

03-853 LEAVITT V. CHEROKEE NATION OF OKLAHOMA

DECISION BELOW: 334 F3d 1075

LOWER COURT CASE NUMBER: 02-1286

QUESTION 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-1(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.

CONSOLIDATED WITH 02-1472 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 3/22/2004