ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

MARVIN KEITH STITT,	)	
	)	
Appellant,	)	
	)	Case No. M-2022-984
v.	)	
	)	Tulsa Municipal Court No. 7569655
CITY OF TULSA,	)	
	)	
Respondent.	)	
	)	

BRIEF OF AMICI CHEROKEE NATION, CHICKASAW NATION, AND CHOCTAW NATION OF OKLAHOMA IN SUPPORT OF APPELLANT

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May 31, 2023

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INTEREST OF *AMICI CURIAE*

Amici Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma ("Nations"), are federally-recognized Indian tribes, 88 Fed. Reg. 2112, 2112, 2114 (Jan. 12, 2023), each governing a Reservation that is Indian country under federal law, *see* 18 U.S.C. § 1151(a), as this Court has squarely held. *See Sizemore v. State*, 2021 OK CR 6, ¶¶ 10-16, 485 P.3d 867, 869-71, *cert. denied* 142 S. Ct. 935 (2022); *Spears v. State*, 2021 OK CR 7, ¶¶ 10-16, 485 P.3d 873, 876-77, *cert. denied* 142 S. Ct. 934 (2022); *Bosse v. State*, 2021 OK CR 30, ¶ 12, 499 P.3d 771, 774, *cert. denied* 142 S. Ct. 1136 (2022). The Nations submit this brief pursuant to this Court's Order of May 1, 2023, to demonstrate that under settled principles of federal law and decisions of the Oklahoma Supreme Court, Oklahoma's admission to statehood abrogated the authority that municipalities that organized under section 14 of the Curtis Act, ch. 517, § 14, 30 Stat. 495, 499-500 (1898), briefly held in the Indian Territory pursuant to laws borrowed by the Curtis Act for transitional purposes. Both law enforcement and the criminal prosecution of wrongdoers on the Nations' Reservations must respect these settled principles to administer justice.

Tulsa may not rely on section 14 because statehood and the adoption of the Oklahoma Constitution in accordance with the Enabling Act terminated the laws governing municipalities in the former Indian Territory, and because the powers of municipalities in Oklahoma now derive from and are defined solely by state law. *See Benner v. Porter*, 50 U.S. 235, 242-43 (1850); *Lackey v. State*, 1911 OK 270, ¶ 3, 116 P. 913, 914; *State ex rel. Kline v. Bridges*, 1908 OK 45, ¶ 10, 94 P. 1065, 1066-67. Accordingly, Tulsa may not rely on section 14 to claim jurisdiction over Indians today any more than it may rely on the provisions of section 14 which limit qualified voters in Tulsa's elections to male inhabitants, authorize its mayor to act as a justice of the peace

implementing Arkansas law, and permit the City to impose taxes and run schools independent of the State. *See* 30 Stat. at 499-500.

Tulsa offers no basis for its claim of jurisdiction over Indians other than this territorial law that was abrogated by Oklahoma's statehood. Nor is there any basis for such a claim, as Congress has never granted Oklahoma jurisdiction over Indians in Indian country. *See Murphy v. Royal*, 875 F.3d 896, 936-37 (10th Cir. 2017) (citing, *inter alia*, *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 980 n.6 (10th Cir. 1987)). And as "there has been no express delegation of jurisdiction to [Oklahoma], *a fortiori*, there has been no grant of local jurisdiction." *Ross v. Neff*, 905 F.2d 1349, 1352 (10th Cir. 1990). Tulsa therefore lacks jurisdiction over Indians in Indian country.

Tulsa's reliance on territorial law to govern in a state today is wrongheaded for another reason, as well: It ignores a fully functioning tribal justice system, which relies on inter-governmental cooperation to enhance its effectiveness. The Nations exercise criminal jurisdiction over all Indians within their respective Reservation boundaries under their inherent sovereign authority, 25 U.S.C. § 1301(2); *United States v. Lara*, 541 U.S. 193, 210 (2004), and patrol Reservation highways, and prosecute and punish Indian wrongdoers in the Nations' courts under that authority. The Nations also maintain extensive networks of intergovernmental agreements under which state, county, and municipal law enforcement officers on the Nations' Reservations can arrest or cite offenders who violate tribal law, including Indians, and then refer those cases to tribal prosecutors, who pursue them in the tribal justice system. Tulsa turns its back on this highly effective system, *see infra* at 26-29, in an effort to revive power that statehood long ago extinguished. That effort is not only unlawful, it also compromises safety on the streets.

ARGUMENT

Section 14 of the Curtis Act permitted cities and towns in the Indian Territory to organize as municipalities under Arkansas law and exercise local powers once they did so. *Id.* Tulsa claims that those municipalities still hold those powers, notwithstanding Oklahoma's admission to statehood pursuant to the Oklahoma Enabling Act, Pub. L. 59-234, §§ 1-22, 34 Stat. 267, 267-78 (1906) ("Enabling Act"). On that basis, Tulsa—although it organized before the Curtis Act was passed—claims jurisdiction over Indians in Indian country today. That contention fails because statehood extinguishes powers held under laws enacted by Congress to govern a territory prior to statehood, *see Benner*, 50 U.S. at 242-43, and Congress enacted section 14 to permit cities and towns in the Indian Territory to organize as municipalities and exercise local powers as federal agencies prior to statehood. Thus, Oklahoma's statehood abrogated the authority that municipalities that organized under section 14 once held in the Indian Territory. That is also made clear by the Enabling Act and principles of state law, under which municipalities are creatures of state law which must be accountable to the State. Tulsa's grasping at section 14 disregards this law. It also disregards the Nations' impressive record of protecting the public and safety on the roads by exercising their inherent power to police their Reservations. They are doing so within the context of a comprehensive layer of intergovernmental agreements, under which tribal and local governments work cooperatively to protect the public.

I. The Enabling Act And Statehood Abrogated Section 14 Of The Curtis Act.

Tulsa's claim fails because Oklahoma's statehood extinguished the territorial relic, namely section 14 of the Curtis Act, on which it relies. Under section 14, municipalities in the Indian Territory that organized under federal law exercised certain local powers as federal agencies, largely under law borrowed from the state of Arkansas, as discussed further below. Those terms

were "intended to be merely provisional," *Jefferson v. Fink*, 247 U.S. 288, 294 (1918); *see also Shulthis v. McDougal*, 225 U.S. 561, 571 (1912), and were abrogated when Congress authorized Oklahoma's statehood in the Enabling Act, as federal law plainly demonstrates. *See Benner*, 50 U.S. at 242-43, *Koenigsberger v. Richmond Silver Min. Co.*, 158 U.S. 41, 48 (1895); *Permoli v. Mun. No. 1 of New Orleans*, 44 U.S. (3 How.) 589, 610 (1845) (holding federal statute defining scope of powers of territorial government had no force after statehood). Furthermore, if section 14 were still in effect, it would establish two systems of municipal laws in Oklahoma, a special one only for those municipalities that organized under section 14 of the Curtis Act in the former Indian Territory, which would simultaneously hold territorial and state powers, and another for every other municipality. That configuration would be contrary to the explicit text of the Enabling Act, which commanded the application of one system of laws in the new state (initially, Oklahoma Territory law), and would violate the Constitution and laws of the State of Oklahoma, under which powers of municipalities in Oklahoma are now defined solely by state law. *See Lackey*, 116 P. at 914; *Bridges*, 94 P. at 1067.

A. Congress Authorized the Organization of Municipalities in the Indian Territory Under Its Territorial Powers.

"The State of Oklahoma was formed from two territories: the Oklahoma Territory in the west and Indian Territory in the east," *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2476 (2020), each of which were entirely within the United States' territory, *see Oklahoma v. Atchison, Topeka, & Santa Fe Ry. Co.*, 220 U.S. 277, 282 (1911). The Territory of Oklahoma was formed as a "temporary government" for "all that portion of the United States [then] known as the Indian Territory," except that portion occupied by the Five Tribes "and the Indian tribes within the Quapaw Indian Agency" and "the unoccupied part of the Cherokee outlet." Oklahoma Organic Act, ch. 182, § 1, 26 Stat.

81, 81 (1890) ("Organic Act").[1] The Indian Territory was comprised of the remaining lands, *id.* §§ 1, 29, 26 Stat. at 81, 93, which were directly legislated for by Congress under a "provisional" arrangement, *Jefferson*, 247 U.S. at 294. The Nations' Reservations, which were established by treaty and owned by the Nations in fee, were within the boundaries of the territory acquired by the Louisiana Purchase and were therefore within the United States' territory that was not within any State. *See generally Choctaw Nation v. Oklahoma*, 397 U.S. 620, 623-27 (1970).[2]

As federal law, indeed the Constitution itself, makes clear "[a]ll territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States[,] . . . and Congress may legislate for them as a State does for its municipal organizations." *First Nat'l Bank v. Yankton Cnty.*, 101 U.S. 129, 133 (1879). That power derives from the Territories or Property Clause in Article IV of the Constitution, which gives Congress the "[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. Congress has power to either create "territorial legislature[s]" or "itself legislate directly for the local government. . . . It may do for the Territories what the people, under the Constitution of the United States, may do for the States." *First Nat'l Bank*, 101 U.S. at 133; *see also Okla., Kan. & Mo. Interurban Ry. Co. v. Bowling*, 249 F. 592, 593 (8th Cir. 1918) ("Before [territories] are admitted to statehood [Congress] exercises as

[1] The Oklahoma Territory also included the "Public Land Strip," Organic Act § 1, 26 Stat. at 81—i.e., what is now the Oklahoma Panhandle.

[2] The Quapaw and Osage Nations further ceded their aboriginal rights to occupy and use those lands to the United States, before the United States granted those lands to *amici* Nations, *see* Treaty with the Quapaws art. 2, Aug. 24, 1818, 7 Stat. 176, 176-77; Treaty with the Osages art. 1, Sept. 25, 1818, 7 Stat. 183, 183-84; Treaty with the Osages art. 1, June 2, 1825, 7 Stat. 240, 240.

to them the combined powers of the national and state governments by direct legislation, and also through local legislative bodies whose acts are subject to its supervision, or, as was the case with the Indian Territory, by extending thereto certain of the laws of an organized state."). Congress's territorial power extends to reservation lands, as the Supreme Court made clear in *United States v. Celestine*:

> By the second clause of § 3, art. 4, of the Constitution, to Congress, and to it alone, is given "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States[,]" [and] [f]rom an early time in the history of the government it has exercised this power, and has also been legislating concerning Indians occupying such territory.

215 U.S. 278 284 (1909).

Exercising this power, Congress established a territorial government for the Oklahoma Territory, which included executive, legislative, and judicial branches, *see* Organic Act §§ 2, 4, 9, 26 Stat. at 82, 83, 85-86, and legislated directly for the Indian Territory. *Murphy*, 875 F.3d at 933 n.40 ("'[n]o territorial government was ever created in the reduced Indian Territory, and it remained subject directly to tribal and federal governance'" (quoting *Indian Country, U.S.A.*, 829 F.2d at 974)); *Jefferson*, 247 U.S. at 290 ("A territorial government never was established in the Indian Territory," which was governed by "the tribal laws of the Indians" and "such [laws] as Congress enacted or put in force."). In the Organic Act, Congress legislated for the governance of the Indian Territory, by enacting, *inter alia*, the following terms. Congress made applicable to the Indian Territory: "[t]he Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations," *id.* § 31, 26 Stat. at 96, as well as certain Arkansas criminal and criminal procedure laws, *id.* § 33, 26 Stat. at 96-97.

Congress also enlarged the jurisdiction of the United States court in the Indian Territory, *id.* § 29, 26 Stat. at 93-94, which it had established in 1889, *see* Act to Establish a United States Court in the Indian Territory, ch. 333, 25 Stat. 783 (1889) ("1889 Act");[3] *Stephens v. Cherokee Nation*, 174 U.S. 445, 455 (1899). As the Supreme Court has made clear, the "United States court in the Indian Territory [was] a legislative court," *id.* at 478, "not a district or circuit court of the United States," *id.* at 476-77 (citing *In re Mills*, 135 U.S. 263, 268 (1890)). That is, "[t]hese courts were not courts of the United States within the meaning of article 3 of the Constitution of the United States," but rather "[t]hey were legislative courts, established by virtue of the power of the Congress to make rules and regulations respecting the territories of the United States (Const. art. 4, Sec. 3, cl. 2)." *Sand Springs Home v. Title Guar. & Tr. Co.*, 16 F.2d 917, 919 (8th Cir. 1926). The Organic Act also made the "general laws of the State of Arkansas" applicable to the Indian Territory and assigned to the United States court in the Indian Territory various administrative duties relating to those laws. Organic Act § 31, 26 Stat. at 94-95. In addition, Congress granted the court and its clerk power to enforce certain additional federal criminal laws, hear certain civil cases, and engage in other civil duties. *Id.* §§ 34-36, 38, 26 Stat. at 97-98. Later, in 1897, Congress expanded the court's jurisdiction when it "enacted legislation providing that the body of federal law in Indian Territory, which included the incorporated Arkansas laws, was to apply 'irrespective of race.'" *Indian Country, U.S.A.*, 829 F.2d at 978 (citing Appropriations Act of June 7, 1897, ch. 3, 30 Stat. 62, 83).

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[3] Congress originally established this "special federal court of limited jurisdiction" to deal with "problems of lawlessness" caused by non-Indian intruders in the Indian Territory, over whom tribal courts lacked authority. *Indian Country, U.S.A.*, 829 F.2d at 977. The 1889 Act established the court and authorized a United States attorney, marshal, deputy marshals, and clerk for the court. 1889 Act §§ 1-3, 25 Stat. at 783.

The Organic Act also authorized the United States court in the Indian Territory to appoint "United States commissioners," with the powers of commissioners of United States circuit courts, as well as Arkansas justices of the peace in criminal cases. Organic Act § 39, 26 Stat. at 98-99. United States commissioners were quasi-judicial officers. *See Chin Bak Kan v. United States*, 186 U.S. 193, 200 (1902); *United States v. Maresca*, 266 F. 713, 720 (S.D.N.Y. 1920). And the commissioners in the Indian Territory had "jurisdiction to hold preliminary examinations and discharge, hold to bail, or commit in cases of offenses which, under the laws applicable to the Territory, amount to felonies," and the power to preside over civil and criminal proceedings according to the procedures defined in Arkansas law, with appeals from commissioners' rulings to the "United States court in the Indian Territory." Act to Provide for the Appointment of Additional Judges of the United States Court in the Indian Territory, ch. 145, § 4, 28 Stat. 693, 695-96 (1895) ("Mar. 1, 1895 Act"); *see S. Sur. Co. v. Oklahoma*, 241 U.S. 582, 584 (1916).

The Supreme Court described the governance of the Indian Territory under these provisions as follows:

> Up to the time it became a part of the state of Oklahoma it was governed under the immediate direction of Congress, which legislated for it in respect of many matters of local or domestic concern which, in a state, are regulated by the state legislature, and also applied to it many laws dealing with subjects which, under the Constitution, are within Federal rather than state control. In what was done Congress did not contemplate that this situation should be of long duration, but, on the contrary, that the territory should be prepared for early inclusion in a state.

S. Sur. Co., 241 U.S. at 584; *see also Jefferson*, 247 U.S. at 292 ("'There being no local Legislature, Congress alone could act. Plainly, its action was intended to be merely provisional.'" (quoting *Shulthis*, 225 U.S. at 571)).

Among other provisions, the Organic Act had made applicable in the Indian Territory the Arkansas law of "municipal corporations," Organic Act § 31, 26 Stat. at 95, without further

elaboration. The United States Court for the Indian Territory had ruled in 1895 that towns there could incorporate under Arkansas law, *see* Angie Debo, *The Road to Disappearance* 364 (1941), and Tulsa had done so in January 1898, *see* Tulsa Mun. Code app. C.[4] In June of 1898, Congress made further adjustments to the provisional governance of the Indian Territory by expressly authorizing the creation of municipalities in the Indian Territory under section 14 of the Curtis Act, in order to "provide settlers in Indian Territory a means by which they might exercise some control, political and possessory, over the lands in which they lived." *United States v. City of McAlester*, 604 F.2d 42, 64 (10th Cir. 1979) (en banc); *see also Inc. Town of Hartshorne v. Inc. Town of Haileyville*, 1909 OK 240, ¶ 3, 104 P. 49, 50 (section 14 provided for the governance of towns and cities which had been developed primarily by non-Indians who lacked "any titles to the lots and blocks upon which improvements had been placed" and which to that point had "had neither titles nor local self-government").

As the Supreme Court explained in discussing the "series of acts" Congress passed to put laws "in force in the Indian territory" before statehood:

> 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. *There being no local legislature, Congress alone could act.* Plainly, its action was intended to be merely provisional, and not to encroach upon the powers which rightfully would belong to the prospective state.

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[4] *Available at* bit.ly/3MUW2GD. Numerous other cities and towns in the Indian Territory organized before passage of the Curtis Act. Some incorporated under Arkansas law. *See* Craig Cnty. Genealogical Soc'y, "Bluejacket," *Encyclopedia of Oklahoma History and Culture*, https://bit.ly/3RCMcdG; Jon D. May, "Bartlesville," *Encyclopedia of Oklahoma History and Culture*, https://bit.ly/3RC4tYE. And others incorporated under *tribal* law. For instance, Vinita and Chelsea both initially incorporated under Cherokee Nation law. Donna Casity McSpadden, "Chelsea," *Encyclopedia of Oklahoma History and Culture*, https://bit.ly/3aCuw1d; Craig Cnty. Genealogical Soc'y, "Vinita," *Encyclopedia of Oklahoma History and Culture*, https://bit.ly/3RyOSZW (all pages in this footnote last visited May 28, 2023).

Shulthis, 225 U.S. at 571 (emphasis added). By contrast, municipalities in the Oklahoma Territory exercised local authority under grants made by the Oklahoma Territory legislature, *see In re Gribben*, 1897 OK 22, ¶¶ 4-7, 47 P. 1074, 1075,[5] although in both territories, the ultimate source of power was Congress itself, and its Territories Clause legislation, *see Fin. Oversight & Mgmt. Bd. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1667 n.1 (2020) (Thomas, J., concurring).

In enacting section 14 to fill the void in local governance in such cities and towns, Congress again borrowed and adapted Arkansas law. Section 14 first set forth the process to be used to incorporate municipalities in the Indian Territory. "[T]he inhabitants of any city or town in [the Indian] Territory having two hundred or more residents" were authorized to petition the United States court in the Indian Territory to incorporate under chapter twenty-nine of Mansfield's Digest of the Statutes of Arkansas,[6] and the clerk of that court was assigned the administrative tasks necessary to such incorporation that would have been done by Arkansas officials under Arkansas law. Curtis Act § 14, 30 Stat. at 499. "[W]hen so authorized and organized," such cities and towns were to hold "all the powers and exercise all of the rights of similar municipalities in said State of Arkansas." *Id.* "[W]hen so authorized and organized," "such cities and towns . . . shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and town as, and coextensive with, United States commissioners in the Indian Territory,"[7] *id.*, who already exercised quasi-judicial power in the Indian Territory, *see supra* at 8.

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[5] *See* Okla. Terr. Stats. chs. 14-15 (1893), *available at* bit.ly/43pQHNP.

[6] W.W. Mansfield, *A Digest of the Statutes of Arkansas Embracing All Laws of a General and Permanent Character* (Little Rock, Mitchell & Bettis 1884), *available at* bit.ly/43vYZnH.

[7] Such mayors were also authorized to impose "the same fees as such commissioners now collect and account for to the United States," and executive officers of such cities and towns were authorized to execute "all processes issued in the exercise of the jurisdiction" conferred under

Section 14 also legislated on other matters of local concern within the cities and towns that organized under its terms. City and town elections were to be conducted under chapter fifty-six of Mansfield's Digest, so far as applicable. Curtis Act § 14, 30 Stat. at 499. Qualified voters in city or town elections were defined as male inhabitants over twenty-one who were "citizens of the United States or of either of said tribes" and had been municipal residents for six or more months before the election.[8] *Id.* Lands could not be taxed until after title was "secured from the tribe," but cities and towns could tax other property, including "all improvements on town lots," up to a maximum aggregate rate, assessed in compliance with Arkansas law. *Id.* § 14, 30 Stat. at 500. Cities and towns could establish free schools and exercise powers of special school districts under Arkansas law "when the same [were] not in conflict with the provisions of th[e] [Curtis] Act." *Id.* Section 14 also 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 protection therein." *Id.* § 14, 30 Stat. at 499. This established a rule of local governance over inhabitants of cities and towns, which was consistent with the rule that Congress had imposed in the Indian Territory in 1897, i.e., that the laws Congress made applicable there would apply regardless of race, and the United States commissioners and United States court in the Indian Territory would have jurisdiction over all persons there, *see supra* at 7-8. The councils of such cities and towns were directed to "pass such ordinances as may be necessary" to make the laws extended over them applicable and in effect over them. *Id.* § 14, 30 Stat. at 500.

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section 14 and to collect the same fees for doing so "as are allowed to constables under the laws now in force in [the Indian] Territory." Curtis Act § 14, 30 Stat. at 499.

[8] Section 14 did not identify which two tribes these were.

Section 14 also made clear in a proviso that nothing in the Arkansas law incorporated by the Curtis Act "shall authorize or permit the sale, or exposure for sale, of any intoxicating liquor in said Territory, or the introduction thereof into said Territory," and required municipal officials and territorial district attorneys to prosecute those who violated the ban. *Id.*[9]

As shown earlier, federal law makes clear that the municipalities created under section 14 were federal agencies, established under Congress's territorial powers to "legislate for them as a State does for its municipal organizations." *First Nat'l Bank*, 101 U.S. at 133; *see supra* at 4-10. The Oklahoma Supreme Court also expressly so held, ruling that:

> The municipal corporations of the Indian Territory prior to the admission of the state into the Union were agencies of the government of the United States, created by Congress under its plenary power to govern the territories in any manner not forbidden by the federal Constitution, for the purpose of permitting the people of those cities and town, in a measure to control their local affairs.

State ex rel. West v. Ledbetter, 1908 OK 196, ¶ 4, 97 P. 834, 835.

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[9] The Curtis Act also contained in other sections allotment agreements with Indian tribes, which would take effect upon ratification by the tribes' voters, and which, upon taking effect, would supersede parts of the Curtis Act as to the ratified tribes. Section 29 contained the Atoka Agreement with the Choctaw and Chickasaw Nations, which was ratified in 1898. *Woodward v. De Graffenried*, 238 U.S. 284, 308 (1915). Section 30 contained an agreement with the Creek Nation, 30 Stat. at 514, which the Creek did not ratify by the deadline, *see Woodward*, 238 U.S. at 311-12. In 1901, the Creek entered into an allotment agreement, *see* Act to Ratify and Confirm an Agreement with the Muscogee or Creek Tribe of Indians, ch. 676, 31 Stat. 861 (1901) ("1901 Creek Agreement"); *McGirt*, 140 S. Ct. at 2463 (citing 1901 Creek Agreement §§ 3, 7, 31 Stat. at 862-64). In a like manner, the Cherokee Nation entered into an allotment agreement pursuant to an Act to Provide for the Allotment of the Lands of the Cherokee Nation, ch. 1375, 32 Stat. 716 (1902). The Chickasaw, Choctaw, and Cherokee allotment agreements provided that their ratification during the territorial period would not affect section 14 of the Curtis Act, *see* 30 Stat. at 505; 32 Stat. at 727, although this was made in "recognition of the importance of preserving restrictions upon the introduction of intoxicating liquors from without and the traffic in them within the Indian [T]erritory" as provided in a proviso, *Ex parte Webb*, 225 U.S. 663, 684-85 (1912) (discussing Cherokee allotment agreement).

As we show next, the local powers municipalities held under section 14 expired upon Oklahoma's statehood and provide Tulsa no authority today.

B. Oklahoma's Admission to the Union Abrogated Section 14.

Under settled federal law, when Oklahoma was admitted to the Union by Presidential Proclamation on November 16, 1907, 35 Stat. 2160, 2160-61, "the Territorial government was displaced, abrogated, every part of it; and [] no power of jurisdiction existed within her limits, except that derived from the State authority, and that by force and operation of the Federal Constitution and laws of Congress." *Benner*, 50 U.S. at 243; *Koenigsberger*, 158 U.S. at 48; *Permoli*, 44 U.S. at 610 ("[T]he laws of Congress" governing territorial governments in what is now Louisiana "were all superseded by the state constitution; nor is any part of them in force, unless they were adopted by the constitution of Louisiana, as laws of the state.").

This well-settled rule applied to the Indian Territory, as the court held in *Bowling*:

> The authority of Congress over the territories of the United States is a familiar feature of our history. Before they are admitted to statehood it exercises as to them the combined powers of the national and state governments by direct legislation, and also through local legislative bodies whose acts are subject to its supervision, *or, as was the case with the Indian Territory, by extending thereto certain of the laws of an organized state*. But when a territory is admitted into the Union as a state it stands in every respect upon the same footing as the original 13 states, with supreme authority as to all matters of internal government and local concern subject only to the limitations of the federal Constitution. . . . *Upon attaining statehood the statutes enacted for the territory upon subjects of state, as distinguished from federal, cognizance are automatically abrogated, except so far as they may be affirmatively continued to prevent an interregnum or hiatus.*

249 F. at 593-94 (emphasis added) (citations omitted).[10] These clear rules establish that the provisions of section 14 of the Curtis Act providing for the creation of municipal governments in

[10] On that basis, *Bowling* held that a 1902 act which "prescribed a procedure for the exercise of the right of eminent domain and by its terms applied to all lands in the Indian Territory, . . . did

the Indian Territory and defining the terms on which they would exercise authority were abrogated upon statehood. It thus made no difference that section 14 had not been affected by the *amici* Nations' pre-statehood allotment agreements, *see supra* at 12 n.9, as statehood abrogated section 14.

The Oklahoma Enabling Act also made clear that the law that applied to the Oklahoma Territory, not that which applied to the Indian Territory, would govern Oklahoma after statehood. In the Enabling Act,

> provision was made for admitting into the Union both the territory of Oklahoma and the Indian Territory as the state of Oklahoma. Each territory had a distinct body of local laws. Those in the Indian Territory, as we have seen, had been put in force there by Congress. Those in the territory of Oklahoma had been enacted by the territorial Legislature. Deeming it better that the new state should come into the Union with a body of laws applying with practical uniformity throughout the state, Congress provided in the Enabling Act (section 13) that "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," and also (section 21) that "all 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."

Jefferson, 247 U.S. at 292-93 (quoting Enabling Act §§ 13, 21). Section 14 of the Curtis Act was not one of the laws in force in the Territory of Oklahoma that section 21 of the Enabling Act made applicable throughout the State, and so the Enabling Act did nothing to preserve it in the new state. Indeed, section 21 of the Enabling Act provided that the only modifications or changes to Oklahoma law that would apply after statehood would be those of "this Act" or "the constitution of the State," and, accordingly, earlier-enacted laws like section 14 of the Curtis Act could not

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not survive the admission of the state" in 1907, and that an act enacted *after statehood* preserved the 1902 act only "so far as it affected Indian lands including those that had been allotted but were still subject to restrictions against alienation," as "[t]hat was the extent of [Congress's] interest during statehood." 249 F. at 594.

modify the future application of state law. Enabling Act § 21, 34 Stat. at 277-78. And while section 21 of the Enabling Act made federal statutes in effect "elsewhere within the United States" applicable in Oklahoma, section 14 of the Curtis Act was only in effect in the Indian Territory, not "elsewhere." Enabling Act § 21, 34 Stat. at 278. In short, no provision was made in the Enabling Act—in section 13, section 21, or anywhere else—for the continued application to the former Indian Territory of the laws of Arkansas or of section 14 of the Curtis Act.[11]

In broad terms, Congress "framed the enabling act with a clear view of the distinction between the powers appropriate to be exercised by the new state over matters within her borders, and the powers appropriate to be exercised by the United States . . . ." *Ex Parte Webb*, 225 U.S. at 682. When Congress wanted to maintain elements of pre-statehood federal laws of local concern in the Indian Territory, such as the prohibition on the trade or importation of alcohol into the Indian Territory that was reiterated in section 14, *see supra* at 12, it did so expressly. In the Enabling Act, Congress expressly perpetuated the pre-statehood ban on alcohol manufacture or sale in the Indian Territory or the importation of alcohol to there from the Oklahoma Territory, by requiring the State to establish for at least twenty-one years, *state* laws regulating the *intra-state* trade in alcohol in and into the former Indian Territory. *Ex Parte Webb*, 225 U.S. at 679 (discussing

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[11] To the contrary, the Enabling Act expressly provided that:

> nothing contained in the [Oklahoma] constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights . . . which it would have been competent to make if this Act had never been passed.

Enabling Act § 1, 34 Stat. at 267-68. "Section one is a general reservation of federal and tribal jurisdiction over 'Indians, their lands, [and] property,' except as extinguished by the tribes or the federal—not state—government." *Indian Country, U.S.A.*, 829 F.2d at 979 (alteration in original) (quoting Enabling Act § 1).

Enabling Act § 3). Federal law governing the *interstate* trade in alcohol into the former Indian Territory remained in effect, however. *Id.* at 682.[12] By contrast, Congress did not preserve any element of section 14's municipal authority provisions post-statehood, which would not have been appropriate in any event, as section 14 addressed matters of local concern. *See supra* at 9-11.

In addition, "[w]hen the state of Oklahoma was created, in part out of the Indian Territory, and the courts of the newly organized state, and the newly treated Circuit Courts and District Courts of the United States for the newly created judicial districts, were established, the United States Court in the Indian Territory went out of existence. Its jurisdiction ceased." *Sand Springs*, 16 F.2d at 920. As the Oklahoma Supreme Court expressly held, "[u]pon the admission of the state into the Union, the mayors' courts of the Indian Territory, or the jurisdiction of mayors of the Indian Territory in civil cases, was not continued in force in this state; and such courts ceased to exist." *Hillis v. Addle*, 1912 OK 801, ¶ 1, 128 P. 702, 702.[13] In the absence of the mayoral courts established under section 14, the cities and towns established under its terms would have neither civil nor criminal jurisdiction to enforce the laws made applicable under section 14, even if one assumes, *arguendo*, that those laws remained in effect after statehood. And that would make it impossible to constitutionally administer or enforce those laws. *See generally McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 178-79 (1973) (lack of state court jurisdiction compels

[12] Congress reserved federal authority and power to legislate over Indian affairs in section 1 of the Enabling Act, *see Ex Parte Webb*, 225 U.S. at 683, thereby expressly distinguishing between matters of federal and state regulation.

[13] As noted *infra* at 20, Congress abolished the United States commissioners in 1968, which would have rendered a nullity the provision of section 14 making mayors' powers coextensive with those of the United States commissioners in the Indian Territory—assuming section 14 had survived statehood, which it did not.

state to explain how it could "constitutionally administer its tax system altogether without judicial intervention.").

Furthermore, while the Enabling Act "transferred pending cases that arose 'under the Constitution, laws, or treaties of the United States' to federal district courts," *McGirt*, 140 S. Ct. at 2477 (citing Enabling Act § 16, 34 Stat. at 276), and transferred all other cases "pending in the district courts of Oklahoma Territory and in the United States courts for the Indian Territory" to "the courts of said [s]tate" (i.e., Oklahoma), Enabling Act § 20, 34 Stat. at 277; *see McGirt*, 140 S. Ct. at 2477 (citing Enabling Act § 20 and Act of Mar. 4, 1907, ch. 2911, § 3, 34 Stat. 1286, 1287),[14] it said nothing at all about authorizing transfer of cases pending in the mayoral courts established under section 14 of the Curtis Act. Jurisdiction over those cases, like the mayoral courts themselves, died as the State was born.

In sum, the Enabling Act authorized the new State to govern under a single, uniform set of laws, replacing the provisional measures that Congress had enacted for the Indian Territory. *Jefferson*, 247 U.S. at 292-93. Accordingly, just as Tulsa cannot rely on section 14 of the Curtis Act to limit qualified voters at any election to "male inhabitants over the age of twenty-one," Curtis Act § 14, 30 Stat. at 499, it cannot rely on section 14 to exercise jurisdiction over Indians in Indian country today. The survival of section 14 would be plainly inconsistent with the establishment of the State, which the Enabling Act effectuated by replacing the provisional system in the Indian Territory with *"a body of laws applying with practical uniformity throughout the state."* *Jefferson*, 247 U.S. at 292 (emphasis added).

[14] The Act of March 4, 1907 "clarif[ied] treatment of cases to which United States was a party." *McGirt*, 140 S. Ct. at 2477.

Even assuming, only *arguendo*, that section 14 was not abrogated by Oklahoma's statehood, the continued existence of cities and towns in the former Indian Territory as federal agencies, endowed with territorial powers and subject to section 14 as to their legislation and regulation of local matters, would cut so deep into the State's local affairs, as to interfere with its power to "'withhold, grant or withdraw [from or to its municipalities] powers and privileges as it sees fit.'" *Ysura v. Pocatello Educ. Ass'n*, 555 U.S. 353, 362 (2009) (quoting *Trenton v. New Jersey*, 262 U.S. 182, 187 (1923)).

The State's power over its municipalities was "settled doctrine[]" at the time Oklahoma joined the Union: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state." *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907) (citing cases), *overruled on other grounds by Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969); *see Hous. Auth. of the Kaw Tribe of Indians of Okla. v. City of Ponca City*, 952 F. 2d 1183, 1189 (10th Cir. 1991); *City of Herriman v. Bell*, 590 F.3d 1176, 1185 (10th Cir. 2010) (explaining that "*Hunter* remains good law," subject to later rulings prohibiting states and political subdivisions from discriminating on the basis of race or sex or violating the one person, one vote principle).

Oklahoma has itself long adhered to these principles, under "Dillon's Rule" which governs the relationship between state and municipal governments. *See Morland Dev. Co. v. City of Tulsa*, 1979 OK 96, ¶ 3, 596 P.2d 1255, 1258 (Barnes, J., specially concurring). These principles were established by the Oklahoma Territory Supreme Court in *In re Gribben*, which held that:

> A municipal corporation has no inherent jurisdiction to make laws or adopt regulations of government. They are governments of granted and enumerated powers, acting by delegated authority. The character of the general law, which creates them, is their constitution, in which they must be able to show authority for the acts they assume to perform. While state legislatures may exercise such powers of government coming within a proper designation of legislative powers, as are not expressly or impliedly prohibited, the legislative body of a municipal corporation can exercise those powers only which are expressly or impliedly conferred by charter or the general law.

1897 OK 22, ¶ 4, 47 P. at 1075. The Oklahoma Supreme Court reaffirmed these rules post-statehood in *Mitchener v. City Commissioners of Okmulgee*, 1924 OK 645, 228 P. 159, holding:

> the powers which a municipal corporation possesses and can exercise are limited to those powers which are by the act under which they are created and by the charter of the municipal corporation (1) expressly granted, (2) those impliedly granted, as necessary or fairly incident to the powers expressly granted, and (3) those essential to the declared objects and purposes of the corporation not simply convenient, but indispensable.

Id. ¶ 26, 228 P. at 164 (citing *In re Gribben*, 1897 OK 22, 47 P. at 1074); *see also Ex parte Westellison*, 1927 OK CR 300, 259 P. 873, 874 (noting general principle that "municipalities can exercise only such powers as are expressly delegated to them by the Legislature, or such as are fairly implied as an incident to the powers expressly granted," and concluding that "the general grant of police power to a city to enact ordinances for the benefit of the health, safety, and welfare of the city" contains "an implied grant of power" to restrict noises that are "a nuisance, an annoyance, or a breach of public order"). And Tulsa itself recognizes them, as its own municipal code limits its court's "jurisdiction and powers" and "duties and responsibilities" to those "provided for the Court by *state law*, the Charter, and the Revised Ordinances of the City of Tulsa." Tulsa Mun. Code tit. 23, § 100 (emphasis added).[15]

[15] *Available at* https://bit.ly/45CKzDM.

These fundamental principles would be shredded if, notwithstanding Oklahoma's statehood and state laws governing municipalities in Oklahoma, cities and towns in the former Indian Territory could still exercise the territorial powers section 14 confers. Indeed, if section 14 were still in effect, municipalities would have to limit qualified voters at any election to "male inhabitants . . . over the age of twenty-one," and could only apply their laws and ordinances to "*inhabitants of such cities and towns*, without regard to race." Curtis Act § 14, 30 Stat. at 499 (emphasis added). They could also exercise "the rights of similar municipalities in [the] State of Arkansas," *id.*, in addition to or rather than those of Oklahoma municipalities. The duality of their existence would be unmanageable.

For instance, if municipalities were still governed by section 14, their mayors could exercise "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.* Those powers would include the power of Arkansas justices of the peace. *See* Organic Act § 39, 26 Stat. at 98. That would be the case, even though Congress abolished the position of United States commissioner in 1968, *see* Federal Magistrates Act, Pub. L. No. 90-578, § 401(a), 82 Stat. 1107, 1118 (1968), and Oklahoma law has long since "advanced to a higher plane" by abolishing the position of justice of the peace, *Harper v. Dist. Ct. of Okla. City*, 1971 OK CR 182, ¶ 8, 484 P.2d 891, 894.

Further, under section 14, such cities and towns would also have the power to tax, assessed in compliance with Arkansas law, notwithstanding that "the power of taxation belongs exclusively to the legislative department of the [state] government, and the extent to which it shall be delegated to a municipal body is a matter of discretion, and may be limited or revoked at the pleasure of the legislature." *Louisiana ex rel. Folsom v. Mayor of New Orleans*, 109 U.S. 285, 289-90 (1883).

And section 14 also authorized city or town councils to "establish . . . free schools" and "exercise all the powers conferred upon special school districts in cities and towns" under Arkansas law, Curtis Act § 14, 30 Stat. at 500, while the Oklahoma Constitution provides that the Oklahoma legislature "shall establish and maintain a system of free public schools," Okla. Const. art. XIII, § 1, which means "one system . . . applicable to all the public schools within the state," *Bd. of Educ. of Ardmore v. State ex rel. Best*, 1910 OK 118, ¶ 7, 109 P. 563, 565. Section 14 would create a system of municipal school districts governed by Arkansas law in some cities and towns in eastern Oklahoma and a different system governed by Oklahoma law everywhere else.

In fact, Tulsa has already relied on section 14 of the Curtis Act to interfere with this Court's appellate jurisdiction. The Municipal Court below relied on cases dealing with appeals from mayoral court decisions, rendered *before* statehood, to determine that "the appeal from a case rendered under the Curtis Act would be to the U.S. Federal District Court," Corrected Mem. Op. & Order at 10 (citing *Mo., Kan. & Tex. Ry. Co. v. Phelps*, 76 S.W. 285 (Indian Terr. 1903); *Baker v. Marcum & Toomer*, 1908 OK 171, 97 P. 572, 573). Those cases determined that, because Curtis Act mayors exercised the authority of United States commissioners in the Indian Territory, and because such commissioners' decisions were appealable to the United States court in the Indian Territory, *see supra* at 8, territorial mayoral court decisions would also need to be appealed to that court. *See Phelps*, 76 S.W. at 286 (citing Mar. 1, 1895 Act § 4, 28 Stat. at 695-96).[16] Tulsa,

[16] Both *Phelps* and *Baker* dealt with mayoral court decisions issued before statehood and did not consider municipal jurisdiction post-statehood. *Phelps* was decided in 1903. In *Baker*, the U.S. District Court for the Western District of *Indian Territory* affirmed a municipal court decision on appeal before statehood, and then that ruling was appealed to the U.S. Court of Appeals of the *Indian Territory*. Upon statehood, the appeal was transferred to the Oklahoma Supreme Court for final disposition under the provisions of the Enabling Act. *See Baker*, 97 P. at 572; *see also* Enabling Act § 20, 34 Stat. at 277 (providing for transfer of cases from the U.S. Court of Appeals for the Indian Territory to the Oklahoma Supreme Court).

following suit, has already argued *to this Court* in other cases that appeals from municipal courts governed by the Curtis Act should be heard in federal district court, *not* this Court as required by state law, Okla. Stat. tit. 11, § 28-128 (1978), and the Oklahoma Constitution, *see Dutton v. City of Midwest City*, 2015 OK 51, ¶ 19, 353 P.3d 532, 540 (quoting Okla. Const. art. VII, § 4). *See* Appellee City of Tulsa's Mot. to Dismiss Appeal, *Taylor v. City of Tulsa*, No. C-2021-1429 (Okla. Crim. App. July 5, 2022); Appellee City of Tulsa's Mot. to Dismiss Appeal, *Taylor v. City of Tulsa*, No. C-2021-1430 (Okla. Crim. App. July 13, 2022). In those prior motions, Tulsa conveniently elided that nothing in the text of section 14 or the opinions in *Phelps* and *Baker* would limit such appeals to cases involving Indians, as section 14 applied without regard to race, and *Phelps* and *Baker* never applied such a limitation.

As this discussion shows, the continued vitality of section 14 would place the governance of cities and towns in the former Indian Territory that organized under section 14 beyond the reach of state law. Such cities and towns would have a second identity as federal agencies exercising territorial powers over all their inhabitants. They would do so as required or permitted by the Curtis Act and the Arkansas laws it incorporated, rather than Oklahoma law. That dualism would produce a municipal nightmare in half of Oklahoma.

C. State Law Did Not Preserve Municipalities' Section 14 Authority.

Tulsa also lacks authority as a matter of state law as Oklahoma decided in its Constitution to terminate municipalities' authority under the laws that applied in the Indian Territory. In conformance with section 21 of the Enabling Act, the Oklahoma Constitution, Schedule § 2, provides that "all laws in force in the territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable, shall be extended to and remain in force in the state of Oklahoma until they expire

by their own limitation or are altered or repealed by law." No provision was made for the application of the laws of the Indian Territory under which Tulsa had incorporated, much less section 14 of the Curtis Act which was enacted after Tulsa's incorporation. Instead, in conformance with the Oklahoma Constitution, Section 10 of the Schedule to the Oklahoma Constitution, adopted in 1908, provided that

> [u]ntil otherwise provided by law, incorporated cities and towns, heretofore incorporated under the laws in force in the territory of Oklahoma or in the Indian Territory, shall continue their corporate existence under the laws extended in force in the state . . . .

Bridges, 1908 OK 45, ¶ 8, 94 P. at 1066. And those were the laws of the Oklahoma Territory, as the Schedule § 2 of the Oklahoma Constitution makes clear.

The Oklahoma Supreme Court has also squarely held that the adoption of the state Constitution terminated the laws that governed municipalities in the Indian Territory:

> The state of Oklahoma is a different government from the government that existed in the Indian Territory prior to the admission of the state, *and the laws for the administration of the affairs of municipal corporations that were in force in the Indian Territory prior to the admission of the state are no more the laws of the state of Oklahoma than they are of any other state of the Union, unless made so by the provisions of the Enabling Act or some provision of the Constitution.* The Enabling Act contains no provision that extends in force in the state after its admission into the Union any of the laws governing municipal corporations that were in force in the Indian Territory prior to its admission, nor does the Constitution adopt or continue in force in the state any of said laws except certain specific laws for certain specific purposes . . . .

Bridges, 1908 OK 45, ¶ 10, 94 P. at 1067 (emphasis added). This holding was reaffirmed by *Ledbetter*. There, the Oklahoma Supreme Court explained that while section 14 put Arkansas law in force in the Indian Territory, the Enabling Act had displaced it with Oklahoma Territory law. 1908 OK 196, ¶ 2, 97 P. at 835. "*No provision was made in the enabling act or in the Constitution for extending in force in [Oklahoma] the [Arkansas] laws under which the municipal corporations*

of the Indian Territory were created, organized, and governed." *Id.* (emphasis added). Upon the admission of Oklahoma,

> the form of government theretofore existing in the Indian Territory ceased to exist, and the laws in force in that territory under which [a municipality incorporated during the Indian Territory era] held its charter and exercised its municipal powers became inoperative.

Id. ¶ 4, 97 P. at 835. Instead, "the Constitution created them municipal corporations under [Oklahoma Territory] law . . . [and] the corporate existence of said cities . . . continued, after the admission of the state, under the laws extended in force, and not under the laws theretofore in force in the Indian Territory." *Id.* ¶¶ 5-6, 97 P. at 836. As a result, "while the municipal corporations of the Indian Territory continued to exist as municipal corporations in the state after its admission, the powers of such corporations, except as otherwise provided by the Constitution, are to be found in the general statutes of Oklahoma Territory, extended in force in the state, providing for the organization of municipal corporations and defining their powers." *Lackey*, 1911 OK 270, ¶ 3, 116 P. at 914.

The *Lackey* court also addressed the correct interpretation of section 2 of Article 18 of the Oklahoma Constitution, which provides 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. XVIII, § 2. As the *Lackey* court held, "[t]he rights and powers possessed by municipal corporations of the state at the time of its admission, as before stated, *were fixed by the statutes of the territory of Oklahoma, extended in force in the state by the schedule to the Constitution*" and

section 2 "adds to these rights, which shall continue to exist until otherwise provided by law, the rights and powers provided by the Constitution." 1911 OK 270, ¶ 6, 116 P. at 914-15.[17]

Soon after statehood, Tulsa re-incorporated under the provisions of state law, which terminated any authority Tulsa may have had under section 14 prior to statehood. On December 27, 1907, at the request of Tulsa's elected officials, the Governor of Oklahoma C.N. Haskell issued a proclamation declaring Tulsa to have all the powers, duties, and privileges of a city of the first class under, and subject to the requirements of, the laws of the state of Oklahoma. *See* Tulsa Mun. Code app. C. Then on May 22, 1908, the Oklahoma Legislature enacted a statute, consistent with article XVIII, section 3(a) of the Oklahoma Constitution, authorizing any city with a population of more than 2,000 inhabitants to adopt a charter for "its own government," and providing that, upon ratification by voters and approval by the Governor, the charter would "become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it." 1908 Okla. Sess. Laws 190-91,[18] *see also Mitchener*, 1924 OK 645, ¶ 26, 228 P. at 164 (powers held under a municipal charter are limited to those expressly conferred by

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[17] In *Hooper v. City of Tulsa*, Case No. 21-cv-165-WPJ-JFJ, 2022 WL 1105674 (N.D. Okla. Apr. 13, 2022), *appeal docketed*, No. 22-5034 (10th Cir. May 3, 2022), the court construed section 2 to preserve municipalities' powers under section 14 of the Curtis Act, *Hooper* at *4, without considering that the Oklahoma Supreme Court had squarely held otherwise in *Lackey*, as shown *supra* at 4, 24-25. *Lackey* is controlling here. The *Hooper* court did not otherwise consider whether the Enabling Act and statehood abrogated section 14 as a matter of federal and state law, which we show did occur here. *See supra* at 13-25. Thus, *Hooper* is no help to Tulsa. If more were needed, the "until otherwise provided by law" provision set forth in section 2 of article XVIII was triggered twice over as to Tulsa soon after statehood, first by the Governor's proclamation of Tulsa's incorporation as a city of the first class, and then by Tulsa's re-incorporation under state law. *See infra* at 25-26. Under the state constitution and state law, this superseded Tulsa's pre-statehood powers to the extent they could have survived the advent of statehood, which they did not for reasons described *supra* at 13-22.

[18] *Available at* https://bit.ly/43nWYde.

state law or necessarily implied by those express conferrals). Pursuant to the state constitution and this law, Tulsa adopted a charter on July 3, 1908, which the Governor approved on January 5, 1909. Tulsa Mun. Code app. C. Pursuant to its current charter, Tulsa has adopted a municipal code which gives its municipal court only the jurisdiction, powers, duties, and responsibilities conferred by state and municipal law, *id.* tit. 23, § 100, of which the Curtis Act is not a part. So, even if provisions of section 14 had survived statehood—and they did not—Tulsa jettisoned any claim to them when it adopted a state law charter that superseded its earlier incorporation under pre-statehood law, and adopted a code that defines its court's authority with regard only to state law and post-statehood municipal law.

II. The Nations Protect Public Safety By Exercising Jurisdiction Over Reservation Roads Cooperatively In Accordance With Existing Law.

Tulsa has never argued that it has jurisdiction over Indians in Indian country absent express congressional authorization. Nor could it do so successfully, as "[s]tates have no authority over Indians in Indian Country unless it is expressly conferred by Congress." *Cheyenne-Arapaho Tribes of Okla. v. Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980) (citing *Williams v. Lee*, 358 U.S. 217, 220 (1959), and *United States v. Kagama*, 118 U.S. 375, 383-84 (1886)). And as a result, local or municipal officials are generally barred from exercising authority over Indians in Indian country. *See Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Myton*, 835 F.3d 1255, 1258, 1260 (10th Cir. 2016) (Gorsuch, J.); *MacArthur v. San Juan Cnty.*, 497 F.3d 1057, 1074 (10th Cir. 2007) ("'In its "governmental capacity" a municipality acts as an arm of the state for the public good on behalf of the state." (quoting *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 679 F.2d 805, 810 (10th Cir. 1982))).

Congress can grant states such jurisdiction, as it did in 1953 when it enacted Public Law 280. Pub. L. 83-280, 67 Stat. 588 (1953) (codified as amended at scattered sections of 18, 25, and 28 U.S.C.). But Oklahoma has never been authorized to exercise jurisdiction over Indians in Indian country under Public Law 280. *See Murphy*, 875 F.3d at 936-37 (citing, *inter alia*, *Indian Country U.S.A*, 829 F.2d at 980 n.6). And as "there has been no express delegation of jurisdiction to [Oklahoma], *a fortiori*, there has been no grant of local jurisdiction." *Ross*, 905 F.2d at 1352 (emphasis in original).

The Nations protect public safety in accordance with these rules, working hand in glove with state, county, and municipal law enforcement agencies on their Reservations to ensure that Oklahoma's roads are safe, by patrolling the roads and enforcing both tribal and state traffic codes and criminal laws that cover vehicle offenses.

The Nations have enacted traffic codes which mirror or incorporate state traffic laws. *See* Cherokee Nation Code tit. 47;[19] Chickasaw Nation Code tit. 21;[20] Choctaw Nation Res. No. CB-89-21 (Aug. 20, 2021) (codified at Choctaw Nation Traffic Code § 17-100).[21] And state law provides that Tribal law enforcement officers who obtain proper state certification can be commissioned as state law enforcement officers and can enforce state law on the Reservations against non-Indians. Okla. Stat. tit. 21 §§ 99, 99a(D). Exercising authority under these provisions and jurisdictional agreements, the Nations' law enforcement officers have referred thousands of cases involving non-Indians to state prosecutors for prosecution in the state system.

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[19] *Available at* bit.ly/3WEcwHe.

[20] *Available at* bit.ly/45KBKrU.

[21] *Available at* bit.ly/3qdZRik.

Likewise, pursuant to literally hundreds of cross-deputation agreements, the Nations have agreed that state, county, and municipal law enforcement officers on the Nations' Reservations can arrest or cite offenders who violate tribal law, including Indians, and then refer those cases to tribal prosecutors, who prosecute the cases over which the Nations have jurisdiction.[22] In addition, under recently-passed state legislation, the Oklahoma Department of Public Safety treats tribal court convictions for traffic offenses the same way that it treats state court convictions for such offenses. Okla. Stat. tit. 47, § 6-201.2. As a result, for instance, a tribal conviction for driving under the influence ("DUI") or unsafe driving will result in suspension of a person's commercial state driver's license, and tribal convictions for DUI offenses will be considered prior convictions for enhanced state punishment for DUI. *See id.* §§ 6-205.2, 11-902(C)(2)-(5).

Reservation-wide, case referrals under the Nations' agreements with state and local law enforcement have resulted in thousands of traffic citations and criminal charges in the tribal courts. Since their Reservations were acknowledged in 2021, the Nations' records reflect the following: the Cherokee Nation has issued 4,102 traffic citations and filed 474 alcohol-related driving offense cases, the Chickasaw Nation has issued 1,312 traffic citations and filed 560 alcohol-related driving offenses, and the Choctaw Nation has issued 2,095 traffic citations and filed 538 alcohol-related driving offenses. The Cherokee Nation is further implementing its jurisdictional agreements through over a dozen memoranda of understanding with municipalities on its Reservation, under which the Nation shares a portion of fines assessed by tribal law with the municipality in which the offense was committed, equal to the share the municipalities would obtain from fines for

[22] These agreements are available on the Oklahoma Secretary of State's website, *see Tribal Compacts and Agreements*, Okla. Sec'y of State, bit.ly/43t648p (last visited May 26, 2023), and can be found by searching "deputization" or "deputation" and a Nation's name in the "Doc Type" search bar.

offenses committed outside Indian country. *See, e.g.*, Mem. of Agreement Between the Cherokee Nation & the City of Owasso § 6(G)-(H) (Oct. 5, 2021).[23]

By relying on section 14 of the Curtis Act to establish municipal jurisdiction over Indians in Indian country, Tulsa seeks to both circumvent existing jurisdictional rules (rules that it does not challenge) and at the same time to ignore the work the Nations are doing under those rules, in cooperation with state, county, and municipal law enforcement officers, to ensure public safety on their Reservations. The Nations' inter-governmental cooperation to ensure law enforcement on the Reservations depends on mutual respect, and recognition of the long-settled principles that assign jurisdiction over activities on the Reservation. Tulsa's argument, and the Municipal Court's decision, would unsettle those principles and the hundreds of agreements between tribes and local governments that currently govern law enforcement and criminal prosecution in Indian country in eastern Oklahoma.

Tulsa's position also strikes at the heart of tribal sovereign authority. If subdivisions of the State had jurisdiction over crimes by Indians on the Nations' Reservations, it would infringe on tribal self-government by subjecting reservation Indians to an additional criminal justice system, with different laws applied by different courts, in which punishment would be meted out by municipalities without the coordination and consent reflected in the agreements discussed above. The adjudication of any case arising on the reservation involving Indians "by any nontribal court . . . infringes upon tribal lawmaking authority." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987). Such an adjudication "cannot help but unsettle a tribal government's ability to maintain authority." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1978). That would be the case here.

[23] *Available at* bit.ly/45wvpA9.

Section 14 cannot support such an adjudication, however, because it was a provisional enactment that was abrogated by Oklahoma's admission to the Union and did not persist into statehood.

CONCLUSION

For the foregoing reasons, the Court should reverse the Municipal Court's decision.

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I hereby certify that on this 31st day of May 2023, a true and correct copy of this Amicus Brief was served via first class mail to each of the following:

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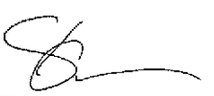

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