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Murphy v. Royal: the battle to define and end Oklahoma tribal exceptionalism

Sara E. Hill
Secretary of Natural Resources
Cherokee Nation

"I voted for statehood all right, but if I had my way about it now I would like to have it back as a Territory as it was. I made money a lot easier then than I can now. I tell you I would be willing to leave here and go anywhere if I could find any place today where things are as they were in those days."

-Fielden Salyer Hill, interviewed July 19, 1937. He was born on December 24, 1870





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“[t]he federal government lacks sufficient investigatory and prosecutorial re-sources in the area to handle that volume of cases; the FBI currently has the equivalent of seven agents for all of eastern Oklahoma.”

OIPA

“Oklahoma has exercised jurisdiction and control over the Indian territory for over a century, fostering the growth of numerous businesses and industries— including the oil and gas industry.

Replacing Oklahoma’s sophisticated regulatory regime with tribal and federal regulation would impose confusing and overlapping tax regimes, a patchwork of varied environmental regulations, and new and possibly inconsistent licensing and zoning regimes.

And— perhaps worst of all—the uncertainty surrounding the shift in regulatory authority would spawn near-endless litigation.”

**NEBRASKA, KANSAS, LOUISIANA,
MICHIGAN, MONTANA, SOUTH
DAKOTA, TEXAS, UTAH,
WYOMING**

“Opening the door for the remaining tribes to exert jurisdiction within the boundaries of their former reservations because the statutes diminishing or disestablishing those reservations were unclear enough—even though the state and local governments have long exercised unquestioned jurisdiction on those lands— would be confusing and costly at best, and disastrous at worst.”

Environmental Federation of Oklahoma, Oklahoma Cattlemen’s Association, Oklahoma Farm Bureau, Oklahoma Oil and Gas Association, State Chamber of Oklahoma

“While acknowledging the unique, and sometimes troubled, history of the former Oklahoma Indian Territory, none of *Amici* or their members have ever believed they were living, working, or owning businesses or land within the boundaries of a current Native American reservation—until the decision below issued.

If not reversed, the decision could damage *Amici*’s member businesses and families, and the business and legal environment in the Nation’s pre-Statehood territory, and overturn expectations across the lands of the others of the Five Civilized Tribes.”

Chickasaw Nation and Choctaw Nation with former state officials

- “The *amici* Nations’ and Creek Nation’s exercise of sovereignty on their respective Reservations has been good for Oklahoma. In one area after another—taxation, gaming, motor vehicle registration, law enforcement, and water rights the Nations’ sovereignty within their Reservation and the State’s recognition of that sovereignty have provided the framework for the negotiation of inter-governmental agreements that benefit all Oklahomans.”

National Congress of American Indians

“[The Amici and Petitioner’s] overblown claims are not just legally irrelevant, they are divorced from the realities of federal Indian law.

Under existing jurisprudence, jurisdiction over almost all non-Indian activities on fee land will remain un- changed: tribes will not have jurisdiction, and states and local governments will.”

Former U.S. Attorneys from Indian country states

“Questions as to how law enforcement and prosecution resources can be most effectively allocated among Federal, State and Tribal officials and institutions do not fall within the province of judges; they are rather the essence of lawmaking.”

“Congress has demonstrated its ability to address the inter-relationship of Federal, State and Tribal juris-diction in Indian country, including in the recent past by enacting VAWA '13 and TLOA, and through statutes adjusting the scope of jurisdiction on particular reservations.”

What does the evidence suggest about the reality of a post-Murphy world in Oklahoma?

The evidence suggests that the state of Oklahoma and the tribes will work together to solve problems as they arise.

What would be the forces that would lead to compromise if the tribes reservations have not been disestablished? After all, don't tribes have complete control over all lands, people and natural resources within their own reservations?

Tribal jurisdiction over non-Indians, in every context, is complicated.

Economic development is important for both tribal and non-tribal citizens.

Congress has plenary power over Indian affairs.

The reservations are heavily checkboarded with fee, restricted fee, and tribal trust lands.

There are existing frameworks for tribes to share authority with the state in numerous contexts.

Tribal gaming, the primary source of income for the tribes, requires a partnership with the state.

Due to the way the state has developed, Tribal citizens throughout the reservation depend upon services provided by the state.