

Filling the Amendment Tree in the Senate

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In the 111th Congress, some senators are cautiously heralding the return of the “regular order.”² What do they mean by the regular order of the Senate? With regard to the process of proposing amendments to bills, the so-called regular order is the practice of setting aside the standing rules and precedents of the Senate (by unanimous consent) to allow senators to propose multiple amendments, even before a decision has been reached on any other pending amendment. Under this practice, senators come to the floor and offer amendments to the bill with little regard to what other amendments might have already been offered and not yet voted upon. Such disregard for amendments previously offered, however, is only possible with the agreement of every senator.

In the absence of unanimous consent, Senate precedents establish the type and form of amendment that can be pending simultaneously. These precedents reflect certain principles, such as that a Senator should be allowed to propose a way to improve text proposed to be stricken out before a vote is held on striking that text. The precedents are, however, somewhat complicated. In an effort to clarify what is in order in a given parliamentary situation, a Senate Parliamentarian diagrammed the amendments that can be pending together before any one is disposed of, and these diagrams are known as “amendment trees.” Any time a senator offers an amendment, a slot on the diagram is considered filled. If another senator wishes to offer another amendment of the same type and form, it will be necessary to secure unanimous consent—permission from every other senator—to “set aside” the amendment in that slot in order to offer another. And under the so-called “regular order,” this consent is typically granted, so that at any one time many amendments might be pending before the Senate, all awaiting eventual disposition.

Periodically, Senate majority leaders exercise one of their few formal powers afforded under Senate precedents, the right of first recognition, and “fill the amendment tree.” To do so,

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² *Congressional Record*, daily edition, January 15, 2009, p. S589; March 27, 2009, p. S3481. See also the remarks of the majority leader regarding the amendment process on September 17, 2009, p. S9489. The phrase “regular order” is used differently to apply to other stages of the legislative process, including, for example, the practice of holding markups prior to floor consideration and the practice of resolving differences with the House in conference committee.

the majority leader typically offers a series of amendatory motions, one after the other, until all amendatory motions in order under the rules are pending.³ When the tree is full, no other amendatory motion is in order until one is disposed of, or laid aside by unanimous consent. In this way, the majority leader can temporarily halt the amendment process on a bill.

In the 110th Congress (2007-2008), many congressional observers noticed the Senate majority leader seemed to be filling the tree more frequently than his predecessors. Senators, particularly those in the minority party, complained that their rights to offer amendments were being curtailed, and one senator even introduced a resolution that aimed to prevent the ability of the leader to fill the tree.⁴ Some congressional scholars observed the change in practice, in one instance citing it along with other evidence that the majority leader was responding to increased minority obstructionism.⁵

Based on data going back to the 99th Congress (1985-1986), it does appear that the practice of filling the tree increased in recent Congresses.⁶ Indeed, the majority leader in the 109th Congress (2005-2006) offered all the allowable amendatory motions more times than any other leader in the time period under study, and the majority leader in the 110th Congress (2007-2008) offered more than his immediate predecessor.⁷ The 109th Congress also saw the first use, at least in recent history and possibly ever, of filling the amendment tree on a motion to concur in House amendments, and this practice increased in the 110th Congress. (Filling the tree on motions to dispose of House amendments is not addressed in this essay, but see the accompanying piece in this edition of *Extensions of Remarks: Whither the Role of Conference Committees, or Is It Wither?* by Walter Oleszek.)

To the extent political scientists are interested in the phenomenon of tree-filling, they are interested in the extent it can be successfully used by the majority leader to affect policy outcomes. In short, they wonder if it is a tool of party leadership power. It is certainly the point of view of those in the minority (regardless of party) that filling the tree blocks an individual

³ The form of the first amendment offered determines the actual motions offered. For detailed information on the motions necessary to “fill the tree,” see *Riddick’s Senate Procedure*, pp. 74-5, 84, and 89, available on the internet through the Government Printing Office at <http://www.gpoaccess.gov/riddick/index.html>.

⁴ S. Res. 83 in the 110th Congress; see also S.Res. 12 in the 111th Congress.

⁵ Norm Ornstein, “First Steps toward ‘Post-Partisanship’ Show Promise” *Roll Call*, January 14, 2009. For a brief discussion of how the increase could be a response to minority party actions, see also Steven S. Smith and Gerald Gamm, “The Dynamics of Party Government in Congress” in *Congress Reconsidered*, 9th edition, eds. Lawrence C. Dodd and Bruce I. Oppenheimer (CQ Press: Washington D.C., 2009), p. 161.

⁶ To identify filled trees, a full-text search was conducted of the *Congressional Record* and press accounts for the phrase “amendment tree”; these cases were then examined to see if they qualified as instances in which the majority leader or his designee deliberately filled the tree. In addition, all motions to commit or recommit offered in the Senate were identified through www.congress.gov, and each of these was examined to see if it was a possible filling-the-tree situation. (By offering a motion to (re)commit with instructions, and two degrees of amendment to those instructions, the majority leader has “filled the tree” because no other amendatory motions are in order until those motions are disposed of.)

⁷ Precise numbers are not presented in this paper because they depend heavily on how a full tree is defined, and the discussion of different definitions consumes several pages and would bore the expected audience for this essay. Under one somewhat broad definition, in the 109th Congress the majority leader filled the tree six times on legislation and two more times on motions to dispose of House amendments. In the 110th Congress, the majority leader filled the tree nine times on legislation and seven times on House amendments. The next highest Congress in this time period appears to be the 106th Congress (1999-2000), when the majority leader filled the tree seven times on legislation.

senator's right to offer policy proposals that might secure numerical majority support, and is therefore oppressive and detrimental to the democratic process. It is closer to the point of view of the majority leader (regardless of who is holding that position) that filling the tree is a response to an obstructionist minority—either the party or a single senator—that aims mainly to prevent a Senator from changing the subject, and temporarily at that.

It is not the purpose of this essay to resolve that question; in fact, I am actually employed to argue that there is truth in both sides. The purpose of this essay is instead to discuss the effects of filling the tree, in the hope this will assist those developing theories of when and how party leaders can affect policy outcomes. The procedural effects are straightforward: a temporary halt to the amendment process. But what other possible effects are there? To address this question, I examine the instances of tree filling in the last two Congresses under two different majority leaders.

It bears emphasizing up front that no single senator, not even the majority leader, can bring the Senate to a vote on the main question. The majority leader therefore cannot unilaterally block senators from offering amendments prior to passage of the bill. Filling the tree does not affect the right of senators to debate legislation at length. It does not bring the Senate any closer to final disposition of the legislation. Senators prevented from offering amendments by a full tree can engage in extended discussion of the legislation indefinitely.

If, however, the majority leader can build a coalition of at least 60 senators (assuming no more than one vacancy in the Senate) in order to invoke cloture, then he can fill the tree to block other senators from having an opportunity to propose changes to the pending question before a final vote. Under the cloture process, three-fifths of senators duly chosen and sworn can bring consideration of most questions to a close. But they cannot end debate quickly. A cloture motion is voted on two days of session after it is filed. If the Senate agrees to invoke cloture, then the main question and all amendments in relation to it can be considered for a maximum of 30 additional hours. After the 30 hours is used or yielded back, any pending motions are voted on in order of precedence, followed immediately by a vote on the question on which cloture was invoked.

Furthermore, after cloture is invoked on a question, all amendments offered to that matter must be germane, and any pending amendment that has been offered prior to cloture being invoked will fall if the presiding officer rules that it is not germane. The germaneness requirement under Senate precedents is quite strict, preventing Senators from offering an amendment that would expand the scope of the bill, even if it concerns a relevant subject matter. The majority leader can conceivably fill the tree to at least temporarily block amendments while he attempts to gain the support of 59 other senators to invoke cloture and thereby prevent non-germane amendments from being offered.

Because of the need to invoke cloture, any model of party leadership influence cannot claim, or frame as the null hypothesis, that the majority leader can force his view on the Senate by presenting the body with a take-it-or-leave-it choice. In the language of formal theory, the majority leader cannot fill the tree to become the “agenda setter,” inducing stability and determining the outcome in the otherwise chaotic environment of multi-dimensional decision-

making.⁸ The procedural reality, as just explained, is that the majority leader cannot single-handedly end the decision-making process, and therefore cannot operate as the pure agenda-setter modeled in some abstract theories of collective decision making. The influence of filling the tree on policy outcomes, if it exists, is much more subtle than that.

In fact, a review of instances in which the majority leader filled the tree on a bill in the last two Congresses illustrates the limitations of its effectiveness in protecting a majority party policy proposal (Table 1). In the 109th Congress (2005-2006) and the 110th Congress (2007-2008), most of the time when the tree was filled, the majority leader did not secure cloture and bring the Senate to a vote on the underlying bill. In just over half of the cases (eight out of fifteen), either the bill was pulled from the floor, or the leader withdrew the amendments that had made up the tree, allowing other senators to offer (frequently nongermane) amendments.

The other seven cases identified in the table are suggestive of the nature of the policy proposition on which this strategy is likely to expedite the legislative process. On each of these bills there was wide support not just for the proposal, but also for the need to act quickly. In fact, on one, a war and Hurricane Katrina supplemental appropriations bill, the majority and minority party leadership worked together to fill the tree.⁹ In several of these instances the measures faced some kind of deadline, either because they provided appropriations or they were extending expiring provisions of law. The two final instances listed in the top half of the table illustrate the effect of political pressures to act. The two bills were both described by senators as modest in scope, but both addressed, albeit in a limited way, major issues on which there was popular concern and, in fact, that the Senate had attempted unsuccessfully to act on in a comprehensive fashion: immigration and energy. It is easy to imagine how amendments on either topic could have dismantled the coalition established for the passage of the narrowly focused legislation. As the majority leader explained when someone sought unanimous consent to set aside the tree to offer an amendment on the energy security act (a bill to allow off-shore drilling), “We are going to keep this bill focused, tight, and clean.”¹⁰

All of this is not to say that filling the tree cannot influence policy outcomes; it is to make the point that the influence is partly conditional on circumstances beyond the leader’s control. The possibility for policy influence depends in part on the decision calculus of the senators who must decide whether to fight cloture in the hopes of gaining an opportunity to amend the bill. Within the confines of the need to secure 60 votes, however, there are still potential opportunities to influence policy outcomes, or at least influence negotiations, by filling the tree.

One form of indirect influence is that the majority leader is able to prevent the offering of an amendment that a simple majority would agree to, as long as the underlying legislation enjoys super-majority support. Sometimes, for example, majority leaders claim to fill the tree to avoid so-called “poison pill” amendments: amendments that the Senate might agree to that would

⁸ The early formal models in which the agenda setter was presumed to be able to put the question are described in Gerald Strom, *The Logic of Lawmaking : A Spatial Theory Approach* (Baltimore: Johns Hopkins Press, 1990), pp. 79-83.

⁹ On H.R. 2206, 110th Congress, the minority leader explained to his conference that he agreed to fill the tree in order to move the measure forward quickly into negotiations with the House, where discussions would continue (*Congressional Record*, daily edition, May 15, 2007, p. S6117).

¹⁰ *Congressional Record*, daily edition, July 27, 2006, S8335.

destroy the support for the bill (or at least the super-majority support to end debate on the bill). If an amendment is a known poison pill, then senators could vote strategically against an amendment they otherwise support, but a filled tree helps them avoid this always-uncomfortable dilemma. It was reported, for example, that in 2005 the majority leader offered first and second-degree amendments to a firearms manufacturers protection bill in order to prevent other amendments on topics such as child safety locks, background checks at gun shows, and the ban on semiautomatic weapons.¹¹ Amendments on these issues had been agreed to the previous year on a similar bill when the Republican majority was smaller, leading its original proponents to withdraw their support for the bill and to its eventual failure.¹²

But the amendment need not be a poison pill for the majority leader to want to prevent it from being offered. Perhaps the amendment would be agreed to, and the bill would still be able to get to a successful final passage vote. If, however, the majority leader (or the majority party, or maybe the majority of the majority party) would rather not have the amendment in the legislation, then the full tree could preclude it—providing, of course, that fewer than 40 senators are willing to risk the whole legislation for the sake of that amendment.

In 2006, for example, the majority leader filled the tree and secured cloture on the USA PATRIOT Act modifications bill,¹³ precluding amendments that some senators believed could have been approved. The bill itself was reported to be widely supported, and the Senate had voted 96-3 to end debate on the motion to take up the bill. Even though, by all accounts, the legislation as called up enjoyed overwhelming support, both Senator Patrick Leahy (D-VT), the ranking member on the committee of jurisdiction, and Senator Russell Feingold (D-WI) expressed their desire to offer relevant amendments. Senator Feingold claimed that his proposals reflected the results of previous bipartisan negotiations, and in fact Senator Arlen Specter (then-R-PA), chair of the committee of jurisdiction, voiced support for some of the changes but introduced them as a stand-alone bill.¹⁴ The filled tree prevented these amendments from being offered, and senators therefore only had the opportunity to vote on whether to bring the popular bill to a vote without change.

¹¹ Senators expressed frustration on the floor at not being able to offer amendments they wished (*Congressional Record*, daily edition, July 27, 2005, pp. S9090-S9091; S9093-S9094; S9104), and *Congressional Quarterly* reported that the majority leader filled the tree (see, for example, Michael Sandler, “Frist Employs Tough Tactics to Limit Democrats’ Options on Gun Bill and Force a Vote,” *CQ Today*, July 27, 2005). Technically, however, after Senator Frist offered the two amendments, two additional amendments were in order. In other words, opportunities existed for senators to offer amendments to the bill, although not of the form and type that they wished. As such, this bill (S. 397) is not included in the list of full trees in Table 1.

¹² Michael Sandler, “Liability Measure for Gun Industry Bumps Defense Bill From Senate Agenda,” *CQ Today*, July 26, 2005. As the sponsor of the bill explained, “. . . opponents succeeded in attaching a couple of unrelated poison-pill amendments that ultimately caused the bill to fail” (*Congressional Record*, daily edition, July 27, 2005, p. S9088).

¹³ S. 2271, 109th Congress (*Congressional Record*, daily edition, February 16, 2006, p. S1379). The motion to commit with instructions was not offered, and senators therefore had the opportunity to offer this motion and two degrees of amendment to the instructions. No senator attempted to offer the motion, and yet several complained of the tree being full (see, for example, pp. S1380 and S1381).

¹⁴ *Congressional Record*, daily edition, February 26, 2006, p. S1495; *Congressional Record*, daily edition, February 28, 2006, p. S1520; Michael Sandler, “Congress Poised to Clear Anti-Terror Law Renewal; Specter Wants to Reopen Debate,” *CQ Today*, February 27, 2006; Michael Sandler, “Cloture Vote Sealed, Senate Grinds Toward Final Vote on Anti-Terrorism Bill,” *CQ Today*, February 16, 2006.

To be clear, the actual intent of the majority leader in filling the tree on the USA PATRIOT Act modifications bill is not known. The majority leader claimed to be facing a filibuster, and certainly Senator Feingold did not hide his goal of stopping the legislation.¹⁵ According to the minority leader, however, Senator Feingold and Senator Leahy said they would agree to be allowed to offer just two amendments, and the minority leader assured the majority leader that the amendments could be disposed of that day.¹⁶ Another reason for filling the tree, however, could have been the belief that the bill, a product of bicameral negotiations, would not have passed the House if modified. Regardless of the intent of the majority leader, the effect was to preclude senators from offering related amendments that no one characterized as poison pills. With enough support behind the bill, the leader filled the tree and the final passage vote was held on the policy package as proposed.

Another possible way to affect policy outcomes is to fill the tree to frame a specific vote as a question of one proposal versus the status quo, with the only opportunity for senators to offer third alternatives occurring *after* the vote on the first proposal. The majority leader can do this by offering an amendment to a bill, and then filling all the other available slots on the tree (sometimes with the same or very similar amendment text). The strategy is to force senators into a choice between one favored proposal and the status quo, keeping in mind that the choice they are going to make is a public one. The strategic response of a numerical minority to this behavior is, of course, to threaten to filibuster the amendment (and therefore the bill) unless granted an opportunity to offer a preferred alternative. Whether the majority leader will secure the planned vote on his proposal therefore depends again on the willingness of the opposition to hold up the whole bill.

In a somewhat recent example of filling the tree to get a vote on an amendment, the majority leader offered a hate crimes amendment to the defense authorization bill in 2007. After offering the amendment, filling the tree, and filing cloture on the amendment, the majority leader announced that he did understand there would be a minority-sponsored alternative amendment.¹⁷ Later, by unanimous consent, the Senate did arrange for another amendment to be offered by a minority party senator. The senator apparently hoped the more limited amendment he drafted would take support away from the majority's proposal by, according to one press report, "providing senators an alternative way of expressing opposition to hate crimes."¹⁸ Instead, the Senate invoked cloture on the majority leader's hate crime proposal by a vote of 60-39, and then agreed to the amendment as well as the minority alternative.

This example illustrates a way in which filling the tree can be used to gain leverage in negotiations. The minority party had an incentive to enter into a unanimous consent agreement in order to be able to offer an alternative amendment, particularly one they hoped would reduce the likelihood that the cloture vote would receive the necessary 60 votes. The majority leader might have had an incentive to allow a minority alternative because senators, particularly those in the minority party who favored the majority party amendment, would perhaps feel less pressure from their party brethren to vote against cloture if they indicated they would not vote for it unless another amendment was allowed.

¹⁵ *Congressional Record*, daily edition, February 15, 2006, pp. S1327-S1333.

¹⁶ *Congressional Record*, daily edition, February 16, 2006, p. S1380.

¹⁷ *Congressional Record*, daily edition, September 25, 2007, p. S12023.

¹⁸ Keith Perine, "Senate Adopts Hate Crimes Measure," *CQ Today*, September 27, 2007.

In summary, it seems possible, based both on an analysis of the procedural ramifications and a review of recent instances, that one effect of filling the amendment tree could be the exercise of some influence over the content of the legislation that is approved. Although the majority leader is still constrained in that effectively the proposal must garner at least the support of 60 senators, some evidence suggests that, even if it is at the margins, there is a possibility for policy impact. One potential use of this tool is that the majority leader, relying on his position of influence, presents a legislative package, and then fights off amendments by explaining he is not sure the package would pass with them. Senators are not sure either. Again, with perfect information, senators might choose to not vote for cloture if they knew that, if the tree was taken down, the bill could be improved from their perspective and still get the necessary votes to end debate. But senators are not sure what the effect would be of approving certain amendments. They rely on leadership to craft legislation as close as possible to their favored position given the need to build super-majority support. To some degree, the leaders have an informational advantage (having negotiated with senators) over the rank-and-file (who also communicate with other senators but not as extensively and not necessarily across the aisle). Introduce considerations other than policy into each senator's decision calculus, and the situation becomes even more complex: "I think we could pass an amendment to this if it were allowed, but how will this vote against cloture on this bill look to the people I represent?" "If I hold this up, how will it affect my pursuit of my amendment on the next bill to be considered next week?" The right political conditions combined with even a slight informational advantage could affect the ability of leadership to affect policy.

Additional influences on policy outcomes are even less direct, and some might place them in the category of impacting electoral, rather than policy, outcomes. Senators who view elections as a means to better policy, however, might reject the distinction. Regardless, filling the tree on a bill that does not enjoy super-majority support, and that no one seems to expect to enjoy super-majority support, is occasionally done and presumably for a reason. One effect is to allow the majority leader to publicly present a policy proposal, but to shield it from modifications and even subject-changing amendments. Senators must either vote for or against cloture, and the vote against can be characterized as a "filibuster" of legislation on a subject of interest to constituents.

Although sometimes regarded as less significant than achieving policy or even electoral goals, another related role of majority party leadership in the Senate is making the best use of time. Filling the amendment tree, even if it does not (and is not intended to) permanently prevent amendments, can help to structure the Senate schedule. Because senators can offer amendments to any part of the bill on any subject, conceivably at any time during consideration of a bill, senators could be required to come to the floor and cast a roll call vote on a subject they and their staff have not examined. For the convenience of all senators, floor managers attempt to mitigate this situation, asking senators to file their amendments at the desk and even in some cases to wait to offer them until a time agreement structuring their consideration is reached. In the absence of such bipartisan accommodation, however, the majority leader can fill the tree for the purpose of temporarily blocking senators from offering amendments until the Senate is ready to vote.

Relatedly, the majority leader might also fill the tree to stop a single senator, from the majority or the minority party, from offering an amendment. Even in situations in which there is

bipartisan policy agreement between committee and party leaders, individual senators can still exercise their rights under the rules. In 2008, for example, the majority leader filled the tree on the defense authorization bill, and the chair and ranking member of the Armed Services Committee soon came down to the floor to propound a unanimous consent agreement making four amendments in order. Both committee leaders urged senators to come to the floor to discuss their amendments as they were putting together a “managers’ package” encompassing many amendments. In this instance, it appears the tree was filled to prevent Senator Jim DeMint (R-SC) from offering an amendment to strike a provision of the bill that would incorporate the earmarks outlined in the committee report into law. Senator DeMint was not able to offer his amendment, and partly in response he eventually objected to the request to agree to the managers’ package and the Senate passed the bill without it, 88-8.¹⁹

For those who are seeking to explain the extent of the power of Senate majority party leadership, a review of recent history demonstrates that while the potential for policy influence and electoral impact exists, it is clearly conditional, depending on the degree to which senators are willing to press their procedural rights and their willingness to vote strategically against their policy preferences in the hopes of securing a more preferred outcome. It also might depend on how much information senators have about their colleagues’ willingness to press their positions. For example, if senators communicate to form a coalition against cloture – in the hopes of getting an opportunity to make changes to the matter on which the tree is filled – then the vote against cloture is less risky. If the matter is going to be approved anyway, regardless of how an individual senator votes, presumably that senator would prefer to be on record in favor of a proposal he or she prefers to the status quo.

None of this makes for easy theory building, but I would like to echo the recent sentiments of Steven S. Smith and urge scholars to continue to try.²⁰ By way of further warning to those seeking to tackle the challenging question of leadership influence in the Senate, considerable research will likely be required before an increase in filled amendment trees, as we saw from 2005 to 2008, can be viewed as evidence of increased majority leader power. The first question to answer might have to be whether there really is that much of a difference on policy influence between a recent majority leader “filling the tree” and leaders of the 1970s and 1980s waiting to move for consideration of a bill until reaching a unanimous consent time agreement limiting amendments. Furthermore, the “regular order” process described at the start of this essay should not be understood as being devoid of behind-the-scenes negotiations and leadership influence. Most amendments are submitted before they are offered, printed in the *Congressional Record* and scanned into the Senate’s online amendment tracking system. Within limits, the floor managers of both parties are informed of which of these amendments will be offered, and when. Because senators typically wish to propose amendments of the same type and form, unanimous consent is often needed to offer their amendments even when the tree is not filled. Therefore, whether “regular order” or “filled tree,” we might simply be seeing the continuation of an earlier documented trend toward an outward-looking Senate, where individual senators are

¹⁹ *Congressional Record*, daily edition, September 9, 2008, pp. S8159-S8161; September 11, 2008, S8361-S8363.

²⁰ Steven S. Smith, *Party Influence in Congress* (Cambridge: Cambridge University Press, 2007), pp. 7, 208-216.

active on the floor and in the public sphere.²¹ Or perhaps this first decade of the 21st Century is witnessing the operation of this trend in response to other changes in the political environment, including the often-cited issue of party polarization. The parting point here is only that understanding the cause of variation in Senate leadership behavior might be an important step to take before designing and testing theories of party influence.

²¹ Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989); Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, D.C.: Brookings Institution, 1989).

**Table 1: Instances in Which the Majority Leader “Filled the Amendment Tree,”
109th (2005-2006) and 110th (2007-2008) Congresses**

Legislation Approved	
Congress and Bill	Votes and Notes
110 th , H.J. Res. 20: Revised Continuing Appropriations Resolution, 2007	Cloture on bill invoked 71-26; passed Senate without amendment 81-15
110 th , H.R. 1585: National Defense Authorization Act for Fiscal Year 2008	Cloture invoked on “hate crimes” amendment 60-39; cloture invoked on full text substitute 89-6 and bill passed with amendment 92-3
110 th , H.R. 2206: U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007	Tree filled jointly by majority and minority leaders; Cloture invoked on full text substitute 94-1; bill passed Senate without further amendment by voice vote
110 th , S. 3001: National Defense Authorization Act for Fiscal Year 2009	Tree filled while majority and minority floor managers worked together on a managers’ package that was eventually objected to by a single Senator; cloture invoked on bill 61-32; passed Senate 88-8
109 th , S. 2271: USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006 ^a	Measure extended expiring provisions of PATRIOT Act; cloture invoked on measure 69-30; passed Senate with amendment establishing the enactment date 95-4.
109 th , S. 3711: Gulf of Mexico Energy Security Act of 2006 ^a	Cloture invoked on measure 72 – 23; passed Senate without amendment 71-25
109 th , H.R. 6061: Secure Fence Act of 2006	Cloture invoked on measure 71 – 28; passed Senate without amendment 80 - 19
Amendments in Full Tree Withdrawn and Additional Amendments Allowed or Legislation Not Approved	
110 th , H.R. 2419: Food and Energy Security Act of 2007 (Farm Bill)	Cloture not invoked on full text substitute 55 – 42; tree amendments withdrawn, other amendments (some not germane) considered; cloture invoked on full text substitute 78 – 12 and bill passed 79-14
110 th , H.R. 2881: FAA Reauthorization Act of 2007	Cloture on full text substitute not invoked 49-42; measure returned to the calendar and not considered again
110 th , H.R. 5140: Economic Stimulus Act of 2008	Cloture on committee amendment not invoked 58-41; tree amendments withdrawn, minor amendment agreed to and bill passed Senate with amendment 81-16
110 th , S. 3036: Lieberman-Warner Climate Security Act of 2008	Cloture not invoked on full text substitute 48-36; measure returned to the calendar and not considered again
110 th , S.3268: Stop Excessive Energy Speculation Act of 2008	Cloture on measure not invoked 50-43; majority leader entered motion to reconsider vote; measure not considered again
109 th , H.R. 4297: Tax Increase Prevention and Reconciliation Act of 2005	Majority and minority floor managers explain filling the tree is done not to prevent amendments, but to control when they are offered. In fact, under reconciliation procedures, amendments could be offered after statutory debate time had expired; tree taken down and unanimous consent agreement reached regarding remaining amendments. Bill passed 66-31.
109 th , S. 1955: Health Insurance Marketplace Modernization Act	Cloture on full text substitute not invoked 55-43; measure returned to the calendar and not considered again
109 th , S. 2454: Securing America’s Borders Act	Cloture on majority leader’s motion to commit with instructions to report back a full text substitute not invoked 38-60; cloture on bill not invoked 36-63; measure not considered again

^a This measure is included even though the majority leader did not offer the motion to commit with instructions, and therefore that motion remained available.

Source: To identify trees, a full-text search was conducted of the *Congressional Record* and press accounts for the phrase “amendment tree”; these instances were then examined to see if they qualified as instances in which the majority leader or his designee deliberately filled the tree. In addition, all motions to recommit offered in the Senate were identified through www.congress.gov, and each of these was examined to see if it was a possible filling the tree situation.