

Secondary Case Study



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Freedom to Petition: Summary

The First Amendment guarantees the right of citizens to petition the government for redress of grievances. While in some cases this has meant the right of citizens to sue, this freedom is rarely invoked by the Supreme Court. Most of the time, the right to petition coincides with other basic freedoms. This case study examines some recent examples of the right to petition in action. Further, the study looks at the implications for democracy in light of events in China, a country where citizens lack this fundamental freedom.

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Washington

Justices reject appeal in right-to-die case

By Joan Biskupic
USA TODAY

WASHINGTON — The Supreme Court on Monday:

► Refused to intervene in the case of Terri Schiavo, a severely brain-damaged Florida woman who is being sustained by a feeding tube. Florida Gov. Jeb Bush had asked the court to review a state Supreme Court decision invalidating a 2003 state law that had allowed him to order continued life support over the protests of Schiavo's husband. The justices rejected the appeal without comment. The dispute has drawn

widespread interest because of the medical, ethical and familial dilemmas raised.

Schiavo, now 41, collapsed when her heart temporarily stopped beating in 1990. Her husband says she would not want to live under such conditions, and he has tried to have the feeding tube removed. Schiavo's parents, Robert and Mary Schindler, are fighting to keep her on life support through separate legal actions in state courts.

► Sent back to lower federal courts more than 400 pending appeals that involve claims related to the justices' recent decision invalidating a major part of U.S. sentencing law. The move

reinforced the fact that lower courts now bear the burden of determining how a complicated, two-part Supreme Court decision issued Jan. 12 will apply to the thousands of defendants who pass through federal courts each year.

The justices said federal sentencing rules violated defendants' right to a jury trial by allowing judges — rather than juries — to decide on factors that can increase sentences beyond certain ranges. But the court also said that the rules could be considered advisory and in the end gave federal judges wide latitude in imposing prison time.

The president's pick

Interest groups immediately line up forces in debate

By Mark Memmott
USA TODAY

Wasting no time and with millions of dollars to spend, interest groups are blitzing radio and TV with ads and blasting e-mails to supporters in response to the president's Supreme Court nominee.

The battle to influence public opinion and senators' votes looks much like a political campaign. It will cost tens of millions of dollars and be the most expensive nomination debate in history, says Richard Davis, a political science professor at Brigham Young University and the author of *Electing Justice: Fixing the Supreme Court Nomination Process*.

It's also likely to be the most partisan debate over a Supreme Court nominee since Justice Clarence Thomas was confirmed in 1991, says Mark Hurwitz, University at Buffalo political science professor, though he thinks Roberts will get confirmed.

From the right, the American Center for Law & Justice was sending 900,000 e-mails to its supporters immediately after President Bush's nomination of federal appeals court Judge John Roberts on Tuesday night. "We're urging them to join us in telling senators to support the nominee," said Jay Sekulow, the conservative center's chief counsel. He called the nomination "a home run."

Also from the right, the advocacy group Progress for America was set to begin airing a TV ad today on cable news networks supporting the nomination.

"We've also got field representatives in 20 states who will start to get the word out to support the nominee," said Brian McCabe, the group's president.

Progress for America pledged to

spend up to \$18 million on ads and grass-roots organizing. It aired its first TV spot even before Justice Sandra Day O'Connor's retirement announcement July 1. That ad warned that Democrats would attack anyone Bush nominated.

From the left, the group People for the American Way "is looking at all contingencies, including ads," President Ralph Neas said. His group prepared to e-mail supporters and journalists an analysis of the nominee's record. Neas issued a statement saying his group was "extremely disappointed" because Roberts is not "a consensus nominee."

This year, People for the American Way spent about \$5 million on ads and organizing efforts during the debate over whether Senate Democrats could continue to hold up votes on some of Bush's nominees to lower courts.

At NARAL Pro-Choice America, President Nancy Keenan said the abortion rights group would be pushing its members to urge senators to question the nominee hard on whether the landmark case *Roe v. Wade* should or should not be overturned. That decision in 1973 made abortion legal nationwide.

Speculation that the president would choose U.S. appeals court Judge Edith Clement had been prominent on cable news networks Tuesday. Her name sparked vehement opposition from Operation Rescue, one of the most vocal organizations opposed to abortion. Of most concern to the group's president, Troy Newman: Clement once said the *Roe* decision had "settled" abortion law.

When it was reported around 7:45 p.m. ET that Bush had chosen Roberts, Newman was "delighted." Roberts, he said, "is a good guy who's said that *Roe v. Wade* was wrong. ... This

president said he would appoint strict constructionist, non-activist judges, and he's done that. We'll be working hard for this nomination."

Also pleased: the conservative Committee for Justice, founded by C. Boyden Gray, who was White House counsel to President George H.W. Bush. He issued a statement calling Roberts "a justice who will not use his power to redefine traditional marriage, strike 'under God' from the Pledge of Allegiance and undermine private property rights."

Bush's choice generated strong opposition from NARAL Pro-Choice America.

Even before the nominee's name was known, he was among a list of potential choices that NARAL on its website called "hostile, not only to women's reproductive rights, but to a variety of civil and constitutional rights."

Nan Aron, president of the liberal Alliance for Justice, also is lining up in opposition.

"An initial review" of his record, she said in a statement, "has led to serious concerns about whether he will be fair, independent and will protect the rights and freedoms of all Americans."

Washington

Protesters of overhaul dog Bush

Opponents use publicity tactics from election

By Richard Benedetto
USA TODAY

GREECE, N.Y. — Gone are the days when a president could travel to a community to make a pitch for a favorite program and bask in mostly favorable local media coverage.

Armed with a variety of publicity techniques honed in recent election campaigns, opponents are vying effectively with the president for local media attention before, during and after presidential visits.

And they are doing that at nearly every stop on President Bush's Social Security tour, which began in February and landed Tuesday in this suburb near Rochester, N.Y.

Tuesday's stop was Bush's 33rd in 26 states since Feb. 2. Cara Morris, of Americans United to Protect Social Security, an umbrella group opposed to the president's plan to divert some Social Security payroll taxes to individual investment accounts, says her Washington-based coalition has worked with local members in each state to stage a "push-back" rally or news conference at all but one stop.

Grass-roots effort

"As soon as we find out where the president is going, we reach out to our local grass-roots groups and start organizing," she says of her group, which was started by labor unions such as the AFL-CIO and Democratic Party operatives.

Stephen Hess, a presidential scholar at the Brookings Institution, a think tank, says this kind of opposition campaigning is a relatively new strategy employed in part because Bush himself has used the techniques of an election campaign to push his Social Security proposal. "They know he's going out to promote his plan, and the opposition goes out and tries to match him," Hess says.

A large part of that is aggressive outreach to the local media. Scott McIntosh, assistant metro editor of the Rochester Democrat and Chronicle, said three groups worked to stage events and gain publicity. He said all of them contacted the newspaper, which is owned by Gannett, the company that owns USA TODAY. Even individual reporters got calls. "They were pretty well organized," McIntosh said. "They sent us press releases in advance and we covered all their events."

Of course, opponents can't match Bush in sheer volume of

local media coverage. Presidential visits are rare in most communities, and they're often covered like a combination of a rock concert, a Hollywood premiere and the Super Bowl.

Local newspapers and radio and TV stations here ran stories about the Bush visit and his Social Security proposals for several days before the Tuesday arrival. On Monday night, TV weather reports were geared to the presidential visit: "What kind of weather will greet President Bush tomorrow?" one teaser said. On Tuesday, the landing and departure of Air Force One got live coverage on four Rochester TV stations. So did the president's speech.

Bush sounded familiar themes in his address at the Greece Athena High School.

"I think more and more people recognize there's a problem (with Social Security), and people are going to say, 'Go do something about it.' And those who obstruct reform — no matter what party they're in — will pay a political price, in my judgment," Bush said.

Even before Bush got to town, opponents got their licks in. On Sunday, activists gathered petitions from citizens at local cultural fairs for presentation to area Republican congressmen who have yet to take a stand on Bush's plan. That got

newspaper and TV coverage.

On Monday, New York Assemblyman Herman Denny Farrell, the state Democratic Party chairman, blasted Bush's proposal: "The president's plan is nothing more than a recipe for fiscal disaster and will move the middle class into poverty." His words were picked up by radio, TV and newspapers Monday and Tuesday.

Grabbing attention

Farrell went to Rochester on Monday to host a news conference of government and labor officials and citizen activists bent on airing their opposition to the Bush plan and gaining media attention for their views. Newspapers covered the event, and TV and radio reported on the news conference Monday night and Tuesday morning.

Newscasts after Bush had left Tuesday featured the hoopla of the Bush visit, but they also contained reports on the downtown protest rally staged by opponents.

Analysts say the opposition's ability to counter the Bush message is contributing to the trouble Bush is having in winning support.

"The longer he's out on the road, the less appreciation people have for (his plan)," says Larry Harris, of the non-partisan Mason-Dixon Poll.

The Chinese century?

Discontent in China boils into public protest

The seizure of a liquor factory in Wanli provokes residents into a confrontation with local officials, who respond with brutality. ■ Once rare, such incidents are increasing amid the nation's surge toward capitalism. ■ Nervous Communist Party officials in Beijing are taking note — and trying to quell growing anger.

By David J. Lynch
USA TODAY

WHEN the local government announced it was going to confiscate their homes and businesses to make room for a new development, residents of this village in southeastern China fought back.

They complained to five levels of local government. They sued officials in charge of the relocation effort. They journeyed to Beijing to petition central authorities. And when all that failed, they staged a sit-in on the grounds of a local factory that they had built with their pooled savings.

All but one of the demonstrators were women, many middle-aged or older. But that didn't stop more than 100 police officers, backed by thugs led by a notorious local criminal, from busting through a locked gate and beating them into submission.

"They bent my arm and threw me on the ground. I started to cry when I fell on

the ground," says 54-year-old Huang Yaying, who suffered a broken arm.

After a half-hour melee in which 15 people were injured, authorities seized control of the four-story liquor factory. And in the weeks since the Aug. 1 incident, relocation crews have returned again and again to knock down nearby homes and businesses. Today,

The second in an occasional series on contemporary China.

blue metal construction fences line Wanli's narrow streets, shielding piles of cement and brick rubble.

The continuing siege in this village of 600 people illustrates that beneath a veneer of authoritarian rule, economic strength and Olympic success, popular discontent is bubbling in China. Last year, there were 58,000 "mass incidents" across China, according to government statistics cited in the Chinese magazine Outlook. That's more than six times the number of protests and demonstrations the authorities admitted to in 1993.

The increasing willingness of individuals to confront state authority is powerful evidence of the emergence of what political scientists have labeled "rightful resistance." As China's economy grows freer and more tumultuous, these government-tolerated grievances are starting to hint at what a more open political environment might entail. They illustrate both the partial loosening of restraints on popular action and the very real limits that remain.

The disturbances — by farmers upset over high taxes, laid-off workers demanding overdue pensions and residents outraged over improper land grabs — have been carefully limited to economic issues. Even the most ill-educated peasant understands that the Communist government would swiftly crush any organized demand for political liberalization.

That doesn't mean China's rulers regard the complaints with indifference. Last month, Zhou Yongkang, minister of public security, listed such protests as one of several factors potentially threatening the country's stability.

Once a rarity, examples of public disobedience are now plentiful. Earlier this year, 2,000 workers and retirees at a textile plant in Suizhou in central Hubei province took to the streets to demand unpaid benefits. In November 2003, thousands of people in Zoucheng, Shandong province, stormed a government building, smashing windows and office equipment, after a sidewalk vendor was accidentally run

over when city officials tried to enforce a new policy against such sales. And in March of 2002, tens of thousands of workers in Liaoyang massed against corruption and unpaid wages in the longest-lasting protests in China since the 1989 "Democracy Wall" campaign.

"They are very concerned about it," says Murray Scot Tanner, a China specialist at the Rand Corp, a think tank. "Unrest has gone up every year by at least 9% or 10% since they started keeping these numbers in 1993."

The central government in recent years, however, has relaxed its view of people who balk at official actions. Beijing established "letters and visits" offices to receive citizen complaints and seems to understand that the dislocation caused by China's unprecedented capitalist evolution, not foreign agents, explains much of the discontent.

At the same time, Chinese protesters also have become adept at choosing their targets. To increase their chances of success, they usually argue that unjust local officials are failing to implement the central government's policies. "When you protest and wave the central government's policies as your shield, it provides some sort of political protection," says Minxin Pei of the Carnegie Endowment for International Peace.

Since taking office two years ago, Communist Party General Secretary Hu Jintao and Premier Wen Jiabao often have spoken publicly of the need to address legitimate

citizen complaints. Ensuring that the ruling party is more responsive to those being left behind in China's pell-mell capitalist surge is likely to be emphasized at a high-level party meeting in Beijing later this week.

Still, local officials don't always handle citizen disputes with the sophistication Beijing would prefer. And, as Wanli demonstrates, they don't hesitate to employ brute force to get their way.

'Take him out and beat him'

Wanli once was a farming village outside of Fuzhou, the bustling capital of Fujian province. In the 1980s, the Cangshan district government confiscated almost 500 acres of village farmland to use for a new university, hospital and other institutions. As their vegetable farms kept shrinking, villagers decided in 1985 to pool their savings and invest in a series of shops, factories and six-story apartment buildings. Four years later, the enterprise, similar to village-level commercial ventures sprouting throughout China, was formalized by the local government as the Wanli Group.

By the mid-1990s, rent from these properties was the villagers' main source of income. By then, continued development in the area had turned the former farming village into an urban neighborhood on the outskirts of Fuzhou.

In 2000, villagers began hearing that the local government planned to evict them to make way for unspecified redevelopment. It's a familiar story in contemporary China. Roughly 20 million of China's 900 million farmers already have lost their land to commercial projects, according to the state-run Xinhua news agency.

Often these disputes pit developers and their government allies against some of the least powerful people in China.

Almost everyone in Wanli was opposed to the project, fearing it would eliminate the businesses that are their only source of income and leave them without enough money to buy new homes elsewhere. With their farms gobbled up by China's insatiable urban development, many residents survive on the 330 yuan (\$39.85) they receive each month as their share of income from the village enterprise.

Villagers say they receive 100 yuan (\$12) per month in compensation for some of the businesses that already have been torn down. And they have been offered 1,300 yuan per square meter (\$14.59 per square foot) for their homes. That's less than half the amount they say they need to buy comparable new housing.

But as is routine amid China's construction binge, local officials rejected the residents' complaints about improper treatment and insisted they evacuate. Villagers, displaying a surprisingly strong faith in the central government, blame corrupt local officials for their predicament. Earlier this year, the villagers sued the Cangshan district government office that is directing the relocation. But the case has languished. "We think it's useless. The government and the court, they're the same thing," Li Hua says.

On March 18, the first wrecking crews arrived in the neighborhood and began tearing down several buildings. In their wake, one despondent resident, Jiang Biquan, 45, died after drinking a bottle of agricultural chemicals. His suicide did nothing to slow the redevelopment. Several weeks later, about 300 police officers and men in civilian clothes surrounded the village and

beat residents trying to halt additional demolition efforts.

On July 17, a group of villagers flew to Beijing and spent 11 days fruitlessly making the rounds of relevant ministries. One official at the Ministry of Construction even telephoned the Fujian Construction Bureau to inquire about the situation. But demolition work continued. "The Cangshan district government doesn't care what the law says. Their attitude is, 'We want this land and you have to give it to us,'" villager Li Wu says.

On Aug. 1, the dispute finally boiled over. Villagers had learned that the relocation office staff was preparing to seize the liquor factory to serve as its headquarters during the final stages of clearing Wanli. Relocation officials told villagers their existing office suffered from poor feng shui, meaning the building's design lacked harmony.

Local residents, who had invested as much as 10,000 yuan each in the village enterprise, feared the loss of their financial stake. So a few minutes past 8 a.m., about 20 people assembled inside the compound, which is ringed by a cement wall.

About 8:30 a.m., Shen Li, an official with the Cangshan district government, arrived and demanded to be let in. The villagers refused to unlock the gate, so Shen clambered over the wall and ordered an underling to break the lock with a hammer. "We tried to stop them from breaking open the lock. Some of us surrounded the lock," says a woman who gave only her surname, Jing, saying she feared retaliation from officials.

At that point, officials began roughly pulling the women away. As the skirmish intensified, says Jiang Bibo, the only male villager inside the compound, "You can't beat

people like that!"

Villagers say Shen responded by ordering another man to punish Jiang, who was sitting nearby, saying, "Take him out and beat him."

Jiang, 50, was punched in the face and hurled to the ground. As he lay there, wrapping his arms protectively around his head, several men kicked and struck him repeatedly, witnesses say. Jiang was later hospitalized with a concussion and internal bleeding. "If it wasn't for another woman who went over and covered Jiang Bibo with her body, somebody could have died that day," Jing says.

Operating alongside the police that day were 14 recently released prisoners headed by Zhao Zhenguang, a local mobster. With ambulances parked nearby, the authorities seemed prepared for violence, witnesses say. One of the vehicles was needed to ferry Pan Lanfang, 56, to the hospital. The local resident had gone to the factory to look for a friend, not to protest. She ended up badly beaten.

Efforts to reach Shen at his office and on his cellphone for his account of the August 1 events were unsuccessful. Authorities in Beijing say they were unable to provide any immediate comment on an individual relocation dispute.

Retaliation by officials alleged

Despite central government directives to take a more subtle approach to quelling protest, such violent repression remains all too common, analysts say. "The use of hoodlums, really violent criminals, against peaceful civilians is quite prevalent," says Pei, the Carnegie analyst.

Chinese authorities have ordered local police to defuse protests without violence,

according to Tanner. But the message doesn't appear to be getting through. "In the last couple of months, I've heard several cases of very deliberate use of harsh forces by the police and very undisciplined use of force," he says. "That's absolutely the sort of thing that, officially, they've been discouraging."

Following the attack, 60 villagers went to the Fujian province's Public Security Bureau to file a complaint. They also penned an open letter to authorities in Beijing seeking an investigation. Human Rights in China, a New York-based group, released an account of the dispute on Aug. 25. There has been no formal response to the villagers' letter.

But on Aug. 2, the day after the assault, relocation office officials staged a banquet at

the factory compound for the police and other government officials who evicted the demonstrators. And in the intervening weeks, several villagers say, provincial officials have threatened them with prosecution for talking about the case with foreign reporters or other outsiders. "Everybody here is in great danger now. They could just put us in jail for seven or eight years. You never know," Zheng Rong says.

Already, one villager, whose home was demolished earlier this month, has been detained along with his wife and sister. Officials reportedly are pressing him to admit he helped organize recent protests, which would leave him open to prosecution. As part of their strategy to quell protest, Chinese officials customarily punish organizers

more harshly than mere participants.

Officials are keeping the pressure on in other ways. In early September, as the temperature hovered around 97 degrees, they interrupted the public water supply for several days. Villagers also say their sleep has been interrupted by people knocking on their doors before dawn.

Amid continued clearance work, desperation is growing. On Sept. 8, Jiang Zongzhong, a retiree in his 70s, had had enough. As workers moved to demolish his home, the elderly man tried to kill himself by igniting a propane tank used for cooking fuel. Witnesses say a fireman knocked him to the ground, slapped him in the face and removed him from the home. The structure and the possessions of a lifetime

were flattened.

Still, the villagers continue to profess faith in the central government in Beijing.

"We hope the real Communist Party can send us a Bao Qingtian," Li says, referring to a 12th-century Chinese imperial official renowned for his honesty and integrity. "We hope they send somebody like that to give us justice."

The seizure of a liquor factory in Wanli provokes residents into a confrontation with local officials, who respond with brutality. Once rare, such incidents are increasing amid the nation's surge toward capitalism. Nervous Communist Party officials in Beijing are taking note — and trying to quell growing anger.

DISCUSSION QUESTIONS

1. Do you think that the Supreme Court's decision on Governor Bush's appeal limits the right to petition? Why or why not?
2. Do you think that citizens expressing views about a candidate are using the right to petition? How does the right to petition reinforce their activism?
3. Do single issues such as social security reform merit the use of the right to petition? Based on the article, what inferences can you draw to support your view?
4. Do you think that in countries such as China, granting citizens stronger rights to petition will provide an outlet for civic demands? Why or why not? Find evidence in the article to support your position.

ACTIVITY EXTENSIONS

1. Freedom to petition: Civic understanding

Survey your classmates, teachers, and community (family and friends) to find out if they are aware of the freedom to petition and what the state of their knowledge is.

Compare your answers with classmates.

Develop five points that you can use to inform people of this right.

2. Petitioning in the news:

Read the newspaper for a week, keeping a log of all cases that seem to be based on the nearly invisible freedom to petition.

At the end of the week, compare your log with classmates.

Write a short summary of the impact of the right to petition on current developments in the U.S.

FUTURE IMPLICATIONS

1. Do you think that we will see more lawsuits in the future by citizens seeking to preserve their First Amendment Rights? Why or why not?
2. In a totalitarian system enacting “reforms,” do you think that the right to petition is the first or last right to be granted? Explain your answer.

ADDITIONAL RESOURCES

The Freedom Forum/First Amendment Publications
www.freedomforum.org

The Future of the First Amendment
www.firstamendmentfuture.org

The First Amendment Center
www.firstamendmentcenter.org