

SJR

9

<TARGET><BILL>SJR 9</BILL><SUBJECT>SJR
9</SUBJECT><COMM>SJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE

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Mike Dunleavy
Senator

MEMORANDUM

TO: Senator John Coghill, Chair
Senate Judiciary Committee

FROM: Senator Mike Dunleavy *Sen Dunleavy
by Sheila*

DATE: March 11, 2013

RE: SJR 9 – Constitutional Amendment: Education Funding

I respectfully request a hearing before the Senate Judiciary Committee on Senate Joint Resolution 9 – Constitutional Amendment: Education Funding.

SJR 9 places a constitutional amendment before the Alaska voters in the fall of 2014. This ballot proposal provides voters a chance to amend the Alaska Constitution to allow the use of public money for the benefit of all Alaskans seeking education/training aid, regardless of whether individuals enroll in public or private institutions.

Thank you for your consideration and attention to this request.

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SPONSOR STATEMENT

Senate Joint Resolution 9 Constitutional Amendment: Education Funding

Senate Joint Resolution 9, if passed by both bodies of the legislature, places a constitutional amendment before the voters in the general election in the fall of 2014. This ballot proposal provides voters a chance to amend the Alaska Constitution to allow the use of public money for the benefit of all Alaskans seeking educational/training aid, regardless of whether individuals enroll in public or private institutions.

Currently the Alaska Constitution prohibits the use of public funds for the direct benefit of any private educational institution. The courts have determined that this ban extends to state funds being allotted to individual Alaskans who choose to attend a private school. Meanwhile an increasing number of Alaskans are questioning the constitutionality of the long-standing practice of giving educational scholarships/grants to adults for educational and training purposes while denying children the same funding opportunities.

Passage of SJR 9 clarifies the question on the constitutionality of current educational practices. More than that, the ballot question allows the voters to decide whether to maintain or abolish the restrictions on the use of public dollars for the education of children. SJR 9 gives the voters the power to decide what is right for them, their families and the State of Alaska.

It is important to note that even with the adoption of this constitutional amendment by a majority of voters, the Legislature still needs to have a robust discussion on how to go forward. These deliberations will occur before any Alaskan child receives state funds to attend a private educational institution. The passage of SJR 9 allows these discussions to begin.

I strongly favor giving Alaskan voters, the very voters who elected each and every one of us, an opportunity to vote on this issue. Please join me in support of SJR 9.

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Senate Joint Resolution 9 – Constitutional Amendment: Education Funding

Quick Reference

Purpose: The purpose of SJR 9 is to allow Alaskans to vote on amending their constitution to remove the prohibition of using public funds for private education. Primary goals include:

- ◆ To ensure that current educational practices within the state are constitutionally sound
- ◆ To open the door for future discussions on the distribution of state funds for educational purposes
- ◆ To measure the voter wishes on their public educational system including educational funding

Problem Statement

- ◆ Many Alaskan children are falling through the cracks of our current educational system. We have not been able to solve this problem by simply providing more funding. For decades we have been engaged in attempts to mitigate this issue through a multitude of programs, the legality of which has been questioned.
- ◆ Section 1, Article VII of the Alaska Constitution states: “No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.” Upon challenge, the Alaska Supreme Court has issued opinions to additionally disallow *indirect* funding although the framers of the constitution intentionally left the concept of “indirect” out of the constitution. Currently, millions of public dollars are going to private, for profit and religious affiliated institutions for educational purposes.

Alaskans are asking for more programs, more choices and more opportunities to ensure the best education possible for them and their families.

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MEMORANDUM

March 8, 2013

SUBJECT: Additional education funding questions
(Work Order No. 28-LS0605)

TO: Senator Mike Dunleavy
Attn: Bethany Marcum

FROM: Jean M. Mischel
Legislative Counsel

You have posed three additional questions in the form of hypotheticals that again pertain to public education funding and ask about the constitutionality of the spending. This memorandum must be brief under the time constraints you provided. Your questions describe a single child¹ entering into three private contracts (one each with, Sylvan Learning Center, religious postsecondary schools located outside the state, and an in-state sectarian school for enrollment in a Latin course) as part of the child's public school program, which in itself poses no particular problem if the funding is private. If, however, you are asking whether a public school district or the state may pay for the contracts in each of the hypotheticals you pose, the details of the program allowing for the funding is relevant. If challenged, a court would scrutinize for consistency with Art. I, Art. VII, and Art. IX of the Constitution of the State of Alaska the use of public funds to pay for the contracts described as previously explained in the March 4th memorandum.

Although you have stated that there is a goal of a "public purpose," that statement alone is not evidence of the existence of a public purpose under Art. IX. If, for example, the contract is funded as part of a public correspondence program or for a student with a learning disability for which a local school has determined the services are necessary, the public purpose appears to be met.² That does not, however, address the other constitutional constraints on public spending.

¹ Since you use the term "child" it is assumed for purposes of this memorandum that all contracts involve a primary or secondary school student.

² As previously stated, students have successfully sought private secular tuition aid using public money under federal disabilities law, 20 U.S.C. 1401. See, *J.P. and L.P. v. Anchorage School District*, 260 P.3d 285 (Alaska 2011). The Alaska Supreme Court has not had occasion to review the issue in the context of a private or religious educational institution under Art. VII, sec. 1 of the Constitution of the State of Alaska.

The Sylvan Learning Center contract does not appear to involve Art. I, sec. 1 questions of government entanglement in a religious program as do the other two contracts. With regard to the two sectarian school contracts, the type of course taken from the three religious programs described is relevant under both the state and federal constitutions although the Alaska Supreme Court has not yet dealt with the specific issues presented.

With respect to all three contracts, a single child's tuition expense may not provide a "direct benefit" under Art. VII, sec. 1 as construed by the Alaska Supreme Court. Cumulatively, however, if the three contracts are part of an overall program to encourage or provide incentives to attend private or religious educational institutions, both Art. VII, sec. 1 and Art. I, sec. 1 are implicated. All three contracts combined call into question the availability of "genuine" public school options required by the United States Supreme Court analysis under the First Amendment to the federal constitution. In addition, if the contracts are not available to all similarly situated students, the contracts could be challenged under the equal protection clause of Art. I, sec. 4.

These are complex considerations not lending themselves to simple yes or no answers. Until further guidance is provided by the Alaska Supreme Court, persuasive arguments may be made on either side of each of the issues raised, depending upon the precise parameters of the program allowing for the funding and the reasons for the private contracts. Keep in mind, however, that the inclusion of private education contracts in a public education plan using public funds is not necessarily evidence of its constitutionality.

JMM:lnd
13-131.lnd

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MEMORANDUM

March 4, 2013

SUBJECT: Questions about public funding of various private or religious programs or contracts (Work Order No. 28-LS0605)

TO: Senator Mike Dunleavy
Attn: Bethany Marcum

FROM: Jean M. Mischel
Legislative Counsel

You have asked nine questions about the constitutionality of various expenditures of public funds for programs or contracts pertaining to preschool and primary, secondary, postsecondary, pre-military, and vocational education or training.¹ The Alaska Supreme Court must ultimately interpret and apply the Constitution of the State of Alaska. The expenditures you describe have not been challenged on constitutional grounds. In each instance, if challenged, a court would review the factual details of the expenditure to determine whether:

(1) the money provided a "direct benefit" to a "religious or other private educational institution" or established a school under sectarian control to the extent prohibited under art. VII, sec. 1;

(2) the expenditure constituted excessive entanglement by the government in religion prohibited under art. 1, sec. 4;

(3) the expenditure resulted in disparate treatment of similarly situated individuals prohibited under art. 1, sec. 1; or

(4) the expenditure served a public purpose under art. IX, sec. 6.

Because of the breadth of your questions, I am unable to provide a full analysis of each of these issues at this point in the session. The following is a general overview of the constitutional protections in the context of public funding of education. Rather than repeat those concepts to answer each of the nine questions, an overview of constitutional funding prohibitions and restrictions will be provided and will be followed by the questions and a short answer for each.

¹ It is likely that a court's review will consider all relevant factors and a comparison of expenditures based solely on age will lead to an oversimplified understanding of complex constitutional considerations.

Funding prohibition under art. VII, sec. I

Art. VII, sec. 1 of the Constitution of the State of Alaska provides:

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

The Alaska Supreme Court, in *Sheldon Jackson v. State of Alaska*, 599 P.2d 127 (Alaska 1979), found tuition grants for private colleges to be a violation of art. VII, sec. 1 of the Constitution of the State of Alaska. The state tuition assistance program under review in the *Sheldon Jackson* case provided money to a student for the difference in the cost of private and public college tuition under an agreement to pay the money to a private college for tuition. Rejecting the proposition that the constitutional prohibition on the use of public funds did not apply to postsecondary institutions and that the tuition grant program then under scrutiny was not a direct benefit, the Supreme Court found that the payment of subsidies in the form of grants to only private college students was unconstitutional.

In that case, the Court established a three-part test for determining the validity of public programs that provide economic benefit to private schools. First, the Court looked at the breadth of the class to which the economic benefits are directed. Second, the Court looked at how the public money is to be used; i.e., whether the benefit to the private school is incidental to education (as with fire and police protection) or whether it amounts to direct aid to education (as with tuition and books). Third, the Court looked at the magnitude of the benefit to private education.

The Court struck down the state's tuition assistance program as violative of all three parts of the test. The class that the tuition assistance program benefitted consisted almost entirely of private schools, the funds were to be used directly for educational purposes (tuition), the benefit conferred on these schools was quite substantial, and the fact that the money was actually paid directly to the students, not the schools, did not mitigate the fact that the students were required to turn the money directly over to the private schools.

The Alaska Supreme Court left open the question of the constitutionality of a tuition scholarship or grant that did not provide for direct incentives to attend a private school as in *Sheldon Jackson*. The Court then stated:

First, the class primarily benefitted by the tuition grant program consists only of private colleges and their students. Though the appellants characterize the statute as merely equalizing the positions of private and public university students, effectively the chief beneficiaries are the private colleges themselves. Unlike a statute that provides comparable

dollar subsidies to all students, Alaska's tuition grant program is not neutral, inasmuch as the only incentive it creates is the incentive to enroll in a private college.

Id. at 131.

Equal Protection

Art. 1, sec. 1 of the Constitution of the State of Alaska states:

Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

This provision has been interpreted to require equal treatment for those who are "similarly situated" and evaluates equal protection claims using a three-step sliding scale test that "places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake." *Malabed v. North Slope Borough*, 70 P.3d 416, 421 (Alaska 2003). The Court determines the weight of the individual interest impaired by the classification, examines the importance of the purposes underlying the government's action, and evaluates the means employed to further those goals to determine the closeness of the means-to-end fit. *Id.* The greater the weight of the individual interest, the greater showing that must be made demonstrating that the classification achieves a legitimate governmental objective.

A more recent Alaska Supreme Court decision described the test for analyzing whether a law violates the constitutional right to equal protection as follows:

Under the Alaska Constitution, the "legitimate reason test" is "the standard level of scrutiny . . . in equal protection cases," and we apply it to laws that do not employ classifications based on suspect factors or infringe on fundamental rights. Under this test, a law "will survive as long as a 'legitimate reason for the disparate treatment exists' and the law creating the classification 'bears a fair and substantial relationship to that reason.'"

Griswold v. City of Homer, 252 P.2d 1020 (Alaska 2011), 2011 Alas. LEXIS 43, 25-26 (Alaska June 10, 2011) (internal cites omitted).

Freedom of Religion

Art. 1, sec. 4 of the Constitution of the State of Alaska states:

Freedom of Religion. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

The postsecondary performance scholarship program and other payments to private educational institutions also share the potential of violating the "establishment" and "freedom of religion" clauses of art. I, sec. 4 of the Constitution of the State of Alaska. We don't know the precise reach of the establishment clause on public school funding because art. VII, sec. 1 has expressly prohibited funding of a religious educational institution and the Alaska Supreme Court has found it unnecessary to address the art. I, sec. 4 issue directly.²

The United States Supreme Court in *Zelman v. Harris*, 563 U.S. 639 (2002), found by a five to four decision that a Cleveland, Ohio pilot scholarship program did not violate the establishment clause of the First Amendment of the United States Constitution for various reasons pertaining to the specifics of the program. The Ohio program provided students who met financial need criteria and who were enrolled in a failing public school in a district that was under federal court order to be operated by the state, with tuition aid to attend another public or private school, tutorial aid to stay in a failing public school, or the option to transfer to a magnet school. The *Zelman* court found that the program's purpose, to provide educational choices to parents who reside in a failing district, was neutral with respect to religion and that the choice of school was an independent, not governmental, decision.³ A private school could receive public funding under the Ohio

² The Alaska Supreme Court in the *Sheldon Jackson* case raised the questions of whether private school tuition payments violated the establishment of religion under art. I, sec. 4, and whether a valid public purpose was served under art. IX, sec. 6, but found it unnecessary to go beyond the art. VII, sec. 1 analysis to invalidate the payments.

³ In Justice O'Connor's tie-breaking concurring opinion in *Zelman*, the three part test of an establishment clause violation from *Lemon v. Kurtzman*, 403 U.S. 602 (1971) was clarified as follows:

Courts are instructed to consider two factors: first, whether the program administers aid in a neutral fashion, without differentiation based on the religious status of beneficiaries or providers of services; second, and more importantly, whether beneficiaries of indirect aid have a genuine choice among religious and nonreligious organizations when determining the organization to which they will direct that aid. If the answer to either query is "no," the program should be struck down under the Establishment Clause.

pilot program only if the school agreed (1) to meet statewide educational standards; (2) not to discriminate on the basis of race, religion, or ethnic background; and (3) not to "advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion." *Id.* at 645.

Public Purpose

Art. IX, sec. 6 of the Constitution of the State of Alaska states:

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

Any expenditure of public funds must be for a public purpose. A philanthropic or charitable purpose is not necessarily a public purpose. Addressing the public purpose issue, the Alaska Supreme Court has held that where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, this Court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact. *DeArmond v. Alaska Development Corp.*, 376 P.2d 717, 721 (Alaska 1962).

In addition, the determination of whether a public purpose is being served does not depend on the public or private nature of the entity that will use public funds, but upon the character of the use of the funds by the entity. *Weber v. Kenai Peninsula Borough*, 990 P.2d 611 (Alaska 1999). The attorney general's office expressed the view that as a general rule, the public purpose clause cannot be met by a mere authorization to provide for the public welfare. Alaska's Supreme Court has taken a fairly strict view of the legislature's appropriation power. For example, The Court has noted that the reason for prohibiting appropriation by voters is "to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs." *McAlpine v. University of Alaska*, 762 P.2d 81, 88 (Alaska 1988).

Your questions

1. Does the Constitution of the State of Alaska prohibit K-12 school districts or the Alaska Department of Education from purchasing educational services directly from private or religious entities for services such as tutorials?

I don't know whether "educational services," in the context of your question, includes things such as transportation, building construction and maintenance, or other commonly contracted for services with private entities as authorized by statute. If, however, the phrase is intended to include the provision of education to public school students, some constitutional and statutory constraints apply.

As a constitutional matter, the authority for expenditure of public funds excludes "direct benefits to private or religious educational institutions," may not be under sectarian control, requires a public purpose, and prohibits government entanglement in religion. If the private contractor is not an "educational institution" or the funding is not a "direct benefit," the funding serves a public purpose, and the funding does not result in an establishment of religion or interfere with the free exercise of religion, as discussed above, then the department's authority is a matter of legislative control.

The powers and duties of the department are found in AS 14.07.020 and 14.07.030, some of which may involve contracting for services.

AS 14.14.110(a) authorizes, when necessary for more efficient or economical educational services, a district to cooperate among districts, with the department, state-operated schools, or with the Bureau of Indian Affairs.

With regard to regional educational attendance area school boards, AS 14.08.011(2) authorizes a contract with any other agency, among others, for the provision of services, facilities, supplies, or utilities. The term "agency" is undefined but its common meaning would be relevant.

2. Is it constitutional for the State of Alaska to give public funds to a 19-year-old Alaskan resident for the purpose of attending APU for educational services?

The Alaska Scholarship Program under AS 14.43.810 - 14.43.849, postsecondary scholarships recently approved and funded by the legislature, has not been tested under the state constitution but raises issues under art. VII, sec. 1, art. 1, sec. 1, and art. 1, sec. 4, (if the program is not available to all students), and, possibly art. IX, sec. 6. The express purpose of the scholarships is to provide incentives to all high school graduates in the state to compete for funding payable to a "qualified postsecondary institution" by meeting increasingly rigorous secondary school curriculum and testing criteria. The private tuition assistance grants invalidated in the *Sheldon Jackson* case are somewhat different from the postsecondary scholarships. Unlike in *Sheldon Jackson*, the program is neutral as it provides no incentive to select a religious or private postsecondary institution over a public postsecondary institution.⁴ A student qualifies for the same amount for either institution and is not required to agree to pay state money directly to a private college but is free to select any school or program that is "qualified" to receive the funds. The *Sheldon Jackson* case involved a tuition grant program that was not neutral inasmuch as the only incentive it created, as noted by the Alaska Supreme Court, was the incentive to enroll in a private college.

⁴ The 2011-2102 numbers of scholarship recipients are consistent with the lack of incentives. So far, a total of 10 students have selected APU in the first two years of the program, as compared to several hundred who have selected public postsecondary institutions.

The postsecondary institutions selected by a scholarship student may be public or private and are described in neutral terms as follows:

Sec. 14.43.830. Qualified postsecondary institutions. (a) The following institutions are qualified postsecondary institutions for purposes of awarding an Alaska performance scholarship:

- (1) a university or college physically located in the state that is
 - (A) authorized to operate in the state under AS 14.48.020, or is exempt from authorization under AS 14.48.030(b)(1); and
 - (B) accredited by a regional accreditation association;
- (2) a career and technical school program physically located in the state that has been included on a list of certified career and technical school programs received from the Department of Labor and Workforce Development; the commission shall publish the list on or before June 30 of the year preceding enrollment.

Under the second prong of the *Sheldon Jackson* test, the benefit from the scholarships is likely to be construed as an educational, not an incidental benefit since they are used for tuition.⁵

Under the third prong, a court would also look at the magnitude of the state money to a private educational institution and determine whether the scholarship payments confer a "benefit" that is of constitutional significance. Here, a court may consider the amount of money flowing to a particular private institution from the program, the size of the program, and other relevant factors. The rate of selection by the scholarship and grant recipients of private schools over public may also be considered. Since this is only the second year of the performance scholarship program, the real magnitude of the benefit may not be readily discernible.

I cannot predict with any certainty the outcome of a constitutional challenge brought against the scholarships provided under AS 14.43.810 - 14.43.849 for attendance at qualified postsecondary institutions. However, the neutrality and apparently equal availability of the scholarship for use at all qualified public and private postsecondary institutions, the option being left to the individual student, along with the stated public purpose for the program, may support a court finding that the program is a constitutionally appropriate use of public funds.

The United States Supreme Court has upheld the concept of providing public funds for attendance at religious schools but not for a religious curriculum under the First Amendment of the federal constitution. The Alaska Supreme Court has not yet had occasion to analyze the issue under our constitutional parameters.

⁵ An advocate for the scholarship program might argue that the career and technical programs are distinguishable since they are not all part of an "educational institution" and therefore should be exempt from the art. VII constitutional prohibition altogether.

Finally, an equal protection challenge may be brought by students who attend a public school that fails to offer courses required for the performance scholarship. The phased in requirements were intended to avoid any disparity in availability.

3. Is it constitutional for the State of Alaska to give public funds to a 12-year-old Alaskan resident for the purpose of attending Monroe Catholic School in Fairbanks?

Currently, there is no state law that would provide for that. I also do not find on these basic facts a public purpose required under art. IX, sec. 6. Without more information, this appears to be prohibited under art. VII sec. 1 of the Constitution of the State of Alaska and to implicate art. 1, sec. 1 and art. 1, sec. 4, although a court is the final interpreter of constitutional principles. I am not aware of any court case asserting that right. I believe, however, there are some cases in which a student with a severe disability has sued the state for funding to attend a private and nonsectarian specialized school under federal disabilities law when the state could not otherwise provide a "free and appropriate" education.

4. How do the two scenarios differ with regard to the constitutionality of giving public funds to Alaskans to receive educational services from private or religious educational entities such as APU and Monroe Catholic School?

As we discussed at length recently and as described above, art. VII, sec. 1 as well as the art. 1, sec. 1, art. 1, sec. 4, and art. IX, sec. 6 issues are unresolved for either scenario. Both the United States Supreme Court and the Alaska Supreme Court considered the incentives to attend a private religious school over a public school. While you have provided no detail in your scenarios, the following significant differences are apparent: (1) the state is constitutionally obligated to provide a *free* system of public education open to all children - not to adults; if public money is spent to pay for the tuition and fees for a 12-year-old to attend a religious school, there is no incentive to use a similar tuition voucher at a public school that already is free to the student; (2) the state is not constitutionally obligated to provide a *free* education at the postsecondary level so that a tuition scholarship based on academic performance is valuable at both private and public postsecondary institutions; and (3) Alaska's options for "school choice" are limited by its topography, transportation, infrastructures, and diverse population distribution. There may be ways, as in *Zelman*, to structure a tuition voucher program that provides other incentives for a student to stay in a public school. In *Zelman*, the public school options included tutorial aid, magnet school admission, and transfer to an adjacent public school. Since Alaska's topography creates natural obstacles that do not exist in the Cleveland urban school district, I don't know whether those options would work here so as to avoid an equal protection, religious freedom, or other constitutional protection problem even if HJR 1 passed and was adopted by the voters to allow public money to be used at private and public school.

5. If it's legal to give the funds to a 19-year-old, does it matter that the state of Alaska already funds and claims the University of Alaska as its public university system?
<Article 7, Section 2>

I don't think so. Art. 7, sec. 2 establishes the University of Alaska but does not require free tuition. In fact, it is my understanding that the performance scholarship amounts were set using UAA tuition costs as a guide at the time of the legislation's passage. The tuition scholarships available now do not appear to provide incentives to afford a private or religious school.

6. Is it constitutional for the State of Alaska to give public education dollars to Alaskans under the age of 5 for the purpose of receiving educational services from public, private and religious educational entities?

Again, the question under art. VII, sec. 1 is whether the public money is for the "direct benefit" of a "private or religious educational institution." For the most part, as I understand it, the preschool age funding is used for nonsectarian programs, not educational institutions, that are conducted at the child's home, on public school grounds, or at a day care center. More specific facts may help in an analysis under the above described constitutional principles.

7. Is Alaska Military Youth Academy considered a public school in the same vein as any other public school in Alaska? It educates 16 to 18-year-old Alaskans with public dollars for a public purpose. If not, please explain why.

The Alaska Military Youth Academy was authorized by the state legislature in AS 14.30.740. Although it is not operated by a public school district, the academy is considered to be an alternative public secondary school. *See, e.g., AS 14.30.365(c).*

8. Is it constitutional to provide labor and workforce training from public dollars to private, for-profit training/educational entities?

As stated above, I don't know whether a court would construe workforce development as providing a "direct benefit to a private or religious educational institution" in violation of art. VII, sec. 1. The fact that those programs are reviewed and certified not by the Department of Education and Early Development but by the Department of Labor and Workforce Development may be persuasive of a distinction for art. VII purposes. The Department of Education and Early Development is also required to provide vocational training opportunities for students over the age of 16 who no longer attend school, under AS 14.07.020(a)(12). I don't believe a court would find the programs to fail to serve a public purpose required under art. IX, sec. 6.

9. Can the Department of Education and Early Development give public dollars to individuals that are private contractors for educational services?

As explained in the answer to question 1, I don't know whether "educational services" (as your question uses the phrase) includes things such as transportation, building construction and maintenance, or other commonly contracted for services as authorized

Senator Mike Dunleavy
March 4, 2013
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by statute. If, however, the phrase is intended to include the provision of education to public school students, some constitutional and statutory constraints apply.

As a constitutional matter, the authority for expenditure of public funds excludes "direct benefits to private or religious educational institutions," requires a public purpose, and prohibits government entanglement in religion. If the private contractor is not an "educational institution" or the funding is not a "direct benefit," the funding serves a public purpose, and the funding does not result in an establishment of religion or interfere with the free exercise of religion, as discussed above, then the department's authority is a matter of legislative control.

The powers and duties of the department are found in AS 14.07.020 and 14.07.030, some of which may involve contracting for services.

If I may be of further assistance, please advise.

JMM:med
13-062.med

List of amendments to the Alaska Constitution

1966

Alaska Residence Requirement to Vote for President (1966)

1968

Alaska Compensation of Judicial Qualifications Commission (1968)

Alaska Judicial Qualifications Amendment (1968)

1970

Alaska Lieutenant Governor/Secretary of State Amendment (1970)

Alaska Chief Justice Election by Supreme Court (1970)

Alaska Term of Office Judicial System Administrator (1970)

Alaska English Eliminated as Voting Requirement (1970)

Alaska Voting Age Amendment (1970)

1972

Alaska Prohibition of Sexual Discrimination (1972)

Alaska Right of Privacy (1972)

Alaska Residency Requirement for Voting (1972)

Alaska Limited Entry Fisheries (1972)

Alaska Borough Assemblies (1972)

1974

Alaska Votes on Constitutional Amendments (1974)

1976

Alaska Veto of Bills Amendment (1976)

Alaska Permanent Fund Amendment (1976)

1982

Alaska Commission on Judicial Qualifications Amendment (1982)

Alaska Authorization to Issue Veterans' Housing Bonds Amendment (1982)

Alaska Limitation on State Budget Appropriations Amendment (1982)

1988

Alaska Residence Preference Amendment (1988)

1990

Alaska Budget Reserve Amendment (1990)

1994

Alaska Right to Bear Arms, Measure 1 (1994)
Alaska Rights for Crime Victims, Measure 2 (1994)

1996

Alaska Statehood Act, Measure 1 (1996)

1998

Alaska Marriage Amendment, Measure 2 (1998)
Alaska Reapportionment Board, Measure 3 (1998)

2004

Alaska Distribution Requirement for Initiatives, Measure 1 (2004)

2006

Alaska 90-Day Legislative Session, Ballot Measure 1 (2006)

Thirteen proposed amendments failed to be ratified.

Alaska Performance Scholarship Data

Private postsecondary institutions approved to participate in the Alaska Performance Scholarship program for the 2012-2013 academic year

1. Alaska Bible College
2. Alaska Career College
3. Alaska Christian College
4. Alaska Pacific University
5. Charter College
6. Wayland Baptist University
7. A Head of Time Design Academy
8. Amundsen Educational Center
9. MetrOasis
10. Northern Industrial Training

APS Recipients and Postsecondary Attendance - Private Institutions

	Academic Year	
	2011-12	2012-13
AK Bible College	5	2
AK Christian College	-	1
AK Pacific University	3	7
AVTEC	7	3
AK Career College	2	-
Charter College	<u>1</u>	<u>4</u>
TOTAL PRIVATE RECIPIENTS*	18	17

Source: 2013 Alaska Performance Scholarship Outcomes Report

AEG Recipients and Postsecondary Attendance By Institution

Institution	2011-12		2012-13	
	Students Receiving	Total Award	Students Receiving	Total Award
AK PACIFIC UNIV	22	\$23,250	26	\$24,375
AK VOC TECH CTR (AVTEC)	9	\$16,500	16	\$40,500
ALASKA CAREER COLLEGE	13	\$21,887	30	\$45,000
CHARTER COLLEGE	124	\$87,500	209	\$114,500
ILISAGVIK COLLEGE	7	\$8,625	7	\$6,375
UAA - MAIN CAMPUS	1,802	\$1,847,250	1,512	\$1,813,875
UAF - MAIN CAMPUS	538	\$610,125	622	\$688,875
UAS - MAIN CAMPUS	185	\$190,125	188	\$204,750
WAYLAND BAPTIST UNIVERSITY - ANCHORAGE	24	\$23,750	34	\$22,250
Grand Totals*:	2,624	\$2,829,112	2,624	\$2,960,600

* Data as of 2/19/13.

AEG means AlaskAdvantage Education Grant. The above information was prepared by the Alaska Postsecondary Education Commission.

Provided by Senator Mike Dunleavy

Legislative Grants to Private Organizations for Education Programs or Facilities, Fiscal Years 2009-2013

Fiscal Year	Community Name	Grant Recipient	Project Name	Amount
2009	Anchorage	Communities in Schools	Career Exploration Program	\$ 15,000
2009	Palmer	Northern Industrial Training	Palmer Training Facility	\$ 250,000
2009	Anchorage	Alaska Family Medicine Residency Program	Residency Program	\$ 2,000,000
2009	Anchorage	Victims for Justice	Victims Assistance Academy Establishment	\$ 75,000
2009	Anchorage	The Alaska Congress of Parents and Teachers	Susitna PTA Furniture Upgrade	\$ 10,000
2009	Anchorage	Alaska Laborers-Construction Industry Training	Construction Equipment Purchase	\$ 1,250,000
2009	Juneau	Hub Youth Center	Classroom and Teaching Technology	\$ 24,566
2009	Juneau	Southeast Alaska Guidance Association	Youth Education and Job Training Facility Repairs	\$ 50,000
2011	Fairbanks	Communities in Schools of Alaska, Inc.	North Star Imagination Library	\$ 40,000
2011	Juneau	Southeast Alaska Guidance Association	Eagle Valley Training Center Repair and Maintenance	\$ 57,000
2012	Anchorage	Alaska Humanities Forum	Education, Economy, and Workforce Development	\$ 165,000
2012	Fairbanks	Calypso Farm and Ecology Center	School Garden Project	\$ 166,750
2012	Juneau	Communities In Schools of Juneau, Inc.	Drop-Out Prevention Pilot Program	\$ 190,000
2012	Anchorage	Alaska Laborers-Construction Industry Training	Training Facility Construction and Upgrade	\$ 4,000,000
2012	Fairbanks Borough	North Star Imagination Library, Inc.	Literacy Initiative Project	\$ 50,000
2013	Juneau	Juneau Economic Development Council	FIRST Robotics Alaska	\$ 250,000
2013	Anchorage	Junior Achievement of Alaska, Inc.	Statewide K-12 Business Education Program	\$ 60,000
2013	Kenai Borough	Kenai Peninsula Opportunities, Inc.	Kenai Peninsula Construction Acad. Covered Storage	\$ 200,000
2013	Haines	Takshanuk Watershed Council	School Garden Season Extender Hoop House	\$ 14,000
2013	Kenai	Challenger Learning Center of Alaska	Facility Planning	\$ 200,000
2013	Anchorage	Alaska Native Heritage Center	Mabel Pike Education Center	\$ 300,000
2013	Anchorage	Alaska Zoo	Distance Education Program	\$ 150,000
2013	Anchorage	Alyeska Vocational Services	Alaska Deaf Center Development Plan	\$ 475,000
2013	Haines	American Bald Eagle Foundation	Avian Flight and Education Center with Dorms	\$ 159,250
2013	Anchorage	Child Care Connection, Inc.	Anchorage Imagination Library Books and Postage	\$ 15,000
2013	Anchorage	Child Care Connection, Inc.	Equipment and Safety Improvements	\$ 75,000
2013	Anchorage	Child Care Connection, Inc.	Retaining Our Outstanding Teachers (ROOTS) Awards	\$ 1,000,000

Legislative Grants to Private Organizations for Education Programs or Facilities, Fiscal Years 2009-2013

(continued)

Fiscal Year	Community Name	Grant Recipient	Project Name	Amount
2013	Haines	Chilkat Valley Preschool	Furniture, Educational Equipment and Supplies	\$ 30,000
2013	Juneau	Communities In Schools of Juneau Inc.	Dropout Prevention	\$ 150,000
Total				\$ 11,421,566

Notes: The figures listed may not be exhaustive of all legislative grants to private organizations for education programs over the time period in question.

Source: Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Grant Data Reports database, <http://commerce.alaska.gov/dca/apps/eGrantsOnLine/Pages/QuickStart.aspx> .

**Selected Department of Labor and Workforce Development Grants to Private Organizations for Training Programs,
Fiscal Year 2013**

Location	Grant Recipient	Project Name	Amount
Anchorage/ Fairbanks	International Alliance of Theatrical Stage Employees Local 918	Alaska Crew and Cast Advancement Program	\$ 40,000
Anchorage	Talking Circle Media	Alaska Crew and Cast Advancement Program	\$ 40,000
Anchorage	Alaska Crew Training (ACT 1)	Alaska Crew and Cast Advancement Program	\$ 79,500
Anchorage	Affinityfilms, Inc.	Alaska Crew and Cast Advancement Program	\$ 17,850
Fairbanks	Alaska Regional Council of Carpenters	State Training and Employment Program (STEP)	\$ 135,000
Various	Alaska Regional Council of Carpenters	STEP - Rigging, Welding, and Carpentry Training	\$ 336,921
Anchorage	Alaska Forum on the Environment	STEP - Environmental Technician Training	\$ 114,969
Anchorage/ Fairbanks	Joint Electric Apprenticeship and Training Trust	STEP - Welding and Commercial Driving Training	\$ 293,660
Anchorage/ Fairbanks	Alaska Laborers Training School	STEP - Construction Training	\$ 378,000
Palmer	Alaska Operating Engineers	STEP - Modeling and Global Positioning Training	\$ 48,350
Anchorage	Joint Apprenticeship Training Committee	STEP - Sheet Metal Training	\$ 149,900
Anchorage	Alaska Trowel Trades	STEP - Plastering and Cement Training	\$ 83,349
Anchorage/ Fairbanks	Alaska Works Partnerships	STEP - Support Services to Construction Trades Trainees	\$ 369,590
Anchorage/ Fairbanks	Alaska Works Partnerships	STEP - Weatherization and Construction Training	\$ 225,000
Barrow	Arctic Slope Regional Corp. Energy Services	STEP - Electrical and Construction Training	\$ 100,000
Various	Carlile Transportation	STEP - Commercial Driver Training	\$ 112,500
Various	Construction Education Foundation	STEP - Construction Training	\$ 150,000
Cordova	Copper River Seafoods	STEP - Food Processing Operations Training	\$ 170,600
Fairbanks	Fairbanks Area Plumbers and Pipefitters	STEP - Advancement Training for Apprentices and Journeymen	\$ 101,075
Fairbanks	Pipeline Training Center Trust	STEP - Occupational Safety and Health Certification	\$ 156,170
Fairbanks	Pipeline Training Center Trust	STEP - Pipeline Construction Training	\$ 368,009
Anchorage	Green Earth Landscaping	STEP - Landscaper Training	\$ 15,000
Anchorage	Heat and Frost Insulators and Allied Workers	STEP - Insulator Training	\$ 60,000
Anchorage	Ironworkers Local 751	STEP - Ironworker Training	\$ 178,918

**Selected Department of Labor and Workforce Development Grants to Private Organizations for Training Programs,
Fiscal Year 2013 (continued)**

Location	Grant Recipient	Project Name	Amount
Homer	Kachemak Shellfish Growers Co-Op	STEP - Shellfish Hatchery Operations Training	\$ 29,737
Palmer	Northern Industrial Training	STEP - Structural Welding Training	\$ 99,996
Statewide	Rural Alaska Community Action Program	STEP - Teacher and Childhood Development Training	\$ 99,978
King Salmon	Southwest Alaska Vocational Ed. Center	STEP - Maintenance Technician Training	\$ 160,000
Anchorage	Zender Environmental Health and Research	STEP - Environmental Health Training	\$ 34,440
Anchorage	Cook Inlet Tribal Council	STEP - Construction and Healthcare Training for Dislocated Workers	\$ 31,223
Anchorage	Nine Star Education and Employment Services	STEP - Construction and Healthcare Training for Dislocated Workers	\$ 84,398
Various	Construction Education Foundation	Construction Academy Program	\$ 3,180,000
Various	Access Alaska	Youth First - Employability and Career Skills for Disabled Youth	\$ 15,000
Anchorage	Alaska Process Industry Career Consortium	Youth First - Externships for Teachers	\$ 60,000
Bering Strait Region	Kawerak, Inc.	Youth First - Employability and Career Skills	\$ 82,500
Anchorage	Nine Star Enterprises	Youth First - Employability Skills Training	\$ 150,000
Southeast Region	Southeast Regional Resource Center	Youth First - Employability and Career Skills	\$ 85,000
Bethel	Yuut Elitnaurviat, Inc.	Youth First - Employability and Career Skills	\$ 90,000
Anchorage/ Fairbanks	Alaska Works Partnerships	Rural Apprenticeship Outreach and Support	\$ 147,000
Bethel	Yuut Elitnaurviat, Inc.	Rural Commercial Driver Training	\$ 58,445
Juneau	Juneau Economic Development Council	Career and Technical Education - "Engineering is Elementary" Program for Primary Grades	\$ 45,970
Total			\$ 8,178,048

Notes: The selected grants listed here are not exhaustive of funds directed to private organizations for training programs by the Alaska Department of Labor and Workforce Development (DOLWD) in fiscal year 2013.

Source: Paula Scavera, Special Assistant to Commissioner II, DOLWD, 907-465-4532.

State of Alaska DEED Districts
Served by Supplemental Education Service Providers 2012-2013

2012-2013 SES Providers and the Districts they are serving	A+ In-Home Tutoring	A to Z In-Home Tutoring	Academic Tutoring Services	Alaska Learning Labs	Alaska Learning Labs - SUMMER	Alternate Learning Styles	Anchorage School District	ATS Project Success	Brain Hurricane, LLC	Club Z! In-Home Tutoring Services	Educate Online Learning, LLC	Imagine learning	Sylvan Learning Center - Anchorage	Sylvan ONLINE - Anchorage	Literacy Council of Alaska	Literacy Council of Alaska - Summer	Math Savvy Institute	Mat-Su Sylvan	Northwestern Alaska Career and Technical Center (NACTEC)	Turning Leaf Literacy Center	Kodiak Island Bourough School District	
Alaska Gateway				x																		
Aleutian Region																						
Aleutians East			x																			
Anchorage	x	x	x	x	x		x	x	x	x	x	x	x				x					
Annette Island																						
Bering Strait				x				x	x								x		x			
Bristol Bay																						
Chatham				x																		
Chugach			x							x				x			x					
Copper River				x													x					
Cordova																						
Craig																						
Delta/Greely																						
Denali																						
Dillingham				x				x	x								x					
Fairbanks	x		x	x	x	x		x	x	x	x	x			x			x				
Galena																						
Haines																						
Hoonah																						
Hydaburg														x								
Iditarod				x	x				x													
Juneau			x	x	x			x	x	x		x										
Kake																						

State of Alaska DEED Districts
Served by Supplemental Education Service Providers 2012-2013

Kashunamiut				x	x							x						x			
Kenai Peninsula				x				x	x	x		x						x			
Ketchikan				x														x			
Klawock																					
Kodiak				x				x													x
Kuspuk				x	x			x	x									x			
Lake and Peninsula				x				x										x			
Lower Kuskokwim				x	x			x				x						x			
Lower Yukon				x	x				x									x			
Matanuska-Susitna		x	x	x						x		x		x				x	x		x
Mt. Edgecumbe																					
Nenana			x	x														x			
Nome				x																x	
North Slope				x				x	x												
Northwest Arctic				x																	
Pelican																					
Petersburg																					
Pribilof																					
St. Mary's			x	x																x	
Sitka				x				x	x												
Skagway																					
Southeast Island				x				x												x	
Southwest Region				x				x	x											x	
Tanana																					
Unalaska																					
Valdez																					
Wrangell																					
Yakutat																					
Yukon Flats				x																	
Yukon-Koyukuk				x								x									
Yupiit				x	x															x	

* Districts shaded are not required to offer SES at any of their school sites.

**Mat-Su Borough School District
Supplemental Education Service Providers FY 2013**

Fund	FY 13 Purchase Order Amount
Federal Programs	
Required funds set aside through Title I	
312 Learning Well, Inc. (Sylvan)	\$ 125,240.00
312 A to Z In-Home Tutoring LLC	\$ 35,783.00
312 Syntelsys (Academic Tutoring)	\$ 17,892.00
312 Turning Leaf	\$ 35,963.00
Unencumbered funds that will be spent on State approved Supplemental Educational Service Providers based on parent 312 preference	\$ 25,122.00
Title I - Required Set-Aside for School Choice and Supplemental Educational Services (SES)	\$ 240,000.00
Additional support for learning opportunities beyond the school day	
352 Southeast Regional Resource Center	\$ 15,400.00
Funds to Support Supplemental Educational Services for District Wide Indian Education Students	\$ 15,400.00
260 Learning Well, Inc. (Sylvan)	\$ 10,000.00
260 Turning Leaf	\$ 4,000.00
Funds to Support Supplemental Educational Services for District Wide Homeless Students	\$ 14,000.00
Grand Total Grant Funds Set Aside for Supplemental Educational Services	
	\$ 269,400.00
Student Support Services	
Required Student Support Contracts for Alternative Educational Facilities	
Jasper Mountain	\$ 7,425.00
Connecticut Center for Child Development	\$ 97,500.00
Grand Total Student Support Funds Set Aside for Supplemental Educational Services	
	\$ 104,925.00

Mat-Su Borough School District
Home School Educational Service Providers FY13

<u>CORE CURRICULUM EDUCATIONAL VENDORS FY13</u>	<u>Brief Description</u>	<u>Mat-Su Central</u>	<u>Twindly Bridge</u>
ALASKA PACIFIC UNIVERSITY	Environmental Education Courses	\$ 19,875.00	\$ 15,000.00
	Multisensory & Advanced Language Instruction (Reading) Based Training, Pre-School Parent Early		
EVENSON, SHAWN D DBA MOMENTUM CUSTOM LEARNING	Numeracy Training	\$ 16,200.00	
	Salmon Lifecycle & Dissection Presentation; Fish		
KRAUS, FREDERIC DBA ROCK & ROE EDUTAINMENT	Printing Presentation	\$ 2,705.00	
LEARNING WELL INC/SYLVAN LEARNING CENTER	Tutoring	\$ 5,300.00	\$ 15,360.00
LUCHSINGER, DENA	Workshop presentations	\$ 388.00	
TURNING LEAF LITERACY CENTER LLC	Literacy Classes	\$ 17,000.00	
UNIVERSITY OF ALASKA	Various courses/tuition	\$ 9,720.00	\$ 1,148.00
		\$ 71,188.00	\$ 31,508.00

<u>ART, PE, LANGUAGE, ETC. EDUCATION VENDORS FY13</u>	<u>Brief Description</u>		
ALASKA CENTER FOR THE MARTIAL ARTS	Martial Arts Classes	\$ 20,590.00	\$ 9,600.00
ALASKA ZOO	Field Trip/Class	\$ 440.00	
ALTHENS, SUSAN DBA SUZIE ALTHENS STUDIO	Art Classes for Students	\$ 1,800.00	
SONJA'S STUDIO OF DANCE	Dance Classes	\$ 19,000.00	\$ 14,820.00
BEAR PAW ARCHERY	Archery Classes	\$ 31,500.00	
ASC SCHOOL OF SEWING	Sewing Classes	\$ 12,150.00	
BONNETTE, TRUDY	Piano & Voice Lessons	\$ 15,674.00	
CLASSROOM WITH A VIEW INC	Art Classes for Students		
DENALI GYMNASTICS & FITNESS INC	Gymnastics Classes		\$ 18,900.00
AT&T SPORTS CENTER	PE Classes		\$ 4,800.00
GAINES, RACHEL DBA LOVE 2 CREATE IN AK	Story Time & Crafts Classes	\$ 7,800.00	
HALF MOON CREEK LLC	Glass Art & Field Trip	\$ 740.00	
KELLER, DAVID DBA JAY'S TAEKWONDO	Martial Arts Classes	\$ 14,850.00	
LEDGENDS INC -	Rock Climbing	\$ 1,184.00	
MAT-SU SKI AND SNOWBOARD CLUB INC	Ski & Snowboarding Program	\$ 9,860.00	\$ 5,000.00
MC&M ENTERPRISES INC	Driver's Ed Classes	\$ 25,000.00	
MOSES, GAIL	Art Classes for Students	\$ 30,600.00	
MCCONARTY, LISA/PRIMAL MARTIAL ARTS	Martial Arts Classes	\$ 50,525.00	\$ 10,600.00
MELSON, ELIZABETH DBA VALLEY MUSIC	Music Instruction		\$ 6,600.00
MUSK OX FARM DEVELOPMENT CORPORATION, THE	Field Trip	\$ 195.00	
NORTH AMERICA OUTDOOR INSTITUTE	Outdoor Safety Courses	\$ 350.00	
NORTHERN SUSITNA INSTITUTE	Various classes in Talkeetna	\$ 10,415.00	
PARKS, MARI JO DBA FINDING YOUR FUTURE	Career Awareness Classes	\$ 18,750.00	
SCION STUDIOS INC	Photography Classes	\$ 720.00	
SOUTHEAST REGIONAL RESOURCE CENTER	Alaska Close-Up Program		\$ 2,775.00
TAYLOR, MICHAEL A DBA ACADEMY KARATE CLUB	Martial Arts Classes	\$ 20,559.00	\$ 14,240.00
		\$ 292,702.00	\$ 87,335.00
		\$ 363,890.00	\$ 118,843.00

Provided by Senator Mike Dunleavy's office

Testimony of Richard D. Komer
For the Alaska House of Representatives
Committee on Education
Concerning HJR 1
Held on March 1, 2013

Madame Chair and Members of the Committee:

My name is Richard D. Komer, and I am a Senior Attorney at the Institute for Justice ("IJ") based in Arlington, Virginia. Thank you for inviting me to offer my views on HJR 1. HJR 1 is a proposal to amend Alaska's Constitution by subtracting the "Blaine Amendment" language found at Article VII, Section 1, and by adding language to Article IX, Section 6 authorizing state assistance to students for educational purposes. This written testimony supplements the oral testimony I presented during my two minute presentation at the Friday, March 1 Hearing.

The Institute for Justice is a non-profit public interest law firm headquartered in Arlington, Virginia, a suburb of Washington, D.C. Since opening our doors in 1991, we have worked on legal issues in four areas: property rights, economic liberty, the First Amendment Free Speech Clause, and school choice. In cases we litigate, we represent clients on a pro bono basis, and in the first three areas we typically sue governments for violating individuals' rights. In the fourth area, school choice, we assist legislators interested in creating school choice programs, seeking to ensure that whatever programs are passed can withstand any subsequent legal challenge. If such challenges are filed against the constitutionality of the program, we intervene in those lawsuits on behalf of parents seeking to defend their rights under the program and are aligned with the state officials defending the program. We consider ourselves the lawyers to the school choice movement.

The Institute for Justice has participated in the successful defense of virtually all current school choice programs that have undergone legal challenge in either federal or state courts and under both the Federal and state constitutions. These programs have included both scholarships provided directly by the state on behalf of eligible families and scholarships generated by private donations to scholarship-granting organizations from either private individuals or businesses. We represented parents in both cases decided by the U.S. Supreme Court involving school choice programs: *Zelman v. Simmons-Harris* (2002) and *Winn v. Arizona Christian School Tuitioning Organization* (2011). *Zelman* upheld a direct scholarship program in Cleveland, Ohio against a challenge alleging that it violated the federal Establishment Clause. *Winn* rejected a similar Establishment Clause challenge to an Arizona program providing state income tax credits for donations to scholarship granting organizations.

Both the Ohio and Arizona federal court cases arose after similar state court challenges concluded in the Ohio and Arizona supreme courts: *Simmons-Harris v. Goff* (Ohio 1999) and *Kotterman v. Killian* (AZ 1999). In addition to alleging violations of the federal Establishment Clause, these state court challenges alleged violations of state constitutional provisions, including state Blaine Amendments

similar to Alaska's, as have a number of other appellate cases we have successfully litigated in other states around the country, including Colorado, Illinois, and Wisconsin. Challenges based on state Blaine Amendments are currently pending in Indiana and New Hampshire, although there are additional states with school choice programs and Blaine Amendments where no challenges were ever brought, including Florida, Georgia, and Pennsylvania. In short, we at the Institute for Justice are intimately familiar with the jurisprudence involving both the federal Establishment Clause and state Blaine Amendments.

I personally have been involved with reviewing and defending school choice programs since I came to IJ in 1993, nearly 20 years ago. Prior to joining IJ, I was a career civil rights lawyer for several of the federal government's civil rights agencies, including the Civil Rights Division at the Department of Justice, the Equal Employment Opportunities Commission, and two separate stints at the U.S. Department of Education's Office for Civil Rights, the second one in a political capacity as Deputy Assistant Secretary for Civil Rights. At IJ I work exclusively in the area of school choice, and co-authored a survey of state constitutions' entitled "School Choice and State Constitutions: A Guide to Designing School Choice Programs," which can be found on our website at ____ . A principal focus of that survey is on the language and case law interpreting the state Blaine Amendments found in 39 state constitutions, including Alaska's.

My testimony at the March 1st hearing of your committee was the fourth time I have testified in Alaska legislative hearings, including one in each of the last two sessions and then most recently on February 13th on SJR 9 before the Alaska Senate Joint Education, Judiciary and Fiscal Committee Hearing chaired by Senator Coghill. All of my testimonies have addressed the need to repeal the Alaska Blaine amendment language to overturn the interpretation of that language by the Alaska Supreme Court in a pair of decisions I consider poorly reasoned. Unless those interpretations are eliminated by removing the language I believe they have misinterpreted, Alaska will be unable to create legally-defensible direct scholarship programs at either the elementary and secondary level or the collegiate level.

The problem arises from the Alaska Supreme Court's interpretation of the last sentence of Article VII, Section 1. That sentence reads "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." As previously mentioned, some 38 other states have similar language in their state constitutions, although none has language as succinct as Alaska's. We regard this as a state Blaine Amendment because it shares the one characteristic common to all of them, the prohibition on spending state money for the benefit of non-public educational institutions at the elementary and secondary school level. The failed federal Blaine Amendment, if enacted, would have prevented all states from spending their money on religious schools. Alaska's Blaine, like those of some other states, includes higher education institutions as well as lower, and prevents aid to private educational institutions as well as religious ones. In these two ways it is broader than the classic Blaine Amendment, but it is also narrower on its face than many by limiting its prohibition to money "paid for the direct benefit of any religious or private educational institution." I have noted that it is only narrower "on its face," and underlined "direct benefit" to emphasize that this is the issue where I think the Alaska Supreme Court has misinterpreted this language, and expanded the prohibition in a way never intended by those who enacted it.

One normally uses the adjective “direct” to create a contrast with “indirect” and indeed the history of the Alaska constitutional convention appears to bear out this commonsense conclusion. For example, Professor Gerald McBeath notes at page 141 of his book, “The Alaska State Constitution : A Reference Guide” (1997), in discussing Article VII, Section 1, that “Delegate Jack Coghill sought an amendment to section 1 that would replace the word *direct* with *indirect*” to increase protection of the public schools from encroachment. According to McBeath, this amendment as rejected by a nearly 2-to-1 margin because other delegates regarded it as too radical and noted that “it might be construed to prevent students in private schools from receiving welfare benefits typically administered through the schools.” Unfortunately, Professor McBeath has somewhat misstated the issue at the convention and the proposed amendment, although he is clearly correct that the amendment was intended to expand the restriction on aid to private schools.

Victor Fisher, a delegate to the convention, explains in his book “Alaska’s Constitutional Convention” (1975), that the rejected Coghill amendment would have added “and indirect” after “direct,” so that the prohibition would have read “direct and indirect benefit.” Fisher notes that opponents of the addition of “and indirect” “argued for the provision of services to the individual student if otherwise in keeping with the constitution.” He concludes that a majority of the convention “agree[d] with those who argued that more important than these considerations *was the need to help each child attain the fullest level of development through programs such as free lunches, bus transportation, and even payment of room and board to parentless children, so long as the basic principle of separation of church and state was maintained.*” (Emphasis added.)

I emphasize that the actual amendment was to add the prohibition of “indirect” benefit for private educational institutions, because this concept of prohibiting both direct and indirect benefits for private schools is found in a number of other states’ Blaine Amendments and it is the “indirect” benefit idea that can lead them to interpret the language as prohibiting aid to students as well as direct aid to schools. The discussion of adding “indirect” to Alaska’s Blaine Amendment clearly shows a similar understanding at the constitutional convention and the rejection of the amendment to add “indirect” was framed in terms of continuing to permit aid to private school students. Regrettably, the Alaska Supreme Court failed to honor this distinction in his two primary cases interpreting the Blaine language, which necessitates the need for repealing the Blaine language to remove the mistaken interpretation.

In the first of these cases, *Matthew v. Quinton* (1961), in a suit brought by the Fairbanks public school district, the Alaska Supreme Court held that the provision of public transportation to private school students attending a Catholic school in Fairbanks violated the direct benefit language of Section 1. Despite the fact that the program pre-dated the new Constitution and the specific reference to bus transportation in the convention debate rejecting the addition of “and indirect” to the Blaine language to protect such aid as bus transportation to private school students, the Court read the direct benefit language expansively. I also note that by 1955 went the constitutional convention occurred and 1961 when the Matthews case was decided, the U.S. Supreme Court had already decided that providing bus transportation to private school students did not violate “the basic principle of separation of church and state,” in its *Everson v. Board of Education* decision from 1947.

In 1979, in the second case, the Alaska Supreme Court compounded its error, in *Sheldon Jackson College v. State* (1979). The Court invalidated a grant program helping students pay tuition at private colleges. The Supreme Court characterized the students as “conduits” for direct benefits to private colleges. This approach utterly disregarded the fact that the students themselves were obviously the direct beneficiaries of the tuition assistance and that any “benefits” the colleges themselves derived came only as result of the students decision to attend the school and use their state aid to purchase an education from it. The U.S. Supreme Court had already dismissed an appeal in which the South Carolina Supreme court had upheld a student loan program under its Blaine Amendment and the federal Establishment Clause in which students could apply the funds to tuition at the college of their choice. *Durham v. McLeod*, 192 S.E.2d 202 (S.C. 1972), *appeal dismissed for want of a substantial federal question*, 413 U.S. 902 (1973).

Although the judicial branch has long been considered the “least dangerous branch” of the government, it does have the final say on what constitutions and statutes mean, at least until those instruments are amended. There are only two ways in which a supreme court decision can be reversed: either the supreme court reverses itself in a subsequent decision, or the people, acting through their legislature and the constitutional amendment process, modifies the language in such a way as to necessitate a different outcome. The problem with the former process in the context of school choice programs is that before the supreme court could have an opportunity to reverse itself the legislature would have to pass a program it knew to violate existing constitutional law. Few state legislatures do this intentionally, given that legislators are sworn to uphold the constitution. But it does happen inadvertently on occasion. HJR 1 and SJR 9 are means of beginning the other alternative of amending the constitution itself.

To illustrate these alternatives let me give an example of each, in the Blaine Amendment context. Both New York and South Carolina have Blaine Amendments originally different than Alaska’s in precisely the way in which Delegate Coghill proposed amending Alaska’s Blaine during the constitutional convention of 1955. New York’s Article XI, Section 3 prohibits use of state money or property “directly or indirectly” in aid of any religious school. South Carolina’s Article XI, Section 4 used to prohibit payment of public funds for the “direct or indirect” of private or religious educational institutions. I want to discuss cases from each state’s supreme court.

In *Judd v. Board of Education* (1936) the New York Court of Appeals (New York’s highest court) held that busing private school children to their private schools violated its Blaine Amendment by indirectly aiding the schools. This case predated by a decade the U.S. Supreme Court’s decision in *Everson* upholding a similar New Jersey program under the federal Establishment Clause. In reaction to this decision, New York amended its Blaine to explicitly permit the transportation of children to and from any school, but left the “direct and indirect” language intact. Decades later New York passed a textbook loan program that provided free textbooks to children in private and religious schools, and a lawsuit challenged the program under New York’s Blaine Amendment, relying on the *Judd* decision. In *Board of Education v. Allen* (1967), the Court of Appeals upheld the textbook program and overruled *Judd* in the process. The Court held that while the program provided *incidental* benefits to the private schools the children attended, those benefits were neither direct nor indirect benefits to the schools

themselves. As a result, student assistance programs in New York similar to the transportation and scholarship programs struck down by the Alaska Supreme Court in the Matthews and Sheldon Jackson College cases are now constitutional in New York.

In South Carolina the Blaine Amendment case was very similar to Alaska's *Sheldon Jackson College* case. The South Carolina Supreme Court struck down a tuition grant program for private college students on the grounds that it provided indirect benefits to the colleges. *Hartness v. Patterson* (1971). The people of South Carolina responded in 1973 by removing from their Blaine Amendment the prohibition on "indirect" benefits while retaining the prohibition on direct benefits. This change was made to reverse the result in the *Hartness* case, and recognized student assistance programs were not direct aid to educational institutions. Thus, the same programs that Alaska prohibits as "direct aid" are treated as incidental aid in New York as a result of the Court of Appeals overruling *Judd* and indirect aid in South Carolina as a result of a constitutional amendment overruling *Hartness* by deleting indirect aid.

In addition to New York and South Carolina, a number of other states have modified their Blaine Amendments in various ways when they found them unduly restrictive, including Delaware, Idaho, Massachusetts, Montana, Nebraska, South Dakota, and Virginia. And as I mentioned at the hearing, three states have repealed their Blaine Amendments entirely, Louisiana, North Carolina, and Tennessee. That brings the total of states to have amended or repealed their Blaines to 12. Accordingly, it would not be unprecedented if Alaska were to pass HJR1 and then complete the process of repealing its Blaine Amendment.

The scope of my testimony here today is not to discuss the merits of school choice as a policy matter, but only to lay out the reasons how the Alaska Supreme Court has severely limited the ability of the Alaska legislature to consider school choice programs on their merits. By its unduly expansive reading of what constitutes a "direct benefit," an interpretation that fails to properly account for the deliberate rejection by the constitutional convention of covering "indirect benefits in its Blaine language, the Alaska Supreme Court has handcuffed the Legislature and only the Legislature and the people can free it.

Thank you for providing me with this opportunity to share my views with you. If you have any questions for me, I would be happy to answer them in writing.

Richard D. Komer

Senior Attorney

Institute for Justice

Arlington, Virginia



INSTITUTE FOR JUSTICE

March 8, 2012

The Honorable Bill Stoltze, Co-Chair
The Honorable Bill Thomas, Co-Chair
House Finance Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801

Via Email: Representative_Bill_Stoltze@legis.state.ak.us
Representative_Bill_Thomas@legis.state.ak.us

RE: HJR 16: Constitutional Amendment for Educational Funding

Dear Sirs:

Thank you for the opportunity to testify last week via telephone as an expert on state constitutions' Blaine Amendments and House Joint Resolution 16. Representative Keller's Office has forwarded me some subsequent testimony submitted to you by the American Civil Liberties Union of Alaska apprising you of two "problems with HJR 16." They assert that those problems are that the federal and state constitutions "would still prohibit the payment of public money to private religious schools" and might expose "newly private-schooled students and families to increased discrimination, which they would not have suffered had they remained at public schools." These concerns are to a large extent based on a mistaken view of both federal Establishment Clause jurisprudence and federal nondiscrimination law.

First, they misunderstand the extent to which the federal Establishment Clause prohibits "the direct payment of public money to private religious schools." They would be correct if they were to say it limits "the direct provision of institutional aid to religious schools for religious activities." That is the holding of the U.S. Supreme Court's most recent decision on aid provided directly to religious schools for the benefit of the schools themselves, *Mitchell v. Helms*, 530 U.S. 793 (2000). That case, however, does not control aid that is provided for the benefit of individual students in the form of scholarships or grants, and such monies can be sent directly to private schools, even religious ones, where it is clear it is being provided on behalf of individual students. For example, there are no doubt many Alaskan college students attending religious colleges who are receiving the benefit of federal Pell Grants that are paid directly to the colleges they attend. It was precisely such a state program that was struck down by the Alaska Supreme Court in the *Sheldon Jackson College v. State* case (599 P.2d 127) in 1979. As I testified earlier,

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Provided by Senator Mike Dunleavy

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it is the purpose of HJR 16 to re-align the Alaska Constitution with the federal Establishment Clause standard.

That standard for student assistance programs is most recently articulated by the U.S. Supreme Court in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), which the ACLU discusses but misunderstands. I represented parents whose children participated in the program in *Zelman*, and it stands for the proposition I stated above, that student assistance programs are not treated the same as programs providing direct assistance to schools. In student assistance programs the payments may be sent directly to the schools, as in the Pell Grant program, and the program can include religious elements. This is crystal clear from the U.S. Supreme Court's opinion in another case cited by the ACLU, *Locke v. Davey*, 540 U.S. 712 (2004), where both the majority and dissenting opinions explicitly recognized that the Washington state program involved passed muster under the federal Establishment Clause even though the student desiring aid was pursuing a religious vocational program, i.e., training to become a minister.

Nor is the ACLU correct that the Alaska Establishment Clause prohibits "the teaching of religion." The Alaska Establishment Clause is modeled on the federal Establishment Clause and is obviously intended to receive a parallel interpretation. The case the ACLU cites for its conclusion, *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963), refused to even decide the Alaska Establishment Clause claim involving the teaching of religion, and the case involved the operation of a public hospital by a religious group, not a program of assistance to individuals allowing them to select religious providers from an array of religious and non-religious providers.

So while the ACLU is absolutely correct that the Alaska Constitution after amendment by HJR 16 would have to be consistent with the Establishment Clause language of both the federal and state constitutions, they simply fail to correctly describe what those clauses permit. The whole purpose of HJR 16 is to bring the interpretation of the two constitutions together, after the Alaska Supreme Court's (mis)interpretation of the language of Article VII, Section 1 drove them far apart in *Sheldon Jackson College* and *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961).

The ACLU's second concern is that students newly-enrolled in private schools may be exposed to discrimination they would not have suffered in public schools. This concern is in part based on a misunderstanding of the federal laws that apply to private schools and in part on a failure to recognize that student assistance programs give students and their families additional opportunities but do not take any away. Regardless of whether Alaska law protects private school students from discrimination on the basis of race, color or national origin, such students do not "fall outside the umbrella of federal ... nondiscrimination laws." One of the federal laws enacted shortly after the Civil War prohibits private schools from discriminating against students in admissions and services on the basis of race, color and national origin, regardless of whether those students receive state aid. See *Runyon v. McCrary*, 427 U.S. 160 (1976), interpreting 42 U.S.C. section 1981.

The Honorable Bill Stoltze, Co-Chair
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March 8, 2012
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Protections against discrimination based on sex and disability are more limited, because we recognize that private schools do not and should not have to be treated exactly like public school systems that must be open to all comers. For example, private schools can be single-sex schools, without this being regarded as illegal sex discrimination. Hillary Clinton, for example, is a proud graduate of Wellesley College, a single sex women's school enrolling hundreds of women on federal scholarships. Similarly, federal protections for students with disabilities are different for students attending private schools, with some schools exempted from coverage in some circumstances. Nor is the ACLU correct that Alaska's provision of IDEA services to private school students are exclusively a matter of "legislative grace" that Alaska is free to eliminate if enough people object to aid to private school students. The IDEA (a federal funding statute) requires the expenditure of an "equitable share" of IDEA funds on students enrolled in private schools as a condition of Alaska's receipt of federal IDEA funds. Alaska can indeed decide not to spend IDEA funds on private school students, but would have to withdraw from participation in the IDEA funding program. Alaska's participation in the IDEA is voluntary and it is, of course, free to withdraw from the program.

Which brings me to my final point regarding the ACLU's concern that families will be subjected to discrimination if HJR 16 results in amendment of Alaska's constitution and school choice programs are subsequently passed. Just as Alaska's participation in federal funding programs is voluntary, so too is any family's participation in a school choice program. Their entitlement to remain in public schools remains and their entitlement to return to public schools remains. What school choice programs do is give them additional opportunities, just as the student assistance program struck down in the *Sheldon Jackson College* case gave students additional options for where to go to college. Unlike the situation with public school where a family that believes it is victimized by discrimination of some sort may be prevented by financial barriers from escaping discrimination by leaving the public schools, a family wishing to escape discrimination in a private school can return to the free public schools. Because private schools, unlike public schools, are subject to market forces, they have very real incentives to keep their customers happy. They gain nothing from unwarranted discrimination, and lose much by it.

The ACLU raises the specter that passage of HJR 16 and amendment of Article VII, Section 1 would expose the state to "needless, costly litigation" and "protracted, expensive litigation." Aligning the language of the Alaska constitution with that of the federal constitution should do no such thing, but one cannot always avoid frivolous lawsuits, because that is precisely what such a lawsuit would be. It is worth noting that in the three current lawsuits challenging school choice programs in Arizona, Colorado, and Indiana, the plaintiffs (which sometimes include the state ACLU's) make no claim of federal Establishment Clause violations, even though in all three programs students can choose religious schools as well as secular private schools, and the religious schools can teach religion classes. The only claims are made under state constitutional provisions they seek to interpret as broadly as the Alaska Supreme Court's mistakenly broad interpretation.

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March 8, 2012
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In conclusion, the legal concerns the ACLU has raised do not provide a basis for not bringing Alaska's Constitution into parallel with the federal constitution. The ACLU has pointed to nothing that suggests that Alaska's situation requires constraints on school choice programs beyond those already imposed by the federal constitution. HJR 16 is simply a first step towards removing unnecessary and unwise impediments imposed by poorly reasoned decisions of the Alaska Supreme Court.

Thank you for letting me respond to these concerns.

Sincerely,



Richard D. Komer
Senior Attorney
Institute for Justice
Arlington, Virginia

cc: Representative Anna Fairclough, Vice Chair,
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Representative Mia Costello, Representative_Mia_Costello@legis.state.ak.us
Representative Bryce Edgmon, Representative_Byrce_Edgmon@legis.state.ak.us
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Representative Beth Kerttula, Representative_Beth_Kerttula@legis.state.ak.us

Table 1: Selected Alaska Legislative Grants to Faith-Based Organizations, Fiscal Years 2009-2013

Fiscal Year	Location	Recipient	Purpose	Amount
2009	Fairbanks	Catholic Community Resources	Fairbanks Counseling & Adoption	\$ 150,000
2009	Juneau	Catholic Community Services, Inc.	Hospice & Home Care Point of Care System	\$ 50,000
2009	Juneau	Juneau Cooperative Christian Ministry	Glory Hole Dormitory Upgrades	\$ 37,500
2011	Anchorage	Downtown Soup Kitchen	New Facility Project	\$ 500,000
2011	Fairbanks	Fairbanks Rescue Mission	Security Equipment Upgrades	\$ 36,000
2011	Fairbanks	Wellspring Revival Ministries	Disability Compliance Remodel	\$ 10,000
2011	Juneau	Juneau Cooperative Christian Ministries	Glory Hole Shelter Roof Replacement	\$ 65,000
2011	Regional	Catholic Community Services, Inc.	Angoon Senior Center Equipment	\$ 8,000
2011	Regional	Catholic Community Services, Inc.	Bring the Kids Home Program Site Acquisition and Building Design	\$ 125,000
2011	Regional	Catholic Community Services, Inc.	Hoonah Senior Center Kitchen Equipment	\$ 18,000
2011	Regional	Catholic Community Services, Inc.	Kake Senior Center Kitchen Equipment	\$ 5,500
2011	Regional	Catholic Community Services, Inc.	Swan Lake Senior Center Waste Heat Energy Capture Project	\$ 12,995
2011	Regional	Catholic Community Services, Inc.	Wrangell Center Senior Furnace, Heating Ducts and Building Insulation Replacement and Repair	\$ 20,000
2011	Regional	Catholic Community Services, Inc.	Senior Center Roof Maintenance & Replacement	\$ 50,000
2011	Regional	Catholic Community Services, Inc.	Vehicle & Wheelchair Lift Purchase	\$ 13,100
2012	Anchorage	Catholic Social Services, Inc.	Purchase of Replacement Property for Clare House	\$ 300,000
2012	Juneau	Juneau Cooperative Christian Ministries	Glory Hole Shelter Energy Efficiency and Heating Improvements	\$ 50,000
2012	Regional	Youth Outpatient Mental Health	Site Acquisition and Building Design for Bring the Kids Home Program	\$ 50,000
2012	Regional	Catholic Community Services, Inc.	New Wheelchair Equipped Vehicle	\$ 13,560
2012	Regional	Catholic Community Services, Inc.	New Wheelchair Lift Equipped Vehicle	\$ 12,200
2013	Kenai	Alaska Christian College	Emergency Generator Purchase	\$ 45,000

Table 1: Selected Alaska Legislative Grants to Faith-Based Organizations, Fiscal Years 2009-2013 (continued)				
Fiscal Year	Location	Recipient	Purpose	Amount
2013	Regional	Catholic Community Services, Inc.	Bring the Kids Home Program Site Acquisition and Building Design	\$ 300,000
2013	Regional	Catholic Community Services, Inc.	Craig-Klawock Senior Center Wheelchair Lift Equipped Vehicle	\$ 70,000
2013	Regional	Catholic Community Services, Inc.	Haines Senior Center Equipment	\$ 10,000
2013	Regional	Catholic Community Services, Inc.	Haines Senior Center Heating System and Weatherization Improvements	\$ 65,000
2013	Regional	Catholic Community Services, Inc.	Hydaburg Senior Program Wheelchair Lift Equipped Vehicle	\$ 70,000
				\$ 2,086,855
<p>Notes: The figures listed may not be exhaustive of all legislative grants to faith-based organizations over the time period in question. Source: Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Grant Data Reports database, http://commerce.alaska.gov/dca/apps/eGrantsOnLine/Pages/QuickStart.aspx.</p>				

Table 2: Alaska Department of Health and Social Services Funding to Faith-Based Organizations, Fiscal Year 2013

Location	Recipient	Purpose	Amount
Anchorage	Alaska Baptist Family Services	Residential Child Care	\$ 233,600
Kodiak	Brother Francis Shelter	Homeless Shelter	\$ 25,125
Anchorage	Catholic Community Services, Inc. (CCS)	Developmental Disabilities / Special Needs	\$ 226,340
Anchorage, Southcentral, Yukon-Kuskokwin	CCS	Homestudies for Adoption and Guardianship	\$ 368,294
Hoonah, Juneau, Ketchikan, Prince of Wales Island	CCS	Elders with Co-occurring Disorders	\$ 150,000
Juneau	CCS	Hospice Care	\$ 49,632
Juneau	CCS	Family Counseling, Support, and Referral	\$ 19,359
Juneau	CCS	Family Preservation	\$ 100,000
Juneau	CCS	Intensive Services to Families	\$ 22,844
Southeast	CCS	Child Advocacy Center	\$ 273,814
Southeast	CCS	Adult Day Program	\$ 120,288
Southeast	CCS	Health Promotion	\$ 4,500
Southeast	CCS	National Family Caregiver	\$ 44,515
Various	CCS	Nutrition, Transportation, and Support	\$ 305,213
Various	CCS	Senior In-Home Care	\$ 96,000
Hoonah, Juneau	CCS	Bring the Kids Home Outpatient Mental Health	\$ 125,000
Anchorage	Christian Health Associates	Medical Services to Uninsured	\$ 250,000
Fairbanks	Presbyterian Hospitality House	Youth Outpatient Mental Health	\$ 550,000
Fairbanks, Mat-Su	Presbyterian Hospitality House	Attendant Care Shelter	\$ 34,840
Interior	Presbyterian Hospitality House	Emergency Shelter Residential Child Care	\$ 365,000
Various	Presbyterian Hospitality House	Residential Child Care	\$ 376,840
Anchorage	Providence Alaska Medical Center	Child Advocacy Center	\$ 492,233
Statewide	Providence Health & Services- Wash.	Behavioral Health Treatment	\$ 812,700
Statewide	Providence Health & Services- Wash.	Autism Evaluation and Diagnostic Services	\$ 250,000

Table 2: Alaska Department of Health and Social Services Funding to Faith-Based Organizations, Fiscal Year 2013 (continued)

Location	Recipient	Purpose	Amount
Kodiak	Providence Kodiak Island Counseling	Behavioral Health Treatment	\$ 805,208
Valdez	Providence Valdez Counseling	Behavioral Health Treatment	\$ 329,232
Anchorage	Salvation Army Booth Memorial	Behavioral Health Treatment	\$ 53,606
Anchorage	Salvation Army Booth Memorial	Family Preservation	\$ 51,000
Anchorage	Salvation Army Booth Memorial	Family Counseling, Support, and Referral	\$ 45,906
Anchorage	Salvation Army Booth Memorial	Residential Child Care	\$ 175,200
Anchorage	Salvation Army Clitheroe Center	Behavioral Health Treatment	\$ 219,000
Anchorage	Salvation Army Older Alaskans Program	Nutrition, Transportation, and Support	\$ 329,763
Anchorage	Salvation Army Serendipity Adult Day Svcs.	Developmental Disabilities / Special Needs	\$ 6,992
			\$ 7,312,044

Notes: The figures listed may not be exhaustive of all Health and Social Services funds to faith-based organizations in fiscal year 2013.

Source: "Fiscal Year 2013 Operating Grants," Alaska Department of Health and Social Services, <http://dhss.alaska.gov/fms/Documents/FY13GrantBook.pdf>.

SHELDON JACKSON COLLEGE, Appellant, v. STATE of Alaska, Avrum Gross, Attorney General for the State of Alaska, B. B. Allen, Commissioner of Administration for the State of Alaska, Kerry Romesburg, Executive Director, Post-Secondary Education Commission, Marshall L. Lind, Commissioner of Education for the State of Alaska, Appellees; INUPIAT UNIVERSITY OF the ARCTIC, Appellant, v. STATE of Alaska, Avrum Gross, Attorney General for the State of Alaska, B. B. Allen, Commissioner of Administration for the State of Alaska, Kerry Romesburg, Executive Director, Post-Secondary Education Commission, Marshall L. Lind, Commissioner of Education for the State of Alaska, Appellees
Supreme Court of Alaska
599 P.2d 127;1979 Alas. LEXIS 552
Nos. 3978, 4002
August 28, 1979

Editorial Information: Prior History

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Thomas B. Stewart, Judge.

Counsel Monte L. Brice, Ely, Guess & Rudd, Juneau, for Appellant Sheldon Jackson College.

B. Richard Edwards, Mark S. Bledsoe, Law Offices of B. Richard Edwards, Anchorage, for Appellant Inupiat University of the Arctic.

Ronald W. Lorensen, Assistant Attorney General, Avrum M. Gross, Attorney General, Juneau, for Appellee.

Robert C. Erwin, Sanford M. Gibbs, Hagans, Smith, Brown, Erwin & Gibbs, Anchorage, for Amicus Curiae Catholic Bishop of Northern Alaska.

Judges: Rabinowitz, Chief Justice, Connor, Boochever, Burke and Matthews, Justices.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant private universities challenged a decision of the Superior Court of the State of Alaska, First Judicial District, Juneau, which granted summary judgment in favor of appellee, the State of Alaska, and held that Alaska's tuition grant program, Alaska Stat. 14.40.751-806, violated Alaska Const. art. VII, 1. The private universities had filed an action challenging the termination of the program. Tuition grant program that awarded students at private colleges difference between tuition at private and public colleges violated Alaska Constitution, which prohibited payment of public funds for direct benefit of a private educational institution.

OVERVIEW: The grant program awarded Alaska residents attending private colleges in Alaska an amount generally equal to the difference between the tuition charged by the student's private college and that charged by a public college in the same area, not to exceed \$ 2,500 annually. The attorney general found that the grants violated Alaska Const. art. VII, 1, which prohibited the payment of money from public funds for the direct benefit of any religious or other private educational institution. The trial court granted summary judgment for the State. On appeal, the court affirmed, holding that the grant program clearly violated 1 because (1) the class primarily benefitted by the tuition grant program consisted only of private colleges and their students; (2) the public funds expended under Alaska Stat. 14.40.776 constituted nothing less than a subsidy of the education received by the student at his private college and thus implicated fully the core concern of the direct benefit provision; (3) the magnitude of benefits bestowed under the program was substantial; and (4) the students to whom benefits were paid were merely conduits for the transmission of state funds to private colleges.

OUTCOME: The summary judgment in favor of the State was affirmed



Howard A. MATTHEWS (substituted for Don M. Dafoe), Commissioner of Education; Alaska Board of Education; Fairbanks School District; Jack Gourley, Transportation Officer for the Fairbanks School District; and Edgar I. Baggen, in his capacity as President of the Board of Directors of the Fairbanks School District, Appellants, v. Judy Kay QUINTON, by next of friend, Lawrence R. Quinton and Loyola I. Quinton, on behalf of herself and all other children similarly situated; Lawrence R. Quinton and Loyola I. Quinton, on behalf of themselves and others similarly situated, Appellees

No. 48

Supreme Court of Alaska

362 P.2d 932; 1961 Alas. LEXIS 85

April 3, 1961

SUBSEQUENT HISTORY: [**1] Rehearing
Denied June 29, 1961.

OUTCOME: The court reversed the grant of summary judgment and directed the trial court to dismiss the action.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant school authorities sought review of a decision from the trial court (Alaska), which granted summary judgment in favor of the appellee student and found that school authorities were obligated to transport private school students on a public school bus.

OVERVIEW: The state enacted Alaska Stat. §§ 37-11-4 to 37-6, which provided for free transportation of children who attended non-public schools. The student, who attended a non-public school, was not provided with free transportation and filed a class action on behalf of similarly situated students. She contended that the school officials were in violation of the statute. The student filed a motion for summary judgment, which was granted and the school authorities sought review. The court reversed the grant of summary judgment. It found that the statutory provisions were unconstitutional and in conflict with the organic act, 48 U.S.C.S. § 77, which provided that public funds could not be expended for the benefit of private schools not under the exclusive control of the government.

Blaine Amendment - A provision in a state constitution for stricter separation of church and state than is required by the Establishment Clause. In 1875, at the request of President Ulysses S. Grant, Senator James G. Blaine proposed an amendment to the U.S. Constitution, applying the Free Exercise and Establishment Clause to the states, and specifically prohibiting the use of any state funds to support any religious institutions, including private church-run schools (esp. Roman Catholic). The House of Representatives passed the amendment, but the Senate narrowly voted against it. Many states, however, amended their constitutions to include a "Blaine Amendment" strictly prohibiting the use of public money for the support of religious institutions [Cases: Constitutional Law 1334.]

Source: Black's Law Dictionary, Ninth Edition

Alaska's "Blaine Amendment" language was part of our original constitution Article VII, § 1, and reads:

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

Provided by Senator Mike Dunleavy

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SJR 9
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SJR009-OOG-DOE-3-11-13
Title: CONST. AM: EDUCATION FUNDING
Sponsor: DUNLEAVY
Requester: Senate Judiciary Committee

Department: Office of the Governor
Appropriation: Elections
Allocation: Elections
OMB Component Number: 21

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services			1.5				
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	1.5	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1004 Gen Fund			1.5				
Total	0.0	0.0	1.5	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Gail Fenumiai, Director	Phone:	(907)465-2644
Division	Division of Elections	Date:	03/11/2013 10:41 AM
Approved By:	Guy Bell, Administrative Director	Date:	03/11/13
	Division of Administrative Services		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. SJR 9

Analysis

Passage of this resolution would require the constitutional amendment to appear on the 2014 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this resolution require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF LAW

TO: The Honorable Fred Dyson
Chair, Senate Health, Education, and
Social Services Committee
Alaska State Senate

The Honorable Lyda Green
Co-Chair, Finance Committee
Alaska State Senate

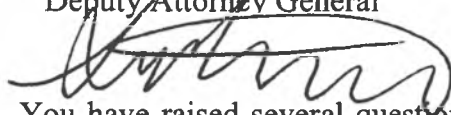
DATE: September 20, 2005

TEL. NO.: (907) 269-5187

FILE NO.: 663-05-0233

FROM: Scott J. Nordstrand
Deputy Attorney General

SUBJECT: Statewide Correspondence
Programs and Religion



You have raised several questions regarding statewide correspondence programs, the associated instructional materials, and the permissibility of religious content. This memorandum responds to your questions and offers guidelines that will be useful in drafting legislation. Finally, we suggest a possible alternative educational approach for public support of home schooling.

I. EXECUTIVE SUMMARY

The Department of Education and Early Development ("DEED") conducted an audit of school districts operating statewide correspondence study programs. Following the audit, DEED informed the districts that they must require parents to use primary curriculum materials that are secular in nature, approved in advance by the school district.

The audit raised several questions among policymakers and those affected by the action related to selection of textbooks and materials, academic credit, and state funding under current law. This memorandum addresses those questions. In general, we conclude that the enforcement action and the current regulations do not infringe upon the rights of parents and are consistent with the underlying statutes. It also describes a set of legal guidelines to define the boundaries of religious involvement in public school curricula.

This memorandum goes on to suggest an alternative educational system to address parents' desire for greater freedom to use religious textbooks and materials in statewide correspondence programs. This new system would provide that freedom, while focusing state and school district involvement on secular student assessments independent of the religious content. Because this system would provide fewer educational services, it may be appropriate to fund it at a lower level than other educational programs that provide more services.

II. BACKGROUND ON STATEWIDE CORRESPONDENCE PROGRAMS AND STATE LAW

District-provided statewide correspondence programs were developed in Alaska during the 1990's. AS 14.07.020(9) provides for state supervision of correspondence programs.¹ The administrative details pertaining to the programs appear in 4 AAC 33.405 – 33.490. The programs allow children to receive their state education in a home environment. Currently, eleven school districts offer statewide correspondence programs and approximately 9,000 students participate. Generally, parents of a child enrolled in a correspondence program select textbooks and other educational materials from a list approved by the school district. Parents teach the material. A certificated teacher approves individual learning plans. Additionally, the teacher must have contact with either the parent or child at least monthly and review the student's work or progress at least quarterly. In most statewide correspondence programs the parents have a great deal of flexibility in educating their child. For instance, in addition to teaching the approved material, parents generally test and often grade their child's work or offer a suggested grade to the reviewing teacher.

In general, these statewide correspondence programs are distinct from traditional correspondence programs, where a student completes work at home and then mails it to a teacher for grading. They also differ from in-district correspondence programs, which are closely controlled by local school boards and subject to less state oversight.

The State of Alaska funds the statewide correspondence programs. For each program student, a district receives 80 percent of the funding normally allotted to a public school student.² The districts generally regulate the funds by establishing an account for each participating family. Families do not have direct access to the accounts. Parents typically submit their requests for specific textbooks and materials to the district. If the materials are on the list of approved materials, the district orders them for the parents and remits payment directly to the vendor. Occasionally, parents purchase texts and materials on their own, and receive reimbursement from the district as long as the items are approved by the reviewing teacher. 4 AAC 33.421(k) prohibits payment for religious textbooks or curriculum materials.

¹ Other statutes addressing correspondence programs include AS 14.07.050 (selection of textbooks), AS 14.08.111(9) (duties of regional school boards), AS 14.14.090(7) (duties of school boards), AS 14.17.430 (funding), and AS 14.30.010(10)(B) (attendance).

² AS 14.17.430.

In the 2004 legislative session, the Alaska Legislature appropriated funds to allow DEED to monitor statewide correspondence programs for compliance with regulations. To conduct the monitoring, auditor John Tongen examined the records of a representative sample of students from 10 districts operating statewide correspondence programs. Where the auditor found violations of statutes or regulations, DEED put the district on a plan of correction.

DEED found that four of the monitored districts had determined certain course materials that parents had selected were religious in nature and not appropriate for state funding. In each case, the district informed the parents of its decision. None of the parents appealed. The districts then allowed students to be instructed primarily with those materials, despite the districts' determinations that they were "religious" in nature.³ DEED informed the districts that they would not receive state funding in the future for students primarily instructed with religious materials in violation of AS 14.03.090. State funding was not denied for the current year. DEED's audits did not instruct the districts as to whether they could count such courses toward graduation requirements.

III. ISSUES AND ANALYSIS

A. **State Law Does Not Permit Correspondence School Parents To Purchase And Use Religious Materials Instead of A School District's Approved Textbooks And Materials.**

You have questioned whether correspondence students may use religious materials in place of district-approved textbooks and materials. Current state statutes do not permit this.

In order to receive state funding for a student enrolled in a statewide correspondence program, a district must comply with state law. AS 14.07.070 provides that "[s]tate funds may not be paid to a school district or teacher that fails to comply with the school laws of the state or with the regulations adopted by the department." AS 14.07.050 requires that public schools, including statewide correspondence programs, use textbooks "selected by district boards." AS 14.08.111(9) and AS 14.14.090(7) make it clear that the requirement for board review and approval is not limited to textbooks but extends to all types of instructional materials. Hence it would appear that a correspondence program using materials not selected by the district board would be ineligible for state funds.

³ Generally, this memorandum refers to textbooks and materials from religious vendors as "religious materials." The religious content of these textbooks and materials varies substantially.

Because the second sentence of AS 14.07.050 also recognizes a parent's right to use privately purchased materials "not provided by the school district,"⁴ however, there has been some suggestion that correspondence school students may use religious materials in lieu of district approved textbooks and materials. The legislative history does not support this interpretation.

The legislative history of AS 14.07.050, AS 14.08.111(9), and AS 14.14.090(7), which were enacted together in 2002, reveals an intent to allow parents to purchase religious materials to supplement, but not replace, district-approved textbooks and materials. During committee hearings on these statutes, Representative Bunde, Chair of the House Special Committee on Education, explained:

there is an approved menu [of textbooks and materials] from which correspondence parents can choose materials. If they wish to *augment* that with privately purchased materials, that would be acceptable just as it is for the parents of students in public school.⁵

Representative Dyson, Chair of the House Health, Education, and Social Services Committee, expressed the same understanding:

Any program receiving [state] money is not precluded from purchasing materials from any publisher; the only restriction is that state law prohibits the use of state money for promulgating or advocating a particular religious perspective [A parent] is free to purchase materials *in addition* to state-funded material.⁶

⁴ The full text of AS 14.07.050 reads: "Textbooks for use in the public schools of the state, including a district offered statewide correspondence study program, shall be selected by district boards for district schools. Nothing in this section precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district."

⁵ Minutes, House Education Committee Hearing on HB 464 (April 24, 2002) (emphasis added). House Bill 464 was later incorporated into SB 345, the vehicle for the three statutes cited.

⁶ Minutes, House Health, Education, and Social Services Committee (March 14, 2002) (emphasis added).

Based on this legislative history, we conclude AS 14.07.050, AS 14.08.111(9), and AS 14.14.090(7) do not allow replacement of district approved texts. Rather, correspondence program parents may privately supplement their child's educational material with religious materials.

B. AS 14.03.090 Restricts The Advocacy Of Religion By School Districts And Public School Teachers, But Not By Parents Who Homeschool.

Some of your questions concern application of AS 14.03.090 to the statewide correspondence programs. This statute provides that:

[p]artisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money.

The statute is consistent with constitutional prohibitions against government establishment of religion.⁷

On its face, the statute applies to public schools. This raises the question of whether a correspondence program is a "public school." The formal statutory definition of "public school," AS 14.60.010(6), includes "elementary schools, high schools, citizenship night schools for adults, and other public educational institutions which may be established"; it is not sufficiently specific to resolve the question. Nonetheless, although the actual education generally occurs in the home and parents provide most of the instruction, we conclude that statewide correspondence programs are public schools. This conclusion is based on the existence of public funding, the state's regulatory oversight, and the statutory requirement for students to meet state educational standards.⁸ Moreover, AS 14.07.050 refers to "public schools of the state, including a district offered statewide correspondence study program."

Since correspondence schools are public schools, AS 14.03.090 requires that religious doctrines not be advocated while the school is in session. Advocacy of religious doctrines through the public schools is also proscribed by the federal and state constitutions, as interpreted in the cases cited below.

⁷ See Alaska Const. art. I, § 4; U.S. Const. amend. I.

⁸ See AS 14.07.020(a)(9) (mandatory departmental supervision); 4 AAC 33.421(b) (requiring programs to conform with statewide goals and performance standards).

To advocate is “[t]o speak, plead, or argue in favor of.”⁹ When publicly employed teachers are educating a child within a correspondence program, they should not use religious texts, materials, or courses of study *in favor of* a religious belief. However, a writing of historical, literary, or scientific value may be taught in the school, even if the writing also contains a religious point of view. The teacher must be careful to avoid religious advocacy, however, and must present the material for its non-religious value. Thus, a teacher could teach a child about various religions, the role of religion in history, or the Bible as literature only as objective study.¹⁰

It is clear that because the correspondence programs are public schools, a public school teacher overseeing such a program is subject to AS 14.03.090. The teacher must therefore strive to avoid religious advocacy “during the hours the school is in session.” As a practical matter, a correspondence school is certainly “in session” whenever the teacher is interacting with the correspondence student.

A different issue is presented by the role of parents in the correspondence school program. As seen from DEED’s 2004 monitoring, some correspondence school parents discuss religion and include religious materials in teaching their child within the context of correspondence study courses. This practice might seem to raise questions under the “establishment” clauses of the state and federal constitutions and under AS 14.03.090. However, a parent’s interest in providing a religious education to his or her children at home is protected under the free exercise clauses of the Alaska and United States constitutions.¹¹ Accordingly, the issue of using religious materials in teaching public school courses at home involves a sensitive balancing of the right to practice religion freely¹² and the prohibition against the state’s establishment of religion.¹³ Moreover, when a parent is presenting material not provided or approved by the school district, it is problematic to contend that the public school program is “in session.”

⁹ *The American Heritage College Dictionary* 20 (3rd ed. 1993).

¹⁰ *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968); *Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203, 225 (1963) (the “objective study” of religion may occur in public schools); *see also* 1988 Inf. Op. Att’y Gen. (Sept. 15; 663-88-0573) (analyzing AS 14.03.090 and concluding that public school teachers may teach about various religions as part of the public school curriculum, but may not advocate a particular religious view or teach that a particular religious view is true or false).

¹¹ Alaska Const. art. I, § 4; U.S. Const. amend. I.

¹² Alaska Const. art. I, § 4; U.S. Const. amend. I.

¹³ Alaska Const. art. I, § 4; U.S. Const. amend. I.

Because (1) there is a tension between the constitutional provisions, (2) correspondence programs do not have regular school hours and (3) the education occurs in the home, we conclude AS 14.03.090 applies to school districts and publicly employed teachers, but not to parents. Parents who include religious instruction, including the use of privately obtained religious materials,¹⁴ in their home during their child's correspondence course studies, may do so without violating the law.

C. Instructional Materials May Not Advocate Religion.

Senator Dyson's undated memorandum to Attorney General David Márquez asked whether the prohibition against religious advocacy in AS 14.03.090 applies only to the actions of teachers, as opposed to the content textbooks and other education materials itself. In short, can textbooks advocate? Senator Dyson posed the question this way:

It is my understanding that it is unjustified and problematic to interpret AS 14.03.090 as a standard by which textbooks, instructional aids, and curriculum materials are selected and purchased. The law prohibits public schools advocating doctrine which is not necessarily violated by teachers making use of materials that may advocate or reveal the world view of the author, publisher, or a person studied. While it is possible for a teacher to violate 14.03.090, it is not lawful to try to determine whether instructional materials violate 14.03.090.

Please comment on, or correct, my perception of the application of AS 14.03.090.

The application of AS 14.03.090 to educational material selection has not been previously addressed by this office or the Alaska courts. The prohibition against religious advocacy by district teachers and the school districts in AS 14.03.090 (or under the establishment clauses) is not limited to oral advocacy. A book may not be approved for use in publicly provided education if it advocates a partisan, sectarian, or denominational doctrine.¹⁵ To allow otherwise would permit a school board to advocate partisan, sectarian, and denominational doctrines in a public classroom through textbooks. Clearly, the school districts have the authority—in fact, the obligation—to

¹⁴ See AS 14.07.050.

¹⁵ Textbooks for use in public schools must be approved by the local school district boards. AS 14.07.050.

determine whether its textbooks advocate religion in violation of the statute, the Alaska Constitution, or the United States Constitution.¹⁶

Furthermore, exercising the authority to determine whether a textbook advocates religion is not unconstitutional censorship.¹⁷ State statutes and regulations allowing local school boards to review and approve textbooks do not, on their face, violate the right of parents or students to freely exercise their religion.¹⁸ As discussed above, parents are free to augment their children's education with religious materials.

A local school board decision regarding textbook selection would not violate the constitution unless it was based on improper, non-educational reasons, such as the intention to establish a religion by including or excluding certain materials from a curriculum.¹⁹ Since state laws allowing school boards to approve textbooks are constitutionally permissible, it follows that enforcing those laws for the purpose of ensuring children receive an adequate education would not violate the constitution.

D. Local School Districts Are Responsible For Determining Which Homeschool Courses May Be Used To Meet Graduation Requirements.

Senator Green asked whether DEED's audit instructed that districts could not allow academic credit toward graduation for religious correspondence courses. As noted above, DEED did not give any instructions regarding whether these courses could be considered in meeting graduation requirements. DEED refrained from instructing districts in this regard because school districts have discretion in deciding whether to award academic credit.

¹⁶ DEED retains general oversight authority, but does not set any standard to determine whether a textbook advocates religion. *See* AS 14.07.020(a)(9).

¹⁷ *See* Alaska State Legislature, News from the House & Senate Majority, "Legislators Work Together to Improve School Curriculum" (May 23, 2005) (raising question of unconstitutional censorship).

¹⁸ *Epperson*, 393 U.S. at 107 (referring to "State's undoubted right to prescribe the curriculum for its public schools" but noting that their choice may not violate the Establishment Clause); *see also Fraser v. Bethel Sch. Dist.*, No. 403, 478 U.S. 675, 683 (1986) (holding right to free speech did not prevent school district from disciplining student for lewd speech at an assembly); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988) (students do not have a free speech right in the choice of curricular materials).

¹⁹ *Epperson*, 393 U.S. at 107-09.

DEED is required to prescribe by regulation “a minimum course of study for the public schools.”²⁰ Accordingly, DEED regulations require a high school student to have earned at least 21 units of credit before being eligible for graduation.²¹ DEED also requires that these credits include courses in language arts, social studies, mathematics, science, and health/physical education.²² However, local school boards have the authority to establish the district's high school graduation requirements beyond the minimum established by DEED.²³ Further, the local school board sets the standards that each course must meet in order to qualify for academic credit.²⁴ The teachers within the local school districts determine when these course requirements are fulfilled.

Therefore, while DEED informed school districts that state funding would not be available in the future for students within the correspondence program using primarily religious materials, its audits did not discuss whether such correspondence courses could be considered in meeting graduation requirements. Districts have discretion with regard to academic credit. A district must follow its own rules and procedures in determining when, for example, a student enrolled in the district who has taken high school courses outside of the district has met a local requirement for a course of study.

E. DEED’s Role Is Not Restricted By AS 14.07.050.

Senator Dyson also asked whether AS 14.07.050 is a restriction on the powers and duties of DEED, such that DEED would not have authority to set standards for selection and review of texts.

²⁰ AS 14.07.020(a)(4).

²¹ See 4 AAC 06.075(a).

²² See 4 AAC 06.075(b).

²³ See 4 AAC 06.075(b) (12 credits in required subject areas); 4 AAC 06.075(a) (21 credits for graduation).

²⁴ See 4 AAC 06.075(f) (defining “unit of credit” as credit awarded by achieving a passing grade in a course of study that meets “the performance standards for a course of study as prescribed by a local school board”); see also 4 AAC 06.075(d) (districts have discretion in determining whether transfer student meets district subject area credit requirements).

Under AS 14.07.050, district school boards are responsible for selecting textbooks for public schools, including correspondence study programs.²⁵ However, nothing in the statute excuses DEED from its general oversight responsibility and authority.²⁶ DEED's authority reasonably includes ensuring that public schools comply with state law, including the requirement that texts do not advocate a religious doctrine. Further, DEED has the responsibility to determine the amount of state aid due each school district.²⁷ A school board violating the prohibition against textbooks advocating a religious doctrine may not receive public money.²⁸ Accordingly, DEED has the statutory authority to ensure that school districts do not select textbooks for public schools (including correspondence schools) that advocate partisan, sectarian or denominational doctrines.

We conclude that AS 14.07.050 does not restrict the powers and duties of DEED, but rather only clarifies the school board's responsibilities with respect to textbook selection.

F. Restrictions On Religious Advocacy Apply To All Public Schools.

You also asked whether the standards for selection and review of texts set by AS 14.03.090 must be applied equally to all public school instruction materials and public school programs. We believe that this question arises from the fact that 4 AAC 33.421(c), which requires textbooks to comply with AS 14.03.090, applies to statewide correspondence programs but not to in-district correspondence programs.

DEED relies on the local school districts to regulate the in-district correspondence programs. This reliance is consistent with the concept of local control of education, which is deeply embedded in our educational system.²⁹ However, a district's education

²⁵ AS 14.07.050 ("Textbooks for use in the public schools of the state, including a district offered statewide correspondence study program, shall be selected by district boards for district schools.").

²⁶ AS 14.07.020(a)(1) (establishing mandatory supervision over public schools).

²⁷ AS 14.17.610; AS 14.17.400; AS 14.17.410.

²⁸ AS 14.03.090; *see also* Alaska Const. art. I, § 4 ("No law shall be made respecting an establishment of religion . . ."); *cf.* Alaska Const. art VII, § 1 ("schools and institutions so established shall be free from sectarian control").

²⁹ *See Tunley v. Municipality of Anchorage Sch. Dist.*, 631 P.2d 67, 75 n.17 (Alaska 1980) ("although state legislatures possess plenary power over the educational system, local initiative with respect to education is so highly regarded that most states

of an out-of-district student through a statewide correspondence program is not local control of education. Accordingly, DEED exercises its statewide regulatory authority over the statewide correspondence programs to ensure that the education offered to out-of-district students (over which the local school districts have less of a vested interest) is of equally high quality as the in-district programs. To further this purpose, 4 AAC 33.421(c) interprets and makes specific the underlying statutory and constitutional provisions, AS 14.03.090 and the establishment clauses, as they apply to the statewide correspondence programs. However, the statute and constitutions apply with equal force to in-district correspondence programs.

We conclude that DEED's decision to apply 4 AAC 33.421 only to statewide programs is a valid policy choice. Additionally, the analysis of AS 14.03.090 above applies with equal force to prohibit the advocacy of religion through textbooks used in in-district schools and programs and in statewide correspondence programs.

IV. EIGHT LEGISLATIVE GUIDELINES

In addition to these questions, we understand that you would like some legal guidelines regarding the use of religious materials in correspondence programs. Religion and public education is a problematic and confusing area of the law. From 1947 through 2004, the United States Supreme Court issued 17 decisions analyzing public school aid and religion. These cases show that the Court has shifted from a stance close to pure separation of church and state to one allowing some state aid to private religious schools.

None of these cases are analogous to the current situation.³⁰ We have also reviewed the handful of Alaska Supreme Court decisions concerning these matters.³¹

have delegated extensive authority over the actual administration of the schools to local institutions") (quoting Project, Education and the Law: State Interests and Individual Rights, 74 Mich. L. Rev. 1373, 1380 (1976)): *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.").

³⁰ The Court's Establishment Clause school aid decisions discuss public funding of private religious education. Our situation involves public funding of public education in a private home. The Court's other Establishment Clause decisions focus primarily on prayer in public schools. In those cases, the Court has held that state sponsored prayer is not appropriate in public education. See *Abington Township*, 374 U.S. at 205, 223; *Engel v. Vitale*, 370 U.S. 421, 424-25 (1962).

None is dispositive of the issue presented here: the constitutionality of parents using religious textbooks, either to supplement or supplant an approved text, in a home-school environment under a statewide correspondence public education program.³²

However, a number of general guidelines can be gleaned from cases concerning the prohibition on state-established religion:

1. The law should be facially neutral.³³ In other words, the language of the statute should not favor or disfavor religion.

2. The law should have a secular purpose.³⁴ For example, educating poor children is a secular purpose, as is the state's desire to have a well-educated populace.³⁵ Instructing a child regarding the positive benefits of religion is not a secular purpose.

3. The law should extend to a broad spectrum of people and be defined by an appropriate state objective such as to assist parents in meeting the rising cost of education,³⁶ or to tailor education to individual student's needs.

4. The educational aid provided by the law (including textbooks and educational materials) should not provide financial benefits to religious schools or institutions.³⁷

³¹ *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994); *Seward Chapel, Inc. v. City of Seward*, 655 P.2d 1293 (Alaska 1982); *Bonjour v. Bonjour*, 592 P.2d 1233 (Alaska 1979); *State v. Frank*, 604 P.2d 1068 (Alaska 1979).

³² Also, of some relevance to this question, the Alaska Constitution has language that prohibits public funds from being paid "for the direct benefit of any religious or other private educational institution." Alaska Const. art. VII, § 1; *see also Sheldon Jackson Coll. v. State*, 599 P.2d 127 (Alaska 1979) (holding that state's tuition grant program, which awarded state residents attending private colleges the difference between the tuition costs of private and public colleges, violated the constitutional prohibition against direct benefits to private schools).

³³ *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 18 (1947); *Zelman v. Simmons-Harris*, 536 U.S. 639, 649-55, 661-63 (2002).

³⁴ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

³⁵ *Agostini v. Felton*, 521 U.S. 203, 209 (1997); *Mueller v. Allen*, 463 U.S. 388, 394-95 (1983).

³⁶ *Mueller*, 463 U.S. at 395, 397-99.

5. The law should be structured so that any involvement of religion in the government program is the result of the parents' independent and genuine choices. For example, the U.S. Supreme Court found acceptable a federal program allowing sign-language interpreters to assist deaf children at a private, religious school since any benefit to the religious school was the result of the parents' independent choice of that school as the best learning environment for their handicapped child.³⁸ Similarly, the Court found acceptable a state tax deduction for educational expenses, including private school tuition costs, since public funds end up with religious schools only as a result of numerous private choices of the parent.³⁹

6. The law should permit guidelines to ensure compliance with the constitutional limitations on educational aid.⁴⁰

7. The law may not be motivated by a goal to promote religion, and this fact should be clear from the legislative history. Courts will closely scrutinize the legislative history for statements or actions indicating a religious intent. If a religious purpose is apparent from the legislative record--for example in statements by members of the enacting body or by the public supporting the action--a court may conclude that the law violates the establishment clauses and is unconstitutional.⁴¹

8. The law should not permit money to be paid from public funds for the direct benefit of any religious or other private educational institution.⁴²

Again, this area of the law is complex and evolving. We recommend that you consider each of these guidelines in any legislation pertaining to the correspondence programs and religious materials.

³⁷ *Zelman*, 536 U.S. at 653-54; *see also* Alaska Const. art VII, § 1 ("No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.").

³⁸ *Zobrest v. Catalina Foothills Dist.*, 509 U.S. 1, 10, 13-14 (1993).

³⁹ *Mueller*, 463 U.S. at 399.

⁴⁰ *Mitchell v. Helms*, 530 U.S. 793, 861-67 (2000) (O'Connor, J., concurring).

⁴¹ *McCreary County, Kentucky v. American Civil Liberties Union of Kentucky*, ___ U.S. ___, 125 S. Ct. 2722, 2733-36 (2005); *Edwards v. Aguillard*, 482 U.S. 578, 592-97 (1987).

⁴² Alaska Const. art. VII, § 1.

V. A POSSIBLE ALTERNATIVE APPROACH TO STATEWIDE CORRESPONDENCE PROGRAMS

One aspect of the statewide correspondence programs that makes them attractive to many parents is that the programs increase parental autonomy in their children's education. Some parents prefer to control the values, principles, skills, and knowledge that their children learn. The state and the school districts, however, have an interest in ensuring that any child who receives a public education has an opportunity to participate in an education on a par with that received by other children in the district. The issues that we have addressed here are largely a result of the tension between a parent's desire for autonomy and the state's desire to assure that each student has an opportunity for a quality, secular education. In broad summary, we have concluded that the current regulations governing statewide correspondence programs do not infringe parents' constitutional rights. In addition, we conclude that the current regulations are consistent with the underlying statutes.

We now turn to a different question: How would the State design a system of public education that maximizes parental autonomy, maintains high quality, and is consistent with constitutional requirements? To put this another way, can the State design a publicly-funded program that would allow parents to select and deliver their own choice of curriculum—without regard to religious content—and still be consistent with the State's goal of providing a quality secular public education? Although a complete answer to this question would involve educational policy matters beyond our expertise, we can offer the following guidelines.

We believe that three legal principles govern any public education program directly funded by the state:

- ***The program must be a public school.***⁴³
- ***The program must have a public purpose.***⁴⁴
- ***The program must be secular.***⁴⁵

To put these legal principles into practice:

⁴³ Alaska Const. art. VII, § 1.

⁴⁴ Alaska Const. art. IX, § 6.

⁴⁵ Alaska Const. art. I, § 4; Alaska Const. art. VII, § 1.

- ***The state or school district must be meaningfully involved in the education.***
- ***The funding of the program should not be diverted to private purposes.***
- ***State or local government personnel should not review, approve, or deliver educational materials or programs that have the purpose of religious advocacy.***

Therefore, we conclude that if a school district wishes to increase parental autonomy, it could decrease the involvement of school personnel in the selection and delivery of the education. In order to do this, however, the school district would have to take other measures to ensure that the education met the standards for a public education.⁴⁶ However, at a minimum, we believe that when the school district does not significantly participate in the selection and delivery of the curriculum, qualified school district personnel must thoroughly assess and evaluate the achievement of the student in each class in which the student enrolls in a public school.

A district would have to assess a student in a manner that does not advocate religion. The assessment would have to reflect district and state standards for the content and grade level of the course. If no secular assessment is readily available, the state, district, or publisher may have to prepare a standards-based secular assessment for the course. The most likely “instrument” would be a comprehensive written test administered and graded by a certificated teacher employed by the school district. Other forms of assessment may be possible.

We recognize that having the state require a comprehensive assessment for each class would be a novel approach. Although teachers frequently use tests in the classroom, the state does not *require* them in other programs. Yet, the alternative system we are suggesting is unique. Here, the parents would select and deliver the curriculum without input from the school district. This program could not be considered a public school unless the school district meaningfully participates in the education. Therefore, a

⁴⁶ In weighing whether the new education system described above qualifies as a “public school,” note that the system requires substantially more involvement by school districts and the state than currently required under Alaska statutes for “private schools.” Under AS 14.45.100 - 120, private schools need only account for student attendance, certify that they operate 180 days a year, and administer nationally standardized tests in grades four, six, and eight at least once each school year.

district that offers an outcome-based program must assess and evaluate the achievement of the students in that program.

In addition to the requirement that the school district evaluate achievement, even a minimal public school program should likely include additional involvement by the school district to ensure its status as a public education. We defer to the policymakers on the precise mix of requirements, but to maintain the quality of education while only minimally intruding into parental autonomy, we suggest that a district should:

1. define the level of knowledge required for each offered course, based, where appropriate, on state standards and grade-level expectations;
2. approve a secular course outline or content requirement for each offered course;
3. provide academic and technical support for the home education;
4. meet with parents and students regarding the content that must be covered in a course before the student will be provided credit; and
5. assist parents in learning teaching skills.⁴⁷

Turning to the question of funding, a program based solely on outcomes may be significantly less expensive than a program in which the district participates in the selection and delivery of the curriculum. In designing this program, policymakers must ensure that the money for the program does not serve a private benefit instead of a public purpose. Moreover, to avoid providing a windfall to districts or parents, good public policy would dictate that funding should be commensurate with the program design: A program that provides fewer services should receive less funding than a program that provides more services.⁴⁸

In sum, an outcome-based program could be designed to maximize parental autonomy while still providing a public education. In our view, a court would not consider an outcome-based program to be a public school unless qualified personnel were directly involved in assessment of achievement for each course. Additional involvement

⁴⁷ In addition, a school district must continue to perform all statutory and regulatory requirements for a public school program. These include setting graduation requirements, participating in statewide assessments, and providing special education.

⁴⁸ We are not implying that foundation funding for a district should be dedicated to a particular program or spent on a per-pupil basis.

by the district should be included even in a minimal program. All involvement by the district should be secular. Funding of a minimal program should not be diverted to a private purpose and should be commensurate with the services provided by the district.

VI. CONCLUSION

We hope we have answered your questions and provided you with helpful guidance. Because this is an unsettled area of the law, you may want to consider consulting your legislative legal staff. We also recommend that you consult the administration regarding standards-based education. If you have additional concerns, please do not hesitate to contact this office.

cc: Roger Sampson, Commissioner, Department of Education and Early Development
David Márquez, Attorney General, Department of Law

PRESIDENT EGAN: Is there objection to adopting the journal of the 43rd day with the suggested correction as offered by the special Committee to read the journal? Hearing no objection, it is so ordered and the journal for that day is ordered approved. At this time we have before us the article on health, education and welfare, and we have the proposed amendment, as proposed by the Committee on Preamble and Bill of Rights. The Chief Clerk will read that proposal. Mr. Sundborg.

SUNDBORG: I would like to report for the Style and Drafting Committee, if I may at this time, that the Committee is hard at

work utilizing the subcommittee method on the articles which had been referred to us. The subcommittees consist of three members each, and they are going over the proposals word by word. We have adopted within our Committee a procedure whereby after the subcommittee has agreed upon its recommendations to the full Committee, but before the full Committee has acted, the subcommittee will contact the substantive committee involved with the view to having one member who would be a spokesman for that committee sit with our subcommittee to go over in detail the suggested changes so that we may be certain that we are following the intent of the committee which originally drafted the article or the intent of the body as expressed here on the floor in amendments. Then after our subcommittees have so conferred with the representative of the substantive committee, the full Style and Drafting Committee will consider their report and report something back here to the Convention floor. My purpose in announcing this to the Convention at this time is to alert each of the major committees to the fact that we will want to have you designate a spokesman or representative of your committee to meet with our subcommittees as we work on your proposals.

PRESIDENT EGAN: That is a matter you will undoubtedly take up with each committee as you come to that.

SUNDBORG: We will notify the committee when we would desire a meeting but we would like to have them be ready to nominate someone to represent them so we will not be delayed.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to Section 1.

CHIEF CLERK: "Section 1, article health, education and welfare, add the word 'educational' before the word 'institution' on the last line."

PRESIDENT EGAN: What is the pleasure of the Committee?

AWES: The Committee met and unanimously adopted this proposed amendment. The word is put in purely for clarification purposes, and I ask the adoption and ask unanimous consent.

PRESIDENT EGAN: Miss Awes asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Taylor.

TAYLOR: Point of information. Is that the only amendment, to put the word "educational" in front of the word "institution"? I am not objecting.

PRESIDENT EGAN: If there is no objection -- Mr. Victor Rivers.

V. RIVERS: I will have to object a little further because that does not in my opinion cover the context of certain communications that we had read here. I will object for this time.

BUCKALEW: I second it.

PRESIDENT EGAN: The subject is open for discussion. Mr. Hellenthal.

HELLENTHAL: I rise to a point of order. I don't think that it is necessary to vote on the proposed amendment. The Committee met and unanimously decided that the word should be included, and rather than have their report remimeographed they merely want to present it with the word in it, and then in the proper course of time the matter will be considered.

PRESIDENT EGAN: No, Mr. Hellenthal, it will have to be amended. Your report is before us and the only manner it can be amended in now is by the action of the body. I understand what your feeling was here, but that is out of that jurisdiction at this time. Miss Awes.

AWES: I will give a little explanation of this. This word, as I said before, was merely for clarification purposes. It was the opinion of the Committee that is what this meant originally, but it was implied by virtue of the fact it was in the education section, but there have been so many comments and so many questions, both from the members of the body and from the communications which have come into the Committee and the Convention, we thought it would be better if this were amended to conform with the intent, at least so it is clear what the intent of the Committee is, and that is the only purpose in submitting this at this time.

HERMANN: Point of information, if we adopt this amendment now and insert the word "educational" before "institution ", it will not be possible to remove it later, will it, by amendment from the floor?

PRESIDENT EGAN: It would not be possible to remove the word "educational", Mrs. Hermann, that is true. The Chair just wondered, Mrs. Hermann, if the word "educational" being there, if there are any other institutions in the Territory other than educational institutions that would be affected by this.

COGHILL: I rise to a point of information on that. It is in the educational article, Section 1 of the health, welfare, and education, and it should be germane to that section, and that is just clarifying the intent of the Committee.

PRESIDENT EGAN: Is there further discussion of the proposed amendment?

ROBERTSON: Point of inquiry, does the word "private" mean parochial?

PRESIDENT EGAN: Do you mean is it all-inclusive? Is that right, Mr. Robertson?

ROBERTSON: Yes, that's right. I don't understand the word "private".

AWES: Well, I think undoubtedly it does. You will notice before the word "private" comes the word "religious". "Religious or other private educational institutions", so I think that would undoubtedly be any educational institution that is not supported and run by the state.

V. RIVERS: The basis to my objection to that is this, we had some statements here for matching funds for hospitals under the Hill-Burton Act under legislative acts and of the Territorial legislature. Now it seems to me if we are going to put in other educational institutions, it might refer back to religious institutions or other private institutions, but I think that under this section they also want to include perhaps that no public funds shall be paid for the direct benefit of any religious institution, so if "education" qualifies "religious", then also you have not taken care of the fact that they will be authorized or allowed to prescribe for religious institutions. Also, I believe if that does not apply, then we have eliminated certain groups that operate hospitals from benefiting under Hill-Burton funds and similar appropriations. It seems to me the word "education" is not adequate to cover it unless we all feel it is adequately covered in some other part of the constitution.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, I would suggest that before we have a discussion at this point, that if this could be accepted as Miss Awes has suggested, we could go ahead with the suggestions of the article and the intent. We are starting at the end of the article instead of the beginning, and I think we are warping Miss Awes' intent out of shape by getting into a lengthy discussion of what was asked as an addition for clarification and I believe we would find that we would have a much more intelligent approach to this thing if we could start at the beginning of the article and read it through, think it through, discuss it and then make any of these amendments. I would say, too, that if we are going to have a lengthy discussion at this point it might be well to just withdraw the motion, because I think we would be defeating our intent.

PRESIDENT EGAN: The article has been read for the second time in its entirety. Mr. White.

WHITE: I don't wish to complicate the situation, but we may run into this again. If I understand the article that is before us

on the floor, the Committee did not ask to withdraw it, but I think Mrs. Hermann raised a very valid point. If this word is inserted now, we can't move later during the course of the debate to strike it. I would move that the rules be suspended and that the Committee be allowed to substitute its unanimous amendment with the thought in mind that we can then later remove it if during the course of the debate it appears to be the wish of the body to do so.

PRESIDENT EGAN: The Chair stated it could not be removed and the Chair would stand corrected to a certain point on that statement, that is by a suspension of the rules or rescinding of the action of course you could do it.

WHITE: I so move, Mr. President, and ask unanimous consent.

PRESIDENT EGAN: Mr. White, please state the motion.

WHITE: That the rules be suspended and that the Committee be allowed to submit its proposed amendment as though a part of the Committee report.

KILCHER: Point of information. Could it possibly be handled in such a manner as to have the report reconsidered and recommitted and come out again a second time?

PRESIDENT EGAN: The effect of Mr. White's motion under suspension of the rules would accomplish that. Mr. Riley

RILEY: Mr. President. I think this is in line with Mr. White's suggestion that this article of this proposal now before us be considered under a suspension of the rules, simply as a committee substitute for the same article. I think that would put the thing in motion.

PRESIDENT EGAN: Right, and have the word "educational" placed before the word "institution".

RILEY: That would enable us to work either way from that word afterwards.

V. RIVERS: That would cover my objection. I have no objection to that.

PRESIDENT EGAN: If there is no objection then, then it is so ordered, and the word "educational" has been inserted before the word "institution" as if this were a substitute committee report. Now, Section 1 is open for amendment. Mr. Hurley.

HURLEY: Mr. President, I would like to ask a question of the Chairman of the Bill of Rights Committee. Would your Committee consider in using the terminology "direct benefit whether or not that would be a directive or a license to the legislature to appropriate money for the indirect benefits? If so, what was their conclusion?

AWES: I don't think it is a direct order to the legislature to do anything. I think we prohibited what we wanted to prohibit. I don't think that tells the legislature they are supposed to do anything else.

METCALF: I have an amendment.

COGHILL: I rise to a point of order. I submitted an amendment to this section before the noon recess, and it has never been recognized, and I was recognized by the Chair.

PRESIDENT EGAN: Were you recognized for that purpose before the noon recess? If you were, then the Chief Clerk may read the proposed amendment as offered by Mr. Coghill. The Chair feels sorry about that, Mr. Coghill.

CHIEF CLERK: "Section 1, line 7. after the word 'direct' insert the words 'or indirect'."

COGHILL: I move and ask unanimous consent.

R. RIVERS: I object.

METCALF: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the words "or indirect" be inserted after the word "direct" in line 7, Section 1.

WHITE: Point of order. I believe there was a letter presented to the Convention the other day that the Convention agreed to defer the reading of until we reached this section. It seems to me proper we hear it before we consider any business.

PRESIDENT EGAN: Is there such a communication? The Chief Clerk might read the communication that was referred to before we act upon this amendment.

CHIEF CLERK: (A letter from Mr. Don M. Dafoe, Commissioner of Education, enclosing a statement on Section 1 of the article on health, education and welfare to the effect that he believed the statement somewhat oversimplified and setting forth seven points which he believed should be included in the constitution, was read.)

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, the Committee has asked me to speak to this section, and seeing it has been amended I hope you will liberally construe that I am talking to the amendment, but the Enabling Act that we have before us says on page 3, "The provision shall be made for the establishment and maintenance of a

system of public schools which shall be open to all children of said state and free from sectarian control." Mr. President, your Committee on Health, Education and Welfare approached this whole subject of education with great care and consideration. Many methods were sought out to provide and protect for the future of our public schools. We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education. The Convention will note that in Section 1 that the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road blocks. May I draw to your attention further the fact that we have used the words to establish and maintain by general law". This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise. Your Committee has also spelled out the fact that all children shall have the opportunity of schools, and that if the need arises for vocational schools, rehabilitation centers, schools for the retarded and other forms of education, that it is completely possible under this proposal. It is not only wise but mandatory under the Enabling Act to spell out that schools are operated in the public interest by the state and kept from sectarian control. In the third sentence of this section it deals with the public funds. This term was used because we felt that state funds may at times go through many hands before reaching the point of their work for the public, and so the term "public funds" was then used as a guide to every portion of our state financing, borough, city or other entity for the disbursement of these monies. In this third sentence we have used the word "direct". It was spelled out that the maintenance and operation or other features of direct help would be prohibited. This was not

intended and does not prohibit the contracting or giving of services to the individual child, for that child benefits as his part of society. This section gives the education department, or other departments, the right to seek out the child, independent of his religious affiliation, to help him to become a strong and useful part of society wherein it touches health and matters of welfare. We would also point out in the light of letters that have come to this floor relevant to the disbursement of funds to denominational or other private institutions, that this does not prohibit the use of funds in other educational matters, and I am sure that no one on the Committee would object to the inclusion of this word as we have given the amendment here to clarify this one statement. Now it reads as it has been amended by the Committee, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." We did this to take any doubt away on the part of this Convention of our motives, and we state that where there are welfare cases for children in homes and when there are indigents in hospitals that we do not wish to interfere with that practice of helping to serve people

through those institutions. It is the feeling of the Committee, after long work and thorough study, that these basic recommendations that we have given here on this section on education should be accepted by the Convention.

V. FISCHER: May I ask the delegate a question?

PRESIDENT EGAN: You may, Mr. Fischer, if there is no objection.

V. FISCHER: The article on finance, the proposal on finance, has the following Section 7: "No tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used, except for a public purpose." Now, that is the article and proposal on finance which would govern not only education but all expenditures of the state, and unless there is a very special reason for having separate and different language here, we probably should treat financial matters only in the finance article, so my question to you is, is there a special reason why we should have the third sentence of Section 1 in the health, education and welfare article?

ARMSTRONG: Your Committee on Health, Education, and Welfare discussed this prior to coming to the floor this afternoon. I believe it was our unanimous feeling that this should be taken as a part of education so that it could always be clarified in relationship to this subject. We realize there are two other matters in proposals that deal directly with finance, but we felt that when we came to those things they would have to be correlated with our action at this point. I feel that this matter needs to be clarified here and that was the action of the Committee and their reason for retaining it here instead of postponing it to the finance section.

R. RIVERS: I speak directly to the proposed amendment to the section. As I understand it, or remember it after all this general discussion --

PRESIDENT EGAN: Before you proceed, it seems that some of the delegates don't realize what the proposed amendment is. After the word "direct" insert the words "or indirect". You may proceed.

R. RIVERS: The standard approach is that no public funds shall be disbursed for the direct benefit of any religious institution or parochial schools. The word "direct" is the standard treatment of that subject. Now when you get into the wording "or indirect", then you are getting into an argument as to whether you can even contract with a private institution for the rendering of certain public services because they might say they might make a profit. Now I agree that it might not be interpreted that way, but you are only stirring up an argument when

you talk about prohibiting the disbursement of money for an indirect benefit to a parochial or private institution. You are reaching clear out to ad infinitum in the realms of logic and association. You don't treat it that way, you don't stir up that kind of an argument. If there is a public purpose for which money is to be extended it does not matter if some of it does result in an indirect benefit to some private concern, which may be a contractor, so I definitely don't want to see the words "or indirect" inserted in this section.

COGHILL: Speaking in defense of my proposed amendment, I would first like to say I am very prone to the problem of putting any religious persecution into the Constitutional Convention or among the delegates. It would be the same thing as me trying to convince Mr. Ralph Rivers of the principles of the Republican party, and he in turn of the party he belongs to. I don't believe that is the problem at all. I think that they certainly have a right, a private right or a religious right, or a parochial right under our constitution to have schools. However, I believe that the way our government was set up 175 years ago, that the founders felt that public education was necessary to bring about a form of educating the whole child for civic benefit through a division of point of the home taking a certain part of the child, the church taking a certain part of this education, and the government or state through public schools taking the other part. I adhere to that principle, and I might say that I am the president of the Association of Alaska School Boards and one of the formers of that twelve-point program we developed in Anchorage last October. I think that the problem could probably be well misconstrued here as to the motive and intent. However, I feel that the intent of public education is primarily a state function and does not belong to any private or any one particular group, whether they are in the minority or the majority. I believe we should take direct steps to maintain a free public education not encroached upon by any quarter. I think it might be well to bring out in the argument for the direct or indirect benefit of public funds for education is the matter that is now being faced in Europe and in particular in the Netherlands where they have what is called the form of educational pacification, where the government is splitting the tax dollar among some 500 different church groups providing for a parochial school benefit on an indirect basis, and in a community where there is maybe 500 school children there will be as high as seven or eight small schools scattered out throughout the community, not providing for the fullest benefit in the educational field as far as having a good complete centralized program. I think that sectarianism segregation in our educational system is bad for the children. I do not deny the right of people to have their own schools. However, I think that we should always look to the interest of the founders of our nation when they brought about the separation of church and state. The

problem was brought, and it was brought about by Thomas Jefferson quite well when he said, "If a nation expects to be ignorant and free in the state of civilization, it expects something that never shall be". Therefore out of his deliberations with John Madison they brought about a form of free public education starting in Virginia, and it has come forward ever since under the intent

of having the tax dollar only brought to the public educational system. I know there have been many law cases on it, Supreme Court rulings and what not, and I think that the matter still is divided as far as the general public is concerned, as between the sects of religion and not on the principle of preserving the free public education as an instrument of the state.

RILEY: Mr. President, I should like to address a question, if I may, to the Committee Chairman, but meanwhile I wish to commend Mr. Coghill on quoting with favor, Thomas Jefferson. Miss Awes, it runs in mind and I have not the delegate proposal before me, that there was a delegate proposal submitted in language substantially the same as this would read if Mr. Coghill's amendment were adopted. Could you tell me what your experience was in Committee, what the Committee thinking was in rejecting that language?

AWES: That I believe, if I recall rightly, was Proposal No. 2 and submitted by Mr. Johnson. It was carefully considered by the Committee, and Mr. Johnson was requested to come in and speak with us on it. We considered both the words "direct" and "indirect" and we felt that the words "or indirect" would, as Mr. Rivers said, reach out into infinity practically, and probably it is not even known what the results of that might be. We did feel it would shut out certain things that should not be prohibited. For instance, the welfare department was giving certain free care to the children of the community, and it might be administered through the schools. Well, we feared that "indirect" would make it impossible to give any of these welfare benefits, for instance, to children who were in private schools, and we did not feel that any prohibition should go that far, and so the Committee did carefully consider that word and unanimously agreed we should not use it.

RILEY: It has been said the Committee gave it correct attention and rejected it permanently?

AWES: That is right.

RILEY: Thank you.

METCALF: Mr. Chairman and delegates, I very much favor the inclusion in this section of the words "or indirect". As I read the section it refers to our school system and in this book, "Constitutions of the States", there are 16 states that have sections in their constitutions preventing public tax dollars

from being spent for private schools in any way, shape or form. Here is the section from the State of Missouri. The constitution was drawn in 1945, which some of you may have read. It says that, "No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof as such, and that no preference shall be given to or any discrimination be made against any church, or any form of religious faith or worship." I am a firm believer in freedom of religion, and we have been aware in the progress of history, medieval times down to colonial times, that at times there have been persecutions practiced. Those are unpleasant things and they have gone past into history. I am for the free public school system, being a licensed teacher and having taught in public school systems in the Territory. I am also a firm believer in the complete separation of church and state, especially with the use of state money and state property. As I

said again, I don't believe that the state property or taxes should be used and transferred to a religious group to be used directly or indirectly to the economic or political religious detriment of some other group or individual, and all activity should be on a free and competitive basis, and if I may just have a few minutes, I have a situation in Seward where a religious group have been given the use of the building and land by the Territory, and they are in competition, economic competition to my economic detriment. It is an actual fact, and I not only speak for myself but I speak for four or five people who happen to be affected similarly, and that is why I am trying to point out that I do not like to see state property or money transferred over to religious groups because persecution often times can come about. In this instance here, they have a Territory land, building valued around 60,000 dollars, and they are in active competition with private enterprise, and they have other advantages -- free snow removal, cheap help, no taxes, and I just point out these little things here that make me very much opposed to the use of state money or property in any way, shape or form by religious groups. I therefore favor the inclusion of this phrase "or indirect".

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I had the opportunity to talk rather at great length with the superintendent of schools in Ketchikan during the Christmas recess on this very subject. He had suggested that the word "indirect" be inserted here, but during the course of the conversation he also said that the public school people were desirous of providing that the standards in the parochial schools be in some manner made equal to those in the public schools. Of course, the only way that could be provided would be through supervision by the State Board of Education. I pointed out to him that the insertion of the word "indirect" here would defeat that purpose and he immediately

said that he agreed and he did not want the word "indirect" inserted.

McCUTCHEON: Mr. President, will the Chair permit a question through the Chair to Mr. Coghill?

PRESIDENT EGAN: The Chair will permit a question through the Chair to Mr. Coghill.

McCUTCHEON: Mr. Coghill, could you cite me at least a few instances how indirect benefit might accrue. Are there specific types of instances within your knowledge of how this would apply? Because of your delivery here a few moments ago I assumed that there must be various types of specific indirect benefits which you would wish to prohibit. I would like to know what they are.

COGHILL: Through the Chair to Mr. McCutcheon, I believe by putting the indirect benefit clause in there that any social welfare, health arrangements that might be made with the state with any private or parochial institution would be on a contractual basis and would be providing a service to the public and not to the institution, and that is the purpose of the indirect clause in there. It would allow them to have a contract to produce or to show full value for the value of money received from the tax coffer, from the funds. In other words, to provide a hot lunch program with Territorial money or to provide a health program in a school, I do not deny that to the private schools because I feel that that is an instrument of public benefit because the child is

benefiting from it from a public standpoint, and a contractual agreement between the organization and our organized state would therefore be in effect. Does that answer your question?

McCUTCHEON: In part. Your intent would be then that if some private institution of one nature or another were to supply this particular service under contract to the state that there could be no profit in that as it extended to that institution? That is, they would have to supply that service at the actual cost? That there could be no profit derived from that particular transaction. Is that the point you are making, that it would not prohibit supplying these various types of welfare programs, hot lunches, etc., but there could not be a profit factor involved?

COGHILL: That is correct, because we in the public school system. we are not allowed to make profit on such things.

KILCHER: I think that the position is not clear at all. What Mr. McCutcheon brought up is not clear at all, a benefit is not the same as a profit, so if they don't want any profit, why don't they mention it. I can see where a private school is benefited by getting nonprofit assistance. If, for instance, it is possible

for a private school to get lunch money assistance on nonprofit basis for its children, it may make the difference for them to be able to operate or not. If they are not getting lunch money or such things, they might not be able to operate, so by getting these nonprofit assistances for the children, they are getting benefited greatly. As a matter of fact, the benefit is so great it means survival or not, so I think the issue is not clear. On the principle I think I should be against the amendment because it does not clear the issue at all in that respect.

COGHILL: Maybe to clarify a point for Mr. Kilcher, one thing we want to keep in mind is the fact that the state has set up a public educational system for all children. The people that are sending their children to private, parochial, or any other type of institution are segregating themselves from the public and therefore they should not derive the benefit from the tax dollar. We are providing it. We have spent thousands, hundreds of thousands to provide a good educational system, and if we go to the pacification plan, we are destroying that principle and that in turn answers your interpretation of profit or benefit.

PRESIDENT EGAN: Mr. Gray.

GRAY: If I may ask Mr. Coghill, in reference to your remarks, does your state guarantee to offer a complete educational system?

COGHILL: It certainly will, Mr. Gray, after we write the articles on the legislation.

GRAY: You feel you have a complete educational system today?

COGHILL: I certainly think so.

GRAY: I think there are a lot of areas where a lot of children have no opportunity for public education.

COGHILL: I feel that it is quite a privilege to be a part of a public educational system and be able to criticize it, to be able to criticize our methods and our procedures and to work on those. I will agree with you wholeheartedly, Mr. Gray, that there are lots of things we have to do. However, in my recent trip to Washington, D. C., and being a conferee on the White House Conference on Education, we found with the exception of one disgruntled person, we found that our educational system in Alaska was far above the educational systems of the states. We have a progressive educational system in the sense that we are moving forward. I think one of our biggest thorns is the Alaska Native Service, if that's what you are referring to.

TAYLOR: There has been a lot of sparring around here on this subject. Everybody seems to duck the issue, and I am going to

ask Mr. Coghill a question if I may, through the Chair.

PRESIDENT EGAN: You may, Mr. Taylor.

TAYLOR: Mr. Coghill, what -- in the event that the word "indirect" was inserted into this measure, what effect would that have on the school bus law that is now in effect?

COGHILL: What effect would that have on the school bus law? I know I am up against a pretty good attorney, but I think that will in turn not affect too much of the school bus system in Alaska because it can be on a public work contractual basis, take it completely out of the educational picture, put it on the welfare picture.

AWES: I would like to make one statement. Mr. Coghill suggested that we insert the words "or indirect". The Committee very carefully considered that word "indirect". We were not sure of the far-reaching effects it would have. Mr. Coghill now proposes that he explains what it means. I can't agree with his interpretation in any respect, and he would have us believe from the explanation he has given so far that it means precisely nothing. I don't believe that any court would so interpret it, and I think he should either give us some reason for having it in there or else if it doesn't mean anything, then I think we should take it out, but I am not satisfied with any explanation he's given yet.

PRESIDENT EGAN: Mr. McCutcheon.

McCUTCHEON: Since the Committee considered this at considerable length about this matter of "direct" or "indirect" wording in this particular section, you must have in mind several specific instances where "indirect" might apply in some fashion in a derogatory manner. If you do have such an idea or some particular questions how this word "indirect" might affect adversely to thinking upon your particular section here, I would like to hear some of them. If your Committee has gone into this so thoroughly, there must have been one or two problems that have arisen where there would be some question about including the word "indirect".

AWES: I have already given one very good example, and that is this question of welfare services which are often administered to children through the schools. Mr. Coghill says that the word "indirect" would not prevent these. I very definitely think that the word "indirect" would prevent them. I think that is one very good example.

POULSEN: May I ask Mr. Coghill a question?

PRESIDENT EGAN: You may, Mr. Poulsen.

POULSEN: If the word "indirect" is put in, would that mean there is such a thing as subsidy to hospitals would be eliminated?

COGHILL: Mr. Poulsen, this is an educational article with the educational institution.

POULSEN: It still comes under public welfare, matching funds for instance.

COGHILL: Mr. Poulsen, if you will note that the Committee amended their proposal to have "educational" inserted before institutions, and so this is strictly an educational article, sir.

WHITE: May I direct a question to Mr. Coghill?

PRESIDENT EGAN: You may, Mr. White.

WHITE: Mr. Coghill, are there children's homes, foster homes in the Territory which provide any education at all to the children who are entitled to admission to those homes?

COGHILL: The children's homes that have schools with them, is that what you mean?

WHITE: Are there any such institutions in the Territory of Alaska that provide any education at all to the children admitted to them?

COGHILL: Yes, there is.

WHITE: What would happen to them under your proposed amendment?

COGHILL: What would happen to these institutions now operating?

WHITE: Do any of these receive any public funds either from the Federal government or the Territorial government?

COGHILL: I don't believe they do because the contract schools went out before 1900. They had a form of contract for schools and that went out. I think that all your foster homes would be deriving an indirect benefit or some sort or another, and there are plenty of them.

WHITE: I think your statement could be corrected, but I'm not the one to do it. I'll defer to someone else, but in the event it is corrected, I would like to hear your answer to the question as to what would happen to them under your amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I have here a copy of a memorandum from Henry A. Harmon, Director of the Department of Public Welfare of the Territory to the Attorney General on this very subject, listing

a number of schools operated by private and religious organizations to which the Territory now pays funds through the Department of Public Welfare. They show that such institutions not only include a few Catholic institutions, but also Seventh Day Adventists, Moravian, and Presbyterian. It is very brief. I wonder if I might ask to have it read.

PRESIDENT EGAN: If there is no objection the communication can be read. Mr. Fischer.

V. FISCHER: I think it should be read only if it covers educational institutions.

SUNDBORG: It does only that.

PRESIDENT EGAN: The Chief Clerk may read the communication.

(This letter giving information as to payments made by the

Territory to various children's institutions in the Territory was read by the Chief Clerk.)

ARMSTRONG: Mr. President, there are several sources of income in the private institution. First of all, an institution can apply for a surplus of food, and upon the signature of the administrator, that food is made available in a limited quantity. I might give an example of butter, beans, and staples of that type. I think that is given on the basis that no Territorial agency is able to give a large enough sum to a private institution to support that child. I might give you an example of one institution that probably is receiving 900 dollars a year from the Territory, but the actual cost breakdown without new buildings and capital expenditures run in excess of 1300 dollars a year to adequately take care of that child. In that institution there was no educational facilities, that is just housing. Another source of income would be then this Territorial grant of 50 dollars which is in lieu of home care. The child as a ward of the Territory and as such must be put into a foster home or into a private institution. They choose, wherever possible, to put the child in a foster home and let that child go to the private school. If a family situation is so complicated, they want to keep that family structure together and hold that family, the child is placed in a private home. There are a few, very few of the schools that have boarding facilities and educational facilities, but there are some that exist, Mr. White, in the Territory, and most of the grants by the Territorial Department of Welfare are given for the boarding home facilities and not for the education, and I think that could be borne out by the fact that they are looking for a holding situation for the child. The educational facilities are incidental at that particular point, but there are a number of places that are together. I hope that will help.

BUCKALEW: Mr. President, I don't think the question has been answered yet by any of the persons who have spoken on this subject.

If the word "indirect" is in there, it is going to eliminate almost any kind of aid. It will, for example, eliminate the free lunch, eliminate bus transportation, eliminate, for example, if we had a school or an institution where they had a school, it would eliminate the state giving any support to the child because that would be indirect support to the institution. I think when the members vote on it, I think they ought to understand the word "indirect" cuts out everything, just eliminates all kinds of support, and I don't think there is any question about it.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to say that I cannot agree with Mr. Coghill that contracts would not be indirect help. I believe you could construe them to be indirect help. I believe that we should leave these words out of the section, and I believe the Committee has done a very good job. They have considered all angles of it, and I would like to say that I support the Committee resolution.

COGHILL: In closing the argument, I might just leave the thought with the delegates that on this particular subject of the direct or indirect benefit to the private or religious educational institution, would guarantee every citizen of the new State of Alaska that any money diverted from the public funds to any such organization in complete competition with your public institutions, if you will, that there will be a sound contractual agreement between your government and this private institution to provide public service and not to the benefit of the individual institution.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 1 line 7, after the word 'direct' insert the words 'or indirect'."

JOHNSON: I request a roll call.

KILCHER: I am sorry to take another minute. There is one problem that has not come up in this discussion. I am a father of seven children, five of which have had the Calvert course for several years with good results. I understand that the Calvert course could possibly be construed not to be available anymore either if indirect help were not available to a private school. The Territory pays it. My children go to a private school, or most of them. The biggest ones though hike over the road, and the Territory pays an indirect system. It could possibly be construed to include the Calvert course, which is a great problem in Alaska.

COGHILL: I might answer that, being familiar with the Calvert course, that the Territorial Department of Education, that is one of their recognized correspondence courses for the outlying areas, and if any family on a CAA remote station or someone on a remote part of the Yukon River, etc., would want to further the education of their children, write to the Commissioner of

Education and they are referred to the Calvert course, and in higher institutions it would be the correspondence courses from the University of Nebraska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Coghill be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 19 - Barr, Boswell, Coghill, Collins, Cooper, Cross, Harris, Hilscher, Hinckel, Johnson, King, Knight, Laws, McCutcheon, Metcalf, Nerland, Poulsen, Robertson, Sweeney.

Nays: 34 - Armstrong, Awes, Buckalew, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Kilcher, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Nordale, Peratrovich, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Taylor, Walsh, White, Wien, Mr. President.

Absent: 2 - Nolan, VanderLeest.)

CHIEF CLERK: 19 yeas, 34 nays, and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption.

WHITE: I have an amendment to Section 1.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. White and Mr. Fischer.

CHIEF CLERK: "Section 1, strike the last sentence."

WHITE: I move the adoption of the amendment.

V. FISCHER: I second it.

ARMSTRONG: I object. Mr. President, I feel that we will complicate our finance situation by trying to write this into a later report for clarification. I think here in one sentence you pinpoint it; you clarify it once and for all, but when you start to define this thing again in a larger amendment, you

have a hopeless task. I don't think it can be done, and I believe you want it here where they read it, they understand it and they know the precepts we are following. I think we would be wasting time to now delete this after we have had this vote of confidence for the Committee's report and then try to take it up again later. So I shall vote to kill the amendment and would ask the delegates to do likewise.

WHITE: I feel again that we are getting into a legislative matter here, and I feel that the broad policies that have been laid down in the Federal Constitution are good enough for our purposes

here. Those policies that are contained in our Section 5 of our bill of rights which says, "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof". In a section, I forget the number of it, in a finance article saying that no funds shall be spent for other than a public purpose. I think those two sections are good enough to spell out the broad outline. In addition, I feel that while I am not a lawyer that almost every argument that has been applied against the use of the word "indirect" could just as logically be applied against the use of the word "direct", and I think it will lead us into trouble.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted"? Mr. Fischer.

V. FISCHER: I would just like to add, Mr. President, that while this Commissioner Dafoe points out education is an important field, I do not feel that when it comes to an appropriation of public funds it should receive any special, either more restrictive or more favored treatment. As Mr. White pointed out, the general stipulation is that funds be appropriated only for public purpose. Now it seems to me that the definition of public purpose must be made during every age in view of the conditions prevailing at that time. I think that has been one of the strong points of the Federal Constitution. The fact that it has left itself open to that kind of interpretation and, therefore, it seems that if we give favored treatment or discriminatory treatment to this education section, what are we going to do when it comes to health, welfare and just anything else that may come out. I think the public purpose provision should be the only guidance when it comes to appropriating public funds.

PRESIDENT EGAN: Mr. Gray.

GRAY: I would like to ask the Chairman of Style and Drafting if they would have the authority to move this section, if it directly belonged to taxation, would Style and Drafting have that authority?

PRESIDENT EGAN: Would the Rules Committee have the answer to that question?

SUNDBORG: Our rules, I believe, outline the authority of the Style and Drafting Committee and they do provide that after the various proposals have been adopted in third reading that the Style and Drafting Committee has an opportunity to arrange any material, section, subsections and I believe even sentences where it properly belongs in the constitution. It might be that Style and Drafting would have that authority, but, of course, that authority would be subject to approval here on the floor because we can't do anything in our Committee, of course, unless it is approved in a subsequent report that we make to the plenary session.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I merely wanted to point out that this problem has arisen in a good many of the States. It has arisen in connection with the education, and therefore I feel that this provision should remain in the section under education.

COGHILL: Mr. White brought up the thought that the Federal Constitution was all-inclusive. However, it might be well to remember that during the years that they were writing the Federal Constitution they left all educational matters to the individual states, and the purpose of leaving these educational matters to them was because of the trouble they were having at that time between different groups and different communities and different states being quite well controlled by different churches of one sort and another, such as the Quakers in Penn State and down in Virginia and over in Rhode Island and through that area. I feel that this should stay in the article, although my amendment did not ride, I am going to vote for it because I feel at least we have a certain provision for the direct benefit of tax dollars. I might, if I may, Mr. President, read the Supreme Court's decision of 1947 of the Emerson case, and I will not read the whole section but just in one part. It says, "No tax in any amount, large or small, can be levied to support any religious activities or institution whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither state nor federal government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa."

WHITE: If I may close briefly. I am not for or against bus transportation to certain institutions. I am not for or against hot lunches to certain institutions. I again think we would be much better advised to stick to the broad outlines. In partial reply to Mr. Coghill, I might mention that 100 years from now the state might wish to get involved in some sort of G.I. Bill of its own, following another war. I would not be in favor of it now, but 100 years from now I might. Why not leave ourselves open?

BARR: Point of information. I seem to remember when we first started out there was a sheet of paper on our desk to outline certain things that was mandatory to place in our constitution to conform with the Federal Constitution and with our accepted principles of American government. I will ask Mr. Armstrong, I believe, wasn't this practically the same wording in one of those paragraphs and did it not specifically mention schools? Mr. White has put in his amendment because he said the other phrasing in the Finance Committee report would take care of it. That mentioned public funds should be used for public purposes, but aren't we required to state in our constitution that public funds should not be used for private schools?

ARMSTRONG: No sir, not according to the House Enabling Act that we have used as a guide. On page 3, line 14, it just makes the general provision that for the establishment and the maintenance of a system of public schools which shall be open to all children of the state and free from sectarian control. That is the only thing, but I might add that I believe that there are 39 states that have added some type of safeguard in their constitutions directly in connection with education, and I believe every new constitution that has come out has held to some provision of this type, practically in every case they have been written in at this point, so I don't know why we should be afraid to follow that pattern. I don't think it is unusual to keep it here. I think it is healthy to keep it here, and I believe this is where it belongs.

McNEES: I call for the question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted by the Convention?"

JOHNSON: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(he Chief Clerk called the roll with the following result:

Yeas: 13 - V. Fischer, Hurley, Kilcher, Laws, Lee, McCutcheon, Nolan, Poulsen, Reader, Riley, Sundborg, Walsh, White.

Nays: 41 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nordale, Peratrovich, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney, Taylor, Wien, Mr. President.

Absent: 1 - VanderLeest.)

CHIEF CLERK: 13 yeas, 41 nays and 1 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 1? Mr. Victor Rivers.

V. RIVERS: May I ask a question? I notice that the Committee has come in with the words "direct benefit". I notice that some of the other states' constitutions, including that of Hawaii, say "support or benefit". What was the intent of limiting them to the word "direct"? I would like to know a little about the intent of the Committee rather than in dealing with both "support" or "benefit".

PRESIDENT EGAN: Miss Awes.

AWES: I don't recall that the Committee considered the words "support" or "benefit". I think the purpose we wanted to achieve was brought out in the arguments on an earlier amendment and we felt these words did it, and I don't recall the words "support" or "benefit" came before the Committee.

V. RIVERS: In other words, the Committee did not consider the words "support" or "benefit"?

AWES: That is right.

PRESIDENT EGAN: That seems to be the understanding of the Chair. Mr. Armstrong.

ARMSTRONG: As I recall, Mr. President, we probably discussed the question of the support of private schools, but we did not feel it needed to be in this particular section, and I don't recall, Mr. Rivers, that we considered that as a part of the text. I certainly would agree with what Miss Awes has said, although we discussed in Committee such things as direct legislation for the building of a school or the maintenance of a private school, which would be support, but it was

our understanding that that would be covered under this word "direct benefit". This would prohibit the direct appropriation for building or maintenance of private institutions.

V. RIVERS: Mr. President, I am going to make a motion. I think that the word "direct" limits the interpretation of this. I am going to make a motion that the word "direct" be stricken and insert in lieu thereof the words "support of", line 7.

BARR: I second it.

PRESIDENT EGAN: The matter is open for discussion. Mr. Rosswog.

ROSSWOG: I would just question the striking of the words "direct benefit". The "support" I can see that, but "direct benefit", it might leave the question wide open again as far as I'm concerned.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Coghill.

COGHILL: I move and ask unanimous consent for a five-minute recess.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for five minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Robertson.

ROBERTSON: May I ask. Mr. Rivers, what in your opinion would be the implication or result of the proposed change?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: There is some question in my mind as to what interpretation the words "direct benefit" would receive from the courts and just how narrow they would consider a "direct benefit" to be. I notice in other state constitutions, I don't have all the constitutions available, but the wording I provided was identical with the State of Hawaii. In Nevada they say, "No money shall be expended, either city, county or state, for benefit of sectarian purposes.". In the case of Puerto Rico they also have the same broad general language. I hesitate to use the Puerto Rican constitution as a model for I don't care too much for it, but in that highly religious little Commonwealth they have adopted the same principle, but there again I feel that the word "direct" may be interpreted very narrowly by the courts and may lead to a great many funds that would go for support that I personally do not feel should be going to support of sectarian institutions.

TAYLOR: Mr. Rivers, do you not believe that if you leave that word out it will create more confusion than it will, leaving it in?

V. RIVERS: I don't think so. It will leave a little broader field for interpretation. However, Mr. Chairman, I believe that after considering the matter I will withdraw my amendment and ask unanimous consent to do so for the moment.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent that his proposed amendment be withdrawn. Hearing no objection, it is so ordered. Mr. Barr.

BARR: I ask that we now revert to the introduction of proposals.

PRESIDENT EGAN: If there is no objection, the Convention will now revert to the order of business of introduction of proposals. The Chief Clerk may read the proposals as introduced by Mr. Barr.

COOPER: Is this a delegate proposal or committee proposal? Was not the date set January 8?

CHIEF CLERK: That is today.

PRESIDENT EGAN: The Chief Clerk may read the proposal.

CHIEF CLERK: "Delegate Proposal No. 45, introduced by Mr. Barr, DEPARTMENT OF LABOR."

PRESIDENT EGAN: What committee would you like that to be referred to, Mr. Barr? I believe it should go to the Executive, both of those should. Would the Committee on the Executive be the proper committee? If there is no objection the Committee Proposal will be referred to the Committee on the Executive. The Chief Clerk will please read the second proposal.

CHIEF CLERK: "Delegate Proposal No. 45 introduced by Mr. Barr, OFFICE OF THE ATTORNEY GENERAL."

PRESIDENT EGAN: Committee on the Executive.

BARR: Would it be possible afterwards to have that referred also to the Judiciary?

PRESIDENT EGAN: If there is no objection, it will be referred from the Committee on the Executive to the Committee on the Judiciary. If there is no objection it is so ordered. Are there other amendments to Section 1? Mr. Johnson?

JOHNSON: I have no amendment. I would like to direct a question to the Chairman of the Bill of Rights Committee concerning this section.

PRESIDENT EGAN: If there is no objection, Mr. Johnson, you may direct a question.

JOHNSON: Miss Awes, in the second line, the wording "system of public schools" appears. Now in a number of state constitutions I have noticed that they use the word "system of free public schools". It is assumed I imagine that you intended that we should have a system of free

public schools here, but you did not specifically use the word, and I wondered if the Committee had considered that matter and if so, why it was left out?

AMES: We did consider the matter. The first two sentences in this section are taken almost word for word from the Enabling

Act. The word "free" was mentioned. We did not feel it was necessary since we say that a "system of public schools shall be open to all children" and since there is already a well set up system of schools which are free, we were afraid that the word, while not necessary, might cause some confusion if it were used. For instance, this section is intended to refer not only to grade schools and high schools, but also other educational institutions. For instance, a state university, and there may be vocational schools, etc., established, which is customary throughout the country to charge tuition for, sometimes less to residents of the state than to other persons. Also, a city running its own school system, I think, customarily charges a small tuition fee to children who come in from other places, and we were afraid if we used the word "free" that it might raise questions whether or not certain practices like this should be continued or considered. We did not think that was a matter for the constitution.

JOHNSON: Thank you.

HURLEY: I would like to speak on the matter of personal privilege and ask unanimous consent.

PRESIDENT EGAN: You may, Mr. Hurley.

(Mr. Hurley spoke under a question of personal privilege regarding the article on health, education and welfare.)

ALASKA STATE LEGISLATURE

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Wasilla, Alaska 99654
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State Capitol
Juneau, Alaska 99801
(907) 465-6600
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Mike Dunleavy
Senator

MEMORANDUM

FROM: Senator Mike Dunleavy 
District D

DATE: March 25, 2013

RE: Dittman Research Poll

On March 21, 2013 the Alaska House Majority Caucus leadership released the results of their annual in-depth poll conducted by Dittman Research and Communications. Dittman Corp. surveyed 800 Alaskans March 13-14, resulting in a 3.4-percent margin of error. All regions of the state were represented and balanced to the 2010 Census.

Attached to this memorandum is page six of the Dittman Corp. report. I hope you find the results of questions 40 and 41 interesting. If the poll results are to be believed, it would appear that an overwhelming majority of Alaskans favor the right to weigh-in on whether to amend the constitutional language that deals with public funding and private/religious education.

If you have any questions or would like to discuss the results of this survey, I can be reached at 907-465-6600.

Thank you for your interest.

Moving now to education...

38) Student graduation and test scores in Alaska consistently rank among the lowest in the nation, despite significant increases in overall state funding for education during the past decade. Given that fact, in your opinion should the state insist on demonstrated student performance improvements in our schools before increasing the state K through 12 education funding formula, or should student performance not be used to determine education funding? [Below options were not read]

- Insist on improvements before increasing funding 48%
- Do not take performance into account 43%
- Unsure 9%

39) How familiar are you with the concept of school choice programs as they pertain to K through 12 education? Are you...

- Very familiar..... 16%
- Somewhat familiar 29%
- Not too familiar..... 22%
- or- Have you never heard of the school choice program 31%
- Unsure 2%

40) A school choice program allows parents the option of sending their child to the school of their choice, whether that school is public or private, including both religious and non-religious schools. The goal is to improve overall performance by creating healthy competition among the schools. If this program is adopted, a portion of state funds that are currently allocated to a student's school district would instead follow the student to the school of their parents' choosing.

Would you support or oppose amending Alaska's constitution to allow a school choice program in Alaska? ...and is that strongly or somewhat support/oppose?

- Strongly support..... 39%
- Somewhat support..... 17%
- Somewhat oppose..... 7%
- Strongly oppose 29%
- Unsure 8%

Split sample Set A

40) Please tell me which of the following two statements comes closest to your view:

Allowing public funds to be used for private schools will lead to an erosion of Alaska's public school system (skipped next question)..... 31%

-or - Allowing parents to choose where to send their child to school, and allowing a portion of the public funds to follow the child, will create a healthy competition and improve the overall performance of Alaska's schools 61%

Neither/Other (volunteered) (skipped next question) 3%
 Unsure (skipped next question) 5%

READ IN RANDOM ORDER

Split sample Set B

41) Would you support or oppose amending Alaska's constitution to allow a school choice program in Alaska?

- Support..... 84%
- Oppose 11%
- Unsure..... 5%

Karen Lidster

From: Sen. John Coghill
Sent: Monday, March 25, 2013 10:58 AM
To: Karen Lidster
Subject: FW: SJR9

From: Mo Sanders [<mailto:MSanders@KPBSD.k12.ak.us>]
Sent: Monday, March 25, 2013 9:10 AM
To: Sen. John Coghill; Sen. Lesil McGuire; Sen. Fred Dyson; Sen. Donny Olson; Sen. Bill Wielechowski
Subject: SJR9

I would like to share my concern over SJR9. I am, most importantly, opposed to creating a constitutional amendment in this case. I am also opposed to reducing already restricted funds for public education by adding non-public sector vouchers. The right to pursue a private education is a good one but this private right should not be augmented with public funds.

Respectfully,

M. Sanders

P.O. 1329

304 W. London Rose

Soldotna, AK

Karen Lidster

From: Bethany Marcum
Sent: Thursday, March 21, 2013 10:03 AM
To: Ryan Wilson; Karen Lidster
Subject: Friday 3/22 Senate Judiciary Committee 1:30 pm

Senator Dunleavy's office will have three expert witnesses testify in the following order.

1. Representative from Alaska Department of Education (TBD) – in person
2. Attorney Kevin Clarkson – telephonic ✓
3. Attorney Martin Nussbaum - telephonic ✓

We will need a laptop for a Powerpoint to display slides introducing the expert witnesses who are testifying telephonically.

Thank you!

Bethany L Marcum
Staff for Senator Mike Dunleavy
State Capitol Building
Juneau, Alaska 99801
Ph 907-465-6600
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Bethany.Marcum@akleg.gov

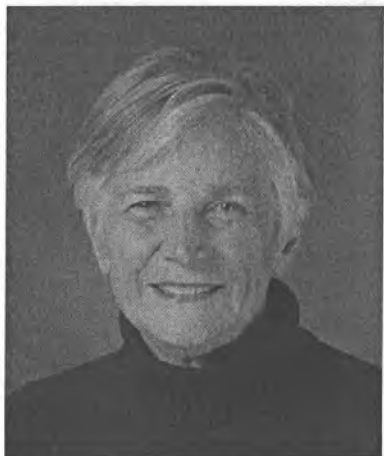
If you would like to subscribe to Senator Dunleavy's newsletter, simply make a request via email to Sen.Mike.Dunleavy@akleg.gov or call 907-376-3370



Vicki Chekan

Question
Q & A - 5 mins - 10
SRG
9
Committee

Diane Ravitch



Diane Ravitch is Research Professor of Education at New York University and a historian of education. In addition, she is a nonresident senior fellow at the Brookings Institution in Washington, D.C.

She shares a blog called *Bridging Differences* with Deborah Meier, hosted by *Education Week*. She also blogs for *Politico.com/arena* and the *Huffington Post*. Her articles have appeared in many newspapers and magazines.

From 1991 to 1993, she was Assistant Secretary of Education and Counselor to Secretary of Education Lamar Alexander in the administration of President George H.W. Bush. She was responsible for the Office of Educational Research and Improvement in the U.S. Department of Education. As Assistant Secretary, she led the federal effort to promote the creation of voluntary state and national academic standards.

From 1997 to 2004, she was a member of the National Assessment Governing Board, which oversees the National Assessment of Educational Progress, the federal testing program. She was appointed by the Clinton administration's Secretary of Education Richard Riley in 1997 and reappointed by him in 2001. From 1995 until 2005, she held the Brown Chair in Education Studies at the Brookings Institution and edited *Brookings Papers on Education Policy*. Before entering government service, she was Adjunct Professor of History and Education at Teachers College, Columbia University.

She is the author of:

- *The Death and Life of the Great American School System: How Testing and Choice Are Undermining Education* (2010)
- *Edspeak: A Glossary of Education Terms, Phrases, Buzzwords, and Jargon* (2007)
- *The Language Police: How Pressure Groups Restrict What Students Learn* (2003)
- *Left Back: A Century of Battles Over School Reform* (2000)
- *National Standards in American Education: A Citizen's Guide* (1995)
- *What Do Our 17-Year-Olds Know?* (with Chester Finn, Jr.) [1987]
- *The Schools We Deserve* (1985)
- *The Troubled Crusade: American Education, 1945–1980* (1983)
- *The Revisionists Revised* (1978)
- *The Great School Wars: New York City, 1805–1973* (1974)

In 2010, the National Education Association selected her as its "Friend of Education" for the year, and the New England Association of Schools and Colleges conferred its Charles W. Eliot Award on Dr. Ravitch. In 2011, she has been honored with the Outstanding Friend of Education Award from the Horace Mann League; the American Education Award from the American Association of School Administrators; the National Association of Secondary School Principals' Distinguished Service Award; and the Distinguished Alumni Award from Teachers College at Columbia University. In June of 2011, she received the Daniel Patrick Moynihan Prize of the American Academy of Political and Social Science.

She was awarded an honorary degree, Doctor of Humane Letters, by the following institutions: Williams College; Reed College; Amherst College; the State University of New York; Ramapo College; St. Joseph's College of New York; Middlebury College Language Schools; and Union College.

A native of Houston, she is a graduate of the Houston public schools. She received a B.A. from Wellesley College in 1960 and a Ph.D. in history from Columbia University's Graduate School of Arts and Sciences in 1975.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SJR 9
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) Constitutional Amendment: Education Funding Dept. Affected _____
 Title _____ Appropriation _____
 Allocation _____
 Sponsor Senator Dunleavy
 Requester _____ (S) Judiciary OMB Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? _____
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Senate Judiciary Committee Phone 465-3719
 Division _____ Date/Time _____
 Approved by /s/ Senator Coghill Date 3/22/2013

After SJR 9: An Overview

School Vouchers

Can be paid directly to the parent or the school, pre-payment in advance, redeemable certificates distributed to parents, or a two-party check to be endorsed by both the parent and the school. Vouchers can be used to cover all education expenses, **or a particular category**, such as tuition, transportation, etc. The value of the voucher can be adjusted according to criteria like household income, student grade level, or educational considerations. There are 16 school voucher programs in the United States. Here are some types:

- Universal
 - o All children are eligible. (Example: Sweden)
- Means-Tested
 - o Children from families below a defined income level are eligible. (Examples: Wisconsin, Ohio, Indiana, Louisiana, and District of Columbia)
- Failing Schools
 - o Children who are performing poorly in public school or who are attending failing public schools are eligible. (Example: Ohio, Louisiana)

Education Savings Accounts

Creates personal accounts that store a child's state education dollars. These funds can be used for tuition, fees, textbooks, and tutoring. There is one education savings account program in Arizona.

Tax Credits

- **Tax Credit Scholarships:** Corporations and individuals make private donations to nonprofit organizations that provide these scholarships to eligible children (preference is generally given to low-income families). In return, the corporations and individuals receive a state income tax credit. There are 14 tax credit programs in the United States. (Q: Would SJR 9 be necessary?) (Examples: Pennsylvania, Florida, Arizona, Iowa, Georgia, Indiana, Rhode Island, and Oklahoma)
- **Individual Tax Credits:** Parents can receive a tax credit or tax deduction for education expenses. Some programs restrict the income level of eligible recipients or the amount they can claim. (Examples: Illinois, Iowa, Minnesota, Louisiana, North Carolina, and Indiana)

Public School Choice

- **Charter Schools & Magnet Schools:** Receive government funding but have flexibility with the curriculum and are run under a charter by parents, educators, and community groups.

Magnet schools specialize in a particular area, like science or the arts. Unlike charter schools, magnet schools are not open to all children, some requiring admission tests. According to the Heritage Foundation, Alaska has weak charter school laws.

- **Second-Chance Schools:** Designed for students who do not function well in traditional schools. Under-achievement, pregnancy, and drug/alcohol dependence.
- **Open Enrollment:** Families may choose to send their children to any school within their resident school district.

What are other countries doing?

France: “School Choice w/ Restrictions on Curriculum”

France subsidizes most private schools, including those affiliated with religious denominations, under contracts stipulating that education must follow the same curriculum as public schools.

Sweden: “BSA for Private Schools”

Starting in 1992, private schools (including religious schools) receive public funding for each student, at a level similar to what public schools receive. Consequently, the schools are not allowed to discriminate or require admission examinations, nor are they allowed to charge the student any additional fees. Sweden is considering limiting for-profit corporations from operating schools. Chile has a very similar system.

Hong Kong: “Vouchers for Pre-K Only”

A voucher system for ages 3 to 6. Each child receives a \$13,000 subsidy to attend a non-profit school. For-profit, religious, and otherwise, are not eligible to accept the subsidy. This has been criticized for not offering enough choice.

Mike Dingman: Vouching for SJR 9

Mike Dingman | Posted: Thursday, February 28, 2013 9:26 am

If you have read the newspapers or watched the news on television in the last couple of weeks, you may be pretty well convinced that the Alaska State Senate is trying to give away education funds in the form of vouchers. Additionally, if those are the news sources where you are getting your information, you may also believe that such an important education decision is going to be made without ever being heard by the Senate Education Committee.

Well, that's not what is happening.

The real story is that Senator Mike Dunleavy (R-Wasilla) has sponsored a resolution that, if passed, would put a constitutional amendment on the ballot for the next state election. The resolution, SJR 9, adds a sentence to the section of the Alaska Constitution that deals with education. The current language reads, "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

The resolution would add the following to the end of that sentence: "however, nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law."

The resolution, if passed, would also allow voters to remove one sentence from the Constitution. That sentence says: "No money shall be paid from public funds for the direct benefit of any religious or other private educational system." Voters would be asked in a statewide election whether to make those two changes to the Constitution.

So this is how the process works. First, a constitutional amendment has to pass both houses of the legislature with a two-thirds vote. The measure would then have to be placed on the ballot in a statewide election. If it wins a majority of the votes, the change would be made in the Alaska Constitution. Then, state or local communities would be given the flexibility to incorporate a voucher system to supplement their educational choices. However, the creation of that system would first have to go through the legislative process, similar to the one SJR 9 had to go through.

To imply that the legislature is on the verge of passing a voucher system is false, nothing could be further from the truth. They are simply discussing a legal procedural matter that would allow an amendment to the Alaska Constitution on the general election ballot. This is why they removed the referral to the education committee. While the resolution is about education in a roundabout way, its passage would have no direct impact on the educational system in Alaska or Alaska's communities in any way.

However, there is another reason why the resolution will not be headed to the education committee that may not be as obvious. The Senate Education Committee is chaired by Senator Gary Stevens (R-Kodiak). Stevens was the Senate president last year when the Senate was run by the “Senate Bipartisan Working Group,” which put Democrats and moderate Republicans in control. Last year’s election, however, was far more favorable to Republicans and they took charge of the Senate. There is likely a sense amongst the new guard in the Republican-controlled Senate that Stevens could tie up this bill in the Education Committee as a means of retaliation.

The fight between the Senate and the House in the Legislature over the last few years has been epic. It all happened over oil taxes, and with Republican control in both houses after redistricting, the fight over oil taxes will probably come to a conclusion this session.

Parents and students in this state deserve to have more choice in their educational options. No parent should be forced to send their child to a failing school, simply because of where they live. Vouchers are one way that many communities have helped provide this choice. Advocates say a voucher system can improve the budget of the local school district because they generally pay up to 90 percent of what it costs to provide a student an education (depending on the family’s income level). This leaves at least 10 percent of the money for that student in the district’s budget, without the cost of providing that student an education.

There are better options available, however. The charter and optional school models allow for a great deal of flexibility for parents and students and because charter schools are generally on their own for funding extra-curricular activities, they help save money in the school district budget.

Vouchers may not be the best option for providing school choice, but that is not the debate happening right now in Juneau. While many might think there is more going on in SJ9 than simply a resolution to create a ballot measure, that is all it really is. Let’s not put the cart before the horse on this issue—let’s be honest about what is actually happening and then the discussion will be fair.

Mike Dingman was born and raised in Anchorage. He is a former student body president at UAA and has studied, worked and volunteered in Alaska politics since the late ‘90s. His opinions are his own. He can be reached at michaeldingman@gmail.com.

February 27, 2013

Dear Senator Coghill,

Homeschooling laws in Alaska are the best in the nation, in addition, the public's perception and attitude toward homeschoolers is generally positive. There are ideas being proposed in Alaska that some homeschool parents think will benefit them. The idea that homeschoolers should be given a property tax break is the main idea that comes to mind.

The proponents of this idea do not see the 2nd and 3rd order effects of their idea. While on a superficial level, it sounds logical for homeschool parents to obtain a discounted property tax as their children do not attend public schools and get no direct benefit.

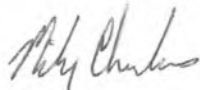
However, we should be aware that once the government "gives" you something, even if it was yours originally, the government attaches strings to that money. The most readily seen problem is how does the government know that you are a homeschooler since Alaska does not require homeschoolers to register with anyone. To reduce the chance of fraud, you will have to prove you are a homeschooler. Now homeschoolers would have to register with the state or borough authorities to protect the public from harm. Once registered, you will be on a list that could be used for all sorts of harmful purposes.

Another negative impact would certainly be from the non-homeschooling community. People would wonder why the homeschool community is so special that they are getting a tax discount for a "choice" that the homeschooler made to be different, thereby driving a wedge between members of the community.

It is essential to leave the best homeschool law in the WORLD as is. We enjoy the freedoms we have in Alaska and must be willing to make sacrifices to keep it that way. A few dollars will not make a huge financial difference, but could, and will in my opinion, make a huge dent in our homeschool freedom.

My background as a federal auditor gives me a perspective that many do not have. I used to audit schools that received indirect federal funding through the universal service fee (telephone tax). If a school, public or private, took one penny from the Universal Service Administrative Company (private company that doled out the universal service fee grants), we could audit the schools records relating to that grant including personnel records etc. In addition, my agency told the school how they could use the service and equipment that was purchased with these very indirect federal funds.

Thank you for considering our opinion.



Mike Chembars



Pat Chembars

Joint Judiciary & Education Informational Presentation on School Choice

School Choice Benefits Everyone

AGENDA

- I. Call Meeting to Order – Sen. John Coghill
- II. Recognition of any Dignitaries- Gov. and Lt. Gov. invited
- III. Purpose of Meeting – Informational Presentation on School Choice by nationally recognized subject matter experts. The Alaska Legislature has under consideration a Resolution to amend our State Constitution to allow state funds to be used for the direct educational benefit of students, and permit these funds to be used by families at the school of their choice, be it public or private.
- IV. Introduction of Committee Members - Senate/House Ed. & Jud.
House Ed. –Rep. Lynn Gattis, Chair; Rep. Lora Reinbold, Vice-Chair
Reps. Gabrielle LeDoux, Dan Saddler, Paul Seaton, Peggy Wilson, & Harriet Drummond
Senate Ed. – Sen. Gary Stevens, Chair; Sen. Mike Dunleavy, Vice-Chair; and Senators Bert Stedman; Charlie Huggins, & Berta Gardner
House Jud. – Rep. Wes Keller, Chair; Rep. Bob Lynn, Vice-Chair; Reps. Neal Foster, Gabrielle LeDoux, Charisse Millett, Lance Pruitt, & Max Gruenberg
Senate Jud. – Sen. John Coghill, Chair; Sen. Lesil McGuire, Vice-Chair; and Senators Fred Dyson, Donny Olson, & Bill Wielechowski
- V. Introduction of Special Guest – Kevin Chavous, national school reform leader. Notably, his advocacy demonstrates that school choice is a bipartisan issue of national concern. He serves as senior advisor to the *American Federation for Children*; board chair of *Democrats for Education Reform*, former chair of the *Black Alliance for Educational*

Options, and past council chairman of *Washington D.C.'s Education Committee*. Mr. Chavous was integral in shaping Washington D.C.'s education partnership with the federal government which led to the first federal scholarship program granting 2,000 low income children the opportunity to attend private schools. In recent years, Mr. Chavous has continued to support charter schools and parental choice programs across the country. He just spearheaded a team working with Louisiana Governor Bobby Jindal to help pass a scholarship bill giving low-income children the chance to attend private schools in New Orleans, a program that was just expanded statewide. *In 2008, Mr. Chavous served on the education policy committee of the Obama for President Campaign.*

VI. Introduction of Guest Speakers – Telephonic

- a) Richard “Dick” Komer - serves as a senior attorney at the Institute for Justice. He litigates school choice cases in both federal and state courts. Several of his current cases involve the constitutionality of allowing school choice programs to include religious schools among the private schools that can participate. He is IJ's resident expert on state Blaine Amendments.

Prior to his work at the Institute, Mr. Komer worked as a career civil rights lawyer for the federal government, working at the Departments of Education and Justice, as well as at the Equal Employment Opportunity Commission, first as a special assistant to the Chairman, Clarence Thomas, and then as Director of the Office of Legal Counsel. He ended his government employment as Deputy Assistant Secretary for Civil Rights at the Department of Education.

- b) Dr. Benjamin Scafidi – Ben Scafidi is Associate Professor of Economics and Director of the Economics of Education Policy Center at Georgia College & State University. He is also the director of education policy at the Georgia Community Foundation, Inc.

Dr. Scafidi's research has focused on education and urban policy. He is chair of the state of Georgia's Charter Commission and a member of the state's Charter Advisory Committee. Previously, Scafidi served as the Education Policy Advisor to Gov. Sonny Perdue, on the staff of both of

Gov. Roy Barnes' Education Reform Study Commissions, and as an expert witness for the state of Georgia in recent school funding litigation. Scafidi received his Ph.D. in economics from the University of Virginia and his bachelor's degree in economics from the University of Notre Dame.

- c) Dr. Patrick Wolf - Dr. Wolf is Professor and 21st Century Endowed Chair in School Choice in the Department of Education Reform at the University of Arkansas College of Education and Health Professions. As principal investigator of the School Choice Demonstration Project he has led the impact evaluation of the DC Opportunity Scholarship Program through a contract with the U.S. Department of Education and overseen a national research team conducting an independent longitudinal multi-method evaluation of the Milwaukee Parental Choice Program. Dr. Wolf's research has been supported by 36 research contracts and grants totaling nearly \$17 million. He has authored, co-authored, or co-edited three books and 89 journal articles, book chapters, and policy reports on school choice, civic values, special education, public management, and campaign finance.

VII. Order of Testimony (20 minutes each) Hold Q&A until end

- ✓ a) Dick Komer, Institute of Justice – the Constitutional question of school choice
- ✓ b) Mr. Kevin Chavous – will address the experience of school choice
- c) Dr. Ben Scafidi – will speak to the fiscal impacts of school choice
- Next → d) Dr. Patrick Wolf – will address common myths of school choice

VIII. Question & Answer

- IX. Adjourn Meeting – Thank the Alaska Policy Forum and the Friedman Foundation for the presentation, Senate Finance Co-Chairs for the use of the committee room, the committee members, and special guests.

Some Fiscal Issues and School Choice

Ben Scafidi

Georgia College & State University

Senior Fellow, Foundation for Educational Choice

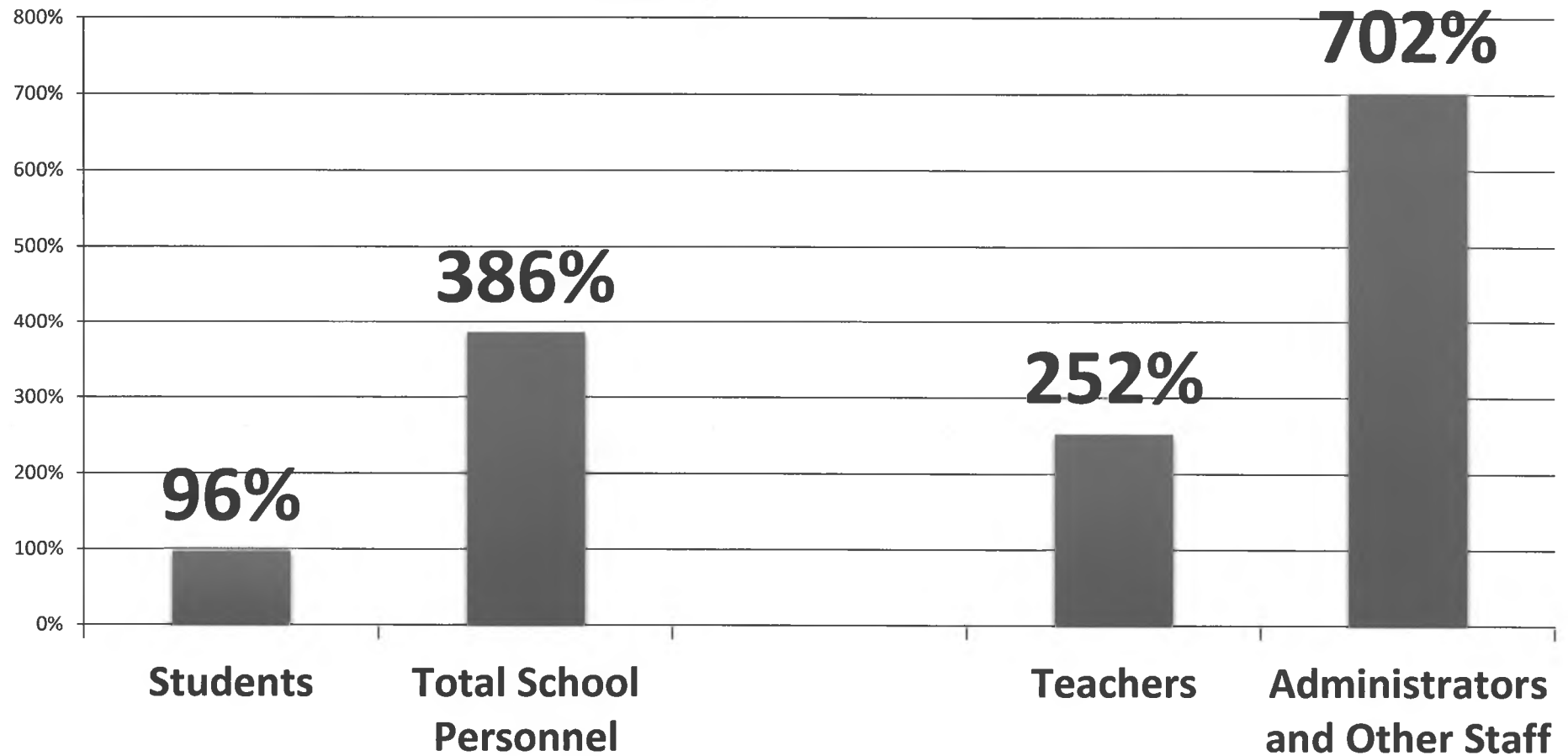
Dr. Benjamin Scafidi



Roadmap

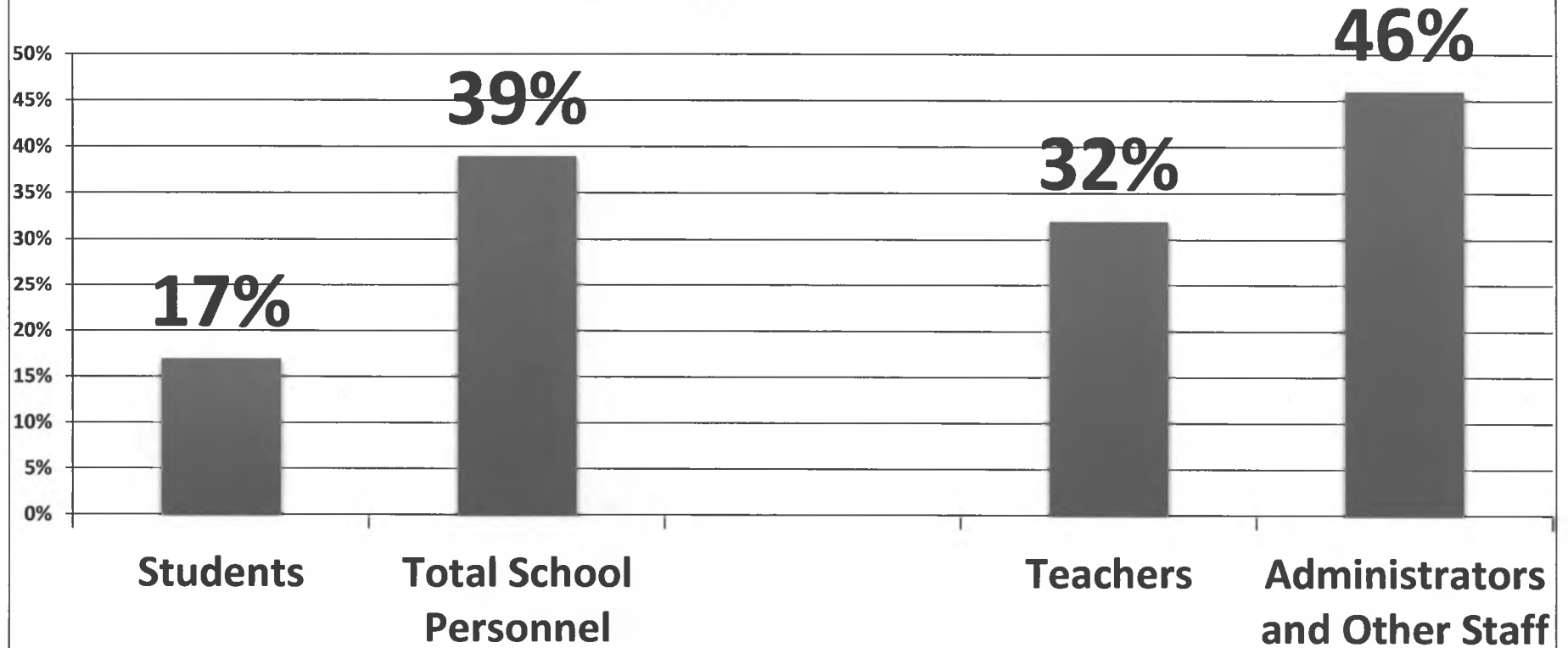
- **Staffing in Public Schools**
 - U.S.
 - Alaska
 - Opportunity Costs
- **Does School Choice Harm State Budgets?**
- **Does School Choice Harm Budgets of Local School Districts?**

Growth in Students and Public School Personnel United States, FY 1950 to FY 2009



Source: U.S. Department of Education, National Center for Education Statistics 1991 Digest of Education Statistics Tables 39 and 84; 2008 Digest of Education Statistics Table 87

Growth in Students and Public School Personnel United States, FY 1992 to FY 2009



Source: U.S. Department of Education, National Center for Education Statistics
1994 Digest of Education Statistics Tables 40 and 85;
2010 Digest of Education Statistics Tables 36 and 87

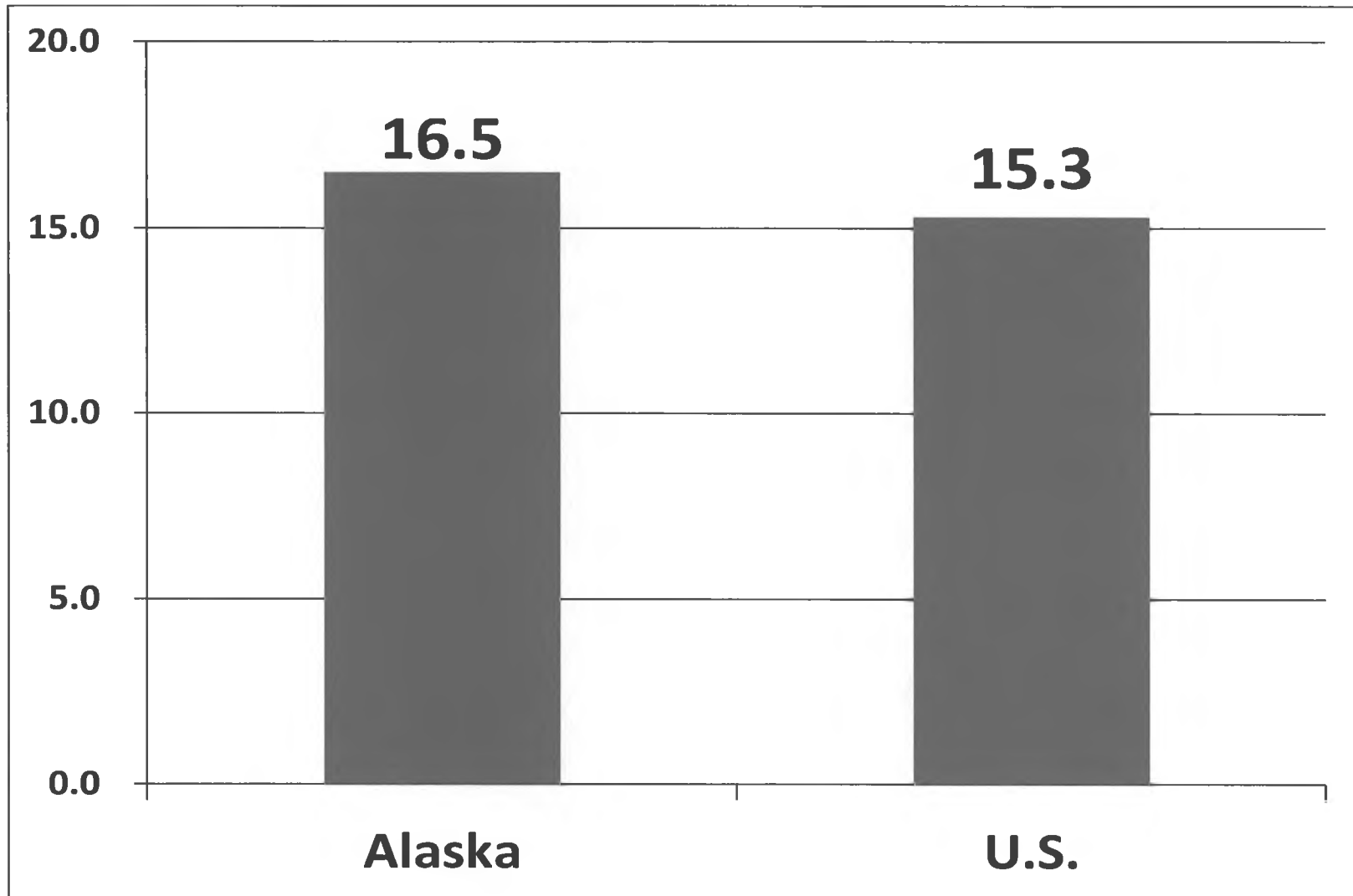
Some Notes About the Public School Hiring Spree

- **Student achievement did not rise between 1970 and 2009.**
- **No evidence the “kids are worse”.**
- **No Child Left Behind did not make us do it.**
- **American public schools are more top-heavy than other wealthy nations.**

What about Alaska?

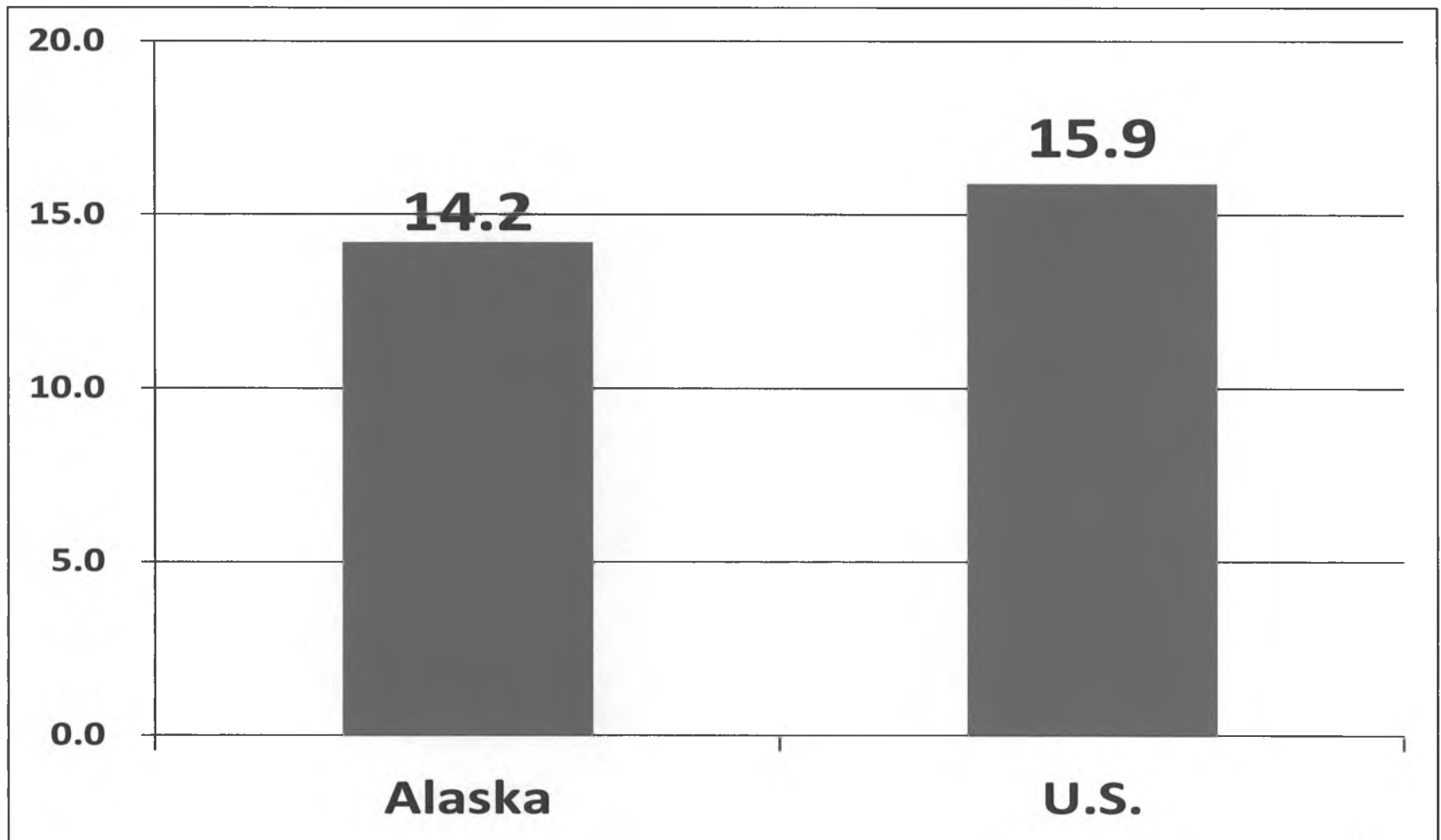
Student-Teacher Ratio

(Source: 2010 Digest of Education Statistics, U.S. Department of Education)



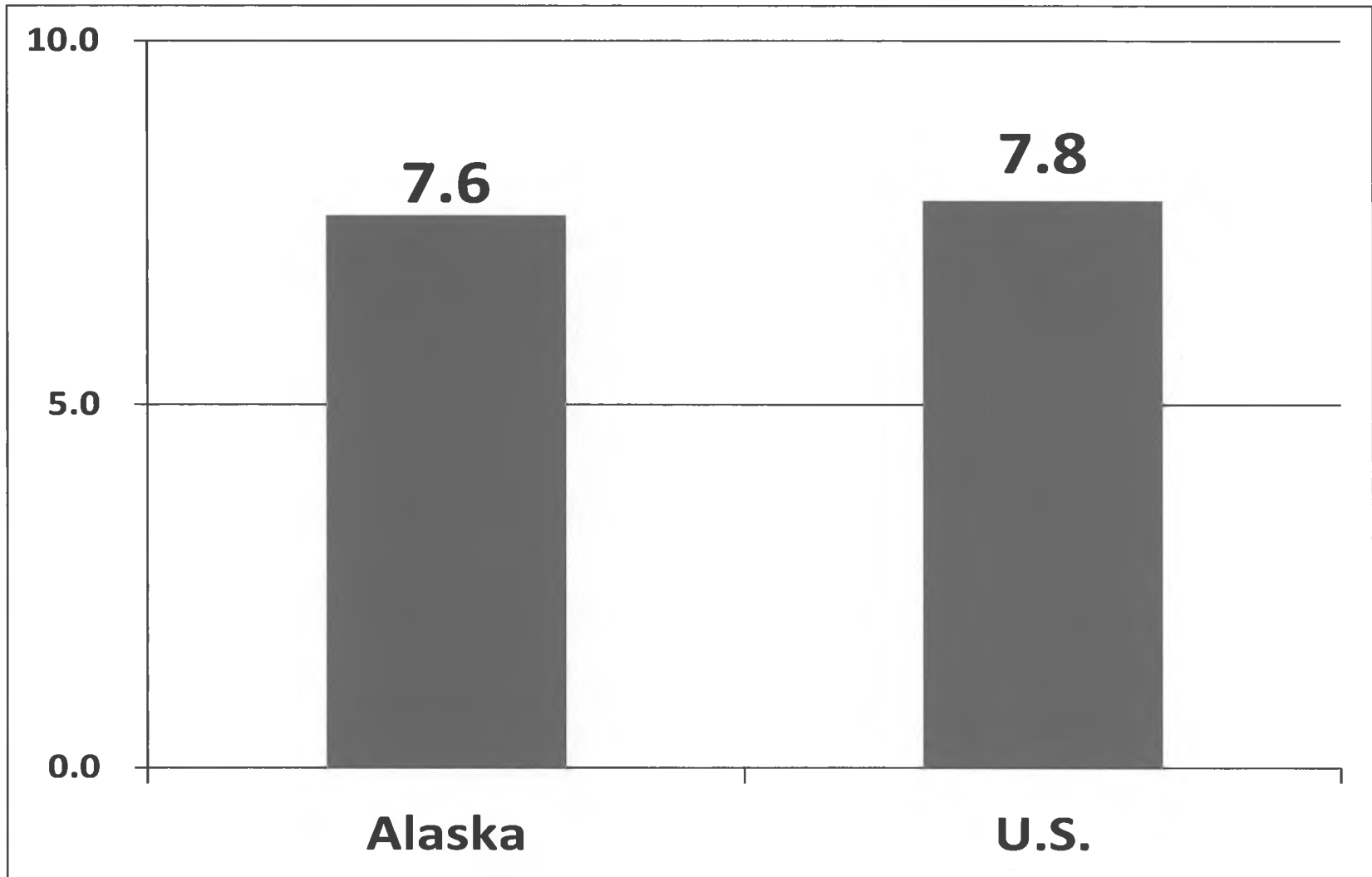
Ratio of Students to Administrators and Other Non-Teaching Staff

(Source: 2010 Digest of Education Statistics, U.S. Department of Education)

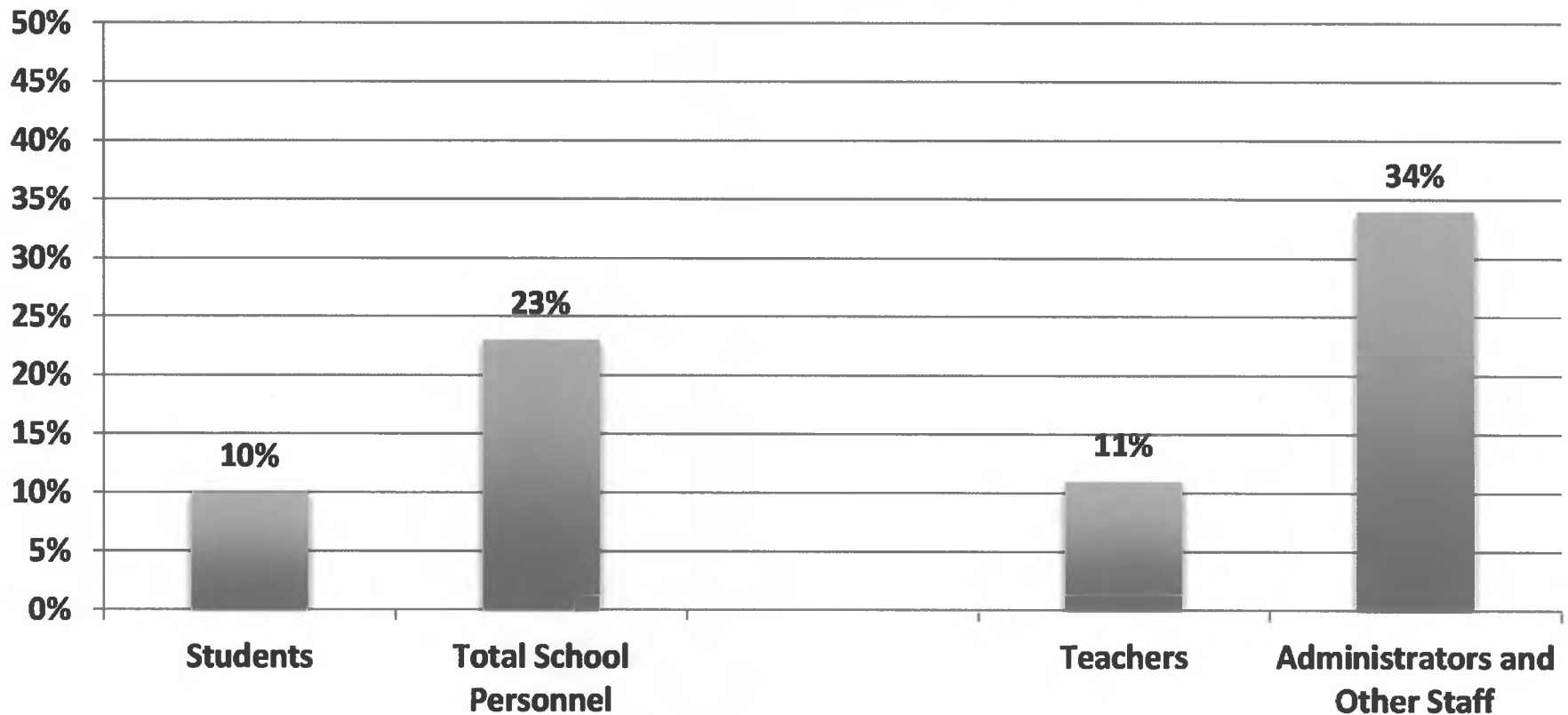


Ratio of Students to Public School Employees

(Source: 2010 Digest of Education Statistics, U.S. Department of Education)



Growth in Students and Public School Personnel Alaska, FY 1992 to FY 2009



Source: U.S. Department of Education, National Center for Education Statistics, 1994 Digest of Education Statistics Tables 40 and 85; 2010 Digest of Education Statistics Tables 36 and 87

**Between FY 1992 and FY 2009,
Alaska Public Schools Hired
Administrators and Other Non-
Teaching Staff at Almost 3.5 Times
the Rate as Their Increases in
Students and Teachers**

What if Alaska had increased non-teaching staff at the same rate as its increase in students?

- **Would have saved Alaska public schools \$66,600,000 per year in annual recurring savings.**
- **What could Alaska public schools do with \$66M per year?**
 - **Spend more than \$12,700 per classroom of 25 students**
 - **Give every Alaska teacher a \$8,400 raise**
 - **Reduce state or local taxes**
 - **Offer children scholarships to private schools, etc.**

Alaska is among 21 “Top-Heavy” States

- **Alaska public schools employ more administrators and other non-teaching staff than teachers.**
- **Alaska public schools employ 1,306 more administrators and other non-teaching staff than teachers (FY 2009).**

Fiscal Effects of School Choice on State and Local Budgets

It is straightforward to design a school choice program that saves the state money ...

Make state funds that follow the child less than average state spending per student.

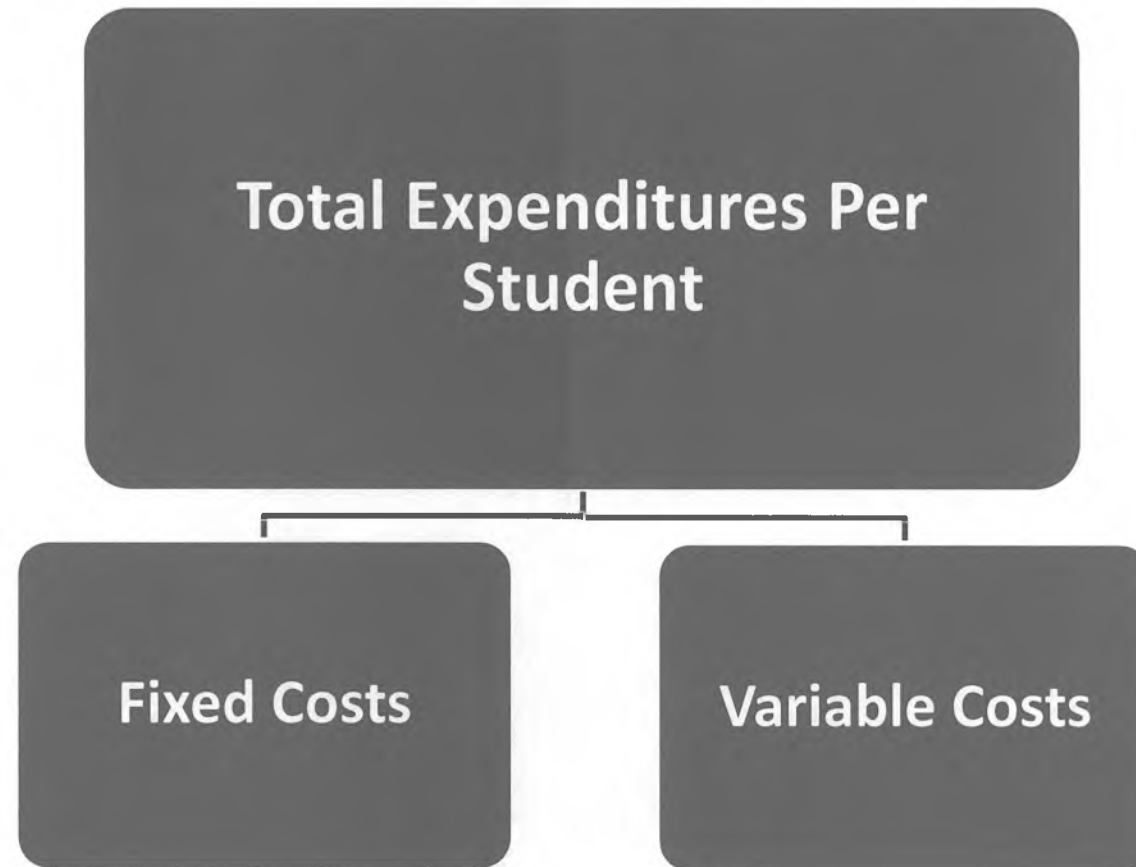
The Fiscal Effects of School Choice Programs on Public School Districts

When some students leave traditional public schools via school choice, are students who remain in public schools harmed?

- They are not harmed academically, and they may benefit academically.
- However, do students who remain in traditional public schools have fewer resources available for their education?

- **The fiscal effect of a given school choice program on local school district budgets is more complicated than it is for state budgets.**
- **Specifically, school choice programs that allow school districts to retain funding for any fixed costs would not harm the fiscal health of public schools or decrease resources available to students who remain in public schools.**

All Costs are Either Fixed or Variable



- **Capital Expenditures**
- **Interest**
- **General Administration**
- **School Administration**
- **Operations & Maintenance**
- **Transportation**
- **"Other" Support Services**
- **Instruction**
- **Student Support**
- **Instructional Staff Support**
- **Enterprise Operations**
- **Food Service**

How to Divine Which of These Costs are Fixed?

- If a significant number of students left a public school district for any reason from one year to the next, is it feasible for the district to reduce the costs of these items commensurate with the decrease in its student population?
- Using 4 school districts in Georgia, I analyzed how they were able to reduce expenses when they lost students for reasons not related to school choice.

Fixed Costs
(in short-run)


- Capital Expenditures
- Interest
- General Administration
- School Administration
- Operations & Maintenance
- Transportation
- "Other" Support

Variable Costs
(in short-run)

- Instruction
- Student Support
- Instructional Staff Support
- Enterprise Operations
- Food Service

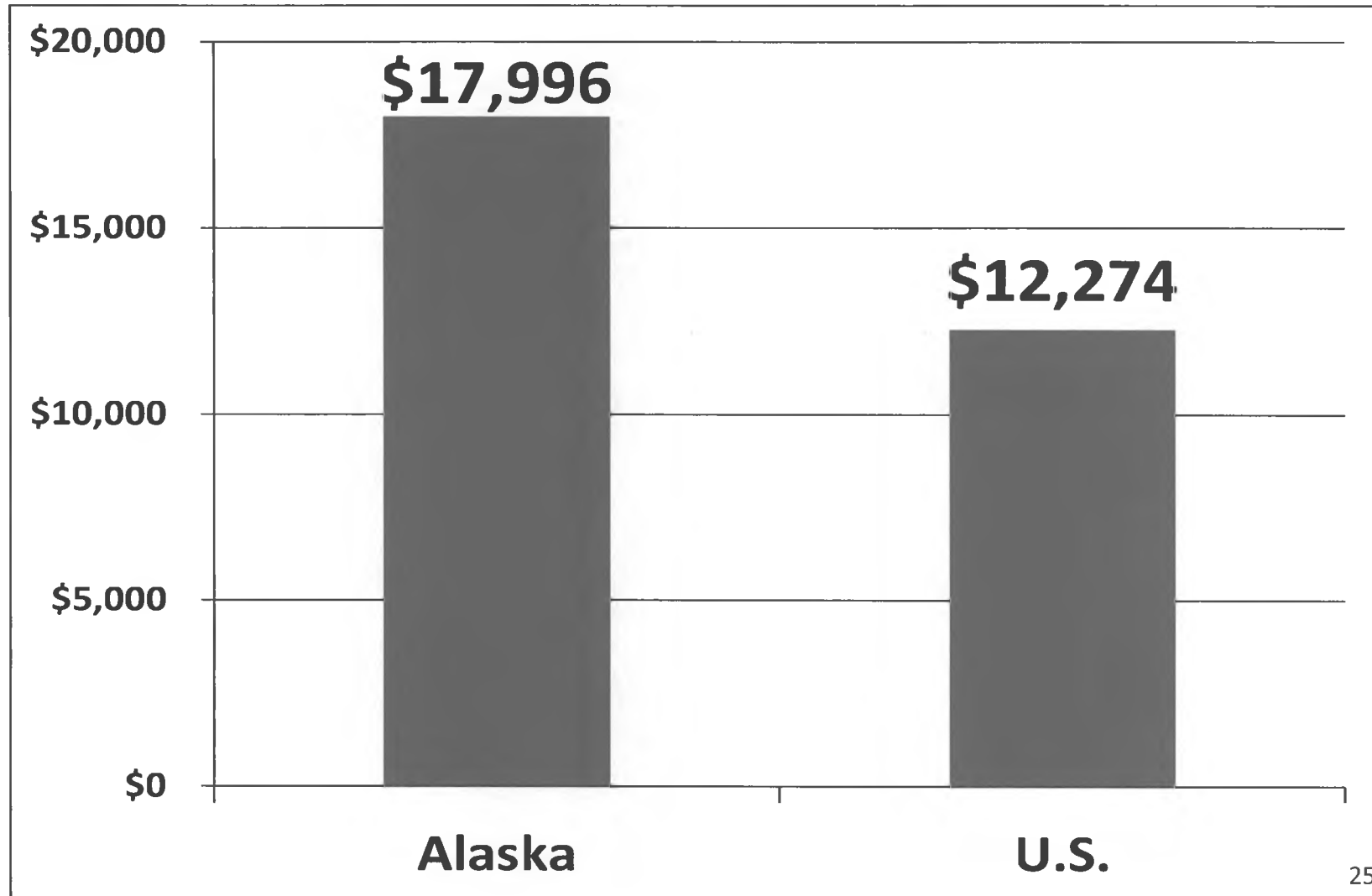
Money that follows the child that is less than this amount improves the finances of school districts--even in the very short-run.

If school districts say they cannot reduce costs when they lose students, then...

- **They are suggesting that all of their costs are fixed. Thus ...**
- **They should not get extra funding when they add students—because all of their costs are fixed.**
- 

Spending Per Student in Fall Enrollment

(Source: 2011 Digest of Education Statistics, U.S. Department of Education)



What about Alaska?

- In FY 2009, Alaska public schools spent an average of \$17,996 per student.
- Using the methodology in my report, 61.9% of this \$17,996 are short-run variable costs (\$11,140).
- The other \$6,856 per student are short-run fixed costs that the state could let school districts retain when they lost students via school choice.
- In the long-run, all costs are variable.

Thus, any school choice program in Alaska where \$11,140 per student or less follows a child to the school of his or her choice improves the fiscal situation of a public school district, on average. And, students who remain in public schools would have more resources devoted to their education.