IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ALICIA STROBLE,	)	
	)	
Appellant,	)	
	)	
v.	)	**No. TC-120806**
	)	
OKLAHOMA TAX COMMISSION,	)	**Appeal from Oklahoma Tax Comm'n,**
	)	**Case No. T-21-041-S**
Appellee.	)	

BRIEF OF AMICI CURIAE MUSCOGEE (CREEK) NATION AND SEMINOLE NATION OF OKLAHOMA

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Dated: February 13, 2023

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STATEMENT OF INTEREST

The Oklahoma Tax Commission ("OTC") has flouted the law in this case. The Muscogee (Creek) Nation ("Creek Nation" or "Nation") and the Seminole Nation of Oklahoma ("Seminole Nation") are federally recognized Indian tribes with government-to-government relationships with the United States, 87 Fed. Reg. 4636-02, 4639 (Jan. 28, 2022), and the State of Oklahoma, Okla. Stat. tit. 74, § 1221. The United States Supreme Court affirmed the continued existence of the Creek Reservation as "Indian country" in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), and *McGirt* has since been applied to recognize the continued existence of the Seminole Reservation, *Grayson v. State*, 485 P.3d 250, 254 (Okla. Crim. App. 2021), *cert. denied*, 142 S. Ct. 934 (2022). This matter arises within the boundaries of the Creek Reservation, but the OTC failed to acknowledge the clear legal consequences of that fact in its decision below. This Court's review will determine whether the rights of the Creek and Seminole Nations and their citizens will be protected and *McGirt* respected. The Nations submit this brief, and an accompanying motion for divided argument time, to vindicate their core sovereign interests in the integrity of their Treaty-protected and judicially affirmed reservations.[1]

INTRODUCTION

The law controlling this case is clear: Under fundamental principles of federal Indian law, states may not tax the income of Indians living and working within their tribe's "Indian Country" as that term is defined by 18 U.S.C. § 1151 ("§ 1151"). *See Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993); *McClanahan v. State Tax Comm'n of Ariz.*,

[1] The parties have consented to the filing of this brief. Verification of consent is appended to this brief. *See* Ex. A.

411 U.S. 164 (1973). Section 710:50-15-2 of the Oklahoma Administrative Code ("Section 50-15-2") accordingly confers an exemption from Oklahoma's individual income tax for tribal citizens who live and work within their tribe's Indian country. *See* Okla. Admin. Code § 710:50-15-2 (citing § 1151). Section 1151 defines "Indian country" in part to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent[.]" 18 U.S.C. § 1151(a).

In *McGirt*, the United States Supreme Court held that the Creek Reservation—including all fee lands within it—remains "Indian country" under § 1151. 140 S. Ct. 2452. It is undisputed that Appellant Stroble, a Creek citizen, both lived and earned her income within the boundaries of that Reservation during the relevant period. *See* ROA, Doc.36, pp.3–4, 8. Ms. Stroble is thus entitled to the exemption conferred by Section 50-15-2. This follows from both the plain text of the exemption and the controlling federal law that it codifies. *See Sac & Fox Nation*, 508 U.S. at 123, 126; *McClanahan*, 411 U.S. at 170–71.

The OTC, however, refused to accept the Creek Reservation as "Indian Country" for purposes of Section 50-15-2, claiming that to so hold would constitute an "unauthorized expansion of [*McGirt*] to state taxation matters." ROA, Doc.36, p.12. According to the OTC, *McGirt* found the Creek Reservation to be Indian country only for purposes of a single federal statute, the Major Crimes Act ("MCA"), 18 U.S.C. § 1153. *See* ROA, Doc.36, pp.13–14. This about-face—*see* ROA, Doc.23, P.Ex.8, p.2 ("Although *McGirt* arose from a criminal proceeding, the implications of the decision extend to many other areas of Oklahoma law, including the taxes … administered by the Oklahoma Tax Commission[.]")—is unmoored from any plausible reading of *McGirt*, including the Court's recognition (echoed by the dissent) that its ruling would extend to the civil context, 140 S.

Ct. at 2480 (Gorsuch, J.); *id.* at 2501–02 (Roberts, C.J., dissenting). Indeed, both the United States Supreme Court and this Court have applied *McGirt*'s "Indian country" determination well beyond the MCA. *See Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2491–92 (2022); *Milne v. Hudson*, 2022 OK 84, ¶ 7, 519 P.3d 511, 513. The OTC's contrary approach is an outlier and should be rejected.

ARGUMENT

I. Standard of Review

This case turns on a single dispositive legal question: whether the Creek Reservation on which Ms. Stroble lived and worked during the three years (2017–2019) for which she has claimed a tax refund is "Indian country" under § 1151. "The OTC's legal rulings are subject to … plenary, independent and nondeferential reexamination. [This Court] review[s] *de novo* its rulings on … dispositive [legal] issues." *Am. Airlines, Inc. v. State ex rel. Okla. Tax Comm'n*, 2014 OK 95, ¶ 25, 341 P.3d 56, 63 (footnote omitted).

II. Legal Background

In § 1151, Congress defined "Indian country" as including, in pertinent part,

> all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent[.]

18 U.S.C. § 1151(a). As this Court has explained, "[a]lthough § 1151 defines Indian Country for application to the exercise of federal criminal jurisdiction, its terms extend to civil jurisdiction as well." *Lewis v. Sac & Fox Tribe of Okla. Hous. Auth.*, 1994 OK 20, 896 P.2d 503, 507 n.18; *accord DeCoteau v. Dist. Cty. Court for Tenth Jud. Dist.*, 420 U.S. 425, 427 n.2 (1975) (§ 1151 "applies as well to questions of civil jurisdiction").

The United States Supreme Court has made it clear that states are "without jurisdiction to subject a tribal member living on the reservation, and whose income [is] derived from reservation sources, to a state income tax absent an express authorization from Congress." *Sac & Fox Nation*, 508 U.S. at 123 (citing *McClanahan*, 411 U.S. 164); *see also, e.g.*, *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985). This rule "applies to all Indian country" under § 1151. *Sac & Fox,* 508 U.S. at 125.

Section 50-15-2 codifies this rule by mandating that "[t]he income of an enrolled member of a federally recognized Indian tribe shall be exempt from Oklahoma individual income tax" when the member lives and works within Indian country, and expressly relies on § 1151 in defining the "Indian Country" to which it applies:

> **"Indian Country"** means and includes formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. **[See:** 18 U.S.C. § 1151]

Okla. Admin. Code § 710:50-15-2(a)(1), (b).

III. The Creek Reservation Is "Indian Country" Under § 1151.

The OTC asserted that *McGirt*'s determination that the Creek Reservation is Indian country applies only to cases involving the MCA. ROA, Doc.36, pp.13–14. This conclusion cannot be squared with *McGirt*, with the post-*McGirt* decisions of the United States Supreme Court and this Court, or with the position of the State of Oklahoma.

A. *McGirt*'s Application of § 1151 Is Not Limited to the MCA.

The MCA does not define Indian country. Therefore, *McGirt* examined whether the Creek Reservation meets the definition of Indian country set forth in § 1151. *See* 140 S.Ct. at 2464 (calling § 1151 the "relevant statute"). In holding that it does, the Court did not purport to undertake an MCA-specific application of § 1151. It instead sought to interpret and apply

"§ 1151(a)'s plain terms," *id.*, which make clear that, so long as they remain in existence, federal Indian reservations are Indian country.

The Court looked first to the establishment of the Creek Reservation in the 1830s, *id.* at 2459, and the United States' treaty promises of territorial integrity and the "right of self-government, with full jurisdiction over enrolled Tribe members and their property," *id.* at 2461 (quotation marks omitted). It concluded that "there can be no question that Congress established a reservation for the Creek Nation," *id.* at 2462, a conclusion clearly not tied to the MCA as that statute did not exist for another half century, *see* Act of March 3, 1885, ch. 341, § 9, 23 Stat. 362, 385.

In canvassing the historical evidence that the Creek Reservation thereafter remained "Indian country" under § 1151, the Court stated that, while Congress continually adjusted the Creek government's authority according to fluctuating federal policies, it at a minimum "left the Tribe with significant sovereign functions over the lands in question," including "the power to collect taxes, operate schools, [and] legislate through tribal ordinances[.]" 140 S. Ct. at 2466. The Court recounted that Congress continued these powers "in full force and effect for all purposes authorized by law" in 1906. *Id.* (citation omitted). And it found that the Nation's authority remained intact, and indeed was significantly expanded, through the twentieth century to the present day. *See id.* at 2466–68. The Court's focus was hence on the panoply of powers the Creek Nation retained over its territory, not simply on its authority under the MCA:

> The federal government promised the Creek a reservation in perpetuity. Over time, Congress .... has sometimes restricted and other times expanded the Tribe's authority. But Congress has never withdrawn the promised reservation.

Id. at 2482.[2]

McGirt, then, is not susceptible to any plausible suggestion that its "Indian country" determination focused on, or is somehow confined to, the MCA. This no doubt explains why the OTC, prior to reversing course in this case, readily accepted the obvious:

> *McGirt* plainly held that the Creek Reservation ... remains intact today. Therefore, the provisions of Oklahoma Administrative Code § 710:50-15-2 now apply in all lands within the Reservation boundaries[.]

ROA, Doc.23, P.Ex.8, p.8 (citation omitted).

The OTC now suggests, however, that *McGirt* does not extend beyond the MCA because the Court stated that "[t]he only question before us ... concerns the statutory definition of 'Indian country' as it applies in federal criminal law under the MCA," 142 S. Ct. at 2480. *See* ROA, Doc.36, p.14 (quoting same). But § 1151 *is* "the statutory definition of 'Indian country'" applicable to the MCA, just as it applies in numerous other contexts. The Court's statement, then, is "simply a customary nod to the truism that we decide only the case before us," *Shinn v. Ramirez*, 142 S. Ct. 1718, 1737 (2022) (citation omitted). And that *McGirt* resolved only the case at hand hardly suggests that its interpretation of the law has no force beyond its facts. *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312 (1994) ("The essence of judicial decisionmaking [is] applying general rules to particular situations[.]"); *Bucklew v. Precythe*, 139 S. Ct. 1112, 1126 (2019) ("[J]ust as binding as this [Court's]

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[2] In *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Okla. Tax Comm'n*, 829 F.2d 967 (10th Cir. 1987), the Tenth Circuit addressed the same history, treaties, and statutes pertaining to the Creek lands to determine that a tract of land within the Creek Reservation was never disestablished of its "reservation" and "Indian country" status under § 1151. *Id.* at 973–76. As such, the OTC's attempt to tax tribal activities on that tract was preempted. *Id.* at 987. The Court left open the broader question of "whether the exterior boundaries of the 1866 Creek Nation have been disestablished," *id.* at 975, the very question answered in the negative by *McGirt*.

holding is the reasoning underlying it."); *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 684–85 (7th Cir. 2020) (applying *McGirt* in civil jurisdictional dispute between tribe and municipality).

Indeed, the *McGirt* statement on which the OTC places so much weight appears in a passage expressly recognizing that the Court's determination will extend beyond the MCA:

> [T]he State worries that our decision will have significant consequences for civil and regulatory law. The only question before us, however, concerns the statutory definition of "Indian country" as it applies in federal criminal law under the MCA, and often nothing requires other civil statutes or regulations to rely on definitions found in the criminal law. *Of course, many federal civil laws and regulations do currently borrow from § 1151 when defining the scope of Indian country.* But it is far from obvious why this collateral drafting choice should be allowed to skew our interpretation of the MCA[.]

McGirt, 140 S. Ct. at 2480 (emphasis added). The Court, then, well understood that numerous civil statutes and regulations applicable to the Creek Reservation do "borrow from § 1151 when defining the scope of Indian country," *id.*, and did not shy away from affirming the continued existence of the Creek reservation in the face of that knowledge.

The four dissenting justices shared this understanding. *See id.* at 2501 (Roberts, C.J., dissenting) ("The Court … acknowledges that 'many' federal laws, triggering a variety of rules, spring into effect when land is declared a reservation."). Indeed, they expressly understood that *McGirt* extends well beyond the MCA. *See id.* at 2502 (discussing reach of *McGirt* and stating that "reservation status adds an additional … layer of governance over the massive territory here, conferring on tribal government power over numerous areas of life").

And even if the OTC, in the face of all this, were correct that *McGirt* does not extend by its own force beyond the confines of the MCA, its ruling would not follow. If *McGirt* does not resolve the Indian country status of the Reservation for purposes of other statutes, then the courts and agencies would still need to—presumably by marching back through the

same statutes and treaties already interpreted authoritatively by the Supreme Court (which itself suggests the absurdity of the OTC's position). What is not defensible is the OTC's decision to instead assume—without any investigation or analysis—that the Reservation is not Indian country. A naked, result-oriented determination of this sort cannot stand.

B. *Castro-Huerta* Confirms that *McGirt* Is Not Limited to the MCA.

In *Castro-Huerta*, the United States Supreme Court addressed whether Oklahoma possesses concurrent criminal jurisdiction over "a crime committed in what is now recognized as Indian country (Tulsa) by a non-Indian (Castro-Huerta)[.]" 142 S. Ct. at 2492. *Castro-Huerta* involved the General Crimes Act, 18 U.S.C. § 1152, which includes crimes committed by non-Indians, rather than the MCA, which is restricted to jurisdiction over "[a]ny Indian" for certain Indian country crimes, 18 U.S.C. § 1153(a). Yet the Court (including all four *McGirt* dissenters) readily accepted *McGirt*'s Indian country determination as the jurisdictional predicate for the issue before it. And nothing in *Castro-Huerta* remotely suggests that in so doing the Court understood itself to be "expanding" *McGirt*'s holding. The Court simply applied its prior decision to the non-MCA case at hand:

> In *McGirt*, the Court held that Congress had never properly disestablished the Creek Nation's reservation in eastern Oklahoma. As a result, the Court concluded that the Creek Reservation remained "Indian country."... Based on *McGirt*'s reasoning, the Oklahoma Court of Criminal Appeals later recognized that several other Indian reservations in Oklahoma had likewise never been properly disestablished.
>
> In light of *McGirt* and the follow-on cases, the eastern part of Oklahoma, including Tulsa, is now recognized as Indian country.!

142 S. Ct. at 2491–92 (citations omitted).

C. This Court Has Likewise Applied *McGirt* Beyond the Major Crimes Act.

In *Milne*, this Court addressed whether a state district court possessed jurisdiction to issue a civil protection order within the Creek Reservation. In doing so, it squarely

recognized that "18 U.S.C. § 1151 applies in both civil and criminal contexts," 2022 OK 84, ¶ 11, 519 P.3d at 514, and that by virtue of *McGirt*'s recognition of the Creek Reservation's "Indian country" status, a variety of laws have legal force within those boundaries:

> *McGirt* ... held that the Muscogee Nation reservation was never disestablished and continues to be Indian Country. With that finding, activity supporting the protection order in this case occurred in Indian Country .... Our analysis thus focuses on the issue of civil jurisdiction in Indian Country.... *McGirt* expanded the popular understanding of the extent of Indian Country in Oklahoma. This necessarily expands the law we may consider and apply in cases raising Indian Country issues.

Id. ¶ 7, 519 P.3d at 513 (citation omitted).

Under the OTC's reasoning, this Court in *Milne* undertook an "unauthorized expansion" of *McGirt* to civil protection orders. *See* ROA, Doc.36, p.12. It of course did no such thing, but instead faithfully applied *McGirt*'s Indian country determination and assessed the legal issue before it in that light. The OTC should have done the same.[3]

D. Oklahoma Recognizes that *McGirt* Applies in the Civil Context.

The State of Oklahoma recognizes that *McGirt* applies equally to matters of civil jurisdiction within the Nations' reservation boundaries. In the immediate wake of the *McGirt* decision, Oklahoma sought approval from the Environmental Protection Agency ("EPA") to administer numerous environmental regulatory programs in Indian country pursuant to Section 10211(a) of SAFETEA-LU, Pub. L. No. 109-59, 119 Stat. 1144 (2005). Letter from

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[3] *Milne* concluded that state courts enjoy jurisdiction concurrent with tribal courts to issue civil protection orders in Indian country because applicable federal law does not foreclose such jurisdiction. *See* 2022 OK 84, ¶¶ 6–16, 519 P.3d at 513–15. Here, federal law emphatically precludes state taxation absent affirmative congressional authorization. *See Sac & Fox Nation*, 508 U.S. at 123; *Cty. of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 257–58 (1992) ("[A]bsent cession of jurisdiction or other federal statutes permitting it ... a State is without power to tax reservation lands and reservation Indians." (brackets in original) (quotation marks omitted)).

Okla. Governor to EPA at 1 (July 22, 2020).[4] The EPA, recognizing that "the impetus for the State's request was the [*McGirt* decision]," granted Oklahoma's request. Letter from EPA to Okla. Governor at 2 n.1, 3 (Oct. 1, 2020).[5] There would have been no reason for the State to make, or EPA to grant, its jurisdictional request had it not understood *McGirt* to apply in the civil context.

IV. Lands Held in Fee Within the Creek Reservation Are "Indian Country" Under § 1151.

In addition to its flawed reading of *McGirt*, the OTC concluded that Ms. Stroble's residence does not qualify as reservation land or Indian country because it is held in fee:

> The warranty deed provided by [Appellant] demonstrates the land is not a formal reservation owned by the federal government. [Appellant] acquired fee title to the property in 2008, from a non-tribal grantor[.]

ROA, Doc.36, p.11.

This is flatly incorrect. The Court rejected a similar argument made by Oklahoma in *McGirt* because, as a matter of federal law, fee status is irrelevant to whether land is part of a reservation and hence Indian country:

> [O]nce a block of land is set aside for an Indian reservation *and no matter what happens to the title of individual plots within the area*, the *entire* block retains its reservation status until Congress explicitly indicates otherwise.

140 S. Ct. at 2468 (emphases added) (quoting *Solem v. Bartlett*, 465 U.S. 463, 470 (1984) (citing *United States v. Celestine*, 215 U.S. 278, 285 (1909))) (discussing 18 U.S.C. § 1151).

The plain text of § 1151 compels this conclusion, because it defines "Indian country" to include "*all land* within the limits of any Indian reservation ... *notwithstanding the issuance of any patent*[.]" 18 U.S.C. § 1151(a) (emphasis added). As *McGirt* explains,

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[4] https://www.epa.gov/system/files/documents/2021-12/oklahoma-july-2020-request_0.pdf.
[5] https://www.epa.gov/system/files/documents/2021-12/epa-october-2020-decision.pdf.

"[n]or under the statute's terms does it matter whether these ... [patented] parcels have passed hands to non-Indians." 140 S. Ct. at 2464. And while Section 50-15-2 requires that the lands be "under the jurisdiction of the tribe to which the member belongs," Okla. Admin. Code § 710:50-15-2(b)(1), reservation fee lands remain under tribal jurisdiction. As *McGirt* explains, tribes "continue to exercise governmental functions over land even if they no longer own it communally. Indeed, such an arrangement seems to be contemplated by § 1151(a)'s plain terms." 140 S. Ct. at 2464.

For this proposition, the Court cited *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351 (1962), the seminal case involving the Indian country status of reservation fee lands. There, the Court rejected the notion that "the existence or nonexistence of an Indian reservation ... depends upon the ownership of particular parcels of land," and declared that Congress's enactment of § 1151 "squarely put to rest," *id.* at 357, any argument that reservation fee land does not qualify as Indian country. *See also, e.g., Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 477–79 (1976) (applying *Seymour* to hold that federal preemption of state taxation of Indians in Indian country applies to "Indians living on 'fee patented' lands" within reservation).

The conclusion in *McGirt* and *Seymour* that fee lands are Indian country under § 1151 was binding on the OTC, which nevertheless failed to recognize or apply that principle. It is likewise binding on this Court, which, in contrast to the OTC, recognizes that it is "governed by the decisions of the United States Supreme Court with respect to ... federal law, and ... must pronounce rules of law that conform to extant Supreme Court jurisprudence," *Sparks v. Old Republic Home Prot. Co., Inc.*, 2020 OK 42, ¶ 20, 467 P.3d 680, 687 (citation omitted), *cert. denied*, 141 S. Ct. 895 (2020)). Accordingly, all parcels within the Creek

Reservation boundaries are "Indian country" and under Creek jurisdiction, including the fee land on which Ms. Stroble lived.

V. Section 50-15-2 Precludes the Tax Asserted in this Case.

Section 50-15-2 provides that "[t]he income of an enrolled member of a federally recognized Indian tribe *shall* be exempt from Oklahoma individual income tax" when

> [t]he member [i.e., tribal citizen] is living within "Indian Country" under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within "Indian Country" under the jurisdiction of the tribe to which the member belongs[.]

Okla. Admin. Code § 710:50-15-2(b)(1) (emphasis added).

Oklahoma administrative regulations are interpreted according to "the plain meaning appearing on the face of the rule with its unambiguous language." *State ex rel. Okla. State Bd. of Med. Licensure & Supervision v. Rivero*, 2021 OK 31, ¶ 49, 489 P.3d 36, 54. Section 50-15-2's mandatory exemption plainly extends to tribal citizens living and earning income "within 'Indian Country' under the jurisdiction of the tribe to which the member belongs," Okla. Admin. Code § 710:50-15-2(b)(1), with Indian country defined by specific reference to § 1151, *id.* § 710:50-15-2(a)(1) ("**See:** 18 U.S.C. § 1151"). And *McGirt* confirms that the Creek Reservation, including all fee lands within it, is a reservation under § 1151 subject to Creek jurisdiction.

All this should resolve the case as a matter of Oklahoma law. Because Ms. Stroble is a Creek citizen who lived and worked on Creek Reservation lands when she earned the income subject to the disputed tax, Section 50-15-2 mandates that her income "shall be exempt from Oklahoma individual income tax[.]" Okla. Admin. Code § 710:50-15-2(b). The provision contains no exceptions and this Court does not sit to conjure them. *See McClure v. ConocoPhillips Co.*, 2006 OK 42, ¶ 25, 142 P.3d 390, 398–99 ("This Court does

not create exceptions or impose restrictions not contained in an agency's rules" because to do so would "require this Court to act as a super-legislature rewriting a regulatory scheme clearly within the legislatively delegated authority of the [agency]. This we will not do." (footnote omitted)); *Tulsa Cty. Budget Bd. v. Tulsa Cty. Excise Bd.*, 2003 OK 103, ¶ 32, 81 P.3d 662, 676 (essentially same).

VI. Federal Law Precludes the Tax Asserted in this Case.

As the OTC recognizes, the Section 50-15-2 exemption tracks the rule of preemption set forth under federal law. *See* ROA, Doc.36, p.10 n.6 (Section 50-15-2 "comes directly" from *Sac & Fox Nation*, and "the definition of Indian Country" relied on in that case—i.e., § 1151— "is mirrored by" that set forth in Section 50-15-2.). In *Sac & Fox Nation*, the Supreme Court reaffirmed the principle that states are "without jurisdiction to subject a tribal member living on the reservation, and whose income [is] derived from reservation sources, to a state income tax absent an express authorization from Congress." 508 U.S. at 123 (citing *McClanahan*). *McClanahan* had likewise held that "Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress." 411 U.S. at 171 (citation omitted); *see also Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973) (With respect to "Indian income from activities carried on within the boundaries of the reservation ... *McClanahan* ... lays to rest any doubt ... that such taxation is not permissible absent congressional consent."). "The *McClanahan* principle derives from a general pre-emption analysis ... that gives effect to the plenary and exclusive power of the Federal Government ... to regulate and protect the Indians ... against interference ... by a state[.]" *Bryan v. Itasca Cty.*, 426 U.S. 373, 376 n.2 (1976) (citations and quotation marks omitted)).

Because Congress has enacted no statute to the contrary (and the OTC did not suggest otherwise), the rule recognized in *Sac & Fox Nation* and *McClanahan* governs this case. *See Sparks*, 2020 OK 42, ¶ 20, 467 P.3d at 687 (federal Supremacy Clause renders United States Supreme Court rulings binding on this Court); *Oklahoma Coal. for Reprod. Justice v. Cline*, 2019 OK 33, ¶ 2, 441 P.3d 1145, 1151 & n.4 (stating same and citing Okla. Const. art. 1, § 1). State and federal law are well aligned here, and the OTC went badly astray in failing to adhere to them.[6]

VII. *Castro-Huerta* Does Not Support State Taxation in This Case.

The OTC also suggested that *Castro-Huerta* supports the presumptive permissibility of state taxing jurisdiction over Indians in Indian country. ROA, Doc.36, pp.14–15. But *Castro-Huerta* does no such thing. To the contrary, it states that

> the Constitution allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State. *To be sure, under this Court's precedents, federal law may preempt that state jurisdiction in certain circumstances.*

142 S. Ct. at 2493 (emphasis added).

As detailed above, it is well-settled that absent an act of Congress, "Indians ... on an Indian reservation are not subject to State taxation" as a matter of "federal pre-emption[.]" *McClanahan*, 411 U.S. at 171–72. *See Bryan*, 426 U.S. at 376 n.2 ("The *McClanahan* principle derives from a general pre-emption analysis[.]"); *Sac & Fox Nation*, 508 U.S. at 126–27 (describing Court's Indian country tax precedents as involving whether state tax had been "pre-empted" as a matter of federal law). *Castro-Huerta* in no way calls these

[6] Prior to reversing course in this case, the OTC readily accepted the controlling force of *Sac & Fox Nation* and *McClanahan* with respect to state taxation of Creek citizens within the Creek Reservation. *See* ROA, Doc.23, P.Ex.8, pp.7–8.

preemption decisions into question. Instead, by expressly recognizing the continued force of the preemption doctrine, it makes plain that the OTC should have considered itself bound by that doctrine.

VIII. *Sherrill* Does Not Support State Taxation in This Case.

The OTC asserted that "without a legislative change or a court decision expanding *McGirt* to taxation cases, neither the tribes, nor the [OTC] ... have the unilateral authority to revive ancient sovereignty newly reclaimed by the Tribes since the *McGirt* decision was issued," and it cited *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), for this proposition. ROA, Doc.36, p.16. But *Sherrill* exists a world apart from this case and provides no support for the OTC's claim of taxing authority.

A. The Creek Nation Is Not Attempting To "Revive Its Ancient Sovereignty" over Abandoned Territory.

In *Sherrill*, the Oneida Indian Nation of New York asserted that parcels of land it had purchased in fee within an area that the Oneida had not occupied or governed "[f]or two centuries" were immune from local taxation. 544 U.S. at 202. The Oneida claimed that through the purchases it had "unified fee and aboriginal title and may now assert sovereign dominion over the [specific] parcels." *Id.* at 213. The Court rejected this reunification theory, "hold[ing] that the Tribe cannot unilaterally revive its ancient sovereignty ... over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders." *Id.* at 202–03.

Here, by contrast, the Creek Nation does not seek to "revive its ancient sovereignty" over its Reservation because it never relinquished that sovereignty in the first instance. Whereas the Oneidas sold the lands at issue in *Sherrill* and largely abandoned the area in the face of the United States' concerted efforts to remove them westward, 544 U.S. at 203–07,

the Creek Reservation was established as the Nation's "permanent home" after removal. *McGirt*, 140 S. Ct. at 2459 (citation omitted). The *McGirt* Court accordingly recounted "the Creek Nation's nearly 200-year occupancy of these lands," *id.* at 2476, and cataloged the Nation's oft-threatened yet continuous exercise of sovereignty over the Reservation, *id.* at 2465–68. Thus, while Congress passed laws at the turn of the twentieth century that "represented serious blows to the Creek," those laws still "left the Tribe with significant sovereign functions over the lands in question," including "the power to collect taxes, operate schools, legislate through tribal ordinances, and, soon, oversee the federally mandated allotment process." *Id.* at 2466.

In the 1930s, Congress "enabl[ed] the Creek government to resume many of its previously suspended functions," and "[t]he Creek Nation has done exactly that." *Id.* at 2467. Since that time, the Nation

> has ratified a new constitution and established three separate branches of government.[7] Today the Nation is led by a democratically elected Principal Chief, Second Chief, and National Council; operates a police force and three hospitals; commands an annual budget of more than $350 million; and employs over 2,000 people. In 1982, the Nation passed an ordinance reestablishing the criminal and civil jurisdiction of its courts. The territorial jurisdiction of these courts extends to any Indian country within the Tribe's territory as defined by the Treaty of 1866. And the State of Oklahoma has afforded full faith and credit to its judgments since at least 1994.

Id. (citations omitted).

The OTC failed to acknowledge any of this. Its efforts to equate this case with one where the Oneida sought to "rekindle[] embers of sovereignty that long ago grew cold," *Sherrill*, 544 U.S. at 214, simply cannot be reconciled with *McGirt*'s conclusions regarding

[7] As required by federal law, the Creek Constitution "was approved by the United States Department of the Interior." *Murphy v. Royal*, 875 F.3d 896, 965 (10th Cir. 2017) (citation omitted), *aff'd sub nom. Sharp v. Murphy*, 140 S. Ct. 2412 (2020).

the Nation's robust, ongoing exercise of sovereignty. For this reason alone, the OTC's reliance on *Sherrill* cannot be sustained.

The OTC's erroneous reliance on *Sherrill* led it to effectively strip the Creek Reservation of a fundamental feature of reservation status: immunity from state taxation of tribal citizens who live and work there. But "only Congress" has this power. *McGirt*, 140 S. Ct. at 2474. Other courts have recognized that *Sherrill* cannot be so employed, especially in the wake of *McGirt*. In *Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022), a New York village invoked *Sherrill* to block the Cayuga Nation from operating a gaming facility on lands within the village boundaries. The village did not dispute that Congress had never disestablished the Cayuga Reservation; rather, it argued that *Sherrill* rendered provisions of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–21—otherwise pertinent to "all lands within the limits of any Indian reservation," *id.* at § 2703(4)(A)—inapplicable to "what it characterize[d] as a 'not disestablished ancient reservation that is stripped of tribal jurisdiction,'" *Cayuga*, 6 F.4th at 379.

The Second Circuit rejected this argument as "irreconcilable with ... *McGirt*[.]" *Id.* According to the Circuit,

> the Court's forceful reaffirmation in *McGirt* of Congress's singular power to disestablish a reservation further underscores the infirmity of the Village's position here.... Adopting the Village's position ... would be akin to interpreting *Sherrill* to have effectively disestablished the Cayuga Reservation. To the extent that were ever a plausible interpretation of *Sherrill*, *McGirt* forecloses it.

Id. at 379–80. The same reasoning applies here, and with substantially more force given *McGirt*'s emphatic recognition of the Creek Nation's continuous exercise of sovereignty from the 1830s to the present day.

B. The Creek Nation Has Not Sought To Unilaterally Assert Sovereignty over Any Lands.

A second, equally fundamental distinction exists between this case and *Sherrill*. *Sherrill* repeatedly characterizes the Oneida as attempting to create immunity from State taxation and regulation through "unilateral" action. *See, e.g.*, 544 U.S. at 221 (referring to the "shift in governance this suit seeks unilaterally to initiate"); *id.* at 219–20 (referring to jurisdictional changes "created unilaterally at [Oneida's] behest"). The Oneida claim, after all, was that simply by purchasing parcels of land on the open market, it could unify fee and aboriginal title and thereby establish sovereignty in those parcels. *See id.* at 213.

Sherrill's rejection of this unilateral action theory reflects the settled rule that "some explicit action by Congress ... must be taken to create or to recognize Indian country," *Venetie*, 522 U.S. at 531 n.6. That rule is a fundamental guidepost in modern Indian law. *See Hydro Res., Inc. v. U.S. E.P.A.*, 608 F.3d 1131, 1151 (10th Cir. 2010) (en banc) (Gorsuch, J.) ("Congress—not the courts, not the states, not the Indian tribes—gets to say what land is Indian country[.]"); *Buzzard v. Okla. Tax Comm'n*, 992 F.2d 1073, 1076–77 (10th Cir. 1993) (while tribe had "the right to acquire land unilaterally," it lacked the "unilateral power to create Indian country").

This case simply does not involve a unilateral effort by the Nation to create tax immunity, much less to create Indian country. The Creek Reservation is the product of bilateral agreement. *McGirt* details the United States' treaty promises to establish the Reservation as a "permanent home to the whole Creek nation," 140 S. Ct. at 2459 (quoting Treaty with the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418); *see also id.* at 2460–62, and squarely holds that the Reservation remains Indian country today, *id.* at 2481–82.

This case is a far cry from unilateralism for a second reason. The tax immunity claimed by Ms. Stroble flows directly from the Indian country status of the Nation's Reservation as a matter of federal law *and* by virtue of Section 50-15-2. Oklahoma itself has prescribed an exemption for tribal citizens who live and work in Indian country, and nothing could be less unilateral than a Creek citizen simply claiming this state law exemption.

Further underscoring the inappositeness of *Sherrill* here, Section 50-15-2 precludes the application of any equitable defense to its application. If a tribal citizen lives and earns her income in her tribe's Indian country, that income "shall be exempt" from state taxation. Okla. Admin. Code § 710:50-15-2(b). As this Court has held, "[w]here ... the rights of parties are clearly defined and established by law, *equity has no power* to change or unsettle those rights." *Mehdipour v. Holland*, 2007 OK 69, ¶ 13, 177 P.3d 544, 550–51 (emphasis added). Accordingly, "there is no room for equitable considerations in the administration of tax laws." *Duncan Med. Servs. v. State ex rel. Okla. Tax Comm'n*, 1994 OK 91, 911 P.2d 247, 250; *accord Tulsa Cty. Budget Bd.*, 2003 OK 103, ¶ 32, 81 P.3d at 676 ("Despite our sympathies," this Court does not issue rulings contrary to "validly adopted administrative rules[.]"). *Sherrill*'s "equitable considerations" and "practical concerns," 544 U.S. at 213, 219, 220 (quotation marks omitted), accordingly have "no power," *Mehdipour*, 2007 OK 69, ¶ 31, 177 P.3d at 550, to limit the clear mandate of Section 50-15-2.

C. The Audit Services Division's *Sherrill* Arguments Are Without Merit.

In the proceedings before the OTC, the Audit Services Division (the "Division") advanced several *Sherrill* arguments that the OTC did not reach. The Nation addresses them here in the event the OTC presses them before this Court.

1. The State's Longstanding Taxation of Creek Citizens Cannot Amend the Law.

The Division contended below that a "revival of tribal sovereignty over fee lands within the boundaries of the former Muscogee (Creek) Nation boundaries will result in serious disruption" for state tax schemes and "countless regulatory programs." ROA, Doc.34, pp.21–22. These arguments—including the reference to "the former" Creek Reservation—mirror Oklahoma's losing arguments in *McGirt*:

> On the civil side, effects will extend from taxation to family law. The State generally lacks the authority to tax Indians in Indian country, *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114 (1993), so turning half the State into Indian country would decimate state and local budgets.

Brief for Respondent at 44, *McGirt* (No. 18-9526), 2020 WL 1478582, at *44.

In rejecting these arguments, *McGirt* makes crystal clear that Oklahoma's longstanding unlawful taxation of Creek citizens provides no warrant for allowing those illegal acts to continue: "Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *Id.* at 2482; *see also id.* (characterizing dissent's arguments as "[y]es, promises were made, but the price of keeping them has become too great" and stating that "[w]e reject that thinking").[8]

[8] To be sure, *McGirt* recognizes that legal doctrines exist "to protect those who have reasonably labored under a mistaken understanding of the law," including laches and statutes of repose. 140 S. Ct. at 2481. This acknowledgment that the prejudice arising from the shift away from past reliance on an unlawful jurisdictional status quo can sometimes warrant relief, *see Deep Fork Constr. Co. v. Bd. of Tax Roll Corr.*, 1964 OK 62, 391 P.2d 810, 813 ("[L]aches .... must be determined by each individual case."), in no way suggests that such reliance can allow a court, as an equitable matter, to cement in place that unlawful status quo going *forward*, something *McGirt* is clear that courts "may never do," 140 S. Ct. at 2478.

2. The Division's Reliance Arguments Fail on Their Own Terms.

Even were the Division's predictions of disruption cognizable under *McGirt*, they fail on their own terms. The Division contended that *McGirt* will "indisputably upset the justifiable expectations of numerous individuals and entities .... [who] have come to rely on the services provided by the State in that territory, and the State relies on income taxes from its residents, Indian and non-Indian alike, to fund those services." ROA, Doc.34, p.22. The suggestion that the State's inability to tax Indian income will result in the significant impairment of government services flies in the face of reality.

The OTC has estimated *McGirt*'s maximum potential annual revenue impact to be $21.5 million in reduced income taxes on the Creek Reservation (with a corresponding figure of $72.7 million for all Five Tribes total). ROA, Doc.23, P.Ex.8, pp.2, 14–18 (describing these estimates as "likely high"). And if every eligible Creek citizen claimed the three-year refund Ms. Stroble seeks in this case, the OTC estimates that would amount at most to an additional one-time impact of $64 million (with a corresponding figure of $218 million for all Five Tribes total, which the OTC also described as "likely high"). *Id.* pp.16–17.[9] None of these sums will have a significant impact on the State budget. Tax revenues in fiscal year 2021 exceeded $11.6 billion. State of Oklahoma FY 2023 Executive Budget at 3 (Feb. 7, 2022).[10] So confident were State leaders in the State's fiscal condition *after* the OTC released its estimates of the impact of *McGirt* that, in May 2021, the Governor signed into law an income tax cut worth approximately $350 million annually. Carmen Forman, *Three*

[9] Oklahoma law provides that a refund of taxes paid as a result of "misinterpretation of law" must be claimed "within three (3) years" from when erroneously paid. Okla. Stat. tit. 68, § 227(A), (B)(1). *McGirt* recognizes that "statutes of repose" may be applied under appropriate circumstances. 140 S. Ct. at 2481.

[10] https://oklahoma.gov/content/dam/ok/en/omes/documents/bud23.pdf.

years ago lawmakers raised taxes. Now, tax cuts are coming, The Oklahoman (May 23, 2021).[11] Then, in FY 2022, Oklahoma's tax revenue increased by nearly $2 billion, reaching $13.4 billion. Oklahoma Tax Commission, FY 2022 Revenue & Apportionment Report, at 14.[12] Oklahoma likewise set a "new state record[]" with a general revenue surplus of $1.9 billion, *Historic finish for FY 2022 General Revenue Fund*, Oklahoma Office of Management & Enterprises Services (Aug. 3, 2022) (citation omitted),[13] and, as of August 2022, had "a record $2.8 billion in state savings accounts … [and] state leaders say they intend to keep that money socked away for a rainy day," Carmen Forman, *With record $2.8 billion in Oklahoma's savings accounts, state leaders resist calls to spend*, The Oklahoman (Aug. 29, 2022).[14] According to Oklahoma's fiscal year 2023 Executive Budget, "State revenues are expected to remain strong in FY 2023," with the revenues available for annual appropriations expected to further increase by more than half a billion dollars. State of Oklahoma FY 2023 Executive Budget at 3–4.[15]

In this budget context, any speculation that the comparatively modest projected impacts of *McGirt* will result in a reduction of state services to individuals and businesses is precisely the kind of "dire[] warning" that *McGirt* inveighs against. 140 S. Ct. at 2481. The

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[11] https://www.oklahoman.com/story/news/2021/05/23/oklahoma-tax-cuts-kevin-stitts-gives-final-approval/5127607001/.
[12] https://oklahoma.gov/content/dam/ok/en/tax/documents/resources/reports/annual-reports/otc/AR-2022.pdf.
[13] https://oklahoma.gov/omes/newsroom/2022/aug/historic-finish-fy22-grf.html.
[14] https://www.oklahoman.com/story/news/politics/2022/08/29/oklahoma-leaders-gov-kevin-stitt-reject-calls-spend-record-savings-account/65413516007/.
[15] *Supra* note 10. Oklahoma's revenue and spending exceeds $30 billion per year when accounting for federal grants and other non-tax revenues (such as fees and fines). *See* National Association of State Budget Officers, 2022 State Expenditure Report at 15, https://www.nasbo.org/reports-data/state-expenditure-report (select "Full Report") (projecting $31 billion in expenditures by Oklahoma in fiscal year 2022). This is 400 times more than the roughly $73 million of reduced annual revenue the OTC estimated in its report.

Court declared that "familiar" predictions about the disruption that will follow from Indian country determinations have failed to pan out in the past "and that fact stands as a note of caution against too readily crediting identical warnings today." *Id.*

This admonishment carries particular force here. *McGirt* highlights the Creek Nation's provision of robust government services within its boundaries, citing the Nation's amicus brief. *See* 140 S. Ct. at 2467. In that briefing, the Nation marshalled extensive factual support regarding the array of critical governmental services it provides within its reservation boundaries to Indians and non-Indians alike, especially in otherwise underserved rural areas of the reservation. These include a substantial and sophisticated police force; the construction and maintenance of roads, bridges, and other infrastructure; state-of-the-art hospitals and medical clinics; family and sexual violence prevention services; and educational programs, including for early childhood. *See* Brief for Amicus Curiae Muscogee (Creek) Nation in Support of Petitioner at 36–39, *McGirt* (No. 18-9526), 2020 WL 774430, at *36–39. That the Nation provides substantial governmental services throughout the reservation further undermines the OTC's argument that the modest reduction in State revenues it predicts warrants abandonment of a long-established principle of law.

IX. *State Ex Rel. Matloff v. Wallace* Does Not Support State Taxation in This Case.

Finally, the OTC contends that, even accepting that *McGirt* extends to state tax jurisdiction, it cannot be applied to the three tax years (2017–2019) for which Ms. Stroble seeks a refund even though Oklahoma law allows claims going back three years in time, Okla. Stat. tit. 68, § 227(B)(1). *See* ROA, Doc.36, p.17. For this proposition, the OTC relies on *State ex rel. Matloff v. Wallace*, 497 P.3d 686, 687 (Okla. Crim. App. 2021), *cert. denied sub nom. Parish v. Oklahoma*, 142 S. Ct. 757 (2022). *Id.*

The argument is meritless. *Matloff* involved a special retroactivity doctrine lacking all relevance here: namely, whether "a new rule of criminal procedure" may "apply retroactively in a state post-conviction proceeding to void a final conviction." *Id.* at 688; *see also id.* at 688–89 ("In state post-conviction proceedings, this Court has previously applied its own non-retroactivity doctrine ... to bar the application of new procedural rules to convictions that were final when the rule was announced."). The reasons for that special rule have no relevance to this case: "[T]he reliance, finality, and public safety interests in factually accurate convictions and just punishments, weigh strongly against the application of new procedural rules to convictions already final when the rule is announced." *Id.* at 689. As applied in the context of state tax jurisdiction in Indian country, *McGirt* is not a rule of criminal procedure at all, and this, of course, is not a criminal case, much less one involving post-conviction relief. The special retroactivity analysis employed in *Matloff* is irrelevant.

Instead, ordinary rules of retroactivity apply, and under them:

> When [the United States Supreme] Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.

Harper v. Va. Dep't of Taxation, 509 U.S. 86, 97 (1993). *Harper* reversed a decision of the Supreme Court of Virginia declining to apply *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803 (1989) (addressing the validity of state tax scheme under federal law), to pre-1989 tax refund claims. *Harper*, 509 U.S. at 89–90. The Supreme Court of Virginia had held that "[a]s a matter of Virginia law," *Davis* "is to be applied prospectively only." *Id.* at 92 (quotation marks omitted). But as *Harper* explains, "[t]he Supremacy Clause ... does not allow federal

retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law." *Id.* at 100.

This Court thereafter relied on *Harper* to vacate an OTC decision declining to apply *Davis* retroactively. *Strelecki v. Okla. Tax Comm'n*, 1993 OK 122, 872 P.2d 910, 922, *as clarified on reh'g* (Mar. 23, 1994) ("Because *Harper* mandates that *Davis* be applied retroactively, Taxpayers are entitled to the refund they seek."). The same conclusion holds here. *McGirt* applies and there is no warrant for disallowing Ms. Stroble the three years of tax relief she seeks and is entitled to under federal and Oklahoma law. *See supra* note 9.

CONCLUSION

The Creek and Seminole Nations respectfully request the Court to reverse the OTC.

Dated: February 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 13th day of February 2023, true and correct copies of the foregoing instrument was served via UPS:

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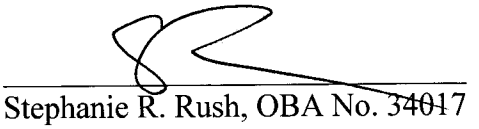

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EXHIBIT A

From: **Michael Parks** Mke@mkeparksaw.com
Subject: RE: Strobe v. Okahoma Tax Commsson: Request for Consent to Partcpate as Amcus Curae
Date: January 10, 2023 at 2:52 PM
To: Voet Rushvrush@kanjkatzen.com

I consent.

From: Violet Rush <vrush@kanjikatzen.com>
Sent: Tuesday, January 10, 2023 2:17 PM
To: Michael Parks <Mike@mikeparkslaw.com>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>; David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: Re: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Good afternoon, Mr. Parks,

I write to provide you with an update regarding the Muscogee (Creek) Nation's participation as amicus curiae. We now understand there is a possibility that one or more Tribal Nations may wish to join our client's amicus brief. To be clear, we are not certain that any other Tribal Nation will join the brief; we simply wanted to apprise you of that possibility. Please let us know if you still consent to Muscogee (Creek) Nation's participation as amicus curiae with the understanding that other Tribal Nations may sign onto the proposed amicus brief.

Thank you,

Stephanie "Violet" Rush
Associate

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From: **Taylor Ferguson** taylor.ferguson@tax.ok.gov
Subject: RE: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae
Date: January 9, 2023 at 10:30 AM
To: Violet Rush vrush@kanjikatzen.com, Elizabeth Field - General Counsel elizabeth.field@tax.ok.gov, Kiersten Hamill kiersten.hamill@tax.ok.gov
Cc: Riyaz Kanji rkanji@kanjikatzen.com, David Giampetroni dgiampetroni@kanjikatzen.com

Ms. Rush,

The Oklahoma Tax Commission is willing to extend the consent to allow other Oklahoma tribal nations to sign on to the Muscogee Nation's amicus brief. Please let me know if you need anything additional.

Thank you,

OKLAHOMA Tax Commission

Taylor Ferguson
Senior Assistant General Counsel
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P.O. Box 269056 | OKC, OK | 73126

From: Violet Rush <vrush@kanjikatzen.com>
Sent: Monday, January 9, 2023 9:41 AM
To: Taylor Ferguson <taylor.ferguson@tax.ok.gov>; Elizabeth Field - General Counsel <elizabeth.field@tax.ok.gov>; Kiersten Hamill <kiersten.hamill@tax.ok.gov>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>; David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: [EXTERNAL] Re: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Good morning, Ms. Ferguson:

I write to follow up on our January 5 email correspondence concerning whether the Oklahoma Tax Commission consents to the Muscogee (Creek) Nation's participation as amicus curiae with the understanding that other Tribal Nations may sign onto the proposed amicus brief. Please let me know if you have any questions.

Thank you,

Stephanie "Violet" Rush
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From: Violet Rush <vrush@kanjikatzen.com>
Date: Thursday, January 5, 2023 at 6:27 PM
To: Taylor Ferguson <taylor.ferguson@tax.ok.gov>, Elizabeth Field - General Counsel <elizabeth.field@tax.ok.gov>, Kiersten Hamill

Counsel <elizabeth.field@tax.ok.gov>, Kiersten Hamill <kiersten.hamill@tax.ok.gov>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>, David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: Re: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Good evening, Ms. Ferguson:

Thank you so much for your timely response. To be clear, we are not certain that any other Tribal Nation will join the brief; we simply wanted to apprise you of that possibility. Our sense is that the Seminole Nation of Oklahoma is the most likely to join our client's brief, with the caveat that they have not yet had an opportunity to review the brief to determine whether they wish to do so. But it is less certain whether other Tribal Nations in Oklahoma will express an interest in joining. We would greatly appreciate the Oklahoma Tax Commission's continued consent for the Muscogee (Creek) Nation to participate as amicus curiae with the understanding that other Tribal Nations may sign onto the proposed amicus brief, and if you can let me know whether that is possible at your earliest convenience, I'd appreciate it.

I will of course keep you promptly posted as we learn whether any other Nations wish to join.

I hope this information is helpful to you, and I would be happy to make myself available for any additional questions you may have.

Warm regards,

Stephanie "Violet" Rush
Associate

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From: Taylor Ferguson <taylor.ferguson@tax.ok.gov>
Date: Thursday, January 5, 2023 at 5:14 PM
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Cc: Riyaz Kanji <rkanji@kanjikatzen.com>, David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: RE: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Ms. Rush,

Thank you for following up with this additional information. Do you know which tribal nations are seeking to join the brief?

Thank you,

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From: Violet Rush <vrush@kanjikatzen.com>
Sent: Thursday, January 5, 2023 10:10 AM
To: Taylor Ferguson <taylor.ferguson@tax.ok.gov>; Elizabeth Field - General Counsel <elizabeth.field@tax.ok.gov>; Kiersten Hamill <kiersten.hamill@tax.ok.gov>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>; David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: [EXTERNAL] Re: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Good morning, Ms. Ferguson:

I hope you had a happy holiday season. I write to provide you with an update regarding the Muscogee (Creek) Nation's participation as amicus curiae. We now understand there is a possibility that one or more Tribal Nations may wish to join our client's amicus brief. Please let us know if this alters the Oklahoma Tax Commission's consent to amicus participation.

Warm regards,

Stephanie "Violet" Rush
Associate

KANJI & KATZEN, PLLC
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From: Taylor Ferguson <taylor.ferguson@tax.ok.gov>
Date: Thursday, December 29, 2022 at 3:27 PM
To: Violet Rush <vrush@kanjikatzen.com>, Elizabeth Field - General Counsel <elizabeth.field@tax.ok.gov>, Kiersten Hamill <kiersten.hamill@tax.ok.gov>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>, David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: RE: Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Ms. Rush,

The OTC is willing to consent to the Nation's participation in the case through the filing of an amicus curiae brief.

Please feel free to contact me if anything additional is needed.

Thank you,

Taylor Ferguson
Senior Assistant General Counsel
405.522.9439
taylor.ferguson@tax.ok.gov | tax.ok.gov
P.O. Box 269056 | OKC, OK | 73126

From: Violet Rush <vrush@kanjikatzen.com>
Sent: Wednesday, December 28, 2022 11:16 AM
To: Elizabeth Field - General Counsel <elizabeth.field@tax.ok.gov>; Taylor Ferguson <taylor.ferguson@tax.ok.gov>; Kiersten Hamill <kiersten.hamill@tax.ok.gov>
Cc: Riyaz Kanji <rkanji@kanjikatzen.com>; David Giampetroni <dgiampetroni@kanjikatzen.com>
Subject: [EXTERNAL] Stroble v. Oklahoma Tax Commission: Request for Consent to Participate as Amicus Curiae

Good morning, Ms. Field, Ms. Ferguson, and Ms. Hamill:

Our firm represents the Muscogee (Creek) Nation. The Nation wishes to file an Amicus Curiae Brief in Support of Appellant in the matter of *Stroble v. Oklahoma Tax Commission*, No. TC-120806, within the briefing time set for the Appellant. Given the clear interest of the Nation in the issues presented, we hope that you will consent to the Nation's participation as amicus curiae in this matter. If possible, please let us know your position by close of business on Thursday, December 29.

Warm regards,

Stephanie "Violet" Rush
Associate

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