

see on television, even the number of yard signs and bumper stickers they encounter, are all factored into respondents' estimation of public support for a candidate. The UNH Survey Center began asking this question in October 2011 and found that two months before the primary, 65 percent of likely Republican primary voters believed Mitt Romney would win the primary, even though he had the support of only 37 percent of likely voters at that time.

For better or worse, polls are the measure used by the public and the press for who is winning in New Hampshire, and it sets the bar for the expectations they need to meet. Paul Tsongas won in 1992, but because he met expectations or perhaps slightly underperformed, his victory was not in the spotlight. The light shone on Bill Clinton instead, because he convinced reporters, on the basis of earlier polling, that he had exceeded expectations, making him the real "winner." Lyndon Johnson in 1968, Edmund Muskie in 1972, Robert Dole in 1988, George H. W. Bush in 1992, and Barack Obama in 2008 are all examples of politicians who failed to meet expectations and whose campaigns were damaged as a consequence. But often the expectations themselves are unrealistic, drawn from polls that provide misleading results. Clearly, caution is necessary when interpreting pre-election polls in primary contests. As Richard Morin and Claudia Deane of the *Washington Post* observed, New Hampshire is a "snowy graveyard for polls and polls."¹⁴

Future of the New Hampshire Primary

IS THERE A BETTER WAY?

It's clear that the current nomination system, which favors Iowa and New Hampshire plus (more recently) the other two "carve-out" states of Nevada and South Carolina, is not fair. For the past forty years, however, various state officials and political leaders have been unsuccessful in trying to nullify New Hampshire's outsize influence in the nomination process. In fact, the two parties have seemingly moved in the opposite direction, solidifying the "rights" claimed by Iowa and New Hampshire to hold their contests before any other. This movement reflects the failure of numerous reform proposals to gain sufficient support to be adopted. Of course, there are alternative methods that would make the process fairer, if by that we mean moving to a process that would provide more equality of influence for voters living in different states. But typically such proposals come with other disadvantages that many see as worse than the current system. Nevertheless, it's worthwhile to examine what potential reforms have been proposed.

Reform Proposals

In addressing the voter fairness issue, several proposals have focused either on changing the order in which states vote, or on replacing the sequential primary system with a one-day national primary. Calls for reform have accelerated with the increasing front-loading of states in the 1990s and 2000s, and political scientists group these reforms into

three general categories: a series of sub-national primaries, one national primary, and modifications to the current system of "window-based" primaries. The sub-national primaries include three types: regional primaries, based on geographical location; population-based primaries; and characteristic-based primaries.

Sub-National Regional Primaries

Proposals for regional primaries seek to increase fairness by rotating geographical groups of states to start the nomination process. In any given year, the region that went first would enjoy increased attention from candidates, have more attention paid to regional policy issues, and presumably have a greater influence in choosing the eventual nominee. That would not be fair to the other regions, of course, but for the next election cycle a new region would get the premier position. This process would ensure that in the long run, all regions of the country would get a chance to be at the head of the line.¹ Such a plan was proposed in 1996 by Senators Slade Gorton (R-WA) and Joe Lieberman (D-CT), which specified four regions of the country — Northeast, South, Midwest and West. Each region would hold a primary on the first Tuesday of the month, with the first region starting in March and the last ending in June of the presidential election year. In subsequent years, the last region (the one that held its primary in June the previous cycle) would move up to March, and each of the other regions would move back a month. The bill received two readings and was sent to the Senate Rules and Administration, where it died.

That year, the National Association of Secretaries of State (NASS) introduced its own regional primary plan. It was similar to the Gorton-Lieberman plan, except that it specifically allowed Iowa and New Hampshire to hold their events prior to the regional primaries. The point of the exceptions was to allow for "retail politics" in the two small states that would not be possible in the subsequent states.² That the NASS plan included exemptions for Iowa and New Hampshire was not surprising, as New Hampshire's secretary of state, Bill Gardner, was then president of the association. The Council of State Governments and the *New York Times* supported the plan, but neither of the two political parties was persuaded to adopt it.

Another variation of the regional primary plan was introduced by former New Hampshire senator Bob Smith. In his "Fairness in Primaries" plan, there would be four regions, as with the other plans described, but there would be two lotteries each election cycle to determine (1) the order of voting for each region, and (2) the order of voting by states within each region. This process would spread out the voting over the primary season, rather than having just four regional primaries. Also, there would be no automatic rotation of regions because a new lottery would be conducted each quadrennium. A region that went first in one election cycle would have a one-in-four chance of going first the next cycle as well. Iowa and New Hampshire would always precede the first region, as had been the tradition, which would also allow for retail politics.³ Smith submitted his plan to the Republican National Convention in 2000, but it was not passed.

Sub-National Population-Based Primaries

This second type of plan differs from regional primaries by recognizing the sequential nature of the nomination process and the importance of retail politics in smaller and earlier states. The Delaware plan, designed for the 2004 nomination, typifies this type of system. It called for grouping states, on the basis of their population size, into "pods." All states in each pod would vote on the first Tuesday of the month, starting in March and ending in June. The smallest twelve states (plus federal territories) would vote first in March (in order to allow for retail politics), followed by increasingly larger states. Importantly, the Delaware plan did not have exemptions for Iowa and New Hampshire. Although this plan was intended to give smaller states the influence that goes with being the first contests, in actual practice the plan would require candidates to campaign across the country, rather than in a geographically limited region, thus reducing the time that a candidate would have to engage in retail politics. For example, states in the first pod would include New Hampshire, Vermont, and Maine in New England; North Dakota, Montana, and Wyoming in the plains and mountains; and also Alaska and Hawaii. Travel time and cost alone would be prohibitive for all but the biggest and best-funded campaigns.

A variation of the Delaware plan, the Ohio Plan was adopted by the rules committee of the Republican National Committee (RNC) in 2004. It also grouped states by population size, but put Iowa and New Hampshire at the beginning of the process. New Hampshire would precede other state primaries, but by only four days, which would conflict with New Hampshire law requiring that its primary be at least seven days before any other. Although the RNC Rules Committee approved it, the plan was voted down by the 2004 Republican National Convention rules committee, which had final say (see Chapter 3).

Another variation was the California plan, which also let smaller states vote earlier, but introduced randomness to the selection process. It called for ten elections held at two-week intervals for a twenty-week nomination period, about the length of the current process.⁴ The first group would consist of a random selection of states and territories whose total electoral votes would equal eight. Each subsequent week would increase the total electoral votes by eight. So, in week two, a random selection of the remaining states would vote in that week's primary, as long as they represented no more than 16 electoral votes. The tenth and final week would consist of states with 80 electoral votes, or about 20 percent of the vote. No state, including Iowa or New Hampshire, would be guaranteed a slot in the first group. The logic for this rather complicated plan is that it allows for retail politicking in the early rounds of elections by ensuring that a state (or combination of states) having no more than eight congressional seats could be included in the first round. The plan does not completely discriminate against larger states, as a state with up to 16 electoral votes could be selected to go as early as the second round. (In that case, of course, it would be the only state holding a primary that week, since the maximum electoral votes for the second week is 16.) The random construction of groups would mean that no state would have a lock on an early spot.

Sub-National Characteristic-Based Primaries

This third type of proposal creates groups of states from across the country that have similar characteristics. It explicitly avoids having smaller states go first, thus implicitly dismissing retail politics as a worthwhile

goal. And this type of proposal explicitly rejects regional groupings, so that no one region of the country can influence the nomination process more than another.

One example is the Texas Plan, which—like the Ohio and Delaware Plans—divided the country into four groups, but based neither on population size nor on geographical location. Instead, they were based on producing groups “that as near as practicable have the same number of states, the same number of delegate votes, the same number of electoral votes, and the same ratio of Republican to Democratic states.”⁵ Group 1 states could vote anytime during the month of March, Group 2 in April, Group 3 in May and Group 4 in June. The groups would rotate the starting dates from one election cycle to the next.

A similar, though more complicated, approach was the Michigan Plan, which divided the country into six pods, each consisting of states with approximately the same number of electoral votes, and spread across the country. One pod, for example, contains Connecticut and Rhode Island in the East; West Virginia, Arkansas, and Georgia from the South; and Oklahoma, Idaho, Nevada, and Utah from the West—totaling 75 electoral votes.⁶ The pods would start voting in March and end in June, with the pods rotating the starting dates from one election cycle to the next.

National Primary

This type of primary would elect delegates in each state on the same day. A national primary would have the advantage of not favoring any one state or states, as everyone in the country would vote at the same time. Retail politics, of course, would be impossible. Candidates simply would not afford the time to meet with small groups of voters in any one state. Also, a candidate would have to be well funded right from the beginning in order to have a chance to do well. Presumably, this would make underhorse campaigns all but impossible. The national primary is part of the oldest nomination reform plans, first proposed by Theodore Roosevelt for the 1912 presidential election. This type of reform has considerable public support but has not received serious considerations by the parties or in Congress.⁷ If no candidate received a majority of the vote, either the plurality winner would be declared the nominee, or there would

be a run-off primary among the top two candidates. Another variation would be to set a threshold of victory at less than a majority — at, say, 40 percent — to avoid a run-off.

Another variation of the national primary is the National Primary/Convention Plan. It also provides for the election of all delegates on the same day across the country. If no candidate wins a majority of the delegates, a very likely situation in most years, the convention would then choose the nominee from among those who have, say, at least 15 percent of the delegates (or some other minimum threshold). Typically, there would be several candidates who would arrive at the convention with significant numbers of delegates, but not a majority. The first official vote in the convention would confirm the relative standings of the candidates, and after that there would be bargaining among party leaders to come up with a nominee. This process would mean that conventions would once again have a meaningful and direct role to play in the selection of the party's nominee.

Variations of this plan include several possible methods for awarding delegates, although all methods would be based on the results of the national primary. One method of awarding delegates would be by proportional representation, based on the total number of votes received nationally. Winning 30 percent of the national vote would give the candidate 30 percent of the total delegates attending the convention. Another more likely method would be a proportional assignment of delegates within each state. A candidate winning 50 percent of the vote in New Hampshire, for example, would get half the state's delegates. That same candidate might end up with just 20 percent of the vote nationally, but that figure would be irrelevant for assigning delegates. Finally, some states might decide to award delegates on a winner-take-all basis, so that a candidate getting the most votes in a state — even if that were only, for instance, 35 percent of the total — would still get all the delegates. Whatever the method of awarding delegates, it would be rare for any non-incumbent candidate to arrive at the convention with a majority of votes, thus forcing the convention to come up with the nominee.

This National Primary/Convention Plan would achieve the goal of

state and voter equality. It would also probably eliminate retail politicking as a realistic method of campaigning, and it would probably also result in the emergence of regional candidates. Both of these results harken back to the pre-reform period, when conventions played the decisive role in the nomination process. But the plan might also give even more influence to the rich than already exists, because of the great expense of waging a national campaign. On the other hand, it's possible the convention would be the method by which the delegates could help to nullify the advantages that wealthy donors enjoy right now. With delegates coming together at a national convention, there could be a greater recognition of the need for a national strategy involving compromise. Perhaps the convention would emerge as the firewall against a moneyed candidate who might be able to win the first several contests and coast to victory.

It's important to keep that ambiguity in mind whenever proposing reforms: *The Unintended Consequences of Seemingly Good Ideas.*

Evolution, Not Revolution, of the "Window-Based" Primaries

The most common type of reform has been the constant tinkering with the current system, typically adjusting the "window" within which the states must hold their contests, changing the date of the convention, and increasing sanctions against states violating calendar rules. Both parties have passed rules that governed the nomination process for an upcoming nomination, and then modified those rules for the subsequent nomination cycle (see Chapter 3). The Democratic Party has been much more active in making modifications to their process than have Republicans. In 1982, the Democratic Party Hunt Commission created super-delegates, also known as PLEOs (party leaders and elected officials), who had reserved spots at the convention as a way to regain some control of the nomination after the outsider wins by McGovern and Carter. The original Hunt Commission called for 30 percent of convention delegates to be super-delegates, giving party insiders a potentially powerful voting bloc. While this never happened, almost one-fifth of delegates to the 2008 Democratic National Convention were super-delegates (796 of the 4,419 delegates). Republicans have been more restrained in stocking the

convention with party insiders, but each state and us territory represented at the convention gets three super-delegates—the national committeeman and national committeewoman as well as the current state party chair.

The most important change, from New Hampshire's perspective, has been the solidification of Iowa and New Hampshire as the first caucus and primary states, respectively, and the more recent insertions of South Carolina and Nevada into the group of "carve-out" states that can hold their contests before the rest. By giving preference to four early states from different regions of the country—including one state with a large Hispanic population, another with a large African American population, and another with strong unions—the parties have undercut the criticisms that important interests are excluded from a significant role in the early contests. These four relatively small states also allow for retail politics and give dark-horse candidates some hope of catching lightning in a bottle.

Of the several types of reforms discussed above, it is most likely that any new reform will consist of modifications to the current system rather than wholesale change. It is much easier, and certainly less risky, to make minor modifications to a system that candidates, parties, and voters are familiar with, rather than to get the broad agreement necessary to push more radical reform.

Obstacles to Reform

The most important obstacle to a national or sub-national primary is the lack of consensus among political leaders for any one of the proposals. There have been more than 300 bills introduced into Congress to reform the nomination process, but none has passed.⁸ It is even questionable whether Congress has the constitutional authority to mandate how nominations are run. Should legislation pass, states would certainly object to such interference in their authority to regulate elections.⁹ Laws in Iowa and New Hampshire, for example, specify that their contests must precede any others, and both states have shown they are willing to counter

any efforts to undermine their prerogative. Other states have reasons they would not want to have specific voting dates imposed on them:¹⁰

- Elections are expensive, and to save money some states will schedule the presidential primary to coincide with their state primary.
- There may be other compelling reasons for a state to schedule its primary or caucuses on a particular date, such as legislative sessions or availability of facilities.
- Rotating primary dates every year, as required by some plans, could create problems for states that prefer to have a fixed date every year.

Unless there is a constitutional amendment that overrides state law, it is hard to see any state going along with a reform plan with which it disagrees.

Political parties, too, would resist such mandated reform as an encroachment on their private organizational rules. Past Supreme Court decisions have backed parties in this area. William Mayer noted several cases:¹¹

- In 1981, the Court overruled the Wisconsin Supreme Court's attempt to assert the supremacy of that state's "open primary" law against national Democratic rules.
- In 1986, the Court allowed the Connecticut Republican Party to open up its primaries to independent voters, even though state law limited primaries to registered party members.
- In 1989, the Court invalidated California laws that dictated the organization and composition of party governing bodies and prohibited those bodies from making endorsements before a primary.
- In 2000, the Court declared that the state of California could not compel the Democratic and Republican parties to nominate their candidates through a so-called blanket primary.

If significant reform is to come, it will almost certainly happen within the parties themselves, and not necessarily with a grand agreement between the parties. The McGovern-Fraser Commission reforms applied only to the Democratic Party, though the Republican Party largely went

along with the calendar of Democratic contests, since most states didn't want to have separate events. Similarly, the Republican calendar changes for the 2016 cycle have been largely accepted by Democrats. The GOP has gone even further in its determination to force states to comply, by stipulating severe penalties for states that violate the defined schedule. For example, a state with 30 delegates or more that holds its contest outside the specified time period will see its delegation reduced to nine. For states with fewer than 30 delegates, their delegations will be reduced to one third of their allotted size, or six delegates, whichever is smaller.¹² At least that is the threat, though parties often don't carry through with the threats at convention time.

Other new rules adopted by the GOP specify that states that hold their contests prior to March 15 must award delegates proportional to the candidates' support, while states holding contests after March 15 can award delegates based either on proportional representation or a winner-take-all method. The mandatory proportional method in the early contests makes it likely that multiple candidates can remain in the race for several weeks, giving plenty of opportunity for diverse positions to be debated. The switch to winner-take-all in the latter part of the schedule encourages states to help identify the eventual winner within a reasonable time period in order to avoid a strung-out competition that could hurt the party in the general election. The Republican National Convention will be moved up to June or early July, giving the eventual nominee more time to concentrate on the general election.

These rules do not represent radical change but rather provide an adjustment to the process that should enable it to avoid some of the pitfalls of the long, drawn-out process that occurred in 2012, which many Republican leaders believe hurt their party's chances in the November election. The Democratic Party has largely adopted the Republican calendar, but has its own rules for awarding delegates and sanctions for states that jump ahead in the schedule. And there is no indication as of this writing that the Democrats will follow the GOP lead in holding their national convention in June.

With the recent changes in the Republican calendar, and with Democrats in general agreement, 2016 looks to be as stable a primary as we

have seen for decades. That is, until even a single state decides to ignore the consequences and move its primary out of order. As noted in Chapter 3, the Utah House of Representatives made just such an effort, passing a bill on March 10, 2014, that would have required the state's presidential primary to be held before any other state's primary or caucus. To overcome New Hampshire's strategy of waiting until close to the primary season before scheduling its primary, the bill required the Utah primary to be conducted by electronic ballot online. The bill ultimately failed in the state senate five days later, but the author, Republican state Representative Jon Cox, implied the issue could be taken up again in 2015. He said the current system is unfair and creates "second class states." What is significant about the effort is that Cox wasn't troubled by the penalty the GOP would impose on the state's delegation to the Republican National Convention. Instead of forty delegates, Utah would get only nine. But, as Cox noted, "New Hampshire gets 12 delegates. Their 12 matter a lot more than our 40, so for us to go to nine, that's not much of a penalty at all."¹³

As this case makes clear, the issue of unfairness continues to rankle. It just isn't logical that such a small state should be able to exert so much influence, regardless of its history. To this oft-asserted criticism, however, New Hampshire Secretary of State William Gardner observes, "An ounce of history is worth a pound of logic."