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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

4 KETCHIKAN GATEWAY BOROUGH, an)
5 Alaska municipal corporation and political)
6 subdivision; AGNES MORAN, an)
7 individual, on her own behalf and on behalf)
8 of her son; JOHN COSS, a minor; JOHN)
9 HARRINGTON, an individual; and DAVID)
10 SPOKELY, an individual,)

Case No. 1KE-14-00016 CI

11 Plaintiffs,)

12 v.)

13 STATE OF ALASKA; MICHAEL)
14 HANLEY, COMMISSIONER OF)
15 ALASKA DEPARTMENT OF)
16 EDUCATION AND EARLY)
17 DEVELOPMENT, in his official capacity,)

18 Defendants.)
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STATE OF ALASKA'S OPPOSITION TO KETCHIKAN GATEWAY
BOROUGH'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION
FOR SUMMARY JUDGMENT

I. Introduction

Plaintiffs Ketchikan Gateway Borough, Agnes Moran, John Coss, John Harrington and David Spokely, ("Ketchikan Gateway Borough" or "the borough") have challenged the statutory requirement that the borough provide part of the funding for the Ketchikan Gateway Borough School District. In effect, the borough argues that the Alaska Constitution requires the State to place the borough in a less desirable position. Under the borough's reading of the dedicated fund, appropriation, and gubernatorial veto

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2 clauses, the State must depart from its longstanding, pre-statehood practice of requiring
3 local entities with taxing authority to make direct financial contributions to their local
4 schools. Instead, the borough argues that this Court should deem its direct financial
5 contribution to its school district to be a state tax and a source of state revenue, such that
6 the Court should require the State to deposit the money into the state treasury, with only
7 the possibility that that the proceeds will be appropriated to fund education and, absent a
8 gubernatorial veto, returned back to the borough as school funding. Although the
9 borough might perhaps gain some political advantage from this alternative approach to
10 education funding, the Alaska Constitution does not require it. The local contribution is
11 not a state tax or a source of public revenue, and therefore it is not subject to the anti-
12 dedication prohibition or subject to the state appropriation process. Instead, the local
13 contribution functions like state matching programs in which a local entity is expected
14 to put its own funds forward in order to receive other (appropriated) state funds. The
15 borough's argument to the contrary relies on an unspoken, unsupported assumption that
16 the Alaska Constitution requires all education funding to come from the state. The State
17 asks this Court to reject the borough's invitation to invalidate the methodology for
18 funding Alaska schools enacted by the Alaska Legislature, to deny the borough's
19 motion for summary judgment and instead to grant summary judgment to the State on
20 all of plaintiffs' claims.
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II. Factual background

In Alaska, the State is the primary source for financing schools, and, as a result, district wealth is not determinative of school funding.¹ A formula spelled out in statute determines the minimum funding that a district will receive from state and local sources.² This minimum funding level is called “Basic Need.”³ The funding due to a particular school district is adjusted for factors that make education more or less expensive in that district: the number of students enrolled, the number of correspondence students, school size, geographic cost differentials, and the number of special needs students.⁴ The figure that results from these adjustments represents a weighted student count called the “adjusted average daily membership.”⁵ Basic need for a district is a product of the adjusted average daily membership of the district multiplied

¹ Exhibit 1. Exhibit 1 is page 1 of the Alaska Department of Education and Early Development’s public school funding program summary for fiscal year 2014. This chart lists Alaska’s school districts and describes the basic need of each district, as well as the various sources of money that comprise that total. For example, the Ketchikan Gateway Borough’s basic need in FY2014 is \$25,947,546. That amount includes \$4,198,727 of local effort and \$21,748,819 of state funds. This exhibit also illustrates how eligible federal impact aid dollars contribute toward basic need in federally impacted communities. For example, Lower Yukon’s basic need of \$39,568.073 is comprised of deductible impact aid in the amount of \$9,873,656, as well as \$29,694,417 in state aid.

² AS 14.17.400.

³ *Id.*

⁴ AS 14.17.410.

⁵ *Id.*

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2 by the “base student allocation,” an amount of money defined in statute.⁶ The base
3 student allocation may go up or down depending on the availability of state revenue.⁷

4 Although basic need is an estimate of the minimum amount required by each
5 school district, not all of basic need is provided by the State. The federal government
6 contributes to school funding through impact aid.⁸ The State factors in 90 percent of a
7 school district’s eligible federal impact aid when computing a school district’s state aid
8 entitlement.⁹ Additionally, the statutory scheme contemplates that school districts
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15 ⁶ AS 14.17.470.

16 ⁷ *Id.*

17 ⁸ The federal Impact Aid Act provides financial assistance to local school districts
18 whose ability to finance public schools is negatively affected by federal presence,
19 activities, or land ownership. *See* 20 U.S.C. § 7701. The statute generally prohibits a
20 state from offsetting this federal aid by reducing state aid to a local district. *See*
21 20 U.S.C. § 7701 (2000 ed. and Supp. IV). However, the federal statute provides an
22 exception; it permits states to compensate for federal impact aid where “the Secretary of
23 Education determine[s] and certifies...that the State has in effect a program of State aid
24 that equalizes expenditures for free public education among local [school districts] in
25 the State.” § 7709(b)(1) (200 ed., Supp. IV). The Secretary of Education has certified
26 Alaska’s school funding as equalized, permitting the inclusion of 90% of eligible impact
aid to be reflected in the funding formula. *See* AS 14.17.410(b)(1). Alaska is one of
only three states to be so certified. *See Getting a Grip on the Basics of Impact Aid*,
National Association of Federally Impacted Schools 16 (March 2013), available at
http://www.ruraledu.org/user_uploads/file/ImpactAidTheBasics.pdf.

⁹ AS 14.17.410(b)(1).

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2 within boroughs and cities with taxing authority¹⁰ will receive some local funding from
3 their borough or city governments:

4 The legislature shall provide the state money necessary to maintain
5 and operate the regional educational attendance areas. The borough
6 assembly for a borough school district, and the city council for a city
7 school district, shall provide the money that must be raised from
8 local sources to maintain and operate the district.¹¹

9 This local funding is consists of a required local contribution ("local
10 contribution"), as laid out in AS 14.17.410(b)(2), and a voluntary contribution as
11 provided for in AS 14.17.410(c).¹² Alaska Statute 14.17.410(b)(2) provides that

12 the required local contribution of a city or borough school district is
13 the equivalent of a 2.65 mill tax levy on the full and true value of the
14 taxable real and personal property in the district ... not to exceed 45
15 percent of a district's basic need for the preceding fiscal year as
16 determined under (1) of this subsection.

17 ¹⁰ All boroughs and home rule or first-class cities are school districts.
18 AS 14.12.010. Not all school districts, however, are municipalities. Some districts,
19 called Regional Educational Attendance Areas, are in the unorganized part of the state,
20 and these school districts do not have taxing authority. AS 14.08.031. Alaska Const. art.
21 X, § 2 ("The state may delegate taxing powers to organized boroughs and cities only.").

22 ¹¹ AS 14.12.020(c).

23 ¹² AS 14.17.410(c) states that: "In addition to the local contribution required under
24 (b)(2) of this section, a city or borough school district in a fiscal year may make a local
25 contribution of not more than the greater of (1) the equivalent of a two mill tax levy on
26 the full and true value of the taxable real and personal property in the district as of
January 1 of the second preceding fiscal year, as determined by the Department of
Commerce, Community, and Economic Development under AS 14.17.510 and
AS 29.45.110; or (2) 23 percent of the district's basic need for the fiscal year under
(b)(1) of this section."

Both the local contribution and any voluntary contribution are paid by the city or borough directly to the school district, and the funds are incorporated into the city or borough's school budget. And although this statute clearly specifies the amount of the local contribution, the statute does not mandate the method that a city or borough must use to obtain the funds.

Finally, the statute contains a strong incentive for a city or borough to annually satisfy the local contribution. Alaska Statute 14.17.410(d) provides that: "State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made." The requirement of a local financial stake to access state and federal funds seeks to ensure prudent expenditure of state and federal education dollars. The requirement is also not new. Pre-statehood, Alaska cities and independent school districts had taxing power and were required to fund local public schools.¹³ The territory then "refunded" a percentage of the school expenses to the local entities.¹⁴ Following statehood the statutory expectation of local contributions continued in school districts with taxing authority, including the newly formed boroughs.¹⁵

Ketchikan Gateway Borough paid its 2014 local contribution "under protest" by sending to the Commissioner for Education a copy of its check to the borough with the

¹³ Alaska Compiled Laws, ch. 3, art. 4 § 37-3-32, 37-3-35, 37-3-53 (1949), *attached as Ex. 2*.

¹⁴ Alaska Compiled Laws, ch. 3, art. 5 § 37-3-61 (1949), *attached as Ex. 2*.

¹⁵ See Sec. 1.03, ch. 164, SLA 1962.

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2 words “dedicated tax paid under protest” written on it.¹⁶ The Commissioner for
3 Education otherwise would not have seen the check; it was made out to the “KGB
4 School District” and the money went directly to Ketchikan Gateway Borough schools.¹⁷
5 State aid covered more than eighty percent of the borough’s basic need, so the
6 borough’s local contribution accounted for less than a fifth of the borough’s basic need
7 costs.¹⁸
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9 On January 13, 2014, Ketchikan Gateway Borough filed this lawsuit challenging
10 the State’s statutory scheme for school funding. On February 6, 2014, the borough
11 moved for summary judgment, arguing that the local contribution violates the
12 constitutional prohibition against dedicated funds, Art. IX, section 7, and also that it
13 unconstitutionally impinges on the legislature’s role in appropriating money to be
14 withdrawn from the State treasury and the governor’s opportunity to strike or reduce
15 items in an appropriation bill. But these claims are without merit because they rely on a
16 mischaracterization of the local contribution and also on an unspoken and erroneous
17 assumption about the meaning of Article VII, section 1 of the Alaska Constitution—the
18 education clause.
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23 ¹⁶ Brandt-Erichsen Aff. In Support of Ketchikan Gateway Borough’s Motion to
Dismiss Ex. G.

24 ¹⁷ *Id.*

25 ¹⁸ *Id.* Ex. F.

III. Standard for granting summary judgment

A party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.”¹⁹

Once the movant meets the burden of establishing entitlement to summary judgment, the nonmoving party must demonstrate the existence of a genuine issue of material fact or that the movant is not entitled to judgment as a matter of law.²⁰

Courts “presume statutes to be constitutional, and the party challenging the statute bears the burden of showing otherwise.”²¹ Doubts are resolved in favor of constitutionality.²² The Court’s power to strike down a provision of law as unconstitutional is “not a power that should be exercised unnecessarily, for doing so can undermine the public trust and confidence in the courts and be interpreted as an indication of lack of respect for the legislative and executive branches of government.”²³ It is also “a well-established rule of statutory construction that courts should if possible

¹⁹ Alaska R. Civ. P. 56(c).

²⁰ *E.g., Weaver Bros., Inc. v. Chappel*, 684 P.2d 123, 126 (Alaska 1984); *State, Dep’t of Highways v. Green*, 586 P.2d 595, 606 (Alaska 1978).

²¹ *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009).

²² *State, Dept. of Revenue v. Andrade*, 23 P.3d 58, 72 (Alaska 2001) (quoting *Katmailand, Inc. v. Lake and Peninsula Borough*, 904 P.2d 397, 401 (Alaska 1995)).

²³ *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357, 360 (Alaska 2001).

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2 construe statutes so as to avoid the danger of unconstitutionality. . . . [For] the
3 legislature, like the courts, is pledged to support the state and federal constitutions and
4 . . . the courts, therefore, should presume that the legislature sought to act within
5 constitutional limits.”²⁴ Whether the required local contribution violates the Alaska
6 Constitution is a matter of law.

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8 **IV. Argument**

9 The required local contribution does not run afoul of the Alaska Constitution’s
10 provisions regarding dedicated funds, appropriation power, or gubernatorial veto
11 authority because the contribution is not a state tax or a source of public revenue. The
12 local contribution statute does not impose a particular method or source of fund
13 collection, it does not result in the deposit of funds to the state treasury, and it does not
14 create a pot of money that the state legislature would otherwise be able to appropriate
15 but for its designation to the local school district. Instead, it is akin to countless other
16 matching fund programs in which the legislature appropriates money for a project
17 conditioned on a local government (or nongovernment recipient) appropriating some of
18 its funds as well. Ketchikan Gateway Borough’s strained interpretation rests on the
19 unspoken and wholly unsupported premise that the state is constitutionally required to
20 fully finance public education, and thus any local funds required for its support must be
21 state funds in hiding. But this stealth argument for a new constitutional interpretation of
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24 ²⁴ *Andrade*, 23 P.3d at 72 (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska
25 1978)).

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2 the education clause is contrary to the historical reality that Alaskan education has
3 always been funded with a combination of state (or territory), local, and federal dollars,
4 and the discussion at the Constitutional Convention contemplated a continuation of that
5 practice. Alaska has one of the most equitable education funding schemes in the nation,
6 a fact it can be proud of. And to date, the State has picked up the lion's share of the
7 costs of educating Alaska's children. This Court should resist the borough's invitation
8 to invalidate this funding methodology.
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10 **A. The required local contribution does not violate the Alaska**
11 **Constitutional provisions regarding dedicated funds, appropriation**
12 **power, or gubernatorial veto because the contribution is not a state**
13 **tax or a source of public revenue.**

14 **i. The local contribution does not create a dedicated fund in**
15 **violation of Article IX, section 7 of the Alaska Constitution**
16 **because it is not a source of public revenue.**

17 Article IX, section 7 of the Alaska Constitution provides that:

18 The proceeds of any state tax or license shall not be dedicated to any
19 special purpose except as provided in section 15 of this article
20 [creating the permanent fund] or when required by the federal
21 government for state participation in federal programs. This
22 provision shall not prohibit the continuance of any dedication for
23 special purposes existing upon the date of ratification of this section
24 by the people of Alaska.

25 There are two key parts to the dedication clause: first, there must be "the proceeds of
26 any state tax or license;" second, there must be a dedication to a special purpose—
something that removes those "proceeds" from the revenue available to the legislature
for appropriation on an annual basis. Here, because the local contribution is not the

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2 “proceeds of any state tax or license,” the local contribution does not result in a pledge
3 of State revenue that would otherwise have been available for appropriation by the
4 legislature.

5 Analysis of the dedicated fund clause has focused primarily on the first part of
6 the clause—the meaning of the phrase “proceeds of any state tax or license”—and the
7 Alaska Supreme Court has interpreted this phrase broadly to encompass “any source of
8 public revenue,”²⁵ including the grant of state land,²⁶ receipts from the marine highway
9 system,²⁷ and the sale of the right to future proceeds from a tobacco settlement.²⁸ But
10 despite this broad reading, the local contribution is not a “source of public revenue,” and
11 plaintiffs’ mere assertion that it is cannot make it so. [Mot. at 15] Because the statutory
12 scheme does not create a pot of money that is available for the legislature to appropriate
13 if it is not provided directly to school districts, there is no source of public revenue here.
14 The local contribution is neither a tax nor a state asset of any kind. The money is not
15 collected by the State; it is not deposited into the State treasury; and, most importantly,
16 if the local contribution is invalidated by this Court based on it being “dedicated”, the
17 money will not be available to the legislature for expenditure.
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23 ²⁵ *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

24 ²⁶ *Southeast Alaska Conservation Council*, 202 P.3d at 1169-70.

25 ²⁷ *Sonneman v. Hickel*, 836 P.2d 936, 939-40 (Alaska 1992).

26 ²⁸ *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 390 (Alaska 2003).

The borough relies heavily on *State v. Alex* arguing that the “same constitutional infirmities present in *Alex* ... are present with the [local contribution].” [Mot. at 14] But *Alex* involved a constitutional challenge to a statute that imposed a “royalty assessment” on the sale of salmon in order to fund aquaculture associations. The tax could be “equal to either two or three per cent of the fair market value of the fish but may not exceed three per cent of the fair market value of the fish.”²⁹ In contrast, AS 14.17.410(b)(2) does not establish a tax or assessment on anything; it only provides a formula for the required amount of local contribution. A borough or municipality can finance its local contribution in any way it wishes.³⁰ Unlike the statutory schemes that have run afoul of the anti-dedication clause,³¹ the education funding statute has only one part—a requirement that localities contribute to the funding of their school districts. And the

²⁹ Former AS 16.10.530(a).

³⁰ Although the amount of the contribution is calculated by reference to the taxable real property within the borough, AS 14.17.410(b)(2), the statute does not create a tax on property and KGB indicates that it funds the local contribution through a combination of property taxes and sales taxes. [Mot. at 8]

³¹ See *Alex*, 646 P.2d at 207 (royalty assessment on sale of salmon dedicated to aquaculture associations); *Southeast Alaska Conservation Council*, 202 P.3d at 1170 (grant of state land to University of Alaska with revenues from the land dedicated to the university). Moreover, even those precedents where no violation of the dedication clause was found involved a two-part scheme: Alaska Marine Highway revenues were held not to be dedicated to fund the system, because “[t]he act clearly states that the fund is part of the general fund and it may not be spent until and unless it is appropriated by the legislature.” *Sonneman*, 836 P.2d at 939. Similarly, the sale of the future proceeds of the tobacco settlement to the Alaska Housing Finance Corporation and the dedication of the sale proceeds to rural school improvements was held not to violate the anti-dedication clause because the tobacco settlement was not a traditional source of revenue and the future proceeds could constitutionally be reduced to present value, sold and the money appropriated for rural schools. *Myers*, 68 P.3d at 392.

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2 absence of any statutory provision creating a source of public revenue means—
3 crucially—that no additional revenue will be available to the legislature for
4 appropriation if the borough does not “dedicate” the local contribution to its local
5 school district.

6 The significance of this is apparent from Ketchikan Gateway Borough’s attempt
7 to reduce the dedicated tax question into a question of whether the local contribution is
8 mandatory. The Borough relies on *Fairbanks v. Fairbanks Convention & Visitors*
9 *Bureau* for the proposition that the royalty assessment in *Alex* was “problematic because
10 ‘the allocation of revenues to the regional associations was mandatory, *leaving no*
11 *discretion to the legislature to spend the money in any other way.*’” [Mot. At 17
12 (emphasis added)] And indeed, Ketchikan Gateway Borough repeatedly asserts that
13 “[t]he RLC is a dedication because it is not available annually for appropriation as the
14 Legislature sees fit each year.” [Mot at 20, *see also* Mot. At 17 (“The payment of the
15 RLC is mandatory, leaving the legislature without discretion to collect these revenues
16 and use them in some other way. Instead, the RLC is earmarked for use by school
17 districts.”)] But this simply ignores reality. Here, if the borough was not directed to
18 provide its local contribution to the local school district the legislature would have no
19 discretion to spend the money in any other way. The money would remain with the
20 borough.
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24 Indeed, Ketchikan Gateway Borough complains that the impact of the local
25 contribution is that its school district “has been substantially underfunded by the State,

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2 with the Plaintiffs being forced to make up the difference. ... The shortfall in this
3 funding depletes the resources of the Borough and the taxpayer Plaintiffs.” [Mot. at 9]
4 But if the local contribution is a source of public revenue, then it belongs to the State,
5 not the borough and the taxpayer plaintiffs. The same internal contradiction is apparent
6 in the borough’s argument that “[t]he State was enriched by the Borough’s payment of
7 the [local contribution] to the KGB School District even though it did not directly
8 receive the [local contribution] because the [local contribution] reduced the amount of
9 money that the State itself provided to the KGB School District.” [Mot. at 22] The
10 notion that the State has been somehow unjustly enriched by the local contribution is
11 flatly inconsistent with the idea that the local contribution is actually “a source of public
12 revenue.”
13

14 Although Ketchikan Gateway Borough analogizes the local contribution to the
15 royalty assessment in *Alex*, because the education funding statutes do not create or
16 impose a tax, a better analogy can be found in the concept of matching grants. For
17 example, the State’s capital project matching grant program provides that the legislature
18 will appropriate money to be deposited in accounts for each municipality in the state.³²
19 A municipality is then able to draw on the funds in that account if it also makes a local
20 contribution to the capital project.³³ Under Ketchikan Gateway Borough’s theory of the
21 local contribution, this sort of matching requirement somehow transforms local money
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24 ³² See AS 37.06.010.

25 ³³ AS 37.06.030.

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2 into state revenue, but the borough identifies no legal authority to support this untenable
3 claim.

4 Finally, the purpose of the dedicated fund clause is not served by application of
5 the clause to the local contribution requirement. As the Alaska Supreme Court noted in
6 *Alex*, the dedicated tax prohibition was prompted by a concern among delegates at the
7 Alaska Constitutional Convention that “earmarking curtailed the exercise of budgetary
8 controls and simply amounted to an abdication of legislative responsibility.”³⁴ But these
9 concerns are not present with a local contribution; the local contribution is not an
10 earmark any more than the privately or locally or federally controlled portion of any
11 other jointly funded endeavor.³⁵ Local contribution to education likewise does not
12 curtail the legislature’s budgetary control; on the contrary it leaves more money in state
13 coffers because schools receive part of their funding from local sources. Finally, even
14 were this Court to entertain the borough’s view—which the State rejects—that a
15 statutory provision requiring a local contribution to education creates a dedicated fund,
16 statutory provisions doing just that have been in effect since Territorial days, and thus
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21 ³⁴ *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982).

22 ³⁵ Indeed, an intent to exempt matching fund programs and other non-tax, non-
23 license money motivated the amendment limiting the dedication prohibition to “the
24 proceeds of any tax or license” from the prior version’s “all public revenues.” 1975 Op.
25 Alaska Att’y Gen. No. 9 at 6-8 (May 2) (concluding Constitutional Convention
26 amendment narrowing “all public revenues” to “the proceeds of any tax or license”
stemmed from desire to avoid having to list exceptions for certain moneys including
“contributions from local government units for state-local cooperative programs.”).

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2 would qualify for the exemption in the clause governing dedications in existence at the
3 time of ratification.³⁶

4 The local contribution is not a “source of public revenue,” because without the
5 requirement that it be paid to school districts, there is no statutorily-created source of
6 money that the State could collect and deposit in the state treasury. Instead, the local
7 contribution represents a commonplace—and constitutional—measure to incorporate
8 local funding into the State’s system for financing public schools. Because the local
9 contribution does not violate the anti-dedication clause, the State asks the Court to grant
10 summary judgment in its favor on Count I of Ketchikan Gateway Borough’s complaint.
11

12 **ii. The required local contribution does not circumvent the**
13 **appropriation power of the legislature or the veto power of the**
14 **Governor.**

15 The fact that the local contribution is not a source of public revenue is fatal also
16 to Ketchikan Gateway Borough’s claims that the statute violates both the appropriation
17 clause of article IX, section 13 of the Alaska Constitution and the governor’s line item
18 veto requirement of article II, section 15. As logic dictates, the constitutional power to
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20 ³⁶ The dedicated fund clause’s exemption for dedications of state funds already in
21 law at the time of statehood reads: “This provision shall not prohibit the continuance of
22 any dedication for special purposes existing upon the date of ratification of this section
23 by the people of Alaska.” Alaska Const. art. 9 § 7. If, and to the extent, that this Court
24 determines that a mere statutory requirement of local contribution is a dedicated fund,
25 the local contribution would be covered by that exemption because the Territory was
already requiring local contributions to school maintenance. *See* Alaska Compiled
Laws, ch. 3, art. 3 §§ 37-3-32, 37-3-35, art. 4 § 37-3-53, art. 5 § 37-3-62 (1949), *attached*
as Ex. 2 (requiring local funding of education and providing for refund of only a
percentage of school costs).

appropriate is limited to funds within the state treasury, leaving the legislature powerless to appropriate funds within the treasury of a city or borough.³⁷ Likewise, the governor's constitutional authority to strike or reduce an item in an appropriation bill is limited to appropriations authorized by the legislature, leaving the governor powerless to veto an appropriation of funds by a city or borough.³⁸ So, because the local contribution is collected by, deposited in, and appropriated from the borough's treasury and not the State's, the local contribution is not subject to appropriation by the Legislature or vulnerable to a line-item veto by the Governor.³⁹ The State, therefore, asks for summary judgment on Count II of the complaint.

B. The Court should reject Ketchikan Gateway Borough's attempt to argue through implication, without authority or explanation, that the State is constitutionally required to provide full funding for public schools.

The unspoken assumption underlying Ketchikan Gateway Borough's argument is that the "pervasive state authority"⁴⁰ over education translates into an obligation to be

³⁷ The Alaska Supreme Court previously defined "appropriation" as "the setting aside from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object, and not other." *Thomas v. Rosen* 569 P.2d 793, 796 (Alaska 1977)(quoting *State ex rel. Finnegan v. Dammann*, 264 N.W. 622, 624 (1936)).

³⁸ See *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001) (governor's line-item veto authority limited to article II appropriation "items" contained in an appropriation bill).

³⁹ If borough taxes, locally collected and locally spent, could be appropriated by the state Legislature, as the borough suggests, it is not clear why such appropriation power would be limited to just the local contribution as opposed to the entire borough budget.

⁴⁰ *Maccauley v Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

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2 the sole source of funding for education in the state. In other words, Ketchikan Gateway
3 Borough assumes that the State is constitutionally required to provide full funding for
4 public schools. It claims, for example, in the introduction to its motion for summary
5 judgment that the State has “abdicated” its “constitutional duty to ‘establish and
6 maintain a system of public schools’”⁴¹ “by unconstitutionally requiring the Borough to
7 fund the Ketchikan Gateway Borough School District ... with an annual required local
8 contribution.” [Mot. at 2] Notably, however, Ketchikan Gateway Borough has not
9 expressly asked this Court to interpret the Alaska Constitution’s education clause⁴²—
10 either in its complaint or in its motion for summary judgment.
11

12 This is doubtless because even a cursory review of the minutes from the Alaska
13 Constitutional Convention reveals that the delegates had no intention of shifting full
14 financial responsibility for public schools to the State and away from local government.
15 To the contrary, in the debate over the local government article, the delegates repeatedly
16 indicated their expectation that boroughs and cities would contribute (or continue to
17 contribute) to funding their local schools. For example, Delegate Vic Fischer explained
18 that the Local Government Committee decided to limit the taxing power to cities and
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21 ⁴¹ [Mot. at 1-2 *citing* (Alaska Const. art. VII, § 1).]

22 ⁴² The education clause reads in full: “The legislature shall by general law
23 establish and maintain a system of public schools open to all children of the State, and
24 may provide for other public educational institutions. Schools and institutions so
25 established shall be free from sectarian control. No money shall be paid from public
26 funds for the direct benefit of any religious or other private educational institution.”
Alaska Const. art. VII, § 1.

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2 boroughs⁴³—rather than allowing school and other service districts to tax—because “[i]t
3 was felt that the borough assembly would be best able to say that so much, on the basis
4 of presentation, say by these districts or boards, that so much can be afforded out of this
5 tax dollar for education, so much for health, so much for police enforcement, etc.”⁴⁴ And
6 Victor Rivers clearly expected that boroughs would have a significant role in paying for
7 education, noting with respect to the city of Kenai:
8

9 I don’t know what percentage in an organized borough the
10 legislature would desire to refund to the borough [for school
11 expenses], but I can assume that if and when they are ready to
12 organize into a borough they would have sufficient ways and means
13 to come in under and be able to adopt the borough system of
14 government based upon what the legislature had, by that time,
15 established as the amounts they would give from the state level.⁴⁵

16 In response, Delegate Irwin Metcalf asked, “Do you think the state would refund some
17 to the borough assembly as they do in the cities now?”⁴⁶ So, for one delegate at least,
18 there seemed to be a possibility that the new borough governments would have the *full*
19 *responsibility* for funding local schools—i.e. that the State might pay nothing—in stark
20

21 ⁴³ Alaska Constitution article X, section 2 provides that “[a]ll local government
22 powers shall be vested in boroughs and cities. The State may delegate taxing powers to
23 organized boroughs and cities only.”

24 ⁴⁴ 4A Proceedings of Alaska Constitutional Convention 2630 (Jan. 19, 1956).

25 ⁴⁵ *Id.* at 2645-46.

26 ⁴⁶ *Id.* at 2646.

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2 contrast to Ketchikan Gateway Borough's apparent assumption that the delegates
3 intended the State to be wholly and solely responsible for funding education.⁴⁷

4 Moreover, Ketchikan Gateway Borough's argument ignores the fact that some
5 kind of local contribution has remained an integral part of Alaska's school funding
6 system since before statehood. Under the territorial laws of Alaska, cities had the duty
7 "to provide the necessary funds to maintain public schools" and had the power to levy
8 taxes to pay for those schools, as did independent school districts.⁴⁸ The territory then
9 refunded a percentage of the money expended by cities and independent school
10 districts.⁴⁹ Following statehood, the Alaska legislature continued to expect local
11 contributions.⁵⁰ The local contribution requirement has existed in some form for more
12 than fifty years—a reality that cuts strongly against the borough's implied assumption
13 that the delegates intended to shift the obligations to fund public schools wholly to the
14 State.
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16

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18 ⁴⁷ See also, *Alex*, 646 P.2d at 212 n.9 (quoting a constitutional convention delegate
19 as expressing the sentiment that "two governmental functions ... the cities and the
20 boroughs ... [are] plenty. *They can provide for everything including the schools.*"
21 (Emphasis added)).

22 ⁴⁸ Alaska Compiled Laws, ch. 3, art. 3 §§ 37-3-32, 37-3-35 (1949), Alaska
23 Compiled Laws, ch. 3, art. 4 § 37-3-53 (1949), *attached* at Ex. 2.

24 ⁴⁹ Alaska Compiled Laws, ch. 3, art. 5 § 37-3-61 (1949). The percentage refunded
25 ranged from seventy-five to eighty-five per cent of the amount expended by the local
26 entities for the maintenance of the schools. Alaska Compiled Laws, chapter 3, art. 5 §
37-3-62 (1949).

⁵⁰ Sec. 1.03, ch. 164, SLA 1962 ("The amount of state aid shall be determined by
subtracting the required local effort (Sec. 1.07) from the basic need (Sec. 1.02)."),
attached at Ex. 3.

The borough's argument for the unconstitutionality of the local contribution statute relies on its unspoken and wrong assumptions about the Constitutional obligations in the education clause. The Court should reject the borough's argument under the principal of constitutional avoidance, which cautions that the Court should particularly refrain from ruling a statute unconstitutional "when the issues are not concretely framed" because that "increases the risk of erroneous decisions."⁵¹

C. The borough cannot bring an action in assumpsit against the State of Alaska because its 2014 local contribution was not a tax and was paid to the Ketchikan School District and not to the State.

Ketchikan Gateway Borough's request for a refund of its 2014 local contribution is also flawed, because, as explained above, the local contribution is not a state tax and it was paid to the school district, not the State. The borough argues that "[t]he State was enriched by the Borough's payment of the [local contribution] to the KGB School District even though it did not directly receive the [local contribution] because the [local contribution] reduced the amount of money that the State itself provided to the KGB School District." [Mot at 22] But to the contrary, the borough's payment of its local contribution triggered a statutory obligation on the part of the State to provide substantial funding to the Ketchikan Gateway Borough School District.⁵² Moreover,

⁵¹ *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357, 360 (Alaska 2001)

⁵² AS 14.17.410(d).

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2 implicit in this argument is the idea—debunked above—that the State has the sole
3 responsibility to provide full funding for education throughout Alaska.

4 Because the local contribution is a constitutional means for financing public
5 schools and not an unconstitutional tax, and because it was paid to the Ketchikan
6 Gateway Borough School District and not to the State, the borough is not entitled to a
7 refund and its claims for assumpsit and restitution must fail.
8

9 **IV. Conclusion**

10 For the reasons stated above, defendants request the Court grant summary
11 judgment to defendants and deny Ketchikan Gateway Borough's request for summary
12 judgment, declaratory judgment, injunctive relief, and an order to refund the 2014 local
13 contribution.
14

15 DATED March 28, 2014.

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