No. 08-863

IN THE
**SUPREME COURT OF THE UNITED STATES**

OMAR STRATMAN,

*Petitioner*,

v.

KEN L. SALAZAR, SECRETARY OF THE INTERIOR; LEISNOI, INC.; KONIAG, INC.,

*Respondents*.

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

# BRIEF OF KONIAG, INC. IN OPPOSITION

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## QUESTION PRESENTED

Where Section 1427 of the Alaska National Interest Lands Conservation Act ("ANILCA") specifically states that Leisnoi is a "deficiency village corporation" entitled to land benefits under the Alaska Native Claims Settlement Act ("ANCSA"), were the unanimous court of appeals, the district court, and the Secretary of Interior correct in determining that ANILCA was plain and unambiguous on its face and ratified that Leisnoi was indeed an ANCSA village corporation entitled to ANCSA benefits.

## STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Koniag, Inc. is a regional corporation validly formed pursuant to the Alaska Native Claims Settlement Act. It has no parent company, and no publicly held company owns 10% or more of the corporation's stock.

## TABLE OF CONTENTS

TABLE OF CONTENTS - Continued

## TABLE OF AUTHORITIES

**CASES** Page

TABLE OF AUTHORITIES - Continued

Page

TABLE OF AUTHORITIES - Continued



**STATUTES AND REGULATIONS**

TABLE OF AUTHORITIES - Continued

Page

**OTHER AUTHORITIES**

## STATEMENT OF THE CASE

For over thirty years Petitioner,[1] who is a cattle rancher on the Kodiak Island Archipelago[2] ("Kodiak Island") has sought to reverse the determination that some three hundred of his fellow Kodiak Island citizens because of their Alaska Native ancestry were entitled to benefits under the Alaska Native Claims Settlement Act ("ANCSA"). In 1974 those three hundred persons formed and were certified as an ANCSA village corporation, Leisnoi, Inc., by the then Secretary of the Interior. Despite the protracted litigation ever since, Leisnoi remains so certified today.[3]

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[1] Other Plaintiffs originally joined Petitioner, Omar Stratman. Over the many years they have dropped out (*see* Pet. App. A-10 and A-13) leaving only Mr. Stratman today following his quest.

[2] Among other islands contained in the archipelago is Woody Island.

[3] Koniag is the regional corporation for Kodiak Island and is entitled under ANCSA to the subsurface estate of those surface lands conveyed to Leisnoi. Pet. App. C-7. The shareholders of Leisnoi are also shareholders of Koniag. *See* 43 U.S.C. § 1604(b). The Leisnoi shareholders constitute under 10% of Koniag's shareholders, and the subsurface estate of the Leisnoi lands holds a corresponding relationship. Neither Petitioner nor anyone else has questioned Koniag's certification.

The factual and legal history of this matter is extraordinarily detailed and exquisitely complex. For instance, the unanimous decision of the circuit court uses 10 of its 22 pages to describe the two relevant statutes and the procedural history of Petitioner's claim. Pet. App. A-3 to A-13. The Petitioner uses 21 pages of his 34 page petition to discuss his Statement and Background. Pet. 2-22. Similarly, the Interior Board of Land Appeals ("IBLA") devoted the first 21 pages of its decision to facts and litigation history (Pet. App. D-4 to D-24), while the Secretary of the Interior in overruling the IBLA devoted seven. Pet. App. C-6 to C-13.

Further, far from all of the legal and factual issues have been decided. As is discussed below, the Secretary of the Interior concluded that the Alaska National Interest Lands Conservation Act ("ANILCA") ratified Leisnoi's ANCSA village corporation status, thus mooting Mr. Stratman's claim. Pet. App. C-6. Consequently, the Secretary noted, it was unnecessary "to review the factual findings of the Administrative Law Judge that were made 25 years after the original determination." *Id.* And the district court, after affirming the Secretary's decision, dismissed as moot 12 other pending motions and a counterclaim. Pet. App. B-18.

## DECISIONS BELOW

The Secretary of the Interior, Dirk Kempthorne, concluded that Section 1427 of

ANILCA ratified Leisnoi's status as a Native village corporation which was eligible to receive benefits under ANCSA.[4] Secretary Kempthorne observed that Congress enacted Section 1427 to address two problems that had arisen in the implementation of ANCSA in the Koniag region. Pet. App. C-17 to C-18. First, there was a deficiency of land on Kodiak Island to satisfy the land entitlements of Leisnoi and the other village corporations in the region. *Id.* Second, the former Secretary had determined in 1974 that seven of the villages in the Koniag region were ineligible to receive benefits under ANCSA.[5] A court had overturned the former Secretary's determination and had remanded the determination to the Department of Interior for further proceedings. Pet. App. C-18.

Secretary Kempthorne then reviewed the language of Section 1427, finding that Leisnoi, along with three other villages, was specifically named as a "Koniag deficiency village corporation because there was not enough land in its immediate vicinity to satisfy its entitlement." Pet. App. C-20. As a "Koniag deficiency village corporation," Leisnoi was entitled to select deficiency acreage from other areas that had been set aside. *Id.* The Secretary also

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[4] The Secretary also overruled the sole holding of the IBLA that the IBLA lacked jurisdiction to hear Mr. Stratman's case. Pet. App. D-24; Pet. App. C-11.

[5] Leisnoi was not one of these seven villages.

found that Section 1427 designated Leisnoi as a "Koniag 12(b) Village Corporation" entitled to additional land under Section 12(b) of ANCSA. *Id.* Thus, Section 1427 specifically referred to Leisnoi twice and both times stated it was entitled to land benefits as an ANCSA village corporation.

The Secretary also noted that the time frames for implementing Section 1427 were short. There were only sixty days for Koniag to recognize Leisnoi as a Koniag 12(b) village corporation. And, the lands on Afognak Island that were to make up the deficiency lands were to be conveyed "as soon as practicable" to the named villages as part of a joint venture that included Leisnoi. *Id.* at 22.

The Secretary further observed that Section 1427 resolved the eligibility of the seven villages[6] by deeming them "eligible as a matter of law for ANCSA benefits in return for a release by them of all of their claims under ANCSA and the conveyance to them of a significantly smaller amount of acreage than they would have been entitled to select under ANCSA." Pet. App. C-18 to C-19.

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[6] All other village eligibility determinations in question from the court of appeals decision in *Koniag, Inc., Village of Uyak v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1052 (1978) were also settled in ANILCA §§ 1432(a) and (b) or had been previously settled. Pet. App. A-7.

The Secretary concluded that "when read as a whole, it is clear that Section 1427 was intended to settle with finality and 'as soon as practicable' the land entitlements of Koniag Regional Corporation and its villages." *Id.* at C-26. Certainty about Leisnoi's status "was a necessary predicate to achieving that finality." *Id.* The conveyances could not occur if Leisnoi's entitlement was subject to further delay such as litigation. *Id.* Consequently, the Secretary denied Stratman's preferred reading of ANILCA, that it merely gave Leisnoi benefits if it were later found to be eligible and that ANILCA must be an impermissible repeal of ANCSA, stating:

> Reading Section 1427 as a whole, and in the absence of any clear evidence to the contrary, I conclude that the language in subsections (b)(1) and (a)(2) [set forth above] is best read as ratifying the Secretary's eligibility determination with respect to Leisnoi.

Pet. App. C-27.[7]

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[7] The Secretary also used the "cardinal canon of statutory construction [that] a statute is to be read as a whole," quoting *Washington State Department of Social and Health Services v. Kefler*, 537 U.S. 371 (2003) (Pet. App. C-26) and recognized the canon that "remedial legislation should be construed broadly to effectuate its purposes," quoting *Tcherpin v. Knight*, 389 U.S. 332 (1967) (*id.* at C-27).

Petitioner appealed to the United States District Court, and that court held:

> The Court concludes that the Secretary's interpretation was not only permissible, but persuasive [under *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)]. Although the Court finds that the Secretary's interpretation must be upheld under *Chevron* deference, the Court notes that it would have come to the same conclusion had it been interpreting the statute in the first instance, or under the persuasive deference standard found in *Skidmore*.

Pet. App. B-16 to B-17.

Petitioner appealed to the Ninth Circuit Court of Appeals. That court unanimously affirmed. It relied on the clear purpose of ANILCA found by this Court in *Amoco Production Co. v. Village of Gambell,* 480 U.S. 531, 549-50 (1987):

> ANILCA's primary purpose was to complete the allocation of federal lands in the State of Alaska, a process begun with the Statehood Act in 1958 and continued in 1971 in ANCSA. [ANILCA] . . . also provided means to

> facilitate and expedite the conveyance of federal lands within the State to . . . Alaska Natives under ANCSA.

Pet. App. A-21 to A-22. The unanimous court found that since "Congress viewed § 1427 as a cleanup measure in which it exercised its authority in order to effectuate the purposes [of] ANCSA, irrespective of determinations made by the Secretary," (Pet. App. A-23), there was neither need to rely upon a *Chevron* deference analysis (*id.* at 23 n.4) nor analyze the legislative history (*id.* at 22). Rather, the words of Section 1427(b) stated a clear Congressional intention when Congress stated that "[i]n *full satisfaction* of . . . the *right* of each Koniag Deficiency Village Corporation to conveyance under [ANCSA] . . . the Secretary of Interior shall . . . convey . . . the public lands on Afognak Island." Pet. App. A-16. The court held:

> Under the plain language of the statute, then, Leisnoi is *entitled*, § 1427(a)(2), and has the *right*, § 1427(b)(1), to public land under §14(a) of ANCSA.

Pet. App. A-16. The language clearly, "inexorably" leads to the conclusion that Leisnoi was treated by

Congress as an eligible village corporation under ANCSA. *Id.* at 17.[8]

Finally, in denying Mr. Stratman's contentions that such a reading of ANILCA was an implied repeal of ANCSA, the unanimous court relied upon this Court's ruling in *United States v. Alaska*, 521 U.S. 1 (1997).

There the State of Alaska reasoned that the Statehood Act should convey submerged lands to the State because the President in 1923 was incorrect in reserving them for the United States because the Pickett Act did not allow him to do so. However, this Court held that Congress in the Statehood Act "ratified the terms of the 1923 Executive Order in §11(b) of the Statehood Act." Pet. App. A-25, citing *United States v. Alaska*, 521 U.S. at 45. Because Congress had the power to dispose of federal lands, the circuit court applied the reasoning to Mr. Stratman's arguments. Congress in ANILCA was

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[8] The circuit court also rejected Mr. Stratman's argument that Section 1427(f) of ANILCA made the conveyance conditional on Leisnoi's eligibility. *Id.* at 18. Section 1427(f) provides that "[a]ll conveyances made by reason of this section shall be subject to the terms and conditions of [ANCSA] as if such conveyances (including patents) had been made or issued pursuant to that Act." *Id.* The court concluded that Mr. Stratman's argument ignored the explicit language of Section 1427(f) which, by its own terms was limited to "conveyances," not eligibility determinations. *Id.*

clearly aware of the Secretary's eligibility determination for Leisnoi since it named Leisnoi in Section 1427.

> As in *Alaska*, the subsequent action of Congress makes the propriety of the underlying decision irrelevant, even if the underlying decision might have transgressed the intent of Congress.

Pet. App. A-26.[9] The circuit court concluded: "[n]early thirty years have now passed since the enactment of ANILCA and it is time to bring this litigation to an end." *Id.* at 28.

## I. REASONS FOR DENYING THE PETITION FOR CERTIORARI

Supreme Court Rule 10 sets forth the general criteria for granting a petition for a writ of certiorari. Clearly, Petitioner does not and cannot argue either Supreme Court Rule 10(b) or (c) applies. Nor, does or can Petitioner claim anything in the decisions below create a split among the circuits in need of resolution by this Court. Rather, Petitioner lists

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[9] As argued in Section III below, Petitioner neither discusses nor cites either *United States v. Alaska* or *Amoco Production Co. v. Village of Gambell*, nor does he cite *Lamie v. United States Trustee*, 540 U.S. 526 (2004) which also was central to the circuit court's analysis.

four reasons (Pet. 22)[10] which he urges come within Supreme Court Rule 10(a) that the circuit court "has so far departed from the usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power."

However, the circuit court did not so depart. And, review should be denied because as shown above, the decision of the Ninth Circuit was unanimous,[11] and it upheld and agreed with the United States District Court which in turn agreed with and upheld the Secretary of the Interior.[12] There is, thus, no judicial determination supportive of Petitioner's position. Both the district court and the unanimous circuit court found the facts and issues similarly. Simply put, and in keeping with direct precedent by this Court, the actions of Congress in ANILCA ratified the status of Leisnoi and did not impliedly repeal ANCSA.

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[10] Mr. Stratman argues that the circuit court invalidated an act of Congress and that the circuit court was wrong. Pet. 22-23. Additionally, Mr. Stratman, a non-Native, argues the circuit court decision is inconsistent with Congressional dictates regarding Indian affairs and the decision allows a "fraud on the United States." *Id.* at 30-31.

[11] Petitioner elected to neither request reconsideration nor en banc consideration.

[12] Indeed Petitioner can point only to an IBLA argument to the contrary. However, the holding of the IBLA was that it lacked jurisdiction, Pet. App. D-23. In any case, the Secretary of Interior's decision is the final and only decision of the Department of Interior. 43 C.F.R § 2651.2(a).

Of equal significance, a reversal of the unanimous court of appeals decision will not end the litigation. The court of appeals itself noted that its decision made it unnecessary to review legislative history[13] or the *Chevron* deference accorded the Secretary's decision by the district court. A reversal of the circuit court decision would require analysis of both issues, either by this Court or the circuit court. A reversal would also require that the district court consider the twelve motions and the counterclaim it dismissed as moot in light of its decision on ratification and *Chevron* deference. And, the Secretary of Interior would at last need to review the multiple objections to the findings of the administrative law judge "made 25 years after the original decision." Pet. App. C-6.

Finally, thirty-three years have indeed passed. Section 1427 was passed in 1980; Leisnoi, Koniag and the remaining village corporations in the Koniag area received their interest in Afognak Island. Indeed, the 12(b) and 12(c) lands were conveyed long ago on the assumption that Leisnoi

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[13] Petitioner requests that this Court accept as true that the legislative history clearly shows that Congress was blissfully unaware of any problems with the Leisnoi certification. Pet. 15. But that is at best a premature assertion in light of the circuit court's refusal to review the "unhelpful legislative history." Pet. App. A-28. And, as argued below it is simply wrong.

was entitled to its benefits. All occurred more than six years ago, and all are beyond recall by the United States (*Leisnoi, Inc. v. United States*, 267 F.3d 1019, 1022 n.2 (9th Cir. 2001) ("*Leisnoi II*")) and for Leisnoi its title has been quieted. *Leisnoi, Inc. v. United States*, 313 F.3d 1181, 1182 (9th Cir. 2002) ("*Leisnoi III*").

The only parties to be effected by this lawsuit, and, indeed, effected to a relatively insubstantial degree, are Mr. Stratman, the cattle rancher from Kodiak who is the sole remaining complainant, and his 300 neighbors who are the shareholders of Leisnoi, Inc. And, of course, Koniag, which is entitled to the subsurface estate of the land selected by Leisnoi. There simply is no one else concerned, and accordingly the petition for certiorari should be denied.

## II. MISSTATEMENTS OF FACT AND LAW IN THE PETITION

### A. Petitioner's Assertion That Leisnoi's Lands May Be Returned To The Public Domain Is Demonstrably False

Petitioner claims that review by this Court will "restore to the public domain the lands that Leisnoi wrongfully obtained." Pet. at 33. But it simply is not true that title to Leisnoi's land may be

returned to the United States. The United States has consistently acknowledged that its conveyances of land to Leisnoi have been "incontestable since 1992, when the six-year statute of limitations period elapsed on any possible suit to recover the land." *See Leisnoi II*, 267 F.3d at 1022 n.2; *see also Leisnoi III*, 313 F.3d at 1183 n.3. Indeed, the United States formally disclaimed any interest in Leisnoi's lands, and the district court then quieted title in Leisnoi in 2002. *See Leisnoi III*, 313 F.3d at 1182.

In affirming the district court's decision which quieted title in Leisnoi's favor, the Ninth Circuit has similarly determined that Leisnoi's lands "could not revert to the United States regardless of the outcome of the decertification proceeding." *Leisnoi II*, 267 F.3d at 1022 n.2.[14] The time for seeking review of that determination has long since passed. Thus, Petitioner's assertion that the land may be returned to the public domain is demonstrably false.

### B. Petitioner's Allegations Of Fraud Are Unconvincing

Petitioner's argument at page 33 that review by this Court "will prevent the commission of a fraud

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[14] Indeed, the IBLA, in the very decision cited extensively in the Petition explained that 43 U.S.C. § 1166 "protects Leisnoi's title" from challenge by either the United States or Mr. Stratman. Pet. App. D-23 to D-24.

on the United States" is unavailing for at least three reasons. First, as noted recently by this Court, "litigation is a winnowing process, and the procedures for preserving or waiving issues are part of the machinery by which courts narrow what remains to be decided." *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2618 n.6 (2008) (internal quotations omitted). Here, in response to the district court's determination in 1976 that "the circumstances constituting fraud have not been particularly alleged," (*Kodiak-Aleutian Chapter of the Alaska Conservation Soc'y v. Kleppe*, 423 F. Supp. 544, 546 (D. Alaska 1976)), Petitioner chose to abandon his allegations of fraud when he filed his amended complaint in 1977, over thirty years ago. ER 194-97.[15] Petitioner cites no authority (and we are aware of none) for the proposition that this Court should grant certiorari based on allegations which the petitioner intentionally abandoned below, and which neither the district court nor the court of appeals addressed.

Second, Petitioner's 1974 lawsuit put the United States on notice of the alleged "fraud." Indeed, Petitioner's argument at page 5 that Koniag's "scheme" to submit "fraudulent applications" on behalf of eight "alleged villages" "became a national scandal when it was investigated

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[15] ER refers to the Excerpts of Record filed with the circuit court in this matter.

and reported in a series of articles by national syndicated columnist Jack Anderson" provides further proof of the United States' notice of the alleged but nonexistent fraud. But despite having notice of the alleged fraud, the United States government conveyed the lands in issue to Leisnoi (and the subsurface to Koniag) in 1985. As addressed by both the circuit court and the IBLA, the six-year statute of limitations on these conveyances expired by 1992, and, since that date, the conveyances have been "incontestable," even if they were procured by fraud. *See Leisnoi II*, 267 F.3d at 1022 n.2; *see also Leisnoi III*, 313 F.3d at 1183 n.3.

Third, Petitioner has received financial benefit as a direct consequence of the purported "fraud" on the United States. Specifically, Petitioner entered into a settlement agreement with Koniag in 1982, in which he agreed to dismiss the decertification action against Leisnoi in return for land from Koniag. *Leisnoi, Inc. v. Stratman*, 835 P.2d 1202, 1205-06 (Alaska 1992). In 1990, pursuant to a second settlement agreement with Koniag, Petitioner for no charge received all of the sand and gravel to approximately 18,000 acres of subsurface estate, which underlay the surface estate conveyed to Leisnoi. To date Petitioner has not returned this estate to the United States to whom he insists it belongs. Instead, he has mined those lands for gravel, as noted by the Ninth Circuit in *Leisnoi, Inc. v. Stratman*, 154 F.3d 1062, 1065 (9th Cir.

1998). Certainly, if a "fraud" has been committed against the United States, Petitioner has both been a part of it and has reaped a benefit from it. Both are inconsistent with his request that this Court reopen this complex case in Petitioner's hope to receive even more.

### C. The Ninth Circuit's Recent Decision Has Little, If Any, Impact On Kodiak's Residents

Petitioner argues that the Ninth Circuit's decision will have a "significant impact" on the residents of Kodiak because Leisnoi has apparently reinstituted a policy which restricts access to its lands. Pet. 32-33. A landowner's decision to limit the use of its lands, to which title is quieted, is not the type of controversy that merits the granting of a petition for certiorari. In any event the circuit court confirmed Leisnoi's ownership of its lands in *Leisnoi II* and *Leisnoi III*. This Court's intervention was not sought from either of those two decisions.

### D. There Is Evidence That The Status Of Petitioner's Lawsuit Was Disclosed To Congress During Its Deliberations On Section 1427 Of ANILCA

The Petitioner asserts that the "fact" that the Secretary's determination of Leisnoi's eligibility was being challenged in court during the deliberations on

ANILCA "was never disclosed [to Congress] by Mr. Weinberg...." Pet. 15. That assertion is simply untrue.

As Petitioner well knows from the proceedings before the district court, Mr. Weinberg, in a letter dated February 23, 1979, to Representative Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs, discussed in great detail the lawsuit challenging Leisnoi's eligibility:

> Almost two years after Leisnoi's certification . . . some individuals in Kodiak . . . filed a lawsuit against the Secretary of the Interior in the Federal District Court in Anchorage attacking Leisnoi's eligibility.
>
> ***
>
> As to Stratman and Burton, the Court permitted the lawsuit to proceed because of a claimed lack of personal knowledge on their part that the Department of the Interior had scheduled an opportunity for protest and hearing on Leisnoi's application. This assertion of lack of knowledge is simply an unproven claim. We dispute it and consider it incredulous in view of the wide publicity given such matters in

> Kodiak, where both resided, in 1973 and 1974 . . . .[16]
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> ***
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> The lawsuit based on the amended complaint was dismissed by the Federal District Court in Anchorage on October 16, 1978, as moot (copy of opinion attached) . . . .

*See* Koniag's Memorandum in Support of Motion to Dismiss, filed on April 14, 2007, at Docket No. 145, Exhibit 3, at 4-7. Courtesy copies of the letter, along with copies of the district court's decision, were provided to the following Congressmen: John Seiberling, Don Young, Henry Jackson, Ted Stevens, Mike Gravel, and John Breaux. *See id.* at 21. These were the legislators centrally concerned with the passage of ANILCA, of which Section 1427 was a part.

In that same letter, Mr. Weinberg specifically "disclosed" that Mr. Stratman and Ms. Burton were appealing the district court's dismissal of the lawsuit:

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[16] The IBLA similarly commented that it was "certainly conceivable" that Petitioner had "actual knowledge" of the eligibility proceedings "and failed to bring any timely administrative challenge thereof." Pet. App. D-41 to D-42 n.15.

> Stratman and Burton have filed a notice of appeal with the Ninth Circuit Court of Appeals . . . .

*See id.* at 8. Thus, Petitioner's assertion that Mr. Weinberg never disclosed the lawsuit to Congress is demonstrably false.

Other record evidence indicates that Congress was aware of the questions surrounding Leisnoi's eligibility during its deliberations on Section 1427. For example, the Sierra Club testified at the first hearings on what would become Section 1427, as follows:

> The Koniag amendment is ... premature because of the uncertainty surrounding the amount of subsurface estate Koniag is entitled to. Its entitlement is based in part on the certification by Interior of [Leisnoi] ... as [an] eligible village[] despite clear Congressional intent to the contrary. [Leisnoi] is a former FAA installation.... Accordingly, we recommend the Committee defer consideration of the Koniag Amendment pending a Committee investigation of the certification of [Leisnoi] and a final determination of subsurface entitlement.

ER 430. Similarly, a letter submitted to Congress from the President of the Kodiak-Aleutian Chapter of the Alaska Conservation Society, stated the Interior Department "should not have certified Leisnoi" and requested that the "Interior Committee direct a full and open investigation of the circumstances of the improper certification" of Leisnoi. ER 435.

Not surprisingly, the IBLA "presume[d]" that Congress was aware that Mr. Stratman's lawsuit had been dismissed by the district court but was on appeal when Section 1427 was enacted (Pet. App. D-30), a presumption accepted by the Secretary of Interior. (Pet. App. C-30), although the conclusion reached by the IBLA was not.

In sum, the Congressional hearings, the letters to Congress, Mr. Weinberg's letter, and the decisions by the IBLA and the Secretary of Interior strongly suggest that Congress was aware of the controversy surrounding Leisnoi's eligibility, and the pending lawsuit challenging Leisnoi's eligibility, during its deliberations on Section 1427.[17]

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[17] Of course, as discussed in Section III below, it is ultimately irrelevant whether Congress was aware of Mr. Stratman's lawsuit. Even if Congress had a mistaken belief about the status of Leisnoi's eligibility, it is not this Court's province to correct Congress' mistake.

This Court should not reconsider the issues, which were decided similarly by both the district court and the unanimous court of appeals. *See Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949) (the Court does not grant certiorari "for correction of errors in fact finding," especially where there are "concurrent findings of fact by two courts below").

## III. THE CIRCUIT COURT'S UNANIMOUS DECISION IS CORRECT

This Court has ruled that the first step in interpreting a statute "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The "inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Barnhart v. Sigmon Coal Co., Inc.*, 543 U.S. 438, 450 (2002) (internal citation omitted).

The circuit court's unanimous decision faithfully applied this Court's precedent to Section 1427 and to ANILCA as a whole. Pet. App. A-15 to A-23. And, like both the district court and the Secretary of Interior, the circuit court correctly determined that the plain language of Section 1427, by specifically naming Leisnoi as an entity entitled to land under ANCSA, mooted any controversy over

the Secretary's 1974 decision finding Leisnoi eligible for ANCSA benefits.

The circuit court also correctly determined that the plain language of Section 1427 was consistent with the primary purpose of ANILCA, which, as noted by this Court, was to "complete" the allocation of lands in Alaska:

> ANILCA's primary purpose was to complete the allocation of federal lands in the State of Alaska, a process begun with the Statehood Act in 1958 and continued in 1971 in ANCSA.

*Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 549-50 (1987); Pet. App. A-21 to A-22. The circuit court concluded that the "desire to facilitate a rapid land allocation supports the view that Congress intended to include Leisnoi as an eligible native village corporation, rather than leave its status uncertain." Pet. App. A-22. Mr. Stratman does not discuss or even mention *Amoco Production Co. v. Village of Gambell* in his Petition.

Perhaps even more astonishing is the absence of any mention of this Court's decisions in *United States v. Alaska*, 521 U.S. 1 (1997), and *Lamie v. United States Trustee*, 540 U.S. 526 (2004). Petitioner contends that the "primary error in the Ninth Circuit's analysis and interpretation of Section 1427 was its failure to apply the canons of

statutory construction relating to repeals by implications." Pet. 23-24. *United States v. Alaska* and *Lamie v. United States Trustee* are the two decisions of this Court upon which the circuit court relied in its analysis. Pet. App. A-28 n.5.

First, and perhaps most significantly, applying this Court's ruling in *United States v. Alaska*, 521 U.S. 1, 45 (1997), the Ninth Circuit concluded that Congress, through Section 1427 of ANILCA, "ratified" the Secretary of Interior's determination of Leisnoi's eligibility in 1974. Pet. App. A-24 to A-26.

Second, the circuit court concluded, citing *Lamie v. United States Trustee*, 540 U.S. 526, 542 (2004), that even if Congress did not know about Mr. Stratman's lawsuit when it ratified the Secretary's decision, it was not the court's province to correct Congress' mistake. Pet. App. A-27. It is remarkable that the Petition fails to address either of these decisions which were central to the circuit court's rejection of Mr. Stratman's implied repeal argument. *See id.* at A-28 n.5. It is especially remarkable in light of Petitioner's reliance for certiorari that the circuit court "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of our Court's supervisory power." Supreme Court Rule 10(a).

Finally, Petitioner's ideological application of the canon of construction for implied repeals ignores

the pragmatic purposes of such canons. As this Court has previously explained, "canons of construction are no more than rules of thumb that help courts determine the meaning of legislation." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253 (1992). Moreover, in applying these rules of thumb, this Court has instructed:

> [A] court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.

*Id.* at 253-54 (internal citations and quotations omitted). Applying this "cardinal" canon of construction, the circuit court correctly determined that the words of Section 1427 were "unambiguous" and, therefore, "judicial inquiry is complete."

## CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

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