This Difference Principle redresses what is known as "the bias of contingencies,"[25] and is directed toward achieving not equality per se but genuine equality of opportunity through, *e.g.* greater educational opportunities for people with fewer personal talents or physical/mental assets and for people starting from lower initial social and economic positions.[26] A person with a natural endowment or initial social position ("arbitrariness found in nature"[27]) gains only by using this good fortune to *e.g.* offset the cost of disproportionately higher resources devoted to training and educating less fortunate people, thereby "enabling a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth."[28]

In the context of the above Liberty Principle and Difference Principle which, according to game theory, every Alaskan would choose in a Veil of Ignorance, how would a justice on the Alaska Supreme Court address the question of whether there was a "fair" relationship between the local contribution statute and the goal of providing and maintaining equal opportunities statewide in public education? That justice should pursue the "fairness" analysis by asking such questions as the following:

> When Alaskans are placed under a "veil of ignorance" such that they no longer know whether they personally live in an economically distressed REAA, or in an exempted affluent REAA, or in a taxed but economically distressed municipal school district, or in an economically affluent municipal school district, would those Alaskans opt for the present local contribution statute dividing all REAAs and all municipal school districts without regard for affluent and distressed economies?
>
> If Alaskans under a veil of ignorance no longer knew whether they had a job or whether they lived on unemployment compensation when not subsistence hunting and fishing, would they opt for the present local contribution statute?
>
> If they no longer knew whether they are first graders primed in the Three Rs by parents and their environment, or coming to first grade as six-year-olds entering a cross-cultural forum where grade-achievement is placed at paramount value, would they be satisfied that less money comes to their district from the State because some affluent REAAs are not contributing to the overall fund?

One could continue with many forms of the same question. The point is that everyone under that veil of ignorance would choose the system of funding that placed the least burden on everyone, because they would not know whether they would be a beneficiary or the victim of any imbalance they chose.

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[25] Ibid., 86.
[26] Ibid., 68, 86-87.
[27] Ibid., 88.
[28] Ibid., 87.

Hence, the fairness tine of the "fair and substantial" fork in equal protection analyses is no more nor less than evaluating whether the challenged statute represents the conservative allocation of benefit and burden that every Alaskan would inevitably choose if s/he was enshrouded in a veil of ignorance (regarding his or her race, age, class, resident location, intelligence, talents, economic and political status, and aesthetic conceptions of what is enjoyably "good"), and forced in that context to devise a system for statewide public school funding, fully aware of the worst that can possibly happen to oneself under whatever system of school funding s/he designs. Stated another way, the fairness tine asks whether the challenged statute is what every Alaskan would choose under such a veil of ignorance where there exists no other safe recourse but to follow the Maximin Rule of game theory.

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[i] "Consider the gain-and-loss table below. It represents the gains and losses for a situation which is not a game of strategy. There is no one playing against the person making the decision; instead he is faced with several possible circumstances which may or may not obtain. Which circumstances happen to exist does not depend upon what the person choosing decides or whether he announces his moves in advance. The numbers in the table are monetary values (in hundreds of dollars) in comparison with some initial situation. The gain (g) depends upon the individual's decision (d) and the circumstances (c). Thus g = f (d, c). Assuming that there are three possible decisions and three possible circumstances, we might have this gain-and-loss table.

	Circumstances		
Decisions	c-1	c-2	c-3
d-1	-7	8	12
d-2	-8	7	14
d-3	5	6	8

The maximin rule requires that we make the third decision. For in this case the worst that can happen is that one gains five hundred dollars, which is better than the worst for the other actions. If we adopt one of these we may lose either eight or seven hundred dollars. Thus, the choice of d-3 maximizes f(d,c) for that value of c, which for a given d, minimizes f." Rawls, 1999, 133 n. 19

Appendix C

Supreme Court Precedents Cited in the Williams Case

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The question for analysis here is whether the earlier U. S. Supreme Court cases cited by Justice Cardozo in the 1933 Williams case support his succinct statement of federal constitutional law that "[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator."

The 1923 case of Trenton v. New Jersey[1] addressed the question of whether an act of the state legislature violated the contract clause of the U.S. Constitution or, alternatively, was a taking of property without just compensation and without due process under the Fourteenth Amendment. The U.S. Supreme Court held "that the city cannot invoke these provisions of the federal Constitution against the imposition of the license fee or charge for diversion of water specified in the state law here in question."[2] The Trenton court cited Hunter v. Pittsburgh, 207 U.S. 161 for the legal proposition of "absolute discretion" of the state over municipalities of that state. The Trenton court even went to the extreme of trying to eliminate a clearly stated distinction in the Hunter case between municipalities acting in their governing role and municipalities acting in their proprietary role:

> The power of the state, unrestrained by the contract clause or the Fourteenth Amendment, over the rights and property of cities held and used for 'governmental purposes' cannot be questioned. In Hunter v. Pittsburgh, 207 U.S. 179, reference is made to the distinction between property owned by municipal corporations in their public and governmental capacity and that owned by them in their private or proprietary capacity, and decisions of this Court which mention that distinction are referred to. In none of these cases was any power, right, or property of a city or other political subdivision held to be protected by the Contract Clause or the Fourteenth Amendment. This Court has never held that these subdivisions may invoke such restraints upon the power of the state.[3]

In footnote 3 to the above quote, the court cited "[s]ome state cases holding that the state legislature is not restrained by federal constitutional provisions." And, the court also cited some cases finding otherwise.[4]

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[1] 262 U.S. 182, 67 L. Ed. 937 (1923).
[2] *Id.* at U.S. 192
[3] *Id*. at U.S. 188 [footnotes omitted]
[4] Town of Milwaukee v. City of Milwaukee, 12 Wis. 93, 109; Grogan v. City of San Francisco, 18 Cal.590, 612-13; Mt. Hope Cemetery v. Boston, 158 Mass. 509, 519; Spaulding v. Andover, 54 N.H. 38, 56; Ellerman v. McMains, 30 La.Ann. 190

The *Trenton* court did, however leave one qualifier in place that remains significant to the discussion later in subsection 4.c.iv. pertaining to the intent of the delegates drafting the Alaska Constitution:

> In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.[5]

Newark v. New Jersey[6] raised the same factual and legal issues as Trenton, *supra*, and was decided by the U.S. Supreme Court the same day as Trenton. The court simply referenced the Trenton decision for its reasoning and supporting case law.

The 1919 case of Pawhuska v. Pawhuska Oil Co.[7] raised the question of whether an impairment of contract contrary to the Contract Clause of the U.S. Constitution existed where the Oklahoma legislature created a statewide regulatory agency setting rates for a local, private gas company that had enjoyed a pre-existing franchise contract with the city that granted to the gas company greater flexibility in rate-setting. The U.S. Supreme Court held that no federal constitutional issue was raised by the facts of the case. The gas company had no legal basis to assume that its contract with a city would never be impaired by the state government.

> But further citations of authorities upon this point are unnecessary; they are full and conclusive to the point that the municipality, being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign at whose pleasure its charter may be amended, changed, or revoked without the impairment of any constitutional obligation, while, with respect to its private or proprietary rights and interests, it may be entitled to the constitutional protection.[8]

Note the underlying assumptions, that the relationship of the state to the city is not simply hierarchical but "sovereign," and that the city exists at the "pleasure" of the state "without the impairment of any constitutional obligation." None of those assumptions are correct with respect to cities and boroughs in Alaska. It is our Constitution that is "sovereign." Our political subdivisions do not exist simply at the "pleasure" of every whim of the state legislature, but rather with a broad grant of liberal construction and maximized local powers.

The issue in this Pawhuska case was constitutional impairment of contract, and the court held that "no question under the contract clause of the Constitution of the United States

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[5] *Trenton* at U.S. 87 [Footnote omitted.] [Emphasis mine.]
[6] 262 U.S. 192, 67 L. Ed. 943 (1923)
[7] , 250 U.S. 394, 63 L. Ed. 1054 (1919).
[8] 250 U. S. at 399. Note that, contrary to the U.S. Supreme Court in Trenton v. New Jersey, this Pawhuska quote recognizes again the earlier Hunter v. Pittsburgh distinction between "governmental or public character" and "proprietary" functions of a city for purposes of the application of federal privileges and immunities. The distinction appears again at 250 U.S., 397.

is involved, but only a question of local law." It was not a federal equal protection case. It acknowledged "a question of local law." It reaffirmed the Hunter v. Pittsburgh distinction between "governmental" and "proprietary" functions of a municipal body, with the latter possibly obtaining constitutional privileges and immunities.

Because of those qualifying factors in Pawhuska, there is a tendency to conclude that this decision is far too refined to support the succinct statement of Justice Cardozo in Williams that "[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator." But a careful reread reveals the brilliance of Justice Cardozo. Every word of his crisp, concise statement of the law is loaded with meaning that incorporates the qualifiers and the refinements found in Pawhuska. Once again, he has simply said it more precisely with fewer words.

The 1929 case of Railroad Comm'n of California v. Los Angeles Railway Corporation, cited by Cardozo in Williams, dealt with a city's power to contract, alleged confiscation of property, abrogation of contract, and street-car fare-setting authority as between a city franchise and a state commission. There is no mention in this case of federal equal protection. The relevant federal constitutional privilege was protection from impairment of contract. In that sense, it supports the Cardozo proposition in Williams that "[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator."

The 1905 case of Worcester v. Consolidated Street Railway Company was also cited by Justice Cardozo in the Williams case. In the Worcester case, the Commonwealth of Massachusetts had enacted new state taxes on street railway companies that also exempted them from keeping streets in repair. The City of Worcester had a preexisting contract requiring the street rail company to make repairs. The City argued that the new state law was an unconstitutional impairment of its contract with the rail company. The U.S. Supreme Court held that the legislature of the commonwealth had the power to abrogate the provisions of the City's contract if the private rail company agreed. The court reasoned,

> A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the state.[9]

[9] Worcester v. Consolidated Street Railway Company, 196 U.S. 539, 549-50, 25 S.Ct. 327, 49 L.Ed. 591 (1905).

The Worcester court did however make the distinction between municipal property held for a public purpose and property held for proprietary purposes, leaving open the possibility of constitutional protections for the latter category:

> In general, it may be conceded that [a city] can own private property, not of a public or governmental nature, and that such property may be entitled, as is said, "to constitutional protection." Property which is held by these corporations upon conditions or terms contained in a grant, and for a special use, may not be diverted by the legislature. This is asserted in Tippecanoe County v. Lucas, 93 U.S. 115, and in Mount Hope Cemetery v. Boston, 158 Mass. 509, the Supreme Court of Massachusetts held that cities might have a private ownership of property which could not be wholly controlled by the state government.[10]

In summary, the cases cited by Justice Cardozo in Williams do indeed support the proposition that the privileges and immunities of the federal constitution do not inure to the protection of a city from the acts of the state that created the aggrieved city.

[10] *Id*. at U.S. 551, S. Ct. 331

Appendix D

State Court Precedents Cited in the Kenai Case

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Village of Riverwood v. Department of Transportation.[1] The Alaska Supreme Court in Kenai cites this case for the cryptic proposition that "under the Illinois Constitution, municipal corporation may not assert due process claim against state." That is an accurate statement, but the deeply buried underlying reasoning demonstrates that the Illinois Constitution grants to the legislature an absolute power over municipal governments that is drastically different from their treatment in the Alaska Constitution.

Cities in northeastern Illinois had appealed water appropriations to them by a state commission empowered by the state legislature. The decision of the Illinois Supreme Court focused primarily on an issue challenging a delegation of powers, not on any development of a line of reasoning through constitutional privileges and immunities. Citing two earlier Illinois cases,[2] the court held summarily that "a municipal corporation is not entitled to the protection of the due process clause against the State."[3] This case offers no insight whatsoever into the reasoning of why municipal corporations do not enjoy due process against the State of Illinois.

In the Meador case cited in Riverwood, the defendant City of Salem alleged that a state statute making the city liable for injuries to a person assisting a law enforcement officer was an arbitrary classification and was vague, uncertain and indefinite in meaning, all in violation of both the federal constitution and section 2 of article II of the Illinois Constitution of 1870.[4] The Illinois Supreme Court cited the Williams case to dispose of the federal claim. The court then cited the Illinois case of Rainbow Garden (the same case cited in Riverwood, above) for the state proposition "that under the doctrine of legislative supremacy over municipal corporations, a municipal corporation may not assert the protection of the due-process clause against action of the State government."[5] However, the Meador court, like the later Riverwood court, did not elaborate with any explanation or reasoning of what that "doctrine of legislative supremacy" entailed in Illinois. Both Riverwood and Meador contain succinct holdings without statements of policy or reasoning to support those holdings, but both cite as authority the earlier case of Rainbow Garden.

Finally, in Rainbow Garden, one finds policy and reasoning for the later endorsement of the doctrine of legislative supremacy in Riverwood and Meador. An incorporated village challenged the constitutional due process of a state statute that permitted counties to dissolve

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[1] 395 N.E.2d 555 (1979).
[2] Meador v. City of Salem, 284 N.E.2d 266 (Ill. 1972), and Supervisors v. Village of Rainbow Gardens, 153 N.E.2d 16 (Ill. 1958).
[3] Riverwood at 558.
[4] Meador at 269.
[5] Id. at 270.

villages with populations of less than 50. The Illinois Supreme Court invoked that same "doctrine of legislative supremacy" with that same proposition that "municipal corporations cannot properly assert the protection of the due-process clause against action of the State government."[6] In its quotes from earlier cases, the Illinois Supreme Court finally provides the underlying reasoning and the full extent of the Illinois meaning of "legislative supremacy." It warrants extensive quoting here to demonstrate how truly preposterous it would be as a statement of law in the context of art. X of the Alaska Constitution:

> The character of the functions of such municipal corporations, the extent and duration of their powers and the territory in which they shall be exercised rest entirely in the legislative discretion. The governmental powers which they may exercise and the property which they may hold and use for governmental purposes are equally within the power of the Legislature. … The state may, with or without the consent of the inhabitants or against their protest, and with or without notice or hearing, take their property without compensation and vest it in other agencies, or hold it itself, expand or contract the territorial area, divide it, unite the whole or part of it with another municipality, apportion the common property and the common burdens in accordance with the legislative will, and it may abolish the municipality altogether. The property of such corporations is public property in the hands of state agents for certain purposes and is subject to the will of the Legislature. It has been held so in many cases.[7]

To put matters back in context, recall that Justice Moore in Kenai cited (perhaps unwittingly[8]) this ruthlessly extreme, highly distinguishable proposition of Illinois law as support for denying due process and equal protection to cities and boroughs existing under the Alaska Constitution, without regard for how the Alaska Constitution addressed the extent of municipal powers, without regard for the constitutional jurisdiction of the Local Boundary Commission (rather than the legislature), and without regard for the due process and equal protection rights afforded "inhabitants" by the Alaska Supreme Court in matters of incorporation, dissolution, boundary changes, merger and consolidation, etc.

One does not find such extreme "legislative supremacy" over municipal corporations in the Alaska Constitution. One instead finds statements of protective powers reserved to municipal governments, statements of liberal construction of their authority, and a Local Boundary Commission insulating them from the extreme political ruthlessness and arbitrariness apparently possible with the Illinois legislature under the Illinois Constitution. Riverwood and

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[6] Supervisors v. Village of Rainbow Gardens, 153 N.E.2d 16, 19 (Ill. 1958).
[7] Id.
[8] Justice Moore actually cited the summary holding of Riverwood, perhaps without his law clerks having read carefully the two cases cited in Riverwood for the conclusory proposition of Riverwood.

its earlier Illinois authority in the courts are not good law for interpreting the rights of cities and boroughs in Alaska.

City of Seattle v. State.[9] I find it puzzling that the Alaska Supreme Court cited this case in Kenai for the legal proposition that the "city itself [is] not entitled to equal protection, but has standing to assert claims of potential residents." That is not an accurate shorthand for the holding of this case. The court offered much broader and liberal standing to Washington cities.

The City of Seattle challenged certain state laws imposing additional annexation criteria on every city with a population over 400,000 at a time when Seattle was the only such city in the state. The Washington Supreme Court reasoned that, where a specific provision of the Washington Constitution protects cities against special legislation, and where the present case "falls directly within the zone of interests protected by [that provision]," the status of the City of Seattle as a political subdivision of the state does not deprive it of standing to raise a constitutional equal protection claim.[10] The court then continued to explain a number of situations where cities have a "direct interest" that affords them legal standing against a state statute:

> Standing is not an insurmountable barrier to municipal corporations challenging the constitutionality of a legislative act. Where a controversy is of serious public importance the requirements for standing are applied more liberally. The basic test for standing is "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question".
>
> The City does not itself have rights under the equal protection clauses of the state and federal constitutions. The primary purpose of the equal protection clause is the protection of individuals' rights, including the right to vote. However, in cases involving the right to vote, the courts have also expressed a concern as to the effects of the denial of the right to vote on the integrity of the democratic process. Protection for the integrity of the political process, as well as individuals' rights, is within the zone of interests protected by the equal protection clause. The City does have a direct interest in the fairness and constitutionality of the process by which it annexes territory.
>
> In the past we have found standing to challenge a state statute for a public agency which was required to act under a statute which was arguably unconstitutional. We have also found standing for the Seattle School District to

[9] 103 Wash.2d 663, 694 P.2d 641 (1985) (en banc).
[10] Id. at 645.

> challenge unconstitutional action by the Legislature which placed financial constraints on the District's ability to meet the State's constitutional obligation to fund public education.[11]

In short, while the Washington Supreme Court mouthed the maxim that "[t]he City does not itself have rights under the equal protection clauses of the state [of Washington] and federal constitutions," it immediately cited a string of earlier cases where political subdivisions were granted standing to raise constitutional issues, not only for asserting individuals' rights but also for protecting the integrity of the political process and in matters of legislated "financial constraints." It qualified that maxim considerably by holding that where a city has "a direct interest in the fairness and constitutionality" of an issue, standing will be applied "more liberally," and the city may assert an equal protection claim in the courts. That quoted breadth of liberal standing is quite a different statement of Washington law than the cryptic version attributed to Washington in the Kenai opinion.

City of Mountlake Terrace v. Wilson.[12] This is a 1976 decision by the intermediate Court of Appeals of Washington. A fired police officer claimed disability before a county board, and the first of three hearings was held without notice or presence of the ex-employer, City of Mountlake Terrace. The court held

> The City of Mountlake Terrace has no standing to attack this order of the Snohomish County Disability Board as violative of either the 14th amendment of the United States Constitution or article 1, section 3 of the Washington Constitution. The due process clause protects people from government; it does not protect the state from itself. Municipal corporations are political subdivisions of the state, created for exercising such governmental powers of the state as may be entrusted to them and they may not assert the protection of the due process clause against action of the state government.[13]

The court recited, without elaboration or explanation, a long string of case authority including Williams, Hunter, Gomillion and Meador. The court failed to recognize that in Gomillion Justice Frankfurter qualified those earlier federal cases, and indeed allowed for the possibility of federal procedural due process being asserted by a city against a state. The court also failed to note that Meador contained only a summary, unreasoned holding that requires one to look deeper into Illinois case law to understand the local meaning of the doctrine of legislative supremacy.

Moreover, nine years after the above-quoted statement by the intermediate court in

[11] Id. (Citations omitted).
[12] 549 P.2d 497, 498 (1976).
[13] Id. at 498-99.

City of Mountlake Terrace, the ranking Washington Supreme Court radically qualified the doctrine of legislative supremacy as it would apply to the due process clause in article 1, section 3 of the Washington Constitution, holding that where a city has "a direct interest in the fairness and constitutionality" of an issue, it may assert unconstitutionality in the courts. (See City of Seattle above.)

Finally, even if the stated law of this intermediate court had not been modified by Gomillion and City of Seattle, the statement by this Washington Court of Appeals that cities are "created for exercising such governmental powers of the state as may be entrusted to them" would not apply to Alaska cities and boroughs when assessed in the context of the powers and liberal construction granted in art. X of the Alaska Constitution.

It is difficult to understand how the Alaska Supreme Court could cite this case for support of its holding in the Kenai case for the proposition that a "city may not assert due process claim against state" when the "state" was not a party, and when another, later and ranking Washington case also cited by Justice Moore substantially qualified the doctrine of legislative supremacy.

State ex rel. Brentwood School Dist. v. State Tax Commission.[14] In this Missouri case, a school district missed a regulatory deadline to intervene in appeals to the state tax commission by taxpayers protesting assessments by the county. It would have been entitled to be heard as an interested party if it had intervened timely. The Supreme Court of Missouri held that no state statute gave the school district an unconditional right to intervene apart from the process and timing in the regulations, and that the school district would not be heard to argue that the regulations violated their due process rights to notice and an opportunity for a hearing.

> We hold that school districts as creatures of the state established to perform governmental functions, are not persons within the protections of the due process clause and cannot charge the state with violations of due process.[15]

The Missouri Supreme Court followed the conventional wisdom of citing the federal line of Hunter-Williams cases for the federal statement of creator "will" cases, and included Illinois, Minnesota and Iowa cases as other states with supporting authority. The court noted the lack of unanimity among states however by citing a Colorado case holding that school district property cannot be taken without due process of law.[16]

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[14] 589 S.W.2d 613 (Mo.1979).

[15] Id. at 615.

[16] School District No. 23 v. School Planning Committee, 361 P.2d 360 (Colo. 1961). The school district (which enjoyed "corporate status" Id. at 361) challenged the constitutional due process of a state statute that provided for reorganization of school districts in a manner that could result in the corporate school district being eliminated,

Justice Moore accurately stated the holding of the case in Kenai. Municipal school districts in Alaska never reach the question of standing because they cannot overcome the threshold question of capacity to sue. But REAAs can sue, and hence this case would apply to REAAs in Alaska except for how the entire doctrine of legislative supremacy is eroded by other arguments in the Report.

State ex rel. New Mexico State Highway Comm'n v. Taira.[17] The Alaska Supreme Court in *Kenai Peninsula Borough* cited this case for the legal proposition that a state highway commission is "not protected by [the] due process clause." That is a correct statement of a tertiary conclusion by the New Mexico Supreme Court. But the case summarily acknowledges that "persons" enjoy that constitutional protection, and presumably that court would include at least some types of corporations as protected "persons." The case says absolutely nothing about whether a municipal corporation numbers among those enjoying the protection.

The New Mexico Highway Commission had obtained an order from the trial court authorizing it to enter premises and preserve evidence in anticipation of future inverse condemnation claims by landowners adjacent to a freeway overpass, but the order required the commission to then disclose the results to the landowners. The state offered a number of arguments to the New Mexico Supreme Court for why this "work product" paid for by the state should be protected from discovery in future litigation, including an argument that the disclosure order was an unlawful deprivation of property in violation of the due process clauses of both the federal and New Mexico constitutions.

Almost as an aside, at the very end of its 5-page opinion, the Supreme Court added a final sentence: "We would also note that the due process clause … protects only the rights of 'persons' and does not embrace the state."[18] The court clearly was saying that the State of

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and all of its property and assets passing to a newly created district.

The Colorado Supreme Court uses the words "capacity" and "standing" seemingly interchangeably. The court ultimately held that the school district "does have the capacity and standing to maintain the action and that defendants' assertion that plaintiff is 'without standing to maintain the action' is without merit." Id. at 362. In its reasoning, the court noted,

> It is true that the plaintiff is a creature of the state and a body politic organized to carry out certain governmental functions. Such being the case it may well follow that the state can alter or even abolish that which it has created. However, in the instant case the General Assembly did not attempt by legislative fiat to abolish this plaintiff. Reorganization under the Act…is not a mandatory matter, rather it provides an orderly manner for reorganizing. Id.

The court is essentially saying that, where the creator can abolish its creature but chooses instead to enact program for a voluntary possibility of reorganization of that creature in a manner depriving it of property and assets, the doctrine of legislative supremacy does not preclude the creature from asserting rights to due process of law.

[17] 430 P.2d 773 (1967).

[18] Id. at 778.

New Mexico is not a "person," but the court did not define who was a "person" for purposes of due process. One can note that the court certainly did not mean to exclude business and religious corporations from constitutionally protected personhood. In the last analysis, apropos the issues in the Kenai case, this New Mexico case says only that the state is not protected from the state, and says absolutely nothing about the status of municipal corporations as "persons."

Carl v. Board of Regents.[19] The Alaska Supreme Court recognized that, in this case, it was a "state medical school admissions committee" that was "not entitled to due process or equal protection" by the Oklahoma Supreme Court. The question before the court was whether a subordinate entity with decision-making authority (an Admissions Board) appointed by the constitutionally-created Board of Regents of the University of Oklahoma was subject to the same open meetings act that applied to the Board of Regents itself. One argument of the Board of Regents was that the open meetings act would be a denial of equal protection to the Admissions Board if it was interpreted to include this subordinate entity. The court held that "it has no rights, privileges and immunities protectable under the Federal or State Constitutions." These guarantees "run to 'persons,' not the state. Their purpose is to protect persons from the abuses of the state's power." 915 The only authority cited by the court was the federal 1933 Williams case applying to municipal corporations.

The Admissions Board in this case was an unincorporated board appointed by a constitutional entity, which was not itself a corporation but rather a department in the executive branch of state government. Note that the Oklahoma court cited no prior Oklahoma state authority, nor did it recognize any of the various distinctions noted above that one finds in the Williams case, including constitutional protections for cities under state law in Maryland. It is wholly possible that, where a state court finds that an unincorporated executive branch commission is not a "person" but rather the state itself, that court could in the future distinguish corporations as "persons," and recognize that the state constitution in that cited Williams case acknowledged that municipal corporations can be denied federal equal protection but still enjoy it under their state constitution.

In short, the Oklahoma Carl case addresses a state-level executive branch, unincorporated commission and deals wholesale with the underlying limited application and true meaning of the federal Williams case. The Carl case lies a far distance from the question of whether an Alaska municipal corporation, enjoying a constitutional origin and mandate of powers liberally construed, should be included among all other Alaskan corporations that are at once subject wholly to legislative supremacy but nonetheless imbued with recognized personhood to assert equal protection.

[19] 577 P.2d 912, 915 (Okla.1978).