

Spokane County Bar  
Association  
17<sup>th</sup> Annual Indian Law  
Conference

Indian Law Litigation Update

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M. Jordan Thompson

Acting Tribal Executive Officer and Deputy Executive  
Officer

Confederated Salish and Kootenai Tribes

# Chinook Indian Nation v. Burgum (25-313)

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- Petitioner: Chinook Indian Nation; Confederated Lower Chinook Tribes and Bands
- Respondent: Douglas Burgum in his capacity as Secretary of the Interior; DOI; Office of Federal Acknowledgement; U.S.
- Issue: Whether a federal court can create federal recognition for a tribe
- Facts:
  - Many instances of the U.S. having a government-to-government relationship with the Chinook tribe
  - The Chinook Indian Nation sued the U.S. Department of the Interior in federal district court for federal recognition.
- Lower Court Decisions: The District Court for the Western District of Washington granted Interior's motion to dismiss on the ground that federal recognition of an Indian tribe is a non-justiciable political question. The Ninth Circuit decision affirmed.
- Why it's important: will clarify how tribes can become federally recognized

# Flying T Ranch, Inc. v. Stillaguamish Tribe of Indians (25- 987)

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- Petitioner: Flying T Ranch, Inc.
- Respondent: Stillaguamish Tribe of Indians
- Issue: Whether tribal sovereign immunity applies when being sued to quiet title to real property located outside of the tribe's reservation under the immovable-property rule.
- Facts:
  - Flying T runs a 165 acre cattle ranch in Snohomish County, Washington, that it purchased in 1991. the property was bordered on its north by a barbed wire fence that had been maintained by flying T or its predecessors in interests since 1962
  - The Tribe purchased a narrow parcel that lies next to Flying Ts parcel and the fence in 2021 (not on the reservation)
  - Flying T requested a quitclaim deed for a fenced portion of the land that the Tribe purchased, and the Tribe declined.
  - Flying T filed a quiet title lawsuit alleging that it owned this area through adverse possession.
- Lower Court Decisions: the superior court granted the tribe's motion to dismiss, holding that it has sovereign immunity from a quiet title suit. The Washington Court of Appeals and Washington Supreme Court affirmed.

# Jacobs v. Oregon Department of Human Services (25-6586)

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- Petitioner: Manuelita Jacobs, the mother of the Indian children at issue
- Respondent: Oregon Dept. of Human Services, the Pit River Tribe, and the Indian children
- Issue: Whether ICWA preempts the states from enacting legislation controlling the adoption of Indian children
- Facts:
  - Oregon has the Oregon Indian Child Welfare Act, which provides that the Oregon juvenile court may transfer the permanency planning for a dependent Indian child to tribal customary adoption if the tribe consents.
  - ICWA then requires the Oregon juvenile court to accept the tribe's proposed order or judgment.
  - The Oregon juvenile court asserted dependency jurisdiction over Petitioner's children and the initial plan was for reunification.
  - Subsequently, the Oregon Department of Human Services petitioned the juvenile court to change the plan from reunification to tribal customary adoption.
  - The Pit River tribe took over the case and, through tribal law and process, the mother's rights and responsibilities to her children were transferred to the children's adoptive placement, with the mother retaining only the right to one visit with each child per year at the discretion of the adoptive placement.
  - Petitioner claims that the ORICWA violated both her due process rights and ICWA.
- Lower Court Decisions: Ruled in favor of Respondents
- Why it's important: 18 states have comprehensive laws regulating Indian child adoptions. If it is held that ICWA preempts ORICWA it could have ramifications on all of these state Indian adoption statutes.

# Stroble v. Oklahoma Tax Commission (25-382)

- Petitioner: Alicia Stroble
- Respondent: Oklahoma Tax Commission
- Issue: Whether Oklahoma may tax the income of a tribal member who lives and works within her reservation, which *McGirt v. Oklahoma* held remains Indian country.
- Facts:
  - In an unbroken line of precedent, the Supreme Court has recognized a *per se* rule prohibiting States from imposing taxes on Indians who live and work within their tribes' Indian country absent express authorization from Congress.
  - In *McGirt*, the Court held that the Muscogee (Creek) Reservation had never been disestablished and that the federal statute defining Indian country includes "all land within the limits of any Indian reservation ... notwithstanding the issuance of any patent."
  - Petitioner is a Muscogee (Creek) Nation citizen who lives on fee land and works for her tribe within the Muscogee (Creek) Reservation.
  - The Oklahoma Tax Commission denied Petitioner's request for exemption from state income taxation under an Oklahoma regulation on the ground that where she lived was not Indian country.
- Lower Court Decisions: The Oklahoma Tax Commission concluded that petitioner's residence - although located in the Creek Reservation recognized in *McGirt* was not "within Indian country." The Oklahoma Supreme Court affirmed the Commission's order, concluding that the that *McGirt* was limited to the narrow issue of what constitutes Indian country for the purpose of the Major Crimes Act. The court concluded by stating that "the United States Supreme Court's declaration - 113 years after statehood - that nearly half of Oklahoma is a reservation is unprecedented."
- Why it's important:
  - If Oklahoma Supreme Court's decision is upheld, this would draw into question federal and state rulings throughout the country about how to determine when States have the power to tax Indians in Indian country.
  - Unless the Supreme Court intervenes, Oklahoma will continue to levy tens of millions of dollars in income taxes on Indians working and living within their Tribes' reservations in Oklahoma.

# Turtle Mountain Band of Chippewa Indians v. Howe (25-253)

- Petitioner: Turtle Mountain Band of Chippewa Indians, Spirit Lake Tribe, and several private parties
- Respondent: Michael Howe, Secretary of State of North Dakota
- Issue: Whether Section 2 of the Voting Rights Act is enforceable by private plaintiffs through 42 U.S.C. § 1983, an implied right of action, or both
- Facts:
  - In 2021 North Dakota redrew the boundaries of its legislative districts. As a result, the number of majority-Indian seats in the northeastern part of the state went from three to one.
  - The Turtle Mountain Band of Chippewa Indians, the Spirit Lake Tribe and three Native American voters sued the Secretary of State, alleging that the new boundaries violated Section 2 of the Voting Rights Act of 1965—a provision that bans voting discrimination on the basis of race, color, or language
- Lower Court Decisions: Petitioners sued the North Dakota Secretary of State in federal district court under 42 USC 42 U.S.C. § 1983 and Section 2 of the Voting Rights Act, alleging that the State's redistricting constituted discrimination. The District court ruled for Petitioners. A majority of a three judge panel of the Eight Circuit reversed, holding that Section 2 is not enforceable by private plaintiffs suing under Section 1983 and that Section 2 is not privately enforceable through an implied right of action. This followed another 8<sup>th</sup> Circuit case that held that only the Attorney General, and not private plaintiffs, are able enforce Section 2.
- Why it's important:
  - The Eighth Circuit became the first and only court of appeals to hold that Section 2 of the VRA is not privately enforceable through an implied right of action. Section 2 has always been an essential and effective backstop against discrimination in voting that has been enforced primarily by private litigants. The Eighth Circuit's decision thus deprives voters in seven states of the ability to protect their own rights under Section 2. This is the opposite result found by the Fifth, Sixth, and Eleventh Circuits that have each held that Section 2 is privately enforceable.
  - By denying a remedy § 1983 as well, the Eighth Circuit has created a framework that extinguishes the remaining pathway for private enforcement of Section 2 of the VRA.

# Cert Denied

- Alaska v. United States (25-320)
- Martorello v. Williams (25-829)
- Sault Ste. Marie Tribe of Chippewa Indians v. Michigan (25-165)