

# THE ALASKAN VARIABLE: A CALL FOR EDUCATION CLAUSE ANALYSIS IN SCHOOL FUNDING CASES

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## ABSTRACT

*The provision of public education in Alaska is a task as monumental as the state itself, requiring innovative solutions to unique challenges faced within the state. The drafters of the Alaska Constitution understood this dilemma and granted the state legislature broad power under the education clause. Early supreme court jurisprudence interpreted this mandate broadly and granted considerable deference. However, recent school funding cases have seen the court's jurisprudence shift to focus on different constitutional provisions and neglect an education clause analysis. The supreme court now has an opportunity to change this. Alaska Legislative Council v. Dunleavy is currently pending before the court and offers the chance to expand on the superior court's cursory education clause analysis. This Note argues that the court should decide the case under an explicit education clause analysis in order to realign its school funding jurisprudence with the early education clause cases.*

## I. INTRODUCTION

Alaska is an educational paradox. “Despite some of the highest expenditures per pupil in the country, Alaska’s K-12 education system is plagued by poor test scores, absenteeism, and low graduation rates.”<sup>1</sup> The state performs admirably by any measure of school funding. Its per-pupil spending is second highest in the nation at \$18,586 per student.<sup>2</sup> The

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1. Win Gruening, *Educational Changes Will Happen Through Local Involvement*, MUST READ ALASKA (Aug. 24, 2019), <https://mustreadalaska.com/educational-changes-will-happen-through-local-involvement/>.

2. BRUCE D. BAKER ET AL., IS SCHOOL FUNDING FAIR? A NATIONAL REPORT

Education Law Center gives Alaska the highest possible grade for fiscal effort, an index evaluating local and state education spending based on the gross state product and aggregate personal income.<sup>3</sup> However, this spending does not correlate with K-12 outcomes. Education Week's Quality Counts Report Card ranks Alaska second-to-last among states in its K-12 Achievement Index and forty-second in the Chance-for-Success category.<sup>4</sup> Alaska's unique history and challenges distinguish it from other states in many areas of everyday life, including public education, and likely drive these disparities in spending and educational outcomes. This "'Alaskan variable' must be taken into account as an important factor in all decisions about education in Alaska."<sup>5</sup>

The drafters of the Alaska Constitution foresaw that the Alaskan variable would shape the public school system in Alaska.<sup>6</sup> Thus, the drafters granted the state legislature broad power under article VII, section 1 of the Alaska Constitution ("education clause"), which states that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions."<sup>7</sup> The Alaska Supreme Court's early education clause jurisprudence reflected the weight of the Alaskan variable in the public schooling context and tracked the drafters' intent to grant the legislature broad deference in the realm of public education.<sup>8</sup>

Recent public schooling cases have pivoted from litigating the broad right of students' access to public education to more specific challenges to school funding mechanisms.<sup>9</sup> The supreme court upheld the constitutionality of two different statutory school funding schemes on various constitutional grounds, but in neither case did the court adequately weigh the education clause's mandate to "establish and

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CARD 10 (7th ed. 2018).

3. *Id.* at 15-17, 21.

4. *Educational Opportunities and Performance in Alaska*, EDUCATION WEEK (Sept. 4, 2019), <https://www.edweek.org/ew/articles/2019/01/16/highlights-report-alaska.html>. The K-12 Achievement Index "examines 18 distinct achievement measures." *Id.* The Chance-for-Success Index is designed "to better understand the role of education across an individual's lifetime." *State Highlights Reports*, EDUCATION WEEK (Jan. 21, 2020), <https://www.edweek.org/ew/collections/quality-counts-2020/state-and-national-highlights-reports-quality-counts.html>.

5. See Carol Barnhardt, *A History of Schooling for Alaska Native People*, 40 J. AM. INDIAN EDUC. 1, 2 (2001) ("The historical, political, cultural, economic and geographical contexts of Alaska are distinct enough from other states, that the 'Alaskan variable' must be taken into account as an important factor in all decisions about education in Alaska.").

6. See *infra* Section IV.C.2.

7. ALASKA CONST. art. VII, § 1.

8. See *infra* Sections II.D.1, II.D.2.

9. See *infra* Section II.D.

maintain a system of public schools.”<sup>10</sup> In shifting its focus away from the education clause, the supreme court has also precluded consideration of the Alaskan variable in public education cases. As a subset of public schooling cases, school funding cases should be primarily analyzed under the education clause, so long as the legislature has implemented funding schemes pursuant to its education clause duties “to establish and maintain a system of public schools.”<sup>11</sup> Under this analysis, the party challenging the constitutionality of a statute has the burden of demonstrating that a constitutional violation exists.<sup>12</sup> The court should resolve any doubts in favor of constitutionality.<sup>13</sup> Thus, unless the party opposing a school funding scheme demonstrates that other constitutional factors prevail, the education clause mandate and broad legislative discretion should dictate a presumption of constitutionality for such a scheme.

Another statutory school funding scheme, forward funding, was recently implicated in *Alaska Legislative Council v. Dunleavy*.<sup>14</sup> In its 2018 session, the legislature forward funded K-12 education by passing appropriations for the following fiscal year to provide school districts with greater budgetary predictability.<sup>15</sup> This was in response to Alaska school districts struggling to retain quality teachers due to the budgetary uncertainty caused by the misalignment of the fiscal year and the academic year.<sup>16</sup> Governor Mike Dunleavy challenged the scheme as unconstitutional and withheld the school funding appropriations.<sup>17</sup> In July 2019, the Alaska State Legislature sued Governor Dunleavy to compel payment of the past appropriations made for the forward funding of Alaska’s public schools.<sup>18</sup> The superior court found forward funding

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10. ALASKA CONST. art. VII, § 1; *see infra* Sections II.D.3, II.D.4.

11. ALASKA CONST. art. VII, § 1; *see infra* Sections III.D.3, III.D.4.

12. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 102 (Alaska 2016) (Winfrey, J., concurring) (citing *State v. Alex*, 646 P.2d 203, 209 (Alaska 1982)).

13. *Id.*

14. Order re: Cross Motions for Summary Judgment, *Alaska Legislative Council v. Dunleavy*, No. 1JU-19-00753 CI (Alaska Super. Ct. Nov. 7, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/order3.pdf>.

15. Act of May 3, 2018, 2018 Alaska Sess. Laws. ch. 6.

16. ARNOLD LIEBELT, HB 287 EDUCATION AND PUPIL TRANSPORTATION: AN EARLY AND STAND-ALONE APPROPRIATION BILL 2 (2018), [http://www.akleg.gov/basis/get\\_documents.asp?session=30&docid=39001](http://www.akleg.gov/basis/get_documents.asp?session=30&docid=39001).

17. Matt Buxton, *The Legislature Is Ready to Sue If Dunleavy Follows Through on Threat to Withhold K-12 Funding*, THE MIDNIGHT SUN (May 28, 2019), <http://midnightsunak.com/2019/05/28/legislature-readies-lawsuit-if-dunleavy-follows-through-on-threat-to-withhold-k-12-funding/>.

18. Complaint for Declaratory and Injunctive Relief and An Accounting at 1-2, *Alaska Legislative Council v. Dunleavy*, No. 1JU-19-00753 CI (Alaska Super. Ct. July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/complaint.pdf>.

constitutional, reasoning that the education clause's mandate and the legislature's corresponding discretion outweighed other constitutional limitations on appropriations.<sup>19</sup> However, much of the court's analysis centered on other constitutional provisions, with limited and at times implicit analysis of the education clause outside of acknowledging its basic directive and importance. The Governor appealed the case to the Supreme Court of Alaska on December 13, 2019.<sup>20</sup>

This Note argues that in *Alaska Legislative Council v. Dunleavy*, the supreme court should shift its school funding jurisprudence to require a thorough analysis under the education clause, which would better align with its early public education cases. Part II explores the history of the Alaska public school system and the shift in the supreme court's public education jurisprudence away from the education clause analysis. Part III introduces and summarizes *Alaska Legislative Council*. Finally, Part IV argues that school funding cases, including *Alaska Legislative Council*, cannot be properly analyzed without a thorough analysis of the education clause.

## II. THE HISTORY OF THE PUBLIC SCHOOL SYSTEM IN ALASKA

### A. Public Education Prior to Statehood

Prior to statehood in 1959, Alaska operated under a dual system of public education in which schooling was provided by both the federal government and the Territory of Alaska.<sup>21</sup> The first public schools in Alaska were operated by the federal government.<sup>22</sup> The Organic Act of 1884 established these schools, providing "[t]hat the Secretary of the Interior shall make needful and proper provision for the education of children of school age in the Territory of Alaska."<sup>23</sup> The dual system emerged with the passage of the Nelson Act in 1905, which established new territorial schools for "white children and children of mixed blood who lead a civilized life."<sup>24</sup> These schools were to be operated under the

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19. See Order re: Cross Motions for Summary Judgment, *supra* note 14, at 6 (reasoning that the education clause did not require specific sources of revenue to be spent in violation of the dedicated funds clause).

20. *Dunleavy v. Alaska Legislative Council*, No. S17666 (Alaska Dec. 13, 2019), <https://appellate-records.courts.alaska.gov/CMSPublic/Case/General?caseID=25798>.

21. Barnhardt, *supra* note 5, at 11.

22. ALASKA DEP'T OF EDUC. AND EARLY DEV., HISTORICAL OVERVIEW OF EDUCATION HISTORY IN ALASKA 1 (2011), [http://www.akleg.gov/basis/get\\_documents.asp?session=27&docid=28](http://www.akleg.gov/basis/get_documents.asp?session=27&docid=28).

23. Act of May 17, 1884, ch. 53, § 13, 23 Stat. 24, 27-28 (1884).

24. Act of Jan. 27, 1905, ch. 277, § 7, 33 Stat. 616, 619 (1905).

supervision of the Governor of the Territory of Alaska, acting as ex officio superintendent.<sup>25</sup> The Nelson Act further provided that, unlike “white children and children of mixed blood,” the education of Alaska Native children was to be provided for by the federal government.<sup>26</sup> The Alaska Native Service, the Alaska Branch of the Bureau of Indian Affairs,<sup>27</sup> operated these schools.<sup>28</sup>

Over the next several decades, attempts were made to unify the dual system. The responsibility for the education of Alaska Native children was to be “transferred from Federal to Territorial jurisdiction as rapidly as conditions justif[ied].”<sup>29</sup> However, these attempts were unsuccessful because the territory could not financially support any additional public schools.<sup>30</sup> Localities did not provide significant financial support; territorial schools were reimbursed seventy-five to eighty-five percent of their operating costs by the territorial government.<sup>31</sup> At the time of statehood, the territorial government supported eighty-eight schools while the federal government operated approximately one hundred schools.<sup>32</sup> Located in remote, isolated villages that lacked territorial schools, the federally-run schools were operated by the Alaska Native Service with the purpose of providing education to Alaska Native children.<sup>33</sup> The curriculum focused on “teaching beginners English and familiarizing [Alaska Native children] with American ways of life.”<sup>34</sup> The Alaska Native Service also operated three boarding schools that enrolled Alaska Native students from across the entire territory.<sup>35</sup>

## B. Development of Public Education from Statehood Onwards

The transition from territory to state required drafting a new state constitution. One of the goals of the Alaska constitutional convention was to adopt a unified public school system.<sup>36</sup> In contemplating the issues of

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25. *Id.*

26. *Id.*

27. JAMES P. DAVIS, DEP’T OF THE INTERIOR OFFICE OF TERRITORIES, MID-CENTURY ALASKA 55 (1952).

28. Barnhardt, *supra* note 5, at 11. The Bureau of Indian Affairs was preceded by the Department of the Interior’s Bureau of Education. *Id.*

29. *Id.* at 55.

30. Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793, 800 (Alaska 1975).

31. DAVIS, *supra* note 27, at 58.

32. *Id.* at 55.

33. *Id.*

34. *Id.* at 61.

35. *Id.* at 62.

36. See Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793, 800 (Alaska 1975) (“The problem of creating a viable, unified system of public education in

public education, the framers were cognizant that a statewide public school system would face challenges unique to Alaska.<sup>37</sup> Alaska is by far the largest state in the union.<sup>38</sup> It is also the least densely populated state.<sup>39</sup> At 35.8%, the rural population is a significantly higher proportion of the population than the national average of 17.4%.<sup>40</sup> Alaska's school demographics reflect this difference; over half of Alaska's 506 schools are rural schools,<sup>41</sup> yet these schools enroll only about one-third of all K-12 students in the state.<sup>42</sup>

With these conditions in mind, as well as the history of the dual educational system, the members of the constitutional convention sought to adopt a unified public school system. To this end, Alaska adopted the education clause, which mandates that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."<sup>43</sup> The Alaska Supreme Court held that the phrase "open to all" is "a unitary phrase embodying a requirement of nonsegregated schools" and indicates an intent to adopt a unified system of public schooling.<sup>44</sup> The court reasoned that the phrasing in the constitution diverged from common phrasings of other state constitutions because the drafters were focused on a unitary, but not uniform, public school system due to "the unique problems in the vast rural areas of Alaska."<sup>45</sup>

The vastness of Alaska also influenced the structure of the state's local government, which in turn impacted the governance of school districts. Alaska has a unique local government structure; it is one of only two states that is not organized into counties.<sup>46</sup> Instead, the drafters

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this state confronted the framers of our constitution when they convened in 1955.").

37. See *infra* Section III.B.2.

38. Dylan Matthews, *Alaska Is Big. Alaska.org Wants to Show You Exactly How Big.*, VOX (Apr. 25, 2015), <https://www.vox.com/2015/4/25/8492577/alaska-is-very-big>.

39. U.S. CENSUS BUREAU, 2010 CENSUS: POPULATION DENSITY DATA (TEXT VERSION) (2010), <https://www.census.gov/content/census/en/data/tables/2010/dec/density-data-text.html>.

40. JOHN CROMARTIE & SHAWN BUCHOLTZ, U.S. DEP'T OF AGRIC., ALASKA - RURAL DEFINITIONS: STATE-LEVEL MAPS 6 (2007).

41. EMEKA EMEKAUWA, THE STAR WITH MY NAME: THE ALASKA RURAL SYSTEMIC INITIATIVE AND THE IMPACT OF PLACE-BASED EDUCATION ON NATIVE STUDENT ACHIEVEMENT 2 (Doris Terry Williams ed., 2004).

42. MARK GLANDER, U.S. NAT'L CENTER FOR EDUC. STATISTICS, SELECTED STATISTICS FROM THE PUBLIC ELEMENTARY AND SECONDARY EDUCATION UNIVERSE: SCHOOL YEAR 2015-16 11 (2017), <https://nces.ed.gov/pubs2018/2018052.pdf>.

43. ALASKA CONST. art. VII, § 1.

44. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 801-02 (Alaska 1975).

45. *Id.* at 801-03.

46. U.S. CENSUS BUREAU, GEOGRAPHIC AREAS REFERENCE MANUAL: STATES, COUNTIES, AND STATISTICALLY EQUIVALENT ENTITIES ch. 4, 2 (1994), <https://>

envisioned a new form of local government for the rural and sparsely-populated state.<sup>47</sup> This system would allow for “local government adaptation in a state with great variations in geographic, economic, social, and political conditions.”<sup>48</sup> The Alaska Constitution states that Alaska was to be divided into organized and unorganized boroughs.<sup>49</sup>

Organized boroughs are one form of municipal government provided by the Alaska Constitution.<sup>50</sup> There are currently nineteen organized boroughs, which cover forty-five percent of the land mass.<sup>51</sup> In areas of the state “in which social, economic, and political resources could not yet sustain a viable system of local self-government, boroughs would remain ‘unorganized’ and the state government would provide for their needs directly, or through whatever local instrumentalities were deemed appropriate.”<sup>52</sup> State legislation has subsequently provided that all land outside of the organized boroughs is to be incorporated into a single unorganized borough.<sup>53</sup> This unorganized borough cannot have a municipal government under the state constitution. Rather, “[t]he legislature shall provide for the performance of services it deems necessary or advisable” in the unorganized borough.<sup>54</sup>

Cities are the second form of municipal government established by the constitution.<sup>55</sup> There are 144 city governments in Alaska.<sup>56</sup> City governments can exist within organized boroughs or the unorganized borough.<sup>57</sup> City governments that exist within an organized borough government can be unified with the borough’s municipal government; this unified government is treated as an organized borough by the state legislature.<sup>58</sup> The city, borough, and unified municipal governments were designed to provide local services, including public school systems.<sup>59</sup>

Section 14.12.010 of the Alaska Statutes governs the provision of

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[www2.census.gov/geo/pdfs/reference/GARM/Ch4GARM.pdf](http://www2.census.gov/geo/pdfs/reference/GARM/Ch4GARM.pdf).

47. THOMAS A. MOREHOUSE & VICTOR FISCHER, *BOROUGH GOVERNMENT IN ALASKA: A STUDY OF STATE-LOCAL RELATIONS* 5 (1971).

48. LOCAL BOUNDARY COMM’N STAFF, ALASKA DEP’T OF COMMERCE, CMTY, & ECON. DEV., *LOCAL GOVERNMENT IN ALASKA* 8–9 (2015), <https://www.commerce.alaska.gov/web/Portals/4/pub/2015%20%20LOCAL%20GOVERNMENT%20IN%20ALASKA.pdf>.

49. ALASKA CONST. art. X, §§ 3, 6.

50. *Id.* § 2.

51. LOCAL BOUNDARY COMM’N STAFF, *supra* note 48, at 2.

52. MOREHOUSE & FISCHER, *supra* note 47, at 6.

53. ALASKA STAT. § 29.03.010 (2018).

54. ALASKA CONST. art. X, § 6.

55. LOCAL BOUNDARY COMM’N STAFF, *supra* note 48, at 1.

56. *Id.* at 1.

57. *Id.* at 3.

58. *Id.* at 4 n.1.

59. *Id.* at 18–19.

public school systems.<sup>60</sup> Under subsection (2), “each organized borough is a borough school district.”<sup>61</sup> Within organized boroughs, city governments are not permitted to provide public schooling.<sup>62</sup> There are nineteen borough school districts in Alaska.<sup>63</sup> In the unorganized borough, public education is provided for by either city governments or Regional Education Attendance Areas (REAs), which are “state service areas to provide public education to the unorganized borough.”<sup>64</sup> There are fifteen city school districts in the unorganized borough.<sup>65</sup> The rest of the unorganized borough is divided into nineteen REAs.<sup>66</sup>

The majority of funding for all public schools in Alaska comes from the state government, rather than local governments.<sup>67</sup> Nationally, K-12 schools are funded approximately equally by the state and local governments with forty-seven percent of nationwide K-12 funding provided by states and forty-five percent by local governments.<sup>68</sup> In Alaska, the majority of public school funding, approximately sixty-five percent, comes from the state.<sup>69</sup> Local contributions total just twenty-seven percent.<sup>70</sup> This is for two primary reasons. First, unlike in other states, Alaska schools were not historically provided for at the local level, but instead were provided for by the territorial and federal governments.<sup>71</sup> Second, the majority of land in Alaska, approximately ninety percent, is publicly owned.<sup>72</sup> The federal government owns sixty

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60. ALASKA STAT. § 14.12.010 (2018).

61. *Id.*

62. LOCAL BOUNDARY COMM’N STAFF, *supra* note 48, at 10.

63. CLIVE S. THOMAS ET AL., ALASKA POLITICS AND PUBLIC POLICY: THE DYNAMICS OF BELIEFS, INSTITUTIONS, PERSONALITIES, AND POWER 944 (2016).

64. LOCAL BOUNDARY COMM’N STAFF, *supra* note 48, at 13. There are three classes of city in Alaska: home rule cities, first-class cities, and second-class cities. Home rule and first-class cities must provide public education. Second-class cities are not permitted to provide public education; it is provided for by REAs or the organized borough. *Id.* at 18.

65. THOMAS ET AL., *supra* note 63.

66. *Id.*

67. MATTHEW D. BERMAN ET AL., PUBLIC SCHOOL FINANCE PROGRAMS OF THE UNITED STATES AND CANADA: 1998-99: ALASKA 1-3 (2001), <https://nces.ed.gov/edfin/pdf/StFinance/Alaska.pdf>.

68. URBAN INST., ELEMENTARY AND SECONDARY EDUCATION EXPENDITURES, <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/elementary-and-secondary-education-expenditures> (last visited May 6, 2020).

69. LEGISLATIVE FIN. DIV., INFORMATIONAL PAPER 17-2: OPTIONS FOR REDUCING STATE FUNDING OF ALASKA’S SCHOOLS 1 (2017).

70. *Id.*

71. See DAVIS, *supra* note 27, at 58 (discussing how appropriations for public schools in 1952 came primarily from the territory’s budget).

72. STATE OF ALASKA, STATE HAZARD MITIGATION PLAN ch. 2, 3 (2018), <https://ready.alaska.gov/Plans/Mitigation/Documents/Alaska%20State%20Mitigation%20Plan/Ch02-AlaskasBackgroundInformation.pdf>.

percent of Alaska land.<sup>73</sup> The state owns approximately thirty percent.<sup>74</sup> Roughly ten percent is Native land.<sup>75</sup> Excluding Native land, less than one percent of land is privately owned.<sup>76</sup> This ownership breakdown has a significant impact on the school funding in Alaska because the Required Local Contribution, school funding statutorily mandated from organized borough school districts as part of the State's school funding formula, is set at a percentage tax based on real property value.<sup>77</sup> In addition, REAAs, which account for nearly half of Alaska's school districts, cannot levy taxes and receive all of their funding from the State.<sup>78</sup>

### C. The Public School System in the Supreme Court

The Supreme Court of Alaska has heard several cases on Alaska's public school system. The first cases centered on the interpretation of the education clause and the constitutional duties it imposed on the legislature. The second line of cases pivoted more specifically to school funding and emphasized constitutional provisions other than the education clause.

#### 1. Macauley v. Hildebrand

In 1971, the Supreme Court of Alaska heard its first case on public education, *Macauley v. Hildebrand*.<sup>79</sup> The dispute arose between the Juneau School Board (School Board) and the unified City and Borough of Juneau (Borough) as to which of the bodies had control over funds appropriated for the operation of schools.<sup>80</sup> The School Board sought injunctive relief prohibiting the Borough from centralizing the accounting system for school funds with the Borough, rather than with the School Board.<sup>81</sup> In rejecting this centralization, the School Board relied on a state statute that required a borough school board consent to such centralizing of funds,

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73. ALASKA DEP'T OF NAT. RES., LAND OWNERSHIP IN ALASKA 2 (2000), [http://dnr.alaska.gov/mlw/factsht/land\\_fs/land\\_own.pdf](http://dnr.alaska.gov/mlw/factsht/land_fs/land_own.pdf).

74. See STATE OF ALASKA, *supra* note 72, at 4 (stating that the State of Alaska owns 105 million acres of the state's total area).

75. See *id.* (stating that Alaska Native Lands comprise 44 million acres of the state's total area).

76. ALASKA DEP'T OF NAT. RES., *supra* note 73, at 2.

77. LEGISLATIVE FIN. DIV., *supra* note 69, at 1. The Required Local Contribution is generally set at 2.65 mills on real property value but might be lower for some districts. *Id.* Some districts are capped at forty-five percent of funding for the preceding year due to "unusually high property values relative to population." *Id.* at 1 n.1.

78. *Making the Most of Your First Term: Introduction to School Finance*, ASS'N OF ALASKA SCH. BDS., <https://aasb.org/school-finance/> (last visited May 6, 2020).

79. 491 P.2d 120 (Alaska 1971).

80. *Id.* at 120-21.

81. *Id.* at 121.

which it had not.<sup>82</sup>

Though the question presented to the court did not directly implicate the education clause, the court's holding turned on whether the regulation of public school systems "was of statewide or local concern."<sup>83</sup> In resolving this question, the court established that the education clause "constitutionally mandated state control over education" for three reasons.<sup>84</sup> First, the language—" [t]he legislature shall"—is mandatory, rather than permissive.<sup>85</sup> Second, the legislature is required to "maintain" an educational system.<sup>86</sup> Third, the obligation to provide public schooling is given solely to the legislature.<sup>87</sup> However, the state may still delegate some functions to local school boards in order to "meet the varying conditions of different localities" under the constitutional mandate of the education clause.<sup>88</sup> The supreme court therefore instructed that judgment be entered for the School Board.

## 2. *Hootch v. Alaska State-Operated School Systems*

The court next addressed whether the education clause requires the legislature to provide public secondary schools in rural Alaska communities. In *Hootch v. Alaska State-Operated School Systems*,<sup>89</sup> Alaska Natives sought to compel the State to provide secondary schools in their communities of residence in rural western Alaska.<sup>90</sup> None of the plaintiffs' villages had public secondary schools, but the State provided four alternative schooling options: (1) attendance at a state-operated regional school, (2) attendance at a Bureau of Indian Affairs school, (3) attendance at a non-local public secondary school through the state boarding home program, or (4) participation in state-funded correspondence study.<sup>91</sup> The superior court severed the education clause claim from the rest of the suit and awarded summary judgment to the defendants.<sup>92</sup> The only issue before the supreme court on appeal of the summary judgment was whether the lack of public secondary schools in the plaintiffs' local communities denied them of the right to education.<sup>93</sup>

The court considered three grounds that might establish a

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82. *Id.*

83. *Id.* at 122.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. 536 P.2d 793 (Alaska 1975).

90. *Id.* at 796.

91. *Id.*

92. *Id.* at 797.

93. *Id.*

constitutional right to public education within the students' local communities: (1) that public school attendance is a fundamental right guaranteed by the education clause, (2) that state Board of Education regulations required the provision of local secondary schools, and (3) that the denial violated the equal protection guarantees in the constitution.<sup>94</sup> With regard to the second ground, the court held that because the state Board of Education had repealed the regulations requiring provision of local education and the repeal was not arbitrary, the court could not grant relief under the former regulations.<sup>95</sup> On the third ground, the court declined to rule on the equal protection claim because it overlapped with claims still pending before the superior court that similarly invoked the equal protection clause.<sup>96</sup>

On the education clause argument, the court noted that *Macauley* recognized a "dual aspect" of the education clause; it both "imposes a duty upon the state legislature, and it confers upon Alaska school-age children a right to education."<sup>97</sup> The court then examined whether this right to education included attendance at a secondary school within one's home community.<sup>98</sup> Although the purpose of the education clause was to establish a unitary school system "designed to serve children of all racial backgrounds," the clause did not require that there be uniformity in such a system.<sup>99</sup> The court reasoned that the drafters were well aware of the unique challenges that the state would face:

It seems likely that the drafters of the constitution had in mind the vast expanses of Alaska, its many isolated small communities which lack effective transportation and communication systems, and the diverse culture and heritage of its citizens. Since educational programs may well require special design to confront the divergent problems presented, a uniformity requirement in the Alaska education system might well prove unworkable.<sup>100</sup>

The court found this consistent with its earlier observation in *Macauley* that governing Alaska schools requires flexibility in order to "meet the varying conditions of different localities."<sup>101</sup> Therefore, the education clause "permits some differences in the manner of providing education," and the State was not required to provide secondary schools in the

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94. *Id.*

95. *Id.* at 806-07.

96. *Id.* at 808.

97. *Id.* at 799.

98. *Id.*

99. *Id.* at 801.

100. *Id.* at 803.

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

plaintiffs' local communities.<sup>102</sup> The court held that the education clause could be fulfilled through "different types of educational opportunities including boarding, correspondence and other programs without requiring that all options be available to all students."<sup>103</sup>

3. Matanuska-Susitna Borough School District v. State

The next line of education cases shifted from the provision of education to school funding. In *Matanuska-Susitna Borough School District v. State*,<sup>104</sup> plaintiffs were a coalition consisting of the Matanuska-Susitna Borough, the Matanuska-Susitna School District, and individual plaintiffs challenging two Alaska public school funding laws under the state equal protection clause.<sup>105</sup> One statute provided state reimbursements for boroughs and cities to recover up to seventy percent of debt incurred for school construction.<sup>106</sup> This provision was not applicable to REAAs.<sup>107</sup> A second statute provided REAAs with state grants for school construction if they contributed two percent of project costs.<sup>108</sup> These grants were not available to borough and city municipal school districts.<sup>109</sup> Plaintiffs argued that the statutory scheme created two classes of students: those in borough and city municipal school districts that only receive state funding for seventy percent of school construction costs and those in REAAs that receive state funding for ninety-eight percent of school construction costs.<sup>110</sup>

In affirming the superior court's ruling that there was no equal protection violation, the supreme court examined the State's purpose in enacting the statutes.<sup>111</sup> It reasoned that the State had a legitimate purpose in the funding programs: "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state."<sup>112</sup> Under the Alaska Constitution, REAAs may not levy taxes.<sup>113</sup> The statutory scheme offset this "difference[]" in constitutional status between REAAs and borough and city school districts.<sup>114</sup> The legislature is given significant discretion in determining means by which to promote public

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102. *Id.* at 804.

103. *Id.* at 803.

104. 931 P.2d 391 (Alaska 1997).

105. *Id.* at 394.

106. *Id.* at 395.

107. *Id.*

108. *Id.*

109. *Id.* at 396.

110. *Id.*

111. *Id.* at 396-97.

112. *Id.* at 399.

113. *Id.* (citing ALASKA CONST. art X, § 2).

114. *Id.* at 400.

policy objectives.<sup>115</sup> Additionally, in cases of school funding, the legislature is “acting in furtherance of its constitutionally mandated duty to maintain and control a statewide system of public schools,” which adds weight to the legitimacy of the state purpose.<sup>116</sup> Therefore, the court held the statutory scheme for funding school construction constitutional under the state equal protection clause.<sup>117</sup>

#### 4. State v. Ketchikan Gateway Borough

In the most recent public education case, *State v. Ketchikan Gateway Borough*,<sup>118</sup> the court affirmed the constitutionality of the statutorily-mandated Required Local Contribution (RLC), local money required of organized boroughs to support their school districts as part of the State’s school funding formula.<sup>119</sup> The plaintiffs were individual taxpayers and the Ketchikan Gateway Borough (“Borough”), an organized borough required to annually pay the RLC.<sup>120</sup> The Borough paid the RLC under protest and filed a suit seeking a declaratory judgment that the statute was unconstitutional, injunctive relief enjoining the State from compelling compliance, and compensatory damages for the amount paid.<sup>121</sup> The Borough argued that because of the RLC, the state underfunded the Borough, forcing it and the taxpayers to make up the difference.<sup>122</sup>

Plaintiffs alleged that the RLC was unconstitutional on three bases: (1) it violated article IX, section 7 of the Alaska Constitution (“dedicated funds clause”) by impermissibly dedicating a state tax for a particular purpose, (2) it exceeded the appropriations power of the state legislature because it is paid directly to the municipal district instead of the state treasury, and (3) it impeded the Governor’s veto power because in circumventing the state treasury it bypasses the Governor’s potential veto.<sup>123</sup> The superior court granted the Borough’s motion for summary judgment on the first claim, ruling that the RLC was unconstitutional under the dedicated funds clause, but denied Plaintiffs’ motion on the other two claims.<sup>124</sup>

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115. *Id.* at 402.

116. *Id.*

117. *Id.*

118. 366 P.3d 86 (Alaska 2016).

119. *Id.* at 87.

120. Complaint at 1, *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (Alaska 2016) (No. 1KE-14-16 Civil), <https://www.kgbak.us/ArchiveCenter/ViewFile/Item/357>.

121. *Ketchikan Gateway Borough*, 366 P.3d at 89.

122. Complaint, *supra* note 120, at 8.

123. *Id.* at 9-10. The RLC payment “never enters the state treasury, and it is never subject to appropriations bills.” *Ketchikan Gateway Borough*, 366 P.3d at 101.

124. *Ketchikan Gateway Borough*, 366 P.3d at 89.

The supreme court reviewed all three arguments and reversed the superior court.<sup>125</sup> The court held that the RLC did not violate the dedicated funds clause, noting the historical practice of local communities sharing some responsibility for funding schools dating back prior to statehood.<sup>126</sup> The drafters did not intend to alter this practice, as demonstrated by subsequent legislation which established a framework of joint state and local public school funding.<sup>127</sup> The court differentiated this case from its dedicated funds clause jurisprudence, noting that the dedicated funds clause had not been considered in a school funding context.<sup>128</sup> It further dismissed the claims under the appropriations clause and the governor's veto clause, finding no issue under either.<sup>129</sup>

In two concurring opinions, Chief Justice Stowers and Justice Winfree noted that the court limited its holding to the dedicated funds clause and declined to analyze the statute in the context of the education clause.<sup>130</sup> Both justices asserted that the constitutionality of the school funding regulation could not be decided without reviewing the education clause.<sup>131</sup> Justice Winfree conducted a cursory analysis of the case under the education clause and expressed doubt as to the constitutionality of the RLC, but noted that the issue was purposefully not briefed and therefore left the question open for future consideration.<sup>132</sup>

### III. ALASKA LEGISLATIVE COUNCIL V. DUNLEAVY

#### A. Factual Background

At issue in *Alaska Legislative Council v. Dunleavy*<sup>133</sup> was House Bill 287 ("HB 287"), "[a]n Act making appropriations for public education and transportation of students."<sup>134</sup> The bill was introduced to the House Finance Committee in January 2018 by Representative Paul Seaton, who explained that the idea for the proposed legislation came from a meeting of school superintendents.<sup>135</sup> The superintendents expressed concerns about retaining quality teachers because the misalignment between the

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125. *Id.* at 90.

126. *Id.* at 91–102.

127. *Id.* at 96.

128. *Id.* at 98–102.

129. *Id.* at 101–02.

130. *Id.* at 102 (Stowers, C.J., concurring); *id.* (Winfree, J., concurring).

131. *Ketchikan Gateway Borough*, 366 P.3d at 102 (Winfree, J., concurring).

132. *Id.* at 103–05.

133. Order re: Cross Motions for Summary Judgment, *supra* note 14.

134. *Id.* at 1.

135. ALASKA H. FIN. COMM., MINUTES, 30th Leg. (Jan. 25, 2018) (statement of Representative Paul Seaton at 9:04:12 AM).

academic and financial years had been exacerbated by delays in the legislature passing the state operating budget.<sup>136</sup> The bill forward funded K-12 schools for the following fiscal year.<sup>137</sup> This funding was intended to eliminate uncertainty created by the misalignment of the school and fiscal years and prevent unnecessary teacher layoffs.<sup>138</sup> Initial justification for the bill included compliance with the constitutional requirements for the provision of public education.<sup>139</sup>

After several months of amendments and discussions, both houses of the state legislature passed HB 287 and transmitted the bill to then-Governor Bill Walker.<sup>140</sup> Governor Walker signed the bill into law on May 5, 2018.<sup>141</sup> The bill was to take effect on July 1, 2019, and “appropriate[d] full funding for public school districts in the state and for transportation of students, as well as one-time additional money for public schools, for the fiscal year 2020.”<sup>142</sup>

At the end of 2018, Mike Dunleavy was elected governor after incumbent Bill Walker dropped out of the gubernatorial race.<sup>143</sup> One of the key issues in Dunleavy’s platform was “fully funding” Alaska residents’ Permanent Fund Dividend, the annual payments made to each resident from the State’s oil revenue.<sup>144</sup> Governor Walker had reduced the dividend after oil prices plummeted in 2015.<sup>145</sup> Upon entering office, Governor-elect Dunleavy proposed a budget that would cut spending by \$650 million to decrease the state deficit and fulfill his campaign promise to fully fund the Permanent Fund Dividend.<sup>146</sup> This proposal sparked a

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136. *Id.*

137. Act of May 3, 2018, 2018 Alaska Sess. Laws. ch. 6.

138. LIEBELT, *supra* note 16, at 2. While the bill was first proposed to be funded by the Constitutional Budget Reserve and the Statutory Budget Reserve Fund, *id.* at 4, the final version was funded through appropriations from the general fund. Act of May 3, 2018, 2018 Alaska Sess. Laws. ch. 6.

139. ALASKA H. FIN. COMM. MINUTES, 30th Leg. (Jan. 25, 2018) (statement of Arnold Liebelt, Staff, Representative Paul Seaton at 9:11:03 AM).

140. ALASKA S. JOURNAL, 30th Leg., 2d Sess. 2707 (Apr. 14, 2018); ALASKA H. JOURNAL, 30th Leg., 2d Sess. 3360, 3506 (Apr. 14, 2018). The bill was transmitted as Senate CS for House Bill No. 287(FIN). ALASKA H. JOURNAL, 30th Leg., 2d Sess. 3506 (Apr. 14, 2018).

141. ALASKA H. JOURNAL, 30th Leg., 2d Sess. 3571 (May 4, 2018).

142. Complaint for Declaratory and Injunctive Relief and An Accounting, *supra* note 18, at 3.

143. Dylan Scott, *Mike Dunleavy Elected Governor of Alaska: Rare 2018 Pickup for Republicans*, VOX (Nov. 7, 2018, 2:14 PM), <https://www.vox.com/policy-and-politics/2018/11/7/18055506/midterm-election-results-alaska-governor-mike-dunleavy-winner>.

144. Tim Bradner, *Post-Election PFD Discussion*, ALASKANOMICS (Nov. 19, 2018), <https://www.alaskanomics.com/2018/11/post-election-pfd-discussion.html>.

145. *Id.*

146. James Brooks, *Governor Launches Plan to Deeply Cut Alaska State Spending*, ANCHORAGE DAILY NEWS (Feb. 13, 2019), <https://www.adn.com/politics/2019/>

budget crisis in Alaska.<sup>147</sup> The Governor and legislature clashed over the budget and the Governor's proposed cuts.<sup>148</sup> Governor Dunleavy continued to slash the budget to fulfill campaign promises.<sup>149</sup> The legislature fought back by proposing its own operating budget<sup>150</sup> and reversing many of the Governor's line-item vetoes.<sup>151</sup>

In the midst of this budgetary back-and-forth, Governor Dunleavy took aim at the HB 287 appropriations.<sup>152</sup> He announced that the State would not distribute the funds to local school districts and justified this withholding by stating that he viewed the funding as an illegal appropriation.<sup>153</sup> The legislature insisted that the appropriations were enacted legally and must be paid.<sup>154</sup> On June 13, 2019, the Alaska Legislative Council, a permanent committee of the state legislature, unanimously voted to "seek relief from the court that [the HB 287] funds be disbursed to school districts as intended by the Legislature."<sup>155</sup>

## B. Parties

Plaintiff was the Alaska Legislative Council ("Plaintiff").<sup>156</sup> Plaintiff brought suit against Governor Mike Dunleavy in his official capacity and also named the Commissioner of Administration for the State of Alaska and the Commissioner of Education and Early Development of the State

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02/13/gov-dunleavy-launches-massive-budget-cut-plan/.

147. Henry Olson, *Alaska Shows Why Budget-Cutting Conservatives Are Destined to Fail*, WASH. POST (Aug. 19, 2019), <https://www.washingtonpost.com/opinions/2019/08/19/alaska-shows-why-budget-cutting-conservatives-are-destined-fail/>.

148. *Id.*

149. See, e.g., Andrew Kitchenman, *'It Won't Be Easy': Universities, Medicaid Hit Hard as Dunleavy Vetoes Nearly \$400 Million from Budget*, ALASKA PUB. MEDIA (July 1, 2019), <https://www.alaskapublic.org/2019/07/01/it-wont-be-easy-universities-medicare-hit-hard-as-dunleavy-vetoes-nearly-400-million-from-budget/> (describing budget cuts made by Governor Dunleavy in furtherance of campaign promises).

150. Olson, *supra* note 147.

151. ALASKA H. JOURNAL, 31st Leg., 1st Sess. 1367 (October 23, 2019). The House budget was transmitted to the Governor on August 7, 2019 and signed into law on August 17, 2019. *Id.* at 1367, 1373.

152. James Brooks, *Governor Threatens No School Funding after July 1, Escalating Fight with Alaska Legislature*, ANCHORAGE DAILY NEWS (May 21, 2019), <https://www.adn.com/politics/alaska-legislature/2019/05/22/governor-vows-no-school-funding-after-july-1-escalating-fight-with-alaska-legislature/>.

153. *Id.*

154. *Id.*

155. ALASKA LEGIS. COUNCIL MINUTES, 31st Leg. (June 13, 2019) (statement of Megan Wallace, Director, Legal Services, Legislative Affairs Agency at 4:00:10 PM).

156. Complaint for Declaratory and Injunctive Relief and An Accounting, *supra* note 18, at 1.

of Alaska as co-defendants (“Defendants”).<sup>157</sup> The Coalition for Education Equity, Inc. (CEE), a non-profit based in Anchorage that promotes “a quality, equitable and adequate public education for every Alaska child through advocacy, policy development and legal action,” moved to intervene.<sup>158</sup> The court granted leave for CEE to intervene on the consequences for education funding should Defendants prevail, but prohibited the organization from litigating the Alaska Constitution’s requirements for state funded education, justifying this limitation on the basis of the issue’s magnitude and complexity.<sup>159</sup>

### C. Claims

Plaintiff brought suit to compel the disbursement of the funding provided for in HB 287.<sup>160</sup> It presented three claims for the disbursement of the funds all provided for by HB 287: (1) funding for public schools, (2) funding for the transportation of students, and (3) a one-time grant to the Department of Education and Early Development.<sup>161</sup> Under each claim, Plaintiff sought declaratory and injunctive relief, alleging that the failure to distribute the funds appropriated under HB 287 prevented the legislature from meeting its constitutional obligations under the education clause.<sup>162</sup>

### D. Procedural Posture

The Alaska Legislative Council brought suit in the Superior Court for the State of Alaska, First Judicial District at Juneau on July 16, 2019.<sup>163</sup> Because the parties agreed that the issues were legal questions not

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157. *Id.* at 2.

158. Order re: Motion to Intervene at 1, Alaska Legislative Council v. Dunleavy, No. 1JU-19-00753 CI (Alaska Super. Ct. filed July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/order.pdf>; *Who We Are*, COALITION FOR EDUCATION EQUALITY, <https://ceequity.org/about> (last visited May 6, 2020). CEE has been a party to key impact litigation in Alaska public school cases over the last two decades. See *Legal History*, COALITION FOR EDUCATION EQUALITY, <https://ceequity.org/legal-history> (describing the Coalition for Education Equality’s involvement in cases dating back to 1997) (last visited May, 6, 2020).

159. Order re: Motion to Intervene, *supra* note 158, at 7.

160. Teagan Hanlon, *Alaska Legislature Sues Gov. Dunleavy Over Public School Funding*, ANCHORAGE DAILY NEWS (July 16, 2019), <https://www.adn.com/politics/alaska-legislature/2019/07/16/alaska-legislature-sues-gov-dunleavy-over-public-school-funding/>.

161. Complaint for Declaratory and Injunctive Relief and An Accounting, *supra* note 18, at 4–7.

162. *Id.* at 4–7.

163. *Id.* at 9.

requiring discovery, the court approved an expedited schedule for filing cross-motions for summary judgment and simultaneous answering briefs.<sup>164</sup> The court then granted CEE leave to join the suit as Plaintiff-Intervenors,<sup>165</sup> and for twenty state legislators in their individual capacities to file an amicus brief in support of Plaintiff's motion for summary judgment.<sup>166</sup> On October 4, 2019, the court heard oral argument on the cross-motions for summary judgment.<sup>167</sup> The court granted Plaintiff's and CEE's motions for summary judgment and denied Defendants' motion for summary judgment.<sup>168</sup> Defendants appealed to the Alaska Supreme Court on December 13, 2019.<sup>169</sup>

## E. Parties' Arguments

### 1. *The Defendants' Theory of the Case*

In Defendants' view, the Alaska Constitution sets up an "annual budgeting model" with roles for both the executive and legislative branches.<sup>170</sup> This can purportedly be seen in the interplay between several provisions of the constitution, mainly found in article IX.<sup>171</sup> First, Defendants highlighted that the HB 287 funds violate the dedicated funds clause, which provides that "the proceeds of any state tax or license shall not be dedicated to any special purpose."<sup>172</sup> They then relied on a suite of additional article IX finance and taxation provisions to argue that there is an annual appropriations model that requires the budgeting process be conducted no more than one financial year prior.<sup>173</sup> Under this model, the

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164. Order re: Joint Motion for Scheduling, Alaska Legislative Council v. Dunleavy, No. 1JU-19-00753 CI (Alaska Super. Ct. Aug. 20, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/scheduling-order.pdf>.

165. Order re: Motion to Intervene, *supra* note 158, at 7.

166. Order re: Motion for Leave to File Brief of Amici Curiae, Alaska Legislative Council v. Dunleavy, No. 1JU-19-00753 CI (Alaska Super. Ct. filed July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/order2.pdf>.

167. Order Scheduling Oral Argument, Alaska Legislative Council v. Dunleavy, No. 1JU-19-0073 CI (Alaska Super. Ct. Aug. 20, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/oral-argument.pdf>.

168. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 10.

169. Dunleavy v. Alaska Legislative Council, No. S17666 (Alaska filed December 13, 2019) (Alaska App. Ct. Case Mgmt. Sys.), <https://appellate-records.courts.alaska.gov/CMSPublic/Case/General?caseID=25798>.

170. Defendants' Opposition to Motion for Summary Judgment at 2-3, Alaska Legislative Council v. Dunleavy, No. 1JU-19-00753 CI (Alaska Super. Ct. filed July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/defendants-opposition.pdf>.

171. *Id.* at 5.

172. *Id.* at 3-5 (quoting ALASKA CONST. art. IX, § 7).

173. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 7. Defendants argued that this was achieved through a combination of four provisions of article IX. Section 8 "generally prohibits the State from contracting

legislature cannot pass appropriations earlier than the preceding fiscal year, and HB 287 would therefore violate this ban on forward funding.<sup>174</sup> Defendants argued that the interaction of these article IX provisions sets up an annual appropriations model that requires the budgeting process to be conducted no more than one financial year prior.<sup>175</sup> Under this model, the legislature cannot pass appropriations earlier than the preceding fiscal year, and HB 287 would therefore violate this ban on forward funding.<sup>176</sup>

Defendants invoked article II, section 15 (“governor’s veto clause”), which grants the governor veto power.<sup>177</sup> The governor’s veto clause specifically provides that the governor “may, by veto, strike or reduce items in appropriation bills.”<sup>178</sup> Defendants also argued this forward funding not only subverts the governor’s veto clause, but also the legislative process by effectively requiring super-majority voting to enact budgets.<sup>179</sup> Defendants asserted that the education clause is not implicated in this case because “education funding does not enjoy a unique status” and is not exempt from the above provisions of the Alaska Constitution.<sup>180</sup> Defendants further asserted that public policy concerns have no bearing on the constitutionality of forward funding and that Governor Dunleavy had no constitutional obligation to implement an unconstitutional statute.<sup>181</sup>

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state debt.” *Id.* Section 10 “permits the State to borrow money to fulfill appropriations for any fiscal year in anticipation of the collection of revenues for that same year, ‘but all debt so contracted shall be paid before the end of the next fiscal year.’” *Id.* Section 12 requires the governor to submit to the legislature “a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State . . . [as well as] a general appropriation bill to authorize the proposed expenditures.” *Id.* Section 17(d) requires that money still available for appropriation “at the end of a fiscal year be deposited in the constitutional budget reserve fund until any prior appropriation from that fund is repaid.” *Id.*

174. *Id.* at 6–7.

175. *Id.* at 9 (“[T]he appropriations subvert the governor’s veto power and the legislature’s power of appropriation because if they are upheld, nothing would prevent a politically aligned legislature and governor from passing budgets for many years into the future knowing that so long as future legislature and governors were not similar in agreement the original budget decisions would stick.”).

176. Defendants’ Opposition to Motion for Summary Judgment, *supra* note 170, at 1–2.

177. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 9 (quoting ALASKA CONST. art. II, § 15).

178. ALASKA CONST. art. II, § 15.

179. Defendants’ Opposition to Motion for Summary Judgment, *supra* note 170, at 8.

180. *Id.* at 9.

181. *Id.* at 20, 24.

2. *The Plaintiff's and Intervenor's Theories of the Case*

Plaintiff and CEE relied primarily on three provisions of the state constitution to support HB 287's legality: the education clause, article IX, section 13 ("appropriations clause"), and article III, section 16 ("faithful execution clause").<sup>182</sup> Plaintiff proposed a theory of the case that integrates the education clause into the constitutional analysis of the relationship between the executive and legislative branches regarding appropriations and budgeting.<sup>183</sup> Plaintiff argued that because it is constitutionally required to fund the public school system, any analysis of that funding must include a holistic review of the constitution, including the education clause.<sup>184</sup> Further, Plaintiff read the constitution to be silent as to the direct issue of forward funding, but viewed the practice as consistent with the process of appropriations outlined in the appropriations clause.<sup>185</sup> Plaintiff alleged that the constitution does not prohibit forward funding nor limit the legislature's appropriations powers, and that forward funding would be consistent with the annual budgeting model proposed by Defendants.<sup>186</sup>

CEE had a similar theory of the case, agreeing that the education clause was highly relevant.<sup>187</sup> It saw no separation of powers concerns implicated, nor did it view the public school appropriations as violating the dedicated funds clause.<sup>188</sup> CEE also addressed prudential concerns

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182. See Order re: Cross Motions for Summary Judgment, *supra* note 14, at 3, 9 (asserting the constitutionality of the appropriation under the education clause, and arguing that the governor's conduct violated the appropriations clause and faithful execution clause); see also Complaint in Intervention, *Alaska Legislative Council v. Dunleavy*, No. 1JU-19-00753 CI (Alaska Super. filed July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/complaint-intervention.pdf> (alleging that the governor failed his constitutional duty under the education clause, the appropriations clause, and the faithful execution clause). The appropriations clause states in part that "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law." ALASKA CONST. art. IX, § 13. The faithful execution clause requires the governor faithfully execute the laws of Alaska. ALASKA CONST. art. III, § 16.

183. Plaintiff's Opposition to Defendant's Motion for Summary Judgment at 3-6, *Alaska Legislative Council v. Dunleavy*, No. 1JU-19-00753 CI (Alaska Super. Ct. filed July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/plaintiffs-opposition.pdf>.

184. *Id.* at 4.

185. *Id.* at 9-10.

186. *Id.* at 7, 11.

187. Coalition for Education Equity's Opposition to Defendants' Motion for Summary Judgment at 14, *Alaska Legislative Council v. Dunleavy*, No. 1JU-19-00753 CI (Alaska Super. Ct. July 16, 2019), <https://public.courts.alaska.gov/web/media/docs/alc/coalition-opposition.pdf>. CEE dedicated a section of its brief, titled "The Education Clause is Patently Relevant to this Case," to discussing the education clause's relevance. *Id.*

188. *Id.* at 4-13.

about public school funding, including the possibility of a gap in time between a ruling for the Governor and passage of a new appropriations bill, during which Alaska's public schools would go unfunded.<sup>189</sup>

#### F. Superior Court's Order

The court found for Plaintiff and CEE, ruling that Defendants have "a constitutional obligation to execute the appropriations in [HB 287]" and that withholding the funds "infringes upon the legislature's power of appropriation and duty to fund public education under the . . . Education Clause."<sup>190</sup> The court did not frame the question in terms of the education clause, but instead presented it as solely implicating the annual appropriations model.<sup>191</sup> The court began its analysis by noting that the legislature may enact appropriations for a public purpose that is rational and valid.<sup>192</sup> The parties did not dispute that the appropriations were rational and valid because the legislature had the valid purpose of maintaining public education.<sup>193</sup> Thus, the parties presumed the appropriations did not violate the education clause.

The court rejected Defendants' arguments that the appropriations were nonetheless unconstitutional under either the dedicated funds clause or the annual appropriations model, finding that the HB 287 funding was not a direct violation of the dedicated funds clause as it did not " earmark a particular public revenue source."<sup>194</sup> While the dedicated funds clause prohibits the earmarking of a state tax or license for a particular purpose, it is "intended to allow necessary dedication of funds once they . . . [are] received and placed in the general fund."<sup>195</sup> The appropriations for the HB 287 funding were from the general fund and did not violate the dedicated funds clause.<sup>196</sup>

The court also rejected Defendants' argument that the appropriations violated the annual appropriations model. It found that the constitutional provisions cited by Defendants at most demonstrated an aspirational model that does not outweigh the appropriations' presumed constitutionality.<sup>197</sup> Even if this annual appropriations model was constitutionally mandated, HB 287 would not violate that mandate because the bill had gone through the appropriations process in 2018, was

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189. *Id.* at 16–19.

190. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 9–10.

191. *Id.* at 1.

192. *Id.* at 4.

193. *Id.*

194. *Id.* at 5–8.

195. *Id.* at 6.

196. *Id.* at 7–8.

197. *Id.* at 7.

subject to the veto of the sitting governor, and was subject to repeal by the legislature in the 2019 session.<sup>198</sup> Therefore, the aspiration of an annual appropriations model was outweighed by the legislature's appropriations clause power and the duty to provide public education under the education clause.<sup>199</sup> Because forward funding was therefore lawfully enacted, the court ruled that Governor Dunleavy had a constitutional obligation to execute the appropriations under the faithful execution clause and refusal to do so would infringe upon the legislature's appropriations power and constitutional duty to provide public education.<sup>200</sup>

#### IV. THE EDUCATION CLAUSE IN *ALASKA LEGISLATIVE COUNCIL V. DUNLEAVY* AND BEYOND

*Alaska Legislative Council* is the latest in a line of school funding cases in which the court upheld a school funding statutory scheme despite underweighting the education clause in its analysis. The court has primarily reviewed these funding schemes through other constitutional provisions including the state equal protection clause, dedicated funds clause, appropriations clause, and governor's veto clause.<sup>201</sup> Here, the superior court followed the supreme court's lead by analyzing the forward funding provisions under the dedicated funds clause.<sup>202</sup> In deciding the pending appeal, the supreme court could establish a more principled jurisprudence by giving appropriate weight to the education clause, which grants the state legislature broad discretion in actions taken in furtherance of the provision of public schooling.<sup>203</sup> In giving equal constitutional weight to the education clause, the court should adopt a presumption of constitutionality for school funding schemes. If the court takes this approach in *Alaska Legislative Council*, the forward funding of public schools by the legislature would be constitutional under the education clause.

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198. *Id.* at 7–8.

199. *Id.* at 8.

200. *Id.* at 9–10.

201. See *supra* Sections II.C.3, II.C.4.

202. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 6.

203. See *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (noting the “constitutionally mandated state control over education”).

### A. As Public Education Cases, School Funding Cases Should Be Decided in the Context of the Education Clause

Public schooling cases are analyzed in light of the legislature's constitutional duty to "establish and maintain a system of public schools open to all children of the State."<sup>204</sup> The supreme court has long held that the education clause "not only requires that the legislature 'establish' a school system, but also gives to that body the *continuing obligation to 'maintain' the system.*"<sup>205</sup> Because public school systems require continual funding, school funding cases are a subset of public education cases and are properly decided under the education clause.

Despite the constitutional obligation to maintain public schools through adequate funding, the supreme court avoided deciding the two school funding cases it has heard, *Matanuska-Susitna* and *Ketchikan*, under the education clause.<sup>206</sup> The two concurrences in *Ketchikan* noted this omission, remarking that the majority erred in not adequately considering the education clause.<sup>207</sup> Avoidance of the education clause may be a strategic move on the part of litigants. In his concurrence in *Ketchikan*, Chief Justice Stowers noted that "the parties intentionally did not litigate this question [of education clause analysis]."<sup>208</sup> Despite pressure from several justices during oral arguments, the parties insisted that the education clause was not at issue in the case.<sup>209</sup> The parties' avoidance of the education clause may have pushed the supreme court to decide the issue on other constitutional grounds.<sup>210</sup> However, such strategic avoidance should not limit the court's complete constitutional analysis. The court ultimately upheld the constitutionality of the RLC not under the education clause, but the dedicated funds clause, relying heavily on a history of state and local cooperation in providing public schools.<sup>211</sup> However, Justice Winfree noted that the RLC appeared to be

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204. ALASKA CONST. art. VII, § 1.

205. *Macauley*, 491 P.2d at 122 (emphasis added).

206. *See supra* Sections II.C.3, II.C.4.

207. *See State v. Ketchikan Gateway Borough*, 366 P.3d 86, 102 (Alaska 2016) (Stowers, C.J., concurring); *id.* (Winfree, J., concurring); *see also supra* Section II.C.4.

208. *Ketchikan Gateway Borough*, 366 P.3d at 102.

209. *See id.* (noting that, despite questions from the justices during oral arguments, the parties insisted that the education clause was not implicated).

210. *See id.* ("I am concerned that the court was not given the opportunity to decide the dedicated funds question controlled by article IX, section 7 of the Alaska Constitution . . . in the fuller context of the public schools clause . . ."); *see also id.* at 105 (Winfree, J., concurring) (noting doubt that RLC is constitutional under the education clause, but resolving doubt in favor of constitutionality since the issue was not litigated or briefed on appeal).

211. *See id.* at 91 (majority opinion) (holding that "the required local contribution is not a 'state tax or license' within the meaning of the dedicated

an unconstitutional dedicated tax.<sup>212</sup> Given Justice Winfree's analysis of the RLC, this tension between the education clause and the dedicated funds clause is better resolved with a more thorough analysis of the education clause. If the court applied the education clause, then the RLC would be presumed constitutional while the party challenging it would have the burden of persuasion.<sup>213</sup> Unlike the supreme court in *Ketchikan*, the superior court in *Alaska Legislative Council* noted that the funding was enacted "in furtherance of fulfilling the legislature's mandate to maintain a system of public education under the [education clause]."<sup>214</sup> The court adopted a presumption of constitutionality and placed the burden of persuasion with Defendants, though not explicitly under the education clause.<sup>215</sup>

## **B. The Alaska Constitution Grants the Legislature Broad Discretion Under the Education Clause**

In conducting an education clause analysis, the court should grant the legislature broad discretion in its actions undertaken to fulfill the duties to "establish and maintain a system of public schools."<sup>216</sup> Extending this broad legislative discretion to school funding cases is supported by: (1) the plain text of the education clause, (2) the intent of the drafters as expressed at the constitutional convention, (3) prudential concerns specific to public education in Alaska, and (4) implications of supreme court precedent.

### *1. The Text of the Education Clause Dictates Broad Legislative Discretion*

The "analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself."<sup>217</sup> Under the education clause, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."<sup>218</sup> The court noted several textual reasons for "pervasive state authority": the language is mandatory rather than permissive, the obligation includes the continuing duty to maintain a public school system, and the legislature is

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funds clause.")

212. *Id.* at 103 (Winfree, J., concurring).

213. *Id.* at 102.

214. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 5.

215. *See id.* at 3 ("Because the Defendants are raising a constitutional challenge to the [HB 287] appropriations, they bear the burden to overcome the presumption of the statute's constitutionality.").

216. ALASKA CONST. art. VII, § 1.

217. *Hickel v. Cowper*, 874 P.2d 922, 927 (Alaska 1994).

218. ALASKA CONST. art. VII, § 1.

the sole body of government that is tasked with this duty.<sup>219</sup> Courts have subsequently interpreted this duty to maintain to include an obligation to fund schools.<sup>220</sup>

2. *The Intent of the Drafters Dictates Broad Legislative Discretion*

The court has noted that, “[w]hile prior practice and the framers’ purposes are not necessarily conclusive, an historical perspective is essential to an enlightened contemporary interpretation of . . . [the] constitution.”<sup>221</sup> Contrary to the court’s holding in *Ketchikan*, which relied on a history of local involvement in the provision of schooling, the court in *Hootch* noted that prior to statehood, Alaska operated under a dual system of public education provided by the federal government, through the Bureau of Indian Affairs, and the territorial government.<sup>222</sup> Through the education clause, the drafters aimed to address the unique issues in creating a unified public school system in Alaska.<sup>223</sup> Granting broad power to the legislature was purposeful; the drafters explicitly shifted from broadly directing that the state provide public education to directing that the state legislature be the “particular division of the state government . . . that should make the provisions [for a public education system].”<sup>224</sup> Delegate Armstrong spoke further to the intent of the Committee on Health, Education, and Welfare to grant broad powers to the legislature under the education clause:

[I]n Section 1 . . . the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road blocks. May I draw to your attention further the fact that we have used the words [“]to establish and maintain by general law”. This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise.<sup>225</sup>

While the intentions of the constitutional drafters on their own do not dictate the interpretation of the education clause, the clear intent to grant the legislature broad power to maintain the public education system weighs in favor of the existence of such a power.

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

220. *See supra* Section IV.A.

221. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 800 (Alaska 1975) (footnote omitted).

222. *Id.*

223. *Id.*

224. 5 MINUTES OF THE DAILY PROCEEDINGS, ALASKA CONSTITUTIONAL CONVENTION 1955–56, at 3312 (1965) (statement of Del. Hurley).

225. *Id.* vol. 2, at 1514 (statement of Del. Armstrong).

### 3. *Prudential Reasons Dictate Broad Legislative Discretion*

Broad legislative discretion under the education clause reflects “the responsiveness of the constitutional convention to the unique problems in the vast rural areas of Alaska.”<sup>226</sup> Alaska is the only state that is not divided into municipal governments with autonomy in providing local services.<sup>227</sup> The state legislature is left to fill the gaps created by the unique governmental structure of Alaska, and without broad legislative discretion over the public school system, provision of services in more rural areas could suffer.

Broad legislative discretion also reflects the importance of funding to the management of public education in Alaska. Compared to most of the country,<sup>228</sup> Alaska’s state legislature plays a much greater role in funding the state’s public schools, contributing approximately two-thirds of the funding.<sup>229</sup> This difference is because the history of public education in Alaska diverges substantially from that of other states.<sup>230</sup> In general, there is a “persistence of attachment to government at the lowest level where education is concerned.”<sup>231</sup> In Alaska, the oversight of public education initially fell under the purview of the federal government, rather than local communities.<sup>232</sup> There is less of a historical basis for a system that “permits and encourages a large measure of participation in and control of each district’s schools at the local level”<sup>233</sup> in a state where public education has never been provided for locally. This history and current practice of more centralized control and funding of schools weigh in favor of greater legislative discretion in school funding so as to more accurately reflect the unique funding structure that relies on state

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226. See *Hootch*, 536 P.2d at 803 (discussing how the education clause does not require uniformity and appears to contemplate various forms of education depending on a diverse array of circumstances).

227. John Havelock, *Alaska Needs to Finish the Job of Creating Boroughs*, ANCHORAGE DAILY NEWS (Nov. 24, 2014), <https://www.adn.com/commentary/article/alaska-needs-finish-job-creating-boroughs/2014/11/25/> (updated June 29, 2016).

228. CONG. RESEARCH SERV., R45827, STATE AND LOCAL FINANCING OF PUBLIC SCHOOLS (2019). Nationwide, state funding accounts for under fifty percent of public school revenues. *Id.* at 2.

229. BERMAN ET AL., *supra* note 67, at 2, 4.

230. Barnhardt, *supra* note 5, at 2.

231. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49 (1973).

232. See Barnhardt, *supra* note 5, at 11. In 1884, the Organic Act established a civil government in Alaska and directed the federal government to provide for education in Alaska. *Id.* Very little has been written about traditional approaches to teaching and learning among Alaska Native people. See *id.* at 1 (“I am always reminded of the scarcity of published information on the history of education in Alaska in general, and in particular, on the history of schooling for Alaska Native people.”).

233. *Rodriguez*, 411 U.S. at 49.

funding.

4. *Supreme Court Precedent Dictates Broad Legislative Discretion*

The supreme court has explicitly and implicitly recognized broad legislative discretion under the education clause in its jurisprudence. In its first analysis of the education clause, the court held that there was a “constitutional mandate for pervasive state authority in the field of education.”<sup>234</sup> This interpretation has been reinforced by the court’s deference to the legislature when evaluating the legislature’s ability to provide schools in remote rural communities.<sup>235</sup> The court has also implicitly recognized a broad deference to the legislature to fulfill its education clause duties through school funding. Though it did not rely on the education clause, the court has upheld various school funding provisions on a number of different constitutional grounds.<sup>236</sup> The common denominator in the school funding cases is that the court recognized that the legislature has taken action “[t]o fulfill this constitutional mandate [under the education clause].”<sup>237</sup>

### C. The Education Clause Mandates Funding for Public Schools

In recent decades, lower courts have consistently acknowledged that the education clause creates a constitutional mandate to fund public schooling. In two notable cases, the superior court ruled that, under the challenged funding systems, the legislature had not met its duty under the education clause and found for the plaintiffs before the cases were ultimately settled out of court.<sup>238</sup> In *Kasayulie v. State*,<sup>239</sup> plaintiffs alleged that funding for school facilities was racially discriminatory.<sup>240</sup> In *Moore v. State*,<sup>241</sup> plaintiffs alleged violation of the education clause by “failing ‘consistently and repeatedly to adequately fund’ . . . constitutionally mandated education.”<sup>242</sup> The court explicitly ruled that the duty to

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

235. *See supra* Section II.C.2.

236. *See supra* Sections II.C.3, II.C.4.

237. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 88 (Alaska 2016); *see also Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 399 (Alaska 1997) (“By enacting a law to ensure equitable educational opportunities across the state, the legislature acted in furtherance of this constitutional mandate [under the education clause].”).

238. EDUC. LAW CENTER, STATE PROFILE: ALASKA, <https://edlawcenter.org/states/alaska.html> (last visited Apr. 8, 2020).

239. *Kasayulie v. State*, No. 3AN-97-3782CI (Alaska Super. Ct. Oct. 4, 2011).

240. EDUC. LAW CENTER *supra* note 238.

241. No. 3AN-04-9756 Civil, 2007 WL 8310251 (Alaska Super. Ct. June 21, 2007).

242. *Id.* at \*1 (quoting Second Amended Complaint at 2, No. 3AN-04-9756

maintain the public school system under the education clause includes an obligation to provide funding adequate to accord to schools a certain standard of instruction.<sup>243</sup>

In *Alaska Legislative Council*, CEE brought a claim in intervention under the education clause that the superior court disallowed.<sup>244</sup> The court was concerned with the “enormity and complexity of the issue” given the expedited timeline that had already been approved.<sup>245</sup> However, the superior court proceeded to note in its decision that “[t]he Alaska Supreme Court has explained that the statutory structure for funding public education in Alaska is established pursuant to the legislature’s mandate and responsibility to maintain a system of public education under the Public Education Clause.”<sup>246</sup>

#### D. The Supreme Court Should Decide Future School Funding Cases Under the Education Clause

If the school funding cases are analyzed with proper weight to the legislature’s broad discretion to fulfill its constitutional mandate under the education clause, the court should adopt a presumption of constitutionality for school funding schemes employed in furtherance of the legislature’s education clause duties. In cases of intra-constitutional conflict regarding school funding, the court should give due weight to its education clause analysis.

1. *In Reconciling Intra-Constitutional Conflicts, School Funding Schemes Should Be Analyzed Explicitly Through the Education Clause*

In questions of constitutional and statutory interpretation, the court “adopt[s] the ‘rule of law that is most persuasive in light of precedent, reason, and policy.’”<sup>247</sup> The text of the education clause, intent of the constitutional drafters, policy concerns, and precedent all support an interpretation of the education clause granting the legislature broad discretion in its actions to fulfill its constitutional duties to provide a unitary public school system for Alaska.<sup>248</sup> If school funding cases are analyzed in light of this interpretation, the court’s analysis should include

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Civil, 2007 WL 8310251).

243. *Id.* at \*76.

244. Order re: Motion to Intervene, *supra* note 158, at 3–4, 7.

245. *Id.* at 7.

246. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 5 (citing *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 87–88 (Alaska 2016)).

247. *Ketchikan Gateway Borough*, 366 P.3d at 90 (quoting *Se. Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009)).

248. *See supra* Section IV.B.

a presumption of constitutionality for statutory school funding schemes based on the constitutional mandate to provide adequate funding to “maintain a system of public schools.”<sup>249</sup>

Under this presumption, the party challenging the funding scheme should have the burden to show either that an education clause analysis is inappropriate because the legislature’s actions were not taken pursuant to its education clause duties or that the constitutional mandate to establish and maintain public schools is outweighed by other constitutional concerns. This is the analysis hinted at by the superior court in *Alaska Legislative Council*, which weighed factors against a presumption of constitutionality of forward funding under the legislature’s education clause mandate.<sup>250</sup> This presumption departed from the reasoning in the supreme court’s school funding cases, in which the court declined to conduct such a direct analysis under the education clause.<sup>251</sup>

This presumption of constitutionality realigns the supreme court’s school funding jurisprudence with early public schooling cases, which focused heavily on the legislature’s duties under the education clause.<sup>252</sup> The court’s reasoning in early public schooling cases, while implicating other constitutional provisions, ultimately turned on the legislature’s duty under the education clause.<sup>253</sup> For example, in *Macaulley*, the court found that the Alaska Constitution grants municipalities broad governmental powers in local activities.<sup>254</sup> However, the court held that “[t]he outcome of the local activity test in the case at bar is dictated by [the education clause].”<sup>255</sup> In its thorough analysis of the education clause, the court in *Macaulley* held that the “constitutional mandate for pervasive state authority in the field of education could not be more clear.”<sup>256</sup> Under this reading of the education clause, the court deferred to the legislature to act as it “has seen fit” in the practicalities of the public school system.<sup>257</sup>

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249. ALASKA CONST. art. VII, § 1.

250. See Order re: Cross Motions for Summary Judgment, *supra* note 14, at 6–8 (finding no violation of the dedicated funds clause or annual appropriation model, but noting even if appropriations “undermine[d] the spirit” of the annual appropriation model, it would be outweighed by the legislature’s appropriation powers and duty under the education clause, an approach consistent with precedent weighing “competing values” in determining whether an appropriation indirectly violated the dedicated funds clause (citing *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 391–94 (Alaska 2003)).

251. See *supra* Sections II.C.3, II.C.4.

252. See *supra* Sections II.C.1, II.C.2.

253. See *supra* Sections II.C.1, II.C.2.

254. *Macaulley v. Hildebrand*, 491 P.2d 120, 121 (Alaska 1971) (referencing *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963)).

255. *Id.* at 122.

256. *Id.*

257. *Id.*

Such a presumption of constitutionality would be consistent with United States Supreme Court precedent, though such precedent is not binding as to Alaska's education clause. In *San Antonio Independent School District v. Rodriguez*,<sup>258</sup> the Court held that "[t]he consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative process of various States, and we do no violence to the values of federalism and separation of powers by staying our hand."<sup>259</sup> Centering the analysis of school funding cases on the education clause would align state supreme court jurisprudence with the broad deference granted by the Supreme Court to state legislatures.

2. *Application of This Rule Demonstrates That Forward Funding of Appropriations is Constitutional*

In *Alaska Legislative Council v. Dunleavy*, the Supreme Court of Alaska is presented with the opportunity to reevaluate its school funding jurisprudence and adopt an analysis centered on the education clause. The superior court determined that the interests of the legislature's appropriations clause power and the education clause duties outweigh any implied annual appropriations model under the dedicated funds clause.<sup>260</sup> In inverting the calculus of this weighing test, the supreme court should analyze whether the legislative duties under the education clause are outweighed by any other constitutional concerns. The superior court's analysis strongly implies that the education clause is not outweighed by other constitutional factors because of the legislature's broad discretion in its education clause duties and the fact that the proposed constitutional issue is only implied by the text of the constitution.<sup>261</sup>

Here, the legislature expressed clear intent to act pursuant to its education clause duties in enacting forward funding in HB 287, noting that "[e]ducation is required by the Constitution and is a high priority program that legislators support."<sup>262</sup> The legislative history demonstrates the intent to provide budgetary stability for school districts through

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258. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

259. *Id.* at 58.

260. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 8.

261. See *id.* at 7-8 (finding clauses in the constitution cited by Defendants "at most" collectively "express an aspiration" that appropriated funds be expended in the following fiscal year; even if forward-funding appropriations undermined the "spirit" of the annual appropriation model, the legislature's "specific prerogative and responsibility" under the education clause, in addition to its appropriation power, would outweigh such concerns).

262. LIEBELT, *supra* note 16, at 9 ("Education is one of the highest priority programs for the state . . . HB 287 reflects the importance of education to our state.").

forward funding.<sup>263</sup> As noted in the Complaint in Intervention, forward funding is critical to alleviate the problems caused by a misalignment between school district and state budgeting cycles.<sup>264</sup> The appropriations were made to avoid the negative impact on school districts' ability to attract and retain quality educators.<sup>265</sup> Because the legislature was acting pursuant to its duties under the education clause, the burden should be on the challenging party—here, Dunleavy, et al.—to show that other constitutional considerations overcome the presumption of constitutionality applied under the education clause. As the superior court found, forward funding is not a direct violation of the dedicated funds clause, and none of the other clauses cited by Defendants explicitly mandate the annual budgeting model proposed by Defendants.<sup>266</sup> Further, to the extent that an annual appropriation model is implied by various constitutional clauses, the “appropriations here do no violence to Alaska’s annual appropriation model.”<sup>267</sup> Thus, in considering *Alaska Legislative Council*, the court should hold that no constitutional considerations outweigh the legislature’s broad discretion in fulfilling its education clause duties, and forward funding of public schools is therefore constitutional under the education clause.

## V. CONCLUSION

The Alaskan variable presents the state legislature with unique challenges, both direct and incidental, in fulfilling its constitutional duties under the education clause. To address these challenges, the legislature has developed creative solutions through various school funding schemes. Such innovations should be encouraged. Though the Alaska Supreme Court upheld recent school funding schemes, it did so under a number of different constitutional provisions other than the education clause. This muddies the court’s public education jurisprudence, which initially focused heavily on the broad discretion of the state legislature under the education clause.

In school funding cases where the legislature has demonstrably taken action pursuant to its education clause duties, such as in *Alaska Legislative Council*, the court should adopt the reasoning of the superior

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263. See *id.* at 2 (noting the bill will “[a]llow school districts to know their state aid in advance of passage of the state operating budget” and “[a]void unnecessary teacher layoff notices due to passage of the state operating budget after school districts plan their budgets”).

264. Complaint in Intervention, *supra* note 182, at 3.

265. *Id.*

266. Order re: Cross Motions for Summary Judgment, *supra* note 14, at 6–7.

267. *Id.* at 9.

court in reviewing the funding scheme primarily under the education clause and give broad discretion to the legislature. Such a holding in *Alaska Legislative Council* would shift the focus in school funding cases back to the legislature's duties under the education clause. This analysis of school funding cases better acknowledges the difficulties that the Alaskan variable poses in the realm of public education, gives proper deference to the state legislature, and recognizes that school funding cases are public education cases that implicate the legislature's duty to "establish and maintain a system of public schools open to all children of the State."<sup>268</sup>

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268. ALASKA CONST. art. VII, § 1.