

CRS Insights

Filling the Senate "Amendment Tree"

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Observers of the legislative process on the Senate floor have heard Senators of both parties talk a lot in recent years about "amendment trees."

"Amendment trees" are diagrams that 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 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. <http://www.gpo.gov/fdsys/pkg/GPO-RIDDICK-1992/pdf/GPO-RIDDICK-1992-7.pdf>. These diagrams are widely and colloquially called "trees" by Senators and staff because the various first- and second-degree amendments they depict are arguably reminiscent of "limbs" growing out from the bill itself as a central "trunk." Which of the four amendment tree charts will be applicable at a given point during consideration of a bill 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. 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.

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 simultaneously pending. With the tree full, the amendment process is, in effect, "frozen"—no additional 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 Pending amendments might be disposed of by being voted upon, withdrawn, tabled, or falling on a point of order. The Senate might also temporarily set aside a pending amendment by unanimous consent so that a Senator may offer another amendment.

The way in which Senators are recognized on the Senate floor is important to understanding contemporary use of the amendment trees. 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" (<http://www.gpo.gov/fdsys/pkg/GPO-RIDDICK-1992/pdf/GPO-RIDDICK-1992-114.pdf>). This priority in recognition afforded a 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 but may not offer an amendment to it except by unanimous consent. 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. Accordingly, if a Senator offering an amendment on which action has been taken can again secure recognition, he may offer an amendment to his 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 theoretically "fill the amendment tree," the custom of granting a majority leader priority recognition means that a majority leader will always be recognized before other Senators, and, as a result, a 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.

A 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, a 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 legislation, but it limits amendments that may be offered to those that are germane, and any pending non-germane amendments fall away. 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.

For additional information on amending, cloture, and other aspects of Senate parliamentary procedure, visit CRS's webpage specifically dedicated to Senate floor process: <http://www.crs.gov/Analysis/SubCongOps.aspx?cliid=4140&parentid=4119&Preview=False>.