



PART 3

The Petition Campaign— Laying the Groundwork

Having decided to petition an agency, you must accurately document the facts to be effective. You need to thoroughly research the problem, the law, the agency you want to impact, potential supporters and opponents, and the solution. The information gained by this process will be the foundation of your petition.

RESEARCH THE PROBLEM

WHEN RESEARCHING the problem, you need to find out the facts of the current situation, the history of the problem, and the reasons why it has not been resolved.

An effective petition will present in a clear and compelling manner the answers to the following questions:

- Who is being hurt by the current situation and how are they being hurt?
- Can the injured persons take independent steps to solve the problem or do they need government action?
- If left unattended, will the problem get better or worse? If worse, how so?

To design an effective campaign strategy, you should also know the following:

- If the problem is long-standing, why has it not been resolved?

- Who is benefiting from the situation?
- What are the politics of the situation?

Be aware

The politics of the problem will influence the way agency officials respond to your petition. They do not turn a blind eye to the opinions and political interests of elected officials. You should remain aware of the politics of the situation throughout the petition campaign.

Where to find the information

There are dozens of sources of information for answers to these questions:

■ Books, newspapers, and periodicals

Read the available literature on the problem and its history, not only to know everything you can but to identify those who are considered authorities in the field. The best publications index is an on-line service known as

“Search Bank,” available in every library. Also do a search of law review articles; they sometimes reveal how the laws you are concerned about have been implemented.

■ **The Internet** A search of the World Wide Web may uncover information about your problem and links to organizations working on the same issue. Always make sure that the source of the information is credible. If you don’t have access to the Internet, you can enlist the help of your local library. (See Appendix pages 67–68 on how to search the Internet.)

■ **Government reports and documents** Your petition will take on increased credibility if it includes information from government sources. A credible petition makes it difficult

for the agency to deny that a problem exists. All federal, state, and local agencies collect data and prepare reports on the activities of those they are charged with regulating. Some of the reports and documents you will want are easily accessible. However, you may have to file a Freedom of Information Act (FOIA) request or Public Records Act request to get the more controversial materials. These acts give the public the right to government information. Under the FOIA, any person may request a federal agency to

make its records available. State and local Public Records Acts make most other government records available. The agency can refuse the request only if the information falls within a narrow category of exemptions. (See Appendix pages 71–72 for information on the FOIA and how to file a request.)

Most states have laws or regulations similar

to the FOIA. In California, for example, a similar state law is known as the Public Records Act. To find your state’s equivalent to the FOIA law, follow the same procedures, outlined in the Appendix on pages 67–68, as you would to find the petitioning statute and look for the keywords *public information*, *public records*, and *freedom of information* in the index.

In California, the Center for Public Interest Law published a damning report on the failure of the state’s Board of Medical Quality Assurance to discipline physicians. The report, *Physician Discipline in California: A Code Blue Emergency*, relied almost exclusively on medical board documents requested under California’s Public Records Act; it was virtually impossible for the board to deny the charges. The report generated extensive media coverage and led to new laws and regulations that greatly improved the effectiveness of the medical board.

■ **Organizations and individuals** It is extremely important to learn the views of other organizations and individuals interested in the subject of your petition. You’ll want to talk with like-minded organizations and individuals, not only to get the benefit of their experience, but also to enlist their support. You should also find out the position of potential opponents, not only to better understand their perspective, but also to help you incorporate effective arguments against their position into your petition and your media materials.

To identify the experts in the field, look at the sources quoted in newspaper and magazine articles related to the subject. To find state advocacy organizations, contact relevant national advocacy groups; they generally work with, or at least know, the state groups in the field. (See Appendix page 83 for information on how to find advocacy groups.) Other excellent sources of information are legislative and agency staff members who work in the policy

“Public Record Act requests of local and state agencies are extremely important tools for advocates: no information is more credible when critiquing a regulatory policy of an agency than documents which come from the agency itself.”

Center for Public Interest Law
1995 Advocacy Training Seminar
course materials, sec. 4, p. 2

area. A review of relevant published policy papers can also identify important sources of information.

When you interview individuals, make sure you are prepared with a list of questions and a list of any reports, studies, or other documents you would like from them. Gain a good grasp of the subject before you interview people likely to be unsympathetic, to avoid being misled or discouraged.

When interviewing someone who is likely to be unsympathetic, or whose views you do not know, be diplomatic and phrase questions in a neutral fashion. Do not ask questions in a way that will get the answer you want. You need to know all sides of your issue. And, you will get more and better information if you avoid antagonism.

Take notes during an interview. Don't rely on your memory; easily forgotten comments sometimes turn out to be important leads. If you want to quote in your petition or in a news release something that is said in conversation, ask for permission to do so. Always ask for leads to other sources of information, and make sure confidentiality is respected if it is requested.

RESEARCH THE LAW

After you understand the facts thoroughly, you need to research the law and any pertinent agency regulations. The questions to answer are:

- What behavior does the law require, or prohibit?
- What's the history behind the law?
- What agency, if any, is responsible for implementing, enforcing, and overseeing the law?
- What statutory powers does the agency have to perform its duties?
- Does the agency have to follow any particular procedures before it exercises its power?

If you have not done legal research before,

you may want to retain an attorney with some experience in administrative law to assist you. There are also ways to get inexpensive or free legal assistance. Some law schools have legal clinics, and many have internship programs. The local bar association may have a directory of attorneys who are available for pro bono (free) work. Legal aid and legal services attorneys may provide help if the problem affects low-income communities.

Don't worry if you can't hire an attorney. It's not that difficult to research the law yourself, even if it's a little intimidating at first. In most cases, all the information you need is in the county law library, where the librarians are used to helping people who are not lawyers.

Time Saver

Before you go to a law library, try to contact experts in the field who will be able to tell you what the law says, where you can find it, and whether or not there are also relevant regulations. For example, you could call a nonprofit organization that works in that field, the staff member of a legislative committee responsible for that area, or the legal office of the agency responsible for overseeing that problem area.

HOW TO FIND THE LAW

Federal laws and regulations

United States Code Annotated (USCA) compiles all federal laws. There's a separate index for each subject area, such as Agriculture, Public Health and Welfare, etc. The annotations list cases, law review articles, and other sources that interpret or cite the code section. The *U.S. Code* is also available on the Web, but without annotations, at: www.access.gpo.gov/uscode/uscmain.html, uscode.house.gov/usc.htm, and www4.law.cornell.edu/uscode/.

The *Code of Federal Regulations* (CFR) compiles all federal regulations. To find specific regulations, look in the general index, the volume titled *CFR Index*. Once you've found what you are looking for in the index, follow

the same procedures outlined in the Appendix on page 65 for finding the procedures for petitioning a federal agency. The CFR is available on the Web at www.access.gpo.gov/ecfr.

U.S. Code Congressional and Administrative News provides the legislative history of federal laws. This is an excellent source for the text of the law itself, all the reports by the Congressional committees, and the votes at every stage of the legislative process. To start your search for the information, you just need to know the year in which the law was passed.

State laws and regulations

All state laws can be found in the state's *Annotated Code*. To find laws pertaining to the subject matter you are concerned with, first check the index of the relevant volume (subjects are usually divided into separate volumes). Once you've found what you are looking for in the index, follow the same procedures outlined on pages 67–68 of the Appendix for finding the procedures for petitioning a state agency.

All state regulations can be found in the state's *Code of Regulation* or, in some states, in the *Administrative Code*. Almost every state's laws and regulations are also available on the Web; a good place to start is www.findlaw.com/11stategov.

Finding the history of state laws can be difficult. The easiest way to find the history is to call the agency or the office of the legislator who sponsored the bill, if he or she is still in office. You might also consult with your State Archives to find out what legislative materials they keep. It is often possible to get the original bill's file, which is a great source of information.

Research Tip

State and federal code books are kept up-to-date by the the periodic publication of supplements, which are kept in a pocket at the back of each bound volume. Be sure to review

the supplements to make sure you have the most recent version of the law. These supplements will also alert you to any new legal cases that you might want to check.

HOW TO UNDERSTAND THE LAW

After you have located the relevant statute or regulation, check to see whether it is preceded by a Definitions section. Often a title or chapter will begin by defining words or terms used in the law. Read these definitions before proceeding to the relevant sections.

A regulation or statute can be difficult to read if you are not used to “legalese.” Don't despair. To understand the language, read it carefully line by line, pronoun by pronoun, punctuation mark by punctuation mark, and pay close attention to the qualifying clauses—for example, “if a manufacturer follows the procedures in section (a), then the product is exempt from further inspection requirements.” Always look carefully at “and” and “or.” If a regulation says “car manufacturers must notify consumers about recalls in writing and by telephone,” it means they are required to do both. If it says, “car manufacturers must notify consumers about recalls through public announcements, phone calls or in writing,” it means they need to notify consumers in only one of the three listed ways.

When you are trying to understand the law, it is also important to look for related court decisions, law review articles, and other legal publications about the subject matter or the specific statute. One of the best sources of information about additional resources is in the same federal or state *Annotated Code* in which you found the law. At the end of each law are cross-references to other relevant statutes, law review articles, other legal publications, attorney general's opinions, and court cases.

Court cases can help you gain an understanding of the law because they provide information on how judges have previously interpreted the law. All court cases are listed

by their name, followed by a code, known as the “cite.” The cite refers to the court that made the decision, the publication in which it can be found, and the date on which it was issued. Once you know the code, cites are easy to decipher. Take, for example: *Public Citizen v. Heckler*, 602 F. Supp. 611 (D.D.C. 1985). The 602 refers to the volume number; F. Supp. means the *Federal Supplement*; 611 refers to the page number; D.D.C. refers to the District Court for the District of Columbia; and 1985 is the year in which the case was decided. Similarly, for state court cases, *Serrano v. Priest*, 5 Cal.3d 584 (1971) breaks down as follows: 5 Cal.3d refers to volume 5 of the *California Reporter*, 3rd edition; 584 refers to the page number; and 1971 is the year in which the case was decided. When, as here, no court is indicated, that means the decision is that of the highest court in the jurisdiction—in this case, the California Supreme Court.

Other useful sources are law review articles. They can provide insight into the history of the law and possible controversies over interpretation. Law review articles also can provide good leads to other sources of information and experts in the field.

RESEARCH THE AGENCY

The first step is to identify the agency responsible for your problem. You don’t want to go to all the trouble of filing a petition with an agency only to find out that the problem doesn’t fall under that agency’s jurisdiction. Sometimes the responsible agency can be fairly obvious, but other times, especially when the agency is part of a larger department, responsibility for the problem may not be clear. The easiest way to find the right agency is simply to ask people and organizations who work in the relevant policy area. But to make sure, call the general counsel’s office of the agency.

Find out as much as you can about the

agency’s attitude toward your problem and its receptiveness to suggestions from the general public. Also find out how decisions are made and by whom. You may not even have to file a petition if you learn that a key agency official already supports your idea, or you might file it with considerably less fanfare than if you were expecting a hostile reception.

Once again, the best sources of information are those in the field who have dealt with the agency and legislative staff members familiar with the agency. Legislative staff will also be able to steer you to potential allies within the agency.

What’s the agency’s attitude?

To find out the agency’s attitude toward your problem, here are questions you should try to answer:

- What was the nature of the problem before the agency was given responsibility for it?
- What, if anything, has the agency done about the problem?
- Has the agency’s approach to the problem changed, and, if so, why?
- What is the agency doing about the problem now?
- Are the agency’s activities making things better, or worse?
- Have elected officials or the media indicated an interest in the problem?
- Do agency officials have a history of working for the organization now causing the problem?

If the agency has never done anything about the problem, find out why. Perhaps the agency was not even aware that the problem existed. To assess the agency’s efforts, it helps to find out what similar agencies in other states are doing about the problem.

The answers to the previous questions can be found in government reports and from talking with experts in the field and with agency officials themselves. If you are working on a state issue, you might gather useful

information from a federal agency in the same policy arena. Particularly useful are federal reports about what is happening in the policy area at the state level.

HOW DO THINGS REALLY WORK?

Once you know about the agency's attitude toward your problem, it is time to figure out how the agency *really* works, not just how it says it works. Here are some questions to answer about an agency's decision-making process.

- Who will make the decision on the subject you are concerned about?
- Is it an appointed official, or an elected one? If appointed, by whom?
- What is that official's background?
- What are his or her views on the subject?
- Who does the official report to within the agency and within the executive branch?
- Are there constituents outside of government that influence the official?

There are two types of agencies, those that are headed by a single individual and those that are headed by a multimember body. Individuals are usually appointed by the executive branch (the legislative branch may have *advise and consent* authority over the appointment). In many states, however, the heads of certain types of agencies are elected officials, such as the secretary of state, attorney general, treasurer, and, in some cases, insurance commissioner.

Agencies led by multimember bodies are frequently called commissions or boards, and generally operate independently of the executive branch. Members of boards and commis-

sions may be appointed by the executive branch, the legislative branch, or both. In some cases members of boards and commissions are elected. In California, for example, members of the tax board are elected.

Your petition strategy may depend on whether the agency heads are elected or appointed. If the official is elected, you will want to get organizations from that official's district to be part of your coalition. Elected officials are more likely to be sensitive to outside pressures than appointed officials are. If

the official is appointed, you may be able to solicit the support of those responsible for the appointment. (Of course, if those responsible for the appointment oppose your solution, they will probably let their appointee know.)

Most agencies are organized as a bottom-heavy pyramid. At the top is the board or the individual head. At the next level are those who

head divisions within the agency. If the agency is not independent, the division heads may also be appointed. At the federal level, the appointment would be made by the president; at the state level, it would be made by the governor. Beneath the division heads are civil servants with a variety of responsibilities.

Despite the common structure, the decision-making process can vary widely from one agency to another. In some agencies, lower-level staff will research all the issues, but the decisions rest with the agency head. In other agencies, lower-level officials will actually make policy decisions that are usually approved by the head of the agency.

“Persistence and a knowledge of the workings of the agency to which the petition is addressed are essential elements of success in the petition process.”

James T. O'Reilly, administrative law professor, in *Administrative Rulemaking*, p. 327 (1983)

Research Tip

A good source of information about elected federal officials and elected officials in many

states are the disclosure forms that these officials must file detailing their outside income, property holdings, and investments. These records can tip you to any conflict of interest the official may have. If officials are elected, check their campaign records. You may find that they received contributions from the source of the problem or from businesses that might be adversely affected by your proposed solution.

STAFF: THE POWER BEHIND THE THRONE

While you are learning about an agency, ask your sources about the agency's staff members. Policy and legal staff are actually the source of most new regulations. In most cases, an agency's staff has a lot of influence on its decision makers, particularly on multi-member governing boards. Board members, usually part-time officials, generally rely heavily on the expertise of the staff. Even when agencies are directed by full-time administrators, upper-level legal and policy staff members largely determine an agency's positions. Your level of success may well depend on their support.

Important Tip

Always treat an agency's staff members politely and respectfully, even when you and they disagree. Listen to their concerns; they will be transmitting those same concerns to their superiors. If you can work with key staff members, you may be able to convince them to reevaluate a position. You never know when some courtesy will make it easier for them to listen to you with an open or supportive mind.

FINDING SOLUTIONS

It is important to determine what action, or actions, will actually fix the problem you

have identified. For example, when community organizations in California sought to ensure that the public assets of a nonprofit HMO would be dedicated to public health care after the HMO converted to a for-profit corporation, they identified two actions they wanted the state to take: force the HMO to turn over the full value of its assets, and establish rules to govern future HMO conversions. Once you know what you want to accomplish, you can identify which agency to seek action from.

An administrative agency can take an action only if the action is consistent with its purposes and only if the legislative branch has given it the power to take such an action. So make sure that the agency you are petitioning has the authority to take the actions you are seeking.

WHAT ACTIONS SHOULD YOU SEEK?

Generally, the actions you want to seek will fall into three categories: rulemaking, adjudication, and the provision of direct service. In some cases, you may want to file petitions for several actions. For example, Consumers Union, in its complaint against the deceptive sale of Medigap insurance policies in California, filed both an administrative petition and a complaint that included a request for direct action.

Rulemaking

Here you request the agency to adopt a new law or regulation, or to repeal or modify an existing law or regulation. To make a request for rulemaking, you would file an administrative petition.

Adjudication

Here you request that the agency enforce a law or regulation, to revoke a license or permit, for example, or to impose fines or issue a cease and desist order. Before requesting an

enforcement action, make sure you know what enforcement action the agency can take. You may first need to petition for a regulation establishing graduated sanctions, especially in cases where the only available enforcement action might be too drastic. In some states, for example, the only enforcement action that can be taken against Medicaid managed care providers is to end the contract. But what then happens to the people covered by the provider?¹

To make an adjudication request, you would file an official complaint. A complaint is no different from a petition; it just has a different title.

Direct service

Here you request that the agency provide a new service to the public. For example, Consumers Union, in its Medigap complaint, requested that the attorney general and the insurance commissioner inform senior citizens about the deceptive marketing of Medigap insurance.

Don't feel constrained by these categories. You can ask an agency to do anything, as long as you can show that the action falls within the authority of the agency. For example, an Ohio coalition of consumer groups and labor unions filed a petition before the Ohio Department of Insurance asking that the department review the sale of a nonprofit health insurance provider to a for-profit hospital chain. The coalition also requested that the department release critical documentation and hold public hearings before making a decision about the legality of the sale. There was no procedure on the books that authorized the actions they requested, but they made sense and the agency had sufficient authority to take the actions requested.

RESEARCH THE SOLUTION

Once again, experts in the field will be key to your research efforts. You will also want to find

out what other states have done about the problem and whether those actions have been effective. If another state or a federal agency has a particularly innovative approach to the problem, you may want to adopt it as the model. The more you can rely on demonstrated methods, the easier it will be to argue your case. The media is also more likely to cover your petition if you can use concrete examples to show that your solution works. If your solution involves government spending, have your own credible estimate of the dollars required and an answer to the question of where the money will come from.

Tips for Success

- As you research your solution, always keep potential allies in mind. Don't make final decisions until you have given potential coalition partners a chance to contribute. Make them part of the process and they will be much more likely to help with the work needed for a successful petition campaign.

- Solicit suggestions from the agency's staff. If you can incorporate at least some of what they suggest, they will appreciate the fact that you took their advice and may well help lobby behind the scenes for your proposed changes.

- If you know that the person who heads the agency or a member of the board supports particular approaches, try to include those approaches in your request.

- Don't ignore proposals from the opposition. If you can add elements of their proposal to your own, it will make it harder for them to oppose your solution.

BUILD A COALITION

While a single individual or organization can file a petition, the likelihood of success is far greater if the petition is filed by a coalition of groups and individuals. In building a coalition, try to reach out to politically diverse groups; the broader the political rep-

resentation, the more powerful the effect. It is much harder for an agency to dismiss a petition that is supported by a wide range of organizations, particularly if those organizations aren't often on the same side.

Remember: This is a campaign. Your audience is not just the agency; it's also the media and the general public. If you have a very large, diverse group, it will demonstrate to the media (especially editorial boards) and the public that there is a broad consensus on the problem and the solution.

SUCCESSFUL COALITION COMPONENTS

It is important to include in your coalition organizations and individuals considered knowledgeable in the field. Agencies will take your petition more seriously if you clearly have a history of action and experience in the area.

The success of a coalition is dependent on several factors:

- All parties must have the same bottom-line goal, a plan to achieve it, and a united front. The strategy for the campaign must be spelled out and agreed upon.
- There needs to be a clear understanding of what the coalition needs to function:
 - Leadership with the time, skills, experience, resources, and coalition support to do the job.
 - A clear understanding of each coalition member's level of participation. Can an organization only sign on, send a letter

“If the goal can be achieved by either a complaint or a petition, consider doing both. The petition can deal with the broader issues and the complaint can address a specific problem.”

Professor John F. Banzhaf III, founder, Action on Smoking and Health

of support or supply resources—or can it participate fully?

- A commitment to full, thorough communications.
 - Defined decision-making authority with fast-track capability.
 - Agreement on the style of the campaign (in-your-face, diplomatic, high media visibility).
- The sharing of credit

must also be spelled out.

- Work divided according to each member organization's strength, resources, capacity, experience in organizing, research, use of the media, negotiating skills, and leadership. Work is delegated and groups are accountable for their part in the whole effort.
 - All members must be in for the long haul and support everyone else's interests, until the job is done. No selling out or side deals.
 - The coalition members must present a united front, and choose designated speaker representatives who have decision-making authority.
 - All successes will be celebrated and acknowledged by all members.

Ideally, you want supporters to sign on as co-petitioners. But if a coalition partner does not want to join as a co-petitioner, a letter of support or testimony at a public hearing should be welcome. Coalition members need to be concerned about the organizational needs and capacities of all supporters and not expect that every group can join on as a front-line participant in the campaign.

A strong coalition makes the work easier, more exciting, and more likely to succeed.

¹Community Catalyst in Boston has developed model rules on enforcement in Medicaid managed care, which are available to groups that need to change their state's enforcement procedures in this area.