

02-1472 CHEROKEE NATION OF OKLAHOMA v. THOMPSON

Ruling below: CA 10, 311 F.3d 1054

QUESTIONS PRESENTED

1. Whether the federal government can repudiate, without liability, express contractual commitments for which it has received valuable consideration, either by spending down discretionary agency appropriations otherwise available to pay its contracts, or simply by changing the law and the contracts retroactively.
2. Whether government contract payment rights that are contingent on "the availability of appropriations" vest when an agency receives a lump-sum appropriation that is legally available to pay the contracts — as is the law of the Federal Circuit under *Blackhawk Heating* — or is the government's liability calculated only at the end of the year after the agency has spent its appropriations on other activities, as the Tenth Circuit ruled below.

03-853 THOMPSON v. CHEROKEE NATION OF OKLAHOMA

Ruling below: CA Fed., 334 F.3d 1075

QUESTIONS PRESENTED

The Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450-450n, authorizes the Secretary of Health and Human Services (the Secretary) to enter into contracts with Indian Tribes for the administration of programs the Secretary otherwise would administer himself. The ISDA also provides that the Secretary shall pay "contract support costs" to cover certain direct and indirect expenses incurred by the Tribes in administering those contracts. The ISDA, however, makes payment "subject to the availability of appropriations," and declares that the Secretary "is not required to reduce funding for programs, projects or activities serving a tribe to make funds available" for contract support and other self-determination contract costs. 25 U.S.C. 450j-l(b). The questions presented are:

1. Whether the ISDA requires the Secretary to pay contract support costs associated with carrying out self-determination contracts with the Indian Health Service, where appropriations were otherwise insufficient to fully fund those costs and would require reprogramming funds needed for non-contractable, inherently federal functions such as having an Indian Health Service.
2. Whether Section 314 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No.105-277, 112 Stat. 2681-288, bars respondent from recovering its contract support costs.

CERT. GRANTED: 3/22/04

Consolidated for one hour oral argument.