

Constitutional Corner – Right of Petition

“In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.”

Petitioning for a redress of grievances was an integral part of British politics and had been for hundreds of years. The right of petition traced its lineage back at least to the first Magna Carta (1215), perhaps earlier. Through its acceptance by King John, Magna Carta implicitly affirmed a right of petition. In addition, the document contained these words:

*“If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, **they shall come to us** - or in our absence from the kingdom to the chief justice—to **declare it and claim immediate redress.**”* (Emphasis added)

Thus the barons reserved a right to petition to make known certain “transgressions” of the peace and claim their redress.

The 1628 Petition of Right presented to King Charles I was another early exercise of the right. The petition was once again reluctantly accepted by the King (he had little choice – Charles desperately needed the funding that would follow).

In 1669, Parliament recognized the right of every British subject to petition Parliament, and the 1689 English Bill of Rights, which followed the “Glorious Revolution” of 1688, explicitly affirmed the “right of the subjects to petition the king.”¹

When it came time for their own revolution, the colonists set about it much as their British brethren had – by the petition process.

In the colonies, the 1641 Massachusetts Body of Liberties was the first document to explicitly affirm a right of petition:

*“12. Every man whether Inhabitant or foreigner, free or not free shall have liberty to **come to any public Court, Counsel, or Town meeting**, and either by speech or writing to move any lawful, seasonable, and material question, or **to present any necessary motion, complaint, petition, Bill or information**, whereof that meeting*

¹ That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;

hath proper cognizance, so it be done in convenient time, due order, and respective manner.” (Emphasis added)

Five other colonies eventually enacted similar guarantees.

Petitions played an important role in early American history as novice legislatures worked to establish their stride, define their powers, and help the struggling colonists meet basic survival needs. “[The petition] process originated more bills in pre-constitutional America than any other source of legislation.”²

Petitions also played a revolutionary role as well. King James II assumed the throne of England in 1685 and quickly alienated many of his subjects, both at home and in the colonies, with his statements affirming the divine right of kings and favoritism shown to his co-religionists: the Catholics. James imposed strict authority over the colonies and ordered a consolidation of several northern colonies under the autocratic rule of a new governor, Sir Edmund Andros. Andros imposed new taxes, abolished colonial assemblies, and abridged long-standing citizens’ rights.

On April 18, 1689, after learning that the King had fled England the previous November (as a result of the Glorious Revolution of 1688), Bostonians stormed the fort of Boston and demanded the ouster of Andros. Anxious to avoid mob violence, a group of Boston merchants and other “first citizens,” presented a petition calling on the Governor to step down from office. After being imprisoned on Castle Island, the Governor escaped to Rhode Island, was recaptured, and sent to England for trial. In London, the agents for Massachusetts refused to sign documents listing the charges against Andros, so he was summarily acquitted, released and subsequently appointed as governor of both Virginia and Maryland.

1765 saw the first truly collective colonial petitions. The Stamp Act Congress, with nine colonies represented, sent Parliament a “Declaration of Rights and Grievances.” The thirteenth of those rights read:

*“That it is the right of the British subjects in these colonies, to **petition the king or either house of parliament.**”* (Emphasis added)

Nine years later, on October 14, 1774, the First Continental Congress sent Parliament a “Declaration and Resolves,” which read in part:

² Stephen A. Higginson, “A Short History of the Right to Petition Government for a Redress of Grievances,” Yale Law Journal, Vol. 91, No. 1, (Nov 1986), p. 142.

*“Resolved, ... That they have a right peaceably to assemble, consider of their grievances, **and petition the King**; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.”* (Emphasis added)

After settling on this statement of rights, Congress immediately sent a similar petition to the King himself.

On July 5, 1775, a little over two months after Lexington and Concord, the Second Continental Congress approved the “Olive Branch Petition.” And the very next day approved “A Declaration on the Causes and Necessity of Their Taking Up Arms,” which documented that:

“A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of Great-Britain:”

Once they arrived in England, the King refused to receive either document. Those hoping for a reconciliation watched their chances wither.

The next year, the resumed Second Congress made clear that they had exhausted all means of peaceful petition by affirming: *“Our repeated Petitions have been answered only by repeated injury.”*

Why go to such lengths - repeated petitions to be precise - just to state your case?

The Colonists saw petitions as an implementation of due process. Before effecting a political separation, they determined they must show their efforts at reconciliation had been repelled.

And so the separation – and the revolution - began. But as John Adams was careful to point out much later, the true revolution had begun long, long before.

“But what do we mean by the American Revolution? Do we mean the American war? The Revolution was effected before the war commenced. The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations.”³

Likewise, Benjamin Rush noted that the revolution did not conclude with the last musket shot:

“The American war is over; but this [is] far from being the case with the American revolution. On the contrary, nothing but the first act of the drama is closed. It remains yet to establish and perfect our new forms of government, and to

³ Letter to Hezekiah Niles, 13 February 1818.

prepare the principles, morals, and manners of our citizens for these forms of government after they are established and brought to perfection.”⁴

At the Virginia Ratifying Convention on June 26, 1788, the delegates responded to the lack of a Bill of Rights in the proposed Constitution by forwarding 20 rights articles and 20 additional amendments. The bulk of the suggested Bill of Rights articles were copied verbatim from the 1776 Virginia Bill of Rights; but the following suggested article was new:

“15th. ... [T]he people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the Legislature for redress of grievances.”

Interestingly, the Virginia delegates were ready to give the new nation’s citizens a right their own state’s residents did not then enjoy. As we know, this right was incorporated into what became the First Amendment. During debate on the amendment, an early draft stating that people had a “right to instruct their representatives” was defeated due to the overbearing inference. Still, members affirmed the legislatures’ obligation to receive and consider such petitions, even if they would not be bound by them. Finally came the familiar words:

“Congress shall make no law ... abridging the freedom of ... the people peaceably to assemble, and to petition the Government for a redress of grievances.”

But what does this right entail today? Must citizens first assemble in order to petition? The amendment can be read that way. To whom and how are petitions to be addressed? Must those petitions be received and responded to? And what if no “redress” results; what is to happen if those petitions are, as they were 240 years ago, met by repeated injury? So many unanswered questions.

After the Constitution went into effect, citizens regularly petitioned the Congress for the passage of specific legislation and “redress of grievances.” However, the first wide-spread exercise of the right was in advocating the end of slavery in the mid-1830s. Congress had enacted rules of order whereby each business day began with state delegations reading petitions they had received. In 1837 and 1838, Congress received 130,000 petitions related to slavery alone. The deluge soon became unmanageable and threatened the ability of Congress to accomplish other needful work; many Congressmen pondered the correct response:

“If the people have a right to petition their representatives it is our duty to receive their petitions.”⁵

⁴ Address to the People of the United States, January 1787.

⁵ Record of the Senate, 1836.

Receive them, yes, but to what end? The House of Representatives adopted a rule that tabled such petitions, meaning that they would “lay upon the table” and receive no other attention. But abolitionists such as John Quincy Adams, were eventually successful in repealing this rule, arguing that it was contrary to the people’s right of petition.

But petitioning the government can sometimes lead to unexpected results. During WWI, petitions suggesting repeal of the new espionage and sedition laws sometimes resulted in imprisonment.⁶

Today, no one disputes the right to petition the government, at any level, for a redress of grievances. But still, the sparse words of the First Amendment provide us no further guidance as to how, when, where.

And so enter the courts. Case law concerning the right of petition is thin, but still significant.

In 1875,⁷ the Supreme Court declared *“The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the National Government, is an attribute of national citizenship, and, as such, under the protection of and guaranteed by the United States.”* (Emphasis added)

In 1954,⁸ the Court ruled Congress can require registration of paid lobbyists.

In 1963,⁹ the right of petition was incorporated against the states for the first time.

In 1985,¹⁰ the Court held that the right to petition does not provide absolute immunity to petitioners; it is subject to the same restrictions as other First Amendment rights, i.e., there is no immunity from liability over what you say in the petition.

In 1980,¹¹ the court upheld a military regulation requiring that military members get permission from their base commander before circulating petitions to Congress on base. The Court ruled the regulation did not infringe the individual right to petition.

In 1988,¹² the Court ruled that states could not bar groups from hiring individuals to circulate petitions in support of a ballot measure.

⁶ The Supreme Court A to Z, 3rd Edition, Kenneth Jost, ed., 2003, p. 312.

⁷ United States v. Cruikshank, 92 U.S. 542 (1875).

⁸ United States v. Harriss, 347 U.S. 612 (1954).

⁹ Edwards v. South Carolina, 372 U.S. 229 (1963).

¹⁰ McDonald v. Smith, 472 U.S. 479 (1985).

¹¹ Secretary of Navy v. Huff, 444 U.S. 453 (1980).

¹² Meyer v. Grant, 486 U.S. 414 (1988).

In 1999,¹³ the Court ruled that states could not require petition circulators to be registered voters, wear name badges, or disclose information about themselves and their salaries.

In 2010,¹⁴ the Supreme Court ruled that the government's disclosure of the names of voters who signed a referendum petition did not violate the First Amendment.

When compared with other first amendment rights, this is indeed a sparse set of controversies.

“Under modern Supreme Court jurisprudence, the right to petition has been almost completely collapsed into freedom of speech.”¹⁵

Exactly. Where does your right of speech end and your right of petition begin? In today's world of instant communication, petition and speech become hopelessly intertwined. Today, we can pick up the phone and talk with a staff member in our Congressman's office (good luck getting connected directly to the member, they are out of their offices more than in). We can send our representatives a letter or an email, either from our own mail system or through the member's website. If we have the time and energy, we can make an appointment and speak directly with our Congressman in their Washington, D.C. or district office. All of these methods are available to groups as well.

We have all seen the numerous emails from special interest groups imploring us to “flood Congressman X's office with emails concerning issue XYZ, or this or that pending legislation” (normally accompanied by an appeal for donations). Do these petitions work?

The Congressional Management Foundation,¹⁶ was established to “work[] directly with Members of Congress and staff to enhance their operations and interactions with constituents. CMF works directly with citizen groups to educate them on how Congress works, giving constituents a stronger voice in policy outcomes. The results are: a Congress more accountable, transparent, and effective; and an informed citizenry with greater trust in their democratic institutions.”

On the subject of “Communicating with Congress,” CMF provides [a series of informative reports](#)¹⁷ you can download and study at your leisure.

Tim Hysom is the Director for Communications and Technology Services at CMF. He was asked by one group: “Does sending emails to Congress still work?” His response:

¹³ Buckley V. American Constitutional Law Foundation, 525 U.S. 182 (1999) .

¹⁴ Doe v. Reed, 561 U.S. 186 (2010).

¹⁵ The Heritage Guide to the Constitution, 2nd Ed., 2014, David F. Forte, Sr. Ed., Matthew Spalding, Ex Ed., p. 415.

¹⁶ <http://www.congressfoundation.org>.

¹⁷ <http://www.congressfoundation.org/projects/communicating-with-congress>.

“Sending your views to Members of Congress does work, no matter what format they arrive in. Senators and Representatives want to know how their votes affect their constituents. One thing people always ask me is, “How many messages does a Member of Congress need to receive in order to change their mind?” There are as many answers to that question as there are Members of Congress: 541.¹⁸ Sometimes a Member can be swayed by a single heartfelt and articulate message from a constituent. Sometimes it's the sheer volume of communications that they receive that persuades them. One important note, however, is that congressional offices do like postal communications because it is easy to see that the constituent took the time to write a handwritten letter, but email is far easier for them to process and will ensure that your message arrives more quickly. The bottom line is that, yes, emails still work, but they are generally most effective if they are personal messages rather than form messages.”¹⁹

[Here are some suggestions](#)²⁰ when writing a letter to a Congressman.

Today, many people don't bother communicating with their Congressional Representatives; they conclude theirs is but one voice in a sea of voices. They should reconsider.

Also bound up with the right of petition is the right to peaceably assemble to do so. But when does protest or demonstration depart from the right of peaceable assembly? I think the answer is in the word: “peaceably.” “Peaceable” normally also mean lawful, which means protests must follow laws set up to ensure the rights of others are not infringed by those desiring to protest or assemble. Notice that Jefferson emphasized that the colonists' petitions had used “the most humble terms.” Even if no action was taken in Parliament, many members of Parliament took note of and expressed thanks for the colonists' tone.

Recent “protests” in Ferguson, Missouri, and elsewhere over the shooting of Michael Brown obviously crossed the line and became riots, with predictable police response. These serve no societal good. Allowing people to “vent” their anger, at the expense of another's private or commercial property, ultimately serves no greater purpose.

When Benjamin Franklin answered: “A republic, Madam, if you can keep it,” he was telling us all that a republic is something that requires “care and feeding.” Among other responsibilities, that means engagement. The people are the true sovereigns in a republic, government employees work for them. If the people don't take the time to communicate their hopes as well as their grievances, who will?

¹⁸ This figure includes non-voting representatives of Guam, etc.

¹⁹ http://fcnl.org/resources/newsletter/janfeb10/communicating_with_congress/.

²⁰ <http://usgovinfo.about.com/od/uscongress/a/letterscongress.htm>.

Repeated petitions to the British government to leave the European Union were seen by candidate for Prime Minister David Cameron as a rising groundswell of support. As part of his platform he promised if elected to support a referendum vote on the matter. As we know, that vote finally took place this month and resulted in 52% of the votes being cast in favor of exit (the turnout was 72% of the electorate, the highest turnout in a UK-wide vote since the 1992 general election).²¹

Seeing the success of the British citizens efforts, 261,159 Austrian citizens (4.12 percent of the electorate) signed a petition demanding that their government hold a similar vote on whether to remain in the EU. As a result of the petition, ministers are obliged to at least discuss the possibility of holding a referendum vote on the issue.

As with any right, your right to petition can be abused. Persistent petitioners who disrupt civil order sometimes encounter opposition and even legal action. An Iowa state law prohibiting convicted sex offenders from circulating petitions was enacted specifically to limit the efforts of a certain Rapid City man whose incessant petition solicitations were disrupting court business.

Is the right of petitioning limited to the powers available for redress? That is, can you only petition for or against something within the power of Congress (or the party petitioned) to address? For a clear answer we need only turn to the current White House publicity stunt, the **"We the People"** petition. President Obama ordered that a section of the whitehouse.gov website be set aside for petitioning the current administration's policy experts. Petitions that garner 100,000 or more signatures²² must be reviewed by officials in the Administration and official responses issued, (there are some exceptions).

Roughly 70 percent of current petitions ask that individual states — [like Texas](#)²³ — be allowed to peacefully secede. In other words, most petitions request actions the Executive branch has no power to effect.

Although most petitions are serious, some are not. In November 2012, a petition was created urging the government to create an actual Star Wars-style Death Star as an economic stimulus and job creation measure. The petition gained more than 25,000 signatures, enough to qualify (at that time) for an official response. The official (tongue-in-cheek) response released in January 2013 noted that the cost of building a real Death Star was estimated at \$852 quadrillion. At the current rates of steel production, the weapon would not be ready for more than 833,000 years. The response also noted that "the Administration does not support blowing up planets" and questions funding a weapon "with a fundamental flaw that can be

²¹ https://en.wikipedia.org/wiki/United_Kingdom_European_Union_membership_referendum,_2016.

²² The threshold started out at a measly 5,000.

²³ <http://theweek.com/articles/469839/11-ridiculous-white-house-petitions>.

exploited by a one-man starship." Other less-than-serious petitions have requested the [deportation of British-born CNN host Piers Morgan](#) (not a bad idea), the [designation and protection of the Sasquatch as an indigenous species](#), and [nationalization of the Twinkie](#). The [Atlantic Monthly magazine](#)²⁴ called the petition site a "joke" (but also the future of democracy).

I recommend not wasting one's time on the We The People petition website, but I do think you should take your individual and collective right of petition seriously and exercise it often. To be effective, realize that this will require you to keep track of pending legislation in Congress, study the legislation, and then communicate to your elected representatives how you recommend they vote on the matter. This is republican government in action.

Or, you could pay no attention to what is happening in Washington, D.C. and hope for the best. Hey, this is America, "Land of the Free,"²⁵ you can do whatever you want!

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²⁴ <http://www.theatlantic.com/technology/archive/2013/01/the-white-house-petition-site-is-a-joke-and-also-the-future-of-democracy/267238/>.

²⁵ For perhaps a little while longer.