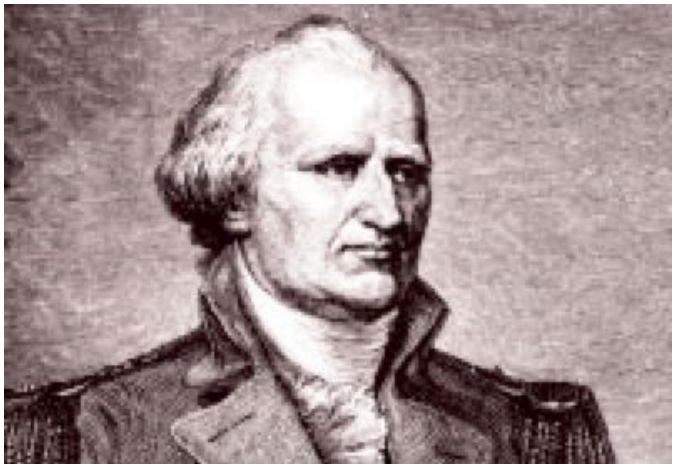

John Stark was a genuine hero of the American Revolutionary War or, if you prefer, America's War for Independence. That he is not generally known beyond the borders of his native New Hampshire is hardly surprising. After George Washington, not many Americans can name a general of that war. And New Hampshire has made General Stark so much its own that his famous saying, "Live Free or Die," has been adopted as the state motto and been engraved on all the state's noncommercial license plates since 1969, replacing the word "Scenic."

The motto has not been universally appreciated, however, and one citizen's insistence on taping over it became a legal battle that went all the way to the U.S. Supreme Court.

The future general was born in 1728 in Londonderry, New Hampshire, a small town bordering on the present city of Manchester, the state's largest municipality. The entire state was rural, and battles with Indian tribes were not uncommon at a time when the settled East resembled in many ways the Wild West. When he was eight years old, his family moved to Manchester, which was then the township of Derryfield. As a young man of 24, he was on a hunting trip along a tributary of the Pemigewasset River when he was captured by Abenaki Indians and carried off to Quebec. He and fellow prisoner Amos Eastman were forced to run a gauntlet of warriors armed with sticks. Stark grabbed the stick from the first Indian he encountered in the line and attacked him with it, taking the whole line by surprise. The chief was said to be so impressed with Stark's combative instincts and courage that the New Hampshire native was adopted into the tribe. He spent the winter with his new family in Canada. By spring, however, a government agent from Massachusetts was sent to negotiate an exchange of prisoners. Stark was ransomed with $103 Spanish dollars, while $60 was expended for the release of Eastman. Both men returned to New Hampshire.

It was far from the end of John Stark's encounters with the Native Americans or with the nation of Canada. Like Washington and other heroes of the colonial era, Stark cut his teeth in the French and Indian Wars. He served as a second lieutenant under Major Robert Rogers, and it was as a member of the daring Rangers that Stark gained valuable combat experience as well as a detailed knowledge of the Northern frontier. The Rangers journeyed from Lake George in upstate New York to the Abenaki village of Saint Francis deep in Quebec. They went north and attacked the Indian town while Stark, second in command, remained behind, refusing to join the attack out of respect for his Indian foster parents residing there. He returned to New Hampshire and to his wife whom he had married the previous year. At the end of the year, Stark retired from the military with the rank of captain.

He returned to military service after the Battle of Lexington and Concord signaled the beginning of the war by England's North American colonists for independence. On April 23, 1775, just four days after the famous Massachusetts battle by "the rude bridge that arched the flood," Stark accepted a commission as a colonel in the New Hampshire militia and took command of the First New Hampshire Regiment. Gathering his forces, Stark moved south to Massachusetts to support the rebels preparing to besiege Boston, making his headquarters the captured Isaac Royal House in Medford.

On June 16, the rebels, fearing a preemptive British attack on their positions in Cambridge and Roxbury, decided to take and hold the high ground surrounding the city, including Dorchester Heights, Bunker Hill, and Breed's Hill. Holding these positions would allow the rebels to oppose any British landing. The positions could also be used to emplace cannon that could threaten the British ships in Boston Harbor — although no cannon were available to the rebels at this time. On the night of the 16th, they moved into position on the heights and began digging entrenchments.

As dawn approached, lookouts on *HMS Lively*, a 20-gun British sloop of war, noticed the activity, and the sloop opened fire on the rebels and the works in progress. That in turn drew the attention of the British Admiral, who demanded to know what the
Lively
was shooting at. Soon the entire British squadron opened fire. As dawn broke on June 17, the British could clearly see hastily constructed fortifications on Breed's Hill, and British Gen. Thomas Gage knew that he would have to drive the rebels out before fortifications were complete. He ordered Major General William Howe to prepare to land his troops and the Battle of Bunker Hill was on. American Colonel William Prescott held the hill throughout the intense initial bombardment with only a few hundred untrained American militia. Prescott knew that he was sorely outgunned and outnumbered, and he sent a desperate request for reinforcements.

Stark and the New Hampshire Minutemen soon arrived. The *Lively* had begun a rain of accurate artillery fire directed at Charlestown Neck, the narrow strip of land connecting Charlestown to the rebel positions. On the Charlestown side, several companies from other regiments were milling around in disarray, afraid to march into range of the artillery fire. Stark ordered the men to stand aside and calmly marched his men to Prescott's positions without taking any casualties.

Stark surveyed the ground and immediately saw that the British would probably try to flank the rebels by landing on the beach of the Mystic River, below and to the left of Breed's Hill. Stark led his men to the low ground between Mystic Beach and the hill and ordered them to "fortify" a two-rail fence by stuffing straw and grass between the rails. Stark also noticed an additional gap in the defense line and ordered Lieutenant Nathaniel Hutchins, from his brother William Stark's company, and others to follow him down a nine-foot-high bank to the edge of the Mystic River. They piled rocks across the 12-foot-wide beach to form a crude defense line. After this fortification was hastily constructed, Stark deployed his men three-deep behind the wall. A large contingent of British, with the Royal Welch Fusiliers in the lead, advanced toward the fortifications. The Minutemen crouched and waited until the advancing British were almost on top of them, and then stood up and fired as one. They unleashed a fierce and unexpected volley directly into the faces of the fusiliers, killing 90 immediately and breaking the advance. The fusiliers retreated in panic. A charge of British infantry was next, climbing over their dead comrades to test Stark's line. This charge too was decimated by a withering fusillade. A third charge was repulsed in a similar fashion, again with heavy losses to the British. The British officers wisely withdrew their men from that landing point and decided to land elsewhere, with the support of artillery.

Later in the battle, as the rebels were forced from the hill, Stark directed the New Hampshire regiment's fire to provide cover for Colonel Prescott's retreating troops. The day's New Hampshire dead were later buried in the Salem Street Burying Ground, Medford, Massachusetts.

While the British did eventually take the hill that day, their losses were formidable, especially among the officers. After the arrival of General George Washington two weeks after the battle, the siege reached a stalemate until March the next year, when cannon seized at the capture of Fort Ticonderoga were positioned on Dorchester Heights in a deft night maneuver. This placement threatened the British fleet in Boston Harbor and forced General Howe to withdraw all his forces from the Boston garrison and sail for Halifax, Nova Scotia.

Trenton and Princeton

As Washington prepared to return south, he knew that he desperately needed experienced men like John Stark to command regiments in the Continental Army. Washington immediately offered Stark a command, and Stark and his New Hampshire regiment agreed to attach themselves temporarily to the Continental Army. The men of the New Hampshire Line were sent as reinforcements to the Continental Army during the invasion of Canada in the spring of 1776. With the defeat of the Continental Army in Canada, Stark and his men traveled to the New Jersey colony to meet up with Washington, and fought in the battles of Princeton and Trenton.

After Trenton, Washington asked Stark to return to New Hampshire to recruit more men for the Continental Army. Stark agreed, but upon returning home, learned that while he had been fighting in New Jersey, a fellow New Hampshire Colonel named Enoch Poor had been promoted to Brigadier General in the Continental Army. In Stark's opinion, Enoch Poor had refused to march his militia regiment to Bunker Hill to join the battle, instead choosing to keep his regiment at home. Stark, an experienced woodsman and fighting commander, had been

passed over by someone with no combat experience and apparently no will to fight. On March 23, 1777, Stark resigned his commission in disgust, although he pledged his future aid to New Hampshire if it should be needed.

Four months later, Stark was offered a commission as Brigadier General of the New Hampshire militia. He accepted on the strict condition that he would not be answerable to Continental Army authority. Soon after receiving his commission, he was ordered by Brigadier General Philip Schuyler of the Continental Army to depart from Charlestown, New Hampshire, to reinforce the Continental Army at Saratoga, New York. Stark refused to go to Saratoga. Instead, he led his men to meet the Hessians at the Battle of Bennington. Before engaging the Hessian troops, Stark prepared his men to fight to the death, shouting, “There are your enemies, the Red Coats and the Tories. They are ours, or this night Molly Stark sleeps a widow!”

Stark’s men, with some help from Seth Warner’s Vermont militia, the Green Mountain Boys, routed the Hessian forces there and prevented British General John Burgoyne from resupplying. Stark’s action contributed directly to the surrender of Burgoyne’s northern army at the Battle of Saratoga some months later. This battle is seen as the turning point in the Revolutionary War, as it was the first major defeat of a British general and it convinced the French that the Americans were worthy of military aid. After the Battle of Freeman’s Farm, Gen. Stark’s brigade moved into a position at Stark’s Knob, cutting off Gen. John Burgoyne’s path back to Lake George and Lake Champlain.

After serving with distinction throughout the rest of the war, Stark retired to his farm in Derryfield. It has been said that of all the Revolutionary War generals, Stark was the only true Cincinnatus because he truly retired from public life at the end of the war. In 1809, a group of Bennington veterans gathered to commemorate the battle. General Stark, then aged 81, was not well enough to travel, but he sent a letter to his comrades, which closed, “Live free or die: Death is not the worst of evils.” Stark and the Battle of Bennington were later commemorated with the 306-foot Bennington Battle Monument in Bennington, Vermont.

Relatively Free

The New Hampshire General Court (the state legislature) adopted “Live Free or Die” as the state motto in 1945. Starting in 1969, the motto became engraved on all noncommercial state license plates, replacing the descriptive and non-controversial word “Scenic” as the preferred adjective for New Hampshire. The combative motto was accepted by most citizens, who no doubt appreciated the patriotic and freedom-loving sentiment. Perhaps anticipating some objection, however, New Hampshire had also enacted a statute making it a misdemeanor to “knowingly” obscure “the figures or letters on any number plate.” Thus one New Hampshire couple ran into legal difficulties by exercising their freedom to not display the motto, taping over the “Live Free or Die” statement, while leaving everything else on the plate plainly visible.

George Maynard and his wife, followers of the Jehovah’s Witnesses faith, viewed the motto as repugnant to their moral, religious, and political beliefs, and for this reason they covered up the motto on the license plates of their jointly owned family automobiles. On November 27, 1974, Mr. Maynard was issued a citation for violating the state statute forbidding the obscuring of the

state motto. On December 6, he appeared in the district court of Lebanon, New Hampshire, to answer the charge. Waiving his right to counsel, he entered a plea of not guilty, explaining his religious objections to the motto. The trial judge found him guilty and sentenced him to pay a $25 fine, which fine was suspended during good behavior. But on December 28, Maynard was again charged with violating the statute. He appeared in court on January 31, 1975, and again representing himself, he was once again found guilty, fined $50, and sentenced to six months in the Grafton County House of Corrections. The court suspended this jail sentence but ordered Maynard to also pay the $25 fine for the first offense. Maynard informed the court that, as a matter of conscience, he refused to pay the two fines. The court thereupon sentenced him to jail for a period of 15 days, a sentence he served in full.

Prior to trial on the second offense, Maynard was charged with yet a third violation of the statute on January 3, 1975. He appeared on this complaint on the same day as for the second offense and was, again, found guilty. This conviction was “continued for sentence” so that Maynard received no punishment in addition to the 15 days.

On March 4, 1975, the Maynards sued in the United States District Court for the District of New Hampshire, seeking injunctive and declaratory relief against enforcement of N. H. Rev. Stat. Ann. 262:27-c, 263:1, insofar as these required displaying the state motto on their vehicle license plates, and made it a criminal offense to obscure the motto. On March 11, 1975, the District Court judge issued a temporary restraining order against further arrests and prosecutions of the Maynards. Later a three-judge District Court panel was convened to hear the case and, following a hearing, issued an order enjoining the state “from arresting and prosecuting [the Maynards] at any time in the future for covering over that portion of their license plates that contains the motto ‘Live Free or Die.’”

The state appealed the ruling and the case of *Wooley v. Maynard* eventually made its way to the U.S. Supreme Court. In 1977, the court issued its ruling, finding in a 6-3 decision that New Hampshire had violated the Maynards’ First Amendment rights. Chief Justice Warren Burger, writing for the court, held that the statute effectively required individuals to “use their private property as a ‘mobile billboard’ for the State’s ideological message.” The state’s interest in requiring the motto did not outweigh the free speech requirement of the First Amendment, including “the right of individuals to hold a point of view different from the majority and to refuse to foster … an idea they find morally objectionable.” The state’s interest in motor vehicle identification could be achieved by “less drastic means,” Burger wrote, and its effort at promoting state pride was not viewpoint-neutral.

In a dissenting opinion joined by Justice Harry Blackmun, Associate Justice William Rehnquist wrote that for the First Amendment to be abridged, the court needed to determine that the motto and the ban on obscuring it placed the citizen in the position of either apparently or actually asserting the message as true. On the contrary, Rehnquist wrote, “The defendants’ membership in a class of persons required to display plates bearing the State motto carries no implication and is subject to no requirement that they endorse that motto or profess to adopt it as matter of belief.” Citing a finding of the New Hampshire Supreme Court in a similar case, Rehnquist argued that nothing in state law prevented the citizens from displaying their disagreement with the state motto, so long as the method or methods used did not obscure anything on the state

license plates. They could, for example, place a bumper sticker on the automobile expressing their dissent from the thought and sentiment of the motto. “Since any implication that they affirm the motto can be so easily displaced, I cannot agree that the state statutory system for motor vehicle identification and tourist promotion may be invalidated under the fiction that appellees are unconstitutionally forced to affirm, or profess belief in, the state motto,” Rehnquist wrote.

Interestingly, the Governor of New Hampshire who wanted Maynard prosecuted was Meldrim Thomson, Jr., the conservative three-term Governor who came into office on the “axe the tax” motto and created a foreign policy for New Hampshire with his regular denunciations of Communist China, trade with the Soviet Union, and membership in the United Nations. The New Hampshire Attorney General, who defended the prosecution of Maynard, was David Souter, who later served on the New Hampshire Supreme Court, was Chief Justice of the First Circuit Court of Appeals, and served for 19 years as Associate Justice of the U.S. Supreme Court. During his confirmation hearing as the nominee of President George H.W. Bush to succeed the retiring Justice William Brennan in 1990, Souter was asked if he could explain the “compelling state interest” in forcing citizens to display the motto. Souter acknowledged the state interest was “not very compelling.”

Few if any New Hampshire residents have followed Maynard’s example of covering over the state motto. The exhortation to “Live Free or Die” is still engraved on the state’s license plates. In fact, by exercising his freedom against the dictates of the state, George Maynard and the case of *Wooley v. Maynard* may have made the message of John Stark all the more emphatic. The message, after all, is “Live free or die,” which is not the same as a command to “bow to an overreaching, overbearing state effort to achieve conformity at all costs.”