The Effects of Electronic Signatures on the Petitioning Process and Democracy

By Chase Haslam

The right to petition the government, which is guaranteed in the First Amendment to the Constitution, is a powerful tool by which people can keep a check on their government leaders. Recently in the state of Utah, activist organizations and citizens demanding a greater voice in politics have pushed for government to permit the use of electronic signatures on petitions. Acceptance of electronic signatures on government petitions would fundamentally transform the way that petitions are organized and executed; this, in turn, could change the nature of democracy in the United States by giving more direct political power to the people. This paper provides a background on the constitutionality of the right to petition, examines the recent debate between Utah politicians and activist groups over the use of electronic signatures in the petitioning process, and arrives at a conclusion on whether the acceptance of electronic signatures will be a benefit or hindrance to democracy. I propose that this new mechanism to gather and collect signatures for petitions, with cooperation from government leaders, could enhance the system of democracy by lending more direct power to the people and making it possible for citizens to make an educated decision to sign a petition rather than a quick one.

Technology is evolving rapidly, and new forms of communication are transforming ways people interact. Electronic messaging, in many forms, is replacing letters and phone calls because of the convenience and promptness that these newer media offer. The ways citizens and their governments relate to each other are also being transformed by these technological changes. Today, instead of writing or even calling a government representative, an individual may simply send a quick e-mail. Likewise, citizens wishing to gather signatures for an initiative petition are choosing the Internet with electronic signatures as a much less arduous and cumbersome way to spread their message and receive public support.

The right to petition the government, which is guaranteed in the First Amendment to the Constitution, is a powerful tool by which people can keep a check on their government leaders. Recently in the state of Utah, activist organizations and citizens demanding a greater voice in politics have pushed for government to permit the use of electronic signatures on petitions. Acceptance of electronic signatures on government petitions would fundamentally transform the way that petitions are organized and executed; this, in turn, could change the nature of democracy in the United States by giving more direct political power to the people.

The design of this paper is first, to provide a background on the constitutionality of the right to petition; second, to examine the recent debate between Utah politicians and activist groups over the use of electronic signatures in the petitioning process; and third, to arrive at a conclusion on whether the acceptance of electronic signatures will be a benefit or hindrance to democracy. I propose that this new mechanism to gather and collect signatures for petitions, with cooperation from government leaders, could enhance the system of democracy by lending more direct power to the people and making it possible for citizens to make an educated decision to sign a petition rather than a quick one.

Democracy, Petitions, and Majority Rule

The First Amendment to the Constitution prevents the government from establishing religion or abridging the free exercise of religion, speech, press, assembly, and petitioning the government. It states:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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. (Constitution of the United States, 1787)

In giving the right to petition the government, the First Amendment provides citizens with a way to speak boldly to their representatives when grievances appear. It allows for the people to engage in an open direct dialogue with those who govern without fear of retribution or punishment. Indeed, petitioning is a mechanism by which citizens can “focus government attention on unresolved ills; provide information to elected leaders about unpopular policies…and vent popular frustrations without endangering the public order” (Newton & Collins, 2010). Clearly, the framers of the United States Constitution valued the use of petitions. The majority of these led the nation to its independence after the English crown rejected the Olive Branch Petition in 1775, which they sponsored and signed.

While the right to petition government remains unambiguously in the Constitution, many of the founders were reluctant to place too much power directly in the hands of the people. Without representatives acting as intermediaries, the founders were afraid of a weak government in which the people’s many opinions would limit their ability to govern. James Madison said the result of giving common citizens too much political power is that, “the public good is disregarded…measures are too often decided not according to the rules of justice…but by the superior force of an interested and overbearing majority” (Madison, 1787). The framers of the Constitution intentionally limited the power of the people by means of creating a representative democracy with numerous checks and balances.

Robert Dahl, a political philosopher argues that in order “to achieve their goal of preserving a set of inalienable rights superior to the majority principle…the framers deliberately created a framework of government that was carefully designed to impede and even prevent the operation of majority rule” (Dahl, 1977). Evidence of this can be seen in the way that our leaders were initially elected before passing the Seventeenth Amendment. In the book, America’s Democratic Republic, the authors state:

Of the three branches of government, only one part of them is selected by the direct vote of the people: the House of Representatives. Moreover, representatives, senators, and presidents are elected for different terms, from different constituencies, and (often) at different times. These noncongruencies in elections were intended to ensure that popular majorities, at least in the short run, would be unlikely to overwhelm those who govern. (Greenberg & Page, 2007)

The framers of the Constitution intended to insulate government representatives from the constantly changing opinions of an “overbearing majority.” The United States government is not, in fact, a pure democracy because there is no direct rule by the people; rather, representatives are chosen to govern on behalf of the public, making political decisions regarding their constituencies as well as making decisions for the good of the entire commonwealth.

The constitutionally-provided right to use petitions is an effective way to allow for direct political participation and interest by the people while maintaining the priority of representative government. While the First Amendment protects the right of citizens to petition the government without redress, it does not indicate how the government must respond. In fact, it does not require that the government take any action. This ambiguity allows for states to establish their own laws and policies concerning the matter.

In each state, laws regarding petitions have already been established. Petitions can be used for a variety of purposes in states. A petition might be used to place a law before the state legislature, to put an individual’s name on a ballot, or to require a vote by the electorate on a particular issue. Some states stipulate a percentage of the population for a petition to be valid while other states indicate a total number of signatures required.

In the State of Utah, most of these laws can be found in section 201 of Title 20A Chapter 7 of the Utah Code. The Utah law recognizes two categories for petitions: petitions for an initiative or referendum to be voted on by the people, and petitions for candidates to be placed on the ballot. To be accepted, initiative petitions must have valid signatures of 10% of the registered voters in the state, and this quota must be reached in at least 26 of the 29 Utah Senate Districts (Utah Code/Constitution, 2010). Petitions for a candidate unaffiliated with either the Democratic or Republican Party to be placed on the election ballot must have at least 1,000 valid signatures from registered voters in the state.

Typically, in Utah the actual process of gathering signatures and circulating petitions is not controversial. The real political controversies are found in the issues that the petitioners are addressing. Nevertheless, a recent debate over the implementation of electronic signatures between the Lieutenant (Lt.)Governor of Utah and Farley Anderson, an unaffiliated candidate seeking ballot access for the election in November 2010, disrupted the petitioning process in the state raising new concerns over the validity of such a practice. Currently, no other state in the Union allows for the use of electronic signatures for petitions; this gives Utah a unique opportunity to lead the nation on this issue, as it will inevitably be a matter that every state will address.

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The Farley Anderson Case: Electronic Signatures
In April of 2010, the Lt. Governor of Utah, Greg Bell, rejected a petition submitted by Farley Anderson in order for Mr. Anderson to be placed on the November 2010 election ballot as an unaffiliated candidate. To fulfill the requirement of 1,000 valid-voter signatures established by state law, Anderson “submitted 958 handwritten signatures, along with 180 e-signatures that four county clerks had certified, to Lt. Gov. Greg Bell” (McKitrick, 2010a). However, the Lt. Governor of Utah rejected the electronic signatures stating: “Utah’s petition process is solely paper-based and has no procedure in place to handle online signatures” (McKitrick, 2010b). Following the legal opinion from the office of the Attorney General of Utah, the e-signatures were not accepted because:

The statutory provisions specifying the processes and procedures for the circulation of initiative petition/packets and the gathering of signatures do not contemplate or allow for the use of electronic signatures…electronic signatures that are gathered in connection with the pending initiatives do not comply with current statutory provisions and should not be allowed or counted toward satisfying the signature requirements. (Shurtleff, 2010)

In other words, because the current law does not give specific requirements and guidelines regarding the use and validation of electronic signatures, accepting such is problematic and not currently permitted by the law. While the government does have computer software systems set up to allow for voter registration and other services to be done online, currently there is no system in place that can properly validate an electronic signature for petitions. As a result, Anderson came up short-handed on the requirement and was not to be placed on the ballot as a gubernatorial candidate. Dissatisfied by this interpretation of the law, Farley Anderson fought back and the issue was rushed to the Utah Supreme Court in order to make a decision on what the law actually intended.

Taking the issue to court gave Mr. Anderson an opportunity to be in the spotlight of the media and to receive a generous amount of publicity that most unaffiliated candidates would otherwise not be given. A large opinion piece from Mr. Anderson was published in The Salt Lake Tribune in which the candidate openly criticized the Governor and the Lt. Governor of Utah for their apparent “misconduct” regarding e-signatures (Anderson, 2010a). Local news networks covered his story and the Deseret News even dubbed him as the “e-candidate” when referring to Anderson and his fight in court (Smith, 2010). On the candidate’s website, www.indepencemovement.org, Anderson declares, “Someone was needed to be the test legal case, I was willing to say yes for this cause” (Anderson, 2010b).

The American Civil Liberties Union (ACLU) of Utah decided to back Mr. Anderson in the case at the Supreme Court. Attorney Brett Manning, who was chosen to represent Anderson from the ACLU of Utah, stated in a news conference, “access to the ballot and governmental process should be free and equal and available to all, not those who are powerful, not those who are affiliated with political parties” (Falk, 2010). The concerns that Anderson’s attorney addressed in the news conference were not focused on the actual process of validating an electronic signature; they dealt with larger implications that would result by rejecting or accepting such in the petitioning process.

Unlike the press conference, the arguments presented to and decision made by the Utah Supreme Court did not focus on the implications of validating electronic signatures, rather whether it is legal under the current law for them to be accepted. The decision made by the Supreme Court was unanimous and ruled in favor of Anderson. The Justices made the determination that in a circumstance in which an unaffiliated candidate petitions the government for access to the ballot, electronic signatures should be accepted. The ruling states: “We hold that electronic signatures may satisfy the Election Code’s requirements under section 20A-9-502 regarding unaffiliated candidates wishing to run for statewide office…we conclude that the Lt. Governor exceeded the bounds of his discretion when he excised the electronic signatures attached to Mr. Anderson’s certificate of nomination” (Anderson v. Lt. Governor Greg Bell, 2010). As a result, the e-signatures that were collected by the candidate were to be validated by the office to the Lt. Governor; Farley Anderson was placed on the November 2010 election ballot as an unaffiliated gubernatorial candidate.

The possible precedent set by this ruling, which favors the implementation of electronic signatures on petitions, is a concern for State Senator Howard Stephenson and many other politicians who believe that allowing electronic signatures “would simply be too easy for initiative advocates to gather needed signatures to place all sorts of changes to state law on the ballot” (Gehrke, 2010a). They argue that eliminating this barrier for Utahns to circulate and sign petitions will create an increasing and often unnecessary burden on the government.

Advocating for Utah’s tight restrictions on referenda, Senator Stephenson warned, “we don’t want to Californicate Utah” (Gehrke, 2010a). California is well known for its liberal requirements for petitions regarding an initiative or referendum to be placed on a ballot for public vote. A majority of Utah lawmakers view this negatively as it has the potential to disrupt current proposed legislation and eliminate those that have already passed.

As recently as the summer of 2010, Robert Gehrke of the Salt Lake Tribune noted that, “In Utah, initiative supporters must gather signatures from registered voters totaling 10% of those who cast votes in the previous gubernatorial election. The level is half that in California” (Gehrke, 2010a). Despite already having a threshold requirement twice that of California, the legislature in Utah enacted new legislation that toughens the requirements for initiative and referendum petitions to gain access to the ballot. Senator Stephenson said he “envisioned raising Utah’s level to 20% or more if
online signatures are ordered to be allowed because of the ease of getting people to sign up online” (Gehrke, 2010a).

In the 2011 legislative session, Senate Bill 165 (SB 165) passed both houses of the Utah legislature. The bill not only increases the standard requirement on petitions for initiatives and referenda, but also prevents the certification of electronic signatures for petitions. The approved bill bans the “use of electronic signatures to qualify initiatives, referenda and candidates for the ballot” (Davidson, 2011).

Immediately following the bill’s approval, the ACLU of Utah filed a lawsuit on behalf of petition circulators in the Utah Supreme Court in an effort to overturn SB 165. Arguing that the newly passed legislation contradicts the Supreme Court’s ruling in Anderson v. Bell, the ACLU brief states:

As this Utah Supreme Court made clear less than a year ago in Anderson v. Bell, no valid reason exists to distinguish between e-signatures and handwritten signatures, so long as the intent of the signer is clear. Lt. Gov. Bell’s refusal to count any e-signatures violates Utah voters’ constitutional rights to use the initiative and referendum power, which is expressly reserved for the people in Article VI, Section 1 of the Utah Constitution. (ACLU of Utah, 2011)

Stiffening the requirements for petitions to be successful and prohibiting the use of modern technology creates more significant barriers in Utah to an already challenging process of gathering signatures. Ironically, while Utah politicians view electronic signatures as a threat to the current political system, it is they who may be threatening the democratic order.

As Farley Anderson put it: “If the government has the right to use electronic means to conduct its business, of course the people already have this right, even though, like most rights, someone had to fight for it” (Anderson, 2010a). Indeed, Anderson was more than willing to lead the battle. Whether the electronic signature standoff was fueled more by his self-interest or a general interest in the well being of democracy is arguable; but this debate is moot. The likelihood of an unaffiliated gubernatorial candidate to be elected in to office is exceedingly slim. The real victory in this fight was not that Anderson was placed on the ballot, but that the means by which he was able to arrive there were validated by the Utah Supreme Court.

UTAHNS FOR ETHICAL GOVERNMENT: BEHIND SIGNATURES

Shortly after the Supreme Court ruled in favor of unaffiliated candidate Farley Anderson and electronic signatures, Lt. Governor Greg Bell issued an interim rule in order to provide some type of framework for government to act under the new interpretation of the law given by the judicial branch. This authority to make the interim rule is a power delegated by the Governor of Utah to the Lt. Governor in accordance with Article VII, Section 14 of the Utah State Constitution (Utah Constitution, 2010).

Under the “News Releases” section on the website of the Lt. Governor, it explains the “intent of the rule is to allow the collection of electronic signatures by petitioners, while maintaining statutory provisions that ensure accountability and integrity in the initiative and referendum process” (Office to the Lieutenant Governor of Utah, 2010). The new order only permits the acceptance of electronic signatures on petitions for an initiative or referenda under the circumstance that “a signature gatherer can physically witness an individual typing his or her name into the computer” (Gehrke, 2010c).

Essentially, this makes the actual process of collecting electronic signatures identical to the traditional paper model where the signature gatherer must witness the person sign the petition for it to be considered valid.

Activist organizations, like Utahns for Ethical Government (UEG), a group seeking ethics reform on Utah’s Capitol Hill, criticize the actions taken by Lt. Governor Bell on the creation of this new rule. While the Lt. Governor maintains that he has taken these measures in order to “ensure accountability and integrity,” the UEG disagrees and seeks to attack his political integrity. In regards to the new interim rule established, Utahns for Ethical Government claim: “The latest ‘rules’ devised by the Utah Lt. Governor’s office to allow—on an interim basis—the use of electronic signatures for petitions to qualify a referendum or initiative for the Utah ballot are more cynical than clumsy” (Utahns for Ethical Government, 2010, July 18). The group has been circulating an initiative petition around the state that “would establish an Independent Ethics Commission and a strict code of ethical conduct for the Utah Legislature” (Utahns for Ethical Government, 2010). The provisions included in the initiative seek to prohibit the Utah Legislature from doing the following: spending campaign funds on non-campaign personal expenses; contributing to one another’s campaigns from their own campaign funds; accepting gifts from paid lobbyists; and accepting donations to their campaigns from corporations, non-profits, partnerships, and unions (Utahns for Ethical Government, 2010).

Utahns for Ethical Government, like Farley Anderson, also collected signatures electronically in an effort to gather the 95,000 signatures of registered voters before April 15, 2010, for the initiative to be placed on the November ballot. While the Supreme Court was hearing the case Anderson v. Lt. Governor Greg Bell, the UEG filed a brief to the Utah Supreme Court in which they called the Lt. Governor an “outlaw” for not validating the 10,000 plus electronic signatures valid on their initiative petition. In the brief they criticize the Lt. Governor Greg Bell saying: “In short, rather than obeying the law of our state, the Lieutenant Governor has become an outlaw, attempting officiously, arbitrarily, and, as
we shall see, unconstitutionally to overthrow a longstanding recognition by two of the three branches of our state government that electronic signatures are legal in every way" (McKittrick, 2010b). While the Utah Supreme Court took into consideration the brief from UEG before releasing their opinion on the case Anderson v. Lt. Governor Greg Bell, it was ultimately left out of the ruling.

Utahns for Ethical Government continue to demand that their signatures be counted, despite reports that indicate the group “fell about 20,000 signatures short of the 95,000 needed” (Associated Press, 2010). Despite their shortcomings, backers of the initiative petition have declared they “will go to court to try to force the state to count 10,000 electronic signatures they have collected to put their measure on the ballot” (Gehrke, 2010b). However, even if the 10,000 electronic signatures collected were included in the final total, they would still be another 10,000 signatures short of meeting the requirement for ballot access.

Despite failing to reach a vote by the people, further evidence on the government ethics issue in Utah suggests other types of systemic flaws. A survey conducted by Dan Jones & Associates in January 2010 found: 80% of Utahns want to ban all gifts from lobbyists to legislators; 77% want campaign contribution limits; 77% want an independent ethics commission; and 71% want to prohibit lawmakers from spending their campaign funds on themselves. (Bernick, 2010)

**CONCLUSION**

Clearly, ethics reform in the Utah State Legislature is an issue that the people of Utah want addressed—these high percentages indicate an overwhelming support by the people for change. The Legislature has taken small steps to increase transparency, with the goal that government become more “open, inclusive, responsive and accountable for its actions” (Raymond, 2009). In addition to the state’s transparency initiatives, Utah consistently receives national awards of recognition for the government’s electronic services (State of Utah, 2011).

However, despite these advances, many Utah politicians see the implementation of electronic signatures as an opportunity to raise the standard for petitioners higher. This could insulate the government further from the demands of their constituencies. The legislation passed in 2011 creates more constraints for petition circulators by not only banning electronic signatures, but also raising the minimum number of signatures required. Increasing the standards on statewide petitions lessens the chance for an initiative or referendum to be voted on by the people, and it undermines the people’s right to petition the government without redress, a right protected by the First Amendment to the Constitution. In short, these stricter standards discourages public participation in government.

Many government officials are, understandably, hesitant over the acceptance of electronic signatures on the basis that there is currently no process set up by law that allows for their proper verification. Without a computer software system in place that can ensure accountability and transparency, it is easy to see why one could be tentative and cautious about implementing a new process. Nevertheless, signing a petition online has many advantages besides simply making the process less strenuous for signature gatherers. An opinion piece in The Salt Lake Tribune reads, “Unlike when a signature-gatherer pushes a clipboard in a voter’s face, an online petition allows a person to take time to read the whole proposal and decide whether to sign it” (The Salt Lake Tribune, 2010, May 28). The ability for a petition-signer to make an educated decision on an issue rather than a quick one is important and could be a great benefit to democracy. The decision to sign a petition would be made independently, outside the realm of peer pressure and other popular influences.

Moreover, if the Utah Supreme Court recognizes the validity of the ACLU’s case, electronic signatures would increase the number of Utahns who are able to participate in the political process. By mandating that signatures be collected only by pen and paper, “the legislature has effectively ruled that registered Utah voters not present in the state during the signature gathering period—such as our military servicemen and women, students studying out of state, missionaries, and others—have no right to exercise their constitutional right to support initiatives and referenda. This disenfranchisement of thousands of Utah voters is unfair, unnecessary, and unconstitutional” (ACLU of Utah, 2011).

**REFERENCES**


Anderson v. Lt. Governor Greg Bell. Case No 20100237. Supreme Court of the State of Utah. Filed June 22, 2010: Pg 14


Utah Constitution (2010). Article VII. Section 14. 1-3
