



Presented by: Donald K. Shandy





Level Set

A. Murphy Case (U.S. Supreme Court)

Justice Gorsuch recuses

4 – 4 Deadlock

Broad implications of the Creek Nation's case were clearly discussed during oral arguments

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Level Set (cont.) B. McGirt case (U.S. Supreme Court)

- court)
- Justice Gorsuch participated and wrote opinion for majority
- Major Crimes Act.

Different crime but similar fact situation (Tribal member convicted in state

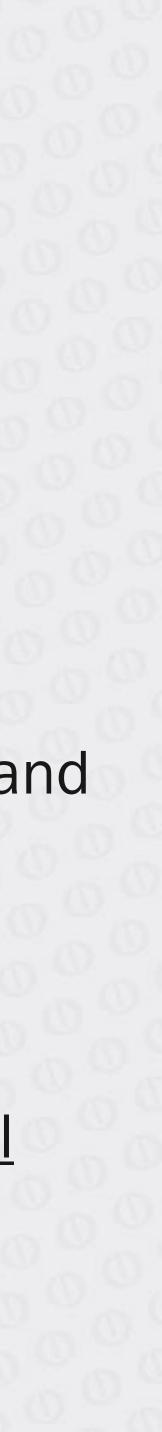
Held that McGirt matter should have proceeded in federal court pursuant to the





Level Set (cont.) B. McGirt case (U.S. Supreme Court) (cont.)

- Held that the Creek "reservation" was never disestablished
- Expansive application to five tribes Creek, Cherokee, Choctaw, Seminole and Chickasaw
- Very strong dissent from Chief Justice Roberts
- Two million Oklahomans are impacted at least 90% of which are not tribal members



McGirt Update I. Implications of McGirt A. Chaos has resulted in the area of both criminal and civil law No state/tribal progress on "compacts"

jurisdiction over environmental programs

2005

- B. Oklahoma Department of Environmental Quality received approval from Trump EPA (per existing statutory authority) retaining state-wide
 - Tribes recently sent a letter to Biden Administration seeking further consultation
 - The major impediment to the tribes is that DEQ jurisdiction is vested by statute (Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). Public Law 109-59, 199 Stat. 1144, August 10,

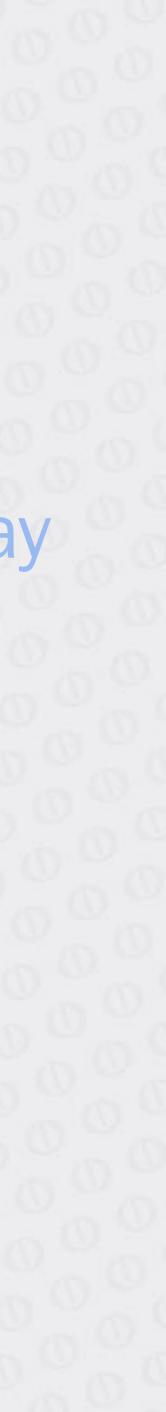


II. Implications of McGirt (cont.)

- C. Tribal members (exact number is unknown) have refused to pay (or protested payment) of state taxes
- **D.** Title Insurance Exclusions in reservation areas
- E. Oneta Power case Wagoner County District Court

McGirt Update





III. Recent National Media Coverage

- A. "Complete, dysfunctional chaos: Oklahoma reels after Supreme Court ruling on Indian tribes", Washington Post, July 24, 2021
- B. "Justice Gorsuch Tears Up Oklahoma", The Editorial Board of the Wall Street Journal, September 8, 2021
- C. Question Will this kind of coverage impact capital investment in Oklahoma business and industry?





IV. Recent action from the State of Oklahoma A. State of Oklahoma v. Victor Manuel Castro-Huerta

- Facts
 - was Indian.
 - imprisonment.

Petition for Writ of Certiorari to U.S. Supreme Court (filed September, 2021)

- Defendant is a non-Indian. Horribly abused five-year-old stepdaughter who

- Charged and convicted in state court and sentenced to 35 years



IV.Recent action from the State of Oklahoma (cont.)

- A. State of Oklahoma v. Victor Manuel Castro-Huerta (cont.)
 - On Appeal, the Oklahoma Court of Criminal Appeals expanded McGirt saying the federal government has exclusive (not concurrent) jurisdiction over a crime committed by a non-Indian against an Indian.
 - Questions presented to the Supreme Court:
 - 1. Whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian Country.
 - 2. Whether McGirt should be overruled.
 - How likely is it that Supreme Court will actually take the case?
 - Timing Fall 2022

McGirt Update





V. Where does Oklahoma go from here?



VI. Questions?

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McGirt Update



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