



PART 5

Spread the Word— Building Public Support

The media can perform an important role in the administrative petitioning process. Through the news media, you can inform the public about the problem you are trying to address and mobilize public support.

MEDIA COVERAGE RARELY OCCURS automatically, newsworthy though your petition may be. In most cases, news stories come about because petitioners have worked hard to reach and educate reporters.

Start your media campaign with a list of all the newspapers, magazines, and radio and television news programs you think might cover the subject. The list should include:

- daily newspapers (city and suburban)
- weekly newspapers and shoppers
- magazines (local, national, and specialty)
- college and university newspapers
- alternative newspapers
- television stations (network, cable, local, and public)
- radio stations (network, local, public, and foreign language)
- news wire services

In making your list, consider the audience reached by the various media. Evaluate both the size of the audience (as measured by cir-

ulation or media ratings) and its potential influence (will that publication or broadcast reach decision makers in the state capital, individuals affected by the petition, potential allies?). Television news generally reaches a larger audience than either newspapers or magazines, but printed articles tend to reach a more interested and perhaps more influential audience. Also, newspaper stories can be cut out, copied, and used many times for future organizing activities.

Consider the type of coverage you would like to receive. News stories vary in length from a straight news story of several lines or paragraphs to an in-depth report of several pages. A critical factor in deciding what type of coverage to seek is the complexity of the issues raised by your petition. While simple issues may be competently presented as a straight news story, complex issues may require in-depth coverage. You will be more likely to receive such coverage if you brief interested reporters well beforehand, so they have time to do their own research. Make

sure reporters chosen for advance briefing understand that they may not release the news of your petition until it is filed. (Any news release or other materials for reporters should carry a “release date”—a prominent line on the pages stating, “For release on January 1, 2000, at 6:00 A.M.”) Another way to get coverage is to ask the newspaper to write an editorial or to publish an op-ed piece you write.

Finally, consider how hard or easy it will be to get coverage in a particular medium. It is usually easy to obtain local newspaper or radio coverage; local television coverage may be somewhat more difficult; national television or magazine coverage is the most difficult to generate.

Once you have completed your media list, decide how you will go about reaching reporters. You can reach them through news releases, news conferences, or personal interviews. A news release mailed out widely is the easiest way to reach a large number of publications and broadcast outlets, but stories resulting from press releases are likely to be brief. A news conference is likely to result in deeper coverage, since reporters have an opportunity to ask questions, but fewer newspapers and broadcast outlets will be able to attend a news conference. Interviews with individual reporters will result in the most detailed coverage—but in the fewest outlets.

Whatever method you select, you should develop a concise news “peg” for reporters to hang the story on. The peg is the fact or collection of facts that makes the story of current interest to the public—a \$1.5 billion overcharge to homebuyers, for example, or advertising in classrooms that illustrates the commercial exploitation of schoolchildren.

Some common news pegs that may help make your petition more newsworthy are: new announcement (your petition is unprecedented or ground breaking); trends (a new trend is emerging); dramatic human interest (find a compelling personal anecdote to help illustrate the problem you are addressing);

controversy (highlight corruption or corporate greed); anniversaries (time your release to coincide with an important date or relevant holiday).

News releases and news conferences are the most common methods of getting information to reporters. Over time, a standard set of procedures has been established for these methods.

HOW TO WRITE A NEWS RELEASE

News¹ releases should be typewritten, double-spaced, on 8½ x 11” paper. They should be short—one to two pages in length. The top of the first page should carry the notice “For Further Information Contact:” followed by the name and telephone number of the person or persons selected to answer questions from reporters. The top of the page should also indicate the date and time of release. For example, “For Immediate Release” or “For Release on Tuesday, October 2, 1979, 8:00 A.M.” Immediately below the contact person and release time, begin the text with a headline that sums up the gist of your petition in a compelling way. You may include a subhead with additional critical information about the petition—for example, “Consumer Groups Petition Education Officials to Seek Ban on Box Top Gimmick.”

The news release should be written in the third person and the first paragraph should succinctly state all the critical facts: who, what, where, when, and why. For example:

“Today, Consumers Union, the nonprofit publisher of *Consumer Reports*, charged 19 firms with using phony government agencies and bogus senior citizens’ organizations to sell health insurance to elderly consumers. The charges came in a 14-page complaint sent to California Attorney General John Van de Kamp and State Insurance Commissioner Roxani Gillespie.”

Build the second paragraph around a quote from the coalition’s principal spokesperson.

While the factual information in the press release should be presented in a straightforward, unemotional style, the quote should be dramatic—designed to grab the reader’s attention and to provoke questions from reporters. Use the first quote to define the problem your petition seeks to address.

“Insurance companies and their agents are involved in a massive mail campaign to panic senior citizens into spending hundreds of dollars for policies that they may not need,” said Carl K. Oshiro, attorney for Consumers Union. “It’s time that state officials stop this scam.”

The subsequent paragraphs should explain the issues in more detail and provide additional background information to support your story. Use examples to illustrate the situations your petition will address, to put a human face on what might otherwise be just another problem in governance. For example:

“Among the abuses uncovered by the committee were the sale of overlapping or duplicative policies to seniors. Recently, a 79-year-old Santa Cruz woman was sold more than nine overlapping policies amounting to \$6,500 a year in premiums. Another elderly couple in Santa Rosa was sold nearly \$13,000 in overlapping premiums.”

Use additional quotes to advocate a position or comment on a set of facts in a way the reporters cannot do themselves. Thus:

“They are like wolves in sheeps’ clothing,” said Oshiro. “They may look like a government agency or seniors’ organization, but they’re an insurance company out for your money. The Department of Insurance must take legal action to end this deceptive practice.”

If you are working with a coalition, it is a good idea to have quotes from several different coalition members.

At the end of the news release, provide the names and phone numbers of officials at the agency you are petitioning. That helps the reporter get reaction to your announcement and add depth to the report. You should also ask individuals who have been harmed if

they are willing to speak with reporters. Reporters want to use interviews with “real people” to make their stories more compelling.

Tips

- If the news release is more than one page long, write “OVER” at the center of the bottom of each page. At the end of the release write “END,” centered at the bottom of the page.

- Ask someone who doesn’t know the issue to read the news release, to make sure you have explained the purpose of the petition in an interesting and understandable way.

- Avoid using technical terms or jargon. If you must use unfamiliar terms—in a press release about insurance, for example—explain the terms in plain language.

- Make sure every fact, down to the last number, is accurate. Inaccuracies not only open you to political attack, but harm your credibility with reporters.

In addition to the petition and the cover letter, attach a list of the members of your coalition and a one- or two-sentence summary of what each member does. You may also want to attach statements by coalition members on their organization’s letterhead.

HOW TO HOLD A NEWS CONFERENCE

Reserve news conferences for subjects of unusual significance and of a complexity difficult to cover in a news release, or for announcements that may have visual appeal for television. Unless the subject is significant, reporters won’t attend. And unless the subject is complex, a news release does the job more efficiently and economically. Used carefully, however, news conferences can maximize your coverage.

If you plan to hold a news conference, select a location convenient for reporters.

Reporters are less likely to travel to someplace remote or hard to find. Choose a space big enough to accommodate all the reporters you expect but not so large as to make the gathering appear insignificant. The area should have enough electrical outlets for cameras, lighting, and recording equipment. Also, it should be quiet enough so that speakers can be easily heard.

Sometimes, you might want to go to reporters rather than bring them to you. If, for example, you want the press corps at the state capitol to cover the event, hold the press conference in the capitol building itself, or nearby. (State capitols frequently have press-rooms that a friendly legislator or staff member can reserve for you.) Sometimes, it's effective to hold the press conference just outside the agency you are petitioning. Or you might hold it at a site that symbolizes the problem, to provide an interesting visual for television.

To alert reporters about your news conference, send out a news advisory to your media list a few days before your event. Your news advisory should provide the basic who, what, where, why, and when information that will hopefully convince reporters to attend your event.

If you plan a news release as well as a press conference, be sure the release includes the time and place of the conference. Otherwise, invite reporters through an "editor's advisory" that explains what the conference is about and when and where it will be held. Mail copies of the release or advisory, two to four days before the news conference, to the

news or assignment editors of local television and radio stations, to the city desks of local newspapers, to the wire services, and to specific reporters you think might be interested in covering the story. See the Media Advisory on page 78 for an example.

Generally, the best days for press conferences are Tuesdays and Wednesdays. For

maximum coverage, schedule the press conference in the morning, between 10:00 and 11:00 A.M. Don't schedule press conferences around lunchtime or later than 3:00 P.M. If you specifically want coverage in a certain paper or on a certain TV station, call and find out what time is best for them.

The day before the conference, call everyone to whom you sent materials. Make sure that they received the materials and find out whether they are planning to attend. Make a brief pitch explaining why your event is newsworthy and why they

should attend. These calls should give you a good idea of what the turnout will be and also serve as an opportunity to arrange separate interviews with reporters who are unable to attend.

On the day of the news conference, arrange the area so there is a table in front of the spokespersons. The table should be big enough and sturdy enough to hold microphones, tape recorders, and other media equipment. There should also be an ample supply of chairs for the reporters, as well as extra news releases, copies of the petition, and other informative materials. Station

"When you schedule a press conference, you have to consider that someone with no knowledge of the subject has to write something on deadline. They are given the assignment at 2 o'clock, they start writing at 3 o'clock and have to turn it in at 4 o'clock. You also have to understand that they are going to call the other side for a reaction and need time to do that."

Virginia Ellis, reporter,
Los Angeles Times

someone at the door who will see to it that all the reporters sign in and indicate the media outlet they work for and their phone/fax number and e-mail address. Remember that if you hold the news conference, anyone, even opponents and agency personnel, can attend.

The news conference should begin on time or a few minutes late. Never begin early. One or two spokespersons should open the conference by introducing themselves and giving a brief statement. This statement should clearly yet concisely explain the petition and the reasons behind it. After the statement, give reporters an opportunity to ask questions of the spokespersons. Be certain to state that you are taking questions from the working press *only*. If you think questioners are not reporters you may ask them to identify themselves and their employer. Once the questions become repetitive, or interest seems to wane, a spokesperson should formally end the news conference by thanking the reporters for attending and indicating whether someone will be available to answer questions after the news conference is over.

After the news conference, check the sign-in list and contact reporters who were expected but did not attend. It is a good practice to follow up even with reporters who attended, to ask what the other side is saying. This gives you a chance to rebut or correct what opponents have said. You can also use the sign-in list to monitor coverage after the conference.

If a reporter does a particularly good job on your story, you might want to thank him or her for the coverage. However, if you find that you received little or no coverage, you shouldn't automatically blame the reporter. In addition to the reporter's sense of what is newsworthy, a number of other factors determine whether and how a story is covered. On some occasions, other news may limit or eliminate the space scheduled for your story, or a reporter may be reassigned to another story with a higher priority. In other

instances, an editor may reduce the size of the story or delete it entirely.

There are some special considerations to remember when working with the electronic media. First, television and radio news is typically headline news. Most stories aired are those that can easily be reduced to 15- or 30-second spots. One way to accommodate this limitation is to include at the beginning of your statement a 30-second summary written specifically for television and radio. Second, to receive television coverage a story must be visually interesting. Using visual aids such as pictures, graphs, models, or props is one way to add "interest" to a news conference. If your news conference will feature compelling visuals, make a note of that in your news advisory and bring this to the attention of TV stations you contact when pitching your event.

To prepare for a news conference, write out your statement word for word. Go over the statement until you are thoroughly familiar with it. Finally, prepare an outline of the statement to refer to at the news conference. You want to cover all your points, but without reading from a prepared text. If there's more than one spokesperson, they should coordinate statements so that each person covers distinct parts of your message. If there's a coalition, its leaders should sit or stand behind the spokesperson, who should introduce them.

Give some thought to the kinds of questions reporters might ask and to the points you would like to make in response. Here are some questions you should expect, and possible answers:

"How do you think the state will respond to your petition?"

Possible answer: "We think that we have made a good case and we expect the agency to act responsibly by..."

"Why hasn't something been done about this before?"

Possible answer: “It was only recently that the problem became so large that it could no longer be ignored.”

“Isn’t this a problem that could be solved without the help of government?”

Possible answer: “In the past, we have tried to solve these problems without government intervention, but were unsuccessful because...”

“Do you really think that what you’re asking for will solve the problem people are facing?”

Possible answer: “If the agency’s officials take the action we have requested, people will no longer have to...”

¹“News” and “press” are used interchangeably here, e.g., “news release,” “press release.” Both terms are commonly used.



PART 6

What to Do After You File

Filing your petition is the culmination of your research, organizing, coalition building, solution crafting, and writing. Filing launches your official request for change. But your work is not over. It is essential to recognize your accomplishment and immediately begin to follow through with the next steps.

MOST STATE LAWS require agencies to respond to your petition—either to start the regulatory process or to deny the petition—within a specified or a “reasonable” time. Most federal agencies have no deadline. If any agency fails to respond in the required time period or in a reasonable time, say, 60 days—you may want to file a lawsuit to force the agency to respond.¹

WHILE WAITING FOR AN ANSWER

Don't just sit back and wait for the agency to respond. Build public support and provide the agency's staff members with any help they may need to move the petition forward.

Build public support

During this time, build on any press coverage of your petition to suggest editorials and op-ed pieces in favor of the proposal. Take advantage of the attention your petition has focused on an issue to seek the support of

officials who can encourage the agency to accept your petition.

Work with the agency's staff

Find out who is dealing with your petition at the agency and offer any assistance the staff might need in finding facts. Because decision makers often give great weight to the views of their staff members, your success may well depend on whether or not the staff supports your position. So try to establish a good working relationship with staff members. If you work well with the staff, you will be able to find out what agency officials think about the petition, what the opposition has in rebuttal to the petition, who will make the decision, and what it's likely to be.

Note, however, that some states prohibit persons from making contact with an agency's officials after a petition has been filed. These restrictions are intended to prevent bias and undue influence in the decision-making process. Ask the agency's staff or the state attorney general's office whether your state has

such a prohibition before you file your petition. You will also want to read the law for yourself.

WHEN THE ANSWER IS YES

When an agency says it will accept your petition, that doesn't mean it will take the actions you request. It generally means only that the agency will start the rulemaking process. The process varies from agency to agency. Generally, however, the process includes a public comment period and a public hearing, followed by further consideration within the agency, before a final decision is made. Make sure you ask the agency staff about its rulemaking procedures and about how to have all your facts and arguments considered.

HOW TO MAKE YOUR CASE

Before an agency can act on a petition, it generally must give the public adequate notice and an opportunity to comment. Often the agency will publish "proposed rules" in order to focus comments on what it is considering. The notice period allowed for public comment generally ranges from 30 to 90 days. At the federal level all notices are published in the *Federal Register*. Some states have a state equivalent; in others, agencies put out press releases and send notices to interested parties.

You can expect those who oppose your proposals to express their opposition in letters to the agency. So you need to make sure your supporters send the agency letters as well—the more, the better.

BEFORE PUBLIC HEARINGS

If the issue is a significant one, or if it generates a lot of interest, the agency will probably hold a public hearing. In some states, such as California, you can request a public hearing. Public hearings give you an excellent forum to air your views, respond to the criticism of the opposition, and correct any misperceptions. The hearings also provide an excellent press opportunity. To get the most out of a public hearing, you need to take the following steps:

Find out the format

Hearing procedures vary from state to state and agency to agency. Find out who will preside at the hearing. Will it be the agency's head or a commission member? Will oral testimony be allowed, and, if so, what are the time limits? Will witnesses be questioned?

How will witnesses be scheduled? Will the agency receive posthearing comments?

If you do not like the format, propose changes. For example, if you believe the hearing officer is opposed to your position, ask the agency to select an impartial officer. If a time limit on testimony will restrict your presentation, see if the agency will give you more time. In the interest of fairness, try to get the agency to alternate between supporting and opposing witnesses. If the

agency schedules witnesses in advance of the hearing date, try to testify as early as possible, preferably first or second. Early witnesses tend to get the full attention of the presiding officers and the media in attendance.

Line up witnesses

You will want to have two or three witnesses who can speak articulately and author-

“Courts can't force an agency to grant a petition, but they can ensure that there are no unreasonable delays or denials.”

William V. Luneburg,
administrative law
professor, in *Petitioning
Federal Agencies for
Rulemaking*, p. 8.

itatively about the problem and answer any technical questions. Expert witnesses such as professors, doctors, scientists, etc., are particularly helpful. You should also try to get as many additional witnesses as you are allowed, even if only for one-minute statements of support. The additional witnesses help demonstrate the breadth of your public support. All your witnesses should be chosen because they have the ability to make a positive impression on the agency and the public.

Prepare your testimony

Your testimony should present the case as clearly, persuasively, and comprehensively as possible. It should describe the current problem and show how it is hurting the public. It should also point out that the agency has the authority to take the corrective action requested and explain why that action will be effective.

While preparing your testimony, be sure to check to see if there have been any significant changes in the facts, the law, or government policy since you filed the petition. You would quickly lose credibility if you testified to something that was no longer the case. Also, try to respond to all the arguments raised in opposition to your case. Substantiate critical facts and key legal principles by identifying your sources. If the facts are particularly complex, you might also want to prepare graphs, charts, or diagrams to illustrate your points. If you have previously submitted materials, refer to them in your testimony.

If your testimony is long, prepare a summary for yourself. Read the summary alone, and submit the full testimony for the record. Take enough copies of your testimony for the presiding officials, staff, reporters in attendance, and other people who might want it.

Coordinate with supporters / co-workers / other coalition members

It is essential that you decide which speaker is best at giving what kind of testimony—for instance, legal, factual, or analytical. Try to

avoid unnecessarily repeating each other's testimony. Be sure you agree on the main points and your message. Also, be prepared for questions, such as, "Would your problems be solved by the following approach...?" The agency might try to find out if you will settle for less than you have asked for in your petition. Decide what you will do and, perhaps, where your bottom line is. Or, agree to ask for time to consult with others in the coalition.

Marshal support

In addition to the witnesses you enlist, try to get as many supporters as possible to attend the hearings.

The mere presence of a large group of interested citizens observing the proceedings can make a great impression on the agency's officials.

If you know that an agency's staff person supports your point of view, see if he or she will suggest to the presiding officials questions that will help you bolster your case and questions that highlight weaknesses in the opposition's case. If it is a multimember body and you know a member is supportive, you should, if permitted, encourage the member beforehand to ask the opposition hard questions. You might ask if it would help the member if you drafted sample questions to give him or her an idea of what would be helpful to get on the record.

Inform the media

Several days before the hearing, put out a news advisory informing reporters about when and where it will be held. The advisory should include a brief statement of the facts behind the petition; the groups filing the petition; the actions you are requesting of the agency; and why the actions are necessary to protect the public interest. Follow up the

"Ideally, your witnesses should be able to tell a compelling story, one that cries out for remedy."

Center for Public Interest Law
1995 Advocacy Training
Seminar course materials,
sec. 4, p. 11

advisory with a phone call to those reporters who covered your press conference. They are the ones most likely to provide additional coverage.

AT THE HEARING

Get to the hearing early. Bring materials and either hand them to reporters or place them on a press release table, if one has been provided. Bring plenty of copies and hold some back to be sure all reporters get a copy. Sit in the front row, where you can see and be seen by the agency's officials. Check with them to see if there have been any last-minute changes and introduce yourself to any reporters. If possible, it is helpful to schedule or hold an impromptu press conference just before the hearing and just outside the hearing room. The reporters will be there and you can help them frame the way they will write about your petition. You may need to rebut the opposition's arguments during your testimony and, if allowed, send in posthearing comments. So take detailed notes during the hearing and get copies of the opposition's testimony and any materials they bring.

Testify concisely

When it is your turn to testify, distribute copies of your testimony to the hearing officer or presiding officials, the agency's staff, and the recorder, if there is one. Begin your testimony by introducing yourself and thanking the agency for the opportunity to testify. Keep your testimony brief. Do not drone though pages of details; simply summarize and submit the full testimony for the record. Speak clearly. Refrain from dramatic gestures. Do not raise your voice.

During your testimony, you may want to expand on a point or respond to a particular question or criticism raised earlier. If you are not comfortable interrupting your prepared testimony with spur-of-the-moment comments, you may want to respond by saying, "I'll answer that as soon as I finish my pre-

pared testimony." Then wait until you have finished your prepared remarks and introduce additional comments by saying, "I would also like to take this opportunity to respond to earlier remarks."

In some cases you may find that you need to correct an earlier statement made by a witness who supports your position. Try to avoid contradicting an ally. A good approach is to say, "I would like to clarify a point mentioned by..." To avoid this problem, try to meet with all your supporters to coordinate your testimony and agree on your message. If necessary, discuss what fallback positions you should take, if any.

Answer questions directly

Don't be intimidated by questions. They are generally asked to clarify statements you made in your testimony, or to solicit your views on issues beyond the scope of your testimony. In many instances, there won't be any questions.

When you are asked a question, answer directly; don't ramble. If appropriate, use the question as an opportunity to make additional points in support of your proposal. But, always start by first answering the question asked. And, where possible, start your answer with a clear declarative phrase, for instance, "Yes, I agree, and..." or "No, because..." If you don't know the answer, *don't fake it!* Admit that you don't know or don't have an opinion. If you are asked for specific information, say that you will get back to the questioner on the matter—and then be sure to do so.

Respond to hostile questions calmly

If you encounter a presiding official or staff person who is bent on embarrassing and discrediting you, keep your composure. Don't let the questioner put words in your mouth. Look out for questions such as, "Did you say...?" or "Is it your position that...?" Stick to your position and bolster it with documented facts and legal authority. If your answer is interrupted by another unrelated

question, politely say that you need to finish answering the first question before addressing the second one.

Don't be intimidated or discouraged by harsh questioning. Such interrogation is generally ineffective and makes the reporters present more sympathetic to your case. Moreover, when the hearing officer or the agency's staff exhibit such hostility or bias that it interferes with the presentation of evidence, a reviewing court may impose legal sanctions on the agency or overturn its decision.

AFTER THE HEARING

Agencies may or may not allow posthearing comments. If they do, take advantage of the opportunity to answer any questions raised at the public hearing and to rebut opposing arguments. You may also use posthearing comments to bring recent developments to the agency's attention.

Your posthearing comments should:

- Review the facts raised in your petition and testimony.
- Review the arguments raised by the opposition.
- Explain why the opposition's arguments are faulty. They may be faulty because they are contrary to the law or the facts; because they are illogical or inconsistent; or because they contradict other opposing testimony.
- Discuss how recent developments in the law, the facts, or government policy strengthen your case and weaken that of your opponents.
- Include any items that you promised in your testimony.

Testimony and posthearing comments, including exhibits, are formal mechanisms for communicating with the agency's officials. They form the official record for an agency's decision. Where permitted, you

should also use informal contacts with the agency's staff and officials to encourage them to grant the petition. If other members of your coalition have a good relationship with the agency's officials, ask them to speak to the officials about the petition. Informal lobbying efforts are important to the success of the petition and should be maintained through all stages of the petitioning process.

AFTER THE PUBLIC COMMENT PERIOD

After the close of the public comment period, stay in contact with the agency's staff and officials. Ask about the progress of their deliberations, and make yourself available to answer any questions. Monitor the agency's actions and those of your opponents, who will be lobbying the agency just as hard for their position.

Remember: Several layers of internal agency review may prolong the process, especially if you are requesting a major change. In addition, other agencies may also need to review the proposal.²

IF THE PETITION IS GRANTED

Congratulations—you made it! If the agency announces that it will take some or all of the actions you have requested, you can celebrate and thank all your co-workers and supporters. Also, congratulate the agency's staff and give praise for a job well done. Then get back to work to make sure your proposal gets over any additional hurdles and is implemented properly.

If your petition results in a new regulation, in many states the agency must submit the new regulation and a record of the proceedings to another agency for review before putting the regulation into effect. In California, for example, the Office of Administrative Law

must review all regulations. It can reject rules that do not comply with prescribed standards.

Many states also require a grace period of 10 to 30 days between the time the rule is filed and the time it becomes effective. This grace period allows the agency's officials time to correct any errors they may have made and gives persons affected by the new regulations time to adjust to them. Check to make sure that the agency complies with all the filing and other requirements. Stay in contact with its officials during the grace period to make sure they don't back away from their decision.

Spread the news

You should issue a press release announcing the agency's action and praising the agency for it. Also let the press know when the new regulation goes into effect.

Thank the agency

Send a brief thank-you note, along with the press release, to the appropriate staff members and to the heads of the agency. They will appreciate your recognition, since their work is generally thankless.

Watch the opposition

If the actions you secured were controversial and opposed by powerful interests, you need to pay careful attention to possible attempts to unravel your victory. Opponents may file a lawsuit, or ask the legislature to pass a law undoing the agency's action. In either case, you need to think about how to respond. Do you have the time, money, and expertise to participate in a lawsuit? (If yours is an issue that affects people with low incomes, you may be able to find free legal assistance through your local legal services program. In addition, many state and local bar associations offer pro bono—that is, free—assistance programs. See Appendix pages 81–83 for some useful Web sites.) Can you mount a lobbying campaign against a bill? Is the agency going to defend its action vigorously?

Monitor enforcement

Now that you've come this far, it is important that you make sure the agency actually implements its decision. After the action has had a chance to work, check to see whether it has solved or alleviated the original problem. If not, you may need to seek another remedy.

IF THE PETITION IS DENIED

Don't be discouraged if your petition is denied. Your efforts have by no means been wasted. If nothing else, you have at least alerted the media and policy makers to the problem and built a coalition. And you may have laid the groundwork for future action by the agency or the legislature. For example:

Consumers for Auto Reliability and Safety (CARS) filed a petition with the National Highway Traffic Safety Administration (NHTSA) to require automobile manufacturers to provide the mechanisms necessary for passengers to adjust the height of lap/shoulder belts so that they fit properly. The petition was widely supported by safety organizations, insurance companies, seniors' groups, and parents. It was opposed by the auto industry, which complained that the regulation would be too costly. The NHTSA sided with the industry and denied the petition, stating that the proposed regulation did not meet the agency's cost-benefit analysis—the mechanisms would cost an estimated \$2 each. But after the agency's rejection, CARS and its coalition partners convinced Congress to adopt the requirement as part of an Omnibus Transportation Bill. "The petition focused everyone on the problem and the ease of the solution. It served as the catalyst for Congressional action," said Rosemary Shahan, of Consumers for Auto Reliability and Safety.

POSSIBLE NEXT STEPS

If the agency denies the petition and you want to continue to pursue the matter, there are several steps you can take. You can petition the agency again. You can sue. Or you can take your case to the legislature. And, you can continue to document new examples of the problem and use the media to continue public awareness of the problem.

Another petition

Even if the agency denies your petition, you can prepare and file a second petition. You should consider petitioning the agency again if the facts, or the law, or government policy changes so significantly that the agency's officials need to reconsider their position. Suppose, for example, that the agency denied the petition because it did not have the legal authority to take the action requested, but the legislature later passed a law giving the agency that authority. A second petition would then be appropriate. Some states, including California, have special procedures for re-petitioning. As another example, if harm is caused that would have been prevented if the agency had granted the petition, you have good reason to go back and say, "Now you have to act to protect the public from repeated harm."

Going to court

Judicial review of the agency's action is the most effective check against the illegal exercise of administrative authority. If you sue asking for judicial review, the court will examine the agency's action with the following questions in mind: Did the agency exceed its legal authority? Did it correctly interpret and apply the relevant laws? Did it understand and evaluate the evidence reasonably? Were its proceedings fair and consistent with legal requirements? Although courts may review almost any aspect of an agency's operation, they are generally reluctant to impose

their own views as long as the agency can support the action it took based on evidence in the record of the proceeding.

Courts will scrutinize the agency's actions more closely if: the legislature has not given the agency broad powers of discretion; the agency has a history of, or a reputation for, arbitrary actions, or abusing or exceeding its authority; the issues involved do not require any particular expertise possessed by the agency; the hearing procedures used by the agency were biased or prejudiced; or the agency's actions affect some constitutionally protected right.

Keep in mind that litigation is frequently a long and uncertain process. Lawsuits can last several years before the trial and all the appeals are completed. Before you decide to file a suit, you need to consider whether the chances of success justify the expense and whether success in the lawsuit will further your overall mission. If you win your case, you may be entitled to recover your attorney's fees and court costs from the agency.

Legislative action

If your proposal has broad public support and if the agency's refusal to act is contrary to some clearly stated public policy, you may succeed with the legislature even if you failed with the agency. In addition to passing bills, the legislature can hold hearings on the matter or conduct an investigation into the agency's activities. In some states, special legislative committees have the power to review the agency's rules and regulations.

Before you seek support in the legislature, you should consider the following questions: What do you want the legislature to do? Can you afford to mount an effective lobbying campaign? What are your chances of success? Don't forget that the opposition was successful at the agency level and they will fight in the legislature to preserve their victory. And, in most cases, they will have more resources and be better connected than you.

Ballot measure

Some states, cities, and counties provide for citizens to gather a certain number of signatures and place a proposed regulation, in the form of a law, on the ballot. In some cases, elected representatives can vote to place a

proposal on the ballot. In either case, you should explore this possibility, if you feel your proposal has strong public support. See Appendix page 83 for more information on using the ballot box.

¹See the state chart on pages 85–87.

²See pages 65–66 on petitioning federal agencies.



PART 7

Petitioner's Kit

QUICK-REFERENCE CHECKLIST

The Quick-Reference Checklist provides a summary of the actions you should take at each stage of the petitioning process. Keep it in front of you as you plan, and use it as a check to make sure you have not overlooked anything important. If you are unclear about items in the checklist, review the sections of the handbook that discuss those items.

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
STARTING OUT			
1. What is the problem you are concerned about?	88		19
Who is being hurt?			
How are they being hurt and how much?			
Who is benefiting at present?			
How are they benefiting and how much?			
2. Is the problem one of public concern?	88		19
Does it affect a lot of people? AND			
Are they unable to avoid harm? AND			
Is the problem likely to persist or worsen?			
3. What does the law have to say about the problem?	89–91		19–20
What behavior does the law require or prohibit?			
What are the reasons behind these requirements/prohibitions?			
Which agencies (if any) are responsible for overseeing the problem?			
What procedures must the agencies follow to exercise their power?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
4. What have the agencies done to solve/alleviate/worsen the problem?	91–92		20
What was the nature of the problem before the agency was formed?			
What did the agency do about it?			
Has the agency’s approach changed over time, and, if so, why?			
What actions are being taken now?			
Are these actions making things better, or worse?			
If no actions are being taken, why?			
What actions are being taken in other states?			
5. How are decisions made within the agencies?	91–92		20
Who makes the decision on the subject you are interested in?			
What is the person’s background?			
What are that person’s views on the subject?			
Who is the decision maker accountable to within government?			
What constituencies outside of government does the decision maker respond to?			
6. What actions should agencies take to solve/alleviate the problem?	92–93		
Should the agency:			
Prohibit certain harmful activity?			
Require certain beneficial activity?			
Provide a certain service directly to the public?			
Investigate a certain area?			
Before going on, determine whether:			21–23
Petitioning is still the best route to solving problems			
You have the time, money, people, and expertise to keep going			
You have the commitment to see things through to the end			
It is likely that the petition will make a significant change for the better			

Review your answers to the previous questions in Nos. 1 through 6 and decide whether you want to go forward with a petition.

HOW TO PUT TOGETHER AN ADMINISTRATIVE PETITION

1. Do you have an Introduction? Does it briefly and concisely identify:	36–37	36
The petitioners?		
The agency being petitioned?		
The facts giving rise to the petition?		
The actions you would like to see taken? AND		
The reason why the action is necessary to protect the public interest?		
2. Do you have a statement of facts? Does it:	37	37
Explain the current state of affairs?		
Say how and why the public is being hurt?		
Say why it’s the agency’s duty to act? AND		
State what action needs to be taken?		

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<p>3. Do you have a Petitioners section? Does it: Identify each person or group petitioning? AND State why each petitioner is affected by the problem?</p>		38	38
<p>4. Do you have a Legal Authority section? Does it: Identify the law that gives you the right to petition? AND Identify the laws that give the agency the authority to take the requested actions? AND Quote or summarize relevant portions of the authorizing statutes?</p>		39	39
<p>5. Do you have a Relief section? Does it: List all corrective actions you are requesting that the agency take?</p>		39	39
<p>6. Do you have a Conclusion? Does it: Include a statement urging the agency to take action? AND Include signatures of the petitioners or their representatives?</p>		39	39
<p>7. Have you attached exhibits that support your petition? Do they: Highlight and illustrate critical facts? AND Does each have a title and label? Can you find other documents (maps, charts, newspaper articles, etc.) that will support your petition? Do you have too many exhibits?</p>			40
<p>8. Overall, is your petition persuasive? Is it clear to an outsider? Does it make the problem seem urgent? Do the solutions you propose seem reasonable and responsible? Have you avoided sensational or rhetorical language?</p>		36	36
<p>9. Have you prepared a cover letter? Is it addressed to the head of the agency? Does it briefly explain the reasons for the petition? Does it urge the agency head to take prompt action?</p>			40
<p>10. Can you get others to join in your petitioning effort? Would they: Join as co-petitioners? Send the agency a letter supporting the petition? Make phone calls, help with expenses, show up at news conferences and hearings?</p>	93	32–33	38

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
LAUNCHING YOUR PETITION			
1. How are you filing the petition?			40
By personally delivering a copy to the head of the agency?			
By using registered mail or some other delivery service that assures you a signed receipt?			
2. Are you planning to give the agency's officials a courtesy call before you file?			40-41
3. Have you prepared a media contact list?	94-96		43
Are the audiences reached by the listed media likely to be:			
Affected by the problem?			
Interested in your petition?			
Influential in the agency's decision?			
4. How will you reach the media you have selected?	96		43-44
Can the issues be readily explained in a brief news release?			
Is it desirable to afford reporters an opportunity to ask questions?			
Is the topic so complex that lengthy personal interviews are needed?			
5. Is your news release in the correct format?	96		44-45
Is it typed, double-spaced, on 8 1/2 x 11" paper?			
Have you held it to no more than one to two pages?			
Have you included the name and telephone number of the person designated as the contact?			
Have you stated the release date and time?			
Does the title summarize the purpose of the petition?			
Is it written in the third person?			
Have you included all critical facts in the first paragraph?			
Does it include a quote from a spokesperson or expert?			
6. Is your news release accurate and unambiguous?			44-45
Are all opinions, as opposed to facts, attributed to someone, preferably in quotes?			
Have you checked all information to ensure that it is absolutely accurate and unlikely to be misinterpreted?			
Is the story clear, straightforward, and nontechnical?			
Does it avoid excess rhetoric?			
7. If you are holding a news conference, have you given adequate notice to the media?	92	47-48, 78	45-48
Did you send a news release or media advisory two or more days in advance?			
Did you make a follow-up call 24 hours before the conference?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
8. Did you select a good location for the news conference?			46
Is the location convenient for reporters?			
Is it large enough to accommodate everybody?			
Are there enough electrical outlets for use of the media's equipment?			
9. Have you taken care of all the physical arrangements?			46–47
Is there a table for the speaker(s)?			
Are there enough chairs for the number of reporters expected?			
Do you have plenty of spare copies of:			
news releases?			
the petition?			
any additional informative materials?			
Is there a sign-up list and a person assigned to look after it?			
Does that person know what to do?			
10. Do(es) the spokesperson(s) know what is expected?			47
Is the opening statement brief but complete?			
Are questions to be invited immediately after the opening statement(s)?			
Is someone assigned to thank the reporters for attending?			
Have you provided an opportunity for later questions?			
11. Have you arranged for follow-up after the news conference?			47
Is someone assigned to call any reporter who was expected but did not attend?			
Is someone assigned to thank any reporter who gave good coverage?			
12. Scheduling			46–47
Are you sure you won't be upstaged by other events?			
Is the day and time you selected good for media coverage?			

NOW THAT YOU HAVE FILED THE PETITION

1. Are you checking with the responsible agency person, to encourage action?	94	49–50
Has the petition been reviewed?		
What does she/he think about it?		
What are the problem areas?		
What is the opposition doing?		
Who else will review the petition?		
When can a decision be expected?		

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
2. Are you keeping on top of events?	96		49–50
Are you renewing contact with the agency every few days?			
Are you making yourself plainly available for questions?			
Are you monitoring the actions of the agency?			
Are you monitoring the actions of your opponents?			
Are you building public support for the petition?			

IF THE AGENCY SCHEDULES THE MATTER FOR A HEARING

1. Should you seek changes in the format of the hearing?	97		50
Who will preside?			
Will oral testimony be permitted? And if so, will time limits be placed on witnesses?			
Can witnesses be questioned?			
How will witnesses be scheduled?			
Will posthearing comments be permitted?			
If the arrangements are not satisfactory, can you press for:			
replacing a biased or hostile hearing officer?			
seeking extra time for witnesses?			
alternating witnesses, pro and con?			
being heard early in the proceedings?			
2. Do you need to change or supplement your petition?	98		51
Does it still seem clear, persuasive, comprehensive?			
Have there been any new developments?			
Are there changes in the facts, the law, or governmental policy to be considered?			
Can you bolster your arguments at any point where you expect trouble?			
3. Does your planned testimony give maximum support to your petition?	97–99		51
Does your testimony explain the current state of affairs?			
Does it discuss how and why the public is being hurt?			
Does it state why the agency is responsible for taking corrective action?			
Does it discuss the corrective action needed?			
Does it substantiate facts and legal principles by citing sources?			
Is it free of complex statements, long-windedness, sensationalism, and rhetoric?			
If facts are complex, can you illustrate your points with display-size graphs, charts, and diagrams?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
4. Have you selected witnesses who will give maximum support to your petition?	99		50–51
If the time allowed for each witness to testify is brief, can you split the testimony among several witnesses?			
Do your witnesses speak well in public?			
Are they knowledgeable about the issues?			
Do they have the credentials (degrees, positions, training, experience) to give weight to their testimony?			
Do they have the appearance and bearing to make a good impression on the agency?			
Do they have the capacity to attract the attention of the media?			
5. Have you done all possible to attract public support?	99		51
Have you searched out interested persons and groups?			
Have you briefed them on the issues?			
Have you urged them to make their interest plain by:			
presenting oral testimony?			
submitting written comments?			
attending the hearing?			
Have you kept media coverage alive with a news release about the hearing and the facts of your petition?			
Have you prepared extra copies of the news release for distribution at the hearing?			
Have you prepared extra copies of your testimony, including graphics, for distribution at the hearing?			
6. If posthearing comments are allowed, are you presenting a complete case?	99–101		53
Have you reviewed the facts in your petition and testimony?			
Have you reviewed the arguments raised by your opponents?			
Have you discussed how the opposing arguments are faulty?			
Have you discussed how any recent developments add to your case and/or detract from your opponents' case?			
Have you included all the items you promised to produce?			
7. Are you maintaining contact with agency officials?			53
Are you monitoring the progress of their deliberations?			
Are you making yourself available for questions?			
Are you keeping your supporters up to date on the progress of the petition?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
IF THE AGENCY GRANTS THE PETITION			
1. Have you taken steps to solidify the agency's decision?	101–102		53–54
Is the agency complying with all legal requirements?			
Has the agency's decision been announced to the news media?			
Is the agency actually implementing its decision?			
2. Have your opponents shifted the fight to another forum?			54
Have they filed a lawsuit to stop the agency from taking action? OR			
Have they gone to the legislature for a law that would prevent the agency from taking action?			
3. If so, should you participate in the ensuing struggle?			54
Do you have the resources to intervene in a lawsuit or to lobby against a bill?			
Can the agency be counted on to competently defend itself?			
Are you likely to win, if you intervene?			
What are the consequences, if your adversaries win?			
4. Has the petitioning effort either solved or alleviated the original problem?	101		54
IF THE AGENCY DENIES THE PETITION			
1. Are agency officials likely to respond differently to a second petition?	102		54–55
Has there been a significant change in:			
the facts?			
the laws? OR			
government policy?			
2. Can you bring a successful court action against the agency's officials?	102		55
Do you have the resources to initiate and maintain an effective court action?			
Do you have a reasonable chance of winning, taking into account the strengths and weaknesses of your case, the status of the law, the resources of your opponents, and the inclination of the courts and judges who will be making the decision?			
Will success in the lawsuit further your overall mission?			
3. Can you get help from the state legislature, board of supervisors, city council?	102		55–56
Will a new law, resolution, or legislative hearing help to solve the problem?			
Do you have the resources to stage an effective lobbying campaign?			
Do you have a reasonable chance of succeeding, taking into account the issues involved, your likely supporters and opponents, and the course that a bill, resolution, or request must chart before becoming effective?			