Short Circuit 175

Anthony Sanders

Hello, and welcome to Short Circuit, your podcast on the Federal Courts of Appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. If you enjoy this podcast, you should check out our newsletter and often irreverent take on recent Court of Appeals opinions, which we publish every Friday, you can subscribe at shortcircuit.org or find it on the Volokh Conspiracy Blog. And, please also check out our sister podcast, the documentary series, Bound by Oath. We're recording this Friday, May 28, 2021. And we have what you might call the Big 10, Eastern Division episode. That's because with apologies to the other members of that half of the conference from other states, today, we have cases from Ohio and Michigan and both of course from the Sixth Circuit. In fact, we wanted to go straight to the front lines to find out what was going on. So, we have a special guest who litigated one of the cases. Emily White is a partner at Dann Law in Columbus, Ohio. There, she practices in the areas of student loan debt, disability rights and consumer law. Previously, she worked for Legal Aid Society of Cleveland, and Disability Rights Ohio. She's a graduate of City University of New York School of Law and of the University of Illinois on the other side of the Big 10. Emily, welcome to Short Circuit.

Emily White 01:23

Good morning. Thanks for having me.

Anthony Sanders 01:25

Now, Emily is going to tell us about a takings case appeal on a preliminary issue but a very important preliminary issue that she recently won at the Sixth Circuit. But first, let me introduce IJ attorney Kirby Thomas West, although a native Pennsylvania which is in the Third Circuit, of course, Kirby has agreed to kindly tell us about a case from Michigan, or as Ohio State listeners say the state up North, which is a tribal law case with some really interesting history and follows up to some extent on a case some of you may remember from last year's Supreme Court term McGirt vs. Oklahoma, Kirby, welcome back the Short Circuit.

Kirby Thomas West 02:04

Thanks, Anthony. I'm happy to be here. Although as a big time Penn State fan it pains me a little bit that we're focusing so much on Michigan and Ohio today.

Anthony Sanders 02:13

Right. Well, at least we're in that division. And you can rest assured our episode on the Pennsylvania Supreme Court from last fall, hopefully can keep you happy. And listeners, of course can go back and find that in the archives. Now, Emily, tell us about your case, Harrison vs. Montgomery County. And maybe you can start off by recounting what happened to your client, Alana Harrison.

Emily White 02:36

Sure. So, my client owned a home where she had delinquent property taxes. And in this case, the home was actually worth more than what was owed on the property taxes. And in Ohio, shortly after the Great Recession, there was a movement to address vacant abandoned lands. And one of the problems that the legislature was encountering, especially at the end of the Great Recession, was that sometimes the property, the property tax delinquency was worth actually more than what the property was worth, it was hard to find people to buy these properties after a tax foreclosure. And so, what that meant is that you'd have communities that had land that was essentially not used, that people would

walk away from will say in this day and age, that's not so much of a concern. But that was the context of the law that we challenged in this case. Which what it did was prior to the law, whenever there was a tax delinquency, the government would have to bring a foreclosure and try to sell the property to collect the property taxes. And the legislature decided to create a new streamlined procedure, where instead of selling the property, the property could be directly transferred to a land bank and extinguish the property tax. And then very quickly get it into the hands of like, like say a land bank for economic development purposes. While the law was intended to address situations where the property taxes were worth less than what the property was worth in practice, now in 1000s of cases across our state, this this procedure is being used in cases where properties are worth more than what the taxes are owed. And so, in our case, we brought a takings claim not to challenge the tax foreclosure itself, but to challenge the taking of the surplus equity, which was modest in this case but could but could be very large in other cases. And in in this case at the trial court level, the court said that the claim was precluded, that we could not bring a constitutional takings claim for just compensation, because that should have been raised in the adjudication of the tax foreclosure itself. And so, we appealed that decision to the Sixth Circuit. And we argued that we really didn't get a chance to raise a claim for just compensation because it didn't become ripe until after the property was taken, which was at the conclusion of the process, not the beginning of the process. And ultimately, the Sixth Circuit agreed that we have our day in court, that we have the right to litigate this claim. And Judge Sutton, who wrote the opinion, reiterated with the Supreme Court announced in this this case, Knick, in in the prior year, that whenever there's a constitutional violation, individuals have a constitutional remedy, they can go directly to federal court to assert that claim. And that's just what we did in this case. And we're pleased with the court's decision and reasoning and the fact that our client finally has the opportunity to litigate her claim and seek just compensation.

Anthony Sanders 05:55

And the case is class action. I understand. Where, maybe tell us a little bit about that. And then where is it in the whole class action certification process?

Emily White 06:06

Sure. So actually, this case concerned the practices of Montgomery County, Ohio, which is Dayton. There's a companion case that we have also brought in Cleveland, that is still pending. And actually class certification was recently denied on the question of evidentiary. How do you prove what the amount of surplus equity is, we asserted an argument that because the value of the property is really baked into the property tax, and that one of the things that is decided in the tax foreclosure process is the validity of the tax lien, that it's fair to use the Tax Valuation to determine what the value of the property was at the time of the taking. Our trial court disagreed with that and granted an unlimited motion following the ordinary rule in other non-tax cases is that tax foreclosure is the Tax Valuation is not used to determine valuation that you have to use other appraisal methodology. And once they decided that you basically have to have an individual appraisal for every single property. They concluded that it would be unmanageable to have all these cases litigated in one class action. So, we have a petition for interlocutory review of that denial of class certification that is still pending with the Sixth Circuit and our Cleveland cases on hold until we get that determination.

Anthony Sanders 07:39

And the facts of your named plaintiff, I found particularly galling, that she so she had this property moved into a land bank. And then the county claimed she should have appealed that determination to the state court. And I think she had something like, you could correct these numbers, 15 days, right, 15 days to appeal it. And yet, she had a right of redemption of 28 days. And it wouldn't be till after those 28 days that her property rights was even extinguish because of how a right of redemption works, where you actually pay the taxes back and get the property back. And so, she was in this like, Bizarro never world where she could never even raise her constitutional claim. Is that right?

Emily White 08:28

That's exactly right. And one of the things that we argue that I kind of wish the court had delved into a little bit more is the nature of the takings claim itself. It seems to me that there are different types of takings that you can raise. One is the classic Kelo taking, where you're essentially raising the claim defensively to say don't do the taking it all. But there is another type of taking, which is one for just compensation that I think is distinguishable from the defensive claim. Perhaps it would make sense that if you want to raise it defensively, that you would have to raise that claim in the proceeding to stop the taking itself to stop the physical taking of the property. But in this case, we're actually respecting and acknowledging that the transfer the property has happened, and we cannot undo it as much as my client would like that. But what the Supreme Court and Knick says is, once that taking occurs, the claim for just compensation arises immediately at that moment, my client is entitled to compensation. And so there's a little bit of that discussion in the opinion about ripeness. When does the claim for just compensation become right? And, and yes, for I mean, I could talk all day about the finer points of Ohio administrative law, but for a variety of reasons. The court is absolutely right to say there are procedural barriers to raising this kind of claim in conjunction with an appeal and administrative appeal is literally an appeal you have a defined record, the reviewing court doesn't ordinarily take new evidence, you can't ordinarily raise new claims. The statute says you can raise new issues and claims are different. And procedurally it is possible is a court of concurrent jurisdiction. You could go to the State Common Pleas Court, which is our court of general jurisdiction and raise a 1983 claim. But because an administrative appeal is so distinct, that actually can't be maintained in the same action without consolidating the cases. So even the appeal you file an appeal in a very particular way, it's not a summons and complaint. To do to combine a 1983 action, you would have to do a summons and complaint and then procedurally join them on a claim that isn't ripe yet. Because as you mentioned, the redemption rate doesn't expire until 14 days after the appeal is over. And I think that getting back to what Knick says, you know, look for constitutional claims, the plaintiff does have the right to go to

federal court, and this one, there really has not been a fair opportunity to litigate this just compensation issue. Nor does litigation of the just compensation issue in any way undermine the decision made by the board of revisions, the underlying decision. I mean, they can live together. I mean, in fact, one has to happen before the other is ripe.

Anthony Sanders 11:23

Kirby, how did how do you see this case?

Kirby Thomas West 11:26

I think your point about the kind of difference between focusing on the public use question versus the just compensation question is a really interesting one. Because I think in IJ litigation, we think a lot off, we often think a lot about, you know, what constitutes a public use. But as you say, that's obviously only half of the equation when you're thinking about takings claim. So, I think that's an interesting thing that you bring up in your case.

Anthony Sanders 11:52

And, and I like how you explain how you could join in 1983 claim for it, which for non-lawyer listeners, I shouldn't have to remind you, because we had a big event on the section 1983's 150th anniversary last month, but just in case you missed that, it is the mechanism where most people sue a person who's acting under color of law for violation of the Constitution. And you could join that to an administrative appeal on state court. But I bet if you did, that, the county attorney or the state's attorney would raise all kinds of issues about how, you know it's not, there's no jurisdiction to have one and the other, the court would be better managed to have one state and have the other adjudicated and ripeness. So it's not like everything would be hunky dory, if you went down that road, which is why I really like what happened with your case here, which is Knick cleared up a lot of a lot of confusion, or not just confusion but absurdity in the lower courts about pretty much distinguishing having a federal claim in federal court

for a taking. And so now that you have that, I love how Justice Sutton put it in the in the opinion, that there's a roadmap to how you have a case in federal and federal court. And if these arguments that the county threw up, and the state threw up in this case, had had any water than Knick, basically what you know, might well not even have been decided.

Emily White 13:28

Yeah, I think that's exactly right. And, you know, Judge Sutton also at oral argument is he said, “You know, there's some of us who think that there's something sacred about federal court jurisdiction and that individuals should have the right to access the federal courts to seek a constitutional remedy for constitutional violations.” And there are, you know, many good things about Knick, one of them is that they corrected that that sort of historic wrong of having this judge made exhaustion rule hardened into a procedural barrier that prevents individuals from accessing justice.

Anthony Sanders 14:07

Do you know if this issue came up at all when this legislation was passed? Because it seems pretty obvious, when you just if you just move it to a land bank, and it's all gone that this this might come up? Or was it just overlooked?

Emily White 14:22

I think that it was overlooked. And I'll say to you, I was a legal aid attorney during the during the Great Recession in Cleveland representing homeowners, in some cases, in situations where a home would be terribly unsafe, they didn't have the means or the resources or the desire to fix them up. And they really needed a place in a way to responsibly you know, hand over the property. There is definitely a place for land banks. And that's really what this was, that's really what this was aimed at. And there really were situations where, you know, it takes about 8,000 bucks to demolish a property and so, you know, negotiation to be how much am I going to pay to get out of this house as opposed to keeping it

and I think that the purpose of this this legislation, people really had not imagined that the land banks would use, that this process would be used in cases where people did have surplus equity. But I will say historically and the rest of my you know, consumer practice, you know, tax foreclosures can happen to many people for a variety of reasons, who aren't necessarily, you know, bad neighbors, bad property owners. You know, in this case, which is very common, you have a house that's been in a family for a very long time, and you have a family member who dies intestate, and it's a little bit unclear who owns the property. And that happens all the time. And we've seen also from the way that tax foreclosure is used in Michigan, for instance, I think it's very illustrative of how it's used generally, you know, these can fall harder on elderly folks, folks who are no longer paying a mortgage, and therefore don't have an escrow of a mortgage company that's going to make sure that the taxes are caught up. It can happen when people, you know, have to go to the hospital for longer than they expect, or folks that declined in health. And you can have a lifetime of equity and savings extinguished through a very quick process. And I'll say, too, another thing about this, this process that I don't like is it applies towards vacant and abandoned properties. But that's the statutory definition of vacant and abandoned doesn't match the common sense understanding of what that might mean. So, in this case, the counties have basically reduced it to a form where they see is the property unoccupied when an inspector looks at it, the form that they used in this case, they claimed that they visited my client's home is snowy January and observed tall weeds and grass that wasn't mowed. And that's how the property was certified is being vacant or abandoned. And so, I do think that that while land banks have an important role in our communities, I think that when they start targeting properties that have surplus equity, I think that they've somewhat lost their way.

Anthony Sanders 17:14

Yeah, well, that I mean, that raises all kinds of suspicions often that we deal with here at IJ about, you know, is it property targeted for redevelopment? is there other purposes that the county has for wanting to have a new owner of that land?

Emily White 17:29

Well, and I don't think they're transparent either. I don't think they're hiding the ball on that part, that this is for economic redevelopment. They do land assembly, some of these parcels have been used for stormwater remediation programs with the EPA having more property that you know, is absorbing water, in other just absolutely classic economic development purposes. And some of those are very, very good for our community. But don't reach out and use this in a case where you're extinguishing people's equity. This statute can be applied perfectly constitutionally and the way it was originally intended, which was going after those properties that really are worth less than what the property taxes owed.

Anthony Sanders 18:10

Right. Well, even our clients, Suzette Kelo, in the famous Kelo case you mentioned, although we didn't think her taking her home was a public use, she at least got paid for it. And it took the home of the entire value. One last one last question I want to ask you, before we move on is Judge Sutton enters this opinion, very curiously. And where he says, well, when you go back down to District Court, you may want to solicit evidence about the meaning of a taking both in 1791 and 1868, which is really interesting goes back to a podcast we had a couple episodes ago, which we don't need to get into. But also, this panel stands ready to handle the appeal promptly. Do you know if that's normal for the same panel to be there? Because I know, in the Eighth Circuit where I've had some appeals, it generally isn't.

Emily White 19:02

I mean, generally courts do try to take related cases. But I've never seen a call quite this direct to say we're eager to decide the merits. I will say I really appreciated the engagement of the panel and the quickness of issuing the opinion. I mean, it came out a week and a half after argument, which was, which was amazing. And I also think that from a judicial prudence perspective, the approach here was

the right one. They did solicit the involvement of the Ohio Attorney General's office, who essentially tried to make an argument that wasn't really addressed in the lower courts about whether there is even a takings claim on the merits whether my client has a property interest in her surplus equity. And I think that really is a matter of first impression that does require more thought and more. I think more input from the parties on the court before deciding and I think that that's really what that saying is, is now we're going to get to a question of does an individual have a property interest in their surplus equity? And I think they're very strong arguments that they do. Our friends at the Pacific Legal Foundation submitted an amicus brief, you know, laying out the historical arguments for the government has the right to its taxes, but it doesn't have the right to more than its taxes, the government should take the smallest amount necessary to pay 100% of their taxes, and that there's a historical line of cases saying, “when you're taking a thing, to pay the property taxes, you have to liquidate it so that you can extract its value and return the surplus.” And those are the lines of cases and thought that we intend to invoke in making the argument that you can't just extinguish that surplus equity. It was a real property interest. And we think there should be just compensation for it.

Anthony Sanders 20:55

Yes, and I should add, at oral argument, I know that initially, there were four parties who argued, and Christina Martin, who was on this podcast last year on a different case, argued on behalf of Amicus of Pacific Legal. And we're going to put a link up to the argument for in the show notes. So you can hear I think, both Emily and Christina did some very powerful oral argument that you can that you can learn a lot from, if you're if you're getting ready for your own case somewhere. There was some powerful advocacy. Well, thank you, Emily, for, for coming on. And talking about that Sixth Circuit case from Ohio. Now we're going to go north to Michigan, in fact, Northern Michigan, and Kirby tell us what's, what's going on there and what this dispute is about what happened in 1855.

Kirby Thomas West 21:46

So we have a another case, as you mentioned, out of the Sixth Circuit, it's Little Traverse Bay Band of Odawa Indians v. Whitmer. And this as you mentioned, and also this case goes back quite a ways. So, it deals with a tribe or I suppose more accurately, kind of a conglomeration of tribes in northern Indian, and in northern Michigan, called the Little Traverse Bay Band of Odawa Indians, which is made up of members of the Odawa and Chippewa tribes. The band, at the time that Indian tribes were being forced westward, really wanted to stay in Michigan. And in an effort to do that they tried to work with the United States government in the 1800s, to find out how they could retain their presence within Northern Michigan. These efforts ultimately led to a treaty in 1836. And in that treaty, the federal government said that they would pay the tribes debts, they would give the tribe annuities for 20 years to go towards education, medicine, agriculture. And in return, the tribes ceded 14 million acres to the United States. This is 1/3 of present-day Michigan, so it's a lot of land that was ceded to the United States. And the rate they were paid for that was, I think, around 16 cents per acre, which came up later in about 100 years later in in a dispute in front of the Indian claims commission. At the for the 1836 Treaty, it also established a reservation, in Little Traverse Bay for the band to live on. But unlike some reservations, there was a very short time limit on the existence of this reservation of only five years. And the government said in the treaty, then at the end of this five years, we will pay $200,000 for the land and facilitate if you want your movement westward to another reservation. Unsurprisingly, this the management after this was kind of subpar. Nothing really happened. At the end of the five years, the band continued to live there, the government really didn't do anything. And so ultimately, almost 20 years later, they revisit this issue and propose a new treaty. So there's a new treaty in 1855. And this treaty does not reestablish the reservation, but rather gives specific plots of land to families that are members of the band. So specifically, each head of a family could get 80 acres, and each single person over the age of 21 could get 40 acres. And there was a 10-year time frame set for them to select which land they would choose, each you know head of family and each single person. And again, the program was not administered particularly well. At the end of 10 years, a lot of Indian families had not had an opportunity to select their land. Some ultimately bought the land when it went back to kind of the regular

market that was open to both, you know, settlers and Native Americans. But ultimately, at the end of the 10 years, when that time period had passed, about 1800 members had received about 120,000 acres of land. So, the issue that came up more recently and 2015 is that the band sued the state of Michigan, arguing that what happened in the Treaty of 1855 was that a reservation had been established and that the land that they were living on in Michigan was actually an Indian reservation, which has, you know, obviously, implications for governance of that land. The District Court said, “No, this is not a reservation,” and the Sixth Circuit on appeal affirmed that decision. And in so doing, they applied a legal test for what constitutes an Indian Reservation. It's a two-part test. It's asks was the land set aside for quote, unquote, “Indian purposes?” And second, is, was the land under federal superintendents at the time that it was given to the Indians? And was that set up, you know, to continue to be under federal superintendents. The answer the Sixth Circuit gives to both of these questions is no. And in so doing, you know, they note that they have an obligation and there's a precedent in favor of establishing, of interpreting treaties between the government and Indian tribes, to broadly you know, fit in favor of the Indians and that, you know, any, any kind of, there's kind of a presumption that they will be construed in favor of the Indians in close calls. But looking at the circumstances of the treaty, and the texts of the treaty, they note that, unlike establishment of other Indian reservations, what really was happening here was allotment of specific tracts of land to individuals and to individual families. The title, for example, wasn't given to the tribe as a whole, or in community. It was, you know, individual titles of land given to each family. And they also look at some comments of tribal leaders at the time, including a tribal leader and historian who, shortly after the treaty was signed, said that the tribe had abandoned quote, “its laws, customs and manners,” and quote unquote, “renounced their chiefdoms, and now consider themselves to be operating under the laws of the state of Michigan and having equal rights and privileges with American citizens.” Similarly, with the question of whether the land was under federal superintendence, they, the court notes, a lot of differences between the Treaty of 1855 and the establishment of other Indian reservations. And while there was this kind of federal administration in allotting the land to the members of the band, there was not the same kind of federal superintendents

that was set up to kind of empower to, in perpetuity to over oversee the establishment of other Indian reservations. I think that looking at the treaty and looking at kind of the statements of the tribal members at the time, I think it's right, probably the Sixth Circuit is right that this did not create an Indian reservation, the Treaty of 1855. But it is like so much of Native American history in the United States just kind of heartbreaking to think about and read about. Like I said, you know, that all of these treaties came out of the band's desire to try to stay in Michigan and not have to be forced westward, like so many Native Americans were at that time. And they I think that this is the was the agreement that they ultimately settled on but looking at just how the both treaties were administered, and how, really to the detriment of Native Americans that the federal government did not always expeditiously follow through on its promises to the Native Americans or at all, in some cases. As I mentioned, there were other claims related to the treaties that had to be settled in the 1930s and 40s. Under the Indian claims commission, that were kind of separate and apart from this case. It's just, yeah, I think it really does highlight the kind of troubled history of, of Native Americans in the United States.

Anthony Sanders 29:19

Emily, your thoughts?

Emily White 29:21

One of the I'll start by saying my knowledge of tribal law and Native American laws is somewhat limited. But one of the things that strikes me is somebody who practices you know, real estate law that one of the things that this turns on is what kind of title was delivered to the individual tribal members. And there are all these indications that the title that they received was not really good simple titles that there were restrictions on who they could transfer sell the property to. There was an indication that they could only transfer the property for instance, to other tribal members. And then finally circling back to our earlier case, there's an indication that many tribal members had lost their homes aims to tax foreclosure cases in Michigan. And so, it just seems that if this is premised on what kind of title and what kind of, of

grant of land, Native Americans received out of this deal, they didn't really receive fee simple title. And they were treated differently and collectively, as a tribe for this. And while also giving that imperfect title, to these Native Americans, there are all these references throughout the opinion, where the government is also not providing the basic government services that were provided to non-tribal members. So, you get a worse grant of land, but then you also don't get the benefits of education and other government services that any other member of Michigan would receive. And I just look at it. And, you know, in addition to anybody negotiating with Andrew Jackson, right after he, you know, took the state of Georgia by force from the Cherokees. You know, if we're using basic contract principles unconscionability, both substantive and procedural would seem to be present here. Overall, just seems like a terribly bad deal. My only other comment, though, is just wondering what, what the goal of this litigation is today. My only other connection or interaction with the Chippewa Indians is in my practice representing consumers. And the Lac Vieux Desert Band of Lake Superior Chippewa is a very large major payday lender, that issues really, truly awful loans on terms that would be illegal under federal and state law. And I have represented folks that were tangled up with loans that were truly unconscionable. And I don't know if one injustice is canceled out by another. But you know, that is that is a big part of that, that, that sovereign immunity is a big part of what's necessary to really extract the maximum from consumers in payday loans. And I don't know if that plays into what this The goal of this case was.

Kirby Thomas West 32:15

I think that's a really great point about the quality of the title that was given to the families, to the Native American families in this case. And one thing that I that that makes me wonder, which I don't recall as being very clear, in the opinion was the fact that not all of the land was distributed within the 10-year allotment, and that had that kind of delineation of what the title would look like when the land was given to the Native American families. But then it mentions that, you know, at least some part of the tribe purchased their land once it actually went to kind of the open market. And so I wonder if the Native

Americans who ended up purchasing their land after the 10 year allotment actually got better title? Oh, sorry. Sorry about the interruption with my phone call.

Anthony Sanders 33:00

Kirby is an actual working attorney unlike myself.

Kirby Thomas West 33:05

But I do wonder if, you know, if there was different title for some families? And if so, how many? And if you know, if so how that would affect determining, you know, the tribe's kind of argument about what exactly does the reservation looked like? What land is included in that in that reservation?

Emily White 33:22

It's also curious, though, that the role is assigned to the tribes to essentially handle the distribution of title, which is really a sovereign type role. If they're saying we're negotiating with you as sovereigns, and you're going to decide how your people hold title to the land, then that again, is another. I guess, just another factor that kind of leans towards this was maybe more like a reservation, although then again, I don't know. I'm not a tribal law expert. But that that test of what is a reservation? just seems like an awkward one. And I'm not sure. You know, why that particular test of all things should exist when you're talking about relations among sovereigns. Other negotiations that weren't fair.

Kirby Thomas West 34:09

I agree that it is an unusual thing. And I think as someone else who is also very much not an expert in tribal law, it was sort of surprising to me. And, you know, I thought about this when Anthony, you mentioned the McGirt case, when that came out last year. It was sort of just surprising to me that this is a question like, we don't know what Indian reservations are, how, you know, it just seems hard to

believe that in you know, 2020/2021 We still don't really know what the nature of agreements with Native American tribes are. And I think it's, you know, a little embarrassing for us that we haven't figured out what the obligations to Native American tribes are and what these agreements look like. And just as background, for those who don't know, Anthony mentioned the McGirt case, that was decided last year and in that case, the Supreme Court said that much of eastern Oklahoma, which we hadn't understood in this way was actually, you know, a reservation, it was actually tribal land. And it was something that most people operating in that area of the law did not think. So. Just an interesting thing that this is still all a developing area of law this at this point,

Anthony Sanders 35:16

And interesting part about McGirt versus this case is there. There unquestionably was a reservation created after all Oklahoma originally was called Indian country. And then it's whether the federal government ever abrogated that or there was, you know, as part of some treaty or whatever it is act of Congress that it was taken away. Justice Gorsuch such went through all that the history there and said, “You know, they, they never quite did that.” Although people thought that they did. They never, they never quite did that. Whereas in this case, although there was that that earlier reservation with the later treaty, it's like whether it was created in the first place. And perhaps one way you put these two together, whether this is actually the law or not, is it's going to be harder to go that to go one direction than to go the other direction. Now, I should point out McGirt was five to four the dissenters were pretty adamant that that Gorsuch was reading the treaty or that the leader acts of Congress wrong. So it's still it's still going to be a despite that that victory in that case on Oklahoma, it's still going to be a very, very hard slog for a tribe when they're there in this type of environment. I should point out that we did as some listeners may know we did at the Center for Judicial Engagement, a survey of all 50 states constitutional history, that is state constitutional history last year. And we did this on the best medium for it, which is Twitter, Twitter threads. And you can check my Twitter account for that. And we'll put a link up to the actual thread, but we did a thread on Oklahoma. And I can't remember if it, I think it was

after McGirt came out. But the history of how Andrew Jackson and others moved Native Americans to Oklahoma to Indian country, which got smaller and smaller over the years and became an Oklahoma is just a really fascinating history of how these relations occurred. And of course, that happens all over the country, not just in Georgia and Oklahoma, but it gives you a little bit perhaps of background on what's going on in this case. So, I promise in the future, we will have other cases where we know more about the actual case such as Emily White knows about her own case, which we talked about this week. But it's important to get a well-rounded picture of what's going on at the federal courts of appeals and judicial engagement and whether when judges are protecting our liberties and when they are not. So, thank you so much, Emily, for coming on with us. We wish you the best of luck in continued litigation for a property rights of Ohioans. Kirby, thank you for coming on also, and, and as always, it's a pleasure to have you on the podcast. And I'd say for all the rest of you. Please remember to get engaged.