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R SHEET ON FORCING VOTES

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BACKGROUND

In recent years, Senate majorities have used an assortment of rules and practices to exert greater control over legislative process in the institution. The principal means by which they establish such control is their ability to block the consideration of unwanted amendments on the Senate floor.

But minority senators are not powerless. They can challenge the majority leader's efforts to block consideration of their amendments by offering so-called third-degree amendments or by making a motion to proceed to stand-alone legislation. When used properly, these options can give senators leverage to extract concessions in negotiations with the majority leader over when and how the Senate will deal with their proposals.

CURRENT DEBATE

In recent years, the methods employed by Senate majorities to block unwanted amendments have become complicated and diverse. The majority leader can prevent votes on these amendments by filling the amendment tree or otherwise offering a blocker amendment to legislation pending on the floor.

However, frustrated senators have two weapons at their disposal to force votes on their amendments, despite the majority leader's opposition. If used properly, the options below give them leverage to extract concessions regarding when and how the Senate will deal with their proposal.

Third-Degree Amendment Option

If the amendment tree on a given piece of legislation has been filled, senators can force action on new amendments by offering a third-degree amendment. The Senate's precedents stipulate: "Any senator recognized is entitled to offer an amendment *when such amendment is otherwise in order*, but he cannot offer an amendment unless he has been recognized or has the floor." If a senator offers an amendment after the amendment tree has been filled, the presiding officer traditionally rules that the amendment is not in order pursuant to the Senate's past practice

SUMMARY

- Today's majority leaders exercise unprecedented control over the Senate floor.
- They do so to prevent their colleagues from offering amendments without their prior approval.
- Leaders block amendments by filling the amendment tree or offering a so-called "blocker" amendment to legislation pending on the floor.
- But senators have two ways to force action on their amendments and these can be a source of leverage in negotiations with the majority leader.

(though not its Standing Rules). At that point, the senator can appeal the ruling and request a vote. Doing so would eventually force senators to cast a vote on a procedural question directly related to the amendment: whether or not the amendment should be made pending. The appeal represents an adjudication of the italicized portion of the precedent quoted above: namely, that an amendment is in order despite the fact that the amendment tree has been filled. If successful, the tactic simply creates another branch on the tree where the amendment is pending. This method guarantees that the Senate will eventually adjudicate the amendment in question.

Motion-to-Proceed Option

Senators can also introduce their amendment in the form of standalone legislation and make a motion to proceed to it. While this option requires more steps than offering a third-degree amendment to legislation already under consideration, it still empowers a senator to force a vote in relation to a proposal over the objections of his or her colleagues.

A senator must first ensure that their proposal is on the Senate's legislative calendar. The Calendar is the list of standalone measures eligible for floor consideration and consists of legislation reported by the Senate's commit-

tees, as well as legislation placed directly on the calendar by individual senators, pursuant to Rule XIV.

Once legislation is added, any senator may make a motion to proceed to its consideration. According to the Senate's precedents: "Motions to proceed to the consideration of bills and resolutions on the Calendar are usually made by the Majority Leader or his designee." But under the Standing Rules and precedents, any senator is capable of moving to proceed to a measure.

Motions to proceed are debatable. This means that senators opposed to a vote on the underlying issue may prevent one by filibustering it. Even so, once the motion to proceed is pending before the Senate (i.e., after a senator has made it), there are two ways to force a vote over such objections. First, a senator may file cloture on the motion to end the filibuster. As with the motion to proceed, cloture motions can be filed by any senator. To set up a cloture vote, the senator only needs 15 of his or her colleagues to co-sign a cloture petition to end debate.

A senator may also move to table (i.e., defeat) the motion to proceed. This may seem counterproductive at first. Yet, upon closer inspection, motions to table offer senators some advantages. The most important one is that they are not debatable, which means a senator can use a tabling motion to trigger an immediate vote. Since the tactic is intended to give the senator leverage in negotiations over when and how the Senate will consider the underlying issue, demonstrating that its opponents do not have the votes to table the motion to proceed is sufficient. Of course, a majority of senators must vote not to table the motion for a senator to derive any leverage from trying to do so.

STEPS FORWARD

Senators are not powerless when it comes to forcing votes on their amendments. They can overcome the majority's efforts to block their proposals by offering third-degree amendments or by moving to proceed to standalone versions on the Senate calendar. Both options give senators leverage with which to negotiate amendment opportunities on legislation in the future. If these measures are taken, senators' refusal to accept the majority's restrictions on their ability to participate in decision-making may help create a more inclusive and deliberative legislative process in the Senate.

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