No. 23-1360

In the Supreme Court of the United States

VERNON FIEHLER, PETITIONER

v.

CATHERINE MECKLENBURG, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

SUPPLEMENTAL BRIEF FOR THE PETITIONER

TODD F. GAZIANO
MICHAEL E. ROSMAN
CALEB KRUCKENBERG
CENTER FOR INDIVIDUAL RIGHTS
1100 Connecticut Avenue, N.W., Suite 625
Washington, DC 20036

KANNON K. SHANMUGAM
Counsel of Record
WILLIAM T. MARKS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

MAX H. SIEGEL
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

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Aside from its ultimate recommendation, the government's brief amply confirms the need for further review in this case. The government agrees with petitioners that the Alaska Supreme Court committed a "significant error" by "declin[ing] to accord conclusive weight" to the location of a meander-corner monument when assessing the location of a water boundary at the time of a federal land survey. Br. 11, 12. The government also recognizes that the decision below "has the potential to create significant practical problems affecting ownership of surveyed lands adjacent to waterbodies" in Alaska. Br. 11. The government even goes so far as to "acknowledg[e] that the Court could reasonably grant review." Br. 21.

The government cites only the slimmest of reasons why the Court may wish to deny review. *First*, the government suggests that the decision below does not

"squarely conflict" with the principal cases cited in the petition, because this case concerns the legal effect of a meander-corner monument and those cases dealt with the legal effect of a meander line that represents a fixed water boundary. Br. 19, 21. *Second*, the government observes that "it is difficult to assess with confidence" how many properties in Alaska the decision below will affect. Br. 22.

Those would be exceedingly weak bases for denying certiorari. For purposes of *Cragin*'s rule, there is no distinction between meander-corner monuments and meander lines that represent fixed boundaries. And the government acknowledges the "practical difficulties" the decision below could create by encouraging litigants to "rely[] on dueling experts who attempt[] to estimate [a boundary's] location" decades after the survey took place. Br. 22. Unless this Court intervenes, the Alaska Supreme Court's decision will remain the law in a State with tidal shoreline that is "longer than the shorelines of all the lower 48 states combined," creating uncertainty for landowners who "should [be] entitled to rely" on the government's historical work. *Id.* at 21-22 (citation omitted).

This Court has frequently granted certiorari in cases where the government argues that the decision below was incorrect but that certiorari should nevertheless be denied. See, *e.g.*, *Cantero* v. *Bank of America, N.A.*, 602 U.S. 205 (2024); *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1 (2020); *Ivy* v. *Morath*, 580 U.S. 956 (2016); *Gobeille* v. *Liberty Mutual Insurance*, 577 U.S. 312 (2016); *Oneok, Inc.* v. *Learjet, Inc.*, 575 U.S. 373 (2015). *A fortiori*, where the government not only argues that the decision below was incorrect but also recognizes that it has potentially significant practical consequences, further review is plainly warranted. The petition for a writ of certiorari should be granted.

1. The government agrees with petitioner that the Alaska Supreme Court's decision was "wrong" because "it fails to apply the longstanding federal-survey rule" of *Cragin* v. *Powell*, 128 U.S. 691 (1888). Br. 12. As the government explains, "[f]or over a century, it has been a well-settled rule of law that, unless Congress provides otherwise, the power to make and correct surveys of the public lands belongs exclusively to the political department of the government," and "the action of that department" is "unassailable in the courts except by a direct proceeding." *Ibid.* (internal quotation marks and citations omitted). And under that rule, "a meander-corner monument set by a federal survey conclusively establishes the location of the relevant property corner as it existed at the time of the survey." *Id.* at 17 (emphasis omitted).

2. Although the government is in lockstep with petitioner on the merits, it argues that two lower-court decisions identified by petitioner—*State* v. *Aucoin*, 20 So. 2d 136 (La. 1944), and *Brown* v. *Parker*, 86 N.W. 989 (Mich. 1901)—do not "squarely conflict with the decision below." Br. 19. Of course, the inconsistency between the decision below and this Court's decisions, which the government confirms, is reason enough to grant certiorari (or even summary reversal). See S. Ct. R. 10(c). But the decision below gives rise to a conflict in the lower courts that confirms the need for the Court's review.

Notably, the government does not adopt respondents' position that *Aucoin* and *Brown* are limited to the context of swampland. See Mecklenburg Br. in Opp. 25; Alaska Br. in Opp. 19. Instead, the government suggests that the decision below is distinguishable from those cases because it concerned "the legal effect of meander-corner monuments," whereas *Aucoin* and *Brown* "addressed the legal effect of a *meander line* * * * [where] the meander line itself was accepted as a *fixed* property boundary line." Br.

19-20. But that is a distinction without a difference for purposes of *Cragin*'s rule.

As the Court explained in *Cragin*, "when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions, and land-marks, becomes as much a part of the [patent] by which they are conveyed, and controls, so far as limits are concerned." 128 U.S. at 696. *Cragin*'s rule thus precludes a court from resetting the location of *any* "boundary of a parcel of public land" from the location identified in a federal survey. U.S. Br. 15.

As the government correctly explains, a meander-corner monument marks the intersection of a "boundary line between two parcels of land" and "the mean-high-water line of an adjoining waterbody." Br. 14. Such a monument thus marks the location of the water boundary at the time of the survey. But exactly the same is true of a meander line *where it serves as a fixed property boundary*. To be sure, not all meander lines serve that purpose. See *Railroad Co.* v. *Schurmeir*, 74 U.S. (7 Wall.) 272, 286-287 (1869). But where one does, it too marks the location of the water boundary at the time of the survey.

So considered, this case is not distinguishable from *Aucoin* and *Brown*. In each of those cases, the location of the water boundary at the time of the federal survey was relevant for determining the present-day boundaries of a federally patented parcel of waterfront property. The courts in *Aucoin* and *Brown* held that a court may not second-guess the surveyed location of the water boundary (as marked by a meander line). See *Aucoin*, 20 So. 2d at 154-155; *Brown*, 86 N.W. at 991. But in the decision below, the Alaska Supreme Court held that it could second-guess the surveyed location of the water boundary (as marked by a meander-corner monument). See Pet. App. 18a-19a. The decision below is thus irreconcilable with *Aucoin* and

Brown, and there is no doubt that this case would come out the other way under the reasoning of those decisions.

3. The government freely recognizes the "obvious" and "significant" practical difficulties created by the decision below. Br. 11, 21-22. As the government explains (Br. 21-22), the decision below disregards the decades-old reliance interests of waterfront landowners in Alaska and instead requires a costly battle of the experts to resolve even simple land disputes between neighbors (like this one) concerning water boundaries. The difficulties will "only grow with time," as disputes arise "100 or even 500 years (or more) after a federal survey." Br. 22. The government says it best: "Property rights in land originally owned by the United States should not turn on such uncertain modes of proof, and landowners should be able to rely on clear, fixed boundaries established by federal survey monuments." *Ibid.*

That is particularly true in Alaska, where all of the State's more than 375 million acres began as federally owned lands. See Pet. 23; see also U.S. Br. 4-5. As the government acknowledges, Alaska's tidal shoreline is "longer than the shorelines of all the lower 48 states combined." Br. 22 (citation omitted). And because "[s]horelines are everchanging," it is "particularly important" that landowners in Alaska "be able to rely on survey monuments documenting their parcels' boundaries as they existed when originally surveyed." *Ibid.*

The government does not cite any vehicle considerations counseling against review in this case. Instead, the only countervailing point it makes is that "[i]t is difficult to assess with confidence" how many parcels of waterfront land in Alaska "will implicate meaningful property-line disputes, and how many of those disputes would result in litigation" that could be resolved on grounds that do not require reliance on the relevant federal survey. Br.

22. That is fair enough. But it makes no sense as a basis for denying review. After all, it is *always* "difficult to assess with confidence" the future effects of an incorrect lower-court decision.

But if anyone has the knowledge necessary to make a prediction here, it is the government. And according to the government, the decision below has "the potential to create significant adverse consequences for the determination of landownership, especially in Alaska." Br. 2. Coupled with the government's full-throated argument that the decision below was incorrect, that is more than enough to warrant this Court's intervention. The Alaska Supreme Court's decision cannot stand, and this Court should grant review to reverse it.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

TODD F. GAZIANO
MICHAEL E. ROSMAN
CALEB KRUCKENBERG
CENTER FOR INDIVIDUAL RIGHTS
1100 Connecticut Avenue, N.W., Suite 625
Washington, DC 20036

KANNON K. SHANMUGAM
WILLIAM T. MARKS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

MAX H. SIEGEL
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

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