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Fitch: Supreme Court Ruling Creates Uncertainty in Oklahoma

Fitch Ratings-New York-16 July 2020: The recent U.S. Supreme Court ruling concerning Native American nations in eastern Oklahoma (Issuer Default Rating AA/Stable) presents the state with a score of jurisdictional issues that will take time to address. However, Fitch Ratings expects the generally cooperative relationship between the nations and the state will help clarify sovereignty issues raised by the ruling and provide for an agreement that limits the long-term credit implications to the state.

In *McGirt v. Oklahoma*, the court held that three million acres of eastern Oklahoma, which includes 24% of the state's population and much of the greater city of Tulsa area, remain reservation land of the Muscogee (Creek) Nation. In addition to the Creek Nation, the ruling extends by interpretation to four other Native American nations in the state, as these nations' boundaries were established through the same federal legislation. In total, these areas account for 43% of the state's land mass.

In the short-term, the ruling primarily affects criminal prosecution under the federal Major Crimes Act (MCA). An estimated 1,700 tribal inmates tried under state law and currently serving out their sentences may choose to seek a new trial in federal court. The extent to which eligible inmates seek retrial will determine the scale of disruption to the state's judicial and correction systems but Fitch expects the state to manage this process effectively.

While the Supreme Court majority's opinion stated that the ruling only considered the MCA, Fitch believes the ruling creates ambiguity around the regulatory and civil powers of the state and its municipal governments, including excise, property and income taxation of up to 200,000 tribal members if they reside within the newly affirmed reservation boundaries. The Court has repeatedly ruled against state or local government taxation of income earned by tribal members on a reservation, land owned by tribal nations and the enrolled tribe members that live on such lands, absent U.S. Congressional action authorizing it.

Following the Court ruling, the state is expected to continue its negotiations with Native American nations to resolve jurisdictional uncertainties on criminal justice and other government functions. Oklahoma has a long history of navigating dual sovereignty with Native American nations and a generally cooperative relationship that will likely continue. Fitch anticipates that current tension around gaming issues in the state may hamper these discussions somewhat, but not materially so. Reflecting the cooperative relationship, following the Court's ruling, the state, along with the five nations, released a joint statement that noted their significant progress toward an agreement to present to Congress and the U.S. Department of Justice to address any jurisdictional issues raised by the Court's decision.

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