

While everyone is still dissecting the recent Supreme Court decision regarding the Muskogee Creek Nation, we asked Hobbs, Strauss, Dean, and Walker LLP to give us their breakdown of the opinion. Here is a few of their main takeaways with my added statements in red.

1. The Court was careful to note that its decision only applied to MCN's reservation status and that each tribe's reservation status must be analyzed on a case-by-case basis because each tribe's treaties and related acts of Congress are highly individualized. First, to determine whether a tribe's reservation has been disestablished, the issue would need to be raised. As is common among disestablishment cases, MCN did not raise the issue itself. Instead, an enrolled tribal citizen presented the question after he was convicted for crimes in an Oklahoma state court. In *McGirt*, the Court acknowledged MCN's role in the litigation, stating: "The Creek Nation has joined Mr. McGirt as *amicus curiae*. Not because the Tribe is interested in shielding Mr. McGirt from responsibility for his crimes. Instead, the Creek Nation participates because Mr. McGirt's personal interests wind up implicating the Tribe's." *Id.* at 3. Tribes should be aware that, whether or not they want to raise this issue, tribal citizens, including tribal citizens of other tribal nations, may do so. If the issue is raised by a tribal citizen in civil court, a tribe would have the option to file for a motion to dismiss the case if the citizen failed to join the tribe as an indispensable party. However, tribes do not have similar procedural rights in criminal cases like *McGirt*.

2. Second, some have speculated that the eastern half of Oklahoma will be declared reservation land, specifically with regard to the boundaries of each of the "Five Tribes" (MCN, Cherokee Nation, Choctaw Nation, Chickasaw Nation, and Seminole Nation). This perspective warrants caution, as the Court made clear that its ruling only pertained to MCN's reservation, and the Court did not opine as to whether any other tribe in Oklahoma could expect the same outcome. In fact, when the Court addressed Oklahoma's concern that swaths of state land would return to tribal authority, the Court explicitly stated that "[e]ach tribe's treaties must be considered on their own terms." *Id.* at 37. Thus, while the similar historical reservation grant for each of the Five Tribes gives reasonable rise to future similar reaffirmation of their boundaries, the decision did not, in fact, affirm any other tribe's reservation boundaries in Oklahoma, or elsewhere for that matter.

3. Third, MCN is part of the Five Tribes—a group of tribes that have historically had a relationship with the federal government unique from that of other tribes. For example, the General Allotment Act did not apply to MCN or the other Five Tribes. The distinction is worth noting, as a court could potentially find such different treatment meaningful in its disestablishment analysis for other tribes. **We (Wyandottes) did fall under the General Allotment Act (Dawes Act).**

4. Fourth, several tribes have land located within another tribe's treaty-established reservation. The extent to which the *McGirt* ruling may affect these tribes is not clear and will require exacting factual development and case-by-case analysis to determine appropriate jurisdictional authority. **An example would be when we purchased our land that was within the Seneca Cayuga Reservation.**

While the victory is significant for MCN (Muskogee Creek Nation) and tribes generally, the specific impacts for MCN and Indian country likely will not be borne out for some time.

Chief Friend