NOTES

SHAREHOLDER RIGHTS AS THE LAST FRONTIER FOR ALASKA NATIVE CORPORATIONS

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INTRODUCTION

When the Alaska Native Claims Settlement Act (ANCSA) was signed into law in 1971, it was the largest land claims settlement in American history—and widely praised as a means of providing Alaska Natives with the "economic, social, and sovereign accountability" that Native leaders had long demanded.[1] That economic, social, and sovereign accountability would be exercised through the twelve for-profit regional corporations and over two hundred for-profit village corporations that ANCSA created.[2] Practically overnight, the approximately fifty thousand Alaska Natives[3] living in Alaska each received one hundred shares of both their respective regional and village corporations—corporations which owned a collective forty-four million acres of land and were promised nearly $1 billion in compensation for lost lands.[4]

But ANCSA has not been a panacea for the century of tensions that simmered between Alaska Natives and the federal government.[5] Over fifty years later, about eight million acres of land still have not yet been transferred to their regional or village corporation.[6] ANCSA's unique restrictions on stock transferability have resulted in bitter disputes in the Alaska court systems.[7] And some regional corporations are vulnerable to fraud and self-dealing,[8]

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1. Isaac Stone Simonelli, *50 Years of ANCSA*, ALASKA BUS. MAG. (Sep. 2021), https://digital.akbizmag.com/issue/september-2021/50-years-of-ancsa/ [https://perma.cc/E8DU-E2V6].

2. *Id.*

3. The U.S. Census Bureau identified the total population of Alaska Natives in 1970 as 50,605, constituting 16.8 percent of the population. About 90 percent lived in rural regions of the state. U.S. CENSUS BUREAU, U.S. DEP'T OF COM., PC (S1)-64, NATIVE POPULATION OF ALASKA BY RACE: 1970 2-3 (Sep. 1974).

4. Simonelli, *supra* note 1.

5. *See* Marilyn J. Ward Ford & Robert Rude, *ANCSA: Sovereignty and a Just Settlement of Land Claims or an Act of Deception*, 15 TOURO L. REV. 479, 484-85 (1999).

6. Simonelli, *supra* note 1.

7. *See, e.g.*, Anniskett v. Tracey, Nos. S-17398/S-17636, 2022 WL 2717712, at *1 (Alaska July 13, 2022) (involving three sisters in a dispute over the distribution of their parents' shares).

8. *See* Lois Parshley, *An Alaska Native Tribal Council Greenlit a Gold Mine. Some Tribal Members Aren't Happy.*, GRIST (Dec. 6, 2023), https://grist.org/indigenous/an-alaska-native-tribalcouncil-greenlit-a-gold-mine-some-tribal-members-arent-happy/ [https://perma.cc/ZR6J-7T7R]; *see also* Robert O'Harrow Jr., *D.C. Insiders Can Reap Fortunes from Federal Programs*

leaving many Alaska Natives increasingly wary of ANCSA's lofty promises.[9] After all, many scholars—and Alaska Native Regional Corporations (ANRCs) themselves—have pointed out that ANRCs are for-profit corporations, not charities.[10]

The tension at the center of ANCSA is not likely to dissipate any time soon, and the question of whether the corporate form is the *best* means of protecting Alaska Native interests extends beyond the scope of this Note. But given that ANCSA is the primary framework that Alaska Natives navigate on a day-to-day basis, it is worth considering some of the ways in which ANRCs could better serve the communities for which they were created.

This Note argues that the principles underlying Rule 14a-19, recently implemented by the Securities and Exchange Commission (SEC), are broadly applicable to Alaska Native corporations. Put simply, the introduction of such a rule in the ANRC context would make it easier for Alaska Native shareholders to elect members to their respective boards who are more closely aligned with how the shareholders want their Native values to be implemented in their Native corporation. Part I will trace the complex history that led to the passage of ANCSA and the development of the twelve regional corporations, with a special emphasis on the efforts of Alaska Natives to fight for legislation that would accurately embody their goals, values, and traditions. Part II will conduct a brief survey of ANRCs as they currently exist today and will aim to provide an accurate account of the ways in which ANRCs have exceeded expectations in certain respects while falling short in others. Part III seeks to "bridge the gap" between ANRCs as they were originally envisioned and ANRCs as they have evolved over the fifty-four years

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for Small Businesses, WASH. POST (Mar. 12, 2011), https://www.washingtonpost.com/investigations/dc-insiders-can-reap-fortunes-from-federal-programs-for-small-businesses/2011/02/09/AB1NRJS_story.html [https://perma.cc/2ALZ-5VE5].

9. Nathaniel Herz, *A Historic Settlement Turns 50, But Questions Linger Over Whether It Was Fair*, ALASKA PUB. MEDIA (Dec. 7, 2021, at 01:50 AKT), https://alaskapublic.org/ancsa50/2021-12-07/a-historic-settlement-turns-50-but-questions-linger-over-whether-it-was-fair [https://perma.cc/7FTZ-4LT5].

10. *See*, *e.g.*, E. Barrett Ristroph, *How Alaska Native Corporations Can Better Support Alaska Native Villages*, 10 AM. INDIAN L.J. 68, 86 (2022); Marilyn J. Ward Ford, *Twenty Five Years of the Alaska Native Claims Settlement Act: Self Determination or Destruction of the Heritage, Culture, and Way of Life of Alaska's Native Americans*, 12 J. ENV'T. L. & LITIG. 305, 327 (1997).

since ANCSA became law. NANA Regional Corporation's involvement in developing and maintaining ICE detention facilities (and the resulting shareholder grievances) exemplifies this current tension.

I. ALASKA AND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

Although ANCSA has been celebrated for its goals of self-determination and giving Alaska Natives economic power in a Western, capitalist society,[11] it has equally been criticized for "divest[ing Alaska Natives] of their land, culture, heritage—and ultimately their inherent tribal sovereignty."[12] More troubling is the fact that ANCSA never set out to do what Alaska Natives had demanded in the first place;[13] after all, ANCSA described only "an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska."[14] It did not explicitly address any need, desire, or intention to create any community service requirements for ANRCs. Today, it is not uncontroversial to observe

11. *See*, *e.g.*, Carl H. Marrs, *ANCSA, an Act of Self-Determination: Harnessing Business Endeavors to Achieve Alaska Native Goals*, CULTURAL SURVIVAL (May 7, 2010), https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ancsa-act-self-determination-harnessing-business-endeavors [https://perma.cc/HNL3-GD88]; Willie Iggiagruk Hensley, *ANCSA at 50: How Alaska Natives Won the Land Claims Battle*, ALASKA MAG. (Oct. 3, 2021), https://alaskamagazine.com/authentic-alaska/culture/ancsa-at-50-how-alaska-natives-won-the-land-claims-battle/ [https://perma.cc/49S6-UR4V].

12. Ford & Rude, *supra* note 5, at 489; *see* Margot Hornblower, *Alaskan Natives Struggle to Cope With Capitalism*, WASH. POST (Aug. 27, 1977), https://www.washingtonpost.com/archive/politics/1977/08/28/alaskan-natives-struggle-to-cope-with-capitalism/85a6cf27-bd32-475d-86cf-2b6e23043b8e/ [https://perma.cc/8B7F-CPC4].

13. *See* ROBERT D. ARNOLD, JANET ARCHIBALD, MARGIE BAUMAN, NANCY YAW DAVIS, ROBERT A. FREDERICK, PAUL GASKIN, JOHN HAVELOCK, GARY HOLTHAUS, CHRIS MCNEIL, THOMAS RICHARDS, JR., HOWARD ROCK & ROSITA WORL, ALASKA NATIVE LAND CLAIMS 134 (Alaska Native Foundation 1976) ("Alaska's Eskimos, Indians and Aleuts had declared they wanted land adequate to protect their ancient ways of life."). Almost by definition, as a land settlement, ANCSA failed to protect the lands that Alaska Natives used in their ancient ways of life, as "[a]boriginal Alaska Natives made use of all the biological resources of the land, interior and contiguous waters in general balance with its sustained human carrying capacity." *Id.* at 129. Thus, the Natives' desire to protect their relationship with their ancestral lands was fundamentally incompatible with both the state's and the federal government's interest in natural resource development.

14. 43 U.S.C. § 1601(a); *see also* James Allaway & Byron Mallott, *ANCSA Unrealized: Our Lives Are Not Measured in Dollars*, 25 J. LAND RES. & ENV'T L. 139, 139 (2005) ("ANCSA did not really promise very much. It is we, as Native people, who built the expectations. ANCSA was just a legal settlement.").

that ANRCs exist, like typical for-profit corporations, to make money—not to serve their respective Alaska Native communities.[15]

ANRCs are very clearly *not* typical corporations: The legislative history of ANCSA, paired with its prescribed restrictions on stock alienability and its mandated revenue sharing, are strong indicators that ANCSA exists, at least to a certain extent, for its Alaska Native shareholders.[16] This Section describes Alaska's long journey to statehood and the persistent debate surrounding Native land claims at its center. It also describes the organizing efforts of Native leaders in the 1960s, the reasons why they fought for a corporation system, and the ways in which ANCSA reflects concerns that extend far beyond simply increasing shareholder value.

A. Historical Background

The year is 1867. The United States is reeling from four years of the bloodiest, most deadly war ever fought on American soil.[17] Andrew Johnson, "largely viewed as the worst possible person to have been [p]resident at the end of the Civil War," is president.[18] State governments are debating—and slowly but surely ratifying—the Fourteenth Amendment, enshrining due process and equal protection into the nation's Constitution.[19] Socially, politically, and

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15. Ristroph, *supra* note 10 ("Some have called on ANCs to do more to support Alaska Native Villages.... The standard response of ANCs is that they are 'for profit,' as required by their charters, not charities.").

16. *Compare* ARNOLD ET AL., *supra* note 13, at 146 (explaining that the language of ANCSA suggests that Congress agreed that ANCSA was "the beginning of a great era for the Native people of Alaska"), *with* Meghan Sullivan, *ANCSA: A Complete or Incomplete Story of Sovereignty*, INDIAN COUNTRY TODAY (Feb. 22, 2022), https://ictnews.org/news/ancsa-a-complete-or-incomplete-story-of-sovereignty/ [https://perma.cc/LR2N-NTDL] (arguing that, as for-profit corporations, expectations that Native corporations are generally responsible for the well-being of Alaska Natives are misguided).

17. Approximately 2 percent of the American population was killed in the Civil War, or about 620,000 people total. *Civil War Casualties*, AM. BATTLEFIELD TR. (Sep. 19, 2023), https://www.battlefields.org/learn/articles/civil-war-casualties [https://perma.cc/HRE3-JX72].

18. Elizabeth R. Varon, *Andrew Johnson: Life in Brief*, UVA MILLER CTR., https://millercenter.org/president/johnson/life-in-brief [https://perma.cc/LR9K-RNFT]. Selected as a moderate to temper President Lincoln's re-election ticket, Johnson harbored Confederate sympathies and laid the groundwork for Jim Crow laws to sweep the South. *Id.*

19. *Civil War Amendments (Thirteenth, Fourteenth, and Fifteenth Amendments)*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/intro.6-4/ALDE_00000388/ [https://perma.cc/HJE2-3TET].

economically, this nation is almost unrecognizable from the one that marched into battle in 1861.

But, for better or for worse, one American ideal has persisted: manifest destiny. Although the United States had discussed a potential purchase of the 586,000 square miles then known as "Russian America" on two separate, prior occasions, the purchase quickly fell to the bottom of the political priority list when war broke out.[20] As the nation slowly tried to mend itself, Secretary of State William H. Seward returned to his expansionist aspirations to finally pursue a purchase.[21]

Famously, when Seward agreed to purchase Alaska from the Russian Empire for a meager two cents an acre—$7.2 million in total—in 1867, his decision was ridiculed in the press as "Seward's Folly."[22] The United States sought Alaska's plentiful furs, fishing, and strategic location in the Arctic—and the approximately fifty thousand Alaska Natives that called the territory home were viewed as potential adversaries while the federal government was embroiled in the Indian Wars.[23] Thirty years later, an influx of get-rich-quick hopefuls arrived in Alaska when gold was first discovered near the Klondike River.[24] Although most arrivals were unsuccessful in their pursuits, many put down roots in Alaska.[25] With the

20. Mark A. Plummer & Anne-Marie E. Ferngren, *Russia Sells Alaska to the United States*, EBSCO (2023), https://www.ebsco.com/research-starters/history/russia-sells-alaska-united-states [https://perma.cc/NAM8-29MU].

21. *Id.*

22. *Alaska Purchase*, ENCYC. BRITANNICA (Apr. 2, 2026), https://www.britannica.com/event/Alaska-Purchase [https://perma.cc/M3ER-S8XP]. The purchase was also colorfully denigrated as "Seward's Icebox" and "Walrussia" in some newspapers, especially the *New York Tribune*. *See id.* Others have argued that public sentiment was not as offended by the purchase of Alaska as the nickname Seward's Folly suggests. *See* David Reamer, *'Seward's Folly' is a Myth. Spread the Word.*, ANCHORAGE DAILY NEWS (Jan. 12, 2025), https://www.adn.com/alaska-life/2025/01/12/sewards-folly-is-a-myth-please-tell-a-friend/ [https://perma.cc/CV9X-58B2].

23. William L. Iggiagruk Hensley, *There Are Two Versions of the Story of How the U.S. Purchased Alaska from Russia*, SMITHSONIAN MAG. (Mar. 29, 2017), https://www.smithsonianmag.com/history/why-russia-gave-alaska-americas-gateway-arctic-180962714/ [https://perma.cc/3PCH-QQ9C].

24. *Gold Rush*, LIBR. OF CONG. (2000), https://www.loc.gov/collections/meeting-of-frontiers/articles-and-essays/alaska/gold-rush/ [https://perma.cc/E732-TTFK].

25. *Id.*

increase in white settlers came the introduction of Jim Crow-esque laws segregating school districts, bars, restaurants, and hotels.[26]

Tensions between the Alaska Natives and settlers from the continental United States came to a rapid boil as it became increasingly obvious that plans to develop Alaska's plentiful natural resources were of far greater interest than preservation of the land and its people.[27] The Organic Act of 1884, which established a civil government in Alaska, provided that although Alaska Natives were "not to be disturbed in their occupancy or use of land," the resolution of Native land claims would ultimately be reserved for Congress at a later point.[28] Meanwhile, white settlers wasted no time establishing salmon canneries[29] and developing Alaska's fledgling timber industry.[30]

Discussions about Alaska statehood began as early as 1916,[31] but Alaska's first governor, William Egan, described the discovery of oil just north of the Swanson River in 1957 as "the economic justification for statehood."[32] Shortly after Alaska became the nation's forty-ninth state in 1959, new threats to Native land rights quickly began to emerge.[33] Although the Alaska Statehood Act abstractly recognized the right of Natives to use and occupy their native lands, it failed to articulate any means of preserving or protecting that

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26. Terrence M. Cole, *Jim Crow in Alaska: The Passage of the Alaska Equal Rights Act of 1945*, 23 W. HIST. Q. 429, 431 (1992).

27. The Klondike Gold Rush radically transformed relations between colonists and the Natives:

> Encroachments upon the lives and lands of Eskimos, Indians, and Aleuts multiplied with the passage of time. Aboriginal land rights were ignored by American citizens and others as they sought profits from the natural resources of Alaska. By 1900 these new migrants numbered about 34,000 persons, making Natives for the first time a minority in their own land.

ARNOLD ET AL., *supra* note 13, at 72.

28. CLAUS-M. NASKE & HERMAN E. SLOTNIK, ALASKA: A HISTORY OF THE 49TH STATE 73 (2d ed. 1987). In 1955, the Supreme Court held that the Organic Act of 1884 was intended "merely to retain the *status quo*," granting occupation rights but not ownership rights. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278 (1955).

29. NASKE & SLOTNIK, *supra* note 28, at 187.

30. *Id.* at 159.

31. John David Rausch, Jr., *Alaska Statehood*, EBSCO (2021), https://www.ebsco.com/research-starters/history/alaska-statehood [https://perma.cc/4TBC-SZXG].

32. Ben Boettger, *Oil Workers Celebrate 60 Years of Swanson River*, PENINSULA CLARION (July 24, 2017, at 05:26 ET), https://www.peninsulaclarion.com/news/oil-workers-celebrate-60-years-of-swanson-river/ [https://perma.cc/Q5K2-WBMW].

33. ARNOLD ET AL., *supra* note 13, at 94.

right.[34] And at the same time, the Act authorized the state to select "over 100 million acres of land from the 'vacant, unappropriated, unreserved' public land in Alaska."[35] These lands were selected in hope of future development projects that would have fundamentally interfered with the Natives' ability to use and occupy the lands that the Statehood Act had superficially protected.[36] Alaska Natives began to mobilize[37] as it became increasingly obvious that the nascent state sought to develop its natural resource economy at the expense of Native lands.[38] In 1968, the Atlantic-Richfield Company struck ten billion barrels' worth of oil in the Prudhoe Bay oil field, transforming the Alaskan economy overnight and rendering the Natives' land claims more urgent than ever before.[39]

Alaska Natives embarked on a ten-year fight[40] culminating in the Alaska Native Claims Settlement Act, which granted fee simple title to over forty million acres of land and nearly a billion dollars in compensation for lost lands to the twelve regional corporations and over two hundred village corporations that ANCSA created.[41]

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34. *Id.* at 95.

35. *Alaska Statehood and Build Up to Alaska Native Land Claims*, UNIV. OF ALASKA FAIRBANKS: TRIBAL GOVERNANCE, https://www.uaf.edu/tribal/academics/112/unit-2/alaskastatehoodandbuilduptoalaskanativelandclaims.php [https://perma.cc/TFY4-W8UP].

36. *Id.*

37. ARNOLD ET AL., *supra* note 13, at 108. Distrust among Alaska Native tribes—which had traditionally operated in highly isolated conditions and therefore had little contact with each other—ultimately yielded to the common threat of land loss by the early 1960s. *Id.* at 109.

38. Meghan Sullivan, *The Modern Treaty: Protecting Alaska Native Land, Values*, ALASKA PUB. MEDIA (Aug. 17, 2021, at 15:19 AKT), https://alaskapublic.org/ancsa50/2021-08-17/the-modern-treaty-protecting-alaska-native-land-values [https://perma.cc/W538-DR49].

39. NASKE & SLOTNIK, *supra* note 28, at 180. The Prudhoe Bay oil discovery yielded over $900 million in the state treasury. *Id.*

40. *Id.* at 108-17, 142-44.

41. In general, regional corporations own their lands' subsurface estate, while village corporations own only the surface estate. *About the Alaska Native Claims Settlement Act*, ANCSA REG'L ASS'N, https://ancsaregional.com/about-ancsa/ [https://perma.cc/683N-9X23]. Regional corporations often accounted for both cultural and economic considerations in selecting their swaths of land. *Id.* Today, many Native corporations own a mix of both surface and subsurface estates as a result of transfers with state and federal agencies and other Native corporations. *Id.*; *see also Economic Development and Sustainability*, NANA REG'L CORP., https://www.nana.com/economic-development-and-sustainability/ [https://perma.cc/FR2E-Z4YT] (explaining that NANA, an ANRC, merged with ten village corporations in 1976).

B. The Twelve Regional Corporations

1. Introduction and Basic Structure

At first blush, the corporate form is an unlikely vehicle to facilitate a native land settlement of ANCSA's scale. But conveying the Natives' forty million acres to state-chartered corporations in fee simple gave Alaska Native villages and regions more control than their indigenous neighbors in the lower forty-eight over trust lands administered by the Bureau of Indian Affairs.[42] Congress, which viewed ANCSA as a tolerable means of "assimilating" Alaska Natives rather than as a self-determination project, yielded and created twelve regional corporations.

ANCSA's regional corporations are unified by common heritage and common interest of region:[43] Ahtna, Inc.; Aleut Corp.; Arctic Slope Regional Corp.; Bering Straits Native Corp.; Bristol Bay Native Corp.; Calista Corp.; Chugach Alaska Corp.; Cook Inlet Region, Inc.; Doyon, Ltd.; Koniag; NANA Regional Corp.; and Sealaska Corp.[44] ANCSA also created over two hundred village corporations,[45] which all chose to operate for profit.[46] Each corporation is incorporated under the laws of the State of Alaska as a for-profit corporation, with articles of incorporation and bylaws approved by the State.[47] ANRCs, like typical for-profit corporations, are largely subject to Alaska corporate law.[48]

2. Distinctions Under ANCSA

Unlike typical for-profit corporations, however, ANRCs are subject to three distinctive provisions of ANCSA in addition to Alaska corporate law. First, a given ANRC must redistribute 70

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42. Rosita Kaaháni Worl & Heather Kendall-Miller, *Alaska's Conflicting Objectives*, 147 DAEDALUS 39, 40-41 (2018).

43. *The Twelve Regions*, ANCSA REG'L ASS'N, https://ancsaregional.com/the-twelve-regions/ [https://perma.cc/JJG6-2KXE].

44. *Id.*

45. *See* 43 U.S.C. § 1607(a).

46. Ristroph, *supra* note 10, at 73.

47. 43 U.S.C. § 1606(d)-(e).

48. Aaron M. Schutt, *The Corporate Governance of the Biggest Corporations You've Never Heard Of*, 41 ALASKA L. REV. 279, 286-87 (2025).

percent of all revenues derived from the "timber resources and subsurface estate patented to it" to the remaining eleven regional corporations.[49] Because some regional corporations own land that is more resource-rich than others, this revenue-sharing provision is a powerful testament to the culture of collectivism that ANCSA intended to honor.[50]

Second, shares of Alaska Native corporations are subject to alienability and eligibility restrictions under ANCSA. ANCSA created two classes of Settlement Common Stock in each corporation for eligible shareholders.[51] One class is reserved for village residents while the other is reserved for "at-large" shareholders—that is, Alaska Natives who are not village residents.[52] Village residents received one hundred shares of their respective regional corporation and one hundred shares of their village corporation, while at-large shareholders received only one hundred shares of their regional corporation.[53] ANCSA conferred voting rights to each shareholder,[54] along with permission to receive dividends from the corporation's business activities.[55] Under ANCSA, the shares may not be sold or subjected to a lien, but they may be gifted or inherited.[56] When

49. 43 U.S.C. § 1606(i).

50. *See* Elwood Brehmer, *The Rich Past and Uncertain Future of 7(i) and 7(j)*, ALASKA BUS. MAG. (Mar. 6, 2023), https://www.akbizmag.com/magazine/7i-and-7j/ [https://perma.cc/K99J-MWXU] ("'It is more than the money you see; it's the cultural aspect of making sure that we are taking care of one another,' [ANCSA Regional Association President,] Reitmeier says."); Aaron M. Schutt, Note, *ANCSA Section 7(I): $40 Million Per Word and Counting*, 33 ALASKA L. REV. 229, 231 & n.16 (2016) (describing that, when passing the revenue-sharing provision, Congress acknowledged "that certain groups across Alaska needed and used more land than others within their traditional areas due to concentrations of fish and game, cultural practices, population densities, and geographic features").

51. Maude Blair, *Issuing New Stock in ANCSA Corporations*, 33 ALASKA L. REV. 273, 275 (2016).

52. *Id.*

53. *Id.*

54. The very small number of ANRC non-voting shares are held by non-Native individuals who were willed the shares of their Native spouse. Isaac Stone Simonelli, *Terms and Tales*, ALASKA BUS. MAG. (Sep. 2021), https://digital.akbizmag.com/issue/september-2021/alaska-native-corporations-terms-and-tales/ [https://perma.cc/F6AX-EDPZ]; *see Being a Shareholder or Descendant*, CIRI, https://www.ciri.com/shareholders-descendants/being-a-shareholder-or-descendant/ [https://perma.cc/4FHX-333M]; *Frequently Asked Questions - Board Seat Election*, MYSEALASKA, https://mysealaska.com/FAQs/BoardSeatElection [https://perma.cc/RRP3-ZYGG].

55. 43 U.S.C. § 1606(h)(1)(A)(ii).

56. *Id.* § 1606(h)(1)(B), (h)(1)(C), (h)(2)(A).

ANCSA was first passed, only those who satisfied both the statutory definition of "Native" and were born on or before December 18, 1971, were eligible to enroll as a shareholder in their respective regional and village corporation.[57] ANCSA has since been amended to allow the regional corporations to vote on whether to create and issue new classes of shares.[58] Six regional corporations have voted to do so.[59]

Third, ANCSA exempts all Alaska Native corporations from the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934.[60] Despite this exemption, Native corporations are still required under ANCSA to provide their shareholders with a report that contains "substantially all" of the information required under the Exchange Act,[61] but a 2012 report by the U.S. Government Accountability Office noted that the extent to which ANRCs follow this provision is unclear.[62]

3. Federal Contracting Under Section 8(a)

A major source of revenue for ANRCs and their subsidiaries is federal contracting. Section 8(a) of the Small Business Act created the Small Business Administration's 8(a) Business Development Program, which is designed to help socially and economically disadvantaged small businesses compete in the federal marketplace.[63]

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57. *See id.* § 1604 Notes (Late Enrollment of Otherwise Qualified Natives, Establishment by Court Order of 13th Regional Corporation for Benefit of Nonpermanent Residents; Land Selection Entitlements; Previously Issued Stock; Election for Enrollment; Land Entitlements of Corporations or Native Village or Group Eligibility).

58. *Discussion on Descendant Enrollment*, EYAK CORP., https://www.eyakcorporation.com/images/forms/DescendantEnrollment.pdf [https://perma.cc/VTJ4-LHLD]; 43 U.S.C. § 1606(g)(1)(b)(i).

59. The six that voted in favor of issuing additional shares are Arctic Slope Regional Corporation, Ahtna, NANA, Doyon, Sealaska, and Calista. Blair, *supra* note 51, at 278.

60. 43 U.S.C. § 1625(a).

61. "A Native Corporation that, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 ... shall annually prepare and transmit to its shareholders a report that contains substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act." *Id.* § 1625(c)(1).

62. U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-121, REGIONAL ALASKA NATIVE CORPORATIONS: STATUS 40 YEARS AFTER ESTABLISHMENT, AND FUTURE CONSIDERATIONS 49 (2012).

63. *8(a) Business Development Program*, SMALL BUS. ADMIN., https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program [https://perma.cc/PWN7-HW38]. Relatively little information about the inner machinations

In 1986, Congress passed legislation making Alaska Native corporations eligible to participate in the Small Business Administration's 8(a) Program.[64] Alaska Native corporations are exempted from certain 8(a) Program requirements, such as the dollar amount of each contract[65] and the size of eligible small businesses,[66] which allows them to secure billions of dollars in federal contracting revenue every year.[67] Furthermore, while other 8(a) businesses may only own one additional 8(a) participant, ANRCs may own as many as they would like as long as each business operates in a different sector.[68]

ANRCs' participation in the 8(a) Program has been subject to some skepticism as reports emerged that many of the corporations, inexperienced in government contracting work, would partner with non-Native executives and firms.[69] As a result, shareholder dividends have not always increased in proportion to the increase in revenue that the 8(a) program yielded.[70] This has led to a general sentiment among Natives that ANCSA "only brought worthwhile

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of 8(a) contracts is publicly available, but there is some evidence to suggest that the Trump administration is interested in reexamining government contractors who have benefitted from so-called "D.E.I." initiatives. *See, e.g.*, Zachariah Hughes, *Pentagon Will Take 'Sledgehammer' to Contracting Program Central to Many Alaska Native Corporations, Hegseth Says*, ANCHORAGE DAILY NEWS (Jan. 22, 2026), https://www.adn.com/business-economy/2026/01/22/pentagon-to-take-sledgehammer-to-contracting-program-central-to-many-alaska-native-corporations/ [https://perma.cc/GSR8-QVSP] ("'We're actually taking a sledgehammer to the oldest DEI program in the federal government,' Hegseth said ...[,] referring to the 8(a) Business Development Program.").

64. *See* 15 U.S.C. § 637(a)(13) (2006).

65. *See id.* § 637(a)(16)(A); *8(a) Government Contracting Benefits*, LAKOTA SOLS., https://www.lakotasolutionsllc.com/8-a-contracting [https://perma.cc/K8DS-FMVH].

66. *See* 15 U.S.C. § 636(j)(10)(J)(ii)(II).

67. In fiscal year 2023, Alaska Native corporations incurred a record $14.4 billion in federal contract obligations. Paul Murphy, *Alaska Native Corporations Ride Facility, IT Work to $14 Billion*, BLOOMBERG L. (Feb. 13, 2024, at 05:45 ET), https://www.bloomberglaw.com/bloomberglawnews/federal-contracting/XF6OCH40000000 [https://perma.cc/3E7A-AY6N].

68. U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-399, CONTRACT MANAGEMENT: INCREASED USE OF ALASKA NATIVE CORPORATIONS' SPECIAL 8(A) PROVISIONS CALLS FOR TAILORED OVERSIGHT 3, 25, 27 (2006).

69. *See* Robert O'Harrow, Jr., *In Alaska, A Promise Unmet*, WASH. POST (Sep. 29, 2010), https://www.washingtonpost.com/archive/national/2010/09/30/in-alaska-a-promise-unmet/301eb0ce-cc34-11df-8eee-2e1a26a3708e/ [https://perma.cc/YWT7-Z6SP]; Jennifer LaFleur & Michael Grabell, *Revenues For ANCs Skyrocket, But Not Payout to Natives*, PROPUBLICA (Dec. 15, 2010, at 14:57 ET), https://www.propublica.org/article/revenues-for-ancs-skyrocket-but-not-payouts-to-natives [https://perma.cc/2YW5-GN7H].

70. LaFleur & Grabell, *supra* note 69.

wealth and benefit to corporate consultants, lawyers, managers, employees, and directors."[71] In communities where 8(a) revenues have trickled down into the pockets of shareholders, however, the influx of capital has led local economies to flourish.[72]

II. ANRCs TODAY: A COMPLEX LEGACY

A. Billions and Benefits: Funding Cultural and Economic Survival

Today, ANRCs rake in billions of dollars for the Alaskan economy.[73] Each of the twelve regional corporations boasts a diverse portfolio with investments ranging from tourism, to natural resource development, to aerospace logistics services.[74] These developments appear to be a shining success story and, in theory, these billions of dollars should go straight into the pockets of Alaska Natives in the form of generous dividends. In 2018, Alaska Native corporations reported a cumulative $10.5 billion in revenues, accounting for nearly half of the rankings in Alaska Business Magazine's list of the forty-nine biggest corporations in the state.[75] All twelve ANRCs feature a mission statement that describes a commitment both to economic growth and to cultural heritage.[76]

Some Native corporations offer cultural initiatives to enrich their shareholder communities. Bering Straits Native Corporation, for example, hosts an annual Celebration of Native Arts, offers a variety of resources for learning the languages indigenous to its

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71. Ford, *supra* note 10.

72. *See*, *e.g.*, Jennifer LaFleur & Michael Grabell, *Villages Testify to Disparity in Benefits Alaska Native Corporations Provide*, PROPUBLICA (Mar. 17, 2011, at 08:55 ET), https://www.propublica.org/article/villages-testify-to-disparity-in-benefits-alaska-native-corporations [https://perma.cc/X8FM-LCX7] (describing the "visible benefits" of the local corporation's 8(a) profits).

73. *See Alaska Native Corporations*, RES. DEV. COUNCIL, https://www.akrdc.org/alaska-native-corporations [https://perma.cc/F4YZ-CPM2].

74. *See id.*

75. Meghan Sullivan, *Alaska Native Corporations: 'Homegrown Engines of the Economy'*, INDIAN COUNTRY TODAY (May 13, 2022), https://ictnews.org/news/alaska-native-corporations-homegrown-engines-of-the-economy/ [https://perma.cc/779V-DRZ5].

76. *See* Robert Snigaroff & Craig Richards, *Alaska Native Corp. Endowment Models*, 38 ALASKA L. REV. 1, 3-4 (2021).

swath of land,[77] and supports initiatives to "preserve and promote the culture and heritage of the Bering Strait region" through its Cultural Program Fund.[78] Bristol Bay Native Corporation similarly offers a variety of community-building opportunities for its shareholders: including an internship program;[79] an annual summer "culture camp" for youth, young adult shareholders, and descendants;[80] and the Alaska Native Science and Engineering Program, which is designed to expose Alaska Native high school students to careers in science and engineering.[81] Other ANRCs, such as Doyon, Ltd., offer professional training opportunities for shareholders who seek employment in Alaska's oil fields or in information technology (IT).[82]

Most scholarships are offered through nonprofit affiliates of ANRCs,[83] which have donated more than $107 million since 1971 to over 54,000 Alaska Native shareholders and descendants.[84] And over 15,000 Alaskans are employed by Alaska Native corporations.[85] Many regional corporations require that their directors be shareholders and "Native," as defined under ANCSA,[86] putting Alaska

77. *See Cultural Initiatives*, BERING STRAITS NATIVE CORP., https://beringstraits.com/cultural-initiatives/ [https://perma.cc/BX7Z-NG39].

78. *BSNC Corporate Giving*, BERING STRAITS NATIVE CORP., https://beringstraits.com/BSNCgiving/ [https://perma.cc/X5J8-33GK].

79. *Internship Program*, BRISTOL BAY NATIVE CORP., https://www.bbnc.net/for-shareholders/training-development/internships-apprenticeships-and-on-the-job-training/ [https://perma.cc/HQG4-ZBMG].

80. *Training and Development Opportunities*, BRISTOL BAY NATIVE CORP., https://www.bbnc.net/for-shareholders/youth-programs/ [https://perma.cc/U39R-KT6M].

81. *Id.*

82. *Training Opportunities*, DOYON LTD., https://www.doyon.com/training/ [https://perma.cc/Q2EZ-88R8].

83. *See, e.g.*, *Programs*, ARCTIC EDUC. FOUND., https://arcticed.com/programs/ [https://perma.cc/7YK3-YZV4] (affiliate of Arctic Slope Regional Corporation); *Sealaska Scholarship Program*, MYSEALASKA, https://mysealaska.com/Opportunities/Scholarships [https://perma.cc/JSJ4-7HXU] (disclosing that "[t]he scholarship program is administered by Sealaska Heritage Institute (SHI) on behalf of Sealaska Corporation"); *Scholarships*, CHUGACH HERITAGE FOUND., https://www.chugachheritagefoundation.org/scholarships/ [https://perma.cc/AYR4-3PJT] (affiliate of Chugach Corporation).

84. Sullivan, *supra* note 75.

85. *Id.*

86. *See, e.g.*, *Amended and Restated Bylaws of Arctic Slope Regional Corporation*, ARCTIC SLOPE REG'L CORP. 6 (Nov. 2, 2023) [hereinafter *Arctic Slope Bylaws*], https://www.asrc.com/wp-content/uploads/2024/09/2023.11.02-ASRC-Restated-Bylaws-Distribution.pdf [https://perma.cc/46PE-H5QD]; *Shareholder Handbook*, ALEUT CORP., 5 (Feb. 2024), https://www.aleutcorp.com/wp-content/uploads/2024/03/24-TAC-019-Shareholder-Handbook-

Natives at the helm of their corporations' most crucial decision-making.

For average shareholders trying to scrape by in a state crushed by astronomical cost-of-living expenses,[87] ANRC dividends are perhaps the most tangible benefits. The first dividends that ANRCs paid out following the enactment of ANCSA hovered between $20 and $200 per one hundred shares.[88] As revenues have grown, so too have dividends: In fiscal year 2018, ANRCs issued dividends spanning $300 to $3,700 per one hundred shares.[89] Dividends loom large in debates among the remaining six regional corporations that have not issued any additional shares since ANCSA passed.[90] Some Alaska Natives argue that additional shares would strengthen the community bond that ANRCs preserve, while others fear the effect that stock dilution would have on their budgets.[91]

B. The Costs of the Corporate Mandate

Perhaps unsurprisingly, ANCSA's legacy is more complicated than the successes touted on each regional corporation's website. At the center of this controversy lies the fundamental misalignment between a corporation's posture in the economy—that is, to make money—and the commitment to the Native community with which each ANRC was tasked.[92] ANCSA expressly extinguished "any

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V7.pdf [https://perma.cc/GGY6-BM5Z]; *Third Amended and Restated Articles of Incorporation of Bristol Bay Native Corporation*, BRISTOL BAY CORP., 8 (Mar. 6, 2025), https://www.bbnc.net/wp-content/uploads/2025/08/BBNC-Third-Amended-and-Restated-Articles.pdf [https://perma.cc/YQK6-NYE4].

87. Dan Robinson & Gunnar Schultz, *How Alaska's Costs Stack Up Nationally*, ALASKA ECON. TRENDS, July 2023, at 9.

88. *Economic Impacts*, ANCSA REG'L ASS'N, https://ancsaregional.com/economic-impacts/ [https://perma.cc/P7YX-KVJU].

89. *Id.*

90. Nathaniel Herz, *ANCSA Made Only Natives Born Before December 1971 Corporate Shareholders. Those Born After Want Change.*, ALASKA PUB. MEDIA (Dec. 16, 2021, at 10:10 AKT), https://alaskapublic.org/news/2021-12-16/ancsa-made-only-natives-born-before-december-1971-corporate-shareholders-those-born-after-want-change [https://perma.cc/6ZZA-AH99].

91. *Id.*

92. *See* Gloria Simeon & Ashlyn Simeon, *What Happens When Corporate Obligations Conflict with Alaska Native Values?*, ALASKA BEACON (May 21, 2026, at 17:09 ET), https://alaskabeacon.com/2026/05/21/what-happens-when-corporate-obligations-conflict-with-alaska-native-values/ [https://perma.cc/X2ZN-NVUJ] ("Shareholders are asking an

aboriginal hunting and fishing rights that ... exist[ed].”[93] Although this served the interests of the State of Alaska and oil companies, it did not necessarily serve the interests of the Alaska Natives; as a result, there are no federal subsistence protections on the lands granted to ANRCs through ANCSA.[94]

Moreover, despite the many triumphs of ANRCs described above, they are first and foremost for-profit corporations. Nevertheless, they have been tasked with providing for the “social, economic, and cultural well being of Alaska Native shareholders—a role that most other U.S. corporations are not expected to take on.”[95] For many Alaska Natives, being a shareholder is part and parcel of Alaska Native identity in 2026.[96] This is a symptom of the varied tasks with which ANRC boards are entrusted: increasing shareholder value by running a successful company while also answering to the greater Alaska Native community.

Unsurprisingly, because ANCSA tasks ANRCs with these dual aims, tensions arise when profit motives conflict with the desires of the shareholder community. As reports emerge that some ANRCs own subsidiaries involved in building, maintaining, and operating ICE detention facilities at the southern border between the United States and Mexico, this tension has become more pronounced than ever.[97]

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important question: Should Native corporations operate solely according to Western corporate expectations, or should they also be guided by Native responsibilities to land, culture, subsistence and future generations?”).

93. 43 U.S.C. § 1603(b).

94. *See* Robert T. Anderson, *Sovereignty and Subsistence: Native Self-Government and Rights to Hunt, Fish, and Gather After ANCSA*, 33 ALASKA L. REV. 187, 218 (2016).

95. Sullivan, *supra* note 16.

96. *See id.* (quoting Charlene Stern, Vice Chancellor for Rural, Community and Native Education at the University of Alaska Fairbanks and Vice President of Tanana Chiefs Conference, as stating, “We’ll ask some of our younger generation, ‘What tribe are you from?’ or they’ll have to include that information on a form, and they’ll say ‘Oh, I’m Donyon, or I’m Sealasha”’).

97. *See, e.g.*, Polly Mosendz, Michael Smith & Rachel Adams-Heard, *Lucrative ICE Detention Centers Bring Money—and Anger—to an Alaska Native Community*, ALASKA PUB. MEDIA (Oct. 23, 2025, at 15:14 AKT), https://alaskapublic.org/news/politics/2025-10-23/lucrative-ice-detention-centers-bring-money-and-anger-to-an-alaska-native-community [https://perma.cc/UZ4J-UARE]; David Leslie, *Opinion: Alaska Native Corporations’ ICE Contracts Endanger All Indigenous People*, ANCHORAGE DAILY NEWS (Jan. 27, 2026), https://www.adn.com/opinions/2026/01/26/opinion-alaska-native-corporations-ice-contracts-endanger-all-indigenous-people/ [https://perma.cc/2HH8-4AKM].

1. NANA Regional Corporation: A Case Study

The NANA Regional Corporation's website describes its mission as "improv[ing] the quality of life for [its] people by maximizing economic growth, protecting and enhancing [its] lands and promoting healthy communities with decisions, actions and behaviors inspired by our Iñupiat Ilitqusiat values consistent with our core principles."[98] Like nearly all ANRCs today, NANA is the parent corporation of a long list of subsidiaries[99] that NANA has established since ANRCs were granted eligibility to participate in the 8(a) Program, including Akima, which owns the ICE facilities accounting for the majority of NANA's annual revenues.[100]

NANA shareholders did not receive the news about their corporation's ICE facilities kindly. Many expressed concern that maintaining federal detention centers runs contrary to their Iñupiat values.[101] Some wondered why they were learning about NANA's ICE facilities through news articles rather than the annual shareholder disclosures required under Alaska law.[102] On social media, some shareholders of other ANRCs expressed relief that

98. *Mission & Values*, NANA REG'L CORP., https://www.nana.com/about-us/mission-values/ [https://perma.cc/QJE8-AUJ6].

99. On its website, NANA lists its seven natural resources subsidiaries, all held by NANA North LLC: NANA Management Services, NANA Construction, NANA Worley, DeLong Mountain Logistics, Kuna Engineering, Paa River Construction, Qavvik Air. *Business*, NANA REG'L CORP., https://www.nana.com/business/ [https://perma.cc/5SGU-9QNX]. NANA identifies Akima LLC as the holding company for its federal sector subsidiaries. *Id.* Akima comprises over forty subsidiaries, which operate across facilities management, information technology, logistics, protective services, systems engineering, mission support, furniture and equipment, and construction. *Capabilities*, AKIMA, https://www.akima.com/capabilities [https://perma.cc/LDV5-UABE].

100. Alex DeMarban, *Some Alaska Native Shareholders Speak Out Against NANA Corporation's Involvement in Immigrant Detention Centers*, ANCHORAGE DAILY NEWS (Apr. 6, 2025), https://www.adn.com/alaska-news/2025/04/06/some-alaska-native-shareholders-speak-out-against-nana-corporations-involvement-in-immigrant-detention-centers/ [https://perma.cc/RCW3-5ZT9].

101. *See, e.g.*, Casey Grove, *Alaska Native Corporation's Shareholders Question Migrant Detention Contracts*, ALASKA PUB. MEDIA (Mar. 28, 2025, at 10:10 AKT), https://alaskapublic.org/news/2025-03-28/alaska-native-corporations-shareholders-question-migrant-detention-contracts [https://perma.cc/PGX5-VTPT] (quoting Jackie Qataliña Schaeffer, former NANA board member, as stating, "We are Iñupiaq ... [a]nd those values do not align with any of this type of work").

102. *See* Mosendz, Smith & Adams-Heard, *supra* note 97 ("[NANA] makes no mention of [its growing ICE revenue] in its annual reports to shareholders and Alaska regulators.").

their corporation has not been embroiled in any controversy at the border.[103]

As already discussed, ANCSA exempts Alaska Native corporations from SEC reporting requirements,[104] but they are still subject to state-level disclosure laws.[105] Shareholders of ANRCs have the right to inspect their corporation's books and records, bylaws and minutes of shareholder meetings, and shareholder lists when the inquiry is in "good faith" and for a "proper purpose."[106] For disgruntled NANA shareholders, this is a near-impossible hurdle to clear.[107] ICE contracts, by themselves, are not evidence of mismanagement. Quite the contrary. In a statement released by NANA, the Board defended its contracts with ICE as consistent with its Iñupiaq values.[108] And at the very least, NANA's ICE contracts have been incredibly lucrative.[109] The Board may feel—justifiably, if only from an economic perspective—that its ICE contracts are in the best interests of the corporation, controversy notwithstanding.

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103. *See* Irene Anderson, FACEBOOK, *Ouch/yikes/etc...looks like we can be grateful that those in charge @our company did not invest in such a horrid place such as this native organization did...(not trying to be political here/just human):* (Nov. 4, 2025), https://www.facebook.com/groups/1395327704067493/posts/4150298288570407/ [https://perma.cc/HZ4U-UZKD].

104. *See supra* Part I.B.2.

105. *See* ALASKA STAT. ANN. § 10.06.960 (West 2025).

106. *Id.* § 10.06.430. The Alaska Supreme Court has upheld mandatory confidentiality agreements prior to disclosing the requested information, and has also found that "books and records of account" extend beyond mere annual reports and proxy solicitation statements to include "detailed accounting documents" and "individual executive compensation information." Pederson v. Arctic Slope Reg'l Corp., 331 P.3d 384, 387, 396-97 (Alaska 2014).

107. It is worth noting that the Alaska Supreme Court has not articulated what specifically constitutes a proper purpose. At common law, a stockholder has a proper purpose when she has shown "a lawful and reasonable purpose germane to ... her status as a stockholder" which is not "inimical or hostile to the corporation" or its interests. *See* 18A AM. JUR. 2D *Corporations* § 293 (2025). This Note assumes the common law standard.

108. Mosendz, Smith & Adams-Heard, *supra* note 97 (The NANA board chair wrote: "We remain confident that our operations are in full compliance with our moral commitment to human dignity and reflect who we are as Iñupiaq").

109. Casey Grove, *Some Alaska Native Corporation Shareholders Say Profits from ICE Contracts not Worth Human Toll*, ALASKA PUB. MEDIA (Oct. 31, 2025, at 11:15 AKT), https://alaskapublic.org/news/2025-10-31/some-alaska-native-corporation-shareholders-say-profits-from-ice-contracts-not-worth-human-toll [https://perma.cc/F7D5-4LC7] ("Bloomberg Businessweek ... found NANA held nearly 58.1% of ICE's 8(a) contracts over the past decade, a period during which it raked in about $1.2 billion.").

If the NANA Facebook survey is in fact representative of all 15,500 Iñupiaq shareholders'[110] sentiments, remedies under the existing schema are unsatisfying. Shareholders of a traditional public company generally have three options to express their dissatisfactions: sell, vote, or sue.[111] But selling is not an option for Alaska Native shareholders—nor should it be given the unique relationship that the corporations have with their Alaska Native communities.[112] And a shareholder's mere disagreement with a given corporate policy, or subjective belief of its perceived misalignment with the corporation's values, is not sufficient grounds for a lawsuit either.[113] This leaves voting as the most accessible option for shareholders to express discontent.

Some shareholders have expressed an interest in amending NANA's bylaws to prevent, or scale back, NANA's participation in ICE contracting.[114] A small protest broke out in Fairbanks, Alaska, demanding that NANA divest itself from its ICE contracts.[115] But as a practical matter, a successful shareholder proposal is easier said than done in an ANRC. Neither ANCSA[116] nor Alaska law[117] provide for an affirmative shareholder proposal right akin to that provided by SEC Rule 14a-8, so unless an ANRC's bylaws explicitly confer such a right, a shareholder may be entirely barred from

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110. *About Us*, NANA REG'L CORP., https://www.nana.com/about-us/ [https://perma.cc/Z4ZV-ZGVD].

111. Robert B. Thompson, *Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue*, 62 L. & CONTEMP. PROBS. 215, 216-18 (1999).

112. *See supra* Part II.A.

113. *See supra* text accompanying notes 101-10.

114. *See* Grove, *supra* note 109.

115. Patrick Gilchrist, *Opposed to Detention Center Contracts, Protesters Gather Outside NANA Meeting in Fairbanks*, KUAC (Nov. 19, 2025, at 16:54 AKT), https://fm.kuac.org/2025-11-19/opposed-to-detention-center-contracts-protesters-gather-outside-nana-meeting-in-fairbanks [https://perma.cc/HU6X-X857]. Shareholders of Bering Straits Native Corporation, also involved in ICE contracting, submitted a petition with over one hundred signatures demanding that BSNC "divest from all business contracts associated in any way with U.S. Immigration and Customs Enforcement detention centers immediately." Diana Haeker, *Shareholders Ask BSNC to Divest From ICE Contracts*, NOME NUGGET (Jan. 8, 2026, at 01:09 AKT), https://www.nomenugget.net/news/shareholders-ask-bsnc-divest-ice-contracts [https://perma.cc/49KA-ULNL].

116. *See generally* 43 U.S.C. § 1601 (failing to confer an affirmative shareholder proposal right for shareholders of ANRCs).

117. *See generally* ALASKA STAT. ANN. § 10.06.405 (West 2025) (failing to confer an affirmative shareholder proposal right for shareholders of Alaska corporations).

bringing a proposal.[118] This allows ANRC boards to wield a substantial amount of power without reaping, or even fearing, the consequences of making their shareholders unhappy by supporting controversial initiatives.[119] ANRC boards are enabled instead to focus solely on the bottom lines—even if shareholders support neither the end nor the means.[120] Boards may exercise their business judgment to refrain from doing so,[121] but by no means is this restraint baked into ANRC corporate governance.

III. RULE 14A-19: THE UNIVERSAL PROXY BALLOT

Until 2022, when a shareholder of a public company would elect members of the board of directors, she was forced to vote either on the company's card, which featured exclusively the incumbent nominees, or the insurgent's card, which exclusively featured the insurgent's nominees.[122]

On January 31, 2022, the SEC's final Rule 14a-19 took effect, mandating universal proxy cards by management and shareholders of public companies soliciting proxy votes in contested director elections.[123] Prior to the adoption of the Rule, shareholders voting by proxy could not "mix and match" their preferred candidates in

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118. *Compare Arctic Slope Bylaws*, *supra* note 86, at 1, 4 (outlining the general policy for shareholder proposals), *with Accepting Proposals for the 2025 Annual Meeting of Shareholders*, KONIAG (Feb. 1, 2025), https://www.koniag.com/proposals/ [https://perma.cc/6SG8-UYUY] (describing the process for shareholder proposals under section 2.13.1 of Koniag's bylaws).

119. As discussed above, this is because (1) there is no breach of fiduciary duty in prioritizing profit and (2) Alaska Natives may not sell shares. *See supra* Parts I.B, II.B.

120. *See supra* Part II.B.

121. Some ANRCs, such as Doyon Ltd., have discontinued their work in ICE contracts. *See Alaska Native Corporations Contracted in Border Security*, SEATTLE TIMES (July 25, 2018, at 17:13 ET), https://www.seattletimes.com/nation-world/alaska-native-corporations-contract-in-border-control-work/ [https://perma.cc/9PUJ-EYE4] (specifying that Doyon "got out of" its ICE contracts in 2015).

122. *The Implementation and Implications of Universal Proxy Cards*, GLASS LEWIS (Sep. 1, 2022), https://www.glasslewis.com/article/the-implementation-and-implications-of-universal-proxy-cards [https://perma.cc/B8W8-GYZ5].

123. *Fact Sheet: Universal Proxy Rules for Director Elections*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/ files/34-93596-fact-sheet.pdf [https://perma.cc/6N2A-WYRN]; Universal Proxy, 86 Fed. Reg. 68330, 68330 (Dec. 1, 2021) (codified at 17 C.F.R. pt. 240). *See generally* 17 C.F.R. § 240.14a-19 (2025) (outlining the standards and procedures for the universal proxy ballot).

contested director elections and instead had to choose their preferred slate of candidates representing either the incumbent directors or a group of insurgents.[124] The Rule requires that shareholders be provided with a proxy card that includes director candidates from all parties, allowing shareholders to vote across party lines and tailor their proxy votes in much the same way as in-person voters.[125]

A. Rule 14a-19: Expectation vs. Reality

Shortly before the enactment of Rule 14a-19, one editor at the *Financial Times* warned that the universal proxy could "forc[e] companies to entertain the whims of gadflies."[126] Less than one year after the Rule took effect, the *Financial Times* reported that activists had won eighty-eight board seats in the subsequent proxy season—an increase from the seventy-seven in the prior, pre-Rule 14a-19 proxy season.[127] Companies were encouraged to amend their bylaws,[128] speak with their advisors,[129] and prepare themselves for an onslaught of shareholder activism.[130] The new Rule was referred

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124. *See Fact Sheet*, *supra* note 123.

125. *See id.*; 17 C.F.R. § 240.14a-19(d)-(e).

126. *US Proxy Contests: Lowering the Gates for the Barbarians*, FIN. TIMES (Nov. 22, 2021), https://www.ft.com/content/9568388c-2a72-4ad7-85c8-ada9ff8fcaab [https://perma.cc/KG72-QSFD].

127. Patrick Temple-West, *How a SEC Rule Change Has Opened More Doors For Activists*, FIN. TIMES (June 24, 2023), https://www.ft.com/content/74c0bf2f-5fdb-4dd4-9902-c1f06097c7ac [https://perma.cc/HZ72-EC89].

128. Eduardo Gallardo, *Revisiting Corporate Bylaws for the Universal Proxy Era*, PAUL HASTINGS LLP (Aug. 15, 2022), https://www.paulhastings.com/insights/client-alerts/revisiting-corporate-bylaws-for-the-universal-proxy-era [https://perma.cc/77TK-9NRX] (proposing "changes to standard public company bylaws that would put corporate boards and management in a better position to react and inform shareholders regarding ... activist director contests").

129. Andrew C. Elken, Aaron M. Gruber, O. Keith Hallam, Michael L. Arnold & Andrew M. Wark, *SEC Mandates Use of Universal Proxy Cards in Contested Director Elections*, CRAVATH, SWAINE & MOORE LLP (Nov. 30, 2021), https://www.cravath.com/a/web/8eGtn1viya2xZbKQGvbp3V/3sNPyr/sec-mandates-use-of-universal-proxy-cards-in-contested-director-elections.pdf [https://perma.cc/MF45-LYYK] ("[C]ompanies will need to ... coordinate with their legal advisors, transfer agents and proxy solicitors.").

130. Maia Gez, Danielle Herrick, Scott Levi & Michelle Rutta, *In Another Win for Shareholders, SEC Adopts New Rules for Universal Proxy Cards in Contested Director Elections*, WHITE & CASE LLP (Nov. 24, 2021), https://www.whitecase.com/insight-alert/another-win-shareholders-sec-adopts-new-rules-universal-proxy-cards-contested

to as a "seismic shift in the regulatory regime"[131] that might even create "a new breed of activists."[132]

But data collected since the Rule's introduction in 2022 suggests that, although the Rule has allowed activists to have "more success winning *single* board seats in contested votes ...[,] their ability to achieve sweeping board change has been sharply diminished."[133] This makes sense: Shareholders who vote by proxy[134] are no longer forced into a package deal of all incumbents or all insurgents.[135] In much the same way that it is easier to elect a single insurgent director, it is harder to unseat an entire board with a universal proxy ballot. This is a feature, not a bug, of the "mix and match" model. And, to the extent that activists have seen increased success post-Rule 14a-19, contested director contests "tend to come down to a battle between the most vulnerable incumbent and the strongest activist nominee."[136]

B. Rule 14a-19 and the ANCSA

So what does this mean for ANRCs? Because ANCSA exempts its Native Corporations from federal reporting under the Securities Act and the Exchange Act,[137] ANRCs are not subject to Rule 14a-19's universal proxy requirements. Thus, an activist shareholder hoping

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[https://perma.cc/8LN6-A8WZ].

131. Kai Liekefett, Derek Zaba & Berth Berg, *SEC Dramatically Changes the Rules for Proxy Contexts*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 19, 2021), https://corpgov.law.harvard.edu/2021/11/19/sec-dramatically-changes-the-rules-for-proxy-contests/ [https://perma.cc/WV3N-H8CL].

132. *See Do Companies Need to Amend Their Bylaws for Universal Proxies?*, HUNTON ANDREWS KURTH LLP (Sep. 1, 2022), https://www.hunton.com/insights/legal/do-companies-need-to-amend-their-bylaws-for-universal-proxies [https://perma.cc/V8ZA-M3FP].

133. Eric Goodwin, Kai Liekefett & Derek Zaba, *How Three Years of the Universal Proxy Card Rules Have Changed Proxy Contests*, SIDLEY AUSTIN LLP (Sep. 9, 2025), https://www.sidley.com/-/media/update-pdfs/2025/09/how-three-years-of-the-universal-proxy-card-rules-have-changed-proxy-contests--september-9-2025.pdf [https://perma.cc/4J3H-5JHD].

134. That is, most shareholders: "Today, most voting shareholders vote by proxy instead of attending annual and special meetings in person." JAY B. SYKES, CONG. RSCH. SERV., R48691, PROXY ADVISOR REGULATION: RECENT LITIGATION, STATE LAW DEVELOPMENTS, AND FEDERAL LEGISLATION (2025).

135. *See* Elken et al., *supra* note 129.

136. Goodwin, Liekefett & Zaba, *supra* note 133.

137. 43 U.S.C. § 1625(a).

to initiate board change must follow Alaska state law[138] and her ANRC's bylaws, which often specify the rules surrounding slate voting, the required threshold for a quorum, and other voting mechanics.[139] In practice, this is easier said than done. Reaching a quorum can be difficult, and board slates can obstruct efforts to elect insurgent directors.[140]

As ANRCs have diversified their portfolios[141] and forayed into more high-profile projects that extend far beyond the Alaska state border,[142] implementing a universal proxy card regime would be a low-risk, high-reward means of allowing shareholders to tailor the board as they see fit. At least five ANRCs have already opted for a universal model instead of a slate model.[143] The enhanced flexibility that a universal proxy card provides means that Alaska Native shareholders will have the freedom to express discontent with particular board members without being forced to throw the proverbial baby out with the bathwater.

Furthermore, as a matter of public policy, making proxy voting as easy and as straightforward as possible is especially crucial for ANRCs. While large percentages of a public company's equity are often owned by sophisticated institutional investors,[144] ANRCs are

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138. *See, e.g.*, ALASKA STAT. ANN. §§ 10.06.418, .420, .990(34) (West 2025).

139. *See, e.g.*, *Amended and Restated Bylaws of Calista Corporation*, CALISTA CORP., § 6(e) (Apr. 20, 2023), https://www.calistacorp.com/wp-content/uploads/2025/03/Bylaws-of-Calista-Corporation-amendedandapproved-04-20-2023.pdf [https://perma.cc/D2JX-5H7E] (authorizing the Board to designate a Board slate); *Arctic Slope Bylaws*, *supra* note 86, at 2 (requiring participation by a majority of voting shares to constitute a quorum); *Voting: A Key Responsibility of Ahtna Shareholders*, AHTNA, https://www.ahtna.com/kanas/voting-a-key-responsibility-of-ahtna-shareholders-5/ [https://perma.cc/G9BY-ZTK5] (requiring participation by at least one-third of voting shares to constitute a quorum).

140. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 62, at 25, 26.

141. *See supra* Part II.A.

142. *See* Grove, *supra* note 101. It is worth highlighting that NANA Corp. is among these ANRC's. *Id.* However, the shock with which its shareholders greeted the ICE facility reporting supports the need for a more robust disclosure regime for the benefits of the universal proxy ballot to take full effect. *See infra* note 148.

143. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 62, at 23.

144. For example, institutional investors hold about 78.72 percent of Meta's total outstanding shares. Nathan Reiff, *Top Facebook (Meta) Shareholders*, INVESTOPEDIA (Mar. 21, 2026), https://www.investopedia.com/articles/insights/082216/top-9-shareholders-facebook-fb.asp [https://perma.cc/P9VK-AR2N]. Institutional investors hold at least 70 percent of Disney's total outstanding shares. Matthew Johnston, *Top Disney Shareholders*, INVESTOPEDIA (Feb. 10, 2025), https://www.investopedia.com/articles/markets/102715/top-5-disney-shareholders.asp [https://perma.cc/N52C-8V9U]. At Tesla, institutional investors hold

often composed of individuals for whom complicated proxy regulations may be disproportionately burdensome. Instead of having to actively seek out alternatives to the incumbent board, an individual shareholder using the universal ballot can take a comprehensive look at the myriad options before her and cast a vote that accurately captures her vision for the board and the corporation.

Realistically, a law requiring that each ANRC provide its shareholders with a universal proxy ballot would have to take the form of either state-level legislation or an amendment to ANCSA. Because of the importance of ANRCs in Alaska's economy,[145] the state legislature may be better equipped to understand the importance, and nuances, of an ANRC-specific proxy ballot statute. Furthermore, because ANRCs are state-chartered corporations, most legal claims against them are brought in state court as matters of state corporate law.[146] The state courts' familiarity with ANRCs may support goals of administrative efficiency. Ultimately, however, this issue extends beyond the scope of this Note and is best left to the ANRCs and their shareholders.

To be clear, this Note does not propose that Alaska Native corporations opt in to federal securities regulation, nor does this Note submit that Rule 14a-19 should be implemented verbatim into either ANCSA or the applicable state laws governing Alaska Native corporations. Rule 14a-19 was drafted with public company shareholders in mind. It makes sense that, given the increased scrutiny to which a public company subjects itself, the resulting increase in accountability that Rule 14a-19 may yield would not be equally well received in companies that specifically are not subject to the same disclosure requirements, like Alaska Native corporations. This Note simply suggests that because disgruntled ANRC shareholders do not enjoy the same remedies as disgruntled public company shareholders, a mix-and-match solution to align ANRC boards more closely with their fellow Alaska Native shareholders

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approximately 66.20 percent of its outstanding shares. Nathan Reiff, *Top Tesla Shareholders*, INVESTOPEDIA (Aug. 12, 2025), https://www.investopedia.com/articles/insights/052616/top-4-tesla-shareholders-tsla.asp [https://perma.cc/TL8U-JA6Q].

145. *See* Sullivan, *supra* note 75 ("In 2018, Alaska Native corporations ... accounted for almost 50 percent of the rankings in the Alaska Business' listing of the top 49 corporations in the state.").

146. *See* Schutt, *supra* note 48.

would yield a more democratic result than the current scheme allows, laying the groundwork for a more symbiotic relationship between the shareholders and the board.

In addition, this Note does not suggest that more candidates are necessarily better than fewer candidates. Some critics of Rule 14a-19 have argued that although the new rule makes it easier for shareholders to see the different options presented in an election, it does not necessarily follow that shareholders will make a more informed decision because the rule does not have any disclosure requirements for the insurgent candidates.[147] Such an omission from the rule may be less problematic for sophisticated institutional investors or experienced retail investors, but successful implementation of a universal proxy regime for ANRCs would almost certainly require an increase in information to balance the increase in choice. Questions of how and where the corporations should provide this information are beyond the scope of this Note, and perhaps would be best left to the corporations themselves to decide. But because Alaska Native shareholders may not sell their shares, and because their dissatisfaction as it relates to ICE contracting is not rooted in any breach of fiduciary duty giving rise to a cause of action, the universal proxy ballot would make it easier for shareholders to serve as a check on rogue boards.

CONCLUSION

Although the legacy of ANCSA is complex and remains hotly debated, its provisions nevertheless continue to affect the lives of thousands of Alaska Natives every day. The resulting corporations enjoy a unique, albeit sometimes overburdened, posture in their communities as both for-profit entities and cultural resources to preserve Native heritage and identity. Because an ANRC shareholder may not sell her shares, in the absence of gross corporate misconduct, she does not enjoy the same flexibility as shareholders of liquid, public companies to dissociate herself from initiatives that

147. Neil Whoriskey, *Milbank Discusses Universal Proxy and "Horizontal" Conflicts*, COLUM. L. SCH.: THE CLS BLUE SKY BLOG (May 10, 2023), https://clsbluesky.law.columbia.edu/2023/05/10/milbank-discusses-universal-proxy-and-horizontal-conflicts/ [https://perma.cc/3X37-GGKG].

she does not support. The universal proxy ballot is a simple, straightforward solution that has already been successfully implemented in public companies and some ANRCs. Requiring that all ANRCs circulate a universal proxy ballot, whether by state legislation or an amendment to ANCSA, would be a small tweak to the existing landscape that would allow Alaska Native shareholders to have their voices heard more effectively while honoring ANCSA's goal of self-determination.

Francesca Ferraro[*]

* J.D. Candidate, 2027, William & Mary Law School; B.A., 2022, Philosophy and Political Science, Fordham University. I would like to acknowledge the many Alaska Native journalists, scholars, and voices whose love for and devotion to their communities made this Note possible. In addition, I am deeply grateful to my colleagues on the *Law Review*, whose thoughtful and meticulous edits left this Note better than they found it. An especially heartfelt thank you to my parents, Frances and Gene, for always believing in me (and for their patience as they raised a budding lawyer); my sister, Christina, for her unconditional friendship; and my husband, James, for bringing such joy to the pursuit of my dreams.