

# 15 Things to Know about Taking It to the Floor

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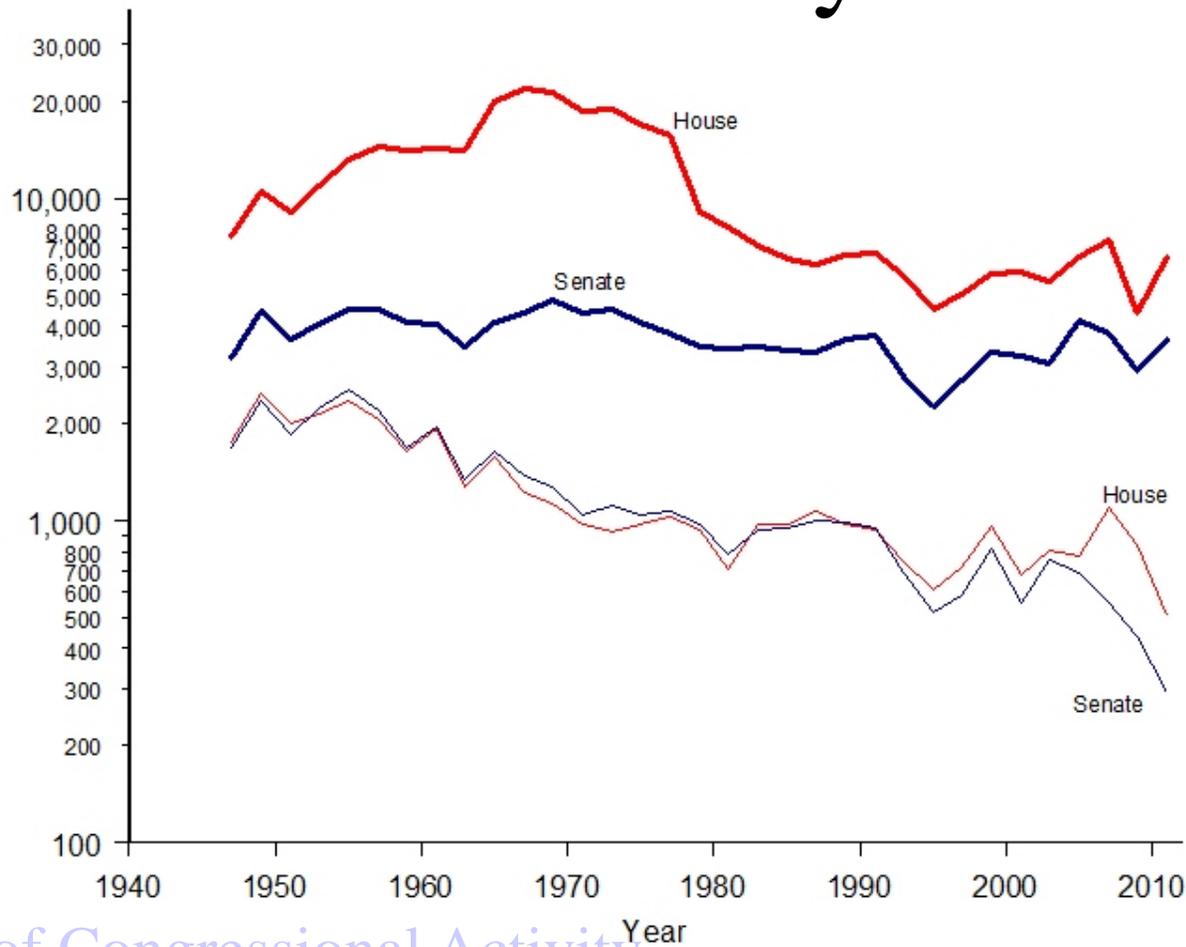
Fall 2012

# 0. Thomas is a cool place to get legislative histories\*

- Home page
- Affordable Care Act Legislative History

\*But it's about to go away...

# 1. The overall workload has generally declined this past half century.



## 2. Getting a bill passed is hard work

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### Major hurdle

*Minor hurdle*

*House detail*

*Senate detail*

### Introduction

House originates tax bills

Senate exclusively considers executive matters

### Reference to committee

Done by Speaker, no right of appeal

Done by presiding officer, w/right of appeal

### Committee consideration (subcommittee nested)

Hearing, Mark-up, Report

### Scheduling

Combo of Rules & leadership

Leadership-centered negotiations

Getting on the calendar

Multitude of calendars (union, House, correction, private, DC, discharge)

Two calendars (general orders, executive)

Getting off the calendar

Simple: suspension;  
Complex: rules

Simple: suspension;  
Complex: unan. consent

Setting the parameters of consideration

Rules Committee

Unanimous consent under threat of filibuster

### Floor consideration

Committee of the Whole

Debate

Constrained

Cloture

Amendment

Germaneness rules strong

Germaneness weak

Reconciling differences

### 3. The most important thing about bill referral is that it usually determines who the bill's murderer is.

As a rule, a bill committed is a bill doomed. When it goes from the Clerk's desk to a committee-room it crosses a parliamentary bridge of sighs to dim dungeons of silence when it will never return. The means and time of its death are unknown but its friends never see it again.

--Woodrow Wilson, *Congressional Government*

## 4. Committee reports are important--- and controversial

Committee reports, floor speeches, and even colloquies between Congressmen ... are frail substitutes for bicameral vote upon the text of a law and its presentment to the President. *Thompson v. Thompson*, 484 U.S. 174, 191-192 (1988)(Scalia, J., concurring).

“In my view a law means what its text most appropriately conveys, whatever the Congress that enacted it might have ‘intended.’ **The law is what the law says**, and we should content ourselves with reading it rather than psychoanalyzing those who enacted it.” *Bank One of Chicago v. Midwest Bank and Trust Co.*, 516 U.S.264,279 (1996).

## 5. Getting bills to the House floor is a two-track process

- Formally, bills move from the committees to calendars, from which they are called up in order
- Non-controversial bills are in practice considered under “suspension of the rules”
- Controversial bills are in practice considered under a “rule.”

## 6. There are four major types of rules, in theory and practice

- Open
- Closed
- Modified closed
- Waiver

# An Open Rule: H.Res. 54

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 359) to reduce Federal spending and the deficit by terminating taxpayer financing of presidential election campaigns and party conventions. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided among and controlled by the chair and ranking minority member of the Committee on Ways and Means and the chair and ranking minority member of the Committee on House Administration. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed five hours. The bill shall be considered as read. All points of order against provisions in the bill are waived. No amendment to the bill shall be in order except those printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII and except pro forma amendments for the purpose of debate. Each amendment so printed may be offered only by the Member who caused it to be printed or a designee and shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

# A Closed Rule: H.Res.1516

## H. Res. 778

*In the House of Representatives, U. S.,*

*September 13, 2012.*

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House the joint resolution (H.J. Res. 117) making continuing appropriations for fiscal year 2013, and for other purposes. All points of order against consideration of the joint resolution are waived. The joint resolution shall be considered as read. All points of order against provisions in the joint resolution are waived. The previous question shall be considered as ordered on the joint resolution and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations; and (2) one motion to recommit.

Sec. 2. Upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 6365) to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to replace the sequester established by the Budget Control Act of 2011. All points of order against consideration of the bill are waived. The bill shall be considered as read. All points of order against provisions in the bill are waived. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on the Budget; and (2) one motion to recommit.

# A very complicated Rule: H.Res. 661

## IN THE HOUSE OF REPRESENTATIVES May 17 (legislative day, May 16), 2012

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 4310) to authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2013, and for other purposes. No further general debate shall be in order.

Sec. 2. (a) In lieu of the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112-22. That amendment in the nature of a substitute shall be considered as read. All points of order against that amendment in the nature of a substitute are waived.

(b) No amendment to the amendment in the nature of a substitute made in order as original text shall be in order except those printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in section 3 of this resolution.

(c) Each amendment printed in the report of the Committee on Rules shall be considered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

(d) All points of order against amendments printed in the report of the Committee on Rules or against amendments en bloc described in section 3 of this resolution are waived.

Sec. 3. It shall be in order at any time for the chair of the Committee on Armed Services or his designee to offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules accompanying this resolution not earlier disposed of. Amendments en bloc offered pursuant to this section shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Armed Services or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

Sec. 4. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

## 7. Floor business in the House is scheduled for everyone's convenience

- [Weekly floor schedule](#)
- [Daily floor schedule](#)

## 8. The substantive consideration of bills in the House is in Committee of the Whole

- Advantages
  - Smaller quorum
  - Debate easier (under the 5-minute rule)
- Formally not the House
  - Presided over by a rank-and-file member
  - All amendments that pass must be approved again by the House

## 9. The Senate differs from the House in being looser

- Getting to the floor is easier and more varied
- Debate need not be germane
- Amendments need not be germane
- Filibuster the 800 pound gorilla

# 10. Scheduling in the Senate by Complex Unanimous Consent Agreements

The majority leader is recognized.

Mr. REID. Before I recite the unanimous consent request that I hope will be approved, what we intend to do is have a vote on final passage of the joint resolution now before us, 10 minutes of debate, there will be votes on two amendments and then final passage. So we have four more votes and we should be finished.

I wish to express my appreciation to everyone. You will note in my last two speeches I made before the Senate yesterday and today, I said a lot of nice things about Republicans, the reason being that is how we have accomplished a lot. We got a decent bill from the House and we have been able to move forward on this legislation.

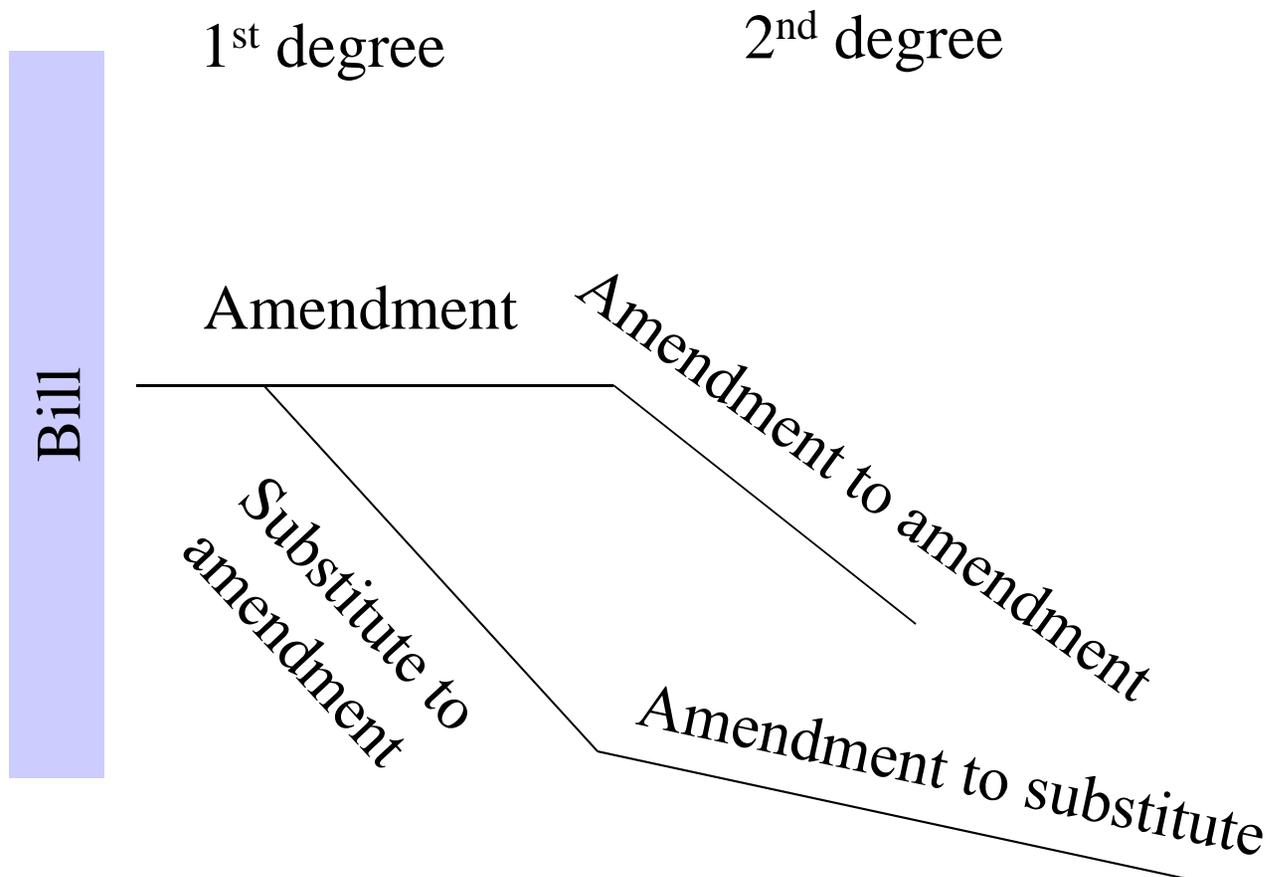
The Republican leader and I had quite a long conversation here in the well. We have a lot of work to do, but we want to do it together. So the cooperation we have had this week by both Democrats and Republicans has been extremely important.

UNANIMOUS CONSENT AGREEMENT--H.R. 2887

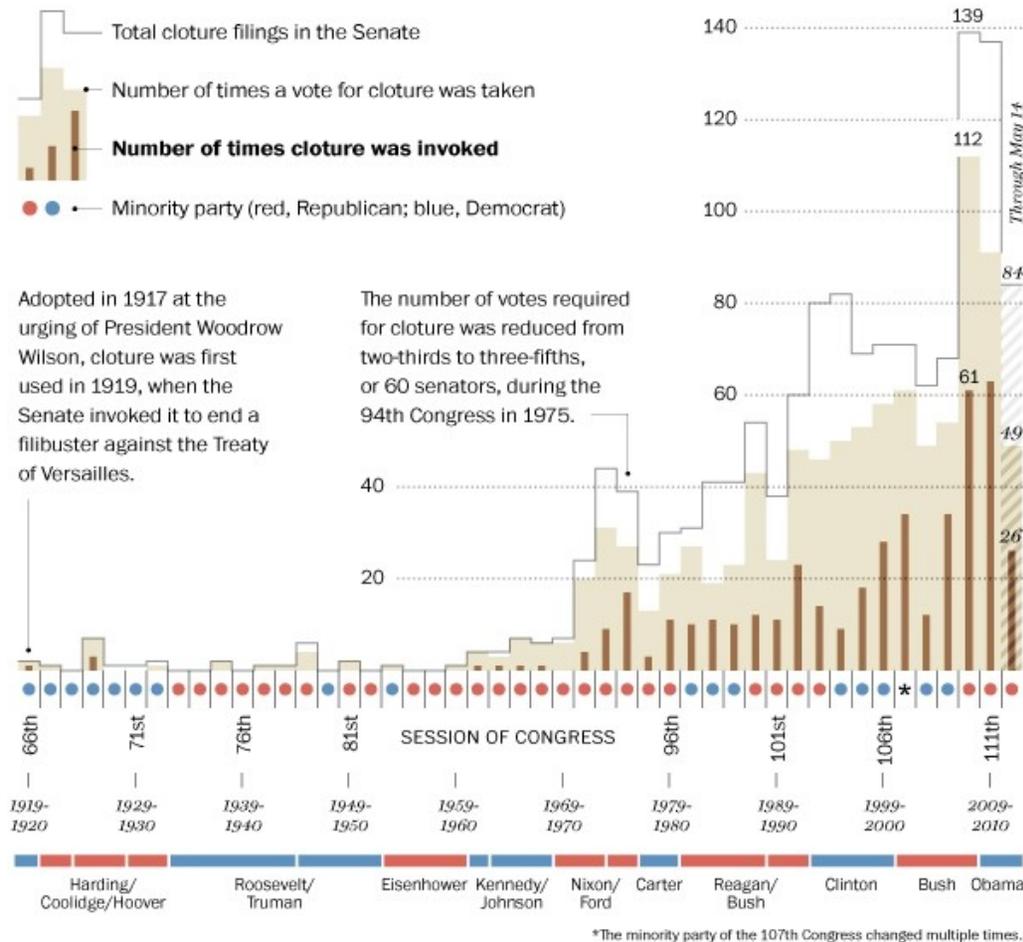
Mr. REID. Madam President, I ask unanimous consent that at a time to be determined by me, after consultation with the Republican leader, the Senate proceed to consideration of Calendar No. 167; that the only first-degree amendments in order to the bill be the following, the text of which are at the desk: Paul regarding limitation of highway trust fund; Paul regarding FAA funding levels; that there be up to 10 minutes of debate on the amendments and the bill to be equally divided between Senators *Paul* and the majority leader or their designees, prior to votes in relation to the amendments in the order listed; that there be no amendments in order to any of the amendments prior to the votes; that the amendments be subject to a 60-vote threshold; that upon disposition of the amendments, the Senate proceed to vote on the passage of the bill, as amended, if amended; that there be no other amendments, points of order or motions in order to the bill other than the budget points of order and the applicable motion to waive; that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

# 11. Offering Complex Amendments More a Strategy in the Senate than the House



# 12. Filibusters probably most powerful as the dog that didn't bark

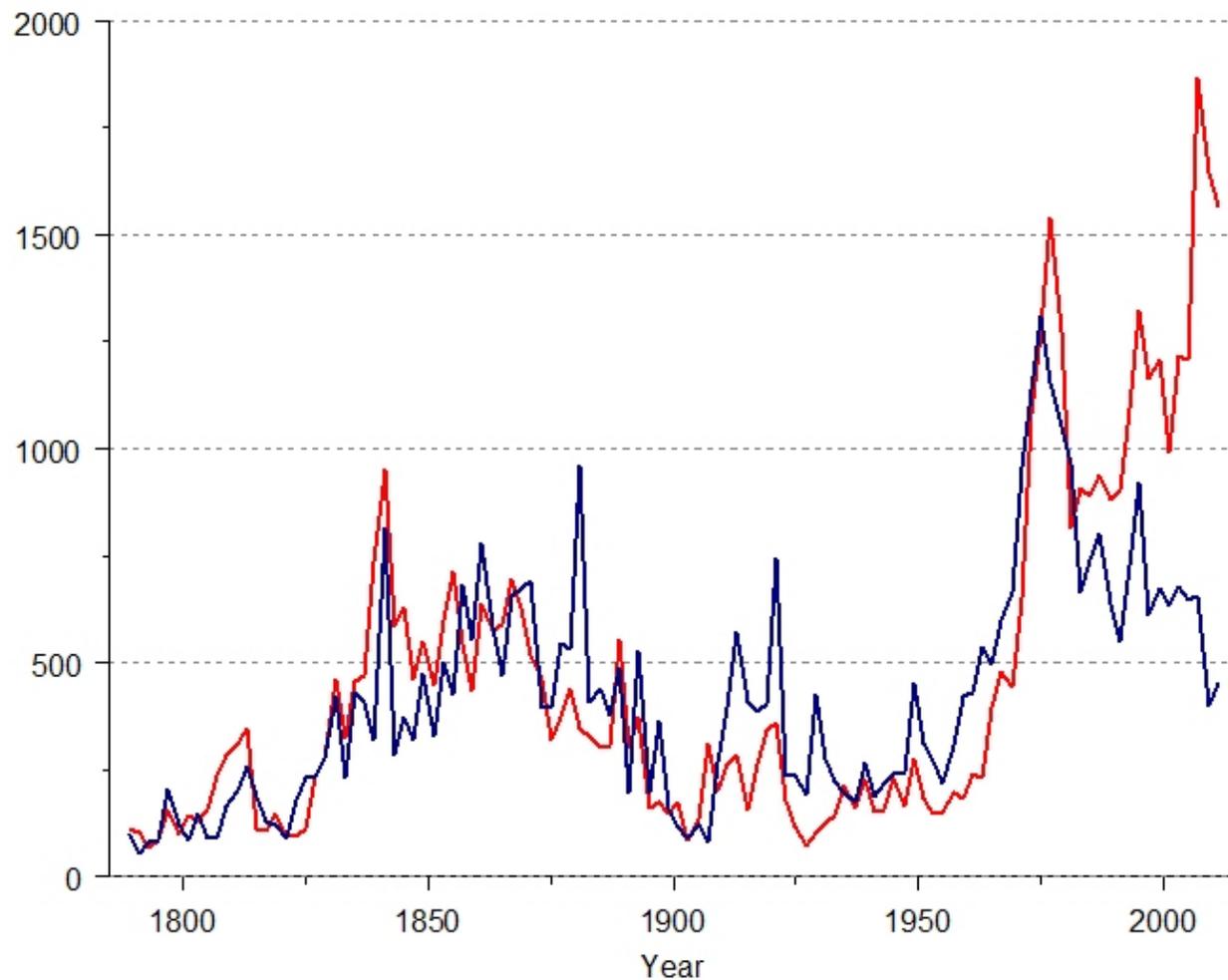


Source: [http://www.washingtonpost.com/blogs/wonkblog/post/is-the-filibuster-unconstitutional/2012/05/15/gIQAYLp7QU\\_blog.html](http://www.washingtonpost.com/blogs/wonkblog/post/is-the-filibuster-unconstitutional/2012/05/15/gIQAYLp7QU_blog.html)

# Filibusters in the 112<sup>th</sup> Congress

- 111 cloture motions filed
- 63 votes
  - 27 failed
  - 36 invoked
  - 3 no action
  - 8 vitiated
  - 34 withdrawn
- 4 votes on S1813 (Federal-aid highway and highway safety construction programs reauthorization)

# 13. Roll call votes, in the aggregate, reveal behavior



# 14. Interest group ratings the most visible practical application of the unidimensional spatial model

- Because groups pick divisive roll call votes, the interest group ratings tend to be more bimodal than reality.
- Ratings like Poole-Rosenthal and Heckman-Snyder are better, because they are based on (almost) all roll calls

# ACU vs. P-R Ratings

