Chapter 9

The Right to Petition

Many legal observers consider the right to petition to be uninteresting. It has spurred no landmark cases, and the First Amendment's language is plain and straightforward: Congress shall make no law abridging the "right of the people. . . to petition the Government for a redress of grievances." It guarantees citizens the right to complain and ask officials to correct a problem or right a wrong, but where is the controversy in exercising this right? It is an obvious right in a democratic society.

The founding generation no doubt would have been surprised and pleased to hear this response because their experience had taught them not to take the right to petition for granted. In the Declaration of Independence, they had justified their separation from Great Britain in part because King George III had refused to heed their petitions: "We have petitioned for Redress in the most humble terms: Our repeated petitions have met with repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people." The king's indifference to the colonists' complaints had proved to be his undoing. The framers of the Bill of Rights sought to avoid the same mistake by ensuring that the political process would be receptive to the people's concerns.

The right to petition, like the guarantee of due process, was an old privilege by the time of the Revolution. It has roots in the constitutional development of England, where the first mention of redress, a word that means correcting an error or providing a remedy, occurred in the tenth century. In 1215, the Magna Carta, the Great Charter of English liberties, formally recognized the right of barons to petition the king. Over several tumultuous centuries, the act of petitioning the monarch for personal relief from laws or punishments became an entrenched tradition. The right was not unlimited, however. During the midseventeenth century, for example, Parliament prohibited petitions with more than twenty signatures, a number its members thought reflected a demand rather than a request. It also restricted petitions likely to provoke public unrest. The Glorious Revolution of 1689, which marked the final triumph of Parliament over the king in practical matters of governing, removed these limits and fully implemented the right by banning "all commitments and prosecutions for such petitioning."

Englishmen by then had carried the right with them to the New World and enacted it in their charters and local laws. From early settlement to independence, colonial assemblies received thousands of petitions from every rank in society, including groups normally excluded from government, such as women, slaves, and Indians. The complaints ranged widely and prayed for relief in matters of debt, property, divorce, taxes, criminal punishments, and a host of other actions. They were, in many ways, a gauge of the public mood in a time before mass media and opinion surveys. Petitioning served as a form of public dialogue with elected or appointed rulers. Royal governors and colonial legislatures, however,

"Every man whether Inhabitant or forreiner, free or not free shall have libertie to come to any publique Court, Councel, or Towne meeting, and either by speech or writeing to move any lawfull, 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."

—Massachusetts Body of Liberties (1641)

often viewed them as a nuisance and at times discouraged petitions by charging fees and punishing petitioners who filed a false complaint—for example, a fabricated claim that the government owed a debt or denied a right. Appeals to the king and Parliament remained open to aggrieved colonists, but in the years preceding the Revolution, colonists increasingly found their petitions rejected by an imperial government eager to assert its authority over them.

These experiences made the revolutionary generation especially keen to guarantee the right to petition. The framers recognized that popular sovereignty, the authority of the people to rule, depended upon the ability of individual citizens to discuss their concerns openly and to communicate directly with officials. They included the right of petition, along with the closely related rights of speech, press, and assembly, in the First Amendment to ensure that the national government heard the people's complaints.

Ironically, it was Congress itself that first denied the right of Americans to petition for a redress of grievances. At stake was the future of slavery in the District of Columbia.When antislavery advocates began to petition Congress in the 1830s for abolition of slavery in the nation's capital, the House of Representatives tabled these grievances without reading them. Outraged, a seventy-six-year-old congressman from Massachusetts set forth on an often lonely eight-year campaign to remove this "gag" that prevented the people's voice from being heard.What made the crusade memorable was not simply his tenacity in making Congress abide by the Constitution but the fact that he was a former President of the United States whose only term in office had been universally judged a failure.

Short, bald, paunchy, plagued by physical problems, and forever failing to control a fierce temper, John Quincy Adams in 1830 was a man old before his time. He remained bitter over his defeat for reelection as President two years earlier, especially because he considered the victor, Andrew Jackson, to be his inferior on every count. "My whole life has been a succession of disappointments," he confided to his diary. "I have no plausible motive for wishing to live when everything I foresee and believe [about the future] makes death desirable."

What makes this statement remarkable was Adams's life itself, which seemed to be a succession of triumphs, not disappointments. Eldest son of John Adams, the nation's second President, John Quincy was ambassador to the Netherlands at age twenty-six, U.S. senator from Massachusetts at thirty-five, and then minister to Russia. But it was as secretary of state that his talents shone. He favored an aggressive expansion of the United States across the continent and was one of

the chief architects of the Monroe Doctrine, which called for an end to European interference in the Americas. His record earned him a reputation among future historians as perhaps the greatest occupant of the office. In all of these positions, he embodied his father's dedication to public service, as well as his own ambition. John Quincy's successes were no accident: John Adams had written his wife, Abigail, that their job as parents was to "Fix their [children's] Attention upon great and glorious Objects, . . .[and] make them great and manly."

Despite this history, John Quincy Adams's Presidency was a failure. The country rejected his view of a strong national government, in part because southerners believed it threatened their ability to hold slaves. He left Washington a dejected and disillusioned man, convinced that slavery had defeated liberty in a struggle for the nation's soul. Then, he had an opportunity for political rebirth when supporters persuaded him to run for the U.S. House of Representatives. His victory in 1830 made him the only former President to date to hold elective national office after his White House years, although a twentieth-century President,William Howard Taft, later became chief justice of the United States.

Adams soon faced a controversy that would consume the remainder of his life and restore his reputation. By 1834, the American Anti-Slavery Society had begun a major campaign to flood Congress with petitions seeking the abolition of slavery and the slave trade in the District of Columbia.Adams presented each of these petitions to the House of Representatives for consideration—50 on one day, 350 a few days later—to the growing distress of southern congressmen. Finally, in 1836, pro-slavery representatives succeeded in passing a resolution directing that all petitions relating to slavery would be tabled immediately without discussion. Slavery was too volatile an issue, they warned, and could not be discussed publicly without wrecking the Union. This "gag rule" would be renewed each session for the next eight years. Under it, Congress effectively denied antislavery forces a right guaranteed by the Constitution.

An angry Adams protested loudly, claiming the action violated the Constitution and the rights of his constituents. Ridiculed and rebuffed, the ex-President took on the entire House. He used every parliamentary tactic he could to keep the antislavery debate alive, "creeping through this rule and skipping over that," in the words of one observer, until ordered to stop. He also insulted his colleagues when they refused to rescind the rule, attacking one for his "rotten breath" and another for having "the very thickest skull of all New Hampshire." Under a barrage of abuses and threats—from Georgia, "Your damned guts will be cut out in the dark"; from Alabama, "I promise to cut your throat from ear to ear"—Adams held firmly to his charge that Congress had abandoned the First Amendment's guarantee of the right to petition.

Adams became a funnel for all antislavery petitions to Congress. The number of these petitions was staggering: the Anti-Slavery Society collected more than 2 million signatures on hundreds of petitions from 1838 to 1839 alone, an eyepopping number in a nation with a population of less than 17 million, including slaves; studies have shown that men and women from all classes signed these petitions. The congressman from Massachusetts personally introduced them all. One occasion was especially memorable. Adams asked the speaker if it would be in order to introduce a petition from twenty-two slaves. Outraged southern congressmen were on their feet immediately, threatening to censure him and burn the petition. Then Adams let it be known that the petitioners were in favor of slavery. Recognizing that Adams had outwitted them, in part because he had forced them to consider a petition from slaves, who legally were property

and without rights, the pro-slavery members sought to censure Adams for having "trifled with the House." This attempt failed, but not before Adams took the floor and savaged his opponents for their suppression of the Constitution. His grand defense of the right to petition soon earned him popular acclaim in the North, where he became known, admiringly, as Old Man Eloquent.

Year after year, session after session, Adams fought a lonely battle in the House. His campaign was not aimed at eliminating what he knew to be an evil institution. Rather, he sought to preserve what he called the "four freedoms," anticipating the phrase used by Franklin Roosevelt a century later: freedom of speech, freedom of press, freedom of petition, and freedom of debate in Congress. They were the "first principles of civil liberty." The right to petition, to make government accountable, was vitally important. Without it, this son of the Revolution argued, the republican government established by the Constitution would not survive.

The climax of Adams's efforts came in 1842 when the House again tried to censure him, this time for introducing a petition, not related to slavery, from poet John Greenleaf Whittier calling for the Union to be dissolved. He was now seventy-five but never had he been so commanding in his own defense—and in defense of the right to petition. When urged by his friends to rest, he replied, "No, no, not at all. . . . I am ready for another heat." The effort to silence the ex-President failed. Two years later, in 1844 at the beginning of another Congress, Adams once more moved to abandon the gag rule. This time, he succeeded. Finally, Americans could petition their government again.

Adams served in the House of Representatives for four more years, his constituents affirmed in their right to submit their grievances against slavery. In February 1848, he was sitting at his House desk as usual, when he suddenly reddened and collapsed, felled by a stroke. He died two days later. His burial in Boston drew the largest crowd the nation had seen since Benjamin Franklin's funeral. As mourners entered Faneuil Hall to view the body, they passed under a sign: "Born a citizen of Massachusetts. Died a citizen of the United States."

The words recognized a man who was one of the last links to the Revolutionary generation, but Adams already had revealed how he wanted to be remembered, at least in part. After he won his war against the gag rule, he received a beautiful walking cane etched with lines from the Roman poet Horace, extolling "A man just and tenacious in purpose." Later, Old Man Eloquent added his own inscription: "Right of Petition Triumphant."

Petitioning has a broader meaning today than it did in the days of John Quincy Adams. It includes all open expression of issues, interests, and grievances designed to cause the government to act. Letter writing, e-mail campaigns, ballot initiatives, testifying before government committees, and numerous other means all fall under the protection of the First Amendment right of petition. These methods, of course, also invoke the rights of free speech, press, and assembly, and most often the Supreme Court decides cases involving petition by reference to these other guarantees. In this sense, then, petition is less visible than its sister freedoms.

The right to petition, like the other rights covered in the First Amendment, is not unlimited, nor does it cover all activities that fall under petition's broader modern meaning. In a 1985 case, the justices rejected any special constitutional status for the right, which means that lawmakers may require petitioners to follow rules to ensure public order and safety. For example, some cities make petitioners show identification when going door to door. These regulations must be

"Let every lover of freedom rejoice! The absurd and tyrannical XXVth (formerly the XXIst) Rule of the House which required the rejection of all petitions relating to slavery has been repealed by a decisive vote! The Sage of Quincy has won a proud victory for the Rights of Humanity. May he long live to rejoice over it! Here is a motion which will not go backward. There will be no more Gag-Rules."

—*New York Tribune* editorial, December 5, 1844

neutral, however, and cannot restrict the right unreasonably. Also, the act of petitioning carries with it no guarantee that government will act on complaints or even reply to the petitioners. Government officials cannot prevent individuals and groups from submitting a grievance, but then it is up to the petitioners to work through the democratic process to ensure an appropriate response or action. Many states, especially in the West, allow citizens to circulate petitions to propose new laws for direct approval by voters. California voters in 1978, for example, limited increases in their property taxes because antitax petitioners gathered enough signatures to put Proposition 13 on the ballot.

If the right to petition seems uninteresting to modern commentators, perhaps it is because the right works so well. It serves important goals in a democracy by creating a flow of information from the public to officials, a flow not governed by what the media considers important. It is a source of public opinion and frequently provides a safety valve for inflammatory issues. It is when we deny citizens the right to express their grievances that democracy suffers, or as President John Kennedy said, "Those that make peaceful revolution impossible will make violent revolution inevitable."Our form of government and our individual liberty require the right to petition for redress of grievances. John Quincy Adams recognized this truth. "The stake in the question," he argued at one point in his long campaign, "is your right to petition, your freedom of thought and action."

Debating an Abolition Petition

Southerners in Congress during the 1830s were determined not to allow debate over the possible abolition of slavery. In both the Senate and House of Representatives, they blocked efforts to receive petitions from constituents or voted to table them immediately upon their introduction. The 1836 Senate debate between James Buchanan of Pennsylvania, later the fifteenth President, and John C. Calhoun of South Carolina, Vice President from 1829 to 1832, reveals the different positions of North and South regarding the meaning of the right to petition.

Mr. Buchanan. The proposition [the right to petition] is almost too plain for argument, that, if the people have a constitutional right to petition, a corresponding duty is imposed upon us to receive the petitions. From the very nature of things, rights and duties are reciprocal. The human mind cannot conceive of the one without the other. They are relative terms. If the people have a right to command, it is the duty of their servants to obey. If I have a right to a sum of money, it is the duty of my debtor to pay it to me. If the people have the right to petition their representatives, it is our duty to receive their petition.

Mr. Calhoun. The first amended article of the Constitution, which provides that Congress shall pass no law to prevent the people from peaceably assembling and petitioning for a redress of grievances, was clearly intended to prescribe the limits within which the right might be exercised. It is not pretended that to refuse to receive petitions, touches, in the slightest degree, on these limits. To suppose that the framers of the Constitution—no, not the framers, but those jealous patriots who were not satisfied with that instrument as it came from the hands of the framers, and who proposed this very provision to guard what they considered a sacred right—performed their task so bunglingly as to omit any essential guard, would be to do great injustice to the memory of those stern and sagacious men.