IN THE SUPREME COURT OF THE STATE OF ALASKA

Governor Dunleavy and Michael Johnson, Appellants, v. Alaska Legislative Council and Coalition for Education Equity, Appellees.	)	Supreme Court No.: S-17666

Trial Court Case No.: 1JU-19-00753 CI

APPEAL FROM THE SUPERIOR COURT,
FIRST JUDICIAL DISTRICT AT JUNEAU,
THE HONORABLE DANIEL J. SCHALLY, JUDGE

BRIEF OF APPELLANTS

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Filed in the Supreme Court
of the State of Alaska
on _____, 2020

MEREDITH MONTGOMERY,
CLERK
Appellate Courts

By: _____
Deputy Clerk

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Constitutional provisions

Alaska Const. Art. II, § 15

The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

Alaska Const. Art. II, § 16

Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.

Alaska Const. Art. VII, § 1

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

Alaska Const. Art. VIII, § 2

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Alaska Const. Art. IX, § 7

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 or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Alaska Const. Art. IX, § 12

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Alaska Const. Art. IX, § 13

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

Alaska Laws

Ch. 6, SLA 2018
AN ACT making appropriations for public education and transportation of students; and providing for an effective date.

*** Section 1.** The following appropriation items are for operating expenditures from the general fund or other funds as set out in section 2 of this Act to the agencies named for the purposes expressed for the fiscal year beginning July 1, 2018 and ending June 30, 2019, unless otherwise indicated.

	Appropriation Allocations	General Items	Other Funds	Other Funds
* * * * * Department of Education and Early Development * * * * *				
K-12 Aid to School Districts	**26,128,400**		**26,128,400**	
Foundation Program	26,128,400			
K-12 Support	**12,111,400**	**12,111,400**		
Boarding Home Grants	7,453,200			
Youth in Detention	1,100,000			
Special Schools	3,558,200			
Mt. Edgecumbe Boarding School	**12,863,300**	**307,400**	**12,555,900**	
Mt. Edgecumbe Boarding School	11,420,600			
Mount Edgecumbe Boarding	1,442,700			

School Facilities

Maintenance

*** Sec. 2.** The following sets out the funding by agency for the appropriations made in sec. 1 of this Act.

Funding Source		Amount
Department of Education and Early Development		
1002	Federal Receipts	250,000
1004	Unrestricted General Fund Receipts	12,111,400
1005	General Fund/Program Receipts	307,400
1007	Interagency Receipts	7,473,300
1043	Federal Impact Aid for K-12 Schools	20,791,000
1066	Public School Trust Fund	10,000,000
1108	Statutory Designated Program Receipts	170,000
*** Total Agency Funding ***		51,103,100
* * * * * **Total Budget** * * * * *		**51,103,100**

*** Sec. 3.** The following sets out the statewide funding for the appropriations made in sec. 1 of this Act.

Funding Source		Amount
Unrestricted General		
1004	Unrestricted General Fund Receipts	12,111,400
*** Total Unrestricted General ***		12,111,400
Designated General		
1005	General Fund/Program Receipts	307,400
*** Total Designated General ***		307,400
Other Non-Duplicated		
1066	Public School Trust Fund	10,000,000
1108	Statutory Designated Program Receipts	170,000
*** Total Other Non-Duplicated ***		10,170,000
Federal Receipts		
1002	Federal Receipts	250,000

1043	Federal Impact Aid for K-12 Schools	20,791,000
*** Total Federal Receipts ***		21,041,000

Other Duplicated

1007	Interagency Receipts	7,473,300
*** Total Other Duplicated ***		7,473,300

*** Sec. 4.** DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT. The sum of $30,000,000 is appropriated from the general fund to the Department of Education and Early Development to be distributed as grants to school districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) - (D) for the fiscal year ending June 30, 2020.

*** Sec. 5.** FUND CAPITALIZATION.

(a) The amount necessary to fund the total amount for the fiscal year ending June 30, 2019, of state aid calculated under the public school funding formula under AS 14.17.410(b), estimated to be $1,189,677,400, is appropriated from the general fund to the public education fund (AS 14.17.300).

(b) The amount necessary, estimated to be $78,184,600, to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2019, is appropriated from the general fund to the public education fund (AS 14.17.300).

(c) The amount necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid calculated under the public school funding formula under AS 14.17.410(b) is appropriated from the general fund to the public education fund (AS 14.17.300).

(d) The amount necessary to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2020, is appropriated from the general fund to the public education fund (AS 14.17.300).

*** Sec. 6.** LAPSE. The appropriations made in sec. 5 of this Act are for the capitalization of a fund and do not lapse.

*** Sec. 7.** CONTINGENCY. The appropriations made in secs. 4 and 5(c) and (d) of this Act are contingent on passage by the Thirtieth Alaska State Legislature and enactment into law of a version of Senate Bill 26.

*** Sec. 8.** Sections 4 and 5(c) and (d) of this Act take effect July 1, 2019.

*** Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2018.

PARTIES

The appellants are Governor Michael J. Dunleavy, in his official capacity as the Governor for the State of Alaska, Commissioner Kelly Tshibaka, in her official capacity as Commissioner of Administration, and Commissioner Michael Johnson, in his official capacity as Commissioner of Education and Early Development. The appellees are the Alaska Legislative Council, on behalf of the Alaska State Legislature, and the Coalition for Educational Equity, a non-profit organization.

ISSUES PRESENTED

Appropriation of state funds. The Alaska Constitution establishes an "annual appropriation model" requiring that "the disposition of all revenues will be decided anew on an annual basis."[1] In service of this model, the constitution provides for an annual budget and bill of appropriations "for the next fiscal year."[2] May the legislature make appropriations for fiscal years *beyond* the next fiscal year so as to dictate spending years into the future? If not, is there an exception that permits the legislature to do so for public education, unlike any other governmental function?

INTRODUCTION

The Alaska Constitution creates a framework for appropriating public funds. This framework preserves an annual appropriation model in which "the disposition of all revenues will be decided anew on an annual basis."[3] As part of this framework, the

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1 *Sonneman v. Hickel*, 836 P.2d 936, 938-39, 940 (Alaska 1992).

2 Alaska Const. Art. IX, § 12.

3 *Sonneman*, 836 P.2d at 938-39.

constitution contemplates that appropriations will be made "for the next fiscal year"[4]—meaning that the legislature may dedicate to particular purposes only those funds that are or become available in the next fiscal year. This temporal limit on appropriations prevents one crop of elected officials from dictating how future officials may spend money that only becomes available in future fiscal years. In this way, the constitution ensures that state spending is controlled by the current legislature and governor, responsive to the will of the voters, and flexible enough to meet the needs of the moment.

This case is about appropriations that flout this constitutional design. In 2018 the Thirtieth Legislature passed a bill appropriating state funds for public education in the next fiscal year (FY 2019)[5]—which is normal and proper—and appropriating additional funds in the following fiscal year as well (FY 2020)[6]—which is not. The latter appropriation did not take effect until the first day of FY 2020,[7] more than a year after the bill was passed and after an intervening general election. In other words, the Thirtieth Legislature reached over a year into the future to appropriate funds that, by constitutional design, were supposed to be available for appropriation by the Thirty-First Legislature and subject to line-item veto by the next governor.

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4 Alaska Const. Art. IX, § 12.

5 Ch. 6, § 5(a) – (b), SLA 2018.

6 Ch. 6, §§ 4, 5(c) – (d), SLA 2018.

7 Ch. 6, § 8, SLA 2018.

Whether intentionally or not, this forward appropriation[8] worked as a kind of hedge against the upcoming election. Even if voters elected new legislators or a governor with different spending priorities, the forward appropriation gave the Thirtieth Legislature's desired level of education spending a leg up in FY 2020: it would be much harder for the Thirty-First legislature to amend or repeal the spending that had already been enacted—and impossible for a new governor to veto it—than to block or veto an identical spending bill before it became law. And that is exactly what happened. The voters elected new legislators and a new governor who advocated lower spending in light of a $1.6 billion deficit. But because education appropriations for FY 2020 had previously been enacted, the Thirty-First Legislature's only option to reduce spending was to amend or repeal the existing appropriation. And the governor was unable to use his veto to reduce the amount dedicated to education because the appropriation was enacted before he entered office.

The legislature's intentions in passing these forward appropriations were laudable. They sought to provide a measure of certainty for school districts, which rely heavily on state funding and need to know how much that funding will be in order to prepare their own budgets. But good intentions do not save unconstitutional acts. And if the Court endorses forward appropriations, then they will be a tool at the disposal of legislators

[8] This brief uses the term "forward appropriation" to refer to an appropriation that does not take effect until after the end of the fiscal year following the legislative session in which the appropriation was passed.

who wish to entrench their spending preferences against changing voter sentiment and declining state revenues.

The superior court, despite approving the disputed appropriations, appeared to recognize the constitutional problem and so attempted to limit its ruling in two ways. First, the court emphasized that the appropriation reached forward only one fiscal year and declined to opine on the constitutionality of forward funding for "multiple or many years into the future." [Exc. 188] Second, it emphasized that the appropriations were made in furtherance of the legislature's "mandate to maintain a system of public education" under the Public Education Clause.[9] [Exc. 188] Neither limit withstands scrutiny. The constitution already places a temporal limit on appropriations—"the next fiscal year."[10] If this textual limit is rejected, there is no other line in the constitution to fall back on. Any other line would be pure judicial invention. And nothing in the text or history of the Public Education Clause, or the decisions interpreting it, suggests that appropriations of state funds for public education fall outside the normal appropriations framework. So there is no valid way to limit forward appropriations to those for public education.

There is no need to open this Pandora's Box. The legislature has the means at its disposal to give school districts a measure of certainty about state funding for public education. The legislature can do what it traditionally has done: appropriate money that is

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9 Alaska Const. Art. VII, § 1.

10 Alaska Const. Art. IX, § 12.

actually at its disposal in the coming fiscal year so it can be set aside for spending the following year, rather than dictate how a future legislature should spend future money in the fiscal years beyond. This is a somewhat harder choice politically because it forces the legislature to confront tradeoffs about how the money at its disposal should be spent, instead of leaving those tradeoffs for a future legislature to resolve. But the Alaska Constitution does not protect elected officials from having to make tough choices about spending. It protects Alaskans from being stuck with those choices as conditions and priorities change. Forward appropriations are incompatible with Alaska's constitutional design.

STATEMENT OF THE CASE

Alaska funds its public schools through a mixture of state, local, and federal dollars.[11] The state's share and the local share (if applicable[12]) of school district funding are calculated according to statutory formulas.[13] The state also provides funding for student transportation, according to a separate formula.[14] But the amount local school districts actually receive from the state in a given year is determined by how much money

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11 AS 14.17.410.

12 There are three types of public school districts: city school districts, borough school districts, and regional education attendance areas. AS 14.12.010. A local contribution is required of city and borough school districts only. *See* AS 14.17.410(b)(2).

13 AS 14.17.400(a); AS 14.17.410.

14 AS 14.09.010(a).

the legislature chooses to appropriate.[15] The money appropriated goes into the public education fund, where it can be disbursed to school districts by the Department of Education and Early Development.[16] Appropriations to the public education fund do not lapse, and once money is appropriated to the fund it may be spent without further appropriation.[17]

Because school districts are heavily reliant on state funding, districts' ability to plan for the upcoming school year depends on knowing how much money the state will give them. For that reason, the legislature has tried to make sure that funds for the state's contribution are set aside well in advance of when they must be distributed. For example, in 2010 the legislature made two appropriations of over $1 billion each to the fund: enough state aid for the next fiscal year and the one after that.[18] In the years that followed, the legislature annually set aside during the next fiscal year the estimated amount of the state's public school contribution for the following year.[19] This approach

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15 AS 14.09.010(a) (amount of transportation funding provided by state is "[s]ubject to appropriation"); (AS 14.17.400(b) ("If the amount appropriated to the public education fund for purposes of this chapter is insufficient to meet the amounts authorized under (a) of this section for a fiscal year, the department shall reduce pro rata each district's basic need by the necessary percentage as determined by the department.").

16 AS 14.17.300(a); AS 14.17.400(b); AS 14.17.610.

17 AS 14.17.300(b).

18 One appropriation was contained in the supplemental appropriations bill for FY 2010 and became effective on April 18, 2010. Ch. 13, §§ 13(a), 22, SLA 2010. The other appropriation was contained in the general operating bill for FY 2011 and became effective on July 1, 2010. Ch. 41, §§ 26(n), 39, SLA 2010.

19 Ch. 3, §§ 25(e), 41, FSSLA 2011 (effective July 1, 2011); Ch. 15, §§ 26(f), 36, SLA 2012 (effective Dec. 1, 2012); Ch. 14, §§ 28(e), 39, SLA 2013 (effective Dec. 1, 2013); Ch. 16, §§ 28(c), 39, SLA 2014 (effective Dec. 1, 2014).

ensured that money for the state's contribution was placed in the public education fund well in advance of distribution, giving school districts time to budget based on that amount.

But in 2015, the legislature drained the public education fund by subtracting over $1 billion from a prior appropriation to the fund.[20] In 2016 and 2017 the legislature did not set aside extra funds to rebuild the fund's balance; each year it appropriated only enough money for state aid in the next fiscal year.[21] Adding to the uncertainty that school districts experienced, these appropriations were not finalized until the eve of the upcoming school year for which they were intended.[22]

The Thirtieth Legislature tried a new approach in 2018. Early in the legislative session it passed an appropriations bill for education only ("HB 287"), separate from the regular operating budget.[23] Like previous years' appropriations to the public education fund, HB 287 appropriated money for state aid and student transportation in the next fiscal year (FY 2019).[24] But instead of appropriating additional sums in the pending fiscal year (FY 2018) or the next one (FY 2019) to be set aside for the state's contribution in the following fiscal year, the legislature reached over a year into the future to appropriate

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20 Ch. 23, § 31, SLA 2015 ("Section 28(c), Ch. 16, SLA 2014, is amended to read: (c) The sum of **$77,008,600** [$1,202,568,100] is appropriated from the general fund to the public education fund (AS 14.17.300)"). This amendment took effect on the last day of fiscal year 2014. *Id.* § 37.

21 Ch. 3, § 26(h) – (i), 4 SSLA 2016; Ch. 1, § 39(g) – (h), 2 SSLA 2017.

22 Ch. 3, 4 SSLA 2016; Ch. 1, 2 SSLA 2017.

23 Ch. 6, SLA 2018 (passed as SCS HB 287).

24 Ch. 6, § 5(a) – (b), SLA 2018.

funds in FY 2020.[25] To do so, the legislature delayed these latter appropriations' effective date until the first day of fiscal year 2020 (July 1, 2019)[26]—over a year after the bill's passage and after the next general election. These appropriations were signed into law by then-governor William M. Walker on May 3, 2018.[27]

Later that year, Michael J. Dunleavy was elected governor. Governor Dunleavy took office on December 1, 2018 and submitted to the legislature an initial appropriations bill prepared by his predecessor. [R. 32] This bill amended HB 287's fiscal year 2020 appropriations by specifying dollar amounts: $1,172,603,900 for state aid and $77,214,600 for student transportation. [R. 31] Governor Dunleavy later submitted an updated fiscal year 2020 operating budget calling for the same amount of transportation funding but a reduced amount ($895,455,700) of state aid to school districts.[28]

As the end of the 2019 legislative session neared, Attorney General Kevin Clarkson advised Governor Dunleavy in a published legal opinion that the forward appropriations made in HB 287 were constitutionally infirm, leaving the state without a valid appropriation for public education in fiscal year 2020.[29] Yet the legislature did not

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25 Ch. 6, §§ 4, 5(c) – (d), SLA 2018. These specific appropriations were: $30 million to the Department of Education and Early Development for distribution to school districts according to their adjusted average daily membership as defined in AS 14.17.410(b)(1)(A) – (D); the amount necessary to fund state aid under AS 14.17.410(b) in FY 20; and the amount necessary to fund student transportation under AS 14.09.010 in FY 20.

26 Ch. 6, § 8, SLA 2018.

27 Ch. 6, SLA 2018.

28 SSSB 20 § 22(k) – (l) (Feb. 13, 2019).

29 Alaska A.G. Op., 2019 WL 2112834 (May 8, 2019).

make a new fiscal year 2020 appropriation for public education; instead it made a forward appropriation for fiscal year 2021.[30] Advised that no valid fiscal year 2020 appropriation for public school funding existed, the Governor concluded that no money could be disbursed to school districts when the fiscal year began.

The Alaska Legislative Council, acting on behalf of the Alaska Legislature, filed suit against the Governor, Education Commissioner Michael Johnson, and Administration Commissioner Kelly Tshibaka in their official capacities (collectively, "the Governor") to resolve the impasse. [Exc. 8-16] The Council sought declaratory judgment that the Governor had unconstitutionally infringed on the legislature's power of appropriation, its duty to maintain Alaska's system of public education, and the Governor's duty to faithfully execute the laws.[31] [Exc. 14-16] So as not to jeopardize school operations while the legal dispute was pending, the parties jointly moved the superior court to permit the funds' disbursement on a monthly basis, save the $30 million in grant funds for school districts. [Exc. 17-19] The superior court granted the order. [Exc. 20]

Over a month later, the Coalition for Education Equity moved to intervene in the litigation. [Exc. 21-28; R. 143-56] The Coalition, a non-profit association whose members include Alaska school districts, argued that its interests in the litigation were not

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30 Ch. 1, §§ 33(i) – (j), 47 SSLA 2019 (effective July 1, 2020).

31 The Council also sought an injunction mandating disbursement of the funds in question and prohibiting the Governor from "impounding or withholding money" from the disputed appropriations. [Exc. 15-16]

adequately represented by the Council because the Council would likely not try to establish the "contours" of the legislature's "funding obligation under Article VII, Section 1." [R. 154] Over the Governor's objection, the superior court permitted the Coalition to intervene but ruled that it could not litigate in this case "the issue of the contours of the Alaska Constitution's requirement that the state fund education, because of the enormity and complexity of the issue." [R. 112]

The parties submitted cross-motions for summary judgment. The Governor argued that appropriations for future fiscal years violate the Alaska Constitution's annual appropriation model by allowing one legislature to constrain the spending choices of future legislatures. [Exc. 29-51] The Council maintained that forward appropriations are a valid exercise of the appropriations power and do not violate any other constitutional provision. [Exc. 54-84] The Coalition made arguments similar to the Council's but also asserted that the public education clause justifies the forward appropriations. [Exc. 85-113]

The superior court ruled in favor of the Council and the Coalition. The court began with the undisputed point that the appropriations were for a valid public purpose. [Exc. 183] It accepted the stated rationale for the forward appropriations: that in recent years "passage of the state's operating budget late in the annual legislative session" left school districts uncertain about the size of their budgets, which made it harder to plan for the coming school year and retain talented educators. [Exc. 183] HB 287's forward appropriations were "an effort by the legislature to provide advanced budget notice and

certainty to public school districts for the 2019-2020 school year" and were a "rational" approach to school districts' budget uncertainty. [Exc. 184]

Turning to the core of the parties' dispute, the court rejected the Governor's argument that the Alaska Constitution's annual appropriation model permits the legislature to appropriate only those funds that will be available in the next fiscal year. The court reasoned that HB 287 does not "directly violate" the dedicated funds clause because the clause prohibits "only the dedication of a particular source of public revenue," and HB 287 does not dedicate "a particular revenue source." [Exc. 184-85] As for the other constitutional provisions governing the appropriation process, the superior court reasoned that "at most, the clauses, read together, express an aspiration that the legislature appropriate general revenue to be expended during the forthcoming fiscal year" but did not expressly or implicitly "prohibit a delayed appropriation effective date" beyond the next fiscal year. [Exc. 186]

Despite rejecting the argument that the constitution temporally limits the appropriation power, the superior court seemed to recognize the implications of this ruling and attempted to qualify it in several respects. The superior court acknowledged that the forward appropriations made by the Thirtieth Legislature "could be said to undermine the spirit of the annual appropriations model" by "curtail[ing] to a degree the [Thirty-First] [L]egislature's control over the appropriated money." [Exc. 187] But it concluded that "the model's spirit is outweighed by the legislature's power of appropriation and its specific prerogative and responsibility to maintain the Alaska public education system under the Public Education Clause." [Exc. 187] Accordingly the court

limited its rationale to "the particular appropriation at issue" pertaining to public education and declined to grapple with "an issue not before it, including . . . forward-funding for multiple or many years into the future." [Exc. 188] With these caveats, the court ruled HB 287's forward appropriations constitutional.

Having upheld HB 287, the superior court ruled that the Governor's "responsib[ility] for the faithful execution of the laws" under Article III, § 16 required him to execute its appropriations. [Exc. 188-89] The court therefore granted the declaratory and injunctive relief requested by the Council. [Exc. 189-91]

The Governor timely appealed the superior court's order.

STANDARDS OF REVIEW

The interpretation of the Alaska Constitution is a question of law to which this Court applies its independent judgment.[32] Enactments are presumed to be constitutional, and those challenging enactments bear the burden of overcoming that presumption.[33] Yet this presumption has no bearing on what the constitution means; in deciding that question, the Court "first look[s] to the intent of the framers of the constitution"[34] and "adopt[s] the rule of law that is most persuasive in light of precedent, reason, and policy."[35]

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32 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016).

33 *Alaskans for a Common Language v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

34 *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) (citing *Warren v. Boucher*, 543 P.2d 731, 735 (Alaska 1975)).

35 *Kritz*, 170 P.3d at 192.

ARGUMENT

I. Forward appropriations violate the Alaska Constitution's annual appropriations model.

This Court has long recognized the Alaska Constitution's "annual appropriation model,"[36] which requires the governor and the legislature "to decide funding priorities annually on the merits of the various proposals presented."[37] Forward appropriations—appropriations that take effect only after the next fiscal year is over—are fundamentally inconsistent with this model because they entail deciding now what funding priorities will be far into the future, rather than deciding them "anew on an annual basis."[38] The superior court did not see this inconsistency because its constitutional analysis merely skimmed the surface. The court failed to examine how the various provisions of the Alaska Constitution work in tandem to govern the appropriations process and paid scant attention to the design evident in the constitutional structure and debates of the constitutional delegates. [Exc. 186-88]

When the framers' intent is considered, the unconstitutionality of forward appropriations becomes clear. The framers designed Alaska's appropriations process to preserve maximum flexibility to spend according to the needs of the moment, to facilitate a comprehensive spending plan, and to favor saving over spending. Forward appropriations flout this intent. They entrench the spending priorities of the past, invite

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36 *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 389 (Alaska 2003).

37 *Sonneman v. Hickel*, 836 P.2d 936, 938-39 (Alaska 1992).

38 *Id.* at 939.

piecemeal spending, and evade the constitution's powerful check on spending—the line item veto. And for all this violence to the constitutional design, they accomplish little that cannot be accomplished through straightforward constitutional means.

A. The Alaska Constitution enshrines an annual appropriation model that authorizes appropriations for the next fiscal year only.

The annual appropriation model is rooted in provisions of Articles II and IX of the constitution: in particular, the dedicated funds clause, the appropriations clause, the budget clause, and the veto clause.[39] While each of these provisions has a "distinct purpose[]," they work in concert so that "together . . . they govern" the appropriations process the framers intended.[40] This process: (1) requires that all funds be available each year for appropriation to any purpose; (2) creates a framework for appropriating funds available in the next fiscal year, rather than funds that will become available only in future fiscal years; and (3) subjects annual appropriations to a powerful line-item veto. Together, the strictures of this process effectuate the framers' intent: to prevent past

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[39] *State v. Ketchikan Gateway Borough*, 366 P.3d at 101 ("[T]he dedicated funds clause, the appropriations clause and the governor's veto clause . . . [t]ogether . . . govern the legislature's and the governor's joint responsibility to determine the State's spending priorities on an annual basis."); *Simpson v. Murkowski*, 129 P.3d 435, 446 (Alaska 2006) (explaining how the budget clause and the veto clause reflect framers' intent to create "a role for both the governor and the legislature in the appropriations process.").

[40] *State v. Ketchikan Gateway Borough*, 366 P.3d at 101-02 (Explaining that "through the dedicated funds clause, the delegates sought to avoid the evils of earmarking . . . to protect State control over state revenue and to ensure legislative flexibility," while "the appropriations clause defines how the legislature may spend state money *after* it has entered state coffers, and the governor's veto clause provides an executive check on the legislature's spending plan").

judgments from thwarting the ability to meet present needs, to foster a comprehensive approach to spending, and to tightly control the "purse strings" of the state.

The first element of the annual appropriation model is the rule that all funds be available each year for appropriation to any purpose. The dedicated funds clause "seeks to preserve an annual appropriation model" by preventing public revenues from being predestined to particular purposes, so that "the disposition of all revenues will be decided anew on an annual basis."[41] The clause provides that "[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 or when required by the federal government for state participation in federal programs."[42] The rule against dedicating revenues ensures that, with the exception of monies destined for the permanent fund or federal programs, incoming revenues do not automatically flow to specific programs or projects. Instead all revenues are available each year for appropriation to meet the priorities of the moment.

The delegates to Alaska's constitutional convention drafted the dedicated funds clause to ensure Alaskans would have maximum flexibility each year. The clause reflects the framers' view that "the most severe obstacle to the scope and flexibility of budgeting results from the earmarking or dedication of certain revenue for specified purposes or funds."[43] Aware that in some states the vast majority of revenues were earmarked to the

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41 *Sonneman*, 836 P.2d at 939-40.

42 Alaska Const. Art. IX, § 7.

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

point "where neither the governor nor the legislature has any real control over the finances of the state,"[44] the framers intended to prohibit this practice so that funds could be spent on the priorities identified as most urgent in that particular moment: "Without earmarked funds, the constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented."[45] The dedicated funds clause ensures that past judgments about how state funds should be spent do not hamstring the state in addressing changing needs and priorities.

The second element of the annual appropriations model is the framers' intent that spending be the product of a comprehensive plan "for the next fiscal year."[46] This design is rooted in the closely related appropriations and budget clauses.[47] The appropriations clause (Art. IX, § 13) provides that state funds may be expended only with a lawful appropriation,[48] which the Court has defined as "a sum of money dedicated to a particular

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44 *Sonneman*, 836 P.2d at 938 (quoting 6 Proceedings of the Alaska Constitutional Convention (PACC) Appx. V at 111 (Dec. 16, 1955)).

45 *Sonneman*, 836 P.2d at 938-39.

46 Alaska Const. Art. IX, § 12.

47 *See State v. Ketchikan Gateway Borough*, 366 P.3d at 101 ("[T]he appropriations clause defines how the legislature may spend state money *after* it has entered state coffers . . . ."); *Simpson v. Murkowski*, 129 P.3d at 446 (describing interplay of appropriations and budget clauses).

48 Alaska Const. Article IX, § 13 provides: "No money shall be withdrawn from the treasury except in accordance with appropriation made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void."

purpose."[49] And the budget clause (Art. IX, § 12) creates a framework for appropriations: an annual process of balancing revenues and expenditures.[50] This framework is designed to increase the executive's role in the appropriations process to ensure that the budget is not "merely a schedule of expenditures" but "a comprehensive financial plan" that permits the needs of the state to be considered against its resources.[51]

The framework established by the budget clause reflects an intent to limit appropriations to the "next fiscal year."[52] 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."[53] The governor then submits "a general appropriation bill to authorize the proposed expenditures"—meaning the proposed expenditures identified in the budget.[54] Because

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49 *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001).

50 *Simpson v. Murkowski*, 129 P.3d at 446 (explaining role of budget clause in appropriations process); 3 Alaska Statehood Comm'n, Constitutional Studies, pt. IX at 24-27 (1955) (found in constitutional convention folder 180.3).

51 Constitutional Studies, *supra* n. 50, pt. IX, at 24 ("Since the first constitutions were adopted, two significant developments have emerged in planning for the expenditure of state money: (1) the transition from the legislative to the executive budget: and (2) the state budget has tended to widen in scope from merely a schedule of expenditures to a comprehensive financial plan which makes possible general as well as fiscal controls."); *id.* at 26-27 ("The important objective is that of comprehensiveness or scope of the budget so that the financial plan of the state is not considered piecemeal. The legislature should be able to see at one time what the total financial needs and tax burden of the state are to be.").

52 Alaska Const. Art. IX, § 12.

53 *Id.* (emphasis added).

54 *Id.*

the budget identifies proposed expenditures "for the next fiscal year," the corresponding appropriations bill authorizing these expenditures must likewise be a bill of appropriations "for the next fiscal year"—meaning that the bill must set aside each sum of money for each particular purpose within that fiscal year.[55] Because the legislature can set aside sums of money during the next fiscal year only if the monies are available in that time, the fiscal year limitation in the budget clause means that the legislature can appropriate only existing savings or revenues anticipated to enter the state's treasury within the next fiscal year.[56]

The framers' decision to limit appropriations to "the next fiscal year" is key to the annual appropriations model. First, it ensures appropriations are based on an accurate prediction of the State's needs and resources. The framers desired a process in which

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[55] *See Hickel v. Cowper*, 874 P.2d 922, 932-33 (Alaska 1994) ("An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more, for that object, and no other.") (quoting *Thomas v. Rosen*, 569 P.2d at 796); *accord Alaska Legislative Council v. Knowles*, 21 P.3d at 371 (defining item of appropriation as "a sum of money dedicated to a particular purpose.").

[56] The executive budget act that implements Article IX, § 12 confirms this limitation by replicating it in statute. The act neatly distinguishes the "budget for the succeeding fiscal year" and each "appropriation bill" made up of the proposed expenditures for that fiscal year from the long-term fiscal planning tools it also requires the executive to prepare. *Compare* AS 37.07.020(a) ("The governor shall prepare a budget for the succeeding fiscal year that must cover all estimated receipts . . . and all proposed expenditures of the state government. The budget must be accompanied by" the mental health appropriations bill, the capital appropriation bill, the operating appropriations bill, and a bill for additional revenues if any) *with* AS 37.07.020(b) ("In addition to the budget and bills submitted under (a) of this section, the governor shall submit a capital improvements program covering the six succeeding fiscal years . . . [and] a fiscal plan with estimates of significant sources and uses of funds for the succeeding 10 fiscal years.").

appropriations "will be considered in the light of the total revenues and the total expenditures of the state, rather than in the hodgepodge fashion in the past."[57] The budget clause was crafted to facilitate that process: to ensure that the budget—and the appropriations it is intended to shape—are "comprehensive[]" in light of "the total financial needs and tax burden of the state."[58] By limiting appropriations to the next fiscal year, the framers precluded officials from committing the state to spend years into the future based on more speculative long-term projections of what future needs and resources might be. Instead, each year's spending will be based on the most up-to-date understanding of the state's needs and resources.

Second, this limit preserves the state's flexibility to spend according to the priorities of the moment—a feature essential to the framers. While the framers discussed this point largely in the context of the dedicated funds clause,[59] the fiscal year limitation they placed in the budget clause is essential to this design. The dedicated funds clause

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57 PACC at 1740 (statement of Del. McCutcheon regarding governor's appropriations veto and confinement clause).

58 Constitutional Studies, *supra* n. 50, pt. IX, at 26-27.

59 *Id.* pt. IX, at 27 ("The most severe obstacles to the scope and flexibility of budgeting results from the earmarking or dedication of certain revenue for specified purposes or funds."); PACC at 2364 ("If you . . . allow for earmarking . . . you are then back to the situation that most states now find themselves in, where an ever increasing percentage of their revenues are earmarked for special purposes and an ever-decreasing amount is available to the general fund. To arrive at the position Texas is in, for example, where 90 per cent of all their funds are earmarked and the legislature has only 10 per cent left to work with . . . ."); PACC at 2368 "In theory I think that earmarking is bad . . . . It is inefficient, undoubtedly, because it deprives the legislature of that adaptability that you get when you take a certain amount of money with no strings attached and allocated it without limitations.").

preserves flexibility by ensuring revenues are not obligated to certain purposes. The budget clause preserves flexibility by ensuring that only those funds available in the next fiscal year may be dedicated, so that future legislatures may decide "the disposition of all revenues . . . anew" in future fiscal years.[60] Without the next-fiscal-year limitation, a legislature could use its appropriation power to dedicate future-year revenues for years to come just as easily as it could by dedicating specific revenue sources. And a forward appropriation hinders future legislatures' freedom to spend the money as they see fit just as much as a revenue dedication: each takes an act of the legislature to undo. So with either maneuver, the legislature has put its thumb on the scales used by future legislatures to weigh future spending priorities. By authorizing appropriations only "for the next fiscal year," the budget clause works in concert with the dedicated funds clause to prevent one legislature from imposing its spending priorities on future legislatures.

The constitutional convention proceedings show that the framers intended the dedicated funds and budget clauses to work together to preserve the annual appropriation model. In explaining how the dedicated funds clause would work, Delegate Gray explained that "there is nothing in this article to preclude the legislature from appropriating to the particular body that amount of money that they have collected through the licenses," to which delegate White replied, "That is absolutely right, Mr. Gray. You appropriate the exact amount that has been earmarked in previous years,

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60 *Sonneman*, 836 P.2d at 939.

year after year after year, it is just an automatic appropriation."[61] Delegate Gray clarified: "it doesn't earmark it but . . . [the entities collecting the licenses] just have to sell their viewpoint to the legislature and if they need the money, why they probably could get it if they could talk them into it."[62] Delegate Hermann spoke up to say that he was "troubled" by the notion of automatically appropriating the amount of the accumulated licenses year after year because it "is in conflict with your own provision covering the budget in this very proposal that you have produced."[63] Delegate Barr responded that while "there is nothing to prevent the legislature from appropriating a like amount," the legislature "always consider[s] the budget before making any appropriations."[64] In the framers' view, the budget clause's fiscal-year cycle would ensure the legislature makes spending decisions each year—not a decision in one year for many years into the future.

The third element of the annual appropriations model is a strong bias towards controlling state spending, rooted in the governor's appropriations veto. The veto power "provides an executive check on the legislature's spending plan."[65] Article II, § 15 gives the governor the power to "by veto, strike or reduce items in appropriations bills." The framers set a high bar for the legislature to override the governor's appropriation veto. The legislature may override a veto of an appropriation item only with a "vote of three-

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61 PACC at 2366-67.

62 PACC at 2367.

63 PACC at 2369

64 PACC at 2370.

65 *State v. Ketchikan Gateway Borough*, 366 P.3d at 101-02.

fourths of the membership of the legislature," as compared to the two-thirds vote required to override vetoes of other bills.[66]

The governor's substantial veto power embodies "a desire by the delegates to create a strong executive branch with 'a strong control on the purse strings' of the state."[67] Because the governor has great power to reduce individual appropriations but cannot make appropriations himself, the veto power creates a structural bias against spending.

This feature of the annual appropriations model reinforces the others. Not only does the constitution prohibit spending money long before it becomes available, its high bar for spending the money that *is* available favors saving. Together, these policies embedded in the constitution promote the framers' ultimate goal of preserving the state's flexibility and wherewithal to respond to the needs of the moment.

B. Forward appropriations violate the Alaska Constitution's annual appropriation model.

Not only did the superior court fail to grapple with the constitutional structure and convention proceedings revealing the framers' intent; it also failed to heed this Court's decisions construing the constitution broadly in order to realize that intent. When properly construed, the constitution does not permit forward appropriations. They

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66 Alaska Const. Art. II, § 16.

67 *Thomas v. Rosen*, 569 P.2d at 795; *accord Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891, 896 (Alaska 2004) ("[T]his section was 'a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive." (quoting PACC at 1741)).

diminish future flexibility, result in piecemeal spending decisions rather than a comprehensive fiscal plan, and circumvent constitutional control of the state's purse strings. And although the superior court deemed forward appropriations necessary to effectuate the legislature's appropriation power, they are not: the legislature can provide just as much certainty for school districts by setting money aside in the next fiscal year for use the following year.

1. The "reach" of the constitutional provisions establishing the annual appropriation model extends to enactments that "undercut the policies underlying" them.

The constitutional provisions that govern the annual appropriation model must be construed broadly enough to avoid frustrating their underlying policies. The Court already takes this approach to interpreting the dedicated funds clause. It should apply the same approach to other elements of the annual appropriation model, including the fiscal year limitation of Article IX, § 12.[68]

This Court has recognized that "the reach of the dedicated funds clause might be extended to statutes that, while not directly violating the clause by dedicating revenues, in some other way undercut the policies underlying the clause."[69] That was the lesson of *Myers v. Alaska Housing Finance Authority*, where the Court considered whether the dedicated funds clause barred legislation authorizing: (1) sale of the right to receive

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[68] *See Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982) ("[T]he judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution . . . .").

[69] *Se. Alaska Conserv. Council v. State*, 202 P.3d 1162, 1170 (Alaska 2009).

periodic payments to the state pursuant to a legal settlement; and (2) appropriation of the proceeds of that sale to capital projects. After concluding that the dedicated funds clause applied to the settlement revenues, the Court was forced to weigh "competing constitutional values: the prohibition on dedicated funds and the legislative power to manage and appropriate the state's assets."[70] The Court decided that the settlement payments were more like an asset the state was free to sell than a source of revenue the state could not dedicate and so gave more weight to the legislative appropriation power in that instance.[71] But its reasoning shows that the dedicated funds clause reaches beyond strict dedications of revenue to enactments "contrary to the spirit of the clause."[72]

The Court took that kind of purpose-driven approach in *Sonneman v. Hickel*.[73] There the Court struck down a statute that did not limit the legislature's power to appropriate program receipts to any particular purpose but merely restricted an agency's power to request that these receipts be used for a particular purpose.[74] In other words, although the statute did not actually dedicate the revenue in question, the Court concluded it was unconstitutional because it interfered with the annual appropriation model.

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70 *Myers*, 68 P.3d at 391.

71 *Id.* at 392.

72 *Se. Alaska Conserv. Council*, 202 P.3d 1t 1170 (citing *Myers*, 68 P.3d at 394).

73 836 P.2d 936.

74 *Id.* at 940.

The other constitutional provisions governing the annual appropriation model—including Article IX, § 12's proviso that the budget and appropriations bill be "for the next fiscal year"—should be interpreted the same way. Each constitutional provision must be interpreted by reference to the "the entire constitutional framework."[75] In *Alaska Legislative Council v. Knowles*, this Court concluded it was necessary to interpret the term "appropriations" differently when used in different contexts so as to avoid "creat[ing] a host of problems in interpreting other articles of the Alaska Constitution."[76] Similar respect for the constitutional framework is needed here. The provisions that "together . . . govern" the appropriations process are closely intertwined.[77] The Court must apply the same purpose-driven approach to interpreting these provisions as it applies to the dedicated funds clause so as not to "undercut the policies underlying"[78] the entire model.

By failing to go beyond the constitutional text, the superior court failed to give proper effect to Article IX, § 12's proviso mandating a budget—and the corresponding appropriations—for "the next fiscal year."[79] True, the phrase does not explicitly forbid

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75 *Alaska Legislative Council v. Knowles*, 86 P.3d at 896.

76 *Id*.

77 *State v. Ketchikan Gateway Borough*, 366 P.3d at 101 ("Like the dedicated funds clause, the appropriations clause and the governor's veto clause both address how the State spend state revenue. Together the clauses govern the legislature's and the governor's 'joint responsibility . . . to determine the State's spending priorities on an annual basis.' " (quoting *Simpson v. Murkowski*, 129 P.3d at 447)).

78 *Se. Alaska Conserv. Council*, 202 P.3d at 1170.

79 Alaska Const. Art. IX, § 12.

appropriations for future fiscal years. Yet the constitutional framework it is a part of unquestionably requires that "the disposition of all revenues will be decided anew on an annual basis."[80] So whether it permits the legislature to enact appropriations beyond "the next fiscal year" depends on the degree to which doing so "undercut[s] the policies underlying" the annual appropriation model.[81]

2. Forward appropriations undercut the policies behind the annual appropriation model.

Interpreting the constitution to permit forward appropriations would create a "host of problems"[82] for the dedicated funds clause, budget clause, and veto clauses by undercutting three policies these constitutional provisions were designed to promote. Just as the Court has limited the scope of the governor's veto power to avoid "do[ing] violence to the checks and balances mechanism built into our constitutional form of state government,"[83] so should it limit the scope of the appropriations power to avoid doing violence to the annual appropriations model that is also embedded in Alaska's system of government.

First, forward appropriations, like dedications of revenue, hinder future legislatures' ability "to decide funding priorities annually on the merits of the various proposals presented."[84] When the legislature makes an appropriation that becomes

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80 *Sonneman*, 836 P.2d at 939.

81 *Se. Alaska Conserv. Council*, 202 P.3d at 1170.

82 *Knowles*, 86 P.3d at 896.

83 *Thomas v. Rosen*, 569 P.2d at 796-97.

84 *Sonneman*, 836 P.2d at 938-39.

effective after the end of the next fiscal year, it "set[s] aside" money from the balance of funds that would otherwise be freely available to a future legislature for spending according to its priorities.[85] This practice ties up future revenues—the precise evil the dedicated funds clause was designed to prevent. The dedicated funds clause prohibits dedicating a particular source of revenue to a particular purpose year after year; forward appropriations can be used to circumvent this rule by dedicating a particular amount from all revenue streams to a particular purpose, year after year.

With this practice, one legislature can put its thumb on the scales used by future legislatures to weigh the state's fiscal needs. While true that a future legislature may amend or reduce the appropriation—a point the superior court emphasized [Exc. 187]—this point overlooks a basic legislative axiom: it is much easier to block a proposal in the first place than to repeal or change it once it has been enacted. To block a proposed appropriation, only a majority in one house of the legislature—or the governor, exercising the veto power—need object. To reduce or repeal an appropriation that has already been enacted, a majority of both houses and the governor must all object to that spending. This dynamic is even more pronounced with appropriations than substantive legislation because of the governor's more powerful appropriation veto. To reduce or repeal an appropriation that has already been enacted by a previous legislature, both

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85 *See Hickel v. Cowper*, 874 P.2d at 932-33 ("An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more, for that object, and no other.").

houses of the legislature must not only agree, they must amass a three-quarter majority to overcome the veto of a resistant governor.[86]

This dynamic means that forward appropriations enacted by a previous legislature can powerfully distort spending decisions by successive legislatures. Normally, only those appropriations that are acceptable to a majority of each house of the legislature and the governor will be made. But if money has already been appropriated, it will be spent even if that spending is acceptable only to one house of the legislature or the governor (who could veto the legislature's attempt to reduce the appropriation). As a result, there will be less money available to spend on items that actually command majority support.

The size and complexity of the budget might mask the powerful effect of forward appropriations, but their distorting effect is easy to see from a 30,000-foot level. Consider a simplified picture of the state's budget. The state has $4 billion in revenues at its disposal annually, with four essential spending priorities: public safety, education, public health, and infrastructure. The Thirty-First legislature appropriates 50% of available funds for public safety for the next three fiscal years, leaving just half of the available funds to divide among public health, education, and infrastructure. After the Thirty-Second Legislature is elected, only ten members of the senate still favor spending 50% on public safety; no members of the house still do. Absent forward appropriations, spending 50% of the budget on public safety would never happen, and the other three areas of need would receive a higher share. But the forward appropriation allows this minority of

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86 *See* Alaska Const. Art. II, §16.

legislators to block any attempt to reduce the 50% appropriation for public safety, leaving less for everything else. In this way, one crop of legislators can use forward appropriations to enshrine its priorities long after the public no longer favors them.

Tilting the playing field for future appropriations decisions contravenes the Court's ruling in *Sonneman v. Hickel*.[87] The act challenged in *Sonneman* created a special account for depositing Alaska Marine Highway System (AMHS) revenues. The legislature could appropriate funds from the account back to AMHS, but the Department of Transportation & Public Facilities (DOTPF) was prohibited from requesting that funds from the account be appropriated for capital improvements.[88] The Court held that this restriction violated the dedicated funds clause because it thwarted the "annual appropriation model."[89] Although the act did not actually preclude AMHS revenues from being spent in particular ways, the restriction on DOTPF requesting funds for capital projects meant these proposals were not "in the same position" as all other proposals for spending state funds.[90] Tilting the playing field for or against specific expenditures undermines the framers' intent that the legislature will be free "to decide funding

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87 *Sonneman*, 836 P.2d at 937.

88 DOTPF could request the legislature appropriate money from the fund to AMHS for capital improvements only if: (1) the legislature had made an annual appropriation from the fund; (2) the fund exceeded a certain figure; and (3) the request for appropriations may not exceed a certain amount. *Sonneman*, 836 P.2d at 938.

89 *Id.* at 940.

90 *Id.* ("As the debates make clear, all departments were to be 'in the same position' as competitors for funds with the need to 'sell their viewpoint along with everyone else.' " (quoting 4 PACC at 2364-67 (Jan. 17, 1956)).

priorities annually on the merits of the various proposals presented."[91] But forward appropriations do just that. In fact they are worse than the purely executive restriction struck down in *Sonneman* because they place a "legal restraint on the appropriation power" of future legislatures.[92]

The superior court's suggestion that forward appropriations do not hinder future legislatures to a constitutionally significant degree is puzzling because the court appeared to recognize that forward appropriations are no easier to overcome than dedications of revenue. Even as the superior court downplayed the problem of forward appropriations by pointing to a future legislature's "power to amend or repeal the appropriations . . . with a simple majority vote in both houses," the court noted "this power is seemingly identical to the legislature's power to amend or repeal a prohibited dedication made in a previous year." [Exc. 187] Entirely true: a legislature can repeal a statutory dedication of revenue with a simple majority vote too, freeing up those revenues for appropriation to any purpose. Yet the framers knew it is not so easy to amend what has already been dedicated—in other words, to take away money that has already been promised. If predetermining how funds will be spent were so easy to fix, the framers would not have designed a constitutional provision banning the practice.

Yet if forward appropriations are permitted, a legislature can accomplish much of the mischief the framers tried to prevent. In *Wielechowski v. State*, this Court ruled that

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91 *Id.* at 938-39.

92 *Cf id.* at 939 (observing that act "impose[s] no legal restraint on the appropriation power of the legislature.").

the statute setting a formula for the annual payment of permanent fund dividends did not obligate the state to make this payment absent an appropriation each year.[93] The Court declined to "create an anti-dedication clause exception that would swallow the rule," holding instead that "the Permanent Fund dividend program must compete for annual legislative funding just as other state programs."[94] Interpreting the constitution to allow forward appropriations would create its own rule-swallowing exception. The legislature could appropriate funds for permanent fund dividends for each successive fiscal year for a decade or longer, and funding for dividends will no longer have to compete from "the same position" as other spending priorities.[95] Instead dividends will have a leg up over all other spending. That kind of system cannot be squared with the annual appropriations process the framers intended.

Second, forward appropriations represent the kind of piecemeal spending that the framers intended to prevent. The framers intended that appropriations be considered "in light of the total revenues and the total expenditures of the state, rather than in the hodgepodge fashion [of] the past"[96] and adopted the budget clause to prevent a "piecemeal" approach to spending.[97] By focusing the budget and appropriations process

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93 *Wielechowski v. State*, 403 P.3d 1141, 1152 (Alaska 2017).

94 *Id.* at 1141, 1152.

95 *Sonneman*, 836 P.2d at 940.

96 PACC at 1740.

97 Constitutional Studies, *supra* n.50, pt. IX at 26-27 ("The important objective is that of comprehensiveness or scope of the budget so that the financial plan of the state is not considered piecemeal. The legislature should be able to see at one time what the total financial needs and tax burden of the state are to be.").

on the "next fiscal year," the framers intended a "comprehensive" weighing of needs and resources: each spending proposal would be considered against all other proposals for the limited pot of money available. But with forward appropriations like HB 287, piecemeal spending is precisely the point. Education funding for FY 2020 was intentionally considered apart from all other spending proposals for FY 2020 funds so that proponents of education funding would *not* have to "sell their viewpoint along with everybody else"[98] in competing for the limited pot of money available in FY 2020. If the Court upholds the constitutionality of forward funding, then piecemeal spending may again become the norm. Legislatures will cordon off sums for politically popular programs and pet projects in future years without regard to other needs or the total amount of money at the state's disposal. The remaining proposals will be left to share what scraps remain in future fiscal years.

Third, forward funding allows the legislature to evade the constitution's structural check on spending: the line item veto. The superior court downplayed forward funding's interference with the veto power, reasoning that the governor in office when the appropriations were enacted had the opportunity to veto the appropriations that year. [R. 235] But this observation ignores what happens in the years that follow. Once the purse strings are loosened, they cannot be tightened again (unless the legislature wishes) for however many years the legislature has appropriated for—even if conditions change, even if Alaskans elect a new governor precisely to tighten the purse strings.

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98 *Sonneman*, 836 P.2d at 939.

And as with piecemeal spending, bypassing the constitution's strong "executive check" on spending[99] is precisely what makes forward appropriations attractive. HB 287 was enacted in the final year of the Thirtieth Legislature and of Governor Walker's first term. Rather than leave future appropriations to results of the democratic process, the legislature and then-governor Walker enacted those appropriations themselves in a way that prevented a future governor from setting the level of spending that he—and the voters who elected him—deemed best. If the Court upholds this practice, then it can be expected that future legislatures will use it to entrench their preferred levels of spending for ever longer periods of time.

The superior court's response to this problem was an attempt to arbitrarily limit its ruling to appropriations for just one future fiscal year. [Exc. 188] But neither constitutional text nor logic support this line in the sand. The line the constitution draws is "for the next fiscal year"[100]—a line that this Court has already recognized in endorsing an *annual* appropriation model in which "the disposition of all revenues will be decided *anew on an annual basis*."[101] If the Court decides that line is meaningless, there is no basis for drawing a line limiting the appropriations power to the next two or three fiscal years. Nor would that contrived limit meaningfully fix the problem. Thwarting the will of the voters for even a single year is profoundly antithetical to our system of government. And as recent COVID-19 pandemic has made terribly clear, last year's judgments about

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99 *Wielechowski v. State*, 366 P.3d at 102.

100 Alaska Const. Art. IX, § 12.

101 *Sonneman*, 836 P.2d at 939.

how money should be spent can quickly grow stale. HB 287 cannot be upheld just because it subverted constitutional design and thwarted the will of the voters for "only" a year.

3. The need for forward appropriations does not outweigh the constitutional policies of the annual appropriation model.

Preserving the legislature's power to manage and appropriate state assets does not require hollowing out the annual appropriations model. These two constitutional principles are not truly in tension here, despite the superior court's suggestion to the contrary. The superior court reasoned that this case is like *Myers v. Alaska Housing Finance Corp.*,[102] where this Court gave more weight to the legislature's "power to manage and appropriate the state's assets" than to the values behind the annual appropriation model. [R. 235-36] But unlike in *Myers*, upholding the values of the annual appropriations model here would not substantially diminish the legislature's institutional power. Rather, it would restore the intended balance of power between *this year's* legislature and governor and *future* legislatures and governors.

In *Myers* this Court considered whether the legislature had the power to take annual settlement payments the state was entitled to receive, sell them for present value, and appropriate the proceeds for spending on various capital projects.[103] The plaintiff challenged this legislation as an unconstitutional dedication of revenue. The Court reasoned that settlement proceeds were state revenues subject to the dedicated funds

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102 68 P.3d 386.

103 *Id.* at 388.

clause but the settlement itself was a "state asset, which the legislature is free to sell" and, "upon the sale, . . . appropriate the proceeds" notwithstanding the dedicated funds clause.[104]

The case forced the Court "to choose between competing constitutional values: the prohibition on dedicated funds and the legislative power to manage and appropriate the state's assets."[105] On the one hand, striking down the legislation would have substantially undermined the legislature's ability to dispose of state assets that also produce income streams, like land.[106] On the other, upholding the legislation could open the door to circumventing the anti-dedication principle by allowing the legislature to sell the rights to future revenue streams and then appropriate the proceeds for a single purpose. To make this difficult choice, the Court drew nuanced distinctions between the nature of the settlement proceeds and other revenue-producing assets.[107] And the Court suggested that in some instances, it might strike a different balance between the legislature's appropriation power and the values of the annual appropriation model.[108]

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104 *Id.* at 391-93.

105 *Id.* at 391.

106 *See id.* at 391 ("But Myers apparently does not dispute that the legislature has the power to sell a state asset like a building, and selling an income-producing asset could be viewed as inconsistent with the anti-dedication clause in the same ways as the sale of the tobacco settlement revenue stream.").

107 *Id.* at 392.

108 *Id.* at 393 (rejecting plaintiff's argument that Court's reasoning would permit legislature to sell right to future oil and gas royalties for a lump sum as "beyond the scope of this case").

Here the Court faces no tough choice between competing constitutional values. Ruling forward appropriations unconstitutional would not undermine the legislature's ability to fund education or to manage and appropriate the state's assets more generally. The legislature would still have the power to dedicate the same amounts of money to the same purposes—just not so far ahead of time. The legislature would be limited only in its ability to restrict the options of future legislatures and to bypass future line-item vetoes—powers inconsistent with the framers' design.

There are two problems with the argument, which the superior court apparently accepted, that the legislature needs forward appropriations to give school districts the "certainty" they need to plan their budgets. [Exc. 184, 187] First, forward appropriations cannot create certainty. They make it more likely that the school districts will receive a certain sum of money in future fiscal years than if the next legislature were working on a clean slate. But as the superior court (and the Council) emphasized below in arguing that this thumb on the scales is no big deal, the next legislature "certainly ha[s] the power to amend or repeal the appropriations at issue before their effective dates." [Exc. 187] In other words, forward appropriations load the dice: they make a certain outcome more likely, but they're no guarantee. Second, what limited certainty they do offer can be provided through other means. The legislature can do what it traditionally has done: appropriate money in the next fiscal year to spend in the following one.[109] Or, as the legislature aptly demonstrated in this most recent session, it can pass a budget well in

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109 *See supra* p. 6-7.

advance of the final day.[110] Either way, the legislature can use the money at its disposal, rather than tie the hands of its successors, to provide the certainty school districts need.

In fact, forward appropriations have little to recommend them, featuring many of the ills of dedicated revenues without the benefits. Like revenue dedications, forward appropriations not only hinder future legislatures from deciding spending priorities anew each year, they create an expectation in the public that funds will be spent a certain way. Yet unlike revenue dedication, forward appropriations do not entice the public to pitch in for that expense.[111] Instead, they are the worst possible combination from the framers' perspective: they bypass control of the purse strings and reduce the state's flexibility to spend according to the needs of the moment, yet do nothing to raise revenue. And just as the framers feared for revenue dedications, the practice of forward appropriation, once endorsed for one purpose, will be hard to limit.[112] Legislators will naturally want to give their priorities the best chance of continued funding going forward. If education can be

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110 Ch. 8, SLA 20 (enacted Apr. 6, 2020).

111 *Cf. State v. Alex*, 646 P.2d at 209 ("[O]ne of the key reasons for the popularity of dedicated taxes was that they reduced taxpayer resistance by guaranteeing that the tax would be used to benefit those who paid it.") (citing 3 Constitutional Studies pt. IX, at 27); PACC 2368 ("[T]he other argument that is often given is that it is easier to pass along for a new tax if you allow earmarking. An automobile driver is more willing to pay an extra gasoline tax if he thinks he is going to have better roads as a result.").

112 *See Sonneman*, 836 P.2d at 938 (quoting 6 PACC Appx. V at 111 (Dec. 16, 1955) ("But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.")).

forward funded, why not the university, permanent fund dividends, and construction projects too?

Given the scant benefits and significant evils of forward appropriations, the scales here tip in the opposite direction from those in *Myers*. Forward appropriations add little to the legitimate exercise of the Legislature's appropriations power because whatever benefits they bring can be obtained with other approaches. On the other side of the ledger, forward appropriations undermine the essential policies of the annual appropriations model: flexibility to meet the needs of the present, a comprehensive approach to appropriations, and structural controls on spending. The superior court's reliance on *Myers* to uphold HB 287 was error.

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For these reasons, HB 287's forward appropriation of fiscal year 2020 funds was unconstitutional. It allowed one crop of legislators to force future spending that probably would not have occurred had the will of the voters, through their elected representatives, been allowed to express itself on a clean slate. It dedicated a portion of fiscal year 2020 funds to one purpose without weighing the expenditure against other needs for those funds. And it bypassed the line item veto that Governor Dunleavy should have been able to use on fiscal year 2020 spending. None of this was necessary to provide whatever certainty HB 287 offered local school districts. The 2018 legislature could have appropriated the same amount to the public education fund in fiscal year 2019 so it would be available for spending in fiscal year 2020. But instead of spending the money at its

disposal, it decided to spend money that should have been at the disposal of the next legislature. Alaska's constitution does not permit this maneuver.

II. The public education clause of the Alaska Constitution does not permit forward appropriations.

Unconstitutional forward appropriations do not become constitutional when made for the purpose of funding public education. The superior court relied on the Alaska Constitution's public education clause[113] to uphold the forward appropriations in HB 287. [Exc. 187-88] Without explaining its reasoning in detail, the superior court concluded that the legislature's "specific prerogative and responsibility to maintain the Alaska public education system" "outweigh[s]" the "spirit" of the annual appropriation model. [Exc. 187] But nothing in the text, history, or decisions interpreting the public education clause suggests the legislature may bypass the normal rules governing appropriations—including the dictates of the annual appropriation model—when it appropriates state funds for public education.

The public education clause assigns the legislature the duty to "maintain" Alaska's system of public schools but says nothing about how the legislature is supposed to do so.[114] The clause does not mention appropriations, refer to the constitutional provisions relating to the appropriations process, or otherwise suggest that the legislature has more latitude to appropriate funds for public education than for any other public good.

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113 Alaska Const. Art. VII, § 1.

114 *Id.*

In fact, the framers rejected the notion that state funding of education would be governed by special rules. The constitutional studies prepared by the Public Administration Service, on which the delegates relied heavily in forming their proposals, discouraged special treatment of education funding:

> [A]rguments for separate and special treatment of education, or fisheries, or veterans, or any other function, subject, or group applies equally to all governmental responsibilities; and that the virtues of a constitution restricted to basic law and favoring no group or interest over any other are overwhelming and . . . the only wise and practical course.[115]

Notwithstanding this advice, some delegates presented a proposal giving funds appropriated for education "first priority on state funds after funds appropriated for the salaries of state officials."[116] But this proposal was not included in the committee proposals for finance[117] or for health, education, and welfare,[118] and nothing like it appears in the constitution. Confirming the lack of special priority or rules for education funding, Delegate Victor Fischer explained that although "education is an important field, I do not feel that when it comes to an appropriation of public funds it should receive any special, either more restrictive or more favored treatment."[119] And apart from a specific

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115 Constitutional Studies, *supra* n. 50, pt. VI at 12-13.

116 Del. Prop. 6, § 10 (Nov. 17, 1955) (contained in constitutional convention file 211).

117 Comm. Prop. 9 (Jan. 18, 1956) (contained in constitutional convention file 310.9).

118 Comm. Prop. 7 (Jan. 9, 1956) (contained in constitutional convention file 310.7).

119 PACC 1526 (Jan. 9, 1956).

restriction on using public funds for the benefit of private or religious schools,[120] the public education clause reflects this intent: funding for public schools is constitutionally mandated, but not entitled to special treatment.

The superior court gave great weight to the legislature's "specific prerogative and responsibility to maintain the Alaska public education system under the Public Education Clause," [R. 235] but funding for a governmental function is not exempt from the normal appropriation rules just because it is constitutionally required. In *State v. Alex*, the Court rejected the argument that the constitutional provisions giving the legislature special responsibility and power to manage the state's natural resources permitted an otherwise impermissible dedication of funds.[121] Article VIII imposes a duty on the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."[122] Fulfilling this duty requires funding.[123] Yet the Court concluded that "[n]othing contained in article VIII can be construed to grant the legislature the power to ignore other express constitutional limitations on its taxing power just because it is legislating in an area that concerns

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120 Alaska Const. Art. VII, § 1 ("No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.").

121 646 P.2d at 210-11.

122 Alaska Const. Art. VIII, § 2.

123 As just one example, managing replenishable resources "on the sustained yield principle," Alaska Const. Art. VIII, § 4, requires the legislature to fund an agency full of biologists, technicians, and other professionals to study and monitor the public's use of fish and game for sustainability.

natural resources."[124] The logic of *Alex* applies equally to Article VII: just because the legislature has a constitutional duty to fund public education does not mean the legislature can ignore the limitations on its appropriations power.[125]

The framers' decision to place the responsibility to fund public education on the legislature[126] does not excuse it from complying with the normal appropriation rules either. The superior court, citing a trio of decisions involving the public education clause—*Hootch v. Alaska State-Operated School System*,[127] *Macauley v. Hildebrand*,[128] and *State v. Ketchikan Gateway Borough*[129]—reasoned that the legislature "bears the sole responsibility and authority to maintain the public school system in Alaska" and then concluded this "prerogative" overrides whatever constitutional rules forward appropriations might break. [Exc. 182-83, 187] But nothing about these decisions

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124 *Alex*, 646 P.2d at 211.

125 Indeed there are many constitutional guarantees that require funding. *See, e.g.*, Art. I, § 11 (rights of the accused, including assistance of counsel); Art. I, § 12 (criminal administration must promote protection of the public and reformation of the offender); Art. I, § 18 (private property may not be taken or damaged for public use without just compensation); Art. II, § 7 (legislative salaries); Art. IV, § 1 (providing for the judiciary); Art. V, § 5 (providing for general elections); Art. XII, § 7 (accrued retirement benefits may not be diminished or impaired). Education is not entitled to first dibs, but must compete against these other functions on a level playing field. *See Sonneman*, 836 P.2d at 940.

126 *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 800 (Alaska 1975) (citing 5 PACC 331 (Jan. 27, 1956)).

127 536 P.2d 793.

128 490 P.2d 120 (Alaska 1971).

129 366 P.3d 86.

suggests an exception to the normal rules governing appropriations when the appropriations concern public schools.

The superior court seems to have been led astray by the Coalition's argument that the legislature has greater power when appropriating funds for education and that courts must give more deference to these appropriations. [Exc. 103-04] Neither point is true. For example, the Coalition relied on *Hootch* to argue that "problems related to public school financing are entitled to respect, so long as they are within the 'limits of rationality.' "[130] But *Hootch* did not concern appropriations for public education. It involved a claim that the public education clause gives each Alaskan student the right to attend secondary school in her community of residence, which the Court rejected.[131] The Court endorsed flexibility and deference towards "the manner of providing education"—not the manner of appropriating public funds to pay for it.[132]

The *Macauley* decision does not involve appropriations either.[133] Nor can it reasonably be read to suggest, as the Coalition did below, that the legislature's role providing for and maintaining a system of public education is so great vis-à-vis the executive branch that the normal appropriations rules should not apply. [Exc. 103-04] *Macauley* had nothing to do with the balance of legislative and executive power.[134]

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130 Exc. 105 (quoting *Hootch*, 536 P.2d at 803-04).

131 536 P.2d at 801-05.

132 *Id.* at 804.

133 *Macauley*, 491 P.2d at 121-22.

134 *Id.*

Instead it concerned a conflict between state and local law about school district accounting.[135] The Court concluded that state law prevailed because the public education clause prescribes "pervasive state authority in the field of education."[136] So when the Court stated that the constitutional grant of power to the legislature is "unqualified" and that "no other unit of government shares responsibility or authority," it meant that no unit of *local* government shares constitutional authority for public education.[137] It did not hold, as the Coalition argued and the superior court apparently believed, that the Public Education Clause augments the legislature's power to appropriate funds for public education at the expense of the executive's—or of the dictates of annual appropriation model.

The superior court's reliance on *State v. Ketchikan Gateway Borough* also missed the mark. The court latched onto the Court's observation that the framers "designed the constitution to be flexible so that the legislature could fill in the 'exact details [later].' "[138] [Exc. 187] That may be true as a general matter,[139] but on the subject of appropriations

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135 *Id.* at 121 ("The sole issue both at trial and on appeal can be simply stated: May a home rule borough require its school system to participate in centralized accounting without the statutorily required approval of the school board? We are thus presented with an issue as to the validity of a home rule borough ordinance which conflicts with a state statute.").

136 *Id.* at 122.

137 *Id.*

138 366 P.3d at 94-95.

139 The quoted language about the framers' intent to allow the legislature to fill in the "exact details" later pertained specifically to a discussion about the proposal on local government that became Article X. *Ketchikan Gateway Borough*, 366 P.3d at 94-95 (quoting 4 PACC 2647, 2650, 2654 (Jan. 19, 1956)).

the framers filled in key details themselves. And there is no support in the constitutional text or history for the notion that they intended to exempt appropriations for public education from this framework.

Nor does the broader holding of *Ketchikan Gateway Borough* suggest appropriations of state funds for public education are exempt from the annual appropriation model.[140] The Court upheld a narrow exception to the dedicated funds clause for *local contributions* to public school funding; it never suggested that all appropriations of *state monies* for public education are exempt. The case concerned whether the law mandating local governments contribute funds to cover part of the cost of their public schools is an unconstitutional dedication of revenues.[141] The Court ruled it is not because the framers specifically sought to exclude "contributions from local government units for state-local cooperative programs" from the reach of the dedicated funds clause.[142]

The Court's language and logic draw a clear line between local contributions, which are exempt from the dedicated funds clause, and state contributions, which are not. To be sure, the Court in some passages referred generally to the constitutionality of

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[140] The Legislative Council argued below that all appropriations for public education are exempt from the Dedicated Funds Clause, relying on the *Ketchikan Gateway Borough* decision. [Exc. 80] The superior court did not go so far, but ruled in a similar vein that appropriations for public education outweigh the "spirit" of the annual appropriation model. [Exc. 187]

[141] 366 P.3d at 88 (citing AS 14.12.020(c)).

[142] *Id.* at 93 (quoting Pub. Admin. Serv., Comments on Finance Committee Proposal at 1 (Jan. 4, 1956) (contained in constitutional convention folder 211)).

"state-local cooperative programs" and the "school funding formula."[143] But when the analysis gets down to brass tacks, it is clear the Court's ruling extends only to local monies, not state monies: "the required local contribution is not a 'state tax or license' within the meaning of the dedicated funds clause."[144]

The clearest indication the decision pertains to local education funds, not the state funds they supplement, lies in the Court's account of the constitutional convention proceedings. The Court focused on revisions to the initial draft of the dedicated funds clause, which at first prohibited dedication of "all revenues."[145] It was pointed out to the framers that this broad language might thwart key governmental functions by hindering the state's ability to set aside "certain moneys" like pension contributions, sinking fund receipts, and "contributions from local government units for state-local cooperative programs."[146] The framers were advised to revise the proposal so as to exempt dedications "where necessary to . . . maintain any individual or corporate or other local government equity therein."[147] The resulting version, which was ultimately adopted,

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143 *See, e.g., id.* at 87 ("And those proceedings also indicate that the delegates did not intend for state-local cooperative programs like the school funding formula to be included in the term 'state tax or license.' … We therefore hold that the existing funding formula does not violate the constitution . . . .").

144 *Id.* at 90; *accord id.* at 100 ("The minutes of the constitutional convention and the historical context of these proceedings reveal that the delegates did not intend for required local contributions to such programs to be included in the term 'state tax or license.' ").

145 *Id.* at 92.

146 *Id.* at 93 (quoting Pub. Admin. Serv. Comments at 1, *supra* n. 142).

147 Pub. Admin. Serv. Comments at 1-2, *supra* n. 142.

narrowed the anti-dedication rule to "the proceeds of any *state* tax or license"[148] so as to exempt local contributions from its reach.[149] The change made state-local cooperation possible by assuring localities that their contributions would be used to their benefit, rather than being available for appropriation to any purpose as the dedicated funds clause otherwise requires. The logic of preserving localities' claim on funds they raise does not apply to the proceeds of a "*state* tax or license," even if directed towards a cooperative state-local program.

Reading *Ketchikan Gateway Borough* to exempt state funds from the dedicated funds clause would have startling implications. The legislature could dedicate an existing source of revenue or a new tax exclusively to fund public education, notwithstanding the constitution's express prohibition against any new dedications not existing at the time of ratification.[150] And although the decision focused on state-local cooperative programs for education, its logic does not appear limited to education funding only. Education was not the only point of state-local cooperation the framers contemplated.[151] So if state revenues

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148 Alaska Const. Art. IX, § 7 (emphasis added).

149 *State v. Ketchikan Gateway Borough*, 366 P.3d at 93. The framers opted to narrow the phrase "all revenues" to "the proceeds of any state tax or license" rather than list the specific exceptions proposed by the Public Administration Service. *Id.* ("Delegate White explained that the amended language allowed these exceptions to continue: 'By going to the tax itself and saying that the tax shall not be earmarked, we eliminated [the need to make explicit] all seven of those exceptions.' " (quoting 4 PACC 2363)).

150 Alaska Const. Art. IX, § 7.

151 *State v. Ketchikan Gateway Borough*, 366 P.3d at 93-94 ("Existing cost-sharing programs between the Territory and local communities, *like that in education*, combined with increased local control over education *and other services* offered such incentives." (emphasis added)); *see also* PACC at 2650 ("[T]he benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will

were exempt whenever channeled through a cooperative state-local program, it would be easy to bypass the dedicated funds clause by establishing cooperative programs for all manner of governmental functions like public safety and transportation. Pairing a statutory dedication with a modest local contribution, one generation of lawmakers could tie up state revenues for years to come in precisely the way the framers opposed. Nothing in the *Ketchikan Gateway Borough* decision suggests the Court contemplated, let alone intended, such far-reaching consequences. Rather, the decision's exception to the dedicated funds clause pertains solely to *local* contributions to state-local cooperative programs.

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Appropriations of state funds for the purpose of "maintain[ing] a system of public schools open to all children of the State," though constitutionally required, are not governed by special rules. Instead the normal appropriations framework—which follows an annual appropriation model—applies to all appropriations, whatever their purpose. The superior court erred in relying on the public education clause to rule that HB 287 need not comply with the constitution's annual appropriation model.

CONCLUSION

For these reasons, the Court should vacate the judgment of the superior court and remand for entry of judgment in favor of the Governor.

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govern how far they go in organizing these boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule . . . ."); PACC at 2652 (suggesting legislature could create incentives for local policing).