

02-1472 CHEROKEE NATION OF OKLAHOMA V. LEAVITT

DECISION BELOW: 311 F3d 1054

LOWER COURT CASE NUMBER: 01-7106

QUESTION 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 and Plumbing Co. v. U.S.*, 622 F.2d 539 (Ct.Cl. 1980)]--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.

CONSOLIDATED WITH 03-853 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 3/22/2004