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## One Vote, Two Winners: Team-Ticket Gubernatorial Elections and the Need for Further Reform

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# One Vote, Two Winners: Team-Ticket Gubernatorial Elections and the Need for Further Reform

T. QUINN YEARGAIN\*

*Historically, governors and lieutenant governors were elected in separate elections. This frequently meant that governors and lieutenant governors of different parties were elected, undermining the democratic legitimacy of gubernatorial succession. But when New York adopted team tickets in 1953, it ignited a flurry of similar changes nationwide. Today, most states with lieutenant governors elect them on a team ticket with governors. And, since the initial adoption of team tickets, several other trends—specifically, trends away from separate primaries and toward post-primary selection—have emerged in how lieutenant governors are elected.*

*Despite the significance of these changes, however, they remain largely unexplored by the academic literature. Accordingly, this Article sets out to remedy that omission. It addresses the move to team tickets—including explaining why the move occurred when it did, the chronology, and the legislative history—and the subsequent adoption of specific lieutenant-gubernatorial election procedures. It explores both trends and ultimately argues for the adoption of an election procedure that maximizes democratic legitimacy.*

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\* Associate Director, Yale Center for Environmental Law and Policy. I am immensely grateful to the staff of the *University of Miami Law Review*—Jose M. Espinosa, Editor-in-Chief; Daniel Mayor, Editor-in-Chief-elect; Mackenzie Garrity, Executive Editor; Phillip Arencibia, Articles & Comments Editor; Daniel Thwaites, Staff Editor; and Mitchell Abood, Harris Blum, Sean Hughes, Taylor Larson, and Tori Simkovic, Junior Staff Editors—for their excellent edits on this piece.

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## INTRODUCTION

In U.S. presidential elections, the nominees of the two major parties each select running mates to a significant amount of media attention.<sup>1</sup> After the presidential primaries are concluded, vice-presidential search committees are formed, vetting takes place, and prospective candidates and their proxies participate in behind-the-scenes wrangling.<sup>2</sup> The process ends with a slick rollout of the newly minted vice-presidential nominee, their nomination at the party's

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<sup>1</sup> Joseph Uscinski, *Smith (and Jones) Go to Washington: Democracy and Vice-Presidential Selection*, PS: POL. SCI. & POL. 58, 58 (2012) (“Every four years, not only American citizens, but spectators worldwide watch as . . . presidential nominees discuss, consider, and finally choose their vice-presidential running mates. The media, both domestic and international, relentlessly cover the selection processes preceding the nominating conventions.”).

<sup>2</sup> Nora Kelly Lee, *Choosing the Veep of Your Dreams*, ATLANTIC (Apr. 23, 2016).

national convention, and if everything goes according to plan, no harm to the presidential nominee.<sup>3</sup>

At the state level, the process is different—and considerably more muted. Not every state has a lieutenant governor, and not all of those that do allow their gubernatorial nominees to select a running mate *after* the primary.<sup>4</sup> But when the process operates like a presidential election in miniature, the gubernatorial nominee selects a running mate to significantly less media attention and, in all likelihood, to the apathy of the state’s voters.

Despite the facial similarities between presidential and gubernatorial elections, the current state of gubernatorial elections is a messy and crowded arena. Governors, as political institutions, have undergone immense change since the early days of the United States. Although most governors in the original thirteen colonies were indirectly elected by state legislatures—either as a formal matter or from the failure of any candidate to win a majority, throwing the election to the legislature—these constitutional provisions were amended over the course of the nineteenth century to make gubernatorial elections more democratic.<sup>5</sup> At the same time, lieutenant governorships did not exist under most original state constitutions and were created for much the same reason.<sup>6</sup> The result, as of now, is the widespread diffusion of both truly democratic gubernatorial elections and built-in successors.

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<sup>3</sup> *Id.*; Jonathan Masters & Goal Ratnam, *The U.S. Presidential Nominating Process*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounders/us-presidential-nominating-process> (last updated Jan. 13, 2020, 7:00 AM) (describing national conventions as “media events to highlight the presidential and vice presidential nominees”).

<sup>4</sup> *Methods of Election*, NAT’L LIEUTENANT GOVERNORS ASS’N, <https://nlga.us/research/methods-of-election/> (last visited May 15, 2021).

<sup>5</sup> See FLETCHER M. GREEN, CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776–1860: A STUDY IN THE EVOLUTION OF DEMOCRACY 89–91 (2008); T. Quinn Yeagain, *New England State Senates: Case Studies for Revisiting the Indirect Election of Legislators*, 19 U.N.H. L. REV. 335 (2021).

<sup>6</sup> See generally T. Quinn Yeagain, *Democratizing Gubernatorial Succession*, 71 RUTGERS U. L. REV. (forthcoming Summer 2021) [hereinafter Yeagain, *Democratizing Gubernatorial Succession*].

Some exceptions to both remain. Relevantly for this Article, seven states don't have lieutenant governors.<sup>7</sup> Two of those—Tennessee and West Virginia—have a position that is nominally *titled* “lieutenant governor,” but it’s actually the president of the state senate, not an independently elected position.<sup>8</sup> In these seven states, three of them place the secretary of state first in the line of gubernatorial succession and the other four name the state senate president as the designated successor.<sup>9</sup> In the states *with* lieutenant governors, seventeen states elect them separately from governors in general elections.<sup>10</sup> These states are primarily located in the southern and western regions of the United States, although Delaware, Rhode Island, and Vermont are notable exceptions.<sup>11</sup>

The remaining twenty-six states elect governors and lieutenant governors on some form of team ticket in the general election.<sup>12</sup> Only in a discrete minority of these cases—just eight states—does the formation of a joint gubernatorial ticket resemble the formation of a modern presidential ticket.<sup>13</sup> In ten other states, gubernatorial candidates run in their party’s primary with a pre-selected running mate.<sup>14</sup> The third form of team-ticket formation occurs when gubernatorial and lieutenant-gubernatorial candidates run in

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<sup>7</sup> *Methods of Election*, *supra* note 4 (“In three states (Arizona, Oregon, and Wyoming), the Secretary of State is first in line of succession to governor and the official is elected separately . . . . Four states have senate presidents as gubernatorial successor (Maine, New Hampshire, Tennessee, and West Virginia) . . .”).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *See id.*; Yeargain, *Democratizing Gubernatorial Succession*, *supra* note 6.

<sup>12</sup> *Methods of Election*, *supra* note 4.

<sup>13</sup> COLO. CONST. art. IV, § 3; COLO. REV. STAT. § 1-4-101(3) (2020); FLA. CONST. art. IV, § 5; IOWA CONST. art. IV, § 3; IOWA CODE § 43.123 (2020); KY. CONST. § 70; KY. REV. STAT. ANN. § 118.126 (LexisNexis 2021); MICH. CONST. art. V, § 21; NEB. CONST. art. IV, § 1; NEB. REV. STAT. § 32-619.01 (2021); N.J. CONST. art. V, § 1, para. 4; S.C. CONST. art. IV, § 8; S.C. CODE ANN. § 7-11-12 (2020); S.D. CONST. art. IV, § 2; S.D. CODIFIED LAWS § 12-5-21 (2020).

<sup>14</sup> ILL. CONST. art. V, § 4; 10 ILL. COMP. STAT. § 5/7-10 (2021); IND. CONST. art. V, § 4; IND. CODE ANN. § 3-8-1-9.5 (LexisNexis 2021); KAN. CONST. art. I, § 1; KAN. STAT. ANN. § 25-4003 (2021); MD. CONST. art. II, § 1B; MINN. CONST. art. V, § 1; MINN. STAT. § 204B.06 subdiv. 7 (2021); MONT. CONST. art. VI, § 2; N.D. CONST. art. V, § 3; N.D. CENT. CODE § 16.1-11-26 (2019); OHIO CONST. art. III, § 1a; OHIO REV. CODE ANN. § 3513.04 (LexisNexis 2020); UTAH CONST. art. VII, § 2; UTAH CODE ANN. § 20A-9-202(3)(a) (LexisNexis 2020).

separate primaries, with the winners of each primary forming a ticket for the general election.<sup>15</sup> Eight states use this system of ticket formation today.<sup>16</sup> The operation of separate primaries effectively results in “shotgun weddings” in which the two nominees, who may have an antagonistic relationship with each other, are forced to productively co-exist for the remainder of the campaign—and if they’re lucky, for the next four years.<sup>17</sup>

The development of these three different types of team-ticket formation aren’t the product of old, well-established state practices. Instead, before the mid-twentieth century, no state elected its governor and lieutenant governor on a joint ticket.<sup>18</sup> Beginning with New York in 1953, however, twenty-six states amended their constitutions or rewrote their laws to provide for team-ticket elections.<sup>19</sup> Despite the sudden nature of these changes, and the extent to which they significantly altered how gubernatorial elections are conducted and how governors are succeeded, little legal scholarship has focused on explaining them. The little scholarship that has notes, as a background matter, that states began adopting team-based elections in the mid-twentieth century.<sup>20</sup> But there has been no effort to analyze these changes as part of a discrete trend in state constitutional law, to explain why these changes took place when they did, or to explore what patterns have emerged in

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<sup>15</sup> See Sam Janesch, *Former Lt. Govs. Cawley, Jubelirer, Singel: Change the Way Lieutenant Governors Are Elected in Pennsylvania*, LANCASTERONLINE (Nov. 15, 2017), [https://lancasteronline.com/news/politics/former-lt-govs-cawley-jubelirer-singel-change-the-way-lieutenant-governors-are-elected-in-pennsylvania/article\\_b9ab1740-c986-11e7-9619-13ec733a21c5.html](https://lancasteronline.com/news/politics/former-lt-govs-cawley-jubelirer-singel-change-the-way-lieutenant-governors-are-elected-in-pennsylvania/article_b9ab1740-c986-11e7-9619-13ec733a21c5.html).

<sup>16</sup> ALASKA CONST. art. III, § 8; CONN. CONST. art. IV, § 3; CONN. GEN. STAT. § 9-181 (2020); HAW. CONST. art. V, § 2; MASS. CONST. amend. art. LXXXVI; N.M. CONST. art. V, § 1; N.Y. CONST. art. IV, § 1; N.Y. ELEC. LAW § 6-104 (Consol. 2020); PA. CONST. art. IV, § 4; WIS. CONST. art. V, § 3; WIS. STAT. § 8.16(6) (2020).

<sup>17</sup> See, e.g., Janesch, *supra* note 15.

<sup>18</sup> *Single Ballot Amendment Up to Voters*, ITHACA J., Oct. 31, 1945, at 16 (“This [amendment] will if adopted make New York the first state in the union to conform to the existing method of electing our president and vicepresident by a single vote.”).

<sup>19</sup> *Infra* Part I.A.

<sup>20</sup> See, e.g., Travis Lynch, Comment, *The Problem with the Lieutenant Governor: A Legislative or Executive Position Under the Separation of Powers Clause*, 84 MISS. L.J. 87, 97 (2015).

the development of specific types of team-ticket elections. The adoption of team tickets, along with the development of the three different methods of forming them, represent significant, and as yet underdiscussed, changes in state constitutional law. This Article explores these changes in detail and ultimately argues that team-ticket gubernatorial elections should be both widely adopted and reformed to ensure that the will of the electorate is reflected in the winning ticket's composition.

The first three Parts of this Article analyze the legal history of how team tickets have been adopted. Part I focuses on the adoption of team tickets in the first place, beginning with New York in 1953. It explores how state constitutional amendments (and similar changes in newly drafted state constitutions) providing for team-ticket gubernatorial elections proliferated throughout the country in such a short period of time. Additionally, it seeks to explain why these changes took place when they did. Then, Part II provides a practical follow-up to Part I by exploring the legislative history of how these constitutional amendments were drafted and what arguments were advanced in support of them.

Part III continues by focusing on the implementation of team tickets in practice after the passage of state constitutional amendments. It explains how the three different methods of team-ticket formation were adopted and what arguments were made by proponents and opponents of each. It concludes by arguing that, following the adoption of team tickets as a general matter, a noticeable trend in state constitutional law has developed that disfavors separate primaries and favors the formation of team tickets *after* primary elections.

Finally, Part IV argues that the foregoing historical discussion makes clear that team-ticket elections, along with how those team tickets were created, reflects a careful balance of maximizing voter intent and ensuring the smooth operation of government. With that balance in mind, it seeks to determine which type of team-ticket formation is ideal. In so doing, it explores the advantages and disadvantages of each type of team-ticket formation. Ultimately, it concludes that, while there are compelling reasons for pre- and post-primary team-ticket formation, separate primaries ought to be abolished altogether.

## I. THE HISTORY OF TEAM-TICKET ADOPTION

In 1953, despite nearly 150 years of electing presidents and vice presidents on a team-based ticket, no state provided the same system for electing its governor and lieutenant governors.<sup>21</sup> But by the end of the year, New York voters had amended their constitution to do just that.<sup>22</sup> Within the next twenty years, seventeen more states would join it; since then, ten more have joined.<sup>23</sup> This flurry of state constitutional activity has been, at most, mentioned in passing in academic literature. This Part sets out to explore it in greater detail, focusing on how these changes have taken place and why they were made—and why *then*. Part I.A. begins by telling the chronological history of how team-ticket constitutional provisions were enacted, along with the enabling legislation passed by state legislatures afterwards. Part I.B. then focuses on a broader thematic question: Why were team-ticket gubernatorial elections adopted when they were? In seeking to answer this question, it walks through several different historical trends in federal and state elections and ultimately concludes that the confluence of those trends provides the likeliest explanation.

### A. Chronological History

In 1944, New York Governor Thomas Dewey proposed amending the state constitution to provide for the election of the governor and lieutenant governor on a team ticket.<sup>24</sup> The 1944 legislature approved the amendment,<sup>25</sup> as did the 1945 legislature, and the change was presented to the voters in a 1945 ballot measure.<sup>26</sup> In the face of near-unanimous opposition from the state Democratic Party, along with most newspaper editorials, the proposal failed by about 10,000

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<sup>21</sup> See *Single Ballot Amendment up to Voters*, *supra* note 18.

<sup>22</sup> N.Y. CTS., VOTES CAST FOR AND AGAINST PROPOSED CONSTITUTIONAL CONVENTIONS AND ALSO PROPOSED CONSTITUTIONAL AMENDMENTS 36, [https://www.nycourts.gov/history/legal-history-new-york/documents/Publications\\_Votes-Cast-Conventions-Amendments.pdf](https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf) (last visited May 15, 2021).

<sup>23</sup> See *infra* Part I.A.

<sup>24</sup> *Legislature Approves Bill for Joint Election of 2 Top Executives*, BINGHAMTON PRESS, Jan. 25, 1944, at 10.

<sup>25</sup> *Id.*

<sup>26</sup> *Single Ballot Amendment up to Voters*, *supra* note 18.



votes.<sup>27</sup> Nearly ten years later, Dewey and the legislature tried again, and the amendment was approved by a fairly wide margin.<sup>28</sup> The success of the 1953 constitutional amendment kicked off a boomlet of similar constitutional changes in other states.<sup>29</sup>

At the Alaska Constitutional Convention in 1955, the delegates proposed an electoral system with a jointly elected governor and secretary of state—functionally, just a lieutenant governor with more official responsibilities, as the delegates explained<sup>30</sup>—which was explicitly based on the 1953 amendment to the New York constitution.<sup>31</sup> The convention ultimately adopted the proposal, along

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<sup>27</sup> N.Y. SEC’Y OF STATE, MANUAL FOR USE OF THE LEG. OF THE STATE OF N.Y. 340 (1946) (noting that amendment received 475,912 votes in favor and 485,534 votes in opposition). While the 1945 effort was ultimately unsuccessful, it may have inspired a similar push at the 1947 New Jersey Constitutional Convention. At the 1947 convention, there was some limited debate over creating a lieutenant governor and providing for team-ticket elections. *See* 5 STATE OF NEW JERSEY: CONSTITUTIONAL CONVENTION OF 1947, at 445–46 (1951) (statement of the Consumers’ League of New Jersey in favor of a lieutenant governor “elected by the voters of the entire State and on the same ticket as the Governor” because “[e]ven though he might, at times, be of a different faction than the Governor, he would represent the same party organization to which the people have entrusted the law enforcement and appointive powers.”).

<sup>28</sup> N.Y. SEC’Y OF STATE, MANUAL FOR THE USE OF THE LEG. OF THE STATE OF N.Y. 1284 (1954) (noting that amendment received 844,310 votes in favor and 663,571 votes in opposition).

<sup>29</sup> The success of team-ticket elections demonstrated that, if you can make it in New York, you’ll make it anywhere. *See generally* FRANK SINATRA, *Theme from New York, New York, on TRILOGY: PAST PRESENT FUTURE* (Reprise Records 1980).

<sup>30</sup> ALASKA CONST. CONVENTION, 1 PROCEEDINGS: NOVEMBER 8–DECEMBER 12, 1955, at 1985, [akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf](http://akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf) (last visited May 15, 2021) (“The term ‘secretary of state’ to many of the Committee members was deemed to be a broader description with less restrictive connotations than the term ‘lieutenant governor.’”).

<sup>31</sup> *Id.* The Committee proposing the new system believe[d] that only persons who hold an elective office should succeed to the Office of Governor. However, the successor should be of the same political party as the governor to avoid unnecessary confusion or waste when a vacancy occurs. These considerations led the committee to adopt a plan of election similar to that in effect in New York and also the same in

with a separate provision requiring that the governor and lieutenant governor run in separate primaries;<sup>32</sup> the entire constitution was approved by the electorate shortly thereafter,<sup>33</sup> and in 1970, the “secretary of state” was renamed the “lieutenant governor.”<sup>34</sup>

During the 1960s, nine additional states also adopted team-ticket gubernatorial and lieutenant-gubernatorial elections: Colorado (1968); Connecticut (1962); Florida (1968); Hawaii (1964), Massachusetts (1966); Michigan (1963); New Mexico (1962); Pennsylvania (1967); and Wisconsin (1967).<sup>35</sup> Additionally, under the 1968 Guam and Virgin Islands Elective Governor Acts, which enabled both territories to democratically elect their governors for the first time, team-ticket elections were created.<sup>36</sup> The change continued in earnest in the early 1970s with Illinois (1970); Indiana (1974); Kansas (1972); Maryland (1970); Minnesota (1972); Montana (1972); Nebraska (1970); North Dakota (1974); and South Dakota (1972) following suit.<sup>37</sup> From here, the changes slowed considerably, with

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principle as the arrangement for election of President and Vice-president of the United States.

ALASKA CONST. CONVENTION, COMMENTARY ON THE EXECUTIVE BRANCH ARTICLE, COMMITTEE PROPOSAL 10/a, at 2–3 (Dec. 16, 1955), <http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20208.pdf>.

<sup>32</sup> See GERALD A. MCBEATH, THE ALASKA STATE CONSTITUTION 103–04 (2011).

<sup>33</sup> ALASKA CONST. CONVENTION, FEBRUARY 5, 1956: SEVENTY-FIFTH DAY 3938, <http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Day%2075%20-%20February%2005%201956%20-%20Pages%203937-3961.pdf>.

<sup>34</sup> MCBEATH, *supra* note 32, at 103.

<sup>35</sup> MASS. CONST. amend. art. LXXXVI (amended 1966); MICH. CONST. art. V, § 21 (1963); PA. CONST. art. IV, § 4 (1967); S. Con. Res. 2, 46th Gen. Assemb., 1st Reg. Sess., 1967 Colo. Sess. Laws 1083, 1083–84; H.J. Res. 1-2X, 41st Leg., Extraordinary Sess., 1967–68 Fla. Laws 536; Assemb. B. 855, 1st Reg. Sess., 1967 Wis. Laws 666; S.J. Res. 3, 25th Leg., 1st Reg. Sess., 1961 N.M. Laws 859; H.B. 19, 2nd Leg., Reg. Sess., 1964 Haw. Laws 119; H.B. 4501, S. 1st Reg. Sess., 1961 Conn. Laws 930.

<sup>36</sup> Guam Elective Governor Act, Pub. L. No. 90-497, 82 Stat. 842, 842–43 (1968) (codified as amended at 48 U.S.C. § 1422); Virgin Islands Elective Governor Act, Pub. L. 90-496, 82 Stat. 837, 837 (1968) (codified as amended at 48 U.S.C. § 1591).

<sup>37</sup> ILL. CONST. art. V, § 4 (1970); MONT. CONST. art. VI, § 2 (1972); H.J. Res. 4, 98th Gen. Assemb., 1st Reg. Sess., 1973 Ind. Laws 2004; S. Con. Res. 4031,

only seven additional jurisdictions amending their constitutions to a similar effect: American Samoa (1977); Iowa (1988); Kentucky (1992); New Jersey (2005); the Northern Mariana Islands (1975); Ohio (1976); South Carolina (2012); and Utah (1980).<sup>38</sup>

In most cases, the adoption of team-ticket gubernatorial elections occurred as part of discrete constitutional amendments—but in Florida, Illinois, Michigan, Montana, and Pennsylvania, the states adopted team-ticket elections as part of broader constitutional rewrites.<sup>39</sup> Similarly, in Kansas, Kentucky, Maryland, New Jersey, North Dakota, and Utah, team tickets were adopted as part of targeted rewrites of the state executive branch.<sup>40</sup> That leaves fourteen states where the changes were presented to voters by themselves—or with minor provisions tacked on.

Thinking only about the discrete constitutional amendments presented to voters (as opposed to the massive constitutional rewrites), team tickets were usually approved by wide margins, proving that they were largely uncontroversial to voters. The average executive-branch revision amendment was approved by 59.8% of the vote<sup>41</sup>

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43rd Leg. Assemb., 1st Reg. Sess., 1973 N.D. Laws 1420; S. Con. Res. 46, 67th Leg., 1st Reg. Sess., 1972 Kan. Laws 1433; H.J. Res. 513, 47th Leg., 1st Reg. Sess., 1972 S.D. Laws 15; H.B. 3, Gen. Assemb., Reg. Sess., 1970 Md. Laws 1298; Legis. B. 1160, 80th Leg., 1st Reg. Sess., 1969 Neb. Laws 1428.

<sup>38</sup> N.J. CONST. art. V, § 1, para. 4 (amended 2005); H.R. 204, 119th Gen. Ass., 2nd Reg. Sess., 2012 S.C. Laws 2969; S.B. 226, Reg. Sess., 1992 Ky. Laws 437; S.J. Res. 1, 72nd Gen. Ass., 1st Reg. Sess., 1988 Iowa Laws 730; S.J. Res. 7, 43rd Leg., 1st Reg. Sess., 1979 Utah Laws 1318; Amend. S.J. Res. 4, 111th Gen. Ass., 1st Reg. Sess., 1976 Ohio Laws 3957; Howard P. Willens & Deanne C. Siemer, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 GEO. L.J. 1373, 1428 n.227 (1977); see also Ian Falefuafua Tapu, Comment, *Who Really Is a Noble?: The Constitutionality of American Samoa's Matai System*, 24 UCLA ASIAN PAC. AM. L.J. 61, 89 (2020) (describing adoption of American Samoa's elected governor and lieutenant governor).

<sup>39</sup> See H.J. Res. 1-2X, 41st Leg., Extraordinary Sess., 1967–68 Fla. Laws 536. See generally ILL. CONST. art. V, § 4 (1970); MICH. CONST. art. V, § 21 (1963); MONT. CONST. art. VI, § 2 (1972); PA. CONST. art. IV, § 4 (1967).

<sup>40</sup> See N.J. CONST. art. V, § 1, para. 4 (amended 2005); S.B. 226, Reg. Sess., 1992 Ky. Laws 437, ch. 168; S.J. Res. 7, 43rd Leg., 1st Reg. Sess., 1979 Utah Laws 1318; S. Con. Res. 4031, 43rd Leg. Ass., 1st Reg. Sess., 1973 N.D. Laws 1420; S. Con. Res. 46, 67th Leg., 1st Reg. Sess., 1972 Kan. Laws 1433; H.B. 3, Gen. Assemb., Reg. Sess., 1970 Md. Laws 1298.

<sup>41</sup> *Infra* Appendix.

and the average team-ticket amendment was approved by 63.97% of the vote.<sup>42</sup> With the exception of Kentucky, the voters of which approved the 1992 executive branch rewrite with just 51% of the vote,<sup>43</sup> all these amendments won at least 55% of the vote.<sup>44</sup>

### B. *Team Tickets: Why Then?*

Team tickets were adopted to mirror the federal model, in which presidents and vice presidents are elected on the same ticket.<sup>45</sup> This much is obvious from the explicit remarks of state legislators proposing the changes, newspaper editorials endorsing the changes, and voters in casting ballots for the changes.<sup>46</sup> But team tickets in presidential elections were adopted, roughly speaking, in 1804<sup>47</sup>—so why did it take nearly 150 years for states to follow suit? There’s no easy answer to this question. To slightly preview this Part’s ultimate conclusion, the likeliest answer is that the belated implementation of team tickets at the state level reflects the glacial speed with which lieutenant governorships were created, the adoption of the so-called “presidential short ballot,” and a relatively recent change in the method of vice-presidential election.

To start off, the modern history of team tickets in presidential elections begins with the ratification of the Twelfth Amendment in 1804.<sup>48</sup> Prior to the Twelfth Amendment’s ratification, electors cast their ballots in a somewhat helter-skelter way. They’d cast two votes each, with the first-place winner becoming president and the second-place winner becoming vice president.<sup>49</sup> The election of 1796 (which resulted in victory for President John Adams and Vice President Thomas Jefferson, who were rivals) and the election of 1800 (which resulted in presidential candidate Jefferson and vice-

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See supra* notes 41–43.

<sup>45</sup> *Infra* Part III.C.

<sup>46</sup> *Id.*

<sup>47</sup> *See* U.S. CONST. amend. XII (ratified 1804).

<sup>48</sup> *Id.*

<sup>49</sup> U.S. CONST. art. II, § 1, cl. 3 (1789) (“The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; . . . In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President.”).

presidential candidate Aaron Burr tying in electoral votes) unfolded with such chaos that a movement developed to amend the constitution.<sup>50</sup>

The solution to this chaos was the Twelfth Amendment. Although the Amendment is widely recognized as the beginning of modern presidential elections—by which most people mean the team-based election of president and vice president<sup>51</sup>—that result isn't specifically demanded by the text. The Twelfth Amendment merely requires that electors distinguish “the person voted for as President” and “the person voted for as Vice-President . . . .”<sup>52</sup> This reflected a method of gubernatorial (and lieutenant-gubernatorial) election that was common at the state level, with state constitutions spelling out that, in casting votes for governor and lieutenant governor, voters were required to distinguish for whom they were voting for each position. That was the system used in Massachusetts, for example.<sup>53</sup> And State Senator Barnabas Bidwell, who argued for the Twelfth Amendment's ratification, noted that, by requiring that the electors distinguish their votes, the Amendment “will render the Constitution of the United States, in this particular, analogous to our own State Constitution.”<sup>54</sup>

Although the Twelfth Amendment may have been logically followed by joint elections, it didn't explicitly *require* them—it instead required separate elections for president and vice president, with electoral college electors distinguishing among the two.<sup>55</sup> Accordingly, even though the Amendment was followed by the establishment of team-based elections, this operated as a function of *state* regulations of presidential elections, not as any sort of constitutional or statutory requirement at the federal level.<sup>56</sup> In this light, it perhaps

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<sup>50</sup> Jerry H. Goldfeder, *Election Law and the Presidency: An Introduction and Overview*, 85 *FORDHAM L. REV.* 965, 974–76 (2016).

<sup>51</sup> *E.g.*, Nathan L. Colvin & Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 *U. MIA. L. REV.* 475, 491–94 (2010).

<sup>52</sup> U.S. CONST. amend. XII (ratified 1804).

<sup>53</sup> MASS. CONST. ch. II., § I–II.

<sup>54</sup> *Massachusetts Legislature*, PITTSFIELD SUN, Mar. 5, 1804, at 2 (remarks of State Senator Barnabas Bidwell).

<sup>55</sup> *See* U.S. CONST. amend. XII (ratified 1804).

<sup>56</sup> *See* Akhil Reed Amar & Vik Amar, *President Quayle?*, 78 *VA. L. REV.* 913, 922–26 (1992); *see also* Dan T. Coenen & Edward J. Larson, *Congressional*

makes sense that the Twelfth Amendment was not followed by joint elections at the state level.

It is also helpful to note here that the method in which presidential elections were originally conducted bears little resemblance to presidential elections today. Today, even though presidential candidates' names are on the ballot, it's understood as a technical matter that votes are actually being cast for a slate of electors affiliated with the state-level branch of each nominee's party and that those electors actually vote for president.<sup>57</sup> This was originally much more explicit. In the early days of post-Twelfth Amendment presidential elections, voters cast ballots for *individual electors*.<sup>58</sup> Beginning in the late nineteenth century, some states began grouping these electors by party and then by adding the names of the presidential candidates.<sup>59</sup> By the mid-twentieth century, most states had replaced the names of the individual electors with those of the presidential and vice-presidential nominees.<sup>60</sup>

Simultaneously, the process by which vice-presidential nominees were selected underwent similarly significant changes. Prior to the mid-twentieth century, vice-presidential nominees were selected

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*Power over Presidential Elections: Lessons from the Past and Reforms for the Future*, 43 WM & MARY L. REV. 851, 854–60 (2002).

<sup>57</sup> See, e.g., *The Electoral College*, NAT'L CONF. OF STATE LEGS. (Nov. 11, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx>.

<sup>58</sup> E.g., Spencer D. Albright, *The Presidential Short Ballot*, 34 AM. POL. SCI. REV. 955, 955 (1940).

<sup>59</sup> See Norman R. Williams, *Reforming the Electoral College: Federalism, Majoritarianism, and the Perils of Subconstitutional Change*, 100 GEO. L.J. 173, 181 (2011) (describing states' movements away from a system of selecting individual electors towards a "true winner-take-all" system involving "short ballot[s], which removed the electors' names from the ballot and listed only the presidential and vice presidential tickets.").

<sup>60</sup> See Albright, *supra* note 58, at 958; see also *Ray v. Blair*, 343 U.S. 214, 228–30 (1952); Paul Boudreaux, *The Electoral College and Its Meager Federalism*, 88 MARQ. L. REV. 195, 209 (2004); Howard M. Wasserman, *Structural Principles and Presidential Succession*, 90 KY. L.J. 345, 396 (2001–02); Amar & Amar, *supra* note 56, at 925–26; Williams, *supra* note 59, at 181. The continued presence of this method of elector selection in Alabama makes it near-impossible to determine how many votes John F. Kennedy and Richard Nixon actually received in the 1960 presidential election. See ARTHUR SCHLESINGER, ROBERT KENNEDY AND HIS TIMES 220 (2012).

in the stereotypical “smoke-filled rooms” by party insiders.<sup>61</sup> Their nominations usually reflected compromises that gave a defeated faction of the party a nominal presence on the national ticket—not competence or worthiness as a candidate or even the presidential nominee’s own preferences.<sup>62</sup> But Franklin Roosevelt’s insistence on Henry Wallace as his running mate in 1940 seems to have served as the catalyst for long-term change in how vice presidents are selected;<sup>63</sup> today, the party’s nominee effectively has their choice of running mate without restriction and only needs to worry about the party convention rejecting the choice in rare cases.<sup>64</sup>

Finally, most states didn’t originally have lieutenant governors. In lieu of a lieutenant governor, most states devolved gubernatorial power to their state senate president—or perhaps to a member of their state executive council—in the event of a gubernatorial vacancy.<sup>65</sup> During the nineteenth century, lieutenant governorships were increasingly embraced by states and became the dominant method of replacing governors.<sup>66</sup> As states were admitted to the Union with their original constitutions with lieutenant governors—or amended their constitutions to create the office—the aforementioned history of vice-presidential election perhaps likely made it unintuitive to provide for a team-ticket method of gubernatorial and lieutenant-gubernatorial election. Moreover, given the extent to which state constitutional drafters looked to *other* state constitutions in developing their systems of government,<sup>67</sup> perhaps an even

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<sup>61</sup> See JOEL KRAMER GOLDSTEIN, *THE MODERN AMERICAN VICE PRESIDENCY: THE TRANSFORMATION OF A POLITICAL INSTITUTION* 47–49 (1982); *Vice President*, *HISTORICAL DICTIONARY OF UNITED STATES POLITICAL PARTIES* 337, 338 (3d ed. Harold F. Bass, Jr. ed., 2020); *Vice President*, *ENCYCLOPEDIA OF THE UNITED STATES CONSTITUTION* 777, 777 (David Schultz ed., 2009).

<sup>62</sup> See SIDNEY M. MILKIS & MICHAEL NELSON, *THE AMERICAN PRESIDENCY: ORIGINS AND DEVELOPMENT, 1776–2014*, at 205–06 (2015).

<sup>63</sup> See RICHARD MOE, *ROOSEVELT’S SECOND ACT: THE ELECTION OF 1940 AND THE POLITICS OF WAR* 246 (2013).

<sup>64</sup> See, e.g., Elisabeth Bumiller & Michael Cooper, *Conservative Ire Pushed McCain from Lieberman*, *N.Y. TIMES* (Aug. 30, 2008), <https://www.nytimes.com/2008/08/31/us/politics/31reconstruct.html>.

<sup>65</sup> See Yeargain, *Democratizing Gubernatorial Succession*, *supra* note 6.

<sup>66</sup> See generally *id.* (discussing adoption of lieutenant governorships).

<sup>67</sup> See, e.g., G. ALAN TARR, *UNDERSTANDING STATE CONSTITUTIONS* 44–53 (1998) (discussing the extent to which state constitutions borrow from each other).

likelier explanation is that, because no state had a team-ticket-based election system, there was simply no model for the idea.

The culmination of these different historical trends likely created a national environment in which team-ticket creation organically developed in the mid-twentieth century. For the first time in American history, presidential nominees affirmatively *chose* their running mates, and they then appeared on the ballot together.<sup>68</sup>

This explanation is certainly more plausible than the facial explanation given by New York Governor Thomas Dewey in 1945 and 1953 when he advocated—first unsuccessfully, but later successfully—for the adoption of team tickets. His initial explanation, as reported in 1944 and 1945, focused on a lieutenant-gubernatorial vacancy that had occurred a few years earlier.<sup>69</sup> When Lieutenant Governor Thomas Wallace died in office in 1943, there was no obvious way to replace him.<sup>70</sup> Litigation to force a special election ensued, and the New York Court of Appeals ultimately ordered that a special election be held.<sup>71</sup> At the resulting special election, State Senate President Joe Hanley, who had been acting as lieutenant governor since Wallace’s death, was elected.<sup>72</sup> Dewey argued that governors and lieutenant governors should be elected on a team ticket because of the 1943 lieutenant-gubernatorial vacancy.<sup>73</sup>

At first blush, this logic makes little intuitive sense. There’s no *direct* connection between a lieutenant-gubernatorial vacancy and team tickets for gubernatorial elections. Dewey’s logic may have drawn from the practical consequences of team tickets. If governors and lieutenant governors are elected together, there is no possible way a special election could be held to fill a lieutenant-gubernatorial vacancy—one part of a team ticket. Who would vote in such an

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<sup>68</sup> See GOLDSTEIN, *supra* note 61, at 48–49 (describing how, “[a]s the power of the Chief Executive has grown and that of the parties declined, the presidential nominee has come to play the decisive role in the choice of his running mate.”).

<sup>69</sup> *Legislature Approves Bill for Joint Election of 2 Top Executives*, *supra* note 24.

<sup>70</sup> *See Issues Are Raised by Wallace Death*, N.Y. TIMES, July 18, 1943, at 30.

<sup>71</sup> *See Ward v. Curran*, 44 N.Y.S.2d 240, 241–42 (N.Y. App. Div. 1943), *aff’d mem.*, 50 N.E.2d 1023 (N.Y. 1943).

<sup>72</sup> *Hanley Elected Lieutenant Governor; Republican Landslide Wins City, County*, ROCHESTER DEMOCRAT & CHRON., Nov. 3, 1943, at 1.

<sup>73</sup> *Legislature Approves Bill for Joint Election of 2 Top Executives*, *supra* note 24.



election? If a Republican ticket had won the last gubernatorial (and thus the lieutenant-gubernatorial) election, would *just* Republicans vote? Would it be a race among *only* Republican candidates?<sup>74</sup> If not, and if other candidates could also run, what sense would it make to potentially stick a governor with a lieutenant governor of another party—especially when the adoption of team tickets was done to *avoid* that exact outcome? Dewey's implicit argument, therefore, was likely that electing a team ticket would avoid a special lieutenant-gubernatorial election in the future and make the executive branch run more efficiently in the process. (Electing governors and lieutenant governors on the same ticket may also have lent democratic legitimacy to the idea of using a gubernatorial appointment to fill a lieutenant-gubernatorial vacancy, but Dewey did not push for such a proposal.)

But there's another, more cynical explanation. The widespread opposition of Democrats to the 1945 constitutional amendment seemed to focus on the disproportionate impact it could have on their statewide candidates.<sup>75</sup> At the 1942 election, where Wallace was elected, the American Labor Party ran a candidate for governor but cross-endorsed the Democratic nominee for lieutenant governor.<sup>76</sup> The American Labor gubernatorial candidate seemed to pull votes primarily from the Democratic Party, and as a result, the Democratic–American Labor lieutenant gubernatorial nominee performed significantly better, nearly winning the election.<sup>77</sup> Democrats alleged that Dewey's proposed change intended to kneecap Democratic candidates in future elections by preventing cross-

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<sup>74</sup> These questions were raised in Florida in 2003, when Lieutenant Governor Frank Brogan resigned, Governor Jeb Bush appointed Toni Jennings to succeed him, and state Democrats initially argued that the lieutenant-gubernatorial vacancy needed to be filled by a special election. Brian E. Crowley, *Possible Brogan Successor May Face Vote to Keep Job*, PALM BEACH POST, Jan. 11, 2003, at 1A, 26A. Following Jennings' appointment, however, the legislature passed legislation laying out a procedure for filling lieutenant-gubernatorial vacancies, Act of June 20, 2003, H.B. 1051, ch. 2003-171, 2003 Fla. Laws 1123, and Democrats dropped their legal objections to how the vacancy was filled. Bob Mahlburg, *Jennings a Disappointment to Democratic Party Leaders*, ORLANDO SENTINEL, July 24, 2003, at B5.

<sup>75</sup> See *Democrats Oppose Single Ballot*, ITHACA J., Nov. 2, 1945, at 8.

<sup>76</sup> *Id.*

<sup>77</sup> See *id.*

endorsements—and perhaps by encouraging third parties to nominate their own separate candidates.<sup>78</sup> At a time when the major third party in New York state politics, the American Labor Party, primarily pulled votes from Democratic candidates,<sup>79</sup> Dewey’s partisan motivation might be a persuasive counter-explanation.

Regardless of the explanation, however, New York’s successful move to team-ticket gubernatorial elections in 1953 was clearly a catalyst for subsequent states to do the same over the next several decades.<sup>80</sup> And the reasons cited by legislative leaders in advocating for the adoption of team-ticket elections were persuasive to the voters of each state, given that the constitutional amendments enacting them were ratified by fairly wide majorities.<sup>81</sup> But the adoption of team tickets only answers half of the question—after doing so, states materially varied in how they implemented team-ticket elections.<sup>82</sup>

## II. THE DEBATE OVER TEAM TICKETS

In 1945, as the previous Part explains, New York voters narrowly rejected the proposed constitutional amendment to adopt team-ticket gubernatorial elections. Part I explored how the eventual adoption of team-ticket elections in 1953 resulted in a wave of similar constitutional changes in other states, as well as why team-ticket proposals were introduced at the point in American history when they were. This Part focuses on a more descriptive query: When states were considering these constitutional amendments, what arguments did proponents and detractors make about them?

Part II.A. begins by reviewing the arguments made in New York, both in 1945 and 1953. The arguments raised during both elections are reflective of the arguments that would be raised in the decades that followed as other states considered similar

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<sup>78</sup> *See id.* (“Parties would be discouraged from supporting a good candidate of another party for governor or lieutenant governor unless they could also agree on his running-mate.”).

<sup>79</sup> *See generally* Alan Wolfe, *The Withering Away of the American Labor Party*, 31 RUTGERS U. LIB. J. 46, 48–49 (1968) (discussing candidates from American Labor Party winning votes in “solidly Democratic” districts).

<sup>80</sup> *See, e.g.*, ALASKA CONST. CONVENTION, COMMENTARY ON THE EXECUTIVE BRANCH ARTICLE, *supra* note 31.

<sup>81</sup> *Supra* Part I.A.

<sup>82</sup> *See id.*

amendments. Part II.B. then reviews the arguments made in other states. These debates played out with similar arguments as those made in New York but, in many cases, focused on state-specific contexts and histories that were absent in New York.

A. *The Debate Over New York's 1945 and 1953 Amendments*

To briefly recap, in advocating for the proposed 1945 amendment, Governor Dewey explicitly tied the idea of team tickets to avoiding burdensome special elections to fill lieutenant-gubernatorial vacancies.<sup>83</sup> This argument, however, was not the primary one made by state Republicans, who were the amendment's chief advocates<sup>84</sup>—and it doesn't appear to have been made at all in 1953. Instead, in 1945, Republicans argued that the governor and lieutenant governor should be of the same party.<sup>85</sup> The biggest advantage of guaranteeing same-party alignment was that, in the event of a gubernatorial vacancy, executive power would not devolve to a member of the opposite party.<sup>86</sup> In making this argument, Republicans could not point to a specific example in which this had happened. The last time that a governor and lieutenant governor of different parties had been elected was 1924, when Democrat Alfred Smith was re-elected as governor and Republican Seymour Lowman narrowly defeated Smith's lieutenant governor for re-election.<sup>87</sup> After the 1953 amendment was approved, it was noted in passing that, during the Smith–Lowman administration, Smith “stayed pretty close to the state” and avoided leaving to prevent Lowman from exercising power.<sup>88</sup> Had Lowman been able to do so, the Republican

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<sup>83</sup> *Supra* Part I.B.

<sup>84</sup> *See* *GOP Leader Favors Single Ballot*, ITHACA J., Nov. 1, 1945, at 15.

<sup>85</sup> *Id.*; *see* *Legislature Approves Bill for Joint Election of 2 Top Executives*, *supra* note 24.

<sup>86</sup> *Single Ballot Amendment up to Voters*, *supra* note 18.

<sup>87</sup> Donald O. Cunnion, *Legislature Adopts Dewey Plan to Elect Governor, Lieutenant of Same Party*, GLENS FALLS POST-STAR, Jan. 26, 1944, at 1; *see* Howard A. Shiebler, *Coolidge Popular Vote May Exceed Harding's; Split Power in Albany*, BROOKLYN DAILY EAGLE, Nov. 6, 1924, at 1–2 (noting that Lieutenant Governor George Lunn lost re-election to Seymour Lowman).

<sup>88</sup> BI-PARTISAN, *Pay Raises Will Lure Candidates*, PRESS & SUN-BULL. (Binghamton, N.Y.), Dec. 20, 1953, at 9–A (“The late Alfred E. Smith served as governor one term with a lieutenant-governor of the opposite political party. As a result, Smith stayed pretty close to the state.”).

Party would have enjoyed, however briefly, total control over the state government. Some of the advocates noted in passing that team-ticket gubernatorial elections would be in line with how presidential elections were conducted, but this didn't seem to be a major focus of the campaign.<sup>89</sup>

Opponents of the amendment—who were mainly, but not exclusively, Democrats—primarily emphasized the value of voter choice. Their arguments emphasized the importance of the electorate's right to vote for lieutenant-gubernatorial candidates of their choosing, a choice that was ostensibly made independently of their choice in the gubernatorial election.<sup>90</sup> Perhaps drawing inspiration from the historical method by which vice presidents were elected, they argued that “the lieutenant governor could be a choice of the [gubernatorial nominee] rather than of the voters.”<sup>91</sup> Building on this argument, they suggested that the team-ticket method of election would allow party bosses to make a “purely political choice for lieutenant governor”<sup>92</sup> and that “some party hack or out-and-out crook”<sup>93</sup> or “some rich dope, by paying enormous party contributions, could get on the ticket as lieutenant governor.”<sup>94</sup> And if an incompetent or unqualified choice were made, voters “could not discriminate” among the lieutenant-gubernatorial candidates and, in voting for governor, would be forced to accept a disfavored lieutenant-gubernatorial nominee.<sup>95</sup> An unqualified nomination would have been less likely under the then-existing system—which they argued “has worked

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<sup>89</sup> See Cunnion, *supra* note 87 (noting that Republican State Assembly Majority Leader Irwin M. Ives, “emphasized that the President and Vice President of the United States are elected jointly.”).

<sup>90</sup> *See id.*

<sup>91</sup> *Up for Decision on Tuesday*, PRESS & SUN-BULL. (Binghamton, N.Y.), Nov. 3, 1945, at 6.

<sup>92</sup> *GOP Leader Favors Single Ballot*, *supra* note 84.

<sup>93</sup> *Yes—Yes—No—Yes—Yes—Yes—Yes—No*, N.Y. DAILY NEWS, Oct. 26, 1953, at 29.

<sup>94</sup> *GOP Leader Favors Single Ballot*, *supra* note 84; *see also Single Ballot Amendment up to Voters*, *supra* note 18 (“The opponents contend the joining ballot for these two offices would deprive the people of any choice in their selection of a lieutenant governor and that a merely rich or unfit candidate for lieutenant governor, or vice versa, could be elected on the strength of his co-partner’s ability or popularity.”).

<sup>95</sup> Cunnion, *supra* note 87; *Vote ‘No’ on Amendment No. 3*, ONEONTA STAR, Oct. 23, 1953, at 4.

well and should be continued”<sup>96</sup>—because “political parties are under a strong obligation to nominate persons of character and ability for the office of lieutenant-governor since the voters have the power to cross party lines in making their choice.”<sup>97</sup>

### B. *Debates in Other States*

The arguments made in 1945 and 1953 accurately foreshadowed the arguments that would be made in the decades that followed. Advocates of team-ticket amendments emphasized the importance of ensuring that the governor and lieutenant governor were of the same political party.<sup>98</sup> In many states, however, these arguments focused on specific examples from state history when governors and

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<sup>96</sup> *Single Ballot Amendment up to Voters*, *supra* note 18.

<sup>97</sup> *E.g.*, *First Four Amendments*, KINGSTON DAILY FREEMAN, Oct. 19, 1953, at 4.

<sup>98</sup> *See, e.g.*, LEGIS. COUNCIL COLO. GEN. ASSEMB., LEGISLATIVE PROCEDURES IN COLORADO, Research Publ'n No. 119, at 36 (Dec. 1966) [hereinafter LEGISLATIVE PROCEDURES IN COLORADO]; *Amendments Facing Minnesotans on Nov. 7 Ballot*, ST. CLOUD DAILY TIMES, Nov. 2, 1972, at 19; Willard Baird, *The Proposed Constitution*, HOLLAND EVENING SENTINEL, Feb. 19, 1963, at 6; Dick Cowen, *Key Feature of Question 4-A: Allowing Governor Second Term*, ALLENTOWN MORNING CALL, May 8, 1967, at 29; Al Cross, *Two Teams: More Players and Issues*, COURIER-J. (Louisville, Ky.), Nov. 5, 1992, at 1, 9; John Elmer, *1970 Constitution Proposes Added Powers for Governor*, CHI. TRIB., Nov. 17, 1970, at 2; *Five Amendments to Be on Ballot*, BRIDGEPORT POST, Mar. 8, 1962, at 12; *Governor and Lieutenant Governor Would Run for Election as a Team*, PALLADIUM-ITEM (Richmond, Ind.), Oct. 23, 1974, at 4; Will Harrison, *Nobody's Acceptable for State's Dough on Ute Dam*, ALAMOGORDO DAILY NEWS, June 27, 1962, at 4; Dick Herman, *'Team Ballot' for Governor, Lieutenant Governor Urged*, LINCOLN EVENING J. & NEB. STATE J., Aug. 24, 1970, at 8; Editorial, *Issue 1—Yes*, J. HERALD (Dayton, Ohio), May 26, 1976, at 4; Editorial, *Proposition 1 Deserves 'Yes'*, HERALD (Provo, Utah), Nov. 2, 1980, at 44; *Pros and Cons Recapped for Tomorrow's Ballot*, HONOLULU STAR-BULL., Nov. 2, 1964, at 1-A; *Strange Bedfellows Indeed*, BILLINGS GAZETTE, Mar. 27, 1972, at 7; Editorial, *Team Approach, Yes*, CEDAR RAPIDS GAZETTE, Nov. 6, 1988, at 8A; Editorial, *Vote 'Yes' on Question No. 1*, BOS. GLOBE, Oct. 21, 1966, at 14; Editorial, *Vote 'Yes' on Question 5*, JANESVILLE DAILY GAZETTE, Mar. 30, 1967, at 6; William C. Wertz, *Amendment 'E' Passage Would Affect State Terms*, ARGUS-LEADER (Sioux Falls, S.D.), Oct. 10, 1970, at 7; J.D. Wilson, *Measure Would End Split Ticket*, BISMARCK TRIB., Oct. 18, 1974, at 3.

lieutenant governors of different parties had served<sup>99</sup>—in some cases, quite frequently.<sup>100</sup> These arguments were particularly poignant in states that, at the time the amendments were proposed or voted on, actually *had* such a party split in their executive branch<sup>101</sup> or that had experienced a party switch following a gubernatorial vacancy.<sup>102</sup> But these arguments went beyond the mere claim that

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<sup>99</sup> *Amendments Facing Minnesotans on Nov. 7 Ballot*, *supra* note 98; Ray Broussard, *Three Proposed Amendments to Face Voters at General Election*, COLO. SPRINGS GAZETTE-TELEGRAPH, Sept. 6, 1968, at 30; Cowen, *supra* note 98; Harrison, *supra* note 98; *Strange Bedfellows Indeed*, *supra* note 98; *Three Amendments*, CALL-LEADER (Elwood, Ind.), Oct. 26, 1974, at 1, 9.

<sup>100</sup> For example, in 1967 a Wisconsin newspaper pointed out the following:

There have been [ten] times in the state's history where the voters have elected a governor of one party and a lieutenant governor of another party. This has happened three times in the last four elections. On two occasions, the governor has died in office and the voters wound up with a governor of the party which had been defeated in the last gubernatorial election.

*Vote 'Yes' on Question 5*, *supra* note 98; *see also* Steve Wilson, *Tandem Issue: Two Officials for Only One Vote*, CIN. ENQUIRER, May 16, 1976, at B-2 (“Since 1856, there have been [ten] times when a governor served with a lieutenant governor of another political party—including the state’s present governor, James A. Rhodes. Rhodes is a Republican and Celeste is a Democrat.”).

<sup>101</sup> JANET CORNELIUS, *CONSTITUTION MAKING IN ILLINOIS, 1818–1970*, at 157 (1972) (“This change was clearly a reaction to the situation at the time the delegates were meeting, when a Republican governor and a Democratic lieutenant governor were in office.”); *Proposition 1 Deserves 'Yes'*, *supra* note 98; Wilson, *supra* note 100. In Colorado, for example, the 1956 election produced a narrow Democratic victory in the gubernatorial election and an even narrower Republican victory in the lieutenant-gubernatorial election. My great-grand uncle, State Senator Sam Taylor, was the Democratic nominee for lieutenant governor. *See McNichols Let Him Down, Sam Taylor Complains*, FORT COLLINS COLORADOAN, Nov. 9, 1956, at 6. Several years later, Taylor proposed a constitutional amendment to provide for the joint election of both offices, but it was rejected by the State Senate. *See Civil Service Amendment Narrowly OK'd by House*, FORT COLLINS COLORADOAN, Feb. 8, 1960, at 1. When the amendment adopted by Colorado voters in 1968 was approved by the state legislature, however, Taylor was not one of the legislators responsible for its passage—although he did vote for it. *See S. JOURNAL*, 46th Leg., 1st Reg. Sess., at S. CON. RES. 6 (Colo. 1967).

<sup>102</sup> Jim Davis, Editorial, *For Issue 1, Against Issue 2*, DAILY REP. (Dover, Ohio), May 22, 1976, at A-4 (“On three occasions, the lieutenant governor succeeding the governor was from a different party—the most recent being John Brown, who replaced Frank Lausche for a brief time in 1957 when Lausche resigned to become U.S. senator.”); *Vote 'Yes' on Question 5*, *supra* note 98.

avoiding these sorts of party splits was desirable; they also focused on the tangible negative impacts that party splits had. Advocates noted that when governors left the state, and lieutenant governors of the opposite party acted as governor in their absence, they made decisions and appointments that were out-of-step with the elected governor's position.<sup>103</sup> They also argued that governors were more likely to include their lieutenant governors in policymaking when they were of the same party<sup>104</sup>—especially when they were elected together—citing examples in which governors had altogether ignored their ostensible deputies.<sup>105</sup> This, in turn, led to an argument rooted in fiscal responsibility, specifically that a more involved lieutenant governor with actual responsibilities would allow taxpayers to “get better value for the dollars spent on the lieutenant governor’s position.”<sup>106</sup> In some states, these changes were adopted in tandem with other constitutional modifications that sought to reduce the number of statewide elected officials<sup>107</sup>—a belated paean to the

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<sup>103</sup> E.g., Broussard, *supra* note 99 (“Those such as Love are disenchanted with the present setup because they feel whenever they leave the state a lieutenant governor from the opposing party will run rampant making appointments and the like.”); Keith Schonrock, *Pairing of Offices Seen as Basic Need*, HARTFORD COURANT, Apr. 22, 1962, at 3B (“In some instances of political division between the governor and the lieutenant governor, the governor has actually been afraid to leave the state, especially when legislative sessions were going, lest his politically-inimical deputy upset some policy or patronage applecart.”); Glenn Urban, *Executive Team from Same Party Is Decision of Voters Tuesday*, COLO. SPRINGS GAZETTE-TELEGRAPH, Oct. 31, 1968, at 10-D (noting that, during Governor Love’s administration, Lieutenant Governor Hogan filled a county commission vacancy with a Democrat to replace a Republican).

<sup>104</sup> See, e.g., LEGISLATIVE PROCEDURES IN COLORADO, *supra* note 98, at 36; *Governor and Lieutenant Governor Would Run for Election as a Team*, *supra* note 98; *Pros and Cons Recapped for Tomorrow’s Ballot*, *supra* note 98.

<sup>105</sup> E.g., Davis, *supra* note 102 (“[Lieutenant Governor] Celeste, who is out campaigning for the team effort, confesses he has hardly talked to Gov. Rhodes since they both took office [seventeen] months ago. Before that, John Brown’s contact with Gilligan was even less.”); *Team Approach, Yes*, *supra* note 98 (“Lt. Gov. Jo Ann Zimmerman, a Democrat, can barely remember the last time she had a talk with Republican Gov. Terry Branstad . . . Branstad would make the lieutenant governor wait six weeks for an appointment.”).

<sup>106</sup> *Team Approach, Yes*, *supra* note 98; see also Davis, *supra* note 102.

<sup>107</sup> E.g., *Referenda: Question No. One*, FITCHBURG SENTINEL (Fitchburg, Mass.), Oct. 19, 1966, at 6; James P. Warnick, *Short Ballot Battle Has Been Long Fight*, DECATUR REV. (Decatur, Ill.), Mar. 23, 1970, at 8.

“short ballot” movement of the late nineteenth and early twentieth centuries.<sup>108</sup> Finally, many supporters of these amendments argued that their states should join the federal government, along with many other states, in adopting team tickets.<sup>109</sup>

Opponents, meanwhile, largely relied on the voter-choice argument raised by New York Democrats in 1945 and 1953: if elections were joined, voters were deprived of their ability to elect the most qualified candidate.<sup>110</sup> One Ohio state representative noted that avoiding a party split in the state executive branch, one of the main features proponents endorsed, might be contrary to what voters intended: “It is just possible that the voters did just exactly what they wanted to do in electing a governor of one party and lieutenant governor of another party.”<sup>111</sup> In support of this argument, some suggested that having a governor and lieutenant governor of different parties was beneficial because it could provide a check on the governor’s power<sup>112</sup>—although, beyond “keeping the governors on the

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<sup>108</sup> See Tyler Yergain, *The Legal History of State Legislative Vacancies and Temporary Appointments*, 28 J.L. & POL’Y 564, 623–25 (2020) [hereinafter Yergain, *Legal History*] (discussing “short ballot” movement).

<sup>109</sup> E.g., MICH. CONST. CONVENTION, JOURNAL OF THE CONSTITUTIONAL CONVENTION 452 (1961); Broussard, *supra* note 99; *Five Amendments to Be on Ballot*, *supra* note 98; *Pros and Cons Recapped for Tomorrow’s Ballot*, *supra* note 98.

<sup>110</sup> LEGIS. COUNCIL COLO. GEN. ASSEMB., AN ANALYSIS OF 1968 BALLOT PROPOSALS, Rsch. Publ’n No. 133, at 2–3 (1968) [hereinafter 1968 COLORADO BALLOT PROPOSALS ANALYSIS]; *Constitutional Amendment OK’d for November Ballot*, HONOLULU STAR-BULL., Mar. 10, 1964, at 17; *Ex-State Officials Differ on Amendment*, MINNEAPOLIS TRIB., Oct. 27, 1972, at 7B; Maynard Leahey, *Questions 1 and 2*, NORTH ADAMS TRANSCRIPT (North Adams, Mass.), Nov. 2, 1966, at 5; *Three Amendments*, *supra* note 99; Brian Usher, *Ohio Voters to Decide on Pairing Top Offices*, AKRON BEACON J., Jan. 29, 1976, at B4; *Voters Facing Eight Constitutional Referenda*, DAILY NORTHWESTERN (Oshkosh, Wis.), Mar. 17, 1967, at 4.

<sup>111</sup> Usher, *supra* note 110; see also *Joint Election Hottest Issue*, COSHOCTON TRIB., May 30, 1976, at 3 (“Opponents argue that Issue 1 would eliminate the right of the voters to pick the lieutenant governor independently. They claim this right has been notably exercised in the last two statewide elections when the voters chose governors and lieutenant governors of opposite parties.”).

<sup>112</sup> For example, an Indiana newspaper described opponents’ beliefs in the following way:



job and not running around outside the state” for fear of what the lieutenant governor might do in their absence,<sup>113</sup> it’s not quite clear how lieutenant governors could exercise a meaningful check. Opponents of the amendments also argued that separate elections encouraged stronger candidates to run for lieutenant governor.<sup>114</sup> Because team-ticket elections allowed the gubernatorial nominees—or their parties—to artificially form a ticket, opponents argued that lieutenant-gubernatorial nominees would be selected for their ability to balance the ticket, not their competence.<sup>115</sup> And one state senator in Iowa argued that the selection of running mates by gubernatorial nominees would reduce the number of women nominated for the office, noting that “[t]he majority of women lieutenant governors have been people who have put themselves forward . . . .”<sup>116</sup>

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Opponents of the amendment, believe that it might be healthy to have a Governor and Lieutenant Governor of opposite political beliefs. That would provide an effective system of checks and balances. The opponents also worry that the amendment would concentrate too much power in the Governor’s hands and reduce the Lieutenant Governor to a ‘rubber stamp’ supporter of the Governor’s point of view.

*Three Amendments, supra* note 99.

<sup>113</sup> Harrison, *supra* note 98. This argument falls under its own weight, however—if having a lieutenant governor of the opposite party serves as a meaningful check on the governor by keeping her from leaving the state, that seems to suggest that undesirable consequences would follow a gubernatorial vacancy.

<sup>114</sup> See 1968 COLORADO BALLOT PROPOSALS ANALYSIS, *supra* note 110110, at 2–3.

<sup>115</sup> E.g., Editorial, *Measures on the Nov. 5 Ballot*, BISMARCK TRIB., Oct. 25, 1974, at 4; David Watson, *Legislators Blister Lieutenant Governor Concept*, TAMPA TRIB., July 12, 1968, at 1, 12–A; see also Richard Pyle, *One Post Nobody Wants, But Most Would Accept*, PORT HURON TIMES HERALD, Dec. 29, 1963, at 3.

<sup>116</sup> Editorial, *Streamline Officials, Too*, IOWA CITY PRESS-CITIZEN, Feb. 29, 1988, at 5A. As an empirical statement, this is false. Iowa had a female lieutenant governor when the team-ticket amendment was approved, which initiated a three-decade streak of female lieutenant governors, which only ended when Lieutenant Governor Kim Reynolds became Governor in 2017 upon the governor’s resignation. Eric Ostermeier, *Number of Female Lieutenant Governors to Increase After 2016*, SMART POL. (Aug. 7, 2016), <https://editions.lib.umn.edu/smartpolitics/2016/08/07/number-of-female-lieutenant-governors-to-increase-after-2016/>; Jason Noble, *Kim Reynolds Becomes Iowa’s First Female Governor*, DES MOINES REG. (May 24, 2017, 7:07 PM), <https://www.desmoinesregister.com/>

Several additional points are worth noting. First, because *most* constitutional amendments providing for team-ticket gubernatorial elections did not specify *how* the team tickets would be formed,<sup>117</sup> the aforementioned arguments played out as a choose-your-own-adventure novel. Depending on the method of ticket formation, the arguments for or against the amendments would be mitigated entirely. For example, if a state legislature's enabling act provided for separate primaries, the notion that lieutenant-gubernatorial nominees would be selected as mere ticket balancers, and that voters would have no say in the selection, would be entirely untrue. On the other hand, some of the arguments in favor of team tickets would be similarly undermined by separate primaries. If gubernatorial and lieutenant-gubernatorial candidates were nominated in separate primaries, antagonistic candidates could emerge as their party's respective nominees, making collaboration significantly less likely.<sup>118</sup> Second, once a number of states had adopted team-ticket amendments, formal opposition seemed to fade.<sup>119</sup> In many states, the Democratic and Republican parties both endorsed—either expressly or tacitly—the amendments<sup>120</sup> and opposition was largely nonexistent.<sup>121</sup> This

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story/news/2017/05/24/kim-reynolds-takes-oath-office-becomes-iowas-first-female-governor/341857001/. Moreover, the best available political science research on the subject has shown that lieutenant-gubernatorial nominees are *more* likely to be female, not less, if selected by gubernatorial nominees. See Valerie M. Hennings & R. Urbatsch, *Gender, Partisanship, and Candidate-Selection Mechanisms*, 16 STATE POL. & POL'Y Q. 290, 299–305 (2016).

<sup>117</sup> Iowa is one of the only examples in which, because the state legislature passed an enabling act *before* the constitutional amendment passed, voters knew exactly what they were voting for. See Act of Apr. 27, 1988, ch. 1121, 1988 Iowa Laws 166.

<sup>118</sup> Daniel J. Foley, *Judge Recommends Functions for Office*, MISSOULIAN (Missoula, Mont.), Feb. 2, 1972, at 8; see also *Team Approach, Yes*, *supra* note 98 (“In other words, the team approach doesn't guarantee that the governor and the lieutenant governor will be compatible in office.”).

<sup>119</sup> See, e.g., Linda Lantor, *Lieutenant Governor Amendments Big Winners*, DES MOINES REG., Nov. 9, 1988, at 8M; Elon Torrence, *Kansas Would Elect Gubernatorial Team*, GARDEN CITY TELEGRAM, Nov. 1, 1972, at 12.

<sup>120</sup> E.g., *Iowa Political Leaders Back Gubernatorial Team Proposal*, SIOUX CITY J., Sept. 30, 1988, at A8; Torrence, *supra* note 119; *Vote 'Yes' on Question No. 1*, *supra* note 98.

<sup>121</sup> See Lantor, *supra* note 119; Torrence, *supra* note 119.

weakening of the opposition is in line with the generally high voter support for team-ticket amendments.<sup>122</sup>

### III. THE POST-AMENDMENT FORMATION OF TEAM TICKETS

Once a state has embraced team-ticket elections for its governors and lieutenant governors, what happens next? In most cases, because the constitutional amendments adopted did not typically address *how* team-ticket elections would be conducted, legislatures were required to pass some form of enabling act. Part III picks up where Part I left off and explores how states initially, and subsequently, structured their team-ticket elections. Part III.A. tells the chronological history of how team-ticket enabling statutes were adopted. Part III.B. then identifies, to the greatest extent possible, the arguments made in favor of the various modes of team-ticket formation. Part III.C. then reviews the state-level experiences with each of the methods of team-ticket formation, responding where appropriate to the arguments raised in the previous parts. Finally, Part III.D. concludes by extracting from this legislative history an as-yet-unreported trend in state election law—the trend away from separate primaries and toward post-primary selection.

#### A. *Enabling Acts, Subsequent Modifications, and Other Post-amendment History*

Following the electorate's ratification of a constitutional amendment providing for team tickets, most legislatures were tasked with operationalizing the amendments' requirements into set procedures. In a handful of cases, the ratification of new constitutions or constitutional amendments completed the process outright.<sup>123</sup> Because the newly adopted constitutional provisions set out a clear procedure for nominating governors and lieutenant governors to create a joint ticket, no statutory codification or enabling act was required. The 1963 Michigan Constitution and New Jersey's Question 1 in 2005 both made clear, for example, that the governor would select the lieutenant governor after the primary.<sup>124</sup> The 1968 Florida

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<sup>122</sup> *Supra* Part II.A.

<sup>123</sup> *See infra* text accompanying notes 124–26.

<sup>124</sup> *See* MICH. CONST. art. V, § 21 (1963); N.J. CONST. art. V, § 1, para. 4 (amended 2005).

Constitution, Maryland's Question 1 in 1970, and the 1972 Montana Constitution provided that gubernatorial candidates would select their running mates before the primary and would, thus, be jointly nominated.<sup>125</sup> In a similar regard, the ratification of South Dakota's Amendment 2 in 1972 required no enabling act because, under then-existing state law, lieutenant-gubernatorial candidates were nominated at state party conventions, a practice that continued thereafter.<sup>126</sup>

And in Iowa and Kentucky, enabling acts were enacted *before* the amendments were passed.<sup>127</sup> Both state legislatures, after approving the constitutional amendments, also approved legislation that was contingent on the amendments' passage, as mentioned previously, which allowed the subsequent debate over the amendments' efficacy to play out with tangible stakes.<sup>128</sup> In Iowa, state legislators approved legislation allowing gubernatorial nominees to select their running mates after winning the primary.<sup>129</sup> In Kentucky, gubernatorial candidates were required to run with lieutenant-gubernatorial candidates in the same primary.<sup>130</sup>

But for every other state, the constitutional adoption of a team-ticket requirement did little to practically implement the new system. Accordingly, state legislatures enacted legislation that set out specific team-ticket formation procedures.<sup>131</sup> Most states opted for separate primaries for gubernatorial and lieutenant-gubernatorial

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<sup>125</sup> MONT. CONST. art. VI, § 2 (1972); H.J. Res. 1-2X, 41st Leg., Extraordinary Sess., 1967–68 Fla. Laws 536; H.B. 3, Gen. Assemb., Reg. Sess., 1970 Md. Laws 1298.

<sup>126</sup> See Act of Mar. 15, 1965, ch. 86, 1965 S.D. Laws 197 (“After perfecting its organization, the convention shall . . . nominate candidates for . . . Lieutenant Governor . . .”).

<sup>127</sup> Act of Apr. 9, 1992, § 14, ch. 288, 1992 Ky. Laws 809, 818; Act of Apr. 27, 1988, ch. 1121, 1988 Iowa Laws 166.

<sup>128</sup> See Act of Apr. 9, 1992, § 14, ch. 288, 1992 Ky. Laws 809, 818; Act of Apr. 27, 1988, ch. 1121, 1988 Iowa Laws 166 (“This section applies only if the constitutional amendment contained in Senate Joint Resolution 1\* is adopted by the qualified electors of this state in the general election in 1988.”).

<sup>129</sup> Act of Apr. 27, 1988, ch. 1121, 1988 Iowa Laws 166.

<sup>130</sup> Act of Apr. 9, 1992, § 14, ch. 288, 1992 Ky. Laws 809.

<sup>131</sup> See, e.g., Act of Apr. 24, 1973, ch. 153, 1973 Kan. Laws 538; Act of May 18, 1973, ch. 318, 1973 Minn. Laws 630; Act of Mar. 10, 1978, ch. 115, 1978 Ohio Laws 233.

candidates.<sup>132</sup> Only Kansas, Minnesota, and Ohio differed.<sup>133</sup> In these states, gubernatorial candidates were required to run in partisan primaries with lieutenant-gubernatorial candidates, and the joint winners of the primary would continue as the party's nominees in the general election.<sup>134</sup>

Following the adoption of these initial procedures, several states amended them fairly significantly. Between 1981 and 2018, eight states adopted different procedures a total of nine times.<sup>135</sup> In 1981, for example, Indiana changed from a system of separate primaries—which had been used in the 1976 and 1980 gubernatorial elections—to one in which the gubernatorial nominee selected their running mate after the primary.<sup>136</sup> The same year, North Dakota—which had used separate primaries for the same gubernatorial elections as Indiana—adopted a new nominating system in which gubernatorial candidates ran with lieutenant-gubernatorial candidates pre-designated.<sup>137</sup> In 1994, Utah similarly moved from a separate-primaries selection system to a pre-primary selection system.<sup>138</sup> And in 1997, Indiana reverted from post-primary selection to pre-primary selection.<sup>139</sup>

Beginning in the late 1990s, however, a small trend has developed in favor of post-primary selection. Florida adopted a

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<sup>132</sup> See *Methods of Election*, *supra* note 4 (listing states that continue to use separate primary systems).

<sup>133</sup> Act of Apr. 24, 1973, ch. 153, 1973 Kan. Laws 538; Act of May 18, 1973, ch. 318, 1973 Minn. Laws 630; Act of Mar. 10, 1978, ch. 115, 1978 Ohio Laws 233.

<sup>134</sup> Act of Apr. 24, 1973, ch. 153, 1973 Kan. Laws 538; Act of May 18, 1973, ch. 318, 1973 Minn. Laws 630; Act of Mar. 10, 1978, ch. 115, 1978 Ohio Laws 233.

<sup>135</sup> Act of Apr. 21, 1981, Pub. L. No. 12, 1981 Ind. Laws 301; Act of Apr. 6, 1981, ch. 241, 1981 N.D. Laws 542; Act of Jan. 27, 1994, ch. 1, 1994 Utah Laws 61; Act of May 13, 1997, Pub. L. No. 3, 1997 Ind. Laws 651; Steve Liewer, *Independents Hope to Level Playing Field*, S. FLA. SUN SENTINEL (Ft. Lauderdale, Fla.), Sept. 28, 1998, at 4B; Act of June 3, 2000, ch. 387, 2000 Colo. Sess. Laws 2027; Leg. Res. 14CA, 96th Leg., 1st Reg. Sess., 1999 Neb. Laws 156-57; Act of Mar. 15, 2018, Act No. 142, 2018 S.C. Laws 1331; KY. REV. STAT. ANN. § 118.126 (2020).

<sup>136</sup> Act of Apr. 21, 1981, Pub. L. No. 12, 1981 Ind. Laws 301.

<sup>137</sup> Act of Apr. 6, 1981, ch. 241, 1981 N.D. Laws 542.

<sup>138</sup> Act of Jan. 27, 1994, ch. 1, 1994 Utah Laws 61.

<sup>139</sup> Act of May 13, 1997, Pub. L. No. 3, 1997 Ind. Laws 651.

constitutional amendment in 1998 that, among many other election-law changes, dropped the requirement in the state's 1968 constitution that gubernatorial candidates run with running mates in the primary.<sup>140</sup> In 2000, Colorado and Nebraska each adopted similar changes—Colorado statutorily and Nebraska by virtue of a constitutional amendment.<sup>141</sup> The South Carolina Legislature also adopted post-primary selection in its 2018 enabling act for the 2012 constitutional amendment that tied gubernatorial and lieutenant-gubernatorial elections.<sup>142</sup> And finally, in 2020, the Kentucky Legislature made the same change.<sup>143</sup> The only exception in the past two decades to this mini-trend has been Illinois, which in 2010, ditched its separate-primaries requirement in favor of a pre-primary selection procedure.<sup>144</sup>

### B. *State Experiences with Different Methods of Ticket Formation*

Despite the base similarity between states with team tickets, differences in team-ticket formation have resulted in significantly different outcomes. This Part reviews the state experiences with each of the three different methods of ticket formation, focusing on the patterns of lieutenant-gubernatorial selection and challenges that have arisen.

First, states with post-primary lieutenant-gubernatorial selection have seen selection practices that don't significantly differ from the selection procedure used by presidential candidates. Like presidential candidates,<sup>145</sup> they aim for ticket-balancing characteristics, like geography, gender, race, age, ideology, and a balance between political insiders and outsiders.<sup>146</sup> (And, like presidential nominees,

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<sup>140</sup> See Liewer, *supra* note 135.

<sup>141</sup> Act of June 3, 2000, ch. 387, 2000 Colo. Sess. Laws 2027; Leg. Res. 14CA, 96th Leg., 1st Reg. Sess., 1999 Neb. Laws 156–57.

<sup>142</sup> Act of Mar. 15, 2018, Act No. 142, 2018 S.C. Laws 1331.

<sup>143</sup> KY. REV. STAT. ANN. § 118.126 (2020).

<sup>144</sup> Act of July 12, 2010, Pub. Act 96-1018, 2010 Ill. Laws 3736.

<sup>145</sup> Lee Sigelman & Paul J. Wahlbeck, *The "Veepstakes": Strategic Choice in Presidential Running Mate Selection*, 91 AM. POL. SCI. REV. 855, 860 (1997).

<sup>146</sup> See, e.g., Hennings & Urbatsch, *supra* note 116, at 305 (concluding that, when lieutenant-gubernatorial candidates are selected by gubernatorial nominee, women are more likely to be represented on the ticket); Michael D. Martinez,

they frequently select former opponents for their party's nomination.)<sup>147</sup> In these states, after winning their party's nomination, each gubernatorial nominee selects a lieutenant-gubernatorial nominee.<sup>148</sup> The time at which running mates are selected makes it possible, and likely advantageous, for the gubernatorial nominee to choose a former opponent for the job. In some cases, depending on state law, gubernatorial nominees might even be able to choose members of the other party<sup>149</sup>—an option repeatedly considered, but never used, at the national level.<sup>150</sup>

Second, in states where gubernatorial candidates make pre-primary running-mate selections, the selection criteria are much the same. Candidates in these states have a slightly smaller universe

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*Gubernatorial Tickets in Primary Elections, 1983–1986*, 21 STATE & LOCAL GOV'T REV. 84, 86–87 (1989). These studies—and a handful of others—notwithstanding, little attention in political science has focused on the selection of lieutenant-gubernatorial candidates.

<sup>147</sup> See, e.g., James Call, *Andrew Gillum Picks Chris King as Running Mate for Governor Matchup with DeSantis/Nunez*, TALLAHASSEE DEMOCRAT (Sept. 6, 2018, 7:39 PM), <https://www.tallahassee.com/story/news/2018/09/06/andrew-gillum-picks-chris-king-lieutenant-governor-running-mate/1210356002/> (noting that 2018 Florida Democratic gubernatorial nominee Andrew Gillum chose Chris King, who lost 2018 Democratic primary, as his running mate).

<sup>148</sup> See, e.g., Act of June 3, 2000, ch. 387, 2000 Colo. Sess. Laws 2027; Act of Mar. 15, 2018, Act No. 142, 2018 S.C. Laws 1331.

<sup>149</sup> E.g., Dana Ferguson, *Billie Sutton Names Running Mate Right Before SD Democratic Party Meet in Sioux Falls*, ARGUS-LEADER (Sioux Falls, S.D.) (June 14, 2018, 6:09 PM), <https://www.argusleader.com/story/news/politics/2018/06/14/billie-sutton-announce-running-mate-thursday-sioux-falls/699600002/> (noting that Billie Sutton, Democratic nominee for Governor of South Dakota in 2018, chose Michelle Lavalley, a Republican, as his running mate); see T. Quinn Yeargain, *Getting the Dream Team on the Ballot: The Legality of Bipartisan Gubernatorial Tickets*, 2021 MICH. STATE L. REV. (forthcoming October 2021). But see Marc Caputo, *'Millions of Dollars Committed': Murphy Enters New Phase of Bipartisan Bid with Jolly*, POLITICO (May 17, 2018, 5:07 AM), <https://www.politico.com/states/florida/story/2018/05/17/millions-of-dollars-committed-murphy-enters-new-phase-of-bipartisan-bid-with-jolly-424566> (noting that Florida law is unclear on legality of a bipartisan gubernatorial ticket).

<sup>150</sup> Matthew Rozsa, *What if John McCain Had Picked Joe Lieberman in 2008?*, SALON (Sept. 8, 2018, 4:00 PM), <https://www.salon.com/2018/09/08/what-if-john-mccain-had-picked-joe-lieberman-in-2008/>; Arlette Saenz & Sarah Mucha, *Joe Biden Says He Would Consider a Republican for His Running Mate*, CNN (Dec. 30, 2019, 4:34 PM), <https://www.cnn.com/2019/12/30/politics/joe-biden-running-mate-republican/index.html>.

from which they can select a running mate, but they nevertheless seek out candidates who can similarly balance the ticket.<sup>151</sup> Although it is possible to choose someone who had previously sought the party's nomination for governor,<sup>152</sup> the practical effect of candidate filing deadlines means the previous rival-turned-running mate would need to end their campaign prior to appearing on a ballot.

Third, states with separate primaries for governor and lieutenant governor are less likely to produce balanced tickets,<sup>153</sup> likely because the ticket is being formed naturally, with little outside influence and no specific design. It's theoretically possible for presumptive gubernatorial nominees (or those unopposed in their party's primary) to exert their influence in the lieutenant-gubernatorial primary, but these efforts are not guaranteed success. One of the few instances in which this influence played out publicly<sup>154</sup> was in the 2006 Pennsylvania lieutenant-gubernatorial Democratic primary, in which Lieutenant Governor Catherine Baker Knoll was seeking re-nomination in a contested primary.<sup>155</sup> Joe Hoeffel, who had represented suburban Philadelphia in Congress before unsuccessfully running for the U.S. Senate in 2004, considered challenging Baker Knoll in the primary.<sup>156</sup> Incumbent Governor Ed Rendell, however,

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<sup>151</sup> See Martinez, *supra* note 146, at 86–87.

<sup>152</sup> E.g., Jessie Balmert, *Mike DeWine to Name Jon Husted as Running Mate*, CIN. ENQUIRER (Nov. 29, 2017, 9:39 PM), <https://www.cincinnati.com/story/news/politics/2017/11/29/unity-ticket-mike-dewine-name-jon-husted-running-mate/907479001/>; Seth A. Richardson, *Richard Cordray and Betty Sutton Announce Joint Ohio Gubernatorial Ticket*, CLEVELAND.COM (Jan. 10, 2018), [https://www.cleveland.com/open/2018/01/richard\\_cordray\\_and\\_betty\\_sutt.html](https://www.cleveland.com/open/2018/01/richard_cordray_and_betty_sutt.html).

<sup>153</sup> E.g., Hennings & Urbatsch, *supra* note 116, at 297–98 (“[G]ubernatorial appointment produces women nominees more often [for lieutenant governor] than does primary election.”).

<sup>154</sup> In 2018, it was reported that incumbent Pennsylvania Governor Tom Wolf successfully worked behind the scenes to defeat his Lieutenant Governor, Michael Stack, in the Democratic primary by informally backing a candidate from a different region of the state. See Christine Vendel, *Pa. Lt. Gov Mike Stack Lost Primary Race Because of Geography, Not Scandals: Spokesman*, PENNLIVE.COM (May 16, 2018), [https://www.pennlive.com/politics/2018/05/pa\\_lt\\_gov\\_mike\\_stack\\_john\\_fett.html](https://www.pennlive.com/politics/2018/05/pa_lt_gov_mike_stack_john_fett.html).

<sup>155</sup> Amy Worden, *Hoeffel Relents on Lieutenant Governor Race*, PHILA. INQUIRER, Mar. 9, 2006, at B1, B6.

<sup>156</sup> *Id.*



pressured Hoeffel not to challenge Baker Knoll in the primary.<sup>157</sup> Rendell persuaded Hoeffel that the ticket needed to be geographically balanced and that the combination of Rendell, the former Mayor of Philadelphia, and Baker Knoll, from Pittsburgh, adequately balanced the ticket.<sup>158</sup> It is also significantly harder, although theoretically possible in limited circumstances,<sup>159</sup> for a team ticket of former rivals to merge in states with separate primaries.

Outside of these rare public insider-driven efforts to balance a ticket, individual voters casting ballots in each primary may well seek to “balance” their ballot by choosing candidates with different backgrounds,<sup>160</sup> but they are certainly under no obligation to do so. Moreover, the results of one election—which primary voters cannot possibly know beforehand—seem as though they would affect voters’ choice in the second election. That is, if voters knew that they were choosing a running mate for a *specific* gubernatorial nominee, and not choosing a lieutenant-gubernatorial nominee in the abstract, they might vote differently.

Gubernatorial nominees’ loss of control over the composition of their ticket extends beyond the inability to balance—it can, however, also stick gubernatorial nominees with controversial running mates and no obvious way to replace them on the ticket.<sup>161</sup> The most prominent example of this occurred in Illinois in 1986, when former U.S. Senator Adlai Stevenson III won the Democratic primary for governor and Mark Fairchild won the primary for lieutenant governor.<sup>162</sup> Fairchild’s nomination caused a significant amount of controversy, given that he was a member of the LaRouche movement, an ideologically extreme, cult-like movement.<sup>163</sup> Refusing to run on

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<sup>157</sup> *Id.*

<sup>158</sup> *See id.*

<sup>159</sup> *E.g.*, Anne Hillman, *Walker, Mallott Form Unity Ticket to Oppose Parnell*, ALASKA PUB. MEDIA (Sept. 2, 2014), <https://www.alaskapublic.org/2014/09/02/walker-mallott-form-unity-ticket-to-oppose-parnell/>.

<sup>160</sup> *See* Hennings & Urbatsch, *supra* note 116, at 294 (noting that “the voting public’s explicit demand for gender balance in nominations is often weak”).

<sup>161</sup> *See* Andrew H. Malcolm, *2 Conservative Extremists Upset Democrats in the Illinois Primary*, N.Y. TIMES (Mar. 20, 1986), <https://www.ny-times.com/1986/03/20/us/2-conservative-extremists-upset-democrats-in-the-illinois-primary.html>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

the same ticket with Fairchild, Stevenson surrendered the Democratic nomination for governor and instead founded the Illinois Solidarity Party, which effectively replaced the Democratic Party in the 1986 election.<sup>164</sup>

A similar event took place in 2010, also in Illinois, when incumbent Governor Pat Quinn won the Democratic gubernatorial primary and businessman Scott Lee Cohen won the lieutenant-gubernatorial primary.<sup>165</sup> Shortly after Cohen won the primary, media attention focused on past allegations of domestic abuse levied against him, and Quinn apparently moved behind the scenes to have Cohen withdraw.<sup>166</sup> Cohen did so shortly thereafter, and the legislature promptly moved to toss its system of separate primaries, instead requiring gubernatorial candidates to pick running mates before the primary.<sup>167</sup>

In opposing constitutional amendments for team-ticket gubernatorial elections, as mentioned previously, some politicians argued that team-ticket elections would produce unqualified, incompetent candidates for lieutenant governor.<sup>168</sup> It is ironic that these arguments were correct—but only with respect to lieutenant-gubernatorial candidates selected by *voters* in primaries, the method of lieutenant-gubernatorial selection closest to the pre-team-ticket method. It, instead, seems to be the case that, as the party's control over the process increases, more qualified candidates—and specifically those who are likelier to balance the ticket—are selected.

### C. *The Rationale Behind These Changes*

In embracing different methods of team-ticket formation—especially pre- and post-primary selection—many state legislators articulated arguments similar to those made in support of team-ticket

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<sup>164</sup> See Karl D. Cooper, Note, *Are State-Imposed Political Party Primaries Constitutional? The Constitutional Ramifications of the 1986 Illinois LaRouche Primary Victories*, 4 J.L. & POL'Y 343, 348–54 (1987–88).

<sup>165</sup> John Patterson & Joseph Ryan, *Quinn Hints at Replacement for Running Mate*, DAILY HERALD (Arlington Heights, Ill.) (Feb. 4, 2010), <https://www.dailyherald.com/article/20100205/news/302059951/>.

<sup>166</sup> *Id.*; Amanda Vinicky, *Illinois' Storied History of Choosing Its Second-in-Command*, NPR ILL. (Feb. 22, 2018), <https://www.nprillinois.org/post/illinois-storied-history-choosing-its-second-command>.

<sup>167</sup> Vinicky, *supra* note 166.

<sup>168</sup> *Single Ballot Amendment up to Voters*, *supra* note 18.

elections. Policymakers focused on ensuring that governors and lieutenant governors would have positive, constructive relationships, suggesting that allowing gubernatorial candidates to pick lieutenant-gubernatorial candidates would make such relationships likelier.<sup>169</sup> These relationships, in turn, would allow governors to feel comfortable delegating additional responsibilities to their lieutenant governors.<sup>170</sup> In some cases, observers perceived these moves as responses to chilly relationships between governors and lieutenant governors who had been nominated in separate primaries<sup>171</sup>—and in this context, the protestations of legislators and governors that this wasn't the motivation seemed particularly insincere.<sup>172</sup> These arguments, which are rooted in the desire to create a cohesive state executive branch, echo the arguments made in favor of adopting team-ticket constitutional amendments.<sup>173</sup>

Outside of the cohesion that deliberate selection of running mates would foster, legislators frequently argued that the selection process would produce higher-quality running mates.<sup>174</sup> For example, in Indiana, backers of a post-primary selection process suggested that requiring lieutenant-gubernatorial candidates to run in primaries forced them to fundraise, which they were not able to do well.<sup>175</sup> Similarly, in Nebraska, the author of a constitutional amendment

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<sup>169</sup> See e.g., *Amendment 1*, LINCOLN J. STAR, Nov. 2, 2000, at 19X; *Constitutional Change Bill Approved in House*, ST. CLOUD TIMES, Apr. 17, 1973, at 5; Tom Diemer, *Rhodes Signs Industrial Tax Abatement Bill*, MARION STAR, Dec. 10, 1977, at 2; *Orr Favors Picking Lt. Governor Via Convention*, DAILY REP. (Greenfield, Ind.), Apr. 24, 1981, at 4.

<sup>170</sup> E.g., *Lt. Gov. Candidates Won't Run Campaigns*, DAILY SENTINEL (Grand Junction, Colo.), Feb. 16, 2000, at 10; Martha Stoddard, *Three Issues Are Getting Little Notice*, LINCOLN J. STAR, Oct. 3, 2000, at 7.

<sup>171</sup> See, e.g., Foley, *supra* note 118; *Owens Says Rogers Would Top List of Potential Running Mates*, DAILY SENTINEL (Grand Junction, Colo.), June 6, 2000, at 3.

<sup>172</sup> E.g., *Lt. Gov. Candidates Won't Run Campaigns*, *supra* note 170 (“[Representatives] Sinclair and McPherson both have said that public conflicts between Gov. Bill Owens and Lt. Gov. Joe Rogers did not prompt them to introduce their measures.”); *Owens Says Rogers Would Top List of Potential Running Mates*, *supra* note 171 (“‘This bill was not Bill Owens trying to put aside Joe Rogers,’ the governor said Monday.”).

<sup>173</sup> Compare *supra* notes 169–70, with *supra* notes 104–05.

<sup>174</sup> See, e.g., *Orr Favors Picking Lt. Governor Via Convention*, *supra* note 169; Stoddard, *supra* note 170.

<sup>175</sup> See *Orr Favors Picking Lt. Governor Via Convention*, *supra* note 169.

abolishing separate primaries noted that, in watching lieutenant-gubernatorial candidates launch campaigns in the 1998 election, he saw “candidates waging expensive advertising wars, in which they made overstated claims about what they would do.”<sup>176</sup>

The implication behind these arguments was perhaps that the affirmative requirement of launching a campaign, fundraising, and generating a campaign platform both discouraged qualified candidates from running and created an electoral process that incentivized wealthier candidates, or those with better connections and fundraising abilities, over others. This argument was made more explicitly in Colorado, where supporters of post-primary selection noted that removing the separate-primary requirement would allow more political outsiders to be selected as running mates.<sup>177</sup> And the most significant advantage of *post*-primary selection over *pre*-primary selection—the ability of nominees to pick former competitors as running mates—was raised as states considered efforts to adopt post-primary selection procedures.<sup>178</sup>

Despite the fact that either pre- or post-primary selection would create a process more similar to presidential elections, few arguments were explicitly made to that effect.<sup>179</sup> The absence of such arguments, which were not-infrequently raised during the adoption of team-ticket constitutional amendments,<sup>180</sup> is an interesting omission. It perhaps suggests that, although states were concerned with creating a process similar to presidential elections in the first place, their adoption of specific procedures actually reflected state-specific

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<sup>176</sup> Stoddard, *supra* note 170.

<sup>177</sup> See Peter Blake, *Bill Lets Gubernatorial Candidates Pick Running Mates*, DAILY SENTINEL (Grand Junction, Colo.), Feb. 16, 2000, at 4 (suggesting that bill would allow outsiders to be involved in process).

<sup>178</sup> E.g., *Bill Would Change Pick of Lieutenant Governor*, MUNCIE STAR PRESS, Jan. 15, 1981, at 10 (“Townsend . . . said the proposed change would allow the nominee to pick one of his primary foes as a running mate . . . .’ This would be very similar to the way in which we chose our president and vice president,” he said. ‘I think it would be a very worthwhile change.’”); Liewer, *supra* note 135 (describing how candidates for governor would be allowed “to run in the primary without choosing a running mate [for lieutenant governor], deferring a choice until after the primary so the winner could choose one of the losing candidates.”).

<sup>179</sup> But see *Bill Would Change Pick of Lieutenant Governor*, *supra* note 178; Stoddard, *supra* note 170.

<sup>180</sup> See *supra* notes 89, 109, and accompanying discussion.

concerns and was rooted in the historical differences between presidential and gubernatorial elections.

Few explicit arguments were made for separate primaries—chiefly because few states affirmatively adopted these procedures after ratifying team-ticket constitutional amendments. In many cases, pre-existing election-law procedures, which obviously provided for separate primaries, continued in force, modified slightly by the force of the constitutional amendments.<sup>181</sup> Nevertheless, arguments were made *in defense of* separate-primary nominating procedures as other procedures were considered. These arguments, which emphasized the importance of the popular, democratic support for lieutenant-gubernatorial candidates<sup>182</sup> and suggested that another procedure would allow behind-the-scenes selection of running mates,<sup>183</sup> actually sound similar to the arguments made *against* the adoption of team-ticket constitutional amendments.<sup>184</sup>

Ultimately, however, the debates surrounding these proposals took place in something of a vacuum. To the extent that voters crystallized these proposals by approving the constitutional amendments, little opposition to them developed and public attention was largely focused on other aspects of the proposed amendments.<sup>185</sup> And if adopted as statutory amendments, the bills were usually approved with large, bipartisan majorities.<sup>186</sup>

#### D. *Identifying the Trend*

The adoption of team-ticket constitutional amendments by New York in 1953 inaugurated a new majority rule for gubernatorial

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<sup>181</sup> See, e.g., Act of Mar. 15, 1965, ch. 86, 1965 S.D. Laws 197.

<sup>182</sup> See Diemer, *supra* note 169; Editorial, *Election Preview*, BANNER-PRESS (David City, Neb.), Oct. 19, 2000, at 24; Foley, *supra* note 118; *Orr Favors Picking Lt. Governor Via Convention*, *supra* note 169.

<sup>183</sup> See Diemer, *supra* note 169; *Orr Favors Picking Lt. Governor Via Convention*, *supra* note 169.

<sup>184</sup> Compare *supra* notes 120–21 and accompanying discussion, with *supra* notes 91–94 and accompanying discussion.

<sup>185</sup> See, e.g., *Amendment 1*, *supra* note 169 (“No organized opposition to the amendment has emerged . . .”); Liewer, *supra* note 135 (largely discussing open-primary aspect of Florida’s Amendment 11, not post-primary selection of lieutenant-gubernatorial nominees).

<sup>186</sup> See, e.g., *Tandem Primary Given Final OK*, MANSFIELD NEWS-J., Dec. 7, 1977, at 17.

elections. Today, most states with lieutenant governors elect their governors and lieutenant governors on a team ticket.<sup>187</sup> But, as the foregoing discussion makes clear, the adoption of team-ticket elections necessitated another decision by state legislators—specifically, how to implement the new electoral process.

Although most states initially adopted, either affirmatively or as the result of pre-existing requirements, separate primaries, a clear trend has developed away from separate primaries and toward pre- or post-primary selection of running mates by gubernatorial nominees. There are several ways to visualize this trend. First, we can consider how state constitutional amendments adopting team-ticket requirements were drafted. The later amendments are likelier than the first amendments to provide for the pre- or post-primary nomination of lieutenant-gubernatorial nominees.<sup>188</sup> Of the first ten states to enact such amendments, *eight* still require separate primaries.<sup>189</sup> Similarly, of the last ten states to enact such amendments, every one forms team tickets either before or after primaries—none do so with separate primaries.<sup>190</sup>

Second, we can consider how states drafted enabling acts. The first constitutional amendments were likelier to be followed up with separate-primary requirements than more recently ratified amendments.<sup>191</sup> Third, we can look to what the most recent changes to lieutenant-gubernatorial selection have entailed. No state has transitioned from pre- or post-primary selection to separate primaries, but six states have done the reverse.<sup>192</sup>

But under the hood, there's another, albeit less discernible, trend taking place. In recent decades, states have increasingly adopted the post-primary selection of lieutenant-gubernatorial nominees. Almost all of the states that currently employ post-primary selection have implemented their procedure in the last two decades: Iowa (1988); Florida (1998); Colorado and Nebraska (2000); New Jersey

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<sup>187</sup> *Methods of Election*, *supra* note 4.

<sup>188</sup> *See supra* notes 28–35 and accompanying text; *see also Methods of Election*, *supra* note 4.

<sup>189</sup> *See supra* notes 28–35 and accompanying text; *see also Methods of Election*, *supra* note 4.

<sup>190</sup> *See supra* note 38 and accompanying text; *see also Methods of Election*, *supra* note 4.

<sup>191</sup> *See supra* Part III.A.

<sup>192</sup> *See supra* notes 136–44 and accompanying text.

(2005); South Carolina (2018); and Kentucky (2020).<sup>193</sup> Before this period, the only states with post-primary selection were Indiana, which had post-primary selection from 1981–97; Michigan, which adopted post-primary selection in its 1963 constitution; and South Dakota, which effectively nominated its lieutenant-gubernatorial candidates post-primary anyway.<sup>194</sup>

Significantly, the states that have embraced post-primary selection of lieutenant-gubernatorial nominees have not done so after trying and rejecting each of the previous methods; accordingly, their systems do not reflect a rejection of the other methods as much as they represent an endorsement of their own specific method. The adoption of these changes has reflected a concrete desire to ensure that the relationships between the gubernatorial and lieutenant-gubernatorial nominees—and thus governors and lieutenant governors—remain positive and to guarantee that governors can have a junior governing partner of their choosing with as few restrictions as possible.

#### IV. IDENTIFYING THE OPTIMAL TEAM TICKET

The two separate trends identified in this Article—first, the trend toward team-ticket elections and, second, the trend toward pre- and post-primary running-mate selection—make clear that states are seeking to modernize their gubernatorial elections in a democratically optimal way. The past rigidity of gubernatorial elections, usually for short terms, without lieutenant governors, and with a relegated role in the state system of government, has been largely abandoned.

But, in adopting team-ticket gubernatorial elections, which method of ticket formation is the best? This Part argues that the three different methods do not have equal merits and demerits to them. Instead, while pre- and post-primary selection each have mutually exclusive advantages and are roughly equal in their practical operation, separate primaries represent an archaic form of selection that makes little sense in the realm of team-ticket formation.

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<sup>193</sup> See *supra* notes 136–44 and accompanying text.

<sup>194</sup> See *supra* notes 124–26 and accompanying text.

Based on the available legislative history identified in the previous parts, Part IV.A. extracts two philosophies underlying the adoption of team tickets: (1) efficiency in the state executive branch and (2) maximization of democratic legitimacy and voter intent. Part IV.B. then analyzes the advantages and disadvantages of each method of team-ticket formation with these philosophies in mind, ultimately concluding that separate primaries should be abolished.

#### A. *The Philosophy of Team-Ticket Elections*

Both advocates and opponents of team-ticket constitutional amendments made arguments rooted in ideals of democracy and the republic. Advocates argued that the election of governors and lieutenant governors of different parties made possible a gubernatorial succession that radically reshaped state politics, likely in a way not intended by voters.<sup>195</sup> They argued that a cohesive executive branch—in which the governor and lieutenant governor got along, worked together, and sought to advance a joint legislative agenda—made for better government.<sup>196</sup> Implicit in their argument was the idea that voters should voluntarily surrender their power to elect governors and lieutenant governors of different parties because doing so—while nominally undemocratic—would more practically advance democracy.

These arguments sound quite similar to the arguments made by “short ballot” advocates during the Progressive era.<sup>197</sup> The “short ballot” movement “reflected both a cynical and realistic view of how elections were conducted—there are so many elections that take place and so many positions voted on at each election that voters don’t know what they’re voting for.”<sup>198</sup> Accordingly, the movement sought to reduce the number of offices elected by voters and to “make politics so simple that what the average citizen knows will be all there *is* to know.”<sup>199</sup>

Although short-ballot advocates apparently did not argue for the adoption of team-ticket elections, they usually sought to preserve

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<sup>195</sup> See *supra* notes 99–109 and accompanying text.

<sup>196</sup> See *id.*

<sup>197</sup> See Yeargain, *Legal History*, *supra* note 108, at 623–24.

<sup>198</sup> *Id.*

<sup>199</sup> Richard S. Childs, *The Short Ballot Movement and Simplified Politics*, 64 ANNALS AM. ACAD. POL. & SOC. SCI. 168, 169 (1916).



the lieutenant governorship as an elected office, even as they advocated for the appointment of otherwise-elected statewide officers.<sup>200</sup> The root of the argument is similar: Voters are generally familiar with the major-party nominees for governor but not many other offices and, accordingly, they cast their ballots with little information at their disposal.<sup>201</sup> In separately electing lieutenant governors, it is unsurprising that few voters have access to information about lieutenant-gubernatorial candidates.<sup>202</sup> Accordingly, the original advocates of team-ticket gubernatorial elections sought, as short-ballot advocates did half a century prior, to persuade voters to give up some of their voting power in exchange for a more competently run and efficient government.<sup>203</sup>

Opponents, meanwhile, leaned much more heavily on arguments favoring “pure” democracy.<sup>204</sup> They cast doubt on the ability of political parties or gubernatorial nominees to select lieutenant-gubernatorial candidates as effectively as the voters could, frequently invoking loaded imagery of smoke-filled rooms and

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<sup>200</sup> See, e.g., *Fourteen Governors Urge Short Ballot*, SHORT BALLOT BULL., Feb. 1915, at 3 (describing support for an elected lieutenant governor position by Michigan Governor Woodbridge Ferris, a short-ballot advocate); *Short Ballot Gaining Favor*, SHORT BALLOT BULL., Aug. 1916, at 4 (same with respect to Kansas short-ballot advocates); “*Stage Coach*” *Government*, SHORT BALLOT BULL., Apr. 1915, at 14 (same with respect to New York short-ballot advocates). *But see Would Abolish Lieutenant Governor*, SHORT BALLOT BULL., Feb. 1915, at 9 (describing proposal of California short-ballot advocates to abolish the lieutenant governorship).

<sup>201</sup> As Richard Childs put it:

Ask Mr. Average Citizen as he emerges from the polling booth whom he voted for for state treasurer and he will not have the slightest idea. He voted for the Republican, whoever that was. He expressed no opinion of his own for the simple reason that he had no opinion to express. Mr. Average Citizen is not a politician. Why should he know anything about the state treasurer?

Childs, *supra* note 199, at 168.

<sup>202</sup> See, e.g., Eric Freedman & Daniel Thai, *Little Newspaper Coverage for Lt. Governor Candidates*, 27 NEWSPAPER RES. J. 82, 92 (2006) (noting that “most candidates for lieutenant governor were barely blips on the radar, if at all, in capital city newspapers during prime campaign season.”).

<sup>203</sup> See *supra* notes 99–109 and accompanying text; see also Yeargain, *Legal History*, *supra* note 108, at 623–24.

<sup>204</sup> See *supra* notes 110–16 and accompanying text.

manipulated processes.<sup>205</sup> A related argument was that lieutenant-gubernatorial candidates would be selected because of their ability to help the ticket win—either through self-financing of the ticket or by balancing it—and not because of their competence.<sup>206</sup> These opponents contended that if a governor and lieutenant governor of different parties were elected, that was the electorate’s will—and if a governor was succeeded by a lieutenant governor of a different party, that was *also* the electorate’s will.<sup>207</sup> At the core of these arguments was an unbridled, untainted belief that the outcome favored by the electorate was the correct one and that efforts to impose an ostensibly more “efficient” outcome were illegitimate as a result.<sup>208</sup>

These arguments contain some amount of internal inconsistency. After all, the idea that lieutenant-gubernatorial candidates could be selected in such a manner as to improve a ticket’s chances of winning a general election suggests that voters *want* a balanced ticket. And the idea that doing so reduces the chances of competent candidates being selected—but, again, increases the ticket’s chances—suggests that voters may not actually be able to critically discern competence and effectiveness.

It is also worth noting that many of the arguments made against team-ticket elections were empirical statements made without the benefit of empirical support. One lawmaker in Iowa suggested, for example, that female lieutenant-gubernatorial nominees would be less likely to be selected by party elites than by the voters,<sup>209</sup> but the best available political science research actually suggests the opposite.<sup>210</sup> And the claims that voters might be deliberately electing governors and lieutenant governors of different parties—perhaps to “mix and match” the best candidates from both parties<sup>211</sup>—is belied by the fact that state electoral systems make it all too possible for candidates of different parties to be elected by happenstance.<sup>212</sup>

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<sup>205</sup> *Id.*

<sup>206</sup> *See, e.g., supra* notes 91–94 and accompanying text.

<sup>207</sup> *See supra* note 111 and accompanying text.

<sup>208</sup> *See* Cunnion, *supra* note 87.

<sup>209</sup> *Streamline Officials, Too, supra* note 116.

<sup>210</sup> Hennings & Urbatsch, *supra* note 116, at 299–305.

<sup>211</sup> *See supra* notes 111–14 and accompanying text.

<sup>212</sup> *See* Yeargain, *Democratizing Gubernatorial Succession, supra* note 6.

Moreover, to the extent that opponents of team tickets sought to cloak their arguments in the guise of popular will, the fact that almost every proposed constitutional amendment providing for team tickets was ratified strongly suggests that the electorate was entirely willing to surrender a piece of its ability to vote for a particular office. These election outcomes were not flukes—in almost all cases, large majorities of the electorate approved the amendments, regardless of whether they were presented individually, as part of an executive-branch rewrite, or as a newly drafted constitution.<sup>213</sup> Accordingly, although it is somewhat dicey to attribute the underlying philosophy of the *drafters* of these constitutional amendments to the *voters* who approved them, it is difficult to conclude that voters approved them for any reason *but* trading a little bit of democracy in the abstract for significantly more democratic legitimacy in practice. It is with this philosophy in mind that we should evaluate the different methods of lieutenant-gubernatorial selection.

#### B. *Evaluating Team-Ticket Election Procedures*

With the three different team-ticket methods used in roughly equal numbers among the states, their advantages and disadvantages become apparent. There is, however, little that can be noted here that has not been adequately covered elsewhere. The benefits and drawbacks of each method should be fairly apparent.

Separate primaries imbue the process of lieutenant-gubernatorial selection with faux democratic legitimacy. In so doing, however, they effectively function as a double-blind experiment in which voters select gubernatorial and lieutenant-gubernatorial candidates to form a joint ticket in a vacuum, even though the selection of *each* candidate ought to be influenced by the identity of the other. (Put another way, how can a voter know who the ideal running mate for their party's gubernatorial nominee is without knowing the identity of the gubernatorial nominee? And vice-versa?) Moreover, a system of separate primaries seems more likely to produce fraught relationships between gubernatorial and lieutenant-gubernatorial

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<sup>213</sup> *Supra* Part I.A.

nominees—giving a great deal of realism to the term “shotgun marriage.”<sup>214</sup>

Post-primary selection stands diametrically opposed to separate primaries. In this system, voters have no *direct* say in the selection of lieutenant-gubernatorial nominees.<sup>215</sup> This does not mean that they have no influence in the process, however. After all, they selected the gubernatorial nominee—whose decision as to a running mate then completes the ticket—and the nominee should be conscientious of how the lieutenant-gubernatorial nominee will either electrify or deflate the party’s base voters. Unlike in states with the separate-primaries method, gubernatorial nominees in states with this method have the ability to select almost any running mate of their choosing.<sup>216</sup> If they want to select a former opponent for their party’s nomination in an effort to unify the party, they can do so.

Pre-primary selection occupies the space between separate primaries and post-primary selection. Like separate primaries, it ensures that the team ticket has the explicit support of primary voters. And like post-primary selection, it ensures that every gubernatorial candidate has the ability to name a running mate of their choosing. But it also meaningfully differs from both of those methods. Voters are deprived of their ability to vote for a *specific* lieutenant-gubernatorial candidate; so too are gubernatorial candidates deprived of their ability to pick *any* potential running mate.

To some extent, the choice between methods of lieutenant-gubernatorial selection, and thus team-ticket formation, presents an empirical question. The available political science research shows that when team tickets are formed by selection, not separate primaries, the resulting ticket is more likely to be balanced and to have

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<sup>214</sup> See, e.g., Janesch, *supra* note 15; A. G. Sulzberger, *Jokes and Secret Hopes for Lieutenant Governors*, N.Y. TIMES (Dec. 3, 2010), <https://www.nytimes.com/2010/12/04/us/04lieutenant.html> (generally discussing the relationships between governors and lieutenant governors); David W. Winder & David Hill, *The Governor and the Lieutenant Governor: Forms of Cooperation Between Two State Executives*, 34 POL. & POL’Y 634, 651 (2006) (noting that, when governors and lieutenant governors are elected separately, governors are less likely to give lieutenant governors policymaking responsibilities).

<sup>215</sup> See *supra* notes 169–80 and accompanying text.

<sup>216</sup> See *id.*

gender and racial equity.<sup>217</sup> Not only that, but deliberately formed tickets are also likelier to result in policy cooperation between the elected governor and lieutenant governor.<sup>218</sup>

More anecdotally, the spectacle of open lieutenant-gubernatorial elections—in which voters know little of the candidates and the candidates are both poorly funded and forced to make impossible campaign promises—leaves much to be desired. And separate primaries seem to require *more* machinations on the part of politicians and powerbrokers, not less. The examples from Illinois in 1986 and 2010, when lieutenant-gubernatorial candidates unacceptable to the gubernatorial nominee were nominated,<sup>219</sup> is reflective of the unintended consequences of separately nominating lieutenant governors.

But deciding among pre- or post-primary selection presents a closer question. Is slightly limiting the gubernatorial candidate's ability to select *any* possible running mate worth the marginal increase in voter input on the ticket formation? In the reverse, is marginally limiting voter input worth a slight increase in the candidate's ability to select *any* running mate? The fundamental operation of each system has slight advantages and disadvantages over the other. And, more significantly, each system might have small effects on how gubernatorial elections are conducted that might only matter at the margins. For example, pre-primary selection might force the number of gubernatorial candidates competing in either party's primary to consolidate and shrink—as occurred in the 2018 Ohio gubernatorial election in both primaries.<sup>220</sup> This consolidation could reduce the chances that a gubernatorial candidate wins their party's primary with a small plurality of the vote. Post-primary selection might enable candidates to make cross-party selections, opening up every political journalist's fantasy scenario: a Democrat and a

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<sup>217</sup> See, e.g., Hennings & Urbatsch, *supra* note 116, at 299–305; Valerie M. Hennings & R. Urbatsch, *There Can Be Only One (Woman on the Ticket): Gender in Candidate Nominations*, 37 POL. BEHAV. 749, 762–63 (2015); Martinez, *supra* note 146, at 86–87; see also John Harold Crouch, *Contemporary State Lieutenant Governors: An Initial Review* 91–93 (Spring 2019) (unpublished M.A. dissertation, California State University, Fullerton) (on file with author) (conducting empirical analysis of the demographic traits of lieutenant-gubernatorial candidates based on election method).

<sup>218</sup> See Winder & Hill, *supra* note 214, at 651.

<sup>219</sup> See *supra* notes 161–67 and accompanying text.

<sup>220</sup> Balmert, *supra* note 152; Richardson, *supra* note 152.

Republican forming a “dream team.” These suggestions represent unanswered empirical questions, however, and are worth addressing in future scholarship.

All of this is to say that policymakers in different states, each operating with the same ethos and each cognizant of the philosophies of democratic legitimacy and governmental efficiency undergirding team-ticket elections, could arrive at different—and well-reasoned—decisions. Because the merits of both pre- and post-primary selection of lieutenant-gubernatorial nominees are compelling, with each possessing advantages over the other, this Article does not seek to prescribe either one of them as an answer. Instead, conscientious that states are laboratories of democracy and may reach different conclusions, it is satisfied to set out each method’s advantages and disadvantages—but ultimately to urge that states pick one of them.

#### CONCLUSION

Over the past half-century, states have increasingly consolidated their gubernatorial and lieutenant-gubernatorial elections. These changes have been addressed sparingly in the scholarly literature surrounding gubernatorial elections and state constitutional law, but they represent a significant shift in the balance of power at the state level. Somewhat paradoxically, the move to team tickets seeks to sacrifice a small amount of direct democracy—namely, the electorate’s ability to select a lieutenant governor entirely of its choosing—for a larger amount of democratic legitimacy in the form of a democratically legitimate gubernatorial succession and the conversion of the lieutenant governor to a reliable governing partner. A similar motivation has supported the transition to methods of lieutenant-gubernatorial election that are ostensibly less democratic but have similar effects.

These efforts have dramatically reshaped how gubernatorial elections take place in the United States. But this movement is not yet over. Although most states with lieutenant governors today employ methods of lieutenant-gubernatorial election that create a team ticket, many still do not. And in those states, some state legislatures

have proposed constitutional amendments that seek to make similar changes.<sup>221</sup>

While there are meritorious arguments in favor of either pre- or post-primary selection, separate primaries are fundamentally at odds with the rationale underlying team-ticket gubernatorial elections. Accordingly, these proposed amendments ought to be adopted, and separate primaries ought to be abolished.

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<sup>221</sup> E.g., Ryan Byrne, *Pennsylvania Legislature Passes Constitutional Amendment to End Primaries for Lieutenant Governor*, BALLOTPEDIA NEWS (Jan. 30, 2020, 4:34 AM), <https://news.ballotpedia.org/2020/01/30/pennsylvania-legislature-passes-constitutional-amendment-to-end-primaries-for-lieutenant-governor/>.

## APPENDIX

<b>Team-Ticket Constitutional Amendment Adoption</b>					
<b>State</b>	<b>Team-Ticket Amendment</b>	<b>Year</b>	<b>Vote Percentage</b>	<b>Amendment Type</b>	<b>Year</b>
Pennsylvania	Amendment 5 (1967)	1967	66.05%	Executive Branch Rewrite	1967
Maryland	Question 1 (1970)	1970	63.95%	Executive Branch Rewrite	1970
Kansas	Amendment 2 (1972)	1972	60.56%	Executive Branch Rewrite	1972
South Dakota	Amendment B (1972)	1972	65.28%	Executive Branch Rewrite	1972
Utah	Proposition 1 (1980)	1980	56.00%	Executive Branch Rewrite	1980
Kentucky	Amendment 2 (1992)	1992	51.13%	Executive Branch Rewrite	1992
New Jersey	Question 1 (2005)	2005	55.60%	Executive Branch Rewrite	2005
New York	Amendment 3 (1953)	1953	56.00%	Specific Team-Ticket Amendment	1953
New Mexico	Amendment 13 (1962)	1962	65.03%	Specific Team-Ticket Amendment	1962
Connecticut	Question 3 (1962)	1962	80.84%	Specific Team-Ticket Amendment	1962
Hawai'i	Proposal 2 (1964)	1964	72.13%	Specific Team-Ticket Amendment	1964
Massachusetts	Question 1 (1966)	1966	73.19%	Specific Team-Ticket Amendment	1966
Wisconsin	Question 5 (1967)	1967	61.90%	Specific Team-Ticket Amendment	1967
Colorado	Measure 1 (1968)	1968	67.73%	Specific Team-Ticket Amendment	1968
Nebraska	Amendment 13b (1970)	1970	56.06%	Specific Team-Ticket Amendment	1970
Minnesota	Amendment 3 (1972)	1972	67.90%	Specific Team-Ticket Amendment	1972
North Dakota	Amendment 1 (1974)	1974	55.27%	Specific Team-Ticket Amendment	1974
Indiana	Amendment 2 (1974)	1974	56.25%	Specific Team-Ticket Amendment	1974
Ohio	Amendment 1 (1976)	1976	61.16%	Specific Team-Ticket Amendment	1976
Iowa	Amendment 1 (1988)	1988	66.62%	Specific Team-Ticket Amendment	1988
South Carolina	Amendment 1 (2012)	2012	55.51%	Specific Team-Ticket Amendment	2012
Alaska	1956 Constitution	1956	68.12%	Whole Constitution	1959
Michigan	1963 Constitution	1963	50.22%	Whole Constitution	1963
Florida	1968 Constitution	1968	55.42%	Whole Constitution	1968
Illinois	1970 Constitution	1970	57.25%	Whole Constitution	1970
Montana	1972 Constitution	1972	50.54%	Whole Constitution	1972
<b>Average Support for Executive Branch Rewrite Amendment</b>					<b>59.80%</b>
<b>Average Support for Specific Team-Ticket Amendment</b>					<b>63.97%</b>