

Bulletin:

Oklahoma's State, Local Credit Ratings Unlikely To Be Affected In The Near Term By The SCOTUS Decision On Reservations

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NEW YORK (S&P Global Ratings) July 13, 2020--S&P Global Ratings believes the U.S. Supreme Court's recent decision ("McGirt v. Oklahoma") upholding a large swath of land (approximately 19 million acres that is home to roughly 48% of the state's population) in eastern Oklahoma (AA/Negative) as tribal reservation land for purposes of federal criminal law does not have immediate credit implications for our rating on the state. We expect the effects of this decision to unfold relatively slowly, potentially over multiple years, but we will continue to monitor for any significant changes in the state's government framework and financial performance, particularly if the state's fundamental sovereignty over the management of its resources is weakened, which contributes to credit deterioration.

The ruling overturns state prosecutors' legal authority to pursue certain criminal cases involving Native American defendants within these territories, which overlap with 39 Oklahoma counties. According to the U.S. Census Bureau ("American Community Survey," 2014-2018), Oklahoma's Native American population is approximately 281,000, or roughly 7.2% of the state's total. While the Court did not rule directly on other matters of state and tribal jurisdiction, S&P Global Ratings believes that Oklahoma, its local governments, and tribal nations could face longer-term challenges ahead to resolve matters on tribal reservation land, which now includes portions of Tulsa, the state's second-largest municipality. However, we also believe that the state maintains a long-standing legal and practical framework in working with tribal nations on various jurisdictional issues that will likely mitigate uncertainty presented by the U.S. Supreme Court's ruling. Following the "McGirt" ruling, the state's Attorney General and tribes filed a joint statement that spoke to substantial progress toward an agreement that will be presented to Congress and the U.S. Department of Justice that resolves the jurisdictional issues raised, and the state and tribes have committed to implementing a framework of shared jurisdiction that affirm procedures, laws, and regulations.

Although we will continue to consider new information as it is presented, S&P Global Ratings expects the U.S. Supreme Court's decision will likely bring about incremental changes over the near term and have a marginal effect on the state's revenue and operating environment overall. Therefore, we do not expect the ruling to immediately or materially impair our view of state of Oklahoma or its local governments' credit quality.

For more information on the state, please refer to our full analysis on Oklahoma, published May

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Historically, cooperative state-tribal compacts and interlocal agreements set some precedent on law enforcement, governance, and taxation matters

While a broad-reaching interpretation of the U.S. Supreme Court's ruling could intersect with pre-existing laws, procedures, and regulations within Oklahoma, we have generally viewed the changes relating to the shared state-tribal jurisdiction of reservation land as incremental and believe they have not weakened the state's economic activities or fiscal capacity. Within its government framework, Oklahoma law establishes the authority and a structure for the state and local governments to enter into agreements with the five tribal nations (Cherokee, Chickasaw, Choctaw, Muscogee [Creek], and Seminole) under its Interlocal Cooperation Act and the State-Tribal Relations Act. Under these acts, we believe that the state and local governments possess relatively strong legal flexibility to resolve jurisdictional issues with the tribes, and to make necessary and timely changes in a practical sense. Based on a review of the state's financial statements and continuing disclosures, there is currently no significant litigation that challenges the state's ability to establish or maintain existing compacts or other shared jurisdictional agreements with the tribal nations. Concurrently, the ruling maintains that all people living within the boundaries of the territories remain citizens of Oklahoma, and federal law significantly limits tribal nations from asserting tribal, civil, or regulatory jurisdiction over non-native citizens in the territory.

Furthermore, while the decision may present a practical challenge for courts and law enforcement, we believe Oklahoma has implemented fiscal and revenue-raising measures with the ongoing cooperation and agreement from tribal nations. The executive branch has executed hundreds of cooperative compacts and facilitated interlocal agreements with tribal nations on various issues, including emergency services and public safety, local and state taxation, and revenue sharing from state-approved gaming activities. According to statements made by the state and the tribal nations, the ruling did not change Oklahoma's boundaries or ownership of land. However, the state and the tribal nations may seek clarity on whether the designation extends to land-use decisions (which may require federal approval) and Native American property rights on reservation territory. Therefore, we will closely watch for changes that materially affect economic development, state taxing authority, and property taxation at the local level.

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