

# **The Story of the 1975 Law Requiring The New Hampshire Presidential Primary to be First in the Nation**

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**By James R. Splaine of Portsmouth**

It was on Tuesday, March 9, 1920, that we held our very first "First-in-the-Nation" Presidential Primary. It was a snowy day when voters throughout the state in small towns and larger cities traveled to the polls to give voice as to whom should lead our nation. That lead-off status has remained ever since.

For the next several decades, our state held the first primary of every presidential election cycle unchallenged, virtually by default. No other state, including the national parties, seemed to care much about taking the torch away from New Hampshire.

However, the New Hampshire primary of 1968 saw a battle between loyalists of President Lyndon Johnson, and a band of anti-Vietnam War activists supporting a then-unknown U.S. Senator from Minnesota, Eugene McCarthy. It became a bitter year for both major political parties, but was especially divisive for Democrats.

The New Hampshire primary of 1972 was even more divisive. With Vietnam continuing to rage, political tensions were at a high point nationally, and Democrats in our state saw a repeat of inside fighting between activists and party leaders. Democrats found themselves greatly divided between Sen. Edmund Muskie from neighboring Maine, and Sen. George McGovern of South Dakota.

The results on Primary Day didn't bring unity to Democrats, as Muskie received 46 percent of the vote, short of the 50 percent he had hoped for as a neighboring senator, to McGovern's 37 percent.

The next few months didn't do much to unify New Hampshire Democrats. Nationally, the Vietnam War was dividing the nation, and Democrats remained discouraged. In November, our state Democratic candidates did poorly.

## **Bipartisan Political Fatigue**

Watergate, with its immense national political implications, is mentioned here only as it applies to the energy and enthusiasm, or lack thereof, of some New Hampshire Republican leaders when it came to whether or not to maintain our First-in-the-Nation status for the next primary, in 1976.

This included months of Congressional hearings, a lengthy impeachment process, and the eventual resignation of President Nixon on August 9, 1974. As 1975 came around, a clear fatigue had set in among both party leaders, activists, and rank-and-file voters. Watergate was embarrassing and exhausting for Republicans. The question among many Democrats and Republicans was: do we really want to do this to ourselves again, just to have the first primary?

## **Building the Mechanism**

The answer emerged in early 1975, when a Republican Governor and several legislators of both parties, and myself, a Democrat, figured out how to create a mechanism that would be flexible enough to protect our First-in-the-Nation primary for years to come.

A case can be made that 1975 was the decisive time for New Hampshire to act, because if we had not been successful at maintaining our status for the 1976 primaries, we may have forever lost it. This was the time we had to get it done. And get it right. In this instance, it took a healthy blend of bi-partisanship and putting egos aside to do it.

Leading up to the 1976 presidential election, there was a lot of discussion regionally among Democrats and Republicans to hold a "New England primary" in early 1976. Many Democrats and Republicans in our state, burned-out because of infighting and the results of Watergate, liked that idea since it would take some of the ferocity from our internal politics.

In December I drafted a simple bill that would move our primary date ahead one week from when state law had it scheduled – which was from the "first Tuesday in March" to the "last Tuesday in February."

The legislation was introduced on January 7<sup>th</sup> with the title: "*House Bill 73, relative to shifting the date of the presidential primary to the last Tuesday in February (Splaine of Rockingham Dist. 19 – to Statutory Revision).*" Only one sponsor.

While a short public hearing was held in early February with me being the only speaker, the committee did not discuss it, given the pressures of other more pressing bills, so on February 13<sup>th</sup> the committee quietly requested a six day extension prior to reporting its recommendation to the House floor, which was granted.

## **A Governor Gets Involved**

During January and February I had discussed the bill with Governor Meldrim Thomson, then serving his second term. His support would be crucial.

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Clearly to some, Thomson had a personal interest in keeping New Hampshire first, but it was also clear from our discussions that Thomson had a sincere interest in preserving New Hampshire's unique contribution to American democracy. He had run for governor on the slogan, "People above Politics," and the state's First-in-the-Nation Primary was a way to continue pursuit of that ideal.

But how could New Hampshire stand up to other states that wanted to be first, either now or in the future, and at the same time battle both national political parties that would prefer our small state to move aside?

And how could we pass a bill on a subject that Democratic and Republican legislators here at home, had for the most part, lost interest in? Why risk another controversial primary, following the divisions of 1968 and 1972, and the 1974 political ruins of Watergate?

Governor Thomson soon became not only a good ally and friend, but he showed a political creativity and ingenuity that has protected the primary these many years, which I have admired to this day.

In mid-February, it became clear that simply changing the date of our primary to a week earlier wouldn't protect us. Another state could do the same, and if our law stated a specific date, we would be stuck with that date, or else it would generate a "jumping jack" and hopscotch arrangement of primary dates between states that wouldn't protect us for long.

I came up with the idea that we create a committee to schedule our primary, based on what other states do, consisting of the governor, house speaker, senate president, state treasurer, secretary of state, and either the Democratic and Republican state chairs or two or three other members appointed by the legislature.

### **Governor Thomson's Two Words of Advice**

A pivotal moment was about to happen. I visited Governor Thomson in his office in early February to further discuss the legislation. He enjoyed national politics, and saw the influence that our primary enjoyed with presidential candidates visiting New Hampshire long before the election got underway.

All Governors furnish their offices reflecting their personalities. Thomson favored a couch, two or three chairs, and his leather swivel chair behind a particularly large desk, with a couple of muskets displayed on the wall behind.

By then I had been a frequent visitor to his office. I was about to sit down but he remained standing, and it was clear he was busy and a bit irritated by a meeting he had just finished, so we remained standing while I quickly told him my idea.

He did a slow full turn, something he would often do as he was thinking, and looked at me with his classic grin and said, "That's sure a way to get politics into it."

The Governor then sat on the end of the couch, and I sat on the other end. We went back and forth for a minute or so as I explained the logic. He listened, then said, "Pick one. Don't make it a committee. Pick one."

That was it. Two words of advice: "Pick one." No elaboration, no explanation. He didn't need to. His message was clear, and I could fill in the blanks in my head.

Pick one, or it would become a decision by committee, or to use a term heard many times about making decisions by committee: "paralysis by analysis." Involve politicians in the mix, you get a political decision.

And he was right: as the years since have proved, this advice to keep politics out of the New Hampshire primary schedule has been crucial. That Thomson and I could communicate across party lines to get agreement, shows the value of breaking down party labels.

The committee was going to make its report on the house floor. Word was they would soon recommend killing the bill outright. This would disarm us entirely, with no legislation ready to defend the next primary.

I talked with several committee members to see if they would support placing HB 73 on the table, rather than killing it outright. There wasn't agreement to do that, but that morning I spoke again with Governor Thomson and he discussed it with some legislative leaders, opening the way for me to speak in favor of delaying a vote.

On Tuesday, February 27th, the committee reported HB 73 out with a recommendation of "inexpedient to legislate," which meant to kill the bill, with this short sentence: *"Keeping our status of 'first primary in the nation' probably good, but not necessarily in this manner."*

As sponsor, I spoke on the house floor to urge the bill be tabled so we could prepare legislation to respond to a regional primary challenge, if necessary.

Joining me was Hanover Rep. Michael Cornelius, a Democrat and Dartmouth College student. He had a lot of respect among Democrats. Concord Rep. Susan McLane, a Republican leader, then made a quick motion to table the bill, and without debate HB 73 was safe for the time being.

As March turned into April, it was clear there were serious efforts by other New England states to hold a regional primary.

Sen. Robert Monier, a Goffstown Republican, was a good friend of Thomson, and it would be up to him to carry whatever legislation the house approved through the senate. The Governor asked him to help us.

With deadlines coming soon for final action, the three of us would spend a few minutes in the hallway between the House and Senate chambers, when no one else was around, chatting about the bill and strategy. We went through the list of people I had originally suggested as a committee.

It was clear when we subtracted the "politicians" from the list, including the governor, state party chairs, legislative members, house speaker and senate president, it came down to either the state treasurer or secretary of state, both non-partisan constitutional officers. I believed that since the Secretary of State administers election laws and ran elections, the choice of Secretary of State was clear. Both Governor Thomson and Senator Monier agreed.

To his credit, Governor Thomson pointedly believed if one person were solely designated to set the primary date, it should not be the governor, the most powerful and partisan of state officials. He believed governors, by the nature of the office, would too easily be manipulated by the national political parties, and be tempted to favor their own presidential choices, perhaps even to their own personal benefit, and act accordingly.

Other New England states encroaching on our primary date were the immediate problem, so we decided to focus on that challenge rather than overreach. So we advocated an amendment to HB 73, changing the title of the bill to *"relative to shifting the date of the presidential primary as circumstances may dictate,"* with the effective change being that the *"primary election shall be held in connection with the regular March [Town] meeting or if held on any other day, at a special election called by the secretary of state for that purpose..."*

The amendment created a flexible mechanism so the Secretary of State, alone and with no other authority needed, could schedule the New Hampshire primary ahead of any other New England state, without regard to political or any other influence.

On May first, House Republican Leader Marshall French moved to remove HB 73 from the table. Then he and House Democratic Leader Chris Spirou jointly made the motion to change the committee report to "ought to pass." Each explained the amendment. After brief discussion, the amended bill was approved on a voice vote. House action on HB 73 was completed.

### **The Senate Seals the Primary**

HB 73 was sent to the Senate Executive Departments, Municipal & County Governments Committee. Senator Monier chaired the committee.

A public hearing was set for May 27th at 9:15 a.m. The plan was for quick approval. I was the only speaker, with just three Senate committee members in attendance. The minutes of the hearing report when I introduced the bill to the committee is as follows:

*"The bill you have before you was first introduced last December after I learned that a number of other states were trying to take the first-in-the-nation presidential primary away from New Hampshire. There was an amendment tacked onto the bill which I concur with. [It] guarantees that even if [there is a] concerted effort to get a regional primary [we] would still guarantee that ours will be first."*

The hearing was over in about ten minutes. The committee approved passage, and it was scheduled for Senate action later that day. On the senate floor, Senator Bob Preston of Hampton made the motion to pass HB 73. As the Senate Journal of that date details, he said:

*"As you know, other New England states are contemplating taking over this position of having the first-in-the-nation primary. Massachusetts is currently considering similar legislation, and this would in effect protect that position."*

After some debate, Sen. Monier stated:

*"The committee boiled it down to two basic questions. The first is, does New Hampshire want to have the first Presidential primary? There are some here that say no; there are most of us who said yes. Those that say no should say that and stand on that basis, but not try to nitpick the dealing. The next point is that you then provide some means by which the Legislature or as an amendment was offered [to] the committee, the Governor and Council, but that was not printed in proper time. Rep. Splaine twice indicated it was not necessary, you set it so the primary would come prior to any other state that might have it."*

With debate over, the Senate approved the bill, and it was soon on its way to Governor Thomson for his signature.

Other parts of the current statute, as of this writing, were added in subsequent legislation. Those include removing the reference to *"New England,"* as well as providing a window for our primary *"...which is 7 days or more immediately preceding the date on which any other state shall hold a similar election..."* and a provision that the primary election could be scheduled *"...in the year previous,"* which has deterred states from trying to pre-date New Hampshire's primary by going into the year before a presidential election.

With the final approval of House Bill 73, the 1975 Legislative Session has allowed the Secretary of State to successfully keep our primary status first-in-the-nation. Since we pay for our primary, and our voters take their job to participate seriously, we have kept this important special feature of American democracy.

In the Granite State our presidential primary not only has stood the test of time, it is pure American democracy at its best.

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*James R. Splaine is a Democrat long active in civic affairs. He served in the state senate for three two-year terms, beginning in 1979, and twelve non-consecutive terms in the House of Representatives, a total of 30 years as a legislator. He has been a member of the Portsmouth School Board, Police Commission, and is a nine term member of the Portsmouth City Council, six of those terms serving as Deputy Mayor, a position he held at the time of this writing. A version of this article appeared in the 2021 edition of the NH Manual For the General Court, No. 67 published by the New Hampshire Secretary of State. Also known as "The Red Book."*