

DID THE ALASKA SUPREME COURT GET IT RIGHT IN ITS DECISION IN THE ALASKA PERMANENT FUND DIVIDEND CASE?

JACK BRIAN MCGEE*

ABSTRACT

In 1976, Alaska voters ratified an amendment to Alaska's constitution that created the Permanent Fund. The amendment required twenty-five percent of certain revenues received by the state be placed in this Fund. In 1980, the Alaska Legislature created the Permanent Fund dividend program. Beginning in 1982, each Alaska resident received an annual dividend in the same amount. The amount of the dividend was automatically determined by a statutory formula. No appropriation was required.

In 2016, the Governor of Alaska vetoed close to one-half of the amount of the annual dividend as calculated by the statutory formula. In subsequent litigation, the Alaska Supreme Court found that a fund utilized by the dividend program was a dedicated fund. And since dedicated funds are prohibited by article IX, section 7 of the Alaska Constitution, the court rejected the claim that the fund was exempt from the prohibition and upheld the governor's veto. The practical effect of the court's ruling is that now any income from the Permanent Fund used to pay the yearly dividend to Alaska residents must first be appropriated and, further, is subject to the governor's veto power.

The central question in the case turned on what is the most likely understanding Alaska voters had of the word "provided" in a single phrase in the 1976 amendment: "except as provided in section 15 of this article." The Alaska Supreme Court found that the plain language meaning of the word "provided" in the phrase quoted above is to "supply" or "furnish." Based on this finding, the court concluded the only dedicated fund "supplied" or

Copyright © 2020 by Jack Brian McGee.

* Bachelor of Science, University of Wisconsin; J.D., University of Wisconsin; M.S. Philosophy, University of Wisconsin. The author is a former Assistant Attorney General for the State of Alaska and United States Supreme Court Fellow. He is now in private practice specializing in appellate law. He also authored an amicus brief in the Permanent Fund Dividend case.

“furnished” by section 15 is the Permanent Fund itself. The court found this to be the probable meaning Alaska voters had of the “except as provided” phrase.

This Article raises a number of questions about the fundamental premise that underlies the court’s conclusion. For instance, given the context in which “provided” appears in section 7, reading “provided” to mean “supplied” or “furnished” is neither common nor ordinary. A number of other arguments are also discussed in the Article.

I. INTRODUCTION

The subject of this Article is the Alaska Supreme Court’s decision in *Wielechowski v. State*.¹ In *Wielechowski*, the court held that a part of Alaska’s Permanent Fund dividend program violated Alaska’s constitutional prohibition against dedicated funds.² The focus of the Article is the premise the court relied on in reaching its decision. That premise is that the word “provided,” as it appears in article IX, section 7 of the Alaska Constitution, means to “supply” or to “furnish.”³

This Article analyzes the court’s decision and, in particular, the court’s interpretation of the plain meaning of the 1976 amendment to the Alaska Constitution establishing the Permanent Fund. Parts II, III, and IV of the Article discuss the background and origin of the litigation that led to the court’s decision, as well as the interpretive principles laid down by the Alaska Supreme Court for understanding constitutional language. Parts V, VI, and VII discuss the court’s decision and the reasoning that supports that decision. Part VIII analyzes a number of problems raised by the court’s reasoning. And Parts IX and X end with a discussion of the most likely reading Alaska voters had of the 1976 amendment.

II. BACKGROUND OF THE CASE

In 1976, Alaska voters approved an amendment to the Alaska Constitution.⁴ The amendment introduced a new section in article IX of

1. 403 P.3d 1141 (Alaska 2017).

2. *Id.*; see also ALASKA CONST. art. IX, § 7 (“The proceeds of any state tax or license shall not be dedicated to any special purpose . . .”). One method of dedicating funds is to “preclude the legislature from appropriating designated funds for any reason other than a designated purpose.” *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).

3. *Wielechowski*, 403 P.3d at 1151.

4. See H.J.Res. 39, 9th Leg., 2d Sess. (Alaska 1976); see also ALASKA CONST. art. IX, §§ 7, 15.

the constitution.⁵ First, the new section created the Alaska Permanent Fund and required certain state revenues earned by the state be placed in that Fund.⁶ Second, it mandated that all income earned by the Permanent Fund “shall be deposited in the general fund.”⁷ Third, it created an exception to this mandate by granting the legislature authority to create an alternative fund, other than the general fund, into which income earned by the Permanent Fund could be deposited as long as this alternative fund is “otherwise provided by law.”⁸ And fourth, it added an exception to the constitutional prohibition against dedicated funds that is found in article IX, section 7 (the “anti-dedication clause”).⁹

The text of the amendment to article IX, section 15 reads as follows:

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. *All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.*¹⁰

The part of article IX, section 7 that was amended reads as follows: “The proceeds of any state tax or license shall not be dedicated to any special purpose, *except as provided in section 15 of this article . . .*”¹¹

Exercising the authority granted by the 1976 amendment, the legislature enacted Alaska’s Permanent Fund dividend program in 1980.¹² It is designed to pay each eligible Alaskan a yearly dividend from the earnings of the Permanent Fund.¹³

The original program used length of residency in Alaska to determine the amount of the dividend: the longer one was an Alaska resident, the larger the dividend would be. In 1982, the U.S. Supreme

5. ALASKA CONST. art. IX, § 15.

6. *Id.* The Permanent Fund is managed by the Alaska Permanent Fund Corporation (APFC). ALASKA STAT. § 37.13.040 (2018).

7. ALASKA CONST. art. IX, § 15.

8. *Id.*

9. *Id.* § 7. Article IX, section 7 prohibits the dedication of any source of revenue, not only revenue from taxes, licenses, or special assessments. *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

10. ALASKA CONST. art. IX, § 15 (emphasis added).

11. *Id.* § 7 (emphasis added). Prior to the amendment, section 7 prohibited the dedication of any source of revenue, not only revenue from taxes, licenses, or special assessments. *Alex*, 646 P.2d at 210.

12. Act of Apr. 15, 1980, 1980 Alaska Sess. Laws ch. 21.

13. STATE OF ALASKA DEP’T OF REVENUE, THE ALASKA PERMANENT FUND AND THE PERMANENT FUND PROTECTION ACT 5 (2017), http://www.akleg.gov/basis/get_documents.asp?session=30&docid=661.

Court struck down the length of residency factor.¹⁴ That same year, the Alaska legislature revised the program to conform to the Supreme Court's decision.¹⁵ And thereafter, all Permanent Fund dividends would be the same amount.¹⁶

The Permanent Fund dividend program works as follows: section 37.13.145(a) of the Alaska Statutes created the earnings reserve account.¹⁷ This account holds the income generated by the Permanent Fund that is transferred to it "as soon as it is received."¹⁸

Section 37.13.145(b) says each year the Permanent Fund Corporation "shall transfer" from the earnings reserve account and to another account, named the "dividend fund," a defined amount of earnings as determined by statute.¹⁹ An annual dividend is then paid out of the dividend fund to each eligible Alaskan in an amount again determined by a statutory formula.²⁰ Before the court's decision in *Wielechowski*, since the amount of the dividend was determined solely by statute, the whole process was automatic and did not require an appropriation.²¹ And since the money in the dividend fund that is used for the dividends is not appropriated either out of the earnings reserve account and into the dividend fund, or out of the dividend fund for the cash dividend paid to eligible Alaskans, the dividend fund was understood by previous legislatures and administrations to be a dedicated fund.²²

III. ORIGIN OF THE LAWSUIT

The annual dividend for 2016 was calculated under the statutory formula to be approximately \$2,044 per resident.²³ However, Governor Bill Walker exercised his veto power over the collective value of all of the

14. See *Zobel v. Williams*, 457 U.S. 55, 57, 65 (1982) (holding that the length of residence requirement violated the Equal Protection Clause).

15. Act of June 16, 1982, § 1, 1982 Alaska Sess. Laws ch. 102, 3–4.

16. *Id.*

17. ALASKA STAT. § 37.13.145(a) (2018).

18. *Id.*

19. *Id.* § 37.13.145(b). The dividend fund was established by law to hold income transferred to it from the earnings reserve account at the end of each fiscal year in an amount to be determined by section 37.13.140. *Id.* §§ 43.23.045, 37.13.140 (2018).

20. *Id.* § 43.23.025 (2018).

21. Act of Apr. 15, 1980, 1980 Alaska Sess. Laws ch. 21. The first dividends were distributed in 1982 and have continued each year since then. Cliff Groh, *Myths, Misconceptions, and the History of the Alaska PFD Formula in State Law*, ANCHORAGE DAILY NEWS (Oct. 23, 2019), <https://www.adn.com/opinions/2019/10/23/myths-misconceptions-and-the-history-of-the-alaska-pfd-formula-in-state-law/>.

22. *Wielechowski*, 403 P.3d at 1152.

23. *Id.* at 1145.

2016 dividends.²⁴ The governor's veto effectively reduced each dividend to half of what it would have been save for his veto.²⁵ This action prompted a lawsuit filed in superior court in Anchorage by State Senator Bill Wielechowski and two former state legislators, Rick Halford and Clem Tillion.²⁶ Wielechowski argued the statutes that created the Permanent Fund dividend program included an automatic transfer of funds from the earnings reserve account to the dividend fund created by the legislature.²⁷ An automatic transfer then followed from the dividend fund to dividends paid to qualified Alaskans.²⁸ Wielechowski argued the dividend fund was a valid dedicated fund authorized by the 1976 amendment that added the "except as provided" language to section 7.²⁹ He concluded the dividend fund is exempt from the general prohibition of dedicated funds.³⁰

The State agreed the dividend program rested on a dedicated fund, i.e., the dividend fund, but defended the governor's veto by claiming the dividend fund was not exempt from the anti-dedication clause.³¹ The State argued that the governor's veto of half of the original amount set aside for the dividend was entirely lawful.³²

After an expedited proceeding, the superior court found the transfer of revenue from the earnings reserve account to the dividend fund "requires an appropriation."³³ The court did not address the dedicated fund argument.³⁴ Wielechowski appealed to the Alaska Supreme Court. Pointing to the clause in section 7 that reads "[t]he proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article," he argued that any dedicated fund created under the authority of article IX, section 15 is exempt from the anti-dedication clause.³⁵ Second, he argued that the legislature was free to dedicate income from the Permanent Fund to an alternative fund because it was authorized to do so by the last sentence of section 15³⁶: "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law."³⁷

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 1146.

28. *Id.*

29. *Id.* at 1148.

30. *Id.*

31. *Id.*

32. *Id.* at 1152.

33. *Id.* at 1146

34. *Id.*

35. *Id.*

36. *Id.* at 1148.

37. ALASKA CONST. art. IX, § 15.

IV. INTERPRETIVE PRINCIPLES DEVELOPED BY THE ALASKA SUPREME COURT FOR UNDERSTANDING CONSTITUTIONAL LANGUAGE

Because this case turned on the understanding Alaska voters had of a constitutional amendment, it is helpful to review principles of interpretation the Alaska Supreme Court has set out to resolve questions about the meaning of constitutional language.

One of the earliest Alaska cases to deal with how the constitution should be construed is *State v. Lewis*.³⁸ In *Lewis*, the court noted that because of the significant difference between construing a legislative act and construing a constitutional provision ratified by Alaska voters, the court must “look to the meaning that the voters would have placed on its provisions”:

While we believe there can be no serious question as to the intent of the delegates in drafting Art. VIII, Sec. 9, we are cognizant that a state constitution differs from a legislative act. In construing a legislative act, we need only look to the intent of the members who enacted it. A constitutional provision, however, must be ratified by the voters, and it is therefore also necessary to look to the meaning that the voters would have placed on its provisions.³⁹

In *Hammond v. Hoffbeck*,⁴⁰ the court considered how the language of a constitutional provision should be understood. Quoting the Arizona Supreme Court, the court agreed that the “governing principle of constitutional construction” is the intent of the framers; the natural, obvious, and ordinary meaning of the language; and the commentary that accompanies the enactment of the provision:

“The governing principle of constitutional construction is to give effect to the intent and purpose of the framers of the constitutional provision and of the people who adopted it. Unless the context suggests otherwise, words are to be given their natural, obvious and ordinary meaning.” In addition to the “natural, obvious and ordinary meaning” of Article XII, [section] 7, we rely on the commentary which accompanied the enactment of this provision⁴¹

38. 559 P.2d 630 (Alaska 1977).

39. *Id.* at 637-39.

40. 627 P.2d 1052 (Alaska 1981).

41. *Id.* at 1056 n.7 (citation omitted) (quoting *Cty. of Apache v. Sw. Lumber Mills, Inc.*, 376 P.2d 854, 856 (Ariz. 1962)).

And in *Division of Elections of State v. Johnstone*,⁴² the court underscored the importance of using “the common understanding of words” especially when “construing provisions of the Alaska Constitution”:

As a general rule, we have held that, “unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.” Adherence to the common understanding of words is especially important in construing provisions of the Alaska Constitution, because the court must “look to the meaning that the voters would have placed on its provision.”⁴³

*Hickel v. Cowper*⁴⁴ is an important case because it discusses the relationship between the “intent” of the people and “the common understanding of words” and why “such deference to the intent of the people requires ‘adherence to the common understanding of words’”:

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires “adherence to the common understanding of words.”⁴⁵

The *Hickel* court also noted that it had no authority to “add missing terms” to a provision”:

Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. We are not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result. Our task is to identify the meaning that the people probably placed on the term.⁴⁶

And in *Alaska Wildlife Alliance v. Rue*,⁴⁷ the court restated the importance of the “practical interpretation in accordance with common sense”: “Similarly, we apply independent judgment to constitutional

42. 669 P.2d 537 (Alaska 1983).

43. *Id.* at 539 (footnote omitted) (citations omitted).

44. 874 P.2d 922 (Alaska 1994).

45. *Id.* at 926.

46. *Id.* at 927–28 (footnote omitted) (citation omitted).

47. 948 P.2d 976 (Alaska 1997).

issues, adopting ‘a reasonable and practical interpretation in accordance with common sense’ based upon ‘the plain meaning and purpose of the provision and intent of the framers.’”⁴⁸

A common theme that runs through these cases is that deference is owed to the “common understanding of words” that the people probably placed on constitutional language.⁴⁹ And the unstated reason for this is the obvious fact that the will of the people is the foundation of any democratic political system.⁵⁰ After all, it is “[w]e the people of Alaska” who “do ordain and establish this constitution for the State of Alaska.”⁵¹ And the very structure of government itself rests on the people: “All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”⁵²

These holdings can be summarized by four general principles. First, in determining the meaning of a constitutional provision, the primary objective “is to identify the meaning that the people probably placed on the term” and give deference to that meaning.⁵³ What is critical is “the meaning the people themselves probably placed on the provision.”⁵⁴ Second, “words are to be given their natural, obvious and ordinary meaning.”⁵⁵ Third, “[i]n addition to the ‘natural, obvious and ordinary meaning’” the court should “rely on the commentary which accompanied the enactment of [the] provision.”⁵⁶ And fourth, deference is owed to the plain, ordinary, and common meaning that the people themselves likely placed on constitutional language.⁵⁷

V. THE ISSUE BEFORE THE ALASKA SUPREME COURT

The supreme court understood the issue before it to be a narrow one: whether the 1976 amendment created an exception for Permanent Fund income from the anti-dedication clause.⁵⁸

The court said that the answer to this question would be “found only

48. *Id.* at 979.

49. *See, e.g., Hickel*, 874 P.2d at 926.

50. *See* JOHN LOCKE, TWO TREATISES OF GOVERNMENT § 95 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690) (discussing the role of the individual entering into a social contract to form a political entity).

51. ALASKA CONST. pmb1.

52. *Id.* art. I, § 2.

53. *Hickel*, 874 P.2d at 926–28.

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

55. *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 n.7 (Alaska 1981) (citation omitted).

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

57. *Hickel*, 874 P.2d at 926.

58. *Wielechowski v. State*, 403 P.3d 1141, 1143 (Alaska 2017).

in the language of the Alaska Constitution⁵⁹ and “the plain language of the anti-dedication and Permanent Fund clauses of the Alaska Constitution.”⁶⁰

VI. THE COURT’S PLAIN MEANING ANALYSIS

Prior to its plain meaning analysis, the court discussed public policy views held by some of the delegates to the constitutional convention that reflected a negative view of dedicated funds; it also referenced prior supreme court cases that discussed the anti-dedication clause.⁶¹ The court also stressed once again that its decision would be “based on the plain language of the anti-dedication and Permanent Fund clauses of the Alaska Constitution.”⁶²

The court’s plain language analysis is relatively short and worth quoting in its entirety:

The second sentence of article IX, section 15 states: “All income from the permanent fund shall be placed in the general fund unless otherwise provided by law.” The phrase “unless otherwise provided by law” does not plainly allow the legislature to dedicate Permanent Fund income; the phrase appears to simply provide an alternative to depositing income into the general fund. And this is precisely what the legislature has done by creating the unique earnings reserve: (1) an account existing outside of the general fund; (2) appropriable by the legislature; (3) managed by the APFC; (4) invested in income-producing assets; and (5) as the State argues, treated differently than other state revenues because of public expectations. The second sentence of the Permanent Fund clause permits the creation and use of the earnings reserve for deposit of the fund’s income pending appropriation; it does not give the legislature the authority to dedicate that income.

Nor can the plain meaning of the exception added to the anti-dedication clause be understood to grant the legislature such broad authority. It exempts dedications “as *provided* in section 15,” not as *permitted by* that section. “Provided” here is synonymous with “supply, furnish.” A dedication is quite explicitly *supplied* in the first sentence of article IX, section 15: “At least twenty-five per cent of all [specified mineral revenues] . . .

59. *Id.*

60. *Id.* at 1148.

61. *Id.* at 1143, 1147.

62. *Id.* at 1148.

shall be placed in a [P]ermanent [F]und.” Even the most expansive reading of the clause’s second sentence—“unless otherwise provided by law”—could be understood only to *permit* further dedications, not to *provide* them.

Interpreting the 1976 constitutional amendment to allow dedications of Permanent Fund income would create an anti-dedication clause exception that would swallow the rule. We remain “unwilling to add ‘missing terms’ to the Constitution or to interpret existing constitution language more broadly than intended by . . . the voters.” Without an explicit exception to the anti-dedication clause, we will not “abstrusely” interpret the Permanent Fund clause to permit the dedication of its income. Whether any prior legislature or administration treated the dividend program as if it were a dedication has no bearing on our analysis; what matters is what the Alaska Constitution says.

The plain language of the 1976 constitutional amendment creating the Permanent Fund does not exempt Permanent Fund income from the constraints of the anti-dedication clause. . . .⁶³

VII. SUMMARY OF THE COURT’S “PLAIN MEANING” ANALYSIS

The court focused on the word “provided” in the section 7 phrase “as provided in section 15.”⁶⁴ And it concluded this word means “supply, furnish.”⁶⁵ As for the phrase “unless otherwise provided by law” in the last sentence in section 15, the court said this phrase “appears to simply provide an alternative to depositing the income into the general fund.”⁶⁶ And that was “precisely what the legislature has done by creating the unique earnings reserve” account under the authority of section 15.⁶⁷ However, the last sentence in section 15 “does not give the legislature the authority to dedicate that income.”⁶⁸

The interpretation of “provided” in section 7 as “supply” or “furnish” allowed the court to conclude that section 15 creates only a single exception to the anti-dedication clause, and that single exception is the Permanent Fund itself: “A dedication is quite explicitly *supplied* in the first sentence of article IX, section 15: ‘At least twenty-five percent of all

63. *Id.* at 1151–52 (alterations in original) (footnotes omitted) (citations omitted).

64. *Id.* (quoting ALASKA CONST. art. IX, § 7).

65. *See id.* at 1151 (“‘Provided’ here is synonymous with ‘supply, furnish.’”).

66. *Id.*

67. *Id.*

68. *Id.*

[specific mineral revenues] . . . shall be placed in a [P]ermanent [F]und.”⁶⁹

The court went on to reject any argument based on the fact that “any prior legislature or administration treated the dividend program as if it were a dedication.”⁷⁰

And lastly, the court held that “[w]ithout an explicit exception to the anti-dedication clause, we will not ‘abstrusely’ interpret the Permanent Fund clause to permit the dedication of its income.”⁷¹

It is obvious the court’s principal reasoning was based on its understanding of the word “provided” in section 7. It understood “provided” in this section to be “synonymous with supply, furnish.”⁷² And given this definition of “provided,” it follows that the meaning of the clause “except as provided in section 15 of this article” in section 7 is that it refers to the dedicated fund that is “supplied” or “furnished” by section 15. And, as pointed out, that fund is the Permanent Fund itself.⁷³

As for the phrase “unless otherwise provided by law” in section 15, the court reasoned it authorized the legislature to establish a fund as “an alternative to depositing the income into the general fund,” with the caveat that it does not give the legislature the authority to dedicate that income:

The second sentence of article IX, section 15 states: “All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.” The phrase “unless otherwise provided by law” does not plainly allow the legislature to dedicate Permanent Fund income; the phrase appears to simply provide an alternative to depositing the income into the general fund.⁷⁴

The court emphasized that “an explicit exception to the anti-dedication clause” is required before the court will “interpret” the Permanent Fund clause “to permit the dedication of its income.”⁷⁵

69. *Id.* at 1151–52 (alteration in original) (footnote omitted).

70. *Id.* at 1152.

71. *Id.* (footnote omitted).

72. *Id.* at 1151. WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY lists four definitions for the word “provide,” one of which is “to supply.” See WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 1556 (1996). It also lists definitions for the word “provided” when it is used to signal a conditional sentence. *Id.* In that case, “provided” means: “on the condition or understanding (that).” *Id.*

73. *Wielechowski*, 403 P.3d at 1151. Since the court determined the plain meaning of the phrase “except as provided in section 15 of this article” in section 7 refers to the only dedicated fund “supplied” by Section 15 (the permanent fund itself), it could conclude that Alaska voters, considering this same plain meaning, would naturally arrive at the same conclusion.

74. *Id.*

75. *Id.*

Quoting the language in section 15, the court explained:

Without an explicit exception to the anti-dedication clause, we will not “abstrusely” interpret the Permanent Fund clause to permit the dedication of its income. Whether any prior legislature or administration treated the dividend program as if it were a dedication has no bearing on our analysis; what matters is what the Alaska Constitution says.⁷⁶

Based on this reasoning, the court concluded that the plain language of the amendment did not exempt the Permanent Fund from the anti-dedication clause and that the governor’s veto of a portion of the Permanent Fund dividend for 2016 was lawful:

The plain language of the 1976 constitutional amendment creating the Permanent Fund does not exempt Permanent Fund income from the constraints of the anti-dedication clause. We affirm the superior court on this alternative ground, although the conclusion that a revenue transfer from the earnings reserve to the dividend requires an appropriation and must survive a gubernatorial veto flows naturally from our decision.⁷⁷

The sole purpose of this litigation was to get a judicial determination of how Alaska voters would have probably understood the 1976 amendment. Put another way, the central issue was “the meaning the people themselves probably placed on the provision.”⁷⁸ The answer to this question turns on “the natural, obvious and ordinary meaning” of words⁷⁹ in the amendment as well as the “common understanding” of these words.⁸⁰

The task, then, is to determine the common understanding the

76. *Id.* at 1152 (footnote omitted). The requirement of “an explicit exception to the anti-dedication clause” rests on the assumption that without such an exception, Alaska voters would never have understood the amendment to have granted the legislature the authority to enact an alternative dedicated fund to hold income from the Permanent Fund that is exempt from the anti-dedication clause. This requirement clearly restricts the judgment of Alaska voters on what other relevant evidence they might consider when determining what is a reasonable and probable understanding of a constitutional provision. This restriction clashes with the principle set down in *Hickel* where the court held: “Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. . . . Our task is to identify the meaning that the people probably placed on the term.” *Hickel v. Cowper*, 874 P.2d 922, 927–28 (Alaska 1994) (footnote omitted).

77. *Wielechowski*, 403 P.3d at 1152 (footnote omitted).

78. *Hickel*, 874 P.2d at 926 (quoting *Citizens Coal. for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 169 (Alaska 1991)).

79. *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 n.7 (Alaska 1981) (citation omitted).

80. *Div. of Elections of State v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983).

citizens of Alaska most probably had of the 1976 amendment to the Alaska Constitution—the amendment that created article IX, section 15 and amended article IX, section 7 by adding a reference to section 15. And once this is determined, deference is due “to the meaning the people themselves probably placed on the provision.”⁸¹

VIII. DIFFICULTIES WITH THE ARGUMENT THAT THE WORD “PROVIDED” IN ARTICLE IX, SECTION 7 MEANS TO “SUPPLY” OR “FURNISH”

First, it is difficult to read the plain language of the phrase “except as provided in section 15 of this article” as if it were intended by the drafters to mean “except as supplied or furnished by section 15 of this article.”⁸² If the drafters had wanted Alaskans to vote on whether the only dedicated fund that should be exempt from the anti-dedication clause is the Permanent Fund itself, they would have used simple and straightforward language in their amendment of section 7. For example, the amendment could have read simply as “except for the Permanent Fund created by section 15 of this article.” But since they did not use such direct and simple language, it follows that the drafters did not intend Alaskans to vote only on whether the Permanent Fund itself should be exempt from the anti-dedication clause. It is unlikely the drafters expected voters to work through a series of steps or inferences before reaching the conclusion that the only dedicated fund the 1976 amendment exempted from the anti-dedication clause is the Permanent Fund itself. Yet the court’s decision implies that this is what the drafters intended.

This lack of clear language suggests it is improbable that Alaska voters, as well as the drafters, thought it reasonable to read “except as provided in section 15 of this article” to mean “except as supplied and furnished in section 15 of this article.” Such a reading requires a reliance on a single definition of a word that has many different definitions and, moreover, is used in a context where that single definition does not seem either “common” or “ordinary.” This exercise would have been entirely unnecessary had clear language been used like that referred to above. Therefore, the plain text suggests that the only reasonable explanation why such straightforward language was not used was because the drafters did not intend that the amendment should be read to mean that the only dedicated fund exempt from the ant-dedication clause is the

81. *Hickel*, 874 P.2d at 926 (quoting *McAlpine*, 810 P.2d at 169).

82. The court stressed that its decision would be “based on the plain language of the anti-dedication and Permanent Fund clauses of the Alaska Constitution.” *Wielechowski*, 403 P.3d at 1148.

Permanent Fund itself.

The second problem with the court's holding "provided" means to "supply" or "furnish" is that the language of article IX, section 15 is self-executing. It was "effective immediately without the need" of any further action.⁸³ That is, the language used in section 15 automatically created the Permanent Fund as a dedicated fund in the first place. The fact that the Permanent Fund was created as a dedicated fund by an amendment to the constitution means that this fund was automatically exempt from the anti-dedication clause regardless of the section's "except as provided in section 15" clause. The language amending section 7 was wholly unnecessary to exempt the Permanent Fund.

If the "except as provided in section 15" language in section 7 did not exist, it is unlikely that anyone reading section 15 would seriously claim that the Permanent Fund cannot be a dedicated fund because all dedicated funds are prohibited by section 7. And if they were to make such a claim, they would be overlooking the well-established rule of constitutional interpretation that sections of a constitution that appear to conflict with each other should be harmonized rather than read as two intractable and contradictory provisions.⁸⁴

In short, if it were argued that the meaning of the "except as provided" clause in section 7 is that it exempts only the Permanent Fund from the general prohibition of dedicated funds, then that entire clause is without any purpose and is a nullity.⁸⁵ And that is because section 15, on its face, has already created the Permanent Fund as a dedicated fund. Section 15, by virtue of self-execution, has already exempted the Permanent Fund from the prohibition.

So there is no need for such a provision in section 7 if its sole purpose is to create an exemption for the Permanent Fund from the anti-dedication clause. The presence of the "except as provided in section 15" clause in section 7 makes sense only if it was intended for another purpose. And that alternative purpose was to get the reader's attention to focus on the

83. "Self-executing" means "effective immediately without the need of any type of implementing action." *Self-Executing*, BLACK'S LAW DICTIONARY (11th ed. 2019).

84. See *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 786 (Alaska 2005) (looking to harmonize the Alaska Constitution's equal protection clause and Marriage Amendment in order to avoid the two provisions conflicting with one another).

85. An argument that leads to a conclusion that the clause has no meaning would violate the established cannon of interpretation that "every word and provision" should be "given effect and meaning" and "none should be ignored." ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 174 (2012); see also *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 801 (Alaska 1975) ("The general rule in constitutional construction is to give import to every word and make none nugatory.").

last sentence of section 15 and, in turn, on a law the legislature might enact at some time in the future under the authority granted it by that last sentence. And since there is no language to the contrary, that law might very well create a dedicated fund, and if it did, that fund would be exempt from the anti-dedication clause. In other words, that law would fall within the general exception created by the “except as provided in section 15.” It is reasonable then, that the drafters included this general provision to ensure laws that are necessary to administer the Permanent Fund could also be made exempt from the anti-dedication clause.

Third, it is true, in a certain context, that the word “provided” can mean “to furnish” or “to supply.”⁸⁶ And that occurs when a certain thing is needed or required, and that which is needed is then supplied or furnished. This meaning makes sense if what is to be supplied or furnished is a material substance or some form of human expertise. However, both material substances and human expertise in this context exist prior to the actual act of supplying or furnishing. For example, when a charitable group supplies food to an impoverished family, or furnishes shelter for victims of a natural disaster or fire, or if a trained specialist provides psychological comfort to those victims, it would be common and natural to say the charity provided or furnished food or shelter and the specialist provided or furnished solace. But it would be unusual and uncommon to hear one speak of a dedicated fund created by a constitutional amendment as being “supplied” or “furnished” by that amendment. This is not common usage when “supplied” or “furnished” is used in this context. It is not “[a]dherence to common understanding of words,” nor is it “a natural, obvious and ordinary” way to speak or write when the subject and context is a creation of a constitutional provision.⁸⁷ It is doubtful anyone has ever heard “freedom of speech” or “freedom of religion” described as something “supplied” or “furnished” by the First Amendment. This strongly suggests that Alaska voters did not understand section 7 to be referring to a dedicated fund “supplied” or “furnished” by section 15 of the Alaska Constitution.⁸⁸

It is likely then that Alaska voters settled on another understanding

86. WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY, *supra* note 72.

87. See *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 n. 7 (Alaska 1981) (“Adherence to the common understanding of words is especially important in construing provisions of the Alaska Constitution because the court must look to the meaning voters would have placed on its provisions.” (citation omitted)); *Div. of Elections v. Johnson*, 669 P.2d 537, 539 (Alaska 1983) (emphasizing the importance of faithfulness to the common meaning of words when construing constitutional provisions). Both cases are discussed above. See *infra* Part IV.

88. Certainty about the voters’ intent is not required: “Our task is to identify the meaning that the people *probably* placed on the term.” *Hickel v. Cowper*, 874 P.2d 922, 928 (Alaska 1994) (emphasis added) (citation omitted).

of the function of the word “provided” as it appears in section 7.

IX. THE MOST PROBABLE UNDERSTANDING ALASKA VOTERS HAD OF THE PHRASE “UNLESS OTHERWISE PROVIDED BY LAW” IN THE LAST SENTENCE OF SECTION 15 IS THAT IT SIGNALS A CONDITIONAL STATEMENT

At the outset, Alaskans would likely have noticed that the last sentence in section 15, “[a]ll income from the permanent fund shall be deposited in the general fund unless otherwise provided by law”⁸⁹ is a conditional statement. The word “provided,” coupled with the word “unless,” signals that the second part of the sentence creates a condition. The logical term for this kind of statement is a conditional or hypothetical proposition.⁹⁰

The first part of the last sentence of section 15 is negated or rendered inoperative “on the condition that X occurs” or “with the understanding that X occurs.”⁹¹ In particular, the use of “provided” in section 15 identifies a condition that, if satisfied, creates an exemption from the first part of the last sentence of section 15, i.e.: “All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.”

The three words, “provided by law,” refer to the procedure by which a law is created. That is, “by law” refers to a bill passed by the legislature and signed into law by the governor.

The condition, then, that creates an exception to the requirement that income from the Permanent Fund must be deposited in the general fund,

89. ALASKA CONST. art. IX, § 15.

90. See IRVING COPI & CARL COHEN, INTRODUCTION TO LOGIC 305 (9th ed. 1993). In traditional logic, a sentence in this form is termed a conditional or hypothetical proposition. See *id.* (The word “unless” in the sentence means “if not.”); DAVID KELLEY, THE ART OF REASONING WITH SYMBOLIC LOGIC 230 (1988). Using this translation of “unless,” the last sentence in section 15 is equivalent to this proposition: “All income from the permanent fund shall be deposited in the general fund *if not* otherwise provide by law.” The standard form for a conditional statement is “if P, then Q.” “P” is the “if” part of the statement and is termed the antecedent; “Q” is the “then” part and is termed the consequent. Q in this case stands for: “All income from the permanent fund shall be deposited in the general fund . . .” For example, the standard form of the last sentence of section 15 is this: If P, then -Q (not Q), where P = “If another fund is created by law for the deposit of permanent fund income” and not Q = “All permanent fund income is not required to be deposited in the general fund.” If P, then -Q. COPI & COHEN, *supra*.

91. As discussed *supra* note 72, when “provided” is used to signal a conditional statement, it means “on the condition or understanding (that).” WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY, *supra* note 72; see also *Provided*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2015).

is a law that that provides an alternative to the general fund to hold Permanent Fund income. Alaskans would also likely take note of the fact that “provided” in the clause “as provided in section 15” in section 7 is a reference to the last sentence of section 15. It alerts the reader that if they want to learn exactly what is “provided in section 15,” then they should read this last sentence. They would also note that that the first sentence of section 15 creates the Permanent Fund.

The first part of section 15’s last sentence requires that “income from the permanent fund shall be deposited into the general fund.” This is the general rule. But the second part of this last sentence creates an exception to this general rule in the form of a conditional statement. It grants the legislature the authority to enact legislation that provides for an alternative fund, a fund other than the general fund, for the deposit of Permanent Fund income. In other words, if the legislature enacts a law that creates an alternative fund for the deposit of Permanent Fund income, then the first part of the last sentence is negated. Section 15 gives the legislature authority to enact an alternative fund to hold Permanent Fund income. This is the probable understanding Alaska voters had of the phrase “unless otherwise provided by law.”

The authority granted by section 15 raises the question whether the legislature is empowered to create an alternative fund for the deposit of permanent fund income that is a dedicated fund. This is the subject of the next Section.

X. THE MOST PROBABLE READING ALASKA VOTERS HAD OF LANGUAGE IN THE 1976 AMENDMENT AS IT RELATES TO THE QUESTION WHETHER IT CREATES AN EXCEPTION TO THE ANTI-DEDICATION CLAUSE IN ADDITION TO THE PERMANENT FUND ITSELF

The Alaska Permanent Fund came into existence in 1976 after Alaska voters approved the amendment to article IX.⁹² The legislature subsequently created other funds related to the Permanent Fund. In 1982, the legislature created the earnings reserve account, a separate account whereby “income from the [permanent] fund shall be deposited by the corporation into the account as soon as it is received.”⁹³ The earnings reserve account was created as a dedicated fund.⁹⁴ Thus income from the

92. See H.J.Res. 39, 9th Leg., 2d Sess. (Alaska 1976); see also ALASKA CONST. art. IX, §§ 7, 15.

93. See ALASKA STAT. § 37.13.145 (2018) (establishing the earnings reserve account, into which income from the Permanent Fund must be deposited).

94. There is no appropriation required from the general fund to the earnings reserve account. See ALASKA STAT. § 37.13.145(a) (2018) (“Income from the

Permanent Fund is not appropriated into the earnings reserve account. Rather it is deposited in the earnings reserve account upon receipt.⁹⁵

This presents a problem. If the last sentence in section 7 together with section 15 authorizes the legislature to create the earnings reserve account as a dedicated fund, as the court assumes in its decision,⁹⁶ then on what grounds can it be said that section 15 does not authorize the legislature to create the dividend fund as a dedicated fund under sections 43.23.045 and 37.113.145 of the Alaska Statutes. It would seem that the very same language in the very same article and section of the Alaska Constitution that authorizes the legislature to create the earnings reserve account as a dedicated fund would also authorize the creation of the dividend fund as a dedicated fund.⁹⁷ The court did not directly address this question in its decision. However, it pointed out that the earnings reserve account was “treated differently than other state revenues because of public expectations.”⁹⁸

As was discussed earlier, if the argument prevails that “provided” in section 7 means “supplied” or “furnished,” then section 7 plays no role in creating the Permanent Fund as a dedicated fund. The Permanent Fund does not owe its exemption to the phrase “except as provided in section 15 of this article” in section 7. But rather than write off the “except as provided in section 15 of this article” phrase of section 7 as a nullity, a more reasonable approach would be to read this phrase as relating to a law that the legislature might enact at some time in the future under the authority of section 15. And if that law enacted a dedicated fund, then that fund would be exempt from the anti-dedication clause because of the “except” clause in section 7. But if this interpretation is rejected and the court’s view accepted, then the section 7 “except” clause would seem to have no purpose.

If the argument that “provided” in section 7 means “supply” or “furnish” fails, then either the “except” clause of section 7 together with the last sentence of section 15 authorizes the legislature to create a dedicated alternative fund to hold income from the Permanent Fund, or Section 7’s “except” clause is a nullity without meaning. Since there is no principle of constitutional interpretation that would sanction the latter,

[Permanent F]und shall be deposited by the corporation into the account as soon as it is received.”). The lack of a requirement of a legislative appropriation means the account is a dedicated fund.

95. See ALASKA STAT. § 37.13.145(a) (2018) (“Income from the fund shall be deposited by the corporation into the account as soon as it is received.”).

96. *Wielechowski v. Alaska*, 403 P.3d 1141, 1144 n.12 (Alaska 2017).

97. In *Hickel v. Cowper*, the court recognized that “[a] percentage of the money in the [earnings] reserve account is automatically transferred to the dividend fund at the end of each fiscal year.” 874 P.2d 922, 934 (Alaska 1994).

98. *Wielechowski*, 403 P.3d at 1151.

the former must be true.⁹⁹ And so it is reasonable to understand section 15, along with the exception clause of section 7, to authorize the legislature to create a dedicated alternative fund to hold Permanent Fund income. And it did exactly this when it enacted the Permanent Fund dividend program.

An additional problem with the court's conclusion that sections 15 and 7 did not authorize the legislature to create the dividend fund as a dedicated fund is the language found in the Ballot Summary. In construing the plain meaning of a constitutional provision, the Alaska Supreme Court noted that "in addition to the 'natural, obvious and ordinary meaning of Article XII, [section 7], we rely on the commentary which accompanied the enactment of the provision."¹⁰⁰

So how did Alaska voters likely understand the meaning of the last sentence of section 15 after taking into consideration the commentary that accompanied the enactment of the 1976 amendment? The Ballot Summary provides the important role of informing Alaska voters about the meaning of a proposed constitutional amendment.¹⁰¹ After all, the Alaska Constitution requires that the lieutenant governor prepare a summary of any proposed amendment to the constitution: "The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election."¹⁰²

The summary must "give a true and impartial summary of the amendment" and be "clear, concise, and easily readable."¹⁰³ In this instance, the summary prepared by the lieutenant governor for the referendum on the 1976 amendment reads as follows:

This proposal would amend Article IX, Section 7 (Dedicated Funds) and add a new section to Article IX, Section 15 (Alaska Permanent Fund) of the Alaska Constitution. It would establish a constitutional permanent fund into which at least 25 percent of

99. As discussed earlier, the "except" clause has nothing to do with the fact that the Permanent Fund is a dedicated fund. *See supra* Part VIII. A claim that the clause has no meaning would violate the established canon of interpretation that "every word and provision," particularly of a constitution, should be "given effect and meaning" and "none should be ignored." SCALIA & GARNER, *supra* note 85, at 174; *see also* *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 801 (Alaska 1975).

100. *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 n.7 (Alaska 1981) (emphasis added) (citation omitted).

101. A Ballot Summary is required by the Alaska Constitution to be prepared by the lieutenant governor, with the express purpose of summarizing each proposed amendment. ALASKA CONST. art. XIII, § 1.

102. *Id.*

103. ALASKA STAT. §§ 15.50.010, 15.50.020 (2018); *see also id.* § 15.80.005 (2018).

all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payment[s] and bonuses received by the State would be paid. The principal of the fund would be used only for income-producing investments permitted by law. *The income from the fund would be deposited in the State's General Fund and be available for appropriation for the State unless law provided otherwise.*"¹⁰⁴

It is reasonable to assume that upon entering the voting booth, the first thing an Alaska voter would do is read this Ballot Summary. The natural, obvious, and ordinary language of this summary would likely lead an Alaska voter to draw two reasonable conclusions about the meaning of the last sentence of section 15. First, that permanent fund income (a) will be deposited in the general fund, and (b) while this income is in the general fund, it will be available for appropriation. And second, he or she would reasonably draw the conclusion that the conditional clause "unless [the] law provided otherwise" in the summary would allow the legislature to create a fund exempt from both the requirement that income from the Permanent Fund be deposited in the general fund and the requirement that this income "be available for appropriation."¹⁰⁵ An Alaska voter would most likely reach the reasonable conclusion that the phrase "unless otherwise provided by law" in the last sentence of section 15 means that the legislature is granted the authority to enact a law that, in fact, does "otherwise." For example, the legislature could direct that Permanent Fund income be deposited into a fund other than the general fund, and it could further direct that the income in the new fund not be available for appropriation and instead designate that the income be used for a particular purpose. In other words, because the legislature has the authority to enact the earnings reserve account as a dedicated fund to hold earnings from the Permanent Fund, it also has the authority to enact a dedicated fund, such as the dividend fund, to hold income from the earnings reserve account. The reasonable and likely understanding of the phrase "unless law provided otherwise" in the Ballot Summary is that it modifies both the rule that income from the Permanent Fund be deposited into the general fund and the rule that such income must be available for appropriation.

A persuasive case can be made that the Ballot Summary, because of the importance of its constitutional role in assisting Alaska voters in

104. *Wielechowski v. Alaska*, 403 P.3d 1141, 1150 n.59 (Alaska 2017) (emphasis added) (quoting the Ballot Summary).

105. *Id.* If this were not the case, it is reasonable to assume the section 15 clause "unless otherwise provided" would have read "unless an alternative fund is otherwise provided by law and made available for appropriation."

understanding the meaning of the 1976 amendment, should be given significant weight in determining how Alaska voters understood this amendment.¹⁰⁶

Therefore, the most probable understanding Alaska voters had of the phrase “unless otherwise provided by law” in section 15, together with the phrase “except as provided in section 15 of this article” of section 7, was that it authorized the legislature to create an alternative fund to hold Permanent Fund income and further, it granted the legislature the discretion to enact that fund as a dedicated fund. In other words, the 1976 amendment created an exception to the anti-dedication clause. And when the legislature exercised its discretion and enacted the dividend fund as part of its Permanent Fund dividend program, it was relying on this exception.

This understanding of the scope of the authority granted to the legislature by the phrase “unless otherwise provided by law” is also supported by the language in the Joint Report from the House Judiciary and Finance Committee Chairs on the 1976 amendment (“Joint Committee Report”).¹⁰⁷ This report noted the purpose of the last sentence in section 15 “*is to give future legislatures the maximum flexibility* in using the Fund’s earnings—ranging from adding to Fund principal to paying out a dividend to resident Alaskans.”¹⁰⁸ The words “maximum flexibility” in the Joint Committee Report together with the phrases “unless otherwise provided by law” and “except as provided” imply the intent behind the amendment was to grant the legislature the “flexibility,” not only to create the earnings reserve account as a dedicated fund, but also to enact a dedicated fund to hold the earnings deposited in the earnings reserve account. That legislative flexibility, and the wide discretion it implies, as emphasized in the Joint Committee Report, is additional evidence for how Alaska voters probably understood sections 15 and 7 of the 1976 amendment.

And lastly, in 1980, the Office of the Attorney General issued a formal opinion on the question of whether dividend payments can be made directly from the income of the Alaska Permanent Fund and concluded that such payments could be made.¹⁰⁹ The opinion focused on

106. When the people are voting on amending their constitution, it is imperative they have knowledge that allows them to decide whether they are for or against the amendment. But to know this, they must know what the amendment does. The purpose of the Ballot Summary is to help make sure the voters understand the proposed amendment. And that is why the summary must “give a true and impartial summary of the amendment” and be “clear, concise, and easily readable.” ALASKA STAT. §§ 15.50.010, 15.50.020 (2018).

107. ALASKA H. JOURNAL, 9th Leg., 2d Sess. 684–85 (Mar. 24, 1976).

108. *Id.* at 685 (emphasis added).

109. AVRUM M. GROSS & WILSON L. CONDON, OFFICE OF THE ATT’Y GEN. OF

the effect the section 15 language “unless otherwise provided by law” had:

Because of decisional law applying constitutional provisions which require disclosure of the principal objects and effects of amendments, the effect of the words, “unless otherwise provided by law” may be quite limited. Our reading of the decisional law on constitutional amendments leads us to the conclusion here that the legislature probably can provide by law for income from the fund to be automatically deposited back into the fund or distributed as dividends. Both are part of the amendment’s history and both are closely related to the fund itself.¹¹⁰

XI. CONCLUSION

The fundamental question in this case is what is the most likely or probable understanding that Alaska voters had of the authority the 1976 amendment granted to the legislature at the time those voters ratified the amendment.

This Article presents a number of arguments why it is reasonable to conclude that it was unlikely Alaska voters understood “provided” in section 7 to mean “supply” or “furnish.” Instead, it is most likely they understood the 1976 amendment to authorize the legislature to create dedicated funds to hold earnings from the Permanent Fund. This would include both the earnings reserve account and the dividend fund.

In summarizing these arguments, it is useful to begin with a question: If the drafters of the 1976 amendment intended voters to vote on whether only the Permanent Fund itself should be exempt from the anti-dedication clause, then why did they not clearly and succinctly say as much in the amendment language they used for section 7? For example, a sentence like this would have made their intention clear: “The proceeds of any state tax or license shall not be dedicated to any special purpose, *except for the Permanent Fund created by section 15 of this article . . .*.” That the drafters did not use such language is strong evidence that they had no such intention. In other words, the drafters had no intention to have Alaskans vote on an amendment that would exempt only the Permanent Fund from the anti-dedication clause. Alaska voters would have understood this.

The second reason has to do with an implication that follows from the court’s ultimate conclusion. Based on its holding “provided” means

ALASKA, 1980 FORMAL OPINION NO. 3, at 7-8 (Mar. 19, 1980).

110. *Id.*; see also *supra* text accompanying note 106.

“supply” or “furnish,” the court determined that the only dedicated fund permitted by section 15 and section 7 is the Permanent Fund itself. Section 15 created the Permanent Fund as a dedicated fund, and section 7 operates to exempt that fund from the anti-dedication clause.

But here is the problem with this approach: Since it is a constitutional amendment that created the Permanent Fund as a dedicated fund in the first place, this fact alone means that the fund is automatically exempt from the anti-dedication clause. Nothing more needs to be done. It follows that the “except as provided in section 15” language in section 7 is superfluous and has no purpose. This can be demonstrated if one imagines the amendment language in section 7 did not exist. If this were the case, no one would seriously argue that the dedicated Permanent Fund created by section 15 is unconstitutional under section 7. After all, the established rule is that seemingly contradictory constitutional provisions must be harmonized.¹¹¹

It is likely that an Alaska voter would reject an understanding of section 7’s exception language that leads to the conclusion that a phrase in a constitutional amendment has no purpose. And therefore they would not understand sections 15 and 7 to mean that only a single dedicated fund, the Permanent Fund, is exempt from the anti-dedication clause.

Third, it is unlikely that Alaska voters would consider the court’s understanding of the meaning of “provided” to be the “the natural, obvious and ordinary” meaning of this word given the context in which it is used. The word “provided,” understood to mean “supply, furnish,” makes sense when what is supplied or furnished involves something material or some human skill. But it does not make sense when that understanding is applied to a provision created by constitutional language. As was suggested earlier, it is unlikely that anyone has ever described the First Amendment as supplying or furnishing the freedom of speech or the freedom of religion. This leads one to conclude that Alaska voters probably did not understand “provided” in section 7 to mean to “supply” or “furnish.”

Collectively or individually, these reasons suggest that Alaska voters would not have adopted the court’s understanding of the word “provided” in the section 7 phrase “except as provided in section 15 of this article.” This is a critical point of departure because the interpretation of “provided” in section 7 as meaning “supplied” or “furnished” is the lynchpin for the premise that allowed the court to conclude that the only dedicated fund that is exempt by sections 15 and 7 is the Permanent Fund

111. See *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 786 (Alaska 2005) (requiring that the court “give effect to every word, phrase, and clause of the Alaska Constitution” while harmonizing any conflicting parts).

itself.¹¹² Without this premise, this conclusion stands alone, without support.

At the same time, focusing on the rules that the Alaska Supreme Court has developed for interpreting constitutional amendments, a persuasive case can be made that Alaska voters probably understood that the 1976 amendment authorized the legislature to create a dedicated fund to hold Permanent Fund income, and that fund is exempt from the anti-dedication clause. Deference, then, is owed “to the meaning the people themselves probably placed on the provision.”¹¹³

This analysis would have had the court hold the governor’s veto of half of what Alaskans should have received as their dividend to be unlawful. This ruling would have returned to the legislature the policy question of whether Alaska’s Permanent Fund dividend program should continue to be protected by a dedicated fund.

But here the governor took it upon himself to significantly diminish a right once held by Alaskans by virtue of an amendment to their constitution, an amendment that they had ratified.¹¹⁴ And not to be forgotten is the fact that it was low income Alaskans who were most negatively affected by the governor’s action.¹¹⁵

When the question whether the governor’s action was lawful came before the Alaska Supreme Court, the court focused on the question of how Alaska voters, the source of political power in our system of government, understood the 1976 amendment. If the answer given to this question is one that supports the governor’s position, then, unless that answer is clear and the reasoning behind it persuasive, our system of government requires that policy questions of how the Permanent Fund dividend should be protected, and how the amount of the dividend should be calculated, are matters best left to the legislature.

112. See *Wielechowski v. Alaska*, 403 P.3d 1141, 1151-52 (Alaska 2017) (holding that Permanent Fund income is not exempt from the anti-dedication clause).

113. *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994).

114. The Governor’s veto reduced the amount of the dividend as determined by statute by almost one-half. Nathaniel Herz, *Gov. Walker’s Veto Cuts Alaska Permanent Fund Dividends to \$1,022*, ANCHORAGE DAILY NEWS (Oct. 19, 2016), <https://www.adn.com/politics/2016/09/23/gov-walkers-veto-shaves-alaska-permanent-fund-dividends-to-1022/>.

115. MATTHEW BERMAN & RANDOM REAMEY, INSTITUTE OF SOC. AND ECON. RESEARCH, UNIV. OF ALASKA ANCHORAGE, PERMANENT FUND DIVIDENDS AND POVERTY IN ALASKA 1, 3-4 (2016).