Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CHEROKEE NATION OF OKLAHOMA ET AL. *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 02–1472. Argued November 9, 2004—Decided March 1, 2005*

The Indian Self-Determination and Education Assistance Act (Act) authorizes the Government and Indian tribes to enter into contracts in which tribes promise to supply federally funded services that a Government agency normally would provide, 25 U. S. C. §450(f); and requires the Government to pay, *inter alia,* a tribe's "contract support costs," which are "reasonable costs" that a federal agency would not have incurred, but which the tribe would incur in managing the program, §450j–1(a)(2). Here, each Tribe agreed to supply health services normally provided by the Department of Health and Human Services' Indian Health Service, and the contracts included an annual funding agreement with a Government promise to pay contract support costs. In each instance, the Government refused to pay the full amount promised because Congress had not appropriated sufficient funds. In the first case, the Tribes submitted administrative payment claims under the Contract Disputes Act of 1978, which the Department of the Interior (the appropriations manager) denied. They then brought a breach-of-contract action. The District Court found against them, and the Tenth Circuit affirmed. In the second case, the Cherokee Nation submitted claims to the Department of the Interior, which the Board of Contract Appeals ordered paid. The Federal Circuit affirmed.

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*Together with No. 03–853, *Leavitt, Secretary of Health and Human Services* v. *Cherokee Nation of Oklahoma,* on certiorari to the United States Court of Appeals for the Federal Circuit.

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Held: The Government is legally bound to pay the "contract support costs" at issue. Pp. 4–15.

(a) The Government argues that it is legally bound by its promises to pay the relevant costs only if Congress appropriated sufficient funds, which the Government contends Congress did not do in this instance. It does not deny that it promised, but failed, to pay the costs; that, were these ordinary procurement contracts, its promises to pay would be legally binding; that each year Congress appropriated more than the amounts at issue; that those appropriations Acts had no relevant statutory restrictions; that where Congress makes such appropriations, a clear inference arises that it does not intend to impose legally binding restrictions; and that as long as Congress has appropriated sufficient legally unrestricted funds to pay contracts, as it did here, the Government normally cannot back out of a promise to pay on grounds of insufficient appropriations. Thus, in order to show that its promises were not legally binding, the Government must show something special about the promises at issue. It fails to do so here. Pp. 4–5.

(b) The Act does not support the Government's initial argument that, because the Act creates a special contract with a unique nature differentiating it from standard Government procurement contracts, a tribe should bear the risk that a lump-sum appropriation will be insufficient to pay its contract. In general, the Act's language runs counter to this view, strongly suggesting instead that Congress, *in respect to a promise's binding nature,* meant to treat alike promises made under the Act and ordinary contractual promises. The Act uses "contract" 426 times to describe the nature of the Government's promise, and "contract" normally refers to "a promise . . . for the breach of which the law gives a remedy, or the performance of which the law . . . recognizes as a duty," Restatement (Second) of Contracts §1. Payment of contract support costs is described in a provision containing a sample "Contract," 25 U. S. C. §450*l*(c), and contractors are entitled to "money damages" under the Contract Disputes Act if the Government refuses to pay, §450m–1(a). Nor do the Act's general purposes support any special treatment. The Government points to the statement that tribes need not spend funds "in excess of the amount of funds awarded," §450*l*(c), but that kind of statement often appears in procurement contracts; and the statement that "no [self-determination] contract . . . shall be construed to be a procurement contract," §450b(j), in context, seems designed to relieve tribes and the Government of technical burdens that may accompany procurement, not to weaken a contract's binding nature. Pp. 5–8.

(c) Neither of the phrases in an Act proviso renders the Government's promise nonbinding. One phrase—"the Secretary is not re-

quired to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe," §450j–1(b)—did not make the Government's promise nonbinding, since the relevant appropriations contained unrestricted funds sufficient to pay the claims at issue. When this happens in an ordinary procurement contract case, the Government admits that the contractor is entitled to payment even if the agency has allocated the funds to another purpose. That the Government used the unrestricted funds to satisfy important needs—*e.g.,* the cost of running the Indian Health Service—does not matter, for there is nothing special in the Act's language or the contracts to convince the Court that anything but the ordinary rule applies here. The other proviso phrase—which subjects the Government's provision of funds under the Act "to the availability of appropriations," *ibid.*—also fails to help the Government. Congress appropriated adequate unrestricted funds here, and the Government provides no convincing argument for a special, rather than ordinary, interpretation of the phrase. Legislative history shows only that Executive Branch officials wanted discretionary authority to allocate a lump-sum appropriation too small to pay for all contracts, not that Congress granted such authority. And other statutory provisions, *e.g.,* §450j–1(c)(2), to which the Government points, do not provide sufficient support. Pp. 8–12.

(d) Finally, the Government points to §314 of the later-enacted 1999 Appropriations Act, which states that amounts "earmarked in committee reports for the . . . Indian Health Service . . . [for] payments to tribes . . . for contract support costs . . . are the total amounts available for fiscal years 1994 through 1998 for such purposes." The Court rejects the Government's claims that this statute merely clarifies earlier ambiguous appropriations language that was wrongly read as unrestricted. Earlier appropriations statutes were not ambiguous, and restrictive language in Committee Reports is not legally binding. Because no other restrictive language exists, the earlier statutes unambiguously provided unrestricted lump-sum appropriations. Nor should §314 be interpreted to retroactively bar payment of claims arising under 1994 through 1997 contracts. That would raise serious constitutional issues by undoing binding governmental contractual obligations. Thus, the Court adopts the interpretation that Congress intended to forbid the Indian Health Service to use unspent appropriated funds to pay unpaid contract support costs. So interpreted, §314 does not bar recovery here. Pp. 13–15.

No. 02–1472, 311 F. 3d 1054, reversed; No. 03–853, 334 F. 3d 1075, affirmed; and both cases remanded.

BREYER, J., delivered the opinion of the Court, in which STEVENS,

O'CONNOR, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in part. REHNQUIST, C. J., took no part in the decision of the cases.