

Eleventh in a series of papers about state constitutional issues

At the November 3, 2026, general election, Proposal 2026-01 will ask voters whether a constitutional convention should be convened for the purpose of a general revision of the 1963 Michigan Constitution. Article XII, Section 3 provides that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to voters. If the question is approved, the convention would convene in Lansing on October 5, 2027. If rejected, it will automatically appear on the ballot again in 2042.

Proposal 2026-01 will ask voters:

Shall a convention of elected delegates be called for the purpose of a general revision of the Michigan Constitution, any such revision to be submitted to the voters for ratification?

The Citizens Research Council is publishing a series of papers to provide information which voters may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this time. The Citizens Research Council takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in the papers in this series will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

ARTICLE VIII – EDUCATION

The Michigan Constitution singles out education as a uniquely important state function by devoting an entire article to the topic. Article VIII deals with elementary and secondary education (K-12 education) as well as higher education (community colleges and four-year universities). The article has been targeted for amendment five times since adoption of the 1963 Michigan Constitution and amended only twice (once to prohibit aid to nonpublic schools and once to change the word “handicapped” to “disabled” to comply with the nomenclature in the federal American with Disabilities Act). Despite the dearth of amendment activity over the past 63 years, it is likely that Article VIII would garner substantial attention if a constitutional convention is called. Among the most salient and pressing topics that a convention could consider include:

- Defining education as a fundamental right.
- Establishing K-12 education adequacy or quality standards.
- Creating constitutional school funding guarantees.
- Addressing charter schools, school choice, or public funding of non-public education.
- Modifying governance systems for K-12 education, four-year universities, and community colleges.

Education as a Fundamental Right

Under the United States constitutional system, responsibility for education rests primarily with the states. Under the Tenth Amendment to the U.S. Constitution, powers not delegated to the federal government are reserved to the states. As a result, every state constitution contains provisions addressing education. Most state constitutions impose an affirmative duty on state

government to provide public education. Some state constitutional language goes so far as to make education a fundamental right.

The Michigan Constitution does not explicitly establish education as a fundamental right in the way some states do, such as Florida, whose constitution describes education as a “fundamental value” and a “paramount duty” of the state. Instead, Article VIII contains two key provisions related to education. Section 1 states, in part, “. . . schools and the means of education shall forever be encouraged”, language that is derived from the historic Northwest Ordinance and expresses Michigan’s commitment to education as a public good. Similarly, Section 2 reads, “The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law.” These provisions create a constitutional obligation for the state to provide and support public education, but, importantly, they do not expressly characterize education as a fundamental individual right.

The distinction between education as a constitutional obligation versus an individual right is important from the perspective of judicial scrutiny. Generally, claims regarding the government’s infringement of basic or fundamental rights trigger the highest level of judicial scrutiny. In this light, Michigan courts have traditionally treated education as a constitutionally mandated public function rather than a fundamental right comparable to free speech or voting. As a result, school finance and education adequacy lawsuits in Michigan have generally focused on whether the state is meeting its constitutional duty to maintain schools, rather than on enforcing an individual fundamental right to education.

This distinction was front-and-center in a recent federal court case, *Gary B. v. Snyder*, involving Detroit public school students.¹ In 2020, a panel of the federal Sixth Circuit initially recognized a fundamental right to basic literacy under the Michigan Constitution, but the court’s decision in this “right to read” case was later vacated when the matter was settled before becoming binding precedent. Consequently, neither federal law nor Michigan’s Constitution currently recognizes a broad fundamental right to education or literacy.

At a future Michigan constitutional convention, a key question would be whether Article VIII should continue to impose a duty on government to operate schools, or whether it should be amended to create an enforceable individual right to educational opportunity. Language that confers an individual right to education would likely give courts a stronger basis to review state education policies and funding decisions than the current Article VIII language.

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K-12 Education Quality/Adequacy Standards

Many state constitutions go beyond simply requiring the existence of public schools and instead impose qualitative or adequacy standards—requiring K-12 public education to be “thorough and efficient,” “high quality,” “adequate,” or making education a paramount duty of the state. These provisions have been the basis for most school-finance adequacy lawsuits.

Section 2 requires the legislature to “maintain and support a system of free public elementary and secondary schools as defined by law,” but does not contain explicit adequacy or quality language like what other states have in their constitutional text. Consequently, Michigan has historically had fewer successful adequacy-based school finance lawsuits than states with stronger constitutional standards. Some have asserted that adding stronger language to Michigan’s education article would establish a framework for the legislature and other state policymakers to make changes necessary to raise the quality of public K-12 education services and improve student outcomes, which have lagged other states and the nation, more broadly, for several years. Nothing in the current language prevents the legislature, with the governor’s signature, from enacting various K-12 education reforms to improve the quality of education in the Mitten State.

K-12 Education Funding Guarantees

While the text of Section 2 does not contain guarantees regarding either the quality or adequacy of K-12 education services provided to students, it does provide a general duty for the state government to fund public schools. But Section 2 does not go beyond this basic requirement. Instead, most details of school finance, including the per-student foundation allowance, categorical funding, and revenue mechanisms are left to statute. This gives the legislature broad discretion but also means constitutional challenges to school funding typically have a narrower textual basis than in states with stronger funding guarantees.

Michigan is not alone as only a handful of state constitutions contain explicit funding guarantees or assign clear fiscal responsibility to the state government. The presence of words and phrases in the education clauses of other state constitution such as “efficient and uniform”, “ample”, “adequate”, and “thorough and efficient” go beyond Michigan’s basic requirement to “maintain and support”. Such provisions are intended to link the amount and distribution of financial resources to public schools to student outcomes. Further, courts have frequently interpreted these provisions to require more equitable funding across school districts within a state.

Although not contained in the education article, the Michigan Constitution has had a dedicated permanent school fund (School Aid Fund) since the mid-1950s. Michigan’s School Aid Fund, created in Article IX, Section 11 (Finance and Taxation), is used exclusively for “aid to school districts, higher education, and school employees’ retirement systems.” Several other states have similar constitutionally-protected “trust funds” dedicated to education.

Section 11 earmarks portions of state sales and use taxes to the fund, which also receives other state tax proceeds as provided by state law. Notably, this section was amended in 1994 as part of the Proposal A school finance reforms to establish a minimum funding guarantee for local school districts. Specifically, beginning in the 1995-96 state fiscal year, each district is guaranteed combined per-student state and local funding for school operations at least equal to the amount it received in the 1994-95 fiscal year. Because the 1994-95 “funding floor” was not indexed to inflation growth, the state has had no problem meeting its constitutional obligation. Thus, the existing school funding guarantee is effectively moot given the general rise in K-12 educational inflationary costs since it was established over three decades ago.

Given the generally poor performance of Michigan schools relative to other states and the state government’s primary role in funding public education, constitutional convention delegates would be expected to consider proposals for stronger and more explicit school funding provisions for Article VIII, Section 2.

Public Support of Private School Choice

Michigan state law provides families with school-age children access to several forms of K-12 public-school choice, including inter- and intra-district choice, and public charter schools. These options allow students to attend a public school other than their residentially zoned school and, because of the state’s school funding system, take their per-student funding with them. While the statutory framework provides public-school options, the Michigan Constitution has prohibited publicly funded private-school choice programs since 1970, when voters approved an amendment to Section 2. The prohibition, commonly referred to as a Blaine Amendment, applies to all private schools (religious and non-sectarian) and extends beyond direct aid to families and schools (e.g., vouchers) to include “indirect” aid such as tax credits and deductions. A 2000 attempt to eliminate this constitutional prohibition was defeated by a 2 to 1 margin.

While Michigan has maintained its strict prohibition against private school choice programs, many other states have expanded existing and/or developed completely novel private school choice options in the intervening years.^a In addition to traditional voucher mechanisms, several states now provide state-level tax credits for donating to private school scholarship-granting organizations or directly fund “educational savings accounts” – effectively a type of K-12 flexible spending account that allows parents to pay for private and public school services for their children, including private school tuition. More recently, as part of the federal One Big Beautiful Bill Act of 2025, Congress approved the first-ever federal school choice tax credit to allow income tax filers to claim a \$1,700 non-refundable credit for donating to a state-level scholarship granting organization starting in 2027.

^a In 1875, then-Congressman James Blaine (Maine) championed a failed amendment to the U.S. Constitution to ban the use of public funds for so-called “sectarian” schools run by religious institutions (Catholic schools were the target at the time). The state-equivalent amendments are found in state constitutions across the country dating back to the late 1800s. Michigan’s was the most-recently adopted (1970).

Given the national movement for expanded and new private school choice options, combined with public concerns about the quality of Michigan's public schools and support for a competitive educational environment, a future constitutional convention may review the existing prohibition against state aid to private schools.

K-12 Education Governance

In the United States, K-12 education governance is typically shared among several state-level institutions rather than controlled by a single entity. Although structures vary by state, legislatures generally hold the broadest constitutional authority over public education. This is the case in Michigan.

Section 2 states that "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law." While this is the only mention of the state legislature in relation to K-12 education, it is important because it gives the legislature plenary authority over education. The legislative branch, through its law-making authority and power of the purse, is primarily responsible for establishing the overall structure of the state's K-12 system, determining school finance policies, and appropriating state funds, creating school accountability structures, defining school district powers, and authorizing alternative methods of service delivery.

In addition to the broad responsibilities granted to the legislative branch, Article VIII carves out specific governance roles for other state officials. For example, the governor serves as an ex-officio (non-voting) member of the constitutionally established State Board of Education and has limited executive authority over the constitutionally established Superintendent of Public Instruction, who serves as the non-voting chairperson of the state board and leads the Michigan Department of Education (Section 3). While these different state actors share the ultimate responsibility for public K-12 education governance, delivery of educational services is delegated to local and intermediate school districts.

The current constitution's provision granting the legislature ultimate authority over elementary and secondary education would not likely be a subject of much controversy at a constitutional convention. The legislature has held this authority since the 1835 Michigan Constitution and most other states' constitutions have a long tradition of vesting authority for public education in the legislative branch. However, other aspects of Michigan's "shared governance" model would generate much discussion and calls for reform should voters call for a 2027 convention.

State Board of Education

The State Board of Education (SBE) consists of eight members nominated by party conventions and elected to eight-year, staggered terms in statewide elections. The SBE has the responsibility of appointing the superintendent of public instruction and determining his or her term of office. The current iter-

ation of the board expands on the structure provided in the 1908 Constitution—an elected four-member board with limited authority and responsibility.

Under the 1963 Constitution, the state board serves as the general planning and coordinating body for all public education and has leadership and general supervision responsibilities over all public education, except public universities. While the constitution gives the board a broad grant of authority, in practice, its role has been more consultative and deliberative. The board is empowered to make education policy only within the limits established by state law (e.g., the board is not empowered to make funding decisions regarding schools but is supposed to advise the legislature “as to the financial requirements of all public education”). The board’s role was further defined and somewhat reduced by two executive orders that transferred administrative statutory powers and responsibilities as head of the Michigan Department of Education (MDE) from the board to the superintendent of public instruction. Additional state laws and court decisions have detailed the board’s responsibilities and extended its supervisory powers over nonpublic education.

At the 1961 Constitutional Convention, most of the debate focused on whether the governor should be a voting member of the State Board of Education. The main arguments in opposition focused on a concern that the governor would dominate the board and a belief that the board would become politicized and educational issues would be of secondary concern. Ultimately, the governor was added as an ex-officio member without the right to vote.

The framers of the 1963 Constitution had high expectations for the State Board of Education and its oversight role. One delegate saw the board as “a deliberative body of outstanding citizens.” The board was given, what appeared to be, a broad grant of constitutional authority over all public education. The reality in Michigan is that, in practice, the State Board of Education shares the responsibility for education policy making and reform with the legislature and governor, and this has led the board to take a more consultative and advisory role and has also contributed to partisan politics playing a greater role in the development of education policy. Michigan is not unique in this regard as others have characterized state boards of education as having “significant powers but limited influence,” and as being relatively weak institutions in relation to other state actors.²

Currently, there is some popular dissatisfaction with the existing governance system at the state level as it relates to K-12 education. Low early literacy rates, falling student test scores, and wide achievement gaps among different student groups would probably lead to a thorough review of education governance at a future constitutional convention, including the structure and selection of board members, with an eye towards how other states operate.

States use different methods to select members of their boards of education.^b These approaches reflect each state’s priorities regarding political accountability, expertise, and the balance of power between governors and voters.

b Minnesota and Wisconsin do not have state boards of education.

About two-thirds of states rely on gubernatorial appointments for at least some board members. This approach can increase executive accountability, better align education policy with a governor's priorities, and allow for the appointment of members with diverse professional qualifications and life experiences. However, it also reduces direct voter control over all board decisions and can lead to highly politicized appointments.

A smaller group of states, including Michigan, use popular elections to select some or all members of their state boards of education. Elected boards, in theory, emphasize direct democratic accountability and provide greater public influence over education policy. However, this method of seating board members can result in highly partisan education governance and members who lack education policy expertise and have minimal professional qualifications.

Over the past several decades, states have generally moved toward greater gubernatorial influence over education policy through appointed rather than elected boards. As a result, Michigan's statewide elected board is now less common than it was when the 1963 Constitution was adopted. A key governance question would be whether to retain the current elected-board model, move to a governor-appointed board, or adopt a hybrid structure that combines political accountability with professional expertise.

Superintendent of Public Instruction

Section 3 specifies that the superintendent of public instruction serves as the non-voting chair of the state board of education and as the executive director of the MDE. Unlike most other executive department heads of Michigan government, who are appointed by and report to the governor, the superintendent serves at the will of the eight-member board and is tasked with carrying out the board's policies. However, the superintendent does head an executive office, sit on the governor's cabinet, and act as a staff officer to the governor.

While the position of state superintendent/chief school officer is a ubiquitous feature of K-12 education governance models across the 50 states, the method of selection varies. Overwhelmingly, states use an appointment method (either by the governor or the state board) to fill this position; just 12 states rely on popular elections to select their chief state school officer.^c

Michigan's 1850 and 1908 Constitutions provided for the popular election of the superintendent of public instruction. Should one be called, a constitutional convention might consider returning to an elected superintendent of public instruction.^d Another consideration may be to allow the governor to appoint the superintendent, which would weaken the role of the state board and give the governor more authority over the superintendent.

^c Oregon eliminated its elected office of Superintendent of Public Instruction and consolidated its functions with the office of Governor in 2011.

^d The 1835 Constitution required the governor, with the consent of the legislature, to appoint the superintendent.

Governance Autonomy of Flagship Universities

The frequent turnover in leadership of Michigan's three flagship universities, often related to actions of the university boards, have drawn increasing public attention to governance issues of those schools. A key question surrounding university governing boards is how they are to be held most accountable, and by extension, to whom these public bodies are to be accountable. The independent election of the governing boards for the University of Michigan (UM), Michigan State University (MSU), and Wayne State University (WSU) and the autonomy granted them through the Michigan Constitution is long standing.^e The constitutional architecture of Michigan's unique higher education governance would likely be a topic of debate at a future constitutional convention with an eye towards greater, and possibly different, public accountability mechanisms.

On its face, accountability would appear to be served by directly electing the boards charged with governing Michigan's major universities. Democracy presupposes that the candidates that are elected to public office will be those that offer positions consistent with the will of the electorate. Furthermore, it presupposes those that perform actions while in office that are contrary to the wishes of the electorate will pay at the ballot in the ensuing election.

However, Michigan voting trends and experiences suggest that maximum board accountability may not be achieved under the current constitutional arrangement. Voter drop off and straight-party voting weaken the arguments for accountability through the ballot box. When the number of people voting for candidates for university board positions is reduced due to voter drop off, the statewide election results often fail to capture the sentiment of the whole electorate. Likewise, the availability of straight-party voting may allow popularly elected university board candidates being chosen for their political affiliation more than their governance acumen. Michigan is just one of seven states that allows straight-party voting, a right enshrined in the state's constitution in 2018.

The alternative is accountability to state officials, which provides very indirect accountability to the electorate. Accountability to state officials is served when the governor is empowered to appoint the governing boards and the senate confirm the appointments. The people elect the governor, who is responsible for the appointment of the governing boards for the other state universities. The people also elect the state senate, which is responsible for its advice and consent. Political theory holds that those officials are better able to monitor the actions of board members and hold them to account if those actions are contrary to the will of the people. But rarely is a gubernatorial election decided by the people holding a sitting governor to account for actions of university board members (or actions of other appointed department heads).

Composition of the current university boards raises concerns about the extent

^e The Board of Regents of the University of Michigan has authority over all three campuses – Ann Arbor, Dearborn, and Flint.

to which the general public is represented under either scenario. Candidates to the flagship university boards do not have to appeal to statewide electors to get on the ballot. Instead, major political party candidates for UM's, MSU's, and WSU's governing boards are nominated at those parties' conventions, rather than being vetted through a primary election process. The Democrat and Republican nominating conventions are not open to the public to participate in, let alone attend. As such, university board candidates are often well-connected party insiders that often have an affiliation with the universities and their major backers. As a result, the degree to which board members can be said to be accountable to electors, as opposed to party officials (faithful and donors) that nominated them, is weakened.

It is important to note, though, that some may view the election of the governing board members of the state's three research universities as vital to the independence of those universities. A provision for electing the regents of the University of Michigan goes back to the 1850 Constitution; the 1908 Constitution contained provisions for electing board members for all three of the largest universities.

At the 1961 Constitutional Convention, one delegate stated "...it's of the greatest importance that you maintain the election of the boards of control of the 3 large universities. It gives the boards an independence that they would not have were they appointed by the governor, and this at times could be important." Some argue that this autonomy has emboldened the University of Michigan to become one of the best public universities in America, for Michigan State to become the premier land grant college in America, and for Wayne State to serve its role as an urban university.

The downside is that these three universities are not beholden to the governor or legislature. The priorities of their boards may not align with the priorities of either branch of state government. This arrangement may create structural diseconomies and inefficiencies with duplication of functions and academic programs.

Governance and Funding of Community Colleges

Michigan's Constitution gives community colleges a distinct constitutional status that is different on many dimensions from the governance structures for K-12 school districts and the state's public universities. Section 7 requires the legislature to establish and provide financial support to community colleges. Like the governance model for traditional public school districts (not charter schools), each college is controlled by a seven-member elected board. To provide some level of statewide oversight and planning, Section 7 directs the legislature to create an eight-member Board for Public Community and Junior Colleges, whose members are appointed by the State Board of Education and serve in an advisory capacity to the State Board of Education.

Because Michigan's Constitution requires community colleges to be governed by locally elected boards, significant changes to their governance structure

cannot be accomplished through ordinary legislation alone. Major reforms—such as replacing elected trustees with appointed boards, consolidating governance, or creating a centralized statewide governing authority—would likely require a constitutional amendment. While this constitutional protection promotes stability and preserves local control, it also limits the state’s ability to adapt governance structures in response to changing educational, demographic, or workforce needs.

General Planning and Coordination for Higher Education

The organization and governance of public universities in Michigan is different from what is found in most other states. While most state constitutions empower the state legislatures to provide for systems of higher education, Michigan’s is one of the few that enumerate specific institutions and specify for the governance and autonomy of those schools. Public universities in most states are governed by consolidated governing boards or coordinating board systems that may have regulatory powers or play only advisory roles. The state universities and the consolidated/coordinating boards in other states are under the control of the governors and legislatures.

An effort was made in the 1963 Constitution to provide for planning and coordination of all institutions of higher education (four-year universities and two-year colleges) through the state board of education (Section 3 states that the state board “shall serve as the general planning and coordinating body for all public education, including higher education”). The state board’s authority as it relates to higher education was emasculated by language at the end of Section 3 which indicates that the authority of boards of higher education institutions to supervise their respective institutions “is not limited by Section 3.” This limitation was re-affirmed by a 1975 Michigan Supreme Court ruling that the University of Michigan Board of Regents is a co-equal branch of state government with exclusive authority over the university’s educational and financial operations, rendering it largely immune from legislative interference.³

Michigan has multiple higher education governance structures, including autonomous public universities, locally governed community colleges, the State Board of Education, and the advisory State Board for Public Community and Junior Colleges. This decentralized governance model can present several challenges. Responsibilities may overlap among governing bodies, making statewide coordination more difficult. The absence of a single entity with comprehensive authority over higher education can hinder long-term planning, create inconsistencies in policy implementation, and make it more difficult to align educational programs with statewide workforce and economic development goals. In addition, institutions may pursue differing priorities based on local needs, institutional missions, or governance structures, potentially limiting system-wide collaboration and strategic alignment.

A statewide system would make statewide planning and coordination of higher education easier and may increase efficiency by coordinating the

programs offered by different universities and colleges across the state. It could facilitate better alignment of the K-12 curriculum to prepare students for higher education. Even if the current system of independent universities and colleges is kept, statewide planning and coordination of higher education may be a subject for review in a constitutional convention just as it was at the 1961 Constitutional Convention. As indicated above, efforts to give the state board of education a planning and coordination role have not been successful. A constitutional convention may wish to revisit that goal. One alternative short of a state university system might be a separate state board for post-secondary education that would be responsible for planning and coordination.

Michigan is an outlier in the autonomy constitutionally granted to its three flagship universities, in the independent election of the boards of those universities, and in the absence of a consolidated statewide governing board or coordinating board to oversee and serve as liaison between Michigan's 15 public universities, 28 community colleges, and the executive and legislative branches of state government. Any fundamental reform of Michigan's higher education governance structure will require amending Article VIII, either through one of the regular amendment procedures or via a constitutional convention. Ultimately, voters will decide what, if any changes, should be made to Michigan's unique higher education governance system.

Conclusion

Article VIII has remained relatively stable since the adoption of the 1963 Constitution, but the issues it governs are among the most consequential functions of state government. A future constitutional convention would likely bring renewed attention to whether Michigan's education article should continue to rely on broad legislative discretion or be revised to establish clearer constitutional commitments regarding educational opportunity, school quality, funding adequacy, public and private school choice, and governance accountability. These questions would not be merely technical; they would require delegates and voters to decide how much authority should rest with the legislature, the governor, elected boards, local institutions, and the courts in shaping education policy.

Because education affects individual opportunity, local communities, state finances, workforce development, and the independence of public institutions, any changes to Article VIII would carry long-term implications well beyond the text of the constitution itself. The central challenge for a convention would be to balance stability with reform: preserving constitutional structures that have served Michigan well while addressing weaknesses that have become more apparent over time. Whether through targeted changes or broader restructuring, Article VIII would almost certainly be one of the most closely watched and vigorously debated areas of any future constitutional convention.

Endnotes

- 1 Gary B. v Snyder, Federal Court of Appeals (Sixth Circuit): 957 F.3d 616 (6th Cir. 2020)
- 2 Paul Manna. *State Governance, Policy, and Education Performance in the United States*. Annual Meeting of the American Political Science Association. Chicago, September 2-5, 2004: pg. 3.
- 3 *Regents v. State*, 235 N.W.2d 1, 395 Mich. 52

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