

# THE FUTURE OF CHALLENGES TO THE ALASKA PUBLIC SCHOOL FUNDING SCHEME AFTER *STATE V. KETCHIKAN*

Kate Wheelock\*

## ABSTRACT

*In 2013, the Ketchikan Gateway Borough initiated a challenge to the Alaska public education funding scheme by paying its required local contribution (RLC) to its school district under protest. The Borough subsequently filed a lawsuit against the State of Alaska in 2014. This Note discusses the supreme court's constitutional analysis of the RLC in State v. Ketchikan. Despite extensive discussion of the RLC in the context of the Alaska Constitution's Dedicated Funds Clause, the court failed to sufficiently analyze the RLC (a critical component of public school funding) in the context of the state's responsibility for education – a duty rooted in the Public Schools Clause. This Note will argue that, unlike the challenge to the RLC under the Dedicated Funds Clause, a successful challenge to the RLC under the Public Schools Clause is a possibility. To prevent a hasty legislative response, the State should consider alternative funding schemes less reliant on RLCs before a court order demands it do so, particularly given the disparities in local contributions that are not necessarily proportional to borough revenues as well as the increased criticism of the RLC after State v. Ketchikan.*

## I. INTRODUCTION & OVERVIEW

Two disparities in the current, “on-the-ground” public education system in Alaska—an achievement gap between Alaska Natives and white Alaskans, and a geographically based digital divide—illustrate the unique challenges Alaska faces in education. First, achievement disparities between white and Native students in Alaska public schools rival or exceed school systems in other states.<sup>1</sup> Almost half of Alaska

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\* J.D. Candidate, Duke University School of Law, 2017; B.A., History, Minor in Education, Duke University, 2013.

1. Emma Brown, *In Alaska, Massive Achievement Gaps Separate Native and White Students*, WASH. POST (Sept. 1, 2015), <https://www.washingtonpost.com/>

Native students did not graduate on time in 2013, and a smaller proportion of Alaska Native fourth-graders are proficient in reading as compared to white Alaskans.<sup>2</sup> Second, the geographic makeup of Alaska means that the state public school system covers and incorporates vastly different types of space, leading to a digital divide. Internet connectivity varies widely between districts across the state,<sup>3</sup> and 42 percent of Alaska's schools cannot provide even a tenth of the Internet resources the FCC mandates for school Wi-Fi.<sup>4</sup>

These interrelated divides paint a picture of the unique and disparate needs of Alaskan students. The state legislature adopted the current public school funding system in 1998 to account for these disparities, among others.<sup>5</sup> A state with significant regional disparities in cost of living and population, among numerous other differences, requires a public school funding scheme that accounts for the variety of unique student circumstances and needs; Alaska is not a "one-size-fits-all" state.<sup>6</sup>

The required local contribution (RLC) to school funding by local governments has played a major role in the funding scheme for decades but is no longer unchallenged. In 2012, Ketchikan Gateway Borough Manager Dan Bockhorst released a report, arguing "the manner in which [Alaska's funding system] is carried out is . . . arcane and deeply flawed," and labeled it a "byzantine" system.<sup>7</sup> The disparity between contributions required by city and borough governments as compared to unorganized areas—the "most egregious aspect of the flawed system"—sparked his indignation over what he perceived as a penalty to organized boroughs.<sup>8</sup> In 2014, the Ketchikan Borough legally challenged the state's statutory

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local/education/in-alaska-massive-achievement-gaps-separate-native-and-white-students/2015/09/01/e56663f0-4ff6-11e5-933e-7d06c647a395\_story.html.

2. *Id.*

3. CONNECT ALASKA, THE ALASKA BROADBAND EDUCATION GAP 12 (May 2015), [http://www.connectak.org/sites/default/files/connected-nation/the\\_alaska\\_broadband\\_education\\_gap.pdf](http://www.connectak.org/sites/default/files/connected-nation/the_alaska_broadband_education_gap.pdf).

4. Naomi Nix, *Alaska's Disconnected Schools*, THE ATLANTIC (Dec. 16, 2015), <http://www.theatlantic.com/education/archive/2015/12/alaska-schools-internet/420648/>.

5. MATTHEW D. BERMAN ET AL., NATIONAL CENTER FOR EDUCATION STATISTICS, ALASKA 8, <https://nces.ed.gov/edfin/pdf/StFinance/Alaska.pdf>; S.B. 36, 1998 Alaska Sess. Laws, § 2, art. 1 (codified at ALASKA STAT. § 14.17 (2016)).

6. See Lori L. Taylor, Jay Chambers & Joseph P. Robinson, *A New Geographic Cost of Education Index for Alaska: Old Approaches with Some New Twists*, 30 J. OF EDUC. FIN. 51, 52 (Summer 2004) (describing reasons for variations in the purchasing power of the educational dollar across the state of Alaska).

7. DAN BOCKHORST, KETCHIKAN GATEWAY BOROUGH, EDUCATION FUNDING IN ALASKA: A BROKEN SYSTEM 1 (2012), <http://www.borough.ketchikan.ak.us/DocumentCenter/View/180>.

8. *Id.*

mandate that the borough pay the RLC in *Ketchikan Gateway Borough v. State of Alaska*.<sup>9</sup> The State defended the system, and the Alaska Supreme Court ruled the RLC permissible under the Dedicated Funds Clause, the Appropriations Clause, and the Governor's Veto Clause of the Alaska Constitution.<sup>10</sup>

However, this affirmation of the RLC under certain clauses does not preclude a future challenge under another relevant provision—the Public Schools Clause. Should the RLC, or the funding scheme as a whole, be successfully challenged and held unconstitutional, the state would need to reform the education funding framework while in the midst of the current fiscal crisis. Thus, the state should begin to analyze additional sources and methods of funding. This Note analyzes the potential constitutional challenges to the RLC and highlights several school funding methods that have been successfully implemented in other states.

## II. BACKGROUND

Alaska public schools served a total of 133,223 students as of October 2016.<sup>11</sup> These students received the second highest per-pupil expenditures of any state in the nation, at \$18,416.<sup>12</sup> Only four other states and the District of Columbia exceeded the \$16,000 threshold.<sup>13</sup>

Yet, these higher-than-average expenditures have not led to higher-than-average student outcomes when compared with national statistics. As of 2015, Alaska public school fourth-graders are below average as compared to students in other states in math and reading proficiency.<sup>14</sup> Although several metrics show that Alaska does indeed pay more to

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9. Complaint, *Ketchikan Gateway Borough v. State*, Case No. 1KE-14-00016CI (Jan. 13, 2014).

10. *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (Alaska 2016) [hereinafter *State v. Ketchikan*].

11. ALASKA DEP'T OF EDUC. & EARLY DEV., DISTRICT ENROLLMENT BY GRADE AS OF OCTOBER 1, 2016, <https://education.alaska.gov/stats/DistrictEnrollment/2017DistrictEnrollment.pdf>.

12. EDUC. FIN. BRANCH, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUBLIC EDUCATION FINANCES: 2013 8 (2016), <http://www2.census.gov/govs/school/13f33pub.pdf>.

13. *Id.* These states are New York, Connecticut, New Jersey, and Vermont, as well as the District of Columbia. *Id.*

14. *Alaska*, NEW AMERICA FOUNDATION: FEDERAL EDUCATION BUDGET PROJECT, <http://febfp.newamerica.net/k12/AK> (last visited Feb. 21, 2017) (compiling and citing statistics from the Common Core of Data at the National Center for Education Statistics).

educate its children and outpaces the rest of the United States,<sup>15</sup> per-pupil spending statistics do not account for the significant role played by cost-of-living variations across the United States.<sup>16</sup> Alaska's cost of living is the fourth highest in the nation.<sup>17</sup> Geographic isolation and climate further influence variations in the cost of education within the state.<sup>18</sup> Particularly in remote regions of the state, the cost of shipping goods and providing services increases costs even beyond those felt by urban Alaskan regions.<sup>19</sup>

Only New York, Connecticut, and Hawaii exceed Alaska's cost of living.<sup>20</sup> New York and Connecticut have comparable per-pupil expenditures to Alaska,<sup>21</sup> providing important context for Alaska's top statistical position in student funding. While Alaska leads the pack in terms of state per-pupil spending on education, the high cost of living undoubtedly plays a role in the higher expenditures and must be considered in any analysis of school funding data.

Article VII, Section 1 of the Alaska Constitution (the "Public Schools Clause") provides in relevant part, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions."<sup>22</sup> The clause does not specifically quantify the amount of money or proportion of funding required to satisfy the provision, and the allocation of funds has been historically left to the state legislature.<sup>23</sup>

The current state education funding formula came into existence in 1998 through Senate Bill 36.<sup>24</sup> State legislators intended to allow for an

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15. Erica Martinson, *Alaska's education spending still outpaces the rest of the US by far*, ALASKA DISPATCH NEWS (Feb. 2, 2016), <http://www.adn.com/article/20160202/alaskas-education-spending-still-outpaces-rest-us-far>.

16. See, e.g., Andrew Reschovsky & Jennifer Imazeki, *Let No Child Be Left Behind: Determining the Cost of Improving Student Performance*, 31 PUB. FIN. REV. 263, 271 (describing how "the composition of the student body, working conditions within schools, and area cost of living play a potentially large role in determining the salary a school district must offer to attract teachers of any given quality").

17. See Neil Fried, *Alaska's Cost of Living*, ALASKA ECONOMIC TRENDS, July 2015, at 4, <http://labor.alaska.gov/trends/jul15.pdf> (analyzing 2014 statistics of cost of living index, not inflation, from the Missouri Economic Research and Information Center).

18. Taylor, *supra* note 6, at 52.

19. Fried, *supra* note 17, at 12.

20. *Id.* at 10.

21. EDUC. FIN. BRANCH, *supra* note 12, at xii.

22. ALASKA CONST. art. VII, § 1 ("Public Schools Clause").

23. *Id.*

24. S.B. 36, 1998 Alaska Sess. Laws, § 2, art. 1 (codified at ALASKA STAT. § 14.17 (2016)). The new formula based funding on school population, whereas the prior model grouped schools and pupils into "funding communities" to determine allocations. See generally ALASKA DEP'T OF EDUC. & EARLY DEV., ALASKA'S PUBLIC SCHOOL FUNDING FORMULA: A REPORT TO THE ALASKA STATE LEGISLATURE (2001),

“equitable” education level for students across Alaska public schools as well as within districts.<sup>25</sup> Alaska public school funding currently comes from three sources: (1) state aid, (2) federal Impact Aid, and (3) a required local contribution.<sup>26</sup> Precise formulae determine the amount a district receives from each source; the formula specifying the amount of state aid provided to each district is the most complex.<sup>27</sup>

Each school district’s total funding entitlement is based on its “basic need,” which is the amount of revenue necessary for the district to operate its schools. A district’s “basic need” is calculated using the average daily membership of the district and the amount of funding the district needs to educate each student per year (“base student allocation”).<sup>28</sup>

First, the school funding formula only mandates that the state cover the excess of what federal and local contributions do not provide. The RLC and 90 percent of federal Impact Aid are subtracted from the “basic need” figure to determine a district’s entitlement to state aid.<sup>29</sup>

Second, as codified in the Elementary and Secondary Education Act of 1965,<sup>30</sup> the federal Impact Aid program supports school districts which lose tax revenue due to the presence of large parcels of land within their boundaries owned by the federal government or exempt from local taxation, such as Indian lands.<sup>31</sup> The program supports districts with a large numbers of students residing on Indian lands or other federal property, as well as districts where a large number of parents are in the military or employed on federal properties.<sup>32</sup> The compensation received is calculated based on the number of eligible students and the average state per-pupil expenditures.<sup>33</sup> Congress appropriates the total amount

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<https://education.alaska.gov/publications/FundingFormulaSB36Report.pdf> (explaining public school funding formula after the passage of Senate Bill 36).

25. 1998 A.K. ATT’Y GEN., GEN. REP., File No. 883-98-0080, at 2.

26. ALASKA STAT. § 14.17.410(b) (2016).

27. *See id.* § 14.17.410(b)-(f) (enumerating formulae). *See generally* LISA SKILES PARADY, FUNDING ALASKA PUBLIC SCHOOLS: A BRIEF EXPLANATION OF THE FOUNDATION FORMULA (2013), [http://aasb.org/wp-content/uploads/BoardRoomBootCamp\\_-\\_FoundationFormula.pdf](http://aasb.org/wp-content/uploads/BoardRoomBootCamp_-_FoundationFormula.pdf) (using visuals and formula breakdowns to explain the funding framework).

28. ALASKA STAT. § 14.17.410(b)(1). The state legislature sets the base student allocation annually. *See id.* § 14.17.470 (statutory history reveals annual amendments).

29. *Id.*

30. 20 U.S.C. § 7703 (2016).

31. U.S. DEP’T OF EDUC., OFFICE OF ELEMENTARY AND SECONDARY EDUC., ABOUT IMPACT AID, <http://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html#a>.

32. 20 U.S.C. § 7703(b) (2016).

33. *Id.*

available for the program nationwide and adjusts this amount periodically.<sup>34</sup>

Ninety percent of the eligible federal Impact Aid is deducted from a district's basic need amount to determine how much the state government must contribute to maintain the public schools.<sup>35</sup> In 2013, Alaska received the second-highest amount of Impact Aid funding,<sup>36</sup> trailing only Arizona, and making up about 13 percent of funding for public elementary and secondary schools.<sup>37</sup>

Third, public schools receive funding from local city or organized boroughs by way of the statutorily-mandated RLC.<sup>38</sup> The magnitude of the RLC is based on the value of the taxable property in the school district, but it may not exceed 45 percent of the district's "basic need" value.<sup>39</sup> The overall amount contributed by local sources in 2013 made up 20 percent of public school funding.<sup>40</sup>

Background on Alaska's borough system of local government is critical to understanding the role of the RLC in the school funding scheme. The "chief innovation" at the Alaska Constitutional Convention was the borough system—a unified local governance system with the borough as the central unit between the states and the cities.<sup>41</sup> The idea was for the boroughs to administer "local" responsibilities, such as school districts.<sup>42</sup> The convention delegates expressed this framework in Article X of the Alaska Constitution.<sup>43</sup> After the Constitution was ratified, the legislature passed the Borough Act of 1961 to encourage borough establishment and integration with special service districts by 1963.<sup>44</sup> The Mandatory

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34. U.S. DEP'T OF EDUC., IMPACT AID FISCAL YEAR 2017 BUDGET REQUESTS B-7, <https://www2.ed.gov/about/overview/budget/budget17/justifications/b-impactaid.pdf>.

35. ALASKA STAT. § 14.17.410(b)(2) (2016).

36. EDUC. FIN. BRANCH, *supra* note 12, at 2. This naturally follows from the fact that 61.2 percent of land in Alaska is federally owned. CAROL VINCENT, LAURA HANSON & JEROME BJELOPERA, CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 4 (2014).

37. EDUC. FIN. BRANCH, *supra* note 12, at 2.

38. ALASKA STAT. § 14.17.410.

39. ALASKA STAT. § 14.17.410(b)(2) ("[T]he required local contribution of a city or borough school district is the equivalent of 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district.").

40. *See* EDUC. FIN. BRANCH, *supra* note 12, at 1 (listing statistics which the author used to calculate the percentage of total revenue spent contributed by local sources).

41. GERALD A. McBEATH, THE ALASKA STATE CONSTITUTION 196 (1997).

42. *Id.*

43. ALASKA CONST. art. X, § 1.

44. THOMAS A. MOREHOUSE & VICTOR FISCHER, INST. OF SOC., ECON., AND GOV'T RESEARCH, UNIV. OF ALASKA, BOROUGH GOVERNMENT: A STUDY OF STATE-LOCAL RELATIONS, 72 (1971), [http://www.iser.uaa.alaska.edu/Publications/1971\\_03-BoroughGovernmentInAlaska.pdf](http://www.iser.uaa.alaska.edu/Publications/1971_03-BoroughGovernmentInAlaska.pdf).

Borough Act of 1963 subsequently required incorporation of boroughs in certain parts of the state, with city governments to encompass other areas.<sup>45</sup>

Despite the delegates' desire for boroughs to administer local responsibilities, today not all boroughs house school districts. State statute outlines three types of districts: (1) city school districts, (2) borough school districts, and (3) regional educational attendance areas.<sup>46</sup> City governments in unorganized boroughs operate city school districts.<sup>47</sup> Organized boroughs operate borough school districts.<sup>48</sup> Areas outside of organized boroughs and outside home-rule or first-class cities<sup>49</sup> are divided into regional educational attendance areas (REAs).<sup>50</sup> Today, the three types of districts are more or less equally prevalent in the state.<sup>51</sup> However, vast differences between numbers of students served, costs, and jurisdictional area exist between Alaska's fifty-four school districts.<sup>52</sup> The funding framework accounts for some of these differences, including type of school district, in its calculation of "basic need" entitlement for each school district.<sup>53</sup>

None of the school districts themselves possess the right to levy taxes. As explicitly stated in Article X of the Constitution, delegates wanted a local governance structure to eliminate and prevent overlapping taxing jurisdictions.<sup>54</sup> Section 2 of Article X provides that the state may only delegate taxing powers to organized boroughs and cities.<sup>55</sup>

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45. *Id.* at 74; ALASKA STAT. §§ 29.18.190–200 (repealed 1985).

46. ALASKA STAT. § 14.12.010 (2016).

47. *Id.*

48. *Id.*

49. Cities are either home-rule or general-law, with the general-law cities divided into first- and second-class. *See generally* LOCAL BOUNDARY COMMISSION STAFF, ALASKA DEP'T OF COMMERCE, CMTY., AND ECON. DEV., LOCAL GOVERNMENT IN ALASKA (2015), <https://www.commerce.alaska.gov/web/Portals/4/pub/2015%20LOCAL%20GOVERNMENT%20IN%20ALASKA.pdf> (outlining the local government structure in Alaska).

50. ALASKA STAT. § 14.08.031(a). In other words, the nineteen REAA school districts are within the portion of unorganized boroughs exclusive of city districts. Complaint, *supra* note 9, at 4.

51. ALASKA DEP'T OF EDUC. & EARLY DEV., ALASKA SCHOOL MAP (2013), <https://education.alaska.gov/facilities/pdf/dae2013map.pdf>.

52. *See, e.g., id.* (depicting school district boundaries).

53. ALASKA STAT. § 14.12.010 (2016).

54. ALASKA CONST. art. X, § 1.

55. ALASKA CONST. art. X, § 2. In fact, an amendment to give school districts equal taxing powers with cities and boroughs lost by a 4-to-1 vote. McBeath, *supra* note 43, at 181. Together this meant that Alaska school districts would no longer have taxation power as they did before statehood. *Id.* Interestingly, other state constitutions provide school districts the right to levy taxes. *Id.* at 183; *Cf. Resource Center*, U.S. DEP'T OF THE TREASURY,

As such, city governments and organized borough governments are the only bodies required to pay the local contribution; the State of Alaska's contribution to the "basic need" amount is reduced by a tax on the value of the taxable real and personal property within those districts.<sup>56</sup> Furthermore, a borough or city district may not receive state aid if their RLCs are not made.<sup>57</sup> REAAs are not required to pay an RLC amount and therefore receive a higher proportion of their funding from the state.<sup>58</sup> This follows from the fact that they cannot tax.<sup>59</sup> Naturally, this has led to disparities in the amount of local contributions to "basic need" and disparities in the proportion of state aid paid to districts to run their schools.

In addition to the RLC, the state permits district to fund their schools above the "basic need" amount—within proscribed limits.<sup>60</sup> A city or borough may contribute more than is required but may not exceed a maximum amount set by the state.<sup>61</sup> The state's cap on supplemental funding enables it to remain eligible to receive federal aid.<sup>62</sup> To receive aid, states must comply with federal disparity limits, which limit the variance in district per-student revenues between the 95th and 5th percentiles to 25 percent.<sup>63</sup>

The inequality between school districts with respect to the existence and magnitude of the RLCs sparked the Ketchikan Gateway Borough's legal challenge.

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center/faqs/Taxes/Pages/state-local.aspx (last updated Oct. 5, 2010) (stating "property tax is usually paid to a local government, a school district . . .").

56. ALASKA STAT. § 14.17.410(b)(1).

57. *Id.* § 14.17.410(d).

58. *Id.* § 14.17.410(b)(2).

59. ALASKA CONST. art. IX, § 1; art. X, § 2; ALASKA STAT. § 29.45.010. However, Ketchikan Gateway Borough Manager Dan Bockhorst argues this is inconsequential because the REAAs operate under state law and may be taxed by the state. BOCKHORST, *supra* note 7, at 9. Furthermore, during oral argument on summary judgment at the superior court, Attorney Louisiana Cutler acknowledged that the unorganized boroughs could have a tax base. Oral Argument at 17:05, Ketchikan Gateway Borough v. State of Alaska, No. 1KE-14-00016CI, <http://www.borough.ketchikan.ak.us/790/Superior-Court-1KE-14-00016-CI>.

60. ALASKA DEP'T OF EDUC. & EARLY DEV., PUBLIC SCHOOL FUNDING PROGRAM OVERVIEW 6 (Sept. 2015), <https://education.alaska.gov/SchoolFinance/pdf/FundingOverview2015.pdf>; see BOCKHORST, *supra* note 7, at 7 (describing the relationship between the allowance for supplemental local funding and federal limitations).

61. ALASKA DEP'T OF EDUC. & EARLY DEV., PUBLIC SCHOOL FUNDING PROGRAM OVERVIEW 6 (Sept. 2015), <https://education.alaska.gov/SchoolFinance/pdf/FundingOverview2015.pdf>

62. 34 C.F.R. § 222.161 (2016).

63. 34 C.F.R. § 222.162 (2016); see generally 34 C.F.R. Pt. 222, App. (2016).



### III. STATE V. KETCHIKAN & THE REQUIRED LOCAL CONTRIBUTION UNDER THE DEDICATED FUNDS CLAUSE

The Ketchikan Gateway Borough (“Ketchikan” or “the Borough”) opposed the state’s school funding scheme in 2013. Ketchikan reluctantly paid the RLC to its school district, doing so “under protest” and accompanied by a statement explaining Ketchikan’s belief that the contribution was an unconstitutional dedication.<sup>64</sup> The Borough “made the payment under duress and compulsion” because, without it, the Borough would receive no state aid for the year, the school district would be unable to operate, and children would be deprived of educational opportunities.<sup>65</sup> Additionally, the Borough worried it would be unable to make up that potential loss with property taxes due to statutory restrictions on the limit of total property tax revenues.<sup>66</sup>

The Borough filed suit in 2014 arguing that municipalities were coerced to pay the RLC.<sup>67</sup> It argued the RLC was unconstitutional under three provisions of the Alaska Constitution: the Dedicated Funds Clause,<sup>68</sup> the Appropriations Clause,<sup>69</sup> and the Veto Clause.<sup>70</sup> The Borough requested a declaratory judgment on these three claims.<sup>71</sup> In its complaint, the Borough did not argue that the RLC circumvented the state’s obligation to establish and maintain a system of public schools.<sup>72</sup>

The Borough subsequently sought summary judgment, and the State filed a cross motion for summary judgment.<sup>73</sup> In its Motion and Memorandum for Summary Judgment, the Borough argued that the State

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64. Complaint, *supra* note 9, at 8.

65. *Id.*

66. *Id.* at 9.

67. *Id.* at 6.

68. ALASKA CONST. art. IX, § 7 (“Dedicated Funds Clause”) (“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.”).

69. ALASKA CONST. art. IX, § 13 (“Appropriations Clause”) (“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.”).

70. ALASKA CONST. art. II, § 15 (“Governor’s Veto Clause”) (“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.”).

71. Complaint, *supra* note 9, at 9-10.

72. It only briefly cited the Public Schools Clause before a description of the current system and funding scheme. *Id.* at 3.

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

had “abdicated this duty [to educate] by unconstitutionally requiring the Borough to fund the Ketchikan Gateway Borough School District . . . with an annual required local contribution.”<sup>74</sup> However, the plaintiffs dedicated the bulk of the memorandum and the argument to an analysis of the Dedicated Funds Clause, not the responsibilities of the State under the Public Schools Clause.<sup>75</sup>

In the Borough’s Reply in Support of Motion for Summary Judgment and Opposition to Defendants’ Cross Motion for Summary Judgment, the Borough dismissed the Public Schools Clause as merely obscuring the other constitutional violations to the RLC.<sup>76</sup> The Borough explicitly stated that it did not seek to invalidate the RLC under the Public Schools Clause.<sup>77</sup>

The superior court found that the RLC, as a dedicated fund, violated the Alaska Constitution’s Dedicated Funds Clause,<sup>78</sup> and granted in part the Borough’s motion for summary judgment.<sup>79</sup> However, the superior court also granted the State’s motion in part, concluding that the RLC did not violate two other provisions of the Alaska Constitution:<sup>80</sup> the Appropriations<sup>81</sup> and Governor’s Veto Clauses.<sup>82</sup> The State appealed and the Borough cross-appealed.<sup>83</sup>

On appeal, the State argued that the RLC did not violate the Dedicated Funds Clause because the clause only applied to state revenue, not local revenue.<sup>84</sup> Furthermore, the State argued that even if the RLC applied to local revenue, the local contribution lacked the necessary characteristics of local funds violations.<sup>85</sup> The State argued that a Dedicated Funds Clause violation has two parts—a specific incoming source of revenue and a specific outgoing dedication to a particular

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74. Plaintiff’s Motion and Memorandum in Support of Motion for Summary Judgment at 2, *Ketchikan Gateway Borough v. State*, Case No. 1KE-14-00016CI (Feb. 6, 2014).

75. *See id.* at 12–20 (discussing arguments other than those under the Public Schools Clause).

76. Plaintiff’s Reply in Support of Motion for Summary Judgment and Opposition to Defendants’ Cross Motion for Summary Judgment at 10, *Ketchikan Gateway Borough v. State*, Case No. 1KE-14-00016CI (Apr. 28, 2014).

77. *Id.*

78. ALASKA CONST. art. IX, § 7.

79. Superior Ct. Order on Motion and Cross Motion for Summary Judgment at 25, *Ketchikan Gateway Borough v. State*, No. 1KE-14-00016CI (Nov. 21, 2014).

80. *Id.*

81. ALASKA CONST. art. IX, § 13.

82. ALASKA CONST. art. II, § 15.

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

84. Brief of Appellants at 25–34, *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (Alaska 2016) (Nos. S-15811, 15841), 2015 WL 4498941.

85. *Id.* at 34.

purpose.<sup>86</sup> According to the State's characterization of the RLC, a borough's combination of sales and property taxes were *general* taxes—not dedicated to a specific purpose—that went into the borough assembly's general funds, and the assembly then appropriated them.<sup>87</sup> Instead, the State claimed that the RLC was "a financial obligation that the borough appropriates money to fulfill on an annual basis."<sup>88</sup>

Moreover, the State argued the RLC was not subject to the Dedicated Funds Clause because the legislative history showed it was intended to be exempt.<sup>89</sup> It claimed that the Constitutional Convention delegates intended to exempt local contributions as a part of state-local cooperative programs, and that the delegates viewed school funding as a "quintessential" cooperative program.<sup>90</sup>

The majority of justices on the Alaska Supreme Court agreed with the State, holding that the RLC is not a constitutionally prohibited dedicated tax.<sup>91</sup> The Dedicated Funds Clause generally prohibits the state from earmarking any state taxes or licenses for any particular purpose.<sup>92</sup> The provision excepts "any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."<sup>93</sup> The court looked to the intent of the State Constitution's framers to reach the conclusion that the RLC was just "the most recent iteration" of an established and "longstanding state-local cooperation system" that existed upon ratification.<sup>94</sup> The court described the historical sharing of responsibility between the Alaska Territory and local communities to fund local schools.<sup>95</sup> The court reasoned that the Constitution's framers intended this cooperation to continue post-statehood, particularly evidenced by the fact that subsequent legislation did not alter this framework.<sup>96</sup>

The court also found that the local funds, as part of a state-local cooperative program, were not "state tax or license" under the Dedicated Funds Clause.<sup>97</sup> The State argued that the public schools funding program is a state-local cooperative program excepted from the Dedicated Funds

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86. *Id.*

87. *Id.* at 35.

88. *Id.*

89. *Id.* at 37–38.

90. *Id.*

91. *State v. Ketchikan Gateway Borough*, 366 P.3d at 91 (Alaska 2016). The court also held that the RLC does not violate the Appropriations or Governor's Veto Clauses, but that is beyond the scope of this Note. *Id.* at 101.

92. ALASKA CONST. art. IX, § 7.

93. *Id.*

94. *State v. Ketchikan*, 366 P.3d at 91.

95. *Id.* at 92–93.

96. *Id.* at 92–96.

97. *Id.* at 90, 98.

Clause.<sup>98</sup> The court analyzed the RLC in light of *State v. Alex*<sup>99</sup> and subsequent cases, quickly casting them aside as distinct and non-controlling in *Ketchikan*.<sup>100</sup>

First, the *Ketchikan* court analyzed the scope of the Dedicated Funds Clause in *Alex*.<sup>101</sup> In *Alex*, the court held that the Alaska Constitution prohibits the “dedication of any source of revenue, including ‘taxes’ and ‘special assessments,’” such as the mandatory assessment of fishermen’s salmon sales to provide revenue for regional aquaculture associations.<sup>102</sup> However, the court in *Ketchikan* cast this case aside because the *Alex* court did not consider a “longstanding state-local cooperative program.”<sup>103</sup> Additionally, no evidence suggests the constitutional delegates intended the program at issue in *Alex* to have an exception—the program was established twenty years after the State of Alaska.<sup>104</sup> Second, the *Ketchikan* court distinguished *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*<sup>105</sup> because the court there analyzed article XI, § 7 of the Alaska Constitution, which defines the scope of the initiative process, and not the Dedicated Funds Clause.<sup>106</sup> Third, the *Ketchikan* court dispensed of another case—*Sonneman v. Hickel*<sup>107</sup>—in which the court had considered the creation of a general fund account for revenue deposits from the Alaska Marine Highway System that designated how the Marine Highway’s parent agency could appropriate, request, and spend the money.<sup>108</sup> There, the supreme court held the act violated the Dedicated Funds Clause because it “restricted executive authority to request appropriations.”<sup>109</sup> However, *Sonneman* did not control in *Ketchikan* because that case had not considered a state-local cooperative program “in which local communities and the State share responsibility for providing a local public service.”<sup>110</sup>

Fourth, the *Ketchikan* court distinguished *Myers v. Alaska Housing Finance Corp.*<sup>111</sup> The legislative scheme at issue in *Myers* involved the sale of anticipated future state revenue from a settlement against tobacco

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98. Brief of Appellants, *supra* note 84, at 3–4.

99. 646 P.2d 203 (Alaska 1982).

100. *State v. Ketchikan*, 366 P.3d at 98–102.

101. *Id.* at 98.

102. *Alex*, 646 P.2d at 210.

103. *State v. Ketchikan*, 366 P.3d at 98.

104. *Id.*

105. 818 P.2d 1153 (Alaska 1991).

106. *State v. Ketchikan*, 366 P.3d at 98–99.

107. 836 P.2d 936 (Alaska 1992).

108. See *State v. Ketchikan*, 366 P.3d at 99 (summarizing the scheme).

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

110. *State v. Ketchikan*, 366 P.3d at 99.

111. *Id.* at 99–100 (citing *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 392 (Alaska 2003)).

companies to fund rural school improvements.<sup>112</sup> Under this scheme, the legislature would issue bonds and then appropriate a portion of the proceeds to fund school improvements.<sup>113</sup> The court in *Ketchikan* thus distinguished *Myers* because the *Myers* scheme dealt with future revenue reduced to a present value, which was subsequently dedicated to school improvement.<sup>114</sup>

Lastly, the *Ketchikan* court invoked *Southeast Alaska Conservation Council v. State*<sup>115</sup> for the proposition that the court had never ruled out the possibility of finding other statutes exempt from the Dedicated Funds Clause, such as a longstanding cooperative program like the school funding scheme.<sup>116</sup> In *Southeast Alaska Conservation Council*, the court held unconstitutional an act that transferred state land to the University of Alaska and directed income from that land be held for the University.<sup>117</sup> There, the court considered whether this was exempt because of an implied exception to Article VII, Section 2 of the Alaska Constitution, but rejected this argument, finding that the University's revenues from land are nevertheless state revenues subject to the clause.<sup>118</sup> However, the majority in *Ketchikan* used *Southeast Alaska Conservation Council* for the proposition that the court might find other statutes exempt from the Dedicated Funds Clause, arguing that schemes in which "local governments and the state share responsibility for providing a local public service" do not violate the Dedicated Funds Clause.<sup>119</sup>

Despite an extensive analysis of Dedicated Funds Clause precedent, the supreme court in *Ketchikan* completed only a cursory review of the state's obligations under the Public Schools Clause, despite the subject matter of the case.<sup>120</sup> As described above, the State argued that the Borough waived arguments based on the RLC's unconstitutionality under the Public Schools Clause.<sup>121</sup> Neither party brought up the applicability of the Public Schools Clause at the superior court or supreme court levels, so neither court ruled on it.<sup>122</sup>

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112. *Myers*, 68 P.3d at 387-88.

113. *Id.* at 388.

114. *State v. Ketchikan*, 366 P.3d at 99-100.

115. 202 P.3d 1162 (Alaska 2009).

116. *State v. Ketchikan*, 366 P.3d at 100.

117. *Southeast Alaska Conservation Council*, 202 P.3d at 1162, 1165-66, 1177.

118. *Id.* at 1171-72.

119. *State v. Ketchikan*, 366 P.3d at 100-01.

120. *See id.* at 87-89 (discussing the school funding formula in four paragraphs).

121. *Id.*

122. The Borough's Complaint and Motion and Memorandum for Summary Judgment did not challenge the RLC based on the Public Schools Clause. *See generally* Complaint, *supra* note 9; Motion and Memorandum in Support of Motion for Summary Judgment, *supra* note 74 (omitting a Public Schools Clause challenge

Although the supreme court's majority opinion does not address the RLC in the context of the Public Schools Clause, two concurrences do.<sup>123</sup> Chief Justice Stowers joined in the majority's ultimate holding, but expressed concern that the court did not decide the question at issue in the "fuller context" of the Public Schools Clause.<sup>124</sup>

Justice Winfree's concurrence expounded on the Chief Justice's general sentiments, expressing "considerable doubt" about the RLC's constitutionality.<sup>125</sup> The Justice explained that the parties' arguments appear to use the Dedicated Funds Clause to define the limits of the Public Schools Clause.<sup>126</sup> The Justice found this inappropriate and wanted a "full interpretation and understanding of the Alaska Constitution's Public Schools Clause. . . ."<sup>127</sup>

After discussing, albeit somewhat briefly, relevant cases and history of the Public Schools Clause, the Winfree concurrence outlined potential implications of a determination of the RLC's constitutionality absent a full interpretation of the Public Schools Clause.<sup>128</sup> The conclusion that the RLC is constitutional, as the majority held, could allow the state to compel a municipality to pay for all of its costs without any state contribution or refuse to fund any public school operations if a municipality failed to comply with the RLC.<sup>129</sup> On the other hand, a conclusion that the RLC is a prohibited dedicated tax may be "necessarily concluding" that the Public Schools Clause mandates that the state alone must fund public schools.<sup>130</sup>

Although Justice Winfree expressed doubts about the constitutionality of the RLC, he did not dissent from the majority holding

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from both documents). At oral argument before the superior court, Borough attorneys expressly denied that the Public Schools Clause requires the State to fully fund education, but evaded questions about at what level the State must fund public education. Oral argument at 39:00-40:46, *Ketchikan Gateway Borough v. State of Alaska*, No. 1KE-14-00016CI, <http://www.borough.ketchikan.ak.us/790/Superior-Court-1KE-14-00016-CI>. Before the supreme court, the Borough only addressed the Public Schools Clause in the context of its unjust enrichment argument on cross-appeal, even stating that "whether the State has to fully fund education is not controlling." Cross-Appellants' Opening Brief at 19, *State v. Ketchikan Gateway Borough*, No. S-15811/15841 (May 12, 2015).

123. *State v. Ketchikan*, 366 P.3d at 102-05 (Stowers, C.J., concurring); (Winfree, J., concurring).

124. *Id.* at 102 (Stowers, C.J., concurring).

125. *Id.* at 102 (Winfree J., concurring).

126. *Id.* at 103-04.

127. *Id.* at 102.

128. *Id.* at 105.

129. *Id.* at 104.

130. *Id.*

because of the presumption that statutes are constitutional.<sup>131</sup> Yet, questions remain: is the RLC constitutional under the Public Schools Clause? What is the scope of the state's responsibility to public schools under the Alaska Constitution?

#### IV. LEGAL ANALYSIS OF FUNDING SCHEME UNDER THE PUBLIC SCHOOLS CLAUSE & OTHER POTENTIAL CHALLENGES

Despite the court's holding in *Ketchikan*, a future challenge to the RLC's constitutionality in the context of the Public Schools Clause could succeed, as suggested in the Winfree concurrence.<sup>132</sup> A requirement that the state alone—without support from the local governments as currently provided with the RLCs—must provide funds necessary to meet at least a minimal standard of adequacy for public schools “can, but by no means must,” be found in the Public Schools Clause.<sup>133</sup> The Alaska Supreme Court has not answered this question, though a claim that the state has the responsibility to fund public education at a minimally constitutionally adequate level could succeed.<sup>134</sup> Moreover, a supreme court decision that the Public Schools Clause does in fact mandate that the state alone fund at some minimal level would call the current funding scheme into question. Specifically, the state could not require any local contribution for funding the minimal adequacy level; that responsibility would be solely the state's.<sup>135</sup> Without this critical component of the funding scheme available to it, the state would be left with a crisis of how to reform the entire funding system while in the midst of decreasing oil revenues and a tightening budget.

The Public Schools Clause is located in Article VII, Section 1 of the Alaska Constitution. This clause reads, in part, “[t]he legislature shall by general law establish and maintain a system of public schools open to all

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131. *Id.* at 102.

132. *Id.*

133. Chris Lott, *The Methodological Middle Ground: Finding an Adequacy Standard in Alaska's Education Clause*, 24 ALASKA L. REV. 73, 75 (2007) (analyzing *Molly Hootch v. Alaska-State Operated School System*, 536 P.2d 793 (Alaska 1975)).

134. See *State v. Ketchikan*, 366 P.3d at 104 (Winfree, J., concurring) (citing *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 405 (Alaska 1997) (Matthews, J., concurring) (explaining that Public Schools Clause *might* support a claim when a district's funds do not provide a minimally adequate education) (emphasis added)). Furthermore, claims that a district's funds are insufficient to provide a minimally adequate education have been made in other states with varying degrees of success. See *Matanuska-Susitna*, 931 P.2d at 405 (Matthews, J., concurring) (listing cases); see Michael D. Boone, *Adequacy and the Courts: A Review*, 64 JOURNAL OF PHILOSOPHY & HISTORY OF EDUCATION 98–104 (2014).

135. *State v. Ketchikan*, 366 P.3d. at 104–05 (Winfree, J., concurring).

children of the State. . . .”<sup>136</sup> The provision is two-pronged in that it bestows a right and orders a responsibility.<sup>137</sup> Not only does the provision guarantee all children of Alaska a right to public education,<sup>138</sup> but it also requires the legislature to “establish and maintain” the public schools.<sup>139</sup> Today, a state statute vests in the Department of Education and Early Development the responsibility to administer the state’s elementary and secondary school programs.<sup>140</sup> The Public Schools Clause does not explicitly provide that the state alone must fund the public schools system.<sup>141</sup> The critical question, however, is at what level, if any, the Public Schools Clause requires that the state fund public schools as part of its responsibility to “establish and maintain” them. Unfortunately, the Alaska Supreme Court is silent on this issue, though a claim employing legislative intent and reasoning from other funding cases could change that.

#### A. Legislative Intent of Constitutional Convention Delegates in Drafting Public Schools Clause

The Alaska Supreme Court and the court of appeals consider legislative history a valuable source for statutory interpretation, frequently employing it in their analyses and heavily relying on it in *Ketchikan*.<sup>142</sup> At the Alaska Constitutional Convention, the Public Schools Clause was uncontroversial.<sup>143</sup> The convention participants’ first goal in education was to delegate broad authority to the state legislature to administer the public schools.<sup>144</sup> Thus, the Clause vests discretion in the legislature to establish and maintain public schools accordingly. But, the delegates did not explicitly provide a precise framework for the legislature to do so.

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136. ALASKA CONST. art. VII, § 1.

137. *Id.*

138. *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972).

139. ALASKA CONST. art. VII, § 1.

140. ALASKA STAT. § 44.27.020 (2016).

141. *State v. Ketchikan Gateway Borough*, 366 P.3d at 104 (Alaska 2016) (Winfrey, J., concurring).

142. *Id.* at 90 (majority opinion) (beginning discussion of legislative history by stating “[l]egislative history and the historical context, including events preceding ratification, help define the constitution”). See generally Susan Falk, *Introduction to Researching Alaska Legislative History Materials*, 28 ALASKA L. REV. 279 (citing numerous case examples where the Alaska Supreme Court and the Alaska Court of Appeals have relied on legislative history).

143. VICTOR FISCHER, ALASKA’S CONSTITUTIONAL CONVENTION 140 (1975).

144. 5 Proceedings of the Alaska Constitutional Convention 1513-15 (Jan. 9, 1956) [hereinafter PACC] (statement of Delegate Armstrong) (explaining the intent to liberally construe the education provision and presenting the recognition that the public schools are the state’s responsibility).



The *Ketchikan* court concluded that the delegates did not intend to compel the state to dismantle existing funding programs or to prevent them from adapting to changing circumstances.<sup>145</sup> The court also reasoned that the legislature never relieved local community governments of their “longstanding obligation to support local public schools.”<sup>146</sup> Despite the court’s analysis, the majority opinion does not provide a complete picture of the delegates’ intent.

The court failed to address two arguments that a Borough could advance in a challenge to the RLC under the Public Schools Clause: (1) the broader intent of the Public Schools Clause as reflected in the Constitutional Convention minutes, and (2) the lack of an RLC in the pre-statehood funding schemes despite some degree of state-local cooperation. Determining the constitutionality of the RLC, a component of the *public schools* funding scheme, thus requires a full interpretation and understanding of the legislative intent and precedent on the Public Schools Clause, not just the Dedicated Funds Clause on which the court mainly focused in *Ketchikan*.

The intent of the delegates in enacting the Public Schools Clause is significant in determining the RLC’s constitutionality under the clause. The Alaska Supreme Court considers a “historical perspective [to be] essential to an enlightened contemporary interpretation of [the Alaska] constitution.”<sup>147</sup> The delegates likely intended *some* cooperation between state and local governments in education.<sup>148</sup> The majority opinion notes this in *Ketchikan*.<sup>149</sup> However, the delegates’ intent for the precise relationship between states and local governments for education appears more indeterminate than the *Ketchikan* majority suggests in its examination of the Alaska Constitution.

The delegates at the Constitutional Convention recognized the importance of preserving state control over the public school system. Delegates repeatedly stated, without challenge from other convention participants, that public education is primarily a function of the state

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145. *State v. Ketchikan*, 366 P.3d at 95.

146. *Id.* at 97.

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

148. See 5 PACC 3617 (Jan. 30, 1956) (statement by Delegate Doogan) (“The argument that could be construed if we left the language as it is: Is a school district a local function or isn’t it? And our purpose was that all districts be under the jurisdiction of a borough. So that was the reason for the change, and that’s the reason we approved it.”).

149. *State v. Ketchikan*, 366 P.3d at 96 (citing Delegate Doogan’s statement from the Constitutional Convention that the borough would “probably have a certain basic tax to provide schools”).

government.<sup>150</sup> Since 1955, the state's responsibility for education was a given, though uncertainty remained regarding the contours of the state-local relationship to education funding.<sup>151</sup> A 1955 Report on the Committee on Preamble and Bill of Rights suggested a provision for public education including the language that the "state shall establish and maintain" the public schools.<sup>152</sup> In crafting the final provision at the Constitutional Convention, delegates discussed which branch of state government to include in the provision, ultimately settling on the legislature.<sup>153</sup> Discussion of the decentralization of educational functions was generally limited to policy and structure, not mandated funding.<sup>154</sup>

Yet, as mentioned above, neither the text of the Public Schools Clause nor the delegates' discussions explicitly provide whether the state alone has the duty to fund the public schools at any level. The *Ketchikan* majority cites to the funding framework before statehood, explaining that the local and Territory governments worked together to fund public schools.<sup>155</sup> Thus, the majority argues, in drafting the Constitution the framers intended to continue this state-local cooperation, and thus mandatory local contributions to school districts are excepted from the Dedicated

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150. See, e.g., 5 PACC 2247 (Jan. 16, 1956) (statement by Delegate Fischer) (stating that education is a "function of [the] state"); 5 PACC 1516 (Jan. 9, 1956) (statement by Delegate Coghill) ("[T]he intent of public education is primarily a state function and does not belong to any private or any one particular group . . .").

151. See, e.g., 5 PACC 2247 (Jan. 16, 1956) (statement by Delegate Fischer) (stating that education is a "function of [the] state"); see Constitutional Convention Committee on Local Government, Summary of Minutes after Hearing Recess, Committee on Local Government, at 5 (describing education as a function generally provided "by the state or with state supervision" but with local government playing a varying role.).

152. *Hootch*, 536 P.2d at 800-01, 801 n.25.

153. 5 PACC 3312 (Jan. 27, 1956) (statement by Delegate Hurley) (noting "the intent was that the legislative branch . . . should make the provisions [about education]"). However, this still leaves open the question about the intent for exact responsibility for education. *Id.*

154. See, e.g., 5 PACC 2622 (Jan. 19, 1956) (statement by Delegate Fischer) (discussing the desire for citizens in boroughs to have some level of self-determination in education or, in "other words, get some decentralization at least on the policy level"); 5 PACC 2247 (Jan. 16, 1956) (statement by Delegate Fischer) ("[Education] is part of the general administrative organization . . . [and] I think that the commissioner of education should possibly be appointed by a special board of education, a nonpartisan board."). Furthermore, the Alaska Supreme Court ruled that the legislative delegation of educational functions to local school boards did not diminish constitutionally mandated state control over education. *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

155. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 91-92 (Alaska 2016); see ALASKA COMPILED LAWS ANNOTATED (ACLA) § 37-3-61 (1949) (requiring Territory to refund local governments for some local school expenditures).

Funds Clause.<sup>156</sup> However, the pre-statehood funding program did not mandate a RLC from boroughs, so the framers' intent to except something that did not exist at the time is less than clear.<sup>157</sup>

The supreme court also analyzed post-statehood legislation as evidence that a local contribution in this context was meant to be excepted from the Dedicated Funds Clause and that subsequent legislation did not alter the "pre-statehood" core.<sup>158</sup> Early post-statehood legislation delegated significant responsibility to the boroughs.<sup>159</sup> The boroughs were given the responsibility to "establish, maintain, and operate a system of public schools on an areawide basis."<sup>160</sup> The court cited this post-statehood legislation as strong evidence of the scope of the Dedicated Funds Clause and its exception, citing a previous holding that "contemporaneous interpretation of fundamental law by those participating in its drafting has traditionally been viewed as especially weighty evidence of the framers' intent."<sup>161</sup> However, Justice Winfree noted that only one-sixth of those legislators who passed the post-statehood funding framework were constitutional delegates.<sup>162</sup> The subsequent legislature's interpretation of the constitutional provision is thus less persuasive than the court let on.

Despite the repeated recognition that the state had the primary responsibility for education, the delegates did not specify the way in which the legislature was to fulfill their responsibility, beyond directing the legislature to "set the machinery in motion" in matters of education.<sup>163</sup> The delegates left this an open question.

## **B. Cases Describing & Defining the State's Public Education Responsibility**

Particularly given the lack of clarity legislative intent provides on the issue of funding, "[a] full interpretation and understanding" of the Public Schools Clause requires analysis and application of precedent on the matter.<sup>164</sup> The *Ketchikan* majority did not analyze two significant supreme

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156. *State v. Ketchikan*, 366 P.3d 86, 92-94.

157. *Id.* at 104 (Winfree, J., concurring) (explaining possible outcomes of constitutional construction); 1961 Alaska Sess. Laws Ch. 146 § 3.33.

158. *State v. Ketchikan*, 366 P.3d at 97 (majority opinion).

159. *Id.*

160. H.B. 509, 1966 Alaska Sess. Laws § 1 (codified at ALASKA STAT. § 07.15.330(a) (1970) (repealed)).

161. *State v. Ketchikan*, 366 P.3d at 95 n.69 (citing *Bradner v. Hammond*, 553 P.2d 1, 4 n.4 (Alaska 1976)).

162. *Id.* at 104 n.24 (Winfree, J., concurring).

163. 4 PACC (Jan. 9, 1956) (statement by Delegate Armstrong).

164. *State v. Ketchikan*, 366 P.3d at 102 (Winfree, J., concurring).

court cases, *Macauley v. Hildebrand*<sup>165</sup> and *Hootch v. Alaska State-Operated School System*,<sup>166</sup> nor multiple lower court cases that inform the interpretation of Public Schools Clause and the RLC's constitutionality under it.

The supreme court decided *Macauley v. Hildebrand* in 1971 and directly addressed the Public Schools Clause.<sup>167</sup> The appeal concerned a dispute between the Juneau School Board and the City and Borough of Juneau.<sup>168</sup> The school board objected to a borough ordinance that required all accounting functions, including some determination of educational spending, be centralized in the borough government.<sup>169</sup> The issue was whether a home-rule borough could require its school system to participate in centralized accounting without obtaining school board approval as required by state statute.<sup>170</sup> In response, the court revisited its precedent developing the "local activity rule"<sup>171</sup> and distinguished between local and statewide issues.<sup>172</sup> Under the local activity rule, the ordinance's enforceability depends on whether the matter regulated is of state or local concern.<sup>173</sup> The court looked to the Public Schools Clause to understand the contours of the issue, holding that "[t]his constitutional mandate for pervasive state authority in the field of education could not be more clear."<sup>174</sup> The provision is unqualified, it reasoned, and "no other unit of government shares responsibility or authority" to establish and maintain the system.<sup>175</sup> Thus, the court reversed the superior court's grant of summary judgment against the school board and remanded the case with an order for the lower court to enter judgment for the school district.<sup>176</sup> The borough ordinance could not conflict with a state statute on this issue of statewide concern.

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165. 491 P.2d 120 (Alaska 1971).

166. 536 P.2d 793 (Alaska 1975).

167. *Macauley*, 491 P.2d at 122.

168. *Id.* at 120-21.

169. *Id.* at 121.

170. *Id.*

171. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115, 122 (Alaska 1970) (describing the "local activity rule" and why it was adopted).

172. As described in *Macauley*, the *Chugach* court determined that the denomination of service areas where a public utility could operate was a statewide issue. *Macauley*, 491 P.2d at 121-22 (citing *Chugach Elec. Ass'n*, 476 P.2d 115, 123 (Alaska 1970)). However, in *Lien*, the court determined that city power to lease municipal property was "clearly a matter of local concern." *Macauley*, 491 P.2d at 121-22 (citing *Lien v. City of Ketchikan*, 383 P.2d 721, 722-23 (Alaska 1963)).

173. *Macauley*, 491 P.2d at 122.

174. *Id.*

175. *Id.*

176. *Id.*

The court also specifically addressed the legislature's delegation of certain educational functions to local school boards. The court held that this designation of some function to local bodies, with the purpose of allowing Alaska schools to adapt to meet the varying conditions of different regions, did not diminish the constitutionally mandated state control over education.<sup>177</sup> Overall, this mandated, unshared, and unqualified responsibility to establish and maintain public education "seem[s] inconsistent with a RLC" if the State could, in theory, make a municipality pay a major proportion, if not all, of its public school system costs.<sup>178</sup>

The court decided *Hootch v. Alaska State-Operated School System*<sup>179</sup> a few years after *Macauley*. The appeal, on behalf of twenty-eight school-aged Alaska Natives, "sought to compel the state to provide secondary schools in the [students'] communities of residence."<sup>180</sup> The court affirmed that the Public Schools Clause "impose[d] a duty upon the state legislature;"<sup>181</sup> however, the court did not specify the degree or extent of this duty.<sup>182</sup>

In a lower court case, *Moore v. State*,<sup>183</sup> the superior court held that the state has a constitutional duty under the Public Schools Clause to provide funding to school districts that enable the districts to provide an adequate knowledge base to pupils.<sup>184</sup> The court held that where the State has delegated responsibility for education to local school districts, the State must nevertheless have adequate accountability and oversight to ensure the districts are fulfilling the State's responsibility to establish and maintain the public schools.<sup>185</sup> As noted by Justice Winfree, this reasoning seems inconsistent with the RLC because the current funding system allows the State to force local governments to foot increasingly large portions of the bill and avoid funding public schools to an adequate minimum level.<sup>186</sup>

In addition to the challenges described above, the Public Schools Clause may support a claim where students, their families, and their

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177. *Id.* at 121.

178. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 104 (Alaska 2016) (Winfree, J., concurring).

179. 536 P.2d 793 (Alaska 1975).

180. *Id.* at 796.

181. *Id.* at 799.

182. *See id.* (citing only to *Macauley's* holding about the State's responsibility for education).

183. No. 3AN-04-09756 CI, 2007 WL 8310251 at \*76 (D. Alaska June 21, 2007) (decision and order for one year stay).

184. *Id.* at \*82.

185. *Id.* at \*76.

186. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 104 (Alaska 2016) (Winfree, J., concurring).

communities view their funding and educational opportunities as insufficient and unequal.<sup>187</sup> As described above, plaintiffs have already brought claims like this in Alaska courts. For example, in 1997 parents and taxpayers in *Matanuska-Susitna Borough School District v. State* brought an equal protection claim alleging that unequal local contributions lead to unequal educational opportunities for students in some districts. This claim failed, however, because the plaintiffs did not prove that the disparities in local contributions resulted in disparities in educational opportunities.<sup>188</sup> Additionally, in *Moore v. State*, the plaintiffs alleged Alaska violated its constitutional mandate by failing to sufficiently fund education.<sup>189</sup> The superior court extensively considered evidence about educational adequacy to come to the determination that while school funding levels comported with the Public Schools Clause, the state's oversight of the public education system was lacking.<sup>190</sup>

Alaska courts have found that the state has a responsibility to support the Alaska public school system, though the exact scope of that responsibility remains unclear. However, the legislative history and cases above could, if coupled with adequate facts, form the foundation for a challenge to the RLC and funding scheme as a whole under the theory that the state has a broader duty under the Public Schools Clause to fund education.

### C. Additional Potential Challenges to the Required Local Contribution

The Ketchikan Gateway Borough has publicly raised concerns about the "underfunding of basic need" for borough and city school districts as compared to REAAs, which could form the foundation for an additional, non-Public Schools Clause challenge to the funding scheme.<sup>191</sup> Although

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187. See *id.* at 104 n.14 (referencing Justice Matthews' concurrence in *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 405 (Alaska 1997)).

188. *Matanuska-Susitna*, 931 P.2d at 398 (majority opinion). Additionally, the court held that the exemption of REAAs from the local contribution requirement was "substantially related to the legislature's goal" of equitable levels of educational opportunities, basing this assertion on the inability of the REAAs to tax or raise capital in other ways available to organized boroughs and cities. *Id.* at 400. Thus, it rejected an equal protection claim based on the legislative decision to exempt the REAAs and unorganized boroughs and cities. *Id.* at 400-01.

189. No. 3AN-04-09756 CI, 2007 WL 8310251 (D. Alaska June 21, 2007) (decision and order for one year stay).

190. *Id.* at \*84.

191. KETCHIKAN GATEWAY BOROUGH, MATERIALS CALLING FOR FULL STATE FUNDING OF BASIC NEED FOR CITY AND BOROUGH SCHOOL DISTRICTS: CONCERNS REGARDING STATE UNDERFUNDING OF BASIC NEED FOR SCHOOLS OPERATED BY

these concerns were not raised in *Ketchikan v. State*, Ketchikan or a different borough could raise them in a different case to great effect. A borough could argue that funding less of the “basic need” for organized boroughs, which deprives them of State revenues, penalizes them for incorporating.<sup>192</sup> The Mandatory Borough Act of 1963 included a clear and formal statement of intent that “[n]o area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.”<sup>193</sup> However, a borough could claim that the RLC violates this clear intent and “promise.”<sup>194</sup> But while multiple sources have argued that the funding formula violates a “promise,” none have attached this notion to a specific legal claim.<sup>195</sup>

Lastly, a borough could argue that the RLC impairs local self-government—mandated in Article X, Section 1 of the Alaska Constitution—because lack of control over finances impairs the borough’s authority and discretion.<sup>196</sup>

None of these claims have been successful legal challenges in the Alaska court system.<sup>197</sup> However, success is not impossible particularly given the growing awareness and criticism of the current funding scheme following the *Ketchikan* ruling. This opposition, coupled with the recent drop in oil prices,<sup>198</sup> should encourage the State legislature to consider a revised or alternative funding scheme on its own, instead of changing it at the behest of the courts. Although the State has delegated to local governments some of the fiscal responsibility to fund public education,<sup>199</sup> the State should avoid a potentially paralyzing legal challenge by seeking alternate funding methods less reliant on RLCs.

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BOROUGH AND CITY SCHOOL DISTRICTS 21 (Feb. 2013), <http://www.borough.ketchikan.ak.us/DocumentCenter/View/187>.

192. *See id.*; *School Funding Rule Creates Unequal Footing for Municipalities*, ALASKA STAR, <http://www.alaskastar.com/2016-01-27/school-funding-rule-creates-unequal-footing-municipalities#.VxQnFRMrLVo> (last visited Feb. 17, 2017).

193. Mandatory Borough Act of 1963, Alaska Sess. Laws Ch. 52, § 1, (1963) (repealed 2003).

194. *See supra* notes 191–192 (showing neither source discussed a legal claim based on the state “promise”).

195. *See id.* (speaking of “promise” generally and not in a legal context).

196. KETCHIKAN GATEWAY BOROUGH, *supra* note 191, at 24.

197. From the author’s review, claims have either not been raised or have not been successful when raised.

198. Timothy Puko, *Oil’s Plunge Puts Alaska Budget in Deep Hole*, WALL ST. J. (Nov. 1, 2015, 9:11 PM), <http://www.wsj.com/articles/alaska-weighs-curtailling-oil-tax-perk-1446427016>.

199. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 97 (Alaska 2016).

## V. POLICY PROPOSALS FOR REFORM OF ALASKA PUBLIC SCHOOL FUNDING SCHEME

### A. Arguments in Support of Reform of Funding Scheme After *Ketchikan*

If a legal claim were successful, the court could require the state legislature to restructure the funding framework or its implementation.<sup>200</sup> Even without a court mandate, the legislature should develop a plan to revise the funding structure because of significant budget concerns and disparities among state aid paid to different districts based on the nature of their local government,<sup>201</sup> even if they do not create equal protection issues. A successful challenge under the Public Schools Clause—a claim from which the parties and *Ketchikan* court shied away—could eliminate or minimize local contributions to school districts, which would significantly increase the responsibility of the state for school funding at a time when revenues are slim.

Indeed, Alaska state revenues have declined precipitously. Oil and mineral-related revenue accounted for 87 percent of Alaska’s state budget in 2014, the highest of any state.<sup>202</sup> In 2015, Alaska struggled to adjust to shortfalls in these revenues during a crash in prices.<sup>203</sup> Currently, the state faces a budget deficit almost two-thirds the size of its total budget,<sup>204</sup> which has led to numerous budget cuts across agencies and services, including the Department of Education.<sup>205</sup>

The current state of the economy and the *Ketchikan* ruling may result in the legislature requiring higher RLCs to account for the unavailability of state funds. Ketchikan Borough Manager Dan Bockhorst predicts “very significantly” increased property or other taxes as a result, particularly given a state task force determination in 2014 that the state’s level of

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200. *Id.* at 101–02.

201. Brown, *supra* note 1.

202. Jason Gold, *Cheap Gas Still Costs You*, U.S. NEWS & WORLD REPORT (Jan. 16, 2015, 1:00 PM), <http://www.usnews.com/opinion/economic-intelligence/2015/01/16/low-gas-prices-will-cost-big-oil-states-like-alaska-and-louisiana>.

203. Puko, *supra* note 198.

204. Rachel Waldholz, *Alaska Faces Budget Deficit As Crude Oil Prices Slide*, NAT’L PUB. RADIO (Jan. 19, 2016, 5:18 PM), <http://www.npr.org/2016/01/19/463551045/alaska-faces-budget-deficit-as-crude-oil-prices-slide>.

205. See OFFICE OF MGMT. & BUDGET, STATE OF ALASKA, DEPARTMENT TOTALS: DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT (2015), [https://www.omb.alaska.gov/ombfiles/16\\_budget/EED/Enacted/16depttotals\\_eed.pdf](https://www.omb.alaska.gov/ombfiles/16_budget/EED/Enacted/16depttotals_eed.pdf) (including budget information from 2015 and 2016).



education funding was unsustainable.<sup>206</sup> Such a realization could incite another challenge to the RLC's constitutionality – this time, under the Public Schools Clause.

Specifically, a Public Schools Clause challenge to RLC's constitutionality may arise if differences in RLCs among districts continue. Currently, 34 of the state's 145 municipal governments must meet RLCs.<sup>207</sup> Contribution levels vary between \$25,000 (Pelican) and \$100,000,000 (Anchorage) for city school districts and organized borough schools districts.<sup>208</sup> A local contribution is not required from the nineteen REAAs.<sup>209</sup> However, studies commissioned by the Ketchikan Borough assembly demonstrated that some of the municipal governments operating schools are more financially distressed than the REAAs or the unorganized boroughs that are exempt from the RLC.<sup>210</sup> Some of the exempt areas have more financial resources than many of the organized boroughs.<sup>211</sup> Although the Alaska Supreme Court has repeatedly rejected equal protection claims about the disparate funding between boroughs,<sup>212</sup> an increasing disparity between RLCs among districts, particularly ones struggling financially, could lead to a challenge to the RLC under the Public Schools Clause.<sup>213</sup> This would give the legislature an opportunity to create a system that demands more equal monetary requirements.<sup>214</sup> Nevertheless, decreasing or reforming the RLC requirement could prove detrimental. If the court had affirmed the unconstitutionality of the RLC,

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206. Leila Kheiry, *High Court Sides with State in Challenge to Education Funding Formula*, ALASKA PUB. MEDIA (Jan. 8, 2016), <http://www.alaskapublic.org/2016/01/08/alaska-supreme-court-sides-with-state-in-case-challenging-education-funding-formula/>.

207. ALASKA DEP'T OF EDUC. & EARLY DEV., PUBLIC SCHOOL FUNDING PROGRAM OVERVIEW 9 (Sept. 2015), <https://education.alaska.gov/SchoolFinance/pdf/FundingOverview2015.pdf>.

208. *Id.*

209. ALASKA STAT. § 14.17.410 (2016).

210. KETCHIKAN GATEWAY BOROUGH, *Issues Regarding State Funding of Schools*, <https://ak-ketchikangatewayborough.civicplus.com/584/Education-Funding-Policy-and-Legal-Issue> (last visited Mar. 28, 2016).

211. *Id.*

212. *See, e.g.,* Matanuska-Susitna Borough Sch. Dist. v. State, 931 P.2d 391 (Alaska 1997).

213. Tegan Hanlon, *Challenge to School Funding Rules Goes Before Alaska Supreme Court*, ALASKA DISPATCH NEWS (Sept. 15, 2015), <http://www.adn.com/article/20150915/challenge-school-funding-rules-goes-alaska-supreme-court>. *See supra* text accompanying notes 187–190.

214. *Cf.* Gary Wilken, *Forced Local Contribution for School Funding Flies in Face of Alaska Constitution*, ALASKA DISPATCH NEWS (Sept. 13, 2015), <https://www.adn.com/article/20150913/forced-local-contribution-school-funding-flies-face-alaska-constitution> (discussing potential implications if the current public school funding system were altered).

\$220,000,000 would drop out of the State's funding formula.<sup>215</sup> Offsetting state aid with local requirements also maintains the state's eligibility to receive federal aid.<sup>216</sup>

## B. Alaska's Constitution & Funding Scheme in the United States Context

Funding a statewide public school system is a complex obligation. This complexity suggests that there may be numerous constitutionally permissible ways to form the system.<sup>217</sup> The U.S. Supreme Court has recognized the need for flexibility in the ways that states provide educational services.<sup>218</sup> Moreover, the Alaska Supreme Court has acknowledged that the "constitution is not a static document and that its provisions must be construed in light of changing social conditions."<sup>219</sup>

The Alaska Supreme Court has stated that a comparison of the Alaska Constitution's Public Schools Clause to other state constitutional provisions would be instructive.<sup>220</sup> As such, research into other state funding schemes could provide potential funding alternatives. Almost every state constitution requires the government to establish and maintain a public school system.<sup>221</sup> In light of these provisions, many state courts have declared the responsibility to adequately fund schools to be a state, not a local, duty.<sup>222</sup> Accordingly, some courts have held that states cannot rely singlehandedly on the local governments to fund education.<sup>223</sup>

An analysis of the Vermont, Washington, and Oklahoma public school funding schemes, the North Carolina education lottery, and recent

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215. Memorandum from Howard S. Trickey of Holland & Knight, LLP to Charles Wohlforth, Executive Director of Citizens for the Educational Advancement of Alaska's Children (June 15, 2015), [http://www.ceaac.net/documents/6-15-15\\_Update\\_to\\_CEAAC\\_with\\_amicus\\_brief.PDF](http://www.ceaac.net/documents/6-15-15_Update_to_CEAAC_with_amicus_brief.PDF).

216. Kheiry, *supra* note 206.

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

218. *Id.* at 803-04 (citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973)).

219. *Id.* at 804.

220. *Id.* at 801.

221. Regina R. Umpstead, *Determining Adequacy: How Courts Are Redefining State Responsibility for Educational Finance, Goals, and Accountability*, 2007 B.Y.U. EDUC. & L.J. 281, 288-89 (2007).

222. *Id.* at 296.

223. *See, e.g., Rose v. Council for Better Educ.*, 790 S.W.2d 187, 211 (Ky. 1989) ("[T]he system of common schools must be adequately funded to achieve its goals . . . [t]his obligation cannot be shifted to local counties and local school districts").

reforms in these states is instructive. The schemes of Vermont and Washington are particularly informative because of their relatively low percentage of local revenue as compared to the total revenue for education. This allows them to provide a foil to the current Alaskan scheme.<sup>224</sup> Additionally, geographic and demographic factors informed the decision to analyze particular states. Vermont and Oklahoma, like Alaska, have a higher than average rural population, and although Washington has a higher than average urban population, its rural school districts serve far-reaching areas of the state, as in Alaska. Moreover, Washington and Oklahoma's constitutional provisions for education are most similar to Alaska's constitutional language. This combination of factors led to the decision to analyze these three states, though further analysis could be done of the seemingly infinite ways in which states fund public education.

*i. Washington Local Property Tax Redistribution*

The main sources of revenue for Washington's public schools are state and local property taxes, in addition to federal funding.<sup>225</sup> In 1978, a Washington Supreme Court decision determined that the use of local levies could not reduce the state's obligation to fund basic education.<sup>226</sup> In 2012, the Washington Supreme Court ruled that the state was not adequately funding basic education, in part because it was not providing sufficient funds to pay teachers and transport children to school.<sup>227</sup>

As a result, state legislators are contemplating what they call a "levy swap."<sup>228</sup> Generally, this means that the legislature would increase the state property tax for public schools while also redistributing and reducing local school taxes.<sup>229</sup> The levy swap proposal directly responded

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224. EDUC. LAW CENTER, *Funding, Formulas, and Fairness* (Feb. 2013), [http://www.elc-pa.org/wp-content/uploads/2013/02/ELC\\_schoolfundingreport.2013.pdf](http://www.elc-pa.org/wp-content/uploads/2013/02/ELC_schoolfundingreport.2013.pdf)

225. Randy I. Dorn, State Superintendent of Public Instruction, *Organization and Financing Of Washington Public Schools*, OFFICE OF SUPERINTENDENT OF PUB. INSTRUCTION 5 (Nov. 2015), <http://www.k12.wa.us/safs/PUB/ORG/15/OrganizationFinancing2015.pdf>.

226. SENATE WAYS AND MEANS COMM. & SENATE EARLY LEARNING AND K-12 COMM., *A CITIZEN'S GUIDE TO WASHINGTON STATE K-12 FINANCE* (2012), <http://leg.wa.gov/Senate/Committees/WM/Documents/K12%20Guide%2012%20FINAL5.pdf>.

227. *McCleary v. State*, 269 P.3d 227, 253 (Wash. 2012).

228. Liv Finne, *Analysis of Proposed Levy Swap Idea to Change the Way Public Education is Funded in Washington State*, WASH. POL'Y CTR. (Jan. 2016), <http://www.washingtonpolicy.org/library/doclib/Finne-Analysis-of-proposed-levy-swap-idea-to-change-the-way-public-education-is-funded-in-Washington-state.pdf>.

229. *Id.*

to the Washington Supreme Court's express desire that education funding rely less on local levy taxes.<sup>230</sup> This would be implicitly required if the Alaska Supreme Court found the RLC unconstitutional. The Alaska legislature should study the structure and impact of Washington state's funding requirement as one of multiple alternatives to the current Alaskan scheme.

ii. *Vermont's Statewide Education Tax*

The Vermont legislature implemented the state's current funding system in 1997 through Act 60, amended in 2004 by Act 68.<sup>231</sup> Following Act 60, the Vermont Supreme Court determined that, under the State Constitution, the State could not "abdicate the basic responsibility for education by passing it on to local governments."<sup>232</sup> The appeal arose from a challenge to the funding system's substantial reliance on local property taxes, which caused disparities across school districts.<sup>233</sup> Although the underlying claim was based on equal protection,<sup>234</sup> the court also discussed the contours of the Vermont constitution's education clause, which ultimately resulted in changes to the state's funding structure.<sup>235</sup> Instead of using local property tax revenues to offset the necessary state contribution to education funding, the system is now completely state-funded.<sup>236</sup>

State sources include statewide residential and nonresidential property taxes, the general fund, the sales and use tax, Medicaid reimbursements, and the state lottery.<sup>237</sup> State statutes no longer require any local contribution toward education and, holistically, experts have expressed that the system works well.<sup>238</sup> Instead, a complicated system of statewide property taxes that incorporate income levels are the foundation for school funding.<sup>239</sup> As of 2012, Vermont had the highest

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230. *Id.*

231. Equal Educational Opportunity Act of 1997, No. 60, VT. ST. ANN. tit. 16 (1997), amended by No. 68, VT. ST. ANN. tit. 16 (2003).

232. *Brigham v. State*, 166 Vt. 246, 264 (1997).

233. *Id.* at 249. Vermont courts have treated the state constitution's Common Benefits Clause as coterminous with the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution. *Id.* at 265.

234. *Id.* at 265.

235. *See, e.g.*, VT. AGENCY OF EDUC., 2017 BUDGET BOOK 12 (Jan. 2016), <http://education.vermont.gov/sites/aoe/files/documents/edu-data-finance-budget-book-2017.pdf> (depicting sources of education budget).

236. *Id.* at 3.

237. VT. STAT. ANN. tit. 16, § 4025 (2016).

238. Hilary Niles, *Effort Begins to Re-evaluate Education Financing in Vermont*, VTDIGGER.ORG (Jan. 14, 2014, 9:48 PM), <http://vtdigger.org/2014/01/14/effort-begins-re-evaluate-education-financing-vermont/>.

239. VT. STAT. ANN. tit. 32, § 5402; *see Art Woolf, Vermont School Taxes Anything*

relative tax effort for education of any state, and devoted the sixth highest percentage of state resources to K-12 schools.<sup>240</sup> But, in 2012, additional tax revenue from the Yankee Nuclear Power Plant contributed to education; however, the plant has since closed and employee numbers have decreased since 2013.<sup>241</sup> Thus, like Alaska, Vermont faces a funding struggle due to changes in its economy. This has prompted recommendations by Vermont state legislators to increase income taxes on Vermont's wealthiest residents.<sup>242</sup>

But Vermont's tax structure is very different from Alaska's. Only twenty-four municipalities in Alaska levy a property tax; for its size, only a small portion of land is taxed.<sup>243</sup> Alaska does not levy an income or property tax.<sup>244</sup> Although property taxes for local governments often fund public services far away from unorganized boroughs or rural areas, the children in these regions nevertheless have a constitutional right to education.<sup>245</sup> An income tax would attain revenue from out-of-state workers, alleviating some of the pressure on permanent residents. A state-administered tax, within certain parameters, would likely accord with an Alaska Supreme Court decision that the responsibility for the state to "establish and maintain" education includes the duty to fund education.<sup>246</sup> Additionally, this would require all residents, not just those in certain regions, to financially support education.

The House Finance Committee is currently considering a statewide income tax bill.<sup>247</sup> This bill proposes an income tax on resident and non-resident individuals, with a tax rate of 15 percent of residents' total federal

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*But Simple*, BURLINGTON FREE PRESS (Apr. 17, 2014, 12:00 AM), <http://www.burlingtonfreepress.com/story/money/2014/04/17/vermont-school-taxes-anything-but-simple/7749895/> (describing how taxes are calculated and presenting the information in a more accessible way than the statutes themselves).

240. Lawrence O. Picus & Assoc., LLC, *An Evaluation of Vermont's Education Finance System 11* (Jan. 4, 2012) (unpublished draft), <http://www.leg.state.vt.us/jfo/Education%20RFP%20Page/Picus%20and%20Assoc%20VT%20Finance%20Study%20with%20Case%20Studies%201-2-12a.pdf>.

241. Mary Serreze, *Vermont Yankee to Terminate 97 Workers at Closed Nuclear Plant*, MASS LIVE (Mar. 3, 2016, 7:25 PM), [http://www.masslive.com/news/index.ssf/2016/03/vermont\\_yankee\\_to\\_terminate\\_97.html](http://www.masslive.com/news/index.ssf/2016/03/vermont_yankee_to_terminate_97.html).

242. Bob Kinzel, *Progressives Leaders Pitch New Plan to Pay for Education and 'Deliver Property Tax Relief'*, VPR (Mar. 18, 2016), <http://digital.vpr.net/post/progressives-leaders-pitch-new-plan-pay-education-and-deliver-property-tax-relief#stream/0>.

243. OFFICE OF THE STATE ASSESSOR, *Alaska Tax Facts*, <https://www.commerce.alaska.gov/web/dcra/officeofthestateassessor/alaskataxfacts.aspx>.

244. *Id.*

245. ALASKA CONST. art. VII, § 1.

246. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 87 (Alaska 2016).

247. H.R. 115, 30th Leg., 1st Sess., sec. 11 (Alaska 2017).

income tax.<sup>248</sup> Constituents' widespread resistance to a statewide income tax generally, as well as this bill specifically, makes a funding scheme based on statewide taxes an uphill battle despite its potential benefits.<sup>249</sup>

iii. *Oklahoma Education Sales Tax*

The current public school funding system in Oklahoma is, again, a combination of local, state, and federal funding sources.<sup>250</sup> Due to recent budget cuts, legislators have proposed a one-percent state sales tax to address the state's "education emergency,"<sup>251</sup> and one legislator believes this is the "best" option.<sup>252</sup> In Oklahoma, the tax would raise state sales tax from 4.5 to 5.5 percent.<sup>253</sup> The proposed amendment would require that the proceeds from the additional levy be deposited into the Oklahoma Education Improvement Fund.<sup>254</sup>

Currently, Alaska does not have a statewide sales tax, though some municipalities levy them.<sup>255</sup> Many Alaskans support a statewide sales tax, even in areas where there is a local tax, as a solution to budget tension.<sup>256</sup> Although there are drawbacks to any tax, a state sales tax could capture desperately needed revenue from visitors and tourists to fulfill the

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248. *Id.*

249. See e.g. Suzanne Downing, "Must Read Alaska" on income tax proposal, STATE OF REFORM (Feb. 13, 2017), <http://stateofreform.com/featured/2017/02/must-read-alaska-income-tax-proposal/>; Kirk Johnson, *As Oil Money Melts, Alaska Mulls First Income Tax in 35 Years*, N.Y. TIMES (Dec. 25, 2015), <https://www.nytimes.com/2015/12/26/us/as-oil-money-melts-alaska-mulls-first-income-tax-in-35-years.html>.

250. See generally FIN. SERVS. DIV., OKLAHOMA STATE DEP'T OF EDUC., TECHNICAL ASSISTANCE DOCUMENT (July 2009), <http://sde.ok.gov/sde/sites/ok.gov.sde/files/TechAsstDoc.pdf> (detailing the sources of Oklahoma public school funding).

251. Kathryn McNutt, *Backers of Oklahoma Education Sales Tax Launch Petition Drive*, THE OKLAHOMAN (Feb. 16, 2016, 12:00 AM), <http://newsok.com/article/5479367>.

252. Sen. Brian Crain, *Oklahoma State Senator: 1-cent Sales Tax Best Option for Education*, THE OKLAHOMAN (Mar. 6, 2016, 12:00 AM), <http://newsok.com/article/5482851>. Sen. Crain has spent over a decade on the State Senate and is a member of the Appropriations Committee. SENATOR BRIAN A. CRAIN - DISTRICT 39, [http://www.oksenate.gov/Senators/biographies/crain\\_bio.html](http://www.oksenate.gov/Senators/biographies/crain_bio.html) (last visited March 22, 2017).

253. State Question No. 779, Initiative Petition No. 403, <https://www.sos.ok.gov/documents/questions/779.pdf>.

254. *Id.* at 2.

255. ALASKA DEP'T OF REV., TAX DIVISION, *Sales and Use Tax* (2017), <http://www.tax.alaska.gov/programs/programs/index.aspx?10002>.

256. Andrew Kitchenman, *Poll: Most Alaskans Support State Sales Tax*, ALASKA PUB. MEDIA (Jan. 20, 2016), <http://www.alaskapublic.org/2016/01/20/poll-most-alaskans-support-statewide-sales-tax/>.

constitutional mandate that Alaskan students receive an education, while also avoiding the undesirable resident income tax.

*iv. North Carolina Education Lottery*

Alaska, unlike most other states, does not have a statewide lottery. Numerous states have used this to help contribute to education funding.<sup>257</sup> Given the need for additional revenue, a lottery that devotes its proceeds to education could be a solution. North Carolina created an education lottery in 2005.<sup>258</sup> The lottery's goal is to increase net revenues for education programs.<sup>259</sup> In 2014, it raised almost half a billion dollars for education in North Carolina.<sup>260</sup> While the population of Alaska is significantly less than that of North Carolina, so is the amount of funds needed for public education. Albeit, lotteries are not panaceas and have been criticized in other states,<sup>261</sup> a well-structured system could benefit local schools without the potentially unconstitutional RLC.

## VI. CONCLUSION

The required local contribution may very well be the most economically viable option for providing education to public school students in Alaska. However, the RLC could be deemed unconstitutional under the Public Schools Clause; both parties and the court avoided this issue in *State v. Ketchikan*. Given the current budget crisis, the state would face a significant financial problem if a challenge to the RLC were successful and local contributions minimized or eliminated altogether. Thus, the State should begin researching additional sources and methods

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257. N.C. EDUC. LOTTERY, STRATEGIC PLAN 2015-2020 1, <http://www.nc-educationlottery.org/uploads/docs/NCEL%20Strategic%20Plan%20Doc%20for%20Comission%20Meeting.pdf>.

258. North Carolina State Lottery Act, N.C. GEN. STAT. § 18C-101 (2016).

259. N.C. EDUC. LOTTERY, *supra* note 257.

260. N.C. EDUC. LOTTERY, LUCKY TO BE IN NORTH CAROLINA: NORTH CAROLINA EDUCATION LOTTERY 2014 ANNUAL REPORT 2, <http://www.nc-educationlottery.org/uploads/docs/Annual%20Report%20fy2014.pdf>.

261. Lotteries have been criticized for reasons ranging from the small proportion of expenditures dedicated to K-12 education, huge budget cuts that prevent the lottery from accounting for the cuts, significant lottery operating costs, and unattainable scholarships from lottery funds, among others. *See, e.g.*, Dallas Franklin, *Why the lottery isn't helping Oklahoma education as much as you think it should*, KFOR (Jan. 12, 2016, 8:14 AM), <http://kfor.com/2016/01/12/why-the-lottery-isnt-helping-oklahoma-education-as-much-as-you-think-it-should/> (describing budget cuts by the state legislature); Michael Van Sickler, *Florida Lottery's record revenues no jackpot for students*, TAMPA BAY TIMES (Mar. 20, 2017, 3:42 PM), <http://www.tampabay.com/blogs/the-buzz-florida-politics/florida-lotterys-record-revenues-no-jackpot-for-students/2317251>.

of funding. Potential methods that have been successfully implemented in other states include a statewide property tax, a statewide dedicated sales tax, a state education lottery, or a combination of these methods. Conducting this important analysis now will help the legislature avoid scrambling for a solution only once it is forced to do so and can correct disparate funding responsibilities between citizens in different types of school districts.