

3. David Tyack, Thomas James, and Aaron Benavot, *Law and the Shaping of Public Education, 1785–1954*, 55 (1987).
4. 347 U.S. 483 (1954).
5. See Frank S. White, *Constitutional Provisions for Differentiated Education* 9–27 (1950).
6. The eleven states were South Carolina, Virginia, Maryland, New York, Kentucky, Tennessee, Louisiana, Illinois, Virginia, Rhode Island, and New Jersey.
7. See John C. Eastman, “When Did Education Become a Civil Right? An Assessment of State Constitutional Provisions for Education 1776–1900,” 42 *Am. J. Legal Hist.* 1, 3 (1998). However, during this early period, no state legislature actually established common schools in accordance with its constitution. *Ibid.* at 8. Beginning early in the nineteenth century, two other types of education provisions began to appear in state constitutions: federal land grant provisions and provisions establishing state public school funds.
8. Mass. Const. of 1780, chap. V, § 2. See also N.H. Const. of 1784, art. 83.
9. Eastman, *supra* note vii, at 6–7 (citing *Roberts v. The City of Boston*, 59 Mass. (5 Cush.) 198 (1849)).
10. Ohio Const. of 1802, art. VIII, § 3. See also Miss. Const. of 1817, art. VI, § 16 (“Religion, morality and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged. in this state.”)
11. Pa. Const. of 1776, § 44.
12. Ga. Const. of 1777, art. LIV.
13. Vt. Const. of 1786, art. XXXVII.
14. Ind. Const. of 1816, art. IX, § 1. See also Cal. Const. of 1849, art. IX, §§ 1–4.
15. Education Commission of the States, “The Invisible Hand of Ideology” 4 (1999), available at <http://www.ecs.org/ecsmain.asp?page=/search/default.asp>.
16. Kern Alexander, “The Common School Ideal and the Limits of Legislative Authority: The Kentucky Case,” 28 *Harv. J. on Legis.* 341, 356 (1991).
17. Ohio Const. of 1802, art. VIII, § 25 (“That no law shall be passed to prevent the poor in the several counties and townships, within this State, from an equal participation in the schools, academies, colleges and universities within this State, which are endowed, in whole or in part, from the revenue arising from donations made by the United States, for the support of schools, academies and universities, shall be open for the reception of scholars and students and teachers, of every grade, without any distinction or preference whatever, contrary to the intent for which said donations were made.”).
18. Conn. Const. of 1818, art. VIII, § 2. Substantially later in the nineteenth century, this theme was embraced by a number of other states. For example, the Nebraska Constitution of 1875 stated that “[p]rovisions shall be made by general law for an equitable distribution of the income of the fund set apart for the support of the common

schools among the several school districts of the State.” Neb. Const. of 1875, art. VIII, § 7. Similarly, the 1868 Constitution of Mississippi provided that “all school funds shall be divided pro rata among the children of school ages.” Miss. Const. of 1868, art. VIII, § 10. *See also* Fla. Const. of 1885, art. XII, § 11 (“The fund raised . . . may be expended in the district where levied for building or repair in school houses, for the purchase of school libraries and textbooks, for salaries of teachers, or for other educational purposes, so that the distribution among all the schools of the district be equitable.”).

19. Ind. Const. of 1816, art. IX, § 2.

20. *See* White, *supra* note v, at 29 .

21. *See* Tyack, James, and Benavot, *supra* note 3, at 57.

22. *Ibid.* at 57.

23. *Ibid.* at 55.

24. *Ibid.* at 57.

25. Miss. Const. of 1868, art. VIII, § 1.

26. Ark. Const. of 1874, art. 14, § 1.

27. For example, Minnesota stated: “The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools.” Minn. Const. of 1857, art. XIII, 1. This section continued: “The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.” *See also* Tex. Const. of 1876, art. 7, § 1 (“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools”); Miss. Const. of 1868, art. VIII, § 1; Ind. Const. of 1851, art. 8, § 1.

28. *See*, for example, Tenn. Const. of 1869, art. XI, § 12 (“The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.”); Mich. Const. of 1835, art. X, § 3 (“The legislature shall provide for a system of Common Schools”). *See also* Miss. Const. of 1868, art. VIII, § 1; Nev. Const. of 1864, art. 11, § 2 (“The legislature shall provide for a uniform system of common schools”); Fla. Const. of 1885, art. XII, § 1 (“The Legislature shall provide for a uniform system of public free schools”).

29. *See*, for example, Ga. Const. of 1877, art. VIII, 1877 (state school commissioner); Mich. Const. of 1835, art. X, § 1 (superintendent of public instruction); Miss. Const. of 1868, art. VIII, §§ 2, 3 (superintendent of public education and board of education); Nev. Const. of 1864, art. 11, § 1 (superintendent of public instruction); Cal. Const. of 1849, art. IX, § 1 (superintendent of public instruction); Ind. Const. of 1851, art. 8, § 8 (state superintendent of public instruction); Tex. Const. of 1876, art. VII, § 8 (board of education); Fla. Const. of 1885, art. XII, §§ 2, 3 (superintendent of public instruction and state board of education); Utah Const. of 1895, art. X, § 8 (state board of education and superintendent of public instruction).

30. *See*, for example, Miss. Const. of 1868, art. VIII, § 4 (superintendent of public education in each county); Cal. Const. of 1879, art. IX, § 3 (providing for the election of a superintendent of schools for each county); Colo. Const. of 1876, art. IX, § 6 (county superintendent of schools).

31. Tyack, James, and Benavot, *supra* note 3, at 58.

32. *See Ibid.* at 62–63.

33. *Ibid.* at 60.

34. *See*, for example, Neb. Const. of 1875, art. VIII, § 6; Cal. Const. of 1879, art. IX, § 5 (“The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district.”).

35. Tyack, James, and Benavot, *supra* note iii, at 55. Some provisions not only created state-level education entities, but also specified many details. For example, regarding state boards of education, clauses dealt with the number of members, how they were to be selected, their terms of years, and their powers and duties. *See* John Mathiason Matzen, *State Constitutional Provisions for Education 5–12* (Teachers College, Columbia University, Contributions to Education No. 46, 1931) (chart detailing state constitutional provisions from 1857 through 1912).

36. Tyack, James, and Benavot, *supra* note 3, at 57.

37. For example, the 1868 Constitution of Mississippi mandated the establishment of “a uniform system of free public schools . . . for all children between the ages of five and twenty-one years.” Miss. Const. of 1868, art. VIII, § 1. *See also* Ala. Const. of 1868, art. XI, § 6; Neb. Const. of 1875, art. VIII, § 6; and Colo. Const. of 1876, art. IX, § 2 (“between the ages of six and twenty-one”).

38. For example, New Hampshire amended its education clause in 1877 to provide “that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.” N.H. Const., art. 83. The 1851 Ohio Constitution prohibited “religious or other sect or sects [from] ever hav[ing] any exclusive right to, or control of, any part of the school funds of this State.” Ohio Const. of 1851, art. VI, § 2. New Hampshire and Ohio are two of thirty-eight states that have adopted provisions prohibiting public aid to religious schools. The Colorado Constitution more severely proscribed the mingling of church and state, explicitly prohibiting any “religious test or qualification . . . as a condition of admission into any public educational institution of the State, either as teacher or student.” Colo. Const. of 1876, art. IX, § 8. Nebraska’s Constitution also prohibited “sectarian instruction . . . in any school or institution supported in whole or in part by the public funds set apart for educational purposes. Neb. Const. of 1875, art. VIII, § 11. *See also* Nev. Const. of 1864, art. 11, § 2.

39. The 1868 Alabama Constitution mandated segregated schools, Ala. Const. of 1875, art. XIII, §§ 1, 11, and that provision was carried forward to the 1901 Alabama Constitution, Ala. Const. of 1901, art. XIV, § 256. Since then, it has been altered, but, amazingly, its segregatory language has not yet been abandoned. In the aftermath of the *Brown* decision, Amendment 111 altered section 256 by effectively eliminating

Alabama's public education system in favor of a system under which parents could opt for "private" single-race schools. More than forty years later, that aspect of section 256 was struck down by the Alabama Supreme Court in a school funding case, *Ex Parte James*, 713 So.2d 869 (Ala., 1997). In 2002, however, the Alabama Supreme Court partially repudiated its 1997 opinion, *Ex Parte James*, 836 So.2d 813 (Ala., 2002), 2002 WL 1150823 (May 31, 2002), leaving the status of section 256 in some doubt. A bill to remove section 256's segregatory language, Ala. HB587, as amended, was adopted by both houses of the Alabama legislature during the spring of 2003, but a majority of the state's qualified electors must approve the constitutional amendment for it to take effect. Voter approval cannot be assumed, however. In September 2003, Alabama voters overwhelmingly rejected a \$1.2 billion tax increase designed, in part, "to catapult the state's school system from among the nation's worst to one of the best." See David M. Halbfinger, "Alabama Voters Crush Tax Plan Sought by Governor," *New York Times* (Sept. 10, 2003). See also Ga. Const. of 1877, art. VIII, § 1; Tex. Const. of 1876, art. VII, § 7; Fla. Const. of 1885, art. XII, § 12. In contrast, the Colorado Constitution of 1876 prohibited the "distinction or classification of pupils . . . on account of race or color." Colo. Const. of 1876, art. IX, § 8. Washington's 1889 Constitution prohibited "distinction or preference on account of race, color, caste, or sex." Wash. Const. of 1889, art. IX, § 1.

40. See, for example, Ind. Const. of 1851, art. VIII, § 1; Minn. Const. of 1857, art. XIII, § 1; Nev. Const. of 1864, art. 11, § 2; and Miss. Const. of 1868, art. VIII, § 1.

41. For example, both the 1851 Ohio Constitution and the 1857 Minnesota Constitution mandated "a thorough and efficient system" of common and public schools, respectively. See Ohio Const. of 1851, art. VI, § 2 ("through and efficient system of common schools"); Minn. Const. of 1857, art. XIII, § 1 ("thorough and efficient system of public schools throughout the state."). The 1867 Maryland Constitution and an 1875 amendment to the New Jersey Constitution called for the establishment of "a thorough and efficient system of free public schools." See Md. Const., art. VIII, § 1 and N.J. Const., art. VIII, § 4, par. 1 (originally adopted as art. IV, § 7, par. 9). The 1874 Arkansas Constitution called for "a general, suitable and efficient system of free public schools." Ark. Const. of 1874, art. 14, § 1. See also Del. Const. of 1897, art. X, § 1 ("general and efficient system of free public schools"); Idaho Const., art. IX, § 1 ("general, uniform and thorough").

42. Wash. Const. of 1889, art. IX, § 1.

43. Tyack, James, and Benavot, *supra* note iii, at 58. See, for example, Calif. Const. of 1879, art. IX, § 5 (six months); Colo. Const. of 1876, art. IX, § 2 (three months); Mich. Const. of 1835, art. X, § 3 (three months).

44. Colo. Const. of 1876, art. IX, § 11 ("every child of sufficient mental and physical ability [may be required to] attend the public school"). See also Nev. Const. of 1864, art. 11, § 2; Idaho Const. of 1890, art. IX, § 9; Va. Const. of 1970, art. VIII, § 3 ("The General Assembly shall provide for the compulsory elementary and secondary education of every eligible child of appropriate age, such eligibility and age to be determined by law").

45. For example, the California Constitution of 1879 stated: "The public school system shall include primary and grammar schools." Cal. Const. of 1879, art. IX, § 6. See

also Wash. Const. of 1889, art. IX, § 2 (“The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.”). Showing that education clauses did not develop uniformly and according to neat time frames, Indiana had adopted a similar provision in 1816, calling for “a general system of education, ascending in a regular gradation, from township schools to a state university.” Ind. Const. of 1816, art. IX, § 2. Indiana was ahead of its time in extending the concept of state education to the university level, but other states caught up. *See*, for example, Utah Const. of 1895, art. X, § 2 (“The Public School system shall include kindergarten schools; common schools, consisting of primary and grammar grades; high schools; an Agricultural College; a University and such other schools as the Legislature may establish.”); Pa. Const. of 1776, § 44 (“all useful learning shall be duly encouraged and promoted in one or more universities”); Tex. Const. of 1876, art. VII, § 10 (“[t]he legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University . . . for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department”); Tenn. Const. of 1869, art. XI, § 12 (“The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines.”).

46. For example, the Mississippi Constitution of 1868 required “the Legislature to encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.” Miss. Const. of 1868, art. VIII, § 1. *See also* Nev. Const. of 1864, art. 11, § 4 (“The Legislature shall provide for the establishment of a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining.”).

47. *Compare* Colo. Const. of 1876, art. IX, § 16 (“Neither the General Assembly nor the State Board of Education shall have power to prescribe text books to be used in the public schools.”) *with* Cal. Const. of 1879, art. IX, § 7 (“The local boards of education [and other applicable authorities] . . . shall adopt a series of text books for the use of the common schools within their respective jurisdictions.”).

48. *See*, for example, Nev. Const. 1875, art. 11, § 5 (requiring teachers and professors “to take and subscribe to” a prescribed oath.”); Cal. Const. of 1879, art. IX, § 7 (giving local boards “control of the examination of teachers and the granting of teachers certificates within their several jurisdictions”).

49. *See*, for example, Ohio Const. of 1851, art. VI, § 1. The 1844 New Jersey Constitution also protected the school fund, providing that “[t]he fund for the support of free schools . . . shall be securely invested and remain a perpetual fund . . . [and] shall be annually appropriated to the support of public schools, for the equal benefit of all the people of the State, and it shall not be competent for the legislature to borrow, appropriate, or use the said fund, or any part thereof, for any other purpose under any pretence whatever.” N.J. Const. of 1844, art. IV, § 7, par. 6. *See also* Ind. Const. of 1851, art. 8, §§ 2–7; and Idaho Const. of 1890, art. IX, § 3.

50. The 1851 Constitution of Ohio mandated legislative “provisions by taxation, or otherwise . . . [to] secure a thorough and efficient system of common schools throughout the State.” Ohio Const. of 1851, art. VI, § 2.

51. *See*, for example, Ind. Const. of 1816, art. IX, § 1; Ala. Const. of 1819, art. VI; and Mo. Const. of 1820, art. VI, §§ 1–2.

52. Cal. Const. of 1849, § 3. *See also* Colo. Const. of 1876, art. IX, § 2; Nev. Const. of 1864, art. 11, § 2; and Miss. Const. of 1868, art. VIII, § 5.

53. Among the most common changes were those relating to whether a state superintendent would be elected or appointed, the number of years in a term, the composition of state and local boards of education, and funding details. For example, Michigan changed its manner of selection of the state school superintendent from gubernatorial appointment, included in its education article (Mich. Const. of 1835, art. X, § 1), to vote of qualified electors, included in its state officers article (Mich. Const. of 1850, art. VIII, § 1). Virginia changed its constitutional provision from election by the general assembly in joint ballot (Va. Const. of 1872, art. VIII, § 1) to election of the superintendent, “who shall be an experienced educator . . . by the qualified voters of the State at the same time and for the same term as the Governor.” Va. Const. of 1902, art. IX, § 131. Virginia amended its provision again in 1928 to provide for gubernatorial appointment of the superintendent. Va. Const. of 1902, art. IX, § 131 (1928).

54. *See* Matzen, *supra* note xxxv, at 33.

55. *See*, for example, Mich. Const. of 1963, art. VIII, §§ 3–7; Va. Const. of 1970, art. VIII, §§ 4–7 (established state board of education, superintendent of public instruction, and local school boards, and specifically delineated state board’s powers and duties); and Miss. Const., art. XIII, § 202 (1982 amendment changed superintendent of public education from elected office to position appointed by state board of education).

56. 347 U.S. 483 (1954). The fiftieth anniversary of the first *Brown* decision in 2004 will be the occasion for many commemorative events, most extolling it, but some questioning or even deploring it. For information about one of the major commemorations, *see* <http://www.nyu.edu/education/metrocenter/brownplus/home.html>.

57. N.J. Const. of 1947, art. I, par. 5 (prohibits segregation “in the public schools, because of religious principles, race, color, ancestry or national origin”); Mich. Const. of 1963, art. VIII, § 2 (“every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin”). For another, more general constitutional amendment long after *Brown*, *see* Mont. Const., art. X, § 1 (provision adopted and ratified in 1972 guarantees “[e]quality of educational opportunity . . . to each person of the state”).

58. Cal. Const., art. I, § 31.

59. Colo. Const., art. IX, § 17.

60. Ore. Const., art. VIII, § 8.

61. Ore. Const., art. VIII, § 8. Arkansas also amended its constitution in 1996, stating that “to provide quality education, it is the goal of this state to provide a fair system for the distribution of funds.” Ark. Const., art. XIV, § 3 (amended, not yet codified). Arkansas “established a uniform rate of ad valorem property tax . . . to be used solely for maintenance and operation of the schools.” Ark. Const., art. XIV, § 3 (amended, not yet codified).

62. Ohio added a provision “guarantee[ing] the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education.” Ohio Const., art. VI, § 5. Georgia amended its constitution in 1983 to authorize the expenditure of public funds for educational assistance to students and parents of students. Ga. Const., art. VIII, § 7.

63. Cal. Const., art. XIII A (Proposition 13). Largely as a consequence of its adoption, California’s spending on education has plummeted, as has the quality of its schools and performance of its students. For an analysis, see Paul L. Tractenberg, “A Tale of Two States: Comparing California’s and New Jersey’s 30-Year School Funding Wars” (1996) (unpublished manuscript). See also Mich. Const., art. 3 (1995 amendment).

64. See, for example, Cal. Const., art. I, § 28(c) (“All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.”).

65. Interestingly, Florida is generally considered to have the most easily changed constitution in the country. See Robert F. Williams, “Is Constitutional Revision Success Worth Its Popular Sovereignty Price?,” 52 *Fla. L. Rev.* 249, 250 (2000).

66. See John Mills and Timothy McLendon, “Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make ‘Adequate Provision’ for Florida Schools,” 52 *Fla. L. Rev.* 329, 332 (2000).

67. Fla. Const. art. IX, § 1 (1998). Apparently because of litigation concerns, its framers were careful not to assign it the status of a fundamental “right.” See Joseph W. Little, “The Need to Revise the Florida Constitution Revision Commission,” 52 *Fla. L. Rev.* 475, 489 (2000).

68. Fla. Const., art. IX, § 1 (1998). See Mills and McLendon, *supra* note lxvii, at 368.

69. Fla. Const., art. IX, § 1 (1998). See *ibid.* at 369–76. Through numerous challenges to state funding of education, these terms have taken on meaning beyond their common usage. Indeed, courts have scrutinized these terms to varying degrees to determine what their respective education clauses mandate. For example, in *Pauley v. Kelly*, 255 S.E.2d 859, 874 (W.Va., 1979), the court used both contemporaneous and modern dictionaries, prior case law and also looked at the framers’ statements “to define the words ‘thorough,’ ‘efficient,’ and ‘education’ to ascertain the boundaries of the legislature’s constitutional mandate.” Jonathan Banks, “State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?,” 45 *Vand. L. Rev.* 129, 146, and notes 105–09 (1992). In the Florida context, the Florida Supreme Court had held in 1996 that Florida’s long standing constitutional mandate that ‘adequate provision’ be made for a ‘uniform system of free public schools’ did not provide a juridical basis to review the adequacy of the amount of school funding provided by the Legislature.” See Little, *supra* note lxviii, at 489 (citing *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 [1996]). Little surmised that Revision 6 was “apparently intended to provide a constitutional standard to which the judiciary may hold the Legislature accountable.” *Ibid.*

70. Fla. Const., art. IX, § 1, par. a (as amended 2002).

71. Fla. Const., art. IX, § 1, par. b (as amended 2002).

72. For an up-to-date, state-by-state review of the litigation, see the Campaign for Fiscal Equity's ACCESS project website, <http://www.accessnetwork.org> (last visited Jan. 13, 2004). According to CFE's latest tally, plaintiffs have prevailed in twenty-five states and defendants in eighteen, with a number of cases in process, including several in states with prior decisions. Only five states—Delaware, Hawaii, Mississippi, Nevada and Utah—have never had a case filed. For discussions of decisional trends, *see*, for example, Kelly Thompson Cochran, "Beyond School Financing: Defining the Constitutional Right to an Adequate Education," 78 *N.C.L. Rev.* 399, n. 2 (2000), for a list of school finance cases in the various states. "Nearly every state has faced at least one round of school financing litigation." *Ibid.* "[M]ost of the school financing cases recognizing a right to a substantive level of education have been decided in the last decade." *Ibid.* at 401. For an earlier set of "summary descriptions, state by state, of the significant post-Rodriguez state court decisions that address the constitutionality, on either equality or adequacy grounds, of educational finance systems that rely on variable local revenue sources," *see* Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 *Vand. L. Rev.* 101, 185–91 (1995).

73. New Jersey presents perhaps the strongest example of a state supreme court maintaining a persistent judicial role in school finance reform. *See* Paul L. Tractenberg, "The Evolution and Implementation of Educational Rights Under the New Jersey Constitution of 1947," 29 *Rutgers L.J.* 827 (1998), for an exploration of "the origins and evolution of the 1947 Constitution's provision relevant to public education," state constitutional educational rights, and a thorough review of school finance litigation in New Jersey. *See also* Charles S. Benson, "Definitions of Equity in School Finance in Texas, New Jersey, and Kentucky," 28 *Harv. J. on Legis.* 401 (1991) (reviewing successful school finance litigation in Texas, New Jersey and Kentucky and finding that "the remedies demanded in the three states set new and higher standards for equity in school funding," while specifically commending the *Abbott v. Burke* decision by the New Jersey Supreme Court as "offer[ing] strong hope that the courts will make a concerted effort to correct our gravest educational deficiencies."). *Cf. City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I., 1995) (commenting that "the absence of justiciable standards could engage the court in a morass comparable to the decades-long struggle of the Supreme Court of New Jersey that has attempted to define what constitutes the 'thorough and efficient' education specified in that state's constitution.") The broader, linked issues of whether litigation and judicial intervention are appropriate means of resolving complex educational policy and political issues, and what the impact of such cases has been, have spawned a huge body of literature. *See*, for example, John Dayton, "Examining the Efficacy of Judicial Involvement in Public School Finance Reform," 22 *J. Educ. Fin.* 1 (1996); Michael Heise, "The Effect of Constitutional Litigation on Education Finance: More Preliminary Analyses and Modeling," 21 *J. Educ. Fin.* 195 (1995); Sheila E. Murray, William N. Evans, and Robert Schwab, "Education Finance Reform and the Distribution of Education Resources," 88 *Am. Econ. Rev.* 789 (1998).

74. A model state constitution primarily designed to press for proportional representation in legislative bodies, which is widely circulated on the internet, does not include an education provision. *See* http://www.cooperativeindividualism.org/law_constitutional_state.html.

75. National Municipal League, *Model State Constitution* (6th ed., 1963; rev'd 1968).

76. *Ibid.* at 18, 101 (art. IX, Public Education).

77. Campaign for Responsible Government, *Model State Constitution for Responsible Government*, art. XI, Miscellaneous Subjects, § 1 (1998) (available at <http://www.geocities.com/responsegov/stateconst.html>). This model constitution also contains clauses prohibiting aid to sectarian schools, *ibid.* at art. XI, § 2, regulating a permanent school fund, *ibid.* at art. VIII, Taxation, § 8, and regulating a permanent university fund, *ibid.* at art. VIII, § 9.

78. Kirk A. Bailey, *Summary-Education Clauses in State Constitutions 2* (Oct. 31, 2000) in conjunction with Hamilton Fish Institute, *Review of State Constitutions: Education Clauses* (Oct. 31, 2000).

79. Education Commission of the States, *State Constitutions and Public Education Governance 1* (ECS State Note, Oct. 2000).

80. Alaska's constitution dates from 1956. By contrast, according to Professor Tarr, "American state constitutions tend to be 'old'—the average state constitution has been in operation for over a century." G. Alan Tarr, Keynote Address (available at <http://www-camlaw.rutgers.edu/statecon/keynote1.html>).

81. The remaining nine sections deal with quite detailed aspects of the funding and governance of both lower and higher education, with the prohibition of aid to sectarian schools, and with nondiscrimination in education. Mont. Const., art. X, §§ 2–10 (2001).

82. *Ibid.* at § 1 (1). In § 1 (2), Montana "recognizes the distinct and unique cultural heritage of the American Indians," and commits itself (at least as a goal) to preserve their cultural integrity, another distinctive provision.

83. *Ibid.* at § 1 (3) (emphasis added).

84. *Ibid.* (emphasis added).

85. Of course, many proposals for constitutional amendment never succeed in reaching the ballot stage. Usually, that is because of insufficient public or legislative support. In a less common circumstance, a proposed 1996 Arkansas amendment, which would have created a state-run lottery and established an education trust fund with the proceeds, was excluded from the ballot by court injunction.

86. *See* La. Const., art. VIII, § 3(A) (2003) (state board empowered to manage and operate failing schools, and to use state and local funds for that purpose); Ariz. Const., art. IX, § 21 (2002) (specifies how income from public lands is to be used for educational purposes and relates to school and community college district expenditure limitations); Haw. Const., art. X, § 1 (2002) (authorizes the state to issue bonds to financially assist private schools and to use the bond proceeds to assist not-for-profit private schools and universities); Utah Const., art. X, § 5 (2002) (repeals a provision requiring a portion of the interest earnings from the State School Fund be kept in the Fund as a protection against the effects of inflation and allows dividends from the Fund's investment to be spent to support the public education system); Ore. Const., arts. XI–L (2002) (allows the state to issue general obligation bonds for seismic rehabilitation of public education buildings); Ore. Const., art. VIII, § 8 (2000) (requires the legislature to

provide enough funding for schools to meet state education quality goals, or publish a report explaining why it was unable to do so); Colo. Const., art. IX, § 17 (2000) (increases per pupil funding by at least the rate of inflation plus one percentage point for the next ten years, and by at least the rate of inflation thereafter); Okla. Const., art. X, §§ 9, 10 (2000) (allows individual school districts to eliminate annual votes on school levies with approval from local voters); Okla. Const., art. X, § 40 (2000) (creates the Tobacco Settlement Endowment Trust Fund, the earnings of which may be expended for education); S.C. Const., art. XVII, § 7 (2000) (allows state lottery to benefit education); S.D. Const., art. VIII, § 15 (2000) (permits legislature to establish multiple classes of agricultural property for school taxation purposes); S.D. Const., art. VIII, § 2 (2000) (allows state to invest permanent school funds in stocks and similar investments with relatively high levels of risk); Cal. Const., art. XVI, § 8, and art. XIII A, § 1 (both sections were amended pursuant to Proposition 39; authorizes bonds for repair, construction or replacement of school facilities, classrooms, if approved by 55 percent local vote for projects evaluated by schools, community college districts, county education offices for safety, class size, and information technology needs); Idaho Const., art. IX, § 4 (2000) (changes the name of the Public School Fund to the Public School Permanent Endowment Fund; allows proceeds from the sale of public school endowment lands to be deposited into a Land Bank Fund to buy other lands within the state for the benefit of public schools); Va. Const., art. X, § 7-A (establishes a Lottery Proceeds Fund, wherein all net revenues from any state-run lottery must be placed, to be distributed among localities to be spent locally for public education); Mo. Const., art. X, § 11 (prohibits the school board from setting an operating levy higher than \$2.75 without a vote; requires levy to be set up to \$6.00 for voter approval by simple majority; requires levy to be set above \$6.00 for voter approval by two-thirds); Ore. Const., art. XI–K (1998) (allows the state to guarantee the payment of general obligation bonds issued by qualified school districts, community college districts and education service districts; to pay the guaranteed indebtedness by using available state funds, borrowing from the Common School Fund or issuing state bonds; and to issue bonds to reimburse moneys borrowed from the Common School Fund); Okla. Const., art. X, § 15 (1998) (provides exception regarding use of certain public facilities; modifies restrictions related to investment of public funds); Ark. Const., art. XIV, § 3 (1996) (establishes a uniform minimum property-tax rate to benefit schools; requires a minimum 25-mill levy for maintenance and operation in all school districts of the state); Colo. Const., art. IV, §§ 3, 9, 10 (changes state board of land commissioners and refocuses mission of panel from maximizing income to managing lands for loans and bonds; allows schools to tap school-trust-land funds for loans and bonds); Ga. Const., art. I, § 2 (limits the purposes and programs for which state lottery funds may be spent, by specifically providing that lottery proceeds go to: (1) tuition, grants, and loans, (2) voluntary prekindergarten, (3) educational shortfall reserves, (4) K–12 teacher training in computer technology and distance learning, and (5) capital outlay projects for education facilities); Haw. Const., art. VII, § 11 (1996) (allows the state to grant funds under the special school-facilities program for periods longer than 3 years); S.D. Const., art. VIII, § 11 (1996) (grants the state investment council authority to invest money from the permanent school fund and other school funds); S.D. Const., art. XI, § 14 (1996) (requires two-thirds majority of the legislature to increase taxes).

87. *See* Cal. Const., art. I, § 31 (1996).

88. *See* Ky. Const., § 187 (1996) (“In distributing the school fund no distinction shall be made on account of race or color.”); § 180 (1996).

89. *See* Ala. Const., amend. 670 (2000) (details composition of the Board of Trustees of Auburn University); Okla. Const., art. X, § 23 (2000) (allows state colleges and universities to make contracts with presidents for more than one year, but not more than three years); Haw. Const., art. X, § 6 (2000) (grants the University of Hawaii authority and power of self-governance in matters involving only internal structure and operation of the university); Fla. Const., art. IX, § 7 (2002) (creates “a single state university system comprised of all public universities” as well as a “board of trustees [to] administer each public university and a board of governors [to] govern the state university system.”).

90. *See* Fla. Const., art. IX, § 1 (1998) (declaring public education to be a “fundamental value” and making it “a paramount duty of the state to make adequate provision for the education of all children residing within its borders”; mandating “[a]dequate provision . . . for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education”); Fla. Const., art. IX, § 2 (1998) (providing for membership, appointment and term of state board of education, and its authority to appoint commissioner of education); Fla. Const., art. IX, § 4 (1998) (specifying that electors of each school district shall vote for its local school board “in a nonpartisan election”); Fla. Const., art. IX, § 5 (1998) (amending language to delete the gender-specific pronoun “he” in referring to school superintendent position); Fla. Const., art. IX, § 1 (2002) (providing for “[e]very four-year old child . . . a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards,” to be “implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs”); Fla. Const., art. IX, § 1 (2002) (mandating reduced class size).

91. *See* Louisiana, Constitutional Amendment 8 (2002), available at <http://www.sec.state.la.us/elections/2002-ca.htm> (proposed to authorize institutions of higher education or their management boards to invest in stocks up to 50% of certain funds received from gifts, grants, endowments and other funds); Nevada, Question 7 (2002), available at http://sos.state.nv.us/nvelection/2002_bq/bq7.htm (proposed to extend the debt limit for the purposes of school construction or improvements); Oklahoma, State Question 684 (2000) (proposed to change how the state may use the permanent school fund); California, Proposition 26 (2000), available at <http://primary2000.ss.ca.gov/VoterGuide/Propositions/26text.htm> (proposed to lower the voting requirement for passage of local school bonds); California, Proposition 38 (2000), available at http://vote2000.ss.ca.gov/VoterGuide/text/text_title_summ_38.htm (proposed to authorize annual state payments of at least \$4,000 per pupil for private and religious schools phased in over four years); Michigan, Proposal 00-1 (2000), available at http://www.michigan.gov/sos/0,1607,7-127-1633_8722_14689-31515--,00.html (proposed to eliminate the ban on direct support of students attending nonpublic schools through tuition vouchers, credits, tax benefits, exemptions or deductions,