

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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Filling the Amendment Tree in the Senate

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Abstract. "Amendment trees" are charts that illustrate certain principles of precedence which guide the Senate amendment process. When all of the amendments permitted simultaneously by these principles have been offered and are pending, an amendment tree is said to be "filled," and no additional amendments may be offered until one or more of those pending is disposed of or laid aside. Given that the presiding officer traditionally affords the Senate majority leader or his designee priority over all others in being recognized, a majority leader can repeatedly secure recognition and "fill the amendment tree" himself by sequentially offering all of the amendments permitted under applicable circumstances. By doing so, a leader can "freeze" the amendment process in place, blocking additional floor amendments, at least temporarily. A majority leader might "fill the tree" in this way to prevent the offering of or voting on of non-germane amendments, to speed consideration of a measure, or to control the subject or sequence of amendments that may be offered.

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CRS Report for Congress

Filling the Amendment Tree in the Senate

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Summary

“Amendment trees” are charts that illustrate certain principles of precedence which guide the Senate amendment process. When all of the amendments permitted simultaneously by these principles have been offered and are pending, an amendment tree is said to be “filled,” and no additional amendments may be offered until one or more of those pending is disposed of or laid aside. Given that the presiding officer traditionally affords the Senate majority leader or his designee priority over all others in being recognized, a majority leader can repeatedly secure recognition and “fill the amendment tree” himself by sequentially offering all of the amendments permitted under applicable circumstances. By doing so, a leader can “freeze” the amendment process in place, blocking additional floor amendments, at least temporarily. A majority leader might “fill the tree” in this way to prevent the offering of or voting on of non-germane amendments, to try speed consideration of a measure, or to control the subject or sequence of amendments that may be offered.

Background on the Amendment Trees

The “amendment trees” have developed over decades of Senate practice as a way of visualizing certain principles of precedence that govern the offering of, and voting on, amendments in the chamber. These principles of precedence are reflected in four amendment tree charts published in the official compilation of Senate precedents which depict the maximum number and type of amendments that may be offered and simultaneously pending under various circumstances during consideration of a bill.¹ Which of the four amendment tree charts will be applicable at a given point during consideration of a measure is dictated by the form of the first amendment that is offered — be it a motion to insert, to strike, to strike and insert, or in the nature of a substitute.

¹ Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices*, 101st Cong., 1st sess., S.Doc. 101-28 (Washington: GPO, 1992), pp. 74-89. See also CRS Report 98-853, *The Amending Process in the Senate*, by Betsy Palmer.

An amendment tree is said to be “filled” when all of the amendments permitted by these principles of precedence have been offered and are pending. Depending on which tree applies in a given floor situation, an amendment tree might be filled by as few as three, or as many as 11 amendments. When an amendment tree is full, the amendment process is, in effect, “frozen” — no additional floor amendments may be offered until action is taken to dispose of one or more of those already pending. Pending amendments might be disposed of by being voted upon, withdrawn by their sponsor, or tabled. The Senate might also lay aside a pending amendment or amendment tree by unanimous consent so that a Senator may offer another amendment, notwithstanding those pending.

Recognition and the Senate Majority Leader

Under paragraph 1(a) of Senate Rule XIX, the Presiding Officer “shall recognize the Senator who shall first address him.” In keeping with Rule XIX, Senators offer amendments to a pending bill in the order they obtain recognition to do so. Under traditions and practices observed since at least the late 1930s, however, “in the event that several Senators seek recognition simultaneously, priority of recognition shall be accorded the Majority Leader and Minority Leader, the majority [bill] manager, and the minority manager, in that order.”² This priority in recognition afforded the majority leader or his designee is relevant to the amendment tree because the order of recognition can affect opportunities in the amendment process.

When a Senator has offered an amendment, he or she has the right to withdraw or modify the amendment. After action has been taken on the amendment, such as ordering the yeas and nays, however, its author loses the unilateral right to withdraw or modify it, but gains the right to amend it.³ Accordingly, if a Senator offering an amendment on which action has been taken can again secure recognition, he or she may offer an amendment to their own amendment, so long as the new amendment complies with the principles of precedence described above.

Thus, while any Senator (or group of Senators acting in concert) might potentially “fill the amendment tree,” the custom of granting the majority leader or designee priority recognition means that a determined majority leader will always be recognized before other Senators, and, as a result, the majority leader alone is guaranteed the ability to fill the amendment tree by being repeatedly recognized in turn to offer amendments to a pending measure (and to their own amendments) until no more are in order.

Possible Strategic Reasons For “Filling the Tree”

A Senator, particularly the majority leader, might pursue a strategy of “filling the amendment tree” for several reasons, including

- preventing non-germane (and perhaps politically controversial) amendments to a measure from being offered or voted upon;

² Ibid., p. 1093.

³ “Action” includes ordering the yeas and nays on the amendment, adopting, rejecting, or tabling it, amending it, or entering into a unanimous consent request specific to that amendment.

- attempting to expedite overall Senate consideration of legislation by limiting the overall number of amendments offered;
- obtaining advantage in the negotiation of a unanimous consent request for the further consideration of a measure;
- obtaining the first recorded vote on a policy provision in the exact form desired; or
- instituting some measure of leadership control over the subject or sequence of floor amendments offered.

After filling an amendment tree, the majority leader may file a cloture petition, either on a pending amendment or on the underlying measure. If cloture is invoked on the measure, not only does it establish a 30-hour limit for further consideration of the bill, it limits amendments that may be offered to those that are germane and any pending non-germane amendments fall. By keeping a tree full until cloture is invoked, a majority leader may be able to prevent action on a pending non-germane amendment, prevent all non-germane amendments from being offered, or limit the consideration of additional amendments altogether.

A majority leader might also fill the tree in an effort to require the Senate to complete action on an amendment tree that includes an amendment in the nature of a substitute, or a substitute for a portion of a measure. Once a substitute for a measure or a section has been adopted, no further amendments to that text are in order because it is not permitted to amend only text that has previously been amended.

Finally, a leader might fill the tree in an attempt to allow only those amendments acceptable to him to be offered to a measure. This could be accomplished by filling an entire tree and agreeing to a unanimous consent request to lay aside a pending amendment only for the offering of favored amendments. A majority leader might also fill some, but not all of the available limbs on an amendment tree, and use his right of first recognition to call up and offer amendments that he finds acceptable — possibly including filed amendments authored by other Senators.

Implication of Filled Trees

As noted above, when a majority leader “fills the amendment tree,” he “freezes” the amendment process in place, limiting opportunities for other Senators to offer amendments while the tree remains pending, and potentially after the amendments are adopted as well. While the leader’s ability to fill the tree gives him at least some temporary control over the Senate floor, it also means that floor proceedings are largely “frozen” for him as well. Unless the Senate chooses to invoke cloture, a measure is regulated by a statute which limits overall debate, or the majority leader is able to negotiate a unanimous consent agreement regulating the further consideration of the legislation, a majority leader is subject to the same procedural stalemate as other Senators.

In addition, the tactic of blocking amendment opportunities in a chamber which by long tradition places few limits on the ability of individual Senators to amend legislation may create a negative reaction which impairs a majority leader’s future ability to manage

the Senate floor. These considerations may help explain why filling the amendment tree has been a visible and often politically-charged occurrence even though it has been comparatively infrequent.