NO. 12-

IN THE

Supreme Court of the United States

ROBERT W. RUDE, ET AL.,

Petitioners,

v.

COOK INLET REGION, INC.,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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6 February 2013

QUESTIONS PRESENTED

Should this Court resolve the issues it left open in *Merrell Dow* and has not since resolved*:*

1. Whether a federal statute can supply the basis for federal question jurisdiction even though the statute does not create a federal cause of action, does not provide a federal remedy or federal penalty, and does not include a jurisdictional grant that would allow enforcement in a federal court? *Alternatively:*

2. Must a federal statute include "creative" language that *creates a cause of action* — words that express or define a specific federal cause of action — in order to supply the basis for federal question jurisdiction?

3. Should this Court adopt a bright line rule that a federal law providing no private remedy cannot supply a "jurisdiction-triggering federal question"† and thus cannot give rise to § 1331 jurisdiction?

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† *Merrell Dow Pharmaceuticals v. Thompson,* 478 U.S. 804, 817 & n.15 (1986).

LIST OF PARTIES ‡

Petitioners, who in the courts below are the Shareholder Defendants-Appellants:

ROBERT W. RUDE

HAROLD F. RUDOLPH

Both of whom are shareholders of CIRI and are residents of Alaska.

Respondent, Corporate Defendant-Appellee:

COOK INLET REGION, INC. [CIRI]

An Alaska business corporation for profit with its headquarters and place of business in Anchorage, Alaska.

‡ Pursuant to Supreme Court Rule 29.6, petitioners state that Cook Inlet Region, Inc. [CIRI] has no parent company.

Because initial ownership of CIRI's stock was restricted to Alaska Natives and because the stock is subject to alienability restrictions, there is no "publicly held company owning 10% or more of the corporation's stock."

The alienability restrictions are found in the Alaska Native Claims Settlement Act, ANCSA § 7(h)(1)(B) and (C) [43 U.S.C. § 1606(h)(1)(B) and (C)].

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INTRODUCTION

This is a case about federal question jurisdiction. This case does not belong in federal court because it does not present a question of federal law.

However, the Ninth Circuit found a federal question in this suit based upon a federal law that does not create a federal cause of action, does not provide a federal remedy, does not provide or impose a federal penalty, and does not include a provision for adjudication in a federal court (i.e., does not include a jurisdictional grant). Instead of choosing federal courts as the forum to resolve disputes about Alaska Native corporations, Congress sent them to state court and disavowed any grant of federal jurisdiction.

The statute implicated is ANCSA, the Alaska Native Claims Settlement Act of 1971, codified at 43 U.S.C. §§ 1600-1629h. ANCSA is a federal appropriations law that resolved the land claims of Alaska's Native people by granting federal land and by appropriating funds to establish Alaska corporations to receive the land grants and to administer the settlement. ANCSA contains no language that creates any cause of action; it grants no right to sue to any aggrieved party; it renders no conduct illegal or subject to any punishment. Instead, ANCSA defers to State law the exclusive authority to charter and to govern Alaska Native corporations. ANCSA specifically designates the law of Alaska to be the law that controls disputes about corporate governance — a common sense allocation of judicial power because Alaska law includes an extensive corporations code and federal law has none.

The Ninth Circuit's mistake is in this sentence:

> We conclude that the district court had federal-question subject matter jurisdiction over Plaintiff's two ANCSA claims because "federal law creates the cause of action" in both claims.[1]

However, ANCSA does not create any cause of action because it does not contain any "creative" language of the sort that is typically found in other federal statutes that do create a federal question and that do sustain subject matter jurisdiction in the federal courts. Some examples include ERISA, the federal securities laws, labor, tax, and environmental laws.

ANCSA is a law that cannot be violated because it does not contain any prohibitions. It merely appropriates federal land and funds, and it supplies standards of conduct that must be enforced in state court. ANCSA is similar to the Federal Food, Drug, and Cosmetic Act that was at issue in the well known federal question case, *Merrell Dow Pharmaceuticals v. Thompson,* 478 U.S. 804 (1986), a useful precedent that controls the decision here.

The petitioners, Robert W. Rude and Harold F. Rudolph, who are the two named defendant-shareholders in this suit brought against them by CIRI, their Alaska business corporation, request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit that was entered in this case.

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[1] *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1130 (9th Cir. 2012) (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 689–90, 126 S.Ct. 2121, 165 L.Ed.2d 131 (2006)) (underlining added).

OPINIONS BELOW

The memorandum opinion and order of the United States District Court for the District of Alaska (Ralph R. Beistline, J.) was not reported. The memorandum (issued on 22 March 2011) denied the defendant-shareholders' motion for relief from judgment, which had challenged the subject-matter jurisdiction of the federal district court. The memorandum decision of the district court is reprinted in the Appendix to Petition [App.], below, at App. A-10 to A-21.

The opinion of the Court of Appeals for the Ninth Circuit, which was entered on 20 August 2012, is published at 690 F.3d 1127 (9th Cir. 2012). The opinion is set out in the Appendix, below, at App. A-1 to A-9.

The order denying the petition for rehearing was entered on 9 October 2012, and also is included in the Appendix at App. A-22. The mandate of the Court of Appeals was issued on 18 October 2012.

JURISDICTION

This lawsuit was filed in the U.S. District Court for the District of Alaska by the corporate respondent, Cook Inlet Region, Inc. [CIRI] on 28 December 2009.

The defendant - shareholders, Rude and Rudolph, who are the petitioners here in this Court, protested the jurisdiction of the district court and they moved for relief from the judgment that was entered against them on the grounds that

the complaint does not state a federal cause of action and therefore (because the parties are not diverse – they all are residents of Alaska) the federal court lacked jurisdiction of the subject matter. When the district court denied the defendant-shareholders' request for relief from judgment, the court already had granted CIRI's motion for summary judgment and already had entered a judgment against the two shareholders. The court then entered its final orders in the case on 22 March 2011. The defendant-shareholders noted their appeal to the Court of Appeals for the Ninth Circuit on the same day, 22 March 2011.

After oral argument in Anchorage, Alaska, on 25 June 2012, the Court of Appeals affirmed the district court in an opinion issued on 20 August 2012. Rehearing was denied on 9 October 2012.

The appeal was decided by a panel of three judges from California: Circuit Judge William A. Fletcher from San Francisco and Berkeley, Circuit Judge Milan D. Smith from El Segundo, and Senior Circuit Judge Alfred T. Goodwin from Pasadena.

Petitioners submitted a timely application to extend the time for filing this petition for writ of certiorari (12A734); their application was granted by order of Circuit Justice Kennedy on 25 January 2012. That action extended the deadline for filing this petition to and including 6 February 2012, the date upon which it is being filed.

The jurisdiction of the Supreme Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes principally involved in this case include the federal question statute, 28 U.S.C. § 1331:

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

This case also implicates parts of the Alaska Native Claims Settlement Act [ANCSA], which is codified at 43 U.S.C. §§ 1601 - 1629h.

The petitioning shareholders rely upon ANCSA § 7(h)(1)(A), which says that Alaska Native corporations are chartered and governed according to Alaska law unless state law is expressly preempted by a specific provision of federal law:

ANCSA § 7(h)(1)(A) [43 U.S.C. § 1606(h)(1)(A)] RIGHTS AND RESTRICTIONS.—

> (A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—
>
> (i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

> (ii) permit the holder to receive dividends or other distributions from the corporation; and
>
> (iii) *vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State*.

(emphasis added).

Alaska Native corporations are defined, created, chartered, and governed according to state law. This theme appears throughout ANCSA, such as in § 7(h)(1)(A), above, and is found elsewhere in ANCSA, such as in ANCSA §§ 3(g) ("Corporation established under the laws of the State of Alaska"), 3(t) ("established under the laws of the State of Alaska"), 7(d) ("shall incorporate under the laws of Alaska"), and 39 ("in accordance with the laws of the State"). These sections are codified at 43 U.S.C. §§ 1602(g), 1602(t), 1606(d), and 1629e, respectively.

ANCSA §§ 2(f), 3(g), 3(t), 7(h)(1)(A), and 39 expressly adopt state law to define, create and govern these Alaska corporations and their programs. The federal laws that were held by the lower courts to have created a federal cause of action for CIRI and thus to have supplied federal question jurisdiction are: ANCSA §§ 36 and 37.

CIRI successfully argued that §§ 36 and 37 allowed the corporation to bring its state law claims about the shareholder-petitioners' alleged proxy violations in the federal court —

even though ANCSA §28 [43 U.S.C. § 1625] expressly exempts Alaska Native Corporations from the federal securities laws and leaves matters of corporate governance to state law:

> **ANCSA § 28 [43 U.S.C. § 1625]**
>
> TEMPORARY EXEMPTION FROM CERTAIN SECURITIES LAWS
>
> (a) A Native Corporation shall be exempt from the provisions, as amended, of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934 ….

This case implicates other parts of the Alaska Native Claims Settlement Act [ANCSA]: For example, ANCSA § 36 [43 U.S.C. § 1629b] *and* ANCSA § 37 [43 U.S.C. § 1629c], which are the ANCSA sections that are at the heart of this dispute about federal question jurisdiction.

The petitioners explain that neither § 36 nor § 37 contain any language that creates a cause of action or supplies a federal remedy. Instead, they merely express a federal standard of conduct, such as restrictions on amending the articles of incorporation, which is a topic traditionally relegated to state law.

The complete text of the principal statutes is set out in the Appendix at App. A-23 to A-48.

STATEMENT OF THE CASE

This is a state-law contract dispute between two Alaska shareholders and their corporation; it is about the contract between these shareholders and their corporation — specifically, about the petitioner-shareholders' proposal to amend the articles of incorporation of the respondent corporation, Cook Inlet Region, Inc. [CIRI].

A federal question does not appear on the face of CIRI's complaint. CIRI alleged that the two shareholder-defendants had issued false and misleading proxy statements when attempting to muster support from rank-and-file shareholders for their proposal to amend the articles of incorporation. Messrs Rude and Rudolph had petitioned the management to hold a special meeting of shareholders so that they could vote on whether to amend the articles in a way that would allow shareholders to sell their stock and to exit the corporation. (Aside: stock in ANCSA corporations cannot be sold or alienated, except by gift to close relatives. ANCSA § 7(h)(1)(B), 43 U.S.C. § 1606 (h)(1)(B).) The disputed shareholder petition failed to garner enough support, and the special meeting was never held. CIRI did not amend its articles — but CIRI still sued Rude and Rudolph in federal court.

Alaska law supplies the exclusive rules for amendment of a corporation's articles of incorporation. AS 10.06.504 (Procedure to amend articles of incorporation). There is no federal law on the subject. Instead, federal law traditionally yields to

state law in all matters of corporate governance and internal affairs. *Cort v. Ash,* 422 U.S. 66, 84 (1975) ("Corporations are creatures of state law"); *Burks v Lasker,* 441 U.S. 471, 478 (1975) ("the first place one must look to determine the powers of corporate directors is in the relevant State's corporation law"); DOUGLAS M. BRANSON, CORPORATE GOVERNANCE, v (1993) ("the law of the incorporating state controls issues of corporate governance, state law is the heart and soul of United States corporation law").

The lower courts veered off the road because they ignored the primacy of state law and because they failed to observe the quintessential features of CIRI's statutes, ANCSA §§ 36 and 37, which:

- Do not create a cause of action – because they are permissive statutes; they are passive.
- Do not command any conduct; they cannot be violated. Neither a corporation nor a shareholder can sue to enforce this law because there is nothing to compel.
- Do not contain a remedy – no enforcement provision or mechanism.
- Do not displace state law.
- Do not contain a jurisdictional grant — on the contrary, Congress said ANCSA does *not* confer jurisdiction. ANCSA § 2(f) [43 U.S.C. § 1601(f)] ("no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor . . .").

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT'S NEW RULE WOULD EXPAND THE JURISDICTION OF THE FEDERAL COURTS AND IS AT VARIANCE WITH THIS COURT'S PRECEDENTS

By creating a relaxed requirement for admission to the federal court, the Ninth Circuit will increase the traffic and case load in the federal judicial system.

The Ninth Circuit's new rule will expand federal question jurisdiction by allowing federal jurisdiction over cases involving federal laws that do not create a federal cause of action, do not provide a federal remedy, and do not contain a jurisdictional grant. A relaxed and expanded criterion for federal question jurisdiction will open the federal courts to "a horde of original filings and removal cases"—the very thing that concerned This Court in *Grable*, 545 U.S. at 318, and years ago in *Merrell Dow*.

A helpful discussion of *Grable* and the current jurisprudence of federal question jurisdiction can be found in Rory Ryan, *No Welcome Mat, No Problem?: Federal-Question Jurisdiction After* Grable, 80 ST. JOHN'S L. REV. 621 (2006), *see esp.* at 650-53

(exploring the disruptiveness element of the jurisdictional calculus).

This case is distinguishable from *Grable:*

Table contrasting *Grable & Sons v. Darue* with *CIRI v. Rude*

Factors Determining Federal Jurisdiction	***Grable v. Darue***	***CIRI v. Rude***
Federal statute implicated?	I.R.C.	ANCSA
Involves United States or federal agency? †	Yes	No
National interest or nationwide application of the law at issue?	Yes	No
Need for uniformity of law?	Yes	No
Does federal law provide a federal forum?	Yes	No
Plaintiff challenges meaning, interpretation, or constitutionality of federal law?	Yes	No
Substantial issue of federal law?	Yes	No

II. THERE IS A CONFLICT AMONG THE CIRCUITS ABOUT WHETHER BOTH A FEDERAL CAUSE OF ACTION AND A FEDERAL REMEDY ARE REQUIRED

The Ninth Circuit finds federal question can be generated from a federal law that neither creates a federal cause of action nor contains a federal remedy nor imposes a federal penalty; and furthermore, does not contain a Congressional grant of jurisdiction to a federal courts.

But other circuits are more demanding in their requirements. For example, the Second Circuit requires federal cause of action and a federal remedy; and it does not allow the plaintiff to gain admission to a federal court by merely alleging a federal claim:

> Though the plaintiff is generally "the master of the complaint,"… a plaintiff cannot create federal jurisdiction under §1331 simply by alleging a federal claim where in reality none exists.

Empire Healthchoice Assurance, Inc. v. McVeigh, 396 F.3d 136, 140 (2nd Cir. 2004) (Sotomayor, J.) (citation omitted; underlining added), affirmed *Empire Healthchoice Assurance, Inc. v. McVeigh,* 547 U.S. 677 (2006).

III. THERE IS A CONFLICT AMONG THE CIRCUITS — THEY ARE SPLIT ON FEDERAL QUESTION JURISDICTION OVER STATE LAW CLAIMS

The central question is when, and under what circumstances, does a federal court have jurisdiction to decide claims that arose under state law? When one body of law incorporates the other? (Usually it is state law that incorporates federal law, but sometimes the converse situation is presented.)

The origin of the debate and continued uncertainty about this topic can be traced at least as far back as this Court's decision in *Smith v. Kansas City Title & Trust Co.,* 255 U.S. 180 (1921). In *Smith,* Justice Holmes dissented and adhered to his rule (known as the "Holmes Test") that "a suit arises under the law that creates the cause of action."[2]

After Justice Holmes retired, this issue resurfaced in the *Moore* case[3], which has become the antipode of *Smith.*

The *Smith* and *Moore* cases have taken opposite views about when a case arises under federal law where the initial claim or cause of action is a state law claim. This issue arose again in *Merrell Dow Pharmaceuticals v. Thompson,* 478 U.S.

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[2] *American Well Works Co. v. Layne & Bowler Co.,* 241 U.S. 257, 260 (1916) (Holmes, J.).

[3] *Moore v. Chesapeake & Ohio Ry. Co.,* 291 U.S. 205 (1934).

804 (1986), which might seem to approve of *Smith* while expressing a narrower — though *vague* in critical respects — view of permissible federal interests.

These conflicts are explored in a useful article on federal question jurisdiction. [4] As Mr. Hellman explained in his article, there is not merely confusion and uncertainty in this area of law, but there is outright *conflict among the circuits*[5]:

> In light of this conflicting language and the Court's subsequent silence, the circuits have split nearly evenly, and sometimes within themselves, on the status and scope of *Merrell Dow's* private right of action requirement. The crux of the disagreement is whether the presence of a private right of action is the only

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[4] Matthew S. Hellman, *Mr.* Smith *Goes to Federal Court: Federal Question Jurisdiction over State Law Claims Post-*Merrell Dow*,* 115 HARV.L.REV. 2272, 2279-82 & especially nn. 49-52 (2002) ("the circuits have split nearly evenly, and sometimes within themselves, on the status and scope of *Merrell Dow's* private right of action requirement") [hereinafter: *Mr.* Smith *Goes to Federal Court*].

[5] There is also intra-circuit conflict within the Ninth Circuit. *Mr.* Smith *Goes to Federal Court,* 115 HARV. L.REV. at 2281 & n. 50 (2002). This petition focuses on the inter-circuit conflict, which poses an issue of nation-wide importance. The Ninth Circuit's woes also can be resolved if this Court will grant review and fashion a workable rule.

> road to *Smith* jurisdiction after *Merrell Dow* or whether *Smith* jurisdiction remains open for state law claims that present federal issues that a federal court should decide. As a result of the nearly even split among the appellate courts, litigants will find it difficult to predict whether a court will take jurisdiction over their *Smith* claims in the absence of a federal cause of action.

Mr. Smith *Goes to Federal Court,* at 2281-82 (footnotes omitted).

Conclusion: This court should resolve the conflict among the circuits by adopting a bright line rule that allows § 1331 jurisdiction only when the federal law at issue both creates a private cause of action under federal law *and* also provides a remedy under federal law.

IV. THE QUESTIONS LEFT UNANSWERED IN *MERRELL DOW* SHOULD NOW BE ANSWERED BY THIS COURT

This Court's decision in *Merrell Dow* has left a trail of uncertainty because that decision embraces conflicting rules about federal jurisdiction.

The uncertainty is the need, *vel non*, for a private right of action? And for a private remedy? [6]

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[6] The importance of both a private cause of action and a private remedy can be traced to the four-factor test of *Cort v. Ash,* 422 U.S. 66, 78 (1975), where

Merrell Dow does say that "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction," *id.*, 478 U.S. at 813. However, the opinion confuses judges and practicing lawyers by failing to address the importance of an independent federal cause of action in the jurisdictional formula. Is it desirable but not necessary? Or is it a *sine qua non* for § 1331 jurisdiction? *See, id.,* 478 U.S. at 814 & n.12 (focusing on nature of the claim and interest balancing — not the stuff from which practical rules can be fashioned).

Again, Mr. Hellman's article informs the discussion. Part II of the article "argues that discretion is undesirable, as a policy matter, to the extent that it leads to a lack of clarity about

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Justice Brennan collected the four elements that must be considered when deciding whether there is a remedy to be found in a federal statute that does not expressly provide one.

Cort v. Ash is the first of several adoptions by this Court of the Internal Affairs Doctrine, which says that "state law will govern the internal affairs of the corporation." *Id.,* 422 U.S. at 84. *See also,* DOUGLAS M. BRANSON, CORPORATE GOVERNANCE, v (1993) ("state law is the heart and soul of United States corporation law"). *See generally,* Note, *The Internal Affairs Doctrine: Theoretical Justifications and Tentative Explanations for Its Continued Primacy,* 115 HARV.L.REV. 1480 (2002).

jurisdictional rules." *Mr.* Smith *Goes to Federal Court*, at 2273, 2277-84.[7]

To clarify the law in the wake of *Merrell Dow,* this court should explain:

- Is a private cause of action under federal law a *sine qua non* for the existence of § 1331 jurisdiction?

- Can *Smith* jurisdiction exist in the absence of a private right of action?

Conclusion: This court should decide whether the doctrine of *Smith v. Kansas City Title & Trust Co.*, and its younger cousin, *Merrell Dow*, allow a federal court to find federal question jurisdiction in a suit presenting a state law claim, where the federal law incorporated by the state claim does not create a federal cause of action and does not provide a federal remedy.

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[7] Reliance upon a law review article to explain the need for a change in the law of federal jurisdiction has historic precedent in this Court. The famous example from legal history is the celebrated article by Charles Warren, *New Light on the History of the Federal Judiciary Act of 1789,* 37 HARV.L.REV. 49, 84-88 (1923), which revealed the historical error in *Swift v. Tyson*, 16 Pet.1, 10 L.Ed. 865 (1842), and which lead to *Swift's* overruling in *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938).

V. THE FRICTION BETWEEN *SMITH* AND *MOORE* SHOULD BE CURED AND PUT TO REST

Long enough. This problem has been with us since 1934. Even Mr. Justice Brennan thought the two cases were causing trouble:

> My own view is in accord with those commentators who view the results in *Smith* and *Moore* as irreconcilable.

Merrell Dow, 478 U.S. at 821-22, n. 1 (Brennan, J. dissenting).

The academic community agrees. Professor Currie devotes six pages of his little treatise to the *Smith - Moore* debate, concluding:

> It is not easy to reconcile these decisions. In *Moore* as well as *Smith* the result turned upon construction of federal law; in neither case did federal law provide a remedy.

DAVID P. CURRIE, FEDERAL JURISDICTION IN A NUTSHELL, 70 - 75 (4th ed. 1999).

Professor Miller seems to agree. *See, e.g.,* Arthur Miller, *Artful Pleading: A Doctrine in Search of Definition,* 76 TEX.L.REV. 1781, 1786-93 (1998) (collecting cases that illustrate the confusion in the law on this topic).

Conclusion: This Court should resolve the apparent conflict between *Smith* and *Moore* by adopting a bright line rule that allows § 1331 jurisdiction only when the federal law at issue both creates a cause of action under federal law *and* also provides a remedy under federal law.

Or, the Court should disapprove or overrule *Smith* and either fashion a workable new rule or return to the Holmes Test [8] (a "suit arises under the law that creates the cause of action").

VI. THIS CASE PRESENTS A RECURRING JURISDICTIONAL PROBLEM THAT IS OF BROAD INTEREST AND IMPORTANCE

The dispute about *Smith* jurisdiction and the need to resolve issues left open in *Merrell Dow* are issues of nation-wide importance. This case is also important to Alaska because of the large number of Alaska Native corporations that are chartered and governed by state corporate law — but that law might give rise only to federal cases? If so, then the internal affairs of Alaska's corporations will no longer be decided by Alaska courts; the Supreme Court of Alaska will no longer be the law giver on matters of corporate law in this State.

This case is of great importance to the State of Alaska, to its economy and to its Native peoples. More than 200 Alaska Native corporations will be affected by this case. A significant part of Alaska's residents are shareholders in Alaska corporations. CIRI alone has more than 7,000 shareholders. These corporations have received almost one billion dollars of federal money and title to an area the size

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[8] *American Well Works Co. v. Layne & Bowler Co.,* 241 U.S. 257, 260 (1916) (Holmes, J.).

of Missouri and Kentucky combined. ANCSA §§ 6, 9, 11-16 [43 U.S.C. §§ 1605, 1608, 1610 - 1615].

This Court has a grand tradition of granting review in cases that are of special importance to Alaska. *Alaska v. Arctic Maid,* 366 U.S. 199, 201-02, 6 L.Ed.2d 227, 81 S.Ct. 929 (1961) ("The case is here on a petition for certiorari which we granted because of the importance of the ruling to the new State of Alaska."). Other cases of the genre include: *Territory of Alaska v. American Can Company,* 358 U.S. 224 (1959) (certiorari "granted in view of the fiscal importance of the question to Alaska"); *Zobel v. Williams,* 457 U.S. 55 (1982) (striking down state-wide dividend distributions that were based upon length of residency in Alaska); and *Alaska v. Native Village of Venetie Tribal Government,* 522 U.S. 520, 534 (1998) ("it is worth noting that Congress conveyed ANCSA lands to state-chartered and state-regulated private business corporations, hardly a choice that comports with a desire to retain *federal* superintendence over the land") (italics in original).

VII. A RULE OF UNIFORMITY REQUIRES THAT A FEDERAL STATUTE MUST ACTUALLY CREATE A CAUSE OF ACTION — MUST HAVE "CREATIVE" LANGUAGE— TO SUPPLY A FEDERAL QUESTION

A rule of reason or of common sense.

A comparison of ANCSA and the 1934 Act [SEA] reveals the bright contrast between these two federal statutory schemes, and shows what is needed for federal question jurisdiction (in the SEA) and what is missing in ANCSA:

Contrasting 1934 Act [SEA] with ANCSA:
The 1934 Act includes an explicit, obvious grant of federal jurisdiction, but ANCSA does not.

Feature or Attribute	***Securities & Exchange Act***	***ANCSA***
Codified in U.S. Code at:	15 U.S.C. §§ 78a et seq.	43 U.S.C. §§ 1601 et seq.
Includes a jurisdictional grant?	Yes–*Federal* law Exchange Act § 27, 15 U.S.C. §78aa	Yes — *State* law † ANCSA §7(h)(1)(A), 43 USC §1606(h)(1)(A)
Provides for litigation in federal courts?	Yes — Federal law Exchange Act § 25 15 U.S.C. §78y	No
Creates a cause of action?	Yes, e.g., §§ 10(b), 14 and SEC Rules: 10b-5, 14a-9	No
Provides a federal remedy?	Yes, e.g., § 18 (damages), § 29(b) (rescission)	No
Provides a federal penalty?	Yes, § 32	No
Express exemption?	No	Yes, ANCSA § 28 ‡
Proxy regulations?	Yes, §§ 10, 14, SEC Rules 10b–5, 14a–9‡	Alaska Securities Act 3 AAC 08.305 -.365 †‡

† ANCSA § 2(f), 43 U.S.C. § 1601(f), disavows federal jurisdiction: "no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, ..."

‡ ANCSA corporations are exempt from federal securities laws, ANCSA § 28, 43 U.S.C. § 1625. The exemption leaves ANCSA corporations in the exclusive domain of state law — no federal law applies.

†‡ State law has replicated the principal features of the federal disclosure statutes and proxy rules (e.g. SEC Rule 10b–5, Rule 14a–9) in AS 45.55.160 and in 3 AAC 08.305 -.365. However, Alaska's replication of the federal securities regulations does not convert a dispute about state law corporate proxy, election, or director's contest into a federal case.

Conclusion: The Ninth Circuit erred in holding, in conflict with the other courts of appeals, that federal question jurisdiction can exist even though the federal law that is implicated lacks a federal cause of action, a federal remedy or penalty, and a federal grant of jurisdiction (and the dispute does not otherwise present a substantial question of federal law).

CONCLUSION

We need a new rule. A bright line rule, not a fuzzy unworkable rule. Or at least a clear definition of a federal cause of action: Does it require both a federal cause of action and a federal remedy? Must the statute at issue contain a Congressional grant of federal jurisdiction, such as found in the securities laws? (E.g., Securities and Exchange Act of 1934, § 27, 15 U.S.C. § 78aa.)

The Petition for Certiorari should be granted *or* the Ninth Circuit's decision should be vacated with instructions to dismiss the case.

In the alternative, this Court should summarily reverse the decision of the Court of Appeals. Supreme Court Rule 16.1. ("The order may be a summary disposition on the merits.").

Respectfully submitted this 6th day of February in 2013 at Petersburg, Alaska.

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PETITIONERS' APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COOK INLET REGION, INC., *Plaintiff-Appellee,* *v.* ROBERT W. RUDE, HAROLD RUDOLPH, *Defendants-Appellants*	No. 11-35252 D.C. No. 3:09-cv-00256-RRB OPINION

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, Chief District Judge, Presiding

Argued and Submitted
June 25, 2012—Anchorage, Alaska
Filed August 20, 2012

Before: Alfred T. Goodwin, William A. Fletcher, and Milan D. Smith, Jr., Circuit Judges.

Opinion by Judge William A. Fletcher

COUNSEL

Frederick William Triem, Law Offices of Fred W. Triem, Petersburg, Alaska, for the appellants.

Jahna M. Lindemuth, Dorsey & Whitney LLP, Anchorage, Alaska, William D. Temko, Munger, Tolles & Olson LLP, Los Angeles, California, for the appellee.

OPINION

W. FLETCHER, Circuit Judge:

***1** Plaintiff–Appellee Cook Inlet Region, Inc. ("CIRI") is an Alaska Native Regional Corporation formed under the Alaska Native Claims Settlement Act ("ANCSA"). Defendants–Appellants Robert W. Rude and Harold F. Rudolph are shareholders of CIRI and former members of CIRI's Board of Directors.

In 2009, Plaintiff CIRI filed suit against Defendants, alleging that they had violated ANCSA and Alaska law. The district court held that it had federal question jurisdiction over the ANCSA claims and supplemental jurisdiction over the state-law claims. On appeal, Defendants challenge the court's holding that it had subject matter jurisdiction over the ANCSA claims. We affirm the district court.

I. Background

Congress enacted ANCSA in 1971, two years after the discovery of oil in Prudhoe Bay. Alaska Native Claims Settlement Act, Pub. Law No. 92–203, 8 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601–1629h); *see also* Martha Hirschfield, Note, *The Alaska Native Claims Settlement Act: Tribal*

Sovereignty and the Corporate Form, 101 Yale L.J. 1331, 1335–36 (1992) ("Oil companies eager to exploit Alaska's natural resources were unwilling to begin development until title to the land had been quieted."). Under ANCSA, all Native claims to Alaskan land based on aboriginal use and occupancy were extinguished, and Native Alaskans were granted monetary compensation and title to forty million acres of land. *See* John F. Walsh, Note, *Settling the Alaska Native Claims Settlement Act,* 38 Stan. L.Rev. 227, 227 (1985).

ANCSA transferred title of the settlement land to twelve regional corporations and numerous village corporations created by the Act. 43 U.S.C. §§ 1606–07. Under ANCSA, only Native Alaskans could be shareholders in these corporations for the first twenty years of their existence. This restriction on alienation was designed to ensure that Native Alaskan lands would not be sold at low prices as soon as title cleared. § 1606(h)(1) (1982); *see also* Walsh, 38 Stan. L.Rev. at 232–33 (discussing reasons for alienability restriction).

In 1990 and 1991, as the twenty-year restriction neared its end, Congress amended ANCSA to broaden restrictions on the transfer of corporate stock. *See* Little Bighorn Battlefield National Monument, Pub.L. No. 102–201, § 301, 105 Stat. 1631, 1633 (1991); Alaska Native Claims Settlement Act, Amendment, Pub.L. No. 101–378, § 301, 104 Stat. 468, 471–72 (1990). Under current law, shareholders in regional corporations established

under ANCSA cannot sell or otherwise transfer their stock except under limited circumstances. 43 U.S.C. § 1606(h)(1)(B)-(C).

Lifting ANCSA's alienability restrictions on stock requires an amendment to the regional corporation's articles of incorporation. *See* § 1629c(b). ANCSA provides two mechanisms by which these restrictions can be lifted. One of them is a shareholder vote taken at the request of a shareholder petition. § 1629c(b)(1)(B)(ii).

***2** In 2009, Defendants solicited shareholder signatures for two petitions. The first petition sought a vote to lift the alienability restrictions. The second petition sought to convene a special shareholder meeting to consider six advisory resolutions concerning dividends, elections, financial reporting, voting rights, and compensation of senior management. The petitions suggested that Plaintiff's board of directors and senior management were mismanaging the corporation. Defendants sent four mailers soliciting signatures for the petitions.

Plaintiff filed suit, alleging two claims under ANCSA and two claims under Alaska law. Plaintiff moved for summary judgment on all claims. Defendants did not oppose the motion. The district court granted summary judgment to Plaintiff on all claims. Defendants filed a motion for relief from judgment, arguing that the court lacked federal-question subject matter jurisdiction. They also argued that the court erred in granting summary

judgment on the second of Plaintiff's two ANCSA claims. The district court concluded that it had subject matter jurisdiction. However, it changed its mind on the merits of the second of the two ANCSA claims and ruled against Plaintiff on this claim.

After entry of final judgment, Defendants appealed, challenging only the jurisdictional ruling.

II. Jurisdiction and Standard of Review

[1] We have appellate jurisdiction under 28 U.S.C. § 1291. We review de novo district court determinations of subject matter jurisdiction. *Puri v. Gonzales,* 464 F.3d 1038, 1040 (9th Cir.2006).

III. Discussion

[2] Plaintiff alleged two claims under ANCSA. The first claim alleged that defendants violated 43 U.S.C. § 1629b(c). This section permits the holders of 25 percent of the voting power of a Native corporation to petition the board of directors to lift alienability restrictions. The section provides that Alaska law governing the solicitation of proxies "shall govern solicitation of signatures for a petition," with exceptions not applicable here. § 1629b(c)(1)(B). Plaintiff alleged that defendants' solicitation materials for the petitions contained false and materially misleading statements, in violation of Alaska law that has been incorporated into § 1629b(c). *See* Alaska Stat. § 45.55.160.

The second claim alleged that defendants violated

43 U.S.C. §§ 1629b(b)(2)(A) and 1629c(b)(2). These sections require that certain information be disclosed in petitions to lift alienability restrictions. These sections do not incorporate any Alaska law.

[3] The general federal question jurisdiction statute, 28 U.S.C. § 1331, grants federal district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." "A case arise[es] under federal law within the meaning of § 1331 ... if a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Empire Healthchoice Assurance, Inc. v. McVeigh,* 547 U.S. 677, 689–90, 126 S.Ct. 2121, 165 L.Ed.2d 131 (2006) (internal quotation marks omitted). We conclude that the district court had federal-question subject matter jurisdiction over Plaintiff's two ANCSA claims because "federal law creates the cause of action" in both claims. *Id.* at 690, 126 S.Ct. 2121.

***3** Defendants make four arguments why there is no federal question jurisdiction over Plaintiff's first claim. First, they argue that Plaintiff's claim under § 1629b(c)(1)(B) "does not allege any serious dispute over the validity, construction or effect[ ] of the 'federalized' state law ... that requires the experience and uniformity" of a federal forum. Second, they argue that federal question jurisdiction over the first claim would disrupt the proper federal-state balance. Third, they argue that the claim does not raise a

substantial federal question. Fourth, they argue that Congress' failure to create an explicit cause of action to challenge the solicitation of signatures indicates that it did not intend to grant federal jurisdiction over claims arising under the provision.

[4][5] Defendants' first and second arguments conflate the sometimes difficult jurisdictional question posed when federal law is embedded in a state-law claim with the much more straightforward question posed when state law is embedded in a federal-law claim. There is federal question jurisdiction over a state-law claim only if it "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.,* 545 U.S. 308, 314, 125 S.Ct. 2363, 162 L.Ed.2d 257 (2005). By contrast, there is federal question jurisdiction over a federal-law claim simply by virtue of its being a claim brought under federal law, whether or not it incorporates state law.

Plaintiff's first claim required the district court to apply Alaska law governing proxy solicitations to determine the legality of Defendants' shareholder petitions under ANCSA. But Plaintiff's claim was not brought as a state-law claim. Rather, Plaintiff brought a federal-law claim under a provision of ANCSA that incorporated state law. Plaintiff did not bring, **and indeed could not have brought,** a claim directly under Alaska law because the relevant

provision of Alaska law governs proxy solicitations rather than shareholder petitions. *See* Alaska Stat. § 45.55.160 (prohibiting "untrue statement[s] of material fact" in documents filed under proceedings in Chapter 55 of the Alaska Securities Act).

Defendants' third and fourth arguments are essentially the same as their argument that there is no federal question jurisdiction over Plaintiff's second claim. That argument is that both ANCSA claims fail on the merits, and that there is therefore no federal question jurisdiction over them.

[6][7][8] Defendants' argument fails because there is subject matter jurisdiction over federal-law claims unless they are "obviously frivolous." *Sea–Land Serv., Inc. v. Lozen Int'l, LLC,* 285 F.3d 808, 814 (9th Cir.2002) (internal quotation marks omitted). It is hard to show frivolousness. There is federal question jurisdiction unless the federal claim is "so insubstantial, implausible, foreclosed by prior decisions of [the Supreme] Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 98, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (internal quotations omitted). "Any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if that claim is later dismissed on the merits." *Cement Masons Health & Welfare Trust Fund for N. Cal. v. Stone,* 197 F.3d 1003, 1008 (9th Cir.1999).

***4** Neither of Plaintiff's ANCSA claims was

frivolous. Defendants can hardly contend that Plaintiff's first claim was frivolous, given that the district court found Defendants liable on that claim. The district court eventually concluded that Plaintiff's second claim failed on the merits, but that claim was not "insubstantial" or "implausible."

[9] Defendants make a final argument, applicable to both ANCSA claims. They contend that ANCSA itself limits federal jurisdiction over claims brought under it. Section 1601(f) states that "no provision of this chapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of the chapter." 43 U.S.C. § 1601(f). Defendants have misread this section. It limits litigation challenging the elimination of Native Alaskan land claims under ANCSA, but it does not limit § 1331 federal question jurisdiction over other claims brought under ANCSA.

Conclusion

We hold that there is federal question jurisdiction under § 1331 over Plaintiff's ANCSA claims.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

COOK INLET REGION, INC.,
Plaintiff,
vs.

ROBERT W. RUDE and
HAROLD F. RUDOLPH,
Defendants.

Case No. 3:09-cv-0256-RRB

ORDER REGARDING MOTION FOR RELIEF FROM JUDGMENT

I. INTRODUCTION

Before the Court are Defendants Robert W. Rude ("Rude") and Harold F. Rudolph ("Rudolph") with a Motion For Relief From Judgment at Docket 61. Defendants contend that they should be relieved from the Court's Orders at Dockets 38 and 40 and from the final judgment in favor of Plaintiff Cook Inlet Region, Inc. ("CIRI") at Docket 41 because (1) this Court does not possess subject matter jurisdiction over the instant matter, (2) this Court should have abstained from hearing this case, and (3) the statutes relied upon by this Court do not apply to

Defendants.[1] Plaintiff opposes at Docket 71 and argues that the Burford abstention doctrine does not apply to its claims and that Defendants have misinterpreted the applicable statutes.[2] All of the issues, arguments, and concerns raised by Defendants in their Motion For Relief From Judgment could and should have been raised in opposition to CIRI's two motions for summary judgment. As it happened, both of CIRI's motions went unopposed. In order to promote expediency, effectiveness, judicial economy, and comity, it behooves all counsel to present arguments in a timely and complete fashion at the appropriate procedural step of litigation and not to wait until the 11th hour to introduce such arguments.

Inasmuch as the Court has determined that it **does** possess subject matter jurisdiction over the present case and that it **should not abstain** from ruling in this case, the Court reaffirms its Orders granting summary judgment at Dockets 38 and 40 and the Final Judgment entered in this matter at Docket 41. However, the Court finds that its grant of summary judgment as to Plaintiff's second claim for relief at Docket 40 was in error, as explained hereafter.

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[1] Docket 75 at 10.

[2] Docket 71 at 3, 6. For the factual background concerning the parties' claims, the Court adopts Docket 38 at 2-5 and Docket 40 at 2-6.

Oral argument has been requested at Docket 69. The Court concludes oral argument is neither necessary nor warranted with regard to the instant matter.[3] .

II. STANDARD OF REVIEW

Under Federal Rules of Civil Procedure ("FRCP") Rules 60(b)(1), (3), and (4), a court may relieve a party from a final judgment or an order due to: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud, misrepresentation, or misconduct by an opposing party; or (3) a void judgment. Fraud by an opposing party is defined as acting "in a manner at all amounting to 'an unconscionable plan or scheme which is designed to improperly influence the court in its decision.'"[4] Furthermore, a judgment is void under 60(b)(4) "*only* if the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law."[5]

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[3] See Mahon v. Credit Bureau of Placer County Inc., 171 F.3d 1197, 1200 (9th Cir. 1999)(explaining that if the parties provided the district court with complete memoranda of the law and evidence in support of their positions, ordinarily, oral argument would not be required).

[4] Hongsermeier v. C.I.R., 621 F.3d 890, 900 (9th Cir. 2010) (citing England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960) (defining fraud on the court)).

[5] U.S. v. Berke , 170 F.3d 882, 883 (9th Cir. 1999) (emphasis added).

III. DISCUSSION

A. The ANCSA Incorporates Alaska Security Law. Defendants claim that under FRCP Rule 60(b)(1), they should be relived from the Court's Orders at Dockets 38 and 40 and from the Final Judgment at Docket 41 because the Court committed a legal error when it found that the Alaska Native Claims Settlement Act ("ANCSA") applies to claims of false and misleading statements in connection with petition signature solicitations.[6] The Court disagrees.

Under 43 U.S.C. § 1629b(c)(B) (2003), "[t]he requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition . . . ." It is clear, therefore, that Alaska law pertaining to proxy solicitation governs Defendants' solicitation efforts. Reliance on § 1629b(c)(B), however, does not create a purely state law issue. Congress will often incorporate state law in order to fill the interstices of federal law.[7] Incorporation of state law into federal law often occurs "where relationships traditionally governed by common law are brought within federal law . . ." so as to not invent federal common law.[8] When federal law incorporates state law, such state law becomes federal, and thus federal law, not state, supplies the

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6 Docket 61 at 5.

7 Young v. U.S., 149 F.R.D. 199, 202 (S.D. Cal. 1993).

8 Id. (citing Gen. Amer. Life Ins. Co. v. Castonguay, 984 F.2d 1518, 1522 (9th Cir. 1993).

rule of decision.[9] A clear example of federal adoption of state law can "be found in the Federal Tort Claims Act under which the United States is made liable for certain torts of its employees in accordance with relevant state law."[10] Under Alaska law, Defendants' statements in the four mailings were materially false and misleading.[11] Because ANCSA incorporates and employs Alaska security law, this Court did not commit a mistake of law when it found that the ANCSA applied to Defendants' material false and misleading statements. Defendants' first argument fails.

B. This Court Possesses Subject Matter Jurisdiction.

Defendants contend that because all of the issues in this case are matters of purely state law, this case presents no federal question and the Court's Order at Docket 40 is void under FRCP 60(b)(4).[12] The Court disagrees.

Under 28 U.S.C. § 1331 (1980), "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The Supreme Court expounded upon this language: "[A] suit does not so arise unless it really and substantially involves a

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9 149 F.R.D. at 202.

10 Id.

11 Docket 40 at 9-11.

12 Docket 61 at 14.

dispute or controversy respecting the validity, construction, or effect of such a law, upon the determination of which the result depends."[13] In the case at bar, the resolution of two of CIRI's claims depends on this Court's determination of the effect of ANCSA on Defendants' actions.

First, as explained above, ANCSA incorporates AS § 45.55.160 and the accompanying administrative regulations governing the solicitation of proxies. Such adoption of Alaska law by federal law transforms the adopted law into federal law when the Alaska laws are applied through ANCSA.[14] Consequently, any dispute that "really and substantially" involves the effect of such adopted law constitutes a federal question.[15] Second, the dispute between the parties concerning the correct procedure for submitting shareholder petitions to the CIRI board focuses on the construction and interpretation of a federal statute: § 1629b(b), (c). Furthermore, because this Court has original jurisdiction over the two previously mentioned claims, the Court possesses supplemental jurisdiction over CIRI's two remaining state claims.[16] Defendants' second argument fails.

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[13] Shulthis v. McDougall, 225 U.S. 561, 569 (1912).

[14] 149 F.R.D. at 202.

[15] 225 U.S. at 569.

[16] 28 U.S.C. § 1367(a) (1990) (in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original

C. Abstention Is Not Required.

Defendants assert that comity requires that this Court apply the Burford abstention doctrine because, *inter alia*, "the applicable proxy law is unclear."[17] The Court disagrees.

In Burford v. Sun Oil Co., 319 U.S. 315, 332 (1943), the Supreme Court held that when an issue "clearly involves basic problems of [state] policy[,] . . . equitable discretion should be exercised to give the [state] courts the first opportunity to consider them." In essence, "a federal court should refrain from exercising its jurisdiction in order to avoid needless conflict with the administration by a state of its own affairs."[18] The Supreme Court has outlined the specific instances in which to employ the Burford abstention doctrine:

> [w]here timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are 'difficult questions of state law bearing on policy problems of

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jurisdiction that they form part of the same case or controversy).

[17] Docket 61 at 11.

[18] Beck v. State of Cal., 479 F.Supp. 392, 399-400 (D.C. Cal. 1979).

> substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of a question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'[19]

The Ninth Circuit has elaborated on the application of the Burford doctrine by requiring that additional circumstances be present: (1) "[T]he state must have concentrated suits involving the local issue in a particular court; [and] (2) the federal issues must not be easily separable from complicated state law issues with which the state courts may have special competence . . . ."[20] Under Burford abstention, "since adequate state court review of an administrative order based upon predominantly local factors is available, intervention of a federal court is not necessary for the protection of federal rights."[21] However, "'[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.'"[22]

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19 Fireman's Fund Ins. Co. v. Quackenbush, 87 F.3d 290, 297 (9th Cir. 1996) (quoting New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 361 109 (1989)).

20 87 F.3d at 297.

21 479 F. Supp at 399-400.

22 City of Tucson v. U.S. West Commc'ns, Inc., 284 F.3d 1128, 1132 (9th Cir. 2002) (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976)).

The present case clearly does not fall within the Burford doctrine. While Alaska security law is involved in the case, such law appears to be settled and no questions bearing on state policy are presented for decision. Additionally, the case does not present any questions of difficult state law. A decision of the federal claims by this Court will not impermissibly impair the State's effort to affect its own policy, as was the case in Burford. Likewise, the exercise of federal jurisdiction here would not in any way interrupt any such effort by restraining the exercise of authority vested in state officers. Furthermore, to the best of the Court's knowledge, there is not currently a concentration of suits involving the same or a similar issue in state court. The facts of this case simply do not fit within the narrow circumstances in which the Burford abstention doctrine would apply. Accordingly, this Court need not abstain from ruling in the instant matter.

D. Defendants Did Not Violate the ANCSA Petition Procedure.

Defendants argue that because § 1629b(b)(2)(A) imposes a duty only upon directors and not shareholders, Rude and Rudolph could not be held liable for a violation of a duty imposed by the statute.[23] Defendants are correct. In its Order at Docket 40, this Court incorrectly found that the statute in question imposed a duty on Defendants to

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[23] Docket 75 at 2.

include with their shareholder petition a written notice setting forth their proposed amendment. Upon closer review, § 1629b(b)(2)(A) imposes no such duty on Defendants. The written notice referred to in the statute applies uniquely to an amendment or resolution approved by the board of directors of a Native Corporation, as mentioned in § 1629b(b)(1). The Court, therefore, hereby amends its Order at Docket 40 solely as to CIRI's second claim for relief and denies summary judgment to CIRI on such claim.

E. Miscellaneous Matters

Defendants allege that CIRI committed fraud upon this Court "by claiming that defendants issued proxy solicitations that 'contain numerous materially false and misleading statements in violation of ANCSA . . .'"; and "by creating the false impression that ANCSA imposes on shareholders 'the requirement that shareholders be given written notice . . . .'" CIRI's actions do not fit the type of fraud required under FRCP 60(b)(3); such actions were a legitimate attempt at establishing Plaintiff's case.

Defendants also contend that the Business Judgment Rule ("BJR"), as adopted in Alaska, protects Defendants from their decision to disclose confidential information to CIRI shareholders. Defendants' argument is inapposite. The question of whether or not the BJR protected such disclosure is moot. The Court found that the Defendants were liable for breaching their respective confidentiality agreements when they disclosed such information to

the CIRI shareholders, regardless of the implications of the BJR.[24]

Defendants additionally argue that the estoppel principle prohibits CIRI from bringing the current suit in federal court[25] and that the 10th Amendment to the United States Constitution "probably" prevents this Court from imposing a duty on the Alaska Division of Banking and Securities to review proxy solicitations.26[26] Defendants fail to even minimally support either argument.

IV. CONCLUSION

For the foregoing reasons, Defendant's request for relief fails on all points excepting Plaintiff's second claim for relief. Accordingly, Defendants' Motion For Relief From Judgment at **Docket 61** is hereby **GRANTED IN PART** as to the summary judgment on Plaintiff's second claim at Docket 40 *only* and **DENIED IN PART** on all other points. The Final Judgment at **Docket 41 STANDS**. In addition, because Defendants' arguments concerning this Court's jurisdiction over the present case have already been considered and adjudicated, Defendant's Motion to Dismiss for Lack of Jurisdiction at **Docket 58** is hereby **DENIED**. Correspondingly, the hearing scheduled at **Docket 76** is hereby **VACATED**. In the interest of clarity,

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[24] Docket 38 at 8-10.

[25] Docket 61 at 13.

[26] Docket 75 at 9.

this Order will not affect the Final Judgment previously entered at Docket 41 or the relief granted by this Court. The only action that this Court will take regarding its decision herein will be to issue an Amended Order modifying its Order at Docket 40 to reflect the Court's decision; i.e., CIRI will be granted summary judgment on its first and third claim for relief, but not on its second. In any event, the case is concluded.

IT IS SO ORDERED.

ENTERED this 22nd day of March, 2011.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

APPENDIX C
Order filed 9 October 2012

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COOK INLET REGION, INC., Plaintiff - Appellee, v. ROBERT W. RUDE; HAROLD RUDOLPH, Defendants - Appellants	No. 11-35252 D.C. No. 3:09-cv-00256 District of Alaska, Anchorage ORDER

Before: GOODWIN, W. FLETCHER, and M. SMITH, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judges W. Fletcher and M. Smith have voted to deny the petition for rehearing en banc; and Judge Goodwin so recommends.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc, filed September 13, 2012, are **DENIED**.

APPENDIX D

Constitutional and Statutory Provisions Involved

CONSTITUTION OF THE UNITED STATES
ARTICLE III — THE JUDICIARY

Section 2, Clause 1. Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases . . . .

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U.S. Code, Title 28, Judiciary and Judicial Procedure Chapter 85, District Courts; Jurisdiction Chapter 89, District Courts; Removal of Cases from State Courts

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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U.S. Code, Title 43, Public Lands, Chapter 33, Alaska Native Claims Settlement Act [ANCSA] (underlining added)

ANCSA § 2(f) [43 U.S.C. § 1601(f)] — Declaration of Policy.

Congress finds and declares that —

. . . .

(f) no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to claims extinguished by the operation of this Act; and . . . .

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ANCSA § 7 [43 U.S. C. §1606] — Regional Corporations

ANCSA § 7(d) [43 U.S.C. § 1606(d)] — Procedures for incorporation.

(d) Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act.

The articles of incorporation shall include provisions necessary to carry out the terms of this Act.

ANCSA § 7(h)(1)(A) [43 U.S.C. § 1606(h)(1)(A)]

REGIONAL CORPORATIONS—SETTLEMENT STOCK—
7(h)(1) RIGHTS AND RESTRICTIONS.—

(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

ANCSA § 10 [43 U.S.C.. § 1609] — Limitation of actions

(a) Complaint, time for filing; jurisdiction; commencement by State official; certainty and finality of vested rights, titles, and interests

Notwithstanding any other provision of law, any civil action to contest the authority of the United States to legislate on the subject matter or the legality of this chapter shall be barred unless the complaint is filed within one year of December 18, 1971, and no such

action shall be entertained unless it is commenced by a duly authorized official of the State. Exclusive jurisdiction over such action is hereby vested in the United States District Court for the District of Alaska. The purpose of this limitation on suits is to insure that, after the expiration of a reasonable period of time, the right, title, and interest of the United States, the Natives, and the State of Alaska will vest with certainty and finality and may be relied upon by all other persons in their relations with the State, the Natives, and the United States.

(b) Land selection; suspension and extension of rights

In the event that the State initiates litigation or voluntarily becomes a party to litigation to contest the authority of the United States to legislate on the subject matter or the legality of this chapter, all rights of land selection granted to the State by the Alaska Statehood Act shall be suspended as to any public lands which are determined by the Secretary to be potentially valuable for mineral development, timber, or other commercial purposes, and no selections shall be made, no tentative approvals shall be granted, and no patents shall be issued for such lands during the pendency of such litigation. In the event of such suspension, the State's right of land selection pursuant to section 6 of the Alaska Statehood Act shall be extended for a period of time equal to the period of time the selection right was suspended.

(Pub.L. 92-203, § 10, Dec. 18, 1971, 85 Stat. 696.)

ANCSA § 36 [43 U.S.C. § 1629b]

(a) **Coverage**. Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section

(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 1606 of this title, subsection (d)(1)(B) of this section, or section 1629c of this title;

(2) a resolution authorized by section 1629d(a)(2) of this title;

(3) a resolution to establish a Settlement Trust; or

(4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to section 1629e(a)(1) of this title;

shall be considered in accordance with the provisions of this section.

(b) **Basic procedure**

(1) An amendment or resolution described in subsection (a) of this section may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall

direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) of this section and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

(B) The board of directors may, but shall not be required to, appraise or otherwise determine the value of

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery;

(ii) the surface estate of land that is both

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of Title 16); or

(iii) land or interest in land which the board of directors believes to be only of speculative value;

in connection with any communication made to the shareholders pursuant to this subsection.

(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

(c) **Shareholder petitions**

(1)(A) With respect to an amendment authorized by section 1606(g)(1)(B) of this title or

section 1629c(b) of this title or an amendment authorizing the issuance of stock subject to the restrictions provided by section 1606(g)(2)(B)(iii) of this title, the holders of shares representing at least 25 per centum of the total voting power of a Native Corporation may petition the board of directors to submit such amendment to a vote of the shareholders in accordance with the provisions of this section.

(B) The requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition described in subparagraph (A) except that the requirements of Federal law shall govern the solicitation of signatures for a petition that is to be submitted to a Native Corporation which at the time of such submission has issued a class of equity securities registered pursuant to the Securities Exchange Act of 1934. If a petition meets the applicable solicitation requirements and

(i) the board agrees with such petition, the board shall submit the amendment and either the proponents' statement or its own statement in support of the amendment to the shareholders for a vote, or

(ii) the board disagrees with the petition for any reason, the board shall submit the amendment and the proponents' statement to the shareholders for a vote and may, at its discretion, submit an opposing statement or an alternative amendment.

(2) Paragraph (1) shall not apply to a Native Corporation that on or before the date one year after February 3, 1988 elects application of section 1629c(d) of this title in lieu of section 1629c(b) of this title. Until December 18, 1991, paragraph (1) shall not apply to a Native Corporation that elects application of section 1629c(c) of this title in lieu of section 1629c(b) of this title. Insofar as they are not inconsistent with this section, the laws of the State shall govern any shareholder right of petition for Native Corporations.

(d) **Voting standards**

(1) Except as otherwise set forth in subsection (3) of this section, an amendment or resolution described in subsection (a) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing

(A) a majority of the total voting power of the corporation, or

(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(2) A Native Corporation in amending its articles of incorporation pursuant to section 1606(g)(2) of this title to authorize the issuance of a new class or series of stock may provide that a

majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) of this section (other than an amendment authorized by section 1629c of this title) in order for such amendment or resolution to be approved.

(3) A resolution described in subsection (a)(3) or an amendment to articles of incorporation under section 7(g)(1)(B) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing--

(A) a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to the articles of incorporation; or

(B) an amount of shares greater than a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to the articles of incorporation (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(e) **Voting power**. For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.

(f) **Substantially All of the Assets**. For purposes of this section and section 1629e of this title, a Native Corporation shall be considered to be transferring all or substantially all of its assets to a Settlement Trust only if such assets represent two-thirds or more of the fair market value of the Native Corporation's total assets.

ANCSA § 37 [43 U.S.C. § 1629c]

(a) **General rule**. Alienability restrictions shall continue until terminated in accordance with the procedures established by this section. No such termination shall take effect until after July 16, 1993: Provided, however, That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition.

(b) **Opt-out procedure**

(1)(A) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsection. Only one amendment to terminate alienability restrictions shall be considered and voted on prior to December 18, 1991. Rejection of the amendment shall not preclude consideration prior to December 18, 1991, of

subsequent amendments to terminate alienability restrictions.

(B) If an amendment to terminate alienability restrictions is considered, voted on, and rejected prior to December 18, 1991, then subsequent amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not earlier than five years after the rejection of the most recently rejected amendment to terminate restrictions; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not earlier than two years after the rejection of the most recently rejected amendment to terminate restrictions.

(C) If no amendment to terminate alienability restrictions is considered and voted on prior to December 18, 1991, then amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not more than once every five years; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not more than once every two years.

(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate.

(3) Dissenters rights may be granted by the corporation in connection with the rejection of an amendment to terminate alienability restrictions in accordance with section 1629d of this title. Once dissenters rights have been so granted, they shall not be granted again in connection with subsequent amendments to terminate alienability restrictions.

(c) **Recapitalization procedure**

(1)(A) On or prior to December 18, 1991, a Native Corporation may amend its articles of incorporation to implement a recapitalization plan in accordance with this subsection. Rejection of an amendment or amendments to implement a recapitalization plan shall not preclude consideration prior to December 18, 1991, of a subsequent amendment or amendments to implement such a plan. Subsequent amendment or amendments shall be considered and voted on not earlier than one year after the date on which the most recent previous recapitalization plan was rejected. No recapitalization plan shall provide for the

termination of alienability restrictions prior to December 18, 1991.

(B) An amendment or amendments submitted pursuant to subparagraph (A) (and any subsequent amendment submitted pursuant to subparagraph (C)) may provide for the maintenance or extension of alienability restrictions for

(i) an indefinite period of time;

(ii) a specified period of time not to exceed fifty years; or

(iii) a period of time that shall end upon the occurrence of a specified event.

(C) If an amendment or amendments approved pursuant to subparagraph (A) or this subparagraph maintains or extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of maintenance or extension then in force.

(D) The board of directors may ask the shareholders to approve en bloc pursuant to a single vote a series of amendments (including an

amendment to authorize the issuance of stock pursuant to section 1606(g) of this title) to implement a recapitalization plan that includes a provision maintaining alienability restrictions.

(2)(A) If an amendment to the articles of incorporation of a Native Corporation maintaining or extending alienability restrictions for a specified period of time is approved pursuant to paragraph (1), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (1)(C).

(B)(i) A Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (1)(B) to maintain or extend alienability restrictions for an indefinite period may later amend its articles to terminate such restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

(ii) Rejection of an amendment described in clause (i) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

(3) If a recapitalization plan approved pursuant to paragraph (1) distributes voting alienable common stock to each holder of shares of Settlement Common Stock (issued pursuant to section 1606(g)(1)(A) of this title) that carries

aggregate dividend and liquidation rights equivalent to those carried by such shares of Settlement Common Stock (except for rights to distributions made pursuant to sections 1606(j) and 1606(m) of this title) upon completion of the recapitalization plan, then such holder shall have no right under section 1629d of this title and any other provision of law to further compensation from the corporation with respect to action taken pursuant to this subsection.

(d) **Opt-in procedure**

(1)(A) Subsection (b) of this section shall not apply to a Native Corporation whose board of directors approves, no later than one year after February 3, 1988, a resolution electing the application of this subsection and such resolution is not validly rescinded pursuant to paragraph (2)(B)(ii).

(B) This subsection shall not apply to Village Corporations, Urban Corporations, and Group Corporations located outside of the Bristol Bay and Aleut regions.

(2)(A) Alienability restrictions imposed on Settlement Common Stock issued by a Native Corporation electing application of this subsection shall terminate on December 18, 1991, unless extended in accordance with the provisions of this subsection.

(B)(i) The board of directors of a Native Corporation electing application of this

subsection shall, at least once prior to January 1, 1991, approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend alienability restrictions. If the amendment is not approved by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

(ii) In lieu of approving the amendment to the articles of incorporation described in clause (i) and submitting such amendment to a vote of the shareholders, at any time prior to January 1, 1991, the board of directors of a Native Corporation that has approved a resolution described in paragraph (1)(A) may approve a new resolution rescinding that prior resolution. Upon approval of the new resolution rescinding a resolution described in paragraph (1)(A), the latter resolution shall be void and alienability restrictions on the Settlement Common Stock of such corporation shall continue subsequent to December 18, 1991, until such time as the alienability restrictions are terminated pursuant to the procedure described in subsection (b) of this section.

(iii) Notwithstanding any other provision of law, a civil action that challenges the constitutionality of any provision in clause (ii) shall be barred unless it is filed within one year after the date of the vote of the board of directors approving a resolution to rescind a prior opt-in election under paragraph (1)(A). Any such civil action shall be filed in accordance with section 16(b) of the

Alaska Native Claims Settlement Act Amendments of 1987 (101 Stat. 1813-1814).

(C) An amendment submitted pursuant to subparagraph (B) and any amendment submitted pursuant to subparagraph (D) may provide for an extension of alienability restrictions for

(i) an indefinite period of time, or

(ii) a specified period of time of not less than one year and not more than fifty years.

(D) If an amendment approved by the shareholders of a Native Corporation pursuant to subparagraph (B) or this subparagraph extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of extension then in force.

(3)(A) If an amendment to the articles of incorporation of a Native Corporation extending alienability restrictions for a specified period of time is approved pursuant to paragraph (2), the restrictions shall automatically terminate at the end

of such period unless the restrictions are extended in accordance with the provisions of paragraph (2)(D).

(B) If the board of directors of a Native Corporation electing application of this subsection does not submit for a shareholder vote an amendment to the articles of incorporation of the corporation in accordance with paragraph (2)(B), or if the amendment submitted does not comply with paragraph (2)(C), alienability restrictions shall not terminate and shall instead remain in effect until such time as a court of competent jurisdiction, upon petition of one or more shareholders of the corporation, orders that a shareholder vote be taken on an amendment which complies with paragraph (2)(C) and such vote is conducted. Following the vote, the status of alienability restrictions shall be determined in accordance with the other provisions of this subsection and the amendment, if approved.

(4)(A) A Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions for an indefinite period of time may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

(B) The rejection of an amendment described in subparagraph (A) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

(5)(A) If a Native Corporation amends its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions, a shareholder who

(i) voted against such amendment, and

(ii) desires to relinquish his or her Settlement Common Stock in exchange for the stock or payment authorized by the board of directors pursuant to subparagraph (B),

shall notify the Corporation within ninety days of the date of the vote of the shareholders on the amendment of his or her desire.

(B) Within one hundred and twenty days after the date of the vote described in subparagraph (A), the board of directors shall approve a resolution to provide that each shareholder who has notified the corporation pursuant to subparagraph (A) shall receive either

(i) alienable common stock in exchange for his or her Settlement Common Stock pursuant to paragraph (6), or

(ii) an opportunity to request payment for his or her Settlement Common Stock pursuant to section 1629d(a)(1)(B) of this title.

(C) This paragraph shall apply only to the first extension of alienability restrictions approved by the shareholders. No dissenters rights of any sort shall be permitted in connection with subsequent extensions of such restrictions.

(6)(A) If the board of directors of a Native Corporation approves a resolution providing for the issuance of alienable common stock pursuant to paragraph (5)(B), then on December 18, 1991, or sixty days after the approval of the resolution, whichever later occurs, the Settlement Common Stock of each shareholder who has notified the corporation pursuant to paragraph (5)(A) shall be deemed canceled, and shares of alienable common stock of the appropriate class shall be issued to such shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this chapter as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

(B)(i) Alienable common stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by section 1606(g)(1)(B)(iii) of this title shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that section.

(ii) Alienable common stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) of this section shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

(iii) In the resolution authorized by paragraph (5)(B), the board of directors shall provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of section 1606 of this title shall be exchanged either for

(I) a share of alienable common stock carrying such right, or

(II) a share of alienable common stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iv) In the resolution authorized by paragraph (5)(B), the board of directors may impose upon the alienable common stock to be issued in exchange for Settlement Common Stock one or more of the following

(I) a restriction granting the corporation, or the corporation and members of the shareholder's immediate family who are Natives or descendants of Natives the first right to purchase, on reasonable terms, the alienable common stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; or

(II) any other term, restriction, limitation, or other provision permitted under the laws of the State.

(C) The articles of incorporation of the Native Corporation shall be deemed amended to implement the provisions of the resolution authorized by paragraph (5)(B).

(D) Alienable common stock issued pursuant to this subparagraph shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.

(7)(A) No share of alienable common stock issued pursuant to paragraph (6) shall carry voting rights if it is owned, legally or beneficially, by a person not a Native or a descendant of a Native.

(B)(i) A purchaser or other transferee of shares of alienable common stock shall, as a condition of the obligation of the issuing Native Corporation to transfer such shares on the books of the corporation, deliver to the corporation or transfer agent, as the case may be, a statement on a form prescribed by the corporation identifying the number of such shares to be transferred to such transferee and certifying

(I) that such transferee is or is not a Native or a descendant of a Native;

(II) that such transferee, if not a Native or a descendant of a

Native understands that shares of such alienable common stock shall not carry voting rights so long as such shares are held by the transferee or any subsequent transferee not a Native or a descendant of a Native;

(III) that such transferee, if a purchaser, understands that such acquisition may be subject to section 78m(d) of Title 15, as amended, and the regulations of the Securities and Exchange Commission promulgated thereunder; and

(IV) whether such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares and whether such owners are Natives or descendants of Natives).

(ii) The statement required by clause (i) shall be prima facie evidence of the matters certified therein and may be relied upon by the corporation in effecting a transfer on its books.

(iii) For purposes of this subparagraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares

(I) voting power, which includes the power to vote, or to direct the voting of, such security; or

(II) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

(iv) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 78m(d) of Title 15, as amended, shall be deemed for purposes of such sections to be the beneficial owner of such security.

(C) The statement required by subparagraph (B) shall be verified by the transferee before a notary public or other official authorized to administer oaths in accordance with the laws of the jurisdiction of the transferee or in which the transfer is made.

The following are provisions of the Alaska Securities Act, Alaska Statutes, Title 45 (AS 45.55)

AS 45.55.138. Application to Alaska Native Claims Settlement Act corporations.

The initial issue of stock of a corporation organized under Alaska law pursuant to 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a security under AS 45.55.070 and 45.55.990(28).

AS 45.55.139. Reports of corporations.

A copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations distributed, published, or made available by any person to at least 30 Alaska resident shareholders of a corporation that has total assets exceeding $1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with its distribution to shareholders.

AS 45.55.160. Misleading filings.

A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.