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When Equal Is Not Always Fair: Senate Malapportionment and its Effect on Enacting Legislation

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Abstract

A brief and concise analysis on the current apportionment rules in the Senate and whether or not those rules affect enacted legislation. This was done to monitor whether the malapportioned Senate votes in accordance with the House. It is acknowledged in empirical literature that due to population variance some states are under-represented while others are over-represented. However, it has not been determined what effect, if any, this has on policy. The study was conducted by comparing pass rates of the U.S. House of Representatives and U.S. Senate on enacted legislation over the last decade. I conclude that, on average, the median gap in pass rate between the two chambers is minimal. Furthermore, it is shown that while the Senate does, at some points, have drastically different pass rates from the House, there are a large number of instances where the chambers have nearly identical pass rates.

WHEN EQUAL IS NOT ALWAYS FAIR: SENATE MALAPPORTIONMENT AND ITS EFFECT ON ENACTING LEGISLATION

Lindsey Alpert

***Abstract:** A brief and concise analysis on the current apportionment rules in the Senate and whether or not those rules affect enacted legislation. This was done to monitor whether the malapportioned Senate votes in accordance with the House. It is acknowledged in empirical literature that due to population variance some states are under-represented while others are over-represented. However, it has not been determined what effect, if any, this has on policy. The study was conducted by comparing pass rates of the U.S. House of Representatives and U.S. Senate on enacted legislation over the last decade. I conclude that, on average, the median gap in pass rate between the two chambers is minimal. Furthermore, it is shown that while the Senate does, at some points, have drastically different pass rates from the House, there are a large number of instances where the chambers have nearly identical pass rates.*

INTRODUCTION

In order to help ratify the Constitution, a compromise was made between the large and small states. It was agreed that Congress would be bicameral with one house based on population and the other having equal representation among all states. At the time, the compromise was written in order to help close the discrepancy between states of varied population and protect the small states from tyranny of the majority. Nowadays, due to a much greater difference in population variance across states, it is causing malapportionment, allowing some Americans to be better represented in the Senate than others. If malapportionment continues, the minority could be in jeopardy as they tend to reside in the states that are most underrepresented.

Dahl (2002) refers to malapportionment as the central flaw within the U.S. Constitution. In the majority of research, malapportionment refers to the belief that because the composition of the Senate is based on equal representation, those states with far less people compared to larger states are being over-represented. Such an idea implies that because the great deal of rural states with lower population elect Republicans, that the Senate has many more Republicans than it should. That being said, the goal of this paper is to determine if enacted legislation is being passed in accordance with the views of general society, or if the apportionment rules for the Senate are allowing for the views of those being over-represented to influence enacted legislation.

Malapportionment in the Senate matters for a multitude of reasons. Firstly, it allows for political inequality. It is obvious that an institution that grants the same number of senators for 500,000 people as it does for 35 million seems unequal at its core, but the implication is deeper reaching (Malhorta and Raso 2007). The fact that minorities (African Americans, Hispanics, those with liberal views, and those who vote Democrat) live in more populated states allows for their voices and representation to be unequal to their numbers (Griffin 2004; Malhorta and Raso 2009; Lee and Oppenheimer 1999). Similarly, it has been noted by scholars in a great deal of empirical literature that overrepresented states are more likely to have a higher share of public expenditures (Ansolabehere, Snyder, and Ting 2003; Lee and Oppenheimer 1999; Lee 1998; Atlas et al. 1995). Within a place minorities were supposed to be protected from the tyranny of the majority, it appears as though they are being weakened by this current Senate procedure. It is for this reason that a framework is provided to study what effect malapportionment is having on enacted legislation and whether or not the minority (in this case those who identify and vote Democratic) is being heard in proportion to its numbers.

LITERATURE REVIEW

It has been confirmed that the U.S. Senate's design allows for the over-representation of some states, while leaving others under-represented (Ansolabehere, Snyder, and Ting, 2003; Dahl 2002; Griffin 2004). There is a large amount of literature on this topic because it has been shown that malapportionment exists across multiple countries. Nations such as Argentina, Brazil, Germany, and Sweden have bicameral legislatures, and it is not uncommon for one chamber to be based upon equal representation while the other is based on population ratios (Ansolabehere et al. 2003). Therefore, with a significant variation of representation accounted for within foreign countries and the U.S., the question the majority of the literature deals with is not whether the current design is leaving some states under-represented. Previous research questions what effect this uneven representation has, if any. This question presents two camps of evidence: there are those who posit that malapportionment does have effects beyond the weight of a vote, and those that suggest that besides some states being overrepresented, Senate apportionment has no other effects. The researchers who believe that

malapportionment effects go beyond the weight of a vote look at areas such as racial representation and the division of public funds in an attempt to show that the variation in weight of one's vote has far reaching implications that could misrepresent the country's interests. The opposing group of researchers hold that while some states might be better represented because of the current rule of apportionment, it has no ramifications on policy.

Malapportionment Is More Than Just Underrepresentation

Lee and Oppenheimer (1999) suggest that simply acknowledging that Senate apportionment plays a role in the representation of interests would be to demonstrate the obvious. Prior research suggests when dealing with the most malapportioned legislature in the world, implications on the representation of interests are inevitable (Lijphart 1984). In his 2004 study, Griffin examines the effect of malapportionment on the U.S. Senate over time on politically relevant groups such as African Americans, Latinos, those with liberal views, and those who tend to vote for members of the Democratic Party. The results find, similar to other studies, that due to the rule in place, these groups have become increasingly likely to have their preferences underrepresented because these groups tend to take up residence in the heavily populated states (Malhorta and Raso 2007). Additionally, Larcinese, Rizzo, and Testa (2013) demonstrate that small states receive disproportionately more dollars per capita. This is the result of not only state population size, but also population growth with the faster growing states losing out on some federal spending. Therefore, large states are once again disadvantaged by the Senate apportionment rules.

Malapportionment Plays Little Role in Policy

Buchanan and Tullock (1962) suggest that the logic when it comes to underrepresentation affecting policy outcomes may be misconstrued. These two authors acknowledge that because coalition forming in the two chambers is not independent, that differences between the majority of society's opinion and the policy produced by the Senate may not exist. Differences also may not exist due to each chamber modifying its product in order to prevent rejection from the other. Furthermore, scholars note that even though evidence has been presented that some groups are underrepresented, the concern surrounding the ramifications of this evidence is currently unfounded (Griffin 2004). For

underrepresentation to be consequential in policy outcomes, it must be shown that the preferences of overrepresented states differ from the underrepresented ones, but this is difficult to do. The Senate currently under-represents large states that tend to be where minorities, liberals, and Democrats reside. If Democrats and liberals tend to oppose Republicans and conservatives (that typically populate small states) respectively, it would appear obvious that policy preferences differ between large and small states. However, this has yet to be examined. Thus Griffin believes when Lee and Oppenheimer (1999) state “no major issue has divided small states from large states per se at any point in the United States history” they may be jumping the gun a bit (417). However, this study does not seek to discuss what the preferences of large and small states are. The goal of this paper is to consider whether the disproportionately high number of Republicans in the Senate is skewing major enacted legislation.

Hypotheses and Applications of Study

Lee and Oppenheimer (1999) suggest there is room for further research examining the effect of Senate apportionment on interest representation. The aim of this study is to add to the literature a discussion on whether or not malapportionment in the Senate is causing enacted legislation to differ from the preferences of general society. With the knowledge that a vote in a small state is not worth as much as a vote in a heavily populated state, the literature suggests there are more Republicans in the Senate than is representative of the population. Because of this, the research expects malapportionment to be represented by large gaps in vote margins between the House and Senate. Major differences in vote margins between the two chambers would be cause for concern. The House is apportioned in accordance with the population and is therefore more representative of general society. If the Senate does not vote similarly to the House, it could mean that preferences of the general population are being skewed. Working off the studies of Griffin (2004) and Malhorta and Raso (2007), this paper continues the conversation by adding whether or not the current Senate apportionment rules are leaving the voices of minorities such as African Americans, Latinos, those who hold liberal views, and those who identify with the Democratic Party under-represented in enacted legislation.

Hypothesis 1: Due to malapportionment allowing for a greater number of Republicans in the Senate than is representative of the population, the two chambers will not vote in accordance with one another. This will be represented by large gaps in vote margins between the House and Senate.

ANALYSIS

When deciding how to look at Senate malapportionment, the goal was to study pieces of legislation over a period of time. Thus, this study examines Congress over the last five sessions (109th to the 114th). This gave the ability to look at six Congresses, four of which had unified control and two that had divided control. As such, I analyzed bills that were enacted during this 10-year period. In this paper, “enacted” is defined as having been brought up for a vote in each chamber and passed in each. Only votes where a given vote margin was taken were used as including legislation where no vote recorded vote was included would not be of much use. This garnered a relatively small N of 76. The main point of this paper is to examine if current Senate apportionment affects policy outcome. Specifically, the study seeks to determine if malapportionment causes produced policy to be misaligned with public preferences. For this reason, I examined Senate votes rather than House votes because the House is apportioned in accordance with the population. Therefore the House should be more representative of the general public in terms of party composition and policy outcome.

Limiting the study to only enacted legislation holds two purposes. First, it is believed, to some extent, that each chamber does tailor its legislation to make it more appealing to the opposite chamber in order to make sure that it is not voted down. One chamber modifying its legislation to meet the expected objections of the other chamber could cause a possible selection bias. This problem is difficult to gauge, but important to acknowledge. It would mean that expressed preferences are not equal to actual preferences. However, this study is mainly concerned with the expressed preferences because that is what policy is actually being produced by Congress. Therefore, by looking at enacted legislation, this research looks at what policy is actually being put into action. Second, the Senate is generally able to handle a smaller workload than the House which causes them to not get to as many pieces of legislation. For this reason, only pieces that were voted on in both chambers were used. This ensured that both chambers had reached these pieces of legislation.

Tables 1-6 (see Appendix I) map out every bill enacted during a given session of Congress. Table 1 is for 109th, Table 2 for 110th, Table 3 for 111th and so on. The diamond line is the Senate and shows the percentage of Senate members who voted ‘yea’ on a given piece of legislation, while the red line shows the comparable figures for the House. The charts allow for comparison between percentages of the House and the Senate to see if there is a bias present in the Senate. For the 109th Congress (Table 1) the largest gap occurs on October 26th, 2006 where the Senate had 81% of members vote “yea” and the House only had 67% of members who voted vote “yea.” Yet there are instances on February 8th, 2006 and October 13th, 2006 where the chambers had equal percentages of members voting “yea”. This trend continues on in the rest of the Congress. There are some pieces of legislation with drastically different pass rates in the chambers and there are others with identical or notably similar pass rates in the chambers. For example, in the 111th Congress on June 24th, 2009 a bill was passed by 95% in the Senate, but only by 53% in the House. Yet on May 22nd, 2009 and August 10th, 2010 the chambers had identical pass rates on bills. While some of the pass rates are very close, the fact that some have a very large difference between them causes concern that there is a clear bias present in the Senate.

While it is easy to look at the outliers and claim that there is a big discrepancy in some of the pass rates, how common are these large gaps? According to Table 7, they are uncommon. Table 7 charts the average gap in pass rates between the House and Senate on enacted legislation for each given Congress. The lowest gap in the last 10 years appears in the 109th Congress where there is a mere 4.1% gap. However, in the 112th Congress a markedly larger average gap of 12.8% exists. Similarly, the largest gaps between pass rates are distributed relatively evenly among times of divided and unified control. While the 112th Congress was divided between Democrats and Republicans, and had a 12.8% gap, the 113th was divided and only had a 6.2% gap. Additionally, the 110th and 111th Congresses were both unified and had larger gaps of 10.3% and 10.8% respectively. This proposes that the gap does not widen based on divided versus unified party control. Overall, the average percentage gap between members of the Senate who voted yes and members of the House who voted yes was 8.3%. However, as many are aware, averages are not always indicative of what is really the most common. Outliers,

such as the few times in the past few years that there have been 30% gaps or greater tend to skew the averages and drive them up. Having acknowledged this, the median of the gaps for the past 10 years was taken and found it to be just 6%. With the data presented, the initial hypothesis can be rejected. The research can conclude that while the higher number of Republicans in the Senate due to current apportionment rules does sometimes cause drastically different views on legislation thus causing different pass rates, the majority of the time it appears that the two chambers tend to vote in close accordance with one another.

DISCUSSION AND CONCLUDING COMMENTS

This study was conducted in order to test the effects of Senate malapportionment beyond the obvious underrepresentation of some states. Prior research suggested two different platforms. The first proposed that malapportionment had further reaching ramifications than just underrepresentation. Researchers found that current apportionment rules not only left large states underrepresented, but disadvantaged in terms of public expenditures and politically relevant groups (such as minorities and Democrats). The second discussed how actions, like coalition building and product modification, will cause the Senate and House to be similar on legislation votes. The research suggested there would be considerable gaps in vote margins between members of the Senate and House. The study suggests that difference in vote margins are not widened when Congress is under divided control. However, the data shows that while there are instances of large gaps in vote margins the majority of the time the two chambers vote in close proximity; leading to the rejection of my initial hypothesis.

The findings suggest that while population variance across states has grown, it may not have the same effect some researchers imagined. While there is obvious underrepresentation, this study cannot conclude at this time that said underrepresentation has any real implications. Over the past decade, in some instances the two chambers seemed to stay relatively close to one another in terms voting. That being said, this study was conducted with a fairly small N. Further research would increase the sample size by looking back towards later sessions of Congress and adding rejected legislation that was brought up for a floor vote. Future research regarding malapportionment in the US senate

should increase the data sample as it would increase the statistical relevance of this study's findings.

Two hundred and twenty seven years ago a compromise was made to appease large and small states alike by creating a bicameral legislature. This compromise shaped the way one of the United State's major political institutions would be formatted. Although it is clear that the structural format may appear to serve some states better than others, through this study no ramifications on policy have been found. Thus, the Great Compromise is still serving its purpose by allowing for representation of the minority under majority rule.

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Appendix I: Figures

Table 1: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 109th Congress

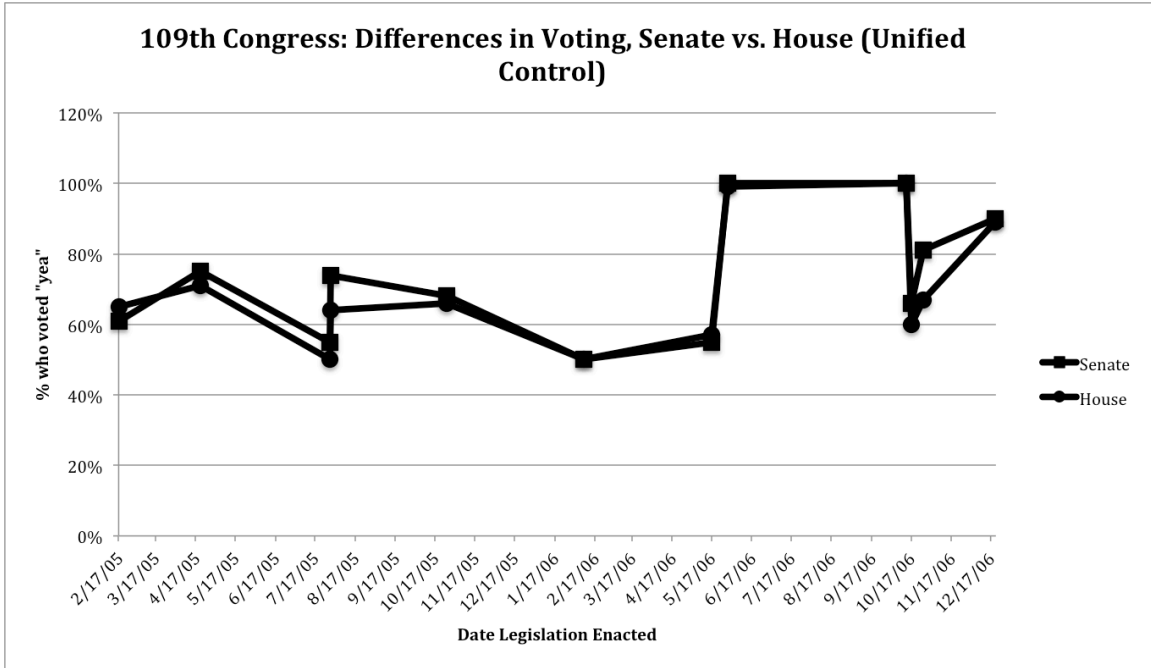


Table 2: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 110th Congress

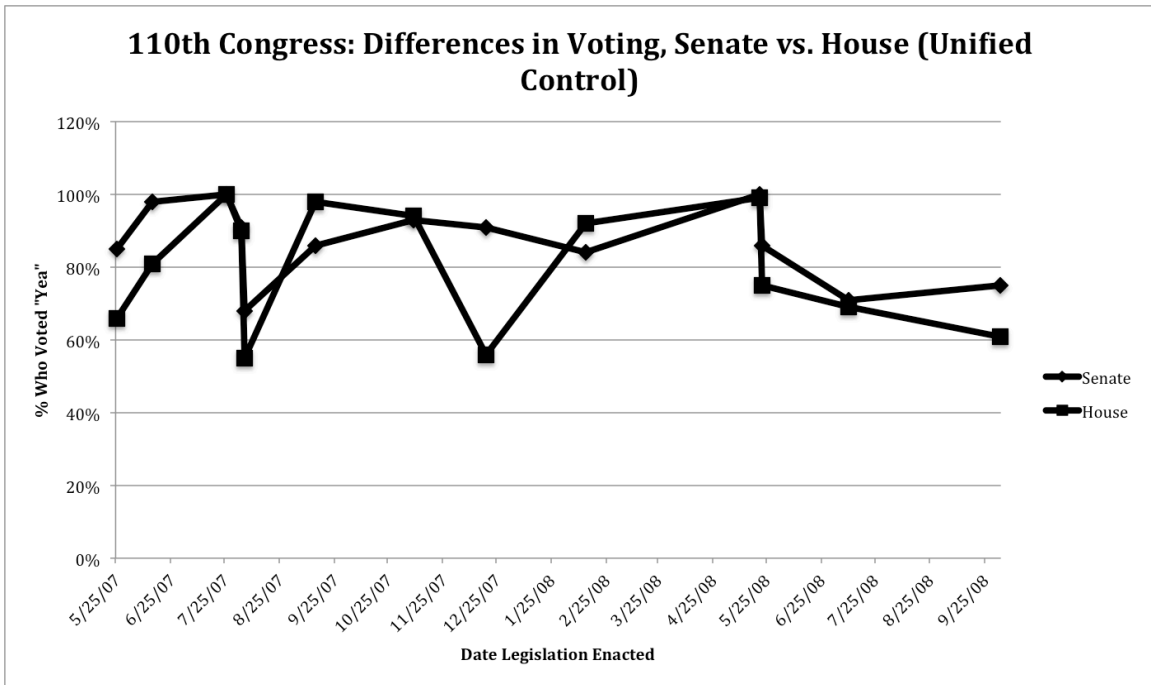


Table 3: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 111th Congress

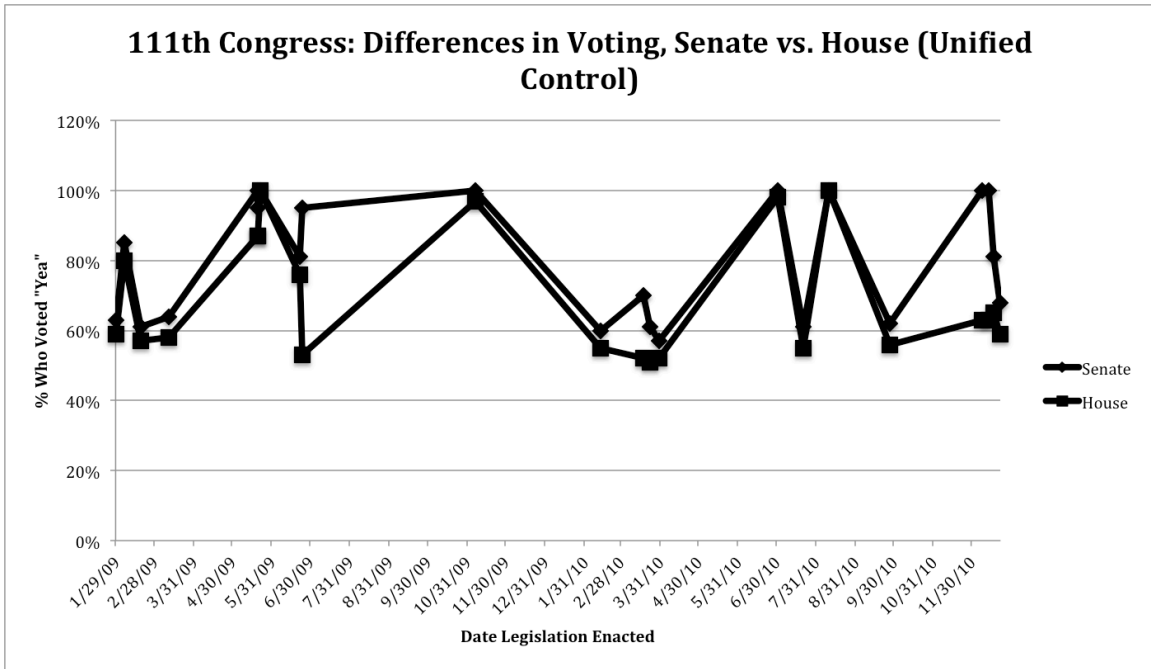


Table 4: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 112th Congress

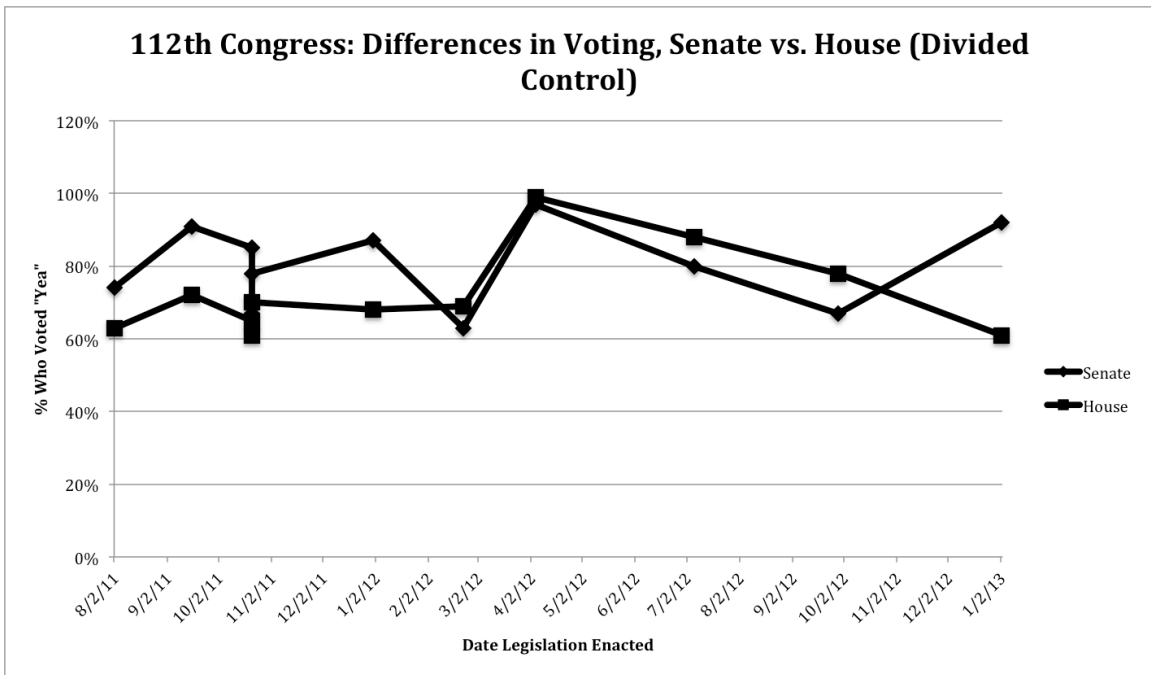


Table 5: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 113th Congress

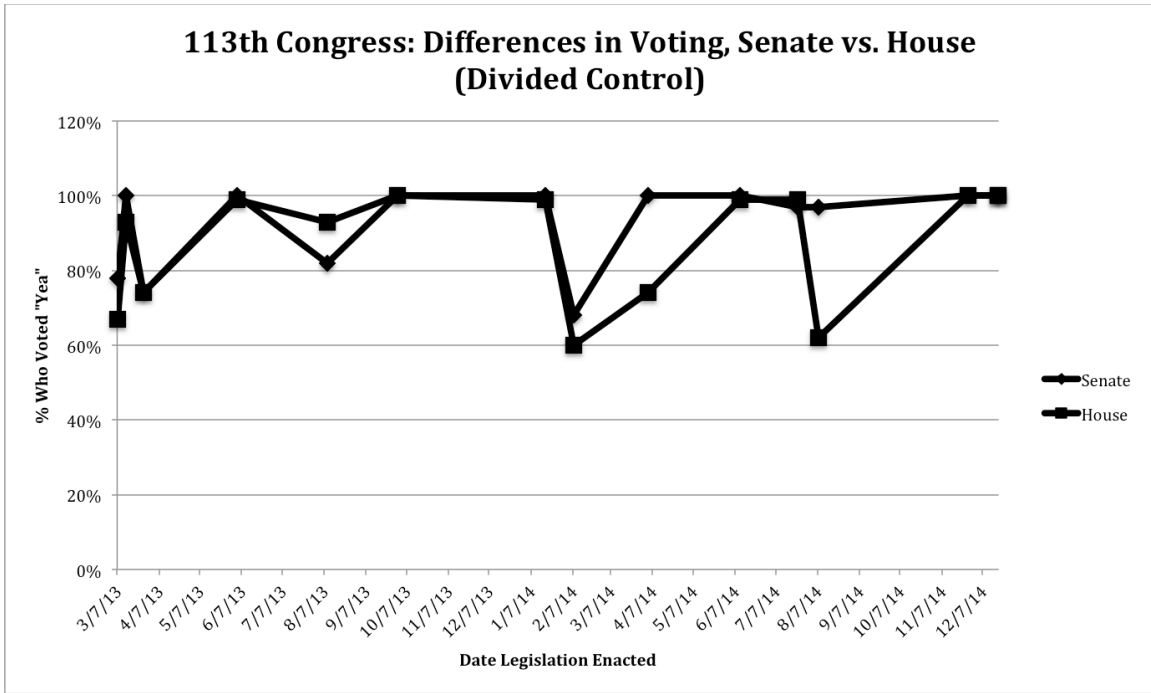


Table 6: Comparison of Senate vs. House in Percent of Members Who Voted “Yea” On A Piece Of Legislation During The 114th Congress

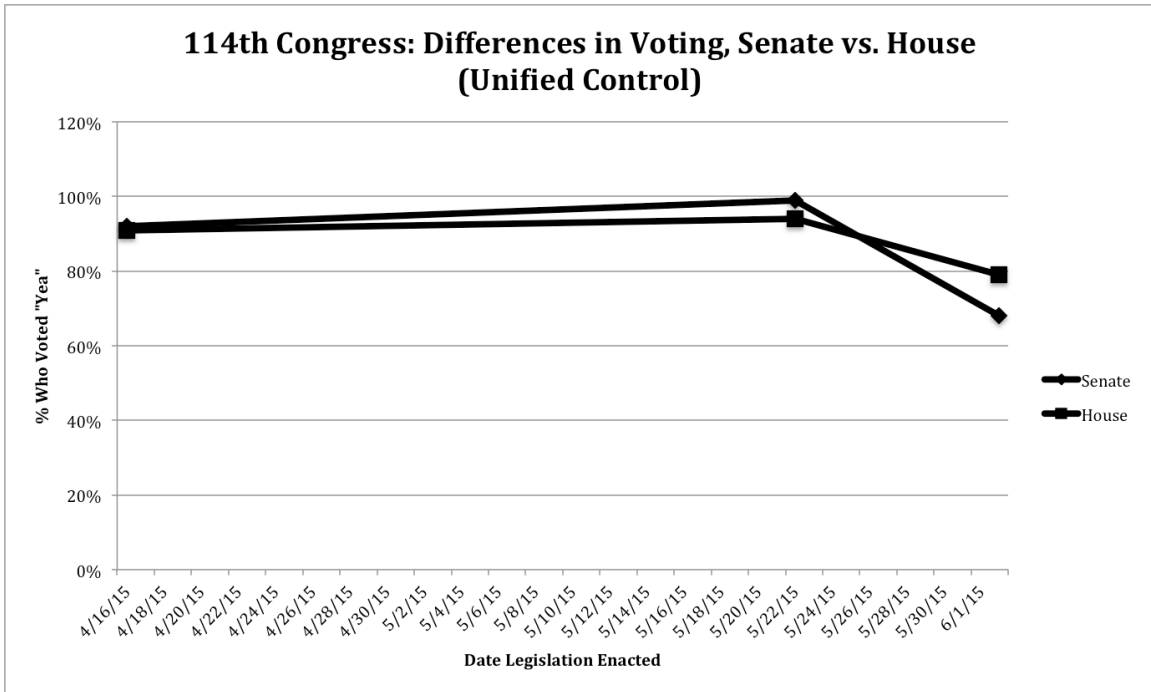


Table 7: *The Average Percent Gap on Each Congress of the Past Ten Years Between Members of the Senate and Members of the House Who Voted "Yea" to a Given Piece of Legislation*

