DEMOCRACY AND STATE EDUCATION GOVERNANCE

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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 members—and voters routinely cast ballots on local school-funding and taxing ballot measures. 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) and in many states, they have the opportunity to approve or disapprove constitutional amendments and statutes that affect public education. Outside of formal, Schumpeterian democratic control, public participation at school board meetings can meaningfully affect the day-to-day administration of local schools—as the last few years have shown.

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. Today, just 24% do, and another 22% have elected state boards of education. During the twentieth century, civic reformers urged the professionalization and depoliticization of state education administration—which most commonly meant converting the elected state superintendent into an appointed office,


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).


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


with appointment power vested in the state board of education. 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. In others,
voters surrendered their control altogether, vesting appointment of the
superintendent in a board appointed by the governor.

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. 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. Still, efforts to sideline voters
in selecting education officials continue, with varying levels of success.

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. This is the story of state education governance, too.
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.\footnote{19} Constant dissatisfaction with the earliest organizational structures prompted tinkering and adjustments over time, ultimately giving way to twentieth-century reforms.\footnote{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.\footnote{21} State legislatures were frequently the most—and, sometimes, the only—democratized branch of state government.\footnote{22} A minority of states provided for governors that were indirectly elected by state legislatures,\footnote{23} but even those with elected governors had little else in the way of elected executive officials.\footnote{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.\footnote{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.\footnote{26}

These broader trends affected state education governance, too.\footnote{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.\footnote{28} Many of these reformers advocated for a
popularly elected superintendent of public instruction, which was first established in Iowa’s 1846 Constitution. Many other states, especially in the Midwest, quickly followed suit.

Thereafter, state superintendents of public instruction became one of the most common elected officials in state government. 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. Even in those Southern states that did not create such a position in their constitutions, almost all established the position statutorily. As Western territories were granted statehood, they, too, provided for elected superintendents. As a result, by the beginning of the twentieth century, thirty-one of forty-five states had elected superintendents.

By 1912, after Arizona, New Mexico, and Oklahoma had been admitted to the Union, thirty-five states had elected superintendents, and one state, Michigan, had an elected state board of education.

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 1850—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.

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.
31. See infra notes 33–37, 50, and accompanying text.
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.
39. Id. at 6–7.
for democracy. 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.” In most of the states that adopted nonpartisan elections, that system has continued to the present day.

But for other reformers, these proposals were inadequate. Advocates of the “short ballot” movement, led by Richard Childs and endorsed by many leading Progressives, 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. These positions were backed up by studies of state governments conducted by entities like the Brookings Institution, as well as state-specific advisory commissions.

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.
43. Richard Spencer Childs, Short-Ballot Principles 110 (1911).
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,” short-ballot proponents who advocated for fewer elected officials, and good-government reformers who agitated for accountability measures and alterations to the allocation of powers to reduce corruption.

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. 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. Some third-party organizations, like the Farmer–Labor Party in Minnesota, Nonpartisan League in North Dakota, and the Progressive Party in Wisconsin, were

54. See, e.g., Hirschhorn, supra note 44.
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

61. See infra notes 62–68 and accompanying text.
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.
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. However, despite the thoroughness of the studies, they seem to have had little impact on education governance.

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. These proposals were apparently taken much more seriously than the Brookings studies. Legislatures engaged with the recommendations, sometimes adopting them in full, but more frequently, tweaking them slightly. 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.


74. Supra note 73 and accompanying text.

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. While some states had no qualms about routinely putting more than twenty proposed amendments on the ballot for a single election, 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, and their proposed changes are usually—but not always—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.

Conventions were held with some frequency in the mid-to-late nineteenth century but were far more infrequent by the early twentieth century. 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 constitutional changes. Arizona, for example, held a constitutional convention in 1912 to adopt a new state constitution.

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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](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.”).


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. Alabama, Arkansas, Connecticut, Illinois, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, New York, Ohio, and Virginia all held formal constitutional conventions before 1940.

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 statute—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.

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. Many states had pre-existing state boards of education, which were established constitutionally, 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. 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.
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 superintendent\(^90\) 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


all adopted this system. 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. Other proposals leaned more heavily on the governor’s appointment powers. 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.

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, or would actually take education “out of politics,” for example—were contested, but so were the values that motivated the changes themselves. Backers and


94. *Supra* note 89 and accompanying text.


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.\textsuperscript{98}

The results of these battles were frequently inconsistent. Though many of these amendments were described as of “little interest” to voters,\textsuperscript{99} the electorate apparently prioritized its own power to select education administrators over the proposed alternative.\textsuperscript{100} However, a failed amendment in one election did not necessarily mean permanent failure.\textsuperscript{101} If voters rejected one amendment, legislators would frequently try again until they succeeded, or until the idea lost steam.\textsuperscript{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.\textsuperscript{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.\textsuperscript{104} At the same time, voters can be overwhelmed
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{108}

Supporters of removing state superintendents from the ballot generally argued that appointment would guarantee a more competent, capable administrator.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{111} Teachers’ unions (and other associations of teachers) frequently supported these amendments.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{115} The idea of the “plural executive”—in the states, the notion that executive power is

\textsuperscript{105} Cf. Childs, supra note 43, at 110.
\textsuperscript{106} See Arizona Teachers’ Association, supra note 96, at 3.
\textsuperscript{107} See id.
\textsuperscript{109} Supra note 97 and accompanying text.
\textsuperscript{111} Supra Section II.A.2.
\textsuperscript{112} See Arizona Teachers’ Association, supra note 96, at 3.
\textsuperscript{113} See id.
\textsuperscript{114} See Miriam Seifter, Gubernatorial Administration, 131 Harv. L. Rev. 483, 496–97 (2017).
\textsuperscript{115} Id. at 499.
split between the governor and other statewide elected executive officers—limits effective governance, and it would be more efficient for voters to elect one person with responsibility over most areas of state policymaking.

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. 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.” 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, and achieved equal constitutional status in 1884.

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. After that amendment was rejected, in 1934, a group of voters proposed a new amendment that would switch from

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.
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).
an elected Superintendent to an elected State Board. In arguing in favor of these amendments, advocates argued that the state had a “double-headed form of state educational organization.” 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.” While the two entities had maintained “harmonious relations,” the dichotomy “is fraught with danger and sooner or later is destined to cause trouble.”

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. The Arizona Legislature twice proposed unsuccessful amendments—one in 1922 and again in 1953—that would have taken the Superintendent off the ballot and made it an office appointed by the Board. Likewise, in Idaho, the state legislature proposed amendments in 1918 and 1968 that would have accomplished the same. Advocates of these measures, which in Arizona included the state educators’ associations, argued that unifying the offices would promote efficiency in education governance.

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. 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. 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).
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

134. JONES REPORT, supra note 47, at 17–19.
136. WOOD, supra note 101, at 12.
137. 1934 CALIFORNIA VOTER PAMPHLET, supra note 91, at 17–18.
138. Id.
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 Education.\(^{144}\)

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

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\(^{141}\) \text{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).}

\(^{142}\) \text{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).}

\(^{143}\) \text{Ark. Acts 875; HAW. Const. art. X, § 2 (amended 2010).}

\(^{144}\) \text{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 Education.  

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

**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).  

**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 district.  

**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).  

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

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

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148. 1924 Missouri Constitutional Convention Amendments, supra note 91, at 65–68.  
Superintendent of Free Schools and replaced them with a gubernatorially appointed State Board of Education.\footnote{151}

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,\footnote{152} but a subsequent constitutional amendment, ratified in 1922, resurrected the superintendent without abolishing the board.\footnote{153} Accordingly, from 1925 until 1988,\footnote{154} voters in Louisiana would select a district representative on the state board of education and the superintendent, albeit at different elections.\footnote{155}

In Arkansas, the superintendent was created statutorily, not constitutionally,\footnote{156} which enabled the state legislature to abolish the office and instead create an elected state board of education in 1931.\footnote{157} Members of the board were elected to staggered terms from the state’s congressional districts during the annual spring school elections.\footnote{158} Just a few years later, in 1933, it attempted to convert the board into a gubernatorially appointed office.\footnote{159} However, the legislature was authorized to resurrect the office,\footnote{160} which it did in 1985 with the passage of a statute, Act of Dec. 7, 1875, 20th Gen Assemb., Adj. Sess., 1875 Ark. Acts 54.

\begin{footnotesize}
\footnote{151}{H.B. No. 6, ch. 4, 47th Leg., 1st Extra. Sess., 1946 W. Va. Acts 10.}
\footnote{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.”).}
\footnote{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.}
\footnote{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.}
\footnote{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.}
\footnote{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.”).}
\end{footnotesize}
one. But voters used their newfound referendum powers to gather enough signatures to put the 1933 law on the ballot at the 1934 election, where they rejected it, temporarily restoring the elected board. However, the legislature responded by simply re-abolishing the elected board a few years later in 1937.

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, 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 administrator—which were rejected.


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-7934]. 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%20Education%20Act%20Next%20November&match=1[https://perma.cc/4MZG-7934].


And in some states, no measure was ever successful. Arizonans twice rejected measures, in 1922 and 1953, that would have abolished their elected superintendent, as did Californians in 1928, 1934, and 1958; Georgians in 1984 and 1988; Idahoans in 1918 and 1968; North Dakotans in 1972 and 1976; Oklahomans in 1990; Oregonians in 1952; and South Carolinians in 1964 and 2018.

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. 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. 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. 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.
Oregon Supreme Court struck down the statute,\textsuperscript{178} resurrecting the previous version of the statute\textsuperscript{179} until the legislature modified it later that year.\textsuperscript{180} In 2019, the Indiana Legislature likewise converted its elected Superintendent of Public Instruction into an appointed office,\textsuperscript{181} following repeated conflicts between the Superintendent and the Governor.\textsuperscript{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,\textsuperscript{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,\textsuperscript{184} which may violate the state’s constitution.\textsuperscript{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,\textsuperscript{186} a state senator announced plans to pursue a constitutional amendment to place the board under the control of the governor.\textsuperscript{187}

\footnotesize
\begin{itemize}
\item 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).”).
\end{itemize}
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, gerrymandering state boards of education, or seeking to amend the state constitution to make further-reaching changes. 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).
190. E.g., Sanderford, supra note 187.