

The original documents are located in Box 22, folder “New Hampshire Senate Race” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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*Judge
Schoener*

Q FOR A PERIOD OF 46 DAYS THE SENATE COMMITTEE ON RULES AND ADMINISTRATION HAS DEBATED IN EXCESS OF 200 HOURS THE UNRESOLVED SENATE ELECTION IN NEW HAMPSHIRE. AT THIS CONJECTURE, WHAT DO YOU THINK THE SENATE OUGHT TO DO?

A THE PEOPLE OF NEW HAMPSHIRE ARE ENTITLED TO TWO SENATORS. THE 17th AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES THAT "THE SENATE OF THE UNITED STATES SHALL BE COMPOSED OF TWO SENATORS FROM EACH STATE, ELECTED BY THE PEOPLE THEREOF..."

THE REMEDY IS AVAILABLE AND IT IS OBVIOUS. SINCE FOR 46 DAYS THE SENATE COMMITTEE ON RULES AND ADMINISTRATION HAS BEEN UNABLE TO RESOLVE THE ISSUE, IT IS DOUBTFUL THAT THE SENATE AS A WHOLE COULD DO SO ON A NON-PARTISAN BASIS.


THIS RACE SHOULD BE TURNED BACK TO THE PEOPLE OF THE STATE OF NEW HAMPSHIRE.



JAN 3 1974

THE WHITE HOUSE
WASHINGTON

January 3, 1975

MEMORANDUM FOR: COUNSELLOR JOHN O. MARSH 
FROM: ROBERT K WOLTHUIS *RKW*
SUBJECT: The Senate Race in New Hampshire

I got a call this afternoon from Tex McCrary regarding the situation in New Hampshire. The new election will be held on February 18. The legislature will meet next Wednesday to enact a new law authorizing the election. Under the old law the election could be held only if there is a tie vote. Tex understands the situation as far as the White House is concerned; however, he makes the following recommendations which he thinks have considerable merit:

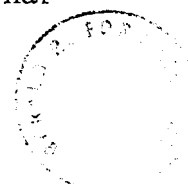
(1) He thinks Wyman will win the election but it could also be run as the first "Presidential primary." Tex says he thinks Jackson and Bentsen will both be very active on Durkin's behalf. Organized labor will also be deeply involved.

(2) He feels that the Administration in some form should make a good showing if the President does not go to New Hampshire on Wyman's behalf. He thinks the Vice President should go. Secondly, he recommends that Governor Reagan make an appearance which might be as helpful as an appearance by Vice President Rockefeller.

(3) He is hopeful that somebody will coordinate with Bill Brock to get the right combination of Senators to go into this State. I am sure that Brock will automatically be involved in this election.

(4) McCrary feels Labor will be very active and recommends that Peter Brennan or someone else of his stature be available to counter the AFL-CIO influence.

(5) Tex raised the issue but didn't have any recommendation as how Wyman would be financed. He felt this is a matter for the National Committee to deal with.



THE WHITE HOUSE

WASHINGTON

April 18, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF

SUBJECT: New Hampshire Senate Recount

Developments this week in the Senate Rules Committee indicate that the Democratic majority intend to take the Senate seat in New Hampshire away from Louie Wyman on very questionable grounds.

Republican Members of the Senate Rules Committee (Hugh Scott, Bob Griffin and Mark Hatfield) have contacted the White House this week urging you speak out on the issue during your New Hampshire visit.

The Wyman-Durkin contest is reportedly the biggest political issue at this time and Senator Scott believes you should make a point that Wyman has been officially declared the winner by the State of New Hampshire and also that Wyman favors a special election to resolve the issue once and for all.

(Senator Scott has also called the Senate Rules Committee action this week, "The Rape of the Voters of New Hampshire." See attachment)

The Senate Republicans on the Rules Committee recommend you call for a new election while in New Hampshire. (Wyman has stated throughout the proceedings that if he were to win, even by 100 votes, he would resign the Senate seat in order that the people of New Hampshire could have another opportunity to decide this election for themselves. Durkin has been against a new election.)

Until Wednesday, it was the belief of all parties that this contest stood approximately the same as it was in January - a margin of 2 or 3 votes between the two candidates.

Because of the masking procedure of some 400 ballots, it is difficult to determine which candidate has the lead, but it appears that Wyman has held his own throughout the procedure. However, Wednesday's action by the Committee has given Mr. Durkin a substantial lead in the contest.



The Committee, on a 4-4 vote, (with Senator Allen voting with the three Republicans) decided not to count for Wyman some 11 ballots originally ruled as straight Republican tickets by the New Hampshire Secretary of State and the New Hampshire State Ballot Law Commission. As defined by New Hampshire law, a proper "X" placed in the party circle above the party column will be counted as a straight party vote for all candidates listed below the party circle.

In all 11 cases, the voters placed a proper "X" in the Republican party circle. In each of these cases, the voter(s) then either before or after marking the party circle proceeded to mark separately the box for every Republican candidate except for Wyman. While it could be argued that the intent of the voter(s) was to vote for all Republicans except Wyman, New Hampshire law specifically states that an "X" in the party circle will be counted as a straight party vote.

It needs to be kept in mind that New Hampshire election officials have always counted a ballot marked as described above as a straight party vote. Presumably, hundreds of such ballots for Durkin and Wyman were counted this way.

The Senate Rules Committee action represents a change in the rules during the fourth quarter of the contest. If these ballots are counted as "no" votes, then all 185,000 ballots need to be reviewed in order that all ballots cast in this fashion can be counted as "no" votes. Of course, the Democrats are against the idea of reviewing all 185,000 paper ballots.

The Democrats on the Committee (except Senator Allen) have maintained that all Committee "tie" votes on how a New Hampshire ballot should be counted should result in a "no" vote for the candidate in question. If this were a judicial body, the lower court's decision would be upheld if it were a "tie" vote. If this were the position of the majority of the members of the Rules Committee, then the 11 ballots in question would be counted for Wyman. But since it is very likely that the position of the Democratic members will prevail, then Wyman will, in effect, lose the election because the 11 ballots will be counted as "no" votes.

Governor Thompson and his Executive Council have passed a resolution directing the New Hampshire Attorney General to sue the United States Senate for depriving the people of New Hampshire equal representation in the United States Senate. According to Senate Republicans, a majority of the people, both Democratic and Republican, has expressed a desire for the new election. They believe you could make political hay out of the fact that the Democratic controlled Senate is preventing the people of New Hampshire the right to select their United States Senator.

bcc: Don Rumsfeld
 Jack Marsh
 Bob Hartmann
 Ron Nessen
 Dick Cheney



Excerpt from:

AP wire, April 17, 1975, concerning: New Hampshire Election Dispute

Concord, N. H. -- Governor Meldrim Thomson and the State's Executive Council have ordered the State Attorney General to sue the U. S. Senate in the Supreme Court to resolve the State's disputed Senate race.

Thomson and the five member council, all Republicans, approved the move unanimously Wednesday in an effort to force the Senate to decide whether Republican Louis Wyman or Democrat John Durkin should be seated.

In a resolution approved without debate, Thomson and the Council cited constitutional provisions guaranteeing each state representation by two senators and authority to choose its senators.

Attorney General Warren Rudman said he was not sure how he would carry out the directive.

Wyman won the November election by a margin of 542 votes out of 222,000 cast; Durkin won a recount by 10 votes, but lost a review of the recount by two votes.

The Senate took jurisdiction of the dispute in January and charged its Rules Committee with determining who actually won the race.

The Committee tied 14 times Wednesday in votes on disputed ballots, including eight in which voters marked the Republican straight ticket box, checked off other GOP candidates but skipped Wyman's name. The Committee also tied on one similar ballot for Durkin.

Senator Hugh Scott, R-Pa., Senate Minority Leader, called it the "Rape of the voters of New Hampshire," and Stanley Brown, Wyman's lawyer, said "This is stealing the election."

4-17-75 11:01 EDT



THE WHITE HOUSE
WASHINGTON

This should
be brought up
~~the~~ next
Monday.



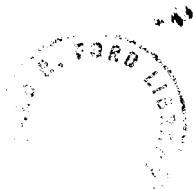
THE WHITE HOUSE
WASHINGTON

Mr. Marsh --

You wanted to discuss this
with Max.

Thanks.

donna



THE WHITE HOUSE

WASHINGTON

Determined to be an administrative marking
Cancelled per E.O. 12356, Sec. 1.3 and
Archivist's memo of March 16, 1983

By NARS date 1/14/86 May 27, 1975

~~CONFIDENTIAL~~

MEMORANDUM FOR: JACK MARSH
FROM: MAX FRIEDERSDORF *M.F.*
SUBJECT: Wyman/Durkin New Hampshire Senate Race

Jack, I am sending along a copy of a memo that Louis Wyman gave me concerning his contested election in New Hampshire.

Louis has called me about this several times and what he is asking is that we contact the 13 Senators listed in the memorandum to support a Weicker motion vacating the seat.

I have very serious problems with our making contacts on this issue and would like to discuss it with you at your earliest convenience.

There are perhaps some contacts we could make with some of these people but I think we should be very careful.

~~CONFIDENTIAL~~

United States Senate

WASHINGTON, D.C. 20510

Personal

May 20, 1975

Max:

The following Senators should be contacted in the cause of declaring the N.H. Senate seat vacant for reason of inability to ascertain a margin for either contestant with any certainty. This is clear on the 5000 page record. It is also implicit in 27 ties in Committee on individual ballots after $4\frac{1}{2}$ months of review.

The Committee has reviewed Durkin's protests. It has tied 4-4 on reviewing mine. IF they don't review mine the unfairness and lack of due process will be apparent to the whole country. IF they do review mine the odds favor increasing my margin but there is still uncertainty with paper missing and unaccounted for from several voting machines and 1200 more votes recorded in the election than checklists show voters given ballots to vote.

The entire nation would approve a decision to return the election to the voters of New Hampshire in accord with the 17th Amendment that provides "Each State shall have two Senators elected by the people thereof."

Mansfield
Long
Hathaway
Sparkman
Nunn
Bentsen
Symington
Eagleton
Haskell
Ford (ky.)
Bumpers
Morgan
Stone

Chiles

Eight of the above are needed to vote for a Weicker motion to vacate the seat.

United States Senate

WASHINGTON, D.C. 20510

2.

If the seat is declared vacant N.H. law provides a runoff within 45 days. I believe I can win a runoff decisively but, of course, there is no certainty of this.

Unless the President uses genuine personal leverage to persuade votes for a resolution of vacancy all indications are that the Senate will literally "steal" the election.

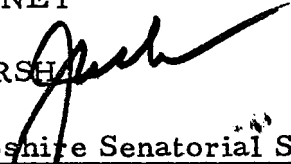
While it is possible that resort to the Supreme Court MIGHT prove effective over the long run, the Senate does not reimburse counsel fees for such action and I am in no position to afford to pay counsel for such an appeal which is estimated would cost in the vicinity of \$30,000.

The matter is scheduled for the Senate floor on a single track about June 9th with 35 tie votes in Committee scheduled for 35 separate votes by the full Senate. I am told that since the Senate will be sitting in a quasi-judicial capacity under the Constitution, a quorum of 51 members must be present at all times during these debates. The burden on the Senate and the prospective time to be consumed is substantial.

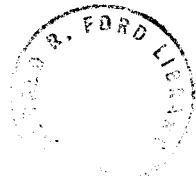
THE WHITE HOUSE

WASHINGTON

August 1, 1975

MEMORANDUM FOR: THE PRESIDENT
THROUGH: DICK CHENEY
FROM: JACK MARSH 
SUBJECT: New Hampshire Senatorial Seat

Although we have not seen an announcement, it has been reliably reported, but so far unconfirmed, that Governor Thomson of New Hampshire will name Senator Norris Cotton to the vacant United States Senate seat until the special election on September 26.



OP IMMED
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FM JACK MARSH

TO DICK CHENEY

UNCLAS E F T O WHS1411

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MEMORANDUM FOR: THE PRESIDENT
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SUBJECT: NEW HAMPSHIRE SENATORIAL SEAT

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0099



***** W H S R C O M M E N T *****

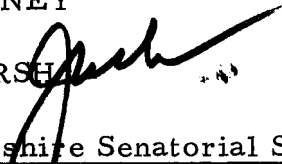
MCFARLANE, RODMAN, MARSH

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*****WHSR COMMENT*****

MCFARLANE, RODMAN, MARSH

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