# McGirt: A Supreme Court Trainwreck

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- 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

## **Case History**



## **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**

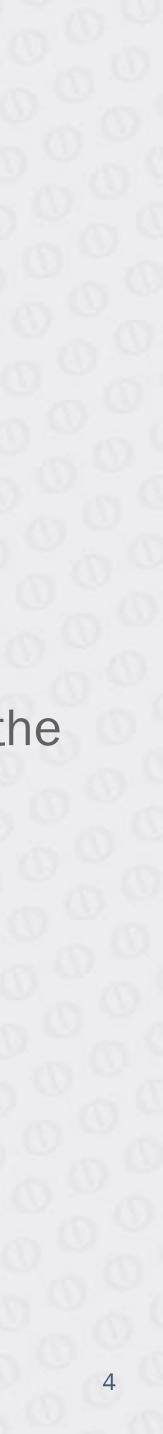
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### A. Civil Jurisdiction Disruption

- 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"





A. The land is not a Creek Indian Reservation В. 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

### **Chief Justice Roberts' Dissent**

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

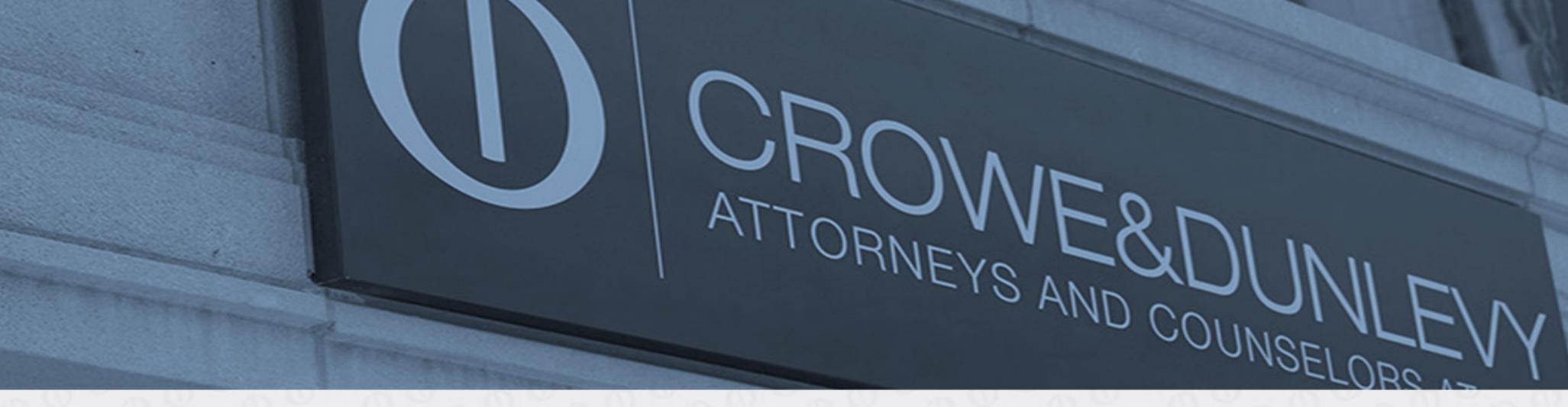






# Questions





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