

Monumental SCOTUS Ruling Has Potential to Alter Legal and Regulatory Regimes in Eastern Oklahoma and Western Arkansas

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Yesterday, the United States Supreme Court clouded the jurisdiction of the entire eastern half of Oklahoma in [McGirt v. Oklahoma](#), including the state's power to enforce laws within the City of Tulsa, by holding that certain Native American lands established by Congress would remain subject to Native American control "in perpetuity" absent Congressional action. No. 18-9526, 591 U.S. — (2020) (slip op., at 42)). The Court adopted the same reasoning in a companion case (*Sharp v. Murphy*, No. 17-1107, 591 U.S. — (July 9, 2020) (slip op.) (per curiam)), applying the same outcome to an individual of a different Oklahoma tribe convicted of murder. The implications of these holdings could have far reaching consequences for Oklahoma and western Arkansas.

The *McGirt* case centered on McGirt's sentence imposed by state law. He was found guilty of raping a minor under state law by an Oklahoma jury. McGirt, however, is a member of the Seminole Nation of Oklahoma and allegedly committed the crime on land reserved by Congress for the Creek Nation. Federal law prohibits state governments from pursuing criminal charges against Native Americans for crimes committed on tribal lands, so McGirt pursued this argument through his post-conviction relief appeals. The Supreme Court held that since McGirt committed the crime on Native American lands (within Oklahoma) and is a Native American, Oklahoma lacked the jurisdiction to convict him of a crime.

After evaluating the text of the relevant treaties, acts of Congress, and the historical treatment of the Creek Nation by Oklahoma, the Court held that since Congress had never clearly disestablished the Creek reservation, it did not have the power to shift tribal jurisdiction over those lands to Oklahoma because "Congress has never withdrawn the promised reservation." *McGirt*, Slip Op. at 42. The majority explained that because the "Creek were promised [a] 'permanent home' that would be 'forever set apart,'" the tribe was "assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State." *Id.* at 21. It was not persuaded by Oklahoma's arguments that over a century had passed since the Creek had exercised real control over the large geographic area, and noted:

[M]any of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.

Id. at 42.

While the case is a watershed moment for Native Americans, it has the potential to impact nearly every facet of life in eastern Oklahoma - as well as Arkansas's legal and regulatory relationship with the area - because the opinions speak in terms of broad tribal jurisdiction over the entire geographical area of the "Five Civilized Tribe" reservations within Oklahoma: the Creek, Cherokee, Chickasaw, Choctaw, and Seminole. Much remains to be seen, but the case appears to potentially impact water rights, environmental law, oil and gas regulation, the Ouachita National Forest, state parks, hunting and fishing, and basic infrastructure, among a wide variety of other areas of law.

The Court recognized that the consequences of its holding could be far-reaching beyond the criminal context but argued that "the magnitude of a legal wrong is no reason to perpetuate it." *Id.* at 38. It noted that the case could impact a variety of civil and regulatory matters (such as mineral ownership, federal civil rights, eligibility for assistance with homeland security, historical preservation, school funding, primary care clinics, housing assistance, nutritional programs, and disability programs) but merely stated that "[s]ome may find developments like these unwelcome, but from what we are told others may celebrate them... [and] it is unclear why pessimism should rule the day. With the passage of time, Oklahoma and its Tribes have proven they can work successfully together as partners." *Id.* at 40. The dissent expressed frustration that the case would impact regulation over 19 million acres of land and 1.8 million people, "creat[ing] significant uncertainty for the State's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and environmental law." *McGirt*, 591 U.S. at – (slip op., at 2) (Roberts, C.J., dissenting).

Keep an eye on this issue. This is only the beginning. Legislatures, courts, and government entities will grapple with the impact for years, particularly those in Tulsa and Northwest Arkansas.