IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE COUNCIL, On Behalf of THE ALASKA STATE LEGISLATURE,

Plaintiff,

v.

HONORABLE MICHAEL J. DUNLEAVY, In His Official Capacity as Governor of the State of Alaska, KELLY TSHIBAKA, In Her Official Capacity as Commissioner of Administration for the State of Alaska, and MICHAEL JOHNSON, In his Official Capacity as Commissioner of Education and Early Development for the State of Alaska,

Defendants,

and

COALITION FOR EDUCATION EQUITY,

Intervenor.

Case No. 1JU-19-753CI

ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

Before the court are cross motions for summary judgment filed by the parties pursuant to their agreement which was adopted by the court on August 20, 2019. Oral argument was held on October 4, 2019.

This case requires the court to determine whether the Governor of Alaska, acting in his official capacity and through his co-defendants (collectively, "Defendants"), has a duty under the Alaska Constitution to execute funding appropriations passed by the Thirtieth Legislature in 2018 and signed into law by the prior sitting governor in 2018 despite delayed effective dates of July 1, 2019 (the first day of Fiscal Year ("FY") 2020), which is the second forthcoming fiscal year from the date the appropriations were enacted. The Alaska Legislative Counsel ("Plaintiff") and the intervenor the Coalition for Education Equity ("Intervenor") argue that he does. The Defendants argue there is no such obligation because the appropriations violate the state constitution due to their delayed effective dates.

The Plaintiff filed its *Complaint for Declaratory and Injunctive Relief and an Accounting* on July 16, 2019. The complaint alleges that HB 287 was passed by the legislature and signed by

then-Governor Bill Walker on May 4, 2018. HB 287, which in relevant part became SLA 2018, Ch. 6, §§ 4, 5(c), and 5(d), had effective dates of July 1, 2019 under § 8, which is the first day of FY2020. The law appropriates funding for public school districts and for transportation of students as well as one-time additional money for public schools for FY2020. The complaint further alleges that the Defendants failed to execute or disburse the appropriated funds for public school districts for FY2020, which would prevent public schools from operating during the 2019–2020 school year.[1]

The Plaintiff brought three claims for relief, one for each of the three appropriations in SLA 2018, Ch. 6 at issue: § 4, § 5(c), and § 5(d). The claims each allege that the Defendants failed to execute the appropriations pursuant to AS 14.17.610(a) (distribution of state school aid); that this failure infringes on the legislature's ability to maintain a system of public schools under Art. VII, § 1 of the Alaska Constitution; that this failure infringes upon the legislature's power of appropriation under Art. IX, § 13; that this failure violates the separation of powers doctrine; and that this failure violates the governor's duty to faithfully execute the laws under Art. III, § 16.

All parties agree that the case poses purely legal questions and that no issues of material fact exist that impede resolution by summary judgment. The Plaintiff argues that the Defendants bear the burden—and are unable to meet the burden—of demonstrating that the appropriations in SLA 2018, Ch. 6 violate the Alaska Constitution. They argue that the appropriations are entitled to a presumption of constitutionality and thus the Defendants are duty bound to execute them pursuant to statute. The Defendants contend that the appropriations violate the Alaska Constitution and thus the governor has no duty to execute them. They argue that the appropriations at issue are unconstitutional dedications, violate the state's annual appropriation model, violate the legislature's power of appropriation, and violate the governor's veto power.

Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law.[2]

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[1] As part of a stipulation entered into by the parties and approved by this court on July 16, 2019, funding for education for the 2019-2020 school year is being expended during the pendency of this suit.

[2] *Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785-86 (Alaska 2015).

A party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies and doubts are resolved in favor of constitutionality.[3] The Plaintiff seeks relief requiring the Defendants to execute the appropriations at issue, and the Defendants contend that the appropriations violate certain provisions of the Alaska Constitution. Because the Defendants are raising a constitutional challenge to the Ch. 6, SLA 2018 appropriations, they bear the burden to overcome the presumption of the statute's constitutionality.

A court's analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself.[4] The court is not vested with the authority to add missing terms or hypothesize differently worded provisions to reach a particular result.[5] The court instead must look to the plain meaning and purpose of the provision and to the intent of the framers.[6] The court must give effect to every word, phrase, and clause of the Alaska Constitution. Seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the constitution.[7] An argument by either party that similar appropriations as those at issue in this case have or have not been employed previously has no bearing on the court's analysis; what matters is what the Alaska Constitution says.[8]

The Plaintiff and Intervenor assert that the legislature validly enacted the appropriations pursuant to Art. IX, § 13 and Art. VII, § 1 ("Public Education Clause") of the Alaska Constitution. The legislature's power of appropriation under Art. IX, § 13 provides that, "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law. . . ." The Public Education Clause provides that, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State." The clause specifically imposes a duty upon the state legislature, and it confers upon Alaska school age children a right to education.[9] The legislature bears the sole responsibility and authority to maintain the public school system in Alaska.[10] Therefore,

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[3] *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).
[4] *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017).
[5] *Id.*
[6] *Id.*
[7] *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 786 (Alaska 2005).
[8] *Wielechowski*, 403 P.3d at 1152.
[9] *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 799 (Alaska 1975).
[10] *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

both clauses together vest the legislature with the prerogative and responsibility to appropriate money for the purpose of maintaining a system of public education in Alaska.

The legislature may enact an appropriation "for a public purpose,"[11] and a finding by the legislature that an appropriation is for a public purpose is valid unless it is arbitrary and without any reasonable basis in fact.[12] The parties do not dispute that the SLA 2018, Ch. 6 appropriations at issue are rational and for a valid purpose—maintaining public education in Alaska for FY2020. The legislature determined that the passage of the state's operating budget late in the annual legislative session posed a specific problem for the Alaska public education system because it provided insufficient notice to school districts of the extent of their budget for the forthcoming school years. The legislature determined that insufficient notice resulted in budget uncertainty, which in turn diminished the public school system's effectiveness in attracting and retaining qualified educators for each forthcoming school year.

To solve this apparent problem the legislature passed HB 287, which was signed into law as SLA 2018, Ch. 6 early in the legislative session on May 4, 2018.[13] The statute

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[11] Alaska Constitution, Article IX, § 6.

[12] *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717, 721 (Alaska 1962).

[13] SLA 2018, Ch. 6 states in relevant part:

> Sec. 4. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT. The sum of $30,000,000 is appropriated from the general fund to the Department of Education and Early Development to be distributed as grants to school districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) – (D) for the fiscal year ending June 30, 2020.
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> Sec. 5. Fund Capitalization. (a) The amount necessary to fund the total amount for the fiscal year ending June 30, 2019, of state aid calculated under the public school funding formula under AS 14.17.410(b), estimated to be $1,189,677,400, is appropriated from the general fund to the public education fund (AS 14.17.300).
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> (b) The amount necessary, estimated to be $78,184,600, to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2019, is appropriated from the general fund to the public education fund (AS 14.17.300).
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> (c) The amount necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid calculated under the public school funding formula under AS 14.17.410(b) is appropriated from the general fund to the public education fund (AS 14.17.300).
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> (d) The amount necessary to fund transportation of students under AS.14.09.010 for the fiscal year ending June 30, 2020, is appropriated from the general fund to the public education fund (AS 14.17.300).
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> Sec. 6. LAPSE. The appropriations made in sec. 5 of this Act are for the capitalization of a fund and do not lapse.
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> Sec. 7. CONTINGENCY. The appropriations made in secs. 4 and 5(c) and (d) of this Act are contingent on passage by the Thirtieth Alaska State Legislature and enactment into law of a version of Senate Bill 26.

appropriates the money necessary for public school funding and transportation of pupils from the general fund to the public education fund for FY2019.[14] §§ 4, 5(c), and (d) of the statute—the appropriations at issue—appropriate $30 million from the general fund to the department of education and early development as grants and appropriates the money necessary for public school funding and transportation of students for FY2020,[15] with delayed effective dates of July 1, 2019.[16]

The forward-funding of public education intended to be achieved with the delayed effective dates of July 1, 2019 for the May, 2018 appropriations was an effort by the legislature to provide advanced budget notice and certainty to public school districts for the 2019–2020 school year. The legislature's chosen solution to the actual or perceived problem in public education is rational. The Alaska Supreme Court has explained that the statutory structure for funding public education in Alaska is established pursuant to the legislature's mandate and responsibility to maintain a system of public education under the Public Education Clause.[17] Therefore, because the SLA 2018, Ch. 6 forward-funding appropriations were passed for the purpose of addressing an apparent problem with public education funding, the appropriations were enacted in furtherance of fulfilling the legislature's mandate to maintain a system of public education under the Public Education Clause.

Art. IX, § 7 ("Dedicated Funds Clause") of the Alaska Constitution provides that, "the proceeds of any state tax or license shall not be dedicated to any special purpose . . . ." The *raison d'etre* of the Dedicated Funds Clause is to prevent the fiscal evil that results from the diminishment of the governor's and legislature's control over the finances of the state by requiring the legislature to decide funding priorities annually on the merits of the various proposals presented.[18] When the legislature commits a particular public revenue source by appropriation to be spent only for a particular funding object, the legislature violates the

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Sec. 8. Sections 4 and 5(c) and (d) of this Act take effect July 1, 2019.

Sec. 9. Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2018.

[14] SLA 2018, Ch. 6, §§ 5(a), 5(b).

[15] SLA 2018, Ch. 6, §§ 4, 5(c), 5(d).

[16] SLA 2018, Ch. 6, § 8.

[17] *See, State v. Ketchikan Gateway Borough,* 366 P.3d 86, 87–88 (Alaska 2016).

[18] *Sonneman v. Hickel, 836 P.2d 936, 938 (Alaska 1992). See, also, State v. Ketchikan Gateway Borough,* 366 P.3d at 101*; State v. Alex,* 646 P.2d 203, 209-10 (Alaska 1982) (citing ALASKA STATEHOOD COMMITTEE, CONSTITUTIONAL STUDIES pt. IX, 29–30 (1955), and 6 ALASKA CONST.CONV. PROCEED., app. V, at 111).

Dedicated Funds Clause because the funding object is no longer required to compete along with everything else for the right to receive the funds from the revenue source.[19] When the legislature makes a prohibited dedication it diminishes the control over the free and unimpeded disposition of those funds from the legislature in future years despite the continuing power of the legislature to amend or repeal the dedication.

An appropriation or statute can impermissibly dedicate funds in various ways,[20] but only the dedication of a particular source of public revenue ("tax, license, rental, sale, bonus-royalty, royalty, or whatever") is a direct violation of the Dedicated Funds Clause.[21] Our supreme court has explained how the clause was limited by amendment at the Constitutional Convention to allow for the setting up of certain special funds such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund.[22] Thus, the clause in its final form was intended to allow necessary dedication of funds once they were received and placed in the general fund.[23]

This interpretation appears to lead to the conclusion that general treasury revenue—but not a particular revenue source—can be appropriated to a fund for expenditure without further appropriation and without directly violating the Dedicated Funds Clause. By logical extension, forward-funding appropriations with delayed effective dates of the second forthcoming fiscal year from the date they were enacted, like those at issue here, do not directly implicate the Dedicated Funds Clause. The appropriations do not earmark a particular public revenue source, which would impact future revenue, but instead appropriate treasury revenue after it is deposited in the general fund. Therefore, the appropriations at issue do not directly violate the Dedicated Funds Clause.

The Defendants contend that the forward-funding appropriations at issue violate the state's so-called annual appropriation model because the appropriations take effect in the second forthcoming fiscal year (on July 1, 2019) from the date they were enacted (on May 4, 2018). The Defendants point to Art IX, § 12, which requires the governor to submit to the legislature "a budget for the next fiscal year setting forth all proposed expenditures and

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[19] *Sonneman*, 836 P.2d at 940.

[20] *State v. Ketchikan Gateway Borough*, 366 P.3d at 99; *see, generally, Sonneman*, 836 P.2d 936; *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009).

[21] *Alex*, 646 P.2d at 210; *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 392-93 (Alaska 2003).

[22] *Alex*, 646 P.2d at 210.

[23] *Id.*

anticipated income of all departments, offices, and agencies of the State." The Defendants point to Art. IX, § 8, which generally prohibits the State from contracting state debt (with some exceptions). The Defendants point to Art. IX, § 10, which permits the State to borrow money to fulfill appropriations for any fiscal year in anticipation of the collection of revenues for that same year, "but all debt so contracted shall be paid before the end of the next fiscal year." The Defendants also point to Art. IX, § 17(d), which mandates that the amount of money in the general fund available for appropriation at the end of a fiscal year be deposited in the constitutional budget reserve fund until any prior appropriation from that fund is repaid.

The Defendants argue that a requirement that appropriations take effect the following fiscal year from the date they are enacted is either expressly provided for, or implied, by the aforementioned clauses of the Alaska Constitution. However, none of the above clauses—either alone or in conjunction with each other—explicitly mandates this. Nor do the clauses implicitly prohibit a delayed appropriation effective date of the second forthcoming fiscal year from the date of enactment. At most, the clauses, read together, express an aspiration that the legislature appropriate general revenue to be expended during the forthcoming fiscal year. The SLA 2018, Ch. 6 appropriations at issue are presumed constitutional and the court is absolutely restricted from reading into the constitution absent or missing language.[24]

The Dedicated Funds Clause seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources.[25] But as explained above, the appropriations at issue do not directly violate the prohibition on the dedication or earmarking of a particular revenue source, which is the particular fiscal evil for which the clause was adopted.

Moreover, the SLA 2018, Ch. 6 appropriations were 2018 appropriations because they authorized the expenditure of money from the general fund on their July 1, 2019 effective dates without further legislative action.[26] Accordingly, the sitting governor had the opportunity to recommend the alternative expenditure of the appropriated funds by

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[24] *See notes 4 and 5, supra.*

[25] *Sonneman,* 836 P.2d at 940; *Myers,* 68 P.3d at 389.

[26] *See, Hickel v. Cowper,* 874 P.2d 922, 933 (Alaska 1994).

submitting the governor's annual budget under Art. IX, § 12, and had the opportunity to veto the appropriations after they were passed by the legislature in 2018 under Art. II, § 15. Because SLA 2018, Ch. 6 consists of 2018 appropriations, had the governor vetoed the appropriations the legislature would have had to overcome the vetoes by a vote of three-fourths of its membership for them to become law.[27] Therefore, the 2018 appropriations at issue, despite their delayed effective dates of July 1, 2019, are entirely consistent with the Alaska Constitution's annual appropriation model.

It is possible to say that the 2018 appropriations curtailed to a degree the 2019 legislature's control over the appropriated money from the general fund. But the 2019 legislature certainly had the power to amend or repeal the appropriations at issue before their effective dates with a simple majority vote in both houses.[28] Even so, to the extent that the appropriations could be said to undermine the spirit of the state's annual appropriation model embodied in the Dedicated Funds Clause, the model's spirit is outweighed by the legislature's power of appropriation and its specific prerogative and responsibility to maintain the Alaska public education system under the Public Education Clause. This is consistent with the Alaska Supreme Court's reasoning and conclusion in *Myers* where it had to weigh multiple competing values in assessing whether an appropriation indirectly contravened the Dedicated Funds Clause. The *Myers* court ultimately determined that the prohibition on dedicated funds had to yield to the legislature's power to manage and appropriate the state's assets.[29]

While Alaska's constitutional framers sought to protect state control over state revenue and to ensure legislative flexibility over the disposition of revenue sources, and to limit certain powers and to avoid certain pitfalls, it is also apparent that the framers did not intend to prevent the state from experimenting and adapting to changing circumstances.[30] Simply put, the forward-funding appropriations here do not constrict the legislature's power over free disposition of state funds to such a degree that they exceed the legislature's freedom to experiment and adapt to the changing circumstances and hurdles of the day,

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[27] AK CONST. Art. II, § 16.
[28] AK CONST. Art. II, § 14. Although this power is seemingly identical to the legislature's power to amend or repeal a prohibited dedication made in a previous year.
[29] *Myers*, 68 P.3d at 391-94.
[30] *See, State v. Ketchikan Gateway Borough*, 366 P.3d at 94.

particularly in the field of public education. The presumption of constitutionality that attaches to the appropriations at issue has not been rebutted.

This conclusion is necessarily limited to the particular appropriations at issue, which have delayed effective dates of the second fiscal year from the date that they were enacted, were passed for the rational purpose of furthering the legislature's mandate to maintain a system of public education, and do not impact future revenue proceeds from a particular revenue stream. This court is free to express no opinion on the validity of any other appropriation not directly at issue.[31] The appropriations here do no violence to Alaska's annual appropriation model.

The Defendants argue that the appropriations subvert the governor's veto power and the legislature's power of appropriation because if they are upheld, nothing would prevent a politically aligned legislature and governor from passing budgets for many years into the future knowing that so long as future legislatures and governors were not similar in agreement the original budget decisions would stick. Art. IX, § 13 provides in pertinent part, in relation to the legislature's appropriations power, that, "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law." Art. II, § 15 describes the governor's veto power by explaining in part that, "[t]he governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills." The plain language of both clauses does not explicitly or implicitly prohibit the type of appropriations at issue here.

The parties do not dispute that the Thirtieth Legislature in 2018 passed the appropriations in HB 287 pursuant to its power of appropriation and that the governor in 2018 had the opportunity to veto the appropriations but chose not to. Accordingly, the appropriations do not violate either the legislature's power of appropriation or the governor's veto power.

Art. III, § 16 of the Alaska Constitution vests the governor with the responsibility "for the faithful execution of the laws." The Defendants thus have a constitutional obligation to execute the appropriations in SLA 2018, Ch. 6, § 4, § 5(c), and § 5(d), and

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[31] *See, e.g., Myers*, 68 P.3d at 393. The court declines to decide an issue not before it, including in relation to forward-funding for multiple or many years into the future.

therefore must execute them accordingly.[32] To do otherwise infringes upon the legislature's power of appropriation and duty to fund public education under the Public Education Clause.

The court grants the relief requested by the Plaintiff, including a declaratory judgment that the Defendants have violated their duty to faithfully execute the law by failing to execute the forward-funding appropriations at issue according to the statutory funding procedures; an injunction mandating that the Defendants disburse the funds in issue in accordance with the appropriations; an injunction prohibiting the Defendants from impounding or withholding money from the appropriations; and an order requiring the Defendants to provide to the Plaintiff an accounting of all of the expenditures of money pursuant to the appropriations.

Thus, the Plaintiff's and the Intervenor's motions for summary judgment are **GRANTED** and the Defendants' motion for summary judgment is **DENIED.**

DATED this 7th day of November 2019 at Juneau, Alaska.

Daniel Schally
Superior Court Judge

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[32] The Defendants also have a statutory obligation to execute the appropriations pursuant to AS 14.17.610 and AS 14.17.410.