

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, et al.,

Appellants/Cross- Appellees,

vs.

KETCHIKAN GATEWAY BOROUGH, et
al.,

Appellees/Cross-Appellants.

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Supreme Court Case No. S-15811/15841

Trial Court Case No. 1KE-14-16 CI

BRIEF OF THE FAIRBANKS NORTH STAR BOROUGH
AS AMICUS CURIAE

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA,
FIRST JUDICIAL DISTRICT AT KETCHIKAN,
THE HONORABLE WILLIAM B. CAREY, PRESIDING

FAIRBANKS NORTH STAR BOROUGH

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Filed in the Supreme Court of
the State of Alaska this _____
day of _____, 2015.

Clerk Marilyn May

By: _____
Deputy Clerk

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ALASKA CONSTITUTIONAL PROVISIONS

Alaska Const. Art. VII, § 1. Public Education.

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Alaska Const. Art. X, § 1. Purpose and Construction.

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Alaska Const. Art. X, § 2. Local Government Powers.

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized borough and cities only.

Alaska Const. Art. X, § 4. Assembly.

The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

ALASKA STATUTES

14.12.020. Support, management, and control in general; military reservation schools.

(a) Each regional educational attendance area shall be operated on an areawide basis under the management and control of a regional school board. The regional school board manages and controls schools on military reservations within its regional educational attendance area until the military mission is terminated or so long as management and control by the regional educational attendance area is approved by the department. However, operation of the military reservation schools by a city or borough school district may be required by the department under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by the regional educational attendance area is disapproved by the department, operation, management, and control of schools on the military reservation transfers to the city or borough school district in which the military reservation is located.

(b) Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board.

(c) The legislature shall provide the state money necessary to maintain and operate the regional educational attendance areas. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money that must be raised from local sources to maintain and operate the district.

14.17.410. Public school funding.

(a) A district is eligible for public school funding in an amount equal to the sum calculated under (b) and (c) of this section.

(b) Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows:

(1) state aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year; basic need equals the sum obtained under (D) of this paragraph, multiplied by the base student allocation set out in AS 14.17.470; district adjusted ADM is calculated as follows:

(A) the ADM of each school in the district is calculated by applying the school size factor to the student count as set out in AS 14.17.450;

(B) the number obtained under (A) of this paragraph is multiplied by the district cost factor described in AS 14.17.460;

(C) the ADMs of each school in a district, as adjusted according to (A) and (B) of this paragraph, are added; the sum is then multiplied by the special needs factor set out in AS 14.17.420(a)(1) and the secondary school vocational and technical instruction funding factor set out in AS 14.17.420(a)(3);

(D) the number obtained for intensive services under AS 14.17.420(a)(2) and the number obtained for correspondence study under AS 14.17.430 are added to the number obtained under (C) of this paragraph;

(E) notwithstanding (A) — (C) of this paragraph, if a school district's ADM adjusted for school size under (A) of this paragraph decreases by five percent or more from one fiscal year to the next fiscal year, the school district may use the last fiscal year before the decrease as a base fiscal year to offset the decrease, according to the following method:

(i) for the first fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 75 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the first fiscal year after the base fiscal year;

(ii) for the second fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 50 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the second fiscal year after the base fiscal year;

- (B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a one mill tax levy on the full and true value of the taxable real and personal property in the city or borough school district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; and
- (2) in the third year of operation, local contributions must be at least the greater of
 - (A) the local contributions, excluding federal impact aid, for the previous fiscal year; or
 - (B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110.

(f) A school district is eligible for additional state aid in the amount by which the local contributions that would otherwise have been required under (b)(2) of this section exceed the district's actual local contributions under (e) of this section.

14.17.510. Determination of full and true value by Department of Commerce, Community, and Economic Development.

(a) To determine the amount of required local contribution under AS 14.17.410(b)(2) and to aid the department and the legislature in planning, the Department of Commerce, Community, and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Commerce, Community, and Economic Development shall make the determination of full and true value guided by AS 29.45.110 and based on a determination of full and true value made by the state assessor at least every two years using the best information available, including on-site inspections made by the state assessor in each of those districts at least once every four years. For purposes of this subsection, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality from which the property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district, or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a tax is not levied under AS 29.45.080 by the municipality that is the school district. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is

a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Commerce, Community, and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.431 shall be treated as taxable property under this section.

(c) *[Repealed, § 8 ch 19 SLA 2012.]*

STANDARD OF REVIEW

Given that the superior court entered summary judgment on the constitutionality of a statute, this Court reviews the superior court's ruling by applying its own independent judgment.¹ While the Court presumes the challenged statute to be constitutional, it does not "redraft defective legislation"² but instead adopts "the rule of law that is most persuasive in light of precedent, reason and policy."³

ARGUMENT

I. ALASKA'S CONSTITUTIONAL HISTORY SUPPORTS ANNUAL LOCAL DISCRETION IN ALLOCATION OF LOCAL RESOURCES WITH NO STATE REQUIRED OR CONTROLLED EDUCATION DEDICATIONS

Alaska's constitution establishes a firm intent to provide "for maximum local self-government"⁴ including vesting "[a]ll local government powers" in boroughs and cities.⁵ Each borough has an assembly, the constitutionally designated "governing body" exercising legislative authority over borough matters including fiscal appropriations.⁶ Thus locally elected governing bodies are constitutionally entrusted with the authority to spend and fiscally manage local funds, including annual budget decisions requiring the allocation of local resources between competing needs and interests.

¹ *Premera Blue Cross v. State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins.*, 171 P.3d 1110, 1115 (Alaska 2007)

² *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1144 (Alaska 1987).

³ *Guin v. Ha*, 591 P.2d 1281, 1286 n.6 (Alaska 1979).

⁴ Alaska Const. art. X § 1.

⁵ Alaska Const. art. X § 2.

⁶ Alaska Const. art. X § 4; AS 29.20.050 and AS 29.25.010.

The state required local contribution⁷ (hereafter “RLC”) overrides this local decision-making power over local funds and displaces it with a state commanded and dedicated funding level.⁸ Although the State obliquely refers to a “long standing practice--pre-dating statehood--of requiring local governments to help fund local schools,”⁹ as discussed below displacement of local budgetary control over education funding simply did not exist pre-statehood.

Indisputably, delegates anticipated that, post-statehood, education would continue to be a power exercised by local governments and that local taxes would continue to play a role in school funding.¹⁰ The State’s argument, however, inexplicably¹¹ confuses the fundamental difference between existence of a power and decision-making control over

⁷ AS 14.17.410(b)(2) and 14.12.020(c).

⁸ This begs the separate question, not directly litigated in the current matter, whether apart from the anti-dedication clause, Alaska’s Constitutional provisions providing for “maximum local self-government”, permits the state legislature to control, through statutes like the RLC, locally raised revenue. Some courts have found that “[p]ublic money in the custody of municipalities are subject to state control and disposition for governmental purposes, within the limitations of the constitution” while others have held that “the legislature may not control fiscal affairs of purely municipal concern” Eugene McQuillin, *The Law of Municipal Corporations*, §4.138 at 437-438 (3d ed. 2014). If the State of Alaska possesses the right to control municipal revenue, then the anti-dedication clause clearly precludes it from dedicating this revenue.

⁹ Appellant’s Brief at 23.

¹⁰ 4A Proceedings of Alaska Constitutional Convention 2630 (Jan. 19, 1956).

¹¹ The State successfully argued this exact distinction in *Moore v. State* where the court, while acknowledging the state’s educational power, held that decisions concerning funding levels are “appropriate policy determinations for the Legislature to address as it may deem warranted.” Appendix B to Citizens for the Educational Advancement of Alaska’s Children Brief at 184.

the spending/budgetary amounts expended on that particular power.¹² Notably, in the pre-statehood funding system familiar to the delegates, local elected bodies retained **full** discretion over the local level of education funding.¹³ The State points to no evidence establishing that the constitutional drafters contemplated a marked change in which the expected local support would occur in an amount earmarked and dictated by the state. Instead, Vic Fisher, while acknowledging education's special needs, described the Local Government Committee's intent to require education to fully compete each year for local tax dollars:

[W]e realize the special needs of education . . . at the same time we feel that education when it comes to the tax dollar, must compete with all the other necessary services that are required by the people of any area. **It was felt that the borough assembly would best be able to say that so much, on the basis of presentation, say by these districts or boards, that so much can be afforded out of this tax dollar for education, so much for health so much for police enforcement, etc.** So that is the only way you can get a proper allocation fund.¹⁴

Delegate Fisher's comments also express the Committee's resolve that despite the importance of education, the amount of local taxpayer dollars paid for education purposes

¹² See, *Adams v. City of Tenakee Springs*, 963 P.2d 1047 (Alaska 1998). (Distinguishing between the existence of a municipal duty and the discretionary policy decisions involved in the legislative allocation of scarce resources.)

¹³ As Delegate Davis explained, the Anchorage area had "some difficulties about finance, by reason of the fact that the school district and the city were competing for the same taxpayer's dollar . . . and whatever the school district set for its budget was subject to final check by the city whose interests were quite different actually." 4A Proceedings of Alaska Constitutional Convention (Jan. 19, 1956).

¹⁴ 4A Proceedings of Alaska Constitutional Convention 2630 (Jan. 19, 1956) (emphasis added).

would be solely a matter of local concern decided within the sound discretion of the governing body elected by the people paying the taxes.¹⁵

Although the State seeks to apply some significance to the absence of any delegate discussion concerning the claimed conflict between the dedicated funds clause and the education funding system,¹⁶ that “dog didn’t bark” because no one was at that unconstitutional door. Instead, the delegates contemplated a local funding system completely consistent with the anti-dedication clause because it preserved “an annual appropriation model . . . [with education] ‘in the same position’ as competitors for funds with the need to ‘sell their viewpoint along with everyone else.’”¹⁷

The fully constitutional system intended by the constitutional drafters did not embrace the conflicting concept of state commanded local funding levels and inherently rejects the argument, manifested through the RLC and supported by well-meaning *Amici*, that given education’s special needs and importance, municipal education funding decisions over local tax dollars must be protected from the discretion of local governing

¹⁵ *Id.*

¹⁶ Appellant’s Brief at 39.

¹⁷ *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992)(quoting in part 4 Pa. Co. Ct. Rep. 2364-67 (Jan. 17, 1956)).

bodies.¹⁸ Although faced with similar arguments made by *Amici* that schools would not receive adequate funding if required to compete with other annual budget needs, delegates expressed confidence that both the state legislature and local governing bodies had made and would continue to make sound educational funding decisions:

The budget goes to the legislature and they approve and very liberally approve, funds for all the needs of our schools and the same situation has existed in regard to the school districts operating under the approval power of the city councils I know that our policy has been good; our schools have been healthy . . . and I see that we are not in this instance deciding upon whether we have good schools or not; I know we are going to have good schools. The question is just how will the money set up be budgeted and approved for schools in relation to all of the other costs of government, so I for one feel that we must maintain within the general governing body the power to approve budgets and that is what we do here.¹⁹

While the State correctly recognizes that the constitutional drafters displayed no fundamental intent to “disturb the education funding system existing at the time,”²⁰ it ignores the defining characteristic of the then existing system—local decision-making and control over local taxpayer dollars unfettered by state earmarking.

¹⁸ After debate, the delegates rejected an amendment permitting school districts to separately tax even though it drew support from delegates concerned about perpetuating the existing system where education dollars had to compete for tax dollars with other local needs and functions. Delegate Davis speaking in support of the amendment commented that under the existing system “I have seen so many times where needed things that the city wants, needed things compete with needed things that the school district wants Certainly it is not up to a borough or a city or any other organization to say, ‘Mr. School, you only need so many teachers’, and that is just exactly what has happened in our area, in the best of faith I know.” Constitutional Convention Minutes Day 59 (January 20, 1956).

¹⁹ Constitutional Convention Minutes Day 59 p. 17 (January 20, 1956).

²⁰ Appellant’s Brief at 38-39.

The fact that the RLC's disruption of this constitutional system was not immediately challenged²¹ by local governments as violating the dedicated funds clause says nothing about its constitutionality. After all, education funding remains a politically popular, worthwhile and notable goal from which local governments have not historically shirked or sought to avoid.²² Moreover, as this Court has recognized, dedicated funds are often highly popular because they reduce "taxpayer resistance by guaranteeing that the tax would be used to benefit those who paid it."²³ The RLC by dedicating the local tax dollars to local school districts incorporated this popular characteristic.²⁴

II. STATE LAW REQUIRING ITS POLITICAL SUBDIVISIONS TO RAISE FUNDS IN FURTHERANCE OF A STATE CONSTITUTIONAL DUTY AND DIRECTING PAYMENT TO AN ENTITY SUBJECT TO OVERRIDING STATE CONTROL CREATES STATE NOT LOCAL REVENUE

As this Court acknowledged back in 1974, the State adopted Title 14 to meet its constitutionally imposed educational obligations.²⁵ Through Title 14, the State's educational funding scheme creates two distinct streams of revenue from locally levied

²¹ It hardly went "unnoticed for the following sixty years" [Appellants Brief at 3] given that Mat-Su challenged its constitutionality on different grounds by filing suit in "late 1986." *Matanuska-Susitna Sch. Dist. v. State*, 931 P.2d 391, 394 (Alaska 1997).

²² Brief of *Amicus Curiae* Citizens for the Educational Advancement of Alaska's Children, Appendix C at 55 (Public School Funding Formula Educational Adequacy 2001 Report positively noting that from FY90 to FY2000 Municipalities significantly increased their local contributions by \$59 million more than the formula required.)

²³ *State v. Alex*, 646 P.2d 203, 209 (Alaska 1982)(quoting 3 Alaska Statehood Commission Constitutional Studies pt. IX, at 27 (1955)).

²⁴ AS 14.12.020(c). This bone is perhaps the other reason for the delayed barking.

²⁵ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 798 (Alaska 1975)(Pursuant to the constitutional mandate to establish and maintain a system of public schools "the legislature has enacted Title 14 of the Alaska Statutes.")

taxes. As elucidated by Legislative Counsel, state laws “expressly provide for both mandatory and optional local contributions to the funding support for public schools.”²⁶

Through the optional local contribution, municipalities may provide additional educational funding above the state-designated “basic need.”²⁷ State law permits this funding but does not statutorily require it or condition state funding on the assembly’s discretionary appropriation of these funds. Although the total amount is capped by state law,²⁸ this truly local revenue results from a voluntary assembly levy and appropriation made in the full exercise of its discretionary authority over local tax dollars and after consideration of competing needs as envisioned by our constitutional founders.²⁹ It is only this voluntary appropriation, not the RLC, as argued by the State and *Amici*,³⁰ that provides any genuine local motivation to closely examine how education dollars are spent. Logically, only voluntary contributions that are not statutorily mandated garner local debate because it is these expenditures that must still compete with other local needs.

²⁶ [Supp. Exc. 315].

²⁷ AS 14.17.410(c)(“In addition to the local contribution required under (b)(2) of this section a city or borough school district . . . **may** make a local contribution.”)(emphasis added).

²⁸ AS 14.17.410(c). As the State acknowledges, substantial state funding ensures that individual “district wealth is not determinative of school funding.” [Appellant’s Brief at 15]. This cap on district funding ensures the “equalization” necessary for federal aid by precluding significant deviations. [Brief of *Amici Curiae* Association of Alaska School Boards, Alaska Council of School Administrators & Alaska Superintendents Association, Attachment 6, Page 3 of 8].

²⁹ In FY 2014, the Fairbanks North Star Borough contributed an addition \$23,354,165 in optional local contributions and in-kind contributions. [Supp. Exc. 295].

³⁰ Appellant’s Brief at 18-19 and *Amici Curiae* Association of Alaska School Boards Brief at 18.

The second locally funded revenue stream occurs through the RLC. The RLC rejects the funding process contemplated by constitutional founders as it creates a **mandatory** revenue stream protected from assembly discretion and competition with other competing local needs. Utilizing the RLC the state funds its educational system by statutorily wielding the taxing arm of its political subdivisions and forcing assembly abdication of its legislative discretion over the resulting tax dollars. Although the State coyly shies away from any RLC linkage to local tax burdens pointing out that the RLC “does not mandate the method”³¹ used to raise the funds, it is almost axiomatic that taxes are a local government’s principal, often sole, source of revenue.³² “Local government without . . . [the power of taxation] would be little better than a mockery. A municipal corporation without the power of taxation would be a body without life, incapable of acting and serving no useful purpose.”³³

Additionally, although the RLC by its own language and effect, statutorily escapes the annual funding process otherwise vested in the assembly’s legislative discretion, it inextricably links itself to the annual municipal taxation process creating the demanded funds by:

- Extracting payment only from incorporated municipalities -- the only legal entities to which the State has constitutionally delegated taxing powers³⁴ in

³¹ Appellant’s Brief at 18.

³² In FY 14-15, total Fairbanks North Star Borough revenue was \$107,221,524. Property taxes generated \$102,890,424 of that total amount. [Supp. Exc. 312-313].

³³ Eugene McQuillin, *The Law of Municipal Corporations* §44.3 at 22 (3d ed. 2013).

³⁴ Alaska Const. art. X, § 2.

obvious recognition that the taxing power is a necessary predicate to payment of the required “contribution.”

- Mandating payment that “is the equivalent of a 2.65³⁵ mill tax levy on the full and true value of the taxable real and personal property in the district.”³⁶
- Setting a funding amount tied directly to and floating with the total value of the municipal property tax base, *i.e.* the amount of the payment is determined by municipal taxable values.³⁷

Through its wholesale supplanting of the assembly’s legislative discretion over the amount of mandatory local educational funding, the RLC transforms the assembly into a ministerial functionary required to produce the state-mandated revenue necessary to fund the state-determined “basic need.”³⁸ State law does not merely suggest, imply or encourage municipalities to fund the RLC. State law mandates the payment.³⁹ Nothing about it is voluntary; the assembly has no discretion over the amount and state law demands payment regardless of any competing borough needs.

³⁵ In FY 2014, the RLC equated to a mill rate of 3.29 on the taxable property within the FNSB [Supp. Exc. 295] because state law includes the value of property the Fairbanks North Star Borough voluntarily exempts, the largest of which is the residential property tax exemption which state law permits but does not require. FNSBC 3.08.020 I.

³⁶ AS 14.17.410(b)(2).

³⁷ AS 14.17.510.

³⁸ AS 14.17.410(b)(1).

³⁹ *See*, AS 14.12.020(c) (“The borough assembly for a borough school district, and the city council for a city school district, shall provide the money that must be raised from local sources to maintain and operate the district.”) and AS 14.17.410(b)(2) which describes the local contribution as “required” and distinguishes it from the voluntary payments which a municipality “may make” in AS 14.17.410(c).

Once the local assembly performs its statutorily required ministerial duty of collecting the money in the amount directed by the state, the RLC requires payment of the earmarked funds to the state's educational system. While not paid directly to the state's treasury, it is paid to an educational system established, maintained and supervised by the state. Although the "legislature delegated the state's authority to manage the operations of the schools to local school districts,"⁴⁰ recipient schools remain a part of an overall state school system.⁴¹ State law selects, creates and oversees the governing board which manages the operations **for the state** in the local district.

The . . . School Board was created by the authority of the state legislature, and is the delegated state authority to govern its school district and manage the operations of the schools within that district. The number of members on the [local] . . . School Board, its powers and duties, and its relationship with the municipal government are typical matters resolved by Alaska statutes. While the school board is elected by the same voters as is the municipal assembly and is also a part of the Municipality . . . it is a legislative body with legal responsibilities which in important respects are distinct from those exercised by the assembly.⁴²

The School Board, created and delegated the authority to locally manage the state's operation of schools within the designated district, locally manages its schools subject to the state's plenary power.⁴³ The state's pervasive authority⁴⁴ over the "local" school district, specifically over district funds, vastly exceeds and overrides the assembly's

⁴⁰ *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 306 (Alaska 2001).

⁴¹ The state is constitutionally charged with the duty to "establish and maintain a system of public schools." Alaska Const. art. VII, § 1.

⁴² *Tunley v. Anchorage Sch. Dist.*, 631 P.2d 67, 75 (Alaska 1980).

⁴³ *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

⁴⁴ *Id.* This "pervasive control over public education" precludes even home rule municipalities from exercising power over education "unless, and to the extent, delegated by the state legislature." *Jefferson v. State*, 527 P.2d 37, 44 (Alaska 1974).

nominal role.⁴⁵ As this Court observed in 1980, “the general absence of municipal assembly legislative appropriation power is particularly striking in light of the large proportion of municipal revenues devoted to the school system budget.”⁴⁶

After the State, through the RLC, statutorily supersedes the assembly’s local legislative appropriating power and secures payment into the state’s educational system, the State then administratively asserts final fiscal and appropriating authority over these funds. State law bars the borough from exercising any control over school district funds denying it any “legislative power to make appropriations for specific item, programs or priorities”⁴⁷ in the district’s budget. The state Department of Education, however, has full authority over all school district funds with no distinction between funds originating directly from the state or from the RLC.⁴⁸ The state’s authority over these funds extends even to the right to appropriate and use the funds as it deems necessary to improve instructional practices in the district.⁴⁹

Moreover, according to Legislative Counsel, the state, not the local assembly, has ultimate control over all locally raised education funds whether voluntarily paid or paid

⁴⁵ It is state law that prescribes and controls rules for local school district employees, sets teacher tenure rules, prescribes testing and sets curricular standards. *See e.g.* AS 14.14.060 (“State law relating to teacher salaries and tenure, to financial support, to supervision by the department and other general laws relating to schools, governs the exercise of the functions by the borough.”)

⁴⁶ *Tunley v. Anchorage Sch. Dist.*, 631 P.2d 67, 76 (Alaska 1980).

⁴⁷ *Id.* at 75-76.

⁴⁸ AS 14.07.030 (Including in the listed powers of the department, the power to direct the “use of appropriations under this title for distribution to a district” and to “redirect public school funding under AS 14.17” when necessary to improve district practices.)

⁴⁹ AS 14.07.030(14) & (15) and AS 14.07.020(a)(16).

pursuant to the state-mandated funding.⁵⁰ State control over these funds extends even to the legal right to *prohibit* the Borough Assembly from reappropriating or reallocating any unused “local” funds at the end of the budget year.⁵¹ Thus, according to state law, state authority and power over school district funds fully and completely trumps the local legislative body’s constitutionally granted legislative powers.⁵²

In sum, through the RLC the State, by using its political subdivision proxies, produces a state earmarked revenue stream protected from any (local or state) annual legislative control or discretion, dedicates the annual revenue stream to the state’s education system and once paid into the system is treated like state money indistinguishable from directly paid state funds.

III. THE RLC EFFECTUATES THE EXACT “FISCAL EVILS” TARGETED BY THE ANTI-DEDICATION CLAUSE

As the Court acknowledged in *Southeast Alaska Conservation Council v. State*,⁵³ “dedicating funds for a deserving purpose or a worthy institution is an attractive idea.” Education certainly qualifies as a deserving purpose and the RLC’s dedication of local taxpayer dollars effectively benefits the state’s education system by ensuring a steady funding source shielded from any competing local and state budget demands. Very few, if any, purposes have a more powerful societal or political impact than education funding. Opposing *Amici’s* “parade of horrors” therefore robustly invokes the “power of the

⁵⁰ Memorandum of Legislative Counsel (Feb. 25, 2013) [Supp. Exc. 314-315].

⁵¹ *Id.* (asserting state law can legally prohibit the Assembly from “the reallocation or reappropriation of local contributions for another purpose”).

⁵² Alaska Const. art. X, § 4 (making the Assembly the governing body of the organized borough).

⁵³ 202 P.3d 1162, 1176 (Alaska 2009).

dedication impulse”⁵⁴ constitutional founders sought to avoid. The anti-dedication clause exists in Alaska’s Constitution because the “considered judgement of the founders” found that the fiscal evils resulting from dedications outweighed these positive benefits.⁵⁵ Moreover, despite recognizing the importance of adequate education funding, these delegates knowingly committed education funding to state and local legislative discretion.⁵⁶

Although the practice of requiring local districts to tax its citizens to supplement education funding is not unique,⁵⁷ our founders’ adoption of the anti-dedication clause precludes blind use of other state’s funding systems operating without anti-dedication constraints. Although the State points out that the 1945 Georgia Constitution apparently contained both a dedicated funds clause and a requirement that local counties levy taxes to support local schools,⁵⁸ the Georgia model appropriately recognizes that this type of funding mandate must be **constitutionally** rather than **statutorily** imposed. No one argues that Alaska could not have **constitutionally** required a local contribution to the state school system. Alaska, in fact, followed this model when it dedicated revenue to the

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See discussion *infra* part I, pp. 1-6.

⁵⁷ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 1278 (1973) (ruling on a challenge to the Texas school finance system that relied on local taxation with benefits falling unevenly based on the wealth of the political subdivision).

⁵⁸ Appellant’s Brief at 7.

Permanent Fund.⁵⁹ The constitution delegates, however, made the deliberate choice to vest local education funding decisions solely in the discretion of local governing bodies.⁶⁰

In adopting the anti-dedication clause, the constitutional delegates heavily relied upon a study concluding that dedications “curtailed the exercise of budgetary controls and simply amounted to an abdication of legislative responsibility.”⁶¹ Given the strong constitutional background and delegate concern regarding these “fiscal evils,”⁶² this Court has even suggested “that the reach of the dedicated funds clause might be extended to statutes that, while not directly violating the clause by dedicating revenues, in some other way undercut the policies underlying the clause.”⁶³

Similar policies against dedication of funds that “disempower the legislative body from making annual spending decisions”⁶⁴ and reduce “flexibility in budgeting”⁶⁵ are incorporated into the State’s constitutional and statutory prohibitions on dedicating revenue by initiative. In this context, this Court has analyzed whether a “dedication” occurs by asking whether the law created a “right” to funds or mandates expenditures.⁶⁶ The RLC does both. It inhibits local legislative flexibility by making the school system

⁵⁹ *Southeast Alaska Conservation Council*, 202 P.3d at 1170.

⁶⁰ See discussion *infra* part I, pp. 1-6.

⁶¹ *Alex*, 656 P.2d at 209 (citing 3 Alaska Statehood Commission, Constitutional Studies pt. IX at 29-30 (1955)).

⁶² “Even those persons or interests who seek the dedication of revenue for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil.” 6 Proceedings of Alaska Constitutional Convention (PACC)(Appendix V at 111 (Dec. 16, 1955)).

⁶³ *Southeast Alaska Conservation Council*, 202 P.3d at 1170.

⁶⁴ *Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991).

⁶⁵ *Id.* at 1158.

⁶⁶ *Id.*

the targeted recipient of local tax dollars, vesting in the school district the annual right to local tax dollars and annually mandating the expenditure. If the State can “dedicate” local taxpayer funds merely by adopting a law earmarking local tax dollars and overriding local legislative flexibility, then it claims a right the State legally denies to local taxpayers who actually provide the funding.⁶⁷

Through the RLC the State secured an educational funding mechanism for its school system that wholly immunizes millions of dollars⁶⁸ from the constitutionally anticipated annual competition for both state and local dollars. In order to comply with state law, local assemblies and councils must annually abdicate their legislative responsibilities over millions of local tax dollars. Thus, the RLC “frees” local taxpayer money from all (local and state) annual legislative discretion and competing budgetary interests by earmarking it for the state’s educational system where it is then subjected to final state **administrative** supervision, use and control.

If the state’s constitutional mandate to fund education somehow justifies state earmarking of revenue by statutorily controlling public money raised through its political subdivisions, then logically it would similarly excuse the earmarking of the state’s direct educational funding. Ironically, although state education funding plays an even larger funding role in the state’s important educational system, its direct contribution remains subject to the legislature’s appropriating power while the money raised by the state

⁶⁷ The entirely separate question of whether local governing bodies can “dedicate” funds, is irrelevant to whether the State of Alaska may through the RLC dedicate the revenue stream produced by local taxpayer dollars.

⁶⁸ The Fairbanks North Star Borough in FY2014, paid \$26,940,883 pursuant to the RLC. [Supp. Exc. 294-295].

through its political subdivisions flows automatically free from any annual legislative discretion, state or local.

IV. A STATE LAW EARMARKING LOCAL FUNDS FUNDAMENTALLY DIFFERS FROM VOLUNTARY COOPERATIVE PARTNERSHIPS OR EXERCISES OF THE STATE'S POLICE POWER

The State repeatedly attempts to analogize the RLC to a matching grant or other state incentive program like its capital matching grant in which the state legislature appropriates money that a municipality may utilize for a capital project if its assembly appropriates the required matching funds.⁶⁹ Intergovernmental cooperation projects⁷⁰ however, markedly differ from the RLC because intergovernmental cooperation agreements “must be voluntary . . . [with] control . . . vested in the elected governing bodies of the units involved.”⁷¹ The state’s capital matching grant program embodies this concept by requiring two voluntary funding decisions each fully remaining within the separate control of each governing body with neither under any existing legal compulsion to contribute the funds.⁷²

⁶⁹ Appellant’s Brief at 24-25 and 33.

⁷⁰ “Defined as an approach or device by which two or more governmental entities work together for a public purpose.” McQuillin’s §3A:4 at 562 (3d ed. 2010).

⁷¹ *Id.* at 565.

⁷² The U.S. Supreme Court decision, *South Dakota v. Dole*, 483 U.S. 203, 97 L.Ed. 2d 171 (1987), illustrates the classic example of a legal incentive program in which the federal government conditioned five percent of its grant of a State’s federal highway funds on whether the State raised its drinking age to 21. The State was under no legal compulsion to raise its drinking age and the Federal government had no constitutional or other legal obligation to pay the conditioned five percent.

The RLC, however, legally compels the assembly to contribute the funds.⁷³ In addition to the use of mandatory language directing its political subdivisions to make the required “contribution,” state law adds a further coercive element by abolishing all state funding to state schools located in the political subdivision’s district if the required payment is not made.⁷⁴ Thus, the state adds to the RLC’s explicit statutory compulsion the whip of overwhelming economic pressure. Although the U.S. Supreme Court has generally approved of the use of financial inducements, it has drawn a distinction between “relatively mild encouragement” and “a gun to the head.”⁷⁵

Moreover, the state of Alaska, already under a constitutional compulsion to fund its public schools, cannot condition the entirety of its constitutionally required duty⁷⁶ to students located in boroughs and cities on the state’s political subdivision’s willingness to contribute. As Judge Gleason in *Moore v. State*⁷⁷ correctly concluded, the “State’s constitutional obligation to maintain schools has four components” one of which is “adequate funding.”⁷⁸ Although the constitution does not quantify the financial amount necessary to meet the State’s duty to “establish and maintain a system of public schools

⁷³ AS 14.12.020(c) and AS 14.17.410(b)(2).

⁷⁴ AS 14.17.410(d)(“State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made.”) and AS 14.17.490(b)(“A city or borough school district is not eligible for additional funding . . . unless the district received a local contribution equal to at least the equivalent of a 2.65 mill tax levy”)

⁷⁵ *Nat’l Fed’n of Indep. Bus v. Sebelius*, 567 U.S. ___, 183 L.Ed. 2d 450, 494 (2012).

⁷⁶ See e.g., *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 799 (Alaska 1975)(Alaska’s constitution “imposes a duty upon the state legislature” in the educational field).

⁷⁷ Attached as Appendix B to Brief of *Amicus Curiae* Citizens for the Educational Advancement of Alaska’s Children.

⁷⁸ *Id.* at 174.

open to all children of the State,”⁷⁹ appropriately leaving it to the state’s annual legislative discretion, it logically must amount to something more than zero.⁸⁰ Zero funding, however, is what the State statutorily threatens in order to “incentivize” its political subdivisions to comply with statutorily mandated local funding requirement.

The RLC similarly bears no legal relationship to the state’s minimum wage or mandatory insurances requirements. State laws like the minimum wage, are not adopted to create, divert or dedicate a public annual revenue stream but are instead enacted pursuant to the state’s police powers. These statutes, unlike the RLC, do not in any way implicate the underlying policies of the anti-dedication clause. They do not demand legislative abdication over public funds; they do not shield public revenue from any annual legislative budgeting oversight; and, they do not annually dedicate the resulting guaranteed revenue stream to fund a state constitutional purpose.

CONCLUSION

On behalf of the Fairbanks North Star Borough, therefore, the undersigned respectfully requests that the Court uphold the superior court’s decision invalidating a funding scheme that avoids appropriate legislative oversight as required by Alaska’s Constitution.

⁷⁹ Alaska Const. art. VII, §1.

⁸⁰ NEA-Alaska erroneously characterizes Ketchikan’s position by claiming that Ketchikan “contends that the State is required to supply the first tier of dollars necessary to meet education needs in organized municipalities . . .” and that “state assistance should displace the municipalities’ obligation to fund education.” NEA-Alaska Brief at 11. Nothing in Ketchikan’s argument seeks to obviate the state legislature’s discretion over the appropriate level of state education funding.

DATED at Fairbanks, Alaska this 30th day of June, 2015.

FAIRBANKS NORTH STAR BOROUGH

A handwritten signature in black ink, appearing to read 'ARB', written over a horizontal line.

A. René Broker
Borough Attorney
ABA No. 9111076

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, et al.,

Appellants/Cross- Appellees,

vs.

KETCHIKAN GATEWAY BOROUGH, et
al.,

Appellees/Cross-Appellants.

Supreme Court Case No. S-15811/15841

Trial Court Case No. 1KE-14-16 CI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Brief of the Fairbanks North Star Borough as *Amicus Curiae* and this Certificate of Service / Certificate of Typeface was served upon each of the following by U. S. First class Mail:

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