

Murphy/McGirt Agreement-in-Principle

With the Supreme Court cases of *Sharp v. Murphy* and *McGirt v. Oklahoma* in mind, the Five Tribes and the State of Oklahoma believe intergovernmental cooperation will best serve our shared interests in consistency, predictability, and a mutual respect for sovereign rights and interests. To this end, the Five Tribes and the Oklahoma Office of the Attorney General (OAG) look forward to working with the U.S. Department of Justice and Oklahoma's congressional delegation in crafting proposed legislation that generally (1) recognizes tribal sovereignty, jurisdiction, and the continued importance of the Five Tribes' respective boundaries set out in treaties and statutes while (2) also affirming continuity of the State of Oklahoma's jurisdiction within Eastern Oklahoma but outside of Indian trust or restricted lands (meaning, those lands held in trust by the United States on behalf of the Tribe or an individual Tribal member or citizen, restricted title lands, and Tribal treaty lands that have never been allotted), subject to limitations concerning Tribes and Tribal hunting, fishing, or water rights protected by treaty or other Federal law.

Accordingly, the Five Tribes and OAG today recommend to Oklahoma's congressional delegation a set of principles that memorialize our shared position. Our goal is to see these principles implemented in appropriate Federal law for purposes of enhancing and clarifying respective State and Tribal jurisdiction, both criminal and civil, *without* limiting the jurisdiction or immunities of either the State or any Nation. We believe implementation of these principles will preserve sovereign interests and rights to self-government while affirming jurisdictional understandings, procedures, laws, and regulations that support public safety, our economy, and property rights.

- 1. Criminal Jurisdiction:** Presently, the Federal government has law enforcement jurisdiction within the Nations' treaty territories. With respect to criminal matters, the legislation should:
 - a.** Affirm the Five Tribes' criminal jurisdiction throughout their respective treaty territories over Indian offenders, as well as those non-Indian offenders over which federally-recognized tribes generally have jurisdiction in Indian country, such as domestic abusers covered by the Violence Against Women Reauthorization Act of 2013;
 - b.** Provide and affirm the State's criminal jurisdiction over all offenders throughout that same area, including appropriate and legal mechanisms to address matters concerning existing convictions, with the exception of crimes involving Indians committed on Indian trust or restricted lands; and
 - c.** Authorize and direct the U.S. Department of Justice to coordinate with the State and Nations concerning deployment of law enforcement resources and respective authorities under the law.
- 2. Civil Jurisdiction:** With respect to civil jurisdiction, including the ability to legislate, regulate, tax, and adjudicate on non-criminal matters, legislation should:

- a. Affirm the Five Tribes' civil jurisdiction throughout their respective treaty territories, to be exercised subject to Federal law that generally governs Tribal civil jurisdiction in Indian country. The Five Tribes would accordingly be affirmed in their civil jurisdiction over, for example, matters of self-government and their members but would remain subject to the Federal law that provides, as a general matter, that Tribes do not have civil jurisdiction over non-members outside Indian trust or restricted lands, as described above, *except for* (1) subject matters for which Federal law specifically grants Tribes jurisdiction; (2) activities of non-members that are part of a consensual relationship, such as contracts, with the Tribe; or (3) conduct of non-members that threatens Tribal self-governance or the economic security, health, or welfare of the Tribe.
- b. Provide and affirm the State's civil jurisdiction over all persons throughout the treaty territories, except on Indian trust or restricted lands, but legislation would not grant the State jurisdiction to regulate or tax, directly or indirectly, any Tribe, Tribal official, or entities owned or operated by one of the Five Tribes. Also, the legislation would not affect jurisdiction over Tribal rights relating to hunting, fishing, or water that are protected by Federal law.

3. General Provisions: In addition, the legislation should:

- a. Protect Tribal sovereignty and consistency in law enforcement by affirming that only the Nations will exercise Tribal jurisdiction within their respective treaty territory.
- b. Allocate resources sufficient to ensure public safety and effective law enforcement.

Each of these components would reaffirm or expand upon the Tribes' and the State's sovereign authorities and should not be read as limiting any authority possessed prior to legislation being enacted, including any sovereign immunity.

We recognize that details about how these broad principles will be worked out in particular situations will require further development. Accordingly, we believe the legislation should encourage the State and Nations to resolve any remaining concerns through intergovernmental compacting, while providing also that it does not alter or terminate any existing compact or other intergovernmental agreement between the State and one of the Five Tribes.