



# McGirt Update

**Presented by: Donald K. Shandy**





# McGirt Update

## I. 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



# McGirt Update

## I. Level Set (cont.)

### B. McGirt case (U.S. Supreme Court)

- Different crime but similar fact situation (Tribal member convicted in state court)
- Justice Gorsuch participated and wrote opinion for majority
- Held that McGirt matter should have proceeded in federal court pursuant to the Major Crimes Act.





# McGirt Update

## I. 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

## II. Implications of McGirt

### A. Chaos has resulted in the area of both criminal and civil law

- No state/tribal progress on “compacts”

### B. Oklahoma Department of Environmental Quality received approval from Trump EPA (per existing statutory authority) retaining state-wide jurisdiction over environmental programs

- 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, 2005





# McGirt Update

## 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?





# McGirt Update

## IV. Recent action from the State of Oklahoma

### A. State of Oklahoma v. Victor Manuel Castro-Huerta

- Petition for Writ of Certiorari to U.S. Supreme Court (filed September, 2021)
- Facts
  - Defendant is a non-Indian. Horribly abused five-year-old stepdaughter who was Indian.
  - Charged and convicted in state court and sentenced to 35 years imprisonment.





# McGirt Update

## 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?





# McGirt Update

## VI. Questions?





# Donald K. Shandy



- Litigation, environmental and regulatory attorney
- Energy, Environmental and Natural Resources
- \*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Donald K. Shandy, or another licensed attorney.
- (405) 234-3205







## Contact

Donald K. Shandy

(405) 234-3205

[don.shandy@crowedunlevy.com](mailto:don.shandy@crowedunlevy.com)

[www.crowedunlevy.com](http://www.crowedunlevy.com)



CROWE & DUNLEVY  
ATTORNEYS AND COUNSELORS AT LAW



### Oklahoma City

Braniff Building

324 North Robinson Avenue

405.235.7700



### Tulsa

500 Kennedy Building

321 South Boston Avenue

918.592.9800



### Dallas

2525 McKinnon Street

Suite 425

214.420.2163

To sign up for Crowe & Dunlevy news, legal updates and seminars, please visit [crowedunlevy.com/subscribe](http://crowedunlevy.com/subscribe)

