No. 11-35252

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COOK INLET REGION, INC.

Plaintiff-Appellee,

v.

ROBERT W. RUDE AND HAROLD RUDOLPH,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Alaska
The Honorable Ralph R. Beistline, Judge
Case No. 3:09-CV-00256 (RRB)

BRIEF OF APPELLEE

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Corporate Disclosure Statement

Cook Inlet Region, Inc. ("CIRI") is a privately held corporation formed under the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), 43 U.S.C. § 1601, et seq. Under ANCSA, CIRI's stock is restricted, and can be held only by certain Alaska Native peoples from south central Alaska. §§ 1606-1607. This statement is filed pursuant to Fed. R. App. P. 26.1.

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I. Statement of Jurisdiction

The district court held that it had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because two of Appellee Cook Inlet Region, Inc.'s ("CIRI") four claims arose under federal law. CIRI asks this Court to affirm that ruling in this appeal. The district court had supplemental subject matter jurisdiction over CIRI's two state-law claims pursuant to 28 U.S.C. § 1367(a).

This Court has appellate jurisdiction under 28 U.S.C. § 1291.

II. Statement of the Issue

Whether the district court properly concluded that this case falls within the court's federal question jurisdiction, 28 U.S.C. § 1331, because CIRI asserted two federal claims arising under the stock alienability restriction provisions of the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), specifically, ANCSA §§ 36–37, 43 U.S.C. §§ 1629b–1629c.

III. Statement of the Case

CIRI filed a four-count complaint in the district court. ER at 67. CIRI's first and third claims challenged petition solicitations distributed by Robert W. Rude and Harold F. Rudolph in support of a proposed amendment to CIRI's articles of incorporation terminating stock alienability restrictions and several advisory shareholders' resolutions. ER at 75-77. The claims asserted that Rude and Rudolph's solicitations were false and misleading in violation of federal and

state law. *Id.* The second claim contended that Rude and Rudolph failed to meet federal requirements regarding the content of a petition to terminate stock alienability restrictions. ER at 76. Finally, the fourth claim asserted that Rude and Rudolph breached their contractual obligations to CIRI and violated state-law corporate fiduciary duties by revealing confidential information in their petition solicitations. ER at 77-78.

After answering the complaint, Rude and Rudolph moved to amend their answer to raise numerous counterclaims, primarily challenging CIRI's election procedures. ER at 134-35. The district court denied their motion on the grounds that the proposed counterclaims had previously been adjudicated in CIRI's favor and were barred by the doctrine of claim preclusion. ER at 138-44.

CIRI moved for summary judgment on all four claims. ER 2, 31, 44. Rude and Rudolph did not oppose the motions. *See* ER at 7, 19, 36. The district court granted summary judgment to CIRI on all claims and awarded injunctive relief, ER at 42-44, and final judgment was entered for CIRI. ER at 30.

After the entry of final judgment, Rude and Rudolph filed a motion to dismiss and for relief from judgment, arguing that the judgment was void for lack of subject matter jurisdiction. ER at 18. The district court denied the motion, holding that it had subject matter jurisdiction because CIRI asserted two claims

arising under federal law. ER 18-29. Rude and Rudolph appealed the judgment to this court, challenging only subject matter jurisdiction.

IV. Statement of the Facts

This appeal raises only a legal question regarding federal question jurisdiction under 28 U.S.C. § 1331. A brief summary of the facts of the underlying dispute nonetheless provides context for analysis of the purely jurisdictional legal question.

ANCSA was enacted by Congress to address the "need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims . . . ." ANCSA § 2(a), 43 U.S.C. § 1601(a). To accomplish the purposes of the settlement, ANCSA created twelve regional corporations and numerous village corporations in the state of Alaska and made Alaska Native people shareholders in those corporations. ANCSA §§ 7–8, 43 U.S.C. §§ 1606–1607. CIRI is the Alaska Native regional corporation for the Cook Inlet region in south central Alaska. ER at 3, 94. Rude and Rudolph are CIRI shareholders and former members of CIRI's Board of Directors. *Id.*

Although ANCSA dictated that regional corporations be incorporated under Alaska law, ANCSA set forth numerous specific *federal* requirements for the articles of incorporation and bylaws of such corporations. 43 U.S.C. § 1606(e)–(h). Crucially, in order to preserve Native control over ANCSA corporations,

section 7(h)(1)(B)–(C) of ANCSA, 43 U.S.C. §§ 1606(h)(1)(B)–(C), provides that the corporation's stock cannot be sold or otherwise transferred, with some limited exceptions that primarily permit transfer within families.

ANCSA, which was enacted in 1971, was amended in 1988 to add sections 36 to 39, 43 U.S.C. §§ 1629b-1629e. Those sections address stock alienability restrictions and settlement trusts. ANCSA's statutory stock alienability restrictions may be terminated only if a corporation amends its articles of incorporation in accordance with the procedures set forth in sections 36 and 37, 43 U.S.C. §§ 1629b–1629c. This process can be initiated either by the board of directors or by shareholder petition. § 36(b)–(c), 43 U.S.C. § 1629b(b)–(c). Under section 36(c), "the holders of shares representing at least 25 percentum 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 . . . ." 43 U.S.C. § 1629b(c).

In 2009, Rude and Rudolph undertook a mailing campaign to solicit signatures from CIRI shareholders for two petitions: (1) to require CIRI's Board of Directors to submit the issue of terminating stock restrictions to the shareholders, and (2) to hold a special meeting on six advisory resolutions regarding dividends, elections, financial reporting, and other matters. ER at 4, 94. Rude and Rudolph sent CIRI shareholders a series of four mailings advocating for these petitions. ER at 110-33. The mailings alleged excessive spending by CIRI,

mismanagement of CIRI's land and money, and other alleged illegal or improper conduct by CIRI's Board of Directors and management, allegedly resulting in CIRI shareholders losing out on large dividends and higher share values. ER at 94-133. On this basis, Rude and Rudolph encouraged shareholders to sign the petition to require CIRI's Board to submit the question of terminating stock alienability restrictions to the shareholders. ER 128-29.

In late 2009, CIRI filed its complaint, alleging two claims for violation of ANCSA related to Rude and Rudolph's solicitation to terminate stock restrictions and two state-law claims based on violations of the Alaska Securities Act and breach of confidentiality agreements. ER 67. CIRI moved for summary judgment on all claims, and Rude and Rudolph did not oppose entry of summary judgment. ER 19.

In granting summary judgment to CIRI, the district court held that Rude and Rudolph's mailings contained 32 materially false and misleading statements in violation of both ANCSA and the Alaska Securities Act. ER at 10-14, 39-42. The court also held that the mailings, as well as an article authored by Rude and posted on the internet, contained confidential information that Rude and Rudolph, as former directors, were contractually obligated not to disclose. ER at 44. Accordingly, the court voided the signatures obtained by Rude and Rudolph based on their false and misleading statements, ordered Rude and Rudolph to disseminate

a corrective statement to CIRI shareholders regarding the false and misleading statements, ordered that the confidential CIRI information be removed from the internet article authored by Rude, enjoined future false and misleading statements or breaches of confidentiality by Rude and Rudolph, and ordered that, for a period of three years, Rude and Rudolph submit all proxy or petition solicitations to the Alaska Division of Banking and Securities, with a copy to CIRI, for review before distribution of such solicitations to shareholders. ER at 13-14; 42-44.

V. Summary of Argument

The district court had subject matter jurisdiction in this case because CIRI asserted two federal claims under ANCSA. CIRI's first claim arose under section 36(c)(1)(B) of ANCSA, 43 U.S.C. § 1629b(c)(1)(B), in which Congress, by incorporating the Alaska law standard regarding false and misleading statements in proxy solicitations, prohibited false and misleading statements in petitions to terminate federally created stock alienability restrictions. As the district court correctly held, such incorporation by Congress assimilates the standard found in state law into federal law, and a claimed violation of those requirements is a federal claim that supports federal question jurisdiction.

CIRI's second claim asserted that Rude and Rudolph's attempt to petition to terminate ANCSA stock alienability restrictions failed to meet procedural standards found in sections 36 and 37 of ANCSA, 43 U.S.C. §§ 1629b–1629c.

The district court correctly held that this claim also arose under federal law and provided an independent basis for subject matter jurisdiction.

Rude and Rudolph's arguments based upon *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005), and related cases are inapposite. That line of cases considers whether federal question jurisdiction exists over state-law causes of action with embedded federal-law issues. This case does not require the complex analysis set forth in those cases; it is a garden-variety federal question case in which CIRI's claims are created by federal law.

VI. Argument

A. Standard of Review

The existence of subject matter jurisdiction is a question of law subject to *de novo* review in this Court. *Puri v. Gonzales*, 464 F.3d 1038, 1040 (9th Cir. 2006).

B. A Well-Established Framework Guides Federal Question Jurisdictional Analysis.

Federal courts have statutorily granted original jurisdiction over civil actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The Supreme Court has imposed three restrictions on the meaning of "arising under" in the statute.[1] First, the federal-law question in the case must be

[1] *See* 13D Charles Alan Wright et al., Federal Practice and Procedure § 3562 (3d ed. 2008).

found in the plaintiff's claim and not in a defense. *Franchise Tax Bd. of the State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 9-10 (1983); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908). This requirement, known as the "well-pleaded complaint rule," *Franchise Tax Bd.*, 463 U.S. at 9, is satisfied by CIRI's complaint and not challenged by Rude and Rudolph.

Next, the federal issue must be "substantial" enough to justify federal court jurisdiction. *E.g.*, *Hagans v. Lavine*, 415 U.S. 528, 536 (1974). Only where a federal claim is " 'so attenuated and unsubstantial as to be absolutely devoid of merit,' " will federal question jurisdiction be found lacking based on this requirement. *Id.* (quoting *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904)).

The final and most analytically complex jurisdictional restriction requires that the federal question be sufficiently "central" to the dispute. *See, e.g.*, *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 699 n.5 (2006).[2] This "centrality" analysis typically arises in circumstances where a state-law cause of action requires resolution of an embedded federal issue.

[2] "Put simply, centrality is concerned with 'how federal' the claim must be." *Wright, et al.*, *supra*, § 3562 at 174.

These requirements have been summarized by the Supreme Court in the following general rule: "A case 'aris[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.' " *Id.* at 689-90 (quoting *Franchise Tax Bd.*, 463 U.S. at 27-28); *Grable*, 545 U.S. at 312 ("Federal-question jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by federal law . . . [but] in certain cases federal question jurisdiction will lie over state-law claims that implicate significant federal issues.").

C. CIRI's First Claim Presents a Federal Question.

In this case, CIRI alleged two federal claims based on two separate ANCSA violations in Rude and Rudolph's solicitations for petitions to terminate alienability restrictions on CIRI stock. CIRI's first claim alleged that the solicitations contained extensive false and misleading statements in violation of section 36(c)(1)(B) of ANCSA, 43 U.S.C. § 1629b(c)(1)(B). That section provides that "[t]he requirements of the laws of the State[3] relating to the solicitation of proxies shall govern solicitation of signatures" in shareholder petitions for three different types of amendments to the articles of incorporation, including section

[3] ANCSA defines "State" to mean "the State of Alaska." 43 U.S.C. § 1602(f).

1629c amendments terminating stock alienability restrictions, ANCSA § 36(a), 43 U.S.C. § 1629b(a).

The district court analyzed CIRI's claim and correctly held that "[w]hen federal law incorporates state law, such state law becomes federal, and thus federal law, not state, supplies the rule of decision." ER at 22. The district court reasoned that, because "adoption of Alaska law by federal law transforms the adopted law into federal law when the Alaska laws are applied through ANCSA," CIRI's claim "constitutes a federal question." ER 23. In this appeal, Rude and Rudolph challenge the district court's finding of federal question jurisdiction. All three arguments Rude and Rudolph make are based on the mistaken premise that CIRI's claim arises under state, not federal, law.

1. Congress Incorporated Alaska Law as the Federal Standard Governing Shareholder Petitions for Terminating Stock Alienability Restrictions.

Rude and Rudolph do not dispute that where "federal law creates the cause of action," *Franchise Tax Bd.*, 463 U.S. at 27-28, federal jurisdiction exists. They nonetheless assert that federal jurisdiction is lacking over CIRI's first claim because the federal law in question incorporates state law. Rude and Rudolph thus attempt to recast their federal law violations as violations of state law enforceable solely through state procedures.

But Rude and Rudolph plainly violated federal law, not state, when they used false and misleading statements in support of their petition to terminate stock alienability restrictions. Alienability of an ANCSA corporation's stock is restricted under section 7(h) of ANCSA, 43 U.S.C. § 1606(h). The stock alienability restrictions may be terminated only if the corporation amends its articles of incorporation in accordance with section 37 of ANCSA, 43 U.S.C. § 1629c. Pursuant to section 36(c)(1)(A), 43 U.S.C. § 1629b(c)(1)(A), "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 an amendment of the corporation's stock alienability restrictions to shareholder vote. Section 36(c)(1)(B) of ANCSA, 43 U.S.C. § 1629b(c)(1)(B), the provision at issue here, provides that "[t]he requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures" for such a petition.

Thus, although each Regional Corporation is incorporated under state law, 43 U.S.C. § 1606(d), Congress imposed stock restrictions as a matter of federal law, and later enacted a federal statutory scheme governing the process to terminate those stock restrictions. As the plain language of the statute indicates, Congress did *not* give Alaska authority over petitions related to the termination of stock restrictions, but instead incorporated state law "requirements" governing proxy solicitations as the standard to be applied to such petitions under federal law.

In other words, under section 36(c), 43 U.S.C. § 1629b(c), Congress made the Alaska law standards for proxy solicitations applicable—purely through the force of federal law—to solicitations for petitions to terminate alienability restrictions on ANCSA stock.

The Supreme Court recognizes that it is "not uncommon for Congress to direct that state law be used to fill the interstices of federal law." *Moor v. County of Alameda*, 411 U.S. 693, 701 (1973). For example, the Federal Tort Claims Act states that in tort claims against the United States, "the law of the place where the act or omission occurred" governs liability. 28 U.S.C. § 1346(b)(1). The Supreme Court has explained that "this provision *recognizes and assimilates into federal law* the rules of substantive law of the several states . . . ." *Feres v. United States*, 340 U.S. 135, 142 (1950) (emphasis added).

In a similar way, federal courts making federal common law sometimes "absorb state law as the appropriate federal rule of decision instead of creating a uniform federal rule." *General Am. Life Ins. Co. v. Castonguay*, 984 F.2d 1518, 1523 n.5 (9th Cir. 1993). Such federal common law provides a basis for federal question jurisdiction. *Illinois v. City of Milwaukee, Wis.*, 406 U.S. 91, 100 (1972) ("§ 1331 jurisdiction will support claims founded upon federal common law as well as those of a statutory origin."); *D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp.*, 315 U.S. 447, 471-72 (1942) ("A federal court sitting in a non-diversity

case . . . does not sit as a local tribunal. In some cases it may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state.") (Jackson, J., concurring). If federal courts can adopt state law as federal common law and thereby support federal question jurisdiction, Congress plainly can do the same.

A third example of state law "assimilated as federal law" can be found in locations of federal enclave jurisdiction, such as the national parks. In *Macomber v. Bose*, 401 F.2d 545, 546 (9th Cir. 1968), this Court explained that when Congress accepted dominion from Montana over Glacier National Park, "federal authority became the only authority operating within the ceded area." This Court further clarified that state laws were thereby assimilated into federal law and "[r]ights arising under such assimilated law arise under federal law and are properly the subject of federal jurisdiction." *Id.*[4]

This Court has already exercised federal jurisdiction over claims arising from the exact statutory scheme at issue in this case. In *Broad v. Sealaska Corp.*, 85 F.3d 422, 425-26 (9th Cir. 1996), this Court considered an elder trust created by an ANCSA regional corporation in accordance with sections 36 and 39 of ANCSA,

[4] *See also Willis v. Craig*, 555 F.2d 724, 726 (9th Cir. 1977) (holding that if an injury to the plaintiff occurred on property within a federal enclave, subject matter jurisdiction over his negligence claim was proper).

43 U.S.C. §§ 1629b & 1629e. Shareholders too young to be eligible to receive distributions under the terms of the settlement trust challenged the trust under a state law prohibiting discriminatory distributions to holders of a single class of stock. *Id.* at 426. This Court exercised federal question jurisdiction[5] and held, among other things, that the settlement trust had been properly authorized by the shareholders in accordance with section 36 of ANCSA, 43 U.S.C. § 1629b. *Id.* at 429-30.[6] A holding in this case that no federal question jurisdiction exists over a claim arising under the very same statute would be inconsistent with *Broad*.

To help support their argument that CIRI's claim does not arise under federal law, Rude and Rudolph incorrectly assume, without analysis, that AS 45.55.160 of the Alaska Securities Act and the corresponding proxy regulations govern their petition to terminate stock restrictions. Appellants' Br. at 13, 24-27. That statute and the corresponding proxy regulations require "materials related to proxy solicitations" to be filed with the Division of Banking and Securities and prohibit materially false and misleading statements in those documents. AS 45.55.139; AS 45.55.160; 3 AAC 08.315. A "proxy" is defined as "a written

[5] *Id.* at 425 (noting that the "district court had jurisdiction" under the removal statute). Because the parties in the case were not diverse, removal could only have been based on federal question jurisdiction.

[6] The Alaska Supreme Court has likewise unquestioningly treated challenges to settlement trusts created by ANCSA corporations as federal-law claims. *Bodkin v. Cook Inlet Region, Inc.*, 182 P.3d 1072, 1077-78 (Alaska 2008).

authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact *and giving another person power to vote* with respect to the shares of the shareholder." 3 AAC 08.365(12) (emphasis added). A "solicitation" is defined as " a request to execute or not to execute, or to revoke a proxy" or "the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy." 3 AAC 08.365(16).

The state regulatory scheme governs proxy solicitations, not shareholder petitions. Alaska law, operating of its own force, creates no restrictions on stock alienability, no procedures for shareholder petitions to terminate such restrictions, and no rules governing solicitations for such petitions. In fact, any attempt by Alaska to legislate in this area would likely be preempted by ANCSA.[7] *See Broad*, 85 F.3d at 426 (holding that the settlement trust provisions in section 39 of ANCSA, 43 U.S.C. § 1629e, preempted state law).

Rude and Rudolph's petition solicited signatures to require CIRI's Board to submit the termination of stock alienability restrictions to shareholders under section 36(c)(1)(A) of ANCSA, 43 U.S.C. § 1629b(c)(1)(A). The petition did not

[7] Section 7(p) of ANCSA further provides that if there were any conflict between the provisions of ANCSA and state law, the provisions of ANCSA would prevail. 43 U.S.C. § 1606(p).

purport to solicit any shareholders' proxy on that issue. ER at 129, 132. There is no evidence in the record that Rude and Rudolph ever solicited a proxy as to the termination of stock restrictions.[8]

Rude and Rudolph's assumption that Alaska law governs their petitions is further belied by the text of section 36 of ANCSA, 43 U.S.C. § 1629b. Part (a) of the statute confirms at the outset that state laws "related to proxy statements and solicitations that are not inconsistent with this section" will continue to apply to section 36 proxy solicitations.[9] The same statute's later adoption of state proxy standards as the standards to govern "solicitation of signatures for a petition" to terminate stock alienability restrictions recognizes the distinction between petitions and proxies, and would be unnecessary if, as Rude and Rudolph simply assume, such petitions were already subject to state proxy laws. *See, e.g.*, *Knight v. Comm'r*, 552 U.S. 181, 190 (2008) (commenting that "accepting [a particular]

[8] Not only do the state and federal statutes apply to different types of documents (proxies versus petitions), they govern overlapping but distinct types of corporations. The state proxy regulations apply only to an ANCSA "corporation that has total assets exceeding $1,000,000 and a class of equity security held of record by 500 or more persons . . . ." AS 45.55.139. The alienability restrictions and related provisions in ANCSA, by contrast, apply to all ANCSA corporations, regardless of assets or number of shareholders.

[9] *See Broad*, 85 F.3d at 429 ("The 1987 ANCSA amendments make clear that proxy statements and solicitations made in the course of a Native Corporation's efforts to establish a settlement trust must comply with state law." (citing 43 U.S.C. § 1629b)).

approach would render part of the statute entirely superfluous, something that we are loath to do").

In short, the district court was correct in concluding that it had subject matter jurisdiction because "federal law, not state, supplies the rule of decision" for CIRI's first claim. ER at 22.

2. CIRI's First Claim Presented a "Substantial" Federal Question.

Rude and Rudolph argue that CIRI's false-and-misleading-statements claim did not provide the district court with subject matter jurisdiction because the claim was not "substantial." This argument seriously misapprehends the controlling jurisdictional principles, and amounts to nothing more than a repackaging of Rude and Rudolph's previous argument that CIRI's claim arises under state and not federal law.

Concepts of "substantiality" arise in two distinct pieces of the jurisdictional analysis, which Rude and Rudolph conflate. The first type of substantiality analysis dismisses "obviously frivolous" federal claims for lack of jurisdiction. *Sea-Land Service, Inc. v. Lozen Intern., LLC.*, 285 F.3d 808, 814 (9th Cir. 2002); *see also Lavine*, 415 U.S. at 536-37. Federal jurisdiction is defeated under this rule "only when the 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 (1998) (quoting *Oneida Indian Nation of N.Y. State v. Oneida County, New York*, 414 U.S. 661, 666 (1974)). A claim need not even reach the level of merit required to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6) to pass this jurisdictional requirement.[10] CIRI's first claim under section 36(c) of ANCSA, 43 U.S.C. § 1629b(c), succeeded on its merits and therefore indisputably clears the low bar of this substantiality test.

The second area where the Supreme Court requires analysis of "substantiality" of a federal claim arises in the small category of federal question cases where a federal issue is embedded in a state-law cause of action. There, courts must decide whether the "state-law claim 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*, 545 U.S. at 314 (emphasis added). The requirement is sometimes called the "centrality" prong of federal question analysis. *See, e.g., Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 699 n.5 (2006).

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[10] *See, e.g., Burks v. Lasker*, 441 U.S. 471, 476 n.5 (1979) ("The question of whether a cause of action exists is not a question of jurisdiction, and therefore can be assumed without being decided."); *Daigle v. Opelousas Health Care, Inc.*, 774 F.2d 1344 (5th Cir. 1985) (holding that federal question jurisdiction exists over a civil rights claim that failed to state a claim upon which relief could be granted).

Rude and Rudolph rely heavily on *Grable* and *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986), two prominent Supreme Court cases on the complex topic of embedded federal-law issues in state-law claims. But the analysis in those cases simply does not apply here. CIRI has not raised a state-law cause of action with an embedded federal issue, but instead, a straightforward case of a federal cause of action. The Supreme Court made clear in *Grable* that a federal cause of action is a "sufficient condition for federal-question jurisdiction." *Grable*, 545 U.S. at 317.

Rude and Rudolph explicitly recognize that the case law they cite involving embedded federal-law claims in state law causes of action does not apply here. Although they initially argue that CIRI's claim in fact arises from state law, Appellants' Br. at 16-18—and this premise is the central theme of their arguments—they nonetheless candidly recognize that CIRI's first claim presents precisely the opposite issue: "state law embedded in federal law." *Id.* at 21 n.15. Rude and Rudolph nevertheless ask this Court, citing no authority, to "examine the question as if a federal law were embedded in a state cause of action" because these two situations are supposedly "analogous" and it somehow "stands to reason" to apply the same analysis to both types of case. *Id.* Quite simply, it is neither reasonable nor consistent with any legal authority to treat a federal-law cause of

action as a state-law claim simply because Congress borrowed from state law to provide the applicable federal rule.

3. The Exercise of Jurisdiction Does Not Disrupt the State-Federal Balance.

Rude and Rudolph's third argument that the "possibility of upsetting the state-federal line" drawn . . . by Congress," *Grable*, 545 U.S. at 314, forecloses jurisdiction is also misplaced here. Appellants' Br. at 22-28. This argument, like Rude and Rudolph's other arguments, is based on the mistaken premise that CIRI asserts a state-law claim. As the Court explained in *Grable*, the state-federal line analysis simply provides a "possible veto" over jurisdiction in cases where a "state action discloses a contested and substantial federal question." *Id.* at 313. Consideration of this factor is not necessary or appropriate where the claim is based on federal law. Rude and Rudolph's misleading prediction that "federal courts will become bogged down in numerous proxy fights that properly belong in . . . Alaska courts" is baseless. As explained above, CIRI's first claim does not raise a proxy issue governed by Alaska law; it is a federal claim regarding petitions for terminating wholly federal stock alienability restrictions. This argument must be rejected.

D. CIRI's Second Claim Provides an Independent Basis for Federal Question Jurisdiction.

CIRI's second claim alleged that Rude and Rudolph violated ANCSA sections 36 and 37, 43 U.S.C. §§ 1629b–1629c, because their solicitations failed to

give shareholders written notice of the language of their proposed amendment and did not specify the date alienability restrictions would terminate. The district court held that this claim, like CIRI's first claim, was a basis for federal question jurisdiction because it "depends on [the] Court's determination of the effect of ANCSA on [Rude and Rudolph's] actions." ER at 23. "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)." *Id.*

Rude and Rudolph now argue that CIRI's second claim is not "substantial" enough to raise a federal question. But like CIRI's first claim, this federal claim easily meets the low jurisdictional threshold that it not be " '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.*, 523 U.S. at 98 (quoting *Oneida Indian*, 414 U.S. at 666).

When 25 percent of shareholders petition the board to "submit such amendment"—that is, an amendment to the articles of incorporation terminating stock alienability restrictions—"to a vote of the shareholders," ANCSA § 36(c)(1)(A), 43 U.S.C. § 1629b(c)(1)(A), the board is required to comply. ANCSA § 36(c)(1)(B)(i)–(ii), 43 U.S.C. § 1629b(c)(1)(B)(i)–(ii) ("[T]he board *shall submit the amendment* . . . to the shareholders for a vote . . . ." (emphasis

added)). The board must provide "written notice" of "any amendment or resolution submitted [by shareholder petition]" in advance of the meeting where the vote will be held. ANCSA § 36(b)(2)(A), 43 U.S.C. § 1629b(b)(2)(A). In addition, section 37(b)(2), 43 U.S.C. § 1629c(b)(2), requires that an amendment to terminate alienability restrictions "specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate."

Rude and Rudolph's petition failed to include actual language of an amendment or a termination time for the petitioning shareholders to review. ER at 129, 132. The petition therefore did not comply with ANCSA because CIRI's Board could not possibly comply, on the basis of the petition, with its duty to submit an amendment to its articles of incorporation to the shareholders. Even if 25 percent of the shareholders had agreed that alienability restrictions should be put to a vote and signed a petition to that effect, CIRI could not have presented an appropriately authorized amendment for full shareholder vote because the petitioning shareholders had not agreed upon language for the proposed amendment or a date or triggering event for terminating restrictions. CIRI's Board could not draft such an amendment itself or choose the termination time on behalf of the petitioning shareholders.

The district court initially agreed and granted summary judgment on CIRI's second claim, holding that Rude and Rudolph "failed to follow the proper procedure in soliciting shareholder signatures for the stock alienability restriction petition" required by ANCSA. ER at 41-42. In response to Rude and Rudolph's Motion to Dismiss and for Relief from Judgment, however, the district court reversed course on this point and held that section 36(b)(2)(A) of ANCSA, 43 U.S.C. § 1629b(b)(2)(A,) did not impose a duty upon Rude and Rudolph to include the language of a proposed amendment in their shareholder petition. ER at 12-13, 27. This resulted in denial of summary judgment on CIRI's second claim for relief but did not affect the result in the case because Rude and Rudolph's petitions were voided on the basis of false and misleading statements. ER at 12-14.

Despite the fact that CIRI's second claim for relief ultimately did not succeed in the district court, CIRI's arguments about the meaning of sections 36 and 37 of ANCSA are far from "completely devoid of merit."[11] *Oneida Indian*,

[11] CIRI continues to believe that Rude and Rudolph's petition fell short of the statutory requirements of ANCSA. The requirement that a shareholder petition include the actual language of a proposed amendment can be found in section 36(c)(1)(A)'s reference to submission of "such amendment" by petitioning shareholders. If petitioning shareholders do not specify the actual amendment sought, the petitions are not valid because the board cannot present a shareholder-approved amendment for a vote. Because CIRI prevailed on the merits of its claim regarding false and misleading statements, however, Rude and Rudolph's petitions were voided. Rude and Rudolph did not appeal that issue. CIRI therefore had no

(continued)…

414 U.S. at 666. The claim meets the jurisdictional "substantiality" test and provides an independent basis for federal question jurisdiction.

Rude and Rudolph also challenge CIRI's second claim as a basis for subject matter jurisdiction based on a conclusory statement that "§ 1629b(b)(2)(A) creates no cause of action," again citing the inapposite embedded federal-law cases of *Merrell Dow* and *Grable*. This argument receives no elaboration from Rude and Rudolph, and for the reasons discussed above, it must be summarily rejected. In ANCSA, Congress created a complex statutory scheme restricting stock alienability and providing procedures for termination of those restrictions. There is no enforcement agency charged with ensuring that these federal rules are followed, and Congress can only have intended that ANCSA corporations and shareholders be permitted to bring claims to ensure that the law is followed. Congress did not create rights and duties for ANCSA corporations and their shareholders while leaving the statutes completely unenforceable through any federal mechanism.

E. The District Court and this Court Regularly Exercise Federal Question Jurisdiction Over Cases Arising Under ANCSA.

All of Rude and Rudolph's arguments are based on the flawed premise that a claim seeking to enforce the requirements of ANCSA does not arise under federal

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(continued)…
reason to cross appeal this issue. This Court need only consider whether CIRI's second claim presented a federal question regarding the meaning of the ANCSA provisions with sufficient merit to support jurisdiction.

law, and that therefore the federal courts have no jurisdiction over such claims. But the conclusion that federal courts properly exercise jurisdiction over claims arising under ANCSA is far from novel or surprising. Both the district court and this Court have routinely exercised federal question subject matter jurisdiction over other claims asserted under ANCSA. The case of *City of Ketchikan v. Cape Fox Corp.*, 85 F.3d 1381, 1383 (9th Cir. 1996), for example, "involve[d] interpretation of the land reconveyance provision of [ANCSA], 43 U.S.C. § 1613(c)."[12] In *Tyonek Native Corp. v. Cook Inlet Region, Inc.*, 853 F.2d 727 (9th Cir. 1988) and *Koniag, Inc. v. Koncor Forest Resource*, 39 F.3d 991, 994 (9th Cir. 1994), this Court considered the rights of ANCSA regional and village corporations to gravel under the ANCSA provisions granting those corporations their respective land rights. In all of these cases, the ANCSA issues presented to this Court were plainly federal.[13] Indeed, as noted above, this Court held in *Broad*, 85 F.3d at 426, that the settlement trust provisions in section 39 of ANCSA, 43 U.S.C. § 1629e, preempted state law with respect to corporate resolutions that establish settlement trusts.

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[12] *Beuttner v. Kavilco, Inc.*, 860 F.2d 341 (9th Cir. 1988), arose under the same provision of ANCSA.

[13] *See also Notti v. Cook Inlet Region, Inc.*, 31 F. App'x 586, 587 (9th Cir. 2002) ("The district court had subject matter jurisdiction because the complaint raises a substantial federal question of whether Section 7(r) of ANCSA, 43 U.S.C. § 1606(r), authorizes CIRI to pay dividends to Native leaders who were original CIRI shareholders."); *Sealaska Corp. v. Roberts*, 428 F. Supp. 1254 (D. Alaska 1977) (interpreting section 5(a) of ANCSA, 43 U.S.C. § 1604(a)).

There is no basis to hold that subject matter jurisdiction does not likewise rest on the federal claims under ANCSA that CIRI raised.

VII. Conclusion

ANCSA is a federal statute that creates purely federal rules for Alaska Native corporations, including a restriction on stock alienability created to serve the unique policy goal of maintaining Native ownership of the corporations that own much of Alaska's land. Congress's choice of incorporating pre-existing state-law rules applicable to proxy solicitations as the federal standard to apply to shareholder petitions to terminate stock restrictions does not convert CIRI's first claim into a state-law claim, and no state law otherwise dictates procedures for termination of stock restrictions. As the district court recognized in granting judgment to CIRI on the merits of its federal-law claim, CIRI's first claim clearly arises under federal law. CIRI's second federal claim as to the technical requirements of such a petition also provided an independent basis for the district court to find federal question jurisdiction under 28 U.S.C. § 1331. In summary, the district court correctly held it had subject matter jurisdiction over both ANCSA claims. CIRI respectfully asks that the district court's judgment be affirmed.

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Certificate of Compliance

I certify that pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached brief is proportionately spaced, has a typeface of 14 points and contains 7,135 words, including footnotes and endnotes.

Respectfully submitted,

Dated: August 29, 2011

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Statement of Related Cases

Pursuant to Ninth Circuit Rule 28-2.6, Appellee Cook Inlet Region, Inc. states that it knows of no other related cases pending in this Court at this time.

Proof of Service

The undersigned hereby certifies that on the 29th day of August, 2011, a true and correct copy of this document was served on

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ADDENDUM

Provisions of Statutes and Regulations Relied Upon

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FEDERAL STATUTES

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.

…

Title 43

ANCSA § 2, 43 U.S.C. § 1601

Congress finds and declares that –

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this chapter shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State or Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of December 18, 1971;

(d) no provision of this chapter shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this chapter shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 except as specifically provided in this chapter;

(f) no provision of this chapter 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 the claims extinguished by the operation of this chapter; and

(g) no provision of this chapter shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended [42 U.S.C. 3121 et seq.], shall be interpreted to include lands granted to Natives under this chapter as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

ANCSA § 3, 43 U.S.C. § 1602. Definitions

…

(f) “State” means the State of Alaska;

…

ANCSA § 7, 43 U.S.C. § 1606. Regional Corporations

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration.

For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

…

(d) Incorporation; business for profit; eligibility for benefits; provisions in articles for carrying out chapter.

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 chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

(e) Original articles and bylaws: approval by Secretary prior to filing, submission for approval; amendments to articles: approval by Secretary; withholding approval in event of creation of inequities among Native individuals or groups.

The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) Board of directors; management; stockholders; provisions in articles or bylaws for number, term, and method of election.

The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) Issuance of stock

(1) Settlement Common Stock

(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this chapter) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.

(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to

(I) Natives born after December 18, 1971, and, at the further option of the Corporation, descendants of Natives born after December 18, 1971,

(II) Natives who were eligible for enrollment pursuant to section 1604 of this title but were not so enrolled, or

(III) Natives who have attained the age of 65, for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) of this section or section 1629c(d) of this title) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) of this section unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

(2) Other forms of stock

(A) A Regional Corporation may amend its articles of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that

(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, or

(ii) issuance of such shares shall permanently preclude the corporation from

(I) conveying assets to a Settlement Trust, or

(II) issuing shares of stock without adequate consideration as required under the laws of the State.

(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following

(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation

(I) dividend rights,

(II) voting rights, and

(III) liquidation preferences;

(ii) made subject to one or more of

(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B) of this section, and

(II) the restriction described in paragraph (1)(B)(iii); and

(iii) restricted in issuance to

(I) Natives who have attained the age of sixty-five;

(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family;

(III) Settlement Trusts; or

(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued

(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

(D) During any period in which alienability restrictions are in effect, no stock whose issuance is authorized by subparagraph (A) shall be

(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

(3) Disclosure requirements

(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify

(i) the maximum number of shares of any class or series of stock that may be issued, and

(ii) the maximum number of votes that may be held by such shares.

(B)(i) If the board of directors of a Regional Corporation intends to propose an amendment pursuant to paragraph (2) which would authorize the issuance of classes or series of stock that, singly or in combination, could cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purposes of electing directors, the shareholders of such corporation shall be expressly so informed.

(ii) Such information shall be transmitted to the shareholders in a separate disclosure statement or in another informational document in writing or in recorded sound form both in English and any Native language used by a shareholder of such corporation. Such statement or informational document shall be transmitted to the shareholders at least sixty days prior to the date on which such proposal is to be submitted for a vote.

(iii) If not later than thirty days after issuance of such disclosure statement or informational document the board of directors receives a prepared concise statement setting forth arguments in opposition to the proposed amendment together with a request for distribution thereof signed by the holders of at least 10 per centum of the outstanding shares of Settlement Common Stock, the board shall either distribute such statement to the shareholders or provide to the requesting shareholders a list of all shareholder's names and addresses so that the requesting shareholders may distribute such statement.

(4) Savings

(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) of this section. No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuant to paragraph (1)(B)(iv).

(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) of this section prior to February 3, 1988 for purposes of distributing funds pursuant to subsections (j) and (m) of this section.

(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i) of this section.

(C) No provision of this chapter shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this chapter.

(h) Settlement Common Stock

(1) Rights and restrictions

(A) Except as otherwise expressly provided in this chapter, 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.

(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be

(i) sold;

(ii) pledged;

(iii) subjected to a lien or judgment execution;

(iv) assigned in present or future;

(v) treated as an asset under

(I) Title 11 or any successor statute,

(II) any other insolvency or moratorium law, or

(III) other laws generally affecting creditors' rights; or

(vi) otherwise alienated.

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native

(i) pursuant to a court decree of separation, divorce, or child support;

(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, nephew, or (if the holder has reached the age of majority as defined by the laws of the State of Alaska) brother or sister, notwithstanding an adoption, relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient.

(2) Inheritance of Settlement Common Stock

(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii) of this section) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of

intestate succession to a person not a Native or a descendant of a Native after February 3, 1988, if

(i) the corporation

(I) amends its articles of incorporation to authorize such purchases, and

(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

(C) Settlement Common Stock of a Regional Corporation

(i) transferred by will or pursuant to applicable laws of intestate succession after February 3, 1988, or

(ii) transferred by any means prior to February 3, 1988,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

(3) Replacement Common Stock

(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 1629c of this title, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each 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) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection

(g)(1)(B)(iii) of this section shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to 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 this section shall be exchanged either for

(I) a share of Replacement Common Stock that carries such right, or

(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iii) Replacement 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.

(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following

(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

(ii) a restriction granting the Regional Corporation, or the Regional 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 Replacement 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; and

(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

(E) Replacement Common Stock 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.

(4) Purchase of settlement common stock of Cook Inlet Region

(A) As used in this paragraph, the term "Cook Inlet Regional Corporation" means Cook Inlet Region, Incorporated.

(B) The Cook Inlet Regional Corporation may, by an amendment to its articles of incorporation made in accordance with the voting standards under section 1629b(d)(1) of this title, purchase Settlement Common Stock of the Cook Inlet Regional Corporation and all rights associated with the stock from the shareholders of Cook Inlet Regional Corporation in accordance with any provisions included in the amendment that relate to the terms, procedures, number of offers to purchase, and timing of offers to purchase.

(C) Subject to subparagraph (D), and notwithstanding paragraph (1)(B), the shareholders of Cook Inlet Regional Corporation may, in accordance with an amendment made pursuant to subparagraph (B), sell the Settlement Common Stock of the Cook Inlet Regional Corporation to itself.

(D) No sale or purchase may be made pursuant to this paragraph without the prior approval of the board of directors of Cook Inlet Regional Corporation. Except as provided in subparagraph (E), each sale and purchase made under this paragraph shall be made pursuant to an offer made on the same terms to all holders of Settlement Common Stock of the Cook Inlet Regional Corporation.

(E) To recognize the different rights that accrue to any class or series of shares of Settlement Common Stock owned by stockholders who are not residents of a Native village (referred to in this paragraph as "non-village shares"), an amendment made pursuant to subparagraph (B) shall authorize the board of directors (at the option of the board) to offer to purchase

(i) the non-village shares, including the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of this section (referred to in this paragraph as "nonresident distribution rights"), at a price that includes a premium, in addition to the amount that is offered for the purchase of other village shares of Settlement Common Stock of the Cook Inlet Regional Corporation, that reflects the value of the nonresident distribution rights; or

(ii) non-village shares without the nonresident distribution rights associated with the shares.

(F) Any shareholder who accepts an offer made by the board of directors pursuant to subparagraph (E)(ii) shall receive, with respect to each non-village share sold by the shareholder to the Cook Inlet Regional Corporation

(i) the consideration for a share of Settlement Common Stock offered to shareholders of village shares; and

(ii) a security for only the nonresident rights that attach to such share that does not have attached voting rights (referred to in this paragraph as a "non-voting security").

(G) An amendment made pursuant to subparagraph (B) shall authorize the issuance of a non-voting security that

(i) shall, for purposes of subsections (j) and (m) of this section, be treated as a non-village share with respect to

(I) computing distributions under such subsections; and

(II) entitling the holder of the share to the proportional share of the distributions made under such subsections;

(ii) may be sold to Cook Inlet Region, Inc.; and

(iii) shall otherwise be subject to the restrictions under paragraph (1)(B).

(H) Any shares of Settlement Common Stock purchased pursuant to this paragraph shall be canceled on the conditions that

(i) non-village shares with the nonresident rights that attach to such shares that are purchased pursuant to this paragraph shall be considered to be

(I) outstanding shares; and

(II) for the purposes of subsection (m) of this section, shares of stock registered on the books of the Cook Inlet Regional Corporation in the names of nonresidents of Villages;

(ii) any amount of funds that would be distributable with respect to non-village shares or non-voting securities pursuant to subsection (j) or (m) of this section shall be distributed by Cook Inlet Regional Corporation to itself; and

(iii) village shares that are purchased pursuant to this paragraph shall be considered to be

(I) outstanding shares, and

(II) for the purposes of subsection (k) of this section shares of stock registered on the books of the Cook Inlet Regional Corporation in the names of the residents of Villages.

(I) Any offer to purchase Settlement Common Stock made pursuant to this paragraph shall exclude from the offer

(i) any share of Settlement Common Stock held, at the time the offer is made, by an officer (including a member of the board of directors) of Cook Inlet Regional Corporation or a member of the immediate family of the officer; and

(ii) any share of Settlement Common Stock held by any custodian, guardian, trustee, or attorney representing a shareholder of Cook Inlet Regional Corporation in fact or law, or any other similar person, entity, or representative.

(J)(i) The board of directors of Cook Inlet Regional Corporation, in determining the terms of an offer to purchase made under this paragraph, including the amount of any premium paid with respect to a non-village share, may rely upon the good faith opinion of a recognized firm of investment bankers or valuation experts.

(ii) Neither Cook Inlet Regional Corporation nor a member of the board of directors or officers of Cook Inlet Regional Corporation shall be liable for

damages resulting from terms made in an offer made in connection with any purchase of Settlement Common Stock if the offer was made

(I) in good faith;

(II) in reliance on a determination made pursuant to clause (i); and

(III) otherwise in accordance with this paragraph.

(K) The consideration given for the purchase of Settlement Common Stock made pursuant to an offer to purchase that provides for such consideration may be in the form of cash, securities, or a combination of cash and securities, as determined by the board of directors of Cook Inlet Regional Corporation, in a manner consistent with an amendment made pursuant to subparagraph (B).

(L) Sale of Settlement Common Stock in accordance with this paragraph shall not diminish a shareholder's status as an Alaska Native or descendant of a Native for the purpose of qualifying for those programs, benefits and services or other rights or privileges set out for the benefit of Alaska Natives and Native Americans. Proceeds from the sale of Settlement Common Stock shall not be excluded in determining eligibility for any needs-based programs that may be provided by Federal, State or local agencies.

…

(p) Federal-State conflict of laws. In the event of any conflict between the provisions of this section and the laws of the State of Alaska, the provisions of this section shall prevail.

…

ANCSA § 36, 43 U.S.C. § 1629b. Procedures for considering amendments and resolutions

(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 [15 U.S.C. 78a et seq.]. 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 (d)(3) of this section, an amendment or resolution described in subsection (a) of this section 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 1606 (g)(1)(B) of this title 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 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 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. Duration of alienability restrictions

(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.

…

ALASKA STATUTES

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.

ALASKA ADMINISTRATIVE CODE

3 AAC 08.315. False or misleading statements

(a) A solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a proxy for the same meeting or subject matter, which has become false or misleading. A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required. The following are some examples of what, depending upon particular facts and circumstances, might be misleading within the meaning of 3 AAC 08.305 - 3 AAC 08.365:

(1) predictions as to specific future market values;

(2) material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation;

(3) failure to identify a proxy statement, proxy, or other soliciting material so as to distinguish it clearly from the soliciting material of any other person soliciting for the same meeting or subject matter;

(4) claims made before a meeting regarding the results of a solicitation; and

(5) regarding the election of directors, failure to disclose the existence of an agreement or understanding among two or more nominees, proxyholders, or other participants with respect to voting of proxies, and failure to disclose the material provisions of such an agreement or understanding, in circumstances where such

participants appear to solicit proxies independently or where there is no apparent affiliation among such participants.

(b) The fact that a proxy statement, proxy, or other soliciting material has been filed with or examined by the administrator under AS 45.55.139 is not a finding by the administrator that the material is accurate or complete or not false or misleading, or that the administrator has passed upon the merits of or approved any statement contained in the solicitation or any matter to be acted upon by shareholders. No representation to the contrary may be made.

(c) The administrator may require a person who has brought to his attention a solicitation which the person believes contains materially false or misleading statements to explain the reasons for his view in writing.

3 AAC 08.365. Definitions relating to solicitation of proxies

For purposes of 3 AAC 08.305 - 3 AAC 08.365, the following definitions apply:

…

(12) "proxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder;

…

(16) "solicitation" means

(A) a request to execute or not to execute, or to revoke a proxy; or

(B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.