

IN THE SUPREME COURT FOR THE STATE OF ALASKA

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

Appellants/Cross-Appellees,

v.

KETCHIKAN GATEWAY BOROUGH;  
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, an  
individual,

Appellees/Cross-Appellants.

Supreme Ct. No. S-15811/S-15841

Superior Court No. 1KE-14-00016 CI

**APPELLEES/CROSS APPELLANTS' MOTION AND MEMORANDUM IN  
SUPPORT OF MOTION FOR RECONSIDERATION OF MARCH 11, 2015 ORDER  
STAYING SUPERIOR COURT'S JANUARY 23, 2015 JUDGMENT PENDING  
APPEAL AND REQUEST FOR A DECISION ON THIS MOTION  
BY APRIL 30, 2015**

*Introduction and Summary of Appellees' Arguments*

In accordance with Alaska Rule of Appellate Procedure 503(h)(2)(c), Appellees/Cross Appellants ("Appellees") respectfully request that the Court reconsider its March 11, 2015 Order granting the State's Emergency Motion For a Stay Pending Appeal ("March 11, 2015 Order"). The Order instructed that counsel work with the Clerk of Court ("Clerk") to "arrange a briefing schedule on an expedited basis." The March 13, 2015

Scheduling Order (“Scheduling Order”) provides for a leisurely as opposed to expedited briefing schedule culminating in an oral argument that will not take place until the week of September 14, 2015. It is unknown when the Court will rule following oral argument. Appellees’ counsel strongly objected to this schedule in the March 13, 2015 scheduling conference call with the Clerk because it will result in further harm to Appellees from which there is no adequate protection. Appellee Ketchikan Gateway Borough (“KGB”) raises the funds to pay the required local contribution provided for in AS 14.17.410(b) and AS 14.12.020(c) (“RLC”), which the Superior Court declared unconstitutional, through property and sales taxes. In accordance with AS 29.45.240, the property tax mill levy must be prepared before June 15, 2015. In light of the briefing schedule, KGB will be forced to levy and collect, and the private party Appellees will be forced to pay and fund the RLC, during the pendency of this appeal. In addition, even if the Court ultimately rules in Appellees’ favor and awards a refund of previously paid RLCs to the KGB, the private taxpayer Appellees will still be harmed and are not adequately protected because no mechanisms exist to refund taxes previously paid to taxpayers, especially sales taxpayers. And, unlike in other appeals, the Court is statutorily precluded from requiring Appellant State of Alaska to post a supersedeas bond.

In light of these uncontested facts, Appellees request that the Court reconsider the March 11, 2015 Order granting the stay and issue another order denying the stay. The current schedule for the Court to issue a decision on the merits is yet another reason why

Appellees are not adequately protected from harm as required by *Keane v. Local Boundary Com'n*, 893 P.2d 1239, 1249-50 (Alaska 1995) and its progeny for issuance of a stay pending appeal.

**I. The Briefing Schedule Is Not Expedited and Constitutes An Additional Reason Why Appellees Are Not Adequately Protected and A Stay Pending Appeal Should Be Denied.**

In order to obtain a stay of a nonmonetary judgment pending appeal, the moving party must first establish that it faces irreparable harm if the Court denies the request for the stay. Second, if the opposing party can be adequately protected, there must either be serious and substantial questions going to the merits of the case or, if the opposing party cannot be adequately protected, the moving party must show a clear likelihood of prevailing on the merits.<sup>1</sup>

As explained in the February 9, 2015 Affidavit of Ketchikan Gateway Borough (“KGB”) Manager Dan Bockhorst at ¶ 3, AS 29.45.240 requires that property taxes be levied only once annually before June 15 of each year.<sup>2</sup> Additionally, state statutes also set forth a schedule for preparation and approval of the school district budget in May and June

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<sup>1</sup> See *Keane*, 893 P.2d at 1249-50. Further, the Court’s precedent explains that trial courts have discretion to determine whether a stay is appropriate and further, that the trial court’s decision will only be overruled if it abused that discretion. See, e.g., *Keane*, 893 P.2d at 1249-50 (Superior Court did not abuse its discretion in denying stay pending appeal). Precedent also holds that the superior court is often in the best position to determine whether to grant a stay. See *Powell v. City of Anchorage*, 536 P.2d 1228, 1230 (Alaska 1973) (citation omitted) (“the stay or suspension of such judgments often involves a delicate balancing of the equities that only the court thoroughly familiar with the case is able to make”).

<sup>2</sup> Mr. Bockhorst’s February 9, 2015 Affidavit (“2/9/15 Bockhorst Aff.”) is included in material previously provided to the Court. A copy of it is also included with this Motion for the convenience of the Court.

each year.<sup>3</sup> The KGB cannot subsequently modify the June 15 mill levy.<sup>4</sup> Tax bills are sent out by July 1 of each year in accordance with AS 29.45.240(b).<sup>5</sup> The RLC amounts to more than fifty percent of the KGB's annual areawide property tax levy.<sup>6</sup>

At the March 13, 2015 scheduling conference presided over by the Clerk, the Clerk explained that the Court had directed her to establish a briefing schedule that would result in oral argument in mid-September 2015.<sup>7</sup> She further explained that she did not know when the Court would issue its decision following oral argument.<sup>8</sup> Counsel for Appellees explained the above described statutory deadlines to the Clerk and stated that, in light of the stay granted by the Court in the March 11, 2015 Order, Appellees would be further harmed if a ruling from the Court was not received before June 15, 2015.<sup>9</sup> Counsel for Appellees suggested a briefing, oral argument and decision schedule that would accommodate the statutory deadlines.<sup>10</sup> Counsel for Appellants/Cross Appellees ("Appellants") objected to the schedule proposed by Counsel for Appellees.<sup>11</sup> Furthermore, the Clerk indicated that

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<sup>3</sup> March 16, 2015 Affidavit of Dan Bockhorst (3/16/15 Bockhorst Aff.") at ¶¶ 3 and 4. A PDF version of the 3/16/15 Bockhorst Aff. is attached to this Motion. The original version with Mr. Bockhorst's signature will subsequently be provided to the Court.

<sup>4</sup> 3/16/15 Bockhorst Aff. at ¶ 5.

<sup>5</sup> 3/16/15 Bockhorst Aff. at ¶ 6.

<sup>6</sup> 3/16/15 Bockhorst Aff. at ¶ 6; Exhibit A (Transcript of February 20, 2015 Oral Argument on the Stay Motion ("Oral Argument Transcript")) at 30.

<sup>7</sup> March 16, 2015 Affidavit of Louisiana W. Cutler ("Cutler Aff.") at ¶ 3.

<sup>8</sup> Cutler Aff. at ¶ 4.

<sup>9</sup> Cutler Aff. at ¶ 5, 6.

<sup>10</sup> Cutler Aff. at ¶ 7.

<sup>11</sup> Cutler Aff. at ¶ 8.

there would not be enough time for the Court to rule in accordance with the schedule set forth by Appellees' counsel.<sup>12</sup>

In light of the inability of the Court to rule before June 15, 2015, Appellees will be further harmed by the stay issued in the Order because Appellee KGB will be forced to levy and collect, and private taxpayer Appellees will be forced to pay and fund the RLC, during the pendency of the appeal even though the Superior Court declared it unconstitutional. The Court is precluded by AS 09.68.040(a) from requiring the State to post a supersedeas bond for this appeal. Even if the Court ultimately upholds Judge Carey's finding that the RLC is unconstitutional and overturns his finding that Appellee KGB is entitled to a refund, the private taxpayer Appellees will not be adequately protected because there are no mechanisms in place for the KGB to refund taxes already paid.<sup>13</sup> As Mr. Bockhorst explains, property taxpayers often sell their property or move away.<sup>14</sup> Further, the identity of sales taxpayers is not even known by the KGB since such taxes are collected by merchants and delivered to the KGB.<sup>15</sup> Thus, it is not possible to refund taxes to the parties who paid them.<sup>16</sup>

In light of the above described uncontested facts, the briefing and argument schedule adopted in the Scheduling Order insures that Appellees will not be adequately protected for

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<sup>12</sup> Cutler Aff. at ¶ 9.

<sup>13</sup> 2/9/15 Bockhorst Aff. at ¶4; Oral Argument Transcript at 29-30.

<sup>14</sup> 2/9/15 Bockhorst Aff. at ¶4.

<sup>15</sup> 2/9/15 Bockhorst Aff. at ¶4.

<sup>16</sup> 2/9/15 Bockhorst Aff. at ¶4.

at least another year even if the Court ultimately rules in their favor. Under such circumstances, the Court should reconsider its Order and deny the stay. The only way to insure that all Appellees are adequately protected during the pendency of the appeal is to lift the stay.

In addition to the inadequacy of the protection, the Court did not have the benefit of the complete record on the stay proceedings which was available to Judge Carey. After Judge Carey ruled, Appellants requested that the full Court review the record below including Judge Carey's decision before issuing its decision.<sup>17</sup> However, Appellants did not provide the Court with a transcript of the oral argument before Judge Carey on the stay motion, which contains Appellees' responses to Appellant's reply brief and articulates why Appellants are not irreparably harmed, why Appellees are not adequately protected, and why Appellants have not demonstrated a clear likelihood of success on the merits as required to obtain a stay.<sup>18</sup> Appellees therefore request that the Court review the Oral

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<sup>17</sup> Appendix to March 2, 2015 Notice That Emergency Motion For Stay Is Ripe For Decision And Request For Full Court Consideration.

<sup>18</sup> For example, with respect to whether Appellants are irreparably harmed, Appellees pointed out that the legislature is not required to fund education at any particular level and therefore, has complete discretion to react to the February 23, 2015 Final Judgment, including doing nothing. Oral Argument Transcript at 18-21. It is the Legislature that determines what choices to make in funding on an annual basis in accordance with the Anti-Dedication Clause. *Id.* Additionally, Appellees reiterated that Appellants cannot be irreparably harmed from the lack of an RLC since Appellants' position below was that they receive no benefit from the RLC and therefore, should not have had to refund previously paid unconstitutional RLCs. *Id.* at 27. With respect to whether Appellees are adequately protected, Appellants' arguments largely depend on speculation about the future, not actual facts and only facts are considered when weighing whether a stay should be granted or denied. *Id.* at 27. Additionally, Appellees explained that a restitution claim against the KGB School District is not a realistic possibility in light of the statutory scheme for overpayment of state aid and related issues and that even if it were realistic, it would not

Argument Transcript attached as Exhibit A to this Motion before deciding whether to grant or deny this Motion.

### Conclusion

To the extent that the Court believed that a briefing schedule that might result in a decision by the end of the year would adequately protect Appellees, Appellees request that the Court take into account the harm that Appellees will suffer as a result of the current briefing schedule in addition to all of the previously asserted reasons for why Appellees are not adequately protected during the pendency of this appeal, as well as the fact that Appellants have not demonstrated irreparable harm or a likelihood of clear success on the merits of their appeal.

Finally, because of the statutory deadlines set forth above, in accordance with Alaska Rule of Appellate Procedure 503(a)(6), Appellees request that the Court issue a decision on this Motion by April 30, 2015.

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benefit the private party Appellees because of the lack of a mechanism for refunding any recouped taxes to taxpayers. *Id.* at 28-30. Finally, with respect to clear likelihood of success on the merits, Appellants' counsel admitted that the Court would have to overturn earlier precedent to rule in their favor. *Id.* at 14. The need to overturn precedent cannot demonstrate clear likelihood of success on the merits. *Id.* at 32-33.

DATED at Anchorage, Alaska this 17<sup>th</sup> day of March, 2015.

K&L GATES LLP

By: LW Cutler  
Louisiana W. Cutler, ABA #9106028  
Jennifer Coughlin, ABA#9306015  
Attorneys for Appellees Ketchikan  
Gateway Borough, Agnes Moran, John  
Coss, John Harrington and David Spokely

KETCHIKAN GATEWAY BOROUGH

By: LW Cutler for  
Scott Brandt-Erichsen, ABA #8811175  
Attorney for Appellee Ketchikan Gateway  
Borough

**CERTIFICATE OF FONT AND SERVICE**

I hereby certify that the font used herein is Point  
13, Times New Roman.

I further certify that on March 16, 2015, a copy  
of the foregoing was served on:

by:  hand  mail  fax

Kathryn R. Vogel  
Assistant Attorneys General  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK. 99501

By: Tara L. Moore  
Tara L. Moore

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT

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

Plaintiffs, )

vs )

No. 1KE-14-00016 CI )

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

Defendants.)

VOLUME I

TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE WILLIAM CAREY  
Superior Court Judge

Ketchikan, Alaska  
February 20, 2015  
11:18 a.m.

APPEARANCES:

FOR THE PLAINTIFF:

LOUISIANA CUTLER  
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420 L Street, Suite 400  
Anchorage, Alaska 99501

FOR THE DEFENDANT:

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Anchorage, Alaska 99501

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT

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

8 Plaintiffs, )

9 vs ) No. 1KE-14-00016 CI

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

13 Defendants.)

14 VOLUME I

15 TRANSCRIPT OF ORAL ARGUMENT  
16 BEFORE THE HONORABLE WILLIAM CAREY  
Superior Court Judge

17 Ketchikan, Alaska  
18 February 20, 2015  
11:18 a.m.

19 APPEARANCES:

20 FOR THE PLAINTIFF: LOUISIANA CUTLER  
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21 Anchorage, Alaska 99501

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23 1031 West Fourth Avenue  
Suite 200  
24 Anchorage, Alaska 99501

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PROCEEDINGS

1 Room D-306  
 2 11:18:16  
 3 THE CLERK: All rise. The Superior Court is now in  
 4 session. The Honorable William B. Carey presiding.  
 5 THE COURT: Please have a seat, everybody. Well, this is  
 6 the time set for oral argument on a motion for stay pending  
 7 appeal in the matter of the Ketchikan Gateway Borough, Agnes  
 8 Moran, John Coss, John Harrington, and David Spokely versus the  
 9 State of Alaska and the Commissioner of the Department of  
 10 Education and Early Development, case number 1KE-14-16. Here  
 11 in the courtroom is Ms. Cutler on behalf of the Borough.  
 12 Welcome back. Mr. Brandt-Erichson is here as well.  
 13 MS. CUTLER: I'm just going to say I'm here on behalf of  
 14 all the plaintiffs here.  
 15 THE COURT: All the plaintiffs. Right.  
 16 MS. CUTLER: Thank you.  
 17 THE COURT: And I'll note the presence of Ms. Moran,  
 18 Mr. Coss and I think Mr. Spokely and Mr. Harrington as here as  
 19 well. There he is. Okay. On the line is Ms. Vogel on behalf  
 20 of the State. Ms. Vogel, can you hear me okay?  
 21 MS. VOGEL: Yes. I can hear you. And with me, Your  
 22 Honor, is the Attorney General, Craig Richards.  
 23 THE COURT: That's what I understand.  
 24 MS. VOGEL: And on the line in Juneau is Rebecca Hattan.

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1 THE COURT: Sure. I didn't necessarily set time limits.  
 2 How much time do you think you need?  
 3 MS. VOGEL: I'm not sure, Your Honor. I don't know that I  
 4 have more than, say, 15 minutes.  
 5 THE COURT: Okay. All right. Well, we'll give you --  
 6 certainly you're -- you will be allowed reasonable rebuttal.  
 7 So, I'm prepared to hear from you, if you're ready to go.  
 8 MS. VOGEL: Fantastic. Thank you. The State is  
 9 requesting this stay because this Court's judgment would  
 10 require a fee change in the way education is funded in Alaska.  
 11 And the State believes Supreme Court review is warranted first.  
 12 I think the very first thing to address is the scope of  
 13 this Court's judgment, just because there was some disagreement  
 14 in the briefing. Then I'll be turning to irreparable harm to  
 15 the State, and then adequate protection for the Borough.  
 16 But touching briefly on the scope of this Court's  
 17 judgment, it is a statewide judgment. And this Court's  
 18 judgment affected more than just Ketchikan. This is evidenced  
 19 by the presence of Amicus participating in this lawsuit, and  
 20 it's -- because the State doesn't do business of requiring  
 21 every party individually to sue if a statute has been ruled  
 22 invalidated. That's just not the way the State does business.  
 23 and I think that's also evidenced by the way Ketchikan  
 24 presented the challenge. This was a facial challenge to the  
 25 required local contribution and not an as-applied challenge.

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1 THE COURT: Okay. Ms. Hattan and Ms. Vogel and the  
 2 Attorney General, Mr. Richards. You folks are missing a  
 3 beautiful day in Ketchikan. Sorry. It wasn't so much earlier  
 4 this morning. We were sorry that you're not present. Well --  
 5 MS. VOGEL: It was very pretty from the sky.  
 6 THE COURT: Okay. And I'm sorry I didn't get the chance  
 7 to meet the attorney general, as well. But in any event, we're  
 8 here and I assume the parties are ready.  
 9 I have reviewed all of the briefing, the affidavits and  
 10 the exhibits that have been submitted, digested them to the  
 11 extent I have been able to. A couple of observations. I mean,  
 12 certainly this -- I don't think there's any dispute. I don't  
 13 think Ms. Cutler and Mr. Brandt-Erichson would dispute that the  
 14 State certainly has serious and substantial issues raised in  
 15 their appeal. So it would seem that the question before the  
 16 Court is determining whether the State would suffer irreparable  
 17 damage by my decision holding up, while the Supreme Court deals  
 18 with these issues, and whether the Borough can be, and the  
 19 other defendants can be adequately protected in the meantime.  
 20 But, I guess I'll hear from the parties. And Ms. Vogel, I  
 21 assume you're going to be arguing for the State.  
 22 MS. VOGEL: Yes, Your Honor.  
 23 THE COURT: Okay. Are you ready to go?  
 24 MS. VOGEL: Yes. And I'd love to reserve five minutes for  
 25 rebuttal.

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1 As a result, the stay is the relief that -- that the State  
 2 would seek on the stay is substantial enough to protect the  
 3 interests that the State is talking about. In other words,  
 4 protected the required local contribution for the coming school  
 5 year, not just Ketchikan Gateway Borough's \$4.4 million going  
 6 to their schools, but around the state, the \$223 million that  
 7 are the required local contributions. And because of that, it  
 8 would also -- a stay would also protect the federal impact aid,  
 9 which the State gets because we have equalized funding. And  
 10 that's another \$70 million. So, just a word on scope; the  
 11 State firmly believes that the judgment is a big one for the  
 12 State, and that a stay is important for the State.  
 13 Turning then to I think the more contested issue of  
 14 irreparable harm, there are six different irreparable harms  
 15 that I identified. And the first is actually more basic than  
 16 what we've discussed in the briefing, which is that any time a  
 17 state is enjoined by a court from effectuating statutes enacted  
 18 by representatives of its people, it suffers an irreparable  
 19 injury. And this is a principle that United States Supreme  
 20 Court has reflected upon. And this afternoon I'd like to send  
 21 a Rule 77(l) supplemental notice to this Court with Maryland v.  
 22 King, which is at 567 U.S. 2012. And it's from Chief Justice  
 23 Roberts on a stay, and he is granting the stay to a state and  
 24 making this exact point about irreparable injury. It does harm  
 25 to a state when the laws passed by its representatives are

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1 enjoined by a court. And that's the first injury that's done  
 2 here. But of course it's not the last.  
 3 Secondly, there is the ongoing harm to the education  
 4 clause, because this Court's judgment invalidates the  
 5 legislatures method of fulfilling its obligation under the  
 6 education clause to establish and maintain a system of public  
 7 schools in Alaska. And so, it's not just, oh, it's old law  
 8 that Alaskans no longer get to have in force, it's also it's  
 9 our way of fulfilling the education obligation. And that's  
 10 obviously a big deal all by itself, no matter how many people  
 11 this judgment affected.  
 12 But thirdly, and perhaps most troubling, this invalidation  
 13 occurs without either sufficient time or sufficient  
 14 information. So, the lack of sufficient time that we're  
 15 talking about here is we're 30 days into a 90-day session. The  
 16 governor's budget and the governor's revised budget did not  
 17 provide for any other source of funding to help fill the gap  
 18 that required local contributions currently fill for their  
 19 schools. There aren't bills pending that address how else to  
 20 come up with the required local contribution or revise the  
 21 legislation or to provide a different source of funding. And  
 22 so, this is a situation where there really is an emergency  
 23 situation and not enough time to fix it.  
 24 Other courts, even final judgments from a supreme court  
 25 about issues as important as education often delay the impact

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1 THE COURT: Okay.  
 2 MS. VOGEL: It's not directly about, you know, what  
 3 happens at this interim stage, but it is sort of this -- the  
 4 bigger picture of hey, is this the sort of harm that the State  
 5 would be facing down the road anyway, and therefore does it  
 6 matter less that the State faces it now. I think -- I think  
 7 sort of on the first instance it, you know, this is something  
 8 that we would ask the Supreme Court not to do to the State or,  
 9 you know, to the legislature. But even more so, it's true in  
 10 the case of a decision from the Superior Court where there  
 11 haven't been final appellate review. And that's because this  
 12 invalidation occurs without sufficient information.  
 13 As Your Honor is aware, this was a complicated case.  
 14 There were three different constitutional provisions that were  
 15 part of the initial challenge. And this Court threaded its  
 16 dedicated fund decision and determined that while the required  
 17 local contribution doesn't invalidate the appropriation or the  
 18 detail clause, is it does have a dedicated fund problem. And I  
 19 think a very valid concern that the state has is that the  
 20 Supreme Court's decision, even if it re -- even if it affirms  
 21 this Court's decision, won't share the contours of this Court's  
 22 decision, and might have different things to say about what the  
 23 boundaries are of the dedicated fund clause. And as a result,  
 24 this requiring the legislature to change the education system  
 25 now is really asking them to do so on incomplete information.

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1 of their judgment. Colorado is a case that comes to mind,  
 2 where the Colorado Supreme Court advised that any judgment  
 3 invalidating the education formula needs to provide sufficient  
 4 time to allow the legislature an opportunity to respond. And  
 5 simply put, this isn't enough time. I would say plaintiffs  
 6 argued, hey, you know, the problem of lack of time could happen  
 7 later on Supreme Court review. And I think the pitch that we  
 8 would make to the Supreme Court deciding in the final instance  
 9 about education is similar. You know, any court judgment about  
 10 something that has this magnitude, should give the State and  
 11 the legislature time to implement it in a sound way. Because  
 12 these are important issues.  
 13 THE COURT: Can I -- can I break --  
 14 MS. VOGEL: Here, there's not that time.  
 15 THE COURT: -- for just a moment, Ms. Vogel? I'm sorry.  
 16 MS. VOGEL: Of course.  
 17 THE COURT: You referenced -- you referenced some Colorado  
 18 authority just now, and I'm not sure what that was.  
 19 MS. VOGEL: Your Honor, it's -- it wasn't a -- it was a  
 20 Colorado Court of Appeals decisions. Hold on one second.  
 21 THE COURT: Okay. Did you cite it in your brief? Because  
 22 I didn't recall that.  
 23 MS. VOGEL: No, Your Honor. That, again, was not cited in  
 24 the brief. And I'd be happy to supply that in the 77(l) letter  
 25 this afternoon.

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1 Because we don't know what the Alaska Supreme Court is going to  
 2 say about the dedicated fund clause in this context. And the  
 3 State does feel that this is a different context. There hasn't  
 4 been a dedicated fund clause case about the local portion of a  
 5 matching grant. There hasn't been a dedicated fund case about  
 6 money that's not state revenue that is of a local nature  
 7 before. And we think that the Supreme Court may have very  
 8 different things to say about what the dedicated fund clause  
 9 means in this context.  
 10 The fourth irreparable harm that the State's identified is  
 11 that enforcement of this judgment is certain to cause  
 12 uncertainty among school districts and around the state. There  
 13 are 53 school districts. They've had draft budgets prepared.  
 14 School districts view basic needs funding as a floor that they  
 15 can build upon for their education funding. And the required  
 16 local contribution averages out to be 16 percent of that basic  
 17 need funding. And so this is money, in other words, that our  
 18 school districts have come to believe is foundational. And  
 19 already in the process, you know, we're in -- we're at the time  
 20 of year where school districts are having hiring job fairs and  
 21 are needing to make decisions about employees and what sort of  
 22 educational opportunities they're going to be offering next  
 23 year. So, even if the, you know, if the stay is not granted,  
 24 essentially uncertainty ripples throughout the state, even to  
 25 non-parties.

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1 The fifth irreparable harm is that a legislative change  
 2 may moot, in law and in fact, the State's claims. So, if the  
 3 legislature does take action to comply with its constitutional  
 4 obligation under the education clause and believes that it's  
 5 required to act immediately this session -- that would be  
 6 before the Supreme Court has had a chance to weigh in on this  
 7 issue. And thus, in fact, the Supreme Court would be facing a  
 8 situation where the statutory structure that we'd ask them to  
 9 review is no longer one that exists. Generally, the Supreme  
 10 Court doesn't hear cases like that, that are moot, so there's a  
 11 legal mootness problem that the State would face. But equally  
 12 importantly for the people who have elected their  
 13 representative and who have made the policy choice of a  
 14 required local contribution, mooting in fact, by changing the  
 15 structure before the Supreme Court has ruled, is an irreparable  
 16 injury to the people of Alaska.

17 And lastly, there is the possibility that the legislature  
 18 either won't act or the funding won't be replaced. And so  
 19 there will be a funding gap, which presents the possibility of  
 20 harm to educational opportunities. And, you know, there is no  
 21 re-do button on a year of school for Alaska's children. And  
 22 this is about the funding that happens for next school year.  
 23 So, that, too, is irreparable injury that isn't solved by this  
 24 -- of the State getting a reversal, you know, down the road.  
 25 So, with that in mind, unless the Court has questions,

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1 required local contribution costs. What we don't know is how  
 2 much the stay costs. So, in other words, yes, under the status  
 3 quo they pay a required local contribution. But if a stay is  
 4 -- or by status quo I mean under the required local  
 5 contribution system, that's how much they would pay next year.  
 6 But the big question mark is would they pay even a dollar less  
 7 if this Court denied the stay? And the answer is, we don't  
 8 know. We don't know if there would be a property tax imposed  
 9 by the state that would charge 2.65 mils to the people of  
 10 Ketchikan. We don't know if there would be -- and this would  
 11 be new for the State of Alaska -- a tax on boroughs, such that  
 12 the borough was paying the exact same amount of money. We  
 13 don't know if Ketchikan would voluntarily pay that amount of  
 14 money, if the state was showing no signs of raising revenue to  
 15 pay for the required local contribution itself. And we don't  
 16 know if there was some other solution for raising revenue, how  
 17 much it would cost the people of Ketchikan or borough. So,  
 18 yes, we know what they pay right now. We don't know what they  
 19 would pay if a stay was denied.

20 And I think that this would be a different analysis if  
 21 there was a showing that Ketchikan was paying money that the  
 22 state was somehow obligated to pay, and therefore it really  
 23 would be, you know, the equivalent of paying a bond. But in  
 24 fact, what the court found is that right now, Ketchikan pays  
 25 money to the school districts. And they're paying to educate

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1 I'll turn to adequate protection for the Borough.  
 2 THE COURT: Go ahead.  
 3 MS. VOGEL: So, I think the first point is that the  
 4 Borough hasn't shown even a dollar of measurable cost to them  
 5 from the granting of a stay. And that's because it is simply  
 6 unclear what they would pay in the alternative.  
 7 THE COURT: Well, don't you --  
 8 MS. VOGEL: Partially, it's a simple question --  
 9 THE COURT: -- don't they have a set --  
 10 MS. VOGEL: -- that would be decided by the legislature,  
 11 partially it's a local question. I think that was reflected in  
 12 their own affidavit where they indicated, you know, they might  
 13 choose to spend the tax payers' money differently or more  
 14 towards the voluntary contribution portion if a stay was denied  
 15 and hypothesizing that the State had also supplied the money  
 16 separately.  
 17 THE COURT: Don't we know -- excuse me, Ms. Vogel. Don't  
 18 we know -- I mean, I've reviewed the affidavits of the Borough  
 19 manager and the school superintendent. And don't we know that  
 20 the RLC is going to roughly be 2.65 mils on the value of the  
 21 property here? And last year it was \$4 million, some odd.  
 22 MS. VOGEL: Yes. So we currently know how much --  
 23 THE COURT: Don't we know -- don't we pretty much know  
 24 that?  
 25 MS. VOGEL: -- the re -- yes. We know how much the

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1 their students. And in return, they receive a return. The  
 2 return is a more educated populous. This isn't done just  
 3 enrichment. It isn't a bond. It's local responsibility. The  
 4 legal harm that comes from a dedicated fund problem is about  
 5 freedom of appropriation. We argue that the freedom of  
 6 appropriation that the dedicated fund clause is about is the  
 7 state legislature. And that the borough simply doesn't suffer  
 8 any harm from the state legislature being able to maintain the  
 9 option this year to continue to expect the required local  
 10 contribution. And we also argue that it's an adequate solution  
 11 for a dedicated fund problem to allow the solution to wait for  
 12 Supreme Court review and to hear what the Supreme Court has to  
 13 say about the dedicated fund and to have the problem in a  
 14 statute, if there indeed is a problem in the statute, fixed  
 15 under that climate of finality. And understanding what the  
 16 Supreme Court has to say about the dedicated fund problem.

17 Given that, that there's no -- there's no -- not even a  
 18 dollar of measurable cost caused by a stay, and that there's  
 19 been no other legal harm to the borough or the parties  
 20 demonstrated, the state maintains that the balancing is fairly  
 21 easy. There's irreparable harm to the state, the borough's  
 22 adequately protected, and the questions are certainly  
 23 substantial. I think the state also feels that it has a  
 24 likelihood of success on the merits because this will be the  
 25 Supreme Court's first time at looking at this, and we think

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1 it's a road that they're not going to want to go down, inter --  
 2 invalidating local funding of public schools.  
 3 THE COURT: Well, maybe they might want --  
 4 MS. VOGEL: But I don't --  
 5 THE COURT: -- you know, maybe it's not a road I may have  
 6 wanted to go down, but I had to look at the legal issue. And  
 7 that was -- that was my determination. So --  
 8 MS. VOGEL: Absolutely, Your Honor. And certainly the  
 9 Supreme Court is in a different posture than the Superior Court  
 10 in terms of looking at its precedence. And if it decides that,  
 11 you know, State v. Alex, looking at a different situation,  
 12 worded it's ruling a particular way, you know, it's less bound  
 13 to the words of State v. Alex than Your Honor, was.  
 14 THE COURT: I suppose that's true.  
 15 MS. VOGEL: Just because of its position of the highest  
 16 court. I guess just to wrap up, the state's feeling is that  
 17 school districts around the state, and believes that, you know,  
 18 the borough concedes this, view basic need as a floor for how  
 19 much a school district has to spend. And if this judgment goes  
 20 into immediate effect, school districts are going to discover  
 21 that the floor of spending that they have been standing on is  
 22 at imminent risk of collapse. So, the state's asking the Court  
 23 to stay its judgment pending Supreme Court review to allow the  
 24 chance for more reasons decision making should -- should there  
 25 need to be a change in education based on final appellate

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1 case. Including the fact that the governor introduced the  
 2 budget that they originally claimed was the emergency, long  
 3 before this ruling has been issued, and of course long before  
 4 the Supreme Court ruled.  
 5 THE COURT: All right. So leaving alone whether it's an  
 6 emergency, we can all agree it's a urgent issue that probably  
 7 it would behoove everyone to get it all settled as soon as  
 8 possible, by the Supreme Court or otherwise. I mean, that --  
 9 MS. CUTLER: That's not -- we don't have any problem with  
 10 the Supreme Court ruling quickly. In fact, as I believe I  
 11 mentioned at the status conference, we made that offer to the  
 12 state. And they have not taken us up on that offer, because  
 13 what they want to do is get a stay and then slow roll in front  
 14 of the Supreme Court. We've already made that offer to them,  
 15 and they did not accept it.  
 16 THE COURT: Okay. I don't know what --  
 17 MS. CUTLER: And if you --  
 18 THE COURT: -- I have no idea how long the Supreme Court  
 19 will take. Last time I had an issue of statewide import, they  
 20 decided it in about three weeks, the decision I made. So --  
 21 MS. CUTLER: I certainly believe -- agree with you that  
 22 first of all --  
 23 THE COURT: That maybe was a little less complicated.  
 24 MS. CUTLER: -- the Supreme Court -- I'm sorry?  
 25 THE COURT: That was maybe a little less complicated than

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1 review, not in this time crunch, and not with this incomplete  
 2 level of information that currently exists.  
 3 THE COURT: Thank you, Ms. Vogel. Ms. Cutler?  
 4 MS. VOGEL: Thank you.  
 5 MS. CUTLER: Yes. Thank you, Your Honor. Did I  
 6 understand that I do not have a time limit? I mean, I'm not  
 7 going to go on endlessly, but if I have a time limit, I'd like  
 8 to know about it.  
 9 THE COURT: No, there's not specifically a time limit. I  
 10 hope you'd be able to present your argument in 20 minutes or  
 11 so.  
 12 MS. CUTLER: Okay. I'll do my best.  
 13 THE COURT: Okay.  
 14 MS. CUTLER: And I'll also try to respond to some of the  
 15 comments that Ms. Vogel made that I don't have prepared remarks  
 16 for as well.  
 17 THE COURT: Yeah. Sure.  
 18 MS. CUTLER: Okay. So, first of all, I think it is really  
 19 important to again focus on the fact that there is no emergency  
 20 at issue here. In the original motion, the state argued that  
 21 the source of the state's alleged emergency was the statute  
 22 that provided that the, quote/unquote, deadline for the  
 23 governor to introduce his amended budget. And of course, we  
 24 pointed out in our opposition, which I know you've read so I'll  
 25 try to keep this short, several reasons why that was not the

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1 this case.  
 2 MS. CUTLER: Well, the Supreme Court's already evidenced  
 3 interest. They've already indicated that they're going to make  
 4 a ruling after you make your ruling. So I don't think --  
 5 THE COURT: On the stay.  
 6 MS. CUTLER: -- we're going to have a problem getting the  
 7 Supreme Court to focus on this case. My point is, they've said  
 8 there's an emergency, which does not exist, which has  
 9 completely evaporated since they filed their motion. And they  
 10 have not had any desire to actually get the Supreme Court to  
 11 rule quickly. Not with respect to the stay; I'm talking about  
 12 the underlying --  
 13 THE COURT: And that --  
 14 MS. CUTLER: -- issue here. What they want to do is get  
 15 the victory that plaintiffs have so far received. They want to  
 16 put that on hold so that nobody has to do anything and we all  
 17 wait around for a few years for the Supreme Court to rule. We  
 18 don't believe that's in the public interest. However, I just  
 19 did really want to point out that there is no emergency. I  
 20 mean, they -- they knew what your ruling was before  
 21 Thanksgiving. Nothing changed. Your ruling at -- your final  
 22 judgment actually quotes to what you said before Thanksgiving.  
 23 And so the idea that they were surprised by the final judgment  
 24 and all of a sudden, you know, a crisis has occurred because  
 25 you issued a final judgment just really doesn't hold up under

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5 (Pages 14 to 17)

1 the facts.  
 2 That said, our goal here is to apply the law to the facts.  
 3 There is a set of law that applies to when you can get a stay  
 4 and when you cannot. And all we ask, we just respectfully ask  
 5 that you apply that law to these facts. Just like you did when  
 6 you ruled at summary judgment. That's all you did. And that's  
 7 all we're asking for here. And you've said what the standard  
 8 is; irreparable harm, adequately protected. If we can't be  
 9 adequately protected, then they have to show clear likelihood  
 10 of success on the merits. And we are also firmly of the belief  
 11 that the public interest comes in here as well, and that the  
 12 public interest is not in favor of a stay. And I'm going to  
 13 talk about that and then I'll go back to additional points that  
 14 she made, such as new law that obviously we've never seen, that  
 15 we have partial cites to, that we obviously can't respond to  
 16 today.  
 17 With respect to irreparable harm, and I want to spend a  
 18 substantial amount of time on this, if you don't mind, because  
 19 I understood from your opening comment that this is really  
 20 where you're at. It's, you know --  
 21 THE COURT: These two issues, irreparable harm and --  
 22 MS. CUTLER: Irreparable harm and --  
 23 THE COURT: -- adequate protect --  
 24 MS. CUTLER: -- adequate protection. And I will focus on  
 25 those.

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1 Nor is irreparable harm established by the state's duties  
 2 under the education clause. Again, for the same reason. The  
 3 legislature has full flexibility to increase or decrease  
 4 education funding in light of your ruling. And as the state  
 5 loves to point out, and they pointed out again today, the  
 6 required local contribution is not a major portion of education  
 7 funding to begin with. They made that point repeatedly below.  
 8 And --  
 9 THE COURT: So you're saying that the -- well, I guess  
 10 part of my concern is, as Ms. Vogel pointed out, we have a  
 11 90-day legislative session. We're over 30 days into it.  
 12 Doesn't the legislature have to do something --  
 13 MS. CUTLER: The legislature --  
 14 THE COURT: -- in light of the decision to --  
 15 MS. CUTLER: Sorry.  
 16 THE COURT: -- to make sure that -- well, there are issues  
 17 as to what the constitutional mandate is for the state, as far  
 18 as fully funding or not. But don't they have to do something  
 19 to --  
 20 MS. CUTLER: No.  
 21 THE COURT: -- to go forward?  
 22 MS. CUTLER: They don't have to do anything. It's a  
 23 statute. You've declared it unconstitutional. You've enjoined  
 24 that from taking place. Whether or not they decide to choose  
 25 to make up for that lost funding is totally up to the

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1 THE COURT: Okay.  
 2 MS. CUTLER: Absolute legislative discretion over  
 3 education funding, which we all agree exists here, trumps any  
 4 argument that the state is irreparably harmed by your final  
 5 judgment. The governor can propose, and the legislature can  
 6 provide as much or as little funding for education or any other  
 7 program. That's the whole purpose of the anti-dedication  
 8 clause. The legislature gets to decide. And the fact that you  
 9 issued a final judgment which impacts a statute simply doesn't  
 10 change that. Given that reality, the state can't establish  
 11 that it's irreparably harmed. To the contrary, it's got  
 12 complete flexibility to decide how to react to this ruling.  
 13 Not only statutorily, but financially. And that's a harm that  
 14 they're claiming exists.  
 15 The request for a stay amounts to a request that this  
 16 Court make a legislative decision instead of making a legal  
 17 decision as to whether the elements necessary for a stay have  
 18 been established by the defendants. The legislature is  
 19 ultimately responsible for deciding how much funding to provide  
 20 for education, not this Court. The legislature legislates.  
 21 The Court makes legal decisions. And you've already made a  
 22 difficult one, and you've got to make another difficult one  
 23 after you hear our arguments. But plaintiff -- excuse me,  
 24 defendants have not met their burden to establish that a stay  
 25 is necessary just because there's a lot of money at stake.

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1 legislature. That is the point of the anti-dedication clause.  
 2 It is not up to you. You are not responsible for this supposed  
 3 crisis that the state has manufactured. They do this every  
 4 year. Every year there are competing needs for funding. Every  
 5 year some things have to be short funded and some things are  
 6 over funded. Every year we talk about a gas line, or we talk  
 7 about this, or we talk about that. Those are choices that are  
 8 up to the legislature. They deal with court orders all the  
 9 time. That's the whole point of the anti-dedication clause and  
 10 the appropriations clause. They get to decide whether or not  
 11 they're going to make up for this funding or not. That's  
 12 irregardless of whether or not you think this is a \$220 million  
 13 problem or a \$300 million problem that they asserted later on.  
 14 Now they're saying several hundred million dollars. It doesn't  
 15 matter whether or not you think it's a statewide problem or  
 16 it's a Ketchikan problem. They get to decide. That's the  
 17 whole point of the separation of powers. It's up to them.  
 18 They don't have to do anything in the next 90 days. And  
 19 they're fully capable of having a special session. They do it  
 20 all the time. There is no reason why a stay needs to be put in  
 21 place just because a statute has been declared  
 22 unconstitutional.  
 23 Now, I understand that Ms. Vogel has cited to some U.S.  
 24 Supreme Court case that I've never looked at, which I don't  
 25 even know what year it was enacted, that apparently stands for

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6 (Pages 18 to 21)

1 that proposition. But I assume that if you are at all going to  
 2 rely on that case, you're going to give us an opportunity to  
 3 respond to that before you do.  
 4 THE COURT: Sure. We're going to have a look at it for  
 5 sure. And --  
 6 MS. CUTLER: Well, I certainly hope we will --  
 7 THE COURT: -- the Maryland v. King.  
 8 MS. CUTLER: -- you'll give us an opportunity to give you  
 9 our view of that case, and you'll give us some time to do that.  
 10 And whatever time you give us, we'll live with that.  
 11 THE COURT: Okay.  
 12 MS. CUTLER: But I certainly hope you'll let us do that.  
 13 The other thing that -- well, one of the other things that I  
 14 want to really emphasize with respect to irreparable harm is  
 15 that the cases that we could find are clear that you do not  
 16 establish irreparable harm by speculating about what the  
 17 legislature might do, or by speculating about how school  
 18 districts react, or by speculating about how children are going  
 19 to be impacted. That is not the law. There is nothing that  
 20 the state's lawyers -- they haven't even proven that the  
 21 legislature will act too quickly or make the wrong decision.  
 22 They've just asserted that. There's no proof in the record  
 23 that says that. There's no evidence in the record to even  
 24 suggest a time frame for how long they would need, if they were  
 25 going to decide to change the statute. They haven't done any

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1 this is a little inconsistent with me saying you're not  
 2 supposed to think about them, but they're bringing it up. And  
 3 I just want to talk about what actually is in the record. They  
 4 said that school -- the state has put nothing in the record to  
 5 support its claim that school districts have not taken the  
 6 final judgment into account. And they -- to make that point,  
 7 they put this article from the Frontiersman into the record.  
 8 Well, what the article actually says, is that the Mat-Su  
 9 Borough School District officials have said that the ruling  
 10 could result -- this is quote. Sorry. This is a quote from  
 11 the article. Mat-Su Borough School District officials have  
 12 said the ruling could result in the state being forced to make  
 13 up the difference if the ruling isn't put on hold. These same  
 14 officials also are clearly anticipating that the RLC might,  
 15 quote, from the article, become a responsibility of the state  
 16 leading to a proportionate reduction of state funding across  
 17 all school districts if there is no stay. So not only are they  
 18 aware of your ruling, they're actually counting on the RLC  
 19 being enforced this year, despite -- I'm sorry, they're not  
 20 counting on that, despite what the state is claiming; all  
 21 school districts in the state are just running around crazy,  
 22 worried about what's going to happen. The very evidence that  
 23 they put in the record doesn't support that.  
 24 And again, they complain about Mr. Boyles' affidavit, the  
 25 Ketchikan Borough School District, as suggesting that the RLC

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1 of that. The legislature hasn't asked to intervene and tell  
 2 Your Honor, not to issue a stay because it's worried about not  
 3 having enough time or what decisions it might make this year.  
 4 You don't have any affidavit from any person who can speak for  
 5 the legislature here to tell you that. And nor, for that  
 6 matter, is anybody else who the state claims is irreparably  
 7 harmed by the order, such as the school districts, the public,  
 8 the this person, the that person. There is nothing in the  
 9 record to support any of those statements. This is nothing  
 10 more than Chicken Little tactics and it's based solely on rank  
 11 speculation about non-parties to this litigation. That  
 12 wouldn't get you a stay at the U.S. Supreme Court. It wouldn't  
 13 get you a stay at the Ninth Circuit, and it wouldn't get you a  
 14 stay at any of the ca -- in any of the cases that we brought  
 15 forward in our opposition at page 14.  
 16 And I understand that the state is doing everything they  
 17 can to make you feel personally responsible for this problem.  
 18 But all this is, with all due respect to you and to Ms. Vogel  
 19 and to their ability to make their arguments, this is just a  
 20 massive guilt trip. There is no evidence in the record that  
 21 suggests irreparable harm.  
 22 THE COURT: I don't feel guilty at all for doing my job.  
 23 MS. CUTLER: Well, good. I'm glad to hear that. I don't  
 24 either. And again, I just want to talk a little bit about --  
 25 more about school districts. And you might think, well, maybe

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1 is significant. Actually, that's not at all what Mr. Boyles  
 2 said. He said that he clear -- even though he clearly states  
 3 that the RLC is not a factor in calculating basic need. He  
 4 said that in paragraph 10 of his affidavit. And he also said  
 5 that basic need is the minimum amount that the district counts  
 6 on. Basic need is not the RLC. The RLC is the different  
 7 component form basic need.  
 8 THE COURT: I understand that.  
 9 MS. CUTLER: I won't bother to read you the -- what his  
 10 affidavit -- the key portions, because you've said you've  
 11 already read it.  
 12 THE COURT: I've read it.  
 13 MS. CUTLER: But I just want to point out, the evidence  
 14 that's in the record as opposed to the speculation that the sky  
 15 is falling, does not support irreparable harm.  
 16 Now, let me talk about mootness, because they keep  
 17 bringing up that mootness equals irreparable harm. Again,  
 18 there's no support in the record for their claim that the  
 19 legislature will change the law such that plaintiffs will have  
 20 to provide the same amount of funding as what they have had to  
 21 provide before your order. The truth is, one could just as  
 22 easily speculate that the legislature will make up the funding  
 23 somehow. We could all speculate to that. But the point is, we  
 24 can't speculate and they can't speculate. That's not how you  
 25 decide whether or not there's a stay. And while the court may

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7 (Pages 22 to 25)

1 have said in the one case that they cited to, that it usually  
2 doesn't address legal issues when facts render them moot, the  
3 court does not hesitate to address constitutional issues.  
4 That's exactly what happened in the ARCO case. Years after the  
5 legislature changed the system, the court still came in and  
6 ruled on whether or not the statute that they had changed long  
7 ago was constitutional or not. And in fact, in the United Cook  
8 Inlet Drift Association case, again, it's not -- it's not a  
9 similar set of facts as ARCO is, in terms of a constitutional  
10 ruling long afterwards, the court held that the superior court  
11 had not applied the test for issue of an injunction, went ahead  
12 and ruled on that, even though it found that the case was moot.  
13 So it's just not accurate to say that the court doesn't make  
14 rulings after the legislature changes a statute. That just is  
15 not correct. And that's Alaska Supreme Court case, not a  
16 United States Supreme Court case that none of us have even had  
17 a chance to read.  
18 Finally, they poo-poo our argument that the plaintiffs --  
19 the attorney fee motion will require the state -- the Supreme  
20 Court to reach the merits. So, it doesn't matter whether or  
21 not you re -- you issue the stay or not. But that's really not  
22 true, because one way or the other you're going to rule on our  
23 motion. And one way or the other you're going to decide  
24 whether or not we're the prevailing party or not. And probably  
25 whatever you decide, somebody's going to appeal it, and so the

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1 Court is going to have to make a determination as to who the  
2 prevailing party is, so they're going to have to reach whether  
3 or not the RLC was constitutional or not. It just -- it  
4 doesn't hold up under the law and the facts, the argument that  
5 you say in the abstract, that mootness can sometimes be irre --  
6 be irreparable harm. It is not in this particular case.  
7 And finally, I just want to also underscore something, an  
8 argument that we made in our opposition to which they have  
9 absolutely no response. With respect to irreparable harm. And  
10 that is that they argued and you agreed with them on -- you  
11 know, it wasn't our position, but you agreed with them, that  
12 they receive no benefit from the required local contribution.  
13 Well, if they receive no benefit from it, they can't possible  
14 be irreparably harmed by the absence of it. It's just not  
15 logical to argue now that you're irreparably harmed by  
16 something, not only that you argued, but that became the law of  
17 the case, that you receive no benefit from it.  
18 I'm going to go on to adequate protection. It is  
19 illogical for the state to argue that the only injury caused by  
20 a dedicated fund violation is harm to the legislatures freedom  
21 to appropriate in the very same case in which they're asking  
22 plaintiffs to continue to fund and pay millions of dollars in  
23 payments that have been declared unconstitutional. Obviously,  
24 there's a harm. It's not just some amorphous harm to the  
25 legislature, there is an actual harm at issue in this case from

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1 which plaintiffs cannot be adequately protected. The state  
2 speculates that plaintiffs aren't harmed because the  
3 legislature might replace it with something; we've heard that  
4 repeatedly. But again, you can't speculate about that. The  
5 case law does not allow you to do that. You cannot assume that  
6 the legislature is going to change the law. You can't assume  
7 they're going to come with funding; you can't assume they won't  
8 come up with funding. That is simply not part of the calculus  
9 of what you're supposed to consider when you decide whether or  
10 not to issue a stay. What you have to do is figure out whether  
11 or not the plaintiffs are going to continue to fund and make  
12 millions of dollars in payments that you've ruled are  
13 unconstitutional. You need to decide whether or not that means  
14 they can be adequately protected.  
15 Now, the state focuses in on whether or not the borough is  
16 adequately protected, as opposed to the other plaintiffs. I  
17 want to talk about that for a second. They argued that the  
18 borough could seek restitution from the school district through  
19 a lawsuit. Well, once again, that totally glosses over the  
20 difficulties inherent in doing that. And I won't spend a lot  
21 of time on this, but again, just talking about what's in the  
22 record. Mr. Bockhorst, in his affidavit, at paragraphs 5  
23 through 9, explains the interplay between total local  
24 contributions, i.e., you know, the voluntary and the required  
25 local contributions, and the cap on voluntary contributions.

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1 He goes through that analysis and explains it, and makes it  
2 clear that the borough will never recover any required local  
3 contribution payments from the district or the state because  
4 they'll just get recouped back through the system, either to  
5 the school district in the form of voluntary contribution, or  
6 back through the state as an overpayment for state aid. So,  
7 it's not a viable option to seek restitution. That's not an  
8 option.  
9 And in contrast, it's certainly not equivalent as the  
10 state tried to argue to already having a law on the books;  
11 i.e., AS 14.17.610(b), which allows you to take back any money  
12 that the district shouldn't have gotten, or as I keep harping  
13 on, and I'm sorry, the ability of the legislature to decide not  
14 to do anything. Or to make up the payment or whatever they  
15 want to do. That is their choice.  
16 So, again with respect to this notion of a restitution  
17 claim, let's say I'm wrong. It could succeed. I don't know  
18 what I'm talking about. It could go forward. What does that  
19 do to protect the private plaintiffs? Absolutely nothing.  
20 Because they can't be protected because the borough cannot  
21 refund them the money that they've already contributed to it.  
22 Now, the state and the Ms. -- the commissioner, the  
23 defendants in this case would really like you to just forget  
24 about the fact that there even are private plaintiffs in this  
25 case. I understand that. But I want you to just focus on that

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1 for a minute, because that's what the law requires you to do.  
 2 And frankly, it's not an inconsiderable sum. We're not talking  
 3 about a nominal amount of money. We're talking about, as I  
 4 understand it, about half of everyone's property tax goes to  
 5 pay the required local contribution. And again, what happens  
 6 if you don't make your tax payments? Well, the guy sitting  
 7 next to me tries to foreclose on your house, or otherwise  
 8 collect those tax payments. It's not insignificant. Just  
 9 because they're the private parties here, the harm that exists  
 10 to them is not insignificant.

11 The reality is that making the borough and the private  
 12 plaintiffs continue to fund and make RLC payments, despite your  
 13 finding that they're unconstitutional, when you cannot make the  
 14 state put up a bond. You can't do that. It means they just  
 15 literally cannot be adequately protected.

16 And finally, just on this issue, because I know it's  
 17 important to you, I did want to mention another case that the  
 18 state brought up in their briefing, because I actually think it  
 19 supports our point of view, not theirs. And that's the  
 20 Alsworths case. I think it's cited at note 2 of their reply  
 21 brief.

22 THE COURT: Right.

23 MS. CUTLER: This is one of the Pebble Mine cases --

24 THE COURT: Right. I read it right before I came in.

25 MS. CUTLER: Okay. Well then you know, if you read it,

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1 or not education funding and a required local contribution did  
 2 or did not violate the anti-dedication clause. Well, they  
 3 certainly didn't sit around and think about whether or not the  
 4 procedure for aquiculture funding at issue in Alex was a  
 5 violation of the anti-dedication clause, and you could probably  
 6 go through most of the other anti-dedication clause cases. The  
 7 point is, that the Supreme Court has held for a long, long time  
 8 that it needs to be broadly construed. And you can go back and  
 9 argue all you want to, and they have every right to make the  
 10 argument, that it shouldn't be applied here. But that -- but  
 11 when you have to overrule Supreme Court precedent, you are not  
 12 demonstrating clear likelihood of success on the merits. And  
 13 to me, the same is true with respect to the emphasis that  
 14 they're now trying to put on the fact that the required local  
 15 contribution is an exempted local state cooperative effort.

16 Let's put aside whether or not they're right or they're wrong  
 17 about that. We don't think they're right about that, but fine.  
 18 Let's just put that aside. How hard is it going to be to  
 19 convince the Supreme Court that this is a voluntary state local  
 20 cooperative effort when it is a required local contribution?  
 21 That if it isn't made, school districts get penalized. That is  
 22 not a matching grant program that you voluntarily decide to  
 23 participate in. They are -- have a very steep, uphill climb to  
 24 get the supremes to overturn that. So to conclude that it is,  
 25 quote/unquote, quite likely, which is what they say in their

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1 that what happened there was that the Supreme Court held that  
 2 the Superior Court had not adequately weighed adequate  
 3 protection. And, in my view, for a very similar reason to what  
 4 the state is arguing here. Basically, the Supreme Court said,  
 5 just because they have to follow the law doesn't mean that  
 6 they're adequately protected. Here, plaintiffs go -- excuse  
 7 me, defendants go even further, and they say, just because you  
 8 have to follow an unconstitutional law, just because you've  
 9 been doing it for a long time, so how could you possibly, you  
 10 know, that's no big deal to you. I think the Alsworths case  
 11 stands for the proposition that the Supreme Court has rejected  
 12 that analysis. And of course, as you know, because you just  
 13 read it, obviously there was a constitutional right at stake  
 14 there; freedom of speech, similar to the constitutional right  
 15 that we assert here.

16 So, I do not believe that plaintiffs are adequately  
 17 protected. And I think the law supports me in that conclusion.  
 18 And so therefore, if I'm right about that, they have to show  
 19 clear likelihood of success on the merits. And I don't see how  
 20 you can ever do that when you admit, in your own briefing, that  
 21 you're asking the Supreme Court to overrule their earlier  
 22 precedent and take, quote/unquote, a fresh look at the facts  
 23 here because somehow they're so different. At one point they  
 24 make an argument that, whell, you know, the constitutional  
 25 framers, you know, never sat around and thought about whether

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1 brief at page 10, that the Supreme Court will overrule earlier  
 2 precedent, or find that the RLC is accepted from the reach of  
 3 the anti-dedication clause, in my view is just as overblown as  
 4 its claim that your final judgment has created an emergency,  
 5 and that dire consequences will result if you don't issue a  
 6 stay.

7 So, let me just spend a couple minutes talking about the  
 8 public interest. The state doesn't deny that it has plenty of  
 9 money to increase state education funding if it wants to. It  
 10 can't deny that. Of course it can't deny that. It doesn't  
 11 deny that the legislature has unfettered discretion to fund  
 12 education at any level, if it so chooses. State can do either  
 13 one of those things. So if that's the case, why wouldn't it be  
 14 in the public interest for policy makers to begin grappling now  
 15 with an unconstitutional funding mechanism. If the Supreme  
 16 Court does overrule its earlier cases, and changes the  
 17 applicable law, then they won't have to worry about it. But  
 18 given the clear legal landscape --

19 THE COURT: Well, what if --

20 MS. CUTLER: -- that presently --

21 THE COURT: -- what if in the meantime the legislature  
 22 enacts an entirely different scheme? That goes back to the  
 23 mootness issue.

24 MS. CUTLER: I would -- I don't know if you've had a  
 25 chance to read the ARCO case. That is exactly what happened

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1 there. And the court went ahead and ruled on it. And  
2 furthermore, there's going to be attorneys fees, which they're  
3 going to have to make a decision anyways, so they could, you  
4 know, they could decide years from now. It's just simply not  
5 something that has to be done right away, in terms of the stay.  
6 They can change the legal landscape if they want to, but really  
7 what are the chances that they're going to do that? I mean, I  
8 -- I'm not saying they can't make those arguments, but we're  
9 talking about a situation where plaintiffs can't be adequately  
10 protected, and they can't demonstrate a clear likelihood of  
11 success on the merits, given the uphill battle. So why  
12 wouldn't it be in the public interest to just let Your Honor's  
13 ruling go forth and let the chips fall with the -- where they  
14 may. And figure out -- let the legislature start grappling  
15 with this. Maybe encourage the Supreme Court to rule quickly.  
16 There is no reason why it is not in the public interest to let  
17 this sleeping dogs lie, as opposed to just assume that  
18 something has been done wrong here, and therefore we all have  
19 to put the brakes on, on it, just because Your Honor followed  
20 the law.  
21 I know I'm running out of time, so I'm going to -- I would  
22 -- I just want to talk about a few other points that she made  
23 in her -- in her remarks this morning.  
24 Again, we made an argument in our brief for why, from a  
25 technical standpoint, and again we'd ask you to apply the law,

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1 the -- really, at the end of the day, the final judgment is not  
2 about hundreds of millions of dollars, it's really just about  
3 Ketchikan. I know that's a technical argument. It is true,  
4 though. And there's plenty case law which we cite to where  
5 other courts have held that something continues to have  
6 precedential effect, binding effect, even if it is stayed. And  
7 I know they focus on the Huron case. I actually think the  
8 Huron case is totally on point, because it is a separate  
9 judgment. And that's -- but that's not the only thing we cited  
10 to. We also cited to the Restatement of Judgments.  
11 Again, you can't -- but even if it is hundreds of millions  
12 of dollars, you can't control what the legislature is going to  
13 do. That's not your role. And it's not irreparable harm, no  
14 matter how much money it is. Because they get the right to  
15 decide how they're going to react to it, regardless of whether  
16 or not you impose a stay or not.  
17 I've already made my point about the two cases we've never  
18 seen before. I assume we'll get an opportunity to respond to  
19 those. So I won't even talk about either one of those cases.  
20 I won't take up your time now for that.  
21 Again, the mooted in fact argument, as opposed to the  
22 mooted in law argument, I'm frankly not sure that's a legal  
23 doctrine. But if it is, again, now we're talking about the  
24 people of Alaska. Now we're talking about a more educated  
25 populous. You have not one shred of evidence in the record

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1 that suggests that the people of Alaska are concerned about  
2 this. You have not one shred of evidence in the record that  
3 suggests that there will not be a more educated populous if you  
4 do not impose a stay. Again, all the legislature has to do is  
5 write a check, if it truly has a concern about that. And if it  
6 doesn't have a concern about that, it doesn't have to do  
7 anything.  
8 The bottom line is the balance of harms clearly harms my  
9 clients, and not the State of Alaska that's got more money than  
10 it knows what to do with and can solve this problem if it wants  
11 to, or not choose to solve it. It can do whatever it wants to  
12 do.  
13 Thank you very much for giving me enough time to address  
14 you today.  
15 THE COURT: Okay. Thanks, Ms. Cutler. Well, Ms. Vogel?  
16 If you go over five minutes, that's fine.  
17 MS. CUTLER: Is she hearing you?  
18 THE COURT: Hello out there? Do we have Ms. Vogel on the  
19 line?  
20 THE CLERK: (Indiscernible). I think so.  
21 (Indiscernible). Ms. Vogel?  
22 (Whispered conversation)  
23 THE COURT: I've got one of them, Ms. Cutler. The Supreme  
24 Court case.  
25 MS. CUTLER: Okay.

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1 THE COURT: Maryland v. King.  
2 MS. CUTLER: Okay.  
3 THE COURT: 567 U.S. -- I thought she said 2012, 2012.  
4 Maybe that wasn't -- maybe I misheard. Maybe that's the year.  
5 MR. BRANDT-ERICHSON: That's what I had also, Your Honor.  
6 THE COURT: Okay.  
7 MS. CUTLER: Thank you.  
8 (Whispered conversation)  
9 THE COURT: Why don't you go ahead. Why don't -- let's  
10 put her on the speaker.  
11 THE CLERK: (Indiscernible). I have her one.  
12 THE COURT: Okay. Ms. Vogel --  
13 MS. VOGEL: Hello, Your Honor.  
14 THE COURT: -- are you there? This is Judge Carey.  
15 MS. VOGEL: Yes, I am.  
16 THE COURT: It's unclear when we lost you.  
17 MS. VOGEL: Yeah. I don't think it was more than four  
18 minutes ago. Might have been slightly less.  
19 THE COURT: Okay. Why don't we go back about five minutes  
20 or so, Jackie, and play it back. If you think we need to go  
21 back further, just butt in and let us know. Ms. Cutler has  
22 otherwise finished her remarks.  
23 MS. VOGEL: Thank you.  
24 THE COURT: Ms. Vogel, are the three of you there on a  
25 speaker phone, so you all got cut off?

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1 MS. VOGEL: Also Juneau.  
2 THE COURT: Oh, Juneau. Okay.  
3 MS. VOGEL: Yeah. So, both Seattle and Juneau have --  
4 were cut off. And -- but we remained connected to each other.  
5 THE COURT: Okay. We're going to go ahead and play --  
6 we've gone back about five minutes before Ms. Cutler was done,  
7 is that right, Jackie? Okay. Hopefully the first part will  
8 sound familiar to you. And then --  
9 MS. VOGEL: Thank you.  
10 THE COURT: -- that will be your chance to respond. Go  
11 ahead.  
12 MS. VOGEL: Great. Thank you.  
13 12:12:42  
14 (Audio replayed)  
15 12:13:06  
16 (Pause)  
17 12:13:43  
18 (Audio continues replay)  
19 12:14:12  
20 MS. VOGEL: Your Honor, I'm prepared to give a rebuttal.  
21 I found that there's plenty to respond to in the first portion,  
22 if --  
23 THE COURT: Okay.  
24 MS. VOGEL: -- these technical difficulties are proving  
25 difficult.

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1 to the contrary.  
2 I think that Ms. Cutler spoke a lot about complete  
3 flexibility that's been given to the legislature on the subject  
4 of education. I would say in the absence of this stay, that  
5 complete flexibility has the glaring exception of the one  
6 decision that the people of Alaska, through their duly elected  
7 representatives, came to about how to fund education. And  
8 that's through a system of local contributions. Ms. Cutler  
9 would encourage the legislators right now to be re-imagining  
10 education without the one way of funding education that they've  
11 chosen, and that the people of Alaska have chosen. Certainly  
12 it's not new that certain places in Alaska don't like required  
13 local contributions. There has not been the political will to  
14 change that. If it changes now in the absence of a stay, it's  
15 because of a court order. And that is -- that is an  
16 irreparable harm. That's not the legislative process at work.  
17 That's about responding to a court order under pressure. It  
18 happens that the circumstances facing the state this year make  
19 it a particularly terrible time for that to happen. There's  
20 not sufficient time for the legislature to respond, and they  
21 haven't begun to respond. Even with budget being given to the  
22 legislature before their technical deadlines, the state is  
23 facing a situation in which it is scrambling to come up with  
24 cuts to meet goals. And this, figuring out what happens with  
25 basic need, because it's missing 16 percent of it that was

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1 12:14:26  
2 (Audio continues replay)  
3 12:14:31  
4 THE COURT: Okay. Let's just go back, start it over,  
5 we'll make the best of it. I'm going to play -- I'd rather  
6 hear you -- I'd rather have you hear the whole thing. And I  
7 think we're ready to go ahead.  
8 MS. VOGEL: Okay.  
9 THE COURT: It may not be perfect, but let's give it a  
10 shot.  
11 12:14:47  
12 (Audio continues replay)  
13 12:19:02  
14 THE COURT: Ms. Vogel?  
15 MS. VOGEL: Thank you, Your Honor.  
16 THE COURT: There. Thank you. Okay. Ms. Vogel, are you  
17 ready to go ahead?  
18 MS. VOGEL: Yes, I am. Thank you, Your Honor.  
19 THE COURT: All right. Sorry. I have no idea what  
20 happened, but I'm --  
21 MS. VOGEL: Oh, no. I appreciate it.  
22 THE COURT: -- certainly ready to hear from you.  
23 MS. VOGEL: And that last line, about the state has more  
24 money than it knows what to do with is certainly a relief to  
25 hear, as a state employee has been reading newspaper articles

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1 supplied by required local contributions, that hasn't even  
2 begun to happen at the legislature. And that's why a stay is  
3 needed; there isn't time. There's also insufficient  
4 information.  
5 Again, as this Court remarked, this was a complicated  
6 issue. It's very unlikely that the Supreme Court is going to  
7 view the dedicated fund clause exactly with the same emphasis  
8 and interpretation that this Court applied, just because it is  
9 such a complicated issue. And yes, the state is confident that  
10 it will, you know, receive reversal in the Supreme Court. But  
11 even if there is an affirmance, it's likely that it has  
12 slightly different contours than this Court's ruling. The  
13 solution to a dedicated fund problem is allowing the  
14 legislature to make a change with a full understanding of what  
15 the appellate opinion is on what the contours of that new  
16 regime needs to be. Otherwise, the state risks having to do  
17 this twice.  
18 I would also say that there was a talk about a lot of  
19 uncertainty. But the irreparable harms that the state  
20 mentioned didn't involve uncertainty, and the first four had no  
21 uncertainty. Certainly, there's no uncertainty that's to the  
22 fact that the state was enjoined by a court from effectuating a  
23 statute. And that is something that the United States Supreme  
24 Court pointed out is always irreparable harm. And obviously we  
25 will supply that later this afternoon in the 77(l) letter. I

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1 believe the rule on Rule 77(l) allows them to supplement if  
2 they've got alternative authority. It's not about a brief,  
3 it's about providing you with the authority to read. It's  
4 also, I think, three pages long, so I don't think it'll be a  
5 long read.  
6 In addition, the -- there's certainty that what law was  
7 invalidated was the legislature's solution for how to fulfill  
8 its mandate under the constitution to satisfy the education  
9 clause. There's certainty that the invalidation occurs at this  
10 point in the legislative session and before a Supreme Court  
11 ruling has been issued. And there's certainty that the lack of  
12 a stay will throw school budgets statewide, including many non-  
13 parties, into a state of uncertainty. And that's bad for  
14 schools. We've gotten affidavit from Commissioner Hanley in the  
15 record talking about uncertainty being bad for schools.  
16 They're talking about how basic need hasn't historically, you  
17 know, caused any big, you know -- they're talk -- they have an  
18 affidavit saying that the required local contribution has not  
19 historically been a huge factor in the mind of school  
20 districts' planners. But that's because it wasn't under  
21 (indiscernible). Certainly, school districts who looked at  
22 basic need of the floor that they could stand on were operating  
23 at a different time than right now when there's a superior  
24 court ruling that says that a big piece of the foundation of  
25 their floor, 16 percent, is unconstitutional. And so, that's

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1 why it's suddenly becoming on the agenda, and there is  
2 certainty that lack of a stay will cause uncertainty in school  
3 districts.  
4 And then finally, yes, there are some unknowns. But the  
5 unknowns, no matter how you cut it, lead to irreparable harm.  
6 Either the money is found somehow through a new statutory  
7 change, in which case there is a mooted in fact of what the  
8 will of the people was, in terms of how schools are funding,  
9 right? Or there's no money found, in which case there is harm  
10 to educational opportunities. So, I really don't think that  
11 there's a ton of uncertainty here. I think that it's quite  
12 clear, not matter how you cut it, there's irreparable harm to  
13 the state of allowing this Court's judgment to go into effect  
14 before the Supreme Court has had a chance to review.  
15 And in terms of adequate protection, I think we didn't  
16 hear anything that shows that the borough can establish that  
17 their tax payers, the individuals, are even a dollar worse off  
18 by this Court granting the stay than they would be without it.  
19 The borough, for example, doesn't pay a school -- doesn't  
20 charge a school tax to their individuals. We've heard it's a  
21 property tax and a sales tax. But you don't have an affidavit  
22 from the borough saying that they plan to not charge the money  
23 this year. In fact, you have something to the contrary,  
24 something saying maybe they would charge some of the money and  
25 put it -- put some more towards the voluntary portion of

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1 education. It's simply unclear what would happen to the tax  
2 burdens of those individuals, both from the side of the  
3 legislature and if they were trying to come up with revenue,  
4 but also from the side of the borough. So, you do have a  
5 situation where the injury that they are electing is relatively  
6 slight in comparison to the injury which the person seeking the  
7 stay will suffer. And for those reasons, the state urges this  
8 Court to grant the stay and allow the Supreme Court to weigh  
9 in.  
10 THE COURT: Okay. Thank you, Ms. Vogel. Well, Rule 77(l)  
11 just does provide for, you know, any additional citation, no  
12 argument, in response. So, I wouldn't expect a brief.  
13 MS. CUTLER: Excuse me?  
14 THE COURT: A brie -- I wouldn't expect a brief on the  
15 subject, but maybe any other citation that you might have.  
16 MS. CUTLER: Well, normally when this type of Rule 77(l)  
17 motion is made, it's done in advance.  
18 THE COURT: True.  
19 MS. CUTLER: So that the opposing party can respond at  
20 oral argument, if they so choose. That wasn't done here.  
21 Again, the state seems to be suggesting that we should not be  
22 able to respond to their citation, which seems to me completely  
23 inappropriate. And I still have no idea what Colorado Court of  
24 Appeals case they're talking about.  
25 Again, at every stage in this litigation, you know, they

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1 try to get an unfair advantage. I mean, if they're so proud of  
2 this case, why can't we have an opportunity to respond to it?  
3 THE COURT: Are you going to be submitting the Colorado  
4 case citation as well?  
5 MS. VOGEL: Your Honor, I will submit both of those by  
6 email this afternoon. I think Rule 77(l) actually allows you  
7 to supplement post-oral argument, just before court's ruled.  
8 Though I don't think that there's an inherent right to brief in  
9 response. And additionally, Your Honor, I think if this Court  
10 feels that it's not needing to rely on that in order to issue a  
11 ruling, we encourage the Court not to wait. I think the  
12 Supreme Court indicated that they were hoping for a response by  
13 the 23rd, which I recognize is just Monday.  
14 MS. CUTLER: Your Honor, may I just briefly respond to  
15 that? It may not be literally stated in the rule. Again,  
16 they've completely surprised us, so I don't have the rule in  
17 front of me. But it's common courtesy to give the other side  
18 an opportunity to respond.  
19 THE COURT: I'm going to have a look at what they submit,  
20 and the cases, and then I'll fashion a short order.  
21 MS. CUTLER: Okay.  
22 THE COURT: Saying the -- setting out the scope of any  
23 response that I'd expect from the borough.  
24 MS. CUTLER: Thank you, Your Honor.  
25 THE COURT: And the plaintiffs. Well, as far as time -- I

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1 mean, that -- I wouldn't expect to get that until -- your  
2 response until Monday, at this point. We don't have the  
3 citation submitted on the record. So, I'm not sure if -- I'll  
4 be working on this case certainly over the weekend. I have to  
5 go to Petersburg on Monday for my -- or Sunday, actually, for  
6 my court week. But I'll be -- other than being in the air,  
7 I'll be working then. But I will be in Petersburg for a full  
8 day of hearings on Monday and Tuesday, and in Kake for trial on  
9 Wednesday. But --  
10 MS. VOGEL: Your Honor, just to put the Maryland v. King  
11 cite on for the rec -- into the record --  
12 THE COURT: Go ahead.  
13 MS. VOGEL: It's 133 S.Ct. 1, 2012. And it's at 2 to 3.  
14 The other citation I've seen for it is 567 U.S., but they  
15 haven't filled out the pin cite on that. Also 212.  
16 THE COURT: Okay. So 133 Supreme Court 1. It's a 2012 --  
17 MS. VOGEL: Yes.  
18 THE COURT: -- case.  
19 MS. VOGEL: Yeah. It's just a -- it's just a three-page  
20 order on a stay.  
21 THE COURT: Okay. All right. Well, we'll all have a look  
22 at that. I'm just -- I want to get a decision done on this,  
23 obviously, as soon as possible. I'll shoot for Monday, is all  
24 I can say. Well, anything else, Ms. Vogel?  
25 MS. VOGEL: No. Thank you, Your Honor.

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1 THE COURT: Ms. Cutler?  
2 MS. CUTLER: No. Thank you, Your Honor --  
3 THE COURT: Okay.  
4 MS. CUTLER: -- for listening to us.  
5 THE COURT: All right. Well, thank you, Counsel. Back to  
6 work. Thank you. Safe travels back home, to everyone. So,  
7 all right. We'll be off record. Thanks, everybody.  
8 (Off record)  
9 12:30:48  
10 END OF REQUESTED PORTION  
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I, Richell E. Boyd, hereby certify that the foregoing pages numbered 2 through 47 are a true, accurate, and complete transcription of proceedings in Case No. 1KE-14-00016 CI, Ketchikan Gateway Borough versus State of Alaska, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

3/13/15

Date

\_\_\_\_\_  
Richell E. Boyd, Transcriber