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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,)

19 Defendants.)

20 Case No. 1KE-14-00016 CI

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22 **REPLY IN FURTHER SUPPORT OF EMERGENCY MOTION FOR STAY**
23 **PENDING APPEAL**

24 This Court's final judgment has created a legislative and budgetary emergency
25 because the constitution obligates the legislature to "by general law establish and
26 maintain a system of public schools,"¹ and this Court's ruling invalidated key provisions
of the legislation implemented to fulfill that obligation. If the dedicated fund ruling is
upheld on appeal, policymakers will have final Supreme Court guidance as a framework
upon which to determine how to permissibly fund schools. But at this point, only this

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¹ Alaska Const. Art. 7 § 1.

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2 Court has had an opportunity to weigh in on the constitutionality of the existing funding
3 formula. Ketchikan Gateway Borough is unable to justify placing lawmakers in a
4 position where they would feel constitutionally obligated to overhaul education funding
5 statewide before the Alaska Supreme Court has had a chance to weigh in on the
6 constitutionality of Alaska's public school funding formula.

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8 A stay should be granted because without one the legislature may precipitously
9 reimagine school funding on partial information, the legislature may alternatively risk
10 falling short of its obligation to maintain Alaska's public school system, schools may
11 suffer from underfunding, and schools will certainly suffer from increased uncertainty
12 in budgeting. On the other side of the equation, if a stay is granted the borough is
13 adequately protected. It will continue to be required to pay its school district its less than
14 twenty percent share of the basic need cost of educating its residents until the Alaska
15 Supreme Court has had an opportunity to review this Court's decision. But that does not
16 mean that it will pay even a dollar more than it would if the stay were not granted,
17 because without a stay any legislative reimaging of school funding might well cost the
18 municipality or its taxpayers as much or more than they pay under the current system.

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20 The borough tries to reduce the balancing of interests to the narrow financial
21 question of the borough's \$4 million local contribution. But the irreparable harm to the
22 State is beyond the borough and beyond financial costs because the decision impacts
23 school districts statewide and the State also has an interest in the solvency of its school
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2 districts, in the quality of education provided to Alaskan children, and in the orderly
3 functioning of its government following judicial decisions.

4 Given this context, the State's motion for a stay should be granted.

5 **I. The Borough is adequately protected.**

6 Adequate protection exists where the injury that would result from a stay, "is
7 relatively slight in comparison to the injury which the person seeking the [stay] will
8 suffer if the [stay] is not granted."² That is precisely the proportionality here. The
9 borough's only claimed harm is relatively slight: it argues that it will suffer harm
10 because should it prevail on review it will either not receive a refund of any interim
11 required local contributions it pays or it will not be able to refund the money to its
12 taxpayers if it does receive a refund. [Borough Opp. to Stay 19] But the borough offers
13 no response to the point that it does not and cannot know how much it or its taxpayers
14 would be required to contribute should the stay be denied and the legislature enact a
15 new system of education funding. So postponing implementation of a different
16 education funding system is not necessarily a financial loss at all. It is unable to prove
17 that it is even a single dollar worse off under a stay than it would be without one.

18 Additionally, the borough does not argue that it suffers any other injury from the
19 alleged dedication of the required local contribution. [See Borough Opp. to Stay at 18-
20 19] As the State argued without refutation, the harm of a dedicated fund violation is to
21 legislative appropriation freedom, and is therefore not experienced by the plaintiffs.
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25 ² *Alsworths v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (quoting *State v. United*
26 *Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991)).

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2 The argument that the borough is somehow less protected because it is incapable
3 of obtaining or processing a tax refund is a non-starter because the borough is unable to
4 show that any refund would be due. [See Borough Opp. to Stay at 12] But it is also
5 noteworthy that this court directed that the borough could seek restitution for any
6 overpayment directly from its school district. [Order on Motion to Reconsider at 3]
7 Seeking money from a school district is the same recourse that the State would have
8 under the borough's proposed solution of seeking repayment under AS 14.17.610(b) if
9 the State chooses to over-fund the current formula pending appeal and seek repayment
10 in the event of a reversal. [Borough opposition to stay at 5] Similarly, the argument that
11 money spent by a government in one year is not subsequently refundable to the
12 taxpayers who would have otherwise kept or received the money is equally true at the
13 State level, which is responding to its existing revenue shortfall with proposals of
14 budget cuts and lost jobs. The consequences of an attempt to fill an additional several-
15 hundred-million dollar shortfall this year will be immediate and not solved by a
16 subsequent victory in the Supreme Court about the legality of a funding structure that
17 may not necessarily even still be on the books.

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20 **II. The State is irreparably harmed.**

21 The borough downplays the irreparable harm to the State from this Court's
22 judgment by minimizing the scope of this Court's ruling and ignoring all harm beyond
23 the financial loss of the borough's local contribution. [Borough Opp. to Stay at 6] But
24 this Court's judgment impacts more than the \$4 million the borough pays to its local
25 school district; the judgment invalidated the required local contribution statewide with
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2 its holding that that the required local contribution is a “‘dedicated fund’ within the
3 meaning of the Constitutional prohibition, and that it is therefore unconstitutional for
4 the State of Alaska to require the payment” of the required local contribution. [Final
5 Judgment 2] The challenge made by Ketchikan Gateway Borough was a facial
6 challenge to the statutory requirement of a local contribution and not an as-applied
7 challenge. [Complaint at 15] If the State had not appealed, the State would not have had
8 the legal option to enforce the required local contribution everywhere but Ketchikan.
9 Thus, this Court’s judgment leaves the State with a statewide problem affecting the
10 public and other non-parties to this lawsuit.
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12 Similarly, because this Court’s judgment speaks to the facial legality of the
13 required local contribution statewide, a stay of the judgment likewise resolves the
14 immediate legislative and financial crisis that the judgment creates until the Alaska
15 Supreme Court has had a chance to weigh in. The borough misapprehends the nature of
16 the requested stay when it argues that “the Final Judgment continues to have preclusive
17 effect even if it is stayed.” [Borough Opp. to Stay at 2] Their citation for this contention
18 discusses only the irrelevant context of the degree of finality another court would afford
19 the judgment in separate litigation.³ But whether or not an Alaska court would view the
20 superior court decision as “final” pending appeal does not alter the impact of a stay: a
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23 ³ See Opp. to Stay at 7, citing *Huron Holding Corp. v. Lincoln Mine Operating*
24 *Co.*, 312 U.S. 183, 189 (1941) (discussing propriety of state court’s recognition of
25 judgment issued in foreign jurisdiction that was on appeal, concluding it was
26 appropriate where court waited until appeal was finished before issuing its decision).
Here, if separate litigation were filed by a different municipality or taxpayer the State
would request a stay pending decision of the Alaska Supreme Court.

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2 stay would allow the State to continue to implement its funding formula by staying the
3 prohibition on enforcing its funding formula, and would permit the legislature and
4 school districts to rely on local contributions as part of basic need funding in the next
5 school year. As even the borough concedes, the stay would bar enforcement of the Final
6 Judgment. [Borough Opp. to Stay at 7.]
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8 Plaintiffs suggest that because the State does not have full responsibility for
9 funding schools it should be collaterally estopped from arguing that this Court's
10 judgment causes irreparable harm by stripping away an important source of school
11 funding. [Borough Opp. to Stay at 5] But the State has a Constitutional mandate to
12 "establish and maintain a system of public schools open to all children of the State,"
13 which it has historically fulfilled through laws that set up a system of joint state and
14 local cooperation.⁴ By invalidating a key statutory source of funding necessary to the
15 maintenance of public schools, the judgment harms the State's ability to fulfill its duty
16 under the education clause. The State has vested interests in the solvency of Alaska's
17 schools and the adequacy of Alaska's educational opportunities, and these interests
18 should be weighed when considering the merits of a stay.⁵
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20 Additionally, any legislative solution (or lack of solution) that results in less
21 funding to schools next year is an injury suffered by the State and Alaskan children. The
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24 ⁴ Alaska Const. Art. 7 § 1.

25 ⁵ The Alaska Supreme Court has also directed that a superior court's discretion in
26 granting a stay "is guided by the 'public interest,'" making doubly relevant the State's
concerns about harm to students, schools, the legislative process and the public. *Keane*
v. Local Boundary Comm'n, 893 P.2d 1239, 1249 (Alaska 1995).

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2 consequences of a financial decision to withdraw additional money from State coffers
3 for education this year, a time of proposed layoffs and cutbacks, are likewise not
4 remedied by the existence of a statutory ability to collect any overpayment from school
5 districts (and not the borough) in subsequent years. *See* AS 14.17.610(b). People who
6 lose their jobs because education needed more funding will not be made whole if the
7 State chooses to demand money back from school districts a year from now. Nor will
8 Alaskan schoolchildren get an opportunity to repeat underfunded years of their
9 education.
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11 Finally, the harm to the State that comes from a forced reimagining of education
12 funding is one of mootness in both the legal and actual sense. If the legislature feels the
13 need to remove the local contribution before the Supreme Court resolves the issue, the
14 situation will be actually moot for supporters of the current funding formula, regardless
15 of the Court's willingness to hear the case.⁶
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17 Plaintiffs also attempt to minimize the emergency caused by the Court's
18 judgment by pointing out that the administration released its revised budget early.
19 [Borough Opp. to Stay at 9] But the fact that the revised budget was submitted in
20 advance of the statutory deadline, far from signaling that those statutory deadlines are
21 unimportant, communicates that even more time will be required in this year of tough
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23 ⁶ The Alaska Supreme Court "will ordinarily refrain from deciding questions
24 'where the facts have rendered the legal issues moot.'" *Dep't of Health and Soc. Servs.*
25 *v. Alaska State Hosp. and Nursing Home Ass'n*, 856 P.2d 755, 766 (Alaska 1993)
26 (citation omitted). The borough argues that a subsequent attorney's fee award might
provide the basis for the appeal to continue, but as no attorney's fee award is yet in
place this is only a hypothetical exception to mootness.

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2 fiscal choices in order to obtain sound policy choices before the session ends in little
3 more than two months. Additionally, the administration's revised budget does not
4 attempt to replace the required local contribution, and thus there is no plan in place for
5 school districts statewide that have budgeted with the expectation of full basic need
6 funding. Lawmakers should not be put in the position of being compelled to
7 preemptively and precipitously reimagine public school funding out of concern that a
8 funding gap will affect students before the Supreme Court has had a chance to rule.
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10 The borough attempts to downplay the effects of monetary uncertainty on school
11 districts with its affidavit from the Ketchikan Gateway Borough school district
12 superintendent. [Borough Opp. to Stay at 17] But the school district's affidavit, far from
13 establishing that uncertainty is desirable, establishes that in normal years school districts
14 view basic need (including the required local contribution) as a foundational "floor" for
15 the amount of funding they will receive. [Borough Opp. to Stay at 17, Boyle affidavit
16 ¶ 4.] But it's precisely this floor that is subject to falling away when a key component of
17 its foundation is treated as unconstitutional. As plaintiffs repeatedly suggest, the
18 legislature has the option to underfund basic need this year or to simply not make up for
19 the required local contributions, and then the school district would not receive the "set
20 entitlement amount" that it currently views as so foundational that it "is not significant
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2 to budget planning.” [Boyle affidavit ¶¶ 4, 10] Other school districts are continuing to
3 budget with the expectation of local contributions.⁷

4 In sum, this Court’s judgment, if not stayed, will have a widespread impact that
5 has not yet been planned for in either state or local budgets across the state. A stay
6 would keep existing money sources flowing to Alaska schools, and allow the legislature
7 to change the education funding structure either with the benefit of Supreme Court
8 guidance or, if sooner, only because it politically desires to do so.

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10 **III. The State has made a sufficient showing on the merits.**

11 Because the borough is adequately protected, the State need only show that it has
12 raised serious and substantial questions going to the merits of the case.⁸ It has easily met
13 that standard because its arguments are not “frivolous or obviously without merit.”⁹ But
14 the State would also satisfy the stricter test of “clear showing of probable success on the
15 merits” because the Alaska Supreme Court, unlike this Court, will be free to revisit
16 some of its more broadly worded language in cases such as *Alex* in light of the clear
17 intent of the constitutional delegates to restrict only dedication of state revenue¹⁰ and the

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20 ⁷ O’Connor, Brian, “State will appeal school funding ruling.” *Mat-Su Valley*
21 *Frontiersman* (Jan. 29, 2015), *attached as Ex. 2* (quoting assistant superintendent Luke
22 Fulp as saying that the ruling has not changed their budget estimates and that the ‘best
23 case scenario would be a continuation of the current funding structure in which the
24 required local contribution is fully funded”).

25 ⁸ *State, Division of Elections v. Metcalfe*, 110 P.3d 976, 979 (Alaska 2005).

26 ⁹ *Id.*

¹⁰ *See State v. Alex*, 646 P.2d 203, 209 (Alaska 1982) (provision motivated by
concerns about hampering scope and flexibility of budgeting in legislature).

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2 express exemption made for state-local cooperative programs such as education.¹¹ The
3 delegates to the Alaska Constitution never discussed the dedicated fund provision as if it
4 would restrict the ability of the State to require local contributions to public schools.
5 And the Alaska Supreme Court has similarly never interpreted the dedicated fund clause
6 as implicating the local portion of any matching grant. It is quite likely that when
7 confronted with the borough's new application of the dedicated fund clause, the Alaska
8 Supreme Court will clarify any existing precedent and uphold Alaska's historic practice
9 of joint state and local funding of public schools. In the interim, a stay is warranted.
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11 **CONCLUSION**

12 This Court should grant a stay of final judgment pending appeal.

13 DATED February 12, 2015

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15 CRAIG W. RICHARDS
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25 ¹¹ 1975 Op. Att'y Gen. No. 9 at 8 (May 2) (quoting 6 Proceedings of Alaska
26 Constitutional Convention, App. V, 106-07 (Dec. 19, 1955).

State will appeal school funding ruling

Posted: Thursday, January 29, 2015 8:11 pm

ANCHORAGE — State officials announced plans Wednesday to appeal a court ruling affecting school funding statewide.

The November 2014 ruling in favor of the Ketchikan Gateway Borough essentially invalidated a longstanding practice of funding 34 of the 53 Alaska school districts, including Mat-Su Borough schools. Perhaps more important than the fact of the appeal — school budget officials said they had anticipated the appeal in both long- and short-term planning anyway — officials with the Alaska Department of Law said they anticipated filing a stay of the decision by the end of the week, and expected an answer by the following week. Officials also said they would seek a stay from the Alaska Supreme Court in the event that the Superior Court denied to stay proceedings, according to assistant attorney general Kathryn Vogel



Reading to learn

Meadow Lakes Elementary School third-grader Brayden Johnson reads a book in Jennifer Hudson's class Feb. 7, 2014.

“We plan to request the stay as soon as possible and will request expedited consideration of the stay,” Vogel wrote in an e-mail.

Were the stay to be granted, it could resolve budget issues arising from the lawsuit in the short term. Mat-Su Borough School District officials have said the ruling could result in the state being forced to make up the difference, if the ruling isn't put on hold while the appeal makes its way through the process.

In the meantime, school officials are continuing with annual budgeting prospect unabated, said Luke Fulp, assistant superintendent for business services.

“It wasn't done in consultation with the state,” he said. “We were just assuming the state would appeal.”

Budget preparations are presently underway, and the preliminary budget will be presented to the school board Wednesday, Fulp said. The budget was on-track to be submitted to state officials by July 15. The ruling has not affected the present budgeting cycle in any way, he said.

“The best case scenario would be a continuation of the current funding structure in which the required local contribution is fully funded,” he said. “The worst case scenario would be that the

Exhibit 2
Page 1 of 2

school district does not continue to be funded at the same level because the required local contribution becomes a responsibility of the state, leading to a proportionate reduction of state funding across all school districts in Alaska if the state determines that it is unable to meet this obligation.”

The ruling struck down a portion of school funding formula known as the required local contribution, essentially, a portion of school costs coming from borough or city coffers. Superior Court Judge William Carey ruled that because the funds were earmarked for schools, they violated a provision of the Alaska constitution disallowing for fees to be earmarked, according to court documents.

Borough officials, ensconced in their own budget preparations, were unavailable for comment Thursday morning.