

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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IN THE SUPREME COURT OF 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 Court Nos.: S-15811/S-15841

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Trial Court Case No.: 1KE-14-00016 CI

STATE OF ALASKA'S OPPOSITION TO APPELLEES/CROSS-APPELLANTS' MOTION FOR RECONSIDERATION OF ORDER GRANTING STAY

The appellees/cross-appellants, Ketchikan Gateway Borough, Agnes Moran, John Coss, John Harrington and David Spokely, ("the borough") have asked this Court to reconsider its order granting the State's request for a stay of the superior court's judgment during the pendency of this appeal. In support of this motion, they suggest that this Court somehow failed to appreciate that the borough would have to continue to collect taxes in order to pay its share of the cost of its schools for next year if the judgment was stayed, despite the arguments in their opposition stating how they would be harmed by just such taxation and payment to the school district. They also belatedly

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2 provide an error-ridden transcript of oral argument before the superior court,¹ review of
3 which merely demonstrates that this Court was fully informed of all the relevant issues
4 when it made its original decision to grant the stay. Because the borough has failed to
5 identify any reason for this Court to reconsider its decision to grant the State's request
6 for a stay, the borough's motion should be denied.

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8 **I. The borough fails to identify any standard for this Court to apply in
9 evaluating whether reconsideration is appropriate.**

10 Alaska Appellate Rule 503(h), governing motions for reconsideration, does not
11 explain the circumstances in which the reconsideration will be granted as does the
12 parallel Alaska Civil Rule 77(k); and as does the appellate rule governing petitions for
13 rehearing, Appellate Rule 506(a). For motions filed pursuant to Appellate
14 Rule 503(h)(2)(A) and (2)(B)—motions decided by the clerk or by a single justice—it
15 makes sense that reconsideration would be de novo, since it is in effect a different
16 person or group—a justice or the full court—considering the motion. But where, as
17 here, a party moves for reconsideration of an order entered by the full court,
18 reconsideration should be granted only upon a showing comparable to that required
19 under Civil Rule 77(k) or Appellate Rule 506(a), otherwise the rule simply allows a
20 party to demand a second chance to make the same arguments to the same audience.
21 Because this runs counter to the interests of judicial economy and finality, a party

22
23 _____
24 ¹ The transcription errors, presumably due in part to poor sound quality of the
25 recording, include: at page 4, line 10 counsel stated that the court's judgment represents
26 a "sea change" not a "fee change"; at page 8, line 18 the transcript should read "veto
clause" not "detail clause"; at page 13 lines 2-3 the transcript should read "unjust
enrichment" not "done just enrichment."

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requesting reconsideration of an order entered by the full court should have to establish that the “court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or . . . overlooked or misconceived some material fact or proposition of law; or . . . overlooked or misconceived a material question in the case.”² Because here the borough simply reiterates arguments already considered and rejected by this Court, its motion should be denied.

II. The stay is appropriate because the State’s system for funding education should not be disrupted before this Court has had a chance to weigh in on its constitutionality.

This case involves a major constitutional challenge to a longstanding and important element of the State’s statutory scheme for funding public schools in Alaska.

The borough fundamentally misapprehends the nature of the harm to the State that will result if there is no stay of the superior court’s judgment. Because it conceives of *its* harm as the loss of the money it will have to pay its school district if the stay remains, it assumes that the harm to the State of there being no stay is somehow confined to that money also. But the State identified multiple forms of irreparable harm that it would suffer.³ Chief among them is the harm to the legislative process: the State has a constitutional obligation to “establish and maintain a system of public schools”⁴ and the superior court has declared that the system created by the Legislature to meet

² See, Alaska Civil Rule 77(k)(1)(i)-(iii) and Alaska Appellate Rule 506(a)(1)-(3).
³ [Oral Argument Transcript 5-10; Emergency motion for stay at Part II]
⁴ Alaska Const. art 7, § 1.

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2 that obligation violates a separate constitutional provision. If that ruling is effective
3 immediately the Legislature will have to decide whether to redesign the statutory
4 education funding scheme or leave it in place without a significant component—
5 required local money—with all the potentially damaging downriver impact that might
6 have on the quality of public schools. Other state courts that have made decisions with
7 this kind of dramatic impact on the system of education funding have delayed the
8 effective date of their decisions in recognition of the reality that they are presenting their
9 legislatures with a major legislative task—a task that will, and should, take time to
10 address appropriately and effectively. For example, the Ohio Supreme Court in
11 *DeRolph v. State* declared: “We recognize that a new funding system will require time
12 for adequate study, drafting of the appropriate legislation, and transition from the
13 present scheme of financing to one in conformity with this decision. Therefore, we stay
14 the effect of this decision for twelve months.”⁵
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18 ⁵ *DeRolph v. State*, 677 N.E.2d 733, 747 (Ohio 1997), *opinion clarified*, 678
19 N.E.2d 886 (Ohio 1997), and *order clarified*, 699 N.E.2d 518 (Ohio 1998); *see also*
20 *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1360 (N.H. 1997) (“We are mindful
21 of the fact that our decision holding the present system of financing public education
22 unconstitutional raises issues concerning the interim viability of the existing tax system.
23 Because the legislature must be given a reasonable time to effect an orderly transition to
24 a new system, the present funding mechanism may remain in effect through the 1998
25 tax year.”); *Montoy v. State*, 120 P.3d 306, 310 (Kansas 2005) (“We are aware that our
26 decision (1) raises questions about continuing the present financing formula pending
corrective action by the legislature; (2) could have the potential to disrupt the public
schools; and (3) requires the legislature to act expeditiously to provide constitutionally
suitable financing for the public school system. Accordingly, at this time we do not
remand this case to the district court or consider a final remedy, but instead we will
retain jurisdiction and stay all further proceedings to allow the legislature a reasonable
time to correct the constitutional infirmity in the present financing formula. (Continued)

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2 This Court's stay recognizes the wisdom of this approach. A decision that
3 suddenly strikes down a major component of education funding creates an unnecessary
4 emergency for the Legislature, one that makes an informed and well-designed substitute
5 system much less likely. This harm to the State if the stay is not granted is exacerbated
6 when the decision prompting the overhaul is the appealed decision of a superior court:
7 it creates the danger that the Legislature will redesign the system when there is
8 ultimately no need—if this Court reverses the superior court decision—or that a system
9 redesigned without this Court's insight and direction with respect to the constitutional
10 constraints on the Legislature may also be constitutionally defective.
11

12 The existence of cases in which final appellate decisions have struck down key
13 aspects of their state's education funding—and nevertheless stayed the effective date of
14 the ruling so that the legislature could act⁶—reflect a judgment that this sort of case
15 contains additional reasons for granting a stay outside the parameters of the standard
16 stay analysis. After all, those courts were not granting a stay based on any idea that the
17 State could prevail on the merits. Rather, recognizing the strong public interest in
18 allowing the legislature time to respond appropriately to the law as enunciated in the
19 court's decision, these courts stayed their rulings until the legislature had had time to
20 act. This Court should do the same—by denying the borough's motion for
21 reconsideration and, if necessary once the merits have of this appeal have been decided,
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25 *(Continued)* In the meantime, the present financing formula and funding will remain in
effect until further order of this court.”), *supplemented* 112 P.3d 923 (Kansas 2005).

26 ⁶ *See id.*

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2 by delaying the effective date of this Court's ruling to allow the Legislature time to
3 enact a new education funding scheme.

4 **III. The borough's claim of "further harm" resulting from the briefing schedule**
5 **is misplaced.**

6 The borough argues that it will suffer an "additional" harm as a result of the
7 briefing schedule set by the Court. But this misconstrues the obvious impact of the
8 stay—the point of the stay is to leave the current system in place so that no unnecessary
9 or hasty recasting of education funding is enacted unless and until this Court has
10 declared the current system unconstitutional. The idea that the briefing schedule
11 imposes a harm not contemplated by the Court when it imposed the stay makes no
12 sense, particularly as the borough's opposition to the motion for stay was premised on
13 harm it would suffer by imposition of non-refundable taxes pending appeal. [Opposition
14 to stay at 6]
15

16 The stay and expedited briefing schedule set up by the court maintain the status
17 quo in the public interest, so that education funding is secure while the constitutionality
18 of the system is reviewed by this Court. In contrast, the rush to judgment advocated by
19 the borough's proposed schedule would give this Court only a couple of weeks to
20 consider an issue that it took the superior court nearly six months to decide—less time
21 in fact than the borough proposed to take preparing each of its briefs—and would
22 produce a decision potentially invalidating the state's education funding scheme for the
23 next school year after the legislative session is over and after education budgets
24 anticipating the funding have already been passed.
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The borough argues that the individual taxpayer plaintiffs in this case will be irreparably harmed by the stay because taxes that they will pay in the next year allegedly cannot be refunded. [Motion at 5] But in fact, there is no evidence in the record to suggest that the stay will make any difference whatsoever to the taxpayers; even assuming that the Legislature's response to the lack of a stay did not involve a comparable financial cost to taxpayers, the borough has never asserted that it would cut either property or sales taxes if the required local contribution was invalidated. Nor does the superior court's judgment require the borough to cut its taxes proportionate to the elimination of the required local contribution. For the same reason, the borough's concerns about the alleged difficulty of refunding taxes is irrelevant.

Moreover, the borough's claim that it could not keep track of the property taxes paid by the four individual named plaintiffs so as to permit a "refund" of any alleged excess payment is remarkable. And given that the borough's property tax revenue is significantly more than the required local contribution, the fact that sales taxes would be difficult to refund is irrelevant; it is nothing more than an attempt to manufacture a harm where none exists.

IV. Success on the merits.

Finally, the borough offers the transcript of the oral argument on the stay in support of its claim that the State has not met its burden to show a sufficient probability of success on the merits. [Motion at 6-7, n.18] But the borough's argument rests on a mischaracterization of the State's arguments in this case in an attempt to establish that

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this Court will have to overturn *State v. Alex*⁷ and other precedents if it finds that the required local contribution does not violate the dedicated fund prohibition. But the State has never suggested that this Court will have to overturn *Alex* to uphold the required local contribution.⁸

The State argued below that the required local contribution is not state revenue, because it is not the product of a state-imposed tax or license and because it is neither collected by, nor paid to, the State. And contrary to the borough's assertion, this Court will not have to overturn any of its precedents to agree with the State on this issue.⁹ Even an extremely broad construction of the dedicated fund clause's prohibition on the dedication of "any state tax or license" does not foreclose the possibility that some sources of money do not constitute state revenue; nor would a holding that the required local contribution falls outside the dedicated fund provision require this Court to disavow prior cases addressing state revenue. Because the State's position has always been that *Alex* does not control this case, the borough's argument is misplaced.

⁷ 646 P.3d 203 (Alaska 1982).

⁸ The pages of the oral argument transcript cited in support of this assertion reflect the State's counsel making the uncontroversial point that this Court is the final arbiter of the meaning of the language of its earlier cases, [Oral Argument Transcript at 14] and the borough's counsel's mischaracterization of the State's position. [Oral Argument Transcript at 32-33]

⁹ In addition to its extensive briefing distinguishing *Alex* and other precedent during cross-motions for summary judgment, the State argued at oral argument on the stay that the case falls outside the context of prior dedicated fund cases. [Oral Argument Transcript at 9]

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ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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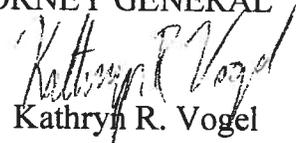
CONCLUSION

Because the borough has not presented any rationale warranting reconsideration, and because the State's previous arguments in favor of a stay remain persuasive, this Court should deny the motion for reconsideration.

DATED: March 25, 2015

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:



Kathryn R. Vogel
Alaska Bar No. 1403013
Rebecca Hattan
Alaska Bar No. 0811096
Margaret Paton-Walsh
Alaska Bar No. 0411074
Assistant Attorneys General

Phone: (907) 269-5275
Attorneys for Defendants

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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individual, on her own behalf and on)
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individual; and DAVID SPOKELY, an)
individual;)

Appellees/Cross-Appellants.)

Supreme Court Nos.: S-15811/S-15841

Trial Court Case No.: 1KE-14-00016 CI

ORDER

Upon consideration of the appellees/cross-appellants' motion for reconsideration of the order granting stay and the State of Alaska's opposition to the motion,

IT IS HEREBY ORDERED that the motion is DENIED.

DATED this ___ day of March, 2015.

Justice of the Alaska Supreme Court

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OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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KETCHIKAN GATEWAY) Supreme Court Nos.: S-15811/S-15841
BOROUGH, et al.)
)
Appellees/Cross-Appellants.)
)

Trial Court Case No.: 1KE-14-00016 CI

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that on March 25, 2015 a true and correct copy of the *State of Alaska's Opposition to Appellees/Cross-Appellants' Motion for Reconsideration of Order Granting Stay* and this *Certificate of Service* were served by U.S. Mail to the following:

Louisiana W. Cutler K&L Gates 420 L Street Suite 400 Anchorage, AK 99501-1971	Scott A. Brandt-Erichsen Ketchikan Gateway Borough 1900 First Avenue, Suite 215 Ketchikan, Alaska 99901
A. Rene Broker Fairbanks North Star Borough 809 Pioneer Road Fairbanks, AK 99701	

I further certify, pursuant to App. R. 513.5, that the aforementioned document was prepared in 13 point proportionately spaced Times New Roman typeface.



Katelyn M. Disney
Law Office Assistant