IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

BILL WIELECHOWSKI, RICK HALFORD, AND CLEM TILLION,	)	
Plaintiffs,	)	
v.	)	
	)	Case No.: 3AN-16-08940CI
STATE OF ALASKA AND THE ALASKA PERMANENT FUND CORPORATION,	)	
Defendants.	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants State of Alaska and Alaska Permanent Fund Corporation hereby move for summary judgment dismissing the complaint pursuant to Alaska Civil Rule 56(b). The motion is supported by a memorandum of law, affidavit, and attached exhibits.

Exhibits A-Q sent to Exhibits Room 10.31.16

h day of October, 2016.

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: Kate Vogt
For William Milks
Alaska Bar No. 0411094
Assistant Attorney General

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

10.31.16 EXHIBITS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

BILL WIELECHOWSKI, RICK HALFORD, AND CLEM TILLION, Plaintiffs, v. STATE OF ALASKA AND THE ALASKA PERMANENT FUND CORPORATION, Defendants.	)	Case No.: 3AN-16-08940CI

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

I. Introduction

In June 2016, confronting what the Division of Legislative Finance has characterized as the "gravest fiscal crisis in state history,"[1] Governor Walker issued a line item veto to the operating budget appropriations bill containing the money for this year's permanent fund dividends (PFDs), reducing by half the amount of money to be transferred from the permanent fund earnings reserve account to the dividend fund for the payment of this year's dividends. Although the Legislature had the opportunity to override that veto, it did not vote to do so.

Two and a half months after the veto and less than three weeks before the State issued the 2016 permanent fund checks, the plaintiffs brought this suit against the Alaska Permanent Fund Corporation (APFC) and the State (collectively, "the State") to challenge the lawfulness of the veto. The complaint alleges permanent fund income must be transferred to the dividend fund for the payment of dividends because of a statutory directive, regardless of the annual appropriation decisions made by the Legislature. The plaintiffs make this claim despite the Legislature's consistent practice over the life of the permanent fund of passing an appropriation bill to authorize the movement of permanent fund income to the dividend fund in order to pay dividends, and despite the existence of constitutional provisions that forbid a statutory dedication

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

1 *Alaska Revenue and Expenditures—FY07-17*, Legislative Finance Division Informational Paper 17-1 (July 2016), *available at* http://www.legfin.akleg.gov/InformationalPapers/17-1AlaskaRevenueAndExpendituresFY07-FY17.pdf

of permanent fund income and forbid spending public revenues without an appropriation.

Summary judgment is appropriate for the State because at least three provisions of the Alaska Constitution prevent the transfer of permanent fund income to another fund to be spent without annual appropriation by the Legislature and opportunity for veto: the dedicated funds clause, the appropriations clause, and the veto clause. This case presents a purely legal question whether the 1976 permanent fund amendment authorizes the Legislature to dedicate and spend income from the permanent fund in a way that circumvents the normal constitutional checks and balances on state spending, and if such authorization exists whether the Legislature in fact passed statutes that circumvented those annual controls. Because the constitutional language, constitutional history, legislative practice, and legislative language do not provide for this enormous exception to the ordinary controls on spending state money, the State moves for summary judgment in its favor.

II. Background

A. Overview of the creation of the permanent fund and the dividend program.

In the 1960s and 1970s, the discovery and development of Prudhoe Bay oil reserves led to dramatically increased state revenue from oil leases and the promise of substantial royalty income.[2] But during this time Alaskans were concerned that the

[2] Jack Roderick, *Crude Dreams: A Personal History of Oil & Politics in Alaska* 281, 393 (Epicenter Press 1997) (describing $900 million raised from oil lease sale in 1969; and anticipation of revenue from Prudhoe oil during the 1970s).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

Legislature was able to spend this new state revenue as fast as it arrived.[3] Alaska did not have any formal mechanism to build savings, even though, by all accounts, the money it was receiving from oil revenue was subject to boom and bust cycles. When lawmakers passed legislation seeking to divert a portion of incoming resource royalties to a savings account fund, however, Governor Hammond vetoed the legislation because of the dedicated funds clause, which prohibited dedicating royalty revenues to a specific purpose.[4]

Governor Hammond then sought an amendment to the Alaska Constitution to establish a permanent fund as an exception to the dedicated funds clause. Using the method for amending the Constitution laid out in article XIII, section 1, the proposed amendment needed to first pass a two-thirds vote in each house of the Legislature and then achieve a majority of votes from the public at the next general election. In Governor Hammond's January 15, 1976 transmittal letter to the Legislature, he explained that he was proposing the constitutional amendment because "revenues from our non-renewable resources belong to future generations of Alaskans as well as ourselves. A permanent fund as I have proposed will set aside a modest portion of the proceeds from the exploitation of our non-renewable resources for investment in our future while leaving sufficient revenues for our present needs."[5]

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

3 *Id.* at 302, 310 (describing rapidly expanding state budgets); *accord.* Compl. ¶¶ 17-19.

4 1975 House J. 1644-1645, *available at* Exh. L.

5 1976 House J. 39-40, *available at* Exh. A.

During the legislative process, the proposed amendment was changed in certain ways. For example, the proposed dedication of resource royalties to be deposited in the permanent fund was increased from 10 percent to 25 percent, the proposal to deposit production taxes into the permanent fund was removed, and the proposal to deposit income from the permanent fund into the general fund was modified to also permit a deposit of income as "otherwise provided by law."[6] The proposed amendment was ultimately passed by the Legislature on June 1, 1976 and in November 1976 the voters amended the Alaska Constitution to authorize a limited exception to the prohibition against dedicating state funds to permit a percentage of state resource royalties to be placed in a permanent fund. The permanent fund amendment, article IX, section 15 of the Alaska Constitution, provides as follows:

> At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.[7]

The dedicated funds clause was simultaneously amended to add the words, "except as provided in section 15," to its prohibition on dedicating the proceeds of any state tax or license to a special purpose.[8]

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

6 Each version of the proposed permanent fund amendments are available at Exh. B.

7 Alaska Const. art. IX, § 15 (effective February 21, 1977).

8 Alaska Const. art. IX, § 7 (effective February 21, 1977).

In 1980, the Legislature created the Alaska Permanent Fund Corporation (APFC) to "manage and invest the assets" of the permanent fund.[9] The APFC is a public corporation governed by a board of trustees and staffed by an executive director and other employees.[10] In accordance with article IX, section 15, the permanent fund principal can only be used for income producing investments and cannot be spent by the Legislature. The Legislature has provided general direction regarding the income-producing investments that may be made with permanent fund assets.[11] The APFC Board of Trustees has adopted regulations specifically designating the types of income-producing investments permitted for the investment of fund assets.[12]

The realized income of the permanent fund, meanwhile, is deposited as it accrues into a separate account within the permanent fund known as the "earnings reserve account."[13] Unlike the principal of the permanent fund, the earnings reserve account is subject to appropriation by the Legislature, although (at the direction of the Legislature)

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

9 AS 37.13.040.

10 AS 37.13.050; AS 37.13.100.

11 AS 37.13.145(a) and 37.13.120.

12 15 AAC 137.410-.530.

13 AS 37.13.145(a). The earnings reserve account was established in 1986. Before 1986, the income of the permanent fund was placed in an account within the permanent fund known as the undistributed income account. *See* sec. 2, ch. 28 SLA 1986.

it continues to be invested by APFC subject to the same statutory investment guidelines as the permanent fund.[14]

The first effort to establish a permanent fund dividend program—in 1980—provided for differing dividends to Alaskans based on the length of their Alaska residency.[15] The program was immediately challenged on constitutional grounds and no dividend payments were made pending the court challenge.[16] The Alaska Supreme Court upheld the constitutionality of the program[17] but the United States Supreme Court ruled that the law violated the federal equal protection clause because the State did not have a valid interest that could rationally support the distinction made among people with differing lengths of state residency.[18] The current dividend program was first established in 1982, and has remained law, with minor amendments, to this day.[19] Unlike the invalidated 1980 dividend law, the current dividend pays an equal amount to each eligible Alaskan regardless of length of residency.[20]

Permanent fund dividends are not actually paid by the APFC out of the permanent fund. Instead, income in the permanent fund earnings reserve account is

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

14 AS 37.13.145(a) and 37.13.120; *see Hickel v. Cowper*, 874 P.2d 922, 934 (Alaska 1994).

15 Sec. 2, ch. 21 SLA 1980, *available at* Exh. M.

16 The United States Supreme Court stayed the distribution of dividends pending resolution of an appeal filed with that Court. *Zobel v. Williams,* 449 U.S. 989 (1980).

17 *Williams v. Zobel*, 619 P.2d 448 (Alaska 1980).

18 *Zobel v. Williams,* 457 U.S. 55 (1982).

19 Ch. 81 SLA 1982, *available at* Exh. N.

20 AS 43.23.005.

transferred annually to the "dividend fund"—a separate fund managed by the Department of Revenue as a part of the state treasury.[21] The earliest dividends were paid through appropriations to the Department of Revenue; but since 1984 the Legislature has passed appropriations bills that appropriate money from the earnings reserve account "to the dividend fund ... for the payment of the ... dividend."[22]

Indeed, contrary to the assertion in plaintiffs' complaint, appropriations bills passed by the Legislature have included an appropriation for dividends since before the first dividend payments in 1982, and have continued without exception since then.[23]

After the appropriations bill and transfer of funds, the Department of Revenue calculates and pays dividends according to the amount of money in the dividend fund which includes the amount of permanent fund income transferred into it, "unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend

---

21 AS 43.23.045(a), (d); AS 37.13.145(b)

22 *See* CCS HB 256, sec. 10 (2016); CCS HB 72, sec. 11 (2015); CCS HB 266, sec. 12 (2014); CCS HB 65, sec. 10 (2013); CCS HB 284, sec. 10 (2012); CCS HB 108, sec. 10 (2011); CCS HB 300, sec. 12 (2010); CCS HB 81, sec. 9 (2009); CCS HB 310, sec. 9 (2008); CCS HB 95 (Corrected), sec. 10 (2007); CCS HB 365 (Corrected), sec. 10 (2006); CCS HB 67, sec. 11(2005); CCS HB 375, sec. 13 (2004); CCS SSHB 75, sec. 12 (2003); CCS HB 403, sec. 10 (2002); CCS HB 103, sec. 8 (2001); CCS HB 312, sec. 6 (2000); CCS HB 50, sec. 2 (1999); CCS HB 325, sec. 3 (1998); CCS HB 75, sec. 4 (1997); CCS HB 412, sec. 5 (1996); CCS HB 100, sec. 16 (1995); CCS HB 370, sec. 12 (1994); CCS HB 55, sec. 15 (1993); CCS HB 405, sec. 13 (1992); CCS HB 75, sec. 13 (1991); CCS HB 500, sec. 12 (1990); CCS HB 100, sec. 13 (1989); CCS SB 432, sec.13 (1988); CCS HB 75, sec. 13 (1987); CCS HB 500, sec. 13 (1986); CCS HB 60, sec. 14 (1985); CCS HB 511, sec.15 (1984); CCS HB 105, sec. 32 (1983); SCS HB 148, sec. 18 (1982); FCCS HB 297, sec. 50 (1981), SCS CSHB 1002, sec 52 (1980). These sections from the appropriations bills are compiled at Exh. C.

23 *See id. Contra* Compl. ¶ 44.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

fund," the number of eligible individuals, and other factors.[24] The amount of the dividend has varied over the years from $331.29 to $2,072.00.[25]

B. The 2016 dividend.

Consistent with the historical practice, fiscal year 2017's operating budget included an appropriation for permanent fund dividends that authorized the transfer of money from the earnings reserve account into the dividend fund for the purpose of paying dividends.[26] The appropriation bill initially passed by the Legislature provided for an appropriation estimated to be $1,362,000,000 for the payment of permanent fund dividends and for administrative and associated costs.[27] Because of the state's fiscal problems, the possibility that the Governor would veto a portion of the appropriation for permanent fund dividends was a subject of some speculation by the press and legislators.[28]

---

24 AS 43.23.025.

25 Summary of Dividend Applications & Payments, Alaska Department of Revenue Permanent Fund Division, http://pfd.alaska.gov/Division-Info/Summary-of-Applications-and-Payments (last visited October 26, 2016).

26 HB 256, Section 10 (2016), *available at* Exh. D.

27 *Id.*

28 *See, e.g.*, Lisa Phu, *With budget at stake, Gov. Walker contemplates vetoing PFD checks*, Juneau Empire (June 23, 2016), available at http://juneauempire.com/local/2016-06-23/budget-stake-gov-walker-contemplates-vetoing-pfd-checks ; Charles Wohlforth, *If the House won't cut the PFD, Walker should do it with his veto pen*, Alaska Dispatch News (June 15, 2016), http://www.adn.com/voices/commentary/2016/06/15/if-the-house-wont-cut-the-pfd-walker-should-do-it-with-his-veto-pen/ ; Elwood Brehmer, *Walker left with decisions after House committee rejects using Fund earnings*, Alaska Journal (June 17, 2016), http://www.alaskajournal.com/2016-06-17/walker-left-decisions-after-house-committee-rejects-using-fund-earnings#.WAUmtfkrK70 .

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

On June 28, 2016, the Governor exercised his veto power[29] to reduce the appropriation to $695,650,000. After veto, the budget bill provides as follows:

> The amount ~~authorized under AS 37.13.145(b)~~ for transfer by the Alaska Permanent Fund Corporation on June 30, 2016, ~~estimated~~ to be ~~$1,362,000,000~~ **$695,650,000**, is appropriated from the earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the payment of permanent fund dividends and for administrative and associated costs for the fiscal year ending June 30, 2017.[30]

The Legislature met in a special session from July 11-18, 2016 but did not vote to override[31] the veto reducing the appropriation for dividends.

On September 16, 2016, three plaintiffs filed suit against the State and APFC alleging that the dividend for 2016 was improperly calculated because it was based on the Governor's veto reduction to the permanent fund dividend appropriation. The plaintiffs allege that APFC is statutorily required to transfer to the dividend fund the portion of permanent fund earnings that is calculated according to two statutes—AS 37.13.140 and AS 37.13.145(b)—rather than the sum appropriated in the operating budget after the Governor's veto.[32] And they ask this Court to order that these funds be transferred.[33] They do not, however, ask for an order requiring supplemental dividend money be paid.

---

29 Alaska Const. art. II, § 15.

30 HB 256, Section 10 (2016), *available at* Exh. D.

31 *See* Alaska Const. art. II, § 16.

32 Compl. ¶ 72.

33 Compl. ¶ 23.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

III. Standard for granting summary judgment

The meaning of constitutional provisions, the legality of the Governor's veto and the necessity of appropriations for the dividend are purely legal questions, which summary judgment is an efficient means for resolving. "Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law."[34] The parties appear to agree that this case does not involve disputes of material fact and is therefore ripe for a summary judgment decision.

In deciding the questions of law, Alaska courts adopt the rule of law "most persuasive in light of precedent, reason, and policy."[35] Constitutional provisions that potentially conflict must be harmonized if possible.[36] Likewise, Courts should "if possible construe statutes so as to avoid the danger of unconstitutionality."[37] And when interpreting the Constitution, Courts look at "the meaning that the voters would have placed on its provisions" and give "deference to the intent of the people."[38]

IV. Argument

The permanent fund amendment and statutorily-enacted dividend program did not create an entitlement to the unappropriated transfer and spending of permanent fund

---

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

35 *State v. Schmidt*, 323 P.3d 647, 655 (Alaska 2014) (citations omitted).

36 *Id.* at 656.

37 *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (citing *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978)).

38 *Hickel v. Halford*, 872 P.2d 171, 177 (Alaska 1994) (quoting *Division of Elections v. Johnstone*, 669 P.3d 537, 539 (Alaska 1983) and *Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 169 (Alaska 1991)).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

income because such automatic and unappropriated spending of state money would violate the Alaska Constitution, and both constitutional amendments and statutes should be interpreted in harmony with the Constitution if possible. Multiple provisions of the Alaska Constitution provide checks and balances governing the spending of state money designed to ensure that each Legislature controls the purse strings for a given year, with input from the Governor. In particular, the appropriations clause provides that public revenues are spent through an annual appropriation process in which the Legislature has the constitutional authority to appropriate funds.[39] The veto clause gives the Governor the constitutional authority to reduce or eliminate an appropriation, subject to override by the Legislature.[40] Money cannot be withdrawn from the state treasury except through this appropriation process.[41] And the dedicated funds clause prevents one Legislature from tying the hands of future Legislatures, by prohibiting the dedication of the proceeds of state taxes or licenses to any special purpose.[42]

Nonetheless, the plaintiffs contend that the dividend program is an exception to each of these core constitutional requirements, arguing that even though dividends have historically been appropriated by the Legislature this was never necessary because the Legislature and the Governor have no annual control over the payment of dividends.[43] According to the plaintiffs, this is because the permanent fund constitutional

---

39 Alaska Const. art. IX, § 13.

40 Alaska Const. art. II, § 15.

41 Alaska Const. art. IX, § 13.

42 Alaska Const. art. IX, § 7.

43 Compl. ¶¶ 66, 68, 76.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

amendment permits a statute alone to require that permanent fund income be automatically transferred to the dividend fund and spent for dividend payments without intervening appropriations.[44] But the constitutional amendment establishing the permanent fund does not even mention a dividend program let alone authorize automatic spending of permanent fund income on dividends.

Instead, the permanent fund amendment carved out an exemption from the dedicated funds provision of the Constitution (and only the dedicated funds provision) for the permanent fund in order to allow the dedication of money from the state's royalty payments. But, as befits an amendment creating a savings account fund, the permanent fund amendment did not contain any exemption from other constitutional provisions governing annual *spending*: the appropriations or veto clauses. The dividend, in contrast to the permanent fund itself, is a statutory program created several years after the permanent fund amendment by a Legislature without authority to ignore the constitutional mandates of even the dedicated funds clause, let alone the appropriations and veto clauses. This understanding of the dividend is supported by the plain language of the Constitution, the public understanding of the amendment they voted on, and the legislative history of the amendment.

Moreover, even if the permanent fund amendment could be read to both authorize a statutory dedication of permanent fund income and authorize spending of permanent fund income outside of the annual appropriation process—which it cannot—

---

[44] Compl. ¶ 68.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

it is clear from the dividend statutes and more than thirty years of appropriations bills that the Legislature has not authorized this practice. Instead, the Legislature appropriates permanent fund income to be transferred to the dividend fund to pay dividends—like all other spending of public revenues.

In sum, the plaintiffs' claims fail because the permanent fund amendment did not create either a sweeping but unadvertised exception to the dedicated funds clause or any exceptions to the appropriations and veto clauses; and therefore, dividends can only be paid according to a legislative appropriation.

A. The plaintiffs' interpretation of the dividend statutes would violate the Alaska Constitution's framework for spending state money.

It is "a well-established rule of statutory construction that courts should if possible construe statutes so as to avoid the danger of unconstitutionality. . . . [For] the legislature, like the courts, is pledged to support the state and federal constitutions and . . . the courts, therefore, should presume that the legislature sought to act within constitutional limits."[45] In Alaska, the spending of state money is governed by a system of checks and balances between the legislative and executive branch set out in the Alaska Constitution. The Alaska Supreme Court has stated that the Legislature and the Governor have a "joint responsibility ... to determine the State's spending priorities on an annual basis."[46] Because the plaintiffs' interpretation of the dividend fund statutes as mandating automatic spending for the dividend without appropriation or chance for

---

45 *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978)).

46 *State v. Ketchikan Gateway Borough,* 366 P.3d 86, 93 (Alaska 2016).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

gubernatorial veto conflicts with the Constitution, the Court should reject that interpretation.

Under Alaska's Constitution, the Governor is required to submit an annual budget setting forth proposed appropriations for the next fiscal year.[47] The Legislature, in turn, has the annual responsibility to determine how much to spend and on what, and then to pass appropriations bills authorizing that spending.[48] Under the appropriations clause, "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law."[49] And appropriation bills are constitutionally recognized as different from other bills—such as the one creating the dividend fund—which produce statutory law.[50] After the Legislature passes an appropriations bill, the Governor has the authority to strike or reduce each appropriation item,[51] and the Legislature may override an appropriation veto with a three-fourths vote.[52] The Legislature and Governor maintain annual control over the budget in part because there is no requirement that appropriations satisfy all statutory promises: the continued

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

47 Alaska Const. art. IX, § 12.

48 Alaska Const. art. IX, § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations at the end of the period of time specified by law shall be void.").

49 *Id.*

50 Alaska Const. art. II, § 13. *See also Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001) ("The confinement clause prevents the legislature from enacting substantive policy outside the public eye.")

51 Alaska Const. art. II, § 15.

52 Alaska Const. art. II, § 16,

existence of a statutory entitlement program does not mean that the legislative and executive branches need to fund or fully fund the program.[53] According to the Alaska Supreme Court, "the appropriations clause defines how the legislature may spend state money after it has entered state coffers, and the governor's veto clause provides an executive check on the legislature's spending plan."[54]

These constitutional provisions should be given their plain meaning: they are commonplace in state constitutions in the United States and generated little debate at the constitutional convention when they were adopted, although the delegates did choose to create "an especially strong form of the item veto, allowing the governor to wield great influence during the budgetary process" as compared to the President and governors in other states.[55] Delegate Rivers explained that this special veto power was "a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive."[56] The Governor's item veto power originated as a measure to prevent legislators from "logrolling" when the Legislature enacts appropriation bills—i.e., cobbling together provisions supported by various legislators

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

53 *Knowles*, 21 P.3d at 378 (recognizing that "legislatures do not have to fund or fully fund any program (except possibly constitutionally mandated programs"); *Simpson v. Murkowski*, 129 P.3d 435, 447 (Alaska 2006) (affirming grant of summary judgment regarding the legality of governor's veto of longevity program funding).

54 *Ketchikan Gateway Borough,* 366 P.3d at 101-02.

55 Nicholas Passarello, *The Item Veto and the Threat of Appropriations Bundling in Alaska*, 30 Alaska L. Rev. 125, 133 (2013).

56 Proceedings of the Alaska Constitutional Convention ("PACC") Day 55 (Jan. 16, 1956).

in order to create a majority—and to give the Governor the ability to limit state expenditures.[57]

In addition to those commonplace constitutional provisions, Alaska's dedicated fund clause presents an additional—and more unusual—safeguard to preserve the Legislature's and Governor's annual powers over the purse.[58] The dedicated funds clause prohibits dedicating "the proceeds of any state tax or license" to any special purpose.[59] The delegates to the constitutional convention decided to include the dedicated funds prohibition in the Constitution after learning that dedicated funds were a problem "bedeviling" other states and depriving state legislatures of control over state finances.[60]

As the Alaska Supreme Court noted recently, "[t]hrough the dedicated funds clause, the delegates sought to avoid the evils of earmarking, which the delegates feared would 'curtail[] the exercise of budgetary controls and simply [would] amount[] to an

---

57 *Alaska Legislative Council v. Knowles*, 21 P.3d at 367, 371 n.33 (Alaska 2001).

58 Alaska Const. art. IX, § 7. At the time of statehood, only the Georgia Constitution of 1945 had a dedicated funds prohibition. *See* Georgia Constitution 1945, art. VII, § IX, ¶ IV ("[N]o appropriation shall allocate to any object, the proceeds of any particular tax or fund or a part or percentage thereof."); *Myers v. Alaska Housing Fin. Corp.*, 68 P.3d 386, 389 n.11 (Alaska 2003) (identifying Georgia's status as only other state with similar provision).

59 Alaska Const. art. IX, § 7.

60 3 Alaska Statehood Commission, *Constitutional Studies* pt. IX "State Finance" at 27 (November 1955), *available at* Exh. E. The briefing provided to the delegates cited stark examples of Colorado having approximately 90 percent of tax collections earmarked for special funds and Texas having only 15 percent of its tax collections unrestricted. *Id.* at 28.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

abdication of legislative responsibility.' The delegates sought to protect State control over state revenue and to ensure legislative flexibility."[61]

Against this constitutional backdrop, the plaintiffs' arguments about the meaning of the dividend statutes are unpersuasive. Interpreting the dividend statutes to mandate the automatic spending of state revenue on the dividend would violate the letter as well as the spirit of the appropriations, veto, and dedicated funds clauses by removing from the Legislature's annual control the spending of state revenue, and impermissibly eliminating the Governor's ability to exercise budgetary controls. [62] While this would be impermissible at any dollar figure, the disabling impact of stripping annual governmental control over the dividend payments is particularly apparent in the current budget climate where the dividend fund payment authorized by statute exceeds the amount of all other revenue coming into the state. Specifically, for fiscal year 2015 the state's unrestricted general fund revenues were $2.3 billion, while state revenues from permanent fund income were $2.9 billion; in fiscal year 2016 unrestricted general fund revenues are projected to be $1.3 billion, while state revenues from the permanent fund

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

61 *Ketchikan Gateway Borough*, 366 P.3d at 101.

62 The plaintiffs' claim that permanent fund dividends must be paid pursuant only to the dividend statutes, without requiring any appropriations, would also violate Alaska Const. article IX, § 12—providing for a budget "setting forth all proposed expenditures..." for the next fiscal year; and "a general appropriation bill to authorize the proposed expenditures."

were $2.2 billion.[63] Nor does the situation look rosier for fiscal year 2017, in which unrestricted general fund revenues are projected to fall to $1.2 billion.[64] Given these facts, it is no exaggeration to note that depriving the Legislature of annual control over the dividend would provide a court-mandated abdication of budgetary controls. Accordingly, the plaintiffs' interpretation of the dividend statutes should be rejected.

B. Article IX, section 15 of the Alaska Constitution does not exempt permanent fund income from the constitutional prohibition against dedicated funds or permit its expenditure without appropriation.

The plaintiffs argue that the permanent fund amendment exempted permanent fund income from the constitutional provisions identified above. But the permanent fund amendment did not explicitly authorize the dedication of permanent fund income for expenditure on dividends or any other purpose in a manner that would otherwise violate these core constitutional provisions governing the expenditure of public funds. Therefore, permanent fund income cannot be dedicated and it must be spent in accordance with the appropriations process.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

63 Alaska Department of Revenue Tax Division, *Revenue Sources Book* at 1 (Fall 2015), *available at* http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1240r; Alaska Department of Revenue, *Revenue Sources Book* at 1 (Spring 2016), *available at* http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1255r; Alaska Permanent Fund Corporation, *Annual Report* (2016), *available at* http://www.apfc.org/_amiReportsArchive/2016_09_AR.pdf. Permanent fund income was $2.9 billion in fiscal year 2013 and $3.5 billion in 2014. *Id.*

64 *Id.*

1. The permanent fund amendment created a single exception to the dedicated funds clause—for the permanent fund.

The permanent fund amendment effected two related changes to the Alaska Constitution. First, it added section 15 to Article IX, creating the permanent fund and providing that at least twenty-five percent of specified natural resource revenues would be dedicated to the fund.[65] Second, to avoid contradiction in the Constitution, it amended the dedicated fund prohibition to create an exception for the permanent fund. After amendment, Article IX, section 7 read, in relevant part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article…"[66]

According to the plaintiffs, section 15 not only created a dedicated fund in the form of the permanent fund, but also permits the dedication of income from the fund through language inserted into the final sentence: "All income from the permanent fund shall be deposited in the general fund *unless otherwise provided by law*."[67] The plaintiffs read the phrase "unless otherwise provided by law" expansively, as permitting the Legislature to enact statutes authorizing the expenditure of fund income in any way it wishes, including the creation of additional dedicated funds, unspecified in section 15.

But the amendment of the dedicated fund prohibition is on its face limited to dedications provided for in section 15, not potential dedications that might or might not be later "provided by law." The only dedicated fund actually *provided for* in section 15

---

65 Alaska Const. art. IX, § 15.

66 Alaska Const. art. IX, § 7.

67 Alaska Const. art. IX, § 15 (emphasis added).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

is the permanent fund; and the plaintiffs' attempt to shoehorn other unmentioned dedications into the scope of section 7's exception is contrary to "precedent, reason, and policy."[68] After all, if the Legislature had wanted to exempt permanent fund income from the dedicated funds clause, it could have done so clearly and easily by drafting the final sentence of the resolution as follows: "Income from the permanent fund shall be deposited in the general fund or may be dedicated to a particular purpose."[69] But it did not do this. Accordingly, the section 7 exception extends only to the permanent fund itself and the only options available to the Legislature for the income are deposit in the general fund or deposit elsewhere in accordance with the law.

Alaska precedent also compels this conclusion. The Alaska Supreme Court has held that the dedicated funds "prohibition is meant to apply broadly."[70] Looking to the state constitutional convention, the Court has emphasized the importance the delegates placed on "preserv[ing] control of and responsibility for state spending in the legislature and the governor."[71] The purpose of the dedicated funds prohibition was to ensure "that the legislature would be required to decide funding priorities annually on the merits of

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

68 *See State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016) (considering "[q]uestions of constitutional and statutory interpretation ... [the Court] adopt[s] the 'rule of law that is most persuasive in light of precedent, reason, and policy.'")

69 *See also*, Alaska Const. art. IX, § 17(a) providing in part: "...Section 7 of this article does not apply to deposits made to the fund under this subsection."

70 *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1170 (Alaska 2009); s*ee also*, *State v. Alex*, 646 P.2d 203 (Alaska 1982) (holding that salmon assessment violated the dedicated funds prohibition).

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

the various proposals presented."[72] To protect this bedrock principle of Alaska's fiscal landscape, the Supreme Court has broadly construed the phrase "any state tax or license" to include an assessment on salmon sales[73] and income derived from state land.[74]

If precedent commands that the dedicated funds prohibition be interpreted broadly, it follows that any exception to that prohibition should be construed narrowly to effectuate the goals of the delegates and preserve maximum annual flexibility in state spending. But the plaintiffs would have this court read into an ambiguous subordinate clause a sweeping exception to this longstanding constitutional rule, one that would permit a substantial share of current state revenue to be dedicated in a manner directly contrary to the intentions of the framers of the state constitution. This Court should decline this invitation.

The Alaska Supreme Court directs that "[c]onstitutional provisions that potentially conflict must be harmonized if possible."[75] Here, the greatest harmony can be achieved by limiting the exception in Article IX, section 7 to the dedicated fund that is expressly provided for in section 15—the permanent fund; and holding that the phrase "unless otherwise provided by law" simply permits the Legislature to provide that permanent fund income may be deposited into state accounts other than the general

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

72 *Id.* at 938–39.

73 *State v. Alex*, 646 P.2d 203 (Alaska 1982).

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

75 *State v. Schmidt*, 323 P.3d 647, 656 (Alaska 2014).

fund. Such a limitation preserves the integrity of the dedicated fund prohibition and simultaneously gives the Legislature maximum flexibility on an annual basis in determining how best to utilize permanent fund income.

In fact, this is precisely how the Alaska Supreme Court interpreted that language in *Hickel v. Cowper* when it described the permanent fund earnings reserve account:

> This fund is established as a separate account within the permanent fund under the authority of the last sentence of Article IX, § 15 of the Alaska Constitution: "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." *AS 37.13.145(a) provides otherwise*: "The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received."[76]

Thus, in *Hickel* the Supreme Court recognized that the final clause of section 15 authorized the deposit of permanent fund income into a separate earnings account in the permanent fund rather than into the general fund. But nothing in section 15 or the amended section 7 clearly permits dedication of state revenue outside of the permanent fund; and this Court should not strain to find such authorization in the face of longstanding precedent directing that the dedicated fund prohibition should be read broadly.

2. The phrase "unless otherwise provided by law" did not convey to voters that the permanent fund amendment would accomplish a dramatic departure from the established constitutional rules against dedicated funds and against spending public revenues without an appropriation.

The voting public was not put on notice of the permanent fund amendment's potential to undermine the dedicated funds and spending provisions of the Constitution

---

[76] 874 P.2d 922, 934 (Alaska 1994) (emphasis added).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

with respect to fund income, a consideration which alone mandates rejecting the plaintiffs' interpretation of the amendment. When interpreting constitutional amendments, the court "must 'look to the meaning that the voters would have placed on its provisions.'"[77] In so doing, the Court will focus on the "plain ordinary meaning" that the voters would have given the terms of the amendment rather than construing it "abstrusely."[78] The Court will "look to any published arguments made in support or opposition to determine what meaning voters may have attached to the initiative."[79] Here, neither the language of the amendment nor the public debate over the creation of the permanent fund informed Alaskans that the permanent fund itself was not the only exception to the dedicated fund prohibition contemplated by the measure before them.

The permanent fund amendment clearly authorizes a dedication of at least twenty-five percent of resource royalties to be placed in a "permanent fund." But the amendment says nothing about dividends. In fact, the amendment states very little about how the income generated by the permanent fund may be spent. Instead, it simply states: "All income will be deposited in the general fund unless otherwise provided by law." That statement did not inform the voters in a "plain ordinary" manner that the amendment would authorize dedicating permanent fund income to be spent in a way that would violate the prohibition against dedication of revenues, much less that it

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

77 *Hickel v. Halford*, 872 P.2d 171, 176 (Alaska 1994) (quoting *Division of Elections v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983)).

78 *Id.* at 177.

79 *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 193 (Alaska 2007).

would permit the circumvention of the appropriations and veto clauses of the Constitution as the plaintiffs appear to believe.[80]

Certainly the language is vague, but that vagueness guides this Court's interpretation because it does not "explicitly" in a "plain ordinary" manner that was understandable to the voters communicate that the Legislature would be able to dedicate permanent fund income to be spent on dividends or another program in a manner that would otherwise violate several constitutional provisions.[81]

Additionally, the history of the debate over the permanent fund amendment reveals that the public was informed that the amendment would authorize saving a portion of state revenues for the future—not that it would authorize the dedication of permanent fund income and permit unrestrained spending outside of the appropriations process. For example, the ballot summary provided to voters stated as follows:

> This proposal, if approved, would amend the Constitution of the State of Alaska by amending Article IX, Section 7 (Dedicated Funds) and adding a new Section to Article IX (Section 15, Alaska Permanent Fund). It would establish a constitutional permanent fund into which at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State would be paid. The principal of the fund would be used only for income-producing investments permitted by law and *the income from the fund would be deposited in the general fund of the State and be available to be appropriated for expenditure by the State unless otherwise provided by law.*[82]

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

80 *See* Compl. ¶ 36.

81 *See Hickel v. Halford*, 872 P.2d at 176.

82 1976 Ballot Proposition No. 2 (emphasis added), *available at* Exh. F.

The assertion that the income would "be available to be appropriated for expenditure by the State unless otherwise provided by law," suggests that the Legislature might decide to do something with the income other than spend it, not that the Legislature could decide to spend the money without appropriating it.

The voters were also provided with statements in favor of and in opposition to the permanent fund amendment. Although neither statement addressed specifically how the income of the permanent fund would be used, the statement in support did focus on the fact that the creation of a permanent fund would provide for savings in the future when the state's nonrenewable resources were not so plentiful. Specifically, the statement declared:

> Today, as the result of anticipated oil and gas revenues, Alaska stands on the brink of unprecedented prosperity. No one, but no one, argues that these non-renewable resources will last but for a few decades. Similarly, no one should fail to recognize that in those years ahead the cost of state government will continue to spiral upwards. Now is the time to ask ourselves the question: "When the oil and gas is depleted, where will the funds to feed our giant government come from?" The answer is: the "Permanent Fund."[83]

But a conception of the permanent fund as a source of revenue to support government in the future is fundamentally inconsistent with the notion that the fund's income could be dedicated to specific purposes. Tying up fund income through dedication would undermine an express goal of the permanent fund: to provide a sustainable source of income to replace oil and gas revenues and finance state government. Thus, the plaintiffs' argument that the permanent fund amendment authorizes the dedication of

---

[83] Statement In Favor of Proposition No. 2., *available at* Exh. F,

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

any or all of the fund's income and its expenditure without legislative appropriation cannot be reconciled with the way the amendment was presented to voters.

Similarly, although Governor Hammond only briefly addressed the income from the permanent fund in his public statement in support of the amendment, he gave no indication that the income could be earmarked by one Legislature for spending outside of the appropriation process. To the contrary, he explained that "[t]he income from the Permanent Fund will be available for general appropriation by the legislature, but the principal of the fund may not be touched. It could only be removed from the fund by another constitutional amendment."[84] Thus, Governor Hammond expressly contrasted the Legislature's access to fund income with the way in which the principal would be dedicated and beyond the reach of legislative appropriations.

But if the purpose of the final clause—"unless otherwise provided by law"—was to permit dedication of fund income, then the income would not "be available for general appropriation by the legislature." To the contrary, under the plaintiffs' interpretation of this language, the Legislature could dedicate all income from the fund for any purpose it chooses—from supporting the operation of the Division of Motor Vehicles to financing the Knik Arm Bridge. The popularity of the Legislature's chosen use of permanent fund income—for a dividend received by every eligible man, woman, and child in Alaska—doubtless makes the plaintiffs' argument that the funds are

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

84 Gov. Jay Hammond, *The Governor's Point of View,* Anchorage Times, October 27, 1976, at 6, *available at* Exh. G.

dedicated seem more palatable but it does not transform the program into one exempt from normal constitutional requirements.

Alaska's largest newspapers also discussed the proposed permanent fund amendment, emphasizing the flexibility that the Legislature would enjoy with respect to fund:

> Nobody knows exactly how the fund will be used; that decision will be made by legislative action in the future. Although the fund is protected against certain kinds of usage, its precise organization and management have been left flexible by designers... [t]he flexibility of allowing future legislatures to decide on precise uses will prevent the 'locked up' circumstance...There have been many proposals for possible fund uses. They range from paying direct dividends to Alaskans to using the money to underwrite such vast projects as hydroelectric dams. [85]

Here too, the notion that future Legislatures would have flexibility in how to spend the money—"prevent[ing] the 'locked up' circumstance"—could not have alerted voters that the amendment would create a major exception to the dedicated funds clause for fund *income* as well as for the fund itself. To the contrary, a dedicated fund is by definition "locked up" and thus voters were, in effect, promised the opposite of what the plaintiffs suggest.

> Exactly how the permanent fund is set up would be the job of future legislatures. Our elected representatives, by law, would prescribe how the money is to be invested. That may demand a different application of the fund from one year to the next, but flexibility to meet changing demands is guaranteed by current legislation. Likewise, future legislators would be able to decide what to do with the considerable earnings of the fund. [86]

---

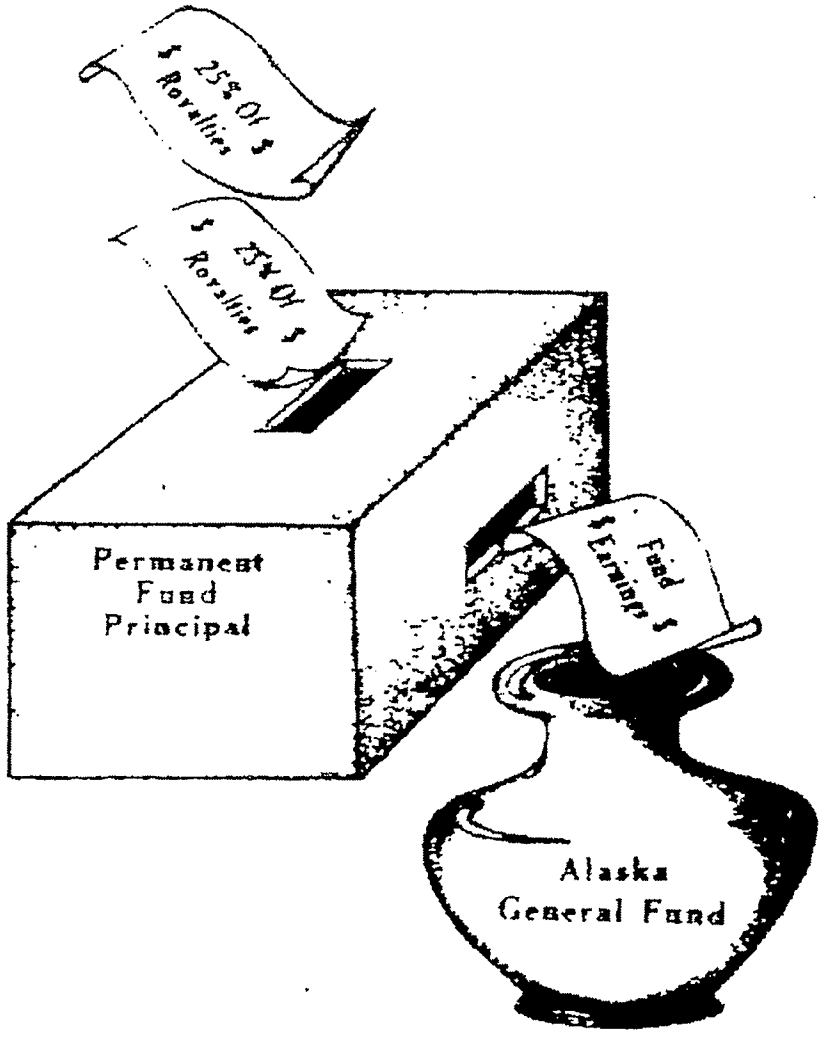
[85] *Permanent Fund Raises Use Issue,* Anchorage Daily News, 2 (Oct. 22, 1976), *available at* Exh. H.

[86] Editorial, *2 Plans, 1 Fund,* Anchorage Daily News, 6 (April 21, 1976), *available at* Exh. I.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

No reasonable voter informed that "future legislators would be able to decide what to do with" fund income would have supposed that this meant—contrary to current constitutional requirements—that the amendment would permit income to be dedicated and spent without any appropriation.

Similarly, less than two weeks before the vote on the amendment, the *Anchorage Times* offered its readers a graphic representation of the proposed fund and how it would fit into the state's finances, but the image provided no warning at all that fund income could be dedicated:



Anchorage Times, October 24, 1976, A-3.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

The Alaska Supreme Court has explained that when interpreting a ballot initiative "we attempt to place ourselves in the position of the voters at the time the initiative was placed on the ballot, and we try to interpret the initiative using the tools available to the citizens of this state at that time."[87] But none of the primary sources of information provided to the voters informed them that permanent fund income would be exempt from the constitutional prohibition against dedicating state revenues. Nor was there any warning that the amendment would override the existing constitutional provisions requiring that the spending of state revenues be by appropriation subject to veto. And these omissions are fatal to the plaintiffs' claim that the Constitution permits fund income to be dedicated to pay dividends without the need for any appropriation.

3. The legislative history of the amendment is also inconsistent with an exemption from the appropriations process.

Nor does the legislative history of the amendment support the plaintiffs' claims, despite their cherry-picked quotations from a single legislative hearing. To the contrary, the legislative history taken as a whole shows no sign that legislators intended such a significant exception to either the dedicated funds clause or the appropriations clause.[88]

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

87 *Alaskans for a Common Language, Inc. v. Kritz,* 170 P.3d 183, 193 (Alaska 2007).

88 The legislative history of the permanent fund amendment was reviewed in 2009 by the Office of the Attorney General. 2009 Inf. Op. Att'y Gen., 2009 WL 1719849 (June 16, 2009). Attached as Exh. O are minutes from legislative committee hearings regarding the proposed permanent fund amendment; attached as Exh. P are audio recordings of committee hearings and of the house and senate floor debates on the permanent fund amendment. The quality of the audio recordings varies and there are gaps of silence in portions of the recordings.

For example, a Joint Chairmen's Report of the House Judiciary and Finance Committees was produced regarding the permanent fund amendment. It explained that under the amendment a portion of the state's resource revenue would be "dedicated" to a permanent fund.[89] Specifically, the Report stated that under the proposed amendment there would be a permanent fund "into which 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses and all mineral production taxes would automatically be placed."[90] In contrast, the Report does not say that income of the fund could be "dedicated." Instead, the Report stressed that future legislatures would have maximum flexibility in deciding how to use permanent fund income:

> The purpose of the language in the last sentence of the resolution [unless otherwise provided by law] *is to give future legislatures the maximum flexibility* in using the Fund's earnings—ranging from adding to Fund principal to paying out a dividend to resident Alaskans. (emphasis added).[91]

Similarly, when Representative Malone described to the House Judiciary Committee how the income from the permanent fund would be used he focused on the fact that the income would *not* be dedicated to any particular purpose:

> The other thing that makes this sort of permanent fund different from permanent funds that exist in other laws and maybe other constitutions, state constitutions, is that the income from the fund as well as the principal of the fund is not limited to specific uses – to certain uses ... it's

---

89 Joint Chairmen's Report on CS SSHJR 39, 1976 House J. at 684, *available at* Exh. J.

90 *Id.*

91 Joint Chairmen's Report on CS SSHJR 39, 1976 House J. at 684-85, *available at* Exh. J.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

> not limited at all in the constitutional amendment. The income would go to the state's general fund or as otherwise provided by law which could also be changed whatever the provision is there or might be adopted by law. So we're not talking about a specific source and then turning around and using it for a specific purpose that locks the state into something that is completely inflexible. The income could be used wherever the legislature thought it needed to be used or where the governor thought it needed to be used or if it goes someplace else.[92]

The plaintiffs nevertheless contend that the legislative history supports dedicating permanent fund income. They focus on testimony from a February 21, 1976 House Finance hearing to argue that the "unless otherwise provided by law" language was intended to permit permanent fund income to be pledged as security for the issuance of bonds or other state debt or to pay dividends.[93] But this history simply shows that the committee wanted to preserve the option of not having all permanent fund income automatically deposited in the general fund. Thus, it supports an intent to maintain legislative flexibility which is the opposite of plaintiffs' position that the Legislature and the Governor are now locked into a position in which permanent fund earnings are spent on one program outside of the annual appropriations process. Moreover, as noted above, if legislators had intended to permit additional dedications of permanent fund income they could have done so expressly.

Thus, the legislative history does not support the conclusion that the intent of the amendment was to bypass the Legislature's power of appropriation and permit

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

92 House Judiciary Comm., March 15, 1976; 2009 WL 1719849 at 11 (Alaska AG June 16, 2009).

93 Compl. ¶¶ 8-9 (discussing House Finance Hearing of February 21, 1976).

permanent fund income to be spent in a manner that would not be otherwise permitted under the Alaska Constitution.

C. Even if Article IX, section 15 authorizes the creation of a dedicated dividend fund, the Legislature did not create a dedicated dividend fund and could not and did not enact a statutory scheme that pays the dividend without an appropriation.

In their complaint, the plaintiffs allege that when the Legislature created the permanent fund dividend in 1980, it enacted a "dividend plan [that] was self-executing and no further annual appropriations were necessary."[94] This is incorrect. Not only does the Legislature lack the power to circumvent Article IX, section 13 and Article II, section 15 of the Alaska Constitution—the appropriations clause and the veto clause—simply by enacting a statute that directs expenditures, but the statutory language cannot support the weight the plaintiffs attach to it. And indeed, the actions of the Legislature in the early 1980s, and since, directly contradict the plaintiffs' claim that the Legislature either intended to, or believed it had, created a dividend plan that would operate outside of the traditional appropriations process.

The plaintiffs first suggest that it is significant that the initial proposal in 1980—to use permanent fund income to provide a net income tax refund—expressly made the refund "subject to an annual appropriation."[95] And they argue, similarly, that the final version of the 1980 Permanent Fund Act "specifically conditioned the [1979] PFD on an appropriation made from the general fund to the dividend fund," an appropriation

---

94 Compl. ¶ 36.

95 Compl. ¶ 32.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

which they allege was "effectuated" by section 3 of the Act.[9697] "In Section 3 of the Act," they claim, "the Legislature demonstrated that it knew how to condition dividend payments on annual appropriations. But for the ordinary annual dividend payments, no separate appropriation was needed."[98] In effect, the plaintiffs argue that because the Act provided that the 1979 dividend would be funded by an appropriation from the general fund to the dividend fund, but did not otherwise mention appropriations to pay the dividend, the Legislature must have intended that no appropriations would be required to pay dividends in the future. This is unlikely to say the least.

The language that the plaintiffs rely on establishes only that the Legislature intended that general fund monies could be appropriated to supplement permanent fund income if necessary to pay out a dividend of at least fifty dollars.[99] It does not demonstrate an intent that dividends be paid from permanent fund income without appropriation, even if that were constitutionally permissible. But it is not.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

96 This allegation ignores the constitutional requirement that "[b]ills for appropriations shall be confined to appropriations." Art. II, sec. 13. In fact, money for the 1979 dividend was appropriated in sec. 52, ch. 120 SLA 1980, *available in* Exh. C.

97 Compl. ¶ 35.

98 Compl. ¶ 36.

99 Sec. 2 ch. 21 SLA 1980 (AS 43.23.050(c) provides: "The legislature may annually appropriate money from the general fund to the dividend fund if there is not enough money in the dividend fund to pay each eligible individual an annual permanent fund dividend valued at $50."), *available at* Exh. M.

1. Dedicated funds are not inherently exempt from the appropriations and veto clauses of the Alaska Constitution.

Article IX, section 13 of the Alaska Constitution provides that "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law." Article II, section 15 provides, in part, that the Governor "may, by veto, strike or reduce items in appropriations bills." Even if the court believes that the exception to the dedicated funds clause created in the 1976 permanent fund amendment extends not only to the permanent fund but also to anything the Legislature might choose to do with fund income, the 1976 amendment did not make any exceptions to the appropriations or veto clauses. As a result, even if fund income can be dedicated to a specific purpose, it may not be spent—i.e., "withdrawn from the treasury"—without a valid appropriation and an opportunity for gubernatorial veto. Because these constitutional requirements cannot be circumvented by the simple expedient of enacting statutes that provide that money shall be spent but that don't say anything about appropriating it, the plaintiffs are mistaken in believing that the Legislature could provide for dividend payments for which "no separate appropriation was needed."[100]

Indeed, the plaintiffs misapprehend what a dedicated fund is. The supreme court explained in *Sonneman v. Hickel*, that "[o]ne method of dedicating funds is to preclude the legislature from appropriating designated funds for any reason other than a designated purpose. Another less direct method would be to preclude agencies from

---

100 Compl. ¶ 36.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

requesting monies from designated funds or revenue sources."[101] But neither of these approaches to dedicating funds involves state expenditures without an appropriation.

And Alaska's experience with dedicated funds reinforces this reality. For example, one of the few dedicated funds in Alaska is the Territorial-era dedication of cigarette taxes and tobacco license fees under AS 43.50.010—.180,[102] which is covered by the exception in Article IX, section 7 for already-existing dedications.[103] There is no dispute that this tobacco revenue is constitutionally dedicated to Alaska schools; but the Legislature nevertheless appropriates it for that use.[104] That is because there is nothing mutually exclusive about dedicated funds and appropriations—a dedication may *restrict* the Legislature's appropriation power, but it does not eliminate it. Quite simply, a dedicated fund is one which can be spent only for specific, limited purposes; it is not a fund that can be spent without appropriation at all.

Thus, because the permanent fund amendment did not exempt fund income from the appropriations or veto clauses of the Constitution, even if permanent fund income

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

101 *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).

102 AS 43.50.140 provides that "[t]he proceeds derived from the payment of taxes, fees, and penalties under AS 43.50.010—43.50.180, and the license fees received by the department shall be paid into a state fund entitled 'School Fund,' and shall be used exclusively to rehabilitate, construct, and repair the state's school facilities, and for the costs of insurance on buildings comprising school facilities during the rehabilitation, construction, and repair, and for the life of buildings."

103 *See Ketchikan Gateway Borough*, 366 P.3d at 93 (discussing grandfather provision); 4A Proceedings at 2370, 2408, 2415 (Jan. 17, 1956) (identifying fuel and tobacco taxes as largest existing earmarks); ch. 187 SLA 1955 (enacting what later became AS 43.50.010–43.50.180).

104 *See e.g.*, HB 256, sec. 24(k)(1) (2016) (appropriating "$18,300,000 from the School Fund (AS 43.50.140)"), *available at* Exh. D.

can be dedicated, an appropriation is still necessary to spend it. Moreover, it is clear that the Legislature did not intend to place the dividend outside of the appropriations process. If it had, it would not have established the dividend fund "as a separate fund *in the state treasury*"[105]—from which money may only be withdrawn by appropriation under Article IX, section 13.

2. The statutory scheme clearly shows that the dividend fund is not a dedicated fund.

The plaintiffs appear to believe that the dividend fund is a dedicated fund, but this is not so. To the contrary, the statutes providing for the dividend demonstrate that money in the dividend fund may be appropriated for purposes other than the payment of dividends or the administration of the dividend program. For example, AS 43.23.025 instructs the Commissioner of Revenue to determine the amount of the dividend. Part of that calculation requires the subtraction of "*appropriations from the dividend fund* during the current year, including amounts to pay costs of administering the dividend program and the hold harmless provisions of AS 43.23.075."[106] This language indicates that these appropriations may also include sums appropriated for things other than administrative costs and the hold harmless statute.

Similarly, AS 43.23.028 requires that the "stub attached to each individual dividend disbursement advice" provide notice to recipients of "the amount by which

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

105 AS 43.23.050(a); § 2 ch. 21 SLA 1980. The plaintiffs mistakenly believe that this language was added in 1982. Compl. ¶ 41.

106 AS 43.23.025(a)(1)(E) (emphasis added).

each dividend has been reduced due to each appropriation from the dividend fund."[107] And, indeed, as Department of Revenue records indicate, appropriations have been made from the dividend fund for various reasons over the years, including appropriations for the Department of Corrections, for the Council on Domestic Violence and Sexual Assault, for the Violent Crimes Compensation Board and the Alaska State Legislature's Office of Victim's Rights.[108]

Because the statutory language permits appropriation from the dividend fund for purposes other than paying dividends and the Legislature's consistent practice has been to make such appropriations, it is clear that the dividend fund is not dedicated to the payment of dividends and is generally available for appropriation by the Legislature.

3. The statutory scheme clearly shows that the Legislature intended that the dividend fund would be funded through appropriations.

In addition to noting the absence of a provision that the dividend will be paid through appropriations, the plaintiffs also emphasize the language in AS 37.13.145(b) that directs APFC to *transfer* permanent fund income from the earnings reserve account to the dividend fund. They assert that "[t]he transfer of funds does not constitute an appropriation," and argue that the transfer was therefore "not subject to the line-item veto."[109] And, indeed, perhaps recognizing the flaws in any argument that the dividend can be paid without an appropriation, the plaintiffs request only an order instructing

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

---

107 AS 43.23.030(a)(3).

108 *See* Affidavit of Sarah Race (October 27, 2016) with attached spreadsheet showing appropriations, *attached at* Exhibit K.

109 Compl. ¶¶ 45-46, 76.

APFC to make the transfer required by AS 37.13.145(b).[110] They do not appear to seek supplemental dividend payment, just transfer of the money into the dividend fund.

But in focusing myopically on the language of AS 37.13.145(b), the plaintiffs miss the repeated references to appropriations in other parts of the statutory scheme that demonstrate the Legislature's understanding and expectation that dividends would be paid pursuant to an appropriation and that fund income would be transferred into the dividend fund by an appropriation. For example, AS 43.23.045, which establishes the dividend fund, expressly refers to "an appropriation to implement this chapter" and to "the fiscal year in which the appropriation was made."[111] And when AS 43.23.045(d) was added to the dividend fund statute in 1987, Governor Cowper's transmittal letter noted that "[a]n appropriation has been the vehicle for the 'transfer' of permanent fund income to the dividend fund."[112]

Similarly, the statute establishing the formula for calculating dividends states that the amount available for dividend payments includes "the unexpended and unobligated balances of prior fiscal year appropriations that lapsed into the dividend fund under AS 43.23.045(d)."[113] It is a standard rule of statutory construction that "[w]hen interpreting statutes and regulations, seemingly conflicting provisions must be harmonized unless

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

110 Compl. p. 23 ¶ B.

111 AS 43.23.045(d).

112 1987 House J. 103-104, *available at* Exh. Q.

113 AS 43.23.025(a)(1)(B).

such an interpretation would be at odds with statutory purpose."[114] In this case, there is no conflict if the court reads "transfer" to include transfer by appropriation, nor is such an interpretation at odds with the purpose of the dividend program.[115] Moreover, this interpretation reflects the Legislature's consistent practice of appropriating permanent fund income for the payment of dividends from the earliest days of the dividend program.

4. The Legislature has consistently recognized that permanent fund dividends are paid by appropriations.

When the Alaska Supreme Court first considered the dividend program—in *Williams v. Zobel*—it expressly described the dividend program as the result of the Legislature's "decision to use *its appropriations power* over the earnings."[116] Nevertheless, the plaintiffs argue that the Legislature intended that dividends would be paid annually without any appropriation, based solely on the use of the word "transfer" in AS 37.13.145(b).[117] But if that was actually the Legislature's intent, it would not have annually appropriated money to pay the dividend. And it has done exactly that.

---

114 *Davis Wright Tremaine LLP v. State, Dep't of Administration*, 324 P.3d 293, 299 (Alaska 2014).

115 The dividend program was intended to provide "for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth;" to encourage people to remain in Alaska and "reduce population turnover;" and "to encourage increased awareness and involvement by [Alaskans] in the management and expenditure of the Alaska permanent fund." *See* sec. 1, ch. 21 SLA 1980. None of these purposes is undermined by complying with the constitutional requirement for an appropriation to pay the dividend.

116 *Williams v. Zobel*, 619 P.2d 448, 453 (Alaska 1980), rev'd, 457 U.S. 55 (1982).

117 The transfer instruction was initially found in AS 43.23.045(b). It was moved into Title 37 in 1992. *See* sec. 19, ch. 134 SLA 1992.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

Although the plaintiffs allege that "[t]he 1982 PFD was paid under the authority of the 1982 law; there was no intervening appropriation by the legislature," this is not true. In 1982, the Legislature appropriated $150,400,000 "for the purpose of making permanent fund dividend payments," in addition to reappropriating sums appropriated for dividends in 1980 and 1981.[118] And each year since then the Legislature has continued to appropriate the money to pay the dividend.[119]

The Legislature's intention that money for the dividend would be appropriated—just like all other state spending—is also apparent from the language of Article IX, section 16, an amendment to the Constitution enacted by the Legislature in 1981 and adopted by the people in 1982. Article IX, section 16 provides for a limit on appropriations, but expressly excludes from that limit "appropriations for Alaska permanent fund dividends." This exception to the appropriations limit was created by the *same Legislature* that enacted the 1982 law establishing the modern dividend program. If the Legislature had intended to create a dividend program that existed outside of the normal appropriation process—and believed that Article IX, section 15 authorized such a program—there would have been no need to include this exception in the appropriations limit amendment. Thus, all the contemporary evidence shows that the Legislature understood and respected the need to appropriate funds to pay the dividend.

From the beginning of the dividend program, the understanding of the legislative and executive branches has been that dividends would be paid by appropriation. State

---

118 *See* secs. 17-18, ch. 101 SLA 1982, *available at* Exh. C at p. 99.

119 *See, supra* n.23, Exh. C.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

policy makers have acted in addressing the state's financial needs according to this understanding. Not only would departing from this practice upset the fiscal assumptions that have gone into creating the state's budget over the last thirty-plus years, but such an action would be unsupportable as a matter of law.

For the reasons set forth above, the State asks this Court to grant summary judgment against the plaintiffs on Counts I and II of the complaint.

D. The Governor did not unconstitutionally delete descriptive language from the operating budget

The plaintiffs' third claim challenges the Governor's deletion of certain language in the appropriation that the plaintiffs characterize as descriptive.[120] In *Alaska Legislative Council v. Knowles*,[121] the Alaska Supreme Court addressed the issue of whether a Governor's item veto was improper because it included striking descriptive language in an appropriation bill. The Court held that the Governor's item veto power to "strike" or "reduce" an item in an appropriation bill was the power to reduce "a sum of money dedicated to a particular purpose." [122] Thus, the Governor can reduce the amount of an appropriation through exercise of the line item veto.[123] But the Governor cannot alter the purpose of an appropriation by striking descriptive language.[124]

---

120 Compl. ¶ 80.

121 21 P.3d 367 (Alaska 2001).

122 *Id.* at 372-73.

123 *Id.*

124 *Id.*

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

In reducing the appropriation for the payment of dividends, the Governor did not alter the purpose of the appropriation, which was to appropriate a sum of money for the payment of dividends. Although the words—"authorized under AS 37.13.145(b)" and "estimated"[125]—were stricken from the appropriation this was done because the words were used to identify the amount of the appropriation. Specifically, AS 37.13.145(b) refers to "50 percent of the income available for distribution under AS 37.13.140." Without striking that language, the appropriation would have been for a sum based on the calculation in AS 37.13.145(b). And importantly, the striking of these words did not change the purpose of the appropriation which was to appropriate a certain amount of money to the dividend fund for the payment of permanent fund dividends.

Accordingly, there is no basis to conclude that the Governor unconstitutionally deleted descriptive language from the operating budget bill and this Court should grant the State summary judgment on Count III of the plaintiffs' complaint.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

125 HB 256, Section 10 (2016), *available at* Exh. D.

V. CONCLUSION

For the reasons set forth above, the Governor's line item veto was properly exercised to reduce an appropriation for the payment of permanent fund dividends in the fiscal year 2017 operating budget. Accordingly, none of the plaintiffs' claims have merit and the State is entitled to summary judgment.

DATED October 28, 2016.

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: 
Bill Milks
Alaska Bar No.0411094
Margaret Paton Walsh
Alaska Bar No. 0411074
Kate Vogel
Alaska Bar No. 1403013
Assistant Attorneys General

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100