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THE OPTION OF PRESERVING A HERITAGE: THE
1987 AMENDMENTS TO THE ALASKA NATIVE
CLAIMS SETTLEMENT ACT

Julia A. Bowen*

Sometimes people believe a general principle and yet . . .
when they’re in a tough spot, they might do something be-
cause they just don’t have any choice.¹

The 1971 Alaska Native Claims Settlement Act (ANCSA)²
devised a new plan of property settlement for the Native peoples.
The ANCSA provided for both a land and cash settlement to
satisfy the Natives’ claims to the land.³ The distribution of the
settlement, however, was complicated by the requirement that
the Natives establish corporations under Alaska state law.⁴ It is
these formed corporations that collected the proceeds from the
cash settlement and from the revenues generated by the corpora-
tion’s profits.⁵

The original passage of the ANCSA contained several pro-
ective guidelines and procedures. Specifically, Natives cannot
alienate their stock for a twenty-year period, ending December
18, 1991.⁶ It is only after this date that the stock can be sold
on the open market.⁷ The fear of takeovers from outside entities
and loss of Native ownership has increased as the 1991 date

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Joseph & Mills, Washington, D.C.

1. T. BERGERS, VILLAGE JOURNEY 106 (1985) (quoting a statement from Eunice
Nesseth at a Klawock village hearing). In 1983, Berger was appointed by the Inuit
Circumpolar Conference to conduct the Alaska Native Review Commission. To this
purpose, Berger visited Native villages in Alaska and collected Natives’ ideas and
concerns about the ANCSA.

1601-1641 (1988)).

3. Lazarus, Jr. & West, Jr., The Alaska Claims Settlement Act: A Flawed Victory,
40 LAW & CONTEMP. PROBS. 133 (1976) [hereinafter Lazarus & West]. Native is defined
as a citizen of the United States who is one-fourth degree or more Alaska Indian,
Eskimo or Aleut blood, or a combination thereof. 43 U.S.C. § 1602(b) (1982).
6. Id. §§ 1606(b), 1607(c).
7. Id.
approaches. The voicing of these fears by the Natives prompted Congress to continue the alienability restrictions after December 18, 1991. Nevertheless, the 1987 amendments to the ANCSA are qualified by the availability of options, within the amendments, that permit termination of the restrictions.

For many Natives the sale of their stock is a sale of their heritage. The stock shares the Natives hold represent their claim to the land. Although the Natives hold shares in the land, many of them are faced with poverty, and several of the corporations are near bankruptcy. Because of these financial plights, the liquidation of their stock may become the only available means of satisfying debts.

This note will discuss the 1987 amendments to the ANCSA, which were designed to extend alienation restrictions beyond 1991. First, a brief history of the ANCSA will be detailed. Second, the amendments will be analyzed with particular focus on the achievement of land preservation for the Natives, which is the stated goal for the enactment of the ANCSA. Finally, reasons will be offered as to why the amendments will not succeed in achieving the ANCSA's stated goal.

The Alaska Native Claims Settlement Act of 1971

The passage of the ANCSA in 1971 exposed a new way of dealing with aboriginal land claims. Traditionally, Indian and Native land claims reached settlement through negotiations and treaties, and lands were set aside as reservations. The ANCSA established a new and systematic course of dealing with the Natives.

9. Id.
11. See T. Berger, supra note 1, at 98 (quote from Myra Starkloff at a Tyonek hearing).
12. Id.
13. Id. at 95.
14. Id. at 106.
16. Id.
The Alaskan Natives, as aboriginals inhabiting the land, staked claims to almost all of the state's 375 million acres. Pressure to settle these claims escalated in 1970 as a result of the discovery of oil deposits in Alaska. Private industries, seeking the opportunity to exploit these resources, joined the Natives in their attempt to settle the land claims. The collective pressures of these groups persuaded Congress to provide a settlement.

The Act

In exchange for the extinguishment of the Natives' rights to the land, the ANCSA provided for a settlement of 44 million acres to be held in fee by the Natives, and a $462.5 million payment from the U.S. Treasury over an eleven-year period. Also, a 2% royalty, subject to a ceiling of $500 million, was to be added to the cash settlement for mineral development on the lands transferred to the federal and state government by the terms of the Act. The ANCSA provided more money and land for the Natives than any other previous treaty, agreement, or statute for the dissolution of aboriginal title in the nation's history. Despite the appearance of a generous settlement, in actuality the amount of compensation to the Natives for the 300 million acres attained by the government averaged about $3 an acre.

The fundamental difference between the ANCSA and other land settlements is the administration of the land and the payments made to the Natives. Past settlements designated reservation sites and held land in trust for the aboriginal peoples; in contrast, the ANCSA directed that the settlement be channeled through organized corporations with the Natives as shareholders in these corporations. The greatest distinction between the two types of settlement arrangements is that the ANCSA gave the Natives control over their land and assets. Hence, removal of the Bureau of Indian Affairs from supervising the Natives'
settlement logically followed. This lack of supervision by the Bureau, in turn, allowed the Natives to maintain, control, and realize the benefits of their assets.

The Act directed the Secretary of the Interior to divide the state of Alaska into twelve geographic regions. Natives who shared a common language, heritage and similar interests were placed together. The Natives within the designated regions then established "regional corporations," which were organized for profit and subject to the laws of Alaska. Once organized, the corporation could issue 100 shares of stock to each Native enrolled in the region. In addition, the Act provided for a thirteenth corporation to be organized for the purpose of giving stock interest to nonresident Alaskan Natives who wished to enroll in a corporation; each Native born before December 18, 1971, could enroll in an appropriate regional corporation and receive 100 shares of stock. The Natives own their stock in the corporation but are restricted from alienating it until December 18, 1991.

Another provision of the ANCSA authorized the establishment of village corporations. Any village that was made up of 25 or more Natives could elect to incorporate. The village could elect to incorporate for profit or nonprofit but once the choice was made, it could not be changed. After formation, the village corporations could issue 100 shares of stock to each enrolled member born before December 18, 1971. These corporations were not subsidiaries of the regional corporations but were subject to their control in certain areas. For example, the regional corporation supervised the distribution of funds to the village corporations for timber and mineral resources. Also, the regional corporations held the power to approve the articles of incorporation enacted by the village corporation.

30. Lazarus & West, supra note 3, at 133.
31. Id. at 133-34.
32. 43 U.S.C. § 1606(a).
33. Id.
34. Id. § 1606(g).
35. Id. § 1606(c).
36. Id. § 1604(a).
37. Id. § 1606(h).
38. Id. § 1607.
39. Id. § 1607(a).
40. Id.
41. Id. § 1607(b).
42. Id.
43. Id.
44. Id.
The capital for the corporations was distributed from the Alaska Native Fund, in which the monetary settlement of the ANCSA was deposited.\textsuperscript{45} Between 1972 and 1982, $462.5 million was deposited into the fund.\textsuperscript{46} In addition, 2\% royalty from the revenues generated from the land taken by the federal and state government funneled into the fund until a cap of $500 million was reached.\textsuperscript{47} Pursuant to certain provisions of the Act, the money in the Fund was divided at the close of each three months of the fiscal year among the regional corporations based on the number of Natives enrolled in the corporation.\textsuperscript{48} For the first five years of the Act, a minimum of at least 10\% was to be distributed by the regional corporation to the stockholders. In addition, 45\% was to be given to the village corporations.\textsuperscript{49} At the end of five years, the only distribution requirement was that 50\% of the money received was to go to the village corporations.\textsuperscript{50}

The Secretary of the Interior had withdrawn over 100 million acres of land from which the village corporations collectively held the right to withdraw 22 million acres.\textsuperscript{51} Upon selection, the corporations received a fee simple to the surface of the land.\textsuperscript{52} The Secretary then issued the regional corporation, for the region in which the village lands were located, a patent to the subsurface estate to the corresponding land.\textsuperscript{53} The village corporations were required to select the land within three years, with the right to selection terminating on December 18, 1974.\textsuperscript{54}

The ANCSA allocated 16 million acres for withdrawal by regional corporations.\textsuperscript{55} These corporations, in contrast to the village corporations, obtained both the surface and subsurface rights to the land.\textsuperscript{56} The Act required that the land be selected within four years, ending on December 18, 1974.\textsuperscript{57} Upon selection of the land, the regional corporations received fee simple title to their land and a fee simple patent to the subsurface lands.

\textsuperscript{45} Id. § 1605(a).
\textsuperscript{46} Id.
\textsuperscript{47} Id.
\textsuperscript{48} Id. § 1605(c).
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} Id. § 1613(a), (b), (f), (h).
\textsuperscript{52} Id. § 1613(f).
\textsuperscript{53} Id.
\textsuperscript{54} Id. § 1611(a).
\textsuperscript{55} Id. § 1611(c).
\textsuperscript{56} Id. § 1613(f).
\textsuperscript{57} Id. § 1611(c).
selected by the village corporations.\textsuperscript{58} Although the land was held by its respective corporations, specific provisions of the ANCSA reduced the regional corporations' right to receive the benefits from the property.\textsuperscript{59} Each year, 70\% of the revenues generated from the timber and subsurface resources of any one regional corporation's land was required to be shared with the other twelve regional corporations.\textsuperscript{60}

The stated goal of the ANSCA was to maximize participation by the Natives in decisions affecting their assets.\textsuperscript{61} The ANCSA gave the Natives control of their assets, thus freeing them from the supervision of the Bureau of Indian Affairs.\textsuperscript{62} As a protective measure, Congress imposed a twenty-year alienation restriction on the stocks.\textsuperscript{63} Until December 18, 1991, the Native corporations were afforded time to build capital and establish themselves as corporate entities.\textsuperscript{64} An additional restriction was that stock could not be transferred except by inheritance, court decree, or divorce. This restriction ensured that non-Natives would be prevented from initiating a takeover during this period.\textsuperscript{65} A 1980 amendment produced another protection allowing corporations to change their articles of incorporation to deny any non-Native the right to vote.\textsuperscript{66}

\textit{Subsequent Problems}

Several problems have resulted from the enactment of the ANCSA. Although the settlement amounted to $962.5 million, several of the village and regional corporations are presently near bankruptcy because they are unable to maintain the expenses associated with incorporation.\textsuperscript{67} These expenses include costs of incorporation, corporate elections, enrollments, stock issuances, land conveyances, CPA audits, meetings, and public reports.\textsuperscript{68} The limited capital received from the Alaska Native Fund during the eleven-year distribution period was divided among the thirteen regional corporations.\textsuperscript{69} Furthermore, where

\textsuperscript{58}. \textit{Id.} § 1613(f).
\textsuperscript{59}. Lazarus & West, \textit{supra} note 3, at i38.
\textsuperscript{60}. 43 U.S.C. § 1606(f).
\textsuperscript{61}. \textit{Id.} § 1602; see H.R. Rep. No. 31, \textit{supra} note 8, at 3.
\textsuperscript{62}. Lazarus & West, \textit{supra} note 3, at 133.
\textsuperscript{63}. 43 U.S.C. §§ 1606(h), 1607(c).
\textsuperscript{64}. Comment, \textit{supra} note 17, at 209.
\textsuperscript{65}. H.R. Rep. No. 31, \textit{supra} note 8, at 3.
\textsuperscript{68}. \textit{Id.}
\textsuperscript{69}. See \textit{id.} at 4-5.
village corporations were established within a region, an additional 45-50% payout from the regional corporation was required.\textsuperscript{70} Corporate expenses together with the limited amount of money available to the corporation retarded the ability of the Native corporation to make investments and solicit business.\textsuperscript{71} The regional corporations that have realized a profit attribute their heightened financial status to the existence of exploitable resources and prime geographic location.\textsuperscript{72} Although a few of the regional corporations have shown a profit, the majority of the regional corporations have met with only a moderate amount of success, and there are several corporations close to bankruptcy.\textsuperscript{73}

Another serious problem has been created by the Bureau of Land Management’s failure to complete the forty-four million acre distribution.\textsuperscript{74} By 1987 only nine million of the forty-four million acres reached the Native corporations.\textsuperscript{75} This delay in land distribution has forced many corporations to resort to expensive litigation, reducing their resources even further.\textsuperscript{76}

Motivated by the lack of success of many of the corporations, Natives voiced their concerns about the future of the ANCSA.\textsuperscript{77} These concerns, brought before Congress in 1987, included the termination of the alienability restrictions in 1991.\textsuperscript{78} Termination of the alienability restrictions presented a concern because of the fear that after 1991 the Natives’ stock shares would be lost to non-Native control.\textsuperscript{79} The stock is the Natives’ personal stake in the land. If non-Natives gained control of the land, Native ownership would be lost.\textsuperscript{80}

Since the purpose of the alienability restrictions in 1971 was to give the Natives a period of time to establish themselves as corporate entities, many Natives challenged termination in 1991 on grounds that the purpose of the restrictions had not yet been fulfilled.\textsuperscript{81} Many Natives who had been forced to accept a

\textsuperscript{70.} Id.
\textsuperscript{71.} Id. at 5.
\textsuperscript{72.} Id. at 4.
\textsuperscript{73.} Id.
\textsuperscript{74.} S. REP. No. 201, 100th Cong., 1st Sess. 20, reprinted in 1987 U.S. CODE CONG.
\& ADMIN. NEWS 3269, 3270 [hereinafter S. REP. No. 201].
\textsuperscript{75.} Id.
\textsuperscript{76.} Id.
\textsuperscript{77.} Id. at 3270-71.
\textsuperscript{78.} Id.
\textsuperscript{79.} Id.
\textsuperscript{80.} Id.
\textsuperscript{81.} H.R. REP. No. 31, supra note 8, at 5.
corporate structure as the device for holding their interest in 1971 never became completely familiar with the nature and practices of the corporate system. Before the ANCSA, the Natives were primarily engaged in hunting and other outdoor trades. It was the establishment of the ANCSA that sent the Natives to compete with Wall Street. The twenty-year restriction period was simply an insufficient amount of time for the Natives to assimilate into the world of high finance.

The 1987 Amendments to the ANCSA

The House of Representatives responded to the Natives' concerns by enacting a bill proposing amendments to the ANCSA. The Senate similarly proposed a bill addressing these concerns. Subject to changes by House and Senate compromise, the House of Representatives and the Senate approved the revised bill on December 21, 1987, and enacted the 1987 amendments to the ANCSA. These amendments were passed to meet the concerns of the Natives and to assist them in their struggle to preserve their land. Four amendments were added to section 1629 of the existing act. The amendments were specifically targeted to concerns about the alienability of shareholders' stock.

82. Henry, Alaska Native Land Remains in Jeopardy, FOURTH WORLD BULLETIN, September 1988, at 6. This publication, by the Fourth World Center for the Study of Indigenous Law and Politics, Department of Political Science, University of Colorado at Denver, is devoted to timely and current issues concerning indigenous peoples.
83. Id.
84. Id.
85. S. REP. No. 201, supra note 74, at 21. The alienation concerns are the primary focus of this note; however, there were several other concerns voiced by the Natives. The possible bankruptcies of many of the regional and village corporations caused fear that land would be lost to creditors' claims. Also, since only those Natives born before December 18, 1971, received the stock, there was a concern the future generations of Natives could receive an interest in the land only through inheritance. If the stock of their ancestors was sold, these Natives would have no opportunity to participate in their heritage. T. BERGER, supra note 1, at 99-110. The 1987 amendments, also discussed in this note, have addressed and provided for these concerns.
86. 133 CONG. REC. H1669 (daily ed. Mar. 31, 1987). H.R. 278 was proposed to amend the Alaska Native Claims Settlement Act providing Alaska Natives with options for the continued ownership of lands and corporate shares received pursuant to the act. H. REP. No. 31, supra note 8, at 1.
90. Id.
91. Id.
The Procedural History of the Amendments

Since it was Congress and not the Natives who drafted, voted, and passed these amendments, it is essential to examine Congress' ideas and actions concerning the Alaskan Natives and their land. The March 31, 1987, initial vote to pass the proposed amendments appealed to the House of Representatives as a measure directed at reducing some of the inadequacies of the ANCSA. These inadequacies were emphasized with regard to the failure to the ANCSA to achieve its original goals. The goals of the ANCSA were to satisfy the economic, social, and cultural needs of the Alaskan Natives by preserving land for the Natives. It is through the amendments that Congress intended to restructure the ANCSA to meet these original goals. Expression of the Natives' concerns about the protection of their land initiated legislative involvement. It is with these concerns that the legislature undertook to restructure the corporate guidelines of the ANCSA.

The House bill extended the twenty-year alienation restriction beyond the original date of December 18, 1991. To accommodate the desire of the Bristol Bay region, which wanted to end the alienability restrictions, an exception canceled the restrictions as to Bristol Bay only. Other options available to the corporations would be dissenters' rights and a trust option.

Similarly, the Senate bill adopted the continuation of alienability restrictions past December 18, 1991. In addition, the Bristol Bay exception was also extended to include the Aleut region. The Senate's bill contained more narrowly defined

93. Id. (statement of Rep. Udall).
94. Id.
95. Id.
96. H.R. REP. No. 31, supra note 8, at 5.
97. Id. Before the bill was brought before the House of Representatives, over two years were spent in contemplation of the 1991 considerations. Hearings were also held in Anchorage, Fairbanks, and Washington, D.C. The hearings were to provide the House with input from the Natives as to the failure of the initial goals of the ANCSA. Further, the Natives were given the chance to offer ideas of their own as to how the goals of the ANCSA could be better achieved. H.R. REP. No. 31, supra note 8, at 3.
98. See 133 CONG. REC. H11,933 (daily ed. Dec. 21, 1987). The House explanatory statement records the differences in the original bills of the House and the Senate. It further details how the differences were reconciled to create the final bill passed by both bodies of Congress on December 21, 1987.
99. Id. at H11,935.
100. Id. at H11,936.
101. Id. at H11,935.
102. Id.
guidelines for dissenters’ rights and permitted the option of a settlement trust. 103

With these noted Senate changes, approved in a joint conference of members from both the House and Senate, a revised bill was drafted and offered for consideration by Congress. 104 On December 21, 1987, both the House and the Senate passed the revised bill and enacted the 1987 amendments to the ANCSA. 105

The Amendments

The amendments to section 1629 deal with the alienation of Native corporate stock by making four changes to the existing law. 106 First, procedures for considering amendments and resolutions are established. 107 Second, the duration of alienability restrictions are to extend past December 18, 1991. 108 Third, dissenters’ rights and limitations are recognized. 109 Finally, an option for a settlement trust is provided. 110

The amendments begin with the general rule that the alienability restriction will continue after December 18, 1991, unless a particular exception within the amendment applies or specific action is taken by the corporation to end the restrictions. 111 Essential to this section is the premise that regardless of any corporation’s choice to remove the restrictions, no restriction on the alienation of stock can be removed prior to December 18, 1991, the original date provided in the ANCSA. 112

Although amended section 1629 imposes the general rule that alienation restrictions continue after the original termination date, there are several alternatives within the section which provide for removal of the restrictions if the corporation so chooses. 113 Subject to the guidelines detailed in the section, the opt-out procedure allows alienation. 114 The guidelines provide that before December 18, 1991, the proposal to terminate res-

103. Id. at H11,936-37.
104. Id. at H11,933; see also 133 Cong. Rec. S18,698 (daily ed. Dec. 21, 1987).
107. Id. § 1629b.
108. Id. § 1629c.
109. Id. § 1629d.
110. Id. § 1629e.
111. See id. § 1629c(a).
112. Id. 7
113. Id. § 1629c(b).
114. Id.
restrictions can be considered only once.115 Further, if termination is considered before December 18, 1991, put to a vote, and then rejected, termination cannot again be considered for a specified amount of time.116 The amount of time for reconsideration is dependent upon the identity of the party who initiated the proposal for termination. If the board of directors initiated the consideration of the restriction removal then the failed amendment cannot be reconsidered for five years.117 Alternatively, if the consideration was brought by a shareholders’ petition, two years must pass before the proposal can be reconsidered.118 The reconsideration limitations for failed proposals to remove the alienation restrictions also apply to proposals initiated after 1991.119 The reconsideration limitations ensure that corporations are not constantly threatened by directors or pressured by shareholders to terminate the alienability restrictions.120

Specific procedures for considering the removal of alienability restrictions are included to ensure that every shareholder is informed of the proposed actions. The basic procedure for considering termination proposals requires that written notice explaining the changes be sent or personally delivered to each shareholder.121 The notice of the suggested changes affords each shareholder the opportunity to read through and review the proposed action before the actual meeting. If a meeting to vote on the restrictions is scheduled and is subsequently postponed for more than forty-five days, the corporation is required to again send notice to the shareholders detailing the proposed changes.122

For the shareholders to collectively petition the board of directors to consider terminating the restrictions, signatures constituting at least 25% of the total voting power of the corporation must be secured.123 A majority of the shareholders possessing voting power is necessary to effect the status of the alienability restrictions.124 Although a majority of the shareholders is necessary to effect the change, this same majority can

115. Id. § 1629c(b)(1)(A).
116. Id. § 1629c(b)(1)(B).
117. Id. § 1629c(b)(1)(B)(i).
118. Id. § 1629c(b)(1)(B)(ii).
119. Id. § 1629c(b)(1)(C)(i)-(ii).
120. Henry, supra note 82, at 6.
122. Id. § 1629b(b)(2)(C).
123. Id. § 1629b(c)(1)(A).
124. Id. § 1629b(d)(1)(A).
elect to change the corporation's articles to require any percentage from the majority up to two-thirds voting power to effect any future changes. 125 Further, a majority vote can amend the articles of incorporation to include the issuance of a new class of stock. 126 This new class of stock can be structured to require a vote in a majority block to effect the removal of alienability restrictions. 127 These procedures appear to reduce the possibility that alienability restrictions will be terminated; however, shareholders and directors have the power to initiate terminations proposals. 128

Another provision of the amendments allows for a recapitalization plan. 129 Before December 18, 1991, the Native corporation is given the opportunity to adopt a recapitalization plan, by the majority of the stockholders with voting power or by the higher number of votes required if the articles have been amended to require such a vote. 130 The chief purpose of a recapitalization plan is to allow shareholders a chance to build capital in the corporation without the threat of an outside takeover. 131 There are a number of options that the shareholder can choose in a recapitalization plan. 132 These options include the extension of alienability restrictions, the issuance of additional stock, and plans for stock options as incentives to officers and employees of the corporation. 133 These options are directed at extending the time to decide on the future of the corporation without threats of outside forces taking control. 134

The recapitalization plan, nevertheless, is subject to several guidelines and restrictions. 135 For instance, if the recapitalization plan is put to a vote and rejected, a waiting period of one year is mandated before another plan for recapitalization can be considered. 136 The Native corporation can elect to extend alienability restrictions under its recapitalization plan but must state

125. Id. § 1629b(d)(1)(B).
126. Id. § 1629b(d)(2).
127. Id.
128. Henry, supra note 82, at 6.
129. 43 U.S.C. § 1629c(c).
130. Id. § 1629(c)(1)(A).
133. Id. § 1629c(c)(1)(B), 1629c(c)(1)(D), 1629c(3).
135. See 43 U.S.C. § 1629c(c).
136. Id. § 1629c(c)(1)(A).
an exact time that restrictions end. Unless a subsequent vote approves the continuation of the restrictions, the alienation restrictions are terminated on the arrival of the date designated.\textsuperscript{137} An additional provision requires that the corporation choose this option before December 18, 1991.\textsuperscript{138}

For the corporations located within the Bristol Bay and Aleut regions, a special opt-in procedure was available.\textsuperscript{139} However, this procedure must have been adopted before February 3, 1989.\textsuperscript{140} For these corporations, alienation restrictions will end on December 18, 1991, unless a direct action is taken by the corporation to continue the restrictions.\textsuperscript{141} The premise that restrictions will terminate unless a choice to extend is made is qualified with the requirement that the shareholders vote at least once prior to January 1, 1991, on the issue of whether or not they wish to extend the alienability restrictions.\textsuperscript{142} Restrictions may be extended for an indefinite period of time or for a specified period of time not to exceed fifty years.\textsuperscript{143} In addition to this provision, there is a provision that specifically states that in the absence of such a vote prior to the 1991 date, the restrictions do not terminate but instead remain in effect until a court orders such a vote.\textsuperscript{144} If the vote favors termination of the restrictions, only then are the restrictions removed.\textsuperscript{145}

To summarize, the opt-in procedure appears to be very complicated, and its premise states that alienability restrictions end unless action is taken otherwise.\textsuperscript{146} Action must be taken to a certain degree regardless of the decision to terminate the restrictions because the shareholders must vote on the restrictions before January 1, 1991.\textsuperscript{147} The major difference in this option is that if termination is approved by the voting power on or before this date, the restrictions will terminate on December 18, 1991.\textsuperscript{148} Conversely, if the shareholders elect to extend the restriction, the Native corporation is subjected to provisions which

\textsuperscript{137} Id. § 1629c(c)(2)(A).
\textsuperscript{138} Id. § 1629c(c)(1)(A).
\textsuperscript{139} Id. § 1629c(d).
\textsuperscript{140} Id. § 1629c(d)(1)(A).
\textsuperscript{141} Id. § 1629c(d)(2)(A).
\textsuperscript{142} Id. § 1629c(d)(2)(B).
\textsuperscript{143} Id. § 1629c(d)(2)(C)(i)-(ii).
\textsuperscript{144} Id. § 1629c(d)(3)(B).
\textsuperscript{145} Id.
\textsuperscript{146} Id. § 1629c(d)(2)(B).
\textsuperscript{147} Id. § 1629c(d)(2)(A).
\textsuperscript{148} Id. § 1629c(d)(2)(A).

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require that the corporation wait the established period before termination or a subsequent vote to terminate. 149 This procedure looks to the fact that many of these corporations advocated termination of the restrictions on the 1991 date. 150 And yet, provisions are established to ensure that shareholders are able to vote in the decision whether or not to extend alienability restrictions that may be in the best interest of the corporation.

Another unique feature of the opt-in provision requires compensation for any shareholder who voted to terminate alienability restrictions and lost to a majority vote to extend. 151 In the opt-in procedure, dissenting shareholders have the right to demand payment for their shares if the corporation should elect to continue alienability restrictions. 152 The section provides that the corporation may pay the dissenter in cash or in alienable stock. 153

The third amendment focuses on the rights of dissenters. 154 As seen in the situation where a shareholder in the Bristol Bay or Aleut corporations loses to a majority vote to extend alienability restrictions, the opportunity to demand payment is allowed. 155 Additionally, this section grants dissenters' rights to opposing shareholders in the opt-out procedure. 156 If a vote results in the continuation of restrictions, any shareholder who voted for the termination may present a demand for payment of shares. 157 The availability of a dissenter's claim is subject to the limitation that the board of directors approve such payment. 158 Even if the board of directors approves such a plan, the dissenter's chances of receiving payment is further complicated in that the board of directors is given the option to vote for an extended period of time to make payment than is normally allowed by Alaska state law. 159

The fourth and final amendment provides for the election of a settlement trust. 160 Under this option, a Native corporation is able to convey its assets to a settlement trust, limited to the

149. Id. § 1629c(d)(4)(A).
152. Id. Section 1629(d) covers dissenters' rights in general.
153. Id. § 1629c(d)(5)(B)(i)-(ii).
154. Id. § 1629d.
155. Id. § 1629c(d)(5)(A).
156. Id. § 1629d(a)(1)(A).
157. Id.
158. Id. § 1629d(a)(2)(A).
159. Id. § 1629d(b)(2).
160. Id. § 1629e.
regulations provided by the state. The purposes for establishing such a trust include the promotion of health, education, and welfare of the Natives. The establishment of a trust is subject to a number of restrictions, in addition to those dictated by the state. First, the shareholders must approve the creation of a trust in the form of a resolution before assets will be conveyed to the trust. If the approval of the shareholders is not obtained, the conveyance is void. Second, subsurface estates cannot be conveyed to a trust. Third, the corporation cannot convey its assets to the trust to avoid creditors. And finally, dissenters' rights must be observed if the rights of the beneficiaries are inalienable.

The Failure of the Amendments to Meet the Natives' Concerns

The goal of the ANCSA was to meet the economic, social, and cultural needs of the Alaskan Natives by preserving certain land for the Natives. The failure of the ANCSA to meet this goal prompted the 1987 amendments. The amendments were aimed particularly at continuing and preserving Native ownership of the settlement property. Although the amendments appear to address the Natives' concerns about preserving their land, we will see that they contain provisions which serve to potentially diminish the Natives' ability to control their land. In sum, these amendments are unable to meet the goals of the ANCSA or the needs of the Alaskan Natives.

Problems Within the Amendments

There are a number of problems in the amendments. The amendments do provide for the alienation restrictions to continue past the original December 18, 1991, termination date. However, the continuation provision is illusory, because there

161. Id. § 1629e(a)(1)(A).
162. Id. § 1629e(b)(1).
163. See generally id. § 1629e.
164. Id. § 1629e(a)(1)(B).
165. Id.
166. Id. § 1629e(a)(2).
168. Id. § 1629e(a)(3)(B).
170. Id. at 4.
171. Id.
172. 43 U.S.C. § 1629c(a).
are so many contrasting options available for termination. To illustrate, a simple majority can vote to terminate the restrictions even though there is a provision that they will continue to exist after the termination date. 173 If such vote favors termination, the shareholders are then free to alienate their stock at any time after December 18, 1991. 174 It is true that the simple majority can be raised to two-thirds vote to effect a termination, but a vote of the majority must have been secured at a time before termination of alienability restrictions was considered. 175

The option available to the Bristol Bay and Aleut regions is also problematic. If the Native corporations within these regions elect to continue alienability restrictions, they are bound to acknowledge and satisfy any dissenters' rights. 176 If a cash payment to the dissenter is made, there is a possibility that the corporation's funds could be impaired, which could jeopardize its financial status. It could conceivably follow that a vote to terminate may be realized solely to meet these expenses.

The ability of a Native corporation to issue new types of stock in a recapitalization plan is of concern. 177 As previously noted, if a recapitalization plan is adopted by a Native corporation, additional options are then available to the corporation. 178 One such possibility is the issuance of new classes of stock as incentives for employees and directors of the corporation. 179 Although this issuance purports to retain Native participation and control, different types of stock carry varying rights to earnings and power to vote. 180 Therefore, there is a good possibility that Native control will decrease with the election of this type of option.

The intricacies of the settlement trust option also present problems. First, dissenters' rights are available if the rights of the beneficiaries of the trust are inalienable. 181 Second, the trust is subject to any applicable state law, which could additionally pose some problems. 182 Third, a corporation is not able to place assets in trust to circumvent the need for corporate existence. 183

173. *Id.* § 1629c(b)(1)(A).
174. *Id.*
175. *Id.* § 1629b(d)(1)(B); see also Henry, *supra* note 82, at 7.
178. 43 U.S.C. § 1629c(c).
179. *Id.* § 1629c(e)(3).
182. *Id.* § 1629c(a)(1)(A).
183. *Id.* § 1629c(a)(2).
Because subsurface rights to land are prohibited from being placed in the trust, the regional corporation must continue its existence in order to receive any of the profits it may derive.\textsuperscript{184} Thus, an additional problem is potentially created if expenses involved in maintaining a corporation outweigh the profits realized from the rights granted to the corporation. In such a situation, with bankruptcy pending, the subsurface rights could be lost altogether because the corporation would have to relinquish those rights to satisfy creditors claims.

\textit{Remaining Problems with the ANCSA}

Aside from the complexities and problems within the amendments, the Act itself contains a fundamental flaw that impedes the Natives' ability to control their land. The reason for creating the ANCSA was to give the Natives participation in decisions affecting their rights and property.\textsuperscript{185} Corporations do have the potential to realize great profits and prosperity. However, education and skill in dealing with the business world is essential to achieving this type of success.\textsuperscript{186} Non-Natives have generally been raised in a society where stock reports and business transactions are accepted as a way of life. Alaskan Native lifestyle, however, centers around activities that are vastly different from the business world. Assimilation into the corporate world is very difficult for Natives who have previously had no contact with such a world.\textsuperscript{187} The twenty-year restriction period from entering into the open market is not long enough for a Native shareholder to understand the complexities and implications involved in owning stock.\textsuperscript{188} Forcing Natives to defend themselves within a framework that they have not yet learned to understand is an injustice even when the framework, in theory, was intended to help them realize profits from their land.

The amendments afford the Natives the opportunity to maintain alienability restrictions. However, the impending bankruptcy of many corporations makes selling stock a viable and attractive option for the Natives.\textsuperscript{189} For many, the decision whether to preserve their land is burdened by inability to pay debts.\textsuperscript{190} In this situation, the sale of stock presents itself as an opportunity.

\begin{footnotes}
\item[184] \textit{Id.} \textsuperscript{a} § 1629e(a)(2).
\item[185] H.R. Rep. No. 31, supra note 8, at 3.
\item[186] See Henry, supra note 82, at 6.
\item[187] \textit{Id.}
\item[189] T. Berger, supra note 1, at 104-06.
\item[190] \textit{Id.}
\end{footnotes}
to satisfy indebtedness. The tension between the Native’s cultural values and immediate economic needs may force a decision to be made solely as a means of survival.\textsuperscript{191}

\textit{Conclusion}

The 1987 amendments to the ANCSA provide an opportunity for the Native corporations to extend the alienability restrictions on shareholders’ stock past December 18, 1991.\textsuperscript{192} The amendments were passed to preserve Native ownership of land.\textsuperscript{193} Although appearing to accomplish this purpose, the amendments contain options to terminate these restrictions, which frustrate this goal. As a result, the 1987 amendments to the ANCSA are no more able to meet the goal of preserving Native land ownership than were the original ANCSA provisions.

\textsuperscript{191} \textit{Id.} at 106.
\textsuperscript{192} 43 U.S.C. § 1629c(a).