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-19-00753CI

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

APPELLEE COALITION FOR EDUCATION EQUITY'S BRIEF

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Article II, § 1. Legislative Power; Membership

The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

Article II, § 13. Form of Bills

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Article II, § 15. Veto

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.

Article VII, § 1. Public Education

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

Article IX, § 6. Public Purpose

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

Article IX, § 7. Dedicated Funds

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. [Amended 1976]

Article IX, §12. Budget

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.

Article IX, § 13. Expenditures

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.

Article IX, § 16. Appropriation Limit

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects

of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury. [Amended 1982]

JURISDICTION

This is an appeal from the final judgment entered by the Alaska Superior Court, Judge Daniel Schally on December 9, 2019, and distributed on December 10, 2019. [Exc. 190–91] This Court has jurisdiction under AS 22.05.010 and Appellate Rule 202(a).

ISSUES PRESENTED

The Coalition for Education Equity adopts the Issues Presented set forth in the Alaska Legislative Council's Appellee's Brief.

INTRODUCTION

The Alaska Constitution vests the legislative branch with the power of appropriation and the obligation to maintain a system of public education open to all children of the State. Under this Court's precedents, the legislature enjoys broad discretion in carrying out these constitutional prerogatives. In this case, the legislature exercised that discretion to solve a crisis in public education funding that was destabilizing school districts, causing mass temporary layoffs, and making it difficult for schools to attract and retain quality teachers. The Governor disagreed with the legislature's approach to solving this unique problem, but his efforts to undo the legislature's work through the political process were unsuccessful. He now asks the Court to intervene by announcing a new constitutional rule that limits the legislature's appropriation power and authority to manage public education funding. The Court should decline the invitation.

The rule the Governor proposes – a categorical prohibition against forward appropriations – is not grounded in any express constitutional text. Instead, the Governor asks the Court to infer a categorical prohibition from some combination of the

Constitution's dedicated funds, budget, and veto clauses. Notably, however, the Governor does not contend that forward appropriations violate any one of these constitutional provisions standing alone. And for good reason. Forward appropriations easily pass constitutional muster under the analytical framework this Court has already adopted for evaluating challenges brought under these provisions. The Governor therefore steers a wide berth around these authorities, and advocates for a new test under which the dedicated funds, budget, and veto clauses collectively limit the legislature's appropriation power to a greater extent than any one of them does by itself. According to the Governor, whether a forward appropriation violates the Constitution depends on the degree to which such an appropriation undermines the "annual appropriation model" – in effect, a three-legged stool constructed out of "elements" of the dedicated funds, budget, and veto clauses.[1] In other words, even if a forward appropriation does not violate any of these constitutional provisions individually, the Court can nevertheless strike it down for being in tension with their collective spirit. This approach to constitutional interpretation is an invitation for courts to rewrite the text of the Constitution to reach a particular result. But this Court has recognized that its role is not to add missing terms to the Constitution or hypothesize differently worded provisions. That same recognition requires the rejection of the Governor's arguments here.

There is no dispute that the Alaska Constitution contemplates an annual budgeting process. But that much is unremarkable, and it does not resolve the constitutional questions

[1] Appellants' Br. at 26.

presented in this case. The fact that the Governor and legislature have various annual budgeting obligations does not mandate an inflexible and categorical constitutional prohibition against multi-year appropriations. There simply is no express or textual annual limitation on the legislature's appropriation power and authority. Nor can the structure of the Constitution support an annual appropriation limitation. The Governor's preferred fiscal policy of an annual appropriation model may be good politics but it is bad constitutional law and analysis. The legislature acted reasonably and within the core of its constitutional authority when it enacted appropriations to solve a budgeting problem unique to the state's public education system. The judgment of the Superior Court should be affirmed.

STATEMENT OF THE CASE

The Coalition for Education Equity adopts the Statement of the Case set forth in the Alaska Legislative Council's Appellee's Brief.

STANDARD OF REVIEW

This Court applies its independent judgment to constitutional issues, adopting "a reasonable and practical interpretation in accordance with common sense" based upon "the plain meaning and purpose of the provision and the intent of the framers."[2] Because deference to the framers' intent normally "requires adherence to the common

[2] *Alaska Wildlife All. v. Rue*, 948 P.2d 976, 979 (Alaska 1997); *see also Alaska Pub. Def. Agency v. Superior Court*, 450 P.3d 246, 251–52 (Alaska 2019); *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 370 (Alaska 2001).

understanding of words[,]"[3] the "analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself."[4] The Court is "not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result."[5] Nor will the Court "interpret existing constitutional language more broadly than intended by the framers or the voters."[6] Finally, legislative acts are presumed to be constitutional.[7] "The burden of showing unconstitutionality is on the party challenging the enactment; doubtful cases should be resolved in favor of constitutionality."[8]

ARGUMENT

The forward appropriations in HB 287 (Ch. 6, SLA 2018) must be upheld as a valid exercise of the legislature's constitutional authority. First, the Alaska Constitution vests both the power of appropriation and the authority to maintain the State's public education system squarely in the legislature. In enacting HB 287, the legislature acted well within its broad discretion under the appropriation and the education clauses, neither of which places a temporal limitation on these core legislative prerogatives.

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

4 *Id.* at 927.

5 *Id*. at 927–28.

6 *Id*. at 927.

7 *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 379 (Alaska 2001).

8 *Id*. *See also Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007) ("[A] party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies, and doubts are resolved in favor of constitutionality.") (internal quotation omitted).

Second, HB 287 is entitled to a presumption of constitutionality. That presumption is at its apex in the context of education funding, where legislative judgments are entitled to deference so long as they are "within the limits of rationality." The Governor has not overcome this presumption. He advocates for a new constitutional rule derived from "elements" of the budget, veto and dedicated funds clauses. But none of these clauses limits the legislature's appropriation power. The Governor therefore cannot make the requisite showing that HB 287 is "clearly unconstitutional."

I. HB 287 IS A VALID EXERCISE OF LEGISLATIVE POWER UNDER THE EDUCATION AND APPROPRIATION CLAUSES OF THE ALASKA CONSTITUTION

The education and appropriation clauses of the Alaska Constitution vest the authority to fund the State's public education system squarely in the legislature. Both clauses give the legislature broad discretion in carrying out its constitutional prerogatives. The appropriations in HB 287 fall within the core of this authority and should be upheld.

A. The Authority to Establish and Maintain the State's Public Education System is Vested in the Legislature

Public education occupies a unique position in Alaska's constitutional framework. Under Article VII, § 1 (the education clause), it is the only public service that the Constitution explicitly requires the State to provide to its citizens, and the only public service that Alaskan citizens have an express constitutional right to receive from their government. The education clause is also unique in that it vests the authority to manage a constitutionally mandated state program in the legislative branch, rather than the executive.

Both aspects of Alaska's public education system are important components of the framers' intentional design.

Prior to statehood, Alaska had two education systems.[9] The United States Bureau of Indian Affairs ("BIA") operated one system for Alaska Native students, and the territorial legislature and department of education operated another system for non-Natives and those Natives leading a "civilized life."[10] The framers of the Alaska Constitution were determined to end this dual system and establish a single, unified system for all of Alaska's children. It was with this fundamental purpose that the framers proposed Alaska's education clause, which was ultimately adopted as Article VII, § 1 of the Alaska Constitution. It provides in relevant part: "The legislature shall by general law establish and maintain a system of public schools open to all children of the State…."

It was not an historical accident that the framers vested responsibility for public education in the legislature. Earlier versions of the education clause would have simply vested that responsibility in "the state." For example, a draft proposed by the Committee on Preamble and Bill of Rights provided: "The *state* shall establish and maintain by general law a system of public schools which shall be open to all children of the state. …"[11] The founders ultimately changed "state" to "legislature" to clarify which branch of the

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9 *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 800 (Alaska 1975).

10 *Id*.

11 6 Proceedings of the Alaska Constitutional Convention, Appendix V, 68 (Committee Proposal No. 7, December 15, 1955) (emphasis added).

government would be primarily responsible for public education. As delegate James Hurley explained:

> The first change from the [original version] embodied the second word . . . which . . . said that the "state" shall do something and we have suggested that the term "legislature" be used in order to pinpoint it to a particular division of the state government. . . .[12]

In other words, the legislature's leading role in public education was part of the founders' deliberate constitutional design. As this Court has recognized: "[The education clause] not only requires that the legislature 'establish' a school system, but also gives to that body the continuing obligation to 'maintain' the system…. [T]he provision is unqualified; no other unit of government shares responsibility or authority."[13]

This Court has interpreted the education clause on a number of occasions since statehood. Two critical propositions emerge from these decisions. First, as just explained, the education clause vests the legislature with primary responsibility and authority over the public school system in Alaska. Second, this Court affords the legislature significant flexibility in carrying out this constitutional mandate so that it can address the complex and evolving challenges of maintaining a state-wide school system. Discussing the education clause in *Ketchikan Gateway Borough*, the Court noted:

> [The delegates] designed the constitution to be flexible so that the legislature could fill in the "exact details [later]." Though the delegates sought to limit certain powers and to avoid certain pitfalls, they did not intend to compel the

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[12] 5 Proceedings of the Alaska Constitutional Convention 331 (January 27, 1956), quoted in *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 801 n.26 (Alaska 1975).

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

> State to unravel existing programs nor did they intend to prevent the State from experimenting and adapting to changing circumstances.[14]

And in *Hootch v. Alaska State-Operated School System*, the Supreme Court explicitly recognized that the legislature's efforts to address problems related to public school financing are entitled to respect as long as they are within the "limits of rationality."

> The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them, and that, within the limits of rationality, the legislature's efforts to tackle the problems should be entitled to respect.[15]

The legislature passed HB 287 in furtherance of its obligations under the education clause to provide schools across the State with a measure of budget certainty and to put an end to a disturbing cycle of mass lay-offs and re-hirings. Under this Court's precedents, the Constitution afforded the legislature with the flexibility to tackle this complex problem through reasonable means, and the methods employed are entitled to respect.

The Governor asserts that the constitutional flexibility this Court afforded to the legislature in *Ketchikan Gateway Borough* does not apply to appropriations because, according to the Governor, "on the subject of appropriations the framers filled in key details themselves."[16] But the Governor's primary argument in this case dispels this contention. The categorical rule against forward appropriations the Governor advocates for would

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14 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 94–95 (Alaska 2016).

15 *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803–04 (Alaska 1975) (internal citations and quotations omitted) (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 42 (1973)).

16 Appellants' Br. at 44–45.

certainly qualify as a "key detail" on the subject of appropriations. Yet, the Governor is asking the Court to fill that detail in because the framers did not fill it in themselves.

The Governor also suggests that forward appropriations are not necessary because the legislature had other means at its disposal to provide school districts with budgeting certainty.[17] For example, the Governor suggests that the legislature could appropriate next fiscal-year revenues for future use, or it can pass its budget early in the year.[18] But when the legislature acts within the core of its authority under the appropriation and education clauses, the "necessity" of a particular enactment is not the measure of its constitutionality. Appropriations are not subject to strict scrutiny. The fact that there may be more than one way to address a problem does not suggest that the method the legislature has chosen is unconstitutional. To the contrary, this Court has specifically recognized that there will be "more than one constitutional method" of solving complex public education funding problems.[19] And this Court is not "inclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes unless they are clearly in violation of the Constitution."[20]

The legislature enacted HB 287 in furtherance of its authority under the education clause to address a complex problem specific to public school budgeting. The means it

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17 *See id*. at 36.

18 *Id*.

19 *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803–04 (Alaska 1975).

20 *Dearmond v. Alaska State Dev. Corp*., 376 P.2d 717, 724-25 (Alaska 1962).

selected were reasonable and are therefore entitled to respect, even if the Governor or the Court would have selected other means.

B. The Power of Appropriation Also Belongs to the Legislature

The legislative power of the State, including the power to appropriate, is also vested in the legislature.[21] As with its education clause powers, the legislature has broad discretion in exercising this constitutional prerogative. In view of these broad Article II powers, this Court has recognized that "[t]he legislature chooses the means to effect a public purpose in the exercise of a broad discretion[.]"[22] Accordingly, this Court is not "inclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes unless they are clearly in violation of the Constitution."[23]

By contrast, the Governor holds "no appropriation power" at all.[24] Instead, the Constitution provides only an obligation to propose a budget and a check on the legislature's power through the line-item veto.[25] As explained more fully in Sections II.B and II.C *infra*, the Governor's power with respect to appropriations is derivative of the

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21 Alaska Const. art. II, § 1 ("The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty."); *id.*, art. II, § 13 (addressing the appropriation power); *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001) (recognizing that the Alaska Constitution "gives the legislature the power to legislate and appropriate"); *State v. Fairbanks N. Star Borough*, 736 P.2d 1140, 1142–43 (Alaska 1987) (recognizing appropriation power resides in the legislature and cannot be delegated to the executive).

22 *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 552 (Alaska 1966).

23 *Dearmond*, 376 P.2d at 724–25.

24 *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 372 (Alaska 2001) ("But this control gives the governor no appropriation power.").

25 *Id*.

legislative power. The constitutional text therefore establishes the outer limits of the Governor's authority in that arena. As a consequence, that authority cannot be interpreted to diminish the legislative prerogative beyond what constitutional text expressly provides.

The Constitution establishes only three limits on the legislature's appropriation power: (1) the legislature may only appropriate funds for a "public purpose";[26] (2) appropriation bills must be confined to appropriations and cannot include substantive legislation;[27] and (3) the legislature cannot appropriate more than $2.5 billion annually, adjusted for inflation, subject to certain exceptions.[28] None of these limitations supports the newly-minted temporal limitation that the Governor asks the Court to adopt.

Article IX, section 6 of the Alaska Constitution provides that "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall public credit be used, except for a public purpose." This Court has held that "whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case."[29] Courts generally defer to the legislature's public purpose findings, unless they are arbitrary or have no reasonable factual basis:

> In determining the question presented this court adopts for its guidance the general rule, supported by the great weight of authority, that where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, this court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact.[30]

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26 Alaska Const. art. IX, § 6.

27 *Id*., art. II, § 13.

28 *Id*., art. IX, § 16.

29 *Dearmond v. Alaska State Dev. Corp.*, 376 P.2d 717, 721 (Alaska 1962).

30 *Id*.

There is no contention in this case the appropriations in HB 287 lack a public purpose. And HB 287 easily clears this hurdle. It funds public education and provides budgeting certainty for school districts, both of which are quintessential public purposes. As Rep. Paul Seaton explained in sponsoring HB 287:

> The bill is intended to pass separately from the regular operating budget and early in the session to enable school districts to avoid mandatory teacher layoff notices. Many lawmakers agree that education funding cannot withstand further cuts without negatively affecting Alaskan children. An early, separate appropriation for education that has existing funding identified would prevent these problems and will allow school districts to finalize their budgets on time.
>
> Even after the budget has passed the legislature, line item veto or veto reductions can be made by the Governor. In 2015, the Legislature needed to come back in special session to pass a second operating budget that included education funding. In 2016, the state operating budget was passed by the legislature on May 31. Last session, the state operating budget did not pass the legislature until June 22 and was signed by the Governor on July 31. All this uncertainty for the funding amount forces school districts to draft multiple budgets. The Anchorage School District is required to submit their budget to the Municipality by the first Monday in March. Anticipating low amounts requires districts to give termination notices (pink slips) to tenured teaches by May 15 and non-tenured teaches by the last day of school.
>
> Education is one of the highest priority programs for the state, and educators are shaping future generations. HB 287 reflects the importance of education to our state.[31]

The "public purpose" requirement of Article IX, section 6 is also important to this case for another reason. It provides a safeguard against arbitrary appropriations by requiring the legislature to have a reasonable factual basis for determining that its spending

[31] Rep. Paul Seaton, Sponsor Statement for HB 287, *available at* http://www.akleg.gov/basis/get_documents.asp?session=30&docid=54508.

decisions will serve a public purpose. The Governor is therefore wrong when he asserts that nothing will prevent the legislature from forward funding select programs or even the entire government years into the future if the Court does not adopt a categorical rule that prohibits all forward appropriations *ab initio*. A legislature that gets too far out over its skis would likely lack a reasonable factual basis for appropriating years into the future and would be subject to challenge under Article IX, section 6. Whether or not such appropriations were arbitrary and lacking a reasonable basis in fact would then depend on "the particular facts and circumstances"[32] of the case. Unlike the Governor's proposed categorical rule against forward appropriations, the limitations inherent in Article IX, section 6 are (i) consistent with the legislature's broad discretion to legislate and appropriate, and (ii) do not require the Court to piece together a new constitutional rule from "elements" of the Constitution that do not apply to the legislature. In this case, the single-year forward appropriation in HB 287 easily withstands "public purpose" scrutiny. Specifically, HB 287 funded public education a single year into the future based on an existing statutory formula that already established school districts' level of need. Under the particular facts and circumstances of this case, the legislature had a reasonable basis in fact to determine that the forward appropriations in HB 287 would serve a public purpose, and its funding decision was not arbitrary.[33]

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32 *Dearmond*, 376 P.2d at 721.

33 Indeed, forward appropriations are an eminently rational way to remedy the unique funding problems they were designed to address. Their use in the federal government's budgetary processes have a long and uncontroversial history. *See* United States General Accounting Office, *Terms Used in the Budgetary Process* (July 1977) (defining "advance appropriation" as "an appropriation provided by the congress for use in a fiscal year, or

Finally, this case does not implicate either of the remaining express limitations on the legislature's appropriation power: the confinement clause and the budget cap. Accordingly, for all of the foregoing reasons, HB 287 should be upheld as a valid exercise of legislative authority under the education and appropriation clauses of the Alaska Constitution.

II. THE GOVERNOR CANNOT OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY

Like all enacted laws, the appropriations at issue in this case are presumptively valid and constitutional.[34] The Governor bears the burden of convincing this court otherwise.[35]

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more, beyond the fiscal year for which the appropriation act is passed") (available at https://www.gao.gov/assets/190/180148.pdf); Congressional Research Service, *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations* (June 10, 2019) (available at https://fas.org/sgp/crs/misc/R43482.pdf); Congressional Research Service, *Department of Education Funding: Key Concepts and FAQ* (Feb. 19, 2019) (available at https://fas.org/sgp/crs/misc/R44477.pdf).

[34] *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90–91 (Alaska 2016) ("We presume statutes to be constitutional; the party challenging the statute bears the burden of showing otherwise."); *Harris v. Millennium Hotel*, 330 P.3d 330, 332 (Alaska 2014) ("Statutes are presumed to be constitutional, and the person challenging a statute's constitutionality has the burden of showing that the statute is unconstitutional."); *Fraternal Order of Eagles v. City & Borough of Juneau*, 254 P.3d 348, 352 (Alaska 2011) ("We have made clear that '[a] duly enacted law or rule, including a municipal ordinance, is presumed to be constitutional' and that '[c]ourts should construe enactments to avoid a finding of unconstitutionality to the extent possible.'"); *Brandon v. Corrections Corp. of America*, 28 P.3d 269, 275 (Alaska 2001) ("When a constitutional challenge to a statute is raised, the party bringing the challenge must demonstrate the constitutional violation; constitutionality is presumed, and doubts are resolved in favor of constitutionality.").

[35] *Baxley v. State*, 958 P.2d 422, 428 (Alaska 1998) ("A party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies, and doubts are resolved in favor of constitutionality.").

In other words, he must establish that the appropriations in HB 287 are "clearly in violation of the constitution."[36] Any doubts must be resolved in favor of constitutionality.[37]

This is not a vanishing presumption. Even "considerable doubt" about the constitutionality of a legislative enactment is an insufficient basis for striking it down. Justice Winfree's concurring opinion in *Ketchikan Gateway Borough* is instructive on this point. Despite harboring doubts about the constitutionality of Alaska's public school funding formula, and detailing those doubts in a thorough concurrence, Justice Winfree joined the majority and upheld the statute against a constitutional challenge because he could not conclude that the presumption had been overcome:

> Statutes are presumed to be constitutional, and the party challenging a statute's constitutionality has the burden of persuasion; doubts are resolved in favor of constitutionality. Although I have considerable doubt about the constitutionality of the statutorily required local contribution (RLC) public schools funding component, I cannot conclude that the presumption has been overcome in this case. I therefore agree that the superior court's primary decision—that the RLC is an unconstitutional dedicated tax—should be vacated. But I do not rule out an ultimate conclusion that the RLC is unconstitutional, as a dedicated tax or otherwise, and therefore do not join the court's analysis or decision on this point.[38]

In addition, the presumption of constitutionality should be at its strongest in the context of legislation that appropriates public education funding. This is so for several reasons. First, the responsibility for establishing and maintaining Alaska's public schools rests squarely with the legislature. Appropriation power similarly rests with the

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36 *Dearmond v. Alaska State Dev. Corp.*, 376 P.2d 717, 721 (Alaska 1962).

37 *Id*.

38 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 102 (Alaska 2016) (Winfree, J., concurring) (internal footnotes omitted).

legislature.[39] Because the legislature is acting within the core of its constitutional authority when it appropriates public school funding, judicial inquiry into the propriety of its funding decisions is correspondingly limited.[40] By contrast, the executive branch's authority over both public education and legislative appropriations is circumscribed and limited. The governor may propose, veto or reduce appropriations before they become law, and nothing more.[41] After funds have been appropriated, the Governor has no constitutional authority to withhold them, and must instead faithfully execute the legislature's directives.[42] The Governor's authority is therefore diminished in the context of public education funding.

Second, as noted above, this Court has held that the legislature has considerable flexibility under the education clause to address the complex and evolving challenges of maintaining a state-wide school system. The Constitution affords the legislature room to "experiment[ ] and adapt[ ] to changing circumstances" in order to meet its obligations under the education clause.[43] When it does so, the legislature's judgments are "entitled to respect" as long as they are within the "limits of rationality."[44]

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39 Alaska Const. art. IX, § 3.

40 *Cf. Wauchope v. U.S. Dep't of State*, 756 F. Supp. 1277, 1282 (N.D. Cal. 1991) (noting that where Congress legislates in areas where legislative power is at its zenith, "Congressional plenary power in these areas limits the scope of judicial inquiry into the propriety of such legislation") (citing *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)).

41 Alaska Const. art. II, § 15.

42 *Id*., art. III, § 16.

43 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 94–95 (Alaska 2016).

44 *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803–04 (Alaska 1975) (internal citations and quotations omitted) (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 42 (1973)).

The Governor has not overcome the presumption of constitutionality in this case. His contention that forward appropriations are facially and categorically unconstitutional does not rest on a "clear violation" of any constitutional provision, but on a newly conceived rule stitched together from "elements" of the dedicated funds, budget, and veto clauses. But for the reasons explained below, none of these clauses prohibits forward appropriations or ties the legislature's hands in the way the Governor advocates. They therefore do not provide a basis for striking down HB 287.

The Governor will likely respond that the Coalition's argument focuses too narrowly on these clauses in isolation, and that they must be read in concert because it is the constitutional design as a whole that matters. But it is one thing to "interpret each constitutional provision…by reference to 'the entire constitutional framework,'" as the Governor asks the Court to do here.[45] It is quite another to write a categorical prohibition into the Constitution based *only* on the constitutional framework and not any particular constitutional provision. Even after evaluating the "entire constitutional framework," the Governor's answer to the question "which constitutional provision does HB 287 violate?" is still "none."

A. HB 287 Does Not Violate the Dedicated Funds Clause

The first "element" of the Governor's proposed rule against forward appropriations consists of the policy values animating the dedicated funds clause.[46] To be clear, the

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[45] Appellants' Br. at p. 25 (quoting *Alaska Legislative Council v. Knowles*, 86 P.3d 891, 896 (Alaska 2004)).

[46] Appellants' Br. at 15.

Governor has not asked this Court to hold that forward appropriations violate the dedicated funds clause itself.[47] Instead, the Governor contends that the policies *underlying* the dedicated funds clause comprise one element of an "annual appropriations model," and it is the "annual appropriations model" that strictly forbids multiple-year appropriations.[48] In other words, the Court can rely on the dedicated funds clause (and, more importantly, favorable language from this Court's dedicated funds clause cases) to strike down HB 287 even if forward appropriations do not amount to a prohibited dedication. The Court should reject this "heads I win, tails you lose" argument. A statute either violates the dedicated funds clause or it does not. If it does not (as the Governor apparently concedes with respect to HB 287), the policies *underlying* Article IX, section 7 do not become severable and provide an alternative and independent basis for invalidating the law.

Forward appropriations do not violate the letter or the spirit of the dedicated funds clause because the appropriations are not tied to any particular source of state revenue. Article IX, section 7 provides that "[t]he proceeds of any state tax or license shall not be dedicated to any special purpose[.]"[49] A prohibited dedication therefore has two components: (i) a specific source of state revenue; and (ii) the dedication of that revenue stream to a specific purpose. As the State argued to this Court in *Ketchikan Gateway*, "a

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47 *Id*. at 1 (issues presented). At oral argument in the Superior Court, the Governor specifically disclaimed the argument that forward appropriations violate the dedicated funds clause, stating "The Governor's position here is not that this appropriation violates the dedicated funds clause. The dedicated funds clause applies to a particular tax."

48 *Id*. at 15 ("The first element of the annual appropriation model is the rule that all funds be available each year for appropriation to any purpose.").

49 Alaska Const. Art. IX, § 7.

dedicated funds problem exists only when both parts of the constitutional prohibition are satisfied: there must be a specific incoming source of revenue and a specific outgoing dedication to a particular purpose."[50] While this Court has interpreted the phrase "proceeds of any tax or license" to mean all sources of state revenue,[51] a law impermissibly dedicates funds only if it requires *specific* revenues or receipts to be spent on *specific* purposes, *i.e.* when it "effectively eliminates…a source of revenue previously available to future legislatures."[52]

Consistent with these principles, every dedicated funds decision issued by this Court has considered whether a *specific stream of future revenue* has been impermissibly set aside, *i.e.* whether the "proceeds of any state tax or license" have been dedicated to a particular purpose.[53] For example, in *State v. Alex*, 646 P.2d 203 (Alaska 1982), the specific stream of revenue was a mandatory tax on the sale of salmon, the proceeds of which were to be allocated to regional associations for enhancement of salmon production. In *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992), the specific stream of revenue consisted of Alaska Marine Highway System receipts, which were to be deposited into a special account within the general fund. In *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (Alaska 2016), the specific stream of revenue under consideration was the required local

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50 Brief of Appellants State of Alaska; Michael Hanley, Commissioner of Alaska Department of Education and Early Development, in his official capacity, Appellants/Cross Appellees, v. Ketchikan Gateway Borough; et al., Appellees/Cross-Appellants, 2015 WL 4498941 *34 (Alaska 2015).

51 *State v. Alex*, 646 P.2d 203, 209 (Alaska 1982).

52 *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391 (Alaska 2003).

53 Alaska Const. art. IX, § 7.

contribution of cities and the borough towards public education, which the Supreme Court concluded did not constitute the "proceeds of any state tax or license." *Id*. at 91. In *Wielechowski v. State*, 403 P.3d 1141 (Alaska 2017), the specific stream of revenue at issue was investment income from the Permanent Fund. *Id*. at 1143. In *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1164 (Alaska 2009), the specific stream of revenue was the "net proceeds from the University's sale or use" of roughly 250,000 acres of state land. In *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1153 (Alaska 1991), the specific revenue stream was the proceeds of a "motel and hotel bed tax." And in *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 387 (Alaska 2003), the specific revenue stream consisted of annual payments from a tobacco settlement fund.

The common question in all of these cases is whether *a specific source of state revenue* had been dedicated in violation of Article IX, section 7. That is the required analysis because, as this Court has noted, a legislative enactment "cannot implicate the prohibitions of section 7" if the act "does not dedicate any state *revenue* to any particular fund."[54] This analysis is consistent with the framers' intent that the dedication clause "apply to the allocation of particular taxes to a particular purpose ***and no more than that***."[55]

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[54] *Hickel v. Cowper*, 874 P.2d 922, 927 n.8 (Alaska 1994) (emphasis added).

[55] 4 PACC 2405 (Jan. 17, 1956) (emphasis added). *See also* 4 PACC 2969 (Jan. 24, 1956) ("[W]hat we are trying to get at is the allocation or dedication or earmarking of the proceeds of a particular tax to a particular purpose."); *id*. at 2971 ("A 'dedicated' revenue, for instance, is the idea that tobacco taxes are used for school construction or maintenance. That is a 'dedicated' revenue right from the time it is collected. It can't be used for anything else.").

Unlike the statutory schemes that have run afoul of the dedicated funds clause in the past, the forward appropriations at issue in this case have only one part—a requirement that the State make payments from the general fund to meet its future education funding obligations.[56] The appropriations in HB287 do not meet the criteria for a dedication because they are not tied to any tax or revenue source, and do not "eliminate…a source of revenue previously available to future legislatures." There is no specific revenue stream being dedicated to public education or any other special purpose. There is instead a future financial obligation that the legislature has committed the State to fulfilling. But simply having a future financial obligation is not the same as having a dedicated funds problem. The State has a myriad of financial obligations that extend into the future.[57] None of these

[56] *See Alex*, 646 P.2d at 207 (royalty assessment on sale of salmon dedicated to aquaculture associations); *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1170 (Alaska 2009) (grant of state land to University of Alaska with revenues from the land dedicated to the university). Moreover, even those precedents where no violation of the dedicated funds clause was found involved a two-part scheme: Alaska Marine Highway revenues were held not to be dedicated to fund the system, because "[t]he act clearly states that the fund is part of the general fund and it may not be spent until and unless it is appropriated by the legislature." *Sonneman v. Hickel*, 836 P.2d 936, 939 (Alaska 1992). Similarly, the sale of the future proceeds of the tobacco settlement to the Alaska Housing Finance Corporation and the dedication of the sale proceeds to rural school improvements was held not to violate the anti-dedication clause because the tobacco settlement was not a traditional source of revenue and the future proceeds could constitutionally be reduced to present value, sold and the money appropriated for rural schools. *Myers*, 68 P.3d at 392.

[57] *See, e.g.*, AS 47.25.455(a) ("The department shall pay at least $280 a month to a person eligible for assistance under this chapter..."); AS 39.20.110-39.20.130 (state employees entitled to per diem and/or a mileage allowance when traveling for official business); AS 39.20.360 (unpaid state employee compensation owed to named beneficiary of deceased state employee); AS 39.27.011 (classified and partially exempt employees entitled to compensation according to salary schedule).

obligations presents a dedicated funds problem because the legislature has not pre-pledged money from a particular source of revenue to satisfy them.

It is true, as the Governor points out, that this Court has "suggest[ed] 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."[58] But the cases the Governor cites for this proposition, *Myers* and *Se. Alaska Conserv. Council (SEACC)*, both involved statutes that set aside specific state assets to fund particular programs. In *Myers*, the state liquidated a tobacco settlement and appropriated the proceeds to fund capital projects. And in *SEACC*, a statute authorized the University of Alaska to select a quarter million acres of state land, and to use future proceeds from that land to fund the university system. When the Court observed that the dedicated funds clause might be extended to statutes that do not "directly violat[e] the clause by dedicating revenues," it was considering the dedication of state assets that did not fit neatly into the category of "[t]he proceeds of any state tax or license."[59] But this Court has never suggested, much less held, that the reach of the dedicated funds clause might extend to a mere appropriation from the general fund that is not tied to any particular state asset or source of revenue. Nor has this Court suggested that the *policies* underlying the dedicated funds clause might extend to invalidate a statute that does not violate the

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[58] Appellants' Br. at 23 (quoting *Se. Alaska Conserv. Council v. State*, 202 P.3d 1162 1170 (Alaska 2009)).

[59] Alaska Const. art. IX, § 7.

clause itself. The Governor's expansive reading of *Myers* and *SEACC* is therefore misplaced.

The Governor's reliance on *Myers* and *SEACC* is also puzzling, because the Governor is not actually asking the Court to "extend the reach of the dedicated fund clause" to reach HB 287. He concedes there is no dedicated funds clause violation. What the Governor is really asking the Court to do is extend the reach of its dedicated funds clause *precedents* to strike down an appropriation that admittedly does *not* violate Article IX, section 7. Even if the Court is inclined to entertain this unconventional approach to constitutional analysis, the Governor's argument must still be rejected. This Court has held that the legislature has the power to act within its constitutional authority even if its actions "may conflict with the purposes of the anti-dedication clause."[60] In *Myers v. Alaska Housing Finance Corp*., the Court held that a court must "choose between competing constitutional values" in cases where "the anti-dedication clause clashes with the legislature's appropriation power."[61] The competing constitutional values in *Myers* were "the prohibition on dedicated funds and the legislative power to manage and appropriate the state's assets."[62] Weighing these values, the Court held that incidental conflict with the purposes of the anti-dedication clause did not render the legislature's action invalid in light of the legislature's core responsibility to manage state assets. The balance of values is tilted even more heavily in favor of the legislature in this case. The legislature passed

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60 *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391 (Alaska 2003).

61 *Id*. at 391, 394.

62 *Id*. at 391.

HB 287 not only pursuant to its authority to manage and appropriate state assets, but also pursuant the unique mandates and obligations of the education clause. These are weightier interests than those at stake in *Myers*. And any conflict with the anti-dedication clause is more attenuated. In *Myers*, the Court was confronted with legislation that "effectively eliminate[d]…a source of revenue previously available to future legislatures."[63] There is no such conflict in this case. No revenue source is dedicated to or encumbered by the forward appropriations in HB 287, just as no revenue source is dedicated to any other financial obligation the State has in future years. Accordingly, even if there is some arguable conflict between forward appropriations for public education and the purposes of the anti-dedication clause, the balance of constitutional interests weighs decidedly in the legislature's favor.

B. HB 287 Does Not Violate the Budget Clause

The second "element" of the Governor's proposed rule against forward appropriations is the budget clause's requirement that the Governor prepare a "comprehensive plan for the next fiscal year."[64] But the budget clause cannot be interpreted to limit the legislature's appropriation power because it does not impose any obligations on the legislature.

Article IX, section 12 provides that:

> 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,

63 *Id*.

64 Appellants' Br. at 16.

> 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.

With the exception requiring the legislature to set a time "fixed by law" for the Governor to submit his budget, this clause does not govern legislative conduct at all. The budget clause imposes obligations on the Governor alone. And these obligations clearly do not bind the legislature.

The Governor contends that, because he is required to submit a budget for "the next fiscal year," the legislature cannot appropriate beyond that. But the legislature is not limited to any extent by the proposals contained in the Governor's budget. It has the constitutional discretion to appropriate funds the Governor did not request, to decline appropriations the Governor asked for, or to disregard the Governor's proposed budget altogether.

The Governor urges the Court to go beyond the plain meaning of the budget clause and extend its reach to impose additional limitations on the legislative appropriation power. Doing so would run afoul of the separation of powers. The Governor's role in the budgeting process is derivative of the legislative appropriation power. As explained more fully below in the context of the veto clause, this means that Article IX, section 12 must be strictly construed as "delineat[ing] the full extent of the constitution's express grant" to the executive branch of its role in the appropriations process.[65] In other words, the budget clause cannot be interpreted to encroach on legislative prerogatives beyond what the text

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[65] *Bradner v. Hammond*, 553 P.2d 1, 7 (Alaska 1976).

of that provision actually says. And the budget clause says nothing about what appropriations are or are not constitutionally permissible. Accordingly, the Governor's argument that the obligations the budget clause imposes on *him* should be interpreted to restrict the legislature must be rejected.

C. HB 287 Does Not Violate the Veto Clause or the Separation of Powers Doctrine

The third and final "element" of the Governor's proposed rule against forward appropriations is the Governor's appropriation veto power.[66] But there is no dispute that HB 287 was subject to executive veto. And like the Governor's budget clause argument, his argument for a more expansive interpretation of the veto power runs headlong into this Court's separation of powers jurisprudence and must be rejected.

The veto clause provides in relevant part that "[t]he governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills."[67] The Governor contends that this clause requires that he have an opportunity to veto any appropriations made for expenditures during his tenure in office. This interpretation is wrong for a number of reasons. First, the veto clause says nothing of the kind. It requires only that the governor in office at the time an appropriation is passed have an opportunity to reduce or veto the expenditure. There is no question that happened here. Governor Walker signed HB 287 into law on May 4, 2018. It therefore did not impermissibly bypass executive veto.

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66 Appellants' Br. at 21.

67 Alaska Const. art. II, § 15.

Second, the Governor's veto clause argument requires the Court to ascribe conflicting meanings to veto powers set forth in the first and second sentences of Article IX, when there is no textual basis for doing so. The Governor's authority to strike or reduce items in appropriation bills parallels his authority to "veto bills passed by the legislature." But for any individual governor, that authority is necessarily limited to bills passed by the legislature while he is in office. Obviously, the Governor has no constitutional authority to exercise veto power over legislation passed into law by his predecessors.

Third, the Governor's argument ignores the fact that every governor is required to faithfully execute appropriation bills signed into law by their predecessors. Alaskan governors are sworn in in the middle of the fiscal year, and are required to operate a government funded by appropriation bills they had no opportunity to veto. So even as a practical matter, the argument that a governor has veto authority over all expenditures while he is in office is simply incorrect.

Finally, the Governor's contention that forward appropriations impermissibly bypass the executive veto power ignores the separation of powers analysis established in this Court's prior decisions. This Court adopted an analytical framework for separation of powers disputes in *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976). In that case, Governor Hammond refused to comply with a law that required him to submit subcabinet officials and division heads for legislative confirmation. The Governor contended that the legislature's confirmation power under Article III, section 25 was limited to approving "the

head of each principle department," and that requiring confirmation of lower officials intruded on his appointment powers.[68]

The Court analyzed the dispute under the separation of powers doctrine. It held that the "threshold question" in separation of powers cases is whether the governmental power at issue "is a legislative or executive function."[69] The Court concluded that the appointment power was an executive function, that legislative confirmation was "a delegated function taken from an executive function, [and that] …the breadth of this delegated authority must be strictly construed."[70] Accordingly, the Court held that Article III, section 25 set the ceiling, rather than the floor, of the legislature's confirmation power, and that the express provisions of that section:

> embody[ ] not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers.[71]

In the present case, the analysis is the same but the polarity is reversed. The appropriation power and the obligation to fund Alaska's public education system are core legislative functions.[72] The Governor's veto power under Article II, section 15 is quite

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68 *Bradner v. Hammond*, 553 P.2d 1, 1 (Alaska 1976).

69 *Id*. at 6 (Alaska 1976) ("In determining if Chapter 82 violates the doctrine of separation of powers, which is implicit in Alaska's constitution, it is necessary to answer the threshold question whether the appointment of executive officers is a legislative or executive function.").

70 *Id*. at 4.

71 *Id*. at 7.

72 *See Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001) (noting that the Alaska Constitution "gives the legislature the power to legislate and appropriate");

clearly a "delegated function" taken from these legislative functions—the veto power is set forth in Article II of the Constitution, which establishes the legislative powers of state government. And this Court has recognized that "[h]owever the item veto power is characterized…it was intended only to limit the legislature's appropriation power, not to grant the executive a quasi-legislative appropriation power."[73]

Because the Governor's item veto power (like his authority under the budget clause) is derivative of a core legislative function, *Bradner* directs that "the breadth of this delegated authority must be strictly construed."[74] The express and unambiguous language of Article II, section 15 must be interpreted as "embodying not only the maximum parameters of the delegation" of the legislative appropriation power, but also as "delineat[ing] the full extent of the constitution's express grant"[75] to the executive branch of checks on the legislature's power to appropriate state funds in furtherance of its public education obligations. In sum, the Governor's veto power is no greater than what is provided by the express language of Article II, section 15 — he may veto or reduce items in appropriations bills passed while he is in office and nothing more.

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see also Alaska Const. art. IX, § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law."); *id.* at art. VII, § 1 ("The legislature shall by general law establish and maintain a system of public schools open to all children of the State….").

73 *Knowles*, 21 P.3d at 372.

74 *Bradner*, 553 P.2d at 4.

75 *Id*. at 7.

The Governor's argument ignores this analysis. He describes his appropriations veto power as "substantial" and "strong."[76] And that may be true. But his veto power is nevertheless a delegated legislative function and, under *Bradner*, must be narrowly construed according to its express constitutional terms. However "substantial" that power is, it is completely circumscribed by the express language of the Constitution. In other words, the veto clause "delineates the full extent" of the Governor's veto power. It cannot be interpreted to grant powers beyond those expressly given, or to add limitations to the legislature's appropriation power that are not provided in the text of the Constitution. The Constitution does impose express limitations on the legislature's appropriation power. But the temporal limitation the Governor proposes is not among them, and this Court is not "vested with the authority to add missing terms [to the Constitution] or hypothesize differently worded provisions in order to reach a particular result."[77] This is especially so where the Governor asks the Court to add missing terms by broadly construing his delegated legislative powers, in violation of the analysis required by *Bradner*. The forward appropriations in HB 287 were subject to executive veto by the Governor in office when it was passed. That is all the Constitution requires.

Even if the Governor's power is not strictly construed, it cannot reasonably be interpreted to contain an implicit prohibition against forward appropriation. For example, the Governor argues that the three-fourths majority required to override appropriation

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[76] Appellants' Br. at 21–22.

[77] *Hickel v. Cowper*, 874 P.2d 922, 927–28 (Alaska 1994).

vetoes under Article II, section 16 demonstrates his "strong control on the purse strings," and supports placing a temporal limitation on appropriation bills.[78] But Article II, section 16 also imposes a three-fourths requirement for overriding ***revenue*** bill vetoes.[79] Yet, there is no plausible argument that the Constitution limits the legislature's ability to pass multi-year revenue bills. The Court can no more infer a temporal limitation for appropriation bills under Article II, section 16 than it can infer such a limitation for revenue bills.

The Governor also suggests that if the forward appropriations in HB 287 are constitutional, then there is no meaningful limit to the legislature's forward funding power. But this is not so. As explained above, the legislature that attempted to future fund state government for an extended time frame would be acting without sufficient facts, funding information, or information about future needs to have any kind of rational basis for its appropriations. In that case, forward appropriations could be challenged as arbitrary and without a reasonable factual basis under the "public purpose" requirement of the appropriations clause. In addition, both the legislature and the Governor are politically accountable. An engaged electorate would serve as a check on the incompetence or abuse of power by either or both branches, or more generally, by the political parties represented in office. In the absence of an express or implied prohibition, the Constitution entrusts these disputes to the democratic process. Appropriations are no exception.

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[78] Appellants' Br. at 22.

[79] Alaska Const. art. II, § 16 ("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.").

For all of the foregoing reasons, the Governor's reliance on the executive veto power to impose a temporal limitation on legislative appropriations is misplaced. The veto power is a delegated legislative function and must be strictly construed according to the express language of the constitutional grant. It cannot serve as a basis for grafting new and unexpressed limitations onto the legislature's appropriation power. In this case, HB 287 was fully consistent with the legislature's appropriation power and properly subject to gubernatorial veto, which is all that the Constitution requires.

III. CONCLUSION

For all of the foregoing reasons, the judgment of the Superior Court should be affirmed.

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