

## The Breakfast Club

### Constitutional Minute for 28 February 2023

#### Right #6: Freedom to Petition for a Redress of Grievances

As I noted last week, too often the constitutional rights of speech, assembly and petition are inappropriately combined to manufacture a “right” of protest. But, today, we talk of petitions, not protests.

The right to petition government was well-known to the Founders; the English Bill of Rights of 1689 stated bluntly: *“That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.”* The first mention of a right of petition in an American document was the 1641 Massachusetts Body of Liberties, which stated: *“Every man whether Inhabitant or forreiner, free or not free shall have libertie to come to any publique Court, Councell, or Towne meeting, and either by speech or writeing to move any lawful, seasonable, and materiall question, or to present any necessary motion, complaint, **petition**, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner.”* In 1776, Jefferson reminded the King and Parliament that *“In every stage of these Oppressions We have Petitioned for Redress in the most humble terms.”* Some of those petitions included:

- 1765 – The Declaration of Rights and Grievances
- 1774 – The Declaration and Resolves
- 1775 – The Declaration of Causes of Taking-up Arms
- 1775 – The Olive Branch Petition

In my research for this essay, I actually stumbled upon a [law professor, Maggie Blackhawk](#), who has focused her academic career on the history of petitions and specifically those to the U.S. Congress. She and her team assembled a searchable database of the more than 500,000 petitions she claims Congress has received since setting up shop in 1789. Note: the database seems to constructed in an obscure manner, I couldn’t figure it out. Professor Blackhawk reports that [“the First Congress of 1789-91 received 621 petitions.”](#)

Early in our republic’s history, you could formally petition Congress and Congress would actually receive, consider, and answer your petition. Back then, when we only had a little over three million citizens; petitions were actually manageable. Not today of course. Imagine if only a small portion of 320 million Americans petitioned Congress. But that does not mean the right of petition is dead, as we will see.

In January, 1777, about six months after Jefferson penned his famous Declaration announcing an inalienable right to Liberty, a free black man, “Prince Hall” and seven other free blacks [petitioned the Massachusetts legislature](#), pointing out the inconsistency of slavery with the Declaration of Independence. The Massachusetts legislature did not respond.

Benjamin Franklin was a more prolific petitioner against slavery than Prince Hall and his friends, but not until late in his life. As a young man, Franklin owned slaves, and I haven’t located when he release them, but after his service in the Constitutional Convention of 1787, Franklin published several essays arguing for the abolition of slavery. Three years later, while serving as President of the *Pennsylvania Society for*

*Promoting the Abolition of Slavery*, Franklin petitioned Congress once again on behalf of the Society asking for the abolition of slavery and an end to the slave trade.<sup>i</sup>

The petition was introduced in the House on February 12 and in the Senate on February 15, 1790. It was immediately denounced by pro-slavery congressmen and sparked a heated debate in both chambers. The Senate took no action: the House referred the petition to a select committee for further consideration. [The committee report](#) on March 5, pointed out that the Constitution restrains Congress from prohibiting the importation or emancipation of slaves until 1808; then they promptly tabled the petition. On April 17, 1790, just two months later, Franklin died in Philadelphia at the age of 84.

The Religious Society of Friends, otherwise known as the Quakers, had been petitioning against slavery from 1688 onward. In 1783, they famously petitioned the Confederation Congress yet again and the petition [has been preserved](#).

Beginning in 1836, Congress began to receive so many petitions concerning slavery that each petition could not be responded to, as had been their practice for the first fifty years of the Constitution. The House adopted a rule that *“all petitions relating...to the subject of slavery or the abolition of slavery shall, without being either printed or referred, be laid upon the table and that no further action whatever be had thereon.”* This so-called “gag rule” didn’t sit well with Congressman (and former President) John Quincy Adams, who started a campaign to end it, which was successful eight years later (1844), four years before [Adams would die at his desk in the House of Representatives](#).

And let’s not forget what this clause of the Bill of Rights does not say; it does not say that only Congress can be petitioned, it secures the right to “petition the government for a redress of grievances. What government? Any government? What part of “government?” This is left undefined.

Here in Virginia, we have an explicit right to petition the state government, in our own Declaration of Rights:

*“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.”*

In 2011, the Supreme Court majority opined that the right of petition extended also to petitioning the *federal courts* which, it reminded us, were *“established by the government for resolution of legal disputes.”*<sup>ii</sup> Associate Justice Antonin Scalia disagreed with the majority in that decision, arguing that the right should apply only to Congress and the Executive. I’m taking a poll: who do you think is right, the majority or Scalia? Email me your answer.

Do you want to petition Congress? Try [this website](#).

For further reading: Sorry, I can’t find a single book focused exclusively on the Right of Petition.

Next week: Right #7: Freedom to Keep and Bear Arms (that one should be easy, right?)

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<sup>i</sup> <https://www.archives.gov/legislative/features/franklin>

<sup>ii</sup> [\*Borough of Duryea, Pennsylvania v. Guarnieri \(2011\)\*](#)