



Legislative Constituent Casework

Prepared by: Melissa Schmidt, Principal Attorney

Wisconsin legislators, along with members of the U.S. Congress and state legislators across the country, routinely request information from administrative agencies on behalf of their constituents. This representational activity, commonly referred to as “casework,” is rooted in a citizen’s constitutional right to petition government. Each legislator determines the scope of casework he or she will provide as a service to help constituents deal with administrative agencies by acting as “facilitators, ombudsmen, and in some cases advocates.”¹

CONSTITUTIONAL RIGHT TO PETITION

Both the U.S. and Wisconsin Constitutions protect the inherent right of citizens to petition the government. Under the U.S. Constitution, the [First Amendment](#), which is applicable to states under the Due Process Clause of the Fourteenth Amendment, states:

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the Government for a redress of grievances.**

The U.S. Supreme Court has recognized the First Amendment right to petition as an inherent right of the people to petition their government, including its Legislature. In [Borough of Duryea v. Guarnieri](#), the Court noted that the right to petition dates back to the Magna Carta, which evolved over time to eventually provide that “every commoner in England possessed ‘the inherent right to prepare and present petitions’ to [the House of Commons] ‘in case of grievance’” In the United States, the right to petition has evolved to allow citizens, either individually or in groups, to petition all departments of government, including the executive and judicial branches.²

Wisconsin Constitution, [art. I, s. 4](#), includes a similar provision:

The right of the people peaceably to assemble, to consult for the common good, and **to petition the government, or any department thereof**, shall never be abridged.

While the U.S. Constitution provides that the right to petition is “for a redress of grievances,” this phrase is not contained in the Wisconsin Constitution. However, the right to petition under the U.S. Constitution is not limited to the “demands for a ‘redress of grievances.’” In *Borough*, the Court explained the right to petition also broadly allows “citizens to express their ideas, hopes, and concerns to their government and their elected representatives.” Thus, both the U.S. and Wisconsin Constitutions provide a similar right to petition.³

APPLICATION OF THE RIGHT TO PETITION TO CASEWORK

Members of both the Wisconsin Legislature and U.S. Congress provide casework as a constituent service in response to their constituents’ questions and concerns. This representational activity in the United States dates back to at least the 1800’s.⁴

At the federal level, both the U.S. House of Representatives and the U.S. Senate recognize that the work that Members of Congress do with administrative agencies, on behalf of their constituents, is grounded in the right to petition. For example, the [U.S. House Ethics Manual](#) states the following:

The first Article in our Bill of Rights provides that Congress shall make no law ... abridging the ... right of the people ... to petition the government for a redress of grievances. The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The [U.S. Senate Ethics Manual](#) also recognizes casework as both a Congressional response to the right to petition and an appropriate exercise of a legislators' role. The [overview](#) of the manual's Constituent Service Chapter explains:

The First Amendment of the U.S. Constitution guarantees the "right of the people . . . to petition the government for a redress of grievances." Responding to inquiries of petitioners and assisting them before executive or independent government officials and agencies is an appropriate exercise of the representational function of each Member of Congress, as well as an important function of congressional oversight.

In 1992, the Senate adopted S. Res. 273, which created [Senate Rule 43](#). The Rule affirms that "in responding to petitions for assistance, a Member of the Senate, acting directly or through employees, has the right to assist petitioners before executive and independent government officials and agencies."

Similarly, Wisconsin legislators also frequently perform [casework](#) for their constituents. It appears that this casework arises out of the constitutional tradition and expectation that casework serves Wisconsin citizens' right to petition. In [State ex rel. Van Alstine v. Freear](#), the Wisconsin Supreme Court explained that when a state legislator requests information of a state agency on behalf of a constituent, the legislator is acting as the constituent's agent.⁵ In doing so, through casework, legislators facilitate the constituent's petition to state government. Similarly, when a state agency provides information in response to such a request, the state agency recognizes casework as part of the legislator's representational role in facilitating the constituent's right to petition.

¹ Congressional Research Services (CRS), [Casework in a Congressional Office: Background, Rules, Laws, and Resources](#) (April 1, 2021), 1, and Karl T. Kurtz, Gary Moncrief, Richard G. Niemi, and Lynda W. Powell, [Full-Time, Part-Time, and Real Time: Explaining State Legislators' Perceptions of Time on the Job](#), *State Politics Quarterly* (Fall 2006), 324.

² 564 U.S. 379, 388 (2011).

³ Compare *Borough*, at 388; [Eastern R.R. Presidents Conf. v. Noerr Motor Freight](#), 365 U.S. 127 (1961); and [In re Stolen](#), 193 Wis. 602, 631 (1927).

⁴ CRS, [Casework in a Congressional Office](#), (April 1 2021), 1.

⁵ 142 Wis. 2d 320, 348 (1910).