

1974

**Amending the Alaska Native Claims Settlement Act: hearing before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, House of Representatives, ninety-third congress, second session on H.R. 12355, to amend the Alaska Native Claims Settlement Act, (85 Stat. 688): hearing held in Washington, D.C. Feb. 4, 1974**

David Getches

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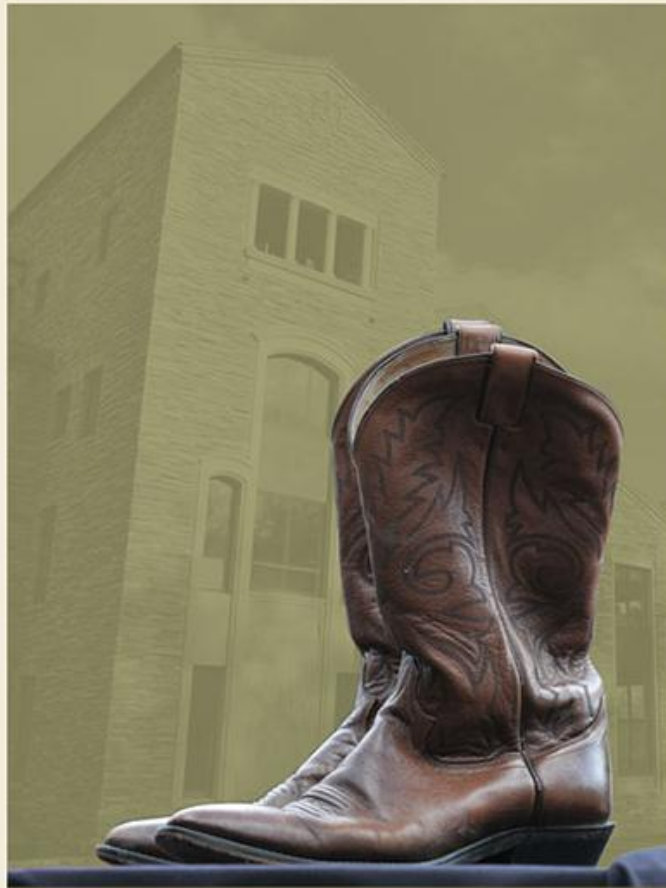
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*Amending the Alaska Native Claims Settlement Act:  
Hearing Before the Subcomm. on Indian Affairs of the  
H. Comm. on Interior and Insular Affairs on H.R.  
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David Getches, Alaska Native Association of Oregon;  
letter of David H. Getches, Native American Rights  
Fund, to Hon. Lloyd Meeds, dated Feb. 5, 1974).*

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SETTLEMENT AC

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON INDIAN AFFAIRS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
HOUSE OF REPRESENTATIVES  
NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 12355

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT  
(85 STAT. 688)

HEARING HELD IN WASHINGTON, D.C.  
FEBRUARY 4, 1974

Serial No. 93-41

Printed for the use of the  
Committee on Interior and Insular Affairs



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1974

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(III)

University of Colorado at Boulder



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# TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (85 STAT. 688)

MONDAY, FEBRUARY 4, 1974

HOUSE OF REPRESENTATIVES  
INDIAN AFFAIRS SUBCOMMITTEE OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The subcommittee met pursuant to notice at 10:05 a.m., in room 1302, Longworth House Office Building, Hon. Lloyd Meeds (chairman) presiding.

Present: Representatives Lloyd Meeds, Lujan, Towell, deLugo, Owens, Young, and Regula.

Mr. MEEDS. The Subcommittee on Indian Affairs of the full Committee on Interior and Insular Affairs will be in session for the taking of testimony on H.R. 12355, "To amend the Alaska Native Claims Settlement Act." The Subcommittee on Indian Affairs, in taking testimony on this, is responding to a matter which is presently before the House on the Speaker's table in the form of an amendment—a Senate amendment—to the assistant secretary bill passed by the House of Representatives.

The matter is before this subcommittee this morning in the form of H.R. 12355 which differs in some respects from the legislation on the Speaker's table. If there are no objections, the bill and the reports of the Department of the Interior and the Securities and Exchange Commission will be entered into the record at this point.

Without objection, it is so ordered.

[The material referred to follows:]

(1)

## STATEMENT OF DAVID GETCHES, ALASKA NATIVE ASSOCIATION OF OREGON

Mr. GETCHES. Thank you, Mr. Chairman.

My name is David Getches, and I am an attorney with Native American Rights Fund, representing the Alaska Native Association in Oregon in a litigation against the Secretary of the Interior, brought by that Association. As such, I have been asked by Mr. Charles Johnson, president of the Alaska Native Association of Oregon, to present a written statement of Mr. Johnson for the record, to be included therein.

In addition to presenting that written statement of Mr. Johnson on behalf of the Association, I have been asked to comment briefly on the nature of the litigation that has been undertaken by the Association.

Mr. MEEDS. Without objection, the prepared statement—did you say you had a statement of Mr. Johnson?

Mr. GETCHES. Yes, sir. We would like leave to submit Mr. Johnson's statement. Mr. Johnson, as recently as yesterday, was planning on coming here.

Mr. MEEDS. Without objection, Mr. Johnson's statement will become a part of the record at this point.

[The information referred to follows:]

### STATEMENT OF CHARLES JOHNSON, PRESIDENT, ALASKA NATIVE ASSOCIATION OF OREGON

This is to introduce the Alaska Native Association of Oregon (ANAO), a non-profit corporation licensed in the state of Oregon. Our major objectives of this organization are to: promote pride on the part of the Alaska Natives in their heritage and traditions; to preserve customs, folklore and art of the Native races; to promote the physical, economic and social well-being of the Alaska Natives and to promote good government by reminding those who govern and those who are governed of their mutual responsibilities.

During our three years of existence we have tried to follow these guidelines for our membership (consisting of Alaska Indians, Eskimos and Aleuts). Some of our objectives have been put aside to put full effort in helping our Natives to enroll under the Alaska Native Claims Act. Under this Federal Law, Native claims against the lands in Alaska are "extinguished forever." Since this was a once-and-for-all enrollment, our efforts for the past two years have been limited to publicizing the law and encouraging enrollment.

This judgment is lengthy and very difficult for our people to understand, so we have worked in many capacities through a business office manned solely by volunteers. As it has turned out, ANAO became the central clearing house for Native problems. These included finding jobs, housing, health referrals, educational placement and befriending the lonely. As a result, our staff has attained a very close working relationship with the Bureau of Indian Affairs in Portland, Oregon. Although working closely with the BIA they were not designated the funds to aid us in our cause, nor were we supplied with office equipment, supplies, or office space. Due to a lack of BIA manpower, our own staff volunteered their services without pay to go to the Portland BIA office to help with enrollment and appeals.

We not only assisted our own members, but also people all over the nation including many confined in various institutions, with their enrollment and appeal problems. These problems were in regard to both the 12 regions in Alaska and information on the 13th Region in the event it came into being. As the end of enrollment period was in March of 1973, we have since put forth a great effort in helping with the appeal procedures. With our aforementioned volunteer

efforts we put forth a full scale publicity campaign on enrollment, the bill itself, and appeals. This has been derived by a \$2.50 annual membership fee, which can only be afforded by about one hundred of our members, aided by dinners, breakfasts, car washes, bake sales, and rummage sales, all of which were again managed by a force of workers who asked nothing for their time and effort.

But even as the enrollment period is over, the real task begins. None of the non-resident association will receive benefits from the Alaska Native Lands Claims Act. In fact, these Associations receive the added responsibility of being the watchdogs of the settlement benefits. True, our people will receive some monetary assistance in the form of dividends and one hundred shares of stock. However, the portion will be so small that the Native economic condition will not be enhanced to the point of solving their problems, such as education, health and welfare. From our membership alone, 36% are educated only to the sixth grade level. Some can not read or write. Now the real education should begin. How do these people best deal with one of the 12 Regional Native Corporations in Alaska? How do they enter proxies for their best interest? How can they receive the health and educational benefits so badly needed? How can they best manage the money they are receiving? These people will receive little or no information from Alaska as the non-resident has always been treated as a stepchild. And the biggest and the most important fact to us now is with this new found money that brings urbanization how do we preserve a dying culture and vanishing art form? Therefore as you can see when the election for a 13th Region was voted down our members not only began to besiege us with the above questions, but began to realize that they did not fully understand where or by what means they were placed in any region.

With the lack of an education etc., enrollment papers were filled out with no idea of what they were doing. This was in many cases taken advantage of. Letters started coming to our members from many sources in the form of Regional and Enrollment questionnaires. These people, therefore, could not make a distinction between what was being asked of them. We have parents and children in different regions. For example, an Eskimo in Sea Alaska owning land in Nome. We have an Athabascan born in the Copper River area and placed in the Aleut Corporation with all of her children placed back in Copper River. We realize some of these locations and regions mean little to you, but in the regions the cultures and heritages are so different it does matter to the people. We found the decision as to where to place these people was made by the way their enrollment forms were filled out. Again, a lack of education and a genuine misunderstanding combined with misinformation lead to this perplexity. Stemming from this, many enrollees still do not fully comprehend how they filled out their forms.

Needless to say we began to see a need to straighten this out. Since we are not a militant or overbearing group, we wish to settle this in the best way available. While working through correct channels we have come up against unanswered phone calls, letters and telegrams. We have been told one thing when in actuality another has taken place. We have been put off as being associated with other groups when we repeatedly said we were working for our people and not to see how much we could gain from them.

Finally the Native American Rights Fund (NARF) was recommended to us. With the help of NARF we now have a suit pending in Federal Court against the BIA with the intended results being a new election for placement of the people. The basic question we want answered is: given an informed choice where do our people want to be registered. Legislation was another alternative given to us for a change of a 13th Region.

Since we would be better able to help our people we eagerly investigated this opportunity. We therefore worked hard to place legislation before you. We are not only fighting for our people by speaking to you, but also trying to prove where our alliance lies. We are not financed by a bank which has a stake in this legislation. Our charge comes from our confused and mistreated Alaskan Natives who have no one else to turn to for help. Our phone is constantly ringing sometimes with questions we cannot answer. We could go on ad infinitum with the problems, all of them as heartrending as the others. But, we are sure you have heard them all many, many, many times before. We need this legislation. It is the fairest way to help the non-resident Alaska Native to make a choice where he wants to be registered. By considering those who expressed wishes to change their registration up until December 1, 1973 we can clear up the problems of



being registered in the wrong region. By having a 13th we solve so many social, economic and educational problems of our non-residents. By asking for a fair election from the prospective shareholders we obtain what we hope to be the true leaders from our people.

Our attorneys have all of the proof—or cases—if this is what you wish to see. What we offer to you, we hope, is some common sense. You ask for representation from us to present our case, yet the funds are not there to send someone. Still, we find ourselves being undermined, shafted and discriminated against unless we are there showing who we are, what we are, and what we want; but again we often do not have the funds needed to present our case. We are not asking for favors. All we are asking for is a just resolution of the inequities bestowed upon us.

We thank you gentlemen for giving us this time before you.

Mr. GETCHES. I would also like to tell the committee, on behalf of Mr. Johnson, that he regrets not being able to be present, but limitations on the Association's funds, and their inability to raise sufficient money to send him here in the time permitted, did not allow him to come.

A few words on the nature of the litigation. On November 30, 1973, a class-action lawsuit naming the Secretary of the Interior, the Commissioner of Indian Affairs, and others, was filed in U.S. District Court in the District of Columbia. That suit is number 2133-73. The Alaska Native Association and several nonresident Alaska Natives brought the suit to challenge enrollment procedures under the act. By the action, the plaintiffs are seeking review of the actions of the Secretary of the Interior and his subordinates, relating to the process of enrolling nonresident Alaska Natives under the act.

The plaintiffs in this suit are claiming that the process of enrollment has resulted in denials of enrollment, enrollment in the incorrect regions, and an inability effectively to exercise their rights to elect in favor of or against the establishment of a 13th regional corporation, a right provided for them in the act. They also allege that persons have been informally promised the ability to amend their applications after the administratively established filing date, although only some, not all, of those amendments were accepted.

A claim is also made that the rulemaking related to the amendments was improperly undertaken and was ineffective. The plaintiffs are asking the court for declarations concerning the illegality of the Secretary's action and procedures, and for an order declaring that the process for amending applications for enrollment submitted by non-residents remains open.

We also ask that the Secretary be required to take a new tabulation of the votes concerning the 13th regional corporation, based on this amended information. Since the filing of the suit, Judge Oliver Gash, on December 19, or December 17, 1973, ordered a halt in distributions of the Alaska Native funds to the regional corporations. That order was lifted a few days later, but not until Judge Gash had ordered the Secretary of the Interior to make a comprehensive canvas of all enrollment data to determine what attempts had been made by Alaska Natives to amend their enrollment applications, and the effect that those amendments would have had on the roll, particularly as the information pertained to the 13th regional corporation.

The Secretary has also been required, by court order, to poll those nonresident Alaska Natives who indicated no preferences between the

13th regional corporation and one of the 12, to find out their reason for abstaining, and what their vote would have been. Although the court has asked for these results, of the polling and canvassing that he has ordered the Secretary to do as soon as possible, we expect that it will take some time. The letters are just now going out to those abstainers, even though the court order was dated December 19.

Further, there are cross motions for summary judgment pending in the lawsuit, and necessary hearings and decisions may delay a resolution of the matter many, many months from now. Enactment of the legislation as pending before this committee can avoid the protracted litigation, vindicate the rights of the litigants while protecting the rights of others, and further manifest the intent of Congress that the claims of Alaska Natives be settled rapidly and with individual fairness.

In order to supplement the record, we would like to submit for the committee's consideration a copy of the complaint in this action, copies of affidavits that have been filed in the suit that explain some of the problems that have arisen in individual cases, a legal memorandum on the summary judgment motions, which sets forth the legal positions of the parties, and the memorandum in order I referred to that was entered by Judge Gash on December 19.

Mr. MEEDS. Without objection—if there is no objection, the material you mention will be made a part of the file.

[The information referred to will be found in the file of the subcommittee.]

Mr. MEEDS. Thank you very much.

Mr. YOUNG. Are you finished with your testimony, and are you available for questions?

Mr. GETCHES. Yes.

Mr. YOUNG. In your suit, you are asking for a new election?

Mr. GETCHES. We are.

Mr. YOUNG. You are asking for a new election. Do you believe that the court order to poll the nonparticipants and to canvass—what is this, canvassing all individuals, or just those individuals that chose not to participate, or to participate with no residence preferred?

Mr. GETCHES. The court order indicates that a canvas will be made of all of the enrollment files to determine what attempts have been made to amend, and what effect they would have on the election.

Mr. YOUNG. Your group is basically made up of whom? The Oregon group only?

Mr. GETCHES. Well, the Alaska Native Association of Oregon is primarily Oregon, nonresident. However, another group in the State of Washington, the Spokane Alaska Native Association, is attempting to join as a party plaintiff in this lawsuit, and there are also individuals involved who are nonresidents in the States of Oregon and Washington.

Mr. YOUNG. And they support the court case for a new election?

Mr. GETCHES. Yes, they do.

Mr. YOUNG. Thank you, and I thank the chairman.

Mr. MEEDS. Thank you, Mr. Getches.

I do want to ask one question. How many people are in the organizations that you represent, Mr. Getches?

Mr. GETCHES. The Alaska Native Association has a membership of several hundred, approximately 700, and they are not all located in the State of Oregon.

Mr. MEEDS. OK.

The next witness is Mr. Roger Lang, who is president, of the Alaska Federation of Natives, Inc.

Please come forward, Mr. Lang.

Please proceed, Mr. Lang. You have a rather long written statement. You may read it into the record or summarize it.

#### STATEMENT OF ROGER LANG, PRESIDENT, ALASKA FEDERATION OF NATIVES, INC.

Mr. LANG. Mr. Chairman, members of the committee, I appreciate this opportunity to appear and testify on H.R. 12355, a bill to amend the Alaska Native Claims Settlement Act with respect to the 13th or "nonresident" corporation.

I appear today as president of the Alaska Federation of Natives, a position I have held since December 10, 1973, following the resignation of Willie Hensley. My election by the AFN board of directors was confirmed by the Natives themselves during our annual convention, December 16 through 18, 1973.

Before discussing AFN's current position on 12355 and the 13th region, I think it will be helpful to review briefly the provisions of the Settlement Act relating to the 13th region. As this committee knows, the Settlement Act established an Alaska Native Fund through which \$962.5 million would be distributed to Alaska Natives and the corporations created by the Settlement Act. But to the Alaska Natives themselves, this fund represented only a small part of the settlement. To us, the great value lies in the 40 million acres of land and which we will retain in full fee ownership. That land, we believe, is worth far more than the Alaska Native Fund.

The land selection rights in the Settlement are vested entirely in Native corporations in Alaska and individual Alaska Natives. The optional 13th regional corporation provided for in the act would have no land selection rights at all. That corporation would only be entitled to a per capita share of the \$962.5 million in the fund. Similarly, although the Settlement Act provided that 70 percent of the revenues from the development of subsurface resources and regionally owned timber would be shared per capita among the 12 regions, that provision was made inapplicable to the 13th region since it had no land rights at all.

In our view, analysis of the benefits of creating and enrolling in a 13th regional corporation must begin with the awareness that that corporation and its stockholders would not share in the land or revenues derived from the land. Thus, the 13th would have a per capita resource base far below that of the other 12 corporations. But that is only one of the important factors in evaluating the benefits of the 13th.

Even though the Alaska Native Fund is distributed on a per capita basis, nonresidents who enroll back to 1 of the 12 corporations will in most instances receive more of the monetary distributions than those

Now, Sealaska Corp. has a member who heads up Alaska Federation of Natives. They had a member who heads up the enrollment office. They have a member who heads up the Alaska BIA region. And consequently, I think it is a stacked deck.

Mr. YOUNG. Even if it were an independent group to run the election.

Mr. NOTTI. The board members who are elected to protect the integrity of the corporation, to increase the position dollarwide and land-wise are voting against the 13th, even when they benefit. So I think they are being led by basically one regional corporation in Alaska. They do not understand.

Mr. YOUNG. Again, I am looking for a happy middle ground. If I cannot find it, that is fine.

Thank you.

Mr. MEEDS. If I may state to the gentleman from Alaska, on this issue there is no happy middle ground.

Mr. YOUNG. Well, there may have to be.

Mr. MEEDS. Very, very good. Well, that is the end of the testimony. We thank all the witnesses who have been so patient and sat through the long hearings, and we appreciate your appearing.

The committee meeting is adjourned.

[Whereupon, at 3:20 p.m., the hearing in the above-entitled matter was adjourned.]

Subsequent to the hearing letters were received from Mr. David H. Getches, Native American Rights Fund and Donald H. Green, law offices of Wald, Harkrader, and Ross.

[The letters follow:]

NATIVE AMERICAN RIGHTS FUND,  
February 5, 1974.

HON. LLOYD MEEDS,

*Chairman, Indian Affairs Subcommittee, House Committee on Interior and Insular Affairs, Cannon House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: On February 4, 1974, I appeared before the Indian Affairs Subcommittee to present the written statement of Mr. Charles Johnson, President of the Alaska Native Association of Oregon (ANAO), and to make brief explanatory comments concerning litigation against the Secretary of the Interior in which we represent ANAO. Certain remarks and questions by Committee members and other witnesses later in the hearings led me to believe that the position of our clients should be further clarified.

The support of ANAO for H.R. 12355 is strong and unequivocal. The fact that a new election concerning the establishment of a thirteenth regional corporation is among the relief sought in ANAO's lawsuit concerning non-resident enrollment (*Alaska Native Association of Oregon v. Morton*, U.S.D.C., District of Columbia, Civ. Action No. 2133-73) should in no way indicate disagreement with the objectives or procedures in the bill or a dichotomy with the bill's other supporters. Remedies sought in litigation are necessarily different from those which can be effected through the more flexible processes of legislation.

It is the position of our clients that the nonresident enrollment process, including elections stating an applicant's preference as to establishing a thirteenth regional corporation, were so tainted with irregularity there must be another opportunity for non-residents to state their place or residence and election regarding the thirteenth. Misleading contradictory and often incorrect instructions by Interior officials were compounded by a lack of objective information concerning the implications of responses on the application form. Further, promises of the ability to correct, amend and add information to applications, followed by an incredible parade of arbitrary "deadlines" for amendments, none of which were publicized, clearly robbed many applicants of their opportunity freely and fully to exercise and obtain rights under the Alaska Native Claims Settlement Act.

The fact that some amendments were accepted while others rejected as untimely demonstrates the arbitrary nature of the process. It was not the "democratic process" heralded by your Interior Department witness.

We have felt that only a reopening of the amendment process (characterized as a "new election") can remedy the denial by administrative action of congressionally created rights under the Act. H.R. 12355 accomplishes the same objective by providing an opportunity in § 28(a) (2) for non-residents to amend their applications. We believe this to be an ideal solution, although it might be more difficult to frame as relief in a lawsuit.

Finally, it should be pointed out that ANAO believes solving the problem through legislation is far superior to litigation. Assuming ultimate success on the merits of the lawsuit, three factors militate in favor of the alternative of a congressional solution. First, the relief a court can design, even utilizing its broad equity powers, is less amenable to easy management and implementation. Second, the legislation would be fully effected in 120 days after enactment, but litigation (and subsequent appeals) could consume a year or two. Such delay would be prejudicial to all concerned—the twelve regions and all individual Alaska Natives, as well as the litigants. Thus, the litigation promises (and already has shown itself) to be more divisive within the Native community. Third, it is essentially a legislative function here involved. The court will be grappling with matters such as legislative intent which, of course, is best expressed by the Congress itself.

We would like to assure you on behalf of our clients that their lawsuit would be dismissed immediately upon enactment of H.R. 12355. ANAO believes that terminating protracted, expensive, and complicated litigation would be for the benefit of all. Of course, there is little risk of claims by any of the regional corporations because of loss of stockholders in that Congress has broad powers in these matters, the exercise of which the courts will not disturb. *United States v. Jim*, 93 S. Ct. 261 (1972).

Sincerely,

DAVID H. GETCHES.

WALD, HARKRADER & ROSS,  
Washington, D.C., February 20, 1974.

HON. LLOYD MEEDS,  
Chairman, House Subcommittee on Indian Affairs, Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN MEEDS: On behalf of the Aleut Corporation, one of the twelve regional corporations created by The Alaska Native Claim Settlement Act, we submit the following comments on H.R. 12355 for inclusion in the record of the above-captioned hearings.

The Aleut Corporation's position is that legislation requiring the establishment of a thirteenth regional corporation for non-resident Alaska natives electing in favor thereof should not be adopted by the Congress. At the present time, the question whether the Secretary of Interior properly determined that a majority of the non-residents of Alaska natives did not vote in favor of creation of the thirteenth region is before Judge Oliver Gasch in *Alaska Federation of Natives International, et al. v. Morton, et al.*, Civil Action No. 2141-73, U.S.D. D.C. The Court has ordered an inquiry into the question whether votes for and against the creation of the thirteenth region have been properly counted and may be expected in the reasonably near future to resolve this issue. If a new election is ordered by the Court, this could be done within the confines of the present Act. Accordingly, there appears to be no need for legislation.

The Aleut Corporation is also opposed to any legislation which would permit the creation of the thirteenth region in the absence of a majority of eligible voters voting in its favor. The requirement in the initial Settlement Act that such a majority must favor creation of the thirteenth soundly reflects the business reality that the fewer natives enrolled in a particular corporation the greater diseconomies of scale and management disfunctions are inherent in operation of the corporation. Removal of the requirement that a majority vote in favor of the thirteenth before its incorporation would permit the creation of the thirteenth on a basis likely to doom it in advance.