of the Whole is an integral part of the legislative process and the means by which the House of Representatives exercises its legislative powers and prerogatives under the Constitution; and

Whereas on January 5, 1993, the House, in the resolution adopting the Rules of the House for the 103rd Congress (H. Res. 5), included provisions authorizing the Resident Commissioner from Puerto Rico and the delegates from the District of Columbia, Guam, American Samoa and the Virgin Islands to vote in and preside over the Committee of the Whole; and

Whereas attempts to refer the proposal to a select committee to study its constitutionality and to separately vote on such proposal were prevented by procedural votes, and the House was thereby precluded from making a separate determination as to whether such provisions are in conformance with constitutional requirements and Members' sworn duty to uphold the Constitution; and

Whereas such proposal affects the representational rights of duly elected Members of the House under the Constitution and could result in a derogation or denial of such rights; and

Whereas such proposal affects the constitutional lawmaking prerogatives of the House and its Members and the integrity of the process by which bills are considered, and thus raises a question of the privileges of the House; and

Whereas the House has just adopted a resolution making it in order for the Speaker to declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of legislation, and this represents the first instance in the 103rd Congress in which the House is resolving into the Committee of the Whole under the provisions of the new rule allowing non-Members of the House to vote in and Chair the Committee of the Whole; and

Whereas the inability and failure of the House to make a separate determination as to the constitutionality of the proposal prior to this first use of the new rule presents the House with an "extraordinary question" under the Constitution requiring a separate determination and thus raises a question of the privileges of the House; Now, therefore, be it

Resolved, That, as a matter of the constitutional privileges of the House to make all laws and to preserve the integrity of its proceedings and the representational rights of its Members, the implementation of those provisions of House Rules as adopted on January 5, 1993, authorizing the Resident Commissioner from Puerto Rico and the Delegates from the District of Columbia, American Samoa, the Virgin Islands and Guam to vote in and preside over the Committee of

the Whole, shall be delayed until such time that the House has made a separate determination as to whether such provisions can and should be implemented by a Rule of the House, consistent with Article I, sections 1 and 2, of the Constitution.

The SPEAKER made the following statement:

"Under rule IX, a resolution offered from the floor by a Member other than the majority leader or the minority leader as a question of the privileges of the House has immediate precedence only at a time or place designated by the Speaker in the legislative schedule within two legislative days from its being properly noticed. In the current circumstances, however, the Chair is inclined to entertain the matter raised by the gentleman from New York [Mr. SOLOMON] at this point."

Accordingly,

Mr. SOLOMON addressed the Chair, and said:

"Mr. Speaker, the resolution that has been presented calls for a delay in the implementation of those provisions of House rules which would permit non-Member Delegates to vote in and chair the Committee of the Whole until the House has made a separate determination as to whether the House can and should implement such a rule under the existing provisions of the Constitution.

"It clearly raises a question of the privileges of the House for a variety of reasons stated in the precedents of the House under which we operate. It is being offered in a timely manner since the House is about to resolve into the Committee of the Whole for the first time in this 103d Congress under the provision of this new rule.

"In support of this question of privilege, I wish to cite section 662 of the House Rules and Manual, which states that questions of privilege of the House are those which affect 'the integrity of the processes by which bills are considered,' especially when a process is of questionable constitutionality.

"In such instances, the precedents made clear that the issue raises an extraordinary question under the Constitution which is eligible for separate consideration and determination by the House.

"In this regard, the section cites a question of privilege resolution offered on August 15, 1978, involving 'the constitutional question of the vote required to pass a joint resolution extending the State ratification period of a proposed Constitutional amendment.'

"The manual, at section 664 elaborates that this involved 'an extraordinary question * * * where the House had not otherwise made a separate determination on that procedural question' as to whether a majority or two-thirds vote was required to pass a joint resolution extending the ratification period for a constitutional amendment, 'and where consideration of the joint resolution had been made in order.'

"In that instance, after the special order for the joint resolution had been adopted, a question of privilege resolu-

tion was offered which would have required a two-thirds rather than majority vote to pass the joint resolution. After the Chair ruled as to its legitimacy, the question of privilege resolution was subsequently tabled by the House.

"By the same token, the pending question of privilege resolution raises an extraordinary question under the Constitution, on which the House has not made a separate determination. And that extraordinary question is whether delegates can be granted voting privileges in the Committee of the Whole by a rule of the House, or whether a constitutional amendment would be required.

"The resolution specifically requires the House, before implementing the Delegate voting rule, to make a separate determination as to whether the rule can and should be implemented consistent with the provisions of sections 1 and 2 of article I of the Constitution.

"Numerous Supreme Court decisions have held that while the right of the House to determine its own rules of proceeding under the Constitution is nearly absolute, it may not by its rules violate constitutional rights or ignore constitutional mandates.

"In this instance, not only are the representational rights of House Members involved, but the rights of their constituents to equal representation as well.

"In the present instance, as with the 1978 precedent I have cited, the House has never made a separate determination as to whether Delegate voting in the Committee of the Whole can be authorized by rule or whether it requires a constitutional amendment.

"The adoption of House Resolution 5 on January 5 of this year cannot be construed as a separate determination of that issue since the Delegate voting provisions constituted only three of over 20 changes in House rules made by that resolution, all of which were adopted by a single vote.

"Moreover, on three occasions when that House rules resolution was called up or under consideration, attempts to separate the Delegate voting issue were rebuffed by rulings or procedures:

"First on the refusal of the Speaker to recognize a Member to offer a question of privilege resolution that would have required a separate vote;

"Second, on a motion to refer the resolution to a select committee to study and report on the constitutionality of the Delegate voting provisions; and

"Third, on a motion to commit with instructions to delete the Delegate voting provisions. In all three instances, opportunities to separately determine the efficacy and constitutionality of the delegate voting provisions were blocked by procedural moves.

"For the House to protect itself against overreaching its constitutional rulemaking powers, the extraordinary-questioning doctrine enunciated in the 1978 precedent must be applied to such a serious constitutional issue as this.

"The second precedent I will cite in support of this resolution is found at section 664 of the manual, 'a question of privileges of the House is raised' when there is an alleged 'denial of representational rights.'

"While the precedent cited in that incident involved inequitable party ratios at the subcommittee level, the same principle should apply to the possible derogation or denial of representational rights of House Members in the Committee of the Whole where the votes of non-Members could make the difference on important questions.

"Mr. Speaker, I realize that it might be argued that this resolution does not constitute a question of privilege because it might be interpreted as changing the rules of the House.

"However, that is not the case because the resolution only calls for a delay in the implementation of the rule until the House has made a separate determination as to whether it should be implemented in light of the requirements of article I of the Constitution.

"In 1978 precedent, a question of privilege resolution was ruled proper even though it sought to alter the number of Members required to approve the extension from a majority to two-thirds.

"If anything, the 1978 precedent was more farreaching than the pending question since it would have changed rules already adopted which required only a majority vote for passing legislation brought under a special rule.

"No pretense was made that the joint resolution was framed as an amendment to the Constitution requiring a two-thirds vote of both Houses, let alone ratification by three-fourths of the States.

"And yet the Chair's holding in that 1978 precedent makes clear that it involved extraordinary question under the Constitution, and the resolution therefore constituted a legitimate question of privilege.

"The pending question of privilege resolution does not attempt to force a two-thirds vote of the House to permit implementation of the delegate voting rule. It simply requires the House, by simple majority vote, to make a determination that implementation of the rule is permissible under the Constitution.

"Such a determination could be made immediately after the question of privilege resolution is adopted, and the House could then proceed with the consideration of the pending legislation based on the determination made by the House.

"In conclusion, Mr. Speaker, the issues raised by this resolution clearly involve a question of the privileges of the House and should therefore be allowed for consideration and determination by the House.

"Let us do it the right way. The Chair can do it right now by letting us pass this resolution and then bringing up a resolution which would speak to the admissibility, speak to the con-

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
Klecicka	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