



Native American tribes outside the Oklahoma State Capitol in Oklahoma City

Who Owns Oklahoma?

A Supreme Court ruling could return nearly half of the state to Native Americans

BY JOE BUBAR

Throughout history, Native Americans were pushed off their territories by white settlers, and later the U.S. government, onto smaller and smaller patches of land. But in a ruling expected later this year, the Supreme Court could decide to hand back a big chunk of Oklahoma to American Indian tribes.

The justices have already heard arguments in the case of Patrick

Murphy, a member of the Muscogee (Creek) Nation, who is fighting his conviction by an Oklahoma jury in a 1999 murder of another tribal member. Murphy's lawyers have made a bold argument: He should never have been tried in a state court in the first place.

They argue that the murder took place on land in eastern Oklahoma that rightfully still belongs to the Muscogee Nation. By law, any major crimes between Native Americans on

Indian reservations can be prosecuted only in tribal or federal courts, not state ones. Lawyers for the state of Oklahoma, however, say that land hasn't belonged to the Muscogee since Oklahoma became a state in 1907.

If the Court sides with Murphy, he would have to be tried again in federal court. But perhaps more significant: More than 40 percent of the state, including its second-largest city, Tulsa, could once again be considered "Indian country."

"This is the biggest thing out here since statehood," says Lindsay Robertson, director of the Center for the Study of American Indian Law and Policy at the University of Oklahoma. "It's extraordinary."

'As Long as the Grass Grows'

The case, *Carpenter v. Murphy*, is rooted in one of the darkest periods of American history. In 1830, President Andrew Jackson signed the Indian Removal Act, forcing the five major tribes in the Southeast—the Cherokee, Chickasaw, Choctaw, Muscogee, and Seminole—to move from the lands they'd long called home and trek west in long, brutal marches known as the "Trail of Tears" (see "Key Dates").

Jackson granted those tribes (which white settlers called the "Five Civilized Tribes") territory in what is now Oklahoma, calling the land "Indian country" (see map). He promised that territory would be theirs "as long as the grass grows or the water runs."



Trail of Tears: Thousands of American Indians were forced to move west in the 1830s.

But that promise, like many made to American Indians by the U.S. government, wasn't kept. In the years leading up to Oklahoma statehood, the government divided up the land among individual tribal members and sold what was left over to white settlers.

"Within just a few years, the majority of that land changed to white ownership," says Rebecca Nagle, an activist and citizen of the Cherokee Nation, "sometimes through consensual sale, a lot of times through swindle, and sometimes through outright theft."

However, Congress never explicitly abolished the tribal reservations. And that's what has led to the current dispute.

In a 1984 Supreme Court case, *Solem v. Bartlett*, the Court ruled that reservations can be disestablished only if Congress explicitly says so. Because Congress never did say so in any official statutes involving the Muscogee—or the other four major eastern Oklahoma tribes, for that matter—Murphy's lawyers argue that the land on which the murder took place is still tribal land.

In 2017, the Tenth Circuit Court of Appeals sided with Murphy. But the state of Oklahoma then appealed that ruling to the Supreme Court.

Remapping Oklahoma

If the Supreme Court upholds the Tenth Circuit's ruling, it would not only revive the Muscogee reservation, it could open the door for the other

four major tribes in eastern Oklahoma to reclaim the land that had been granted to them before statehood. That would result in the largest restoration of tribal land in U.S. history, encompassing almost all of eastern Oklahoma.

The state argues that the U.S. government has, since Oklahoma statehood, acted as though these reservations were disestablished even if there was no official action to do it. Its lawyers say changing that now would "shock the 1.8 million residents of eastern Oklahoma who have universally understood that they reside on land regulated by state government, not by tribes."

The state says that, among other things, the federal government and tribal courts would have to devote many more resources to prosecuting crimes in the area, since state courts could no longer

be used; the state would have to stop collecting taxes from people living there who claim to be tribal citizens; and businesses would need new licenses.

"This would be a dramatic change from the way everyone has understood it for the past 100 years," Edwin Kneedler, a lawyer for the federal government, arguing in favor of Oklahoma, told the Supreme Court in November.

He added that many Native Americans currently serving prison sentences for crimes they committed on that land might also decide to appeal their cases, arguing, like Murphy, that they should've been tried in federal courts.

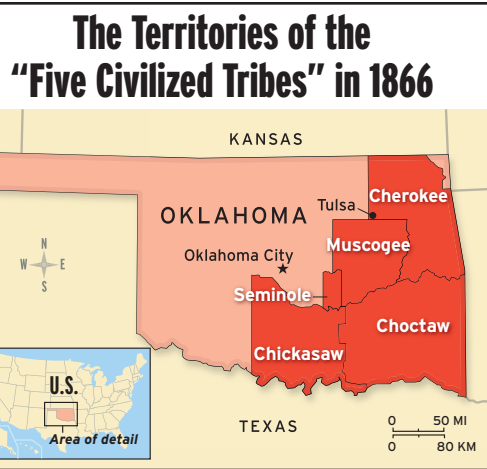
However, lawyers on Murphy's side say these fears are overblown, and that most people wouldn't notice a

difference. They point out that Oklahoma and tribal authorities already cooperate on many things, such as casinos and gambling, and only tribal members would really be affected.

For the members of the tribes, a ruling in their favor would also correct a great

historical injustice.

"We're not asking the Supreme Court to go back and change the law," says Nagle of the Cherokee Nation. "We're just asking that they follow precedent and they follow the law." •



What happens if eastern Oklahoma is recognized as Indian country?

Key Dates: U.S.-Native American Relations

1778

Treaties

The Continental Congress and the Delaware tribe of Ohio become allies against the British. It's the first of 389 treaties Congress makes with American Indians over the next century.

1789

Constitution

The U.S. Constitution states that Indian land may not be seized except in wars authorized by Congress. The pledge is repeatedly violated.

1830

Indian Removal Act

President Andrew Jackson signs a law allowing him to negotiate relocation treaties with tribes east of the Mississippi. Many tribes are forced to move west during the Trail of Tears.

1851

First Reservations

To make way for western migration of white settlers, Congress authorizes Indian reservations in the West. By the 1880s, about 60 have been built.

1890

Wounded Knee

Great Plains Indians resist whites migrating west. Up to 300 Lakota Sioux are killed in the Battle of Wounded Knee in South Dakota, the last major military clash between the U.S. and American Indians.

1934

'Indian New Deal'

Congress gives American Indians greater control over their land and internal affairs. Federal funds are allocated for education, land purchases, and tribal organization.

OPPOSITE: DANITADELIMONT/NEWS.COM (NATIVE AMERICANS); THE GRANGER COLLECTION (TRAIL OF TEARS); JIM MCMAHON (MAP)