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## Senate

The Senate was not in session today. Its next meeting will be held on Wednesday, January 6, 1999, at 12 noon.

## House of Representatives

FRIDAY, DECEMBER 18, 1998

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. LAHOOD).

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
December 18, 1998.

I hereby designate the Honorable RAY LAHOOD to act as Speaker pro tempore on this day.

NEWT GINGRICH,  
*Speaker of the House of Representatives.*

### PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Let us pray, using the words of Saint Francis: Lord make us instruments of Your peace.

Where there is hatred let us sow love;  
where there is injury, pardon;  
where there is discord, union;  
where there is doubt, faith;  
where there is despair, hope;  
where there is darkness, light;  
where there is sadness, joy.  
Grant that we may not so much seek  
to be consoled as to console;  
to be understood as to understand;  
to be loved as to love.  
For it is in giving that we receive;  
it is in pardoning that we are pardoned; and  
it is in dying that we are born to  
eternal life. Amen.

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Jersey (Mr. PALLONE) come forward and lead the House in the Pledge of Allegiance.

Mr. PALLONE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

### PRIVILEGES OF THE HOUSE—PROVIDING VOTE FOR THE DELEGATE TO CONGRESS FROM THE DISTRICT OF COLUMBIA IN CONSIDERATION OF PRESIDENTIAL IMPEACHMENT RESOLUTIONS

Ms. NORTON. Mr. Speaker, I rise to offer a privileged resolution that is at the desk.

The Clerk read the resolution, as follows:

H. RES. 613

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively or the Members individually in their representative capacity are affected;

Whereas under the precedents, customs, and traditions of the House pursuant to rule

IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House and of Members of the House; and

Whereas the House is prepared to consider a resolution impeaching the President, and the Delegate to the Congress from the District of Columbia seeks to assert the constitutional prerogative to cast a vote in the consideration of the resolution: Now, therefore, be it

*Resolved,*

### SECTION 1. PROVIDING VOTE FOR DELEGATE FROM THE DISTRICT OF COLUMBIA IN CONSIDERATION OF PRESIDENTIAL IMPEACHMENT RESOLUTIONS.

Pursuant to section 2 of article I of the Constitution and the twenty-third article of amendment thereto granting the people of the District of Columbia the right to vote in presidential elections, the Delegate to the Congress from the District of Columbia shall be permitted to cast a vote in the House of Representatives in the same manner as a member of the House in the consideration by the House of any resolution impeaching the President or Vice President of the United States.

### SEC. 2. EFFECTIVE DATE.

Section 1 shall apply with respect to any resolution impeaching the President or Vice President of the United States that is considered by the House of Representatives after the adoption of this resolution.

The SPEAKER pro tempore. Does any Member wish to be heard on whether the resolution constitutes a question of the privileges of the House? Ms. NORTON. I ask to be heard, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from the District of Columbia is recognized.

Ms. NORTON. Mr. Speaker, most Americans do not know and most people in the world are unaware that the

This symbol represents the time of day during the House proceedings, e.g.,  1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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residents of the Nation's Capitol do not have any representation in the Senate and cannot vote on this floor.

But the Constitution of the United States, in its 23rd amendment, does give to the residents of the District the right to vote for President and Vice President of the United States. The same Constitution that gives the District the right to vote for President must recognize the right of District residents to representation for a vote on removal of the President.

I have submitted a narrowly-tailored resolution, along with a legal memorandum, for a narrowly-tailored right. I am not here asking for the delegate vote in the Committee of the Whole at this time. I am not asking for a House vote. I am asking to vote only on impeachment, in order to perfect the rights of District residents under the 23rd amendment. The House has abundant authority to grant me this right at this time.

Clause 2 of the 23rd amendment gives the House the power to enforce the amendment through legislation. My resolution is that legislation. The District clause, as this body so often reminds us, gives Members full authority over the District of Columbia, and the impeachment clause gives Members unilateral authority, or the sole power of impeachment.

The 23rd amendment explicitly treats the District as a State for purposes of electing the President and the Vice President.

I ask for this right in the name of half a million people, the only Americans who pay Federal income taxes who do not have full representation in the Congress. They are a third per capita in Federal income taxes. Their one right that is explicitly mentioned in the Constitution is the right to vote for President and Vice President.

The decision to expel a President from office is as important as the decision to elect the President to office. Indeed, the decision to expel him is more momentous. There are no partial rights in the Constitution. It is unconstitutional and irrational to interpret the 23rd amendment to afford a vote for President, but no vote on whether to impeach a President.

Let this process begin on a high note of fairness. In the name of the half million American citizens who happen to live in the Nation's Capital, I ask for the vote in these impeachment proceedings, Mr. Speaker.

Mr. Speaker, today I introduce a resolution affording the District of Columbia Delegate a vote in impeachment proceedings. The House is fully empowered to enact my resolution under Article I, §2, clause 5 of the Constitution (stating that the "House of Representatives . . . shall have the sole Power of Impeachment"); the Twenty-Third Amendment affording the people of the District of Columbia the right to vote for President of the United States; and Article I, §8, clause 17 of the Constitution affording Congress plenary power over the District of Columbia.

I am seeking to protect the constitutional right of District residents to vote for President

by securing a vote in the impeachment proceedings only. My resolution is narrowly tailored and would not be a grant of voting privileges to the Delegate in other proceedings of the House.

American citizens living in the District of Columbia participated in the last two presidential elections by choosing as their electors three citizens pledged to President Clinton. Unless Congress acts to remedy the situation under the Twenty-Third Amendment, the District population will be the only community of American citizens who participated in the Presidential elections of 1992 and 1996 who will have no vote at all on impeachment or conviction.

This constitutional asymmetry not only violates the rights of more than half a million voters; it is unnecessary. Congress has sufficient authority under the District Clause and under the enforcement clause of the Twenty-Third Amendment to grant the District of Columbia Delegate to the House of Representatives a vote in the House impeachment process on the House floor. The Supreme Court has liberally construed enforcement clauses in all of the suffrage amendments to vindicate the broad and central constitutional purpose of securing equal voting and participation rights for all Americans.

The Twenty-Third Amendment put the District of Columbia essentially on the same level as the states for purposes of presidential elections.

The purpose of Twenty-Third Amendment was to give Congress the power to provide the residents of the District an equal role in selecting the President and the Vice-President. The Amendment allows District residents to participate in presidential elections on an equal footing with the states.

Today, this right can be fully vindicated only by reading the Twenty-Third Amendment to permit Congress to grant the District of Columbia Delegate a vote on the Resolution Impeaching William Jefferson Clinton, President of the United States. Otherwise, the political will and sovereignty of residents of the District of Columbia in the selection of the president will be lost in violation of the Twenty-Third Amendment.

The legislative history of the Twenty-Third Amendment does not contradict this conclusion. Apparently because impeachment has been so rare, there was no discussion of this problem at the time. This is the first occasion that articles of presidential impeachment will go to the floor of the House since the Twenty-Third Amendment was added to the Constitution in 1961. This is a case of first impression.

The Twenty-Third Amendment is part of our Constitution's progressive inclusion of all "the governed" in the processes of government. The Fifteenth Amendment secured the right of African-Americans to vote. The Nineteenth Amendment extended the right to vote to women. The Twenty-Fourth Amendment abolished the poll tax. The Twenty-Sixth Amendment gave the right to vote to 18-year olds. All of these suffrage amendments have been interpreted liberally to secure the inclusion of once disenfranchised Americans. As the Supreme Court stated in *Reynolds v. Sims* in 1964: "history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." 337 U.S. 533 (1964)

This reasoning applies equally to the Twenty-Third Amendment and American citizens who happen to live in the nation's capital.

The case for the Delegate's vote on impeachment would be harder put if such participation had to be self-executing. But section 2 provides that, "the Congress shall have power to enforce this article by appropriate legislation." Since Congress is given the instrumental role in activating and enforcing the Twenty-Third Amendment, it may interpret that amendment to give the Delegate the right to cast her vote along with the representatives of all the other states that participated in the presidential electoral college.

The Supreme Court has clearly treated impeachment as a political question solely within legislative competence and control. In *Nixon v. United States*, 506 U.S. 224 (1993), the Court rejected an impeached judge's attack on Senate Impeachment Rule XI, under which the presiding officer appoints a committee of Senators to "receive evidence and take testimony." The Court found that this process of delegating to a committee was wholly within the Senate's powers because the Senate has "the sole power to try all impeachments." Article I, Section 3, Clause 6. The Court found that the "common sense meaning of the word 'sole' is that the Senate alone shall have authority to determine whether an individual should be acquitted or convicted. . . . If the courts may review actions of the Senate in order to determine whether that body 'tried' an impeached official, it is difficult to see how the Senate would be 'functioning . . . independently and without assistance or interference.'" "Just as the Senate has the 'sole power' to shape and control the trial process, the House of Representatives has the 'sole power of Impeachment' in the first instance. Article I, Section 2, Clause 5. As the Nixon Court itself pointed out in discussing the nonreviewability of the Senate trial, 'the word 'sole' appears only one other time in the Constitution—with respect to the House of Representatives' sole Power of Impeachment.'" Thus, like the Senate, the House of Representatives is free to structure the impeachment proceeding consistent with its own judgment of constitutional requirements.

The Delegate's participation on the impeachment articles can thus be accomplished by way of a House rule. Article 1, Section 5 of the Constitution generally makes "Each House" both "the Judge of the Elections, Returns and Qualifications of its own Members" and the sole body to "determine the Rules of its proceedings." As precedent, the House unilaterally granted the Delegate from the District of Columbia and other Delegates full power to vote in Committee of the Whole deliberations, a decision upheld against constitutional attack in *Michel v. Anderson*. This case, too, presents little constitutional difficulty because the House is not acting in its bicameral legislative capacity but rather in its unilateral capacity to "have the sole power of Impeachment" under Article 1, Section 2. Thus, the House must be able to design and enforce its own rules for conducting the impeachment process.

The Supreme Court has recognized an extremely broad degree of interpretive powers under congressional enforcement clauses found in the Constitution's suffrage amendments. In *Katzenbach versus Morgan* it upheld the power of Congress, under Section 5 of the Fourteenth Amendment, to override a New

York law and grant the right to vote to all persons who had completed the sixth grade in Puerto Rican schools regardless of their inability to read or write English. The Court rejected the argument that Congress' powers under the enforcement clause were limited only to what the Fourteenth Amendment itself required, stating rather that: "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective."

The Court emphasized that Congress was acting to protect voting rights and expressed reluctance to interfere with congressional judgement in this field. The Court said: "It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgement, to assess and weigh the various conflicting considerations . . ."

The Court concluded that any legislation enacted under the enforcement clause of the Fourteenth Amendment was permissible so long as the enactment "is plainly adapted to [the] end" of enforcing Equal Protection and "is not prohibited by but is consistent with 'the letter and spirit of the Constitution'," regardless of whether Equal Protection itself dictates such a result.

Elsewhere, the Court has also found that enforcement clauses give the Congress the power to act to vindicate voting interests even where a particular statutory result is not constitutionally required. In *South Carolina versus Katzenbach*, the Court upheld Congress' power under Section 2 of the Fifteenth Amendment to enact the Voting Rights Act of 1965, which included a ban on literacy tests, the requirement that new voting rules must be precleared, and the use of federal voting examiners. The Court stated that "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." These powers are defined in these terms: "Whatever legislation is appropriate, that is, adapted to carry out the objects the [Reconstruction] amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

In *Oregon versus Mitchell*, the Court unanimously upheld the Voting Rights Act Amendments of 1970, which banned literacy tests for five years. Using a mere rationality test, the court found that Congress could rationally have found that these measures were needed to attack the perpetuation of racial discrimination. In *City of Rome versus United States*, the Court upheld Congress' Section 2 power to ban electoral changes that are discriminatory in effect intentional discrimination in voting. Thus, the Court found that Congress' enforcement authority under Section 2 went beyond the strict requirements of Section 1. The Court stated that it "is clear . . . that under Section 2 of the Fifteenth Amendment Congress may prohibit practices that in and of themselves do not violate Section 1 of the Amendment, so long as the prohibitions attacking racial discrimination in voting are 'appropriate.'"

Because the Twenty-Third Amendment is an attempt to bring voting rights to a historically disenfranchised population, its enforcement clause should be read in a very broad way consistent with the Court's deference to congressional enforcement of suffrage rights. It is also relevant that the District Clause, contained in Article 1, Section 8, Clause 17 of the Constitution, provides that Congress shall exercise "exclusive Legislation in all cases whatsoever over "the District." This "plenary power" has been interpreted by the Supreme Court to give Congress complete authority over the District. There is thus ample constitutional basis for Congress having the final authority to define the meaning of the Twenty-third amendment, given that this is a "case" involving the District. The courts, at any rate, would, in all likelihood, treat this matter as a political question solely within the legislative competence, as impeachment is clearly a political question, as determined by the Supreme Court in *Nixon versus United States*, 506 U.S. 224 (1993).

The SPEAKER pro tempore. Are there other Members who wish to be heard?

The Chair is prepared to rule. The resolution offered by the gentlewoman from the District of Columbia seeks to provide the Delegate from the District of Columbia the right to vote in the House on a resolution of impeachment.

Pursuant to Title II, section 25(a) of the United States Code, the Delegate to the House of Representatives from the District of Columbia is accorded a seat in the House, with the right of debate but not of voting.

Under rule XII of the rules of the House, the right of a Delegate to vote is confined to committee. The Chair will state a basic principle on proper questions of privilege as recorded on page 366 of the House Rules and Manual.

A question of the privileges of the House may not be invoked to affect a change in the rules or standing orders of the House. Altering the right to vote of a delegate is tantamount to a change in the rules of the House and is not a proper question of privilege.

MOTION TO ADJOURN

Mr. BONIOR. Mr. Speaker, in protest of the decision to proceed while U.S. men and women are fighting abroad, I move that the House do now adjourn.

The SPEAKER pro tempore. The question is on the motion to adjourn offered by the gentleman from Michigan (Mr. BONIOR).

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

RECORDED VOTE

Mr. BONIOR. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 225, not voting 26, as follows:

[Roll No. 540]

AYES—183

Abercrombie	Green	Olver
Ackerman	Gutierrez	Ortiz
Andrews	Hall (OH)	Pallone
Baesler	Hamilton	Pascarell
Baldacci	Harman	Pastor
Barcia	Hastings (FL)	Payne
Bentsen	Hilliard	Pelosi
Berman	Hinojosa	Peterson (MN)
Berry	Holden	Pickett
Bishop	Hoolley	Pomeroy
Blagojevich	Hoyer	Poshard
Blumenauer	Jackson (IL)	Price (NC)
Bonior	Jackson-Lee	Rahall
Borski	(TX)	Rangel
Boswell	Jefferson	Reyes
Boucher	John	Rivers
Boyd	Johnson, E. B.	Rodriguez
Brady (PA)	Kanjorski	Roemer
Brown (CA)	Kennedy (RI)	Rothman
Brown (OH)	Kennelly	Roybal-Allard
Capps	Kildee	Rush
Cardin	Kilpatrick	Sabo
Carson	Kind (WI)	Sanchez
Clay	Kleczka	Sanders
Clayton	Klink	Sandlin
Clement	Kucinich	Sawyer
Clyburn	LaFalce	Schumer
Condit	Lampson	Scott
Conyers	Lantos	Serrano
Costello	Lee	Sherman
Coyne	Levin	Sisisky
Cramer	Lewis (GA)	Skaggs
Cummings	Lofgren	Skelton
Danner	Lowey	Slaughter
Davis (FL)	Luther	Smith, Adam
Davis (IL)	Maloney (CT)	Snyder
DeFazio	Maloney (NY)	Spratt
DeGette	Markey	Stabenow
Delahunt	Mascara	Stark
DeLauro	Matsui	Stenholm
Deutsch	McCarthy (MO)	Stokes
Dicks	McCarthy (NY)	Strickland
Dingell	McDermott	Stupak
Dixon	McGovern	Tanner
Doggett	McIntyre	Tauscher
Dooley	McKinney	Thompson
Doyle	McNulty	Thurman
Edwards	Meehan	Tierney
Engel	Meek (FL)	Trafigant
Eshoo	Meeks (NY)	Turner
Etheridge	Menendez	Velazquez
Evans	Millender-	Vento
Farr	McDonald	Visclosky
Fattah	Minge	Waters
Fazio	Mink	Watt (NC)
Filner	Moakley	Waxman
Ford	Mollohan	Wexler
Frank (MA)	Moran (VA)	Weygand
Frost	Murtha	Woolsey
Furse	Nadler	Wynn
Gejdenson	Neal	Yates
Gephardt	Obey	

NOES—225

Aderholt	Canady	Fawell
Archer	Cannon	Foley
Armey	Castle	Forbes
Bachus	Chabot	Fossella
Baker	Chambless	Fowler
Ballenger	Chenoweth	Fox
Barr	Christensen	Franks (NJ)
Barrett (NE)	Coble	Frelinghuysen
Barrett (WI)	Coburn	Galleghy
Bartlett	Collins	Ganske
Barton	Combust	Gekas
Bass	Cook	Gibbons
Bateman	Cooksey	Gilchrest
Bereuter	Cox	Gillmor
Bilbray	Crapo	Gilman
Bilirakis	Cubin	Goode
Bliley	Cunningham	Goodlatte
Blunt	Davis (VA)	Goodling
Boehlert	Deal	Goss
Boehner	DeLay	Graham
Bonilla	Diaz-Balart	Granger
Bono	Dickey	Greenwood
Brady (TX)	Doolittle	Gutknecht
Bryant	Dreier	Hall (TX)
Bunning	Duncan	Hansen
Burr	Dunn	Hastert
Burton	Ehlers	Hastings (WA)
Buyer	Ehrlich	Hayworth
Callahan	English	Hefley
Calvert	Ensign	Herger
Camp	Everett	Hill
Campbell	Ewing	Hilleary