No. 23-1360

In the Supreme Court of the United States

VERNON FIEHLER, PETITIONER

v.

CATHERINE W. MECKLENBURG, ET AL.

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

BRIEF IN OPPOSITION

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
2000 Ave. of the Stars, Ste. 200N
Los Angeles, CA 90067

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Nicole Welindt
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Ave.
Palo Alto, CA 94301

Counsel for Respondent Catherine W. Mecklenburg

QUESTION PRESENTED

In the 1800s and early 1900s, federal surveyors divided the government's land into parcels. Ordinarily, surveyors' boundary lines are legally binding and not subject to revision based on extrinsic evidence. But when parcels bordered water, surveyors instead drew "meander lines"—estimates of the shoreline's location—to help the government estimate the size of the parcel and account for how much land it was selling. This Court's precedents establish that the actual shoreline, rather than a surveyor's meander line, is the parcel's legal boundary, *Railroad Co. v. Schurmeir*, 74 U.S. (7 Wall.) 272, 286-87 (1868), so a court's task in a dispute is to decide the location of the actual shoreline, not the meander line.

Here, Petitioner Vernon Fiehler claims the boundary between his and Respondent Catherine W. Mecklenburg's beachfront properties should be located based on a brass monument a federal surveyor placed on a meander line in 1938, even though both parties' experts determined the shoreline was in a different location. Fiehler points to lower court decisions holding that in the swampland context a meander line is the parcel's legal boundary. *Hilt v. Weber*, 233 N.W. 159, 163 (Mich. 1930). Acknowledging that narrow exception but finding it inapplicable here, where there is no swampland, the Alaska Supreme Court held that the property line had to be set based on where the actual shoreline stood in 1938. The Alaska high court reviewed and deferred to the trial court's findings.

The question presented is whether the Alaska courts clearly erred in locating the parties' property boundary consistent with both sides' experts' calculations of the shoreline in 1938.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioner's lists of the parties to the proceeding and directly related proceedings are complete and correct, except Respondent Anthony Mecklenburg passed away after the decision of the Alaska Supreme Court. Catherine W. Mecklenburg is thus the sole remaining Respondent, as she has advised the Court by letter, and she has updated the caption accordingly.

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INTRODUCTION

This case is a factbound property dispute satisfying none of the criteria for this Court's review. The Alaska courts correctly applied this Court's meander-line precedent and distinguished the decisions Petitioner Vernon Fiehler claims create a split. This Court has long held that when a federally conveyed homestead parcel borders a body of water, the parcel's boundary is the actual shoreline at the time of the survey, not the meander line, which is just the federal surveyor's estimate of the shoreline. *See Hardin v. Jordan*, 140 U.S. 371, 380-81 (1891). Here, the Alaska courts located the boundary dividing the parties' beachfront properties based on where both sides' experts determined the shoreline was in 1938, when the parcels were created. The courts credited that evidence over unquestioning adherence to a brass cap a federal surveyor placed based on a meander line. That decision was correct, and it aligns with how every other court has treated meander lines in similar cases.

In arguing otherwise, Fiehler misstates long-settled law. He conflates meander lines (which are surveyors' approximations) with true boundary lines (which are controlling no matter other evidence). To do that, he relies on two decisions in the distinct *swampland* context, which courts expressly recognize as different because swampland uniquely resists line-drawing between land and water. And he disregards the Alaska Supreme Court's discussion of that very distinction. Pet. 20. The Alaska courts correctly resolved the parties' factual dispute about where the shoreline was in 1938. What's more, Fiehler cannot point to any decision showing that the question presented is important or recurs. It isn't and doesn't,

because this Court's precedents have long made clear the evidentiary value that courts should afford meander lines. The Court should deny review.

1. Fiehler and Respondent Catherine W. Mecklenburg are neighbors on a harbor beach north of Juneau, Alaska. They (together with Catherine's late husband, Anthony Mecklenburg) have been engaged in a years-long disagreement over the boundary between their lands. Both parcels abut the same cove, and settled law reflects that the shoreline is the property boundary along that edge. *See Hardin*, 140 U.S. at 380-81. The parties agree that the disputed corner between their properties was where their shared property line met the edge of the water in 1938—that is, "the intersection of the shared property line and the mean high tide line in 1938." App. 5a. But the mean high tide line has shifted since 1938 as natural forces have expanded and reshaped the beach. *Id.* The parties agreed that the newly exposed land would be apportioned based on the "initial proportion of the beach." *Id.* Thus, the dispute at trial was where the mean high tide line was located in 1938. *Id.*

Fiehler and the Mecklenburgs offered competing evidence to locate the 1938 mean high tide line. Fiehler pointed to the brass cap monument that a federal surveyor had placed in 1938. App. 3a-4a, 6a. Federal surveyors marking plots for homestead distribution were responsible for walking the land and dividing it into parcels. *See* 43 U.S.C. §§ 751, 752. Generally, surveyors marked corners of the parcels that then marked the parcels' legal boundaries. *See id.* But where a parcel met water, surveyors instead marked a "meander line." *See Hardin*, 140 U.S. at 380. A meander line was not the true boundary—the boundary was the actual shoreline—but was used to

approximate the size of the parcel so the government could calculate the land's cost. *Id.* at 380-81. The government directed surveyors to place a physical structure, called a "meander corner," where the meander line, approximating the mean high water line, intersected with other boundaries. *See* U.S. Department of the Interior, *Manual of Instructions for the Survey of Public Lands of the United States* 216, 218 (1930) [hereinafter *1930 Surveying Instructions*]. Here, the surveyor who conducted the 1938 survey put a monument at the meander corner, which he stated was placed "at the line of mean high tide." App. 3a-4a. Fiehler's expert argued that this monument was the best evidence of where the mean high tide line stood in 1938. App. 6a.

The Mecklenburgs offered extensive competing evidence. Their expert opined that aerial surveys and tidal records were the best evidence of the 1938 mean high tide line. App. 5a. Taking historical tidal data and mapping it on a modern aerial survey, the expert "concluded that the mean high tide line was roughly 100 feet seaward of the meander corner monument." App. 5a-6a. That conclusion aligned with opinions of other surveyors. App. 6a. It was also consistent with testimony from *Fiehler's* expert, who admitted that "*his own calculations* of the mean high tide line in 1938 placed it substantially seaward of the meander corner marked on the survey." App. 7a (emphasis added). The Mecklenburgs' expert also explained why it made sense that the monument was not placed at the true boundary: The federal surveying manual stated that meander lines were not property boundaries, so surveyors knew they did not have to perfectly place monuments. App. 6a. It thus made sense that the surveyor did not record tidal observations that

would be necessary to perfectly place the monument at the mean high tide line. *Id.*

Weighing all the evidence, the Alaska trial court sided with the Mecklenburgs. App. 8a. The Alaska Supreme Court upheld that finding. App. 2a. To do so, the Alaska high court carefully applied settled legal principles, diligently following this Court's caselaw and the reasoning of other state high courts; evaluated the disputed facts; and located the boundary in the Mecklenburgs' favor. App. 10a-33a.

2. Fiehler nonetheless asks this Court to intervene. In his view, the Alaska Supreme Court erred by failing to treat the surveyor's brass cap as dispositive, to the exclusion of all other evidence. Pet. 12. He first asserts that the Alaska Supreme Court split from two other state high court decisions, which each involved a swampland exception to the general rule that meander lines are not property boundaries. Pet. 13-15. Fiehler also contends that the Alaska Supreme Court diverged from other decisions that treated monuments placed at proper corners as the best evidence of the property boundary—but he admits that those cases involved true boundary lines (and thus proper corners), not meander lines (and thus meander corners). Pet. 15-17. In Fiehler's telling, the Alaska Supreme Court erred because courts may weigh no extrinsic evidence beyond a meander corner monument. Pet. 12. Fiehler contends that the case is important because it will unsettle rules for property disputes and "open the door to burdensome litigation." Pet. 22-23. Fiehler has it exactly backwards: *his* approach would unsettle years of precedent, including this Court's.

a. The Alaska Supreme Court applied the correct law to reach the correct result. This Court has long

held that a meander line is not the legally controlling boundary—the boundary is the mean high tide line. *See Railroad Co. v. Schurmeir*, 74 U.S. (7 Wall.) 272, 286-87 (1868). The Alaska high court correctly applied those principles. App. 14a-15a. It explained that "[b]ecause a meander line does not control the location of the property boundary, a meander corner logically would not control the boundary either." App. 19a. "Fiehler's argument that courts must accept a meander corner monument as the only evidence of the location of the property boundary is contrary to this framework," App. 31a, because it suggests that the meander line is the controlling boundary. The proper analysis, in contrast, evaluates all the evidence to determine the actual location of the mean high tide line at the time of the survey. The brass cap was one piece of evidence, but it was not the exclusive evidence that the court could consider. Taken as a whole, the evidence supported locating the mean high tide line seaward of the monument. *See* App. 31a-33a. In fact, Fiehler's own expert testified that his calculations showed the mean high tide line was located beyond the monument. App. 7a.

b. There is no split. Courts universally recognize the general rule, grounded in this Court's precedents, that the legal boundary where property meets a body of water is not at the surveyor's approximation—the meander line—but rather at the actual shoreline. *See infra* pp. 21-23. The Alaska Supreme Court recognized and applied that general rule. App. 14a-15a.

Fiehler claims the Alaska Supreme Court split from the Michigan and Louisiana Supreme Courts by declining to treat the surveyor's meander corner monument as dispositive. Pet. 13-15. That's wrong. As the Alaska Supreme Court correctly recognized, the

Michigan and Louisiana cases involved an exception for swampland to the general rule that "meander lines do not control." App. 24a. When swampland borders a body of water, it's impossible to fix a definite shoreline because the swamp merges into the water without any clear boundary. *Id.* Courts thus treat a surveyor's meander line as dispositive in setting the boundary, because there's no better way to do it. App. 24a-25a. But it's undisputed that this case doesn't involve swampland. The Alaska Supreme Court thus correctly recognized that the swampland exception recognized by the Michigan and Louisiana Supreme Courts doesn't apply—without disagreeing with that exception.

Fiehler also argues that the Alaska Supreme Court's decision is in tension with decisions treating surveyors' monuments as controlling when they are placed on the true boundary line. Pet. 15-17. But once again, that's not this case. The monument here was placed at the intersection of the property boundary and the meander line, and a meander line is not a true boundary line. App. 14a-15a. The court didn't treat the brass cap as dispositive because this Court's precedents required it to locate the mean high tide line. App. 19a. The court did not address the weight the cap would have received if there were no water involved and the surveyor had been able to place the monument at the actual boundary, as in Fiehler's cases, because those questions aren't at issue here.

c. This case doesn't warrant review for any other reason, either. These issues rarely arise—indeed, the most recent case in either of Fiehler's (nonexistent) conflicts is over fifty years old. Pet. 13-17. Because there's no split, this petition ultimately seeks only clear error review of the Alaska courts' weighing of the

trial evidence. That wouldn't clarify the law (which doesn't need clarifying) for other litigants. And the State of Alaska—which has the greatest interest in minimizing property disputes among its residents—sided with the Mecklenburgs below. App. 11a.

The Court should deny review.

STATEMENT

A. Legal background on land surveying

This case concerns how much weight courts must afford estimates federal land surveyors made when marking boundaries between land and water for homesteads.

1. To encourage settlement across the country, the federal government in the 1800s began offering federal land to individuals for use as farmland. U.S. Department of the Interior, Bureau of Land Management, *History of Alaska Homesteading: The Last Chapter in America's Homestead Experience* 1-2 (2016), https://tinyurl.com/4j5wkkrf. This process, called "homesteading," allowed people to claim land, virtually for free, if they lived on the land and cultivated it. *Id.* Congress first extended homestead laws to Alaska in 1898. An Act Extending the Homestead Laws and Providing for Right of Way for Railroads in the District of Alaska, and for Other Purposes, Pub. L. No. 55-299, § 1, 30 Stat. 409, 409 (1898).

Surveyors divided federal land into individual parcels, which were generally rectangular. *See* An Act to Amend the Homestead Law in Its Application to Alaska, and for Other Purposes, Pub. L. No. 65-180, § 2, 40 Stat. 632, 633 (1918); 43 U.S.C. § 751a (extending "the system of public land surveys" to Alaska). The lands in Alaska were permitted to depart from this

rectangular system, however, "where, by reason of the local or topographic conditions, it is not feasible or economical." An Act to Authorize Departure from the Rectangular System of Surveys of Homestead Claims in Alaska, and for Other Purposes, Pub. L. No. 69-104, § 1, 44 Stat. 243, 243-44 (1926).

Federal surveyors divided the land using a grid system—they walked the land and marked corners of the grid. *See* 43 U.S.C. §§ 751, 752. Surveyors divided the public lands into townships, which were further divided into sections and subdivisions. *Id.* § 751. The corners marked by surveyors—and the straight lines run between those corners—created the boundaries of the parcels of land. *Id.*

This grid had legal significance. The "lines and boundaries" marked by surveyors formed the true boundaries of the land. *Cragin v. Powell*, 128 U.S. 691, 693, 698 (1888). That meant that even when a surveyor erred in marking the boundaries, such as setting up 5.5-mile parcels instead of 6-mile parcels, courts were not permitted to reset the boundaries. Rather, the Executive Branch has "the power to make and correct surveys of the public lands." *Id.* at 698-99.

2. a. Where the parcel was bounded on one side by a body of water, however, the surveying process was different. In that situation, surveyors ran "meander lines." *1930 Surveying Instructions*, *supra*, at 216. Surveyors set meander lines to estimate where the water started—the "mean highwater of a permanent natural body of water." U.S. Department of the Interior, Bureau of Land Management, *Glossaries of BLM Surveying and Mapping Terms* 39 (1980) [hereinafter *Glossaries of Surveying Terms*]; *1930 Surveying Instructions*, *supra*, at 216.

Where the meander lines intersected standard, township, or section lines, surveyors placed a meander corner, marked as "MC." *Glossaries of Surveying Terms*, *supra*, at 37-38; *see also 1930 Surveying Instructions*, *supra*, at 218, 240; 1 Joyce Palomar, Patton & Palomar on Land Titles § 116, Westlaw (3d ed., updated Sept. 2024). If surveyors were unable to place a meander corner—for example, because the monument would be destroyed by the tide or other natural causes, the surveyors instead placed a "witness corner" in a more stable location. *1930 Surveying Instructions*, *supra*, at 218, 234.

b. A meander line is not the legal boundary for the parcel. Where a parcel of land is bounded by water, it is "the waters themselves," and not the estimate provided by the meander line, that "constitute[s] the real boundary." *Hardin*, 140 U.S. at 380-81; *Schurmeir*, 74 U.S. at 286-87; *1930 Surveying Instructions*, *supra*, at 216. Meander lines were run to allow the government to ascertain "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*, 140 U.S. at 380. The federal government informed surveyors as much. It explained that "[n]umerous decisions in the United States Supreme Court and many of the State courts assert the principle that meander lines are not boundaries defining the area of ownership of tracts adjacent to waters." *1930 Surveying Instructions*, *supra*, at 216.

Meander corners, which are placed on the meander line, similarly do not reflect the legal boundary of the property, as this Court has made clear. *See Schurmeir*, 74 U.S. at 284-87; 11 C.J.S. *Boundaries* § 14, Westlaw (updated May 2024) ("A 'meander corner,' is not a fixed point for measurements, as are established

section corners and quarter corners, but a marker for courses."). Where parties disagreed whether a grant of land based on a federal patent extended to the channel of a river or "stopped at the meander-posts," this Court held that the grant of land extended beyond the meander posts to the channel of the river. *Schurmeir*, 74 U.S. at 284, 286-87.

c. There is an exception to the general rule that meander lines and corners do not form the boundary line in the context of swamp and marsh lands. Swamp and boggy land is "treated as land," not "as a body of water." *Niles v. Cedar Point Club*, 175 U.S. 300, 307-08 (1899). But swamp and marsh lands posed unique problems for surveyors. These lands are "so wet that where they bordered on a lake or stream they frequently merged into it without a definite shore line." *Hilt v. Weber*, 233 N.W. 159, 163 (Mich. 1930). Surveyors would find it "impossible" to mark the actual high water line, because surveyors were unable to go through the swamp to actually reach the shore. *State v. Aucoin*, 20 So. 2d 136, 155 (La. 1944). The lands were "impassable." *Niles*, 175 U.S. at 301. Given those unique circumstances, courts in swampland cases used the meander line as the legal boundary for the parcel. *Id.* at 306. This choice reflects the practical reality that "there was no other means of fixing the limits" of this kind of land. *Hilt*, 233 N.W. at 163.

3. The term "survey" refers both to this "process of recording observations, making measurements, and marking the boundaries of tracts of lands," and also to the resulting documentation. *Glossaries of Surveying and Terms*, *supra,* at 65. When used to refer to the documentation, the "survey" includes "[t]he plat and the field-note record of the observations, measurements, and monuments descriptive of the work

performed." *Id.* Field notes are the "official written record of the survey," which surveyors prepared by hand. *Id.* at 23. The "plat" is "the drawing" that the surveyor prepared, which includes the lines, their lengths, the boundaries, and descriptions. *Id.* at 49.

Where a line described in a survey actually "lies on the ground" poses a factual question. *United States v. State Investment Co.*, 264 U.S. 206, 211 (1924). Courts have adopted rules for how to weigh extrinsic evidence where there are inconsistencies between parts of a survey—for example, where there are inconsistencies between a reference to "a natural object" and the "distances" marked on the survey. *Newsom v. Pryor's Lessee*, 20 U.S. (7 Wheat.) 7, 9-10 (1822). In those circumstances, a call for a natural object, like a river or a tree, or for a fixed monument, controls over the distance marked. *See id.* at 10; *State Investment Co.*, 264 U.S. at 211-12.

B. Factual and procedural background

1. Fiehler and Catherine W. Mecklenburg are neighbors. App. 2a-4a.

Each neighbor's beachfront Alaskan property was initially a homestead. App. 2a-3a. A federal surveyor surveyed their parcels in 1938, and the survey was platted—drawn up—in 1939. App. 3a.

The surveyor placed a meander corner along the boundary between the neighbors' properties. *Id.* The surveyor marked the meander corner with a physical monument—a brass cap. App. 3a-4a. The surveyor's notes provided that the brass cap was "set 'flush in cement in a boulder … at the line of mean high tide'" at the "meander cor[ner]." *Id.* (alteration in original). The brass cap "is now at roughly ground level," because the boulder is no longer visible—it "must have

been buried by accreted sediment, eroded away, or sunken into the existing beach." App. 6a.

2. The neighbors ultimately disagreed about the location of the 1938 corner of their properties, which was relevant to dividing ownership of the newly exposed beachfront. App. 4a. In 2019, the Mecklenburgs sued to quiet title to the disputed land. *Id.* The issue at trial was how to determine the proper location of the corner of the properties near the meander corner. App. 5a. The parties agreed that the central dispute was how to identify the mean high tide line as it existed in 1938. *Id.*

At trial, both parties called surveyors to testify as expert witnesses. *Id.* The Mecklenburgs' expert opined that the best evidence of the 1938 mean high tide line involved aerial surveys and historical tidal records. *Id.* He opined that the meander corner monument did not best reflect the location of the 1938 mean high tide line because "the federal surveying manual governing the original survey stated that meander lines were not the actual property boundaries and implied that surveyors should therefore not take pains to perfectly place monuments used to mark meander lines," among other reasons. App. 6a.

Fiehler's expert disagreed. He opined that the meander corner monument provided the best evidence of the 1938 mean high tide line. *Id.* In his opinion, the notes describing the monument at the mean high tide line, and the fact that the surveyor set a meander corner and not a witness corner, supported that the meander corner was in fact at the mean high tide line. App. 6a-7a. Fiehler's expert admitted, however, that "his own calculations of the mean high tide line in

1938 placed it substantially seaward of the meander corner marked on the survey." App. 7a.

3. The Alaska trial court ruled in favor of the Mecklenburgs. App. 8a. Because "meander lines are just approximations used to represent the waterlines," not actual boundaries, the meander corner just approximated the mean high tide line. *Id.* The court accordingly "turned to extrinsic evidence to determine where the mean high tide line actually was." *Id.*

The court concluded that the extrinsic evidence supported the Mecklenburgs. *Id.* Notably, *both parties'* experts' calculations located the mean high tide line substantially seaward of the monument, and other surveyors agreed with that assessment. *Id.*

The court thus adopted the Mecklenburgs' proposed order locating the 1938 mean high tide line roughly 100 feet seaward of the monument. App. 9a.

4. a. Fiehler appealed to the Alaska Supreme Court. *Id.* He argued that the trial court erred because it lacked "jurisdiction to locate the property boundary at the time of survey at any location other than the monument," and it was legal error to do so. App. 10a. He also argued that "the court clearly erred in determining as a factual matter the location of the mean high tide line in 1938." *Id.*

The State of Alaska participated "in limited capacity" in the Alaska Supreme Court. App. 11a. It supported the Mecklenburgs. *Id.* The state argued that "the court acted lawfully by recognizing that the true property boundary was the mean high tide line, not the monument, and then determining as a factual matter where the mean high tide line existed at the time of conveyance." *Id.*

b. The Alaska Supreme Court agreed with the Mecklenburgs and the state. App. 10a-33a. The court first assumed without deciding that it was bound by "federal limits on jurisdiction." App. 12a n.11. It concluded that federal limits on jurisdiction posed no barrier, however, because while a court's "jurisdiction to correct a survey is limited," the court below did not change or correct a survey. App. 11a-12a. The Alaska Supreme Court explained that there is a difference between a meander corner, which does not mark the boundary, and a proper corner, which does. App. 18a. A court may not "determine[e] that the property boundary is somewhere other than the location of the proper corner." *Id.* But a court does not impermissibly "correct" a federal survey when it "determin[es] that the boundary is located at the actual waterline rather than the location of the meander corner monument," because that determination faithfully implements the survey. *Id.* Thus, the court concluded, "[a] court does not exceed its jurisdiction by determining that a property's boundary extends beyond the meander posts or monuments to the waterline." App. 27a.

In reaching these conclusions, the court distinguished several cases Fiehler cited in support of his argument that a court must treat the meander line on a survey as the legally controlling boundary. The court explained that the meander line formed the boundary in two of the cases—*Brown v. Parker*, 86 N.W. 989 (Mich. 1901), and *Aucoin*—because the land in those cases was swampland, and swampland is subject to an exception to the general rule that meander lines are not the legal boundary. App. 23a-25a. Because that exception "does not apply to land that is not swamp land," the court explained, it "has no application here." App. 25a. And various other cases Fiehler cited were

likewise irrelevant, the court held, because they did "not involve meander corners or lines." App. 21a. Unlike other corners, "meander corners do not conclusively establish the location of property boundaries." App. 30a.

c. Finally, the Alaska Supreme Court concluded that the trial court did not err in evaluating the extrinsic evidence to determine the boundary. App. 30a-33a. Because the actual 1938 mean high tide line controls over the meander corner monument, the court needed to evaluate all the evidence of where the shore was located. App. 28a-30a. The court carefully considered each competing piece of evidence. App. 32a-33a. The surveyor's notes indicating that the monument was set at the line of mean high tide and the surveyor's use of witness corners in other locations supported Fiehler's argument that the monument was located at the 1938 mean high tide line. *Id.* But that evidence was outweighed by the evidence supporting the Mecklenburgs, which included expert testimony on how surveyors would have understood meander lines at the time, an aerial photograph from 1948, and *both* experts' agreement that mapping tidal data from 1938 onto aerial surveys "shows the waterline was likely substantially seaward of the monument in 1938." App. 32a-33a.

REASONS FOR DENYING THE PETITION

This case does not warrant review. The Alaska Supreme Court's decision was correct; Fiehler identifies no conflict among state high courts; and only *Fiehler's* arguments would upset the well-established legal rules and spark increased litigation.

First, the Alaska Supreme Court's decision was correct. It applied the controlling legal rule—in force

from the 1800s—that a meander line is not a boundary, and meander corners, set on those lines, are thus not boundaries either. Rather, the actual mean high tide line is the boundary. That means that a court follows a federal survey when it identifies where that water line was located. The Alaska Supreme Court properly looked to the extrinsic evidence of that boundary line and concluded that the trial court's weighing of the evidence was not clearly erroneous. Fiehler's contrary argument—that because the surveyor noted that the meander corner monument was placed at the mean high tide line the monument must be treated as a legally controlling boundary—contravenes settled precedent. By definition, surveyors tried to place meander corners at the mean high tide line. Nonetheless, those meander corners are not the legal boundary. And the Alaska courts properly considered the location of the meander corner as one piece of evidence indicating where the 1938 mean high tide line was located. They simply found that evidence outweighed by the competing evidence, which was supported by Fiehler's own expert.

Second, and for those very same reasons, there is no split here. This Court has long held that a meander line is not the parcel's boundary—the boundary is the mean high tide line. *See Schurmeir*, 74 U.S. at 286-87. State high courts, like the Alaska Supreme Court here, uniformly recognize and apply that rule. *See* App. 19a. The Louisiana and Michigan Supreme Court cases Fiehler cites, Pet. 13-15, do not conflict with the opinion below. As the Alaska Supreme Court explained, those cases apply a "special rule for swamp lands" that "does not apply here," because this case doesn't involve swampland. App. 23a-25a.

The monument cases Fiehler cites are equally irrelevant. Fiehler admits that those decisions "did not address meander lines." Pet. 15-16. Rather, those decisions involved monuments placed on the true boundary, which a meander line is not. At bottom, Fiehler fails to identify a single case where a state high court applied a different legal rule in an analogous context. The state high courts are not in conflict.

Third, this case does not warrant the Court's intervention, and nothing Fiehler says suggests otherwise. The Alaska Supreme Court properly applied controlling legal principles to conclude that while the meander corner monument was *relevant* evidence as to the mean high tide line in 1938, it was not *dispositive* evidence, and the trial court did not clearly err in finding it outweighed by the other evidence. The court's analysis turned on the unique facts set forth at trial, including testimony from both parties' experts that evidence supported that the 1938 mean high tide line was seaward of the monument.

Fiehler asserts that the decision below "throws into doubt" various property boundaries, because it will permit challenges to monuments as controlling boundaries. Pet. 22-23. Fiehler has it exactly backwards, because it is *his* approach that would unsettle the law. The Alaska Supreme Court opinion unsettles nothing; it applied longstanding legal principles in the context of a meander corner. And there is no reason to credit Fiehler's sky-is-falling argument, as there is no reason to think that there will be a flood of litigation. Even putting the novelty of Fiehler's approach aside, there were only a few thousand homesteads in Alaska, and there is no reason to think that those properties will have similar boundary disputes to the one here.

The State of Alaska certainly isn't worried—it sided with the Mecklenburgs below.

Finally, Fiehler suggests that the Court should call for the views of the Solicitor General. But the federal government has already agreed with the same legal principles the Alaska Supreme Court correctly applied here. There is no unresolved legal question or conflict, and no need for this Court's intervention.

I. The Alaska Supreme Court's decision is correct.

The Alaska Supreme Court correctly applied the governing legal rules. *See supra* pp. 8-10. *First*, it recognized that, under federal law, courts do not have the power to alter boundaries set in a federal survey. App. 11a-12a. *Second*, it recognized that where a parcel is bounded by water, the survey sets the water as the boundary, not the meander line. App. 12a-16a. *Third*, it recognized that because a meander corner is on the meander line, a meander corner does not inherently mark the boundary. App. 16a-19a.

Because it needed to locate the 1938 mean high tide line to locate the boundary, the Alaska Supreme Court evaluated the parties' trial evidence about where the mean high tide line stood in 1938. App. 27a-33a. It properly concluded that the trial court did not clearly err in weighing the evidence. *Id.*

The Alaska courts recognized and weighed the evidence that supported Fiehler's proposed location of the 1938 mean high tide line. App. 32a. "[T]he original surveyor's map and notes indicat[ing] that the monument was set at the line of mean high tide" were relevant pieces of evidence supporting Fiehler. *Id.* Additionally, the surveyor's designation of "witness corners" in other places "suggest[ed] that when the

surveyor did not set a witness corner, he placed the monument close to the actual waterline." *Id.*

But the courts correctly concluded that this evidence was outweighed by the evidence supporting the Mecklenburgs. *Id.* Most strikingly, Fiehler's expert *agreed* with the Mecklenburgs' expert "that mapping tidal data from 1938 onto the oldest available photograph of the beach—a 1948 aerial survey—shows the waterline was likely substantially seaward of the monument in 1938." App. 32a-33a. The Mecklenburgs' expert had taken "historical tidal data for the area, mapped it onto a modern aerial survey of the contested beach, and then adjusted for isostatic rebound (i.e., the general uplifting of ground due to glacial retreat) and sediment accretion." App. 5a. Those measurements located the mean high tide line "roughly 100 feet seaward of the meander corner monument." App. 5a-6a. And Fiehler's expert admitted that "his own calculations of the mean high tide line in 1938 placed it substantially seaward of the meander corner marked on the survey." App. 7a.

Other evidence, too, supported the Mecklenburgs. "[T]he 1948 aerial photo shows the water's edge a substantial distance away from the monument, supporting the expert's conclusion that when the monument was placed just ten years earlier, it was similarly far from the water's edge." App. 33a. And "other surveyors had also concluded that the mean high tide line was substantially seaward of the monument." App. 8a.

The Mecklenburgs' expert, a certified public surveyor and licensed Alaska surveyor, App. 47a, explained why it made sense that the surveyor had not placed the monument at precisely the mean high

tide line. He "testified that—given the surveying manuals in effect at the time—the surveyor's monument was not meant to represent the actual mean high tide line." App. 32a. The meander line was used to approximate acreage of the land so that the government could calculate the land's cost; it was not used to set the legal boundary of the parcel. *See supra* p. 9.

Taking all of this into account, the Alaska Supreme Court properly concluded that "the evidence supports the court's finding that the mean high tide line was roughly 100 feet seaward of the monument in 1938." App. 33a.

II. This case doesn't implicate any split.

A. As the Alaska Supreme Court explained (but Fiehler disregards), its decision does not conflict with Louisiana and Michigan Supreme Court decisions applying the swampland exception.

There is no split for the Court to resolve. The Supreme Courts of Alaska, Michigan, and Louisiana all agree that meander lines are not generally a parcel's legally controlling boundary. They further agree that there's an exception for swampland, because there's no way to come up with a better boundary than the meander line when swampland flows into water. But this case isn't about swampland, so the Alaska Supreme Court didn't apply that exception. In reaching its decision, the court distinguished, not rejected, swampland decisions from Michigan and Louisiana.

1. Courts apply the general rule that meander lines are not boundary lines.

a. The Court has long held that the property boundary where a parcel meets a body of water is the mean high tide line, not the meander line. *See Hardin*, 140 U.S. at 380-81; *Schurmeir*, 74 U.S. at 286-87. Following those decisions, the federal government instructed its surveyors that "meander lines are not boundaries defining the area of ownership of tracts adjacent to waters." *1930 Surveying Instructions*, *supra*, at 216. That is true even though meander corner monuments were directed to be placed at the mean high water line, and if they were not placed there, they were called witness corners instead. *Id.* at 216-18. Nonetheless, where the location of the meander corner monuments and the location of the shoreline differ, the shore controls. *See Schurmeir*, 74 U.S. at 284.

b. State high courts have consistently applied these rules. The Michigan Supreme Court, for example, has explained that monuments on meander lines are "used to fix the termini of the line which is described as following the sinuosities of the stream," not to stand as precise boundaries. *Grand Rapids Ice & Coal Co. v. South Grand Rapids Ice & Coal Co.*, 60 N.W. 681, 684 (Mich. 1894). In *Ladd v. Osborne*, 44 N.W. 235, 236 (Iowa 1890), similarly, the Iowa Supreme Court addressed a dispute over whether the proper boundary was the meander line or the lake shore. "The government plat and field-notes show[ed] that no reservation of land was made between the meandered line and the water's edge, but that the line intersected the lake." *Id.* Nonetheless, the court explained that the property "extends to the lake" because "[t]he meander line is not a line of boundary."

Id. And in *Everson v. City of Waseca*, 46 N.W. 405, 405 (Minn. 1890), the Minnesota Supreme Court explained that it is "well settled" that "the title of the purchaser from the general government extends to the meandered lake or stream, although the meander line of the survey be found to be not coincident with the shore."

The Wisconsin Supreme Court has addressed the issue specifically in the context of meander corners. In *Underwood v. Smith*, 85 N.W. 384, 386 (Wis. 1901), the defendants argued that the proper boundary line was on the "meander post." The Wisconsin Supreme Court rejected that argument, explaining that "[t]he lake … is the boundary, and not the meander line or meander post." *Id.* And it has applied this principle since: "The so-called meander corner is not a fixed point for measurements, as are established section corners and quarter corners, but is a marker for courses." *Thunder Lake Lumber Co. v. Carpenter*, 200 N.W. 302, 303 (Wis. 1924).

Similarly, in *Gardner v. Greene*, 271 N.W. 775, 776 (N.D. 1937), the North Dakota Supreme Court addressed the proper analysis for determining the boundary of lands where, as here, a meander line was marked and the shoreline had since shifted. The court held that the meander line did not mark the boundary; the actual shoreline at the time of the survey would control. *Id.* at 784.

c. Consistent with these decisions, the Michigan and Louisiana Supreme Courts apply the general rule that a meander line is not the true boundary line. The Michigan Supreme Court has explained that the blackletter rule is that a meander line "is not a boundary in law." *Hilt*, 233 N.W. at 161. The Louisiana

Supreme Court, too, has provided that "[t]he general rule is that meander lines purporting to represent the edge of a navigable stream or body of water are not to be regarded as boundary lines," and the survey "conveys title to the water line." *Land v. Brockett*, 110 So. 740, 742 (La. 1926).

2. Some courts treat meander lines as controlling when swampland borders open water because there's no mean high tide line.

The Michigan and Louisiana cases Fiehler claims (Pet. 13-15) conflict with the Alaska Supreme Court's decision below address swampland, a unique feature that requires a unique rule. The Alaska Supreme Court here explained that critical distinction, but Fiehler cursorily disregards it, Pet. 20.

In *Brown*, the Michigan Supreme Court addressed a boundary dispute related to lands conveyed under the state swamp land act. 86 N.W. at 989-90. The court concluded that "the survey by the government, and transfer to and sale by the state to the meander lines, as state swamp land, conclusively establish the boundaries of the lake, and that titles of abutting proprietors extend to them upon the presumption that must be conclusive, i. e. that when the meander lines were run they followed the true shore of the lake." *Id.* at 991.

The Michigan Supreme Court has since explained that *Brown* announces an exception unique to swampland, and does not disturb the general rule that meander lines are not controlling. While *Brown* looks to be in "apparent conflict" with the blackletter rule that meander lines are not boundaries, the difference lies in "the character of lands" *Brown* addressed. *Hilt*,

233 N.W. at 163. Swamplands are unique because they are "so wet that where they bordered on a lake or stream they frequently merged into it without a definite shore line." *Id.* Swamplands are thus subject to an exception to the general rule that meander lines are not boundaries: "As there [is] no other means of fixing the limits of the land, the meander line, of necessity, [is] held to be the boundary." *Id.* "On the basis of this distinction, the decisions of this court upon the effect of the line as a boundary are entirely harmonious." *Id.* On lands that are not swamplands, "the meander line has no force as a boundary." *Id.* at 161.

The Louisiana Supreme Court's decision in *Aucoin* is similar. There, the court needed "to locate and mark on the ground the traverse line of the lake according to the official plat and field notes of a survey." *Aucoin*, 20 So.2d at 138. The land was conveyed under a swampland grant. *Id.* Ultimately, the court concluded that the traverse line was the proper boundary line. *Id.* at 155. The court explained that swampland's unique conditions meant that a surveyor could not in fact locate the shore. *Id.* 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." *Id.* The surveyor referred to "the impossibility of reaching the lake shore." *Id.* As the Alaska Supreme Court explained, the Louisiana Supreme Court thus "held that under these circumstances—specifically, swampy lands that were indistinguishable from the lake—the patent was intended to convey only the land within the meander line." App. 25a.

3. The land here is not swampland, so the Alaska Supreme Court applied the general rule, not the exception.

The Alaska Supreme Court's decision below is consistent with *Brown* and *Aucoin*. The court applied the general rule drawn from this Court's cases, explaining that "[b]ecause a meander line does not control the location of the property boundary, a meander corner logically would not control the boundary either." App. 19a. It thus declined to treat the surveyor's monument as dispositive because that marker was placed at the meander corner, not the legal boundary. App. 20a. And the court concluded that the evidence supported the trial court's location of the 1938 mean high tide line, and thus affirmed. App. 33a.

In reaching those conclusions, the court expressly considered and distinguished *Brown* and *Aucoin*. App. 23a-25a. It explained that the Michigan and Louisiana Supreme Court's holdings arose in the context of swampland, where courts treat the meander line as controlling because there's no better approach for locating the boundary. *Id.* It then declined to apply those cases here, because this case doesn't involve swampland. The court did not disagree with anything *Brown* or *Aucoin* said, much less reach a result incompatible with the law applied by the Michigan and Louisiana Supreme Courts.

B. The other decisions Fiehler cites create no tension, because they did not evaluate extrinsic evidence in the context of meander lines or meander corners.

The Alaska Supreme Court didn't split from any of the other decisions Fiehler cites, either. Those decisions address how much weight to give a surveyor's

monument where the surveyor placed the monument on the legally controlling boundary line. But here, the surveyor put his monument at a meander corner. The Alaska Supreme Court's decision not to treat the surveyor's monument as controlling when it was a mere estimate of the property boundary does not conflict with decisions assigning greater weight to monuments delineating the legally controlling boundary.

1. As noted (at 8), when no bodies of water are involved, surveyors placed monuments at the actual boundary of the parcel. *See* 43 U.S.C. § 752. When the boundary between parcels is dry land, the surveyor can walk the land and place a monument at the corner forming the true boundary. *See 1930 Surveying Instructions*, *supra*, at 25, 223-24. That means that the monument reflects the legally controlling boundary of the land unless it was moved.

But the monument does not reflect the true boundary in the meander context. All parties agree that the true location of the disputed property corner was the actual 1938 mean high tide line. *See* Pet. 20. The federal government told surveyors to place the meander corner at the mean high tide line, *1930 Surveying Instructions*, *supra*, at 218, just as the surveyor indicated that he did here, App. 3a-4a. Nonetheless, this Court, state high courts, and the federal government have all recognized that the meander is not the true boundary line. *See supra* pp. 21-23; *infra* pp. 32-33. While the meander corner thus may be evidence—sometimes very good evidence—of where the mean high tide line was located, that doesn't alter the fact that the true boundary set by law is the mean high tide line, or require courts to ignore compelling evidence that the mean high tide line was somewhere

other than where the surveyor's monument was placed.

2. Fiehler claims the Alaska Supreme Court's decision not to treat the monument as controlling is "irreconcilable" with a spate of other cases. Pet. 15. But he admits that the cases he cites "did not address meander lines." Pet. 15-16. Rather, those cases involved how much weight to give a monument when it was placed on the land boundary between two parcels. *See Arneson v. Spawn*, 49 N.W. 1066, 1069 (S.D. 1891) (if the mound marked the "true corner," then it "determined the boundary line"); *United States v. Doyle*, 468 F.2d 633, 636-38 (10th Cir. 1972) ("the actual location of a disputed boundary line is a question of fact," and the district court properly considered the disputed collateral evidence to determine that the corner was "lost"); *Henrie v. Hyer*, 70 P.2d 154, 157 (Utah 1937) ("the original corners as established by the government surveyors, if they can be found, or the places where they were originally established, if that can be definitely determined, are conclusive," and surveyors "may consider extrinsic and material evidence" in trying to locate lost corners); *Sala v. Crane*, 221 P. 556, 559 (Idaho 1923) ("the monumented corners shown on the plat should prevail"); *Langle v. Brauch*, 185 N.W. 28, 29 (Iowa 1921) ("If these [true boundary] lines can be ascertained and determined by reason of monuments erected by the government surveyor, they will control … ."); *Hickey v. Daniel*, 195 P. 812, 814 (Or. 1921) ("[I]n establishing a boundary line monuments control courses and distance."); *Thompson v. Darr*, 298 S.W. 1, 3 (Ark. 1927) (holding that the fixed monuments at the corners controlled the true boundary line); *Kurth v. Le Jeune*, 269 P. 408, 411 (Mont. 1928) (the monuments placed at the boundary controlled

over inconsistent measurements of "lines, angles, or surfaces"); *Davies v. Craig*, 201 P. 56, 58-59 (Colo. 1921) (holding that the corner monument marked the true boundary, not the field notes); *Myrick v. Peet*, 180 P. 574, 579 (Mont. 1919) (the corner monuments "were in place and identified by plaintiff's witnesses as such," and thus control); *Beardsley v. Crane*, 54 N.W. 740, 741 (Minn. 1893) ("The true corner is where the United States surveyors in fact established it, whether such location is right or wrong, as may be shown by a subsequent survey.").

That distinction is critical, and it dispels Fiehler's claimed "tension," Pet. 3-4, between his cases and the Alaska Supreme Court's decision below. As the Alaska Supreme Court explained, the true legal boundary—the mean high tide line—controls over the artificial monument, so the trial court had to evaluate extrinsic evidence and determine where the mean high tide line had been located. App. 28a-30a. The meander corner monument was not controlling, because "meander corners do not conclusively establish the location of property boundaries." App. 30a-31a. The court explained that Fiehler's argument that the meander corner monument must be treated as the boundary "is contrary to this framework." App. 31a. The proper framework was to consider the monument as one piece of evidence relevant to locating the 1938 mean high tide line. *See* App. 30a-33a. The court didn't reject Fiehler's non-meander monument cases—it just concluded they didn't apply in this factually and legally distinct meander case.

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

A. The question presented is not important.

The issues presented in this case rarely arise, the legal principles are clear, and the evidentiary dispute is factbound.

1. The issues presented here rarely arise. The most recent state high court case that Fiehler cites applying the unique exception for swampland arose 80 years ago. *See Aucoin*, 20 So. 2d at 136. And the most recent decision that he cites evaluating evidence of monuments on proper corners was issued in 1972. *See Doyle*, 468 F.2d at 633. Fiehler has not pointed to a case in the past fifty years even supposedly in "tension" with the opinion here.

It makes sense that these cases so rarely arise: Courts apply the governing legal principles consistently. *See supra* pp. 21-23. Different outcomes result from the different facts and contexts, not any confusion about the relevant legal rules. *See supra* pp. 23-28. Moreover, most major title disputes about homestead parcels would have been raised and settled long ago, making these issues stale by decades.

2. For these same reasons, this Court's review would not assist the lower courts. Because the lower courts agree on the legal framework for resolving this kind of boundary dispute, all that's left in this case is a factbound disagreement about whether the Alaska state trial court correctly weighed the competing evidence offered at trial about where the mean high tide line sat in 1938. Applying clear error review to a dispute about shifting tides in a cove in Alaska could potentially be significant to these two parties, but not anyone else.

3. What's more, it's not even clear that the Court's resolution of this issue would matter in *this* case. The Alaska Supreme Court reserved the question whether state law or federal law governs the boundary at issue. App. 12a. In the Alaska Supreme Court, Fiehler acknowledged that the disputed lands "were tidelands in 1938." Appellant's Reply Brief at 11, *Fiehler v. Mecklenburg*, 538 P.3d 706 (Alaska 2023) (No. S-18208). And "[r]ights and interests in the tideland, which is subject to the sovereignty of the state, are matters of local law." *Borax Consolidated, Ltd. v. City of Los Angeles*, 296 U.S. 10, 22 (1935). Thus, the Alaska Supreme Court on remand could conclude that state law governs, in which case the question presented would be moot.

B. Fiehler's counterarguments are meritless.

1. Fiehler asserts that the Alaska Supreme Court's rule creates uncertainty and will lead to a flood of lawsuits. It's the other way around.

The Alaska Supreme Court applied blackletter principles on the distinction between meander lines and boundary lines. It is Fiehler's rule—which would treat a meander corner as a legally controlling boundary—that threatens to unsettle over a hundred years of precedent. *See supra* pp. 8-10. The federal government instructed surveyors that "meander lines are not boundaries defining the area of ownership of tracts adjacent to waters." *1930 Surveying Instructions*, *supra*, at 216. To change the law now, and treat meander corners as the true boundary, would be inconsistent with what federal surveyors at the time understood their goals related to meandering and setting meander corners to be. It would also upend settled

expectations of landowners, who had every reason to believe that the meander corners did not define the boundary of their land—the water did.

Fiehler can't show there will be an increase in "burdensome litigation," because none of the purportedly "similar" cases he cites are actually similar to this case. In three of the four, as discussed (at 27-28), the monument marked the true boundary. *See Kurth*, 269 P. at 411; *Davies*, 201 P. at 58-59; *Beardsley*, 54 N.W. at 741. And the last case doesn't help Fiehler, either. There, the government's survey prevailed, setting the boundary at a shoreline, even though a competing survey located a post the later surveyor believed to be described in the field notes. *Brown v. Milliman*, 78 N.W. 785, 787-88 (Mich. 1899); *see Barringer v. Davis*, 120 N.W. 65, 70 (Iowa 1909) (citing *Milliman* as holding that "the lake shore must be recognized as a monument fixing the boundary").

What's more, it's not clear why Fiehler thinks cases like these will arise from the Alaska Supreme Court's decision. Other state high courts, like Wisconsin and North Dakota, have long employed the same reasoning that the Alaska Supreme Court applied here. *See supra* pp. 21-22. Yet Fiehler has not pointed to any grave uncertainty or ongoing issues in those states.

2. Fiehler also disagrees with how the courts below evaluated the extrinsic evidence of the true boundary. Pet. 21-22. But that kind of factbound determination, to which courts extend great deference, *State Investment Co.*, 264 U.S. at 211, doesn't warrant review. The Court's analysis of the unique extrinsic evidence presented at trial would be of little value to

future cases that have entirely different surveys, land conditions, and expert and witness testimony.

3. Fiehler suggests that the decision below could harm landowners in Alaska because much of that state's land was originally owned by the federal government. Pet. 23. All indicators suggest otherwise.

First, the State of Alaska, which has a significant interest in property disputes within its borders, sided with the Mecklenburgs below. The state argued that "the court acted lawfully by recognizing that the true property boundary was the mean high tide line, not the monument, and then determining as a factual matter where the mean high tide line existed at the time of conveyance." App. 11a. There is no reason to think that the decision below will cause a deluge of cases, and the state didn't raise any such concern. Indeed, Fiehler has pointed to no similar boundary dispute that has reached the Alaska Supreme Court in the past century.

Second, despite Alaska's vast amounts of land, only several thousand people received homestead lands in Alaska. *History of Alaska Homesteading*, *supra*, at 7. And the longstanding rules applied in this case are relevant only when a parcel meets a body of water—not the case for many homesteads.

4. Finally, Fiehler argues that the case presents "obvious federal interest[s]," so the Court "may wish" to call for the views of the Solicitor General. Pet. 25. That would be wasteful effort. There is no need to invite the views of the Solicitor General in response to this splitless, factbound case applying long-established legal principles.

What's more, the federal government, including the Solicitor General, has already endorsed the

controlling rule. In *United States v. 100 Acres of Land*, 468 F.2d 1261, 1264 n.1 (9th Cir. 1972), the government stated that "[i]t is undisputed that the actual mean high tide line is the boundary if there were a difference between the survey meander line and the actual mean high tide line." And before this Court, the Solicitor General has explained "that the water course itself, rather than the surveyor's meander lines, normally defines the riparian boundary of a fractional lot." Petition for Writ of Certiorari at 18 n.9 (citing *Schurmeir*, 74 U.S. at 286-87), *United States v. Koch*, No. 95-253 (U.S.), *cert. denied*, 516 U.S. 915 (1995). Here, too, the actual mean high tide line in 1938 controls, not the meander corner. There is no reason to think that the government's position will have changed and no reason to cause further delay here.

CONCLUSION

The petition should be denied.

Respectfully submitted.

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
2000 Ave. of the Stars, Ste. 200N
Los Angeles, CA 90067

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Nicole Welindt
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Ave.
Palo Alto, CA 94301

Counsel for Respondent Catherine W. Mecklenburg

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