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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

4 KETCHIKAN GATEWAY BOROUGH,)
5 an Alaska municipal corporation and)
6 political subdivision; AGNES MORAN,)
7 an individual, on her own behalf and on)
8 behalf of her son; JOHN COSS, a minor;)
9 JOHN HARRINGTON, an individual;)
10 and DAVID SPOKELY, and individual,)

11 Plaintiffs,)

12 v.)

13 STATE OF ALASKA; MICHAEL)
14 HANLEY, COMMISSIONER OF)
15 ALASKA DEPARTMENT OF)
16 EDUCATION AND EARLY)
17 DEVELOPMENT, in his official)
18 capacity,)

Case No. 1KE-14-00016 CI

19 Defendants.)

20
21 **EMERGENCY MOTION FOR STAY PENDING APPEAL**

22 Defendants State of Alaska and Michael Hanley (“the State”), move the court,
23 pursuant to Alaska Rule of Civil Procedure 62(c), for a stay of the court’s Final
24 Judgment, dated January 23, 2015, pending appeal to the Alaska Supreme Court. *A*
25 *decision on this emergency motion is needed immediately.* The State requests this stay
26 because the court’s Final Judgment invalidates the statutory provisions that govern
education funding at a point in time when the governor’s budget has already been
submitted, the legislature is already in session, and major budgetary decisions will be

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2 finalized within the next few weeks.¹ An atmosphere of uncertainty currently prevails
3 regarding the legal ramifications of this Court’s judgment, particularly because it is
4 unlikely that the Alaska Supreme Court will have the opportunity to fully review the
5 issue before this year’s legislature passes the next education budget.²

6 **STANDARD FOR A STAY PENDING A PETITION FOR REVIEW**

7
8 “Whether a stay of an injunction pending appeal will be granted is a question
9 directed to the sound discretion of the court.”³ In considering whether to grant a stay
10 pending appeal, “the lower court must consider criteria much the same as it would in
11 determining whether to grant a preliminary injunction.”⁴

12 Alaska courts employ a “balance of hardships” test when considering a motion
13 for a preliminary injunction.⁵ In order for an injunction to issue, the party requesting the
14 injunction “must be faced with irreparable harm; ... the opposing party must be
15 adequately protected; and ... [the party requesting the injunction] must raise serious and
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20 ¹ The governor’s preliminary budget was statutorily due by December 15, 2014
and his amended budget is due by February 18, 2015. AS 37.07.020(a); AS 37.07.070.

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22 ² This year’s legislature is scheduled to adjourn April 19, 2015.

23 ³ *Powell v. City of Anchorage*, 536 P.2d 1228, 1229 (Alaska 1975) (internal
citations omitted).

24 ⁴ *Id.*

25 ⁵ *N. Kenai Peninsula Rd. Maint. Serv. Area v. Kenai Peninsula Borough*, 850 P.2d
26 636, 639 (Alaska 1993).

1
2 substantial questions going to the merits of the case; that is, the issues raised cannot be
3 ‘frivolous or obviously without merit.’”⁶

4 **LEGAL AND FACTUAL BACKGROUND**

5 The State incorporates by reference the facts stated in its cross-motion and
6 opposition to summary judgment.

7 **ARGUMENT**

8
9 This Court should stay its final judgment pending appeal to the Alaska Supreme
10 Court because the State faces irreparable harm if a stay is not granted, plaintiffs
11 (collectively, “the borough”) are adequately protected because they face no cognizable
12 legal harm from a stay, and the State’s arguments raise serious and substantial questions
13 going to the merits of this case. Under the balance of interests analysis, the balance
14 clearly favors granting a stay pending appeal.

15
16 **I. The State and public face irreparable harm if the order is not stayed.**

17 The State has a strong interest in ensuring the solvency of local school districts.
18 Because required local contributions constituted over \$222 million dollars of public
19 education funding in the last school year, [affidavit of Commissioner Michael Hanley
20 ¶ 4]⁷ the invalidation of the required local contribution creates an enormous gap in
21 education funding. Indeed, school districts already submitted budget proposals for fiscal
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24 ⁶ *Id.* (quoting *State v. Kluti Kaah Native Village*, 831 P.2d 1270, 1273 (Alaska
1992)).

25 ⁷ The affidavit of Commissioner Michael Hanley, dated January 27, 2015, is
26 attached as Ex. 1 to this motion.

1
2 year 2016 under the expectation that they would be using funds from required local
3 contributions. [Hanley affidavit ¶ 3] As this Court rightly held, the State is not legally
4 responsible for fully funding basic need or covering that shortfall, and the borough
5 conceded that it was not arguing for full funding. [Order on Motion to Reconsider at 3;
6 Borough Reply Br. at 10] Nonetheless, by declaring unconstitutional the method by
7 which schools receive their full basic need funding, the court's decision puts in limbo
8 school budgets statewide, including the budgets of non-parties to this suit. Immediate
9 implementation of the order risks seriously impairing educational opportunities in
10 Alaska because it places in jeopardy a key source of school funding that has been relied
11 upon since before statehood.
12

13
14 Even if funding is eventually found from another source, financial limbo has
15 immediate and irreparable effects on schools, as a budget crisis and budget uncertainty
16 make schools less able to retain staff, embark on multi-year projects, or plan for the
17 future. [Hanley affidavit ¶ 9] This problem is exacerbated by Alaska's unprecedented
18 and unrelated revenue shortfall that is already demanding tough decisions. Because of
19 the harm and disruption that will result given the budget deadlines and legislative
20 decision-making timeframe, the State requests that the court grant an immediate stay of
21 the January 23, 2015 Final Judgment.
22

23 Moreover, the State would suffer irreparable harm from immediate enforcement
24 of the Final Judgment because resulting legislative amendments to ameliorate the
25 effects of the loss of funding may render the appeal subject to attack under the mootness
26

1
2 doctrine. The mootness of an appeal is an irreparable injury.⁸ Because some form of local
3 contribution to schools has existed since before statehood, invalidation of the practice
4 through an expansion of the dedicated funds clause is an issue of constitutional and
5 practical significance that the Alaska Supreme Court should have the opportunity to
6 review.

7
8 Even if a subsequent appeal were allowed to proceed, the State also has an
9 interest in not overhauling a system before a final appellate judgment is issued. If the
10 legislature believes it is legally unable to require local contributions pending appeal, it
11 may urgently and imprudently overhaul education funding without the benefit of
12 appellate judgment on the permissibility of the status quo. Even should plaintiffs prevail
13 on some points on appeal, the exact contours of an Alaska Supreme Court decision may
14 not align with this Court's judgment, causing a chaotic and disruptive funding climate
15 for schools in multiple years and creating repeated unnecessary legislative crises.

16
17 Accordingly, the State and public face irreparable harm should this Court's
18 judgment take immediate effect.⁹

19 **II. The borough is adequately protected because they do not face cognizable**
20 **harm if the order is stayed.**

21 The borough is adequately protected by a stay because if they ultimately prevail
22 before the Supreme Court, the political discussion about how education should be
23 funded in Alaska will be able to occur in an atmosphere of legal finality and an agreed

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25 ⁸ *Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986).

26 ⁹ *N. Kenai Peninsula*, 850 P.2d at 639.

1
2 understanding of the meaning of the dedicated funds prohibition. The only impact of the
3 stay would be that any court-required education overhaul would happen slightly later in
4 time—an insignificant factor given that the borough collected a required local
5 contribution for half a century prior to filing suit.¹⁰

6
7 Where, as here, the borough has not, and cannot, establish that they would pay
8 less to educate their children in the absence of the “dedication” of their local
9 contribution to their local school district, a stay imposes no cognizable financial harm
10 on the borough. It is a political question whether an alternative to the current system of
11 local contributions would prove more or less costly for plaintiffs. For example, should
12 the legislature amend the statute to redirect the borough’s current required local
13 contribution into the state’s general fund, plaintiff’s financial outlay would not change
14 at all, although its schools might receive a different amount of funding because their
15 money would not be pledged to their school district. Should the legislature instead
16 institute a state property or sales tax, it is far from certain that the legislature’s formula
17 would improve the financial position of the taxpayer plaintiffs although it would deprive
18 them of local control over how the money is raised. Should the legislature respond to
19 the lack of local contributions by drastically slashing education funding, such
20 precipitous action might well harm rather than benefit plaintiff parents, students, or the
21 borough as a whole.
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26 ¹⁰ See Sec. 1.07, ch. 164, SLA 1962 (requiring local contributions to education).

1
2 Indeed, the only injury caused by an ongoing dedicated fund violation is a
3 limitation on the budgetary discretion of the *legislature* in future years. But this injury
4 does not exist here. Allowing the State to require local contributions of local money to
5 joint state-local cooperative programs such as public schools benefits rather than
6 impedes legislative appropriation freedom. Even if having local contributions did
7 somehow impede future legislatures' budgetary discretion, because local contributions
8 to education have been required since before statehood, any impact caused to legislative
9 discretion by allowing the legislature the option of maintaining the status quo during the
10 brief additional time required for an Alaska Supreme Court appeal is negligible if not
11 non-existent.
12

13 Accordingly, the borough will be "adequately protected" from harm should this
14 Court stay its order pending appeal.¹¹
15

16 **III. The State's arguments raise serious and substantial questions going to the**
17 **merits of the case.**

18 The State incorporates by reference the merits arguments it made to this Court in
19 its opposition and cross-motion for summary judgment and reply. In sum, the State
20 maintains that the local contribution is not state revenue and therefore is not subject to
21 the dedicated funds prohibition. Moreover, even if the dedicated funds prohibition were
22 interpreted broadly as applying to local revenue, the Constitutional Convention
23 Delegates drafted the provision to exempt "contributions from local government units
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25

26 ¹¹ *N. Kenai Peninsula*, 850 P.2d at 639.

1
2 for state–local cooperative programs”¹² such as the local portion of public education
3 funding. For these reasons and the others articulated in its brief, the State has met its
4 burden of raising serious and substantial questions going to the merits of its case.

5
6 **CONCLUSION**

7 Because the State faces irreparable harm if a stay is not granted, the plaintiffs are
8 adequately protected because they face no cognizable legal harm, and the State’s
9 arguments raise serious and substantial questions going to the merits of the case, this
10 Court should grant a stay of its order pending appeal.¹³

11 DATED January 28, 2015

12 CRAIG W. RICHARDS
13 ATTORNEY GENERAL

14 By:

15 Kathryn R. Vogel
16 Alaska Bar No. 1403013
17 Rebecca Hattan
18 Alaska Bar No.0811096
19 Margaret Paton-Walsh
20 Alaska Bar No. 0411074
21 Assistant Attorneys General

22 *Attorneys for Defendants*

23
24 ¹² 1975 Op. Att’y Gen. No. 9 at 8 (May 2) (quoting 6 Proceedings of Alaska
25 Constitutional Convention, App. V, 106-07 (Dec. 19, 1955).

26 ¹³ *N. Kenai Peninsula*, 850 P.2d at 639.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

KETCHIKAN GATEWAY BOROUGH,)
an Alaska municipal corporation and)
political subdivision; AGNES MORAN,)
an individual, on her own behalf and on)
behalf of her son; JOHN COSS, a minor;)
JOHN HARRINGTON, an individual;)
and DAVID SPOKELY, and individual,)

Plaintiffs,)

v.)

STATE OF ALASKA; MICHAEL)
HANLEY, COMMISSIONER OF)
ALASKA DEPARTMENT OF)
EDUCATION AND EARLY)
DEVELOPMENT, in his official)
capacity,)

Case No. 1KE-14-00016 CI

Defendants.)

AFFIDAVIT OF MICHAEL HANLEY

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

I, Michael Hanley, state the following under oath:

1. I am the Commissioner of the Alaska Department of Education and Early Development, and have held this position since February, 2011. The Department of Education and Early Development is responsible for the distribution of funding from the Public Education Fund to school districts in Alaska.

Exhibit 1
of 4

1
2 2. Prior to serving as Commissioner of Education and Early Development I
3 was employed as a public school teacher at Gladys Wood Elementary School in the
4 Anchorage School District for 15 years, from 1991-2006. From 2006-2010 I was an
5 elementary school principal, first at Kasuun Elementary School and then at Kincaid
6 Elementary School in Anchorage.
7

8 3. School districts are required to submit their annual budgets both to the
9 state and to their municipal governments well in advance of each school year. Typically,
10 school districts project basic need in the November prior to the beginning of the
11 subsequent school year, thereby allowing at least 10 months to begin budgeting in order
12 to provide for students entering the classroom the following September.
13

14 4. It is of paramount importance to our students that districts are able to plan
15 for the upcoming school year, and in municipal school districts, the required local
16 contribution is a significant part of the plan. The required local contribution pays for
17 teachers, heating fuel, and other required elements for Alaska's education system.
18 Required local contributions constituted over \$222 million of public education funding
19 in the last school year, and for individual municipal school districts, an average of 16
20 percent of basic student need funding.
21

22 5. For example, in Ketchikan, the required local contribution for FY2015 is
23 approximately \$4.4 million of approximately \$31.6 million in operating expenditures,
24 exclusive of pension funding. The Ketchikan budget plan, including the required local
25 contribution funding, directs \$25 million to the instructional budget component and \$4.4
26

1
2 million for fuel, custodians and other annual operations of buildings. The remaining
3 \$2.2 million is allocated for such things as district administration and student activities.
4 In short, our school districts need the required local contribution to operate as expected.

5 6. This ruling comes at a time when our school districts are already
6 pressured by budgetary constraints. State revenue projections have fallen and the high
7 cost of health care and other challenges have significantly stressed our schools.

8
9 7. Each year, the Alaska Department of Education & Early Development
10 reviews the 53 school district budgets and communicates with individual districts and
11 schools. This year, districts reported budget challenges related to fluctuations in their
12 local economies, costs of goods such as fuel and transportation, and other factors.
13 During these times of economic uncertainty, the current year school budgets represent a
14 careful balance of revenues and expenditures and the required local contribution is a
15 critical source of the current year's plan.

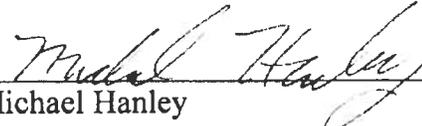
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17 8. Not only are required local contribution dollars a vital source of funding
18 to our municipal schools, the required local contribution is also an essential element of
19 the state's proven, equalized funding mechanism that maximizes Alaska's ability to
20 include federal dollars in its funding formula. The required local contribution impacts
21 not only municipal school districts, but schools throughout Alaska. Maintaining an
22 equalized education funding mechanism allows Alaska to include \$130 million of
23 annual federal Impact Aid receipts in the state's funding formula. Of that amount,
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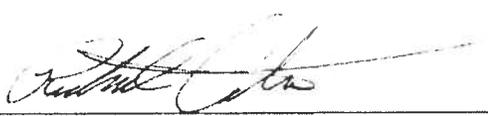
approximately \$70 million dollars from the Impact Aid program funds basic need in Alaska's schools annually.

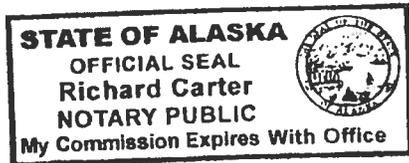
9. The funding formula provides critical stability to schools. Alaska's funding mechanism relies on a studied and considered, predictable formula not only to cover expenditures but to maintain equalized distributions. Dropping a major element mid-year is in conflict with Alaska's public education governance. When school districts are forced to plan budgets under the possibility that a significant percentage of their funding will disappear, schools have trouble retaining staff, embarking on multi-year project commitments, and planning for the future.

Further, your affiant sayeth naught.


Michael Hanley

SUBSCRIBED & SWORN to before me this 27 day of January, 2015.


Notary Public, State of Alaska
My Commission Expires: with office



ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
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Entered 1
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3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

4 KETCHIKAN GATEWAY BOROUGH,)
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18 capacity,)

Case No. 1KE-14-00016 CI

19 Defendants.)

20 **ORDER**

21 Upon consideration of the defendant State of Alaska's emergency motion for
22 stay and any opposition to the motion,

23 IT IS HEREBY ORDERED that the motion is GRANTED. The court's order
24 Final Judgment of January 23, 2015 is stayed pending appeal.

25 DATED this ___ day of January, 2015.

26

Honorable William B. Carey
Superior Court Judge

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

4 KETCHIKAN GATEWAY BOROUGH, et al.,)

5 Plaintiffs,)

6 v.)

7 STATE OF ALASKA, et al.,)

8 Defendants.)

9 Case No. 1KE-14-00016 CI

10 **CERTIFICATE OF SERVICE**

11 I certify that on this date true and correct copies of the *Emergency Motion for*
12 *Stay Pending Appeal, Order* and this *Certificate of Service* were served via e-mail and
13 U.S. First Class Mail on the following:
14

15 Scott A. Brandt-Erichsen
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