

State Board of Education

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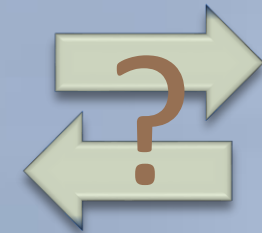
Litigation



History



Options



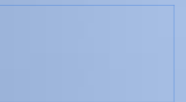
State Board of Education

Litigation



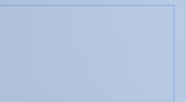
Breck England v. Joel Hatch et al.,

Judge Waddoups, 1:14-cv-079-CW (Utah Fed, Dist. Court, 2014)



Current candidate selection process *may be* unconstitutional

- Free speech violation
 - Committee and Governor are permitted to use any criteria.
 - Applicants' viewpoints were evaluated.
- States have a recognized interest keeping ballots manageable and understandable.
 - Includes regulating the number of candidates on a ballot.

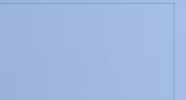


Current candidate selection process *may be unconstitutional*

- Current solution does not “fit”
 - Burden on free speech is not “necessary or appropriate” to further the state’s interest.
- Scheme of prior restraint on speech
 - “Only by imposing standards that limit . . . discretion [based on speech] may the danger be avoided.”
 - “Catch all” provision of considering “life experiences” contributes to “unbridled discretion.”
 - Provision is limitless
- “[T]he statute is essentially a standardless one because there is no measuring stick by which to determine why one candidate is selected over another.”

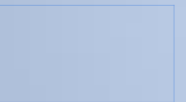
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History



Prior to 1951

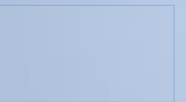
- Starting in 1935, the State Board of Education had nine appointed members.
- Tenth Member was the state superintendent.
- Governor appointed the initial members in 1935 to staggered terms.
- As terms expired, replacements were appointed by regional conventions (made up of members of local school boards) for seven-year terms.



Utah Constitution Amended in 1950

Article X, Section 8

The general control and supervision of the public school system shall be vested in a State Board of Education the members of which shall be elected as provided by law.



Utah Constitution Amended in 1950

Article X, Section 8

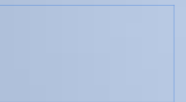
The general control and supervision of the public school system shall be vested in a State Board of Education the members of which shall be elected as provided by law.

Current version (Article X, Section 3):

The general control and supervision of the public education system shall be vested in a State Board of Education. The membership of the board shall be established and elected as provided by statute. The State Board of Education shall appoint a State Superintendent of Public Instruction who shall be the executive officer of the board.

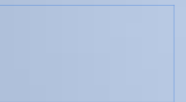
1951

- Nine members with six-year terms
- Regional school district conventions each nominated at least two candidates based only on “merits and fitness”
- A person could also be nominated by obtaining 50 signatures from within their district



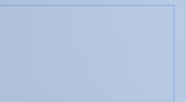
1953 – 1982

- 1953 – Terms reduced from six years to four years
- 1965 –
 - Signatures required for nomination by petition increased from 50 to 100
 - Number of candidates in each district narrowed to two in primary elections
- 1969 – Board membership increased to 15
- 1972 – Board members reduced to 11
- 1982 – Board members reduced to 9



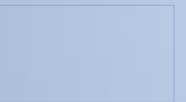
1991

- Governor selected a nominating committee for each State School Board district
- Each committee submitted three to five names to the governor
- Governor selected two from each State School Board district to be listed on the ballot
- Board membership increased from nine to fifteen
- Signature provision removed



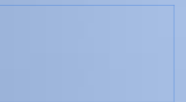
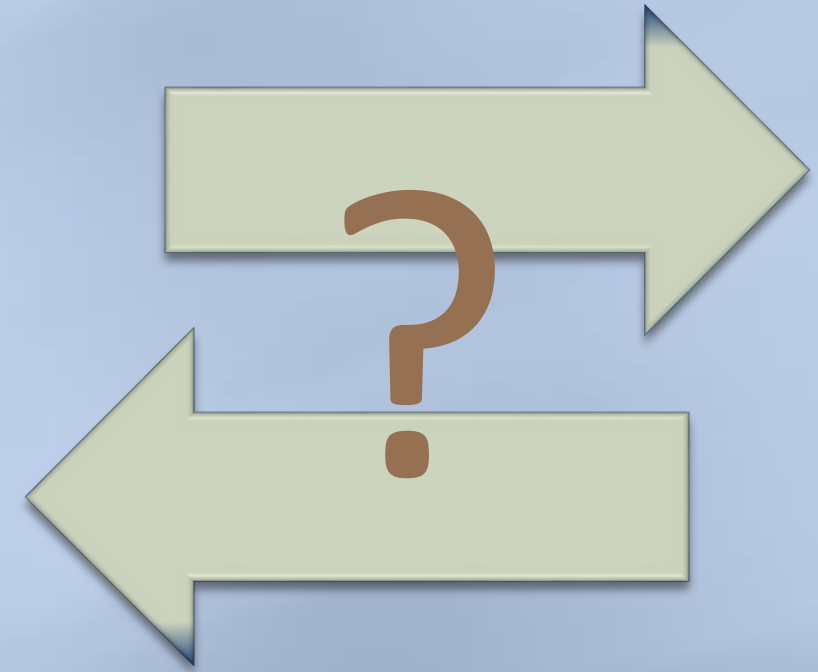
2003 (Current system)

- System changed to a statewide nominating committee
- Nominating committee submits to the governor at least three names from each State School Board district
- Governor chooses two names from names submitted for each State School Board district to stand for election



State Board of Education

Options



Options (nonexclusive list)

- Do nothing and wait for a final ruling
- Variation of current system with definite, nondiscretionary, and verifiable standards
- Amend constitution to allow for appointment
- Partisan or nonpartisan elections with ballot access controlled by qualifications and/or signatures
- Nonpartisan conventions
- Hybrid system

