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Democracy And State Education Governance

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DEMOCRACY AND STATE EDUCATION GOVERNANCE

QUINN YEARGAIN*

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INTRODUCTION

Voters in every state play a direct and significant role in how their schools are run. In virtually every school district in the country, local school boards are comprised of elected members¹—and voters routinely cast ballots on local school-funding and taxing ballot measures.² In most states,

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1. See JENNIFER L. LAWLESS, BECOMING A CANDIDATE: POLITICAL AMBITION AND THE DECISION TO RUN FOR OFFICE 33 (2012) (estimating that there are approximately 13,506 elected school boards in the country).

2. E.g., R. Hamilton Lankford, *Preferences of Citizens for Public Expenditures on Elementary and Secondary Education*, 27 J. ECONOMETRICS 1 (1985); Ronald G. Ehrenberg

voters elect statewide education administrators (either a state superintendent of public instruction or a state board of education)³ and in many states, they have the opportunity to approve or disapprove constitutional amendments and statutes that affect public education.⁴ Outside of formal, Schumpeterian democratic control,⁵ public participation at school board meetings can meaningfully affect the day-to-day administration of local schools⁶—as the last few years have shown.⁷

But even though education is uniquely shaped by democracy and public participation, the percentage of states with statewide elected education administrators is at its lowest since the 1870s. In 1912, 70% of states elected superintendents of public instruction.⁸ Today, just 24% do, and another 22% have elected state boards of education.⁹ During the twentieth century, civic reformers urged the professionalization and depoliticization of state education administration¹⁰—which most commonly meant converting the elected state superintendent into an *appointed* office,

et al., *Why Do School District Budget Referenda Fail?*, 26 EDUC. EVALUATION & POL'Y ANALYSIS 111 (2004).

3. ALA. CONST. art. XIV, § 262(1) (State Board of Education); ARIZ. CONST. art. V, § 1(A) (Superintendent of Public Instruction); CAL. CONST. art. IX, § 2 (Superintendent of Public Instruction); COLO. CONST. art. IX, § 1 (State Board of Education); GA. CONST. art. VIII, § 3, ¶ 1 (State School Superintendent); IDAHO CONST. art. IV, § 1 (Superintendent of Public Instruction); KAN. CONST. art. VI, § 3(a) (State Board of Education); LA. CONST. art. VIII, § 3(B)(1) (State Board of Elementary and Secondary Education); MICH. CONST. art. VIII, § 3 (State Board of Education); MONT. CONST. art. VI, § 1 (Superintendent of Public Instruction); NEB. CONST. art. VII, § 3 (State Board of Education); NEV. REV. STAT. ANN. § 385.021(1) (State Board of Education); N.M. CONST. art. XII, § 6(B) (Public Education Commission); N.C. CONST. art. III, § 7(1); N.D. CONST. art. V, § 2 (Superintendent of Public Instruction); OHIO CONST. art. VI, § 4 (State Board of Education); OHIO REV. CODE ANN. § 3301.01(A) (State Board of Education); OKLA. CONST. art. VI, § 1(A) (Superintendent of Public Instruction); S.C. CONST. art. VI, § 7 (Superintendent of Education); TEX. CONST. art. VII, § 8 (State Board of Education); TEX. EDUC. CODE § 7.101 (State Board of Education); UTAH CONST. art. X, § 3 (State Board of Education); WIS. CONST. art. X, § 1 (Superintendent of Public Instruction); WYO. CONST. art. IV, § 11 (Superintendent of Public Instruction).

4. E.g., John Dinan, *State Constitutional Initiative Processes and Governance in the Twenty-First Century*, 19 CHAP. L. REV. 61, 69–70 (2016); James N.G. Cauthen, *Referenda, Initiatives, and State Constitutional No-Aid Clauses*, 76 ALB. L. REV. 2141, 2157–76 (2012); Adrian Brennan-Evans, Note, *Million to One: Criticizing the Framework for State-Sponsored Lottery Schemes*, 56 U.C. DAVIS L. REV. 2137, 2141–42 (2023).

5. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 269 (3d ed. 2010).

6. Harvey J. Tucker & L. Harmon Zeigler, *Responsiveness in Public School Districts: A Comparative Analysis of Boards of Education*, 3 LEGIS. STUD. Q. 213, 216–17 (1978).

7. E.g., Sarah Mervosh & Giulia Heyward, *The School Culture Wars: 'You Have Brought Division to Us'*, N.Y. TIMES (Aug. 18, 2021), <https://www.nytimes.com/2021/08/18/us/schools-covid-critical-race-theory-masks-gender.html> [<https://perma.cc/3NDQ-WCZY>].

8. *Infra* Section I.A.

9. *Infra* Sections I.B, II.B.

10. *Infra* Section II.A.2.

with appointment power vested in the state board of education.¹¹ In some of these states, voters simply swapped one method of democratic control for another; they ratified constitutional amendments that abolished the elected superintendent and created, instead, an elected state board.¹² In others, voters surrendered their control altogether, vesting appointment of the superintendent in a board appointed by the governor.¹³

The political reforms that achieved these new education governance structures were inconsistent across the country, occasionally controversial, and frequently decided in the context of state-specific idiosyncrasies.¹⁴ Voters frequently *rejected* constitutional amendments that would have limited their ability to elect state education administrators, and the past century is littered with failed amendments.¹⁵ Still, efforts to sideline voters in selecting education officials continue, with varying levels of success.¹⁶

This Article lays out the hundred-year-plus trajectory of state constitutional and statutory changes that transitioned education from a near-universally democratized area of policymaking into one that unevenly balances democracy and professionalization. Part I begins by sketching out the starting position of democracy in state education governance: the initial creation of elected state education administrators and the pressures to reform these systems in the early twentieth century. Then, Part II explores the slow process by which the structure of statewide education governance shifted, discussing the methods by which reforms were proposed and the content of the proposed changes. Part III explores the adoption (and rejection) of these measures, focusing on the arguments made for and against the efforts, the outcome of the amendments, and more modern developments. In doing so, this Article situates democracy in education in today's political climate—in which state policymakers continue to tinker with the relationship between democracy and education governance, frequently for political aims.

I. THE STARTING POSITION OF STATEWIDE EDUCATION GOVERNANCE

Constitutional and structural change in the states takes time—but once it starts in one state, other states take note and frequently adopt similar changes themselves.¹⁷ This is the story of state education governance, too.¹⁸ The lack of centralized administration, much less any statewide elected official to manage state schools, was seen as a problem during the mid-

11. *Infra* Section II.B.

12. *Infra* Section II.B.

13. *Infra* Section II.B.

14. *Infra* Section III.A.

15. *Infra* Section III.B.

16. *Infra* Sections III.B, III.C.

17. *See infra* notes 29–30, 33–37, and accompanying text.

18. *Infra* Section I.A.

nineteenth century, which many states solved by creating the earliest forms of state education departments headed by elected superintendents.¹⁹ Constant dissatisfaction with the earliest organizational structures prompted tinkering and adjustments over time, ultimately giving way to twentieth-century reforms.²⁰

This Part briefly sets the scene for the efforts in the early 1900s to radically reshape state education governance. Section A begins with a history of how state education governance came to be dominated by elected administrators. Then, Section B explains some of the dissatisfactions with these efforts and why policymakers and reformers pushed for change.

A. The Creation of Elected Education Administrators

Until the mid-nineteenth century, state governments were usually undemocratic.²¹ State legislatures were frequently the most—and, sometimes, the *only*—democratized branch of state government.²² A minority of states provided for governors that were indirectly elected by state legislatures,²³ but even those with elected governors had little else in the way of elected executive officials.²⁴

Beginning in the 1840s and 1850s, however, an outpouring of democratic and populist sentiment from the Jacksonian era pressured many state policymakers to make their governments more directly accountable to voters.²⁵ Through a combination of totally rewritten state constitutions, targeted constitutional amendments, and statutory reforms, the number of statewide elected officials in the United States rose considerably.²⁶

These broader trends affected state education governance, too.²⁷ At the same time that democratic reformers were pushing for changes in how state officials were selected, education reformers were pushing for greater standardization of public education systems—which usually consisted of some sort of state supervision.²⁸ Many of these reformers advocated for a

19. See *infra* notes 29–30, 33–37, and accompanying text.

20. *Infra* Sections I.B, II.A.

21. Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859, 884–87 (2021).

22. *Id.* at 884–85.

23. T. Quinn Yeagain, *Democratizing Gubernatorial Selection*, 14 NE. U. L. REV. 1, 9–14 (2022).

24. Quinn Yeagain, *Administrative Capacity in Direct Democracy*, 57 U.C. DAVIS L. REV. 1347, 1355–58 (2023); Quinn Yeagain, *Shadow Districts*, 45 CARDOZO L. REV. 405, 415–27 (2024) [hereinafter Yeagain, *Shadow Districts*].

25. Bulman-Pozen & Seifter, *supra* note 21, at 885–87.

26. See *id.*

27. See, e.g., IND. CONST. art. VIII, § 8 (1851); IOWA CONST. art. IX, § 1 (1857); KAN. CONST. art. I, § 1 (1859); OR. CONST. art. VIII, § 1 (1857); WIS. CONST. art. X, § 1 (1848).

28. Quinn Yeagain, *Taking Education “Out of Politics”: The Rise of Nonpartisan State Education Governance*, 33 WIDENER COMMW. L. REV. 1, 7–13 (2023) [hereinafter Yeagain, “Out of Politics”].

popularly elected superintendent of public instruction, which was first established in Iowa's 1846 Constitution.²⁹ Many other states, especially in the Midwest, quickly followed suit.³⁰

Thereafter, state superintendents of public instruction became one of the most common elected officials in state government.³¹ As Southern states adopted new constitutions as they were readmitted to the Union after the Civil War, Northern delegates frequently promoted conceptions of democracy from their home states, which included elected education administrators.³² Even in those Southern states that did *not* create such a position in their constitutions, almost all established the position statutorily.³³ As Western territories were granted statehood, they, too, provided for elected superintendents.³⁴ As a result, by the beginning of the twentieth century, thirty-one of forty-five states had elected superintendents.³⁵ By 1912, after Arizona, New Mexico, and Oklahoma had been admitted to the Union,³⁶ thirty-five states had elected superintendents, and one state, Michigan, had an elected state board of education.³⁷

B. The Movement to Take Education “Out of Politics”

The proliferation of elected state superintendents—reflected in almost every state that was admitted to the Union after 1850³⁸—perhaps reflects an assumption that the office ought to be elected. But Progressive reformers and efficiency movement advocates in the early 1900s began to question that assumption.³⁹

Many good-government reformers were concerned about the politicization of elections for education administrators—and feared that subjecting these offices to partisan elections had sacrificed professionalism

29. *Id.*; IOWA CONST. of 1846, art. IX, § 1.

30. *E.g.*, IND. CONST. art. VIII, § 8 (1851); Act of Feb. 18, 1854, 18th Gen. Assemb., 2d Sess., 1854 Ill. Laws 13; Act of Mar. 14, 1853, 50th Gen. Assemb., Reg. Sess., 1852 Ohio Laws 429; WIS. CONST. art. X, § 1 (1848).

31. *See infra* notes 33–37, 50, and accompanying text.

32. PAUL E. HERRON, FRAMING THE SOLID SOUTH: THE STATE CONSTITUTIONAL CONVENTIONS OF SECESSION, RECONSTRUCTION, AND REDEMPTION, 1860–1902 201–09 (2017).

33. Act of Dec. 7, 1875, 1875 Ark. Acts 54; Act of Mar. 5, 1867, ch. 27, 34th Gen. Assemb., Reg. Sess., 1867–1868 Tenn. Pub. Acts 33; S.B. Nos. 32 & 44, ch. 25, 18th Leg., Spec. Sess., 1884 Tex. Gen. Laws 38.

34. IDAHO CONST. art. IV, § 1 (1889); MONT. CONST. of 1889, art. VII, § 1; N.D. CONST. of 1889, art. III, § 82; S.D. CONST. art. IV, § 12 (1889); UTAH CONST. art. VII, § 1 (1895); WASH. CONST. art. III, §§ 1, 3 (1889); WYO. CONST. art. IV, § 11 (1889).

35. *See infra* note 50 and accompanying text.

36. ARIZ. CONST. art. V, § 1 (1910); N.M. CONST. art. V, § 1 (1911); OKLA. CONST. art. VI, §§ 1, 4 (1907).

37. MICH. CONST. of 1908, art. XI, § 6.

38. Yeargain, “*Out of Politics*”, *supra* note 28, at 8–9.

39. *Id.* at 6–7.

for democracy.⁴⁰ In response, some states opted to turn their school elections into nonpartisan affairs, with the claim that doing so would take education “out of politics.”⁴¹ In most of the states that adopted nonpartisan elections, that system has continued to the present day.⁴²

But for other reformers, these proposals were inadequate. Advocates of the “short ballot” movement,⁴³ led by Richard Childs and endorsed by many leading Progressives,⁴⁴ urged that administrative positions, including superintendents of education, be appointed by the state’s governor. Efficiency advocates and short-ballot adherents alike argued that administrative jobs required expertise, and that voters, while well-intentioned, were poorly positioned to select qualified candidates given the realities of partisan elections.⁴⁵ These positions were backed up by studies of state governments conducted by entities like the Brookings Institution,⁴⁶ as well as state-specific advisory commissions.⁴⁷

The prescription for these problems varied. Some policymakers pushed for an extreme in the opposition direction: near-total insulation of education administrators from electoral influence by creating appointed

40. *Id.* at 19.

41. *Id.* at 19.

42. *But see* S.B. 78, ch. 28, 61st Leg., 2d Reg. Sess., 2016 Utah Laws 147 (converting Utah State Board of Education elections from nonpartisan to partisan); *Richards v. Cox*, 450 P.3d 1074, 1085 (Utah 2019) (upholding partisan elections under the Utah Constitution).

43. RICHARD SPENCER CHILDS, *SHORT-BALLOT PRINCIPLES* 110 (1911).

44. BERNARD HIRSCHHORN, *DEMOCRACY REFORMED: RICHARD SPENCER CHILDS AND HIS FIGHT FOR BETTER GOVERNMENT* (1997).

45. Charles A. Beard, *The Ballot’s Burden*, 24 *POL. SCI. Q.* 589, 602–03 (1909).

46. BROOKINGS INST., INST. FOR GOV’T RSCH., 1 ORGANIZATION AND ADMINISTRATION OF THE STATE GOVERNMENT OF ALABAMA 398–404 (1932) [hereinafter *ALABAMA BROOKINGS STUDY*]; BROOKINGS INST., INST. FOR GOV’T RSCH., 1 REPORT ON A SURVEY OF ADMINISTRATION IN IOWA 162–67 (1933) [hereinafter *IOWA BROOKINGS STUDY*]; BROOKINGS INST., INST. FOR GOV’T RSCH., REPORT ON A SURVEY OF THE ORGANIZATION AND ADMINISTRATION OF STATE AND COUNTY GOVERNMENT IN MISSISSIPPI 482–84 (1932) [hereinafter *MISSISSIPPI BROOKINGS STUDY*]; BROOKINGS INST., INST. FOR GOV’T RSCH., REPORT ON A SURVEY OF THE ORGANIZATION AND ADMINISTRATION OF THE STATE GOVERNMENT OF NORTH CAROLINA 160–64 (1930) [hereinafter *NORTH CAROLINA BROOKINGS STUDY*]; BROOKINGS INST., INST. FOR GOV’T RSCH., ORGANIZATION AND ADMINISTRATION OF OKLAHOMA 36 (1935) [hereinafter *OKLAHOMA BROOKINGS STUDY*].

47. *E.g.*, *Summary of Recommendations Made by Education Study Group*, *OPELIKA DAILY NEWS*, Jan. 17, 1969, at 3 [hereinafter *Alabama Education Study Group Recommendations*], <https://www.newspapers.com/image/982570840> [<https://perma.cc/QT8A-VQGD>]; CAL. LEGIS., REPORT OF THE SPECIAL LEGISLATIVE COMMITTEE ON EDUCATION 17–19 (1920) [hereinafter *JONES REPORT*]; GA. SCH. BDS. ASS’N, A REPORT FROM THE GEORGIA SCHOOL BOARDS ASSOCIATION TASK FORCE ON EDUCATION REFORM (1984) [hereinafter *GEORGIA SCHOOL BOARDS ASSOCIATION REPORT*]; KAN. LEGIS. COUNCIL, THE EDUCATION AMENDMENT TO THE KANSAS CONSTITUTION, No. 256 (Dec. 1965) [hereinafter *KANSAS LEGISLATIVE COUNCIL REPORT*], <https://cdm16884.contentdm.oclc.org/digital/collection/p16884coll8/id/730> [<https://perma.cc/WKJ2-HEPT>]; WASH. ST. PLAN. COUNCIL, A SURVEY OF THE COMMON SCHOOL SYSTEM OF WASHINGTON WITH PROPOSALS FOR FURTHER DEVELOPMENT AND IMPROVEMENT 64–65 (1938) [hereinafter *WASHINGTON COMMON SCHOOL SYSTEM REPORT*].

state boards of education that appointed state superintendents.⁴⁸ Others pushed for the creation of *elected* state boards of education, usually by district, that had the authority to name the superintendent.⁴⁹

In most states, either proposal—much less any change—required popular buy-in. State superintendents were established as constitutional, not statutory, offices,⁵⁰ and changing their method of selection required a constitutional amendment or an entirely new constitution.

II. A CENTURY OF PROPOSED REFORMS TO EDUCATION GOVERNANCE

Amidst growing dissatisfaction with the state of education governance, policymakers—including governors, state legislators, constitutional convention delegates, and voters themselves—began to develop proposals to alter the composition of state education departments. Because most elected state superintendents were established as constitutional offices, proposals to convert them into appointed, not elected, offices—or to establish an elected state board of education—required state constitutional change.

These changes took place in a variety of ways, including by the adoption of new state constitutions and the ratification of discrete state constitutional amendments.⁵¹ These changes were usually proposed by state legislators, but in a handful of cases voters used their new initiative powers to propose structural changes themselves.⁵²

This Part examines the proposals to reform state education governance. Section A discusses *how* these proposals were developed, explaining the different processes through which specific reforms were

48. *Infra* Section II.B.

49. *Infra* Section II.B.

50. ALA. CONST. art. V, § 112 (1901); ARIZ. CONST. art. V, § 1 (1910); CAL. CONST. of 1879, art. IX, § 2; COLO. CONST. art. IV, § 1 (1876); FLA. CONST. of 1885, art. IV, § 20; *id.* art. XII, § 2; Act of Dec. 18, 1894, Act No. 152, Gen. Assemb., Reg. Sess., 1894 Ga. Laws 34, *amending* GA. CONST. of 1877, art. VIII, § 2, ¶ 1 (amended 1896); IDAHO CONST. art. IV, § 1 (1889); ILL. CONST. of 1870, art. V, § 1; IND. CONST. art. VIII, § 8 (1851); IOWA CONST. art. IX, § 1 (1857); KAN. CONST. art. I, § 1 (1859); KY. CONST. § 91 (1890); LA. CONST. of 1898, art. 249; LA. CONST. of 1913, art. 249; H.B. No. 127, Act No. 105, Leg. Assemb., Reg. Sess., 1924 La. Acts 5, *amending* LA. CONST. of 1921, art. XII, § 5 (amended 1922); MICH. CONST. of 1908, art. XI, § 2; MISS. CONST. art. VIII, § 202 (1890); MO. CONST. of 1875, art. V, § 2; MONT. CONST. of 1889, art. VII, § 1; NEB. CONST. 1875, art. V, § 1; NEB. CONST. art. IV, § 1 (1920); NEV. CONST. art. XI, § 1 (1864); N.M. CONST. art. V, § 1 (1911); N.C. CONST. of 1868, art. III, § 1; N.D. CONST. of 1889, art. III, § 82; OKLA. CONST. art. VI, §§ 1, 4 (1907); OR. CONST. art. VIII, § 1 (1857); S.C. CONST. art. IV, § 24; *id.* art. XI, § 1 (1895); S.D. CONST. art. IV, § 12 (1889); UTAH CONST. art. VII, § 1 (1895); VA. CONST. of 1902, art. IX, § 131; WASH. CONST. art. III, §§ 1, 3 (1889); W. VA. CONST. art. VII, §§ 1–2 (1872); WIS. CONST. art. X, § 1 (1848); WYO. CONST. art. IV, § 11 (1889).

51. *Infra* Section II.A.

52. *Infra* notes 156–65 and accompanying text.

drafted and presented to voters. Subsequently, Section B outlines *what* these proposals consisted of.

A. The Development of Reform Proposals

Reform movements in the early twentieth century dramatically reshaped state governments. Progressive reformers came in many forms—efficiency movement advocates who pushed for the adoption of “business principles and scientific management techniques,”⁵³ short-ballot proponents who advocated for fewer elected officials,⁵⁴ and good-government reformers who agitated for accountability measures and alterations to the allocation of powers to reduce corruption.⁵⁵

The different emphases of different aspects of reform movements, as well as regional differences in who was able to win power, shaped how reforms were pushed. Most institutional reforms, including proposed changes to state education governance, came from three main sources: (1) within state governments themselves, from gubernatorial recommendations and legislative action; (2) from outside state governments, including from external studies conducted by think tanks or specially convened study groups; and (3) constitutional conventions. Each is briefly addressed in turn.

1. Internally Developed Reform Proposals

The early twentieth century saw significant variations in the electoral success of reformers. “Progressive” candidates saw brief—but significant—success in the 1910s as progressive Democrats, progressive Republicans, and as members of the Progressive Party.⁵⁶ The Progressive movement’s strength as an independent electoral force saw its zenith in 1912, with Theodore Roosevelt’s campaign for the presidency as the Progressive nominee, yet declined soon thereafter.⁵⁷ Some third-party organizations, like the Farmer–Labor Party in Minnesota,⁵⁸ Nonpartisan League in North Dakota,⁵⁹ and the Progressive Party in Wisconsin,⁶⁰ were

53. STEPHEN SKOWRONEK, *BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877–1920* 177 (1982).

54. *See, e.g.*, HIRSCHHORN, *supra* note 44.

55. *See, e.g.*, G. Alan Tarr, *Understanding State Constitutions* 150–51 (1998); Amy Bridges, *Democratic Beginnings: Founding the Western States* 125 (2017).

56. *See, e.g.*, John Whiteclay Chambers II, *The Tyranny of Change: America in the Progressive Era, 1890–1920* 158–61 (2d ed. 2004).

57. SIDNEY M. MILKIS, *THEODORE ROOSEVELT, THE PROGRESSIVE PARTY, AND THE TRANSFORMATION OF AMERICAN DEMOCRACY* 262–64 (2009).

58. RICHARD M. VALELLY, *RADICALISM IN THE STATES: THE MINNESOTA FARMER–LABOR PARTY AND THE AMERICAN POLITICAL ECONOMY* 70–83 (1989).

59. MICHAEL J. LANSING, *INSURGENT DEMOCRACY: THE NONPARTISAN LEAGUE IN NORTH AMERICAN POLITICS* 138 (2015).

able to hold on to power for longer, but these were rarer circumstances. Though the movement's formal electoral success was a mere flash in the pan, candidates of both major parties ultimately picked up its positions.⁶¹

In the early 1900s and 1910s, many reform-minded candidates won gubernatorial elections.⁶² These governors were able to use their newfound powers to advocate for state legislatures to adopt specific reforms.⁶³ Some governors, like Charles Evan Hughes of New York, Hiram Johnson of California, and Robert La Follette of Wisconsin, became well-known in their own right—and their recommendations were adopted in other states, too.⁶⁴ Many of these governors were adherents of the short-ballot movement and urged their legislatures to adopt measures that consolidated the number of elected offices.⁶⁵ The superintendent of public instruction was a common target,⁶⁶ given that its primary task—administering the state's public-education system—was intended to be a technical, administrative task, not an ideological one.⁶⁷ Accordingly, in some states, governors and legislators opted to keep the office as an elected position, but pushed to convert elections from partisan to nonpartisan.⁶⁸

2. *Externally Developed Reform Proposals*

The Progressive era's emphasis on empirics and efficiency principles persuaded many state policymakers that the right way to reorganize their governments was to commission "experts" to conduct studies on state governance and make recommendations to the legislature. Some states—including Alabama, Iowa, Mississippi, New Hampshire, North Carolina, and Oklahoma—contracted with the Brookings Institution in the 1930s to conduct thorough reviews of their state governments.⁶⁹ These studies were voluminous and frequently contained recommendations

60. See generally ROGER T. JOHNSON, ROBERT M. LA FOLLETTE, JR. AND THE DECLINE OF THE PROGRESSIVE PARTY IN WISCONSIN (1970).

61. See *infra* notes 62–68 and accompanying text.

62. DAVID R. BERMAN, GOVERNORS AND THE PROGRESSIVE MOVEMENT 23–26 (2019).

63. See *id.*

64. *Id.* at 158–62 (describing Hughes); *id.* at 201–15 (describing Johnson); *id.* at 47–53 (describing La Follette).

65. *Id.* at 28–29, 206–07, 261–62.

66. E.g., Hiram Johnson, Governor of California, Inaugural Address, in S. JOURNAL, 39th Legis. Assemb., Reg. Sess. 66 (1911).

67. See, e.g., Yeagain, "Out of Politics", *supra* note 28, at 13–20.

68. *Id.*

69. See ALABAMA BROOKINGS STUDY, *supra* note 46, at 398–404; IOWA BROOKINGS STUDY, *supra* note 46, at 162–67; MISSISSIPPI BROOKINGS STUDY, *supra* note 46, at 482–84; NORTH CAROLINA BROOKINGS STUDY, *supra* note 46, at 160–64; OKLAHOMA BROOKINGS STUDY, *supra* note 46, at 36. See generally BROOKINGS INST., INST. FOR GOV'T RSCH., REPORT ON A SURVEY OF THE ORGANIZATION AND ADMINISTRATION OF THE STATE, COUNTY, AND TOWN GOVERNMENTS OF NEW HAMPSHIRE (1932).

to shift away from directly elected education administrators.⁷⁰ However, despite the thoroughness of the studies, they seem to have had little impact on education governance.⁷¹

In many other states, specific study (or advisory) commissions were organized, by both gubernatorial and legislative action, to evaluate specific areas of the government and develop a set of reforms that might be adopted as a single constitutional amendment or statute.⁷² These proposals were apparently taken much more seriously than the Brookings studies.⁷³ Legislatures engaged with the recommendations, sometimes adopting them in full, but more frequently, tweaking them slightly.⁷⁴ In a handful of states, the release of an advisory commission's report even galvanized private citizens to gather petitions for initiated statutes or constitutional amendments that adopted the recommendations in full.⁷⁵

70. See ALABAMA BROOKINGS STUDY, *supra* note 46, at 398–404; IOWA BROOKINGS STUDY, *supra* note 46, at 162–67; MISSISSIPPI BROOKINGS STUDY, *supra* note 46, at 482–84; NORTH CAROLINA BROOKINGS STUDY, *supra* note 46, at 160–64; OKLAHOMA BROOKINGS STUDY, *supra* note 46, at 36.

71. In Alabama, *repeated* studies recommended the abolition of the elected Superintendent of Public Instruction, but the legislature did not place such an amendment on the ballot until 1969. Chris Waddle, *Amendment 1 Seeks Elected School Board*, BIRMINGHAM POST-HERALD, Dec. 2, 1969, at 1, <https://www.newspapers.com/image/793811821/> [<https://perma.cc/T57J-7XLJ>] (noting similar recommendations from a 1919 report by the Alabama Education Commission, 1942 and 1944 reports by the Southern States Work-Conference on School Administrative Problems, 1945 report by the Alabama Education Study Commission, 1958 committee report by the Alabama Education Commission, 1959 report by the Commission, and 1968 report by the Alabama Education Study Commission). Iowa ultimately ditched its elected Superintendent for a quasi-elected State Board, but only in 1953, two decades after the Brookings recommendation. H.F. No. 23, ch. 114, 55th Leg. Assemb., Reg. Sess., 1953 Iowa Acts 194. Mississippi voters ratified a constitutional amendment in 1982. S. Con. Res. 506, ch. 616, Legis. Assemb., Reg. Sess., 1982 Miss. Laws 93, *amending* Miss. Const. art. VIII, § 203 (amended 1982). Oklahomans rejected a similar amendment in 1990, H.J. Res. No. 1005, ch. 3, 42d Leg., 1st Extra Sess., 1989 Okla. Sess. Laws 267, and no such proposal has ever been placed on the ballot in North Carolina.

72. *Alabama Education Study Group Recommendations*, *supra* note 47, at 3; JONES REPORT, *supra* note 47, at 17–19; GEORGIA SCHOOL BOARDS ASSOCIATION REPORT, *supra* note 47; KANSAS LEGISLATIVE COUNCIL REPORT, *supra* note 47; WASHINGTON COMMON SCHOOL SYSTEM REPORT, *supra* note 47, at 64–65.

73. *Compare Alabama Education Study Group Recommendations*, *supra* note 47, at 3, with H.B. No. 49, Act No. 2, Spec. Sess., 1969 Ala. Laws 16; *compare* JONES REPORT, *supra* note 47, at 17–19, with S. Const. Amend. No. 26, ch. 61, 47th Leg., Reg. Sess., 1927 Cal. Stat. 2367; *compare* GEORGIA SCHOOL BOARDS ASSOCIATION REPORT, *supra* note 47, with H.R. No. 505, Res. No. 85, Reg. Sess., 1984 Ga. Laws 1716; *compare* KANSAS LEGISLATIVE COUNCIL REPORT, *supra* note 47, with H. Con. Res. No. 505, ch. 10, 1966 Kan. Laws 44.

74. *Supra* note 73 and accompanying text.

75. See, e.g., BELLE REEVES, WASH. SEC'Y OF STATE, A PAMPHLET CONTAINING CONSTITUTIONAL AMENDMENT, INITIATIVE MEASURE NO. 126, INITIATIVE MEASURE NO. 129, INITIATIVE MEASURE NO. 130 5 (1938); *Non-Partisan School Ballot Is Sought*, SEATTLE STAR, Mar. 3, 1938, at 5, <https://www.newspapers.com/image/773679628> [<https://perma.cc/7CDV-L5NL>].

3. *Constitutional Conventions*

The adoption of individual constitutional amendments is an effective, but frequently very time-consuming, method of changing state constitutions. Subject-matter restrictions, usually in the form of “single-subject” requirements, limit the extent to which proposed changes can be included in a single amendment.⁷⁶ While some states had no qualms about routinely putting more than twenty proposed amendments on the ballot for a single election,⁷⁷ most legislatures recognized that drowning voters in endless amendments was a poor strategy.

Constitutional conventions, on the other hand, are much more effective in adopting more expansive change. Conventions contain almost no restrictions at all on what changes they can adopt,⁷⁸ and their proposed changes are usually—but not always⁷⁹—crystallized in a single text on which voters can accept or reject *in toto*. However, a single state may only experience a handful of constitutional conventions in their entire existence, so the effectiveness of conventions is limited by their rarity.⁸⁰

Conventions were held with some frequency in the mid-to-late nineteenth century but were far more infrequent by the early twentieth century.⁸¹ Nonetheless, a number of states still convened conventions in the first half of the twentieth century. Alaska, Arizona, Hawaii, New Mexico, and Oklahoma were admitted to the Union and held conventions to adopt

76. See, e.g., Robert D. Cooter & Michael D. Gilbert, *A Theory of Direct Democracy and the Single Subject Rule*, 110 COLUM. L. REV. 687, 710–11 (2010); Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 ALB. L. REV. 1629, 1650–60 (2019).

77. See, e.g., *34 Amendments Go into Effect*, LAFAYETTE DAILY ADVERTISER, Dec. 10, 1952, at 1, <https://www.newspapers.com/image/536861708/> [<https://perma.cc/YKN4-FFFE>] (“Thirty-four constitutional amendments approved by the Louisiana voters Nov. 4 go into effect today. The 47,000 words add another 65 pages to the state constitution, already the longest such instrument in the United States.”).

78. See, e.g., Jonathan Marshfield, *American Democracy and the State Constitutional Convention*, 92 FORDHAM L. REV. (forthcoming 2024) (manuscript at 26–27) (noting that state legislatures and voters are limited by subject-matter restrictions, but that constitutional conventions are not). Of course, some states have convened constitutional conventions for extremely limited purposes. Francis H. Heller, *Limiting a Constitutional Convention: The State Precedents*, 3 CARDOZO L. REV. 563, 575–79 (1981).

79. Among others, constitutional conventions in 1912 in Ohio, 1919–20 in Nebraska, and 1968 and 1978 in Hawaii submitted their proposed constitutional revisions to voters in separate amendments—most of which were ultimately adopted. STEVEN H. STEINGLASS & GINO J. SCARSELLI, *THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE* 44–46 (2004); ROBERT D. MIEWALD & PETER J. LONGO, *THE NEBRASKA STATE CONSTITUTION: A REFERENCE GUIDE* 27 (2d ed. 2011); ANNE FEDER LEE, *THE HAWAII STATE CONSTITUTION* 14–24 (2011).

80. See Albert L. Sturm, *The Development of American State Constitutions*, 12 PUBLIUS 57, 82 (1982) (showing timeline of when state constitutions were adopted and when constitutional conventions took place).

81. See *id.* at 58, 82.

their first constitutions.⁸² Alabama, Arkansas, Connecticut, Illinois, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, New York, Ohio, and Virginia all held formal constitutional conventions before 1940.⁸³

In a handful of other states, constitutional review or revision commissions were assembled to consider constitutional changes. Depending on the state, such a commission might have been informally convened by gubernatorial action or by a statute⁸⁴—but regardless, it had no authority to directly place amendments on the ballot. At most, it could *recommend* changes to the legislature, which was under no obligation to accept them.⁸⁵

B. The Content of Reform

While the sources of reform proposals varied, the proposals themselves were frequently quite similar. The starting position—an elected superintendent—was the same in most states, so the available changes usually consisted of replacing the elected superintendent with an appointed official to supervise the state school system.

Some of these proposals relied on a state board of education to manage this process.⁸⁶ Many states had pre-existing state boards of education, which were established constitutionally,⁸⁷ and operated alongside the superintendents. While the distribution of policymaking responsibility differed, many of these boards had rulemaking authority, and the superintendent was tasked with serving as the day-to-day administrator.⁸⁸ Depending on the state, these boards might have consisted of some of the state's elected officials (or the heads of state schools) serving in an *ex officio* capacity, gubernatorial appointees, or some mix thereof.⁸⁹

82. *Id.* at 82.

83. *Id.*

84. Robert F. Williams, *Are State Constitutional Conventions Things of the Past? The Increasing Role of the Constitutional Commission in State Constitutional Change*, 1 HOFSTRA L. & POL'Y SYMP. 1, 4–5 (1996).

85. *Id.* at 5–6.

86. *See infra* notes 90–91 and accompanying text.

87. *E.g.*, ARIZ. CONST. art. XI, § 2 (1910); COLO. CONST. art. IX, § 1 (1876); FLA. CONST. of 1885, art. XII, § 3; IDAHO CONST. art. IX, § 2 (1889); MICH. CONST. of 1908, art. XI, § 6; MISS. CONST. art. VIII, § 203 (1890); MO. CONST. of 1875, art. XI, § 4; MONT. CONST. of 1889, art. XI, § 11; N.M. CONST. art. XII, § 6 (1910); N.C. CONST. of 1868, art. IX, § 7; OKLA. CONST. art. XIII, § 5 (1907); S.C. CONST. art. XI, § 2 (1895); TEX. CONST. art. VII, § 8 (1876); UTAH CONST. art. X, § 8 (1895); VA. CONST. of 1902, art. IX, § 130.

88. *See supra* note 50; *infra* notes 89–91; and accompanying text.

89. *E.g.*, ARIZ. CONST. art. XI, § 3 (1910) (“The State Board of Education shall be composed of the following members: the Governor, the Superintendent of Public Instruction, the President of the University, and principals of the State normal schools, as ex-officio members, and a city superintendent of schools, a principal of a high school, and a county superintendent of schools, to be appointed by the Governor.”); FLA. CONST. of 1885, art. XII,

As policymakers pursued the abolition of elected superintendents, they frequently modified the powers and selection mechanisms for these state boards of education or created altogether new boards. Some amendments proposed giving the board the power to appoint the superintendent⁹⁰ and even creating a popularly elected board.⁹¹ Elected boards proved particularly popular. Alabama, Arkansas, Colorado, Iowa, Kansas, Louisiana, Nebraska, Nevada, New Mexico, Ohio, Texas, and Utah

§ 3 ("The Governor, Secretary of State, Attorney-General, State Treasurer and State Superintendent of Public Instruction shall constitute a body corporate, to be known as the State Board of Education of Florida[.]"); MICH. CONST. of 1908, art. XI, § 6 ("The state board of education shall consist of four [elected] members"); MISS. CONST. art. VIII, § 203 (1890) ("There shall be a board of education, consisting of the secretary of state, the attorney-general, and the superintendent of public education[.]"); MONT. CONST. of 1889, art. XI, § 11 ("The said board shall consist of eleven members, the Governor, State Superintendent of Public Instruction, and Attorney General, being members ex officio, the other eight members thereof shall be appointed by the Governor, subject to the confirmation of the Senate, under the regulations and restrictions to be provided by law.").

90. *E.g.*, S.B. No. 19, 5th Leg., Spec. Sess., 1922 Ariz. Sess. Laws 307; S. Const. Amend. No. 26, ch. 61, 47th Leg., Reg. Sess., 1927 Cal. Stat. 2367; S. Const. Amend. No. 2, ch. 81, 1st Extra. Sess., 1958 Cal. Stat. 454; FLA. CONST. art. IV, § 4 (proposed 1978), *reprinted in Amendments, Election of 11-7-78*, FLA. ST. UNIV., FLA. CONST. REV. COMM'N, <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/conhist/1978amen.html> [<https://perma.cc/3SX5-24D4>]; FLA. CONST. art. IX, § 2 (proposed 1978), *reprinted in Amendments, Election of 11-7-78, supra*; H. Res. No. 505, Act No. 85, Gen. Assemb., Reg. Sess., 1984 Ga. Laws 1716; S. Res. No. 270, Act No. 86, Gen. Assemb., Reg. Sess., 1988 Ga. Laws 2100; H.B. No. 467, ch. 169, 1956 Ky. Acts 338; S.B. No. 10, ch. 36, 1986 Ky. Acts 84; S. Con. Res. No. 506, ch. 616, Reg. Sess., 1982 Miss. Laws 93; S.J. Res. No. 8, 9th Leg., Reg. Sess., 1929 N.M. Laws 421; S.J. Res. No. 15, 12th Leg., Reg. Sess., 1935 N.M. Laws 482; S.J. Res. No. 20, 32d Leg., 1st Reg. Sess., 1975 N.M. Laws 2134; N.D. CONST. art. VIII, § 2 (proposed 1972); S. Con. Res. No. 4002, ch. 610, 44th Legis. Assemb., Reg. Sess., 1975 N.D. Laws 1587; H.J. Res. No. 1005, 42d Leg., 1st Extra. Sess., 1989 Okla. Sess. Laws 267; S.B. No. 382, Act of Mar. 14, 1928, ch. 205, Reg. Sess., 1928 Va. Acts 636; H.B. No. 6, ch. 4, 48th Leg., 1st Extra. Sess., 1946 W. Va. Acts 10; S.B. No. 252, ch. 19, 53d Leg., Reg. Sess., 1957 W. Va. Acts 114.

91. *E.g.*, H.B. No. 49, Act No. 2, Spec. Sess., 1969 Ala. Laws 16; FRED B. WOOD, CAL. SEC'Y OF STATE, PROPOSED AMENDMENTS TO CONSTITUTION, PROPOSITIONS AND PROPOSED LAWS TO BE SUBMITTED TO THE ELECTORS OF THE STATE OF CALIFORNIA AT THE GENERAL ELECTION TO BE HELD TUESDAY, NOVEMBER 6, 1934 TOGETHER WITH ARGUMENTS RESPECTING THE SAME 17-18 (1934) [hereinafter 1934 CALIFORNIA VOTER PAMPHLET]; COLO. CONST. art. IX, § 1 (proposed 1928), *reprinted in 6: Amendment to Section 1 of Article IX of the Constitution of the State of Colorado*, Craig Empire, Oct. 10, 1928, at 3 [hereinafter 1928 COLORADO AMENDMENTS]; COLO. CONST. art. IX, § 1 (proposed 1930), *reprinted in 2: Amendment to Section 1 of Article IX of the Constitution of the State of Colorado*, Steamboat Pilot (Steamboat Springs, Colo.), Oct. 3, 1930, at 6 [hereinafter 1930 COLORADO AMENDMENTS]; S. Con. Res. No. 6, 1947 Colo. Sess. Laws 976; H. Con. Res. No. 505, ch. 10, 1966 Kan. Sess. Laws 44; S.B. No. 18, ch. 129, 1972 Ky. Acts 564; LA. CONST. OF 1921, art. XII, § 4; MO. CONST. CONVENTION, AMENDMENTS TO THE CONSTITUTION OF MISSOURI PROPOSED BY THE CONSTITUTIONAL CONVENTION 1922-1923 AND THE ADDRESS TO THE PEOPLE 65-68 (1924) [hereinafter 1924 MISSOURI CONSTITUTIONAL CONVENTION AMENDMENTS]; Legis. B. 212, Act of May 21, 1951, ch. 164, 1951 Neb. Laws 643; S.J. Res. No. 3, 23d Leg., Reg. Sess., 1957 N.M. Laws 716; H.J. Res. No. 5, Act of Mar. 8, 1949, 28th Leg., Reg. Sess., 1949 Utah Laws 296.

all adopted this system.⁹² However, the mere creation of a board elected by district did not, until the 1970s, actually result in the regular *redrawing* of the districts—which left many states with deeply malapportioned and unrepresentative boards for decades.⁹³ Other proposals leaned more heavily on the governor’s appointment powers.⁹⁴ Under these reforms, the elected superintendent would be transitioned into a gubernatorial appointee—and would function as part of the governor’s appointed cabinet like any other administrative official.⁹⁵

III. THE CAMPAIGNS FOR REFORM

As the amendments were placed on the ballot, battle lines were drawn between supporters and opponents. The merits of the changes—whether they would actually result in better-run schools,⁹⁶ or would actually take education “out of politics,”⁹⁷ for example—were contested, but so were the values that motivated the changes themselves. Backers and

92. ALA. CONST. art. XIV, § 262 (amended 1969); Act of Mar. 25, 1931, No. 169, 1931 Ark. Acts 476; COLO. CONST. art. IX, § 1 (amended 1948); H.F. 23, ch. 114, 55th Leg. Assemb., Reg. Sess., 1953 Iowa Acts 194; KAN. CONST. art. VI, § 3 (amended 1966); LA. CONST. art. VIII, § 3(B)(1) (1974); NEB. CONST. art. VII, § 3 (amended 1952); A.B. No. 187, ch. 76, 48th Leg. Assemb., Reg. Sess., 1957 Nev. Stat. 109; N.M. CONST. art. XII, § 6 (amended 1958); OHIO CONST. art. VI, § 4 (amended 1953); Am. S.J.R. No. 30, 100th Gen. Assemb., Reg. Sess., 1953–54 Ohio Laws 1088; S.B. No. 115, ch. 299, 51st Leg., Reg. Sess., 1949 Tex. Gen. Laws 537; UTAH CONST. art. X, § 3 (amended 1950).

93. Yeargain, *Shadow Districts*, *supra* note 24.

94. *Supra* note 89 and accompanying text.

95. H.B. No. 3657, Act No. 272, 17th Leg., Reg. Sess., 1994 Haw. Sess. Laws 839; Proceedings and Debates of the Constitutional Convention of the State of Ohio: Convened January 9, 1912; Adjourned June 7, 1912; Reconvened and Adjourned without Day August 26, 1912 (1913).

96. *E.g.*, Bob Stockton, *School Chief Won’t Seek Re-Election*, ALA. J. (Montgomery, Ala.), Sept. 13, 1969, at 7, <https://www.newspapers.com/image/456943379/> [<https://perma.cc/9RSR-VER5>] (outlining Alabama Education Association arguments); *Arizona Teachers’ Association Tells How Non-Partisan Board of Education Would Work under the New Amendment*, ARIZ. DAILY STAR (Tucson, Ariz.), Oct. 25, 1922, at 3, <https://www.newspapers.com/image/163877179/> [<https://perma.cc/TJB2-LCPJ>] [hereinafter *Arizona Teachers’ Association*]; *Yuma School Trustee Urges ‘Yes’ Vote on School Issues*, YUMA DAILY SUN, Sept. 26, 1953, at 1, <https://www.newspapers.com/image/47775287/> [<https://perma.cc/QZV7-2Q75>]; Mike McCartney & David Ige, Opinion, *Shall Hawaii Have an Appointed School Board? Yes.*, HONOLULU ADVERTISER, Nov. 6, 1994, at 1, <https://www.newspapers.com/image/265061283/> [<https://perma.cc/K6FE-HSEF>].

97. *E.g.*, Edwin P. Morrow, Governor of Kentucky, Inaugural Address, in H. JOURNAL, Reg. Sess. 26 (Ky. 1920) (“The State Superintendent of Public Instruction and County School Superintendents should be elected upon a non-partisan plan and their offices entirely removed from political influence.”); *Sixth Amendment Would Place Schools on Higher Plane Say Speakers*, STEAMBOAT PILOT, Oct. 26, 1928, at 1, <https://www.coloradohistoricnewspapers.org/?a=d&d=STP19281026.2.8&srpos=4&e=-1928---1928--en-20--1--img-txIN%7ctxCO%7ctxTA-----0-----> [<https://perma.cc/8J77-EPMR>]; *Ballot to Include Issues Ranging from State Pensions to Tax Breaks*, ATLANTA J.-CONST., Nov. 4, 1984, at 9-D, <https://www.newspapers.com/image/399163045/> [<https://perma.cc/Z475-3J53>].

detractors debated whether democracy or professionalization were more important and whether it was consistent with a state's conception of separation of powers to remove state education administrators from the ballot.⁹⁸

The results of these battles were frequently inconsistent. Though many of these amendments were described as of "little interest" to voters,⁹⁹ the electorate apparently prioritized its own power to select education administrators over the proposed alternative.¹⁰⁰ However, a failed amendment in one election did not necessarily mean permanent failure.¹⁰¹ If voters rejected one amendment, legislators would frequently try again until they succeeded, or until the idea lost steam.¹⁰² But even once a proposal had been adopted, policymakers did not always stop tinkering: they frequently went back to the drawing board and continued modifying the structure of state education governance.¹⁰³

A. The Campaigns for Reform

Persuading voters to give up their power to vote for an office can be an uphill battle. Even where an office has almost no power at all, voters frequently feel some sort of nostalgic attachment to the idea that they should elect its occupant—and may resist efforts to move toward appointment or abolition.¹⁰⁴ At the same time, voters can be overwhelmed

98. *E.g.*, *The Constitutional Questions*, FORT LAUDERDALE NEWS, Oct. 29, 1978, at 2E, <https://www.newspapers.com/image/233133537/>; *Abolish Office of Superintendent: State Board of Education Issues Bulletin Explaining Duty of Idaho Voters*, IDAHO STATESMAN, Oct. 16, 1918, at 8, <https://www.newspapers.com/image/722562312/> [<https://perma.cc/KQ4A-VGAK>] [hereinafter *Idaho State Board of Education Bulletin*]; *Electing the Superintendent*, Editorial, MUNCIE STAR, Oct. 26, 1972, at 4, <https://www.newspapers.com/image/252068634/> [<https://perma.cc/JU4J-A9YF>].

99. *E.g.*, Darrell Christian, *Amendments Draw Little Interest*, SOUTH BEND TRIB., Oct. 29, 1972, at 40, <https://www.newspapers.com/image/515801099/> [<https://perma.cc/3GXM-M5US>]; James R. Rennseisen, *Constitution Changes Hold Little Interest*, KY. POST (Covington, Ky.), Oct. 21, 1957, at 1, 9, <https://www.newspapers.com/image/760953441/> [<https://perma.cc/ZJ29-9PT2>]; Bill Billiter, *Kentucky Amendments Fail to Interest Voters*, LOUISVILLE COURIER-J., Oct. 14, 1973, at 1, 4, <https://www.newspapers.com/image/110215256> [<https://perma.cc/PQX7-UDE5>].

100. *Infra* Section III.B.

101. FRED B. WOOD, CAL. SEC'Y OF STATE, AMENDMENTS TO CONSTITUTION AND PROPOSED STATUTES WITH ARGUMENTS RESPECTING THE SAME TO BE SUBMITTED TO THE ELECTORS OF THE STATE OF CALIFORNIA AT THE GENERAL ELECTION ON TUESDAY, NOVEMBER 6, 1928, 12 (1928) [hereinafter 1928 CALIFORNIA VOTER PAMPHLET].

102. *See infra* Section III.B.

103. *See infra* Section III.C.

104. Bill Glauber & Jason Stein, *Voters by a Wide Margin Keep Wisconsin's 170-Year-Old State Treasurer's Office*, MILWAUKEE J. SENTINEL, Apr. 4, 2018, <https://www.jsonline.com/story/news/politics/2018/04/03/wisconsin-voters-decide-whether-keep-nix-170-year-old-state-treasurers-office-voters-nix-wisconsins/477700002/> [<https://perma.cc/Y9NA-DC2M>] ("The treasurer is one of the original state officers created by the Wisconsin Constitution in 1848, along with the governor, lieutenant governor, attorney general and secretary of state.

by the sheer number of offices and questions on their ballots and are sometimes willing to give up their ability to vote for less-salient offices, especially when the office's responsibilities are more technical or administrative in nature.¹⁰⁵

In the context of deciding whether a statewide education administrator should be elected (in the form of either an elected superintendent or an elected, multimember state board of education), voters were presented with a variety of arguments.¹⁰⁶ Depending on the state, the same constituencies—teachers, parents, business leaders, civic reformers—might strongly support or oppose a constitutional amendment removing a school office from the ballot.¹⁰⁷ In some cases, these different positions might reflect meaningful differences in a state's system of separated powers, such that an answer in one state may not make sense in another.¹⁰⁸

Supporters of removing state superintendents from the ballot generally argued that appointment would guarantee a more competent, capable administrator.¹⁰⁹ Where the state superintendent was elected, especially in a partisan election, the office was too enmeshed in party politics—and, thus, removing the office from the ballot would also take it “out of politics.”¹¹⁰ In some states, where the changes had been recommended by nonpartisan study groups as mentioned earlier, supporters could point to the conclusions of experts and citizens alike.¹¹¹ Teachers' unions (and other associations of teachers) frequently supported these amendments.¹¹² In several states, teachers' groups were actually *the* driving force behind their state's amendment—and had drafted it and organized the campaign to place it on the ballot. But teachers' unions were not unanimously supportive of these proposals in all states.¹¹³

In the modern era, advocates of appointed superintendents also emphasized the efficiency gains that came from placing the office under the power of the governor.¹¹⁴ Changes over the twentieth century dramatically expanded the power of governors, and many states' constitutions have placed them at the center of their state's sprawling bureaucracy.¹¹⁵ The idea of the “plural executive”—in the states, the notion that executive power is

The treasurer once played an important role in state finance but the office has gradually lost its duties to other agencies.”).

105. Cf. CHILDS, *supra* note 43, at 110.

106. See *Arizona Teachers' Association*, *supra* note 96, at 3.

107. See *id.*

108. Jonathan Marshfield, *America's Other Separation of Powers Tradition*, 73 DUKE L.J. 560–71 (2023).

109. *Supra* note 97 and accompanying text.

110. Yeargain, “*Out of Politics*”, *supra* note 28, at 13–20.

111. *Supra* Section II.A.2.

112. See *Arizona Teachers' Association*, *supra* note 96, at 3.

113. See *id.*

114. See Miriam Seifter, *Gubernatorial Administration*, 131 HARV. L. REV. 483, 496–97 (2017).

115. *Id.* at 499.

split between the governor and other statewide elected executive officers¹¹⁶—limits effective governance, and it would be more efficient for voters to elect one person with responsibility over most areas of state policymaking.¹¹⁷

Opponents focused on a simple, populist-flavored argument in favor of democracy. By removing the superintendent from the ballot, voters would have less of a direct role to play in the composition of state government. Given the salience of education, it makes sense for voters to determine who sets statewide educational policy.¹¹⁸ Opponents also warned of making the governor *too* powerful—and criticized the idea that appointment would be likelier to take the office “out of politics.”¹¹⁹ While an unelected office may not be subjected to partisan *electoral* politics, partisan preferences obviously play a role in gubernatorial appointments.

In the states that had pre-existing state boards of education, these debates sometimes took place within state-specific contexts of separated powers. Supporters of appointed superintendents argued that having two separate entities with constitutionally protected roles in setting educational policy was inefficient. In California, for example, the Superintendent of Public Instruction and the State Board of Education existed as independent offices from the earliest days of statehood,¹²⁰ and achieved equal constitutional status in 1884.¹²¹

In 1928, the California Legislature proposed a constitutional amendment that would have allowed the legislature to create the position of “Director of Education,” an appointed office, which would replace the Superintendent upon its creation.¹²² After that amendment was rejected, in 1934, a group of voters proposed a new amendment that would switch from

116. Christopher R. Berry & Jacob E. Gersen, *The Unbundled Executive*, 75 U. CHI. L. REV. 1385, 1399–1401 (2008).

117. *Id.* at 1402 (“The single versus plural debate generally assumes that multiple executives must exercise overlapping authority, and for this reason concludes the arrangement produces ineffective or inefficient government.”).

118. *Id.*

119. See Yeargain, “*Out of Politics*,” *supra* note 28, at 19–20.

120. Act of Apr. 11, 1850, ch. 85, 1st Leg., Reg. Sess., 1850 Cal. Stat. 205 (creating the Superintendent of Public Instruction); Act of May 3, 1852, ch. 53, 3d Leg., Reg. Sess., 1852 Cal. Stat. 117 (creating the State Board of Education).

121. The Superintendent of Public Instruction was added to the 1849 Constitution in 1862, Amendments to the Constitution, 13th Leg., Reg. Sess., 1862 Cal. Stat. 581, *amending* CAL. CONST. of 1849, art. IX, § 1 (amended 1862), and was continued in the 1879 Constitution, CAL. CONST. of 1879, art. IX, § 2. In 1884, California voters ratified a constitutional amendment that added the State Board of Education to the constitution and granted it the power to “adopt a uniform series of text-books for use in the common schools throughout the State.” Act of Mar. 15, 1883, ch. 76, 25th Leg., Reg. Sess., 1883 Cal. Stat. 365, *amending* CAL. CONST. of 1879, art. IX, § 7 (amended 1884); *see also* A.C.A. 31, ch. 37, 30th Leg., Reg. Sess., 1893 Cal. Stat. 659, *amending* CAL. CONST. of 1879, art. IX, § 7 (amended 1894) (adding the President of the University of California and the Professor of Pedagogy at the University to the Board).

122. S.C.A. 26, ch. 61, 47th Leg., Reg. Sess., 1927 Cal. Stat. 2367.

an elected Superintendent to an elected State Board.¹²³ In arguing in favor of these amendments, advocates argued that the state had a “double-headed form of state educational organization.”¹²⁴ The Superintendent of Public Instruction was granted “earlier functions of a supervisory and clerical and statistical nature,” while the State Board of Education was given “a number of new functions relating to policy and educational control.”¹²⁵ While the two entities had maintained “harmonious relations,” the dichotomy “is fraught with danger and sooner or later is destined to cause trouble.”¹²⁶

A similar argument was made in Arizona and Idaho, where the Superintendent of Public Instruction and the State Board of Education were established as constitutional offices under each state’s original constitution.¹²⁷ The Arizona Legislature twice proposed unsuccessful amendments—once in 1922 and again in 1953—that would have taken the Superintendent off the ballot and made it an office appointed by the Board.¹²⁸ Likewise, in Idaho, the state legislature proposed amendments in 1918 and 1968 that would have accomplished the same.¹²⁹ Advocates of these measures, which in Arizona included the state educators’ associations, argued that unifying the offices would promote efficiency in education governance.¹³⁰

But a unique and somewhat strange separation-of-powers argument arose in California—one that focused on, of all things, whether the state education department’s structure made it more susceptible to capture by the state’s textbook publishers.¹³¹ Some of the earliest debates over the structure, powers, and selection of the State Board of Education concerned its power to adopt and print textbooks.¹³² Allegations arose that a “school book ring” consisting of publication companies was conspiring to inflate the cost of textbooks—which colored public debate over the composition of

123. 1934 CALIFORNIA VOTER PAMPHLET, *supra* note 91, at 17–18.

124. JONES REPORT, *supra* note 47, at 17–19.

125. *Id.* at 17.

126. *Id.* at 19.

127. ARIZ. CONST. art. XI, §§ 2–5 (1912); IDAHO CONST. art. IV, § 1 (creating Superintendent of Public Instruction); *id.* art. IX, § 2 (creating State Board of Education).

128. S.B. No. 19, 5th Leg., Spec. Sess., 1922 Ariz. Sess. Laws 307; H.C.R. No. 7, 21st Leg., 1st Reg. Sess., 1953 Ariz. Sess. Laws 355.

129. S.J.R. No. 5, 14th Leg., Reg. Sess., 1917 Idaho Sess. Laws 507; S.J.R. No. 5, 39th Leg., Reg. Sess., 1967 Idaho Sess. Laws 1570.

130. *Arizona Teachers’ Association*, *supra* note 96, at 3; WESLEY BOLIN, ARIZ. SEC’Y OF STATE, REFERENDUM PUBLICITY PAMPHLET 1953 8 (1953) (printing supportive message of the Arizona Association of School Administrators and the Arizona School Board Association); *Idaho State Board of Education Bulletin*, *supra* note 98, at 8; *Amendments Merit Support*, Editorial, IDAHO STATESMAN, Nov. 3, 1968, at 4, <https://www.newspapers.com/image/724546944> [<https://perma.cc/55BF-625A>].

131. CLYDE J. TIDWELL, STATE CONTROL OF TEXTBOOKS WITH SPECIAL REFERENCE TO FLORIDA 25–26 (1928).

132. *Id.*

the Board.¹³³ These controversies bubbled over into debates over whether the Superintendent should be elected or appointed by an elected or appointed State Board of Education.¹³⁴ The 1928 amendment provided for an appointed superintendent and continued the appointed state board.¹³⁵ In outlining their argument in favor of the amendment in the state's voter pamphlet, the legislative sponsors noted that electing the Board was out of the question "because our state constitution places in the board the selection of textbooks. If the members of the board were elected it would, therefore, make the board a political prize sought after by commercial interests."¹³⁶

The 1934 amendment provided for an *elected* state board of education, and its advocates argued that a state board elected by district would maximize rural representation in governing state schools.¹³⁷ The chief opponent of the measure, however, was the State Printer, who echoed the arguments from the 1928 amendment sponsors that electing the board would allow the "textbook ring" to elect corrupt candidates.¹³⁸

B. Outcomes

Though the percentage of states with elected statewide education officials has declined since the start of the twentieth century, the process has been slow—and frequently cumbersome. Persuading voters to adopt reforms required multiple tries, and in some cases, has yet to actually be successful. Voters in Alabama, Colorado, Florida, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Utah, Virginia, and West Virginia have all adopted constitutional language that shifted their states' education governance away from an elected superintendent. Hawaii voters ratified a constitutional amendment in 2010 that shifted their elected state board of education—first created by a 1964 amendment—to a gubernatorially appointed board.¹³⁹

133. *This Dangerous Amendment Certainly Should Be Beaten*, Editorial, L.A. HERALD, Nov. 2, 1908, at 4, <https://www.newspapers.com/image/46401584/> [<https://perma.cc/Z4V2-7XYG>]; see also TIDWELL, *supra* note 131; PERCY ROLAND DAVIS, STATE PUBLICATION OF TEXTBOOKS IN CALIFORNIA 10–14 (1930).

134. JONES REPORT, *supra* note 47, at 17–19.

135. S.C.A. No. 26, ch. 61, 47th Leg., Reg. Sess., 1927 Cal. Stat. 2367.

136. WOOD, *supra* note 101, at 12.

137. 1934 CALIFORNIA VOTER PAMPHLET, *supra* note 91, at 17–18.

138. *Id.*

139. Kathryn Poythress, *Elected Board of Education Gets Permanent Furlough*, HONOLULU CIV. BEAT (Oct. 28, 2010), <https://www.civilbeat.org/2010/10/6034-elected-board-of-education-gets-permanent-furlough/> [<https://perma.cc/4TPL-WMHJ>].

Shift from Elected Superintendent to Elected State Board	Shift from Elected Superintendent to Appointed State Board	Shift from Elected Superintendent to Gubernatorially Appointed Superintendent	Shift from Elected Board to Appointed Board
Alabama (1969) Colorado (1948) Louisiana (1985) Nebraska (1952) Nevada (1957) New Mexico (1958) ¹⁴⁰	Florida (1998) Illinois (1972) Kentucky (1992) Mississippi (1982) Missouri (1945) Virginia (1928) West Virginia (1958) ¹⁴¹	Ohio (1912) South Dakota (1972) Oregon (2011) Indiana (2019) ¹⁴²	Arkansas (1937) Hawaii (2010) ¹⁴³

However, before these efforts were successful, many others were not. For example, voters in the following states rejected previous iterations of amendments that they later ratified:

Colorado: initiated constitutional amendments in 1928 and 1930 that would have abolished the State Superintendent of Public Instruction and replaced them with a statewide elected Board of Education¹⁴⁴

Florida: a pair of constitutional amendments in 1978, proposed by their Constitution Revision Commission, that

140. ALA. CONST. art. XIV, § 262 (amended 1969); COLO. CONST. art. IX, § 1 (amended 1948); S.B. No. 896, Act No. 444, Leg. Assemb., Reg. Sess., 1985 La. Acts 845; NEB. CONST. art. VII, § 3 (amended 1952); A.B. No. 187, ch. 76, 48th Leg. Assemb., Reg. Sess., 1957 Nev. Stat. 109; N.M. CONST. art. XII, § 6 (amended 1958).

141. FLA. CONST. art. IX, § 2 (amended 1998); ILL. CONST. art. X, § 2 (amended 1972); KY. REV. STAT. ANN. § 156.148; MISS. CONST. art. VIII, § 202 (amended 1982); MO. CONST. art. IX, § 2(b) (1945); VA. CONST. OF 1902, § 131 (amended 1928); W. VA. CONST. art. XII, § 2 (amended 1958).

142. OHIO CONST. art. VI, §§ 3–4 (amended 1912); S.D. CODIFIED LAWS § 1-32-3 (providing that the Governor has the power to appoint the “head of each principal department”); *id.* § 1-32-2(5) (establishing the Department of Education as a “principal department” under state law); S.B. No. 552, ch. 731, 76th Leg. Assemb., 2011 Or. Laws 2742 (designating the Governor as the *de jure* Superintendent of Public Instruction and empowering the Governor to appoint a Deputy Superintendent); H.B. No. 1005, Pub. L. No. 8-2019, 121st Gen. Assemb., 1st Reg. Sess., 2019 Ind. Acts 28 (providing for the appointment of the Secretary of Education by the Governor).

143. Act of Mar. 12, 1937, Act 244, 51st Gen. Assemb., Reg. Sess., 1937 Ark. Acts 875; HAW. CONST. art. X, § 2 (amended 2010).

144. COLO. CONST. art. XI, § 1 (proposed 1928), *reprinted in* 1928 COLORADO AMENDMENTS, *supra* note 91, at 3; COLO. CONST. art. XI, § 1 (proposed 1930), *reprinted in* 1930 COLORADO AMENDMENTS, *supra* note 91, at 6.

would have created an appointed State Board of Education with power to appoint the Commissioner of Education¹⁴⁵

Hawaii: legislatively proposed constitutional amendment in 1970 and 1994 that would have converted their elected State Board of Education into a gubernatorially appointed body¹⁴⁶

Kentucky: five separate amendments (in 1921, 1953, 1957, 1973, and 1986) would have abolished the elected Superintendent of Public Instruction (1921 and 1953) and created an appointed State Board of Education (1957 and 1986) or a Board elected by district (1973)¹⁴⁷

Missouri: a 1924 amendment, proposed by the state constitutional convention, that would have replaced the elected Superintendent of Public Instruction with a State Board of Education elected by district¹⁴⁸

New Mexico: three separate amendments (in 1930, 1935, and 1951) that would have abolished the elected Superintendent of Public Instruction and replaced them with either an appointed State Board of Education (1930 and 1935) or a Board selected as the legislature determined (1951)¹⁴⁹

South Dakota: a 1968 amendment, proposed by the state legislature, that would have abolished the elected Superintendent of Public Instruction¹⁵⁰

West Virginia: a 1946 amendment, proposed by the state legislature, that would have abolished the elected

145. FLA. CONST. art. IV, § 4 (proposed 1978); *id.* art. IX, § 2 (proposed 1978).

146. S.B. No. 1689-70, Act No. 168, 5th Leg., Reg. Sess., 1970 Haw. Sess. Laws 490; H.B. No. 3657, Act No. 272, 17th Leg., Reg. Sess., 1994 Haw. Sess. Laws 839.

147. Chapter 10, Reg. Sess., 1920 Ky. Acts 21; S.B. 170, ch. 67, 1952 Ky. Acts 172; H.B. No. 467, ch. 169, 1956 Ky. Acts 338; S.B. No. 18, ch. 129, 1972 Ky. Acts 564; S.B. No. 10, ch. 36, 1986 Ky. Acts 84.

148. 1924 MISSOURI CONSTITUTIONAL CONVENTION AMENDMENTS, *supra* note 91, at 65-68.

149. S.J.R. No. 8, 9th Leg., Reg. Sess., 1929 N.M. Laws 421; S.J.R. No. 15, 12th Leg., Reg. Sess., 1935 N.M. Laws 482; S.J.R. No. 6, 20th Leg., Reg. Sess., 1951 N.M. Laws 528; S.J.R. No. 20, 32d Leg., 1st Reg. Sess., 1975 N.M. Laws 2134.

150. S.J.R. No. 9, ch. 226, 43d Leg. Sess., Reg. Sess., 1968 S.D. Sess. Laws 311.

Superintendent of Free Schools and replaced them with a gubernatorially appointed State Board of Education¹⁵¹

Even after the ultimate changes were adopted, policymakers and voters continued to tinker with the new structures. Louisiana's 1921 Constitution, for example, abolished its elected superintendent and created an elected board of education in his place,¹⁵² but a subsequent constitutional amendment, ratified in 1922, resurrected the superintendent without abolishing the board.¹⁵³ Accordingly, from 1925 until 1988,¹⁵⁴ voters in Louisiana would select a district representative on the state board of education *and* the superintendent, albeit at different elections.¹⁵⁵

In Arkansas, the superintendent was created statutorily, not constitutionally,¹⁵⁶ which enabled the state legislature to abolish the office and instead create an elected state board of education in 1931.¹⁵⁷ Members of the board were elected to staggered terms from the state's congressional districts during the annual spring school elections.¹⁵⁸ Just a few years later, in 1933, it attempted to convert the board into a gubernatorially appointed

151. H.B. No. 6, ch. 4, 47th Leg., 1st Extra. Sess., 1946 W. Va. Acts 10.

152. LA. CONST. of 1921, art. XII, § 4 (creating the State Board of Education, with three gubernatorially appointed members and eight members elected by district); *id.* § 5 ("The board shall elect for terms of four (4) years a chairman and a State Superintendent of Public Education.").

153. H.B. No. 127, Act No. 105, Leg. Assemb., Reg. Sess., 1924 La. Acts 5, *amending* LA. CONST. OF 1921, art. XII, sec. 5 (amended 1922).

154. Under the 1974 Constitution, the Superintendent was removed as a constitutional office, and the state legislature was given the power to continue the office as an elected or appointed office. LA. CONST. art. VIII, § 2 (1974). The legislature initially opted to continue the office as elected, S.B. 47, Act No. 274, Reg. Sess., 1975 La. Acts 596, but converted it into an appointed office in 1985, S.B. No. 896, Act No. 444, Leg. Assemb., Reg. Sess., 1985 La. Acts 845.

155. The Superintendent was elected with the rest of the statewide elected officers in April of presidential-election years. *See* LA. CONST. of 1921, art. VIII, § 9. But members of the State Board of Education were elected to staggered eight-year terms in November of even-numbered years. *Id.* art. XII, § 4.

156. The Superintendent of Public Instruction was constitutionalized in Arkansas's 1868 Constitution, ARK. CONST. of 1868, art. VI, § 1, and was abolished by the 1874 Constitution. ARK. CONST. of 1874, art. VI, § 21 ("[The Secretary of State] shall also discharge the duties of superintendent of public instruction, until otherwise provided by law."). However, the legislature was authorized to resurrect the office, *id.* art. XIV, § 4; *see id.* art. VI, § 21; which it did in 1875 with the passage of a statute, Act of Dec. 7, 1875, 20th Gen Assemb., Adj. Sess., 1875 Ark. Acts 54.

157. Act of Mar. 25, 1931, 48th Gen. Assemb., Reg. Sess., No. 169, 1931 Ark. Acts 476.

158. *Id.* The first election took place in 1932, for a member from the state's 7th congressional district. *Year of Political Activity Assured*, MOUNTAIN AIR (Saint Paul, Ark.), Jan. 16, 1932, at 1, <https://www.newspapers.com/image/274758765> [<https://perma.cc/V9RB-GAW9>] ("... the annual school board election will be held March 1, with a member of the state board of education to be elected in the Seventh congressional district.").

one.¹⁵⁹ But voters used their newfound referendum powers to gather enough signatures to put the 1933 law on the ballot at the 1934 election,¹⁶⁰ where they rejected it, temporarily restoring the elected board.¹⁶¹ However, the legislature responded by simply re-abolishing the elected board a few years later in 1937.¹⁶²

After Nebraskans ratified a constitutional amendment in 1952 that provided for an elected State Board of Education with power to appoint the Commissioner of Education,¹⁶³ the Nebraska School Improvement Association successfully placed constitutional amendments on the ballot in 1960 and 1964 to undo the measure and revert back to an elected chief administrator¹⁶⁴—which were rejected.¹⁶⁵

159. Act of Mar. 6, 1933, Act No. 78, 49th Gen. Assemb., Reg. Sess., 1933 Ark. Acts 227.

160. Once the requisite number of signatures was gathered, the 1933 law was suspended from coming into effect. ARK. CONST. art. V, § 1 (amended 1920) (“Any measure referred to the people by referendum petition shall remain in abeyance until such vote is taken.”); *State Board of Education Will Hold Till Election*, MADISON CNTY. REC. (Huntsville, Ark.), June 8, 1933, at 1, <https://www.newspapers.com/image/353710893> [<https://perma.cc/NXE2-ECZ8>]. However, the validity of the referendum petitions was challenged in court. In a contentious, 4–3 decision, the Arkansas Supreme Court struck down the referendum, concluding that the proposed ballot title was misleading. *Shepard v. McDonald*, 70 S.W.2d 566, 567–68 (Ark. 1934); see also Timothy J. Kennedy, *Initiated Constitutional Amendments in Arkansas: Strolling Through the Mine Field*, 9 U. ARK. LITTLE ROCK L. J. 1, 16–17 (1986) (citing *Shepard v. McDonald*, 70 S.W.2d 566, 566–67 (Ark. 1934)). The referendum supporters proposed a substitute ballot title to remedy the defectiveness of the original petition, which the Arkansas Attorney General concluded was permissible under state law. *Act 78 Still May Reach Referendum*, HOPE STAR, Apr. 26, 1934, at 1, <https://www.newspapers.com/image/7487958/?terms=Act%2078%20Still%20May%20Reach%20Referendum&match=1> [<https://perma.cc/H37G-NVPP>]. After the challenger of the original ballot title agreed not to contest the revised title, the Secretary of State placed the measure on the November 1934 ballot. *Referendum Right on 78 Is Upheld: People Will Vote on Education Act Next November*, HOPE STAR, May 1, 1934, at 1, <https://www.newspapers.com/image/7488500/?terms=Referendum%20Right%20on%2078%20Is%20Upheld%3A%20People%20Will%20Vote%20on%20Education%20Act%20Next%20November&match=1> [<https://perma.cc/4MZG-7934>].

161. Act of Mar. 12, 1937, Act 244, 51st Gen. Assemb., Reg. Sess., 1937 Ark. Acts 875; see also Ed L. Campbell, *State Education Board in Future to Be Appointive*, HOPE STAR, Mar. 17, 1937, at 1, <https://www.newspapers.com/image/310552/> [<https://perma.cc/9LAZ-PT9D>].

162. M. M. CHAMBERS, SOME FEATURES OF STATE EDUCATIONAL-ADMINISTRATIVE ORGANIZATION 23 (1936).

163. L.B. 212, ch. 164, 62d Leg., Reg. Sess., 1951 Neb. Laws 643, amending NEB. CONST. art. VI, § 1; art. VII, §§ 1, 13–17; art. XVII, § 3 (amended 1952).

164. Don Shasteen, *School-Head Ballot Asked: Petitions Will Seek to Abolish Board*, OMAHA EVENING WORLD-HERALD, Feb. 17, 1960, at 31, <https://www.newspapers.com/image/883992102/> [<https://perma.cc/8HMK-3EYU>]; *Voters Urged to Mark ‘301’ on Amendment*, LINCOLN J. STAR, Oct. 23, 1964, at 20, <https://www.newspapers.com/image/313475828/> [<https://perma.cc/E7A5-TZA2>].

165. FRANK MARSH, NEB. SEC’Y OF STATE, OFFICIAL REPORT OF THE BOARD OF STATE CANVASSERS OF THE STATE OF NEBRASKA, GENERAL ELECTION, HELD NOVEMBER 8, 1960 57 (1960); FRANK MARSH, NEB. SEC’Y OF STATE, OFFICIAL REPORT OF THE BOARD OF STATE

And in some states, no measure was ever successful. Arizonans twice rejected measures, in 1922 and 1953, that would have abolished their elected superintendent,¹⁶⁶ as did Californians in 1928, 1934, and 1958;¹⁶⁷ Georgians in 1984 and 1988;¹⁶⁸ Idahoans in 1918 and 1968;¹⁶⁹ North Dakotans in 1972 and 1976;¹⁷⁰ Oklahomans in 1990;¹⁷¹ Oregonians in 1952;¹⁷² and South Carolinians in 1964 and 2018.¹⁷³

C. Continuing Efforts to Reform Education Governance

In 1998, Floridians adopted a constitutional amendment that converted their previously elected Commissioner of Education into an appointed office—the last such amendment to have been ratified anywhere in the country.¹⁷⁴ Since then, however, several states have statutorily converted their superintendents into appointed offices.

In 2011, the Oregon Legislature abolished the separately elected superintendent, and instead designated the *governor* as the superintendent and granted the governor the power to appoint a deputy superintendent.¹⁷⁵ Having the governor perform double-duty as the superintendent may seem like an odd choice, but the choice that the Oregon Constitution allows the legislature is to have the governor serve in the role *or* to provide for an elected superintendent.¹⁷⁶ The Oregon Supreme Court reinforced the binary nature of the choice in 1965, after the legislature passed legislation converting the Superintendent of Public Instruction from a popularly elected office into one “elected” by the State Board of Education.¹⁷⁷ The

CANVASSERS OF THE STATE OF NEBRASKA, GENERAL ELECTION, HELD NOVEMBER 3, 1964 44 (1964).

166. S.B. No. 19, 5th Leg., Spec. Sess., 1922 Ariz. Sess. Laws 307; H.C.R. No. 7, 21st Leg., 1st Reg. Sess., 1953 Ariz. Sess. Laws 355.

167. S.C.A. No. 26, ch. 61, 47th Leg., Reg. Sess., 1927 Cal. Stat. 2367, 1934 CALIFORNIA VOTER PAMPHLET, *supra* note 91, at 17–18; S.C.A. No. 2, Res. Ch. 81, 1958 (1st Ex. Sess.) Cal. Stat. 454.

168. H.R. No. 505, Res. Act No. 85, Reg. Sess., 1984 Ga. Laws 1716; S.R. No. 270, Act No. 86, Reg. Sess., 1988 Ga. Laws 2100.

169. S.J.R. No. 5, 14th Leg., Reg. Sess., 1917 Idaho Sess. Laws 507; S.J.R. No. 5, 39th Leg., Reg. Sess., 1967 Idaho Sess. Laws 1570.

170. N.D. CONST. art. VIII, § 2 (proposed 1972); S.C.R. No. 4002, ch. 610, 44th Leg. Sess., Reg. Sess., 1975 N.D. Laws 1587.

171. H.J. Res. No. 1005, 42d Leg., 1st Extra Sess., 1989 Okla. Sess. Laws 267.

172. S.J.R. No. 14, 46th Leg. Assemb., Reg. Sess., 1951 Or. Laws 1154.

173. J.R. No. 1310, Act No. 1078, Gen. Assemb., Reg. Sess., 1964 S.C. Acts 2451; J.R. No. 235, Act No. 267, Gen. Assemb., Reg. Sess., 2018 S.C. Acts 2511.

174. FLA. CONST. art. IX, § 2 (amended 1998).

175. S.B. No. 552, ch. 731, 76th Leg. Assemb., 2011 Or. Laws 2742.

176. OR. CONST. art. VIII, § 1 (“The Governor shall be superintendent of public instruction, and his powers, and duties in that capacity shall be such as may be prescribed by law; but after the term of five years from the adoption of this Constitution, it shall be competent for the Legislative Assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his powers and duties.”).

177. H.B. No. 1068, 51st Leg. Assemb., Reg. Sess., 1961 Or. Laws 1228.

Oregon Supreme Court struck down the statute,¹⁷⁸ resurrecting the previous version of the statute¹⁷⁹ until the legislature modified it later that year.¹⁸⁰ In 2019, the Indiana Legislature likewise converted its elected Superintendent of Public Instruction into an appointed office,¹⁸¹ following repeated conflicts between the Superintendent and the Governor.¹⁸²

Outside of these states, policymakers in other states have considered similar efforts. In Ohio, after liberal candidates won a majority of the elected seats on the State Board of Education,¹⁸³ the legislature adopted legislation that strips the board of most of its powers, placing control of the state's schools under a gubernatorially appointed director,¹⁸⁴ which may violate the state's constitution.¹⁸⁵ In Nebraska, following a failure by hard-right candidates to win a majority on the formally nonpartisan State Board of Education in the 2022 elections,¹⁸⁶ a state senator announced plans to pursue a constitutional amendment to place the board under the control of the governor.¹⁸⁷

178. State *ex rel.* Musa v. Minear, 401 P.2d 36, 38–39 (Or. 1965).

179. *Id.* at 39 (“The declaration of the unconstitutionality of ORS 326.005 (1) (Oregon Laws 1961, ch 624, § 1) automatically reinstates the repealed statute, ORS 326.010 (last enacted in Oregon Laws 1947, ch 253).”).

180. S.B. No. 414, ch. 519, 53d Leg. Assemb., Reg. Sess., 1965 Or. Laws 1012.

181. H.B. No. 1005, Pub. L. No. 8-2019, 121st Gen. Assemb., 1st Reg. Sess., 2019 Ind. Acts 28.

182. See, e.g., Shaina Cavazos, *The ‘Toxic’ Politics Behind McCormick’s Decision to Reject a Second Term as Indiana Schools Chief*, CHALKBEAT IND. (Oct. 12, 2018), <https://in.chalkbeat.org/2018/10/12/21105882/the-toxic-politics-behind-mccormick-s-decision-to-reject-a-second-term-as-indiana-schools-chief> [https://perma.cc/CBV6-NN7M]; Chelsea Schneider, *Ritz Receives Mixed Reviews as Schools Chief*, INDIANAPOLIS STAR (Oct. 16, 2016), <https://www.indystar.com/story/news/education/2016/10/16/ritz-receives-mixed-reviews-schools-chief/91555316/> [https://perma.cc/YGX8-X2KR].

183. Conor Morris, *Political Differences Define the New Ohio Board of Education*, IDEASTREAM PUB. MEDIA (Nov. 23, 2022), <https://www.ideastream.org/news/education/2022-11-23/political-differences-define-the-new-ohio-board-of-education> [https://perma.cc/T5DY-NNPW].

184. Sarah Szilagy, *Ohio Board of Education Loses Most of Its Powers in State Budget*, NBC 4 NEWS (July 13, 2023), <https://www.nbc4i.com/news/politics/ohio-board-of-education-loses-most-of-its-powers-in-state-budget/> [https://perma.cc/77B7-MNX4].

185. Quinn Yeargain, *The State Board of Education Might Be the Next Casualty in Ohio’s War on Democracy*, GUARANTEED REPUBLICS (Jan. 23, 2023), <https://guaranteedrepublics.substack.com/p/the-state-board-of-education-might> [https://perma.cc/7B9J-YD8F].

186. Aaron Bonderson, *Nebraskans Elect 3 Conservatives to the State Board of Education in Midterms*, NEB. PUB. MEDIA (Nov. 9, 2022), <https://nebraskapublicmedia.org/en/news/news-articles/nebraskans-elect-3-conservatives-to-the-state-board-of-education-in-midterms/> [https://perma.cc/87FL-TAK2].

187. Aaron Sanderford, *Constitutional Amendment Would Eliminate State Board of Education*, NEB. EXAM’R (Jan. 13, 2023), <https://nebraskaexaminer.com/2023/01/13/constitutional-amendment-would-eliminate-state-board-of-education/> [https://perma.cc/2WUB-NHY3]; Martha Stoddard, *Measure to Eliminate Nebraska’s State Ed Board Draws Opponents, No Supporters*, LINCOLN J. STAR (Mar. 7, 2023), https://journalstar.com/news/local/education/measure-to-eliminate-nebraskas-state-ed-board-draws-opponents-no-supporters/article_f9892d34-dc51-5a87-a90f-dd34d2724d9b.html [https://perma.cc/G724-V8DX].

CONCLUSION

The earliest efforts to centralize and professionalize state education administration resulted in the creation of elected superintendents of public instruction—but continued efforts to achieve the same aims sought to undo some of these earlier efforts. Since the early twentieth century, policymakers have sought to take state education governance “out of politics” and place it in the hands of expert administrators. Voters have responded inconsistently to these efforts, but persistence on the part of state legislatures has produced widespread change.

As education continues to be a salient issue—and a cudgel in culture wars over race, gender, and sexuality—it seems likely that state legislatures and governors will move to consolidate their own control over the process. In some states, this may mean either stripping separately elected offices of their power to the greatest extent possible,¹⁸⁸ gerrymandering state boards of education,¹⁸⁹ or seeking to amend the state constitution to make further-reaching changes.¹⁹⁰ How voters will respond to these efforts remains to be seen—but as the history detailed in this Article demonstrates, early opposition does not foreclose ultimate acquiescence.

188. *Cf.* *Powers v. State*, 318 P.3d 300, 323 (Wyo. 2014) (limiting ability of state legislature to remove most of the state superintendent’s powers under the state constitution).

189. Yeargain, *Shadow Districts*, *supra* note 24.

190. *E.g.*, Sanderford, *supra* note 187.