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The 1st Amendment Right to Petition Electronically Both Eases Citizen Participation and the State Tabulation Burdens Imposed by Wet Signatures

What Would the US Supreme Court Do If Only “Wet” Signatures Counted?

America's 250th Birthday is the celebration that we live in the longest-running constitutional democratic republic in history. Americans rights to life, liberty, and the pursuit of happiness, includes fully honoring the First Amendment guarantee of *“the right of the people... to petition the Government for a redress of grievances,”* as extended to the States by the 14th Amendment.

The Founders foresaw the need for this guarantee to the citizens. The Declaration of Independence treats the King's refusal to answer petitions not as one grievance among many but as the climactic charge that justified revolution: *“Our repeated Petitions have been answered only by repeated injury.”*

That is the original meaning of the Petition Clause. The right to petition was understood in the English tradition, which the Framers of our constitutional republic inherited and established in the First Amendment to the Bill of Rights as a composite right to submit, to be heard, and to receive an answer.

The Supreme Court Holdings on the First Amendment – Including the Right to Petition

Since 1877, Supreme Court of the United States (SCOTUS) has consistently and broadly applied the 1st Amendment rights, pursuant to the 14th Amendment and including the right to petition, to the states and invalidated state laws and other actions that conflict with them. For example:

- *United States v. Cruikshank*, 92 U.S 542 -552 (1876) -- In its opinion, the Court held in applying the First Amendment to the states: “[T]he very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.”
- *DeJonge v. Oregon* 299 U.S. 366 (1937)-- SCOTUS applied the 1st Amendment rights of assembly and petition to the states through the 14th Amendment's Due Process Clause to hold that an Oregon statute, as applied by the state court, was “repugnant to the due process clause of the Fourteenth Amendment.”

- In *McDonald v. Smith*, 472 U.S. 479 (1985), Chief Justice [Warren E. Burger](#) noted that “[t]he right to petition is cut from the same cloth as the other guarantees of that Amendment and is an assurance of a particular freedom of expression.”

As a penultimate point and drawing upon footnote 2/2 of the *McDonald v. Smith* holding, “The Court long ago concluded, however, that the Petition Clause embraces a much broader range of communications addressed to the executive, the legislature, courts, and administrative agencies. See, e.g., *Bill Johnson’s Restaurants, Inc. v. NLRB*, [461 U. S. 731](#), [461 U. S. 741](#) (1983); *California Motor Transport Co. v. Trucking Unlimited*, [404 U. S. 508](#), [404 U. S. 510](#) (1972). It also includes such activities as peaceful protest demonstrations. See, e.g., *NAACP v. Claiborne Hardware Co.*, [458 U. S. 886](#), [458 U. S. 909-912](#) (1982); *Edwards v. South Carolina*, [372 U. S. 229](#), [372 U. S. 235](#) (1963). Expression falling within the Petition Clause will thus frequently also be protected by the First Amendment freedoms of speech, press, and assembly. “

Citizen Petition Rights Among the States

Today:

- 32 states do not allow citizen ballot initiatives, only the legislature can propose them.
- 18 states allow statewide citizen-initiated ballot measures, but 17 of those states impose wet ink signature process requirements.

In the course of our review of state constitutions recognizing this citizen right, we encountered the following constitutional, statutory, legislative, and administrative requirements and processes imposed on the ability of citizens to petition for changes or adjustments in their respective state constitutions. These include:

- Legislatures’ authority to amend petitions before they can be delivered to either the petitioners or voters.
- Requiring expensive and cumbersome processes for wet signature only petitions, such as:
 - Allowing only paper and wet signatures, required witness attestation requirements when a voter signs a petition, and thereby requiring that the documents be delivered by postal or other means of physical delivery – in the face of national commercial and federal and state government use of far less costly -- \$10-15 for wet signature circulators and collections vs \$2 or less for ID verified electronic signatures (e-signatures).
 - Gathering wet signatures for petitions can easily cost millions of dollars and thereby require substantial sponsorship and citizen donations to fund the attendant organization, contracting, and staffing.

- Legislatively shortening campaign timelines for registered voter signatures.
- Intrastate geographic signature thresholds required rather than a single tally for the entire state.
- Rejection on technicalities, such as required fonts, name given to an initiative, and state staff edits or disapprovals before a petition can be circulated to the voters.

The right to petition is foundational to democratic republican government and is given strong protection; states retain some ability to regulate the *manner* of petitioning through reasonable time, place, and manner restrictions. However, state-imposed process restrictions on citizen petitions, in our view, work:

- To frustrate the opportunity for citizen-led and financed petitions for constitutional or legislative measures; and
- Appear intended to lessen the administrative burden on state government elections apparatus.

The Remedy: Reinvigorate the Constitutional Right to Petition by Enabling the Use of Verified E-petitions that Both (i) Help the Citizens Participate and (ii) Ease the States' Administrative Tabulation Burden

We believe the solution to reinvigorating and facilitating the First Amendment right of citizens to petition lies in the use of verifiable electronic signatures (e-signatures) to enable registered voters to petition their state and local governments and have those petitions become ballot measures for the people to vote upon. Enabling Americans to use e-signature in participating in this critical right in their states significantly provides for its exercise by all registered voters, including members of our military, citizens working abroad, those having significantly limited mobility and those in rural and remote areas.

In both commerce and government, electronic signatures ("e-signatures") are already the norm for financial and official transactions. The Government Paperwork Elimination Act of 1998 required federal agencies to accept electronic signatures wherever practicable, and the ESIGN Act of 2000 and the Uniform Electronic Transactions Act of 1999, now adopted by nearly every state, give electronic signatures the same legal force as handwritten ones.

Moreover, verified and authenticated e-signatures can now be applied in all state and local governmental correspondence and transactions by having the signers scan their driver's license or state ID and enter its last 4 digits plus name and date of birth. This same process can also be easily tied to registered voter petitioners by also adding the voter identification number as another identifier. In this way, the legitimacy of e-signer's eligibility as a registered voter is instantaneously verifiable and countable because integrity is determined at the e-signature filing of the petition. Plus, the petitioners get a copy in real time of their signed petition.

Notably, Utah alone allows electronic signature gathering for initiatives and referendums, and Arizona, New Mexico, Denver, and DC have versions for candidate or in-person digital signatures.

How Verified E-Signatures Work and Where They Are Used

Verified e-signatures rest on the same identity-proofing methods government already uses to protect tax filings and benefits. Under the federal digital identity standard (NIST Special Publication 800-63), the signer photographs a government-issued ID, which is authenticated, and submits a live selfie matched against it; knowledge-based checks and multi-factor authentication can be added as needed. Each signature is captured with a time-stamped, tamper-evident record, and the signer receives a copy in real time.

This technology is proven and in use at scale. Login.gov, the federal sign-in service run by the General Services Administration, performs this verification for more than fifty federal and state agencies, and the Internal Revenue Service and Social Security Administration require it before a person may view records online. The verification that secures a tax account can secure a petition signature.

Applied to petitions, each verified identity is matched against the statewide voter file by name, date of birth, address, and driver's license or voter identification number, so eligibility is confirmed at the moment of signing rather than through later manual review. Utah already authorizes this for statewide initiatives and referendums. Adopting verified e-petitions honors the right to petition while easing the tabulation burden that wet-signature petitions place on state election offices.