

IN THE DARK: STATE V. ALASKA LEGISLATIVE COUNCIL AND PUBLIC-SCHOOL FUNDING IN THE FACE OF THE DEDICATED FUNDS CLAUSE

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ABSTRACT

In the past several years, Alaska has faced many challenges in its public education system. These challenges gave rise to an intense political debate, significant new legislation, and a protracted battle over the future of funding for public education. Governor Mike Dunleavy and the state legislature publicly clashed over the implementation of H.B. 287, a 2018 state law designed to provide financial stability to ailing schools and curtail teacher layoffs. In 2022, the Supreme Court of Alaska resolved the dispute in favor of the governor and found a contentious piece of state legislation unconstitutional under the states "Dedicated Funds Clause." This Note examines the Court's decision in State v. Alaska Legislative Council, considers the underlying constitutional issues in the case, and explores the implications of the ruling. In particular, this Note argues that the Court incorrectly decided the case on multiple grounds – misinterpreting the plain text of the relevant constitutional provisions, the framers' intent, and the court's own precedent in a decision that will exacerbate existing troubles with public education in the state. The proper interpretation of the Dedicated Funds Clause matters for legislators, government agencies, teachers, parents, and children in Alaska going forward.

I. INTRODUCTION

Like most things in Alaska, the state's education system looks a little

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different from the rest of the country. Few school districts in the Lower Forty-Eight provide advice for prospective teachers on commuting via snowmobile, boat, and “air taxi,” or recommend bringing rifles and shotguns for recreation.¹ But with unique circumstances come unique challenges. Especially in the wake of the Covid-19 pandemic, education in Alaska faces many.

In *State v. Alaska Legislative Council*,² the Supreme Court of Alaska dealt a decisive blow to legislative efforts to lighten the financial anxiety faced by school districts in the state. *State v. Alaska Legislative Council* settled a years-long conflict between the Alaska State Legislature and Governor Mike Dunleavy over a scheme of forward funding education passed in 2018 for the fiscal years 2019 and 2020.³ The scheme, passed as H.B. 287 prior to Dunleavy taking office, was meant to create stability for school districts and reduce the number of teacher layoffs.⁴ After taking office, Governor Dunleavy refused to distribute funds according to the law, citing its purported violation of the state constitution, leading the legislature to sue to compel action.⁵ The case rose to the Supreme Court of Alaska where, siding with the governor, the court found the scheme to be an unconstitutional appropriation of funds.⁶

This Note discusses the outcome of *State v. Alaska Legislative Council* along with its future implications. The case was incorrectly decided on multiple grounds—misinterpreting the plain text of the relevant constitutional provisions, the framers’ intent, and the court’s own precedent in a decision that will exacerbate existing troubles with public education in the state.⁷ This Note starts with an overview of public education in Alaska and follows with a summary of the Dedicated Funds Clause,⁸ the constitutional provision at the heart of the case. Next, it provides a synopsis of the case. Finally, this Note concludes by discussing the errors in the court’s reasoning and considers how the case may alter Alaskan state government and politics moving forward.

1. *Teaching in Alaska*, SW. REGION SCHOOLS, <https://www.swrsd.org/domain/60> (last visited Apr. 28, 2023).

2. 515 P.3d 117 (Alaska 2022).

3. James Brooks, *Alaska Supreme Court rules against forward funding for education, confirms limit on legislative power*, ANCHORAGE DAILY NEWS (Aug. 13, 2022), <https://www.adn.com/politics/2022/08/13/alaska-supreme-court-rules-against-forward-funding-for-education-confirms-limit-on-legislative-power/>.

4. *HB 287 Eliminates Uncertainty For School Districts And Prevents Unnecessary Teacher Layoffs*, ALASKA HOUSE COAL. (Feb. 7, 2018), <https://akhouse.org/2018/02/07/hb-287-eliminates-uncertainty-for-school-districts-and-prevents-unnecessary-teacher-layoffs/>.

5. Brooks, *supra* note 3.

6. *Alaska Legislative Council*, 515 P.3d at 119.

7. See discussion *infra* Sections V, VI.

8. ALASKA CONST. art. IX, § 7.

A. The Current State of Alaska Public Education

Alaska finds itself in a unique position in the public-school landscape in the United States. There are over 130,000 students enrolled in the Alaska public school system in fifty-three separate districts,⁹ making it the state with the fifth smallest public-school enrollment in the country.¹⁰ As of 2019, the state's per-pupil spending was the sixth highest in the nation, totaling over \$18,000—nearly 40% higher than the national average.¹¹ Alaska's education outcomes, however, do not match the state's per-pupil expenditures. In the 2022 National Assessment of Education Progress, Alaska's fourth graders ranked 49th nationwide in reading, falling fifteen months behind the national average.¹²

While Alaska is spending more than nearly the entire nation on education per-pupil, state-specific factors keep these funds from reaching the classrooms.¹³ When adjusted for the high cost of living in Alaska, per-pupil spending actually falls two percent *below* the national average.¹⁴ Alaska's geography, both physical and human, poses significant constraints on the education system. Two examples show how education spending in Alaska falls through the cracks before reaching students. First, because the state funds schools in any community with more than ten students, twenty percent of schools in the state enroll under fifty total students.¹⁵ Small schools are expensive, as they "have small class sizes, and do not benefit from economies of scale in capital and labor costs."¹⁶ Second, energy costs in Alaska are disproportionately larger than the rest

9. Data Center, ALASKA DEP'T OF ED. & EARLY DEV. (Oct. 1, 2022), <https://education.alaska.gov/data-center> (follow "Statistics & Reports" hyperlink; then follow "Enrollment Totals (as of October 1 of each year)" hyperlink; select "2022-2023" under "District Enrollment Totals for all Alaskan Public School Districts" field and then select "Go" hyperlink).

10. Digest of Education Statistics, *Enrollment in Public Elementary and Secondary Schools, by Region, State, and Jurisdiction: Selected Years, Fall 1990 through Fall 2023*, NATIONAL CENTER FOR EDUCATION STATISTICS (2022), https://nces.ed.gov/programs/digest/d13/tables/dt13_203.20.asp.

11. Sarah Montalbano, *Alaska's Public Education Revenues, Expenditures, and Outcomes*, ALASKA POL'Y F. (June 2, 2022), <https://alaskapolicyforum.org/2022/06/alaskas-public-education-revenues-expenditures-and-outcomes/>.

12. Quinn Townsend, *Policy Brief: 15 Months Behind in Reading Proficiency*, ALASKA POL'Y F. (Jan. 30, 2023), <https://alaskapolicyforum.org/2023/01/policy-brief-15-months-behind-in-reading-proficiency/>.

13. DeFeo et. al., *How much does Alaska Spend on K-12 Education?*, UAA INST. OF SOC. AND ECON. RSCH. (Sep. 30, 2019), <https://scholarworks.alaska.edu/handle/11122/11102>.

14. *Id.* at 2.

15. *Id.* at 4.

16. *Id.*

of the country, and increase with the remoteness of a given community.¹⁷ Simply keeping the heat on in Alaska schools demands an outsized portion of district budgets as compared to the rest of the country.¹⁸

Current trends in Alaska do not point to these concerns lessening any time soon. The state legislature has increased per-pupil funding by only half a percent since 2017.¹⁹ During the same period, Alaska's consumer price index rose by 15.4 percent, meaning "virtually the same level of funding [in 2017] is worth significantly less [today]."²⁰

High overhead costs are compounded with another problem uniquely exacerbated in Alaska: teacher turnover.²¹ Annual statewide turnover between 2013 and 2017 stood at a consistent twenty-two percent,²² above the typical national average of sixteen percent.²³ Not only does high turnover hurt educational outcomes, it also costs the state a significant amount of money.²⁴ Every teacher that leaves the state costs \$20,431.08 in separation, recruitment, hiring and training.²⁵ In fact, between 2008 and 2012, teacher attrition cost the state \$20 million annually.²⁶ With school budgets in crisis, districts are faced with cutting teacher salaries, laying teachers off, or in the most drastic cases, closing schools.²⁷ A "fiscal cliff" is on the horizon for Alaska public schools,

17. ALASKA ENERGY AUTH., ALASKA AFFORDABLE ENERGY STRATEGY 8, 11 (2017), <https://www.denali.gov/wp-content/uploads/2018/10/Alaska-Affordable-Energy-Strategy.pdf>.

18. DeFeo et. al., *supra* note 13, at 4.

19. Sean Maguire, 'Slow Strangulation': Alaska School Districts Face Fiscal Cliff with High Inflation and Flat Funding, ANCHORAGE DAILY NEWS (Oct. 14, 2022), <https://www.adn.com/alaska-news/education/2022/10/14/slow-strangulation-alaska-school-districts-face-fiscal-cliff-with-high-inflation-and-flat-funding/>.

20. *Id.*

21. Drew Godsell, *Teacher Turnover in Alaska: Causes and Solutions*, ALASKA POL'Y F. (Sep. 20, 2021), <https://alaskapolicyforum.org/2021/09/teacher-turnover-in-alaska-causes-and-solutions/>.

22. CANO ET. AL., REG'L EDUC. LAB'Y NW., EDUCATOR RETENTION AND TURNOVER UNDER THE MIDNIGHT SUN 9 (2019), <https://files.eric.ed.gov/fulltext/ED598351.pdf>.

23. Mark C. Perna, *Flexibility or Else: Teacher Retention in the Brave New World of Education*, FORBES (July 12, 2022), <https://www.forbes.com/sites/markcperna/2022/07/12/flexibility-or-else-teacher-retention-in-the-brave-new-world-of-education/?sh=436c81f911a9>.

24. Godsell, *supra* note 21.

25. DEFEO ET. AL., UAA CTR. FOR ALASKA EDUC. POL'Y RSCH., THE COST OF TEACHER TURNOVER IN ALASKA 2 (2017), <https://scholarworks.alaska.edu/bitstream/handle/11122/7815/2017CostTeacher.pdf?sequence=1&-isAllowed=y>. (Such costs have likely risen given recent spikes in inflation).

26. *Id.*

27. See Maguire, *supra* note 19 (noting the fiscal cliff in the state poses critical concerns for district funding).

leaving administrators, teachers, and parents scrambling to ensure that schools in the state remain open and functioning.²⁸

B. The Public School Funding Process in Alaska

Funding for public schools in Alaska is similarly unique. Alaska has one of the highest percentages of revenues coming from federal sources in the nation.²⁹ Further, what funding is not provided by the federal government comes from state, rather than local, sources.³⁰ The amount of state aid determined for individual schools is in accordance with the school's "basic need," minus a required local contribution and ninety percent of eligible federal aid.³¹ "Basic need" is determined through a student-based formula known as District Adjusted Average Daily Membership ("ADM").³² ADM accounts for school size, a district cost factor, special needs funding, vocational and technical funding, intensive services, and correspondence programs (distance learning).³³

The result of the ADM calculation is multiplied by the Base Student Allocation—\$5,930 in 2023—to determine the basic funding need of the school.³⁴ The required local contribution is then subtracted from the basic funding need.³⁵ Since a locality's required contribution is relatively small, districts may contribute more than required, but only to a maximum local contribution, calculated as the required contribution plus twenty-three percent of basic need and floor state funding based on ADM.³⁶ In total, state sources account for sixty-three percent of total education revenues (approximately \$1.6 billion), as compared to twenty-two percent and

28. *Id.*

29. Montalbano, *supra* note 11.

30. *Making the Most of Your First Term, Introduction to School Finance*, ASSC'N OF ALASKA SCH. BOARDS, <https://aasb.org/school-finance/> (last visited Feb. 18, 2023).

31. ALASKA STAT. § 14.17.410(1) (2022).

32. *Id.*; ALASKA DEP'T OF EDUC. & EARLY DEV., PUBLIC SCHOOL FUNDING PROGRAM OVERVIEW 3, 5 (2022), https://education.alaska.gov/SchoolFinance/docs/ADA%20Funding%20Program%20Overview%202023_eff1-2022.pdf.

33. ALASKA DEP'T OF EDUC. & EARLY DEV., *supra* note 32, at 3.

34. *Id.* at 5.

35. *Id.* at 6. The required local contribution is a 2.65 mill tax levy on real and personal property in the district, which may not exceed forty-five percent of the district's overall basic need. *Id.* A "mill" is a unit of expression in property taxation. One mill is equal to one dollar per \$1,000 of assessed value. Thus, 2.65 mill is \$2.65 per \$1,000 of value, or 0.265%. *See, e.g.,* Brian Beers, *Mill Levy*, INVESTOPEDIA (Sep. 24, 2020), <https://www.investopedia.com/terms/m/mill-levy.asp>.

36. ALASKA DEP'T OF EDUC. & EARLY DEV., *supra* note 33, at 6.

fifteen percent attributable to local and federal sources, respectively.³⁷

II. A HISTORY OF PUBLIC EDUCATION IN ALASKA

A. Pre-Statehood

Public schooling in Alaska traces to the First Organic Act of Alaska, creating the District of Alaska in 1884.³⁸ The Organic Act spawned the position of the Governor, the District Court and Attorney, and, notably, public schools.³⁹ It tasked the United States Secretary of the Interior with the provision of schools for children in the territory, beginning a period of high federal involvement in local education.⁴⁰ Federal oversight persisted until 1905 with the passage of the Nelson Act.⁴¹ It delegated incorporated towns the power—and ultimate responsibility—to provide “suitable schoolhouses, and to maintain public schools therein and to provide the necessary funds for the schools”⁴²

Under the Nelson Act, the federal government retained agency over education of Alaskan Native children.⁴³ Thus began a “Dual System” period of schooling continuing through the first half of the 20th century. Schools in incorporated towns, predominantly white, were run by the territory and later state, and schools in remote or rural areas, predominantly Alaska Native, were run by the federal government.⁴⁴ Although the Johnson O’Malley Act of 1934 authorized federal funds to pay for Native education in state-run schools, Alaska did not enter contracts to do so until the 1950s.⁴⁵ As a result, leading up to statehood, education in Alaska was largely split on racial lines, with funding sources following suit.

37. Montalbano, *supra* note 11.

38. Act of May 17, 1884, ch. 53, 23 Stat. 24 (1884).

39. *Id.* at § 13.

40. *Id.*

41. Act of Jan. 27, 1905, ch. 277, 33 Stat. 616 (1905).

42. *Id.* at § 4.

43. “[T]he schools specified and provided for in this Act shall be devoted to the education of white children and mixed blood who lead a civilized life. The education of the Eskimos and Indians in the district of Alaska shall remain under the direction and control of the Secretary of the Interior” *Id.* at § 7.

44. Carol Barnhardt, *A HISTORY OF SCHOOLING FOR ALASKA NATIVE PEOPLE*, 40 J. OF AM. INDIAN EDUC. at 11 (2001).

45. Sasha Jones & Elizabeth Rich, *Alaska: A Brief History of the State and Its Schools*, EDUC. WEEK (July 19, 2019), <https://www.edweek.org/leadership/alaska-a-brief-history-of-the-state-and-its-schools/2019/07>.

B. Education and the Alaska State Constitution

In 1955, when Alaska entered statehood, 55 delegates met to draft the state's constitution.⁴⁶ Cognizant that a unified school system was necessary for the new state, framers grappled with how to move forward from the dual-system.⁴⁷ The convention settled on what would become the Education Clause of the state constitution.⁴⁸ The clause in relevant part states, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State . . ."⁴⁹

Although abolishing Alaska's dual education system, the Education Clause contains no language regarding uniformity in quality of the schools. Despite its absence, the framers would have been aware of such a clause—many states across the country include similar language in their constitutions.⁵⁰ Nonetheless, in the landmark 1975 case *Hootch v. Alaska State-Operated School System*,⁵¹ the Alaska Supreme Court ruled that the sole requirement of the clause was to create non-segregated schools and nothing more.⁵² Prior to *Hootch*, the Alaska Department of Education did not establish public secondary schools in many rural, primarily Native Alaskan communities, including those of the twenty-eight original plaintiffs.⁵³ Instead, students were given the opportunity to attend boarding schools at the expense of the state.⁵⁴ Appellants argued that the Education Clause created the right to attend secondary schools in their communities of residence.⁵⁵ Since boarding school attendance was conditioned upon "liv[ing] in dormitories or board with strangers in an alien environment hundreds of miles from home," the schools attended by these children could not be considered "open" under the clause.⁵⁶ The

46. Erin McKinstry, *Alaska's Constitutional Convention Question, Explained*, ALASKA PUB. MEDIA (Sep. 28, 2022), <https://alaskapublic.org/2022/09/28/alaskas-constitutional-convention-question-explained/>.

47. ALASKA CONST. CONVENTION, PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSAL NO. 7 (1955).

48. ALASKA CONST. art. VII, § 1. For a thorough discussion of the Education Clause, and how it might apply to *State v. Alaska Legislative Council*, see Sarah Laws, *The Alaskan Variable: A Call for Education Clause Analysis in School Funding Cases*, 37 ALASKA L. REV. 87 (2020).

49. ALASKA CONST. art. VII, § 1.

50. See, e.g., IND. CONST. art. 8, § 1; N.C. CONST. art. IX, § 2; WISC. CONST. art. X, § 3.

51. 536 P.2d 793 (Alaska 1975).

52. *Id.*

53. *Id.* at 796.

54. *Id.*

55. *Id.* at 797.

56. *Id.* at 799.

court disagreed.⁵⁷ The court noted the absence of a uniformity requirement in the Education Clause, reasoning that “open to all” was instead the operative language of the provision.⁵⁸ Thus, following *Hootch*, absent a valid equal protection claim, there was no right for a student to attend a secondary school in their community of residence.⁵⁹

The *Hootch* court noted, however, that while the constitution did not require uniformity of schools, the political branches could address the problems raised by the appellants.⁶⁰ Following the court’s recommendation, the Department of Education agreed to settle all similar future claims with what became known as the Tobeluk Consent Decree.⁶¹ Under the decree, the state agreed to establish high school programs across the state in communities with ten or more students, but maintained that there was no constitutional requirement to do so.⁶² While the Tobeluk Consent Decree has greatly improved education for Alaska Natives and others in remote communities, it exemplifies the delicate balance between the state and local communities when it comes to education.

C. School Funding in the Alaska Court System

Given the unique state and local partnership of public education in Alaska, several cases have made their way through the state’s court system. A number of these cases have particularly focused on school funding. The cases below, while focusing on different constitutional claims, have the same undercurrent—a state struggling to balance equitable funding to ensure quality education for its students.

1. *Matanuska-Susitna Borough School District v. State*

In *Matanuska-Susitna Borough School District v. State*,⁶³ the Matanuska-Susitna Borough, its school district, taxpayers, and parents sued the state alleging that the state’s treatment of certain rural school districts violated the state constitution’s equal protection guarantees.⁶⁴ The crux of the case centered on the state’s different treatment of Regional Educational Attendance Areas (REAAAs)—funded almost entirely by the state—and city and borough school districts—which required more

57. *Id.* at 801–05.

58. *Id.* at 801.

59. *Id.* at 805.

60. *Id.* at 803–04.

61. Tobeluk v. Lind, *the Settlement of the Molly Hootch Lawsuit*, ALASKA STATE ARCHIVES (Sep. 3, 1976), www.alaskool.org/native_ed/law/tobeluk.html.

62. *Id.*

63. 931 P.2d 391, 394 (Alaska 1997).

64. *Id.*

substantial local contribution.⁶⁵ The petitioners challenged two school funding statutes,⁶⁶ one concerning state aid for costs of school construction debt, and one concerning local contribution requirements when districts receive state aid for operating costs.⁶⁷

In Alaska, each city and borough is organized into individual school districts, and the land outside of organized boroughs—the “unorganized borough”—is divided into separate REAAs.⁶⁸ Under the first statute challenged, city and borough school districts were eligible for state reimbursement to “retire the indebtedness they incur for school construction,” up to 70% of the costs.⁶⁹ REAAs were not eligible for reimbursement.⁷⁰ The second challenged statute provided state aid to REAAs for construction costs, so long as REAAs contributed 2% of costs.⁷¹ A similar state aid program was not available for city and borough districts.⁷²

The court held that the legislature’s strong interest in “ensuring an equitable level of educational opportunity across the state” outweighed the taxpayer’s claim, and therefore did not rise to an equal protection violation.⁷³ Under the Alaska Constitution, REAAs are unable to levy taxes, unlike cities and boroughs.⁷⁴ Thus, the “statutory treatment of municipal districts and REAAs is warranted based on the constitutional differences between these two entities.”⁷⁵ The Court reasoned “the legislature had to find some means of accommodating the fact that REAAs cannot raise taxes on their own,” and that their chosen strategy was well within their broad discretion to provide schooling.⁷⁶ *Matanuska-Susitna Borough School District* stands as a key example of the comprehensive authority of the Alaska legislature under the Education Clause.

65. *Id.* at 394.

66. ALASKA STAT. § 14.11.100(a) (1997); ALASKA STAT. § 14.17.025 (1997) (repealed 1998).

67. *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 395.

68. ALASKA STAT. § 14.12.010 (2022).

69. *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 395.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 400.

74. ALASKA CONST. art. X, § 2.

75. *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 399 (quoting Brief for Appellee at 30, *Mantanuska-Susitna Borough Sch. Dist.*, 931 P.2d 391 (Alaska 1997) (No. S-05513), 1995 WL 17814249).

76. *Id.* at 399.

2. *Moore v. Alaska*

School funding disputes resurfaced in *Moore v. Alaska*.⁷⁷ Parents and three rural school districts alleged that inadequate rural school funding constituted a violation of the Education Clause.⁷⁸ Specifically, they alleged that

[t]hough the state has spent many years defining educational adequacy, identifying the necessary components of educational adequacy, and developing objective criteria for measuring educational adequacy, it has failed to fund the very educational adequacy so defined, identified and measured. It has failed to maintain a system of education and to keep a system open to all, all in violation of [the Education Clause].⁷⁹

The Superior Court read the Education Clause expansively. It held that there must be “rational educational standards that set out what it is that children should be expected to learn,” and that there must be “adequate funding so as to accord to schools the ability to provide instruction in the standards.”⁸⁰ Alluding to the legislature’s broad discretion to meet the Education Clause’s constitutional requirements, the court cautioned that there was no “silver bullet” in education.⁸¹ It held that while the legislature had a constitutional duty to provide adequate educational funding, it enjoyed a wide latitude with regards to the means of upholding that duty.⁸²

The court concluded that the districts themselves, not the state, bore the ultimate responsibility to ensure adequate student performance, unless “generations of children within a district are failing to achieve proficiency.”⁸³ In its findings of fact, the court noted that the plaintiff school districts consistently scored lower in reading, writing, math, and the high school exit exam as compared to state averages.⁸⁴ Even still, the districts’ revenue per student was \$10,000 greater than that of the Anchorage and Fairbanks school districts, the two largest in the state.⁸⁵ The court reasoned that the state primarily served as a funder of schools and held only minimal authority to control how the school districts spent

77. 2007 WL 8310251 (Alaska Super. Ct. 2007).

78. *Id.* at *1.

79. *Id.* (quoting Second Amended Complaint, *Moore v. Alaska*, No. 3AN-04-9756 (Alaska Super. Ct. 2004)).

80. *Id.* at *71.

81. *Id.* at *81.

82. *Id.*

83. *Id.*

84. *Id.* at *12-17.

85. *Id.* at *4.

state funds.⁸⁶ Since these districts received significantly more funding than the state average, the plaintiffs failed to establish that the performance gap was attributable to state underfunding.⁸⁷ The court found that the state had only violated the Education Clause through a lack of oversight of district performance, and failed to provide “meaningful exposure” to content areas in the state’s educational standards.⁸⁸

While *Moore* adds responsibilities that the legislature must meet to satisfy the Education Clause, the ruling provided little guidance as to what constituted “adequate” funding and gave districts no avenue to challenge funding except in the most egregious situations.

III. ALASKA’S DEDICATED FUNDS CLAUSE

Under the taxing and expenditures provisions of the Alaska Constitution, the state legislature retains wide discretion to appropriate state funds.⁸⁹ The Dedicated Funds Clause limits that power.⁹⁰ It provides, in relevant part, that “[t]he proceeds of any state tax or license shall not be dedicated to any special purpose”⁹¹ The clause prohibits the direct apportionment of revenues into individual funds for separate purposes instead of into a general fund from which all other appropriations are drawn. Essentially, it functions as an anti-earmarking provision.⁹²

A. Constitutional History of the Dedicated Funds Clause

The framers of the Alaska Constitution sought to preserve legislative control over spending to prevent tax money from being apportioned to certain interests without first passing through the legislature.⁹³ One delegate noted:

[T]he earmarking of taxes or fees for other interests is a fiscal evil. 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

86. *Id.* at *4, *81.

87. *Id.* at *78.

88. *Id.* at *84.

89. ALASKA CONST. art. IX, §§ 1, 13.

90. *Id.* § 7.

91. *Id.*

92. See 6 ALASKA CONST. CONVENTION, PROCEEDINGS OF THE ALASKA CONST. CONVENTION, at 2364 (statement of Del. White) (explaining that earmarking is often used by legislators to ensure that their projects and policy interests receive a piece of the appropriations pie). For more on earmarks, see John Hudak, *Earmarks are Back, and Americans Should be Glad*, BROOKINGS (Mar. 17, 2021), <https://www.brookings.edu/blog/fixgov/2021/03/17/earmarks-are-back-and-americans-should-be-glad/>.

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

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.⁹⁴

As such, the framers included the Dedicated Funds Clause to prohibit the “allocation of particular taxes to a particular purpose.”⁹⁵ The clause places all interests vying for legislative spending in the same position, permitting the legislature to decide on the merits how to allocate funds.⁹⁶

Expressly prohibiting dedicated funds is a unique aspect of the Alaska Constitution. Texas, for example, has 12 dedicated funds,⁹⁷ directly absorbing \$68 billion in revenues over two years.⁹⁸ Earmarking has even returned at the federal level. In 2021, the U.S. House of Representatives ended a nearly 10-year ban on federal earmarking originally put in place to limit perceived corruption in the appropriations process.⁹⁹

B. The Dedicated Funds Clause at the Supreme Court of Alaska

Alaska lawmakers have often pushed the limits of the Dedicated Funds Clause to meet policy goals, spurring a large volume of litigation. While the framers of the Alaska Constitution demonstrated a strong commitment to anti-earmarking, the Dedicated Funds Clause has left more questions than answers. The operative language of the clause is vague, with the terms “state tax or license” and “special purpose” undefined. Over time, the Supreme Court of Alaska has filled out the contours of the Dedicated Funds Clause through interpretative judgments.

1. *State v. Alex*

The foundational case for Dedicated Funds Clause jurisprudence is the 1982 case *State v. Alex*.¹⁰⁰ There, commercial fishermen argued that mandatory assessments on the sale of salmon levied by private

94. *Id.* (quoting 6 ALASKA CONST. CONVENTION, PROCEEDINGS OF THE ALASKA CONST. CONVENTION, AT 111 (Dec. 16, 1955)).

95. *Id.* at 2405 (statement of Del. White).

96. *Id.* at 2364.

97. *General Revenue-Dedicated Funds*, TEXAS LEGIS. BUDGET BD., <https://www.lbb.texas.gov/GenRevDedFunds.aspx> (last visited Feb. 19, 2023).

98. Karen Brooks Harper, *Texas Legislature’s State Budget Proposals Leave More Than \$50 Billion in State Funds Up For Grabs*, THE TEXAS TRIBUNE (Jan. 18, 2023), <https://www.texastribune.org/2023/01/18/texas-legislature-budget/>.

99. Jennifer Shutt, *House Appropriators Officially Bring Back Earmarks, Ending Ban*, ROLL CALL (Feb. 26, 2021), <https://rollcall.com/2021/02/26/house-appropriators-to-cap-earmarks-at-1-percent-of-topline/>.

100. 646 P.2d 203 (Alaska 1982).

aquaculture associations were unconstitutional.¹⁰¹ The Alaska Supreme Court agreed, holding that the assessments violated the Dedicated Funds Clause.¹⁰² *Alex* concerned a single section in Alaska’s Fisheries Enhancement Loan Program which permits representatives of commercial fishermen to petition the Commissioner of Commerce and Economic Development to assess royalties on commercial salmon catches.¹⁰³ The assessments served as collateral for state loans for the creation of fish hatcheries.¹⁰⁴

The court held that the legislature intended to create an impermissible “dedicated fund under the ownership and control of the associations,” which constituted a “special purpose” under the Dedicated Funds Clause.¹⁰⁵ It reasoned that a special assessment fell under the definition of “proceeds of a state tax or license” within the meaning of the clause.¹⁰⁶ The court concluded that the plain meaning of tax, along with the framers’ intent to capture all revenues within the clause, led to a conclusion that the special assessments necessarily fell under the purview of the section.¹⁰⁷ Finally, it rejected the state’s argument that the legislature’s power to deal with natural resources of the state under Article VIII led to a specific exemption from the Dedicated Funds Clause.¹⁰⁸

State v. Alex remains the touchstone for Dedicated Funds Clause analysis.

2. *Southeast Alaska Conservation Council v. State*

Following *Alex*, the Alaska Supreme Court continued to broaden the scope of the Dedicated Funds Clause. *Southeast Alaska Conservation Council v. State*¹⁰⁹ is one such case. In 2005, the Alaska state legislature passed two bills conveying 250,000 acres of land to the University of Alaska, providing that the net proceeds from the University’s sale or use of the land be deposited in the University’s endowment trust fund.¹¹⁰ The court held that the sale or use of land fall within the definition of “proceeds of any state tax or [license]” as used in the clause, invalidating

101. *Id.* at 204–05.

102. *Id.* at 210.

103. ALASKA STAT. § 16.10.530 (repealed 1984). Although repealed, § 16.10.540 allows for voluntary assessments on salmon sales. ALASKA STAT. § 16.10.540.

104. *Alex*, 646 P.2d at 206.

105. *Id.* at 207–08.

106. *Id.* at 208–10.

107. *Id.*

108. *Id.* at 210–11.

109. 202 P.3d 1162 (Alaska 2009).

110. *Id.* at 1165; ALASKA STAT. § 14.40.365(j) (held as unconstitutional).

the land transfer.¹¹¹

The court reasoned that the dedicated funds prohibition was meant to apply broadly.¹¹² It concluded that proceeds assigned by the legislature into a single fund, in this case the endowment, reached an impermissible level of earmarking.¹¹³ The court further explained that the University was not exempt from the Dedicated Funds Clause under Article VII, Section 2, which allows the university to hold real property.¹¹⁴ Since university land is state land, and can only be disposed of by the legislature, revenue from university land is state revenue.¹¹⁵

Applying a principle of a broad reach of the Dedicated Funds Clause articulated in *Alex, Southeast Alaska Conservation Council* further limited the legislature's ability to direct funds to chosen recipients.

3. *Wielechowski v. State*

Wielechowski further enlarged the reach of the Dedicated Funds Clause. Even before the Alaska Supreme Court's ruling in *Alex*, Alaskans were concerned with the impressive scope of the Dedicated Funds Clause. In 1976, voters passed a constitutional amendment to create the Alaska Permanent Fund.¹¹⁶ Framers designed the clause to save money for the future and prevent wasteful spending of booming oil and mineral revenue.¹¹⁷ The new provision, Article IX, Section 15, mandated that twenty-five percent of all mineral revenues received by the state would be placed in a permanent fund, which could only be used for "income-producing investments specifically designated by law."¹¹⁸ Earnings derived from the investments would then be placed in the state general fund.¹¹⁹

In 1980, the legislature created a dividend program to distribute income from the permanent fund to Alaska residents.¹²⁰ For thirty-five years, eligible Alaskans received dividends as direct payments from the fund.¹²¹ By 2016, residents were expecting to receive over \$2,000

111. *Se. Alaska Conservation Council*, 202 P.3d at 1169.

112. *Id.* at 1170.

113. *See id.* at 1170 (distinguishing from *Myers v. Alaska H. Fin. Corp.*, 68 P.3d 386 (Alaska 2003)).

114. *Id.* at 1170-72; ALASKA CONST. art. VII, § 2.

115. *See Se. Alaska Conservation Council*, 202 P.3d at 1171-72 (citing *State v. Univ. of Alaska*, 624 P.2d 807 (Alaska 1981)).

116. H.R.J. Res. 39, 9th Leg., 1st Sess. (Alaska 1976); ALASKA CONST. art. IX, § 15.

117. *Zobel v. Williams*, 457 U.S. 55, 55-57 (1982).

118. ALASKA CONST. art. IX, § 15.

119. *Id.*

120. *Wielechowski v. State*, 403 P.3d 1141, 1144 (Alaska 2017).

121. *Id.* at 1144-45.

annually,¹²² but Governor Bill Walker used his line-item veto authority to cut the dividend in half.¹²³ Wielechowski, a state senator, brought suit, alleging that the dividend program statutes contained a permissible automatic revenue dedication not subject to the governor's veto.¹²⁴ The court not only rejected Wielechowski's argument, but further held that permanent fund income was not exempt from the Dedicated Funds Clause.¹²⁵

The Alaska Supreme Court treated the dividend program with hostility, explaining that it presumptively violated the Dedicated Funds Clause, had the 1976 amendment not explicitly provided for its validity.¹²⁶ The court in *Wielechowski* interpreted *Alex* and *State v. Ketchikan Gateway Borough*¹²⁷ to impose an immediate suspicion of constitutionality upon any government earmarking.¹²⁸ In holding the Permanent Fund subject to the Dedicated Funds Clause, the court first looked to the intent of the framers of the permanent fund amendment.¹²⁹ It concluded that "[t]here was virtually no discussion . . . about dedicating Permanent Fund income, and they had reason to know that the fund's income would be state revenue subject to the constitution's anti-dedication clause."¹³⁰ Further, it observed that Wielechowski produced no evidence that voters understood the amendment to permit legislative dedication of the fund's income.¹³¹ Finally, the court read the plain meaning of Section 15 to require direct deposit of all permanent fund income into the general fund.¹³² It closed by noting that the "Permanent Fund dividend program must compete for annual legislative funding just as other state programs."¹³³

122. *Id.* To determine the dividend, 21% of the net income of the Permanent Fund and earnings of the reserve of the last five years is isolated as "income available for distribution." *Id.* 50% of this amount is transferred to a dividends fund, which is then divided by the amount of eligible individuals to calculate the dividend payment. *Id.*

123. *Id.* at 1145.

124. *Id.* at 1145–46.

125. *Id.* at 1152.

126. *Id.*

127. 366 P.3d 86 (Alaska 2016).

128. See *Wielechowski*, 403 P.3d at 1147 (explaining case law to demonstrate significance of anti-dedication clause to budgetary framework).

129. *Id.* at 1149.

130. *Id.*

131. *Id.* at 1150.

132. *Id.* at 1151.

133. *Id.* at 1152. Governor Walker's decision to cut the Permanent Fund dividend was incredibly unpopular. See Nathaniel Herz, *Supreme Court Upholds Gov. Walker's Veto of Half of Permanent Fund Dividend*, ANCHORAGE DAILY NEWS (Aug. 26, 2017), <https://www.adn.com/politics/2017/08/25/alaska-supreme-court-upholds-gov-walkers-2016-veto-of-half-of-permanent-fund-dividend/> ("I

In *Wielechowski*, the Supreme Court further empowered the Dedicated Funds Clause, applying it even where specific constitutional provisions hint at exceptions.

4. *State v. Ketchikan Gateway Borough*

In *State v. Ketchikan Gateway Borough*,¹³⁴ the Alaska Supreme Court considered the application of the Dedicated Funds Clause to public schooling. In 2013, the required local contribution¹³⁵ for the Ketchikan Gateway Borough School District was \$4.2 million, paid by the Borough “under protest.”¹³⁶ The Borough brought suit, alleging that the required local contributions were an earmarked “state tax or license” in violation of the Dedicated Funds Clause.¹³⁷ The Court disagreed, holding, in a rare decision against prohibiting direct spending, that the required local contribution did not violate the Dedicated Funds Clause.¹³⁸

The court focused on the long history of the state-local partnership in Alaskan public school funding to distinguish the local contribution requirement from other expenditures held to be unconstitutional earmarks.¹³⁹ Justice Bolger recounted that prior to statehood, the territory and local communities shared responsibility for funding local schools.¹⁴⁰ He explained that the framers of the state constitution kept that in mind while drafting the Dedicated Funds Clause.¹⁴¹ Based on the history, the court held that the Dedicated Funds Clause was not intended to be strictly construed when the funds at hand were contributions from local government units for state-local cooperative programs.¹⁴² For further support of its interpretation, the court pointed to a lack of prior litigation regarding the Dedicated Funds Clause and state-local cooperative programs as an indication of a general consensus that the clause was not violated by such practices.¹⁴³

Ketchikan Gateway Borough stands as one of few cases that pushes

have absolutely no doubt if [the Permanent Fund dividend] went to a vote of the people, it would pass.”). The legislature has continued the dividend program since *Wielechowski*, albeit through the general appropriations process. *Id.*; *Alaska Permanent Fund Dividend*, STATE OF ALASKA: DEP’T OF REV., pfd.alaska.gov (last visited Feb. 25, 2023).

134. 366 P.3d 86 (Alaska 2016).

135. See discussion *supra* Part I.B.

136. *Ketchikan Gateway Borough*, 366 P.3d at 89. Interestingly, the Borough voluntarily contributed another \$3.8 million. *Id.*

137. *Id.*

138. *Id.* at 100–01.

139. *Id.* at 91.

140. *Id.* 91–94.

141. *Id.*

142. *Id.* at 93.

143. *Id.* at 96–101.

back against an expansive interpretation of the Dedicated Funds Clause and provides vital background to *Alaska Legislative Council*.

IV. THE CASE: *STATE V. ALASKA LEGISLATIVE COUNCIL*

A. Background Facts

State v. Alaska Legislative Council concerned House Bill 287 (HB 287),¹⁴⁴ which provided for “forward funding” of public education in the 2019 and 2020 fiscal years.¹⁴⁵ Before the House Finance Committee, the bill’s proponent explained that it originated from a conversation he had with school superintendents in Seward, Alaska.¹⁴⁶ The superintendents explained that schools had to prepare two or more district budgets each year based on different levels of possible funding due to the legislature’s delayed yearly approval of the state education budget.¹⁴⁷ The funding uncertainty forced schools to tender termination notices to teachers in mid-May, just ahead of the statutory deadline for staffing positions.¹⁴⁸ These teachers often left for other positions due to the uncertainty of being re-hired by their previous employers once the budgets crystallized.¹⁴⁹ HB 287 was meant to address that funding uncertainty while staying within the bounds of the difficult appropriations process.¹⁵⁰ It successfully passed through both chambers of the Alaska legislature and was signed by Governor Walker on May 4, 2018.¹⁵¹ The act’s provisions took effect on July 1, 2018, except for the provisions regarding appropriations for the subsequent fiscal year, which took effect July 1, 2019.¹⁵²

In November 2018, Governor Mike Dunleavy was elected to succeed Governor Walker. His initial budget plans largely followed Walker’s and they included the forward funding of education not only for 2020 but also 2021.¹⁵³ But, shortly afterward, Governor Dunleavy reversed course, cutting spending to pay for a larger Permanent Fund Dividend.¹⁵⁴ Then-

144. *State v. Alaska Legislative Council*, 515 P.3d 117 (Alaska 2022).

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

146. *An Act Making Appropriations For Public Education and Transportation of Students: Hearing Before the Alaska H. Fin. Comm.*, 30th Leg. 2 (Alaska 2018) (statement of Rep. Paul Seaton).

147. *Id.*

148. *Id.* at 12 (statement of Kenai Peninsula Sch. Dist. Superintendent Sean Dusek).

149. *Id.* at 2 (statement of Rep. Paul Seaton).

150. *Id.* at 3.

151. H. J., 13th Leg., 2d Sess. 3571 (Alaska 2018).

152. *State v. Alaska Legis. Council*, 515 P.3d 117, 120 (Alaska 2022).

153. *Id.*

154. James Brooks, *Supreme Court Rules Against Forward Funding for Education, Confirms Limit on Legislative Power*, KTOO (Aug. 15, 2022),

Attorney General of Alaska, Kevin Clarkson, wrote to Dunleavy to explain that he believed that the forward funding of education was unconstitutional.¹⁵⁵ Clarkson reasoned that Alaska law recognized an annual budget process, and that the state constitution required all appropriations to be made on an annual basis.¹⁵⁶ He further contended that appropriations of future revenues violated the governor's constitutional right to veto appropriations.¹⁵⁷ Fearing that Dunleavy would ultimately veto the prospective funding, the legislature brought suit.¹⁵⁸

B. Parties and Claims

The Alaska Legislative Council¹⁵⁹ brought suit against Governor Dunleavy, along with Kelly Tshibaka, the Commissioner of Administration of State, and Michael Johnson, Commissioner of Education and Early Development, all in their official capacities.¹⁶⁰ The Coalition for Education Equity intervened on behalf of the Legislative Council, arguing it had a direct interest in the matter.¹⁶¹ The Legislative Council sought declaratory judgments that Governor Dunleavy and the other defendants violated the state constitution by failing to execute appropriations made by the legislature for state aid to schools, transportation of students, and grant funding.¹⁶² Plaintiffs further sought injunctions ordering Tshibaka and Johnson to disburse funds in accordance with HB 287, prohibiting the governor from withholding funds in the future and accounting of all expenditures.¹⁶³

<https://www.ktoo.org/2022/08/15/supreme-court-rules-against-forward-funding-for-education-confirms-limit-on-legislative-power/>.

155. FY20 Education Appropriation, Op. Alaska Att'y Gen. (2018), https://law.alaska.gov/pdf/opinions/opinions_2019/19-001_FY20-Education-appropriation.pdf.

156. *Id.* at 2–3.

157. *Id.* at 5.

158. Brooks, *supra* note 154.

159. The Alaska Legislative Council is a statutorily created body that acts as the service agency of the legislature, and is granted certain powers, including the authority to sue in the name of the legislature. ALASKA STAT. § 24.20.010, 24.20.060(4)(F) (2022).

160. Complaint for Declaratory and Injunctive Relief and Accounting, Alaska Legislative Council v. Dunleavy (Alaska Super. Ct. 2019) (No. 1JU-19-00753 CI), <https://public.courts.alaska.gov/web/media/docs/alc/complaint.pdf> [hereinafter “Complaint”].

161. Coalition for Education Equity, Inc.’s Motion to Intervene, Alaska Legislative Council v. Dunleavy (Alaska Super. Ct. 2019) (No. 1JU-19-00753 CI), <https://public.courts.alaska.gov/web/media/docs/alc/motion-intervene.pdf>.

162. Complaint, *supra* note 160, at 7–8.

163. *Id.* at 8–9.

B. Procedural History

After filing in the Superior Court for the First Judicial District in Juneau, the parties jointly moved for expedited consideration of cross summary judgment motions, agreeing that it was in the public interest to resolve the case quickly, and that the case presented only legal questions.¹⁶⁴ 20 state legislators filed an amicus brief in support of the Legislative Council, represented by Jahna Lindemuth,¹⁶⁵ who served as the Alaska Attorney General at the time of the passage of HB 287.¹⁶⁶

On November 7, 2019, Judge Schally of the Superior Court granted the Legislative Council's motion for summary judgment, and denied the Governor's motion.¹⁶⁷ The Superior court held that the forward funding appropriations were a rational solution to a perceived problem, and "were enacted in furtherance of fulfilling the legislature's mandate to maintain a system of public education under the Public Education Clause."¹⁶⁸ Further, it was held that the appropriations in this case did not directly violate the Dedicated Funds Clause.¹⁶⁹ The reason for the Dedicated Funds Clause, Judge Schally wrote, is to "prevent the fiscal evil that results from the diminishment of the governor's and legislature's control over the finances of the state by requiring the legislature to decide funding priorities annually on the merits of the various proposals presented."¹⁷⁰ Critically, only the dedication of a particular source of public revenue directly violates the clause.¹⁷¹ So long as revenues pass through the general fund, the legislature has discretion in deciding the recipients of appropriations.¹⁷²

The forward funding at issue here did not earmark a particular public revenue source, but "instead appropriates treasury revenue after it is deposited in the general fund."¹⁷³ By determining that the Dedicated

164. Joint Motion for Scheduling Order with Expedited Consideration of Cross Summary Judgment Motions, Alaska Legislative Council v. Dunleavy (Alaska Super. Ct. 2019) (No. 1JU-19-00753 CI), <https://public.courts.alaska.gov/web/media/docs/alc/scheduling-order.pdf>.

165. Brief of Amici Curiae, Alaska Legislative Council v. Dunleavy (Alaska Super. Ct. 2019) (No. 1JU-19-00753 CI), <https://public.courts.alaska.gov/web/media/docs/alc/amici.pdf>.

166. *Attorneys General of Alaska*, STATE OF ALASKA DEP'T OF L., https://law.alaska.gov/department/ag_past.html (last visited Feb. 26, 2023).

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

168. *Id.* at 5.

169. *Id.* at 6.

170. *Id.* at 5.

171. *Id.* at 6.

172. *Id.*

173. *Id.*

Funds Clause did not prohibit the legislature's appropriations under HB 287, the judge deemed them lawful, and the Governor and other defendants had a constitutional obligation under Article III, Section 16 of the Alaska Constitution to execute the appropriations.¹⁷⁴ Soon afterward, the Governor and other defendants filed an appeal with the Supreme Court of Alaska on December 13, 2019.¹⁷⁵

C. Arguments

1. Appellant's Theory of the Case

The Governor and other officials' (Appellants) argument rested on the theory that the Alaska Constitution enshrines an annual appropriation model for the use of public funds.¹⁷⁶ Appellants pointed to four provisions of the Alaska Constitution claiming support for this proposition – (1) the Dedicated Funds Clause; (2) the Appropriations Clause; (3) the Budget Clause; and (4) the Veto Clause.¹⁷⁷ After the Dedicated Funds Clause, the Appropriations Clause, officially named the Expenditures Clause, provides that “no money shall be withdrawn from the treasury except in accordance with appropriations made by law.”¹⁷⁸ Next, the Budget Clause requires the governor to submit a budget to the legislature for the next fiscal year, and finally the Veto Clause allows the governor to veto bills passed by the legislature, including a line item veto in appropriations bills.¹⁷⁹ Appellants argued that the four clauses worked together to create a system intended by the framers that, “(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 line-item veto.”¹⁸⁰

Pointing to the Dedicated Funds Clause, Appellants argued that the prohibition on directing public revenues for a “predestined” purpose necessarily required the disposition of all revenues to be decided on an annual basis.¹⁸¹ Citing the framers' disdain for earmarking funds,

174. *Id.* at 9.

175. *Dunleavy v. Alaska Legislative Council*, No. S17666, ALASKA APP. CT. CASE MGMT. Sys., <https://appellate-records.courts.alaska.gov/CMSPublic/Case/General?caseID=25798> (last visited Oct. 21, 2023).

176. Brief of Appellants at 2, *State v. Alaska Legis. Council*, 515 P.3d 117 (Alaska 2022) (No. S-17666), 2020 WL 5646025, at *2 [hereinafter “Brief of Appellants”].

177. *Id.* at 15.

178. ALASKA CONST. Art. IX, § 13.

179. ALASKA CONST. Art. IX, § 12; ALASKA CONST. Art. II, § 15.

180. Brief of Appellants, *supra* note 176, at 15.

181. *Id.* at 15.

Appellants posited that 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.”¹⁸² In order to meet this obligation, the theory goes, the Dedicated Funds Clause must be interpreted as imposing a temporal limit on legislative appropriations.¹⁸³ This intent was further exemplified in the Appropriations and Budget Clauses.¹⁸⁴ The Appropriations Clause required any spending to be made in accordance with the law, and the Budget Clause created an annual framework for appropriations, evidenced by the language of “next fiscal year.”¹⁸⁵ This focus on “the next fiscal year” showed the clear intent of the framers to follow an annual appropriations model, according to Appellants.¹⁸⁶ This process ensured that appropriations were “based on an accurate prediction of the State’s needs and resources,” reflecting the existing position of the state rather than “speculative long-term projections.”¹⁸⁷

Finally, the annual appropriations model exhibited a “strong bias towards controlling state spending, rooted in the governor’s appropriations veto.”¹⁸⁸ The specific line-item veto for appropriations bills in the Veto Clause showed a desire of the framers for an executive that could strike excessive or inappropriate legislative spending.¹⁸⁹ With the contours of the annual appropriations model drawn, Appellants moved on to apply these principles to the forward funding at issue.¹⁹⁰

Appellants reasoned that the “reach” of the constitutional provisions that establish the annual appropriations model extended beyond clear violations, applying in equal strength to enactments that “undercut the policies underlying” them.¹⁹¹ Since the forward funding appropriations would create a “host of problems” for the clauses, HB 287 was necessarily unconstitutional.¹⁹² First, forward funding tied the hands of future legislatures, preventing them from addressing the current needs of the

182. *Id.* at 16.

183. *See id.* at 15–16 (explaining how the framers “believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented”).

184. *See id.* at 16 (“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.’”).

185. *Id.* at 16–17.

186. *Id.* at 18.

187. *Id.* at 19.

188. *Id.* at 22.

189. *Id.*

190. *Id.*

191. *Id.* at 23.

192. *Id.* at 26.

state as envisioned by the framers.¹⁹³ Further, HB 287 allowed the legislature to avoid the governor's constitutional check through the line item veto.¹⁹⁴ Through this combination of factors, Appellants believed that the policies underlying the relevant constitutional provisions were sufficiently undercut to render forward funding unconstitutional.¹⁹⁵

Finally, Appellants addressed further policy and constitutional arguments. First, the need for forward funding did not justify circumventing the annual appropriations model.¹⁹⁶ Without forward funding, the legislature retained its ability to fund education—it could dedicate the same amount of money, “just not so far ahead of time.”¹⁹⁷ Appellants further contended that forward funding was in effect an ill-advised method of funding education, reducing flexibility in education spending, and creating unrealistic expectations that funds will be spent in a specific way.¹⁹⁸ Appellants concluded by rejecting the idea that the Education Clause authorized the legislature to bypass the annual appropriations model.¹⁹⁹ Applying *Alex*, they argued that “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.”²⁰⁰

2. Appellee's Theory of the Case

The Alaska Legislative Council (Appellees) focused on three primary points.²⁰¹ The first two hinged on the governor's constitutional responsibility to execute the laws of the state, and that the legislature held authority to exercise forward funding appropriations under the Public Education Clause.²⁰² Responding to Appellant's main contention, Appellees argued that the Alaska Constitution does not mandate an annual appropriations model, and that the forward funding model did not violate any Constitutional provision.²⁰³

First, Appellees contended that the governor has a constitutional duty under Article III, Section 16 to execute all laws that are not “clearly

193. See *id.* at 26–31 (explaining how forward funding hinders future legislators by removing revenues from their discretion).

194. *Id.* at 32.

195. *Id.* at 32–34.

196. *Id.* at 34.

197. *Id.* at 36.

198. *Id.* at 38.

199. *Id.* at 39.

200. *Id.* at 42.

201. Brief of Appellee the Alaska Legislative Council at i, *State v. Alaska Legis. Council*, 515 P.3d 117 (Alaska 2022) (No. S-17666), 2020 WL 8084895.

202. *Id.*

203. *Id.* at 19.

unconstitutional.”²⁰⁴ Appellees pointed to the disagreement between the past two attorneys general concerning the constitutionality of the bill as evidence of a lack of certainty.²⁰⁵ Thus, the governor was required to execute the law as passed, with refusal to do so infringing upon the legislature’s duty to fund public education under the Education Clause.²⁰⁶ Appellees further delineated the responsibilities of the legislature in regard to the Education Clause.²⁰⁷ Citing the intent of the framers to allow flexibility in legislative public education funding, Appellees suggested that the legislature’s efforts in dealing with the complex problems of public education should be respected.²⁰⁸

With the constitutional authorization of the Education Clause at their backs, Appellees asserted that Appellant’s theory of a constitutional prohibition through an annual appropriations model was unfounded.²⁰⁹ Appellees pointed to the absence of an annual appropriation model in the state constitution, claiming that the governor was asking the court to “infer a new constitutional restriction on the legislature’s power of appropriation”²¹⁰ Instead, Appellees argued HB 287 should be analyzed under the text of the cited provisions alone—that the scheme did not dedicate a particular state tax or license, did not run afoul of the governor’s veto power, and did not implicate the Appropriations and Budget Clauses.²¹¹ Appellees concluded by describing the Governor’s actions as an “unprecedented refusal to execute the law as required by the Alaska Constitution” and that he did not have the “authority to unilaterally declare validly enacted appropriations unconstitutional”²¹²

E. The Alaska Supreme Court’s Decision

On August 12, 2022, the Supreme Court of Alaska reversed the

204. See *id.* at 12–14 (citing *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)); ALASKA CONST. art. III, § 16 (proclaiming that the governor’s power to abrogate a law passed by the legislature is limited to situations where the law is clearly unconstitutional).

205. Brief of Appellee the Alaska Legislative Council at 15, *State v. Alaska Legis. Council*, 515 P.3d 117 (Alaska 2022) (No. S-17666), 2020 WL 8084895.

206. *Id.* at 18–19 (citing Order Re: Cross Motions for Summary Judgment, *supra* note 189).

207. See *id.* at 19–21 (explaining the constitutional duty of the legislature to fund public education).

208. *Id.* at 20 (citing *Hootch v. Alaska*, 536 P.2d 793, 803–04 (Alaska 1975)).

209. See *id.* at 21 (noting that “to achieve the result the governor seeks, this Court must re-write art. IX of the Alaska Constitution”).

210. *Id.*

211. *Id.* at 24–34.

212. *Id.* at 37–38.

ruling of the Superior Court in a unanimous decision, finding that an annual appropriations model was implicit in the Alaska Constitution.²¹³ The court acknowledged that none of the constitutional clauses put forth expressly prohibit forward funding, yet maintained that “often what is implied is as much a part of the constitution as what is expressed.”²¹⁴

The court largely adopted the arguments of Appellants throughout its opinion. The court held that the Budget Clause introduces a strict timeframe of a single year for appropriations,²¹⁵ and that the Dedicated Funds Clause “seeks to preserve an annual appropriation model by ensuring that the legislature is free to appropriate all funds for any purpose on an annual basis.”²¹⁶ In a swift analytical leap, the court opined that through these clauses, the state constitution created a “strong executive branch with a strong control on the purse strings of the State and limited the legislature’s power to impose current spending priorities on future governors and legislatures.”²¹⁷ This purportedly represented the framers’ desire for a comprehensive state financial plan, rather than a piecemeal approach.²¹⁸ This is reflected in the strong stance against earmarking of funds, which should be “avoided at all costs.”²¹⁹

The court conceded that these provisions do not explicitly mention the timing of the legislature’s budgeting process.²²⁰ However, Justice Maassen contended that read together, they create an implicit requirement of annual appropriations.²²¹ If the legislature may appropriate funds from the future state of the general fund, it would necessarily undercut the executive’s role in the budgeting process, along with hamstringing subsequent legislatures.²²² Thus, the only way to avoid a constitutional dilemma in the fiscal process is to require an annual appropriations model.²²³

213. *State v. Alaska Legis. Council*, 515 P.3d 117, 119–20 (Alaska 2022).

214. *Id.* at 125 (citing *Pub. Def. Agency v. Superior Ct.*, Third Jud. Dist., 534 P.2d 947, 950 (Alaska 1975)).

215. *Id.* at 125 (quoting ALASKA CONST. art. IX, § 12).

216. *Id.* (quoting *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992) (internal quotations omitted)).

217. *Id.* (quoting *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) (internal quotations omitted)).

218. *Id.* at 125–26 (quoting 3 ALASKA STATEHOOD COMM’N, CONSTITUTIONAL STUDIES, pt. IX at 26–27).

219. *Id.* (quoting 3 ALASKA STATEHOOD COMM’N, CONSTITUTIONAL STUDIES, pt. IX at 30).

220. *See id.* (explaining that the vision of the delegates implies the idea that the governor’s budget and corresponding legislative process should take place within the next fiscal year).

221. *Id.*

222. *Id.*

223. *See id.* at 127 (“The forward-funded appropriations at issue are incompatible with this constitutional model.”).

Further, the court held that the Education Clause did not exempt education appropriations from the annual appropriations model.²²⁴ Recognizing that while flexibility is valuable in education funding, policy considerations cannot create exemptions from constitutional requirements.²²⁵ Zealously protecting the annual appropriations model, the court argued that “allowing this form of forward funding for education a year in advance would open the door for forward funding in other contexts and more years in advance, weakening the annual budgeting process intended by the Constitution’s framers.”²²⁶ To meet the goal of providing school districts with advance notice of their annual budget, the court suggested the legislature move education funding earlier in the legislative session, or commit funds from the current fiscal year to the following year.²²⁷ With this, the superior court’s judgment was vacated, and HB 287 was officially deemed unconstitutional.²²⁸

V. THE SUPREME COURT OF ALASKA INCORRECTLY DECIDED *STATE V. ALASKA LEGISLATIVE COUNCIL*

The court’s reasoning in *State v. Alaska Legislative Council* lacks the legal backbone to support its determination. Here, the court fashioned a new constitutional requirement out of whole cloth, stitching together three provisions to create a doctrine not envisioned by the framers of the document. In the name of protecting executive power and supposed legislative flexibility, the court has prevented the Alaska legislature from meeting the needs of the state. The court’s reasoning is divorced from the constitutional text, the intent of the framers, its own precedent, and public policy.

A. The Court Misinterpreted the Plain Meaning of the Text of the Constitutional Provisions

In interpreting the Alaska Constitution, provisions “should be given a reasonable and practical interpretation in accordance with common sense. The court should look to the plain meaning and purpose of the provision and the intent of the framers.”²²⁹ The court purports that taken together, the Dedicated Funds Clause, the Budget Clause, and the

224. *Id.*

225. *Id.* at 127–28.

226. *Id.* at 128 (citing *Sonneman v. Hickel*, 836 P.2d 936, 938 (Alaska 1992)).

227. *Id.*

228. *Id.* at 128–29.

229. *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994) (quoting *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992)).

Expenditures Clause create an implicit requirement of an annual appropriations model.²³⁰ Regardless of the validity of this position, the court skipped the first step in interpretation—looking to the text of the provisions themselves. Whether read individually or coupled together, the text of the three cited provisions of the Alaska Constitution in no way require an annual appropriations model.

At the outset, the Expenditures Clause simply states that “no money shall be withdrawn from the treasury except in accordance with appropriations made by law.”²³¹ The plain meaning of the clause is clear and not disputed: it serves as a backstop, or a protection against spending violative of other constitutional or statutory provisions. The clause does not explicitly create any affirmative requirements—so long as expenditures are made in accordance with duly enacted legislative appropriations, it sits in silence. In the instance of HB 287, the Expenditures Clause would only come into play if the Budget Clause or the Dedicated Funds Clause were violated. Appellants argued, instead, that the clause plays a role in the “spirit” of an annual appropriations model.²³²

The claim that HB 287 violates the Budget Clause may be dismissed with a cursory view of the text itself. The provision states “[t]he governor shall 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.”²³³ First, this imposes no temporal requirement on the legislature’s role in the appropriations process. Instead, this provision provides for annual gubernatorial input in funding, allowing the governor to make requests of the legislature, such as ending a forward funding program, which the legislature may then accept or ignore. No part of the Budget Clause, however, provides any information regarding the permissibility of any funding program that complies with the Expenditures Clause.

Citing previous dedicated funds cases, the court reasoned that the constitutionally mandated budgetary process starts with the governor’s proposed budget, which then is considered by the legislature, and may only pertain to spending in the upcoming fiscal year.²³⁴ This reading stems from a view of the framers to create a “strong executive branch with

230. *State v. Alaska Legis. Council*, 515 P.3d 117, 125 (Alaska 2022).

231. ALASKA CONST. art. IX, § 13.

232. Brief of Appellants at 11, *State v. Alaska Legis. Council*, 515 P.3d 117 (Alaska 2022) (No. S-17666), 2020 WL 5646025, at *11.

233. ALASKA CONST. art. IX, § 12.

234. *State v. Alaska Legis. Council*, 515 P.3d 117, 126–27 (Alaska 2022) (citing *Sonneman v. Hickel*, 836 P.2d 936, 938 (Alaska 1992)).

a strong control on the purse strings of the state.”²³⁵ Presuming framer intent of robust gubernatorial budget oversight, along with a following assumption the annual process begins with the governor, the forward funding process of HB 287 *still* remains permissible. The governor maintains the “first crack” at the budget by recommending education expenditures, whether the scope is a single year or two.²³⁶ Further, the funding amounts extending beyond the upcoming fiscal year are not set in stone but remain amenable. Thus, expenditures never escape annual evaluation, but rather provide guidance to school districts for their own internal planning.

The inapplicability of the Expenditures Clause and the Budget Clause to HB 287 indicates that *Alaska Legislative Council* should have been decided as a purely Dedicated Funds Clause case. This is certainly a closer call than that of the other two clauses – on first glance reasonable minds may differ on whether forward funding schemes are dedicated funds. However, a closer look to the text reveals that HB 287 does not qualify as a dedicated fund. First, the funds at issue are not “proceeds of any state tax or license.”²³⁷ Instead, the appropriations are drawn from the general fund, where all revenue streams are placed.²³⁸ Since the legislature retains the discretion to direct the funds used to any purpose, they do not “directly violate the prohibition on the dedication or earmarking of a particular revenue source, which is the particular fiscal evil for which the clause was adopted.”²³⁹ Further, the funds appropriated in HB 287 compete with all other appropriation recipients; the legislature at any time may amend or repeal the forward funding in favor of other needs of the state. While HB 287 provides districts with a picture of education appropriations for planning purposes, at no time are the funds “dedicated” within the meaning of the Dedicated Funds Clause.

The court admits that the three clauses do not expressly prohibit forward funding.²⁴⁰ The court maintained, though, that “what is implied is as much a part of the constitution as what is expressed.”²⁴¹ However, the opinion provides no precedent or canon of interpretation supporting that what is implied may *supplant* what is expressed. Moving forward with this supposition, Justice Maassen wrote that an annual

235. *Id.* at 125 (quoting *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977)) (internal quotations omitted).

236. *Id.*

237. ALASKA CONST. art. IX, § 7.

238. § 4–5, 2018 Alaska Sess. L. Ch. 6, 5.

239. *Alaska Legis. Council v. Dunleavy*, 2019 WL 8643544 at *5 (Alaska Nov. 7, 2019).

240. *State v. Alaska Legis. Council*, 515 P.3d 117, 125 (Alaska 2022).

241. *Id.* (quoting *Pub. Def. Agency v. Superior Ct., Third Jud. Dist.*, 534 P.2d 947, 950 (Alaska 1975)).

appropriations model is “necessarily implicit” in these clauses.²⁴² If this were the case, one would expect the court to show how this is true, either through logical deduction or hypothetical. But this is not the case. The court instead accepts this proposition as naturally true, citing policy implications that create “obstacles . . . incompatible with the annual budgeting model our Constitution contemplates.”²⁴³

The court noted that “when . . . reviewing a legislative enactment, constitutionality is presumed, and doubts are resolved in favor of constitutionality.”²⁴⁴ Rather than following the plain meaning of the provisions, the court wove the three clauses together, created a “doubt” of constitutionality out of thin air, and resolved this doubt by citing an implied requirement that arose solely from the brief of the Governor. Here, the court decided that a scantily supported doctrine that *could* be implied by distorting multiple provisions of the state constitution overrode the plain meaning of the text. Instead of following the clear words of the provisions, the court determined that the clauses mean something never mentioned in the Constitution itself, a puzzling strategy of constitutional interpretation.

B. The Court Misinterpreted the Framers’ Intent

In Alaskan statutory and constitutional construction, even if a provision appears clear on its face, it is interpreted in the context of the legislature’s or framers’ purpose.²⁴⁵ In its opinion, the court only briefly mentions the Constitutional Convention, citing a report prepared by consultants rather than any materials from the delegates themselves.²⁴⁶ The court conceded that the report’s subject was the executive’s role in budgeting process and the evils of earmarking, but that it “illustrate[d] the importance an annual budget held for the constitutional delegates.”²⁴⁷ Interestingly, no support was provided for this claim.

Indeed, the delegates were wary of the “evils” of earmarking when drafting the Dedicated Funds Clause.²⁴⁸ However, the version of

242. *Id.* at 126.

243. *Id.*

244. *Id.* at 124 (quoting *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 275 (Alaska 2001)) (internal quotations omitted).

245. Memorandum from Leone Hatch, Assistant Att’y Gen. on Rural Schs. and Airport Land Title, to Joseph L. Perkins, Comm’r Dept. of Transp. and Pub. Facilities (Dec. 11, 2001), https://law.alaska.gov/pdf/opinions/opinions_2001/01-020_665990090.pdf.

246. *See State v. Alaska Legis. Council*, 515 P.3d 117, 125–26 (citing a paper prepared by the Public Administration Service for use by the delegates).

247. *Id.*

248. *See, e.g., ALASKA CONSTITUTIONAL CONVENTION, PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION*, at 2364 (1956) (statement of Del. White)

earmarking the framers feared looked far different from the forward funding provisions of HB 287. The framers were largely concerned with keeping spending within the purview of the currently-elected legislature and governor, not with when the branches exercise this power.²⁴⁹ Delegate White noted the fear was “[t]o arrive at the position Texas is in, for example, where 90 percent of all their funds are earmarked and the legislature has only 10 percent left to work with.”²⁵⁰ HB 287 is far from this case; the Alaska legislature would retain full control over the education funds at hand, free to amend, repeal, or scrap for a different strategy in the future. Aware of the constraint the Dedicated Funds Clause could put on the budget process if interpreted broadly, Delegate White noted that “[t]he Committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that.”²⁵¹ As noted previously, HB 287’s version of forward funding simply does not allocate a particular tax to a particular purpose.²⁵²

An overly broad interpretation of the Dedicated Funds Clause further disregards the framers’ intent to encourage flexibility in public education. The Supreme Court of Alaska itself has noted that the framers envisioned a Dedicated Funds Clause that did not apply strictly to education, along with six other vital objectives of state government.²⁵³ Recognizing the unique position of public education in Alaska, the framers drafted the Education Clause to give wide latitude to the legislature, with Delegate Armstrong noting that,

in Section 1 [. . .] the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional roadblocks[. . .]his is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and

(explaining that exceptions to the Committee’s plan to prevent earmarking would allow an infinite number of future exceptions to draw on the state’s general fund).

249. See *Sonneman v. Hickel*, 836 P.2d 936, 938 (Alaska 1992) (“The constitutional convention committee which drafted the prohibition on the dedication of funds commented that the reason for the prohibition is to preserve control of and responsibility for state spending in the legislature and the governor.”).

250. ALASKA CONSTITUTIONAL CONVENTION, PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION, at 2364 (1956) (statement of Del. White).

251. *Id.* at 2405 (statement of Del. White).

252. See discussion *supra* Sec. V.2490 (explaining why HB 287’s version of forward funding does not allocate a particular tax to a particular purpose).

253. See *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 92–96 (Alaska 2016) (discussing statements of Delegate White, the most ardent proponent of the Dedicated Funds Clause, including “though the delegates sought to limit certain powers and to avoid certain pitfalls, they did not intend to compel the State to unravel existing programs nor did they intend to prevent the state from experimenting and adapting to changing circumstances.”).

whatever future needs may arise.²⁵⁴

The court's decision in *Alaska Legislative Council* directly contradicts such intent. Rather than allowing the legislature to meet the needs of public education in Alaska, as intended by the framers, the court hobbled the legislature's constitutional power through a clause never meant to apply to such a situation.

C. The Court Misapplied Its Own Precedent

The court's precedents in dedicated funds cases in no way mandate the conclusion reached in *Alaska Legislative Council*. In the foundational dedicated funds case, *Alex*, the court took issue with specific assessments on salmon sales being directed to *specific* aquaculture projects without legislative approval.²⁵⁵ HB 287 bears no resemblance to such a program. Appropriations are pulled from the general fund, rather than a particular tax, and only go to public education after apportionment by the legislature. The court relied on the reasoning from *Alex* to decide *Southeast Alaska Conservation Council*, where proceeds from the sale of land were deposited directly into a university endowment.²⁵⁶ For the same reasons as *Alex*, HB 287 again does not resemble the appropriations in this case. *Wielechowski* fits neatly with *Alex* as well, where proceeds specifically from mineral royalties were directed to state residents through Permanent Fund dividends.²⁵⁷

The court relies on these three cases as support for its decision in *Alaska Legislative Council*, yet it is inescapable that they fundamentally differ from the education funding at issue in HB 287. Not only is it possible to distinguish HB 287 from the facts of the court's previous dedicated funds cases, but it is also the natural conclusion from the general practice of constitutional law. In *Alaska Legislative Council*, the court rejects responsible incrementalism in constitutional interpretation, expanding the Dedicated Funds Clause to a supremely powerful prohibition, and disregards its own practice of presuming constitutionality of legislative actions.

254. ALASKA CONSTITUTIONAL CONVENTION, PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION, at 1514 (1956) (statement of Del. Armstrong); see Laws, *supra* note 46, at 111 (for a further discussion of this quotation and the framers' intent with the education clause).

255. See *State v. Alex*, 646 P.2d 203, 207-09 (Alaska 1982) (explaining that proceeds of any state tax are prohibited from being dedicated to a special purpose under Article IX, section 7 of the Alaska Constitution).

256. See *Alaska Conservation Council v. State*, 202 P.3d 1162, 1165-66 (Alaska 2009) (detailing the reasoning behind its reliance).

257. *Wielechowski v. State*, 403 P.3d 1141, 1143-45 (Alaska 2017).

VI. THE ALASKA SUPREME COURT AS POLICYMAKER AND FUTURE IMPLICATIONS

At times, the Alaska Supreme Court's decision in *Alaska Legislative Council* reads more as a white paper than a judicial decision. The court repeatedly speaks in terms of policy wisdom rather than legal analysis, discussing the relative ease of blocking single-year proposals and the concern of a runaway practice of forward funding.²⁵⁸ However, the province of the court is not to judge the merits of a legislative action, but its legality. By wading into the political waters, the Alaska Supreme Court has set a dangerous precedent that it will allow policy considerations to trump constitutional legitimacy.

A. The Court Settled a Political Disagreement Rather than Deciding on the Law

In the background of the court's decision in *Alaska Legislative Council* was an ongoing conflict between the state legislature and Governor Dunleavy concerning funding and other salient political issues.²⁵⁹ The governor and legislature were at odds over the executive's role in budget determinations, with the governor claiming he had been locked out of important decisions, and the legislature concerned with overly broad gubernatorial power.²⁶⁰ At the time, the Alaska House was in a state of disorder; although Republicans held a numerical advantage, multiple members joined a multipartisan coalition rather than the Republican bloc, breaking from the administration's positions.²⁶¹

Of central relevance in this conflict was HB 287, with Dunleavy's administration threatening to withhold school funding if the legislature

258. See *State v. Alaska Legis. Council*, 515 P.3d 117, 126, 128 (Alaska 2022) (noting that "it is easier to block a proposal in the first instance than to repeal or change it once . . . enacted" and the Alaska Supreme Court's reluctance to "create an anti-dedication clause exception that would swallow the rule").

259. See, e.g., James Brooks, *Governor Threatens No School Funding After July 1, Escalating Fight with Alaska Legislature*, ANCHORAGE DAILY NEWS (May 21, 2019), <https://www.adn.com/politics/alaska-legislature/2019/05/22/governor-vows-no-school-funding-after-july-1-escalating-fight-with-alaska-legislature/> (explaining that Governor Dunleavy's administration threatened to "stop payments to local school districts unless the Alaska Legislature changes its option on funding schools in advance").

260. *Id.*

261. See *id.* (citing some house Republicans' concerns over Governor Dunleavy's claimed budgetary authority); James Brooks, *Alaska House Convenes into Deadlock As Legislative Session Begins*, ANCHORAGE DAILY NEWS (Jan. 15, 2019), <https://www.adn.com/politics/alaska-legislature/2019/01/16/alaska-house-convenes-into-deadlock-as-legislative-session-begins/> (explaining house's inability to form a majority).

did not reconsider the forward-funding structure of the bill.²⁶² Governor Dunleavy cited his inability to participate in the process of passing the legislation, as well as a belief that appropriating money not yet held violated state law.²⁶³ These are two fundamental misunderstandings of the functioning of government. On the legal side, the executive branch is always subject to legislation passed during previous administrations. To hold that a governor may refuse to enforce already existing law is akin to granting him what may be described as a reverse-veto, to “. . . [reach] back in time, saying ‘I don’t like that bill, and I’m going to veto it.’”²⁶⁴ The role of changing duly enacted law is left to the legislature, as proxies for the voters, not the executive. Dunleavy’s prudential point, that money not in hand cannot be appropriated, is also misguided. Setting appropriations based on projected revenues is not only permissible, but general practice in budget-making – in Alaska, for instance, appropriations are set based in part on projected oil revenues for that year, something that pertains to all spending in the state.²⁶⁵

Rather than allow the general dispute between the legislature and governor settle itself, the Alaska Supreme Court granted a decisive blow to the legislature by striking down a plainly constitutional law.²⁶⁶ The court does not hide its policy preferences, specifically repeating the fear of the governor that HB 287 could lead to a slippery slope of forward funding.²⁶⁷ However, this slippery slope argument is less than compelling when the opinion fails to establish that the activity is unconstitutional itself. As such, the court evidently sided with the governor in a partisan manner, showing a willingness to favor the party line over objective legal analysis.²⁶⁸

B. Moving Forward: Education Funding in Alaska and Expanding

262. Brooks, *supra* note 282.

263. *Id.*

264. *Id.* (quoting representative Tammie Wilson).

265. *See id.* (quoting representative Tammie Wilson) (explaining that “all of the state’s appropriations could be illegal under [the governor’s] interpretation because the state relies on revenue from oil . . . produced later in the year”).

266. State v. Alaska Legis. Council, 515 P.3d 117, 128 (Alaska 2022).

267. *See id.* (explaining that “allowing this form of forward funding for education a year in advance would open the door for forward funding in other contexts and more years in advance”).

268. *See* Alaska Judges, ALASKA CT. SYS., <https://courts.alaska.gov/judges/index.htm#justices> (last visited Apr. 28, 2023) (four of the five justices who heard the case were appointed by Republican governors, with the fifth, Justice Susan M. Carney, appointed by Governor Walker, a nominally independent yet conservative figure).

Judicial and Gubernatorial Power

In the wake of *Alaska Legislative Council*, the school funding crisis in Alaska returns to square one. The challenges the state faces – high teacher turnover, outsized overhead costs, and more – that could have been partially alleviated by forward funding, remain pressing.²⁶⁹ Legislators could propose a constitutional amendment to create an education fund exempt from the Dedicated Funds Clause, yet gaining two-thirds support in each chamber and voter support would seem to be a high hurdle.²⁷⁰ Instead, school administrators and legislators will likely need to find an alternative route to provide the support Alaskan schools need. What such a strategy may look like remains unseen; the unique position of the state likely calls for a solution that has not been tested in another state before. Regardless of the form of any plan, proponents of expanding education funding must face a governor and judiciary – apparently hostile to their goals – standing in their path.

The import of *Alaska Legislative Council* is vast – with implications expanding beyond the pale of education alone. The governor of Alaska, whether Dunleavy or his eventual successors, have a weapon to attack previously enacted law they disagree with. With nebulous claims of constitutional impermissibility and a friendly court willing to bend with the political winds, the executive holds disproportionate power in Alaska government. In the end, the legislature, and by extension the voters, hold the short end of the stick. Alaskans cannot be certain that legislation properly passed and signed into law will be followed by the governor in accordance with his duties. Such an existence is an unaccountable, and unsustainable, form of governance.

VII. CONCLUSION

The public education system in Alaska is in dire need of stability, most notably in the form of consistent, reliable funding. Through HB 287, the Alaska state legislature provided the type of financial clarity that allowed school districts and teachers to have confidence in setting their budgets for upcoming years. The wisdom of such a policy may be debated – forward funding is not necessarily compatible with Governor

269. See discussion *supra* Part I. (discussing the current challenges faced by Alaska's education system).

270. See ALASKA CONST. art. IX, § 15 (while difficult, Alaskans have passed a constitutional amendment to circumvent the Dedicated Funds Clause in the past, creating the Alaska Permanent Fund); see ALASKA CONST. art. XIII, § 1 (explaining amendment procedure).

Dunleavy's advocacy for fiscal conservatism.²⁷¹ However, rather than leave the issue to the voters, Governor Dunleavy refused to execute a properly enacted law of his state, and the Supreme Court of Alaska fashioned a new constitutional requirement to support his position.

The court's decision in *Alaska Legislative Council* is not only devoid of proper constitutional analysis, but also sets a dangerous precedent for the future of the state. Any governor may reach back in the code to a statute promulgated prior to their administration, refuse to enforce, and hope that the court will justify the action. Here, it is the Alaska public education system, and its students, that will pay the price of such overreach. Yet in the future, any interest of the Alaskan citizen could be at risk.

271. See, e.g., *Mike Dunleavy - KTOO Election Guide*, KTOO, <https://www.ktoo.org/elections/alaska-2018/candidate/mike-dunleavy/> (last visited Apr. 29, 2019) (discussing his commitment to reducing state spending).