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McGirt: A Supreme Court Trainwreck

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October 14, 2020



Member

LexMundi
World Ready

Case History

- A. McGirt is a member of the Seminole Nation
- B. McGirt was convicted of three serious sexual offenses in the state district court of Wagoner County in 2000
 - The offenses occurred on non-tribal land but within an area allotted to the Creek Tribe
 - McGirt was sentenced to 1,000 years plus life imprisonment
- C. After the Supreme Court granted certiorari in *Murphy*, McGirt sought relief arguing Oklahoma courts lacked jurisdiction
 - The Tenth Circuit in *Murphy* held that former Creek Nation allotment lands were a “reservation” that was never disestablished by Congress



Petitioner Arguments

A. Congress Alone Can Disestablish Reservation Status

B. Statutory Language

- Required hallmark language of disestablishment not present

C. Congressional Actions

- Congress retreated from cession plan
- Allotment consistent with continued reservation status



Arguments Opposing Petitioner

EFO

- A. Civil Jurisdiction Disruption
- B. Congress Declared Intent to Divest Creek Nation of Certain Authority Over Tribal Lands and Vest that Authority in State of Oklahoma
 - Series of statutes
 - *Murphy* wrongly decided
- C. U.S., Creek Nation, and Others Believed Creek Territory No Longer a Reservation

State of Oklahoma

- A. Creek Nation Land was Never a Reservation
 - Dependent Indian Community
- B. Jurisdictional Statutes
- C. Congress Divested the Tribe of Its Interests in the Land
 - Series of statutes
 - Understanding of U.S. and Tribes



Justice Gorsuch's Majority Opinion

- A. The land Reserved to Creek Nation remains “Indian country”
- B. Lands established as a Reservation
- C. No statute meets the requirement of clearly expressing congress' intent to disestablish the reservation
 - Must explicitly reference cession or total surrender of all tribal interests
 - No statutory ambiguity requires analyzing extratextual sources
- D. The “scope of the dispute is limited”
 - “[N]othing we might say today could unsettle Oklahoma’s authority to try non-Indians for crimes against non-Indians on the lands in question”
 - “Oklahoma and its Tribes have proven they can work successfully together as partners”



Chief Justice Roberts' Dissent

A. The land is not a Creek Indian Reservation

B. Congress disestablished the reservation in a series of statutes

- Determine Congressional intent by examining relevant Acts of Congress and all surrounding circumstances including contemporaneous and subsequent understanding
- Congress established uniform legal system for all citizens; dismantled Creek government; extinguished Creek Nation's title to lands at issue; and incorporated Creek members into the State of Oklahoma
- Actions, both contemporaneous and subsequent, of the Tribe, State of Oklahoma, and U.S. confirms that the Creek reservation was disestablished

C. “[T]he decision may destabilize the governance of vast swathes of Oklahoma”



Questions





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