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# Filling the Amendment Tree in the Senate

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## Summary

“Amendment trees” are charts that illustrate certain principles of precedence that 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 to speed consideration of a measure or to control the subject or sequence of amendments that may be offered.

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## 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 that depict the maximum number and type of amendments that may be offered and simultaneously pending under various circumstances during consideration of a bill.<sup>1</sup> 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.

While there may be different ways of counting filled trees, generally speaking, 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. Under Senate precedents, to fill every limb on an amendment tree, amendments have to be offered in a specific order and are generally voted upon in reverse order of their offering. As a result, amendments offered to certain limbs of higher precedence on an amendment tree may effectively block Senators from utilizing limbs of lower precedence. 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.

A motion to commit or recommit a measure to committee may be offered even when an amendment tree on a bill is full. Such a motion may be offered with or without amendatory instructions. Those instructions, however, may also be amended in two degrees: a first degree amendment to the instructions and a second degree amendment to the amendment. Thus, it is also possible to “fill the tree” on such a motion, and a Senator will often do so when trying to eliminate all opportunities for floor amendment. In recent Congresses, there has been an increase in the number of filled trees used on amendment exchanges between the House and Senate.

## 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.”<sup>2</sup> 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.

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

<sup>2</sup> *Ibid.*, p. 1093.

When a Senator has offered an amendment, he or she has the right to withdraw or modify the amendment. However, after action has been taken on the amendment, such as ordering the yeas and nays, its author loses the unilateral right to withdraw or modify it but gains the right to amend it.<sup>3</sup> 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 that 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,
- 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, 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 also limits amendments that may be offered to those that are germane, and any pending non-germane amendments fall on a point of order. 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 or her 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 only some of the available limbs on an

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

amendment tree and use his or her right of first recognition to call up and offer amendments that he or she 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 or she “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 or her at least some temporary control over the Senate floor, it also means that floor proceedings are largely “frozen” for him or her as well. Unless the Senate chooses to invoke cloture, a measure is regulated by a statute that 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 has historically placed few limits on the ability of individual Senators to amend legislation, may create a negative reaction that 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.

## **Recent Senate Actions Related to Filled Trees**

On January 27, 2011, then-Majority Leader Harry Reid and then-Minority Leader Mitch McConnell conducted a colloquy on the Senate floor during which the majority leader pledged to use the procedural option of filling the amendment tree “infrequently” in the 112<sup>th</sup> Congress (2011-2012). In the same colloquy, the minority leader pledged to “use our procedural options with discretion.” Both floor leaders further pledged to do all they could to see that Senators in their respective party caucuses respected the terms of the colloquy. According to Senators Reid and McConnell, this informal agreement was entered into “in the interests of comity and [a] more open process in the Senate.”<sup>4</sup>

In 2013, the Senate adopted a standing order, in force for the duration of the 113<sup>th</sup> Congress (2013-2014), which established a new optional process of proceeding to consider legislation that structured the offering of the first four amendments to the bill in a specific order mandated in the standing order. This process could have had implications for a majority leader’s ability to fill the amendment tree on measures called up in this way.<sup>5</sup>

Neither the 112<sup>th</sup> Congress colloquy nor the 113<sup>th</sup> Congress standing order is in force in the 114<sup>th</sup> Congress (2015-2016).

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<sup>4</sup> *Congressional Record*, daily edition, vol. 157 (January 27, 2011), p. S325.

<sup>5</sup> For more information on this optional process, see CRS Report R42996, *Changes to Senate Procedures at the Start of the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by (name redacted) .

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