No.

In The
Supreme Court of the United States

THE CITY OF TULSA,
Applicant,
v.
JUSTIN HOOPER,
Respondent.

On Application for Stay

CITY OF TULSA'S APPENDIX TO ITS EMERGENCY APPLICATION FOR A STAY OF MANDATE PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTORARI

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FILED
United States Court of Appeals
Tenth Circuit

June 28, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JUSTIN HOOPER,

Plaintiff - Appellant,

v.

THE CITY OF TULSA,

Defendant - Appellee.

CHEROKEE NATION; CHICKASAW NATION; CHOCTAW NATION OF OKLAHOMA; QUAPAW NATION; SEMINOLE NATION OF OKLAHOMA; MUSCOGEE (CREEK) NATION; STATE OF OKLAHOMA; OKLAHOMA ASSOCIATION OF MUNICIPAL ATTORNEYS,

Amici Curiae.

No. 22-5034

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:21-CV-00165-WPJ-JFJ)

John M. Dunn, The Law Offices of John M. Dunn, PLLC, Tulsa, Oklahoma, for Plaintiff – Appellant.

Kristina L. Gray, Litigation Division Manager (Becky M. Johnson, Criminal Division Manager; R. Lawson Vaughn, Senior Assistant City Attorney; Hayes T. Martin, Assistant City Attorney, with her on the brief), Tulsa, Oklahoma, for Defendant – Appellee.

Anthony J. Ferate (Andrew W. Lester, Courtney D. Powell, John E. Dorman, with him on the brief), Spencer Fane LLP, Oklahoma City, Oklahoma, for Amicus Oklahoma Association of Municipal Attorneys.

Riyaz A. Kanji, Kanji & Katzen, P.L.L.C., Ann Arbor, Michigan, appeared on behalf of Amici Muscogee (Creek) Nation, Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Quapaw Nation, and Seminole Nation of Oklahoma. (David A. Giampetroni, Kanji & Katzen, P.L.L.C., Ann Arbor, Michigan; Geri Wisner, Attorney General, and Kevin W. Dellinger, Assistant Attorney General, Okmulgee, Oklahoma, with him on the brief for Amicus Curiae Muscogee (Creek) Nation).

Frank S. Holleman, Sonosky, Chambers, Sachse, Endreson & Perry, LLP, Bonita, California, for Amici Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma; Sara Hill, Attorney General, Cherokee Nation, Tahlequah, Oklahoma, for Amicus Cherokee Nation; Stephen H. Greetham, Senior Counsel, Chickasaw Nation, Oklahoma City, Oklahoma, for Amicus Chickasaw Nation; Brian Danker, Senior Executive Officer, Division of Legal & Compliance, Choctaw Nation of Oklahoma, Durant, Oklahoma, for Amicus Choctaw Nation of Oklahoma; Robert H. Henry, Robert H. Henry Law Firm, Oklahoma City, Oklahoma, for Amicus Quapaw Nation; Valerie Devol, Attorney General, Devol & Associates, Edmond, Oklahoma, for Amicus Seminole Nation of Oklahoma, filed a brief for Amici Curiae The Cherokee Nation, Chickasaw Nation, Chocktaw Nation of Oklahoma, Quapaw Nation, and Seminole Nation of Oklahoma.

Zach West, Solicitor General, Bryan Cleveland, Deputy Solicitor General, Oklahoma City, Oklahoma, filed a brief for Amicus Curiae State of Oklahoma.

Before **McHUGH**, **EID**, and **CARSON**, Circuit Judges.

McHUGH, Circuit Judge.

Justin Hooper and the City of Tulsa dispute whether the Curtis Act, 30 Stat. 495 (1898), grants Tulsa jurisdiction over municipal violations committed by all Tulsa's inhabitants, including Indians, in Indian country. Tulsa issued a traffic citation to Mr. Hooper, an Indian and member of the Choctaw Nation, and he paid a $150 fine for the ticket in Tulsa's Municipal Criminal Court ("municipal court").

Following the Supreme Court's decision in *McGirt v. Oklahoma*,[1] recognizing that the Muscogee (Creek) Reservation had never been disestablished, Mr. Hooper filed an application for post-conviction relief, arguing the municipal court lacked jurisdiction over his offense because it was a crime committed by an Indian in Indian country. Tulsa countered that it had jurisdiction over municipal violations committed by its Indian inhabitants stemming from Section 14 of the Curtis Act ("Section 14"), an 1898 statute granting lawmaking authority and jurisdiction to municipalities in the Indian Territory that existed prior to the formation of the state of Oklahoma. The municipal court agreed with Tulsa and denied Mr. Hooper's application.

Mr. Hooper then sought relief in federal court—filing a complaint (1) appealing the denial of his application for post-conviction relief and (2) seeking a declaratory judgment that Section 14 is inapplicable to Tulsa today. Tulsa filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, again arguing Tulsa could exercise jurisdiction over municipal violations by its Indian inhabitants based on a jurisdictional grant in Section 14 of the Curtis Act. The district court granted the motion to dismiss Mr. Hooper's declaratory judgment claim, agreeing with Tulsa that Congress granted the city jurisdiction over municipal violations by all its inhabitants, including Indians, through Section 14. Based on this determination, the district court dismissed Mr. Hooper's appeal of the municipal court's denial of his petition for post-conviction relief as moot.

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[1] 140 S. Ct. 2452 (2020).

On appeal, Mr. Hooper argues the district court erred by granting Tulsa's Rule 12(b)(6) motion to dismiss his declaratory judgment claim because Section 14 of the Curtis Act no longer grants power to Tulsa. Mr. Hooper contends the district court also erred in dismissing his appeal of the denial of his petition for post-conviction relief as moot based on the same analysis. Tulsa counters that Section 14 has never been repealed and still grants Tulsa jurisdiction over municipal violations committed by all its inhabitants.[2] Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we conclude the district court erred in granting dismissal of Mr. Hooper's declaratory judgment claim because even if the Curtis Act was never repealed, it is no longer applicable to Tulsa. We also agree with Mr. Hooper that the district court erred in dismissing his appeal from the municipal court as moot based on its analysis of Section 14, but we determine the district court lacked jurisdiction over Mr. Hooper's appeal from the municipal court. We therefore reverse the district court's grant of Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's declaratory judgment claim,

[2] Several amici curiae submitted briefs. In support of Mr. Hooper, the Muscogee (Creek) Nation ("the Creek Nation") and a group of tribes consisting of the Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Quapaw Nation, and Seminole Nation of Oklahoma ("the Nations"), submitted briefs arguing Tulsa lacks jurisdiction over municipal violations by Indians in Indian country. In support of Tulsa, the state of Oklahoma and the Oklahoma Association of Municipal Attorneys ("OAMA") submitted briefs arguing for affirmance of the district court's decision. We accepted those briefs and also allowed the Creek Nation and OAMA to participate in oral argument. "[T]o the extent that amici's contentions illuminate the contours of the parties' respective positions or explicate the real-world . . . implications of the legal issues before us we consider them." *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219, 1226 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 2647 (2022) (internal quotation marks omitted).

vacate the district court's dismissal of Mr. Hooper's appeal as moot, direct the district court to dismiss Mr. Hooper's appeal without prejudice for lack of jurisdiction, and remand for proceedings consistent with this opinion.

I. BACKGROUND

A. Factual Background[3]

On August 13, 2018, Mr. Hooper received a speeding ticket in the city of Tulsa, Oklahoma. Specifically, Mr. Hooper was cited for driving over the speed limit in violation of City of Tulsa Revised Ordinances Title 37 Section 617A. The location of Mr. Hooper's citation for speeding was within the Muscogee (Creek) Reservation's boundaries. The municipal court found Mr. Hooper guilty of the moving violation, and Mr. Hooper was ordered to pay a citation fee of $150. Mr. Hooper is a resident of Tulsa and a member of the Choctaw Nation, a federally recognized Indian tribe.

B. Procedural Background

Around five months after the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Mr. Hooper filed an application for post-conviction relief with the municipal court.[4] Mr. Hooper claimed, based on the Supreme Court's holding in *McGirt*, that the Muscogee (Creek) Reservation had not been disestablished, *see McGirt*, 140 S. Ct. at 2482, Tulsa lacked jurisdiction to

[3] All facts are drawn from Mr. Hooper's complaint.

[4] Mr. Hooper subsequently amended the application twice to bring it into compliance with Oklahoma's Post-Conviction Relief Act.

prosecute him, an Indian in Indian country, for violation of a municipal ordinance. Tulsa responded by arguing (1) Mr. Hooper's application for post-conviction relief contained fatal procedural defects and (2) the municipal court properly exercised jurisdiction over Mr. Hooper based on jurisdiction granted by Congress under Section 14 to municipalities, including Tulsa, in what was known as the "Indian Territory" prior to Oklahoma receiving statehood.

The municipal court denied Mr. Hooper's application for post-conviction relief. The court rejected Tulsa's first argument, determining Mr. Hooper's application, as amended, complied with the requirements of the Oklahoma Post-Conviction Relief Act. But the court agreed with Tulsa that it had properly exercised jurisdiction over Mr. Hooper's moving violation based on jurisdiction stemming from Section 14. Specifically, the municipal court relied on Section 14's statement that "all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein." App. at 26 (quoting Curtis Act, § 14, 30 Stat. 495, 499–500 (1898)). The municipal court concluded that "pursuant to the Curtis Act, the City of Tulsa has had subject matter jurisdiction to hear violations of its ordinances [by its Indian inhabitants] since 1898." *Id.* at 27. The municipal court further determined the relevant section of the Curtis Act had not been repealed and that Congress may at times grant powers to municipalities that are not available to states. Accordingly, the municipal court denied Mr. Hooper's application for post-conviction relief. The municipal court noted that the state of Oklahoma lacked

jurisdiction over any potential appeal, but Mr. Hooper could appeal its judgment to the federal district court.

Mr. Hooper responded to the municipal court's decision by filing a complaint with the United States District Court for the District of Northern Oklahoma. In the complaint, Mr. Hooper brings two counts: (1) he appeals the municipal court's dismissal of his application for post-conviction relief; and (2) he seeks a declaratory judgment "that the Curtis Act is inapplicable to present times and confers no jurisdiction to municipalities to prosecute and punish Indians for offenses that occur on an Indian Reservation." *Id.* at 105. Mr. Hooper explains that he filed his appeal with the federal district court, rather than the Oklahoma Criminal Court of Appeals, because Oklahoma state courts lack jurisdiction over the matter, which relates to criminal conduct by an Indian in Indian country, and the appeal presents a federal question. Mr. Hooper also posits that if the municipal court is correct that Tulsa properly exercised jurisdiction over his municipal violation pursuant to Section 14, appeals from the decisions of municipalities under Section 14 were historically heard by the federal district courts.

Tulsa responded to Mr. Hooper's complaint with a Rule 12(b)(6) motion to dismiss, arguing Tulsa properly exercised jurisdiction over Mr. Hooper's municipal violation based on the jurisdiction granted by Section 14. Tulsa argued (1) the city of Tulsa was incorporated pursuant to the Curtis Act, (2) Section 14 granted municipalities jurisdiction over municipal violations by all their inhabitants, Indian and non-Indian alike, and (3) Congress never repealed Section 14. Accordingly,

Tulsa argued that Mr. Hooper's appeal and claim for declaratory judgment both failed as a matter of law. Mr. Hooper countered that (1) a Rule 12(b)(6) summary dismissal was not appropriate in the context of a criminal appeal; (2) the Curtis Act no longer granted authority to Tulsa following statehood or had been repealed; (3) even if it still granted authority to Tulsa, the Curtis Act did not grant municipal courts jurisdiction over cases against Indians; and (4) Tulsa could not exercise jurisdiction over Indians which Oklahoma lacks when Tulsa, as a political subdivision of the state, derives all its authority from the state.

The district court issued an order seeking supplemental briefing from both parties addressing whether *McGirt* "ha[d] retroactive effect to permit post-conviction relief in this case" and "the propriety of [the district court] ruling on a civil motion to dismiss in [an] appeal of the municipal criminal court's denial of post-conviction relief." *Id.* at 226. Addressing the court's first question, Tulsa contended *McGirt* had no retroactive effect on applications for post-conviction relief, because it announced a rule of criminal procedure, which could not be applied retroactively to collaterally attack a conviction based on the Supreme Court's holding in *Teague v. Lane*, 489 U.S. 288, 310 (1989). Mr. Hooper countered that *McGirt* did not announce a procedural change to criminal procedure but established that Oklahoma had lacked jurisdiction to convict Indians of crimes committed in Indian country, and that lack of subject matter jurisdiction could never be waived. Turning to the court's second question, Tulsa posited the district court could grant Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's appeal of the denial of post-conviction relief because

Mr. Hooper chose to bring the appeal through a civil action. Alternatively, Tulsa suggested Mr. Hooper's appeal may be rendered moot if the district court granted dismissal of Mr. Hooper's declaratory judgment claim. Mr. Hooper argued Tulsa's Rule 12(b)(6) motion was not the appropriate vehicle for resolving his criminal appeal and that only Mr. Hooper's declaratory judgment claim was subject to dismissal under Tulsa's motion.

The district court granted Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's claim seeking declaratory judgment and determined his appeal from the municipal court's denial of his application for post-conviction relief was accordingly moot. First, the district court addressed the unique posture of the case—Mr. Hooper brought a civil claim, seeking declaratory judgment, and a criminal appeal, appealing the denial of his application for post-conviction relief. The court determined the Rule 12(b)(6) motion applied to the civil claim, and if dismissal of the civil claim was appropriate, the criminal appeal would be rendered moot. The district court concluded *McGirt* had no impact on the ability of Tulsa to exercise jurisdiction over Indians because the decision did not address the jurisdictional grant in the Curtis Act. The court determined Section 14 granted Tulsa the ability to exercise jurisdiction over municipal violations committed by all its inhabitants, including Indians, and that Section 14 was never repealed. Relying on *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958), the district court further concluded that Congress could grant municipalities powers different than those granted to the state. Having determined Tulsa properly exercised jurisdiction over Mr. Hooper's traffic violation, the court

granted Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's claim for declaratory judgment and determined Mr. Hooper's appeal of his application for post-conviction relief was moot.

Mr. Hooper timely filed notice of appeal.

II. DISCUSSION

Mr. Hooper argues the district court erred in granting Tulsa's Rule 12(b)(6) motion to dismiss his declaratory judgment claim, and accordingly erred in determining his appeal of the denial of his application for post-conviction relief was moot, because the jurisdictional grant in Section 14 has not applied to Tulsa since the city became a political subdivision of the state of Oklahoma. Tulsa counters that it may still exercise jurisdiction over municipal violations committed by its Indian inhabitants because Congress never repealed Section 14 and Section 14's jurisdictional grant continues to apply to municipalities that were formerly organized according to the Curtis Act in the Indian Territory.[5] After assuring ourselves we have

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[5] Amicus Oklahoma raises an alternative ground for affirming the district court, citing the Supreme Court's recent decision in *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022), to argue Oklahoma has inherent jurisdiction over Indians within its boundaries and has "conferred that jurisdiction on Tulsa here." Amicus Oklahoma's Br. at 5. Our court system "is a party-directed adversarial system and we normally limit ourselves to the arguments the parties before us choose to present." *United States v. Ackerman*, 831 F.3d 1292, 1299 (10th Cir. 2016). Although we "ha[ve] the discretion to reach arguments raised only in an *amicus curiae* brief," we "exercise that discretion only in exceptional circumstances" such as when "(1) a party attempts to raise the issue by reference to the *amicus* brief; or (2) the issue 'involves a jurisdictional question or touches upon an issue of federalism or comity that could be considered sua sponte.'" *Tyler v. City of Manhattan*, 118 F.3d 1400, 1404 (10th Cir. 1997) (quoting *Swan v. Peterson*, 6 F.3d 1373, 1383 (9th Cir. 1993)). We do not exercise our discretion to reach the argument raised only by amicus

jurisdiction over Mr. Hooper's appeal of the district court's dismissal of his declaratory judgment claim, we set the stage for the parties' dispute by reviewing the history of federal governance in the territories that preceded Oklahoma, the enactment of the Curtis Act, and Oklahoma's transition to statehood. We then turn to the parties' arguments. After addressing the merits of Mr. Hooper's declaratory judgment claim, we address Mr. Hooper's secondary argument that the district court erred by dismissing his appeal from the municipal court as moot.

A. Declaratory Judgment Claim

1. Jurisdiction

Prior to reaching the merits of Mr. Hooper's appeal of the district court's grant of Tulsa's Rule 12(b)(6) motion to dismiss his declaratory judgment claim, we address our "independent duty to assure ourselves of the district court's subject-matter jurisdiction." *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1211 (10th Cir. 2018). Considering this duty, we sought supplemental briefing from Mr. Hooper and Tulsa addressing "whether Mr. Hooper has met his burden to demonstrate he has standing to bring his declaratory judgment claim." Order at 1,

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Oklahoma because Tulsa did not "attempt[] to raise the issue by reference to the amicus brief" either in its briefing or at oral argument, the issue does not involve a question of this court's jurisdiction, federalism, or comity that the panel could address sua sponte, and Oklahoma does not argue exceptional circumstances warrant consideration of its argument. *Id.*; *see also Ackerman*, 831 F.3d at 1292 ("[T]his court has routinely declined to consider arguments presented only in an amicus brief—and no one even attempts to offer us a reason to depart from that practice here."). Accordingly, we leave resolution of this issue for a case where it is properly raised by the parties.

Hooper v. City of Tulsa, No. 22-5034 (10th Cir. Apr. 20, 2023). After reviewing the supplemental briefs, we agree with both parties that Mr. Hooper has satisfied this burden.

The district court exercised jurisdiction over Mr. Hooper's declaratory judgment claim pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and federal question jurisdiction, 28 U.S.C. § 1331. Like all plaintiffs seeking judicial review in the federal courts, an individual bringing a claim under the Declaratory Judgment Act has the burden of meeting Article III of the Constitution's justiciability requirements. *See* U.S. Const. art. III, § 2; *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) ("[T]he phrase 'case of actual controversy' in the [Declaratory Judgment] Act refers to the type of 'Cases' and 'Controversies' that are justiciable under Article III." (quoting 28 U.S.C. § 2201(a))). The Supreme Court has held that a plaintiff bringing a declaratory judgment claim meets this burden if "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc.*, 549 U.S. at 127 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)).

"For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case—in other words, standing." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997)). To meet his standing burden, Mr. Hooper needed to "show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent;

(ii) that the injury was likely caused by [Tulsa]; and (iii) that the injury would likely be redressed by judicial relief." *Id.* Because Mr. Hooper's declaratory judgment claim seeks prospective relief, "he must demonstrate a continuing injury." *Jordan v. Sosa*, 654 F.3d 1012, 1019 (10th Cir. 2011). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)).

Although Mr. Hooper's complaint includes only minimal allegations relating to injury, we determine he satisfied his standing burden at the pleading stage. *See Atlas Biologicals, Inc. v. Kutrubes*, 50 F.4th 1307, 1330 (10th Cir. 2022) (determining plaintiff met its burden to demonstrate standing at pleading stage even where "complaint [wa]s somewhat vague about its purported injury"). Mr. Hooper alleges in his complaint that he is an Indian living in Tulsa and that Tulsa is wrongfully exercising jurisdiction over him pursuant to its erroneous interpretation of Section 14. Specifically, Mr. Hooper points to (1) Tulsa's past exercise of jurisdiction over him through the issuance of a traffic ticket and (2) the municipal court's determination that Tulsa, pursuant to Section 14, can exercise jurisdiction over municipal violations committed by Indians. Mr. Hooper alleges a declaratory judgment in his favor is necessary to prevent Tulsa from continuing to wrongfully exercise jurisdiction over him pursuant to Section 14. We presume Mr. Hooper's general allegations embrace the fact that Mr. Hooper reasonably fears Tulsa will

continue to wrongfully exercise jurisdiction over him, an Indian living in the Creek Reservation. *See Lujan*, 504 U.S. at 561. This is sufficient to demonstrate Mr. Hooper faces an imminent injury—infringement on his right as an Indian living on a reservation to be free from the city's exercise of jurisdiction.

In *McClanahan v. State Tax Commission of Arizona*, the Supreme Court recognized that although Congress "has, most often, dealt with the tribes as collective entities," "those entities are . . . composed of individual Indians, and the legislation confers individual rights." 411 U.S. 164, 181 (1973). Specifically, the Court recognized that individual Indians living on reservations have the right "to make their own laws and be ruled by them." *Id.* at 181 (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)). Mr. Hooper's allegations in his complaint adequately demonstrate he faces the continuous injury of Tulsa's infringement on his right as an Indian living on a reservation to be self-governing. Further, this alleged injury is caused by Tulsa and would be redressed by a favorable decision from the district court. *See TransUnion LLC*, 141 S. Ct. at 2203. Accordingly, we agree with the district court that "there is a substantial, real, and immediate controversy between the adverse parties here," App. at 12, so the district court properly exercised jurisdiction over Mr. Hooper's declaratory judgment claim.

The district court also properly exercised jurisdiction pursuant to 28 U.S.C. § 1331 because Mr. Hooper alleges in his complaint that he seeks a declaratory judgment to establish the proper interpretation of Section 14 of the Curtis Act, a federal statute. The district court issued a final judgment, granting Tulsa's Rule

12(b)(6) motion to dismiss Mr. Hooper's claim for declaratory judgment and dismissing Mr. Hooper's appeal of his petition for post-conviction relief as moot—"disposing of [Mr. Hooper's] case on the merits." App. at 260. Accordingly, we exercise jurisdiction over Mr. Hooper's appeal pursuant to 28 U.S.C. § 1291. *See* 28 U.S.C. § 1291 (granting courts of appeals jurisdiction over "appeals from all final decisions of the district courts of the United States"); *see also Ray Haluch Gravel Co. v. Cent. Pension Fund of Int'l Union of Operating Eng'rs & Participating Emps.*, 571 U.S. 177, 183 (2014) ("In the ordinary course a 'final decision' is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." (quoting *Catlin v. United States*, 324 U.S. 299, 233 (1945))).

2. History of the Curtis Act and Tulsa

a. The Indian and Oklahoma Territories

Congress first addressed the governance of individuals living in the area that would eventually make up the state of Oklahoma through the Oklahoma Organic Act, 26 Stat. 81 (1890).[6] The Oklahoma Organic Act recognized "two territories: the Oklahoma Territory in the west and Indian Territory in the east. Originally . . . criminal prosecutions in the Indian Territory were split between tribal and federal courts." *McGirt*, 140 S. Ct. at 2476; *see also Murphy v. Royal*, 875 F.3d 896, 934–35 (10th Cir. 2017) (noting that through the Oklahoma Organic Act, "Congress carved

[6] Now commonly referred to as the Oklahoma Organic Act, the act was originally titled "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States Court in the Indian Territory, and for other purposes." 26 Stat. 81 (1890).

the Territory of Oklahoma out of the western half of the Indian Territory" while "[t]he lands in the east held by the Five Civilized Tribes remained Indian Territory, subject only to federal and tribal authority" (quotation marks omitted)). The Oklahoma Organic Act adopted two separate sets of law for the Oklahoma Territory and the Indian Territory. 26 Stat. 81, 87, 94–95 (1890). First, selected "chapters and provisions of the Compiled Laws of the State of Nebraska . . . [we]re [] extended to and put in force in the Territory of Oklahoma until after the adjournment of the first session of the legislative assembly of said Territory." 26 Stat. 81, 87 (1890). The act provided for the Oklahoma Territory to have a governor, who would exercise executive authority, and a legislative assembly, that would create laws for the territory. 26 Stat. 81, 82–83 (1890). The act further provided "[t]hat the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace." 26 Stat. 81, 85 (1890).

Second, in the Indian Territory, the Oklahoma Organic Act provided

> [t]hat certain general laws of the State of Arkansas . . . in the volume known as Mansfield's Digest of the Statutes of Arkansas, which [we]re not locally inapplicable or in conflict with [the Oklahoma Organic] [A]ct or with any law of Congress, relating to the subjects specially mentioned in this section, [we]re hereby extended over and put in force in the Indian Territory until Congress shall otherwise provide.

26 Stat. 81, 94–95 (1890). *See, e.g.*, *Adkins v. Arnold*, 235 U.S. 417, 420 (1914) ("The act of May 2, 1890 (26 Stat. at L. 81, chap. 182), § 31, put in force, until Congress should otherwise provide, several general laws of Arkansas appearing in Mansfield's Digest of 1884."); *Okla. City v. McMaster*, 196 U.S. 529, 531 (1905)

(noting the Oklahoma Organic Act "provid[ed] a territorial government for Oklahoma").

In this same period, "Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribe members." *McGirt*, 140 S. Ct. at 2463. This period, which began in the 1880s, is known as the "allotment era." *Id.* "In 1893, Congress charged the Dawes Commission with negotiating changes to the Creek Reservation. Congress identified two goals: Either persuade the Creek to cede territory to the United States, as it had before, or agree to allot its lands to Tribe members." *Id.* When the Five Civilized Tribes[7] refused to negotiate with the Dawes Commission, Congress "began to force the issue by placing restrictions on the Indian governments and expanding federal jurisdiction within Indian Territory." *Indian Country, U.S.A., Inc. v. Okla. ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 977 (10th Cir. 1987). In 1897, placing pressure on the Five Civilized Tribes to agree to allotment, Congress "(1) provid[ed] that the body of federal law in Indian Territory, which included the incorporated Arkansas laws, was to apply irrespective of race; (2) broadened federal court jurisdiction, thereby divesting Creek tribal courts of exclusive jurisdiction over cases involving only Creeks; and (3) subjected Creek legislation to presidential veto." *Murphy*, 875 F.3d at 934 (internal quotation marks omitted).

[7] "The Cherokees, Chickasaws, Choctaws, Creeks, and Seminoles historically have been referred to as the 'Five Civilized Tribes.'" *Indian Country, U.S.A., Inc. v. Okla. ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 970 n.2 (10th Cir. 1987).

Against this backdrop, the city of Tulsa, located in the Indian Territory, incorporated "under the laws of the state of Arkansas" in January 1898, as permitted by the Oklahoma Organic Act.[8] At the time, the Oklahoma Organic Act allowed for municipalities in the Indian Territory to operate according to "chapter twenty-nine, division one" of the Mansfield's Digest of the Statutes of Arkansas ("Mansfield's Digest"). *See* Oklahoma Organic Act, 26 Stat. 81, 94–95 (1890). "[C]itizens of the United States and residents of the town of Tulsa, Indian Territory" submitted a petition on December 16, 1897, "for an order of municipal corporation of the said town of Tulsa into a body politic under the name of Tulsa under the laws of the State of Arkansas." App. at 38. The United States District Court for the Northern District of the Indian Territory approved the petition on January 18, 1898.

A few months after Tulsa incorporated, Congress passed the Curtis Act. *See* 30 Stat. 495 (1898). The Curtis Act "continued the campaign for allotment by 'abolish[ing] the existing Creek court system and render[ing] then-existing tribal laws unenforceable in the federal courts'" and "'provided for forced allotment and termination of tribal land ownership without tribal consent unless the tribe agreed to

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[8] Tulsa objects to Mr. Hooper's inclusion of historical public records in his appendix, arguing this court should not consider these texts, as Mr. Hooper did not present them before the district court. When reviewing a district court's grant of a motion to dismiss, we may consider sources of which we can take judicial notice, including public records. *See Warnick v. Cooley*, 895 F.3d 746, 754 n.6 (10th Cir. 2018). Further, by providing the court with Tulsa's petition for incorporation and original charter, Mr. Hooper is not raising a new issue on appeal, as the timing of Tulsa's incorporation was raised by Tulsa before the district court. Accordingly, we take judicial notice of Tulsa's petition for incorporation and original charter.

allotment.'" *Murphy*, 875 F.3d at 934 (alterations in original) (first quoting *Indian Country, U.S.A.*, 829 F.2d at 978 and then quoting *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1441 (D.C. Cir. 1988)). In addition to abolishing tribal courts and forcing allotment of tribal land, Section 14 of the Curtis Act provided a path for municipalities in the Indian Territory to incorporate, hold elections, levy taxes, operate schools, and pass and enforce ordinances based on Arkansas law. Curtis Act, § 14, 30 Stat. 495, 499–500 (1898). Section 14 allowed municipalities to incorporate according to chapter twenty-nine of Mansfield's Digest and provided that all inhabitants of appropriately organized municipalities would be eligible to vote and subject to the municipalities' laws. *Id.*

Following the 1898 enactment of the Curtis Act, "[i]n 1901, the Creek Nation finally agreed to the allotment of tribal lands." *Indian Country, U.S.A.*, 829 F.2d at 978. In 1901, Congress enacted the Creek Allotment Act, and the following year, Congress enacted the 1902 Cherokee Allotment Act. *See* Creek Allotment Act, 31 Stat. 861 (1901); Cherokee Allotment Act, 32 Stat. 716 (1902). These acts both provided that "no Act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation, except section fourteen of [the Curtis Act], which shall continue in force as if this agreement had not been made." Creek Allotment Act, 31 Stat. 861, 872 (1901); *see also* Cherokee Allotment Act, 32 Stat. 716, 727 (1902). In 1906, Congress enacted the Five Civilized Tribes Act. *See* 34 Stat. 137 (1906). The Five Civilized Tribes Act "cut[] away further at the Tribe's autonomy . . . . [by] empower[ing] the President to remove and replace the principal

chief of the Creek, prohibit[ing] the tribal council from meeting more than 30 days a year, and direct[ing] the Secretary of the Interior to assume control of tribal schools." *McGirt*, 140 S. Ct. at 2466 (citing Five Civilized Tribes Act, 34 Stat. 137, 139–40, 148 (1906)).

b. Oklahoma enters the Union and Tulsa reorganizes under Oklahoma law

"Two months after enacting the Five [Civilized] Tribes Act, Congress passed an enabling act to permit the people of the Oklahoma and Indian territories to form a state." *Indian Country, U.S.A.*, 829 F.2d at 978. The Oklahoma Enabling Act allowed "the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, [to] adopt a constitution and become the State of Oklahoma." 34 Stat. 267, 267 (1906). The Oklahoma Enabling Act provided for the laws of the former Oklahoma Territory to apply across the entire state, including the former Indian Territory, stating "the laws in force in the Territory of Oklahoma, as far as applicable, shall extend over and apply to said State until changed by the legislature thereof." 34 Stat. 267, 275 (1906). The Enabling Act further stated,

> [A]ll laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this Act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere with the United States.

34 Stat. 267, 277–78 (1906).

The following year, Oklahoma adopted its Constitution, becoming the forty-sixth state in the Union. *See* Okla. Const. The Oklahoma Constitution provided for the organization of municipalities, stating, "Municipal corporations shall not be created by special laws, but the Legislature, by general laws shall provide for the incorporation and organization of cities and towns and the classification of same in proportion to population, subject to the provisions of this article." *Id.* art. XVIII, § 1. The constitution further stated, under a section titled "Existing municipal corporations continued--Rights and powers," that "[e]very municipal corporation now existing within this State shall continue with all of its present rights and powers until otherwise provided by law, and shall always have the additional rights and powers conferred by this Constitution." *Id.* art. XVIII, § 2. The Oklahoma Constitution also provided for cities to create charters under state law:

> Any city containing a population of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State . . . . Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it.

Id. art. XVIII, § 3(a). Tulsa enacted a charter according to Article 18 § 3 of the Oklahoma Constitution in 1908. *See* Charter of the City of Tulsa, Okla. (1908). According to that charter,

> The City of Tulsa shall have the power to enact and to enforce ordinances necessary to protect health, life and property . . . . and it shall have and exercise all powers of municipal government not prohibited to it by this Charter, or by some general law of the State of Oklahoma, or by the provisions of the Constitution of the State of Oklahoma.

Id. art. 2, § 2. Accordingly, Tulsa's 1908 Charter "supersed[ed]" Tulsa's previous charter under the Oklahoma Organic Act. *See* Okla. Const. art. XVIII, § 3(a).

3. Analysis

Mr. Hooper argues the district court erred in granting Tulsa's motion to dismiss his declaratory judgment claim because Section 14 of the Curtis Act no longer applies to Tulsa. Specifically, Mr. Hooper argues Congress conditioned its grant of jurisdiction through Section 14 on municipalities being organized and authorized according to chapter twenty-nine of Mansfield's Digest. Because Tulsa is now organized as an Oklahoma charter city under Oklahoma law, Mr. Hooper contends Section 14 no longer confers jurisdiction on Tulsa. Tulsa counters that Section 14's references to Mansfield's Digest have been implicitly replaced with Oklahoma law and that Oklahoma's Constitution preserved its ability to exercise jurisdiction pursuant to Section 14 following statehood. Although Mr. Hooper does not argue on appeal that Section 14 was either implicitly or expressly repealed,[9] Tulsa dedicates much of its briefing to demonstrating Section 14 was never repealed and remains good law. After setting out the standard of review, we interpret the text of Section 14 and determine the scope of its jurisdictional grant. Then, we turn to whether Section 14's jurisdictional grant continued to apply to Tulsa after it reorganized as an Oklahoma charter city.

[9] At oral argument, Mr. Hooper clarified that "this is not a case of an implied repeal." Oral Argument, *Hooper v. City of Tulsa*, No. 22-5034, at 5:12–15 (10th Cir. Mar. 23, 2023).

a. Standard of review

"We review a Rule 12(b)(6) dismissal de novo and apply the same standards as the district court." *Sagome, Inc. v. Cincinnati Ins. Co.*, 56 F.4th 931, 934 (10th Cir. 2023). "[A]ll well-pleaded factual allegations in the complaint are accepted as true and viewed in the light most favorable to the nonmoving party." *Herrera v. City of Espanola*, 32 F.4th 980, 991 (10th Cir. 2022) (quotation marks omitted). "A complaint must contain 'enough facts to state a claim to relief that is plausible on its face.'" *Santa Fe All. for Pub. Health & Safety v. City of Santa Fe*, 993 F.3d 802, 811 (10th Cir. 2021) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[D]ismissal under Rule 12(b)(6) is appropriate if the complaint alone is legally insufficient to state a claim." *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1104–05 (10th Cir. 2017). Here, the district court granted dismissal of Mr. Hooper's claim based on statutory interpretation. Like Rule 12(b)(6) dismissals, "[w]e also review questions of statutory interpretation de novo." *Solar v. City of Farmington*, 2 F.4th 1285, 1289 (10th Cir. 2021).

b. Scope of jurisdictional grant in Section 14 of the Curtis Act

We "interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment" as "only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020). Courts "may not 'replace the actual text with speculation as to Congress' intent.'" *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2496 (2022) (quoting *Magwood v. Patterson*, 561 U.S. 320, 334 (2010)); *see also Kan. Nat. Res.*

Coal. v. U.S. Dep't of Interior, 971 F.3d 1222, 1235 (10th Cir. 2020) ("The goal of statutory interpretation is to ascertain the congressional intent and give effect to the legislative will. In conducting this analysis, we first turn to the statute's plain language." (internal quotation marks omitted)). To interpret a statute's plain language, "[w]e give undefined terms their ordinary meanings, considering both the specific context in which the word is used and the broader context of the statute as a whole." *In re Taylor*, 899 F.3d 1126, 1129 (10th Cir. 2018) (internal quotation marks omitted). "It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

With these principles in mind, we turn to the text of Section 14. Referring to cities and towns in the Indian Territory that have "incorporated as provided in chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas," Section 14 states, with our emphasis, that "such city or town government, *when so authorized and organized*, shall possess all the powers and exercise all the rights of similar municipalities in said State of Arkansas." Section 14 proceeds to state:

> All male inhabitants of such cities and towns over the age of twenty-one years, who are citizens of the United States or of either said tribes, who have resided therein more than six months next before any election held under this Act, shall be qualified voters at such election. That mayors of such cities and towns, in addition to their other powers, shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and towns as, and coextensive with, United

> States commissioners in the Indian Territory, ... *and all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein*. . . . .
>
> For the purposes of this section all the laws of said State of Arkansas herein referred to, so far as applicable, are hereby put in force in said Territory; and the United States court therein shall have jurisdiction to enforce the same, and to punish any violation thereof, and the city or town councils shall pass such ordinances as may be necessary for the purpose of making the laws extended over them applicable to them and for carrying the same into effect.

30 Stat. 495, 499–500 (1898) (emphasis added).

Based on its plain text, Section 14 grants a limited set of municipalities jurisdiction over violations of municipal ordinances by all their inhabitants: municipalities in the Indian Territory that are organized and authorized according to chapter twenty-nine of Mansfield's Digest. This limitation on the grant of jurisdiction is repeated throughout Section 14. First, Section 14 opens by stating "[t]hat the inhabitants of any city or town in [the Indian Territory][10] . . . may proceed to have the [city or town] incorporated as provided in chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas, if not already incorporated thereunder." 30 Stat. 495, 499 (1898). Section 14 proceeds to state that "such city or town government, when so authorized and organized, shall possess all the powers and exercise all the rights of similar municipalities in said State of Arkansas." *Id.* Here, Section 14's requirement

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[10] Section 14 refers to "said Territory," Curtis Act, § 14, 30 Stat. 495, 499 (1898), but the opening of the Curtis Act shows the act is directed towards the "Indian Territory," and later references throughout the Act to "said Territory" or "such Territory" are referring back to the Indian Territory. *See* Curtis Act, § 1, 30 Stat. 495, 495 (1898).

that a city or town government be "so authorized and organized" refers to the preceding requirement that the city or town be authorized and organized according to chapter twenty-nine of Mansfield's Digest. *Id.* Further, rather than stating "after being so authorized and organized," or "once so authorized and organized," Congress chose to limit the following grant of power—that municipalities would "possess all the powers and exercise all the rights of similar municipalities in said State of Arkansas"—to "when [municipalities were] so authorized and organized," conditioning this grant of power on municipalities being authorized and organized according to chapter twenty-nine of Mansfield's Digest.

All of Section 14's following grants of power, including the jurisdiction granting provisions at issue in this case, refer back to "such cities and towns." *See, e.g.*, *id.* ("That mayors of *such cities and towns*, in addition to their other powers, shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of *such cities and towns* as, and coextensive with, United States commissioners in the Indian Territory." (emphases added)); *see also id.* ("[A]nd all inhabitants of *such cities and towns*, without regard to race, shall be subject to all laws and ordinances of *such city or town governments*, and shall have equal rights, privileges, and protection therein." (emphases added)). Since prior to the enactment of the Curtis Act, "such" has been defined as "the same as previously mentioned or specified; not other or different." 7 Century Dictionary 6039 (William Dwight Whitney ed., 1889); *see also* 4 Universal Dictionary of the English Language 4525 (Robert Hunter & Charles Morris eds., 1897) (defining "such" as "[t]he same as

mentioned or specified; not another or different; so; in the same state or condition"); *c.f. Such*, Black's Law Dictionary (11th ed. 2019) ("That or those; having just been mentioned"). Congress's choice to grant jurisdiction only to "such cities and towns" limits Section 14's jurisdictional grant to the cities and towns previously described—cities and towns in the Indian Territory organized and authorized according to chapter twenty-nine of Mansfield's Digest and empowered to "possess all the powers and exercise all the rights of similar municipalities in said State of Arkansas." 30 Stat. 495, 499 (1898).

Section 14's grant of lawmaking authority provides additional context to Section 14's grant of jurisdiction. Under Section 14, municipalities are permitted to "pass such ordinances as may be necessary for the purposes of making the laws extended over them applicable to them and carrying the same into effect." 30 Stat. 495, 500 (1898). Immediately preceding this grant of power to pass ordinances, Section 14 states that "[f]or the purposes of this section all the laws of said State of Arkansas herein referred to, so far as applicable, are hereby put in force in [the Indian] [T]erritory." *Id.* So, municipalities are permitted under Section 14 to "pass such ordinances as may be necessary for the purposes of making ['the laws of said State of Arkansas herein referred to'] applicable to them and carrying the same into effect." *Id.* This limitation that ordinances align with Arkansas law is consistent with Section 14 applying only to towns and cities organized according to chapter twenty-nine of Mansfield's Digest, which is a digest of the laws of Arkansas. *See generally* Mansfield's Digest of the Statutes of Arkansas (1884).

Mr. Hooper does not dispute that Section 14 provided Tulsa with jurisdiction over municipal violations committed by all its inhabitants, including Indians,[11] at the time it was enacted, as Tulsa was a municipality in the Indian Territory, authorized and organized according to chapter twenty-nine of Mansfield's Digest.[12] *See* Reply at 2. Rather, Mr. Hooper argues that once Tulsa reorganized under Oklahoma law, Section 14 no longer applied to the city. We agree.

c. Section 14 of the Curtis Act no longer applies to Tulsa

Having determined the scope of Section 14's grant of jurisdiction, we turn to the primary issue in this appeal—whether Section 14 still grants Tulsa jurisdiction over municipal violations committed by its Indian inhabitants today. As discussed above, Section 14 provides cities and towns in the Indian Territory organized and authorized according to chapter twenty-nine of Mansfield's Digest jurisdiction over municipal violations committed by their inhabitants. Because Tulsa is no longer such a city or town, Section 14 no longer grants jurisdiction to Tulsa. Tulsa argues Section

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[11] Although Mr. Hooper argued before the district court that Section 14's reference to "all inhabitants" did not include Indians, he does not raise this argument on appeal. *See* Appellant's Br.; Reply. Mr. Hooper also does not argue that he is not an "inhabitant" of Tulsa. *See* Appellant's Br.; Reply.

[12] Amici the Nations argue that because Tulsa was incorporated according to the Oklahoma Organic Act of 1890, prior to the passage of the Curtis Act, Tulsa cannot exercise jurisdiction based on the Curtis Act. *See* Amici Nations' Br. at 15 ("Since it incorporated under the Organic Act, before the Curtis Act was passed, Tulsa cannot claim rights under the Curtis Act."). However, Mr. Hooper does not raise this issue or refer to the Nations' argument in his briefing. *See* Appellant's Br.; Reply. Because this issue was raised only by an amicus, and does not involve an issue we may reach sua sponte, such as our jurisdiction, federalism, or comity, we do not reach it. *Tyler*, 118 F.3d at 1404 (quoting *Swan*, 6 F.3d at 1383).

14 still grants it authority because (1) following Oklahoma's statehood the references to Arkansas law in Section 14 were replaced with references to Oklahoma law; (2) the Oklahoma Constitution reserved municipalities' preexisting rights and powers, including the jurisdiction granted by Section 14; and (3) Congress never repealed Section 14. We start by explaining why Section 14 no longer applies to Tulsa based on its plain text and then address why Tulsa's three arguments to the contrary are unavailing.

Following statehood, in 1908, Tulsa adopted a new charter reincorporating under Oklahoma law. Charter of the City of Tulsa, Oklahoma (1908). This new charter "supersed[ed]" Tulsa's previous charter under the Oklahoma Organic Act, and Tulsa ceased to be organized and authorized according to chapter twenty-nine of Mansfield's Digest. *See* Okla. Const. art. XVIII, § 3(a) (stating that following approval of a new charter, the new charter will "become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it"). To this day, Tulsa continues to be a political subdivision of the state of Oklahoma, organized and authorized according to Oklahoma law. *See* City of Tulsa Amended Charter (1989). Because Tulsa is no longer authorized and organized according to chapter twenty-nine of Mansfield's Digest, Tulsa is no longer entitled to Congress's limited grant of jurisdiction in Section 14. Tulsa does not dispute that it is no longer authorized and organized according to chapter twenty-nine of Mansfield's Digest, but offers several theories as to why this change does not prevent it from exercising jurisdiction pursuant to Section 14.

First, Tulsa argues that the references in Section 14 to Arkansas law are immaterial because "[u]pon Oklahoma's statehood in 1907 together with Congressional approval of Oklahoma's Enabling Act, 34 Stat. 267 (1906), the references [in Section 14 of the Curtis Act] to Arkansas law were replaced by references instead to the law of the new State of Oklahoma." Appellee's Br. at 13. But Tulsa cites no portion of the Oklahoma Enabling Act or other act of Congress making such a change. The Oklahoma Enabling Act provided Oklahoma Territory law would extend across the entire state of Oklahoma, including the former Indian Territory, but did not address retention or amendment of Section 14 of the Curtis Act. *See* Oklahoma Enabling Act, § 13, 34 Stat. 267, 275 (1906). Congress's silence is not fairly interpreted as a directive to amend Section 14 of the Curtis Act to remove the conditions Congress expressly placed on municipalities' rights and powers in the former Indian Territory.

Amicus Oklahoma attempts to complete Tulsa's argument. Oklahoma contends that by extending Oklahoma Territory law over the former Indian Territory through the Oklahoma Enabling Act, Congress abrogated the application of Arkansas law but did not abrogate its grant of jurisdiction to municipalities over municipal violations committed by all their inhabitants, including Indians. Oklahoma argues that while there was a conflict between the application of Oklahoma Territory law and Arkansas law, there was no conflict between the Oklahoma Territory law and municipalities' exercise of jurisdiction, so the parts of Section 14 not involving Arkansas law remained in effect following the Oklahoma Enabling Act. Oklahoma's argument falls

short because it does not address the express requirement that the rights and powers granted in Section 14 are available only to a municipality organized and authorized according to Mansfield's Digest. Section 14 does not simply direct municipalities to apply Arkansas law in some places and grant them jurisdiction over municipal violations in others. The references to Arkansas law are intertwined with the powers Section 14 grants. Indeed, it expressly provides that the powers of municipalities are granted upon incorporation according to chapter twenty-nine of Mansfield's Digest, and continue when municipalities are "so authorized and organized." *See* 30 Stat. 495, 499–500 (1898).[13] Reading Section 14 the way Tulsa and Oklahoma suggest would require this court to ignore the express limitations Congress placed on the jurisdictional grant.

Tulsa also argues the jurisdictional grant in Section 14 still applied to Tulsa following Oklahoma's entry to the Union because Oklahoma reserved for its municipalities their current rights and powers at the time of its adoption through Article 18 § 2 of the Oklahoma Constitution. Article 18 § 2 of the Oklahoma Constitution states, "Every municipal corporation now existing within this State shall

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[13] This limitation makes sense considering Section 14's historical context. Referring to an act of Congress putting the corporation laws of Arkansas in effect in the Indian Territory, the Supreme Court noted that this was but one of "a series of acts of that character" where "[Congress's] action was intended to be merely provisional" because Congress "was then contemplating the early inclusion of that territory in a new state, and the purpose of those acts was to provide, for the time being, a body of laws adapted to the needs of the locality and its people in respect of matters of local or domestic concern." *Shulthis v. McDougal*, 225 U.S. 561, 571 (1912).

continue with all of its *present rights and powers* until otherwise provided by law, and shall always have the additional rights and powers conferred by this Constitution." (Emphasis added.) Tulsa argues that based on Article 18 § 2, Oklahoma provided for Tulsa to retain its jurisdictional grant from the Curtis Act following statehood. This argument has two fatal shortcomings. First, the Oklahoma Constitution cannot amend an act of Congress. Congress limited its grant of jurisdiction in Section 14 to cities and towns in the Indian Territory organized and authorized according to chapter twenty-nine of Mansfield's Digest. Only Congress had the power to change that limitation. Second, upon statehood, even prior to Tulsa's adoption of a new charter under Oklahoma law, Tulsa ceased to be a municipality organized according to chapter twenty-nine of Mansfield's Digest. The Oklahoma Enabling Act extended Oklahoma Territory laws across the former Indian Territory. *See* Oklahoma Enabling Act, § 13, 34 Stat. 267, 275 (1906) (extending laws in force in Oklahoma Territory across former Indian Territory). This means, upon statehood, Tulsa became a municipality subject to the laws of the Oklahoma Territory, until the point it was reorganized under Oklahoma state law. So, by its express terms, Section 14 of the Curtis Act no longer applied to Tulsa upon statehood, and Tulsa had no "present rights and powers" stemming from the Curtis Act to be preserved by the Oklahoma Constitution. *See State ex rel. West v. Ledbetter*, 97 P. 834, 835 (Okla. 1908) ("Upon the admission of the state into the Union, the form of government theretofore existing in the Indian Territory ceased to

exist, and the laws in force in that territory under which Muskogee held its charter and exercised its municipal powers became inoperative.”).

Tulsa dedicates much of its remaining briefing to demonstrating Section 14 of the Curtis Act has never been repealed. But with its focus on repeal, Tulsa is arguing past Mr. Hooper. Mr. Hooper does not argue Congress has either implicitly or expressly repealed Section 14.[14] *See* Oral Argument, *Hooper v. City of Tulsa*, No. 22-5034, at 5:12–15 (10th Cir. Mar. 23, 2023). Instead, he argues, based on its plain text, Section 14's jurisdictional grant no longer applies to Tulsa. Tulsa notes that “[s]ince its passage before Oklahoma statehood and to this day, there have been no changes to Section 14 of the Curtis Act.” Appellee's Br. at 16 (emphasis omitted). Tulsa further contends that only Congress can repeal or amend a federal grant of jurisdiction. Although Tulsa cites these principles in support of its argument that the jurisdictional grant from Section 14 survived statehood, Tulsa fails to appreciate that because Congress has not amended or repealed Section 14, the plain text of Section 14, including its limitations on the grant of jurisdiction, also still applies. Based on this text, Section 14 does not confer jurisdiction upon Tulsa in its current form.

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[14] Amicus OAMA filed a Federal Rule of Appellate Procedure Rule 28(j) letter bringing this court's attention to the District Court for the Northern District of Oklahoma's recent decision in *Pickup v. District Court of Nowata County*, where the district court concluded “that Congress has not implicitly repealed Curtis Act § 14.” No. CIV 20-0346 JB/JFJ, 2023 WL 1394896, at *83 (N.D. Okla. Jan. 31, 2023). The district court's analysis in *Pickup* is not persuasive here because the district court in *Pickup* analyzed whether Congress repealed Section 14 but did not address the issue raised by Mr. Hooper: the conditions Congress placed on Section 14's grants of power. *See id.* at *83–86.

Tulsa warns that reversing the district court's decision would lead to an "unworkable" and "counterintuitive" "system where municipal laws would apply only to some inhabitants, but not others, depending on a complex algorithm with variables based on tribal membership of a defendant as well as discrete geographies within the City limits." Appellee's Br. at 29–30; *see also* Amicus OAMA's Br. at 3 (contending determination that Section 14 does not grant municipalities jurisdiction over municipal violations committed by Indians "will create unnecessary judicial inefficiency issues for all courts, even tribal courts, and will likely lead to the regular dismissal of local offenses"). Amicus Creek Nation counters that "[t]he Nation presently exercises highly effective criminal law enforcement throughout its Reservation—including in traffic matters—in close cooperation with other governments" and "[r]eversing the district court's decision will allow that cooperative enforcement to continue to flourish." Amicus Creek Nation's Br. at 23. Both Tulsa and Mr. Hooper speculate about possible unintended consequences of either affirming or reversing the district court, but ultimately, we are limited to interpreting the law Congress enacted and not the parties' "dire warnings." *See McGirt*, 140 S. Ct. at 2481 ("[D]ire warnings are just that, and not a license for us to disregard the law."). In *McGirt*, the Supreme Court explained that courts need not "consult extratextual sources when the meaning of a statute's terms is clear," as extratextual sources may not overcome a statute's plain terms. *Id.* at 2469. Accordingly, even if Tulsa proves correct that reversing the district court's decision will lead to disruption, we must base our decision on the plain text of Section 14. If

the system in place in Oklahoma proves untenable, "Congress remains free to supplement its statutory directions about the lands in question at any time." *Id.* at 2481–82.

Because, by its plain text, Section 14 of the Curtis Act no longer applies to Tulsa, the district court erred in granting Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's declaratory judgment claim.

B. Appeal from the Municipal Court

Mr. Hooper contends that because Section 14 no longer grants Tulsa jurisdiction over municipal violations committed by Indians, the district court erred by dismissing as moot his appeal of the municipal court's denial of his application for post-conviction relief. Although we agree the district court erroneously dismissed Mr. Hooper's appeal as moot based on its analysis of Section 14, we determine the district court lacked jurisdiction over Mr. Hooper's appeal of the municipal court's denial of his petition for post-conviction relief.

As noted above, we have an "independent duty to assure ourselves of the district court's subject-matter jurisdiction." *Planned Parenthood of Kan.*, 882 F.3d at 1211. Mr. Hooper argues in his complaint and response to Tulsa's motion to dismiss that the district court had jurisdiction over his appeal from the municipal court's denial of his petition for post-conviction relief based on (1) the appeal procedures pursuant to Section 14 of the Curtis Act and (2) federal question jurisdiction under 28 U.S.C. § 1331. Because Section 14 no longer grants Tulsa jurisdiction over municipal violations committed by Indians, and accordingly the appeal procedures under

Section 14 do not apply to Mr. Hooper's application for post-conviction relief, we are left only with Mr. Hooper's argument that the district court has jurisdiction over his appeal because it presents a federal question. Section 1331 grants district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." As recognized by the Supreme Court through the *Rooker-Feldman* doctrine, § 1331 "is a grant of original jurisdiction[] and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to [the Supreme] Court." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002). Accordingly, the district court could not exercise subject matter jurisdiction over Mr. Hooper's appeal from the municipal court's denial of his petition for post-conviction relief, an appeal from a state court decision, even if it involves a federal question. *See D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). We vacate the district court's dismissal of Mr. Hooper's appeal as moot and direct the district court to dismiss Mr. Hooper's appeal for lack of jurisdiction on remand.

III. CONCLUSION

We REVERSE the district court's grant of Tulsa's Rule 12(b)(6) motion to dismiss Mr. Hooper's claim for declaratory judgment, VACATE the district court's dismissal of Mr. Hooper's appeal as moot, DIRECT the district court to dismiss Mr. Hooper's appeal without prejudice for lack of jurisdiction, and REMAND for proceedings consistent with this opinion.

FILED
United States Court of Appeals
Tenth Circuit

July 19, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JUSTIN HOOPER,

Plaintiff - Appellant,

v.

THE CITY OF TULSA,

Defendant - Appellee.

CHEROKEE NATION, et al.,

Amici Curiae.

No. 22-5034
(D.C. No. 4:21-CV-00165-WPJ-JFJ)
(N.D. Okla.)

ORDER

Before **McHUGH**, **EID**, and **CARSON**, Circuit Judges.

This matter is before the court on the *City of Tulsa's Opposed Motion to Stay the Mandate Pending the Filing of a Petition for Writ of Certiorari*, *Plaintiff/Appellant's Response to the City of Tulsa's Opposed Motion to Stay the Mandate Pending the Filing of a Petition for Writ of Certiorari* and the *Response of the Muscogee (Creek) Nation, Seminole Nation of Oklahoma, Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, and the Quapaw Nation to the City of Tulsa's Opposed Motion for Stay Pending the Filing of a Petition for Writ of Certiorari*. Upon review and consideration,

appellee's motion to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUSTIN HOOPER,

Plaintiff/Appellant,

v. Case No. 21-cv-165-WPJ[1]-JFJ

THE CITY OF TULSA,

Defendant/Appellee.

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [Doc. 6]

THIS MATTER comes before the Court upon Defendant City of Tulsa's Motion to Dismiss Plaintiff's Complaint and Brief in Support ("Motion") (Doc. 6). Having reviewed the parties' submissions and the applicable law, the Court finds that the Motion is well-taken and therefore **GRANTS** it as to Count II (declaratory judgment), which renders Count I (appeal from municipal court judgment) moot.

BACKGROUND[2]

Plaintiff, as a member of the federally recognized Choctaw Tribe, is an Indian[3] by law. On or about August 13, 2018, he received a speeding ticket from the City of Tulsa within the

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[1] Chief United States District Judge William P. Johnson of the District of New Mexico was assigned this case as a result of the Tenth Circuit Order designating Judge Johnson to hear and preside over cases in the Northern District of Oklahoma.

[2] Unless the Court notes otherwise, these facts are derived from the Complaint and are to be taken as true for the purposes of ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[3] The Court recognizes that some individuals find the term "Indian" to be antiquated or offensive to indigenous communities. The term holds legal significance as it refers specifically to members of federally recognized indigenous tribes and was the language Congress used when enacting statutes relevant to this matter. Therefore, other terms such as "First Nations," "indigenous," or "Native

boundaries of the Creek Reservation. On or about August 28, 2018, he was found guilty by Tulsa's municipal criminal court and was ordered to pay a $150 fine, which was paid.

Years later, on or about December 17, 2020, Plaintiff filed an application for postconviction relief in the Municipal Criminal Court of the City of Tulsa. After arguments, the court found that it had jurisdiction pursuant to the Curtis Act, 30 Stat. 495 (1898), and denied postconviction relief. The Municipal Criminal Court found that the appropriate court to which Plaintiff (there Defendant) could appeal his municipal conviction would be the U.S. Federal District Court. Doc. 1-1 at 12. Accordingly, Plaintiff appeals that decision here as Count I. For Count II, Plaintiff seeks a declaratory judgment that municipalities, such as the City of Tulsa, do not have subject matter jurisdiction over "Indians" within the boundaries of a reservation. Plaintiff's case therefore contains both a criminal appeal (Count I) *and* a civil request for declaratory judgment (Count II), an unusual procedural posture. Defendant moves to dismiss the case in its entirety pursuant to Rule 12(b)(6). Doc. 6.

DISCUSSION

I. Procedural Posture

Given the uncommon form this case takes, the Court begins with a logistical question: can it rule on a civil motion to dismiss when Count I is an appeal from Tulsa's municipal *criminal* court?

The parties agree that Count II, as a civil request for declaratory judgment, is appropriately subject to a motion to dismiss under Rule 12(b)(6). *See* Doc. 22 at 7 ("[A] ruling on the City's Motion to Dismiss is proper as to the declaratory judgment aspect of the case."); Doc. 23 at 19–20 ("[I]f the issue of subject matter jurisdiction is taken as a legal issue, the declaratory judgment

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American" do not convey the precise legal meaning that "Indian" does. The Court uses the term "Indian" for clarity.

could be addressed, but not the appeal from the denial of post-conviction relief."). Further, the parties agree that the Count II declaratory judgment issue might render the Count I appeal moot. *See* Doc. 22 at 7 ("Depending on how this Court rules on the declaratory judgment action, such a ruling could serve to render any further proceedings on the appeal moot."); Doc. 23 at 19 ("[T]he Court's resolution of the Curtis Act issue and the potential retroactive application of the *McGirt* decision will be dispositive of the post-conviction relief since the sole basis for post-conviction relief is that the City is lacking jurisdiction to prosecute him.").

Therefore, mindful of the possibility of overstepping with a different approach, the Court first addresses the declaratory judgment issue in Count II to determine whether reaching Count I is necessary.

II. Count II: Declaratory Judgment

Declaratory judgment is appropriate where "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Surefoot LC v. Sure Foot Corp.*, 531 F.3d 1236, 1244 (10th Cir. 2008) (citation omitted). Here, Plaintiff seeks declaratory judgment that the Curtis Act does not confer upon municipalities jurisdiction over crimes committed by Indians within the boundaries of a reservation. Plaintiff asserts that because of this lack of subject matter jurisdiction, any such judgment would be void. Doc. 1 at 5–6. This decision could resolve the dispute regarding Defendant's subject matter jurisdiction over Plaintiff's traffic ticket. Doc. 23 at 19. Accordingly, there is a substantial, real, and immediate controversy between the adverse parties here, and declaratory judgment is an appropriate avenue to consider.[4]

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[4] The parties also dispute the mechanism by which this Court has subject matter jurisdiction to resolve this dispute, although they agree that jurisdiction is proper. *See* Doc. 6 at 3; Doc. 12 at 4. Because the

Defendant moves to dismiss Plaintiff's request for declaratory judgment because, it argues, Plaintiff's legal theory is incorrect. Doc. 6 at 1. Defendant maintains that the Curtis Act remains good law and grants the City of Tulsa municipal authority over everyone within city limits, whether or not that land is part of a reservation. *Id.* at 11. The Court first outlines the relevant provisions of the Curtis Act, then examines the parties' arguments.

A. Relevant Provisions of the Curtis Act

The Curtis Act, 30 Stat. 495, became federal law in 1898. It contained many sections dealing with different issues, largely for the shameful purpose of weakening tribal sovereignty by abolishing tribal courts, *id.* § 28, and enacting an allotment policy that parceled out land to individual tribal members, *id.* § 11. The section of the law at issue in this case, however, is Section Fourteen.

The relevant portions of Section Fourteen deal with Indian Territory state and municipal law and ordinances. On a state law level, this provision copied over Arkansas law to part of what would be Oklahoma, which was not yet a state and was referred to as Indian Territory. *See id.* § 14. Federal district courts had the authority to punish violations of Arkansas state law within Indian Territory because, since the land was not yet a state, there was not a state court to do so. *See id.* On a municipal law level, this provision allowed for incorporation of cities and towns with two hundred or more residents. *Id.* It stated that incorporation would take place "as provided in chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas"[5] and that once incorporated, the city or town government "shall possess all the powers and exercise all the rights of similar

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Curtis Act is a federal statute, a dispute about its extent or validity is a federal question. *See* 28 U.S.C. § 1331.

[5] Mansfield's Digest of the Statutes of Arkansas, or Mansfield's Digest, is a publication from 1884 which compiled the statutes of Arkansas. It can be read online at https://llmc.com/docDisplay5.aspx?set=99989&volume=1884&part=001.

municipalities in said State of Arkansas." *Id.* Additionally, Section Fourteen granted city or town councils the authority to pass ordinances and gave the mayors of such towns "the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and towns as, and coextensive with, United States Commissioners in the Indian Territory[.]" *Id.* And most importantly, the law provided that "all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protections therein." *Id.*

Plaintiff makes a variety of arguments about how to interpret this language. First, he asserts that Section Fourteen grants only legislative and executive powers to municipalities while reserving judicial powers to the federal district court. Doc. 12 at 4–5.[6] He goes so far as to contend that the Curtis Act does not permit municipalities to create municipal courts. *Id.* at 6. This stance is patently incorrect; the same section of the Curtis Act recognizes mayoral civil and criminal jurisdiction "coextensive with[] United States Commissioners in the Indian Territory." Curtis Act § 14. The Curtis Act therefore explicitly recognizes mayoral courts. *Id.* Additionally, the language of Section Fourteen governs incorporation based on the provisions of Mansfield's Digest, chapter twenty-nine. Section 765 of this chapter provides:

> By-laws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures, and penalties, on any person offending against or violating such by-laws or ordinances, or any of them; and the fine, penalty, or forfeiture, may be prescribed in each particular by-law or ordinance, or by a general by-law or ordinance made for that purpose; and municipal corporations shall have power to provide in like manner for the prosecution, recovery and collection of such fines, penalties and forfeitures.

[6] Plaintiff cites to two cases describing how the Act of April 28, 1904 stripped tribal courts of jurisdiction and vested that jurisdiction in the United States courts of the Indian Territory. Doc. 12 at 5. These cases do not stand for the proposition that federal courts had sole jurisdiction over all matters, including municipal matters, in the Territory. They refer only to the divestment of *tribal* judicial authority. *See Colbert v. Fulton*, 157 P. 1151, 1152 (Okla. 1916); *In re Poff's Guardianship*, 103 S.W. 765, 766 (Ct. App. Indian Terr. 1907).

Mansfield's Digest, ch. 29, § 765 (1884). Additionally, the same chapter grants jurisdiction to "police courts" reminiscent of the municipal court at issue in this case: "The police judge shall provide over the police court, and perform the duties of judge thereof, and shall have jurisdiction over all cases of misdemeanor arising under this act, and all ordinances passed by the city council in pursuance thereof." *Id.* § 812. These sections together make it quite clear that the Curtis Act, which incorporates the provisions of Mansfield's Digest by reference, explicitly authorizes the jurisdiction of a variety of municipal courts and court functions.

Plaintiff shifts to a more technical approach on this point in his supplemental brief, claiming that municipal judges—not mayors—exercise municipal jurisdiction today. Doc. 23 at 16–17. It is true that mayoral courts did not survive Indian Territory's conversion to statehood as Oklahoma. *Hillis v. Addle*, 128 P. 702, 702 (Okla. 1912). Therefore, the mayoral courts to which the Curtis Act refers are no longer in existence. However, as described above, the provisions of Mansfield's Digest incorporated by reference into the Curtis Act expressly authorize other forms of municipal jurisdiction, including the jurisdiction to enforce municipal ordinances and misdemeanors.

Plaintiff also argues that the language "all inhabitants of such cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments" fails to consider the difference between race (indigenous heritage) and the political status of being an Indian (membership in a federally recognized tribe). Doc. 23 at 18. This argument loses sight of the forest for the trees. The statutory language plainly covers *all inhabitants*. It clarifies, during an era of history in which "all" often made racial exclusions,[7] that this statement covered individuals of all racial backgrounds. But this clarification supplements "all," not restricts it. Plaintiff's

[7] See, famously, the Declaration of Independence's "all men are created equal" penned while slavery remained legal.

argument could just as easily be used to say that "without regard to race" does not cover other interpersonal differences, such as sex, and therefore that "all" did not include women, whom the Curtis Act had already separated from the rest of the political citizenry by forbidding them to vote. Curtis Act § 14. Even if "without regard to race" does not cover the political difference of whether a person is legally an Indian, or a woman, or a member of any other group treated differently under the law based on a trait other than race, that does not diminish the coverage of the phrase "all inhabitants." The plain meaning of this phrase is to cover *everyone* inhabiting the city or town.

Oklahoma's statehood did not put an end to municipalities' powers under the Curtis Act. The Oklahoma Constitution provided that "[e]very municipal corporation now existing within this State shall continue with all of its present rights and powers until otherwise provided by law, and shall always have the additional rights and powers conferred by the Constitution." Okla. Const. Art. 18 § 2. In fact, the Oklahoma Constitution explicitly permitted the operation of municipal courts. Article 7, § 1 stated,[8]

> The judicial power of this state shall be vested in the Senate, sitting as a court of impeachment, a Supreme Court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions or boards, inferior to the Supreme Court, as may be established by law.

Ex parte Bochmann, 201 P. 537, 539 (Okla. Ct. Crim. App. 1921). Therefore, statehood did not terminate the continued power of municipalities to operate municipal courts.

Plaintiff also argues that the Curtis Act has been repealed by *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439 (D.C. Cir. 1988). This case did not involve Section Fourteen of the Curtis Act; it addressed Section Twenty-Eight of the Curtis Act, which pertained to the abolition of tribal courts. *Hodel*, 851 F.2d at 1440, 1442–43. Accordingly, *Hodel* did not repeal Section Fourteen.

B. State and Municipal Authority

[8] This provision has since been amended.

Pursuant to the Major Crimes Act ("MCA"), 18 U.S.C. § 1153, state courts do not have jurisdiction over major crimes committed by Indians in "Indian country," which includes reservation lands. Federal courts have exclusive jurisdiction over these crimes, which include offenses such as murder, arson, and assault. *Id.* Plaintiff argues that a regulatory scheme that would grant the City of Tulsa, but not the state of Oklahoma, criminal authority over an Indian defendant does not make sense because municipalities are political subdivisions of the state. Doc. 12 at 6. Defendant counters, correctly, that "a municipality may be granted powers by the federal government different than those granted to the state." Doc. 13 at 6 (emphasis removed).

Defendant cites *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958). In this case, the City of Tacoma sought to build a power project on a river that ran through it. It received a federal license to do so. The State of Washington opposed the project and the license because it would destroy one of the state's fishing hatcheries. Although Tacoma was a political subdivision of Washington, the federal government has authority over navigable waters and it used that authority to issue a license to Tacoma—so, the Supreme Court held, Tacoma could use the license and build the project even though the state opposed it. *Id.* at 339.

The circumstances here are analogous. Congress has plenary power over Indian affairs, *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998), just like it does over navigable waters. Although this case does not involve a license, the same principle applies—Congress affirmatively granted authority to a municipality that it did not give to the state. Even if the mechanism by which the city receives power is different (a license vs. a statutory act), the basic holding that cities can hold powers separate from and contradictory to the wishes of the state is sufficient.

C. *McGirt* and the Curtis Act

When the United States Supreme Court ruled on *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), the decision had a tremendous impact on the state of Oklahoma. *McGirt* examined whether the Creek reservation covering much of the eastern half of Oklahoma had been disestablished: taken out of political existence by an act of Congress. *Id.* at 1, 7. It found that the reservation was still intact, and thus, the area in which the petitioner had committed his crime was, and is, "Indian country" under the MCA. *See id.* at 27–29. Accordingly, the State of Oklahoma had no jurisdiction over the petitioner because the federal government had exclusive jurisdiction over his major crime. *See id.* at 36.

Plaintiff contends that because of *McGirt's* holding, "the state of Oklahoma and its political sub-divisions are without subject matter jurisdiction to try criminal cases against defendants that are classified as 'Indian' under federal law" and that because of this, the municipal court lacked subject matter jurisdiction over his conviction. Doc. 12 at 1–2. This characterization of *McGirt's* holding is incorrect. *McGirt* makes no mention of municipal jurisdiction and only briefly mentions the Curtis Act in the dissent. 140 S. Ct. at 2490 (Roberts, C.J., dissenting). This mention is made in the context of Congress "laying the foundation for the state governance that was to come," i.e., that the Curtis Act was an indication of Congress's intent to disestablish the reservation in the future. *Id.* at 2491. *McGirt* says nothing about repealing or overriding the Curtis Act, and it does not deal with municipal law at all. Its holding is that the Creek reservation is still intact, which has implications for felony crimes within the scope of the MCA.

In contrast, Congress passed the Curtis Act to, among other things, give municipalities jurisdiction over local ordinance violations—a classification of crimes entirely distinct from the MCA's litany of serious offenses. *See* 18 U.S.C. § 1153 (MCA). Plenty of other criminal violations also do not trigger the MCA's jurisdiction; for example, it is not federal courts but tribal courts

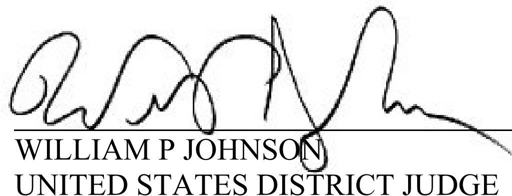
that have jurisdiction over misdemeanors that Indians commit within reservation boundaries. *See United States v. Lara*, 541 U.S. 193, 199 (2004). It is not contradictory that Congress granted federal jurisdiction over major crimes through the MCA and municipal jurisdiction over violations of local ordinances through the Curtis Act. *McGirt's* implications for the former do not demonstrate an effect on the latter.

D. Conclusion

Plaintiff requested declaratory judgment "finding that the Curtis Act confers no jurisdiction to municipalities located within the boundaries of a reservation and any judgment rendered by such municipalities against an Indian would have been made without subject matter jurisdiction and is therefore void." Doc. 1-1 at 5–6. Defendant moves to dismiss this request. Doc. 6. The Court **GRANTS** the motion to dismiss this request for declaratory judgment and finds for the above reasons that the Curtis Act grants the municipalities in its scope jurisdiction over violations of municipal ordinances by any inhabitant of those municipalities, including Indians.

Accordingly, Plaintiff's appeal of the decision denying postconviction relief for his speeding ticket fine (Count I of the Complaint) is **MOOT**.

IT IS SO ORDERED.



WILLIAM P JOHNSON
UNITED STATES DISTRICT JUDGE

AFFIDAVIT OF DEPUTY CHIEF ERIC DALGLEISH

STATE OF OKLAHOMA,)
) ss:
COUNTY OF TULSA)

The undersigned, Eric Dalgleish, Deputy Chief of Police of the City of Tulsa Police Department – Operations Bureau, being of lawful age and being first duly sworn, upon oath under penalty of perjury, deposes and states as follows:

1. This Affidavit is written in reference to claims that denial of a stay of the Tenth Circuit Court of Appeals' decision in *Hooper v. City of Tulsa*, Case Number 22-5034, will not cause any disruption to the City of Tulsa. These claims are made by amici Muscogee (Creek) Nation and Cherokee Nation (joined by several tribes who have no jurisdiction within the City of Tulsa) ("the Tribes") in their "Motion for Leave to File a Response to the City of Tulsa's Opposed Motion for Stay Pending the Filing of Petition for Writ of Certiorari" filed in the case below, which claims were adopted by party Justin Hooper.
2. Mr. Hooper and the Tribes claim that the City of Tulsa ("the City") does not need a stay and that the City's request is based on "nothing more than unsupported claims of disruption…." *Tribes' Mot. for Leave at 2*. This Affidavit provides evidence of only some of the disruption that will occur.
3. The information in this Affidavit is in part based on information obtained from Tulsa Police Department personnel working in the field, reports and videos reviewed by me, information on court and other government websites, and from information obtained from department analysts and the City's Information Technology and Court records systems.
4. In the 2020 Census, the City's population was estimated to be 411,867, approximately 62% of whom identified as White alone, 15% as Black alone, 4.5% as American Indian/Alaska Native Alone, 3.5% as Asian alone, and 10.5% as mixed race.[1]
5. One-hundred ninety (190) square miles of the City of Tulsa, or 95% of the City's landmass, are within the Muscogee Creek Nation ("MCN") and Cherokee Nation reservations.[2] The remainder of the City lies within Osage County, which is not a reservation at this time, however, there is a case pending before the Oklahoma Court of Criminal Appeals seeking to declare

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[1] https://www.census.gov/quickfacts/fact/table/tulsacityoklahoma/PST045222.
[2] These data are from a Tulsa Planning Office GIS analysis.

Osage County to be the Osage Nation reservation, which would result in the entirety of the City being within the three reservations.[3]

6. The Curtis Act of 1898 provides that "all inhabitants of ... cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein." §14, 30 Stat. 499-500.
7. In the fall of 2020, the City of Tulsa Police Department ("TPD") and other City agencies determined that this jurisdiction conferred by Congress authorizes them to address violations of Municipal ordinances by Indians and non-Indians alike, and so continued filing such violations in the City of Tulsa Municipal Court system ("Municipal Court").
8. In 2021, TPD filed approximately 45,080 citations and 5,208 other charges in the Municipal Court. In 2022, those numbers were 95,986 citations and 10,335 arrests for other charges.
   a. These numbers do not include State or Federal charges or charges sent to the Tribes, which consist primarily of non-federal felony charges and domestic assault and battery misdemeanors.
9. In 2022, of the 95,986 citations, 66,121, or about 69% of all citations, were issued through the City's electronic citation system programmed specifically for use by TPD. The system allows the officer to enter data electronically, and it auto-populates the Municipal Court's location and court date as well as the Municipal Code onto the electronic citation ("e-cite"). Additionally, once the Officer completes the citation, and the cited individual signs the e-cite, the system automatically sends all e-cites to the Municipal Prosecutor who then approves them electronically, sending them directly into the Municipal Court's system.
10. The process of issuing a traffic citation for Municipal Court filing, without going through a complex jurisdictional analysis based on tribal membership, geography, and other factors, takes approximately four (4) to 15 minutes. This timeframe includes, but may not be limited to: observation of the violation; initiation of the stop by activating lights and sirens; making initial contact to gather license, insurance, and registration information; returning to the patrol vehicle to run the appropriate records, driver's license, insurance, and vehicle checks; writing any citations; and returning to the stopped vehicle to issue the

[3] See, e.g., *Br. Of Appellant*, filed 11/22/2022, Oklahoma Court of Criminal Appeals, *Dakota McCauley v. State*, F-2022-208, https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=F-2022-208&cmid=132459.

citation(s) to the violator. This timeframe can vary depending on the number of citations issued, whether the officer has access to an electronic citation device, and the interaction with the driver, among other variables.

11. Public perception regarding the City's jurisdiction has already resulted in Indian citizens challenging TPD Officers in the field, reflecting a sense of impunity to basic standards of conduct. For example:
    a. On or about February 3, 2021, after showing his Cherokee citizenship card to an Officer who pulled him over for traveling 78 miles per hour in a 50 mile per hour construction zone, a driver stated, in reference to his Cherokee citizenship card, "I thought this was my 'get out of jail free card now, my Indian card." See video here: https://bit.ly/TPD-2-3-2021.
    b. On or about July 14, 2023, a motorcyclist with a passenger followed a marked TPD vehicle for approximately four (4) miles and then passed the TPD vehicle traveling at 77 miles per hour in a 65 mile-per-hour zone. Once stopped, the Officer asked the driver, "What's the speed limit?" and the Indian driver stated, "What's the speed limit for me?" The Officer responded, "Sixty-five just like it is for everybody else." The Indian driver then stated, "Are you sure? What about Hooper versus City of Tulsa?" The driver went on to question the Officer about whether he is appropriately commissioned. See video here: https://bit.ly/TPD-7-14-2023
    c. On or about July 18, 2023, an Indian driver was stopped by TPD Officers, and the driver asked the Officer if the Officer had seen the car's tribal tag, suggesting that the vehicle could not be stopped. The driver had no driver's license on his person and only a Choctaw Nation tribal enrollment card. Although the conversation is difficult to hear, the full video can be found here: https://bit.ly/TPD-7-18-2023.

12. While some might suggest that driving 12 to 28 miles per hour over the posted speed limit, as occurred in some of the cases referenced herein, is not a major concern, Tulsa has seen a significant increase in traffic collisions, including fatality collisions, since *McGirt*. In 2021, the City set a record for fatality collisions. There were 11,509 collisions reported to TPD. Of those, 299 resulted in severe injuries with 69 deaths occurring.[4]

13. Although the Tribes allege there will be no disruption to traffic-stop and misdemeanor arrest processes, that allegation is simply incorrect. If Tulsa

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[4] https://www.newson6.com/story/61d3ae7f2dc1430bf6e4cf6f/tulsa-sets-new-record-for-deadly-car-crashes-in-2021.

Police are required to apply Indian Country jurisdictional analysis to every traffic citation, every criminal citation (typically petit offenses such as trespassing, larceny from a retailer, etc.), and every misdemeanor arrest (typically DUI, public intoxication, drug possession, etc.), it will add considerable time and complexity to every stop.

14. First, Officers will have to inquire whether the driver[5] is Indian. Currently, Officers are not compelled to ask citizens their race or citizenship. They simply request a driver's license and insurance. That will change if the Tenth Circuit's mandate takes effect.

    a. In any instance where a driver alleges he or she is Indian, the Officer will have to request proof of Indian citizenship and proof that the person is Indian by blood as required by the Tribes for filing a case.

    b. If the person does not have both a Tribal citizenship card and a Certificate of Degree of Indian Blood on their person, the Officer will be required to confirm that the Tribe is federally recognized. While this might seem simple to confirm, even the Cherokee Nation's own newspaper noted that at one time there were "more than 200 bogus Cherokee tribes."[6] Tulsa Police have also encountered Tribes recognized by other States, but which are not federally recognized.[7]

    c. Once the Officer confirms the Tribe is federally recognized, the Officer must then find a contact number for that Tribe and attempt to confirm whether the driver is a tribal citizen. Although this might not be difficult in reference to some Tribes, TPD Officers have encountered individuals from many Tribes located outside the State of Oklahoma. Not all of the almost 600 federally recognized Indian tribes have 24-hour contacts for their enrollment offices, and there is no single centralized database that includes all Tribal citizens. While some officers have waited on the phone for only one or two minutes for Tribal citizenship confirmation, others have waited hours and even days. An Officer cannot wait hours or days on the side of the road to determine citizenship. The practical reality is that these individuals will be released without charges or charged as non-Indians because their citizenship cannot be established.

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[5] Although this Section refers to drivers, the same analysis and issues hold true for criminal citations and misdemeanor arrests.

[6] https://www.cherokeephoenix.org/news/non-recognized-cherokee-tribes-flourish/article_ac02834f-35d3-5bc3-bd2c-ad2b69101baf.html.

[7] See https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes (noting there are 11 States that recognize more than 60 Indian tribes).

d. When the Tribe contacted has 24-hour enrollment confirmation, determining the Tribe, making the call, and waiting for confirmation adds about an additional five (5) minutes to what would be a four- (4) to six- (6) minute traffic stop.

15. The second change that will occur on every stop if the appellate court's mandate is not stayed will be, when a driver is confirmed to be Indian, the Officer will then be required to determine whether the location of the offense resulting in the stop is in a Tribal jurisdiction, and if so, which one. It might be a relatively simple task in some areas of the City to determine on which reservation a crime occurs, but it is not an easy question as one gets closer to the 21-mile-long boundary line between tribes in City limits.

a. Exhibit A includes several maps showing tribal boundaries. The base map in Map 1 comes from the MCN website and indicates with the east-west red line the northern boundary of MCN, which should also be the southern boundary of the Cherokee Nation within the City. The north-south green line shows the Osage County boundary which is also the farthest western boundary of the Cherokee Nation. As one gets closer to the boundaries, phone calls to both tribes might be required to determine in which tribal jurisdiction the crime occurred, because there is no landmark distinguishing precise tribal boundaries. This can be seen in Map 2 from the Cherokee Nation's website. Map 2 shows the boundary between the two tribes running both north and south of Admiral Place.

b. Phone calls to both tribes might also be required because the boundary line is not the same in both Tribes' maps. An agreed-upon boundary map has been requested, but not provided. As an example, Map 3 shows the boundary line from Cherokee Nation's website at approximately 39 North Peoria running through the middle of the southernmost building of the AirGas Company. Map 4 shows the jurisdictional line at the same location from MCN's mapping software. It shows the boundary line running through the *northernmost* building. Should there be a misdemeanor trespass at AirGas by an Indian person, in the absence of congressionally conferred Municipal jurisdiction over "all inhabitants," there will be a complicated jurisdictional issue between the tribes, which a TPD Officer cannot resolve and which will consume an unknown amount of time.

16. Third, assuming the Officer can determine Indian citizenship and the correct Tribal jurisdiction, the Officer would then be required to search

through the applicable Tribe's laws to determine what charge is applicable, if any. Each Tribe has its own code of laws, and some actions that are crimes in one area of the City under one Tribe's law are not crimes in other parts of the City. Officers will have to have a working knowledge of five codes of laws – Municipal, State, Federal, Cherokee, and Muscogee (and potentially Osage), each with different numbering systems and distinct categories, names, and elements.

a. More importantly, neither Tribe's code has been developed over 125 years to address issues common in large urban areas, such as fire safety, zoning, and common nuisances. While the MCN's Supplemental Crimes Act might allow for recognition of some Municipal laws in Tribal court, it only recognizes laws enacted prior to January 1, 2021, so emerging issues cannot be addressed.

17. Fourth, once the Officer is able to find an appropriate Tribal law, the Officer must then write a distinct paper citation for traffic or criminal citation offenses due to the inability of the e-citation system to refer cases to Tribal Prosecutors.

a. TPD met separately with both Cherokee Nation and Muscogee Creek Nation on July 12, 2023, after the Tenth Circuit's decision. Based on those meetings, TPD contacted its e-cite company to determine if the e-cite system could be altered to re-route e-cites directly to the different Tribal prosecution systems as well as to the Municipal Prosecutor's Office.

b. To send Indian offender e-cites to the Tribes, a project would need to be undertaken to rewrite the code for Tulsa's system.

c. This would require contract negotiations and amendments to the current e-cite contract and then the rewriting of the system's code, all of which would take an unknown amount of time, estimated at around eight months.

d. Redeveloping the e-cite system would also be an additional but as yet unknown cost to TPD. In any case, the amount is an unbudgeted expense for the current budget year, which began July 1, 2023.

18. Without reprogramming, the e-cite system will automatically populate Municipal Court information into the e-cites and automatically transmit them to the Municipal Prosecutor. Paper forms must therefore be created and processed for all Indian citizen citations to make sure they provide the correct court location and date information to ensure it goes to the proper court in the form each court requires.

a. Cherokee Nation representatives have stated that the paper citations can be e-mailed to their prosecutors, but the MCN requires that original paper citation be provided directly to the prosecution for filing. Ensuring that thousands of paper citations make their way to the correct court system raises its own set of challenges.

b. Although writing a paper citation instead of an e-citation might seem like a minor issue, it is not. An average stop using the e-cite system takes approximately four (4)[8] because the system scans the Vehicle Identification Number and the driver's license and auto-populates information from those scans. It is estimated that Tribal citations will take at a minimum almost three (3) times longer due to Officers hand writing paper citations and confirming Tribal citizenship.

c. The unfortunate consequence in some of these traffic situations where Tribal membership cannot easily be ascertained will be to let the Indian violator go free without a citation due to the inability to wait on the side of the road for a Tribe to confirm citizenship or because the Officer could conduct three (3) non-Tribal traffic stops in the same amount of time it would take to complete one Tribal stop.

d. The Tribes have not provided citation books to TPD.

19. Beyond the traffic stop itself, there are additional demands on Officer time in the absence of consistent application of municipal laws. If a TPD Officer is required to appear in a Muscogee Creek Nation case at the MCN District Court in Okmulgee, the TPD Officer would be required to drive an average of 1 hour and 25 minutes roundtrip to said Court, as shown in Table 1 below, which shows distance and time based on the Patrol Division from which the Officer would travel.[9]

Table 1. Estimated Travel Time and Distance from TPD Divisions to MCN District Court.

Division	Estimated Distance in Miles	Estimated Time in Minutes
Headquarters	73	78
Gilcrease	84.8	90
Riverside	64.4	76

[8] This number is based on the average time for each stop made over the past month by a Traffic Enforcement Division Officer.

[9] For purposes of the mileage in this Affidavit, the address of each Division's headquarters was used. The mileage and time spent could be higher or lower depending on where the Officer starts from. All mileage and drive-time estimates in this Affidavit were obtained from Google Maps as of February 24, 2022.

Mingo Valley	93	98
Average	***78.8***	***85.5***

20. The Tulsa citizen would also have to drive similar distances and spend similar additional time to go to court to challenge such a ticket or to pay the ticket if the citizen is unable to pay online for some reason, such as not having a checking account or a credit card.
21. A similar, but more significant, issue arises if a TPD Officer is required to appear in a Cherokee Nation case. The TPD Officer would be required to drive roundtrip to Cherokee Nation's District Court in Tahlequah, and the time and distances from the various Divisions are shown in Table 2 below.

Table 2. Estimated Travel Time and Distance from TPD Divisions to Cherokee Nation District Court.

Division	Estimated Distance in Miles	Estimated Time in Minutes
Headquarters	139.2	138
Gilcrease	144.4	142
Riverside	140.8	142
Mingo Valley	128.4	126
Average	***138.2***	***137***

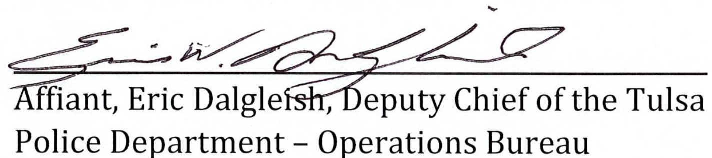
22. If a TPD Officer were required to testify on a traffic citation in Cherokee Nation District Court, or if a Tulsa citizen chose to challenge their ticket in court or had to travel to pay their ticket at that Court, it would take an additional 2 hours and 17 minutes on average. Although both Tribal prosecutor offices expressed on July 12, 2023, that they expect to begin allowing testimony via video so that TPD Officers will not be required to travel, it is not clear at this time that video testimony will be accepted by the Tribal Courts.[10] Regardless, that would not change the additional time required of citizens. One of the few officers who has been contacted to testify at MCN was, in May 2023, required to drive to Okmulgee to testify, even though the case ultimately pled out after the Officer arrived, and no testimony was taken.
23. Beyond traffic citations, if a misdemeanor arrest is made on Cherokee Nation charges instead of Municipal Charges, TPD Officers must drive the

[10] The MCN District Court website, for instance, shows that each judge requires "All Hearings will be in person unless permission is granted to be remote at least 24 hours prior." https://creekdistrictcourt.com/.

arrestee to Rogers County Jail for booking purposes. A roundtrip from the Gilcrease Division (which includes most of the Cherokee territory) to said jail is approximately 57.6 miles (about 60 minutes), whereas a round trip to the Municipal Jail is 15.2 miles from the Gilcrease Division.[11] Additionally, because the transport to the Rogers County Jail would be out of the City limits, two officers are required to transport the Cherokee prisoner, resulting in a total of 4 person-hours per arrest just in drive time.

24. Currently, there is not a significant distance difference for TPD Officers transporting arrestees on MCN charges, as long as MCN is able to maintain its contract for jail services with the Tulsa County Sheriff's Office. However, after *McGirt* and prior to the current jail contract, TPD Officers had to book MCN arrestees at the Creek County Jail in Sapulpa, which is 23-miles roundtrip from Riverside Division, a 36-mile roundtrip from Mingo Valley Division, a 42-mile roundtrip from Gilcrease Division, and a 22-mile roundtrip from Headquarters.
25. To date, while the Cherokee Nation has post-*Hooper* offered a mechanism aimed at cost sharing[12], TPD has received no funding from the Muscogee Creek Nation, the Cherokee Nation, or from the federal government for any of the Indian status cases handled by TPD.

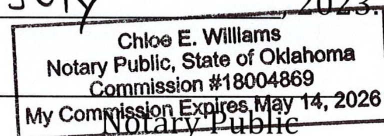
Further Affiant sayeth not.



Affiant, Eric Dalgleish, Deputy Chief of the Tulsa Police Department – Operations Bureau

Subscribed and sworn to before me this 21 day of July 2023.

My commission expires May 14, 2026. Notary Public

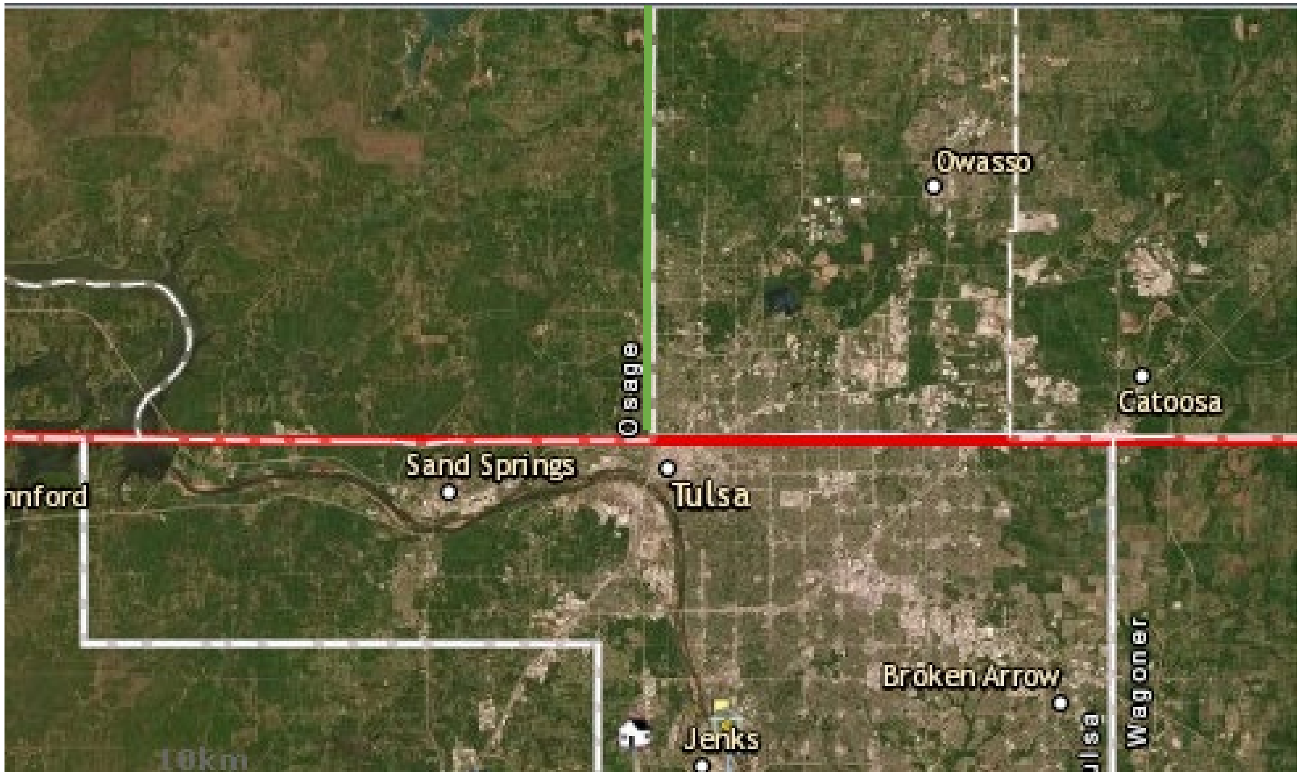


[11] The City has not entered a jail contract with Cherokee Nation because the Cherokee Nation refuses to consider even a partial waiver of its sovereign immunity in such a contract.

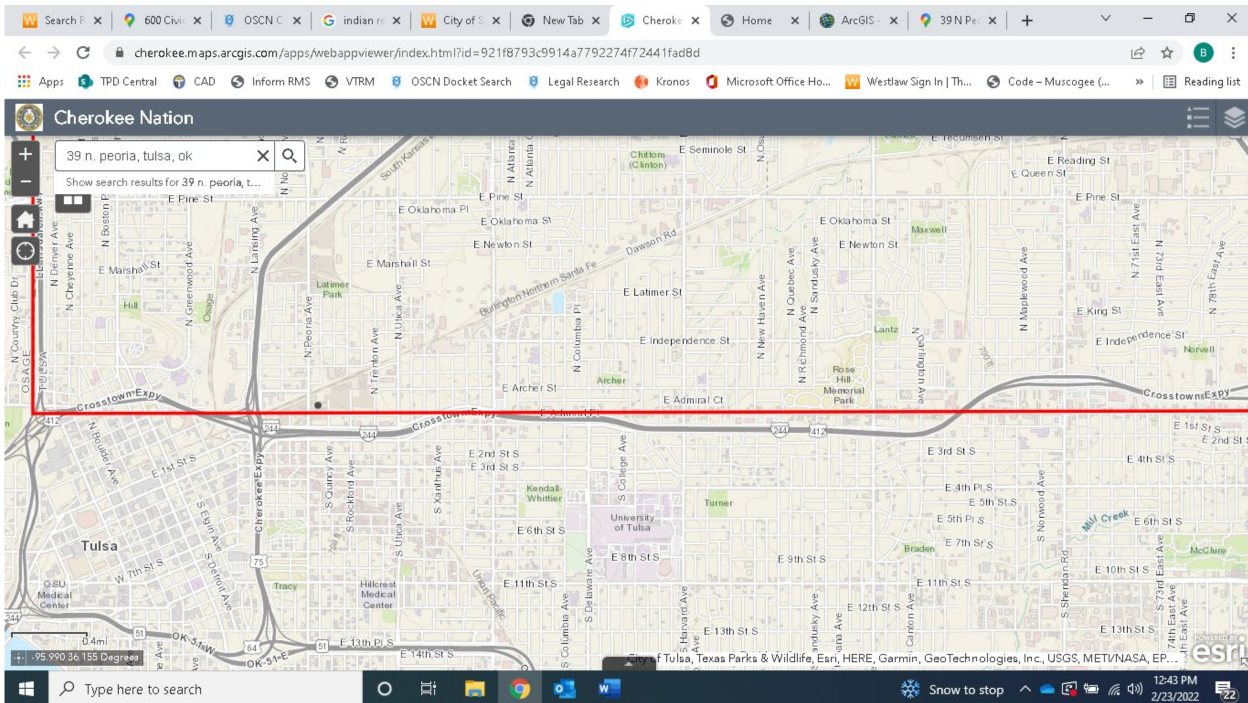
[12] The mechanism is an agreement that would require Municipal police, prosecutors, and court personnel to process the Cherokee Nation's cases through the Municipal Court (using all Municipal personnel, buildings and other resources) and using a separate accounting system for those cases then paying a processing fee to the Cherokee Nation and providing accounting records to the Cherokee Nation. However, the agreement does not allow a Municipal Judge to accept a guilty plea so it is unclear how the City would collect a fine without accepting a plea.

EXHIBIT A

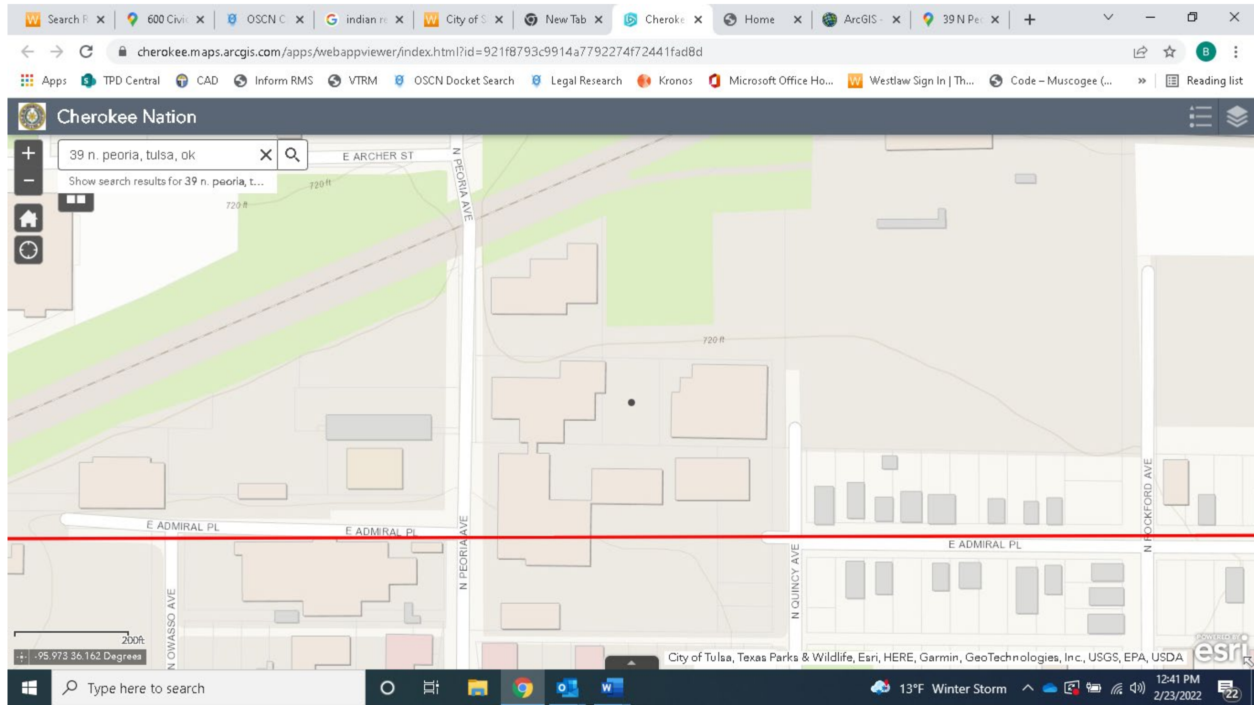
Map 1. Creek Nation base map with tribal and Osage County boundary lines.

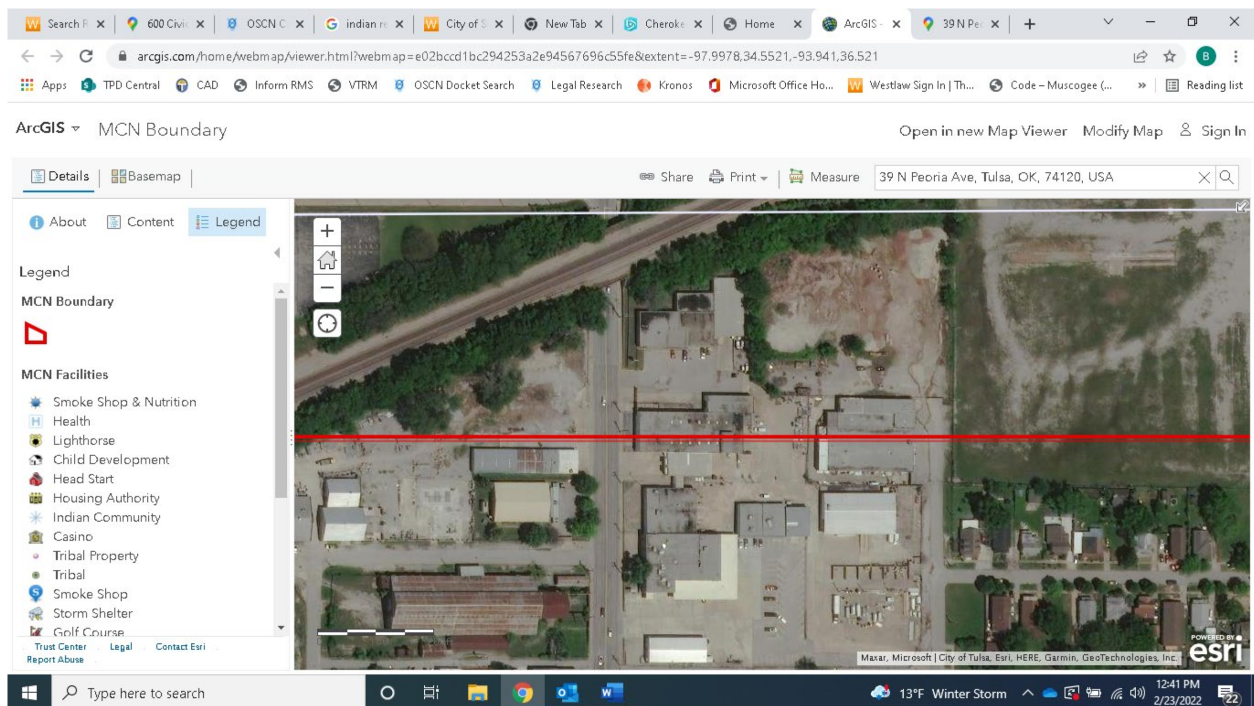


Map 2. Cherokee Nation map of its southernmost boundary line within the City.



Map 3. Cherokee Nation map of 39 N. Peoria showing Cherokee boundary line running through southern building of AirGas.





AFFIDAVIT OF JULIE LYNN

STATE OF OKLAHOMA)
) **ss**
COUNTY OF TULSA)

The undersigned, Julie Lynn, Deputy Chief of the City of Tulsa Fire Department and Acting Fire Chief as of the date of my signature, being of lawful age and being first duly sworn, upon oath deposes and states as follows:

1. This Affidavit is written in reference to claims that denial of a stay of the Tenth Circuit Court of Appeals' decision in *Hooper v. City of Tulsa*, Case Number 22-5034, will not cause any disruption to the City of Tulsa.
2. Mr. Hooper and the Tribes have claimed that the City of Tulsa ("the City") does not need a stay and that the City's request is based on "nothing more than unsupported claims of disruption...." *Tribes' Mot. for Leave at 2*. This Affidavit provides evidence of disruption that will occur.
3. The information in this Affidavit is in part based on information obtained from Tulsa Fire Department personnel working in the field on a daily basis and reports reviewed by me.
4. The Curtis Act of 1898 provides that "all inhabitants of ... cities and towns, without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein." §14, 30 Stat. 499-500.
5. In the Fall of 2020, the City of Tulsa Fire Department ("TFD") and other City agencies determined that this jurisdiction conferred by Congress authorizes them to address violations of Municipal ordinances by Indians and non-Indians alike, and it continued filing such violations in the City of Tulsa Municipal Court system ("Municipal Court").
6. TFD conducts law enforcement activities related to the investigation of fires, as well as regulatory enforcement of the Fire Prevention Code.
7. In 2021, TFD conducted 512 fire investigations. As a result of those investigations, TFD filed 73 cases in the Municipal Court. Of those cases, 42 were related to Fire Investigations and 31 were related to Code Enforcement.
8. In 2022, TFD conducted 549 fire investigations. As a result of those investigations, TFD filed 72 cases in the Municipal Court. Of those cases, 45

were related to Fire Investigations and 27 were related to Code Enforcement.

9. In 2023 to date, TFD has conducted 291 fire investigations. As a result of those investigations, TFD has filed 29 cases in the Municipal Court. Of those cases, 28 were related to Fire Investigations and 1 was related to Code Enforcement.
10. The Fire Investigations section of TFD investigates fires throughout the City of Tulsa and conducts related law enforcement activities and would be adversely affected similar to the Tulsa Police Department's activities.
11. The Code Enforcement section of TFD relies on municipal jurisdiction to uniformly enforce the Tulsa Fire Prevention Code throughout the City of Tulsa.
12. The City of Tulsa adopts the ICC International Fire Code, 2018 Edition as the Fire Prevention Code "for the purpose of safeguarding life and property from fire and explosion hazards by regulating the storage, handling and use of hazardous substances, materials and devices and conditions related to the occupancy of buildings and premises in the City of Tulsa."[1]
13. TFD is on track to conduct approximately 5,000 inspections related to the Fire Prevention Code this year.
14. Neither Tribe has any regulatory codes, such as a fire prevention code. Although the MCN might argue that its Supplemental Crimes Act allows application of Municipal law in Tribal courts, it only allows for application of those laws passed prior to January 1, 2021, so no new ordinances can be enforced.
15. Without municipal jurisdiction for all inhabitants of the City of Tulsa, TFD lacks adequate enforcement mechanisms and cannot uniformly enforce the Fire Prevention Code in order to provide for fire safety within the corporate limits of the City of Tulsa.

Further Affiant sayeth not.

[1] https://library.municode.com/ok/tulsa/codes/code_of_ordinances?nodeId=CD_ORD_TIT14FIPRCO_CH1ICINFICO2018ED AD_S100ADICINFICO2018ED

Affiant, Julie Lynn, Deputy Chief and Current
Acting Chief of Tulsa Fire Department

Subscribed and sworn to before me this 21st day of July, 2023.

My commission expires 9-11-2026.

Notary Public