

# You and Your Rights — Assembly and Petition

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An Integrated Curriculum For The Washington Post Newspaper In Education Program

## YOU AND YOUR RIGHTS

# Some Assembly Required

When you buy a bicycle or a piece of furniture at a store like Ikea, you're used to seeing the instruction that there may be "Some Assembly Required." You know what that label means: When you get the box home, you'll have to put your new TV stand or bookcase together. The package you get may have all the pieces you need, but it's up to you to make them all work. That same instruction might have been stamped on a manual containing the instructions for operation of the United States, if such a manual existed.

There is, in fact, an instruction manual of sorts, created when our country was founded – the U.S. Constitution, that contains directions for making our nation function. And although it doesn't explicitly say "Some Assembly Required," that direction is implied. Since day one, we have continuously been striving to put the pieces together into the best product possible.

Now, the word "assembly" has two meanings: One meaning, the definition toy and furniture manufacturers intend, is the act of putting pieces together into a finished product. A second definition, and the one most important for this article, is a group of people gathered together for a common purpose. As you think about this concept during the rest of your lesson, consider how these different meanings interact with one another.

In addition to the more familiar rights such as freedom of speech and of the press, the First Amendment to our national constitution declares that the government "shall make no law ... abridging ... the right of the people peaceably to assemble." It may seem obvious to you and me that groups of people should be able to gather together. When our country was founded, however, the writers of the First Amendment had a real fear, based on treatment by the British ruling class, that without protection, the American



**The original Constitution of the United States is on display in the Rotunda for the Charters of Freedom in the National Archives.**

SCOTT ROTHSTEIN

government might one day forbid people from forming groups if it didn't like what they had to say or what they stood for.

Today, the freedom of assembly protects religious groups who want to gather together, labor workers who wish to form trade unions, protestors, and student groups. Think of the people gathered on the National Mall to hear Dr. King's "I Have a Dream" speech, the fans at your school's football game, the images from political rallies, and the collection of tents and people "occupying" cities

across the country. Think also of the many images from the past year of protest groups in Egypt, Syria, Tunisia, where the freedom to assemble has not been protected as it is here.

Citizens in a nation where government is based on popular consent need a way to express their views. The right to gather peacefully gives meaning to the other protected rights in the First Amendment. If people were not allowed to gather, what would be the use of free speech? Government cannot interfere with religious teaching but what if it could abolish the freedom to join together — you could practice your religion alone but not communally. What if factory workers facing intolerable conditions could not unite in a strike? Do you think one person, or even a few people, striking, would have any impact if they had no way jointly to express the reasons for their strike?

Our government structure is built on the principle of people joining their friends, neighbors, and co-workers to express ideas. We expect our elected representatives to join one another, to debate and discuss their individual opinions, informed by the desires of their constituents, and together to make the laws and regulations that give order to our society. Similarly, the freedom of assembly protects the right, and responsibility, of private citizens to join one another to discuss the problems of the day. ■

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# Petition: Two Case Studies

## Dirk De Jonge's Story

In 1934, in Portland, Oregon, a man named Dirk De Jonge was arrested after organizing a meeting of the Portland Communist Party in order to protest against police mistreatment of dockworkers who had gone on strike. Mr. De Jonge promoted the formation of a labor union and sold pamphlets about communism.

Even though the meeting had been peaceful, Mr. De Jonge was convicted by an Oregon court and was sentenced to seven years in prison for advocating a revolution. Three years later, though, his case reached the United States Supreme Court in Washington, D.C., and the Justices, in *De Jonge v. State of Oregon*, reversed the conviction. This meant they were required to set Mr. De Jonge free. The Supreme Court explained that the right of assembly is fundamental in our society and "peaceable assembly for lawful discussion cannot

**'THE VERY FOUNDATION'**  
**C**HIEF JUSTICE CHARLES EVANS HUGHES deserves the nation's gratitude for his opinions upholding the American rights of free expression and free assembly. It is good to find the U. S. Supreme Court's other members concurring unanimously in the most recent of those notable decisions—that reversing the conviction of Dirk De Jonge under the Oregon Criminal Syndicalism Law.  
*De Jonge, a Communist, spoke at an orderly public meeting called by the Communist*

*Pittsburgh Post-Gazette article at the time of the Supreme Court decision, January 6, 1937*

be made a crime."

The Court used very strong language to demonstrate how important it is to protect our First Amendment rights, noting that in times of great political upheaval, there is an even greater need to "preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein

lies the security of the Republic, the very foundation of constitutional government." What the Court was saying is that when government is concerned about political revolution and the disruption of our civic institutions, it's more important than ever for that government to safeguard the rights guaranteed by the Constitution: The people cannot not protect their rights by giving those rights away. ■

## Even People With Unattractive Views May Meet

The protections of the First Amendment extend, of course, to groups expressing unsavory opinions as well as to those with popular views. Tolerance for even distasteful opinions is a hallmark of the American tradition.

In 1978, a man named Frank Collin tested the patience of his community — and this idea. Mr. Collin was a neo-Nazi in the Chicago area. He and his group were anti-Semitic and anti-black, and worshipped Adolf Hitler. In the suburb of Skokie, Ill., where many survivors of the Holocaust had settled after World War II, the neo-Nazis announced plans to hold a rally in front of Village Hall.

The Skokie government responded by creating three new rules:

1. Groups wishing to hold assemblies would have to get permits and insurance for property damage;
2. No group would be allowed to hand out materials that would incite racial or religious hatred; and
3. There could be no assemblies by political groups where the members wore military-like uniforms.

The American Civil Liberties Union (the ACLU) hated what the group stood for, but also believed that all Americans had a right to gather and to express their opinions. The ACLU, therefore, helped Mr. Collin and his group in court.

The first courts to hear the case agreed with Skokie village officials and held that the neo-Nazis could not march without obeying the government limitations. On appeal though, this was overturned and a federal district judge declared that, "it was better to allow those who preach racial hate to expend their venom in rhetoric than to be panicked into embarking on a dangerous course of permitting the government to decide what its citizens must say and hear." The government could not limit the freedom of assembly without showing a real likelihood that violence would ensue.

Mr. Collin had won in court and was permitted to hold a hate-filled rally on the steps on Village Hall. In the end though, the freedom of assembly proved to be both the neo-Nazis' champion and

its undoing — the event in Skokie attracted about 200 Nazis but they were far outnumbered by very vocal opponents who drowned out the Nazi speeches. ■



Frank Collin

ACLU.PROCON.ORG

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## Our Rights Have Limits

Like all of our rights, the freedom of assembly is not absolute. It is limited in order to protect the rights of others and to ensure the safety of everyone in society. The major difficulty encountered with the right to assemble is in identifying where the government must stand back and where it must step in.

Limits may be imposed on the right when three conditions are met:

**1. Compelling Interest:** In legal jargon, we say that the government needs to have a “compelling reason” to interfere. This means that the government must have a very real and important reason for limiting the right – public safety, sanitation, and protection of property, are often cited as “compelling” interests.

**2. Content Neutrality:** The government interference must be “content neutral”: the government cannot choose which assemblies to allow based on the kinds of people that will be there, their beliefs, or the message they might put forward. It would be unconstitutional to allow Republicans to assemble but to ban Democrats.

**3. Least Restrictive Means:** Whatever limitation the government imposes must be the “least restrictive means” available. This means it must be the smallest interference possible to achieve its interests. If a group wishes to hold a rally at a public building, for example, and the police are concerned that too many people might show up and that the size of the crowd will create a fire hazard, the government may impose a limit on the number of people admitted to the building, but it cannot ban the whole event. This limitation protects public safety without interfering with the message the group hopes to promote.

## What does the Right to Assemble Mean for Today's Citizens?

In a society like ours, where government is “of the people, by the people, and for the people,” the ability of citizens to assemble is very important. To make our democracy work, we need to be free to gather with our neighbors, our co-workers and other individuals to express our views without fear. It is only through this free exchange of ideas that American society can continue to grow, change, and improve.

In short, to make our country all that it can be, some assembly is required.

### Your Turn

Can you think of ways the government might legitimately regulate the freedom of assembly? Answer the questions about the following situation.

A basketball arena can safely hold 30,000 people but, at a meeting of the National Rifle Association, local police allow only 20,000 people to attend?

1. What condition does this appear to violate?
2. What if you later find out that due to the technical needs of this rally, the likelihood of hard-soled shoes, and the tenderness of the basketball court’s floor, whenever non-sporting events are held in the arena, only 20,000 people are admitted? Does this change your thinking?

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*This lesson is written by Jason M. Whittle. Jason will graduate in May 2012 from American University Washington College of Law. During the 2010-2011 school year, he co-taught a course called Youth Justice in America at Capital City Public Charter School in Washington, D.C. Before coming to law school, Jason worked as a set designer, stage manager, and technical director in various theaters in Madison, Wisconsin, and in the art departments of films shot in the U.S. and in the U.K. Jason graduated from the University of Wisconsin - Madison in 2005, with a Bachelor of Arts degree in Theater and Drama.*

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Name \_\_\_\_\_ Date \_\_\_\_\_

## YOU AND YOUR RIGHTS

# The Freedom of Assembly and the Occupy Movement



BILL O'LEARY — THE WASHINGTON POST

**Protestors swarm the Supreme Court on January 17, 2012.**  
Earlier, dozens went into House buildings, waving banners  
and chanting, "We are the 99 percent!"

You may have heard about the Occupy movement, a protest group focused mainly on ending social, political, and economic inequality. The first Occupy protest, called Occupy Wall Street, started in New York City in September 2011. Since that time, similar protest groups have arisen in cities across the United States and around the world.

One of the tactics of the Occupy movement has been for large groups of people to assemble and to stay put for long periods of time in public and quasi-public (a legal term meaning a privately owned space that is generally accessible to anyone) spaces.

In D.C., protest groups have been occupying McPherson Square near the White House and Freedom Plaza in downtown Washington, which are both public parks, since around October. McPherson Square is under the jurisdiction of the National Park Service. These protestors have erected tents and have resisted requests to leave. The protestors believe the freedom of assembly gives them a right to stay put and to occupy these public spaces.

1. What do you think?

2. Using the considerations discussed in "Our Rights Have Limits" section, how might the protest activities of the Occupy D.C. movement be protected by the freedom of assembly?

3. From a different perspective, how might Occupy D.C.'s protest activities NOT fall under the protection of the right to peaceful assembly?

NOTE to students: In this question and the ones that follow, we provide some ideas to consider before answering the question. What compelling interests might the government have? Do you think it's very important for the government to keep its parks sanitary so that rats and other rodents don't move in? Can city workers provide sanitation services without making the protestors leave? What if the protestors promise to keep everything clean?

4. What if an Occupy protestor were to have a medical emergency?

CONSIDER: How will EMTs locate the right tent on Freedom Plaza? If the protestors were to organize their tent city into streets and label each tent, would that satisfy your concern? Is there a compelling interest in having proper addresses in case emergency medical personnel need to reach a person?

5. If government required the protestors to have a plan for handling basic needs, and they provide one, should they be permitted to stay?

CONSIDER: Without running water, how are these people bathing? Where are they going to the bathroom? What if occupants rent a portable toilet? Does the government have a compelling interest in ensuring that the smell doesn't offend neighbors?

6. If children are present in the tent city, does the government have a right to remove them and their parents or guardians?

CONSIDER: Is there a compelling interest in making sure those children are properly taken care of? Aren't there plenty of homeless children that the government doesn't seem to care about? Are there other ways of ensuring child safety?

As you can see from all these questions, the constitutionality of Occupy D.C.'s occupancy of the downtown parks is a very complex issue.

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## YOU AND YOUR RIGHTS

# The Continuing Importance of the Right to Petition

The right to petition is often overlooked, forgotten, and ignored. The language of the First Amendment is rather clear and unambiguous when it comes to this particular right and its protections are uncontroversial when compared to the freedoms of speech, press, and religion. But the right to petition was not always as bland as it seems now.



MARVIN JOSEPH — THE WASHINGTON POST

**Brendan Hearn attempts to coax drivers near the intersection of 15th and K streets to honk their horns in favor of Occupy K Street protesters gathered in McPherson Square.**

The First Amendment provides that, “Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.” It may help us to understand the right, if we define its parts: a “petition” is a request; “redress” means to correct or to remedy; and a “grievance” is a complaint. Put into more modern language, the First Amendment simply says that people have a right to complain and to request that the government fix some problem or right some wrong. Citizens have freedom, therefore, to make complaints to their elected officials, and to seek assistance from them, without fear of punishment.

To modern readers, this right may seem so unnecessary that it is surprising anyone took the time to write it down – of course we can complain! The fact that the right to petition is so uncontroversial now is a testament to how ingrained it has become in our society. For the Founding Fathers, though, the right to petition was something not to be taken for granted.

At the core of our democracy is the principle that the power of the government comes only from the permission of the governed. Without the ability to tell the government what we think, citizens would have very little ability to affect the course that government takes. This was, in fact, one of the primary reasons for the American Revolution – the king in England wasn’t listening to the concerns of the colonists here in America.

In the Declaration of Independence, after presenting a list of wrongs committed by the British king, the Founders laid out the frustration that eventually became our First Amendment right to petition. “We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.” The king’s refusal to pay attention to the complaints of the Americans ended up costing him the colonies.

When the Framers wrote the Bill of Rights, they tried to make sure that the government they were forming would never make the same mistakes the king had made. They sought to create a political process that would be responsive to the “grievances” of the people. ■

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## The Right to Petition Is Tested

Only 45 years after the adoption of the First Amendment, the fears of the Founding Fathers were realized when the young government started ignoring the petitions of its citizens.

In 1830, John Quincy Adams became the only president in American history to be elected to Congress after leaving the White House. He was the son of our second president, John Adams, had been ambassador to the Netherlands, a U.S. senator from Massachusetts, minister to Russia, and secretary of state, before being elected president. Despite his impressive resumé, it was in the House of Representatives that he left his most lasting legacy.

In 1834, anti-slavery organizers began a campaign to submit petitions to Congress seeking an end to slavery and the slave trade in Washington, D.C. John Quincy Adams presented each petition on the floor of the House of Representatives. Some days he would present only a few petitions but on others he would present many.

Representative Adams was really starting to annoy his southern colleagues with all his anti-slavery talk and, in 1836, pro-slavery congressmen succeeded in passing a resolution that all petitions relating to slavery would not be considered, they would be set aside with no discussion. This resolution was known as the "gag rule."

For the next eight years, the gag rule prevented anti-slavery activists from exercising their right to petition. Adams became the angry spokesperson for trying to undo the gag rule that, he argued, violated the constitutional rights of all Americans. The pro-slavery members of the House were so angry at Adams's continued efforts to introduce anti-slavery petitions, that one representative from Alabama yelled at the former president, "I promise to cut your throat from ear to ear."



LIBRARY OF CONGRESS.GOV

**When he was a member of the House of Representatives, John Quincy Adams, top, fought for the right of all to petition. The ivory cane, above, was a gift for his efforts to end the gag rule. It is now in the Smithsonian collection.**

Adams became the anti-slavery leader in the House of Representatives and all of the petitions were sent to his office. In 1838-39, more than two million signatures were sent from around the country, demanding an end to slavery in D.C. That number is especially impressive when you consider that the total population of the United States (including enslaved African Americans)

was only about 17 million. Despite the gag rule, Representative Adams introduced each and every petition, in an effort both to protect the First Amendment right to petition and finally to put an end to slavery.

On one occasion, Adams rose and asked the Speaker of the House if the rules would allow for him to introduce a petition signed by a group of slaves. Slaves were not considered citizens at that time and the southern congressmen were so outraged that they stood up to argue. Adams then mentioned that the petition was actually in favor of slavery.

The southerners realized they had been out-witted into considering the petition and had violated the gag rule themselves. The pro-slavery congressmen were enraged and moved to censure Adams, who used the opportunity to argue that the right to petition is a fundamental human right, given by God, and that government had no power to deny the right.

In 1844, after eight years, Adams succeeded in having the gag rule lifted and the right to petition was restored. He added the date to his cane inscribed with the words, "Right of Petition Triumphant."

He was nearly 80 years old by that time and had succeeded in protecting one of the foundations of our freedoms. His work to protect the right to petition also helped to bring about the civil war, the Emancipation Proclamation, and an eventual end to slavery in our country.

Today, visitors to the Capitol Building in Washington, D.C. can see the spot in National Statuary Hall where John Quincy Adams's desk once sat. It was also on that spot, in 1848, in the middle of a debate, that he fell to the floor after suffering a stroke. The former president died two days later in an office adjoining the Hall. After his long life of serving his country, it was his protection of the right to petition that had perhaps made him most proud. ■

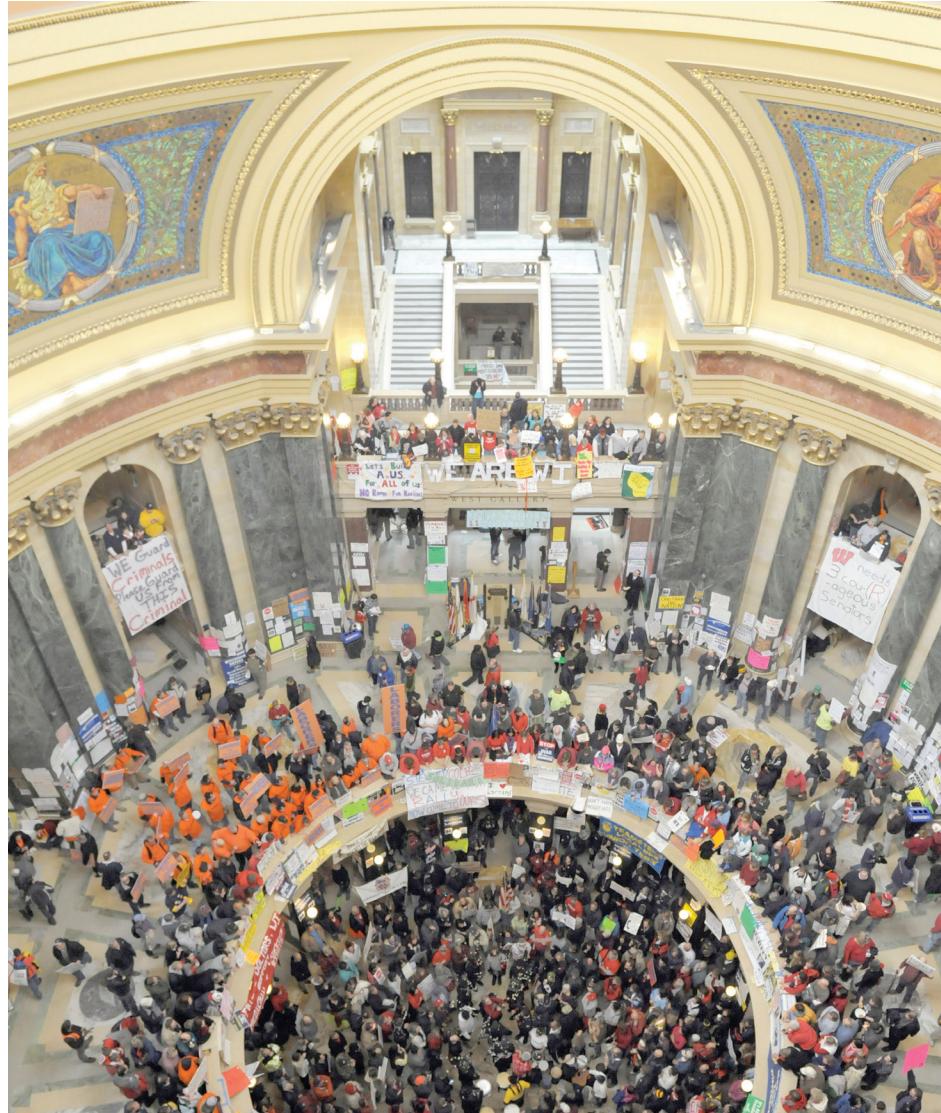
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## The Right to Petition Is Still Exercised

The right of petition, today, works in harmony with the other First Amendment freedoms to protect the ability of people to protest and to make their opinions heard. Consider the recent example of protest and petition in Wisconsin. How do the freedoms of speech, assembly, and petition work together to keep our democracy responsive to the will of the people?

On January 17, 2012, political activists in Wisconsin delivered a literal truckload of signatures to the doors of the Government Accountability Office in Madison. Over one million people had signed petitions seeking a recall election to replace the governor of that state. This was the most recent development in a protest campaign started in February 2011 when Republican legislators and the governor revealed plans to limit the ability of labor unions to organize. At that time, dramatic scenes began to unfold in and around the impressive marble and granite capitol building. Democratic senators, who had been in the political minority, fled the state in order to stop a vote from happening. They appeared later on the nightly news, from hotels and homes in Illinois.

Senate Republicans dispatched state police to the homes of the missing legislators and threatened to arrest them and bring them to the Senate chamber if they were found in Wisconsin. In the meantime, crowds began to gather on the massive square surrounding the capitol building. Over the course of the next few weeks, the crowd swelled to 40-50,000 people. Drummers banged, teachers sang, people gave speeches. Local firemen and policemen organized parades to show their support for the protesters. Celebrities showed up, national news cameras appeared. Inside the building, protestors taped signs to marble columns, they hoisted flags and unrolled sleeping bags. The building shook with the sound of thousands



MATT MCCLAIN — THE WASHINGTON POST

**Protesters filled the Wisconsin State Capitol in Madison on February 25, 2011, due to a budget debate that centers around raising health care premiums for government workers and eliminating union collective bargaining for them.**

of voices. Some people handcuffed themselves to railings so they could not be moved. Professors at the local university joined with their students and took over an office at the Capitol in order to better organize. High school students from all the local schools collectively, and calmly, walked out of school and marched through the streets and to the doors of the Capitol.

Facebook went nuts. People from around Wisconsin, around the country, and from around the world began calling restaurants in Madison, ordering food to

be delivered to the protestors camped out in the capitol building.

After a few weeks, the senators came back, the drummers went home, the students went back to class, and the pizza stopped being delivered. The fervor and excitement remained though, and almost a year later, as a result of those protests, organizers were able to deliver all those petitions. As a result, a recall election will likely take place by June 2012, and the citizens of Wisconsin will decide whether to remove their governor from his office after only one year. ■

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## Innate Human Freedoms

John Quincy Adams was one man fighting for the right of others to petition their government. The story of the Wisconsin protests is a dramatic example of people rising up, using the right Adams helped protect, to express their point of view and actually achieving something in the process. Too often, people feel powerless to affect the governance of their communities, but, as these examples show, American citizens retain power to make their opinions heard.

The U.S. constitutional liberties enshrined in the First Amendment help to protect the dynamic and responsive nature of our government. Other examples during 2011 show the power protest can sometimes exert in foreign countries. From Tunisia to Egypt, Bahrain to Oman, Syria to Yemen, citizens had the courage to protest to demand change. As John Quincy Adams, and many others, have argued, the freedoms of speech, assembly, and petition are so important that they are sometimes called innate human freedoms – they exist whether a government decides to give them or not.

In countries where these rights are not recognized, though, exercising them may be more dangerous than in the U.S.

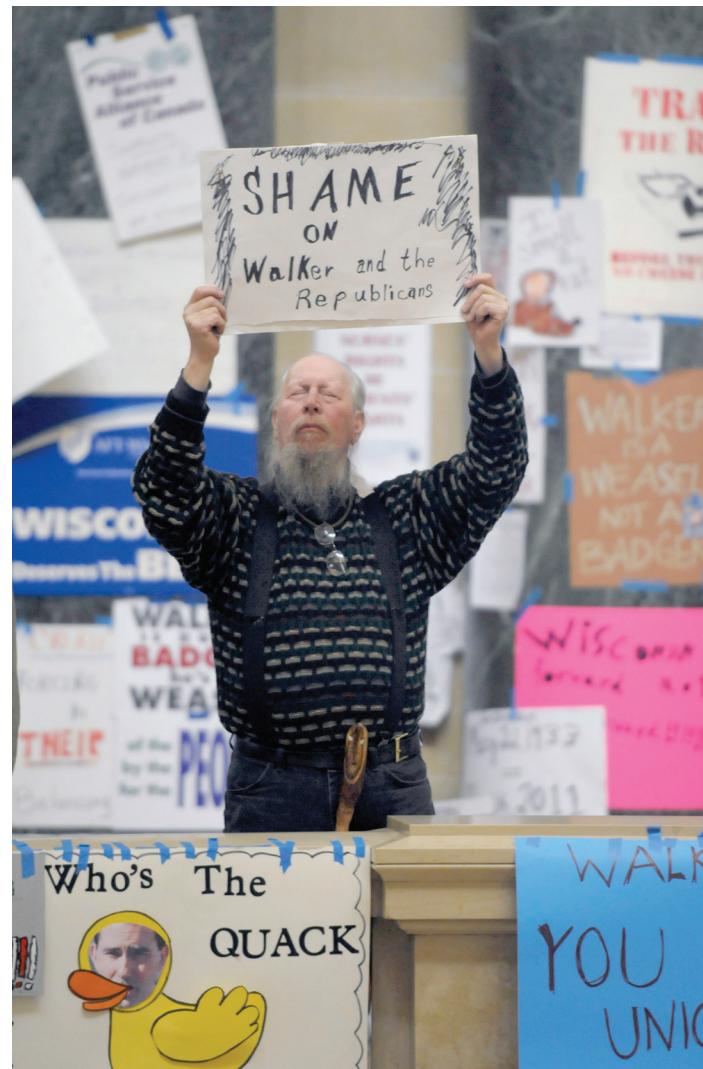
## YOUR TURN

Think about the ways people have made their voices heard in other countries and in examples throughout American history. Petitions do not have to be formal or written, they can be expressed in non-violent protest and in riot, by large assemblies or small groups. Research the ways protest, speech, petition, and assembly have been used recently by people trying to tell their governments that they did not agree with the actions their leaders were taking.

How have people petitioned for change in your community and in your school?

What things would you like to petition about?

How do you think you could make your voice heard? ■



MATT MCCLAIN — THE WASHINGTON POST

**Protester William Thibodeau at the Wisconsin State Capitol in Madison on the morning of February 27, 2011. More than 40,000 engaged in demonstrations, parades and sleep-ins.**

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