No. 23-1360

In the Supreme Court of the United States

VERNON FIEHLER,
Petitioner,

v.

T. ANTHONY MECKLENBURG, ET AL.,
Respondents.

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

RESPONDENT STATE OF ALASKA'S BRIEF IN OPPOSITION

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November 20, 2024

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QUESTION PRESENTED

Federal surveyors use "meander lines" to segregate navigable waterways and other important rivers and lakes from the public lands subject to conveyance. A meander line serves only as an approximation of the water's edge; it does not follow it precisely. *Railroad Co. v. Schurmeir*, 74 U.S. (7 Wall.) 272, 286 (1868). So, although the meander line is used to calculate the exact quantity of the upland a property owner pays for, the federal grant of property extends beyond the meander line and includes all lands to the waterway's high-water mark. *Hardin v. Jordan*, 140 U.S. 371, 380-81 (1891). As such, this Court has long held that the waterbody serves as the actual boundary, not the meander line. *Ibid.*

The question presented is:

Did the trial court err when it located the original property boundary of neighboring beachfront homesteads at the mean high tide line rather than the meander line as shown on a federal survey?

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INTRODUCTION

This case does not, as the petitioner argues, present "a foundational constitutional question." Pet. at 2. It instead involves a dispute between private property owners over the equitable division of accreted land—that is, land that formed by natural processes well after the original federal survey in 1938. See *Hughes v. Washington*, 389 U.S. 290, 293 (1967) ("A long and unbroken line of decisions of this Court establishes that a grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore.").

The property owners dispute the location of the original boundary. The petitioner argues the meander line, specifically the meander corner, controls. The Alaska courts held, consistent with this Court's precedent, that the original boundary extended beyond the meander line to the actual water boundary. App. 14a-15a, 44a-45a.

The State of Alaska took no position on the precise location of the original boundary in the lower courts. It played a limited role throughout the litigation, participating only to protect its interest in the submerged lands, and to clarify its position on the court's jurisdiction to resolve this dispute. See App. 5a, 11a, 44a.

Here too, the State's interest is limited. The petitioner seeks to upset over a century of precedent, custom, and expectation by having this Court hold a meander line is dispositive evidence of the location of a riparian property's boundary. Such a holding may

benefit the petitioner here, but it would upset the interests of all other riparian property owners, who have long believed that, as a general matter, their property extends to the actual shoreline and is not limited by the meander line. See *Railroad Co. v. Schurmeir*, 74 U.S. (7 Wall.) 272, 286-87 (1868) (stating that the true boundary of the meandered side of the property is the actual shoreline, not the meander line).

The Court should deny the petition. The Alaska courts faithfully applied this Court's precedents to resolve a fact-bound dispute between two property owners.

STATEMENT OF THE CASE

1. Through the equal footing doctrine and the Submerged Lands Act of 1953, 43 U.S.C. §§1301-1315, the State of Alaska claims title to the bed of all inland navigable waterways as well as all tidally influenced waterways extending three miles seaward of its coastline. See *United States v. Alaska*, 521 U.S. 1, 6 (1997) (explaining that, generally, "Alaska is entitled under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands extending three miles seaward of its coastline").

The boundary between the upland and the tideland is set at the waterbody's "mean high tide line." *Borax Consol. v. City of Los Angeles*, 296 U.S. 10, 22 (1935); 43 U.S.C. §1301(2) (defining "lands beneath navigable waters" to include "all lands permanently

or periodically covered by tidal waters up to but not above the line of mean high tide"). This means that "to ascertain the mean high-tideline with requisite certainty in fixing the boundary of valuable tidelines" an average of a "considerable period of time" should be used. *Borax*, 296 U.S. at 26-27. This Court has approved averaging the mean high tide over 18.6 years. *Id.* at 27.

While the boundary between the uplands and tidelands is set at the mean high tide line, it is also necessarily an ambulatory boundary. "A long and unbroken line of decisions of this Court establishes that the grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore." *Hughes*, 389 U.S. at 293; see also *Philadelphia Co. v. Stimson*, 223 U.S. 605, 624 (1912) ("It is the established rule that a riparian proprietor of land bounded by a stream, the banks of which are changed by the gradual and imperceptible process of accretion or erosion, continues to hold to the stream as his boundary.").

When two upland owners lay claim to accreted lands, courts divide the lands equitably, giving each property owner a share of the new water line proportional to what they had before the accretion. *Johnston v. Jones*, 66 U.S. 209, 222-23 (1861). This process generally includes measuring the lengths of the original and new water lines and giving each owner a share of the new water line that was proportional to their share of the original. *Id.* at 223. If this process results in an unequitable distribution, however, the court may adopt another method to allow for a more "equitable and judicious" division. *Ibid.*

2. The petitioner Vernon Fiehler and the respondents Theodor and Catherine Mecklenburg own adjacent properties that were once homesteads. The properties share a boundary on their south and north edges, respectively, and abut tidewaters known as Tee Harbor on the eastern edge. The State of Alaska claims title to the submerged lands of this waterbody.

A federal surveyor surveyed Fiehler's and the Mecklenburgs' properties in 1938, marking the eastern edges with a meander line. App. 3a. Surveyors run meander lines "along or near the margin of such waters [] for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines." *Hardin v. Jordan*, 140 U.S. 371, 380 (1891). As this Court recognized in *Hardin*, both federal and state courts have frequently held that "meander lines are intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered, and that the waters themselves constitute the real boundary." *Ibid.*

Federal surveyors have relied on this fundamental understanding of a meander line for over a century. Dating back to 1855, the Bureau of Land Management has issued multiple versions of the *Manual of Surveying Instructions*. See U.S. Department of the Interior, Bureau of Land Management, *Manual of Surveying Instructions* § 1-11, at 4 (2009)<https://tinyurl.com/2009-Manual>. Each edition provides the instructions in force at the time a given survey was conducted. *Id.* § 1-2, at 2. In the 1855 version, the manual instructed surveyors to place "meander corners"—which consisted of posts or

mounds of earth or stone—at the intersection of the banks of a navigable stream with the township and section line. *Manual of Surveying Instructions*, at 13 (1855)< https://tinyurl.com/1855-Manual>.

When Fiehler's and the Mecklenburgs' properties were surveyed in 1938, federal surveyors followed the 1930 manual. Tr. 206, 246. Like the 1855 manual, this version required surveyors to meander navigable and tidally influenced waters. *Manual of Surveying Instructions*, § 197, at 182 (1930)<https://tinyurl.com/1930-Manual>. The 1930 manual also expressly recognized what this Court said in *Hardin* nearly 40 years prior—a meander line "is not a boundary in the usual sense." *Id.* § 512, at 335. Instead, because it was "the intention of the Government to convey title to the water's edge," the manual instructed that the water's edge, rather than the meander line, served as the actual boundary. *Ibid.*

Consistent with this approach, the 1930 manual also acknowledged that any location of the mean high water line was an approximation. *Manual of Surveying Instructions*, § 227, at 217 (1930)<https://tinyurl.com/1930-Manual>. For those waterbodies bound by sharply sloping lands, the survey manual instructed that "the horizontal distance between the margins of the various water elevations [would be] comparatively slight." *Ibid.* This meant the surveyor "[would] not experience much difficulty" in locating the mean high-water level with "*approximate accuracy*." *Ibid.* (emphasis added). In comparison, when a waterbody is bordered by relatively flat land making the horizontal distance between successive levels "relatively great," *ibid,* the surveyor's call would be more

difficult. In such situations, the manual suggested that the surveyor would "find the most reliable indication of mean high-water elevation in the evidence made by the water's actions at its various stages" and that this elevation "w[ould] be found at the margin of the area occupied by the water for the greater portion of each average year." *Ibid.* Although the manual suggested that "a definite escarpment in the soil w[ould] *generally* be traceable," *ibid.* (emphasis added), it also made clear that any location by a surveyor of the mean high-water line would be an approximation, *id.* § 229, at 218 (recognizing that a meander line does not represent the border line of the stream).

Relevant to the petitioner's arguments here, the 1930 manual also addressed the placement of meander corners when surveying property abutting tidally influenced waterways. It directed surveyors to place a meander corner at "every point where either standard, township or section lines intersect[ed] the bank of a navigable stream, or any meanderable body of water." *Manual of Surveying Instructions*, § 228, at 218 (1930)<https://tinyurl.com/1930-Manual>. For lands bordering tide waters, a surveyor could temporarily place a meander corner "with the margin of mean high tide," but the manual provided that "no monument should be placed in a position exposed to the beating of waves and action of ice in severe weather." *Ibid.* If a monument were too exposed, the manual directed a surveyor to place a witness corner on the line

surveyed, "at a secure point near the true point for the meander corner."[1] *Ibid.*

In the 1938 survey the surveyor placed a meander corner at the intersection of Tee Harbor with the line dividing the two properties. The surveyor's field notes describe the monument as "a brass cap" set "flush in cement in a boulder, 4x6x15ft., at the line of mean high tide" at the "meander cor[ner]" of the two lots. App. at 3a-4a.

3. This case is a property dispute between Fiehler and the Mecklenburgs, who acquired their respective properties well after the original survey. Each claims title to accreted land that lies seaward of the meander line established by the original 1938 survey.

The State of Alaska played a limited role in this litigation because neither party claimed title to the submerged lands below the current mean high tide line and, therefore, neither party claimed title to land owned by the State. App. at 5a, 44a.

The trial court held a two-day trial to resolve the dispute between Fiehler and the Mecklenburgs. The State did not participate in the trial.

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[1] The manual also explained that "[a] 'witness meander corner' will be established upon secure ground wherever the intersection of a surveyed line within the mean high-water elevation of a meanderable body of water falls at a point where the monument would be liable to destruction." *Manual of Surveying Instructions*, § 240, at 232 (1930)<https://tinyurl.com/1930-Manual>.

Both Fiehler and the Mecklenburgs relied on expert testimony from surveyors to dispute the meaning of the meander line marking the eastern portion of their respective properties. Fiehler's expert testified that the survey's meander corner marked the mean high-water line in 1938. App. at 51a. The surveyor reasoned "that the 1938 meander corner is the best available evidence" of the mean high tide line and that "this is the point from which the additional lands must be equitably divided." *Ibid.*

The Mecklenburgs' expert had a different view. Consistent with BLM's survey manual, the Mecklenburgs' expert testified that the 1938 meander line and meander corner did not represent the actual boundary of the Mecklenburg and Fiehler properties. App. at 47a-48a. He therefore opined that the meander corner was not the best evidence to determine the properties' boundary. *Id.* at 48a.

Following a long list of federal and state cases, the trial court "recognize[d] that the meander line established in the 1938 survey was not meant to be, and is not, an *exact* representation of the [mean high tide line] as it existed in 1938." App. at 52a. And in considering the federal surveyor's practice at the time, the trial court determined that when the surveyor wrote that he placed the meander corner "at" the mean high tide line, he set "the meander corner . . . along the meander line, [which] is a close approximation of the actual [mean high tide line]." App. at 53a. The trial court concluded that the actual boundary of the original conveyance had to be determined by locating the mean high tide line as it existed in 1938. *Ibid.* In making this determination, the trial court

weighed testimony and evidence presented, which included the 1938 federal survey's approximation of the mean high tide line (i.e., the meander line). *Id.* at 52a-55a. It found that the mean high tide line in 1938 was further seaward than the meander line depicted in the 1938 survey. *Id.* at 56a.

Once the property boundaries as they existed in 1938 were determined, the court equitably divided the accreted land between Fiehler and the Mecklenburgs. App. 56a-57a.

4. In a unanimous decision, the Alaska Supreme Court affirmed the trial court.

As it did in the trial court proceedings, the State of Alaska played a limited role in the appeal. App. at 11a. It responded only to Fiehler's argument that the court lacked subject matter jurisdiction. See App. at 10a-11a. The State argued that, to conclude the trial court lacked jurisdiction to set the location of the mean high water line as it existed in 1938, Fiehler's argument would require the court to hold that meander lines are conclusive evidence of property lines, a proposition that state and federal courts have repeatedly rejected. See *Hawkins v. Alaska Freight Lines, Inc.*, 410 P.2d 992, 994 n.5 (Alaska 1966) (citing cases).

The Alaska Supreme Court agreed with the State's position, App. at 11a-12a, concluding that the trial court correctly determined that meander lines and meander corners did not necessarily mark property lines, *id.* at 30a-31a. Indeed, the court recognized, state and federal courts have repeatedly

rejected finding meander lines to be dispositive evidence of property lines. *Id.* at 14a, 30a. The court also rejected Fiehler's argument that other cases supported the opposite conclusion. *Id.* at 21a. The cases Fiehler cited were either inapposite, explicitly state a meander line is not a boundary, or "involve[d] exceptions to the general rule that a meander line is not a property boundary." *Id.* at 21a-22a. For instance, two state courts concluded that when swamp lands are adjacent to a waterway, there is no definite shoreline, so the meander line, out of necessity, becomes the boundary line. *Id.* at 23a-25a (discussing *Brown v. Parker*, 86 N.W. 989 (Mich. 1901), *State v. Aucoin*, 20 So. 2d 136 (La. 1944)).

The Alaska Supreme Court then concluded that the trial court did not clearly err in locating the mean high tide line in 1938 at a location different than the meander corner. App. 31a-33a. The court recognized the judiciary lacks "the power to make and correct surveys," App. 11a (citing *Cragin v. Powell,* 128 U.S. 691 (1888)), but concluded that the trial court did not make or correct the survey at issue in this case, App. 12a. Rather, the trial court "had to reconcile [] conflicting calls" in the survey and survey notes. *Id*. at 27a-30a. Although the surveyor indicated that he placed the meander corner "at" the mean high tide line, *id*. at 4a, he also demonstrated a clear intent to use the actual boundary of the watercourse as the properties' boundary, *id.* at 28a. Finding no clear error in the trial court's findings, the Alaska Supreme Court affirmed. *Id.* at 31a-33a.

In his petition, Fiehler argues that the Alaska courts erred in going beyond the survey to locate the

mean high water mark. He appears to argue that as a matter of law, survey monuments placed on meander lines should be dispositive evidence of property lines (notwithstanding over a century of precedent, custom, and expectations saying otherwise). Pet. at 13-22. And he argues that even if survey markers are not always markers of property boundaries, the Alaska courts erred here given the particular facts of this case, because in this case, the survey notes stated that the meander corner was placed *at* the mean high tide line. *Id.* at 18-19.

REASONS FOR DENYING THE PETITION

I. The lower courts are not split.

Contrary to the position taken in the petition, the lower courts are not split on the question presented. See Pet. at 13-17. And in fact, this Court's precedent supports the Alaska Supreme Court's decision.

This Court has held that, generally, "meander-lines . . . are run, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the faction, and which is to be paid for by the purchaser." *Schurmeir*, 74 U.S. at 286; see also *Hardin*, 140 U.S. at 380 (citing cases discussing that meander lines are made "for the purpose of ascertaining the exact quantity of the upland to be charged for," but that "the waters whose margins are thus meandered . . . constitute the real boundary"). And a meander corner is a point on a meander line. *Manual of Surveying Instructions*, § 228, at 218 (1930)<https://tinyurl.com/1930-Manual>.

This general rule does not mean, however, that meander lines (and meander corners) can never represent real property boundaries. The two cases that the petitioner cites show that, in specific circumstances (such as when a swamp abuts a lake), a meander line can represent a property line. But these cases also do not abrogate the general rule that meander lines are, generally, only an approximation of the property line. Nor is there any "tension" with this case and cases about the evidentiary weight of survey markers in land disputes that have nothing to do with meandered waters.

1. As the Alaska Supreme Court held, the Michigan Supreme Court's decision in *Brown v. Parker*, 86 N.W. 989 (1901), "has no application here." App. 25a. There, a group of hunters sought to hunt ducks on "wet and marshy land adjacent to Lake Erie." *Brown*, 86 N.W. at 989. The hunters claimed—despite the lands having been surveyed as uplands above the meander line—that the swamp lands were the submerged lands of Lake Erie, and they therefore had a public trust right of access. *Id.* at 989-90.

The factual difference between this case and *Brown* is legally significant. Unlike here, the question there was whether another party could challenge a landowner's claim to land *shoreward* of the meander line. This case, on the other hand, addresses how a trial court resolves a property owner's claim to *accreted* land *seaward* of the meander line. This distinction makes a difference because courts have historically held that a riparian property owner can lay claim to accreted land beyond the meander line,

but no court had ever held that a property owner's right to all property down to the meander line could ever be challenged. *Brown*, 86 N.W. at 990 ("We recall no case, however, that holds in express terms that title does not extend to meander lines.").

Given those facts, the Michigan Supreme Court reached the unremarkable conclusion that the meander lines controlled. *Brown*, 86 N.W. at 990-91. First, "there [wa]s no claim that the meander line was not designed to show the boundary of Lake Erie." *Id.* at 990. That is, there was no claim that Lake Erie extended beyond the meander line into the swamp and marsh lands. Second, the court found that it was "within the power of the federal government" to define the boundaries of what the State of Michigan would receive under the equal footing doctrine; "for otherwise the titles to land derived from the government would be subject to attack upon the ground that they were improperly or erroneously surveyed as land, when in real truth they were submerged lands . . . and already belonged to the state." *Id.*

The Michigan Supreme Court's decision, given the context, makes perfect sense. Recall that a meander line is run to determine the quantity of land paid for by the purchaser. *Schurmeir*, 74 U.S. at 286-87. What this means is that the property owner in *Brown* had paid for the "wet and marshy land" shoreward of the meander line. Allowing the hunters to later claim access to that land because it allegedly was the submerged land of Lake Erie would essentially allow the

hunters to lay claim to land already bought and paid for.[2]

The Michigan Supreme Court did not do what the petitioner now advocates for and hold that an upland property owner's claim is *limited* by the meander line, as evidenced by its later decision in *Hilt v. Weber*, 233 N.W. 159 (Mich. 1930). As the court explained in *Hilt*, swamp lands "were so wet that where they bordered on a lake or stream they frequently merged into it without a definite shore line." *Id* at 163. As such, in cases like *Brown*, "there was no other means of fixing the limits of the land," and "the meander line, of necessity, was held to be the boundary." *Ibid.* But for all other cases the general rule still controlled, and the general rule is that a "meander line was run to show substantially the number of acres to be paid for. It was not meant to be strictly accurate in depicting the precise sinuosities of the shore." *Ibid*. That general rule is no different than the rule the Alaska Supreme Court applied here. See App. at 14a ("Unlike proper boundaries, meander lines are run not as boundaries of the tract, but for the purpose of defining sinuosities of the banks of the stream." (cleaned up)).

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[2] Of course, a riparian owner risks losing land due to erosion. See *Stimson*, 223 U.S. at 624 (stating that a riparian owner holds to the stream despite accretion or erosion and "if his land is increased, he is not accountable for the gain, and if it is diminished he has no recourse for the loss."). But that is not what this case was about. *Brown* was about how to separate a lake from the indistinguishable swamp land that abutted the lake. In that case, relying on the meander line to determine the boundary makes sense.

2. For similar reasons, the Alaska Supreme Court is also not in direct conflict with the Supreme Court of Louisiana. Like the Michigan Supreme Court in *Brown*, the Louisiana court in *State v. Aucoin*, 20 So. 2d 136 (1944), addressed a dispute over the dividing line between swamp lands and an abutting lake. *Id.* at 138. There are two ways in which *Aucoin* is distinguishable from this case. First, the property owner in *Aucoin* claimed title to a now dried up lakebed that abutted his property. *Id.* at 140, 149. In Louisiana, "the riparian rights of an owner bordering upon a lake do not entitle him to become the owner of the bed of the lake by effect of it becoming dry." *Id.* at 149. Second, the meander line was the best evidence of the boundary because the court—like the Michigan court in *Brown*—had to determine where swamp land ended, and the lake began. See *id.* at 155 ("[The surveyor's] field notes show that the swampy conditions surrounding the lake made it impossible to meander the sinuosities of the mean high-water mark."). There is simply nothing within the Louisiana court's decision to suggest that it meant to deviate from this Court's precedent and adopt a bright line rule that meander lines serve as boundary lines in all contexts.

3. There is also no tension between the Alaska Supreme Court and other courts on the evidentiary weight of survey monuments. The petitioner cites a handful of cases that conclude that the physical markings of a surveyor—such as corners—should control over "other, less verifiable evidence of boundary lines." Pet. at 15-16. The petition makes an important concession, however; none of these cases "address[ed] meander lines that mark[ed] the boundary between water and land." *Id.* at 15. This is significant because

meander lines are unlike any other survey line: unlike proper boundaries, a meander line is not run as a boundary of the tract, but for the purpose of segregating navigable and other important waterbodies from the conveyance of public land. App. at 14a (discussing *Schurmeir*, 74 U.S. at 286-87); see also *Manual of Surveying Instructions*, § 512, at 335 (1930)<https://tinyurl.com/1930-Manual> (instructing that the waterbody, rather than the meander line, serves as the actual boundary). The meander line (and as such the meander corner) is therefore only a "close approximation" of where the actual boundary is located. App. at 49a; see also *Manual of Surveying Instructions*, § 227, at 217 (1930)<https://tinyurl.com/1930-Manual>. For this reason, the Alaska Supreme Court's analysis does not easily map on to the cases referenced by the petitioner and there is no tension between the decisions, much less any conflict.

The Alaska Supreme Court faithfully followed this Court's precedent. It recognized that a meander line (and therefore, a meander corner, which is a point on a meander line) are approximations of the mean high water line. It also recognized that the true property boundary is the mean high water line. Its decision does not conflict with the two state court cases cited by the petitioner, which, for distinct reasons not relevant here, held that the meander line represented the property line. And the court's decision does not conflict with the evidentiary weight courts give to physical survey monuments that have nothing to do with meander lines. No conflict warrants this Court's review.

II. The decision below correctly applied federal law.

The Court should also deny the petition because it need not intervene to micromanage the lower courts' application of the correct legal standard to factual findings.

The petition characterizes the Alaska Supreme Court's holding as allowing a state court to second guess a surveyor's monument marking a water boundary. Pet. at 17. That characterization is incomplete. It fails to acknowledge that, unlike all other corners and boundary lines in a survey, nothing required the surveyor to place the meander corner on the exact location of the water boundary. Indeed, all the relevant authority suggested the opposite; that it need only be a "close approximation." App at 14a; *Manual of Surveying Instructions*, § 227, at 217 (1930)<https://tinyurl.com/1930-Manual> (discussing situations where the surveyor would not have "much difficulty" in locating the mean high-water line with "approximate accuracy").

If the meander line is seen for what it truly is, it then follows that the Alaska Supreme Court faithfully applied this Court's holding in *Cragin*. The petitioner argues to the contrary, contending that to "credit 'extrinsic evidence' over boundaries that were explicitly identified in the original survey is too 'correct' a survey." Pet. at 19. That would be true if the court had relied on extrinsic evidence to challenge a proper boundary. Here though, the Alaska court properly interpreted the meander corner to be an approximation of the mean high water mark rather than a proper

boundary. App. at 8a, 52a-53a. The court therefore did not correct a survey when it determined the actual riparian boundary differed from the surveyor's approximation.[3] See App. at 28a.

The petitioner also errs in arguing (Pet. at 19) that the Alaska Supreme Court improperly relied on this Court's decision in *Schurmeir*, 74 U.S. at 272. There, like here, two private property owners disputed whether a federal grant extended to the edge of a river or whether it "stopped at the meander-posts and the described trees on the bank of the river." *Id.* at 284. Also, like the survey in this case, the surveyor's fieldnotes showed that he set the meander-post at the intersection of the township and section lines with "the left bank of the river." *Ibid.* In other words, the survey notes said that the meander post was placed *at* the bank of the water. Faced with circumstances similar to this case, this Court, like the Alaska Supreme Court here, held the property line extended beyond the "meander posts" to the river itself.

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[3] It is true that language in the trial court's decision suggested that the original survey had mislabeled a witness corner as a meander corner. App. 53a ("The Mecklenburgs assert that the 1938 meander corner is not truly accurate insofar as it does not accurately reflect where the [mean high water line] was in 1938"); 55a ("[T]hree of the four surveyors who have reviewed the 1938 survey agree that [the surveyor] was effectively mistaken when he labeled the meander corner as such instead of labeling it a witness corner."). The Alaska Supreme Court acknowledged this language but did not agree with Fiehler's contention that the trial court had "corrected" the survey. See App. 28a. Instead, the court concluded that the trial court properly located the true location of the mean high water line as it existed in 1938. *Ibid.*

Id. at 284, 286. The Alaska courts acted in line with this Court's decision in *Schurmeir*.

What the Alaska courts did here was apply settled caselaw regarding surveys and meander lines to a very specific set of facts. This is evident by the petitioner's last point of contention, which takes issue with how the lower courts "locat[ed] a historical waterline that no longer exists." Pet. at 21. The petitioner contends the Alaska Supreme Court erred in treating the monument as a call that conflicted with the surveyor's call that the boundary extended to the waterway and should have instead deferred to the surveyor's permanent brass marker because it was "certain, definite, permanent, and capable of visual identification." *Id.* at 22. To be sure, the brass monument marking the surveyor's meander corner was the best evidence of the location *of that meander corner and the meander line*, but the petitioner points to no authority that concludes the meander corner, under circumstances not involving swamp lands, was necessarily the best evidence of the actual property boundary. There was no dispute between the parties that the actual property boundary in 1938 was the mean high tide line. Pet. at 3. There was also no dispute between the parties' surveyors that data and historical aerial photos show the mean high tide line in 1938 as further seaward of the surveyor's meander corner. App. at 32a-33a. As such, the Alaska Supreme Court properly relied on the watercourse, as a natural monument, to resolve the conflicting call. *See* App. at 28a-29a.

Even assuming another trier-of-fact could have reached a different conclusion, this Court "does not

sit" as a court of "error-correction." *Halbert v. Michigan*, 545 U.S. 605, 611 (2005). The Alaska Supreme Court properly followed settled law, and this Court's review is therefore unwarranted.

III. The question presented does not warrant this Court's review.

1. It is the petitioner's position, not the Alaska Supreme Court's decision, that would "throw[] into doubt the boundaries of enormous amounts of land." See Pet. at 22. A riparian landowner's right to access the water to which his land abuts "is often the most valuable feature of his property." *Hughes*, 389 U.S. at 293-94. It is for that very reason federal and state courts have held steadfast in finding that the waterbody, and not the meander line, is the true boundary. It is also the reason that property owners, like Fiehler and the Mecklenburgs, are entitled to acquire any natural and gradual accretion formed along the shore. *Id.* at 293. "Any other rule would leave riparian owners continually in danger of losing access to water." *Ibid.* It is the petitioner's position that would throw into doubt the boundaries of land because riparian landowners who once thought they owned land to the waterbody would now be faced with litigation contending that their title instead ended at the meander line or meander corner.

2. The petitioner speculates that the Alaska Supreme Court's decision will open the door to burdensome litigation. See Pet. at 23. Even if the petitioner was correct that the Mecklenburgs' property boundary stopped at the meander corner, this dispute still likely would have resulted in litigation. Both upland

owners acknowledged that, wherever the original 1938 boundary was located, there was accreted land that had to be equitably divided between the lots. See Pet. at 9. Unless the parties could agree on how to divide the land, which seems unlikely given their history, this dispute, and others like it, are bound for litigation.

The petitioner also argues that this case warrants review because of the "numerous lower-court decisions involving similar disputes" and because there are "hundreds of thousands of permanent survey monuments." Pet. at 24. To be sure, a significant number of survey monuments exist in the United States. And some of those monuments mark meander corners. But it is simply unclear whether the Alaska Supreme Court's decision is going to create the type of chaos envisioned by the petitioner. The lower court decisions the petitioner points to as raising similar disputes are all at least 100 years old. See *ibid.* The most recent decision, *Kurth v. Le Jeune*, 269 P. 408, was decided by the Montana Supreme Court in 1928. Even assuming the Alaska Supreme Court somehow deviated from other state supreme courts, this Court would benefit from allowing this decision to percolate. First to see whether there is even an issue, and second to allow other lower courts the opportunity to consider the Alaska Supreme Court's reasoning.

3. This case also does not present an ideal vehicle to decide the question presented. It is unclear whether the location of the mean high tide line in 1938 is outcome determinative. See Pet. at 25. This case is ultimately about how to divide accreted lands between private property owners. As the petitioner

acknowledges, the division of accreted land is based in equity. *Id.* at 3 ("The parties agree that the respective property boundaries turn on the intersection of their shared property line with the location of the mean high tide line at the time of the 1938 federal survey, *together with a fair allocation of land subsequently exposed on the beach."* (Emphasis added)). As the trial court recognized, there are "various methods of apportionment that could be applied to equitably divide the additional lands between the Mecklenburgs and Fiehler." App. 56a.[4]

4. The petitioner is also wrong to suggest that the Alaska Supreme Court's decision could result in "any publicly surveyed land that borders a body of water" being subject to challenge. See Pet. at 26. At most, this decision is limited to disputes over the distribution of accreted land where there is evidence that the historic mean high water line differed from the record meander line.

The case is fact-bound and limited in its reach. Both experts agreed that historical tidal data put the 1938 mean high water line seaward of the surveyor's meander line and meander corner. App. 32a-33a. Had that evidence not existed, the trial court may have reached a different result. The petitioner's claims about the practical significance of this decision are

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[4] To the extent the petitioner contends the court's division was unequitable, see Pet. at 3 (stating that the beach provides the only practical means of access to the petitioner's home), he did not raise a lack of equity as an issue to the Alaska Supreme Court.

based in pure speculation. As such, the question presented does not warrant this Court's review.

CONCLUSION

For these reasons, the Court should deny the petition for a writ of certiorari.

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NOVEMBER 20, 2024