

Union Leader – June 20, 2010

Tom Fahey's State House Dome: Lynch promises action on naming of top justice

By Tom Fahey

ELECTION SEASON will not slow the process of naming a new chief justice to the New Hampshire Supreme Court, Gov. John Lynch's office said last week.

Lynch plans to name a replacement as soon as the process allows, his press secretary Colin Manning said Friday.

Lynch will select a name from a few the Judicial Selection Commission provides him from applications it receives. If he picks a sitting Supreme Court justice, he'll also have a chance to nominate someone to the new associate justice vacancy.

This despite Republican John Stephen's call for Lynch to wait until after November elections to replace Chief Justice John Broderick, who will retire on Nov. 30.

In calling for a delay Stephen said, "The voice of the public must be reflected in the direction of the court."

Manning answered, "The Supreme Court hears a lot of important cases. It is important to fill the vacancy and the governor will act to fill the vacancy in a timely manner."

Two Executive Councilors said Lynch needs to start the process now. It can take months for a search, nomination and confirmation process to conclude, they said.

"It could create a problem if he doesn't act," Executive Councilor Ray Wieczorek, R-Manchester, said. "That's the reason you have five people there. If you have a two-to-two vote, it will be pretty hard to get things done."

Wieczorek noted the court already has four Superior Court and nine District Court vacancies. "When we have shortages like that, it's an indication that justice is not being served well," he said.

Executive Councilor Debora Pignatelli, D-Nashua, said she thinks Lynch "should act as expeditiously as possible" to fill the post by Nov. 30.

"I think we ought to get a new justice and a new chief in there right away," she said. "If this were Nov. 30 and Gov. Lynch had lost the election, I'd probably feel differently."

State Republican Party chair John H. Sununu jumped to Stephen's side.

"I think it underscores the fact that Gov. Lynch is really worried he is going to lose the election," Sununu said. The decision to move ahead now, he said, is what "you'd expect

from a governor who is beginning to understand that the people of New Hampshire are beginning to realize how poorly he has led the state for the last six years."

Raymond Buckley, chair of the state Democratic Party, said the precedent is clear -- governors fill vacancies as they arise and don't put government on hold.

"I'm sure the governor is going to do what he feels is in the best interests of the people of New Hampshire...I don't agree that the election should play into consideration," Buckley said.

Also calling for delay was Sununu's son Chris, a candidate for Executive Council against incumbent Democrat Beverly Hollingworth.

"It is imperative that Gov. Lynch respect the electoral process, and allow the next governor and newly elected Executive Council to nominate and approve the new justice," he said.

Broderick's timing coincides with his eligibility for retirement. By November, he will have reached the 15 years service and 60 years of age that frame the threshold for a full pension, equal to 70 percent of his \$157,000 a year salary.

Wieczorek and Pignatelli said they feel ready to handle both a review of a Supreme Court nominee and the removal proceedings that are pending on Liquor Commission chairman Mark Bodi and Banking Commissioner Peter Hildreth.

"If it comes in the midst of removal, well then it does. We just have to deal with it. Whatever I get dealt, that's the hand I play," Wieczorek said.

LYNCH CAN THANK his old rival, former Gov. Craig Benson, for the fact he even gets to choose a new chief justice.

Benson and the Executive Council went to the Supreme Court in 2004 to challenge a law that pulled appointment power from the executive branch. In the wake of the Claremont education funding rulings, the 2001 Legislature passed a bill that required the chief's post to rotate every five years to the next most senior justice.

An independent Supreme Court panel heard the case and found the law unconstitutional.

In a characteristic move, Benson had threatened to ignore the law and make his appointment while the challenge moved ahead. In the end, he nominated Broderick, who was the senior justice anyway, and the Executive Council approved.

A month after he lost his re-election bid to Lynch in 2004, Benson named three district court judges to the bench, with Executive Council approval. Among them was John Stephen's brother, Derry District Court Judge Robert Stephen.

LESS THAN 24 hours after Broderick made his announcement, speculation began on who Lynch might have in mind, both for the court and the chief's seat.

Supreme Court Associate Justice Gary Hicks' name is high on the list, as is that of District Court Administrative Judge Edwin Kelly. Associate Justice Linda Dalianis could make history by becoming the first woman to hold the post. She was also the first woman named to the Superior Court and Supreme Court.

Lynch's legal counsel Jeffrey Meyers was mentioned in several places as a potential nominee, along with Nashua attorney and former state Sen. Joseph Foster.

DEMOCRATS ARE LINING up behind liquor boss Bodi in a hand-delivered letter to Lynch asking that he drop the removal proceeding.

Lynch asked Bodi to resign over his handling of a Keene liquor enforcement case. He refused, and Lynch called for his removal.

Attorney General Michael Delaney conducted a criminal investigation of Bodi but filed no charges. He plans to attach grand jury testimony in his removal petition for alleged malfeasance.

Identifying themselves as "long-time friends and even ardent supporters of your elections as governor," the group said Bodi has been through enough.

"Any further attempts to remove him...would be most unjust and highly inappropriate," the letter states. "We implore you to restore fairness to this process, and that you propose a plan for his immediate return to his position as chairman."

Among 22 signers are Bill Shaheen of Madbury, Steve Dunfey of Portsmouth, Rick Loeffler of Bedford, Joe Grandmason of Rye, Phil Grandmason of Nashua and George Bruno, Patrick Duffy, Stan Spirou, Steve Reno, Jerome Duval, Gary O'Neil, all of Manchester.

The Council meets this week, and is still in the process of hiring an attorney for both the Bodi and Hildreth cases.

REPUBLICANS FACE 50 primary elections for offices from governor and U.S. Senate to local county races. In the House, 27 GOP primaries will be held to determine who goes up against Democrats in November.

Democrats will compete in a total of 21 primaries, including 12 House contests.

State Republican Party spokesman Ryan Williams said the party is more than happy with candidate turnout. They have 440 candidates for 370 seats, leaving 28 uncontested to Democrats. Democrats filed 359 candidates for 344 seats, leaving the GOP free to grab 56 others.

"We exceeded every metric we set for ourselves," Williams said. When one candidate made a late decision on Wednesday just before the 5 p.m. deadline, Williams had to scamper to the Secretary of State's office in shorts and flip-flops.

He couldn't resist taunting Democrats a bit on the fact they fell short of the 370 House candidates they said were eager to run.

"Obviously, they over-promised and under-delivered," Williams said. Democratic Party executive director Michael Brunelle said it's a matter of quality, not quantity.

"We've covered all our strongholds, covered all the battlegrounds," he said. The only number that matters to him is 201, needed to hold the House majority. Democrats have 219 seats now.

"I think at the end of the day it does not benefit the Republican Party to have a huge number of primaries, not only in their strongholds but all across the state," Brunelle said. "Democrats are going to be unified, and have already started working together on an organized campaign."

© 2010, Union Leader Corporation. All rights reserved.

All trademarks and copyrights on this page are owned by their respective owners. © 1997-2010.