

The name of a plaintiff in a recent court case may not mean much to the average American. But for Oklahoma, the outcome of this case could have profound consequences for our understanding of Indian Country and how far tribal sovereignty extends. At this critical juncture, Oklahoma and some tribes are locked in a struggle that is needless and, potentially, damaging economically and socially. A thumbnail history provides a roadmap for how we got here. The Five Civilized Tribes (the name given by early Americans to the Cherokee, Muscogee, Chickasaw, Choctaw and Seminole tribes) were settled in what is now Oklahoma not by choice but at the whim of a president and the point of a gun. Before the forced march that would become known as the Trail of Tears, the Cherokee Nation had a thriving government, economy and educational system in parts of the newly established states in the southeastern United States (at least by the standards of early 19th century white "civilization"). Most Cherokee were bilingual speakers of English and had developed a written language through the genius of Sequoyah. Many were wealthy landowners. Members of all Five Tribes were farmers, ranchers, lawyers, doctors, merchants and public servants. Even with rapid assimilation into majority culture, the success of the "savages" bred resentment and envy among white settlers. When gold was discovered on Cherokee lands, Georgia's leaders made clear to the sovereign Cherokee Nation that it was time to vacate, and removal seemed inevitable. Even after an order from the U.S. Supreme Court that Cherokee sovereignty superseded that of Georgia, President Andrew Jackson moved forward, purportedly stating, "Chief Justice Marshall has made his decision; now let him enforce it." Within 20 years of the tragic, forced removal and after reestablishing their governments in Indian Territory (now Oklahoma), the Five Tribes had again developed a thriving economy "particularly in agriculture and industry. The Civil War interrupted this progress with the tribes drawn into the intrastate conflict. These actions justified a further land grab as "war reparations" with plans to relocate all Indian tribes in the United States to the Territory. Despite odds against success, after the Civil War, the tribes continued building civil

structures and strong communities, making exceptional progress. Of particular pride to the Cherokee was establishing the Cherokee National Female Seminary, the first higher education facility for women west of the Mississippi River. With this history as predicate, we come to the present day and our confused moment of state and tribal relations. While most reservations across the country were terminated, an analysis by Justice Neil Gorsuch in a case commonly referred to as *McGirt*, the Supreme Court found that the Five Tribes' reservations were never terminated. Only an Act of Congress can terminate a tribe. Based on this decision, these lands remain Indian Country with reservation status. Before *McGirt*, the Five Tribes' sovereignty was circumscribed, although their economic activities were providing a wealth of opportunity for all Oklahomans. The income derived from tribal businesses is spent on roads, water systems, schools, housing, transportation, law enforcement, jobs and many other vital services. The unknown implications of *McGirt* are driving some Oklahoma leaders to suggest radical policies, even the possibility of a new "termination" policy. To avoid unintended consequences, the state and Five Tribes should petition Oklahoma's congressional delegation to propose legislation recognizing the Supreme Court's empowering the tribes and state to enter into agreements providing mutual benefit. The alternative is the continuing push for a termination statute likely to result in the loss for the tribes and state of billions of dollars and countless other lost opportunities for both. Featured video: Cherokee tribal courts see a surge in cases due to *McGirt*

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