

No. 25-856

---

---

IN THE  
**Supreme Court of the United States**

---

WILLIAM KING, *et al.*,  
*Petitioners,*  
v.  
UNITED STATES,  
*Respondent.*

---

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Federal Circuit**

---

**BRIEF OF STEVEN L. SCHOONER  
AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONERS**

---

ARAM A. GAVOOR  
*Counsel of Record*  
THE GEORGE WASHINGTON  
UNIVERSITY LAW SCHOOL  
ADMINISTRATIVE LAW,  
ISSUES, AND APPEALS CLINIC  
2000 G Street NW  
Washington, DC 20052  
(202) 994-2505  
agavoor@law.gwu.edu  
*Counsel for Amicus Curiae*

February 19, 2026

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT.....	4
I. The Federal Circuit’s “Underlying Assets” Test Is Both Unprecedented and Unnecessary.....	4
II. Government Contractors Are Uniquely Exposed to Risk Under the “Underlying Assets” Test.....	7
A. Recent government contract termina- tions create ripe circumstances for Congress to abrogate retroactively the government’s contractual obliga- tions.....	8
B. Retroactive congressional action would expose government contractors to an arbitrary regulatory takings test when seeking relief.....	15
CONCLUSION .....	17

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Armstrong v. United States</i> , 364 U.S. 40 (1960).....	5
<i>Ballinger v. City of Oakland</i> , 24 F.4th 1287 (9th Cir. 2022) .....	5
<i>Brown v. Legal Found. of Wash.</i> , 538 U.S. 216 (2003).....	4-6
<i>CCA Assocs. v. United States</i> , 667 F.3d 1239 (Fed. Cir. 2011).....	15
<i>King v. United States</i> , 151 F.4th 1348 (Fed. Cir. 2025) ...	2, 6, 7, 15, 16
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013).....	5, 6
<i>Lichter v. United States</i> , 334 U.S. 742 (1948).....	13, 15
<i>Loretto v. Teleprompter Manhattan CATV Corp.</i> , 458 U.S. 419 (1982).....	4
<i>Lynch v. United States</i> , 292 U.S. 571 (1934).....	4, 14
<i>McCarthy v. City of Cleveland</i> , 626 F.3d 280 (6th Cir. 2010).....	5
<i>Penn Cent. Transp. Co. v. City of New York</i> , 438 U.S. 104 (1978).....	4, 15
<i>Perry v. United States</i> , 294 U.S. 330 (1935).....	14
<i>Ruckelshaus v. Monsanto Co.</i> , 467 U.S. 986 (1984).....	5

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Sec. Sav. Bank v. California</i> , 263 U.S. 282 (1923).....	5
<i>Swisher Int’l, Inc. v. Schafer</i> , 550 F.3d 1046 (11th Cir. 2008).....	5
<i>United States v. Winstar</i> , 518 U.S. 839 (1996).....	13, 15
<i>Valancourt Books, LLC v. Garland</i> , 82 F.4th 1222 (D.C. Cir. 2023) .....	5
 CONSTITUTION	
U.S. CONST. amend. V .....	1–4, 6, 7, 14
 STATUTES AND REGULATIONS	
28 U.S.C. § 1346(a)(2).....	9
28 U.S.C. § 1491 .....	9
41 U.S.C. § 7102(a).....	8
41 U.S.C. § 7103 .....	9
41 U.S.C. § 7103(g).....	8
41 U.S.C. § 7104(b)(1).....	9
41 U.S.C. § 7109(b).....	11, 12
Economy Act, Pub. L. No. 73-2, 48 Stat. 8, 11 .....	14
Joint Resolution of June 5, 1933, Pub. L. No. 10, 48 Stat. 112.....	14

## TABLE OF AUTHORITIES—Continued

	Page(s)
Federal Acquisition Regulations:	
FAR 1.101, 48 C.F.R. § 1.101 (2026) .....	8
FAR 1.102(b)(3), 48 C.F.R. § 1.102(b)(3) (2026).....	8
FAR 1.602, 48 C.F.R. § 1.602 (2026) .....	9
FAR 2.101, 48 C.F.R. § 2.101 (2026) .....	9
FAR 33.208(a), 48 C.F.R. § 33.208(a) (2026).....	11
FAR 33.210–211, 48 C.F.R. §§ 33.210– 211 .....	9
FAR 49.2, 48 C.F.R. § 49.2 (2026) .....	11
FAR 49.3, 48 C.F.R. § 49.3 (2026) .....	11
FAR 52.249-2(e), 48 C.F.R. § 52.249-2(e) (2026).....	11
FAR 52.249-2(g)(2)–(3), 48 C.F.R. § 52.249-2(g)(2)–(3) (2026).....	11
OTHER AUTHORITIES	
<i>A Snapshot of Government-Wide Contracting for FY 2024</i> , U.S. GOV'T ACCOUNTABILITY OFF. (June. 24, 2025) .....	10
ADAM G. LEVIN, CONG. RSCH. SERV., R40638, FEDERAL GRANT TO STATE AND LOCAL GOVERNMENTS: TRENDS AND ISSUES (2025).....	10
ANDREW C. MAYER, CONG. RSCH. SERV., 77- 136 F, RENEGOTIATION (1977) .....	14

## TABLE OF AUTHORITIES—Continued

	Page(s)
ARMED SERVS. BD. OF CONT. APPEALS, FY2025 ANNUAL REPORT (2025) .....	9
Aron C. Beezley & Nathaniel J. Greeson, <i>SBA’s Mass Suspension of 8(a) Contractors Raises Questions About Due Process and Appeal Rights</i> , NAT’L L. REV. (Jan. 28, 2026).....	12
CIVILIAN BD. OF CONT. APPEALS, CBCA ANNUAL REPORT FOR 2025 (2025) .....	9
Clay Judson, <i>The Renegotiation of Government War Contracts</i> , 10 U. CHI. L. REV. 193 (1943) .....	13
<i>Federal Acquisition Regulation</i> , U.S. GEN. SERVS. ADMIN. ....	8
<i>Grants/Contracts Differences</i> , U.S. DEPT OF ENERGY .....	10
Jessie Blaeser, <i>Just How Much Has DOGE Exaggerated Its Numbers? Now We Have Receipts.</i> , POLITICO (Aug. 12, 2025, 16:40 ET) .....	10
John Cibinic, Jr., <i>Retroactive Legislation and Regulations and Federal Govern- ment Contracts</i> , 51 ALA. L. REV. 963 (2000).....	14
<i>Reports and Statistics Appeals Filed by Category 2023</i> , U.S. CTS OF APPEALS FOR THE FED. CIR. (2023).....	7
<i>Savings</i> , DEP’T OF GOV’T EFFICIENCY (Jan. 1, 2026) .....	10, 11

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>SBA Suspends Over 1,000 8(a) Firms from Program Following December Document Request</i> , U.S. SMALL BUS. ADMIN. (Jan. 28, 2026) .....	12
Steven L. Schooner, <i>The Well-Reasoned Case for Reversing the Outsourcing Trend: A Review Essay of Jon Michaels' Constitutional Coup: Privatization's Threat to the American Republic</i> , GOV'T CONTRACTOR, Oct. 2017 .....	8
<i>Treasury Cancels Contracts with Booz Allen Hamilton</i> , DEP'T OF THE TREASURY (Jan. 26, 2026) .....	12
U.S. CT. OF FED. CLAIMS, STATISTICAL REPORT FOR FY2025 (2025) .....	9

## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

Professor Steven L. Schooner is the Nash & Cibinic Professor of Government Procurement Law at The George Washington University Law School. He is interested in the proper interpretation and fair application of the Fifth Amendment Takings Clause of the U.S. Constitution and in ensuring that contractors—and others who do business with the government—are treated fairly when pursuing their rights and remedies within federal government contracts and the statutes and regulations that govern them.

A former senior public policy official (serving as Associate Administrator for Procurement Law and Legislation within the U.S. Office of Management and Budget's Office of Federal Procurement Policy) and U.S. Department of Justice litigator before the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit, Professor Schooner is one of the nation's leading experts in government contract and federal procurement law and policy. He has written extensively in this area; his scores of publications include several editions of *The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement*.

---

<sup>1</sup> Under Supreme Court Rule 37.6, *amicus* states that no counsel for any party authored this brief in whole or in part and that no entity or person aside from *amicus* or his counsel made any monetary contribution intended to fund the preparation or submission of this brief. Under Supreme Court Rule 37.2, *amicus* affirms that counsel of record for all parties received proper and timely notices of intent to file this brief. The George Washington University takes no position on this case.

## SUMMARY OF ARGUMENT

Over time, the federal government has increasingly come to depend upon a staggering number of contractual relationships with private sector entities to provide it—and, ultimately, the American people—with a broad range of goods and services necessary for the operation of a multitude of programs. In return, the federal government waives its sovereign immunity and provides limited, carefully prescribed statutory and regulatory remedies for contractual disputes.

However, the U.S. Court of Appeals for the Federal Circuit created an opportunity for—and perhaps signaled to—Congress to eliminate statutory protections for government contractors by limiting the applicability of constitutional *per se* takings claims against the government. By diminishing the pensioners’ contractual rights in *King v. United States*, the Federal Circuit unnecessarily devised and relied upon an anomalous *per se* takings test that departs from its sister circuits—the D.C., Sixth, Ninth, and Eleventh—and this Court’s precedent alike. This new test arbitrarily restricts *per se* takings analysis for holders of contractual rights, foregoing its application unless the aggrieved party demonstrates “a property interest in the underlying assets of the” contract. *King v. United States*, 151 F.4th 1348, 1363 (Fed. Cir. 2025).

This discrepant application of *per se* takings by the Federal Circuit could severely inhibit government contractors’ constitutional rights, offering Congress a too-salient option to abrogate contractual rights retroactively without recourse. If Congress retroactively limits contractors’ statutorily available remedies—as it has previously done to reduce the government’s exposure in response to financial straits—the Fifth Amendment will be the sole remaining safeguard of

contractors' property interests. Essentially amounting to a congressional bailout, such a retroactive action that allows the government to shirk its agreed-upon contractual obligations does not seem far-fetched in light of the executive branch's recent termination and modification of thousands of existing contractual agreements, for which the government has accumulated substantial potential liabilities.

Due to the statutory regime that governs government contracts and the exclusive subject-matter jurisdiction of the Federal Circuit, the Federal Circuit maintains, for all intents and purposes, a form of de facto supremacy over the evolution of the relevant government contract jurisprudence. Unless this Court resolves the tripartite circuit split created in the case at bar, federal district courts may defer to the Federal Circuit's erroneous Takings Clause reading in a potentially large number of contract disputes that arise in the district courts. Thus, contractors will be subject to the Federal Circuit's "underlying assets" test that they generally will be unable to satisfy because they often do not hold an underlying property interest in the funds of the government. Unable to receive *per se* protections of their contractual rights, contractors will, in effect, be precluded from a meaningful remedy. At best, contractors could seek redress under a regulatory takings theory. Under the Federal Circuit's regulatory takings analysis, contractors are exposed to arbitrary and rigid standards which are likely to result in only de minimis relief in comparison to the just compensation they are owed.

This Court should grant certiorari to resolve the three-way circuit split and expunge the Federal Circuit's erroneous application of key constitutional

protections necessary to the fair and orderly administration of federal government contracts.

## ARGUMENT

### **I. The Federal Circuit’s “Underlying Assets” Test Is Both Unprecedented and Unnecessary.**

The Federal Circuit concocted a test that invites disorder and results in fundamental unfairness. The “underlying assets” test lacks grounding in this Court’s precedent regarding property interests under the Fifth Amendment and ignores parallel circuits’ existing tests. Because of its broad jurisdiction over government contracts and takings claims against the federal government, the Federal Circuit’s “underlying assets” test may harm future plaintiffs by chipping away at their protections under the Fifth Amendment.

As a constitutional safeguard, the Fifth Amendment’s Takings Clause prohibits a government taking of a property interest without just compensation. U.S. CONST. amend. V. This Court analyzes this clause under *per se* takings and regulatory takings. When a government action physically appropriates a property interest, the *per se* takings analysis follows. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). Absent a finding of a *per se* taking, the Court has set out an “ad hoc, factual inquir[y]” balancing economic injury with public interest to determine if government action nevertheless constitutes a regulatory taking. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

This Court has extended Takings Clause protections to include various types of intangible property, including contracts. *See, e.g., Lynch v. United States*, 292 U.S. 571, 579 (1934) (contracts); *Brown v. Legal Found. of*

*Wash.*, 538 U.S. 216, 235 (2003) (interest earned in attorneys’ client-fund accounts); *Armstrong v. United States*, 364 U.S. 40, 44–46 (1960) (liens); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002–04 (1984) (trade secrets); *Sec. Sav. Bank v. California*, 263 U.S. 282, 285 (1923) (deposits arising from contract formation).

While this Court has never specified whether the *per se* or regulatory takings analysis categorically applies to intangible property, various circuits have developed two competing tests for when government regulation of vested monetary rights constitutes a *per se* taking. See Pet. for Writ of Cert. 16–18; see also *Valancourt Books, LLC v. Garland*, 82 F.4th 1222, 1226, 1235 (D.C. Cir. 2023) (concluding that a *per se* taking occurs when the relinquishment of money is tied to a specific property right); *Swisher Int’l, Inc. v. Schafer*, 550 F.3d 1046, 1049, 1055 n.6 (11th Cir. 2008) (distinguishing a “mere obligation to pay an assessment” from “specific identifiable, property interests” invaded by the government, the latter of which constitutes a *per se* taking); *Ballinger v. City of Oakland*, 24 F.4th 1287, 1294, 1297 (9th Cir. 2022) (adding the requirement that the money in question be connected to a specific, identifiable fund); *McCarthy v. City of Cleveland*, 626 F.3d 280, 286 (6th Cir. 2010) (same).

Although these tests appear to differ in application, each nonetheless requires that the monetary right be “linked” to a specific property interest “such as a bank account or parcel of real property.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013); *Swisher*, 550 F.3d at 1055 n.6; *Valancourt Books*, 82 F.4th at 1234–35; *Ballinger*, 24 F.4th at 1294, 1297; *McCarthy*, 626 F.3d at 286. Critical here is that under either test, King and the remaining class would have prevailed because the monetary right is “linked” to a

contractual pension—a specific property interest. Pet. for Writ of Cert. 20.

Yet rather than recognizing this Court’s flexible protections of contract rights as property interests, the Federal Circuit eschewed the tests of its sister circuits and manufactured a third “underlying assets” test that encumbers interests in and beyond those in *King*. This test appears to treat plaintiffs seeking contractual remedies—which necessarily encompasses government contractors, a class of plaintiffs over which the Federal Circuit exerts disproportionate authority—with unnecessary disregard. The breadth of this test inhibits contractors from receiving Fifth Amendment protection from an abrogation of their vested monetary rights unless they can show they possess a property interest in the underlying assets of the contract—which, for government contractors, typically is not possible. *King*, 151 F.4th at 1356.

Nothing in this Court’s precedent justifies such a rigid test, particularly one capable of causing unjustified harm. Just as this Court has held a flexible view of what constitutes private property, it has similarly held a flexible view of what constitutes a physical invasion subject to the *per se* takings analysis, rejecting creative attempts to circumvent constitutional safeguards. *See, e.g., Brown*, 538 U.S. at 235 (holding that interest from attorneys’ client-fund accounts is subject to *per se* takings analysis); *Koontz*, 570 U.S. at 605 (finding a *per se* taking in part because the government cannot “pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation”). Cabining *per se* takings to only situations where a plaintiff can show ownership of underlying assets

violates the essence of the Fifth Amendment: to protect against takings of property without just compensation.

Rather than embracing existing precedent, the Federal Circuit created a new, sweeping test. However, there is no empirical evidence that suggests the Federal Circuit is better situated to reorganize and reorient takings jurisprudence than its sister circuits. *See Reports and Statistics Appeals Filed by Category 2023*, U.S. CT. OF APPEALS FOR THE FED. CIR. (2023), <https://www.cafc.uscourts.gov/wp-content/uploads/reports-stats/FY2023/CaseloadbyCategory-FY2023.pdf> (reporting that in 2023, takings cases composed merely one percent of the Federal Circuit's docket). While the Federal Circuit's unprecedented and unnecessary test would alone justify granting certiorari, the practical ramifications for the public procurement system and the rights of government contractors concretize these concerns.

## **II. Government Contractors Are Uniquely Exposed to Risk Under the “Underlying Assets” Test.**

*King*'s new “underlying assets” test renders government contractors uniquely vulnerable to an elimination of remedies. Following an unprecedented wave of (oft-arbitrary) government interruptions, terminations, and cancellations of contractual agreements, Congress may soon come to grips with an exorbitant bill for contracts not performed. Congress may attempt to manage these, in retrospect, seemingly wasteful liabilities by retroactively modifying contractual obligations, as it has done before. Left alone, *King* suggests that denying contractors' rights makes business sense.

**A. Recent government contract terminations create ripe circumstances for Congress to abrogate retroactively the government’s contractual obligations.**

Government contractors are crucial to federal government functioning,<sup>2</sup> and they are unique as compared to other contractors in their avenues for redress. While federal government contracts are governed by the specific terms of each contract, the lion’s share of the parties’ rights and responsibilities derive from statutes<sup>3</sup> and regulations.<sup>4</sup> The framework prioritizes fairness to all parties involved, especially the government contractors whose rights and remedies are limited in comparison to their private contracting counterparts. FAR 1.102(b)(3) (2025). More broadly, government contractors enter into privity with the government with the expectation that the government

---

<sup>2</sup> See, e.g., Steven L. Schooner, *The Well-Reasoned Case for Reversing the Outsourcing Trend: A Review Essay of Jon Michaels’ Constitutional Coup: Privatization’s Threat to the American Republic*, GOV’T CONTRACTOR, Oct. 2017, at 3 (noting that, for example, “our military cannot move, fight, communicate, eat or sustain itself without a fully integrated contractor presence”).

<sup>3</sup> In “any express or implied contract . . . made by an executive agency,” the government waives its sovereign immunity, and government contractors can dispute government determinations by timely appealing at an agency board of appeals or the U.S. Court of Federal Claims. Contract Disputes Act, 41 U.S.C. §§ 7102(a), 7103(g).

<sup>4</sup> The Federal Acquisition Regulation (“FAR”) is the “primary regulation” for the executive branch’s procurement of goods and services, and it “codifi[es] and publi[shes] [] uniform policies and procedures for acquisition by all executive agencies.” *Federal Acquisition Regulation*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/policy-regulations/regulations/federal-acquisition-regulation-far> (last visited Feb. 15, 2026); FAR 1.101 (2025).

will fulfill its obligations or provide just (or, at a minimum, agreed-upon) compensation (or procedural relief) if it fails to do so in exchange for performance. When a contractor disagrees with the relevant government official’s—specifically, the contracting officer’s, *see generally* 41 U.S.C. § 7103; FAR 1.602, 2.101, 33.210–211 (2025)—determination regarding a contract, the contractor may exclusively seek redress at either the U.S. Court of Federal Claims or the appropriate administrative board of contract appeals,<sup>5</sup> both of which are bound by Federal Circuit precedent.<sup>6</sup> 41 U.S.C. § 7104(b)(1).

The 2025 termination of thousands of government contracts, driven by the Department of Government Efficiency, creates a ripe moment for potential congressional action that retroactively reduces pre-existing, vested contractual obligations. As of January 1, 2026, the Department of Government Efficiency claims to have terminated a staggering number of contractual relationships: 13,440 contracts

---

<sup>5</sup> In fiscal year 2025, the Civilian Board of Contract Appeals docketed 221 new cases under the Contract Disputes Act, and the Armed Services Board of Appeals docketed 351. CIVILIAN BD. OF CONT. APPEALS, CBCA ANNUAL REPORT FOR 2025 (2025); ARMED SERVS. BD. OF CONT. APPEALS, FY2025 ANNUAL REPORT (2025). Contrast those 570+ cases with the more modest 116 “contract” claims filed at the U.S. Court of Federal Claims. U.S. CT. OF FED. CLAIMS, STATISTICAL REPORT FOR FY2025 (2025).

<sup>6</sup> Claims greater than \$10,000 are governed by the “Big” Tucker Act, 28 U.S.C. § 1491, while claims less than \$10,000 are governed by the “Little” Tucker Act, *id.* § 1346(a)(2). Whereas the “Big” Tucker Act, *id.* § 1491, channels exclusive jurisdiction in the U.S. Court of Federal Claims, the “Little” Tucker Act, *id.* § 1346(a)(2), allows for concurrent jurisdiction in the U.S. Court of Federal Claims and the federal district courts.

and 15,887 grants.<sup>7</sup> *Savings*, DEP’T OF GOV’T EFFICIENCY (Jan. 1, 2026), <https://doge.gov/savings>. These terminated contracts and grants represent more than \$110 billion<sup>8</sup> in government obligations to contractors and grantees for goods and services not yet, and now unlikely to be, received, the consequences of which Congress will soon be forced to face. *Savings*, *supra*.

For example, unlike in common law contractual agreements, federal government contracts are subject to “Termination for Convenience,” which allows the government to unilaterally terminate performance of contracted work if doing so is in the government’s

---

<sup>7</sup> Grants resemble government contracts in that the government is spending taxpayer money to advance a particular public purpose, both grantees and contractors are bound by requirements set by the government, and grantees and contractors face similar hurdles when the government withholds funds. *See Grants/Contracts Differences*, U.S. DEP’T OF ENERGY, <https://science.osti.gov/grants/About/Grants-Contracts-Differences> (last visited Feb. 15, 2026). Grants represent even greater government spending than contracts: In fiscal year 2024, the federal government spent \$1.1 trillion on grants compared to \$755.1 billion on government contracts. *Compare* ADAM G. LEVIN, CONG. RSCH. SERV., R40638, FEDERAL GRANT TO STATE AND LOCAL GOVERNMENTS: TRENDS AND ISSUES 1 (2025), *with A Snapshot of Government-Wide Contracting for FY 2024*, U.S. GOV’T ACCOUNTABILITY OFF. (June 24, 2025), <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2024-interactive-dashboard>.

<sup>8</sup> The Department of Government Efficiency’s claims regarding the number of terminated contracts and the total savings appear to be overstated. *See* Jessie Blaeser, *Just How Much Has DOGE Exaggerated Its Numbers? Now We Have Receipts.*, POLITICO (Aug. 12, 2025, at 16:40 ET), <https://www.politico.com/news/2025/08/12/trump-doge-contract-claims-savings-inflation-00498178>. This inconsistency is only further evidence of the complex and costly questions that the government will soon face.

discretionary interest. FAR 49.2, 49.3 (2025). However, exercising this extraordinary power is not without cost or risk. Indeed, when the government terminates for its convenience, it is obligated to reimburse contractors for work that they have already performed, an allowance for profit, and the (oft-significant) costs associated with closing out or “settling” the matters—with interest accrual applicable to all contract claims. *See, e.g.*, FAR 52.249-2(g)(2)–(3) (2025) (detailing the costs that the government must pay a contractor if settlement fails after termination); 41 U.S.C. § 7109(b) (interest accrues on all contract claims); FAR 33.208(a) (2025) (same).

The combined costs incurred, profits and settlement costs owed, and interest accrued for the contracts and grants terminated by the Department of Government Efficiency in 2025 may soon be recognized as enormous financial liabilities for the government. As 2026 progresses, thousands of contractors with terminated contracts will continue to submit settlement proposals, within the typical twelve-month period starting with receipt of the termination notice. FAR 52.249-2(e) (2025). Of course, during the potentially lengthy dispute process, the government bears the risk associated with ultimately compensating an eventually successful claimant for both the initial claim amount and interest to accurately account for the lost time value of the money. The financial consequences of these terminations will begin to unfold this year—or have begun to unfold already—and the debt will only grow in the years to come.

The tens of thousands of terminated contracts and grants have been accompanied by analogous cessations of contractual relationships adversely impacting both large and small contractors. *Savings, supra*. For

example, in January 2026, the Treasury Department cancelled thirty-one contracts with Booz Allen Hamilton, one of the largest federal contractors. *Treasury Cancels Contracts with Booz Allen Hamilton*, DEP'T OF THE TREASURY (Jan. 26, 2026), <https://home.treasury.gov/news/press-releases/sb0371>. The Treasury Department justified the move by claiming that Booz Allen Hamilton “failed to implement adequate safeguards to protect sensitive data,” in an apparent reference to the illegal acts by a previously terminated Booz Allen Hamilton employee. *Id.* Meanwhile, the Small Business Administration suspended more than a thousand small businesses, temporarily barring them from competing for future federal contract programs. *SBA Suspends Over 1,000 8(a) Firms from Program Following December Document Request*, U.S. SMALL BUS. ADMIN. (Jan. 28, 2026), <https://www.sba.gov/article/2026/01/28/sba-suspends-over-1000-8a-firms-program-following-december-document-request>; Aron C. Beezley & Nathaniel J. Greeson, *SBA’s Mass Suspension of 8(a) Contractors Raises Questions About Due Process and Appeal Rights*, NAT’L L. REV. (Jan. 28, 2026), <https://natlawreview.com/article/sbas-mass-suspension-8a-contractors-raises-questions-about-due-process-and-appeal> (acknowledging that suspension of contractors is not the same as termination but emphasizing the practically identical and, in many circumstances, graver ramifications).

The magnitude of these interrupted contractual relationships may create significant liabilities for the federal government. As the contractors’ claims progress, the government may be required to provide contractors with partial payments, profits, administrative settlement costs, and interest accrued during the adjudication for contracts not fully performed. 41 U.S.C. § 7109(b). Rather than throwing money down the

proverbial drain, Congress may instead follow past practice and retroactively alter the government's contractual obligations to protect public interests and finances.

During the savings and loans crisis in the early 1980s, which ultimately cost taxpayers nearly \$140 billion, federal agencies encouraged healthier savings institutions to acquire those facing insolvency. *United States v. Winstar*, 518 U.S. 839, 847–48 (1996). The agencies induced mergers by allowing acquirers to utilize accounting practices that made regulatory capital requirements easier to meet, in express agreements between the acquirers and the agencies. *Id.* at 848, 853, 859. Subsequently concerned that the crisis remained an issue, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to restore public confidence and prevent the collapse of the federally insured savings industry. *Id.* at 856. The Act reorganized the relevant agencies and undid the incentive structure used in the acquisitions, thereby abrogating the existing agreements. *Id.* at 857.

During World War II, Congress enacted the Renegotiation Act of 1942, which required certain contractors to “renegotiate” their agreed-upon contract prices whenever “excessive profits” had been realized or were likely to be realized. Clay Judson, *The Renegotiation of Government War Contracts*, 10 U. CHI. L. REV. 193, 193 (1943). This Court cautioned that while the retroactive “governmental action authorized” by the Renegotiation Act rested “on valid constitutional grounds,” it “was capable of gross abuse.” *Lichter v. United States*, 334 U.S. 742, 754, 788 (1948) (upholding the constitutionality of the Act’s renegotiation of excess profits for four contracts entered into before the Act’s passage that did not contain provisions

for renegotiation). Ultimately, Congress allowed the government's renegotiation authority to lapse in 1976. ANDREW C. MAYER, CONG. RSCH. SERV., 77-136 F, RENEGOTIATION 57 (1977).

In these examples and others,<sup>9</sup> a Congress mindful of the public fisc retroactively changed contractual obligations to address crises. The current moment in public procurement has created a perfect storm for Congress to do so again. "Surely, our government is not founded on the principle that the public interest is served by permitting Congress or regulators to run roughshod over the rights of its citizens, especially those who have taken the risk of dealing with it on a contractual basis." John Cibinic, Jr., *Retroactive Legislation and Regulations and Federal Government Contracts*, 51 ALA. L. REV. 963, 965, 975 (2000) (asserting, among other things, that "*it's only about money*" and "[t]hus, the question to be answered should be: Which party assumed the risk of subsequent legislation, regulations or other action by the government?").

---

<sup>9</sup> See, e.g., Economy Act, Pub. L. No. 73-2, 48 Stat. 8, 11 (1917) (repealing "[a]ll laws granting or pertaining to yearly renewable term insurance"); *Lynch*, 292 U.S. at 576-82 (holding that the Economy Act's abrogation of vested contractual rights amounted to an unconstitutional taking under the Fifth Amendment); Joint Resolution of June 5, 1933, Pub. L. No. 10, 48 Stat. 112 (repealing existing obligations requiring "payment in gold or a particular kind of coin or currency"); *Perry v. United States*, 294 U.S. 330, 347 (1935) (holding the Joint Resolution of June 5, 1933, unconstitutional).

**B. Retroactive congressional action would expose government contractors to an arbitrary regulatory takings test when seeking relief.**

If Congress retroactively abrogates contract rights, government contractors will be forced to seek restitution through takings claims against the government in the Federal Circuit, as contracting parties have done historically. *See, e.g., Winstar*, 518 U.S. at 859; *Lichter*, 334 U.S. at 754, 788.

When such claims inevitably arise, tribunals following the Federal Circuit's lead, such as the U.S. Court of Federal Claims and agency boards of appeal, will be compelled to apply this unprecedented "underlying assets" test to determine whether a *per se* takings analysis is appropriate. Those courts would then eschew the *per se* test, regardless of any breach of contract rights, because government contractors—"akin to unsecured creditors"—lack "specific rights in the funds of the" government (the underlying assets of their contract rights). *King*, 151 F.4th at 1363.

Proceeding to a regulatory takings analysis, these tribunals would similarly apply the current regulatory takings framework articulated by the Federal Circuit, a framework that arbitrarily erects an additional, almost impossible hurdle for aggrieved parties to clear. When applying the *Penn Central* test, the Federal Circuit invoked an unprecedented and rigid rule for evaluating the "economic impact" prong: So long as the economic impact is less than fifty percent, the court will find that prong weighs against a finding of a regulatory taking. *King*, 151 F.4th at 1365–66; *CCA Assocs. v. United States*, 667 F.3d 1239, 1246 (Fed. Cir. 2011).

This application appears to bestow unto Congress wide latitude to modify contracts retroactively. So long as Congress's abrogation of contractual rights does not exceed the Federal Circuit's arbitrary fifty-percent threshold, a regulatory taking seemingly cannot be found. The rights of government contractors to receive just recompense for services rendered and goods transferred will thus be severely diminished and at risk of discount.

*King* offers a poignant example of how such abrogation and lack of just recompense might play out. Congress, perhaps emboldened by the Federal Circuit's determination, could retroactively abrogate government contractors' right to receive interest or profit on, or settlement costs associated with, successful claims. The Federal Circuit's ruling suggests minimal concern for what otherwise are commonly understood rights, such as the time value of money, a crucial concept underpinning contractual rights and economic decision-making.

Notwithstanding the extraordinary flexibility the government already enjoys as the purchasing party in the federal public procurement process, the Federal Circuit's "underlying assets" test improperly sanctions—indeed, almost appears to encourage—future retroactive congressional action to reduce government contractors' rights and access to remedies. Government contractors, in essence, could lose the right to be made whole—a right to relief they understood to be available at the time they entered, and almost certainly a fundamental predicate to their decision to enter, into privity with the federal government.

**CONCLUSION**

This Court should grant the Petition for Certiorari.

Respectfully submitted,

ARAM A. GAVOOR  
*Counsel of Record*  
THE GEORGE WASHINGTON  
UNIVERSITY LAW SCHOOL  
ADMINISTRATIVE LAW,  
ISSUES, AND APPEALS CLINIC  
2000 G Street NW  
Washington, DC 20052  
(202) 994-2505  
agavoor@law.gwu.edu  
*Counsel for Amicus Curiae*

February 19, 2026