



HAWAI‘I EDUCATIONAL POLICY CENTER

STATE CONSTITUTIONS AND EDUCATION

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PART I INTRODUCTION

Every ten years Hawai‘i voters must be asked on a Yes or No ballot question whether they want the state to convene another state constitutional convention. The last such effort was in 1978. Nearly 75% voted in 1976 to hold the convention. Each subsequent ten-year question posed to voters has been answered with a NO vote.

1978 saw nearly 700 candidates running for 102 delegate seats, with some districts generating up to 20 candidates. In a special election in May 1978, roughly 34% of registered voters participated. In the November general election there were 116 proposed amendments in areas ranging from political and open government reforms, fiscal restraint, environmental protection, individual rights, social justice, and Hawai‘ian affairs.

In November 2018, voters will again have the opportunity to decide. For those interested in *educational constitutional law*, this paper examines national constitutional and federal statutory law, as well as key Supreme Court Cases that create the legal context that would guide any proposed amendments to our state constitution, whether they be generated by the legislature or by a dedicated constitutional convention. In addition, we examine what was done on educational policy in 1978, and what other states have included in their constitutions.

In 1978, Hawai‘i’s Constitution, Article X saw the following amendments:

Public Education

The prohibition of “segregation” in the schools was replaced with a prohibition against discrimination.

Board of Education

Amendments dealt with nonpartisan election and districting of Hawaii’s elected board of education. [In later years a subsequent amendment converted this to an appointed board.] The Board was give jurisdiction over the internal organization and management of the public school system, although the legislature and governor could continue to exercise general budgetary control over the system.

Hawai‘ian Education Program [This was a completely new section.]

The State shall promote the study of Hawai‘ian culture, history and language.
The State shall provide for a Hawai‘ian education program consisting of language, culture and history in the public schools. The use of community

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expertise shall be encouraged as a suitable and essential means in furtherance of the Hawai'ian education program.

In a separate section, the convention also made Hawai'ian language a co-official language of the state.

Board of Regents; Powers.

The board was given exclusive jurisdiction over the internal organization and management of the University of Hawai'i. The amendment also stated its intent not to limit the power of the legislature to enact laws of statewide concern. However, similar to the powers of the Board of Education, the governor and the legislature would continue to have final say over budgets. [A subsequent amendment further compromised UH autonomy by asserting that the legislature would be the sole determinant as to the meaning of "statewide concern." In subsequent years, some of interpreted these provisions to essentially nullify UH autonomy envisioned in 1978.]

PART II FEDERAL LAWS AND SUPREME COURT DECISIONS

All state constitutions are subject to interpretations of the U. S. Constitution, as well as federal laws and court cases. The American Civil Liberties Union has summarized some of the most important. [See: <https://www.aclu.org/other/your-right-equality-education>]

These issues include:

DO ALL CHILDREN, REGARDLESS OF LEGAL STATUS, HAVE THE RIGHT TO AN EQUAL EDUCATION?

Yes! And the Constitution requires that all kids be given equal educational opportunity no matter what their race, ethnic background, religion, or sex, or whether they are rich or poor, citizen or non-citizen. Even if you are in this country illegally, you have the right to go to public school. Many federal, state and local laws also protect students against discrimination in education based on sexual orientation or disability, including pregnancy and HIV status. The Supreme Court said this in the landmark *Brown v. Board of Education* case when it struck down race segregation in the public schools.

ARE TRACKING SYSTEMS LEGAL?

Yes, as long as they really do separate students on the basis of learning ability and as long as they give students the same basic education.

CAN STUDENTS BE TREATED DIFFERENTLY IN PUBLIC SCHOOL BASED ON THEIR SEX?

According to the ACLU, almost never. Public schools may not have academic courses that are just for boys - like shop - or just for girls - like home economics. Both the Constitution and federal law require that boys and girls also be provided with equal athletic opportunities. Many courts have held, however, that separate teams for boys and girls are allowed as long as the school provides students of both sexes the chance to participate in the particular sport. Some courts have also held that boys and girls may always be separated in contact sports. The law is different in different states.

CAN GIRLS BE KICKED OUT OF SCHOOL IF THEY GET PREGNANT?

No. Federal law prohibits schools from discriminating against pregnant students or students who are married or have children. So, if you are pregnant, school officials can't keep you from attending classes, graduation ceremonies, extracurricular activities or any other school activity except maybe a strenuous sport. Some schools have special classes for pregnant girls, but they cannot make you attend these if you would prefer to be in your regular classes.

CAN SCHOOLS DISCRIMINATE AGAINST GAY STUDENTS?

Even though a few states and cities have passed laws against sexual orientation discrimination, public high schools have been slow to establish their own anti-bias codes - and they're slow to respond to incidents of harassment and discrimination. In theory, you can take a same-sex date to the prom, join or help form a gay group at school or write an article about lesbian/gay issues for the school paper, in practice gay students often have to fight hard to have their rights respected.

WHAT ABOUT STUDENTS WITH DISABILITIES?

Although students with disabilities may not be capable of having exactly the same educational experiences as other students, federal law requires that they be provided with an education that is appropriate for them. What is an appropriate education must be worked out individually for each student. For example, a deaf student might be entitled to be provided with a sign language interpreter.

In addition to requiring that schools identify students with disabilities so that they can receive the special education they need in order to learn, federal law also provides procedures to make sure that students are not placed in special education classes when they are *not* disabled. According to the Americans with Disabilities Act (ADA), students who are HIV positive have the same rights as every other student. People with HIV are protected against discrimination, not only in school but in many other public places such as stores, museums and hotels.

WHAT ARE THE RIGHTS OF NON-ENGLISH SPEAKERS?

Students who do not speak English have the right to require the school district to provide them with bilingual education or English language instruction or both.

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

--Title IX, Education Amendments of 1972

Important Court Cases Relating to Education

Cornel University has reviewed important court cases.

[See: <https://scholarship.law.cornell.edu/>]

Goss v. Lopez, [419 U.S. 565](#) (1975), a [US Supreme Court](#) case, held that a public school must conduct a hearing before subjecting a student to suspension. Also, a suspension without a hearing violates the [Due Process Clause](#) of the [Fourteenth Amendment](#) of the [US Constitution](#).

Background. Appellee Ohio public high school students, who had been suspended from school for misconduct for up to 10 days without a hearing, brought a class action against appellant school officials seeking a declaration that the Ohio statute permitting such suspensions was unconstitutional and an order enjoining the officials to remove the references to the suspensions from the students' records. A three-judge District Court declared that appellees were denied due process of law in violation of the Fourteenth Amendment because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that the statute and implementing regulations were unconstitutional, and granted the requested injunction.

The Court Held:

1. Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. Pp. 572-576.

(a) Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred, and must recognize a student's legitimate entitlement to a public education as a property

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interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that Clause. Pp. 573-574.

Student Rights

The United States Constitution generally applies equally to everyone, regardless of age, color, race, religion, or any other factor. However, minors are a special category of person, and in many cases, the rights of minors can be suppressed in ways that the rights of adults simply may not be. The rights of free speech, free press, free association, and freedom from unwarranted search and seizure are ongoing controversies.

Student Rights: In loco parentis

There are several reasons why the courts uphold restrictions of student rights. One of the most basic reasons is known as *in loco parentis*, meaning that while a student is in the custody of a school, the school can and often should act as a parent. In this duty of the school, many decisions can be made that are outside the normal governmental purview. The other basic reason for violation of student rights has to do with the goal of school — to educate. If an act of a student can interfere with the educational process, that act may, in many cases, be suppressed.

Private schools are not subject to any restrictions in terms of violations of the rights of students. Hence, while a public school might have to prove that its violations are for a higher purpose or stem from its *in loco parentis* responsibilities, a private school may set limits arbitrarily.

Student Rights: Violations of Free Speech

In [Board v Barnette](#) (319 US 624 [1943]), the Supreme Court ruled that students could not be forced to recite the Pledge of Allegiance nor otherwise salute the flag against their will. In *Tinker v Des Moines* (393 US 503 [1969]), the Supreme Court ruled that students wearing black arm bands to protest the Vietnam War could not be forced to remove the arm bands by school officials.

The Supreme Court said in *Tinker* that "[I]f conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."

In *Bethel School v Fraser* (478 US 675 [1986]) the Court ruled that a school was not violating a student's rights when it suspended a student for the use of crude language in a speech to a school assembly. Said the Court: "It does not follow ... that simply because the use of an offensive form of expression may not be prohibited to adults

making what the speaker considers a political point, the same latitude must be permitted to children in a public school... The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board."

Student Rights: Violations of Free Press

The Supreme Court has held that schools and school administrators can censor student publications such as student newspapers. The difference between the tolerance of expression, as in *Tinker*, and in promotion of student views, is the key. By wearing an arm band, a student is expressing his view and the school is not taking a stand, nor endorsing the student. But in a student newspaper, the school itself is represented in the newspaper, and by publishing a student piece, is now no longer a passive observer but an active participant. In *Hazelwood School v Kuhlmeier* (484 US 260 [1988]), the Supreme Court ruled that articles in the school paper that were counter to the educational mission of the school were subject to censorship.

In *New Rider v Board* (414 US 1097 [1973]), a pair of male Pawnee Indian students were suspended from school for wearing long hair in the tradition of their ancestors. The suspension was for violation of a school rule which forbade the wearing of hair that extended past the collar or ears. The Court refused to hear the case, but Justices Douglas and Marshall wrote a stinging dissent of the denial, "Petitioners were not wearing their hair in a desired style simply because it was the fashionable or accepted style, or because they somehow felt the need to register an inchoate discontent with the general malaise they might have perceived in our society. They were in fact attempting to broadcast a clear and specific message to their fellow students and others — their pride in being Indian." Douglas wrote another dissent in a hair-length case for *Oloff v East Side Union* (404 US 1042 [1972]). No other cases appear to have been decided by the Court on this issue, and circuit courts have made conflicting rulings.

In *Cohen v California* (403 US 15 [1971]), the Court overturned a conviction of a man who wore a jacket with the words "F___ the Draft" on it. The Court ruled that the presence of a printed vulgarity cannot be sufficient cause for an arrest and 30-day imprisonment. The Court said: "[A]bsent a more particularized and compelling reason for its actions, the State may not, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense." Cohen was not a student and the jacket was not displayed in a school, however. Dress codes that prohibit certain kinds of dress (like cut-off shorts or shirts with obscene or commercial messages) have not been challenged at the level of the Supreme Court, but have generally been upheld as promoting the educational process.

In 2007, the case of *Morse v Frederick* (06-278 [2007]), held that student speech off campus can be suppressed by school administrators if the speech promotes illegal activity — drug use, in this case. In the case, Joseph Frederick erected a banner along a route used to transport the Olympic torch. The route was flanked by students from Frederick's high school. Principal Deborah Morse, on seeing the banner, had it removed and had Frederick suspended, on the premise that the banner ran counter to the school's anti-drug themes and policies. Drawing on both *Tinker* and *Fraser*, the Court decided that the message and its most reasonable interpretations, and not the place the message was displayed, was the deciding factor: "Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse."

Student Rights: Violations of Search and Seizure Protections

Recently, more and more schools are searching of student lockers, bags, and of their persons. The most relevant case is *New Jersey v TLO* (469 US 325 [1985]). Here the Court recognized two things. First, it reaffirmed the role of the school in loco parentis, but it also recognized that school officials are representatives of the State. These two roles can come into conflict, but the Court said that students in public school are not able to assert the same rights as adults in other settings. Rules were established for searches, such as reasonableness, not excessively intrusive, and related to the offense that is being investigated.

In the *TLO* case, a search of a student's purse, the purpose for which was to find cigarettes the student was suspected of smoking on school grounds, was upheld.

Urine tests of student athletes were upheld in *Vernonia School v Acton* (515 US 646 [1995]), when the court again used in loco parentis, a lowered expectation of privacy for athletes, and the need for deterrence of drug use, particularly among athletes, as justifications for forced testing. Said the Court: "Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children."

There have been no reviews of cases of locker searches by the Supreme Court, most likely because the locker, while possibly containing personal property of the student, is itself the property of the school.

A matter which has not yet been reviewed is what powers school officials have to search students before they are on school grounds. It is clear that power exists on school grounds; since the power exists to provide a safe environment for learning, it may be a short leap for some schools to make to insist that they also have the power

to prevent drugs or weapons from even entering school grounds. Where the limits of such a power lie, or if such a power exists at all, is subject to debate.

Student Privacy

Student records contain information from test scores to health records. Students have the right to view these records only after they turn 18: "Schools that receive any federal funding must make student records available by parents and students themselves if they are 18 or older" ("[Ask Sybil Liberty](#)" 1998).

Depending on the state, teachers, social workers, employers and the police may also have access to the records. Student privacy is the right of a student to be secure in their person. When dealing with the privacy of public high school students, the administration of that school has more power to restrict that right than any other right of a student in public high school.

In [New Jersey v. T.L.O.](#), Justice Byron White stated, "A school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, or a reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies"(Harrison and Gilbert 110). Students do not have an absolute right to privacy in public high schools.

Parental Rights

The following parental rights are commonly assumed to be included in the set:

- the right to physical possession of the child;
- the right to inculcate in the child one's moral and ethical standards;
- the right to discipline the child;
- the right to control and manage a minor child's earnings and property;
- the right to have the child bear the parent's name;
- the right to prevent adoption of the child without the parents' consent;
- the right to make decisions concerning the child's medical treatment;
- the right to make decisions concerning the child's education;
- the right to make decisions concerning the child's religious training;
- the right to make decisions concerning other activities of the minor child;
- the right to information necessary to exercise the above rights responsibly.

Parental rights are neither absolute nor unlimited. They are non-absolute in the sense that they may, in certain cases, be overridden by other considerations. A parent's right to determine the education of his or her children may be overridden by the need to provide children with accurate information with which to make responsible choices of their own. Parental rights are limited in the sense that a full and accurate statement of them would contain limiting clauses. Thus, the parent has no right, not merely an

overridden right, to discipline a child by physical torture.

Parents have the legal right to make certain decisions concerning their minor children in the best interests of the children. The fact that the parent is a trustee means that, even when the parent is acting within the scope of his or her rights and in a situation in which these rights are not overridden, the parents' choices are to be guided by considerations of the best interests of the children.

It is within these federal contexts and all state educational constitutional issues operate.

PART III. HAWAI'I'S CONSTITUTIONAL EDUCATION PROVISIONS

Like many states, Hawai'i's State Constitution has provisions covering *public* K-12 and higher education. Similar items can be found in many other state constitutions: namely:

- To require that public schools be free from sectarian (religious) control, and to prohibit public funds to support private schools.
- To prohibit any discrimination based on race, religion, sex or ancestry.
- To include provisions for specific forms of funding (i.e. Special Purpose Revenue Bonds) that can be used to indirectly support private schools.
- To address the structure of educational policy making such as an appointed or elected Board of Education for K-12 public schools or an appointed Board of Regents for the state's University of Hawai'i system. There is a specific process to offer qualified candidates for appointment to the Board of Regents.
- There is a special provision for the promotion of Hawaiian language and culture.

Hawai'i's Article X. Education [Updated for 2018]

Section 1. *The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist:*

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and

2. *Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities. [Ren and am Const Con 1978 and election Nov 7, 1978; am L 1994, c 280, §4 (HB 2692-94) and election Nov 8, 1994; am HB 2848 (2002) and election Nov 5, 2002]*

BOARD OF EDUCATION

Section 2. *[This section as amended by HB2376, L 2010 is not printed in the 2010 supplement to the Hawaii Revised Statutes as it was ratified after the publication deadline.] There shall be a board of education. The governor shall nominate and, by and with the advice and consent of the senate, appoint the members of the board of education, as provided by law. [Am HB 4 (1963) and election Nov 3, 1964; ren and am Const Con 1978 and election Nov 7, 1978; am HB 2688 (1988) and election Nov 8, 1988; am HB2376 (2010) and election Nov 2, 2010]*

POWER OF THE BOARD OF EDUCATION

Section 3. *The board of education shall have the power, as provided by law, to formulate statewide educational policy and appoint the superintendent of education as the chief executive officer of the public school system. [Am HB 421 (1964) and election Nov 3, 1964; ren and am Const Con 1978 and election Nov 7, 1978; am L 1994, c 272, §15 (HB 3657-94) and election Nov 8, 1994]*

HAWAI'IAN EDUCATION PROGRAM

Section 4. *The State shall promote the study of Hawaiian culture, history and language. The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program. [Add Const Con 1978 and election Nov 7, 1978]*

UNIVERSITY OF HAWAI'I

Section 5. *The University of Hawai'i is hereby established as the state university and constituted a body corporate. It shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes, to be administered and disposed of as provided by law. [Ren and am Const Con 1978 and election Nov 7, 1978]*

BOARD OF REGENTS; POWERS

Section 6. *There shall be a board of regents of the University of Hawai'i, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor from pools of qualified candidates presented to the governor by the candidate advisory council for the board of regents of the University of Hawai'i, as provided by law. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive*

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jurisdiction to identify laws of statewide concern. [Am HB 253 (1964) and election Nov 3, 1964; ren and am Const Con 1978 and election Nov 7, 1978; am SB 539 (2000) and election Nov 7, 2000; am SB 1256 (2005) and election Nov 7, 2006]

PART IV. HIGHLIGHTS AND SUMMARY OF OTHER STATE EDUCATIONAL CONSTITUTIONAL PROVISIONS

The Education Commission of the States reviewed constitutional obligations regarding education. Their chart identifies numerous aspects of education from governance to funding to coverage for disabled students. [See: <http://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf>]

Short and Simple Education Provisions

Some states say very little about education other than directing the legislature to establish and maintain both lower and higher education systems. These are the essential building blocks upon which nearly all other provisions might expand upon.

Alaska's Article VII Health, Education and Welfare states:

§ 1. Public Education

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

§ 2. State University.

The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

§ 3. Board of Regents

The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Funding

Thirty-nine states have explicit provisions relating to funding. While most local school districts rely heavily on local taxes, particularly property taxes, state constitutions have added funding guarantees at the state level. Some are very specific on how to ensure sustainable funding. Notable examples include:

California's constitution, which was enacted in 1880, calls for a specific per-pupil funding amount of at least \$180 to be allocated to the districts. In fact, California spends upwards of \$9,000 per pupil in the public school system. Specifying a specific level of funding quickly becomes obsolete over time.

Delaware's constitution requires that the General Assembly shall designate at least \$100,000 for free, public schools in the state. In fiscal year 2012, Delaware invested nearly \$2 billion in its public K-12 education system.

Georgia:

Section 6: School tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education and activities necessary or incidental thereto, including school lunch purposes.

Massachusetts

All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law.

Montana

Sec. 3. Pledge of certain property and money, escheated estates and fines collected under penal laws for educational purposes; apportionment and use of interest. All lands granted by Congress to this state for educational purposes, all estates that escheat to the state, all property given or bequeathed to the state for educational purposes, and the proceeds derived from these sources, together with that percentage of the proceeds from the sale of federal lands which has been granted by Congress to this state without restriction or for educational purposes and all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses. The interest only earned on the money derived from these sources must be apportioned by the legislature among the several counties for educational purposes, and, if necessary, a portion of that interest may be appropriated for the support of the state university, but any of that interest which is unexpended at the end of any year must be added to the principal sum pledged for educational purposes.

Nebraska

Section 5: All such fines, penalties and license money shall be appropriated exclusively to the use and support of the common schools in the respective subdivisions where the same may accrue.

Nevada

Sec. 3. Pledge of certain property and money, escheated estates and fines collected under penal laws for educational purposes; apportionment and use of interest. All lands granted by Congress to this state for educational purposes, all estates that escheat to the state, all

property given or bequeathed to the state for educational purposes, and the proceeds derived from these sources, together with that percentage of the proceeds from the sale of federal lands which has been granted by Congress to this state without restriction or for educational purposes and all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses. The interest only earned on the money derived from these sources must be apportioned by the legislature among the several counties for educational purposes, and, if necessary, a portion of that interest may be appropriated for the support of the state university, but any of that interest which is unexpended at the end of any year must be added to the principal sum pledged for educational purposes.

Sec. 8. Use of proceeds from public lands donated by Act of Congress for benefit of certain departments of State University. [Effective November 24, 2020, if the provisions of Assembly Joint Resolution No. 5 (2017) are agreed to and passed by the 2019 Legislature and approved and ratified by the voters at the 2020 General Election.] The proceeds of the public lands donated by Act of Congress approved July 2, 1862, ch. 130, 12 Stat. 503, and thereafter amended by Act of Congress, for a college for the benefit of Agriculture and Mechanic Arts, including Military tactics, shall be invested by the State of Nevada in the manner required by law in a separate fund to be appropriated exclusively for the benefit of the first named departments to the State University as set forth in Section 4 of this Article. And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart is lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.

New Mexico

Section 4: All forfeitures, unless otherwise provided by law, and all fines collected under general laws; the net proceeds of property that may come to the state by escheat; the rentals of all school lands and other lands granted to the state, the disposition of which is not otherwise provided for by the terms of the grant or by act of congress shall constitute the current school fund of the state.

Oklahoma

Section 1a: The Legislature shall, by appropriate legislation, raise and appropriate funds for the annual support of the common schools of the State to the extent of forty-two (\$42.00) dollars per capita based on total state-wide enrollment for the preceding school year.

Texas

Sec. 2. PERMANENT SCHOOL FUND. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a permanent school fund.

Texas also specifies that the state has an obligation to provide free text books:

Sec. 3. TAXES FOR BENEFIT OF SCHOOLS; PROVISION OF FREE TEXT BOOKS; SCHOOL DISTRICTS. (a) One-fourth of the revenue derived from the State occupation taxes shall be set apart annually for the benefit of the public free schools. (b) It shall be the duty of the State Board of Education to set aside a sufficient amount of available funds to provide free text books for the use of children attending the public free schools of this State.

Washington

Section 2: The entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Wisconsin

Section 2: [T]he school fund ... shall be exclusively applied to the following objects, to wit: (1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor. (2) The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor.

Educational Governance

Arizona sees the value of having colleges and K-12 leaders sit on each other's boards, comingling traditional school, community college and other key educational stakeholders. This is an interesting approach as most states completely segregate the two silos of public education:

Section 3. The state board of education shall be composed of the following members: the superintendent of public instruction, the president of a state university or a state college, four lay members, a president or chancellor of a community college district, a person who is an owner or administrator of a charter school, a superintendent of a high school district, a classroom teacher and a county school superintendent. Each member, other than the superintendent of public instruction, shall be appointed by the governor with the consent of the senate in the manner prescribed by law. The powers, duties, compensation and expenses, and the terms of office, of the board shall be such as may be prescribed by law.

Section 4. The state superintendent of public instruction shall be a member, and secretary, of the state board of education, and, ex-officio, a member of any other board having control of public instruction in any state institution. His powers and duties shall be prescribed by law.

California elects a statewide superintendent:

Sec. 2: A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election. The Superintendent of Public Instruction shall enter upon the duties of the office on the first Monday after the first day of January next succeeding each gubernatorial election. No Superintendent of Public Instruction may serve more than 2 terms.

Florida requires that each public school district have an elected superintendent:

SECTION 5. Superintendent of schools. In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law. The resolution or special law may be rescinded or repealed by either procedure after four years.

Louisiana requires that the Board of Regents meet with the K-12 Board of Education at least twice a year to coordinate programs.

(D) Powers. The Board of Regents shall meet with the State Board of Elementary and Secondary Education at least twice a year to coordinate programs of public elementary, secondary, vocational-technical, career, and higher education.

Michigan specifies that its eight member Board of Education be nominated by partisan conventions and elected, and that the governor sit on the board:

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Montana lists an elected superintendent of schools as one of the six primary statewide elected executives:

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor. (2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified. (3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Montana (and others) specifically assert the autonomy of their university systems:

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

Texas leaves educational governance up to their legislature:

Sec. 8. STATE BOARD OF EDUCATION. The Legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the Legislature shall prescribe not to exceed six years. The said board shall perform such duties as may be prescribed by law.

Thirty-two states have separate provisions relating to the establishment and often funding of **higher education systems**.

Many state constitutional provisions are simply stating what could be in statutory law, and which would not be disputed, such as the “right” to establish public schools. It is not uncommon for education to be linked to land use, control of state lands specifically for education; and It is not uncommon to include specific bonding and financing for education.

Origins of State Constitutional History and Traditions

There is a fundamental difference between constitutions and statutory laws. Constitutions speak to the larger questions of rights, of the powers and limits of government, of the functioning of our democracy.

Of all the state constitutions, perhaps **New Hampshire** (which actually has no mention of education in its constitution) reminds us most of American history in the 18th century, when fear of government overreach and oppression were front and center issues for the emerging states. New Hampshire’s Bill of Rights and first ten provisions were written at the time of the revolution, and retain that flavor, including the right to revolution!!!

Article 1. [Equality of Men; Origin and Object of Government.] *All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.*

June 2, 1784*

**The date on which each article was proclaimed as having been adopted is given after each article. This is followed by the year in which amendments were adopted and the subject matter of all the amendments.*

[Art.] 2. [Natural Rights.] *All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.*

June 2, 1784

Amended 1974 adding sentence to prohibit discrimination.

[Art.] 2-a. [The Bearing of Arms.] *All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.*

December 1, 1982

[Art.] 3. [Society, its Organization and Purposes.] *When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.*

June 2, 1784

[Art.] 4. [Rights of Conscience Unalienable.] *Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.*

June 2, 1784

[Art.] 5. [Religious Freedom Recognized.] *Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his peers on, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.*

June 2, 1784

[Art.] 6. [Morality and Piety.] *As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies, corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of a ny one sect, denomination or persuasion to another shall ever be established.*

June 2, 1784

Amended 1968 to remove obsolete sectarian references.

[Art.] 7. [State Sovereignty.] *The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.*

June 2, 1784

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] *All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.*

Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

June 2, 1784

Amended 1976 by providing right of access to governmental proceedings and records.

[Art.] 9. [No Hereditary Office or Place.] *No office or place, whatsoever, in government, shall be hereditary - the abilities and integrity requisite in all, not being transmissible to posterity or relations.*

June 2, 1784

[Art.] 10. [Right of Revolution.] *Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.*

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