

# CHILDREN AND ALASKA'S PERMANENT FUND DIVIDEND: REASONS FOR RETHINKING PARENTAL DUTY

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## ABSTRACT

*Alaska's Permanent Fund Dividend (Dividend) is an annual payment to eligible residents derived from state investment earnings on mineral royalties. Since 1982, the Dividend has averaged a payout of approximately \$1,000 annually. The Permanent Fund Dividend program allows a parent, guardian, or other authorized representative to claim a Dividend on behalf of a child. Yet Alaska law currently imposes no requirements whatsoever on how parents use a child's Dividend. This Note questions Alaska's lack of parental duty when it comes to managing children's Dividends. Part I sketches the Permanent Fund Dividend's history and motivations, the mechanics of the program itself, and the case law that has developed regarding parental duty under the program. Part II then proposes that the way in which a child's Dividend is characterized influences what sort of parental duty (if any) attaches. In Part III, a reinterpretation of the Dividend as income rightly belonging to the child is offered as a compelling alternative to current doctrine. This Note concludes that the lax treatment of a child's Dividend under current Alaska law is suspect, and argues that an income conception that imputes a higher degree of parental duty better advances the program's aims.*

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## INTRODUCTION

Every year Alaskans “get money just for living.”<sup>1</sup> More specifically, Alaska’s Permanent Fund Dividend (Dividend) is an annual payment to eligible residents derived from state investment earnings on mineral royalties.<sup>2</sup> Since its present-day inception in 1982, the Dividend has averaged a payout of approximately \$1,000 annually.<sup>3</sup> Without adjusting for inflation, 2015 witnessed a new peak Dividend of \$2,072.<sup>4</sup> That year there were 672,741 valid applications for the Dividend,<sup>5</sup> aggregating to a total disbursement of over \$1.2 billion.<sup>6</sup> Of these valid applicants (and ultimately recipients), 176,831 were children under the age of eighteen—equaling 26.29% of 2015 recipients.<sup>7</sup> Translated into dollar terms, children received over \$360 million in Dividend payouts in 2015.<sup>8</sup> Not surprisingly, the Permanent Fund Dividend program allows a parent, guardian, or other authorized representative to claim a Dividend on behalf of a child.<sup>9</sup>

Yet Alaska law currently imposes no requirements whatsoever on how parents use a child’s Dividend.<sup>10</sup> As of now, parents have no duty to spend or invest these funds wisely or even ostensibly in the child’s interest. Hypothetically, nothing prevents a parent from squandering a child’s annual payout “on everything from alcohol to trips to Hawaii.”<sup>11</sup>

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1. DAVE ROSE, SAVING FOR THE FUTURE: MY LIFE AND THE ALASKA PERMANENT FUND 157 (2008) (internal quotation marks omitted).

2. See *About Us*, ALASKA DEP’T OF REVENUE, PERMANENT FUND DIVIDEND DIV., <https://pfd.alaska.gov/Division-Info/About-Us> (last visited Apr. 23, 2016) [hereinafter *About Us*].

3. See ALASKA DEP’T OF REVENUE, PERMANENT FUND DIVIDEND DIV., 2015 ANNUAL REPORT 37 (2015), <https://perma.cc/VG5G-9QQ3> [hereinafter 2015 ANNUAL REPORT] (showing Dividends totaling \$39,099.41 per person over a thirty-four-year period, averaging roughly \$1,149.98).

4. Chris Klint & Sean Doogan, \$2,072: 2015 Alaska Permanent Fund dividend amount announced, ALASKA DISPATCH NEWS, Sept. 21, 2015, <https://www.adn.com/economy/article/2015-pfd-announcement-just-hours-away-anchorage/2015/09/21/> (updated Sept. 28, 2016).

5. 2015 ANNUAL REPORT, *supra* note 3, at 37.

6. *Id.*

7. *Id.* at 24.

8. *Id.* at 24, 37. Each of the 176,831 valid children applicants received \$2,072.

9. ALASKA STAT. § 43.23.005(c) (2015).

10. See *infra* note 66 and accompanying text.

11. Scott Goldsmith, The Alaska Permanent Fund Dividend: A Case Study in Implementation of a Basic Income Guarantee 6 (July 2010) (unpublished manuscript) (on file with the University of Alaska Anchorage Institute of Social and Economic Research), [http://www.iser.uaa.alaska.edu/Publications/bien\\_xiii\\_ak\\_pfd\\_lessons.pdf](http://www.iser.uaa.alaska.edu/Publications/bien_xiii_ak_pfd_lessons.pdf).

Hence, when it comes to parents claiming Dividends on behalf of children, the program has been branded “ripe for abuse.”<sup>12</sup>

This Note questions Alaska’s lack of parental duty when it comes to managing children’s Dividends. Part I sketches the Permanent Fund Dividend’s history and motivations, the mechanics of the program itself, and the case law that has developed with respect to parental duty under the program. Part II then proposes that the way in which a child’s Dividend is characterized influences what sort of parental duty (if any) attaches. Competing interpretations of the Dividend as a credit (as it is treated now), welfare benefit, or child’s income are suggested in turn, analyzing for various strengths, weaknesses, and ramifications of these understandings. In Part III, the last of these characterizations—the Dividend as income rightly belonging to the child—is offered as a compelling alternative to current doctrine. This Note concludes that the present treatment of a child’s Dividend, merely as a credit accompanied by zero parental duty, is suspect, and argues that an income conception that imputes a higher degree of parental duty better advances the program’s aims.

## I. ALASKA’S PERMANENT FUND DIVIDEND PROGRAM

### A. History

The Permanent Fund Dividend was the product of a long-running debate over the use of the Alaska Permanent Fund (APF).<sup>13</sup> The fund had been incorporated into the Alaska Constitution in 1976, creating an endowment derived from state mineral royalties that operates to this day.<sup>14</sup> When the fund began, it was used as both an investment vehicle and as a source of capital for large-scale development projects.<sup>15</sup> Skeptical of concentrating this resource wealth in the government’s hands, though, then-Governor Jay Hammond spearheaded legislation in 1980 to redirect the APF from large-scale development projects into the hands of Alaska residents in the form of a dividend from the fund.<sup>16</sup>

Convinced that “the money could be used better by individuals than spent on government programs or invested in development projects,” the

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12. Donald B. Tobin, *Investing in Our Children: A Not So Radical Proposal*, 73 U. CIN. L. REV. 457, 499 (2004).

13. Christopher L. Griffin, Jr., *The Alaska Permanent Fund Dividend and Membership in the State’s Political Community*, 29 ALASKA L. REV. 79, 82 (2012) (citing ROSE, *supra* note 1, at 185).

14. ALASKA CONST. art. IX, § 15.

15. Griffin, *supra* note 13, at 82.

16. *Id.* (citing ROSE, *supra* note 1, at 158).

initial bill Governor Hammond guided through the legislature set the first Dividend payment at fifty dollars to each citizen eighteen years of age or older.<sup>17</sup> The bill also retroactively conferred on each adult one Dividend per year of residency since 1959 (the year of Alaska statehood).<sup>18</sup> In 1982, however, the United States Supreme Court in *Zobel v. Williams*<sup>19</sup> struck down this “retrospective aspect” of the program.<sup>20</sup> The aspect violated the Equal Protection Clause of the Fourteenth Amendment because it unconstitutionally “favor[ed] established residents over new residents.”<sup>21</sup> Also, whereas the original program was available only to adults,<sup>22</sup> today children are also eligible.<sup>23</sup>

As Governor Hammond’s skepticism implied, one of the motivations behind the Dividend’s enactment was an anti-paternalist disposition in Alaska towards government spending. Not only would APF returns be devolved from state projects to Alaska residents, this money would come with no strings attached. Early supporters of the Dividend argued that if the program’s objective was to provide benefits for all Alaskans, “there was no better way than to give them cash so they could decide for themselves what to spend it on rather than leaving that decision to the government.”<sup>24</sup> However, this *laissez-faire* approach did reportedly temper support for the program in the Alaska legislature, where some feared recipients would spend much of the Dividend unwisely.<sup>25</sup>

Another related motivation behind the program was the desire to enact a more hands-off substitute for state welfare programs. Again,

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17. *Id.* (quoting ROSE, *supra* note 1, at 158–59).

18. *Id.*

19. 457 U.S. 55 (1982).

20. *Id.* at 65.

21. *Id.* (quoting *Vlandis v. Kline*, 412 U.S. 441, 450 (1973)).

22. Griffin, *supra* note 13, at 82.

23. ALASKA STAT. § 43.23.005(c). One explanation given for this change is that, following *Zobel*, Alaskan lawmakers were concerned that excluding children might also be unconstitutional. ROSE, *supra* note 1, at 166 (citing 2 TERRENCE COLE & ELMER F. RASMUSON, *BANKING ON ALASKA: THE STORY OF THE NATIONAL BANK OF ALASKA* 183–84 (2000)). But this argument is dubious. Age groups—including minors—have generally *not* been considered suspect classes, meaning that state classifications based on age are afforded deferential rational basis review. *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976); *see also* Nina A. Kohn, *Rethinking the Constitutionality of Age Discrimination: A Challenge to A Decades-Old Consensus*, 44 U.C. DAVIS L. REV. 213, 215 (2010) (“For decades, both the legal academy and the courts have assumed that—unlike classifications based on race or gender—classifications based on age do not offend constitutional equal protection guarantees. . .”). A constitutional motive for including children in the program would thus be unfounded.

24. Goldsmith, *supra* note 11, at 6.

25. *Id.*

Governor Hammond, the Dividend's founding father of sorts, believed that APF returns were better spent by individuals than on government programs.<sup>26</sup> Today, the Dividend continues to provide "an important source of income for some Alaskans, particularly those in rural Alaska."<sup>27</sup> This is moreover true for "cash-poor rural Alaskans," for whom the money supplies a yearly injection of liquidity.<sup>28</sup> The day following its annual payout has even been referred to by some as "Early Christmas."<sup>29</sup>

A final impetus behind the Dividend program was the notion, attributed to former Governor Wally Hickel, of Alaska as an "Owner State."<sup>30</sup> Because much of Alaska's natural wealth is owned by the state government, especially the land where the state's oil and mineral wealth is largely produced, the basic idea is that the residents who "own" or control these resources have a corresponding obligation to develop those resources for the benefit of all Alaskans.<sup>31</sup> In the same vein, no less than the Alaska Constitution further mandates that the legislature utilizes, develops, and conserves the state's natural resources "for the maximum benefit of its people."<sup>32</sup>

Consonant with this owner state ethic, then, when Governor Hammond originally proposed the Dividend, it was in his view "a means of ensuring that everyone benefitted from oil production on state-owned lands."<sup>33</sup> Thus, following the program's enactment, the APF would be managed as "an investment fund for the future," with its income distributed over the long term as dividends, rather than used as a development bank to "force-feed" Alaska's economy in the short term.<sup>34</sup> In this sense, the dual impulses of anti-paternalism and an owner state

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26. See Griffin, *supra* note 17, and accompanying text.

27. ALASKA PERMANENT FUND CORP., AN ALASKAN'S GUIDE TO THE PERMANENT FUND 26 (2009), <http://www.apfc.org/home/Media/publications/2009AlaskansGuide.pdf>; see also ROSE, *supra* note 1, at 157 ("In rural Alaska, . . . the dividend can make a major difference, providing an essential shot of cash to keep subsistence hunters stocked with ammo and spare parts.").

28. ROSE, *supra* note 1, at 166.

29. Ehren D. Lohse, *Zobel's Ghost: The Equity of Being an Alaskan Still Haunts Permanent Fund Dividend Eligibility*, 39 U. DAYTON L. REV. 447, 448 (2015) (citation omitted).

30. Goldsmith, *supra* note 11, at 2; see also Wally Hickel, *Alaska Has No Reason to Roll Over for Outsiders*, ALASKA DISPATCH NEWS: VOICES (Jan. 16, 2010), <https://www.adn.com/voices/article/alaska-has-no-reason-roll-over-outsiders/2010/01/17/> (referring to Alaska as "an owner state").

31. *Id.*

32. ALASKA CONST. art. VIII, § 2.

33. Goldsmith, *supra* note 11, at 5 (footnote omitted). This mindset also influenced the retrospective aspect of the original, unconstitutional Dividend scheme: many lawmakers believed that "[t]hose who had lived in the state longer had acquired a greater share of ownership." ROSE, *supra* note 1, at 121.

34. ALASKA PERMANENT FUND CORP., *supra* note 27, at 7.

ethic dovetailed with the Dividend itself: the program provided a way of sharing the state's communal natural wealth, without the threat of governmental misappropriation of these funds or micromanagement over their ultimate private use.

Out of these foundational and sometimes overlapping motivations among Alaskan lawmakers and citizens—anti-paternalism, welfare substitution, an owner state ethic—emerged the Dividend program as it exists today. It is worth noting that, “[b]y nearly all accounts, the [Dividend] has been a success and followed through on the constitutional promise to use Alaska’s natural resources for the greater good . . . .”<sup>35</sup> The next section examines the mechanics of how this program is currently implemented, with special attention paid to the administration of Dividends to child recipients.

## B. Mechanics

Funds for the Dividend are supplied by the APF described above.<sup>36</sup> The APF is in turn managed by the Alaska Permanent Fund Corporation, a state-owned corporation.<sup>37</sup> Although capital for the APF is supplied by mineral royalties, investments are allocated across a broad spectrum of assets.<sup>38</sup> So while it is theoretically possible for the APF to have zero or negative returns, and for a year’s Dividend to subsequently drop to zero, the risk has thus far been spread sufficiently such that this has never happened.<sup>39</sup> Indeed, in 1998 and 2015, fund earnings managed to outstrip state oil revenue.<sup>40</sup>

The Dividend program itself is administered by the Permanent Fund Dividend Division within the Alaska Department of Revenue.<sup>41</sup> Individuals are eligible to receive a Dividend if they meet a series of residency and application requirements.<sup>42</sup> The amount of each year’s Dividend is derived from “a complex statutory formula but one that has

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35. Griffin, *supra* note 13, at 83.

36. *What is the Alaska Permanent Fund?*, ALASKA PERMANENT FUND CORP., <http://www.apfc.org/home/Content/aboutFund/aboutPermFund.cfm> (last visited Feb. 3, 2017).

37. *About the Alaska Permanent Fund Corporation (APFC)*, ALASKA PERMANENT FUND CORP., <http://www.apfc.org/home/Content/aboutAPFC/aboutAPFC.cfm> (last visited Feb. 3, 2017).

38. See AN ALASKAN’S GUIDE TO THE PERMANENT FUND, *supra* note 27, at 16.

39. See 2015 ANNUAL REPORT, *supra* note 3, at 37 (documenting a historically low Dividend of \$331.29).

40. Klint & Doogan, *supra* note 4.

41. *About Us*, *supra* note 2; see also ALASKA STAT. § 43.23.055 (2015) (delegating administration of the Dividend to the Department of Revenue).

42. ALASKA STAT. § 43.23.005(a).

led to reasonably predictable annual payments . . . ,”<sup>43</sup> averaging roughly \$1,000,<sup>44</sup> although a Dividend is not per se guaranteed by the statutory formula.<sup>45</sup> The Dividend is a flat amount for all recipients.<sup>46</sup>

There are few restrictions on disbursement and use of Dividends. In 1992,<sup>47</sup> though, the legislature amended the statute to prohibit individuals from assigning Dividends (except to government agencies).<sup>48</sup> Also, while claims against an individual's Dividend can be made directly to the Permanent Fund Dividend Division, the statute (with some exceptions) exempts 20% of recipients' Dividends from debt collection.<sup>49</sup>

On the other hand, the program works to *facilitate* certain uses of Dividends. In 1991, the Permanent Fund Dividend Division implemented a “check-off” program for advance college tuition savings,<sup>50</sup> whereby Dividend recipients can opt to contribute up to 50% of their payouts to a state-run savings trust with the University of Alaska.<sup>51</sup> Then, in 2009, the Division started the “Pick.Click.Give.” program, where recipients can similarly check-off if they want their Dividends to be contributed to various Alaskan charities.<sup>52</sup> These initiatives have had a sizable impact on rerouting disbursements: in 2015, Pick.Click.Give. distributed over \$3 million among 538 eligible charitable institutions, while the University of Alaska College Savings Plan saw Dividend contributions to the school's trust total over \$14 million.<sup>53</sup>

In 2015, more than one in four valid Dividend applicants was a child under the age of eighteen.<sup>54</sup> Statute provides that a parent, guardian, or other authorized representative may claim a Dividend “on behalf” of an unemancipated minor, provided other general eligibility requirements are met.<sup>55</sup> Beyond this, the statute is silent on how a parent may use a

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43. Griffin, *supra* note 13, at 82 (citing ALASKA STAT. § 43.23.025).

44. See 2015 ANNUAL REPORT, *supra* note 3, at 37.

45. See Griffin, *supra* note 13, at 82.

46. ALASKA STAT. § 43.23.025(a).

47. 2015 ANNUAL REPORT, *supra* note 3, at 32.

48. ALASKA STAT. § 43.23.069(a)–(b).

49. *Id.* § 43.23.065(a)–(b).

50. 2015 ANNUAL REPORT, *supra* note 3, at 32.

51. See ALASKA STAT. § 14.40.807(a)(1) (directing the Department of Revenue to prepare the Dividend application to allow for contributions to the Alaska Advance College Tuition Savings Fund); ALASKA STAT. § 14.40.802 (establishing the Alaska Higher Education Savings Trust).

52. 2015 ANNUAL REPORT, *supra* note 3, at 28; see also ALASKA STAT. § 43.23.069(d) (authorizing the Department of Revenue to draw up a contribution list of charities qualified by, among other things, majority Alaskan residency of board members and in-state provision of services and aid).

53. 2015 ANNUAL REPORT, *supra* note 3, at 28–29.

54. *Id.* at 5.

55. ALASKA STAT. § 43.23.005(c).

Dividend claimed on a child's "behalf."<sup>56</sup> Aside from verification provisions to show custody and authority to apply on behalf of a child, the regulations corresponding to this subsection are likewise silent regarding a parent's use of a child's Dividend.<sup>57</sup> Outside of the statute, the only express regulatory restriction on use of Dividends claimed on behalf of a child is an extension of the statutory assignment ban described above.<sup>58</sup>

For children's Dividends that are left unclaimed, however, there is a further statutory provision and set of regulations. The legislature directed the Department of Revenue to adopt regulations establishing procedures for an individual upon emancipation or reaching the age of majority to apply for Dividends left unclaimed during minority because a parent or guardian did not apply on behalf of the individual.<sup>59</sup> Although not advertised as any official program, the regulations allow qualifying individuals to apply for unclaimed Dividends before they reach the age of twenty.<sup>60</sup> In 2015, 49 applicants made use of these procedures,<sup>61</sup> while in past years that number has reached as high as 767 in 2009<sup>62</sup> and 838 in 2010.<sup>63</sup>

Otherwise, though, when it comes to dispensing Dividends, once a child's payout is claimed on his behalf by a parent or guardian, the administering agency's involvement is essentially finished. This hands-off stance is mirrored in the case law surrounding parental duty under the Dividend program, the subject of the next section.

### C. Parental duty case law

Alaskan law does not provide for how a parent must or should use a Dividend claimed on behalf of a child.<sup>64</sup> The state's case law is no

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56. See *Hayes v. Hayes*, 922 P.2d 896, 901 (Alaska 1996) (observing "the legislature's silence as to what parents must or should do with [Dividends] received on behalf of unemancipated minors . . .").

57. ALASKA ADMIN. CODE tit. 15, § 23.113 (2015).

58. *Id.* § 23.203(b).

59. ALASKA STAT. § 43.23.055(3).

60. ALASKA ADMIN. CODE tit. 15, § 23.133(c).

61. 2015 ANNUAL REPORT, *supra* note 3, at 10.

62. ALASKA DEP'T OF REVENUE, PERMANENT FUND DIVIDEND DIV., 2009 ANNUAL REPORT 7 (2009), <https://perma.cc/LAV2-GTCY>.

63. ALASKA DEP'T OF REVENUE, PERMANENT FUND DIVIDEND DIV., 2010 ANNUAL REPORT 7 (2010), <https://perma.cc/4W6Y-LY3V> [hereinafter 2010 ANNUAL REPORT].

64. See *Lohse*, *supra* note 29, at 453 n.36 ("Alaska law does not provide for how a parent should spend or save their child's dividends."); *Tobin*, *supra* note 12, at 478 ("Alaska law gives the parent tremendous leeway to use the child's dividend payment as the parent chooses.").



exception to this rule. At its core, this precedent reflects and incorporates preexisting parental rights doctrine in Alaska. Among these rights of parents over their children, this prior doctrine recognizes the right to control a minor child's earnings and property, notably including a child's Dividend money.

The earliest reported treatment of this issue by the Alaska Supreme Court occurred in *Lee v. Cox*.<sup>65</sup> That 1990 case involved a child custody and support dispute between Elizabeth Lee (the mother) and GERALD COX (the father) following the dissolution of their marriage in 1984.<sup>66</sup> When the mother informed the father that she planned to move with their son Derek (the child) to Washington state, the father filed a Petition for Change of Physical Custody and Support and for Clarification of Decree of Dissolution.<sup>67</sup> After a hearing in 1988, the trial court changed the physical custody of the child to the father, and further ordered the mother to "reimburse [the child]'s permanent fund money by establishing a trust account in an Alaskan bank . . ."<sup>68</sup> When the mother failed to restore the Dividends to an account for the child, she was found in contempt of court, ordered to be incarcerated, and ultimately arrested.<sup>69</sup>

On appeal, the supreme court held that the trial court abused its discretion by ordering the mother to reimburse the child for all Dividends claimed on his behalf.<sup>70</sup> "[T]here is no law in this state requiring parents to set aside their children's permanent funds."<sup>71</sup> The father, who had actually conceded this argument in his briefings, instead asserted that the parties had agreed contractually to set aside the permanent fund monies.<sup>72</sup> The court concluded by deeming the record insufficient to support the trial court's finding on this point, and so reversed and remanded the lower court's decision on this issue for further findings on the father's contract theory.<sup>73</sup>

*Lee* went further than just articulating that Alaskan law imposes no requirement that parents proactively set aside children's Dividends. The supreme court also incorporated preexisting doctrine on "parental rights" into the Dividend context,<sup>74</sup> basing its decision on the pre-Dividend

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65. 790 P.2d 1359 (Alaska 1990).

66. *Id.* at 1359-60.

67. *Id.* at 1360.

68. *Id.*

69. *Id.* at 1361.

70. *Id.* at 1363.

71. *Id.* (internal quotation marks omitted).

72. *Id.*

73. *Id.*

74. *See id.* (citing *L.A.M. v. State*, 547 P.2d 827, 832-33 n.13 (Alaska 1976) (enumerating certain "parental rights")); ALASKA STAT. § 43.23.005(c) (2015)

delinquency case *L.A.M. v. State*.<sup>75</sup> While *L.A.M.* occurred prior to the institution of the Permanent Fund Dividend, the precedent it set for parental control over children would prove fundamental for later Dividend doctrine.

In that case, *L.A.M.*, a minor, appealed an order declaring her a delinquent child for willful failure to comply with various court orders.<sup>76</sup> *L.A.M.* exhibited “a consistent pattern of running away,” which led to her being legally declared a child in need of supervision, and was released to her parents pending further adjudication.<sup>77</sup> When she absconded yet again, *L.A.M.* was charged with criminal contempt, and the court directed that the minor be institutionalized.<sup>78</sup>

On appeal, *L.A.M.* argued that as a matter of Alaskan constitutional law, a child in need of supervision may not be prosecuted for criminal contempt.<sup>79</sup> She grounded her argument in *Breese v. Smith*,<sup>80</sup> where the Alaska Supreme Court held that the right to liberty set out in the Alaska State Constitution<sup>81</sup> guarantees every Alaskan regardless of age “total personal immunity from governmental control: ‘the right to be let alone’ . . .,”<sup>82</sup> qualified only to the extent that it “must yield when [it] intrudes upon the freedom of others . . . .”<sup>83</sup> *L.A.M.* further bolstered her argument by invoking the then recently-enacted “right to privacy.”<sup>84</sup> Since *L.A.M.*’s running away did not allegedly injure a specific definable victim (including herself), she contended that the state lacked a compelling interest to interfere with her conduct.<sup>85</sup>

The Alaska Supreme Court rejected this argument.<sup>86</sup> Critically, in the court’s view, *L.A.M.*’s reasoning erroneously assumed that the sole interest to be protected is that of the child, whereas in truth the interests of the *parents* (as well as those of the state) must also be taken into account.<sup>87</sup> Proceedings against children alleged to be in need of supervision, as in *L.A.M.*, are “in substance and effect” custody disputes in which the parent appeals to the court in order “to vindicate and enforce

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(parent, guardian, or authorized representative may claim Dividend on behalf of a minor).

75. 547 P.2d 827 (Alaska 1976).

76. *Id.* at 829.

77. *Id.*

78. *Id.* at 830.

79. *Id.* at 831.

80. 501 P.2d 159 (Alaska 1972).

81. ALASKA CONST. art. I, § 1.

82. *Breese*, 501 P.2d at 168 (internal quotation marks omitted).

83. *Id.* at 170 (internal quotation marks omitted).

84. *L.A.M.*, 547 P.2d at 832 (citing ALASKA CONST., art. I, § 22).

85. *Id.*

86. *Id.*

87. *Id.*

his custody rights in the child against that child.”<sup>88</sup> Among these so-called “parental rights,” the court enumerated the right to “[p]hysical possession of the child,” as well as “[t]he right to control and manage a minor child’s earnings” and “control and manage a minor child’s property.”<sup>89</sup> The court then indicated that such parental rights are “protected to varying degrees by the [federal] Constitution . . .”<sup>90</sup> But the court left unsaid whether that implied the federal constitution trumped the state constitutional provisions cited by L.A.M., or that the two constitutions complemented each other (that is, it could be that Alaskan rights to liberty and privacy facilitate federal parental rights). Either way, in ignoring the interests and rights of *parents* over and against their children, L.A.M. neglected to contest that her mother had a legally enforceable right to her custody, and that the state could thus legitimately enforce such an order.<sup>91</sup> Because L.A.M. failed to sustain or even raise this claim, the court rejected L.A.M.’s constitutional argument.<sup>92</sup>

L.A.M. did not deal directly with children’s Dividends, but the Alaska Supreme Court would later import the case’s parental rights doctrine into the Permanent Fund Dividend context. In *Lee*, the court interpreted these rights as imposing no requirement that parents set aside children’s Dividends.<sup>93</sup> Later, in *Hayes v. Hayes*,<sup>94</sup> the supreme court held that the superior court did not err in rejecting Allan Hayes’ motion that his former wife Lidia Hayes be required to repay \$4,000 in dividend monies she borrowed from their children’s Dividends.<sup>95</sup> Citing *Lee*’s incorporation of L.A.M.’s parental right to control and manage a minor child’s earnings and property,<sup>96</sup> *Hayes* went on to extend the permissive holding in *Lee*. Not only is there no law obliging parents to proactively “set aside” their children’s permanent funds, as enunciated in *Lee*: here the “legislature’s silence as to what parents must or should do with [Dividends] received on behalf of unemancipated minors” led the court to even permit a parent siphoning money from a child’s Dividends.<sup>97</sup> Cases on this issue are few and far between, but their general trend has been to impute no duty whatsoever to parents claiming Dividends on a child’s behalf.

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88. *Id.*

89. *Id.* at 832 n.13.

90. *Id.*

91. *Id.* at 833.

92. *Id.* at 834.

93. *Lee v. Cox*, 790 P.2d 1359, 1363 (Alaska 1990).

94. 922 P.2d 896 (Alaska 1996).

95. *Id.* at 901.

96. *See id.* at 900-01 (citing *Lee*, 790 P.2d at 1363 (citing *L.A.M. v. State*, 547 P.2d 827, 832-33 n.13)).

97. *Hayes*, 922 P.2d at 901.

Perhaps because of the unforgiving clarity of this rule, there are no Alaska cases reporting disputes between parents and their children (as opposed to between feuding parents) regarding ownership of the Dividend.<sup>98</sup> That being said, children would appear to have standing to sue individuals for wrongly diverting their Dividends. In *Chizmar v. Mackie*,<sup>99</sup> a mother sued her doctor on behalf of her minor children, claiming the doctor's malpractice was the proximate cause of the parents' divorce. The children, through their mother, sought to recover Dividend payments set aside by their parents that were allegedly lost as a result of the divorce.<sup>100</sup> While the Alaska Supreme Court ultimately affirmed the superior court's ruling that economic losses suffered as a result of a divorce are not recoverable,<sup>101</sup> it left unquestioned that the children had standing to bring suit in the first place regarding the loss of their Dividends.<sup>102</sup>

As it stands today, though, based on a synthesis of statutory silence and respect for parental rights, Alaskan case law does not dictate how a parent may use a Dividend claimed on a child's behalf.<sup>103</sup> Besides the stark statutory text governing parental claims on behalf of children, the associated Dividend regulations have generally proven immune to litigation, as well. In *State v. Anthony*,<sup>104</sup> the state supreme court held that a Dividend "is merely an economic interest and therefore is entitled only to minimum protection under our equal protection analysis."<sup>105</sup> Thus, the lax administrative guidelines for parents claiming on children's behalf would receive a high degree of judicial deference were they to be challenged, receiving minimal scrutiny in relation to their already sparse authorizing statute.

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98. Tobin, *supra* note 12, at 479 (citations omitted) ("There are no Alaska cases reporting disputes between parents and children regarding ownership or custodianship of the dividend.").

99. 896 P.2d 196 (Alaska 1995).

100. *Id.* at 211 n.13.

101. *Id.* at 212.

102. *Cf. id.* at 211-12 (reaching and rejecting as a matter of law a claim for recovery of economic loss resulting from divorce, including lost Dividends, only "on proximate cause/foreseeability grounds and on more general public policy grounds.").

103. *See, e.g.,* Lawson v. Reynolds, 2002 WL 1486484, at \*9 nn.54-56 (Alaska 2002) (unpublished) (citing *Hayes*, 922 P.2d at 900-01; *Lee v. Cox*, 790 P.2d 1359, 1365 (Alaska 1990)); *L.A.M. v. State*, 547 P.2d 827, 832-33 n.13 (Alaska 1976)); *see also* *Tea ex rel. A.T.*, 278 P.3d 1262, 1263-64 (Alaska 2012) (interpreting "[t]raditional parental rights" like the right to control and manage a minor child's property as extending to the Office of Child Services or a guardian ad litem claiming a Dividend on behalf of a child deemed legally in need of aid).

104. 810 P.2d 155 (Alaska 1991).

105. *Id.* at 158.

Yet while the current principle of zero parental duty under the Dividend program may make sense in light of judicial precedent and sparse statutory language, the following Part contends that this view corresponds to a characterization of the Dividend as just a credit, and that competing understandings of the Permanent Fund Dividend itself suggest the need to rethink present doctrine.

## II. CONCEPTUALIZING THE PERMANENT FUND DIVIDEND

Despite what its name would suggest (Permanent Fund *Dividend*), the current approach outlined above treats children's Dividends more as something like a credit—simply a check in the mail<sup>106</sup>—and correspondingly imputes no duty to claimant parents.<sup>107</sup> But current law supports other possible understandings of the Dividend program. There are indications that it might instead be construed as a welfare-like benefit or as income rightly belonging to the child. Accordingly, these competing characterizations correlate with different and more demanding imputations of parental duty.

It may help to picture these understandings of the Dividend as forming a spectrum. At one end is a *laissez-faire* pole represented by current doctrine, treating a child's Dividend like a credit and imposing no duty on parents. At the other end is a paternalistic pole, regarding the Dividend as a type of welfare benefit, and imputing parental duty analogous to something like the Social Security Act's representative payee system. Between these two extremes is a middle position, where the Dividend is understood as the child's rightful income, implicating some form of a best interests standard when claiming such funds on the true owner's behalf. This spectrum of competing understandings of the Dividend is analyzed below.

### A. Credit

Current doctrine treats a child's Dividend as something like a credit, imposing no conditions on the use of the funds once they are retained by parents.<sup>108</sup> The analogy here is closest to a specific kind of credit: a tax credit. Now, the Dividend is not literally a tax credit, which directly

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106. See Goldsmith, *supra* note 11, at 20 (“Historically, the dividend was simply distributed as a check in the mail with no suggestion to recipients about how they might think about using it.”).

107. See Tobin, *supra* note 12, at 499 (describing the Dividend program as imposing “almost no regulation or oversight” on dividend use, rendering it “undistinguishable” from a tax credit in terms of supervision).

108. See *id.*

reduces one's tax liability.<sup>109</sup> But a credit like the federal Child Tax Credit, for instance, lets taxpayer parents reduce taxable income per child.<sup>110</sup> So in effect, "[t]he federal tax system delivers the equivalent of cash benefits to families with children through . . . the Child Tax Credit."<sup>111</sup> Yet this cash comes with no condition that a cent of the restored money actually goes to the child's benefit.<sup>112</sup> Conceptually, then, Alaska distributes money to parents in a hands-off way "undistinguishable" from a typical tax credit program.<sup>113</sup>

At first blush, this might seem like a sound understanding of the program. It jibes with the relatively sparse language of the statute permitting parents to claim Dividends on children's behalf.<sup>114</sup> It also mirrors Alaska's judicial embrace of parental rights in the Dividend context<sup>115</sup> and the parallel anti-paternalistic political culture that influenced the program's enactment.<sup>116</sup> Viewing the Dividend as simply a credit entails less meddling by the government in parents' rightful domain.

This understanding also reflects a general rule that if a family is intact, a court will not interfere with its affairs. The points of judicial scrutiny are usually limited to marriage, divorce, and abuse or neglect—otherwise the presumption is to leave the family alone.<sup>117</sup> Hence, the only time Alaskan courts have been willing to actively apportion a child's Dividend with a view to the *child's* best interests is when this power is triggered by an event such as divorce.<sup>118</sup> As in the usual case of child

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109. RICHARD SCHMALBECK ET AL., FEDERAL INCOME TAXATION 18 (4th ed. 2015).

110. Tobin, *supra* note 12, at 481.

111. *Id.* at 480.

112. *See id.* at 489.

113. *Id.* at 499.

114. *See Hayes v. Hayes*, 922 P.2d 896, 901 (Alaska 1996) (observing "the legislature's silence as to what parents must or should do with [Dividends] received on behalf of unemancipated minors . . .").

115. *Lee v. Cox*, 790 P.2d 1359 (Alaska 1990); *L.A.M. v. State*, 547 P.2d 827, 832 n.13 (Alaska 1976) (enumerating certain "parental rights").

116. *See* discussion *supra* Part I.A.

117. *Cf.* Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. REV. L. & WOMEN'S STUD. 133, 205 (1992) ("While a marriage is intact, neither of the parents, nor anyone else, can find a judge willing to interfere because of an argument based on the best interest of children unless the child is neglected or abused in a serious way. . . . [A]t divorce all notions of limitations on government intrusion in family matters evaporate.").

118. *See, e.g., Helen S.K. v. Samuel M.K.*, 288 P.3d 463, 477 (Alaska 2012) (holding the superior court did not abuse its discretion in a divorce proceeding when it assigned the father the right to apply for and manage his children's Dividends); *Ronny M. v. Nanette H.*, 303 P.3d 392, 407-08 (Alaska 2013) (citing *Helen S.K.*, 288 P.3d 463 at 477) (recognizing in a custody dispute "the superior court's broad discretion to decide which parent would better serve the children's best interests in being responsible for management of their [Dividends].").

support, however, there is no indication of ongoing monitoring after such apportionment once the monies are received.<sup>119</sup> The best interests inquiry in these few cases is not specific to the Dividend program; rather it relies on the same general discretionary factors typically used for child custody determinations.<sup>120</sup> And this discretion cuts both ways: the statutory silence regarding parental duty can actually give courts more leeway in *declining* to order parents to use Dividends in a certain manner, as a hands-off determination is consistent with current *laissez-faire* precedent.<sup>121</sup>

In terms of actual use by parents of their children's Dividends, or by Dividend recipients generally, survey data are virtually nonexistent.<sup>122</sup> At least anecdotally, some Alaskans save the money for education or use it to pay off debts or medical bills.<sup>123</sup> Others, meanwhile, "blow the windfall" on luxury goods like "vacations or expensive toys."<sup>124</sup> However, one of the more rigorous studies (albeit from 1984) reported that money from children's Dividends claimed by parents went predominantly to debt repayment.<sup>125</sup> While it may seem doubtful that these children were themselves indebted, there is great practical difficulty in trying to disaggregate from household debt what exactly was spent "on" children, especially if this category were to include normal credit card purchases and repayments.<sup>126</sup>

Lastly, Alaskan courts have repeatedly decided that Dividends are "not, generally, a source of income that individuals depend on to supply the basic necessities of life."<sup>127</sup> So while Dividends may be a welcomed source of income to many Alaskans, they are not normally a life-or-death

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119. See Robert H. Mnookin & Lewis Kornhausert, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 960 (1979) ("A custodial spouse is not required to keep track of how child-support money is spent, and the courts do not supervise child-support expenditures once a payment has been made.").

120. See *Helen S.K.*, 288 P.3d at 472-73, 477 (citing ALASKA STAT. § 25.24.150(c) (2015)) (describing typical standard of review for child custody disputes).

121. See *Ronny M.*, 303 P.3d at 407-08 (citing *Hayes v. Hayes*, 922 P.2d 896, 900-01 (Alaska 1996)) (declining to order children's Dividends be apportioned to visitation expenses).

122. Goldsmith, *supra* note 11, at 9 (noting how there have been "very few studies on the effects of the dividend.").

123. ROSE, *supra* note 1, at 157.

124. *Id.*

125. GUNNAR KNAPP ET AL., THE ALASKA PERMANENT FUND DIVIDEND PROGRAM: ECONOMIC EFFECTS AND PUBLIC ATTITUDES 95, 101-02 (1984), [http://www.iser.uaa.alaska.edu/Publications/1984\\_09-AlaskaPermanentFundDividendProgram.pdf](http://www.iser.uaa.alaska.edu/Publications/1984_09-AlaskaPermanentFundDividendProgram.pdf).

126. See Mnookin & Kornhausert, *supra* note 123, at 960-61 (discussing the problems of disaggregating "joint consumption" among family members).

127. *E.g.*, *State v. Anthony*, 810 P.2d 155, 158 (Alaska 1991) (citing *Williams v. Zobel*, 619 P.2d 448, 455 (Alaska 1980)).

matter. Lax treatment of how a parent may use such an inessential credit would thus seem reasonable.

Understandable as this approach may be, though, it quickly encounters a common sense criticism: What good is the program to society's vulnerable children if, hypothetically, parents are allowed to squander a child's Dividend on vices or vacations?<sup>128</sup> With this possibility left wide open under the current law, the program strikes one as "ripe for abuse,"<sup>129</sup> just as some legislators feared at its enactment.<sup>130</sup> Put differently, the anti-paternalistic rationale for the Dividend seem at odds with the owner state ethic<sup>131</sup> and Alaska's "constitutional promise to use [its] natural resources for the greater good . . ." <sup>132</sup> The program's conflicting motivations and implementation render it self-undermining. Luckily, as argued later, the statute and program itself support viewing children's Dividends as more than just a credit requiring no responsibility from claimant parents.

## B. Welfare benefit

At the opposite extreme of the spectrum sketched above, construing the Dividend as something like a state welfare benefit sheds light on the shortcomings of the present zero-duty treatment. If treated as a government welfare program, then it might make sense to require parent claimants to conform to some minimum fiduciary standard. For instance, the Social Security Act (SSA) provides for a "representative payee" to control a child recipient's social security check and use that money for the child's benefit.<sup>133</sup> The statute defines "misuse of benefits" by a representative payee to occur "in any case in which the representative payee" receives payment under the program and puts it "to a use other than for the use and benefit of such other person."<sup>134</sup> Representative payee responsibilities include "[using] the benefits received on [the child's] behalf only for [the child's] use and benefit in a manner and for the purposes he or she determines under the[se] . . . to be in [in the child's] best interests."<sup>135</sup> The Social Security Administration's Office of the Inspector General may impose civil monetary penalties and assessments against representative payees who convert payments to their own

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128. Goldsmith, *supra* note 11, at 6.

129. Tobin, *supra* note 12, at 499.

130. Goldsmith, *supra* note 11, at 6.

131. *Id.*

132. Griffin, *supra* note 13, at 83.

133. 42 U.S.C. § 1383(a) (2016); 20 C.F.R. § 416.635(a) (2006).

134. 42 U.S.C. § 1383(a)(2)(A)(iv).

135. 20 C.F.R. § 416.635(a).



personal use.<sup>136</sup> Also, with few exceptions, Social Security benefits are exempt from garnishment by creditors,<sup>137</sup> and banks are required to automatically protect two months' worth of benefits if they are direct-deposited into an account.<sup>138</sup>

Yet it seems unlikely that something as demanding as the representative payee requirements could be inferred from the Dividend's underlying statute. Perhaps the most favorable argument on this score is that the relevant statutory language is ambiguous, simply permitting a qualified parent to claim a Dividend "on behalf of" an eligible child.<sup>139</sup> By itself, the phrase "on behalf of" could admit of several different meanings. Alaskan courts have interpreted this to connote the right to control and manage a minor child's earnings and property, at least in the Dividend context.<sup>140</sup> Black's Law Dictionary, meanwhile, takes "*on behalf of*" to mean "in the name of, on the part of, as the *agent* or representative of."<sup>141</sup> The last of these appears to be the sense in which the above SSA regulations use the term, as well.<sup>142</sup> In weighing these competing definitions, Alaskan courts "do not mechanically apply the plain meaning rule but use a sliding scale approach to statutory interpretation, in which 'the plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.'"<sup>143</sup> This holds true "even if a statute is facially unambiguous."<sup>144</sup> If the current judicial understanding of the term frustrates the Dividend program's purpose, as suggested earlier,<sup>145</sup> then this "sliding scale approach" may favor the dictionary definition of "on behalf" of," wherein parents are *agents* of their children when entrusted with the responsibility of claiming Dividends.

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136. 42 U.S.C. § 1320a-8(a)(3).

137. 42 U.S.C. § 407(a).

138. CONSUMER FIN. PROT. BUREAU, *Ask CFPB: Can a Debt Collector Take My Social Security or VA Benefits?*, <http://www.consumerfinance.gov/askcfpb/1157/can-creditor-garnish-my-social-security-benefits-pay-debt.html> (last visited Feb. 3, 2017).

139. ALASKA STAT. § 43.23.005(c) (2015).

140. *L.A.M. v. State*, 547 P.2d 827, 832 n.13 (Alaska 1976).

141. *Behalf*, BLACK'S LAW DICTIONARY (10th ed. 2014) (emphasis added).

142. 20 C.F.R. § 416.635 (emphasis added) ("A representative payee has a responsibility to . . . [u]se the benefits received *on your behalf* only for your use and benefit in a manner and for the purposes he or she determines under the[se] guidelines . . . to be in your best interests . . .").

143. *Municipality of Anchorage v. Stenseth*, 361 P.3d 898, 905 (Alaska 2015) (quoting *McDonnell v. State Farm Mut. Auto. Ins. Co.*, 299 P.3d 715, 721 (Alaska 2013)).

144. *Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Alyeska Pipeline Serv. Co.*, 262 P.3d 593, 597 (Alaska 2011).

145. See discussion *supra* Part II.A.

This ambiguity casts some serious doubts on current doctrine.<sup>146</sup> Nevertheless, the statute's vague language seems lenient relative to the direct mandates of the SSA, which expressly define proper and abusive use of benefits.<sup>147</sup> But a more fundamental problem with this interpretation has to do with the Dividend's various "check-off" initiatives. The statute itself permits parents to not only divert up to half of a child's Dividend into the state-run savings trust (deferring, though not forfeiting, the benefits), but also to immediately donate a child's entire Dividend to a qualified charity.<sup>148</sup> In other words, the statute implicitly allows parents to forfeit their child's whole dividend so long as it goes back into the community. Consistent with neighboring sections, then, the statutory standard would be much weaker than the SSA's. At most, it might be inferred that parental use of Dividends must return to the community in some form, the assumption perhaps being that this way everyone—including the recipient child—thereby benefits from a sort of diffused communal payback.

Several other factors weigh against characterizing the Dividend as a state welfare program with SSA-like protections. First, it is not unusual for welfare programs to lack such fiduciary safeguards. For instance, the Earned Income Credit (EIC), one of the country's largest anti-poverty programs,<sup>149</sup> is intended to provide the equivalent of cash assistance to working people with low incomes, providing the greatest benefit to working families with children.<sup>150</sup> Yet the EIC places no requirement that the recipient spend the money on his or her child.<sup>151</sup> So even if the Dividend were construed as a welfare benefit, it would be possible to define it as a no-strings-attached credit like the EIC.

Lastly, notwithstanding one of the Dividend's original motivations, it does not function purely like a substitute for welfare programs. Again, Alaskan courts have recognized that the Dividend is not typically a source of income that recipients depend on for basic necessities,<sup>152</sup> and have

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146. See Tobin, *supra* note 12, at 478 ("Concluding that a parent has 'the right to control and manage' a minor child's earnings and property' is not the same as holding that the parent may use the child's money for the parent's own benefit. It may be that the parent has control over the money but still has some duty to ensure that the child receives the benefit of the dividend.").

147. See 42 U.S.C. § 1383(a)(2)(A)(iv) (2016).

148. ALASKA STAT. § 14.40.807(a)(1) (establishing the Alaska Advance College Tuition Savings Fund); *id.* § 14.40.802 (establishing the Alaska Higher Education Savings Trust); *id.* § 43.23.069(d) (establishing charitable giving program and parameters).

149. SCHMALBECK ET AL., *supra* note 109, at 771.

150. Tobin, *supra* note 12, at 488.

151. *Id.* at 489.

152. State v. Anthony, 810 P.2d 155, 158 (Alaska 1991) (citing Williams v. Zobel, 619 P.2d 448, 455 (Alaska 1980)).

adjudged that “recipients cannot know with certainty how much it will be in any given year.”<sup>153</sup> Further, it remains possible—if unprecedented—for a year’s Dividend calculation to come out to zero.

While a strict welfare benefit conception of the Dividend does not get too far, it at least helps underscore how the current treatment of the Dividend is left wanting. And, at least indirectly, it charts the way for how a more adequate understanding of the Dividend might navigate between these two extreme conceptions. This middle path—rethinking the Dividend as a child’s rightful income—is the subject of the following section.

### C. Child’s income

The Dividend can convincingly be understood as a recipient child’s rightful income. Beginning outside the program itself, the Internal Revenue Service (IRS) treats children’s Dividend as taxable income to the *child*.<sup>154</sup> That Dividends are treated as normal above-the-line income is not unexpected, given the broad Internal Revenue Code definition of gross income<sup>155</sup> and taxability of other government stipends.<sup>156</sup> Nor is it surprising to attribute Dividend income to children, since it is the child’s name that appears on the annual check.<sup>157</sup> Consistent with this understanding, Alaskan courts have excluded a child’s Dividend from a custodial parent’s income when calculating that income for purposes of child support and alimony.<sup>158</sup> More intriguing, though, is that such attribution of income typically corresponds to who has control over that income, rather than who ultimately benefits from it.<sup>159</sup> To identify Dividend income as belonging to the child would seem to imply that some right of control over these funds resides with the child. In this

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153. *Id.*

154. See INTERNAL REVENUE SERV., DEP’T OF TREASURY, Pub. 3328, Cat. No. 26988N, HOW TO FILE YOUR CHILD’S 2002 TAX RETURN: INFORMATION FOR PARENTS OF ALASKAN CHILDREN 1 (2002), <https://www.irs.gov/pub/irs-pdf/p3328.pdf> (explaining IRS treatment of children’s Dividends).

155. 26 U.S.C. § 61(a) (2012) (emphasis added) (“[G]ross income means all income from *whatever* source derived”).

156. See, e.g., INTERNAL REVENUE SERV., DEP’T OF TREASURY, Cat. No. 11320B, FORM 1040: U.S. INDIVIDUAL INCOME TAX RETURN 1 (2015) (including Social Security benefits in gross income).

157. E-mail from Sara Race, Permanent Dividend Fund Div. Dir., to author (Feb. 18, 2016, 3:33 PM EST) (on file with author).

158. *Fernau v. Rowdon*, 42 P.3d 1047, 1052 (Alaska 2002).

159. See, e.g., *Lucas v. Earl*, 281 U.S. 111, 114–15 (1930) (attributing taxable income to husband even though he had contracted out his earnings to his wife); *Helvering v. Horst*, 311 U.S. 112, 116–17 (1940) (attributing taxable income to bondholder even though he assigned interest coupons to his child).

regard, the IRS and Alaskan child support and alimony case law appear out of sync with current doctrine's unqualified recognition of absolute parental control.

The Dividend's underlying statute also implies that the Dividend is a child's rightful income. While the statute authorizes parents to claim Dividends "on behalf" of a child,<sup>160</sup> generally no one is permitted to assign away a Dividend.<sup>161</sup> Further, while a recipient may donate her entire Dividend to a charitable organization, it must be a qualified Alaskan charity.<sup>162</sup> The statute thus seems to imply some concern, or at least discomfort, with outright forfeiture of Dividends.

Recall too how the program provides that an individual upon reaching majority, or who is an emancipated minor, may apply for unclaimed Dividends until the age of twenty.<sup>163</sup> In fact, the legislature provided *only* this exception to the program's strict filing deadlines.<sup>164</sup> Note that these unclaimed Dividends can only be claimed by their designated recipient upon reaching majority or emancipation, and parents may not claim these Dividends on that recipient's behalf.<sup>165</sup> Although not advertised as an official program like the College Savings Plan, these unclaimed dividends are reserved by the Alaska Department of Revenue until the applicant is eligible to file for them, with the Permanent Fund Dividend Division reporting that over half a million dollars was set aside in anticipation of such filers in 2015.<sup>166</sup> In theory, then, one might assume a year with as many unclaimed Dividend claimants as 2010 (838 applicants)<sup>167</sup> and a historically average Dividend (about \$1,000),<sup>168</sup> and where all these recipients wait until the last minute to file (just shy of age 20). All else equal, a back-of-the-envelope calculation shows that applicants would receive \$20,000 each, with an aggregate windfall exceeding \$16 million.

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160. ALASKA STAT. § 43.23.005(c) (2015).

161. *Id.* § 43.23.069(b) (permitting assignments only to a court or government agency).

162. *Id.* § 43.23.069.

163. *Id.* § 43.23.055(3); ALASKA ADMIN. CODE tit. 15, § 23.133(c) (2016).

164. In the Matter of Annmarie Rega Jones, Revenue Decision 88-39 (Alaska Dep't Rev. 1988).

165. In the Matter of Mr. and Mrs. Applicant, Revenue Decision 89-032 (Alaska Dep't Rev. 1989) ("[B]ecause of the late filing, the Father and Mother are denied Dividends for 1985 and the Children will not be eligible to claim their 1985 Dividends until they are emancipated or reach the age of 18.").

166. 2015 ANNUAL REPORT, *supra* note 3, at 36. Unclaimed Dividends do not accrue interest while they are held by the Department of Revenue. E-mail from Sara Race, Permanent Dividend Fund Div. Dir., to author (Feb. 26, 2016, 8:57 PM EST) (on file with author).

167. 2010 ANNUAL REPORT, *supra* note 63, at 5.

168. See 2015 ANNUAL REPORT, *supra* note 3, at 37.

The unclaimed Dividends provision of the program thus appears to be a narrow but important exception for child recipients when their funds go unclaimed. It would further seem to imply that *between* birth and age of majority, Dividends are still understood as belonging to the child, since otherwise the state reserves these funds in the child's stead until she reaches a responsible age. This would be a plausible explanation for drawing the line for unclaimed Dividends at the age of majority rather than allowing children to reclaim them in the interim. This rationale could also entail that parents are some sort of fiduciaries during this interim, if children themselves are only allowed to reclaim their Dividends when they attain an age associated with responsibility.

Alaska courts "interpret each part or section of a statute with every other part or section, so as to create a harmonious whole."<sup>169</sup> Here, then, the sparse and arguably permissive language allowing parents to claim Dividends "on behalf" of children would be moderated by the statute's concurrent discomfort with outright forfeiture and implicit recognition that children's Dividends belong to them all along. Rather than being free to waste children's Dividends, parents would need to operate under the standard that such money be treated as the child's income. Reconciling these tandem statutory provisions gives even greater credence to an understanding of parents who claim Dividends "on behalf" of children as truly the latter's agent rather than substitute.<sup>170</sup>

Another unresolved corner of this issue of Dividend ownership versus control involves debtor parents who handle their children's payouts. Upon disbursement from the Department of Revenue, the Dividend program allows immediate garnishment of up to 80% of a Dividend for debt collection purposes, with no limits on garnishment following an applicant's later receipt of his Dividend.<sup>171</sup> The state's majority rule is that any bank account can be executed on so long as the debtor has the ability to withdraw money from that account, unless a debtor files a claim of exemption based on a list of nonexclusive factors.<sup>172</sup> This extends even to joint accounts in the name of the parent and child

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169. *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) (citing Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Progressive Cas. Ins. Co., 165 P.3d 624, 629 (Alaska 2007)).

170. *See Behalf*, BLACK'S LAW DICTIONARY (10th ed. 2014) (suggesting that the word "behalf" implies an agency relationship).

171. ALASKA STAT. § 43.23.065 (2015).

172. Telephone Interview with Judge Gregory J. Motyka, Dist. Ct. Judge, 3d Jud. Dist., Anchorage, & Judge David R. Wallace, Dist. Ct. Judge, 3d Jud. Dist., Anchorage (Mar. 1, 2016) [hereinafter Interview with Judge Motyka & Judge Wallace]. *See generally* ALASKA CT. SYSTEM, JUDGMENT DEBTOR BOOKLET (2012) (describing Alaska's debt collection procedures and exemptions).

where a parent might deposit Dividends claimed on a child's behalf (since the minor cannot otherwise open such an account).<sup>173</sup>

Yet within Alaska state district courts, a minority line of cases has cropped up in which children's Dividends claimed by parents are *not* legally considered income of the debtor parent, but rather that of the child, thereby exempting such Dividends from execution.<sup>174</sup> In this view, the only option the majority rule gives debtor parents trying to protect their child's Dividend is to stuff the money under a mattress, as the child cannot otherwise open an individual account.<sup>175</sup> By instead determining that the money rightly belongs to the child, judges can more equitably exempt the child's Dividend from execution against a debtor parent, despite the parent actually controlling the money. But while this issue arises in many cases each year, with potentially thousands of dollars at stake in each case, the inconsistent approaches taken by district courts throughout Alaska (which itself seems unfair) has apparently never been appealed: creditors whose debt collection is denied likely do not want to risk creating unfavorable precedent, while debtors not granted this exemption likely cannot afford an appeal.<sup>176</sup>

Taken together, the implication of control through tax attribution of Dividend income, the interplay of the Dividend's statutory provisions, and Alaska's developing judicial approach to children's Dividends in the debt context—all these provide strong indicators that a child's Dividend, even if claimed by a parent on a child's behalf, should be understood as the child's own income.<sup>177</sup> This interpretation likely imputes some higher degree of duty to claimant parents, above current *laissez-faire* standards. If so, this rethinking of children's Dividends could have major implications for the judicial, legislative, and administrative implementation of the Dividend program. The final Part explores some of these ramifications of an income conception of children's Dividends, and argues that such treatment better advances the program's aims.

### III. RETHINKING THE DIVIDEND AS CHILDREN'S INCOME

The Dividend can persuasively be understood as income rightly belonging to the recipient child. Consequently, in executing the program, some higher degree of responsibility should be expected from parents

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173. Interview with Judge Motyka & Judge Wallace, *supra* note 172.

174. *Id.* Unfortunately, because these are state district court opinions, they have gone unpublished and unreported. *Id.*

175. *Id.*

176. *Id.*

177. See Tobin, *supra* note 12, at 478 (noting that "the dividend clearly belongs to the child").

claiming Dividends on behalf of children. Rethinking the program in this way would entail a variety of potential legal and policy responses. As this Part concludes, an income conception of a child's Dividend thus presents a compelling alternative to present doctrine.

Judicially, this conception of children's Dividends is likely sufficient to implicate a constructive trust under Alaska law, at least in cases where a parent claiming a Dividend on a child's behalf squanders the payout. A constructive trust is an equitable remedy that becomes available upon clear and convincing proof that a party holds a property interest "by reason of unjust, unconscionable, or unlawful means."<sup>178</sup> In imposing a constructive trust, a court returns the ill-begotten property interest to the wronged party.<sup>179</sup> "At a minimum, then, a constructive trust presupposes a transfer or holding of property in which the equitable beneficiary has a legal interest and unconscionable conduct by the property's holder in connection with its acquisition."<sup>180</sup>

Children already appear to have standing to sue individuals for wrongly diverting their Dividends, even if that latter argument has so far found no purchase.<sup>181</sup> In a constructive trust situation, then, the child may have a cognizable legal interest in her Dividend based on the indicators considered above. If a parent claimant used the money in some unconscionable way too remote from the child's interests (like gambling or drinking), a court could impose a constructive trust to remedially vest the misused Dividend back with the rightful child beneficiary.

The resultant standard or duty of conscionable use would likely not be too strict, though. A constructive trust is not tantamount to a full-fledged fiduciary relationship,<sup>182</sup> like the one found in the SSA representative payee program. And a dollar-for-dollar trace of how

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178. *Gold Dust Mines, Inc. v. Little Squaw Gold Min. Co.*, 299 P.3d 148, 160 (Alaska 2012) (internal citations and quotations omitted).

179. *Id.* (citing *McKnight v. Rice, Hoppner, Brown & Brunner*, 678 P.2d 1330, 1335 (Alaska 1984)).

180. *Riddell v. Edwards*, 76 P.3d 847, 852 (Alaska 2003).

181. *Cf. Chizmar v. Mackie*, 896 P.2d 196, 211-12 (Alaska 1995) (reaching and rejecting as a matter of law a claim for recovery of economic loss resulting from divorce, including lost Dividends, only "on proximate cause/foreseeability grounds and on more general public policy grounds.").

182. Under Alaskan law, a "confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Paskvan v. Mesich*, 455 P.2d 229, 232 (Alaska 1969). However, "[a] constructive trust, unlike an express trust, is not a fiduciary relation, although the circumstances which give rise to a constructive trust may or may not involve a fiduciary relation." *RESTATEMENT (FIRST) OF RESTITUTION* § 160 cmt. a (AM. LAW. INST. 1937). "A constructive trust does not, like an express trust, arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment." *Id.*; see also *McKnight*, 678 P.2d at 1335.

children's Dividends are used is probably impractical,<sup>183</sup> not to mention politically unpalatable.<sup>184</sup> Further, a remaining issue is that the "check-off" Pick.Click.Give. initiative already sanctions a parent immediately donating away a child's entire Dividend to Alaskan charities.<sup>185</sup> So potentially there is at least *one* authorized way for parents to spend a Dividend such that the child receives little to no *direct* benefit. Maybe this implies some permissible range of uses, spanning from harmless private use to communal reinvestment. Alternatively, courts might infer a rule prohibiting constructive-trustee parents from donating away a child's entire Dividend. It could be that, in light of the program's purpose and structure, courts need to begin charting a zone of responsible—or at least unobjectionable—uses for children's rightful Dividends.

Legislatively, lawmakers could endorse this conception of children's Dividends by amending the existing statute. The legislature could clarify that the "on behalf of" language in fact entails a principal-agent relationship between the child and parent regarding the child's rightful money.<sup>186</sup> Likewise, lawmakers could enact a similar standard of permissible use for parental claimants, analogous to the SSA representative payee provision.<sup>187</sup>

Administratively, pursuant to the indeterminate statutory language, the Department of Revenue could implement noninvasive measures to "nudge" parents into making choices more consonant with using the child's rightful income in her best interest.<sup>188</sup> For example, the state might establish a public trust account to save children's Dividends for the future, similar to those in effect now for governmental agencies and the University of Alaska College Savings Plan.<sup>189</sup> This could be presented as a "check-off" option to parents claiming Dividends on behalf of children, or even be made a default selection that parents would need to opt out of.<sup>190</sup> Taking a different route, the Division might also impose firmer

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183. See Mnookin & Kornhausert, *supra* note 119, at 960.

184. See discussion *supra* Part I.A.

185. See ALASKA STAT. § 43.23.069(d) (establishing charitable giving program and parameters).

186. See *Behalf*, BLACK'S LAW DICTIONARY (10th ed. 2014) (suggesting that the word "behalf" implies an agency relationship).

187. Cf. 42 U.S.C. § 1383(a)(2)(A)(iv) (2016) (defining "misuse of benefits" to encompass "a use other than for the use and benefit" of the payee).

188. See generally RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 1–14 (2008) (describing how decisions are influenced by the way in which choices are presented).

189. See ALASKA STAT. § 43.23.015(e) (2015); ALASKA ADMIN. CODE tit. 15, § 23.223(g) (2015); ALASKA STAT. § 14.40.802; *id* § 14.40.807(a)(1).

190. See Goldsmith, *supra* note 11, at 20 (proposing new "framing" of dividend application that presents the option of "a savings account for minor children that they would gain control of upon reaching 18 years of age.").



authorization requirements for parents claiming on behalf of children, requiring claimants to demonstrate not merely custody,<sup>191</sup> but also concern for the personal welfare of the beneficiary.<sup>192</sup> Fortunately, then, while the presently lax doctrine regarding children's Dividends has its problems, a host of possible solutions avail themselves once the Dividend is reconceived as a child's rightful income.

Understanding the Dividend in this way, and pursuing its legal and policy implications, overcomes the inadequacies of the present approach. Implementing any of these safeguards for a child's income would serve to check the current potential for abuse by parents claiming on behalf of their children. Consistent with Alaska's owner state ethic, such protections would also ensure that the communal natural resource wealth embodied by the Dividend is developed and disbursed to the benefit of all Alaskans, rather than irresponsibly diverted by claimant parents. Further, many of the above limitations on parental use are relatively less invasive when compared to more demanding analogues like Social Security. They would thus represent a respectful compromise between the state's anti-paternalistic political culture and the Dividend program's other goals.

Lastly, treating children's Dividends as their rightful income would bolster the welfare-substitution function played by the program. The heightened level of responsibility this approach imputes to parents would help guarantee that Dividends actually benefit children as a substitute for more traditional state benefits. In contrast with the current self-undermining approach, then, an income conception of children's Dividends and the responses it entails would better effectuate the objectives of the Permanent Fund Dividend itself.

## CONCLUSION

This Note has sought to critique the current understanding of the Dividend program, and cast doubt on the doctrine imputing zero duty to parents claiming Dividends on behalf of children. The present characterization and legal treatment of children's Dividends is not the only reasonable way of approaching the program; a reinterpretation of Dividends as children's rightful income is compelling in light of the history, purpose, and structure of the Permanent Fund Dividend, and invites a variety of potential legal and policy responses. Moreover, this

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191. ALASKA ADMIN. CODE tit. 15, § 23.113.

192. *Cf.* 20 C.F.R. § 416.621 (2015) (giving some preference under the SSA to representatives "demonstrating strong concern for beneficiary's well being" in case of minor recipients as well as to those with custody).

income conception of children's Dividends, and the heightened level of parental responsibility it entails, avoids the self-undermining shortcomings of the present approach, better advancing the program's aims. In short, a child's Dividend can and should be construed as the recipient's rightful income.

Even under current proposals to modify the program in the face of Alaska's recent fiscal troubles, it happily seems like the Permanent Fund Dividend is not going anywhere anytime soon.<sup>193</sup> But then neither are its attendant issues regarding parents and children outlined here. The tensions between anti-paternalism and the owner state ethic, parental rights and children's welfare and legal interests, remain intertwined with the program itself. When it comes to children and their Dividends, a deep rethinking of parental duty is still in order.

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193. See Jim Carlton, *Alaska's Permanent Fund Loses Its Sacrosanct Status*, WALL ST. J., Apr. 16, 2016, <http://www.wsj.com/articles/alaskas-permanent-fund-loses-its-sacrosanct-status-1460799000> (reporting on plan to bring payouts closer to long-term average of approximately \$1,100 per year).