The Potential Effects of *Sturgeon v. Frost* on Alaska Native Corporations

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I. INTRODUCTION

The Alaska Native Claims Settlement Act, enacted in 1971, was heralded as a new chapter in Indian Law.[1] It extinguished Alaska Natives'[2] aboriginal claims to land and created a complex mechanism by which Native groups were able to select and eventually own millions of acres of land, the distribution of millions of dollars in an Alaska Native fund, and anticipated profits for Alaska state oil royalties.[3] Rather than vesting these assets in existing tribal governments, Congress created Alaska Native Corporations to manage and develop the assets.[4] Today, almost 50 years after the passage of the Alaska Native Claims Settlement Act, the intentions of the Act have been met with varying degrees of success.

This Note compares Congress' intentions when it passed the Alaska Native Claims

1. *See* Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520, 532 (1998). *See also ANCSA Regional Association, Economic Impact 2009–2012*, ANCSA (2009), http://ancsaregional.com/wp-content/uploads/2013/12/ANCSA%20REPORT_digital.pdf ("Alaska Native Land Claims Settlement Act (ANCSA) is arguably the most successful aboriginal land claims settlement anywhere.").

2. I use the term "Alaska Natives" throughout this piece as a collective reference to Alaska's various indigenous groups including Indian, Aleut, Yupik, and Inuit peoples.

3. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 340 (Nell Jessop Newton et al. eds., 2005) [hereinafter COHEN'S HANDBOOK].

4. *Id.*

Settlement Act with how past and current case law, including the Ninth Circuit's most recent ruling in *Sturgeon v. Frost*, have treated Alaska Native Corporations. It will also briefly examine how Alaska Native Corporations compare with their analog in the continental United States, Tribal Corporations. Part II will discuss in detail the history and expectations surrounding the passage of the Alaska Native Claims Settlement Act. Part III will examine the Supreme Court's and Ninth Circuit's most recent decision in *Sturgeon v. Frost*, and consider the effects the Ninth Circuit's ruling may have on Alaska Native Corporations. It will also discuss how the Ninth Circuit's ruling might compare with the intention of the Alaska Native Claims Settlement Act. Lastly, Part IV recommends a direction for Alaska Native Corporations to take in light of the Ninth Circuit's ruling.

II. BACKGROUND

Alaska Native Corporations currently comprise some of the biggest economic forces in Alaska and have economic influence throughout the United States.[5] Alaska Native Corporations are owned by over roughly 111,000 Alaska Native shareholders who reside in villages and towns in Alaska as well as outside of the state.[6] Annual per capita payments to shareholders have ranged in value, but have reached as high as $25,000.[7] A 2010 report estimated the combined corporate revenues of Alaska Native Corporations to equal $8.2 billion from their business ventures in Alaska and around the world.[8]

However, although it is undeniable that Alaska Native Corporations have become a significant economic player, to fully appreciate their role and purpose it is necessary to understand the circumstances that surrounded their creation and the differences between Alaska Native Corporations and other Tribal Corporations found in the continental United States. This Part will discuss first, the history of Alaska Native claims to lands, second, the adoption of the Alaska Native Claims Settlement Act (ANCSA) and the creation of Alaska Native Corporations, and lastly, the difference between Alaska Native Corporations and American Indian Tribal Corporations in the lower forty-eight.[9]

A. The History of Alaska Native Claims to Land

The United States acquired Alaska from Russia in 1867 pursuant to the Treaty of

5. *See* Gavin Kentch, *A Corporate Culture, The Environment Justice Challenges of the Alaska Native Claims Settlement Act*, 81 MISS. L.J. 813, 818 (2012) (stating "[t]oday, ANCSA corporations account for seven of the ten most profitable Alaska-owned businesses.").

6. U.S. GOV. ACCOUNTABILITY OFF., GAO-13-121, REGIONAL ALASKA NATIVE CORPORATIONS: STATUS 40 YEARS AFTER ESTABLISHMENT, AND FUTURE CONSIDERATIONS (2012) [hereinafter REGIONAL ALASKA NATIVE CORPORATIONS] (asserting "shareholders initially numbered around 79,000 and now exceed 111,000. In addition, in over half the regions, 25 percent or more of the shareholders now reside outside Alaska . . . but throughout the regions, many shareholders reside in one of over 200 isolated villages in the state, often located near the sea or rivers. Most villages are accessible only by small planes, boats, or snow machines; 82 percent of the rural communities in Alaska have no road system.").

7. Kentch, *supra* note 5 (stating "annual per capita payments to shareholders have ranged from nothing to as much as $25,000, with the latter attributable to one-time payouts from the sale of timber or financial losses for tax shelter purposes.").

8. REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 13.

9. The "lower forty-eight" is a term commonly used throughout this Note to describe the contiguous United States.

Cession.[10] At the time the United States acquired Alaska, the land had been virtually untouched by non-Native people.[11] The Treaty of Cession essentially quitclaimed Russia's interested in the land to the United States[12] and provided that the "uncivilized tribes will be subject to such laws and regulation as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."[13]

Except for a few unique cases, "the general lesson gleaned from history and disposition of aboriginal claims in Alaska is that, like other indigenous Americans, Alaska Natives held claims to vast tracts of land by aboriginal title."[14] Congress first openly acknowledged Alaska Native claims to lands in the Organic Act of 1884 which stated "[t]hat the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but terms under which such person may acquire title to such lands is reserved for future legislation by Congress."[15] However, unlike tribal lands in the continental United States, which were largely taken by force or treaty,[16] because of the vast size of the Alaska territory—a territory larger than Montana, California, and Texas combined—and the general disinterest of non-Natives to live in it during the 19th century and early 20th century, Native claims to land were left relatively unaddressed for a large span of time.[17] However, as the federal government became increasingly aware of the importance of Alaska's strategic proximity to the then Soviet Union and the discovered large oil reserves in the Kenai Peninsula, Alaska's population grew and pushed for statehood.[18] The 1958 Statehood Act acknowledged Native Claims to Land and provided that "all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, Aleuts . . or is held by the United States in trust for said natives . . . shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority except to the extent as the Congress has prescribe or may hereafter prescribe."[19] On January 3, 1959, Alaska was admitted to the Union as a state.[20]

Following Alaska's statehood and the continued discovery of oil and other natural resources came increasing pressures to determine the boundaries and legitimacy of Alaska Native claims to land, which gave inspiration to the Alaska Native Claims Settlement Act.[21]

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10. ROBERT T. ANDERSON ET AL., AMERICAN INDIAN LAW CASES AND COMMENTARY 833 (3d ed. 2015) (citing the Treaty Concerning the Cession of Russian Possessions in North America, U.S.-Rus., 15 Stat. 539, T.S. No. 301 (1867)).

11. *Id.*

12. Alaska v. United States, 422 U.S. 184, 192 n.13 (1975).

13. ANDERSON ET AL., *supra* note 10, at 833.

14. *Id.* (quoting DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVE AND AMERICAN Laws 62 (3rd ed. 2012)).

15. Organic Act of 1884, § 8, 23 Stat. 24, 26 (1884).

16. John T. Shively, *Alaska Native Corporations and Native Lands*, ROCKY MOUNTAIN MINERAL L. FOUND. (1978), https://www.rmmlf.org/publications/digital-library/a/l/alaska-native-corporations-and-native-lands.

17. ANDERSON ET AL., *supra* note 10, at 833–34.

18. Eric C. Chaffee, *Business Organization and Tribal Self-Determination: A Critical Reexamination of the Alaska Native Claims Settlement Act*, 25 ALASKA L. REV. 107, 115 (2008).

19. Pub. L. No. 85-508, §4, 72 Stat. 339, 339 (1958); *see also* ALASKA CONST. art. XII, § 12 (reflecting corresponding language).

20. Chaffee, *supra* note 18, at 115.

21. *Id.* at 115–16.

B. Alaska Native Claims Settlement Act and the Birth of Alaska Native Corporations

ANCSA, passed in 1971, set out to settle the "immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims."[22] However, Congress also sought to re-envision the way American Indian land claims were resolved, and specifically found that:

> [T]he settlement should be accomplished . . . 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.[23]

The act marked a stark departure from the practices Congress had used to negotiate with tribes in the continental United States.[24]

In another distinct decision, ANCSA further mandated two tiers of Alaska Native Corporations.[25] First of all, ANCSA mandated the incorporation of twelve Alaska Native regional corporations.[26] The regional corporations were to be "composed as far as practicable of Natives having a common heritage and sharing common interests."[27] An option for a thirteenth regional corporation was also mandated to represent Alaska Natives who were no longer residing in Alaska.[28] These regional corporations were given clear title to approximately 45 million acres of land and $96.2 million dollars from an "Alaska Native Fund" to be distributed in nearly equal portions from royalties from mineral leases in Alaska and congressional appropriations.[29]

ANCSA also created a second tier of Native Corporations by naming over 200 Native

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22. Alaska Native Claims Settlement Act, 43 U.S.C. §1601 (1987).

23. *Id.*

24. Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520, 532 (1998) (stating that "in no clearer fashion could Congress have departed from its traditional practice of setting aside Indian lands."); Chaffee, *supra* note 18, at 116; *see* COHEN'S HANDBOOK, *supra* note 3, at 360. ("Instead of the usual course of vesting existing tribal governments with the assets reserved after extinguishment of the aboriginal claims, Congress adopted an experimental model initially calculated to speed assimilation of Alaska natives into corporate America."); *Cf.* Hagen v. Utah, 510 U.S. 399, 421–22 (1994) (holding that by allowing people who are not American Indian to settle diminished reservation lands, Congress had extinguished "Indian country" on those lands).

25. Martha Hirschfield, *The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form*, 101 YALE L.J. 1331, 1331 (1992).

26. 43 U.S.C. §1606 (2008) (stating that "[f]or 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.").

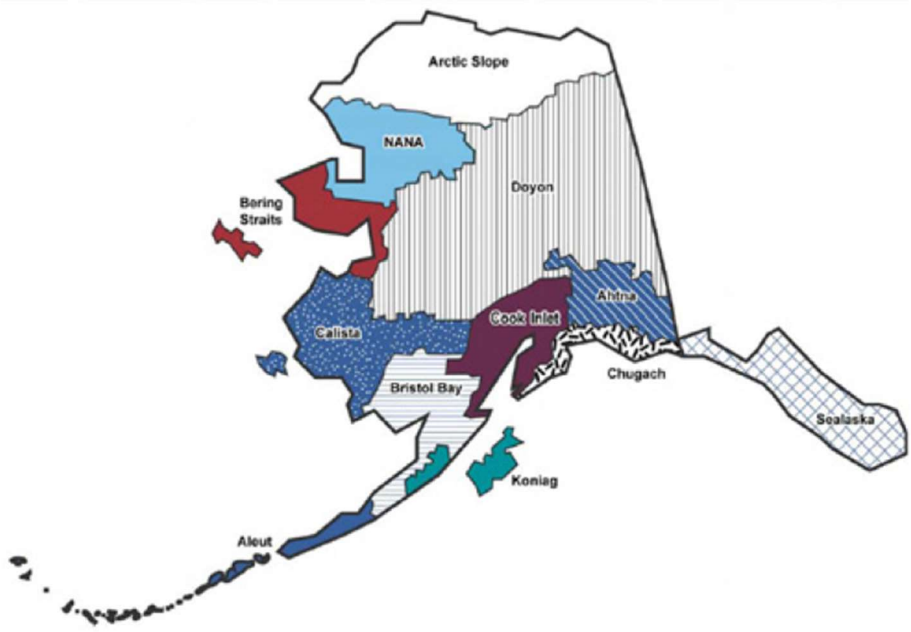
27. *Id.*

28. *Id.*; *but see* REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 14–15 (noting that "In contrast to the 12 regional corporations, the 13th Regional Corporation has experienced long-standing financial difficulties and has largely been insolvent since 2007. In a 2009 letter to shareholders, the corporation's board of directors explained that a series of events—including litigation involving the corporation's former chief executive officer and changes in the construction and real estate markets where the corporation had operations—negatively affected the corporation to the point of insolvency.").

29. 43 U.S.C. §1605 (1976); ANDERSON ET AL., *supra* note 10, at 835.

Villages that had at least 25 residents.[30] The village corporations could make additional selections from public lands, which would then belong to their corporations.[31] Furthermore, regional corporations and the federal government possessed the "power to transfer funds, land and other resources to the village corporations after they had incorporated."[32] However, village corporations were not given title to the subsurface estate; rather, those were given to the Regional Corporation that represented the village.[33]

Figure 1: Map of Regional Corporations[34]



Unlike tribal corporations in the lower forty-eight, under ANCSA, Regional Corporations are required to be for-profit entities in compliance with Alaska law.[35] Additionally, each Alaska Native alive on December 18, 1971 was to be issued 100 shares of stock in the regional corporation representing the region in which the Alaska Native

30. 43 U.S.C. §1606 (2008); 43 U.S.C. §1610 (1971); 43 U.S.C. §1611 (1971); ANDERSON ET AL., *supra* note 10, at 835–36.

31. *Supra no*te 30.

32. Chaffee, *supra* note 18, at 118.

33. 43 U.S.C. §1613(e) (2004); REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 5.

34. REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 5.

35. Alaska Native Claims Settlement Act, 43 U.S.C. §1606(d) (1976).

lived.[36] In order to enact resolutions that would allow the corporations to act in any significant way or to merge with another Regional Corporation, Alaska Native Corporations are bound by the traditional rules of corporate law.[37]

However, it is important to note that Alaska Native Corporations' corporate structure differs from traditional corporate structure in a few significant ways.[38] First of all, ANCSA initially restricted the alienation of stock in Alaska Native Corporations until December of 1991.[39] ANCSA was later modified to allow Alaska Native Corporations to restrict the alienation of their stock indefinitely, and to date not one has lifted the alienation restriction.[40] Secondly, ANCSA did not require Alaska Native Corporations to comply with the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 until (1) stock alienation restrictions are lifted; (2) until stock comes into the hands of someone other than an Alaska Native; or (3) unless the corporation choses to register with the United States Securities and Exchange Commission.[41] Lastly, ANCSA requires some amount of wealth redistribution to equalize the twelve Regional Corporations, mandating that 70% of the revenues from timber and subsurface mining be divided equally between the different regional corporations.[42]

Despite those three variances with typical corporate structure, ANCSA intended for Alaska Native Corporations to function essentially the same as other corporations.[43] Yet, there are many differences between Alaska Native Corporations and Tribal Corporations, in part due to the status that sovereignty gives to businesses.

C. How the Lack of Sovereignty Affects Alaska Native Corporations

ANCSA ended many of the powers and protections that American Indian Tribal Corporations otherwise enjoy.[44] In *Alaska v. Native Village of Venetie Tribal Government*, the Supreme Court ruled that land held by Alaska Native Corporations no longer possessed the protections of Indian country,[45] since the lands were neither a federal set-aside nor were

36. Alaska Native Claims Settlement Act, 43 U.S.C. §1606(g) (1976); Chaffee, *supra* note 18, at 117.

37. Chaffee, *supra* note 18, at 118.

38. *Id.* at 119.

39. *Id.* (citing Alaska Native Claims Settlement Act, 43 U.S.C. § 1629c (2000)).

40. *Id.*

41. *Id.* (citing Alaska Native Claims Settlement Act, 43 U.S.C. §1625 (2000)). *See also* REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 2 (stating "[s]ubsequent amendments, however, have authorized issuance of stock to other Alaska Natives and their descendants, extended the prohibition on the sale of stock, and generally exempted the corporations from regulation by the U.S. Securities and Exchange Commission.").

42. Chaffee, *supra* note 18, at 119 (citing Alaska Native Claims Settlement Act 4, 3 U.S.C. § 1606(i)(1)(A) (2000)).

43. *See generally* Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520, 522 (1998) (asserting "[m]oreover, Congress' conveyance of ANCSA lands to state-chartered and state-regulated private business corporations is hardly a choice that comports with a desire to retain *federal* superintendence.").

44. *See generally* Chaffee, *supra* note 18, at 136–40 (noting ANCSA's effect of diminished sovereignty on Alaska Natives).

45. The term "Indian Country" is being used throughout this paper as a legal term. As Cohen's Handbook of Federal Indian Law states "[a]lthough the term 'Indian Country' has been used in many senses, it is most usefully defined as country within which Indian laws and customs and federal laws relating to Indians are generally applicable." COHEN'S HANDBOOK, *supra* note 3, at 182. *See also Venetie Tribal Gov't,* 522 U.S. at 527 ("Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States.").

they under federal superintendence.[46] Rather, the Court held that ANCSA gave Alaska Natives title to the land without restriction and void of any government supervision.[47] This finding ended Alaska Native communities' power to tax commercial business on their lands.[48] Furthermore, as stated earlier, ANCSA mandated that Alaska Native Corporations comply with corporate laws.[49] Between the *Venetie* Court's interpretation of the definition of "Indian country" and ANCSA's outright mandate of compliance with Alaska corporate laws, Alaska Native tribes essentially lost their powers of sovereignty in exchange for clear title land.[50]

Tribal Corporations operating on reservations, or Indian Country on the other hand, are considered sovereign, and as such, Tribal Corporations have significantly different corporation practices.[51] Unlike Alaska Native Corporations, the Supreme Court has found that tribal sovereign immunity comes from the "inherent powers of a limited sovereignty which has never been extinguished."[52] The courts have explained tribal sovereign immunity protects tribal assets from legal suits.[53] In keeping with this rationale, the courts have extended the doctrine of tribal sovereign immunity to extend to tribal corporations, and limits suits brought regarding business transacted off of the reservations.[54]

Unlike Alaska Native Corporations, tribal corporations enjoy limited liability.[55]

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46. *Venetie Tribal Gov't*., 522 U.S. at 529 (finding that "Indian country" was land that "had been validly set apart for the use of the Indians as such, under the superintendence of the Government"). Catherine Lynn Allison, *Alaska Native Corporations: Reclaiming the Namesake; Effectuating the Purpose,* 42 PUB. CONT. L.J. 869, 872 (2013).

47. Allison, *supra* note 46 at 872.

48. Chaffee, *supra* note 18, at 138.

49. *Id.*

50. *See id.* at 136–40 (arguing that ANCSA diminished the sovereignty of Alaska Native Communities); *see also* Hirschfield, *supra* note 25, at 1348 ("[Without corporate sovereignty] ANCSA corporations are unable to govern their property autonomously."). The *Venetie* decision was hotly contested by many, including Senator Ted Stevens of Alaska who was one of the chief architects of ANCSA. *See* Kim Murphy, *Alaska's Line in the Snow: Tribal Rule*, L.A. TIMES (Oct. 25, 1997), http://articles.latimes.com/1997/oct/25/news/mn-46449 (last visited Mar. 24, 2018) (discussing implications of *Venetie* decision).

51. Amelia A. Fogelman, *Sovereign Immunity of Indian Tribes: A Proposal For Statutory Waiver of Tribal Businesses*, 79 VA. L. REV. 1345, 1347 (1993) (stating that "[t]o further protect the treasuries of Indian tribes, courts have allowed tribal businesses to share in the immunity of the tribe").

52. United States v. Wheeler, 435 U.S. 313, 322 (1978) (quoting FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)).

53. Fogelman, *supra* note 51, at 1349.

54. *Id.*; *see also* Mich. v. Bay Mills Indian Cmty., 134 S. Ct. 2024 (2014) (noting that "IGRA partially abrogates tribal sovereign immunity. . . to enjoin gaming activity *on* Indian lands. . . [but does not allow a state bring] a similar suit to stop gaming activity *off* Indian lands.").

55. *See* Bree R. Black Horse, *The Risks and Benefits of Tribal Payday Lending to Tribal Sovereign Immunity*, 1 AM. INDIAN L.J. 388, 395–96 (2013) (detailing payday lending's relationship to sovereign immunity). *See also* Michael Farley, Note, *Caught on the Wrong Side of the Line: An Examination of the Relationship Between the Payday Loan Industry and American Indian Tribal Sovereignty*, 42 J. CORP. L. 481, 489–90 (2016).

> Possessing a sovereignty that, in most respects, is on par with or greater than that of the state is both a blessing and a curse for American Indian tribes. The benefits are abundant: the ability for tribes to control their society and culture, especially in the face of centuries of systematic attacks on that very same culture and even contemporary factors which pressure people to leave the reservation; avoidance of state laws that could potentially discriminate against American Indians; and a chance to experiment with economic schemes which better fit the population on the reservation, a population which is often different from the general United States population in terms of location, population density, household income, and lifestyle. *Id.*

Furthermore, while Alaska Native Corporations are compelled under ANCSA to incorporate under Alaskan laws, tribal corporations may incorporate subject to tribally enacted laws.[56] Additionally, tribal corporations are not subject to state disclosure requirements as other corporations are.[57] Subsequently, tribal corporations are able to dispense with traditional transparency requirements such as disclosing proxy voting rights.[58] Alaska Native corporations, on the other hand, must make all state-required disclosures including proxy disclosures.[59]

The power that tribal sovereign immunity confers upon tribal corporations is considerable.[60] However, the benefit to clear title of lands is also undeniable and Alaska Native Corporations have greatly profited from owning their lands outright rather than through a federal trust.[61] Yet, recent Ninth Circuit and Supreme Court decisions have called into question whether Alaska Native Corporations may truly use their lands as contemplated by ANCSA or whether they may develop some of their lands only subject to United States National Park Service regulation.[62] Such a ruling begs the question: Are Alaska Native Corporations living up to the promises of ANCSA?

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56. *See* U.S. DEP'T OF INTERIOR, TRIBAL ECONOMIC DEVELOPMENT PRINCIPLES AT A GLANCE SERIES: CHOOSING A TRIBAL BUSINESS STRUCTURE 1, 3 (2015), https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/bia/pdf/idc1-032915.pdf (stating "[t]ribal businesses can be formed through a federal charter under Section 17 of the Indian Reorganization Act (IRA), as a corporation chartered under tribally enacted laws . . ."); ANDERSON ET AL., *supra* note 10, at 10–11 (reporting "[t]he regional corporations are organized as for-profit corporations under Alaska state law and are separate and distinct from the Alaska Native tribal governments recognized by the federal government as Indian Tribes. Incorporated under Alaska state law, regional corporations share fundamental characteristics with other corporations in Alaska").

57. Heather L. Petrovich, *Circumventing State Consumer Protection Laws: Tribal Immunity and Internet Payday Lending*, 91 N.C. L. REV. 326, 344 (2012) (stating that "[t]he information available about corporations organized under tribal law is even more limited than other corporations owned by tribes because these corporations are not subject to the same disclosure requirements as corporations organized under state law . . . . Technically, then, all tribes have to do is hide incriminating documents well enough at the outset to escape regulation").

58. *See id.* (discussing the limited amount of information available regarding corporations incorporated under tribal law).

59. REGIONAL ALASKA NATIVE CORPORATIONS, *supra* note 6, at 19 (reporting that "in [Alaska Native Corporation's] annual proxy statements, the corporations generally disclose the family relationships of directors, board nominees, or executive officers of the corporation and its subsidiaries and certain financial transactions by the corporation with a director or director's family, as required by state regulation.").

60. *See generally id.* (discussing the relative freedom from oversight that Alaska Native Corporations enjoy).

61. *See* Kentch, *supra* note 5, at 838 (discussing the benefits of the government's land grants to Alaskan natives).

62. Sturgeon v. Masica, 768 F.3d 1066 (9th Cir. 2014) *vacated sub nom*., Sturgeon v. Frost, 136 S. Ct. 1061, 1072 (2016) The court held:

> Given this determination, we also do not decide whether the Park Service has authority under Section 100751(b) to regulate Sturgeon's activities on the Nation River, even if the river is not 'public' land, or whether—as Sturgeon argues—any such authority is limited by ANILCA. Finally, we do not consider the Park Service's alternative argument that it has authority under ANILCA over both 'public' and 'non-public' lands within the boundaries of conservation system units in Alaska, to the extent a regulation is written to apply specifically to both types of land. We leave those arguments to the lower courts for consideration as necessary.

III. ANALYSIS

Recent Ninth Circuit and Supreme Court decisions underscore the question of whether ANCSA has lived up to its promises.[63] In *Sturgeon v. Frost*, the Supreme Court considered whether National Park Service regulations applied to "non-public lands" as well as "public lands" under the Alaska National Interest Lands Conservation Act (ANILCA).[64] This Part will describe the *Sturgeon v. Frost* case and consider its implications for Alaska Native Corporations.

A. ANILCA, ANCSA, and Sturgeon v. Frost

ANILCA, passed in 1980, nine years after ANCSA, designated 104 million acres of Alaskan land as preservation land and parceled them into "conservation system units" (CSUs).[65] The CSUs were defined as "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument" and also included over 18 million acres of land owned by Native Corporations, the State of Alaska, and private parties.[66]

ANILCA laid out a distinction between public and non-public lands in Section 103 (c) which read:

> [o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.[67]

Until recently, Alaska Native Corporations have interpreted this language as exempting their lands from National Park Service regulation, regardless of whether their land fell within the boundaries of a CSU.[68]

In 2007, an Alaskan hunter, John Sturgeon, used a hovercraft on the Nation River to reach moose hunting grounds.[69] The Nation River flows through the Yukon-Charley Rivers National Preserve—a CSU managed by the National Park Service.[70] As many other CSUs, the Yukon-Charley Rivers National Preserve was drawn around owned land by the federal government, the state of Alaska, Alaska Native Corporations, and private owners.[71]

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63. *Id.*
64. *Id.* at 1072.
65. *Id.* at 1066.
66. 16 U.S.C. § 3102(4) (1997); *see id.*
67. 16 U.S.C. § 3103(c) (1997).
68. *See* Brief for Doyon, Limited & Nana Regional Corp., et al. as Amici Curiae Supporting Petitioner, Sturgeon v. Frost, 136 S. Ct. 106 (2016) (No. 14-1209), 2015 WL 7625445, at *3.
69. *Sturgeon*, 136 S. Ct. at 1062.
70. *Id.*
71. Sturgeon v. Frost, 872 F.3d 927, 929 (2017).

Although Alaska law permits the use of a hovercraft, National Park Service regulations prohibit such use within "[w]aters subject to the jurisdiction of the United States located within the boundaries of the National Park System . . . without regard to the ownership of submerged lands, tidelands, or lowlands."[72] The National Park Service officers approached Sturgeon and ordered that he remove his hovercraft from the preserve.[73] Sturgeon filed a suit for injunctive relief against the Park Service in the District Court of Alaska contending that the Nation River belongs to Alaska and as such the Park Service has no authority to regulate it.[74] The District Court granted summary judgment to the Park Service and the Ninth Circuit affirmed in pertinent part.[75]

On appeal, the Supreme Court rejected the Ninth Circuit's interpretation of ANILCA Section 103, which addresses the scope of the Park Service's ability to regulate lands within the boundaries of the CSUs, based on the canons of statutory construction and remanded the case back to the Ninth Circuit.[76] The Court noted that the Ninth Circuit's "topsy-turvy approach" failed to take into account the central premise of ANILCA, "that Alaska is often the exception, not the rule."[77] However, the Supreme Court did not answer whether, under ANILCA, the National Park Service could regulate both "public" and "non-public" land.[78] Since much of the land area of the "non-public" lands located in CSUs belongs to Alaska Native Corporations, ANCs found themselves in a precarious position with regard to how they may use and develop their land.[79] Needless to say, shareholders of Alaska Native Corporations nervously considered how to best invest their resources as lands they previously thought were developable are tied up in litigation.[80] The Ninth Circuit was required to answer the question it had previously left unanswered, whether the Nation River as well as other waters in CSUs were "public lands" under ANILCA.[81]

On October 2, 2017, a Ninth Circuit panel concluded that waters such as the Nation River are "public lands" and issued a ruling in favor of the National Park Service concluding that "the federal government properly exercised its authority to regulate hovercraft use on the rivers within conservation system units in Alaska."[82] The panel acknowledged "that some 18 million acres within the ANILCA-established conservation system units, approximately one-sixth of the total, are land selections for Native Corporations" and recognized Sturgeon's concern that "federal regulation of navigable

72. 36 C.F.R. § 1.2(a)(3) (2018).

73. *Id.*

74. *Id.*

75. *Id.*

76. 16 U.S.C. § 3103(c) (1997).

77. Sturgeon v. Frost, 136 S. Ct. 1061, 1071 (2016).

78. *Id.* at 1063.

79. *See* Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *1–4 (stating that "the Ninth Circuit's decision, if allowed to stand, would substantially alter and diminish the Congressional settlement of Native land rights under ANCSA and harm the interests of the Native Corporation *amici*.").

80. *Id.*

81. Matthew J. Sanders, Sturgeon v. Frost*: A little case in Alaska poses big questions for federalism*, *Trends*, AM. BAR ASSOC. (Jan–Feb. 2018), https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2017-2018/january-february-2018/sturgeon-v-frost.html.

82. Sturgeon v. Frost, 872 F.3d 927, 929 (9th Cir. 2017); *see* Sam Friedman, *Court Backs Hovercraft Ban in Alaska's National Preserves*, DAILY NEWS-MINER (Oct. 2, 2017) http://www.newsminer.com/news/alaska_news/court-backs-hovercraft-ban-in-alaska-s-national-preserves/article_e25c1746-a7b4-11e7-8898-ab7334c474d0.html (reporting on Alaskan reaction to the decision).

waters within the units will result in 'economic catastrophe' to native shareholders by 'impeding any efforts . . . to productively utilize their lands'" but found that Sturgeon lacked standing to assert "hypothetical claims on the Native Corporations' behalf" and concluded that "[s]hould Sturgeon's concerns materialize, they can be resolved in an appropriate case."[83]

Sturgeon has since filed a petition for certiorari to the United States Supreme Court asking it to resolve "[w]hether the Alaska National Interest Lands Conservation Act prohibits the National Park Service from exercising regulatory control over State, Native Corporation, and private land physically located within the boundaries of the National Park System in Alaska."[84]

B. Economic Activities on Lands Held by Alaska Native Corporations Inside CSU's Would Be Halted

In light of the Ninth Circuit panel's decision that the National Park Service can regulate "non-public" lands and waters, which include lands held by Alaska Native Corporations, development of land owned by Alaska Native Corporations that fall within CSUs will be effectively halted.[85] Stopping economic development would be in direct tension with the purpose of creating Alaska Native Corporations: to provide economic opportunity to its shareholders as contemplated by ANCSA[86] and possibly go beyond the intentions of ANILCA as well.[87]

For example, Doyon, Limited, an Alaska Native Corporation representing Alaska Natives in the greater Fairbanks area, owns approximately 320 square miles of land in the Yukon-Charley Rivers National Preserve, which is, coincidentally, the CSU at issue in *Sturgeon*.[88] The lands were selected subject to ANCSA and before the enactment of ANILCA.[89] Doyon selected the land because of the high likelihood that it was oil-rich.[90]

Similarly, the Arctic Slope Regional Corporation (ASRC) is an Alaska Native Corporation which is owned by 11,000 Iñupiaq shareholders who primarily reside in eight villages in northern Alaska.[91] Subject to ANCSA, the corporation gained title to approximately five million acres of land, known as the "North Slope" of the Brooks

83. *Sturgeon*, 872 F.3d at 936.

84. Sturgeon v. Frost, 872 F.3d 927 (9th Cir. 2017), *petition for cert. filed,* __ U.S.L.W.___ (U.S. Jan. 2, 2018) (No. 17-949).

85. *See* Brief of Arctic Slope Reg'l Corp. et al. as Amici Curiae in Support of Petitioner and Reversal, Sturgeon v. Frost, 136 S. Ct. 1061 (2016) (No. 14-1209), 2015 WL 7625446 , at *11–12.

86. *See* Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *17 (noting that "[w]hen read against the backdrop of ANCSA, one critical intention of §3103(c) becomes abundantly clear: to preserve the economic value of lands conveyed to Native Corporations by exempting them from regulations written to govern CSUs"); 43 U.S.C. § 1601(b) (1971).

87. *See* Brief of Amici Curiae Mentasta Traditional Council et al., 136 S. Ct. 1061 (2016), No. 13-36165, 2016 WL 6081577, at *7 (stating "[c]ontrary to the State's view, navigable waters within the Yukon-Charley Rivers National Preserve are not "owned" by the State, and they were never "conveyed" to the State").

88. *Id.* at *6; *see Our Lands*, DOYON LIMITED, http://www.doyon.com/our-corporation/our-lands/alatna/ (last visited Mar. 24, 2018) [hereinafter *Our Lands*]; *See* DOYON, LIMITED OIL AND GAS EXPLORATION, http://doyonoil.com/Map (depicting a map of the location) (last visited Mar. 24, 2018).

89. Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *6.

90. *Id.*; *see Our Lands*, *supra* note 88.

91. ARCTIC SLOPE REGIONAL CORP., https://www.asrc.com/About/Pages/Corporate.aspx (last visited Oct. 22, 2016).

Mountain Range.[92] ASRC selected the land because of its great resource potential which could reap large economic benefits for its shareholders; selecting this land also allowed the shareholders to continue a long tradition of hunting and fishing for subsistence use.[93] However, after gaining title to the lands, ANILCA's provisions later enveloped more than 380,000 acres of ASRC's lands in national parks such as the Alaska National Wildlife Refuge (ANWR) and Gates of the Artic National Park.[94] Furthermore, ASRC's lands also encompass two villages, Anaktuvik Pass and Kaktovik, where many of its shareholders live.[95] Subsequent to ANILCA, those villages now lie in the Gates of the Arctic National Park and Alaska National Wildlife Refuge respectively.[96]

Lastly, the Cook Inlet Region, Inc. (CIRI), an Alaska Native Corporation encompassing the greater Anchorage area and owned by 8,700 diverse shareholders from more than six different Native groups,[97] holds resource-rich and gas-producing land that now lies within the Lake Clark National Park and the Kenai National Wildlife Refuge.[98] CIRI has been a largely successful company and has paid over one billion dollars to its shareholders since its inception.[99] Furthermore, CIRI is unique in that, due to heavy development in the south-central region of Alaska, along with other factors, the corporation still has a significant amount of ANCSA lands left to select.[100]

The Ninth Circuit's decision could mean that Alaska Native Corporations possessing inholdings in areas which are now defined as CSUs, like the Alaska Native Corporations mentioned above, will face large economic losses.[101] Federal regulations closely restrict human activity in national parks in order to protect wildlife and the scenic wilderness.[102] While a laudable goal in theory, such a reading would impact 40% of land—together comprising about eighteen million acres of land—given to Alaska Native Corporations to develop "the real economic and social needs" of Alaska Natives under ANCSA.[103] Ventures such as oil exploration, tourism, and subsistence hunting and fishing would be extinguished.[104] Furthermore, corporations such as CIRI, with ANCSA lands left to select,

92. *Id.*; *see* Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at 9 (noting "there are already a number of important ANSCA land development").

93. *See History*, ARCTIC SLOPE REGIONAL CORP., https://www.asrc.com/About/History/Pages/Corporate%20History.aspx (last visited Mar. 24, 2018) (discussing the company's history and heritage).

94. *Lands Today*, ARCTIC SLOPE REGIONAL CORP., https://www.asrc.com/Lands/Pages/LandsToday.aspx (last visited Mar. 24, 2018) (depicting a map of ASRCS inholdings in relation to ANWR and other national parks); *see* Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *9.

95. *Lands Today*, *supra* note 94.

96. *Id.*

97. Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *10; *see About Us*, CIRI, http://www.ciri.com/our-corporation (last visited Mar. 24, 2018) (containing more detailed information about CIRI corporation and lands).

98. Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *10.

99. Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68.

100. *Id.*

101. Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *10–12; Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *4.

102. Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *10–12.

103. *Id.*; City of Angoon v. Marsh, 749 F.2d 1413, 1414 (9th Cir. 1984) (noting that lands were given to Alaska Native Corporations under ANCSA "to assist them in achieving financial independence and self-sufficiency"); 43 U.S.C. § 1601(b) (1971).

104. *See* Brief of Arctic Slope Reg'l Corp. et al., *supra* note 85, at *9.

would face large disadvantages in trying to locate resource rich land outside of federal preserves so long after statehood has been established.[105]

C. Is ANCSA Living Up to Its Intention?

Certainly the stated intent of the Alaska Native Claims Settlement Act was to fairly settle Alaska Natives' aboriginal claims to land in Alaska.[106] Congress wrote ANCSA to address "the real economic and social needs of Natives, without litigation, [and] with maximum participation by Natives in decisions affecting their rights and property."[107] In doing so, ANCSA created twelve corporations, granted the corporations title to a total of 45.5 million acres of land, and paid Alaska Natives a total of $962.5 million into an Alaska Native Fund which would distribute payments to corporations subject to certain terms.[108]

ANCSA signaled a distinct departure from previous policies and legislation regarding American Indian law.[109]By giving Alaska Native Corporations clear title to land instead of following a reservation regime where tribal lands are held in trust by the federal government, Congress intended to reject the paternalism too commonly found in dealings with indigenous peoples.[110] Congress furthermore intended Alaska Native Corporations to be business entities allowed to promote the "real economic and social needs of Natives" without undue support or interference by the federal government.[111]

However, ANCSA had the incidental effect of terminating several aspects of sovereignty that Alaska Native Corporations could otherwise have enjoyed.[112] In *Alaska v. Native Village of Venetie Tribal Government*, the Supreme Court held that ANCSA terminated the powers of Indian Country by giving Alaska Native Corporations title to lands out-right.[113] This meant that Alaska Native communities had lost the "power to tax

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105. *Id.* at *10.

106. Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (2000) ("Congress finds and declares that . . . 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.").

107. *Id.*

108. Chaffee, *supra* note 18, at 109–10 (detailing the context and provisions of the Alaska Native Claims Settlement Act).

109. *See id.* at 117 ("In short, the policies underlying the Settlement Act were and are dramatically different than the policies Congress had used to deal with Native Americans in the lower United States."); *see also* Donald Craig Mitchell, *Alaska v. Native Village of Venetie: Statutory Construction or Judicial Usurpation? Why History Counts*, 14 ALASKA L. REV. 353, 391 (1997) ("[I]n its report on the bill that became the amendment, the Senate Committee on Interior and Insular Affairs explained that '[a] major purpose of this Committee and the Congress is to avoid perpetuating in Alaska the reservation and the trustee system which has characterized the relationship of the [f]ederal government to the Indian peoples in the contiguous [forty-eight] states.'").

110. Mitchell, *supra* note 109, at 440 (quoting Senator Ted Stevens "[ANCSA] rejected the paternalism of the past and gave Alaska Natives an innovative way to retain their land and culture without forcing them into a failed reservation system").

111. Alaska Native Claims Settlement Act, 43 U.S.C. § 1601(b) (2000).

112. *See* Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520, 523 (1998) (deciding whether lands held by Alaska Native Corporations enjoy the same powers as Indian Country).

113. *Venetie*, 522 U.S. at 529, 532. ("Congress indicated that a federal set-aside *and* a federal superintendence requirement must be satisfied for a finding of a 'dependent Indian community'. . . After the enactment of ANCSA, the Tribe's lands are neither "validly set apart for the use of the Indians as such," nor are they under the superintendence of the Federal Government."); *cf.* Montana v. U.S., 450 U.S. 544, 565 (1981) ("A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.").

and the other sovereign powers associated with Indian country, i.e., corporations may own the land but existing Alaska Native governments cannot exercise sovereign powers over it."[114] Furthermore, ANCSA explicitly required Alaska Native Corporations to comply with Alaska corporate law.[115] As Chaffee points out, "Alaska corporate law limits [Alaska Native Corporations'] sovereignty and autonomy because they can no longer choose how their land and natural resources are to be governed."[116]

The proponents of ANILCA sought to ensure that the act did not interfere with the intentions of ANCSA. In enacting ANILCA, For example, Senator Ted Stevens of Alaska, one of the architects of both ANCSA and ANILCA, specifically noted:

> The fact that Native lands lie within the boundaries of conservation system units is not intended to affect any rights which the corporations have under this act, the Alaska Native Claims Settlement Act, or any other law. It is not our intent, by the inclusion of Native lands within the exterior boundaries of conservation system units, to imply that such inclusion is a revocation of land selections validly filed pursuant to any provision of the Alaska Native Claims Settlement Act. The Native organizations have been given repeated assurances that including their lands within conservation units will not affect the implementation of the Native Claims Settlement Act. We intend to have these assurances translated into practice by the administrative agencies.[117]

Yet, Ninth Circuit's ruling is possibly in direct contravention to ANCSA. It is holding could mean that, since some lands held by Alaska Native Corporations are subject to National Park Service regulation, Alaska Native Corporations will not have all of the benefits that were imagined when they entered into ANCSA. The burden to Alaska Native Corporations will directly affect the wellbeing of many Alaska Native shareholders and their communities who have relied on the ongoing benefits of stock ownership as stocks

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114. Chaffee, *supra* note 18, at 138.

115. Alaska Native Claims Settlement Act, 43 U.S.C. § 1606(d) (2008) ("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.").

116. Chaffee, *supra* note 18, at 139.

117. 126 CONG. REC. H21,882 (1980); *see also* 125 CONG. REC. H9905 (1979). Arizona Congressman Mark Udall stated:

> It is important to recall the relationship between the conservation system units . . . and the lands which the Native peoples of Alaska have received and will receive pursuant to the Alaska Native Claims Settlement Act in return for the extinguishment of their claims based on aboriginal title. We recognize that there are certain lands which have been selected by Native Corporations and which are within the exterior boundaries of some of the conservation system units . . . . I want to make clear that inclusion of these Native lands within the boundaries of conservation system units is not intended to affect any rights which the Corporations may have under this act, the Alaska Native Claims Settlement Act, or any other law, or to restrict use of such lands by the owning Corporations nor to subject the Native lands to regulations applicable to the public lands within the specific conservation system unit.*Id.*

may decrease in value.[118] This result is one that many such shareholders find untenable.[119] Alaska Native Corporations must now examine and reconsider their options.

IV. RECOMMENDATION

As discussed earlier, Alaska Native Corporations are compelled to operate their businesses in a very different manner than tribal corporations in the lower forty-eight.[120] This means that Alaska Native Corporations are subject to stricter compliance codes when it comes to running their business, from transparency requirements and proxy rights to land development than their analog in the lower forty-eight. While it is undeniable that ANCSA gave Alaska Native Corporations and Alaska Native communities many benefits, in light of the Ninth Circuit's ruling, the benefits granted to Alaska Native Corporations under ANCSA have been greatly weakened.

As stated earlier, the lands given to Alaska Native Corporations were intended to be in "settlement" of their aboriginal claims and were to be developed in order to address the economic needs of their communities.[121] And yet, since Alaska Native Corporations lands were later put in CSU's, which the Ninth Circuit finds should only be developed under the compliance of Federal National Park Service laws, the ability of Alaska Native Corporations to address the economic needs of its communities has been largely diminished. The intention of ANCSA seems to be different than the reality of ANCSA. Alaska Native Corporations should consider both bringing suit and beginning an aggressive political campaign to obtain the full benefit of what the corporations were promised under ANCSA.

A. Alaska Native Corporations Should File Suit in Federal Court

Alaska Native Corporations could file suit in federal government for statutory construction of ANILCA in light of the promises of ANCSA. The Ninth Circuit seemed to not only acknowledge this possibility in its most recent decision, but further seemed to leave the door wide open to such a possibility.[122] As such it is possible that a corporation could sue and obtain a more favorable result.

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118. *See* Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *15 (stating "The revenues derived from development of these ANCSA lands are fundamental to the innovative settlement Congress devised. Under ANCSA §7(i), 43 U.S.C. §1606(i), each Regional Corporation is required to share seventy percent (70%) of its revenues from natural resource development (including timber, minerals, and oil and gas) on its ANCSA lands with the other land-owning Regional Corporations. Under §7(j), 43 U.S.C. §1606(j), one-half of the revenues that are received by a Regional Corporation under §7(i) are distributed to the Village Corporations located within its regional boundaries, and to its "at large" shareholders (those not enrolled to a Village Corporation). Thus, a share of resource revenues from ANCSA lands flow directly or indirectly to nearly all Alaska Natives.").

119. *See* Brief for Doyon, Limited & Nana Regional Corp., et al., *supra* note 68, at *16 (arguing Congress could not have intended to forbid the "only real economic use of the lands so conveyed").

120. *See* S. Chloe Thompson, *Exercising and Protecting Tribal Sovereignty in Day-to-Day Business Operations: What the Key Players Need to Know*, 49 WASHBURN L.J. 661, 680 (2010) ("There is certainly no need for tribal laws to mirror federal laws exactly or even to follow them very closely at all.")

121. *See* Alaska Native Claims Settlement Act; 43 U.S.C. § 1601(a) (2000) (stating "Congress finds and declares that . . . 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.").

122. Sturgeon v. Frost, 872 F.3d 927, 936 (9th Cir. 2017).

Alternatively, it is possible that Native Corporations could sue the federal government for defaulting on the promises in ANCSA. ANCSA was, and still is, lauded as one of the most equitable visionary pieces of legislation regarding American-Indian law.[123] However, the exchange was predicated on the belief that the age of paternalism over American Indian tribes should be coming to a close and that land claims must be settled in a way that Alaska Natives were given clear title to lands so that they might be developed.[124] In light of the declared policy behind ANCSA, which Alaska Native Corporations considered when signing onto the exchange, Alaska Natives Corporations should bring suit against the federal government for defaulting on their stated promise and intentions as outlined by ANCSA.

B. Alaska Native Corporations Should Begin an Aggressive Political Campaign

Furthermore, Alaska Native Corporations should begin lobbying for new legislation to reexamine the conservation and national park boundaries as they are currently drawn in Alaska. Both current Alaskan Senators Lisa Murkowski and Dan Sullivan and Congressman Don Young filed amicus briefs in *Sturgeon v. Frost* when it was pending in the Supreme Court in support of petitioner John Sturgeon in which they noted that "ANCSA was unique in the realm of Native American land claim settlements because it vested control of the land directly in the elected representatives of Alaska's Native peoples, and not in the federal government as trustee . . . [i]t was fully expected that some of this land would be developed for its vast natural resource potential."[125] As such Alaska Native Corporations should reach out, not only to the Alaska congressional delegations, but other activists and look to amend or write new legislation that complies with the original intention of ANCSA.

V. CONCLUSION

Alaska Natives entered into the agreement with the federal government in which they relinquished sovereignty and their aboriginal claims to land for clear title to selected regions of Alaskan lands. This agreement was reached well prior to the enactment of ANILCA. However, Alaska Natives continue to straddle the divide of living a culture now encased by statute, and in the form of a corporation, yet consistently subject to the ranging interpretations of case law.[126] Alaska Native Corporations should be able to realize the full benefit of trade that the agreed to without constantly changing their business plans and their livelihoods by the whim of the courts.

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123. Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520, 532 (1998) (stating that "in no clearer fashion could Congress have departed from its traditional practice of setting aside Indian lands.").

124. Alaska Native Claims Settlement Act, 43 U.S.C. § 1601(b) (2008) ("[T]he 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 . . .").

125. *See* Brief for United States Senators Sullivan and Murkowski and Representative Young as Amicus Curiae in Support of Petitioner John Sturgeon, Sturgeon v. Frost, 136 S. Ct. 1061 (2015) (No. 14-1209), 2015 WL 7450410, at *12.

126. Chaffee, *supra* note 18, at 130 (noting "Alaska Natives are encased within the law because of the tension between corporate culture and Alaska Native culture, the legal burdens created by the Act, and the stresses generated by operating in an unrefined corporate system.").

In order for ANCSA to truly usher in the next wave of more modern American Indian law there must be a consistent reading of ANCSA. A stable reading will bring some predictability into the boardrooms allowing shareholders to better reap the rewards and Alaska Native communities to truly prosper as was intended by ANCSA. The Ninth Circuit's ruling in *Sturgeon v. Frost* could be a notable placeholder in the legacy of ANCSA's success.