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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 FIRST JUDICIAL DISTRICT AT KETCHIKAN

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

12 Plaintiffs,)

13 v.)

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

20 Defendants.)

21 Case No. 1KE-14-00016 CI

22 **DEFENDANTS' REPLY REGARDING SUPPLEMENTAL AUTHORITIES**

23 The borough misunderstands the limited but persuasive purposes for which the
24 State cited its supplemental authority at oral argument and through its Rule 77(l) letter.
25 Namely, that when a court forces the legislature back to the drawing board regarding
26 policy as important as education funding before the Alaska Supreme Court has had a
chance to rule, irreparable harm to the state follows in numerous ways, including that:
(1) the method chosen by the representatives of the people for funding schools is no
longer given effect; and (2) irreparable harm flows from immediate enforcement given

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2 the limited time available before passage of the next education budget because school
3 funding is not easily reimagined overnight. The borough’s response focuses on the
4 citations’ lack of broader applicability but fails to combat the reality of those harms.

5 **I. The State suffers irreparable injury when it is enjoined from effectuating its**
6 **statutes.**

7 The State cited *Maryland v. King*¹ for its holding that “any time a State is
8 enjoined by a court from effectuating statutes enacted by representatives of its people, it
9 suffers a form of irreparable injury.”² Both the U.S. Supreme Court and Alaska tests for
10 issuance of a stay require decision makers to consider the issue of irreparable injury,
11 although other aspects of their tests are not identical.³ Thus the holding on irreparable
12 injury in *Maryland* directly informs one of the factors of Alaska’s test for a stay:
13 whether the State would suffer irreparable harm in the absence of the stay.⁴ The State
14 previously argued that it would suffer irreparable injury because “this Court’s ruling
15 invalidated key provisions of the legislation implemented to fulfill [the legislature’s
16 education clause] obligation.” [Reply Br. at 1; *see also* Emergency Mot. for Stay at 4,
17 Reply Br. at 6] In other words, the State argued that the invalidation of longstanding
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20 ¹ 133 S. Ct. 1 (2012) (Roberts, C.J. in chambers).

21 ² *Id.* at 3 (quotation marks omitted).

22 ³ The State has never argued that Alaska’s test for a stay pending appeal is the
23 same as that for granting a stay in the U.S. Supreme Court, though they share the factor
24 of irreparable injury. And of course, another factor the Supreme Court considers—
whether a writ of certiorari will be granted—is fully satisfied to the extent that the
Alaska Supreme Court will hear the State’s appeal as a matter of right.

25 ⁴ *See* motion for emergency stay at 2 (citing *N. Kenai Peninsula Rd. Maint. Serv.*
26 *Area v. Kenai Peninsula Borough*, 850 P.2d 636, 639 (Alaska 1993)).

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2 state law constituted irreparable harm to the State. The ruling in *Maryland* makes clear
3 that even if the education funding statutes were not the sort of statutes that fulfill a
4 constitutional obligation, or even if they were not the sort of statutes that carry
5 enormous budgetary ramifications for the State, the public, and school districts, the
6 State would *still* be harmed by an injunction because the statutes are an expression of
7 the will of Alaska's people.⁵
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9 The borough asserts that *Maryland* should not matter because "the legislature has
10 complete flexibility to react to this Court's ruling however it chooses." [Response at 5]
11 But the borough misses the point: without a stay the legislature is enjoined from
12 maintaining and enforcing the existing funding system that Alaska's representative
13 government chose. This is the harm that the Supreme Court in *Maryland* acknowledges
14 as a form of irreparable injury and should be weighed alongside the numerous other
15 irreparable injuries the State has asserted would be caused by enforcement of this
16 Court's judgment before the Alaska Supreme Court has a chance to weigh in.
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22 ⁵ The borough cites two inapposite marriage equality cases for its proposition that
23 the State suffers no irreparable harm from its inability to effectuate the will of its
24 people. [Response at 5-6 n.12] While there may be circumstances in which the
25 irreparable harm to the State is outweighed by competing irreparable harm to U.S.
26 Constitutional rights or other parties, or situations in which the likelihood on the merits
factor is so strongly against the State that its claim of harm is unpersuasive, the
thwarting of the will of the people is a factor the court should weigh as part of the
balancing test.

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2 **II. The State and public interest would be harmed by having to rewrite**
3 **education funding without sufficient time.**

4 The State provided supplemental citation to *Lobato v. State of Colorado*⁶ for the
5 very limited purpose of supporting its contention that the State and public interest are
6 harmed when public school funding is required to be overhauled in a rushed and
7 precipitous manner. *Lobato* recognized that the effects of any judgment requiring a new
8 education funding formula should “allow for an appropriate period of time to change the
9 funding system.” and cited to numerous cases from around the country in which even
10 final appellate judgments were stayed or otherwise given time to take effect.⁷ This
11 supports the State’s argument that this Court’s ruling should be stayed because the
12 ruling comes late in the budgetary process. [Emergency Mot. for Stay at 1-2] School
13 districts submitted budgets anticipating this funding in the fall, the governor’s budget
14 and revised budget anticipated that municipalities would be paying their statutory share,
15 and Alaska’s short legislative session is already a third of the way toward completion.
16 [See Hanley Aff. ¶ 3; Emergency Mot. for Stay 1-2].
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18 The fact that courts routinely stay the effects of their education rulings even
19 when the rulings are final appellate judgments does not undermine the need for a stay in
20 a situation like this, when the legislature lacks both time and the information of what a
21 final appellate ruling would look like. Rather it supports the State’s argument that a
22 judicial decision requiring overhaul of public education funding in an extremely limited
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25 ⁶ 218 P.3d 358, 375 (Colo. 2009).

26 ⁷ *Id.* at 375 and 375 n.21 (collecting cases).

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amount of time is not in the public interest and is something courts should, and routinely do, avoid.

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