



PART 4

How to Write a Petition

Experience has shown that you improve your chances of success if you follow a few basic suggestions in preparing your petition. This will help you present the facts, the law, and your arguments and solutions in a professional, clear, and persuasive manner and help you make your case more effectively.

A BRIEF AND SIMPLE PETITION can succeed just as well as a long and complex one.

■ In 1987, the consumer protection organization Motor Voters sent a one-page letter petitioning the National Highway Traffic Safety Administration (NHTSA) to require car manufacturers to include information in owner manuals about the NHTSA's auto-safety hotline and its defect investigation and recall procedures. The petition described the problem briefly, proposed language for a regulation, and stated the agency's responsibility. The NHTSA granted the petition, and after the first year calls to the hotline had increased by 60 percent. (See Appendix page 75.)

■ Consumers Union, along with 24 other groups, successfully petitioned the California Department of Corporations to require a nonprofit HMO that had

converted to a for-profit organization to transfer an amount equal to its assets to public charities. As a result, two foundations worth a total of \$4 billion were established to help improve health care in California. The petition was only eight pages long.

FRAME THE ISSUE

Your petition should define the problem in a way that is understandable not only to the agency but to the media and the public. For example, in California, the Children's Advocacy Institute (CAI) framed a fight to strengthen the licensing system intended to protect the health and safety of children in childcare. To dramatize the problem, CAI showed that laws and regulations requiring immunizations, nutrition, and inspections in

“A lot of times people think a petition has to be elaborate, but if it is a good concept, the petition itself can be very simple.”

Rosemary Shahan,
Consumers for Auto
Reliability and Safety

dog kennels were more stringent than in child care settings.

WATCH YOUR STYLE

Use language that is objective and even-handed. Sensationalism, exaggeration, and excessive rhetoric tend to undermine your credibility. Let the facts speak for themselves. The more complex the issue, the more you should strive for a simple, straightforward style. Use short sentences and short paragraphs. Break the petition into distinct sections. Use active verbs where possible, and keep adjectives and adverbs to a minimum. (For example, the following statement contains passive verbs: “Children’s health has been adversely affected by budget cuts because funding for both outreach and direct services has been reduced.” Using active verbs will make the sentence flow better: “Budget cuts, which reduced both outreach and direct services, have affected children’s health adversely.”) It’s much easier for agency officials to review a clear, precise petition than a long-winded, jargon-filled document.

While your petition is directed at the agency, it is also an event that allows newspaper and television reporters to cover the problem you are trying to address. A short summary that states the key facts—who, what, when, where, how, and why—will help reporters quickly understand the purpose of the petitioners. A well-crafted introduction to the petition can serve as a summary for reporters.

A court may eventually review the administrative action an agency takes as a result of your petition, to determine whether the agency’s officials did what the law requires. To establish the best possible record for judicial review, your petition should clearly show how the law requires the agency to take the action you request. It should also demonstrate why

“The bottom line is to find a way to draw a line in the sand that helps others identify what issues are at stake.”

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alternative actions or no action at all would be contrary to the law.

THE PETITION FORMAT

All petitions should include the following:

- An introduction.
- A statement of facts about the problem.
- Identification of the parties submitting the petition.
- The legal authority for agency action.
- The solution sought.
- The conclusion.
- Supporting exhibits.

This format can also be used when filing complaints or intervening in licensing and permitting procedures.

The introduction

The introduction should summarize the key facts. It should briefly identify who the petitioners are; the problem that you are seeking to address; the action requested of the agency; and why the action is necessary to protect the public interest.

For example

“This petition brought by concerned nonprofit organizations challenges the actions taken by the Department of Corporations regarding the conversion of Blue Cross of California, a nonprofit Health Maintenance Organization (HMO), into a for-profit organization. In January 1993, Blue Cross of California (Blue Cross) completed a corporate transaction transferring approximately 90% of its assets, substantially all of its managed care business, into a for-profit company named Wellpoint, now the largest for-profit managed health care company in California, and retaining the remaining 10% in the nonprofit shell.

“Nonprofit corporations in California must dedicate their assets to the public benefit. California law requires that when a nonprofit HMO converts into a for-profit entity, it must transfer an amount equal to its full value to charitable purposes. Blue Cross claims that this law does not apply to it because it ‘restructured’ rather than converted its assets. Prior leadership at the Department of Corporations accepted this interpretation, approving the ‘restructured’ entity and obtaining only general commitments to health care charitable purposes. Current Department leadership has called for the transfer of some assets generated by the Wellpoint transaction to an independent foundation. Petitioners believe that an amount equal to all of Blue Cross’s \$2.5 billion in assets is owed to health care charities in California. In this petition they seek relief from the Department restoring these assets to their public purpose. Additionally, petitioners seek appropriate regulation and process so that future conversions will be properly monitored.”

Statement of facts

The statement of facts should discuss three points: the current situation, why it is harmful to the public, and why it is the responsibility of the agency to take action. Here are examples of each:

The current situation

“There is an increasing trend in the state of

nonprofit HMOs converting to for-profit businesses. When the nonprofit decides to convert, an application is filed with the Department of Corporations. The Department reviews the proposed conversion and makes a valuation of the company’s assets. This value is used as the basis for the company’s charitable obligation. The HMOs are then required by law and by their articles of incorporation to turn this value over to an independent entity, which is required to apply those resources to purposes that are in line with the purposes for which the original nonprofit was incorporated. The Department has overseen a number of these transactions, but has refused to adopt regulations necessary to govern this approval process.”

How and why the current situation is harmful to the public

If appropriate, this is an excellent place to use graphs and charts. Not only do they help give a better picture of the problem, but they also give reporters good illustrations to use in their stories.

“In many cases questions have been raised as to the valuation and the adequacy of the amount of assets dedicated to charity. Previous objections by Consumers Union have resulted in reevaluation of the fair market value of the HMO, which resulted in more funds dedicated to the public interest. In other cases, the Department accepted valua-

HMOs Undervalued at Time of Conversion

Health Organization	Amount to Charity at Time of Conversion	Public Offering Value	Subsequent Value
Family Health Plan (Fountain Valley, CA)	\$38,457,000 (1984)	\$135,628,000 (1986)	\$745,684,000 (1993)
Inland Health Care (Loma Linda, CA)	\$663,000 (1985)	\$37,500,000 (1986)	N/A
Pacific Care Health System (Cypress, CA)	\$360,000 (1984)	\$45,300,505 (1985)	\$6,936,460,000 (1993)

Source: *Chronicle of Philanthropy*, “Charities Win, Lose in Health Shuffle,” June 14, 1994

tions that later proved to be grossly understated. Market value of these HMOs proved to be dramatically higher than estimated at the time of the conversion. These under-valuations resulted in the loss of hundreds of millions of dollars that should have been directed to charitable purposes.”

Why is it the agency’s responsibility to take action?

“Petitioners contend that more rigorous regulation and oversight of these conversions, as well as a public process with meaningful input, could have restored huge amounts of badly needed resources to the public interest.”

- If you have relevant information from agency sources, include it in your statement of facts. Data from government sources adds credibility to your petition and makes it harder for the agency to deny that a problem exists.

- If you learned during your research that the agency will need certain information to assess the merits of the petition, make sure you include it. For example, federal agencies must provide the Office of Management and Budget with a cost-benefit analysis as part of the regulation-approval process. So the statement of facts in a petition to a federal agency should include facts about costs and benefits.

PETITIONERS

After the statement of facts, identify the petitioners and explain their interest in the action being sought. If the petitioner is an organization, briefly describe what the organization does. For example:

“Consumers Union of U.S., Inc. is a nonprofit organization that publishes *Consumer Reports* magazine and is dedicated to providing consumers with information, education, and counsel about goods, services, health, and personal finance; and to initiating and cooperating with individual and group efforts to maintain and enhance the quality of life for consumers.”

If the petitioner is an individual, state the person’s name and explain how he or she is affected by the problem.

For the benefit of reporters, put the names of the best-known individuals and organizations at the top of your list. You want the media to see quickly that the problem has attracted the attention of prominent

individuals and key organizations. Also, attempt to interest a broad array of organizations and individuals in joining as petitioners. A large number of interest groups and prominent names make the petition more newsworthy and require an agency to pay attention.

“To the extent the petitioner submits a petition which includes substantial supporting data, asks for a rule of a specific content, and otherwise clearly focuses the issues for decision by the agency, the reviewing court should expect a detailed response from the agency. As a result of the detailed petition and response, the court will be in a better position for identifying and reviewing alleged errors committed by the agency.”

William V. Luneburg, “Petitioning Federal Agencies for Rulemaking: An Overview of Administrative and Judicial Practice and Some Recommendations,” *Wisconsin Law Review*, Vol. 1, p. 47, 1988

LEGAL AUTHORITY

First, you should identify the statute that gives you the right to petition. (For a list of the state statutes see pages 85–87; for federal petitions see pages 65–66.) For example:

“This petition is filed pursuant to the California Constitution, which guarantees the public the right to petition the government for redress of grievances. Cal. Const. Art. 1 3. Additionally, this petition is filed pursuant to California Government Code 11347 et seq. This provision mandates a speedy response or a public hearing. Cal. Gov. Code 11347.1.”

Second, you should identify the laws that give the agency the authority to take the action you are requesting. You should not only list the laws, but also, for the benefit of reporters or others who may read the petition, either quote from the law or summarize it. For example:

“Cal. Revenue and Taxation Code 23701(f) provides that certain organizations that provide a benefit to the public may be exempt from requirements to pay certain state taxes. In exchange for the public financial support, tax-exempt organizations must promise to give back their wealth, if they choose to become for-profit corporations. To qualify for this tax exemption, organizations must include in their articles of incorporation a dedication provision which states that, if and when they choose to convert to for-profit status, they will transfer an amount equal to their assets to the sort of charitable purposes for which they were formed. Cal. Health & Safety Code 1399.72(c).”

RELIEF

This section should list the corrective action that you want the agency to take. For example:

“Petitioners believe that 100% of the value of the Wellpoint stock is owed to the public

of California, to be dedicated toward the same charitable purposes for which Blue Cross of California was incorporated. Therefore, petitioners request that the Department order Blue Cross to divest itself of assets in this amount immediately. The resources should be placed in an independent nonprofit foundation dedicated to the health care needs of Californians, with special emphasis on underserved and low-income populations.”

If you want the agency to adopt regulations, describe them. It is also a good idea to draft a set of proposed regulations and attach it to the petition as an exhibit. That way you can be sure that the agency understands exactly what you are requesting. For example:

“That the Department promulgate, with full notice and comment as provided in the California Administrative Code, and implement, regulations that govern the conversion or restructuring process and that address the above issues for the future; that these regulations include procedures for valuing these entities that are rigorous and provide for public scrutiny including but not limited to: public notice, disinterested evaluators, public records...”

CONCLUSION

In conclusion, urge the agency to take prompt action. The conclusion should be followed by the signatures of the petitioners or their representatives. For example:

“Petitioners urge that the Director immediately take the remedial and preventive measures set forth in this petition.

Dated: January 1, 1995

Respectfully submitted by the following co-petitioners:

Maryann O’Sullivan, Project Attorney
 Jeanne Finberg, Senior Staff Attorney/Policy Analyst
 Harry Snyder, Co-Director
 Attorneys for Consumers Union of U.S., Inc.”

Technical Tip

Put on the front page and the last page the name of the person you want the agency to contact, his or her address, phone number, fax number, and e-mail address.

EXHIBITS

Use exhibits to illustrate critical facts in the petition. Exhibits can include letters, newspaper articles, reports, photographs, even objects. Graphs and charts are always excellent ways to present complex information or technical data. If your research has uncovered studies and surveys that support your claim, include them.

For example, if you petition an agency to regulate a hazardous product, exhibits might include examples of injuries resulting from use of the product, newspaper articles about the harm caused by the product, or studies describing the use of the product. But use restraint. The exhibits themselves should be credible; and they should not be so numerous as to become tedious.

Technical Tip

Even if it is obvious, each exhibit should have a descriptive title. For example, “Levels of Toxic Substances in State Waterways.” Each exhibit should also be labeled (Exhibit A, B, C., etc.) so that you can refer to it in the body of the petition.

THE FINAL STEP—A COVER LETTER

Attach a cover letter to your petition addressed to the head (or heads, if it is a multimember body) of the agency. The letter

"The more the petitioner can give to the agency, the better. Anticipate what the agency will have to go through so that you can provide them with the information they will need."

Jeffrey S. Lubbers,
administrative law
expert¹

should briefly explain the reasons for the petition, but without rhetoric or sensational language. And it should urge the agency to take prompt action. Since you may want to quote from the letter in a news release, try for brief, clean language that states the problem. The letter helps create a newsworthy event. A news release might begin: “In a letter delivered today to the insurance commissioner, Consumers Union urged the commissioner to: [quote from letter].”

When the petition and cover letter have been written and typed in final form, file them with the appropriate agency. Filing simply means delivering the documents to the agency.

DELIVERY OF THE PETITION

Unless the agency has specifically assigned someone to receive petitions, you should deliver the documents to the head of the agency. Consult an up-to-date government directory to find out his or her name and address, or call the agency. Deliver the petition personally if you can. Otherwise, use registered mail, which will provide you with a signed receipt upon delivery.

Agency officials generally dislike surprises. If they're caught off guard by questions from the press, for example, there's a risk of public embarrassment; they may appear unprepared to deal with a problem, even though it falls within the agency's jurisdiction. Feeling challenged and surprised, they may take an unnecessarily hostile position. To avoid this reaction you may want to give the agency's officials a courtesy telephone call to inform them that you will be filing a petition. If you

plan to contact the media, let the agency's officials know that reporters may call them about the petition. Make the courtesy call in the afternoon, the day before you actually file the petition. This allows the agency to be prepared but does not allow it the time to launch its own attack on your petition.

The agency's officials may attempt to dissuade you from immediately filing your petition. For example, they may request that you

meet with them before you go ahead. They may also ask for an advance copy of the petition and your news release. Providing advance copies can prevent the agency from claiming it has not had time to review your request and may encourage a positive response, as long as you don't give the agency too much lead time to formulate a counterattack. Before making the telephone call, decide how you will respond to such requests.

¹Jeffrey S. Lubbers is a former staff member of the Administrative Conference of the United States and is currently a fellow in Law and Government at American University's Washington College of Law.