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Constitutional Law - Contract Clause - Minnesota's Pension Plan Act Violates Contract Clause

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CONSTITUTIONAL LAW—CONTRACT CLAUSE—MINNESOTA'S PENSION PLAN ACT VIOLATES CONTRACT CLAUSE.

Allied Structural Steel Co. v. Spannaus (U.S. 1978)

Allied Structural Steel Company (Allied) entered into a pension plan agreement in 1963 with its salaried employees which, under certain conditions, granted employees vested pension rights.[1] A vested interest in the plan guaranteed an employee the right to receive a monthly pension when he reached the age of sixty-five, regardless of any subsequent termination of his employment.[2] An employee under sixty-five years of age could not have his interest in this pension vest, however, unless he worked for at least fifteen years.[3]

On April 9, 1974, Minnesota enacted the Private Pension Benefits Protection Act (Pension Act)[4] which provided, *inter alia*, that if an employer ceased to operate a place of employment in Minnesota, he would owe his employees a "pension funding charge" for all the years of service over ten that were not vested under the employer's plan.[5] Later in 1974, Allied

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1. Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 236 (1978). The specific provisions of the plan with respect to vesting were described by the *Allied Structural Steel* Court as follows:

> At age 65 an employee was entitled to retire and receive a monthly pension generally computed by multiplying 1% of his average monthly earnings by the total number of his years of employment with the company. . . . An employee could also become entitled to receive a pension, payable in full at age 65, if he met any one of the following requirements: (1) he had worked 15 years for the company and reached the age of 60; or (2) he was at least 55 years old and the sum of his age and his years of service with the company was at least 75; or (3) he was less than 55 years old but the sum of his age and his years of service with the company was at least 80.

Id. at 236-37 (footnotes omitted). Allied was the sole contributor to this pension fund. *Id.* at 237. Contributions were made annually to the fund based on actuarial predictions of future payout needs. *Id.* Although Allied "retained a virtually unrestricted right to amend the plan in whole or in part" and was free to terminate the plan at will, the contributions already made to the fund were irrevocably part of the pension fund and could not be withdrawn by the company. *Id.* The agreement, however, did not require Allied to make specific contributions nor did it impose any sanctions on the company for failing to contribute adequately to the fund. *Id.*

2. *Id.*

3. *See id.*; note 1 *supra*.

4. Private Pension Benefits Protection Act of 1974, H.F. No. 2764, §§ 1-17, 1974 Minn. Laws ch. 437 (codified at 13A MINN. STAT. ANN. §§ 181B.01-.17 (West Supp. 1979)).

5. 13A MINN. STAT. ANN. § 181B.04 (West Supp. 1979). The Minnesota statute provided in pertinent part:

> Every employer who hereafter ceases to operate a place of employment . . . within this state shall owe . . . a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited *because of the employer's ceasing to operate a place of employment or a pension plan*, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner . . . .

Id. (emphasis added).

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began to phase out its Minnesota office and Minnesota sought to enforce the early vesting provisions of the Pension Act.[6] The state claimed that Allied owed a pension funding charge of approximately $185,000 under the provisions of the Pension Act.[7]

Allied brought suit in federal district court seeking injunctive and declaratory relief[8] contending, *inter alia*, that the Pension Act unconstitutionally impaired Allied's contracts with its employees.[9] A three-judge district court, applying a test of minimal scrutiny, upheld the validity of the Pension Act after finding that the Act was reasonably adapted to and necessary for the accomplishment of a vital state purpose.[10] On appeal, the Supreme Court of the United States reversed the district court's ruling, *holding* that the Pension Act violated the contract clause of the United States Constitution. *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978).

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6. 438 U.S. at 239. Allied employed thirty workers in its Minnesota office. *Id.* at 236. On July 31, 1974, the company discharged 11 of these 30 workers, 9 of whom did not have any vested pension rights under the company's plan, but who would have acquired a vested interest under the Pension Act. *Id.*

7. *Id.* at 239. The $185,000 equaled the amount of nonvested pension benefits of those employees who had worked for more than a decade, minus any amount of pension benefits that Allied had voluntarily paid to these employees. *See* 13A MINN. STAT. ANN. § 181B.04 (West Supp. 1979).

Thus, if Allied had employed a woman for fourteen years, who was sixty-four years old when Allied closed its Minnesota office, she would not have had a vested interest in Allied's plan. *See* note 1 *supra*. Nevertheless, the Pension Act would have required Allied to pay this employee a pension. *See* note 5 *supra*. These payments, however, would have been commensurate with the pension benefits she would have earned for fourteen (not fifteen) years of service. *See* 13A MINN. STAT. ANN. § 181B.04 (West Supp. 1979). Consequently, her monthly pension when she reached sixty-five years of age would have equalled .01 X Average Monthly Salary X 14. *See id.*; note 1 *supra*.

8. Fleck v. Spannaus, 421 F. Supp. 20, 21 (D. Minn. 1976). The original plaintiffs—Allied, the trustees of its pension fund, and two Allied employees—initially filed a motion to convene a three-judge court. Fleck v. Spannaus, 412 F. Supp. 366 (D. Minn. 1976). The motion was granted because the court found a substantial constitutional claim under 28 U.S.C. § 2281 (1976). 412 F. Supp. at 370-71. The three-judge court dismissed the claims of the trustees and the two employees because they lacked standing, and certified certain novel issues of state law to the Minnesota Supreme Court. 421 F. Supp. at 21-23. The three-judge panel declined at this point to consider the constitutional questions which Allied had presented because they were not yet essential to the court's disposal of the case. *Id.* at 22. The Minnesota Supreme Court found that the Pension Act was applicable to Allied's Minnesota office personnel. Fleck v. Spannaus, ___ Minn. ___, ___, 251 N.W.2d 334, 340 (1977). The case was again considered by the three-judge federal court which ruled on the constitutional questions that it had declined to address in its first opinion. Fleck v. Spannaus, 449 F. Supp. 644 (1977), *rev'd sub nom.* Allied Structural Steel v. Spannaus, 438 U.S. 234 (1978). For the lower court's treatment of the constitutional issues, *see* note 10 *infra*.

9. 412 F. Supp. at 371. In addition to arguing that the Pension Act violated the contract clause, Allied argued that it violated the commerce, due process, and equal protection clauses of the United States Constitution. *Id.* Allied also argued that the Pension Act was preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1381 (1976), and that the Pension Act itself was intended by the Minnesota legislature to become void when the Employee Retirement Income Security Act of 1974 came into effect. 412 F. Supp. at 368-71.

The contracts which Allied alleged were impaired by the Pension Act were: 1) the employment agreements entered into by Allied and its employees; and 2) the trust agreement between the trustee of the pension fund and the company. 449 F. Supp. at 649 n.5.

10. Fleck v. Spannaus, 449 F. Supp. 644, 649-50 (D. Minn. 1977). The three-judge court in *Fleck* examined the Pension Act in light of the United States Supreme Court's then most recent

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While the contract clause forbids the states from passing any "Law impairing the Obligation of Contracts,"[11] the documentary history of that clause suggests that the convention delegates viewed the measure as primarily a prohibition on the states from legislatively abrogating existing private debts between citizens.[12] Early in the nineteenth century, however, the

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analysis of the contract clause in United States Trust Co. v. New Jersey, 431 U.S. 1 (1977). *See* 449 F. Supp. at 646. For a discussion of *United States Trust, see* notes 34-40 and accompanying text *infra.* The *Fleck* court found that *United States Trust* drew "an important distinction between general regulatory legislation impairing a range of private contracts and legislation abrogating a particular contract to which the state was a party." *Id.* at 646-47. Where the state was a party to the particular contract it sought to impair, the *Fleck* court concluded that the traditional judicial stance of complete deference to legislative judgment concerning matters of economic and social regulation would be inappropriate. *Id.* Where, however, the state was not a party to the contract, the court maintained that the more relaxed deferential standard of review should be employed. *Id.*

In applying this deferential standard of review, the *Fleck* court first noted that the Pension Act did not significantly alter the contracting parties' expectations. *Id.* at 649. The court reasoned that although the Pension Act altered the length of employment necessary for an employee to gain a vested interest in the pension fund, it did not significantly alter the likelihood that Allied would have to make those payments because Allied never anticipated plant closures when it established the fund and, therefore, should have anticipated paying benefits to the workers covered under the Act in, at most, five years. *Id.* at 648.

Turning to the state's interest in regulating pensions, the *Fleck* court maintained that since the loss of a pension fund would have both present and future implications for the employees themselves and for their community, the state had a vital public interest to protect. *Id.* at 650-51. Finding that the Pension Act was reasonably adapted to and necessary for the protection of this interest, the court upheld the constitutionality of the Act. *Id.* at 651.

11. U.S. CONST. art. 1, § 10. The contract clause is included with a number of other prohibitions placed on the states by § 10, which provides in pertinent part:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or *Law impairing the Obligation of Contracts*, or grant any Title of Nobility.

Id. (emphasis added).

12. On August 28, 1787, Rufus King of Massachusetts "moved to add, in the words used in the Ordinance of Congress establishing new States, a prohibition on the States to interfere with private contracts." J. MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, at 542 (Ohio University Press ed. 1966). King's reference was to the recently drafted Northwest Ordinance which contained the following clause: "And in just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in that territory that shall in any manner interfere with or affect private contracts or any agreements, bona fide and without fraud, previously formed." C. WARREN, THE MAKING OF THE CONSTITUTION 554 (1937). Although the brief debate following King's introduction of this proposed clause indicates that some members thought this measure was "carrying the restraint too far," the measure was nonetheless approved in principle. J. MADISON, *supra*, at 542-43.

On September 12, 1787, the Committee of Style reported to the Convention its version of Mr. King's proposal as follows: "No State shall . . . pass any bill of attainder, nor ex post facto laws, nor laws *altering or impairing* the obligations of contracts . . . ." *Id.* at 616, 621 (emphasis added). Two days later, however, this clause mysteriously appeared in an altered form so as to read: "No State shall . . . pass any bill of attainder, ex post facto law, or law *impairing* the obligation of contracts . . . ." *Id.* at 641-42 (emphasis added). Unlike other minor alterations made in the wording of proposed constitutional provisions, the deletion of the reference to "altering" contracts inspired no debate, nor did it provoke any further comment. *See id.* at 634-42.

The discussion of the contract clause by the Federalists during the campaign for the Constitution's ratification offers no insight into the reasons for the Convention's modification of Rufus King's original proposal. Hamilton spoke of the clause as a necessary restraint to achieve

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Supreme Court gave the contract clause a more expansive reading by holding that it applied to contracts to which the state is a party, as well as to private contracts,[13] and that it limited state regulation of corporate charters,[14] tax exemptions,[15] and public land grants.[16] Despite this liberal interpretation of what types of agreements were included within the constitutional meaning of "contracts," the Court initially refused to give the word "impairment" such an expansive construction; a mere alteration of a contractual relationship was not considered to be an "impairment" unless it entailed a *reduction* in a contractual obligation.[17] However, early in the twentieth

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interstate peace. THE FEDERALISTS No. 7 (A. Hamilton) 65 (New American Library ed. 1961). Madison, writing collectively about the prohibition against states passing bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, spoke of them as a necessary requisite to insuring individual liberty and initiative from the debilitating effects of legislative meddling. THE FEDERALISTS No. 44 (J. Madison) 282-83 (New American Library ed. 1961).

Although there is no exposition by the Framers as to why they modified Rufus King's proposal, it is submitted that a fair reading of this change is that it indicates an intent on the part of the Framers to limit the scope of the clause to prohibit only those laws which would deny a contractual obligation to an obligee of a contract. This position is supported by an often quoted speech by Luther Martin, a Convention Delegate, before the Maryland House of Delegates on November 29, 1787:

> I considered, Sir, that there might be times of such *great public calamities* and *distress*, and of such *extreme scarcity of specie*, as should render it the *duty* of a government, for the *preservation* of even the *most valuable part* of its citizens, in some measure to interfere in their favor, by passing laws *totally or partially stopping* the courts of justice, or authorizing the debtor to pay by installments, or by delivering up his property to his creditors at a *reasonable* and *honest* valuation. The times have been such as to render regulations of this kind necessary in most or all of the States, to prevent the *wealthy creditor* and the *monied* man from *totally* destroying the *poor* though even *industrious* debtor. *Such times* may *again* arrive. I therefore voted against depriving the States of this power, a power which I am decided they ought to possess, but which, I admit, ought only to be exercised on very important and urgent occasions.

B. WRIGHT, THE CONTRACT CLAUSE OF THE CONSTITUTION 13 (1938), *quoting* III M. FARRAND, RECORDS OF THE FEDERAL CONVENTION 214-15 (1911) (emphasis in original). *See also* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 461 (1934) (Sutherland, J., dissenting).

13. *See* Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 654 (1819) (state's effort to alter its charter to college violates the contract clause); Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 139 (1810) (contract clause prohibits state from repealing a statutory land grant). *See also* W. HUNTING, THE OBLIGATION OF THE CONTRACTS CLAUSE OF THE UNITED STATES CONSTITUTION (1919); B. WRIGHT, *supra* note 12, at 27-61.

14. *See* Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 654 (1819).

15. *See* State Bank of Ohio v. Knoop, 57 U.S. (16 How.) 369, 392 (1853); New Jersey v. Wilson, 11 U.S. (7 Cranch) 164, 167 (1812). *See also* B. WRIGHT, *supra* note 12, at 179-94.

16. Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 139 (1810).

17. *See, e.g.*, Ewell v. Daggs, 108 U.S. 143 (1883); Watson v. Mercer, 33 U.S. (8 Pet.) 88 (1834); Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380 (1829). In Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380 (1829), the Court considered the constitutionality of a Pennsylvania statute which, in effect, validated a contract that had previously been rendered void by the Supreme Court of Pennsylvania. *Id.* at 380. The *Satterlee* Court, in reaching its decision, stated that "to create a contract and to destroy or impair one," did not mean the same thing. *Id.* at 413.

Similarly, in Watson v. Mercer, 33 U.S. (8 Pet.) 88 (1834), the Pennsylvania Legislature had enacted a measure to cure defects in a deed. *Id.* at 90. The Court, in rejecting the argument that this act impaired a contractual obligation, stated simply that "it goes to confirm, and not to impair the contract." *Id.* at 111.

The Court subsequently developed a test which distinguished between alterations in the procedure of enforcing a contractual right and an alteration in the contract itself. *See* Gross v. United States Mortgage Co., 108 U.S. 477, 488-89 (1883). In *Gross*, the Court sustained the

century, when judicial intervention into economic regulation was at its height,[18] the Court expanded its interpretation of "impairment" to include the *enlargement* of obligations.[19]

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validity of a retrospective law validating a mortgage of a foreign corporation which was taken by that corporation at a time when such mortgages were illegal. *Id.* at 490. Citing *Satterlee* and *Watson* for the proposition that a law which gives validity to a contractual obligation cannot be said to impair that obligation, the *Gross* Court seemed to reason that the alteration in an enforcement right enlarged, rather than diminished, a contractual obligation. *Id.* at 488-89. The Court rejected the argument that such a statute was prohibited by the contract clause since the statute merely enabled the parties to enforce the contract which they intended to make. *Id.* at 488.

18. During the period from 1905 to 1936, the Court employed the doctrine of substantive due process—which tested state legislation by examining whether the law bore a reasonable relation to a legitimate governmental end—to strike down a considerable number of statutes regulating social and economic matters. *See generally* G. GUNTHER, CONSTITUTIONAL LAW 550-616 (1975). Thus, if the law was not reasonably designed to accomplish a legitimate end of government, the Court would strike it down as unconstitutional. *See, e.g.*, Williams v. Standard Oil Co., 278 U.S. 235 (1929); Adams v. Tanner, 244 U.S. 590 (1917). Moreover, the Court during this period maintained an extremely narrow view as to which legitimate "ends" both the federal and state legislatures could reach. *See, e.g.*, Adkins v. Children's Hospital, 261 U.S. 525 (1923); Lochner v. New York, 198 U.S. 45 (1905). In *Lochner*, the Court struck down a law which established the maximum hours that a baker could work in a week because the statute interfered with the "freedom of master and employee to contract." *Id.* at 64. The Court's criteria for determining the validity of the New York law was unabashedly vague and subjective: "We do not believe in the soundness of the state's views which uphold this law." *Id.* at 61.

During the thirty years following *Lochner*, the Court invalidated several laws regulating economic activity because they conflicted with some broad constitutional dictate. *See, e.g.*, Morehead v. New York *ex rel.* Tipaldo, 298 U.S. 587 (1936) (due process prohibits minimum wage law for women workers); Williams v. Standard Oil Co., 278 U.S. 235 (1929) (due process prohibits setting maximum legal price for sale of gasoline); Adkins v. Children's Hospital, 261 U.S. 525 (1923) (due process prohibits minimum wage for women workers); Hammer v. Dagenhart, 247 U.S. 251 (1918) (tenth amendment precludes Congress from prohibiting, under its commerce clause powers, the use of child labor in mines and factories that are functioning exclusively within a state's borders); Coppage v. Kansas, 236 U.S. 1 (1915) (due process prohibits states from banning "yellow-dog" contracts); Adair v. United States, 208 U.S. 161 (1908) (due process prohibits Congress from outlawing "yellow-dog" contracts).

The Court's strict examination of the appropriateness of the means and ends of laws affecting economic or social interests became widely discredited in the years that followed *Morehead.* After that decision, the Court began to adopt the position which Justice Holmes had espoused in his dissent in *Lochner. See* 198 U.S. at 75 (Holmes, J., dissenting); note 70 *infra.* Justice Holmes believed that *Lochner* had been "decided upon an economic theory," and not upon the Constitution which he maintained did not "embody a particular economic theory." 198 U.S. at 75 (Holmes, J., dissenting).

19. *See* Georgia Ry. & Power Co. v. Decatur, 262 U.S. 432 (1923). In *Georgia Railway*, a rail and power company and a town had previously agreed to limit the fare between Decatur and Atlanta to five cents. *Id.* at 434. A state statute then extended the limits of this town, and a state court held that the five cent fare was applicable to the entire area within the town's new boundaries. *Id.* at 439. The United States Supreme Court held that

> [w]hile the statute does not refer to the contract or in terms make the rates applicable in the annexed territory, the necessary result of the decision of the state courts is to give it that effect, and in that way the statute, in the respect complained of, does substantially impair the obligation of the contract *by adding to its burdens.*

Id. at 434 (emphasis added).

The *Georgia Railway* Court did not expressly overrule Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380 (1829). For a discussion of *Satterlee, see* note 17 *supra.* Since the *Georgia Railway* decision was made "during the heyday of substantive due process," it was argued by the dissent in *Allied Structural Steel* that the decision should no longer be controlling. *See* 438 U.S. at 259 n.7 (Brennan, J., dissenting); note 59 and accompanying text *infra.* Indeed, the *Georgia Rail-*

The expanding protection of contractual obligations from state interference has often been perceived to conflict with the police power of the state.[20] In *West River Bridge Co. v. Dix*,[21] the Court held that the contract clause did not insulate the property rights bestowed in a public charter from the state's power to exercise eminent domain over that property.[22] Declaring that all contracts were made subject to the state's right of eminent domain, the Court concluded that a contract could not be impaired by the mere exercise of that right.[23]

The state's power to regulate existing debtor obligations was sustained against a contract clause attack in the landmark case of *Home Building & Loan Association v. Blaisdell*.[24] In *Blaisdell*, the Minnesota Mortgage Moratorium Law, which temporarily extended the redemption period for existing mortgages, was sustained by the Court even though it was found to impair a contractual obligation.[25] The Court, in reaching its decision,

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way Court's expansive view of "impairment" seemed to have been rejected in Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934). The *Blaisdell* Court stated that "[t]he obligations of a contract are impaired by a law which *renders them invalid or releases or extinguishes them.*" *Id.* at 431 (emphasis added) (citation and footnote omitted). For a discussion of *Blaisdell*, *see* notes 24-27 and accompanying text *infra*. *See also* Hale, *The Supreme Court and the Contract Clause*, 57 HARV. L. REV. 512, 512-13 (1944).

20. *See, e.g.*, Stone v. Mississippi, 101 U.S. 814 (1879); West River Bridge Co. v. Dix, 47 U.S. (6 How.) 507 (1848). *See also* notes 21-23 and accompanying text *infra*.

21. 47 U.S. (6 How.) 507 (1848). In *West River Bridge*, the Vermont legislature created a corporation with the exclusive privilege of erecting a bridge over the West River. *Id.* at 530. This franchise was to have lasted from 1795 to 1895. *Id.* Vermont, however, passed enabling legislation in 1839 to permit certain state courts to "take any real estate, easement, or franchise of any turnpike or corporation" and to employ the same methods of compensating the owners of such property as were used when other properties were taken by the state. *Id.* The state subsequently sought to condemn the West River Bridge to incorporate it as part of a public highway. *Id.* at 531.

22. 47 U.S. (6 How.) at 531-36. The Court in *West River Bridge* noted:

> No State, it is declared, shall pass a law impairing the obligation of contracts; yet, with this concession constantly yielded, it cannot be justly disputed, that in every political sovereign community there inheres necessarily the right and the duty of guarding its own existence, and of protecting and promoting the interests and welfare of the community at large . . . . This power, denominated the *eminent domain* of the State, is, as its name imports, paramount to all private rights vested under the government.

Id. at 531-32 (italics in original). *See also* B. WRIGHT, *supra* note 12, at 195-202.

23. 47 U.S. (6 How.) at 531-33. *See also* Stone v. Mississippi, 101 U.S. 814 (1879). In *Stone*, the Court upheld Mississippi's right to outlaw the sale of lottery tickets in the state, even though, one year earlier, the state had granted for consideration a 25-year charter to a lottery company. *Id.* at 817, 821. Writing for the Court, Chief Justice Waite stated that "the power of governing is a trust committed by the people to the government, no part of which can be granted away." *Id.* at 820. *See also* B. WRIGHT, *supra* note 12, at 203-13.

24. 290 U.S. 398 (1934), *noted in* 19 MINN. L. REV. 210 (1935); 8 S. CAL. L. REV. 30 (1934).

25. 290 U.S. at 415-20. *See* The Minnesota Mortgage Moratorium Law of 1933, H.F. No. 1695, 1933 Minn. Laws 514. The Law, after declaring a public economic emergency, provided, *inter alia*, a procedure whereby mortgagees in danger of suffering foreclosure could petition the state district courts to postpone the foreclosure sale, or, where a sale had already occurred, the court could order a resale if it thought the first sale was unfair, unreasonable, or otherwise unjust. *See* Minnesota Mortgage Moratorium Law of 1933, H.F. No. 1695, pt. 1, §§ 1-11, 1933 Minn. Laws 514-20; pt. 2, §§ 1-9, 1933 Minn. Laws 520-22.

placed heavy emphasis on the economic emergency of the Depression, which caused Minnesota to enact the Law, and on the Law's temporary nature.[26] However, the Court also acknowledged a need for greater judicial deference to the legislature in areas affecting the public welfare.[27]

The decisions immediately following *Blaisdell* considered the existence of the economic crisis to be crucial to the *Blaisdell* Court's holding.[28] Later decisions, however, placed greater weight on judicial deference to legislative determinations of policy in sustaining state laws against contract clause challenges.[29] For instance, in *East New York Savings v. Hahn*,[30] the Court ignored the once crucial emergency factor, and applied a test of judicial deference which placed primary responsibility for determining the need for laws which impair contracts on the democratic process.[31] Similarly, in *City of El Paso v. Simmons*,[32] the Court permitted Texas to reduce, by statute, the time within which a defaulted land claim could be reinstated, even though Texas had previously entered into a contract which established a greater time period.[33] The Court, recognizing the state's valid purpose of re-

26. 290 U.S. at 444-48. After an extensive review of the history of the contract clause, the *Blaisdell* Court concluded that "the reservation of the *reasonable exercise of the protective power* of the State is read into all contracts." *Id.* at 429-44 (emphasis added). The *Blaisdell* Court noted five factors in the Minnesota Act which led it to conclude that the law was a reasonable exercise of the state's protective power: 1) the existence of an economic emergency, *id.* at 444; 2) the legislation was addressed to a legitimate end since it was for the protection of a general societal interest, *id.* at 445; 3) the relief afforded was tailored to the emergency at hand, *id.*; 4) the conditions upon which the period of redemption was to be extended were reasonable, *id.* at 445-47; and 5) the legislation was temporary in operation, *id.* at 447.

27. *Id.* at 447-48. The Court stated: "Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned." *Id.*

28. Under this reading of *Blaisdell*, the Supreme Court unanimously held that three state statutes violated the contract clause. *See* Treigle v. Acme Homestead Ass'n, 297 U.S. 189 (1936) (law substantially altered the rights of building and loan association members to withdraw funds); W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56 (1935) (law diminished foreclosure remedies of negotiable bonds); and W.B. Worthen Co. v. Thomas, 292 U.S. 426 (1934) (law exempted life and medical insurance proceeds from collection by the beneficiary's judgment creditors).

29. *See* notes 30-35 and accompanying text *infra*.

30. 326 U.S. 230 (1945).

31. *Id.* at 234. In *East New York Savings*, the petitioner challenged a 1933 mortgage moratorium statute which the New York legislature had, on an annual basis, extended for over a decade. *Id.* at 233-35. Ignoring the disappearance of the economic emergency which had led the legislature to enact the statute, the Court stated: "Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature and not the judiciary." *Id.* at 234.

32. 379 U.S. 492 (1965).

33. *Id.* at 516-17. Texas had sold some of its large landholdings in 1910 by contracts under terms very favorable to the purchaser in order to encourage the development of its vast uninhabited lands. *Id.* at 500, 510. Only a small down payment with annual payments of interest and principal were required, and, in the event of forfeiture, the purchaser or his vendee could reinstate his claim simply by payment of the accrued interest. *Id.* at 498. The only time limitation on the right to reinstate one's claim was that the interests of third parties could not yet have intervened. *Id.* at 498-99. In 1941, however, the Texas legislature enacted a law to limit this right to reinstatement to five years after default. *Id.*

storing confidence and order in its land title system,[34] declared that courts "must respect the 'wide discretion on the part of the legislature for determining what is and what is not necessary' " to further the state's purpose.[35]

This trend toward complete judicial deference to legislatures in determining the need for statutes in contract clause cases was halted in 1977 in *United States Trust Co. v. New Jersey*.[36] The *United States Trust* Court was faced with the issue of whether New Jersey and New York could constitutionally repeal a contract between themselves and their Port Authority bondholders which limited the states' use of the funds securing Port Authority bonds.[37] In determining this issue, the Court developed a test under which a law that impaired a contract would be upheld if the law was both reasonable and necessary to serve an important state purpose.[38] The Court found that under this test the states' repeal of the covenant violated the contract clause.[39] In reaching this decision, the Court implied that while this stricter standard of scrutiny would be employed in cases involving state legislative efforts to renege on public contractual obligations, a more relaxed test would be used in cases involving state impairments of private contracts.[40] A vigorous dissent in *United States Trust* protested the Court's

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The plaintiff in *El Paso*, Simmons, had purchased the contract rights to land which his predecessors in title had forfeited because of delinquent interest payments. *Id.* at 500-01. Five years and *two days* after the forfeiture, Simmons paid the back installments. *Id.* at 518 (Black, J., dissenting). Nevertheless, Texas refused to reinstate Simmons and sold the land to the City of El Paso. *Id.* at 501.

34. *Id.* at 511-13.

35. *Id.* at 508-09, *quoting* East New York Savings v. Hahn, 326 U.S. 230, 232-33 (1945). Justice Black vigorously dissented in *El Paso*, protesting the Court's "balancing away" the contract clause protections so that a wealthy state could take a man's property without just compensation. *Id.* at 518 (Black, J., dissenting). Justice Black interpreted Texas' action as a legislative attempt to get out of a bargain in which the state did not fare well. *Id.* at 519-20 (Black, J., dissenting).

36. 431 U.S. 1 (1977), *noted in* 29 U. FLA. L. REV. 1000 (1977).

37. 431 U.S. at 3-14. The 1962 covenant between the Port Authority and its bondholders basically prohibited the states and their Port Authority from applying any reserve funds for railroad purposes if such funds were pledged as security for bonds that were outstanding and unpaid. *Id.* at 9-10. During the 1973 oil crisis, the two states wanted to use the funds securing the Port Authority bonds to finance much-needed mass transit improvements and, thus, they passed a statute which retroactively repealed the 1962 covenant. *Id.* at 13-14.

38. *Id.* at 29. The Court found that the retroactive repeal was not necessary because 1) a less drastic modification of the 1962 covenant could have accomplished similar objectives; and 2) alternative means were available for raising funds to improve mass transit. *Id.* at 29-30. The repeal was also found to be unreasonable since the Port Authority was aware in 1962 that it might need funds in the future to support mass transit. *Id* at 31-32.

39. *Id.* at 32.

40. Concerning the impairments of private contracts, the *United States Trust* Court stated:

> Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption . . . . As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to necessity and reasonableness of a particular measure.

Id. at 22-23 (citations and footnote omitted). The Court noted, however, that this more relaxed standard of review does not apply when the state is attempting to impair its own obligations under a contract:

interpretation of the contract clause.[41] The dissent maintained that the Court's opinion would impair a state legislature's ability to determine important economic and social policy questions by binding one state legislature to the actions of a prior legislature.[42]

Against this historical background, the *Allied Structural Steel* Court[43] began its analysis by pointing out that although the contract clause is not "the Draconian provision that its words might seem to imply,"[44] nevertheless it must be read to "impose *some* limits upon the power of a State to abridge existing contractual relationships," even if the state is pursuing a policy in an area of vital state interest.[45] These limits were found by the Court to be "clearly indicated" by several of its prior decisions which arose out of the Great Depression.[46]

> The Contract Clause is not an absolute bar to subsequent modification of a State's own financial obligations. As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. *In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.*

Id. at 25-26 (footnote omitted) (emphasis added). Indeed, the district court in *Allied Structural Steel* interpreted *United States Trust* as requiring a more relaxed level of scrutiny in cases involving the impairment of private contracts. *See* 449 F. Supp. at 646-47; note 10 *supra*. *See also* J. NOVACK, R. ROTUNDA & I. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 428 (1978).

41. 431 U.S. at 33 (Brennan, J., dissenting). Justice Brennan wrote the dissenting opinion in which Justices White and Marshall joined. *Id.* (Brennan, J., dissenting).

42. Justice Brennan, in commenting on the debilitating effect of the *United States Trust* decision, wrote:

> One of the fundamental premises of our popular democracy is that each generation of representatives can and will remain responsive to the needs and desires of those whom they represent. Crucial to this end is the assurance that new legislators will not automatically be bound by the policies and undertakings of earlier days. In accordance with this philosophy, the Framers of our Constitution conceived of the Contract Clause primarily as protection for economic transactions entered into by purely private parties, rather than obligations involving the State itself. The Framers fully recognized that nothing would so jeopardize the legitimacy of a system of government that relies upon the ebbs and flows of politics to "clean out the rascals" than the possibility that those same rascals might perpetuate their policies simply by locking them into binding contracts.

Id. at 45 (Brennan, J., dissenting) (citations omitted).

Justice Brennan also disputed the Court's conclusion that the law was not a necessary and reasonable measure designed to further the admittedly important state purpose. *Id.* at 34. The repeal of the 1962 amendment was reasonable, according to the dissent, because the bistate mass transit plans were well thought out, urgently needed, and apparently a nonpartisan effort. *Id.* at 37-41 (Brennan, J., dissenting). Justice Brennan, relying on the findings of the state legislatures, also found the law to be necessary since the transit plan would not be economically feasible unless the 1962 covenant was repealed. *Id.* at 37 (Brennan, J., dissenting).

43. Justice Stewart delivered the opinion of the Court in which Chief Justice Burger and Justices Powell, Rehnquist, and Stevens joined. 438 U.S. at 235. Justice Blackmun took no part in the consideration or decision of this case. *Id.*

44. *Id.* at 240. The Court noted that "literalism in the construction of the contract clause . . . would make it destructive of the public interest by depriving the State of its prerogative of self-protection." *Id.*, *quoting* W.B. Worthen Co. v. Thomas, 292 U.S. 426, 433 (1934).

45. 438 U.S. at 242 (emphasis in original).

46. *Id.* The Court indicated that a state statute would be violative of the contract clause if it lacked the five characteristics which the *Blaisdell* Court had considered to be significant. *Id.* at

The Court maintained that, in a contract clause analysis, its first inquiry is whether a substantial impairment[47] of a contractual relationship is caused by the state law.[48] Then, to determine the degree of scrutiny that should be given to the statute, the severity of the impairment must be measured.[49] According to the Court, the severity of the impairment is "measured by the factors that reflect the high value the Framers placed on the protection of private contracts," including the ability of contracting parties to rely with confidence on their contracts so as to arrange with certainty their future personal and financial affairs.[50] Finally, if a severe impairment is found, the Court will carefully examine the nature and purpose of the law to determine its constitutionality.[51]

Turning to the facts at bar, the Court found that the Minnesota Pension Act severely impaired Allied's pension contracts because it altered a contractual relationship where certainty is vital.[52] Having found a severe impairment, the Court looked to the state's purpose in enacting the statute and found that, unlike the situation in *Blaisdell*, the Pension Act was not enacted to deal with a broad and desperate emergency.[53] Since neither the legislative findings nor the record before the Court indicated an important social

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242-44. For the factors that influenced the *Blaisdell* Court, *see* note 26 *supra*. In addition, the *Allied Structural Steel* Court maintained that a sixth factor in deciding to uphold a state law against a contract clause challenge would be whether "the petitioner had 'purchased into an enterprise already regulated in the particular to which he now objects.' " 438 U.S. at 242-43 n.13, *quoting* Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32, 38 (1940).

47. 438 U.S. at 244. The Court summarily rejected the dissent's contention that an act which merely *increases* contractual obligations is not an "impairment" within the meaning of the contract clause. *Id.* at 244 n.16. For the dissent's position, *see* note 61 *infra*. The Court stated:

> The novel construction of the Contract Clause expressed in the dissenting opinion is wholly contrary to the decisions of this Court. The narrow view that the Clause forbids only state laws that diminish the duties of a contractual obligor and not laws that increase them, a view arguably suggested by *Satterlee v. Matthewson*, . . . has since been expressly repudiated.

Id. (citations omitted). For a critique of the majority's position, *see* notes 90-97 and accompanying text *infra*.

48. 438 U.S. at 244.

49. *Id.* at 245. Concerning its review of statutes that impair contractual obligations, the Court stated: "Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation." *Id.* (footnote omitted).

50. *Id.* It should be noted that the Court did not mention any other factors which it found to reflect the Framers' high esteem for contractual rights. *See id.*

51. *Id. See* note 48 *supra*.

52. *Id.* at 246. The Court found that certainty was vital in this pension agreement because Allied relied upon the vesting provisions of the agreement when calculating its payments to the pension fund. *Id.*

53. *Id.* at 249. The Court noted, however, that its reliance upon the *Blaisdell* economic emergency factor was "not to suggest that only an emergency of great magnitude can constitutionally justify a state law impairing the obligations of contracts." *Id.* n.24, *citing* City of El Paso v. Simmons, 379 U.S. 497 (1965); East New York Savings Bank v. Hahn, 326 U.S. 230 (1945); Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32 (1940).

In further considering the purpose of the Pension Act, the Court expressed concern over the ephemeral nature of the statute, stating that "not only did the Act have an extremely narrow aim, but its effective life was extremely short." 438 U.S. at 248 n.21. It is interesting to

problem which necessitated this severe impairment,[54] the Court found that the "presumption favoring 'legislative judgment as to the necessity and reasonableness of a particular measure,' " should not stand in this case.[55] The Court also expressed concern over the Pension Act's invasion into an area never before subject to state regulation because this further upset the employer's expectations concerning his contractual obligations.[56] Finally, the Pension Act, unlike related federal legislation, became fully effective the day after its passage and, thus, failed to provide the affected parties with a period in which to adjust to the new law.[57]

Although, in concluding its opinion, the Court listed many factors which it considered to be important in deciding *Allied Structural Steel*,[58] its opinion did not indicate whether one factor, or a combination of factors, would be decisive in its review of future contract clause cases. Rather, it simply concluded "that if the Contract Clause means anything at all, it means that Minnesota could not constitutionally do what it tried to do to the company in this case."[59]

Justice Brennan, writing for the dissent,[60] maintained that the contract clause was not relevant to the instant case since the state sought only to

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note, however, that a limited effective life was one of the five factors which the *Blaisdell* Court found, and which the *Allied Structural Steel* Court cited with approval, as *justifying* a state law that impairs the obligation of contracts. *See* notes 26 & 46 *supra*. For a criticism of the Court's objections to the temporary nature of the Act, *see* note 82 *infra*.

54. 438 U.S. at 247. The Court found that the only indication of legislative intent in the record was the following statement in the district court opinion: "It seems clear that the problem of plant closure and pension plan termination was brought to the attention of the Minnesota legislature when the Minneapolis-Moline Division of White Motor Corporation closed one of its Minnesota plants and attempted to terminate its pension plan." *Id.* at 247-48, *citing* Fleck v. Spannaus, 449 F. Supp. at 651. The Court also concluded that the Minnesota Supreme Court had "engaged in *mere speculation* as to the legislature's purpose." 438 U.S. at 248 n.19 (emphasis added). For a criticism of the Court's evaluation of the Pension Act's purpose, *see* notes 75-80 and accompanying text *infra*.

55. 438 U.S. at 247, *quoting* United States Trust Co. v. New Jersey, 431 U.S. 1, 23 (1977).

56. 438 U.S. at 249-50.

57. *Id.* at 249 & n.23. The Court noted that the comparable federal statute, the Employment Retirement Income Security Act, 29 U.S.C. §§ 1001-1381 (1976), did not go into effect until four months after it was enacted. *See* 438 U.S. at 249 n.23; 29 U.S.C. § 1144 (1976). The Court also observed that the vesting provisions of the federal statute were held in abeyance for an additional year. *See* 438 U.S. at 249 n.23; 29 U.S.C. §§ 1086(b), 1061(b)(2) (1976). *Cf.* Fleck v. Spannaus, 449 F. Supp. at 651 (grace period would defeat purpose of the Pension Act). For a discussion of the three-judge court's opinion in *Fleck*, *see* note 10 *supra*.

58. *See* 438 U.S. at 250. After comparing the Pension Act with the other state laws that survived scrutiny under the contract clause, the Court noted four characteristics in the earlier laws that were lacking in the Pension Act: 1) the Pension Act did not deal with a broad, generalized economic or social problem; 2) it did not operate in an area already subject to state regulation; 3) the Act did not merely cause a temporary alteration of contractual relationships but, rather, it created a permanent change in those relationships that was retroactive and irrevocable; and 4) it had a narrow aim directed only at those employers "who had in the past been sufficiently enlightened as voluntarily to agree to establish pension plans for their employees." *Id.* For a critique of these factors, *see* note 68 *infra*.

59. 438 U.S. at 250-51.

60. *Id.* at 251 (Brennan, J., dissenting). Justices White and Marshall joined Justice Brennan in his dissent. *Id.*

impose additional obligations on one contracting party, as opposed to diminishing or nullifying existing contractual duties.[61] According to the dissent, the Pension Act should have been reviewed under the due process clause,[62] in which case the Act would have withstood constitutional scrutiny.[63] The dissent criticized the Court for subjecting the Pension Act to the "most exacting scrutiny" when laws which interfere with settled expectations created by state property law are uniformly subjected to minimal scrutiny by the Court.[64] Moreover, the dissent predicted that the instant decision will leave the validity of other laws involving social legislation vulnerable to the subjective views of individual judges.[65]

It is submitted that the dissent's criticism of the Court's failure to establish a precise analytical framework for considering challenges based on the contract clause was justified.[66] While the Court suggested that a state act which severely impairs the obligations of contracts could be saved if its pur-

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61. *Id.* For a discussion of the Court's treatment of laws that enlarge (as opposed to diminish) contractual obligations, *see* note 19 and accompanying text *supra*. The dissent followed Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380 (1829), and would therefore limit the reach of the contract clause to only those cases where a promisee to a contract is denied his rights thereunder. 438 U.S. at 258. (Brennan, J., dissenting). The dissent stated:

> Historically, it is crystal clear that the Contract Clause was not intended to embody a broad constitutional policy of protecting all reliance interests grounded in private contracts. It was made part of the Constitution to remedy a particular social evil—the state legislative practice of enacting laws to relieve individuals of their obligations under certain contracts—and thus was intended to prohibit States from adopting "as [their] policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them . . . ."

438 U.S. at 256 (Brennan, J., dissenting), *quoting* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 439 (1934) (bracketed material supplied by Brennan, J.). *But see* 438 U.S. at 244 n.16.

62. 438 U.S. at 251 (Brennan, J., dissenting).

63. *Id.* at 264 (Brennan, J., dissenting). The purpose of the Pension Act, according to Justice Brennan, was cognizable from both the terms of the Act and the opinion of the lower state court. *Id.* at 252-55 (Brennan, J., dissenting); *cf.* note 54 *supra*. The dissent found that the measure was designed to combat the serious problem that arises when a worker's expectation of a pension income is unexpectedly frustrated by the loss of his job due to a plant shutdown. *Id.* at 252-53 (Brennan, J., dissenting). Using a test of reasonableness, the dissent would have upheld the legislature's decision to protect, from an unforeseen plant closing, the expectation interests of employees with more than 10 years of service whose pension interests had not yet vested. *Id.* at 264 (Brennan, J., dissenting).

64. *Id.* at 261 (Brennan, J., dissenting). Justice Brennan strongly criticized the majority for upsetting the general approach of upholding the validity of state laws which interfere with property interests so long as the law is "reasonably related to the promotion of the general welfare." *Id.* The dissent contended that providing intense scrutiny under the contract clause, but not under the other constitutional provisions used to protect economic expectations, produced "results difficult to square with any rational conception of a constitutional order" since there is "nothing sacrosanct about expectations rooted in contract that justify according them a constitutional immunity denied other property rights." *Id.* at 260-61 (Brennan, J., dissenting).

65. *Id.* at 261 (Brennan, J., dissenting). The dissent maintained that the majority's decision could only be explained on the grounds that "it subjectively values the interests of employers in pension plans more highly than it does the legitimate expectation interests of employees." *Id.* at 261 n.8 (Brennan, J., dissenting).

66. *See id.* at 260-61 (Brennan, J., dissenting); note 65 and accompanying text *supra*.

pose and need are sufficient to outweigh the need for protecting contractual expectations,[67] it failed to state which purposes and what degree of need must be shown before the statute will survive the Court's scrutiny.[68] While imprecision is not novel in constitutional adjudication,[69] it is submitted that clarity is essential when constitutional doctrines are used by the Court to settle disputes involving broad competing economic interests because of the danger that the Court will decide such cases, not on the basis of neutral legal principles, but rather, on favored economic theories.[70] Thus, it is suggested that Justice Brennan correctly criticized the criteria employed by

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67. 438 U.S. at 245. *See* notes 48-51 and accompanying text *supra*.

68. The Court found that the Pension Act failed because it did not possess the same "attributes of those state laws that in the past have survived challenge under the Contract Clause of the Constitution." 438 U.S. at 250. *See* note 58 *supra*. The attributes mentioned by the Court, however, were not all present in the statutes which the Court had previously upheld as valid. For instance, the Court concluded that prior statutes found to be constitutional under the contract clause, such as the one in *Blaisdell*, dealt with broad economic or social problems. 438 U.S. at 250. In fact, however, some of the statutes upheld in other contract clause cases dealt with much narrower problems. *See, e.g.*, City of El Paso v. Simmons, 379 U.S. 497 (1965) (statute limited the time within which a defaulted public land claim could be reinstated); Day-Bright Lighting, Inc. v. Missouri, 342 U.S. 421 (1952) (law permitted employees to take time off from work without loss of pay on election day). Also, the *Allied Structural Steel* Court found that the Pension Act permanently altered contractual relations, whereas the earlier statutes merely caused temporary alterations. 438 U.S. at 250. This conclusion ignores the statutes of both *El Paso*, *see* notes 32-35 and accompanying text *supra*, and East New York Savings v. Hahn, 326 U.S. 492 (1965) (where the very issue presented before the Court was whether New York could continue a mortgage moratorium act, even though 10 years had passed since the time of the crisis which had necessitated the act's original passage). *See* notes 30-31 and accompanying text *supra*. Moreover, as the Court concedes, there was no substantial emergency to justify sustaining the statutes in three of the prior contract clause cases. *See* 438 U.S. at 249 n.24; notes 53 & 58 *supra*. Thus, it is difficult to predict what a state must prove to convince the Court that the statute is reasonable, and that the state's need and purpose are adequate to justify the contractual impairment.

69. *See, e.g.*, Comment, *Federalism and a New Equal Protection*, 24 VILL. L. REV. 557 (1979) (concluding that equal protection law is in a state of confusion).

70. It is further submitted that clarity is compelling in this situation because in a contract clause case the Court is reviewing the validity of measures which are central to the legislative function—*i.e.*, the regulation of commerce. If a reviewing court is able to strike down such measures, not because they conflict with a precisely stated rule of law, but because the court determines that the legislature employed "inappropriate" means or pursued an "unnecessary" end, the court is essentially acting as a "super-legislature," substituting its judgment for that of the legislators who represent the majority of citizens.

The mere fact that the reviewing court invokes an explicit constitutional provision, it is submitted, does not, in itself, mean that it is applying a specific rule of law since the language of the Constitution is too broad and vague for its exact application to be self-evident. The precise meaning of a constitutional dictate, therefore, depends on the vast interstitial developments in judicial decisions. *See, e.g.*, 438 U.S. at 240 (although language of contract clause is unambiguously absolute, the Court does not interpret it literally); W.B. Worthen Co. v. Thomas, 292 U.S. 426, 433 (contract clause should not be interpreted literally). *But cf.* City of El Paso v. Simmons, 379 U.S. at 517 (Black, J., dissenting) (asserting that constitutional language should be given its literal meaning).

Because of the broad language of the Constitution, the Court in the last forty years has been reticent in scrutinizing legislative acts which regulate social or economic matters. *See* Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952). In *Day-Brite Lighting* a contract clause challenge was raised against a statute that permitted all employees to leave their job for

the Court to determine the validity of the state law as so malleable and vague as to render such cases vulnerable to the economic views of judges.[71] The influences of such subjectivity, it is submitted, are ironically demonstrated in *Allied Structural Steel* by the Court's selective application of facts and precedent to support its position favoring Allied's interests over the interests of Allied's employees.[72]

It is suggested that the majority's selectivity in its analysis of the facts first surfaced when it considered the effects of the Pension Act. While emphasizing the Pension Act's blow to Allied's expectations in managing its pension fund, it is submitted that the Court failed to consider adequately the hardship that a sudden plant closing, coupled with the complete loss of over a decade's accumulated pension credits, would have on *employee* expectations.[73] Although the Court recognized that the "element of reliance could cut both ways," the Court refused to consider the plight of the Minnesota workers because it could find no indication in the record that the purpose of the Pension Act was to protect the employees' reliance interests.[74]

It is further suggested that the Court's selective factual analysis continued when it considered the purpose of the Pension Act. The only indication of legislative intent found by the majority was the statement by the district court that the "problem of plant closure and pension plan termination was brought to the attention of the Minnesota legislature when [a major employer] closed one of its Minnesota plants and attempted to terminate its pension plan."[75] The Court therefore inferred that the Pension Act clearly possessed an extremely narrow focus.[76] It is submitted, however, that legislative purpose cannot be fairly inferred by simply examining the social crisis that brought the problem of frustrated worker expectations before the

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four hours on election days without loss of pay. *Id.* at 422-23. In upholding the statute, the Court stated: "[T]he state legislatures have constitutional authority to experiment with new techniques; . . . they may within extremely broad limits control practices in the business-labor field . . . ." *Id.* at 423. *See also* Ferguson v. Skrupa, 372 U.S. 726 (1963) (Court sustained Kansas law prohibiting the business of debt adjusting to all but lawyers); Williamson v. Lee Optical Co., 348 U.S. 483 (1955) (sustaining Oklahoma law which prohibited the fitting and duplicating of lenses except by a licensed optometrist or ophthalmologist); Lincoln Fed. Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949) (upholding Nebraska and North Carolina right-to-work laws); Olsen v. Nebraska, 313 U.S. 236, 246 (1941) (sustaining Nebraska law which set maximum fees chargeable by employment agencies because the "wisdom, need, and appropriateness of this legislation was for the state legislature to determine").

71. *See* 438 U.S. 261 & n.8 (Brennan, J., dissenting); note 65 and accompanying text *supra*.

72. *See* note 65 *supra*.

73. *See* 438 U.S. at 246-47.

74. *Id.* at 246 n.18. *But cf.* Fleck v. Spannaus, 449 F. Supp. 644, 649-50 (D. Minn. 1977) (district court found that the act was designed to protect employee accumulated pension credits from unanticipated loss); Fleck v. Spannaus, ___ Minn. ___, ___, 251 N.W.2d 334, 338-39 (1977) (Minnesota Supreme Court opinion considered the protection of employee expectations to be an important purpose of the act). *See also* Bernstein, *Employee Pension Rights When Plants Shut Down: Problems and Some Proposals*, 76 HARV. L. REV. 952 (1963).

75. 438 U.S. at 247-48, *quoting* 449 F. Supp. at 651.

76. 438 U.S. at 248.

Minnesota legislature.[77] Moreover, the district court opinion is not the only source from which the Court could infer a legislative intent.[78] Minnesota's highest court, as the dissent noted,[79] found that the Pension Act was enacted to regulate *several* pension abuses including: 1) the use of unreasonably long periods of employment as a prerequisite to vesting; 2) employer concealment of material information from employees as to their rights under the pension plan; and 3) a lack of adequate pension funding.[80]

Furthermore, it is submitted that the majority's construction of the Act's focus in a light most unfavorable to its validity presents further evidence of the Court's selective analysis of the facts underlying the controversy before it. The Court objected to the Act's narrow focus because it applied only to employers who terminated their pension plans or whose Minnesota operations had shut down.[81] It is suggested, however, that this narrow focus, which the majority considered invidious, could with equal logic be viewed as an attempt to tailor the Pension Act to remedy the specific evil of frustrated worker expectations that occur when an *employer by his own actions* terminates a pension plan.[82]

The influence of judicial subjectivity was also revealed by the Court's selective analysis of recent contract clause precedent which the Court consistently interpreted against the constitutionality of the Pension Act.[83] The Court essentially ignored *East New York Savings*—a decision in which the Court deferred evaluation of a statute's purpose and need to the wisdom of

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77. Admittedly, problems are often brought to the attention of legislatures after they have been manifested by a serious crisis. The legislature's response is often to investigate and enact laws that will prevent future troubles of a related nature. *See generally* G. GALLOWAY, THE LEGISLATIVE PROCESS IN CONGRESS (1953); H. WALKER, THE LEGISLATIVE PROCESS (1948). It seems, however, to be a gross oversimplification of the legislative process to suggest that in examining a particular crisis, the legislature is *only* interested in ameliorating that particular crisis and not with remedying the underlying causes that led to the creation of the social problem. The fact that in the present case White Motor's closing of a large Minnesota plant exposed a flaw in Minnesota's protection of worker pension plans seems only to indicate *how* the Minnesota legislature became aware of an existing social problem, and not necessarily that the limit of their concern was with that particular problem.

78. The Court ignored the district court's findings that the act was intended to protect the accumulated pension credits of workers from the unanticipated loss following a plant shut down. *See* note 10 *supra*. The majority also rejected, without explanation, the Minnesota Supreme Court's findings as "mere speculation as to the state legislature's purpose." 438 U.S. at 248 n.19, *citing* Fleck v. Spannaus, ___ Minn. ___, 251 N.W.2d 334 (1977).

79. 438 U.S. at 252 (Brennan, J., dissenting).

80. Fleck v. Spannaus, ___ Minn. ___, ___, 251 N.W.2d 334, 338 (1977).

81. 438 U.S. at 248-50.

82. *Cf.* 438 U.S. at 261 n.8 (Brennan, J., dissenting) ("it is the existence of the pension plan that creates the need for this legislation"). Even more difficult to understand is why the Court objected to the temporary nature of the Pension Act. *Id.* at 248 n.21. It would seem that limiting the length of the Act until Congress had enacted its own pension protection plan adds credence both to a legitimate need for such protection and to the reasonableness of the measure enacted by Minnesota, since it did not unnecessarily extend regulation beyond the period necessary to protect the Minnesota workers.

83. 438 U.S. at 242-45.

the legislature.[84] It is also submitted that the majority's attempt to distinguish *El Paso*, on the basis that the statute in that case caused only a minor impairment of contractual obligations,[85] is unconvincing because the statute there did work a substantial impairment on the state's contractual obligations.[86] A third case, *Veix v. Sixth Ward Building & Loan Association*,[87] was distinguished on the ground that the savings associations which the statute in issue affected were already subject to extensive regulatory control, whereas the pension plan in *Allied Structural Steel* was not so regulated.[88] It is suggested, however, that this distinction is not persuasive because pension plans, like financial institutions, are, in fact, subject to legislative regulations.[89]

Another major weakness in *Allied Structural Steel* was, it is submitted, the Court's inadequate explanation of why it chose to include acts that *enlarge* the obligations of a contracting party within the contract clause's prohibition against the *impairment* of contractual obligations.[90] While it is undoubtedly true that an act imposing additional obligations on a contracting party can have a detrimental effect on that party's economic expectations, it may be inferred from the history of the contract clause that the Framers rejected language that would encompass such acts in favor of the more limited prohibition against impairment of obligations.[91] Therefore, it is

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84. *See* 326 U.S. at 234. For a discussion of *East New York Savings*, *see* notes 30-31 and accompanying text *supra*. The *Allied Structural Steel* Court, after criticizing the Pension Act for not dealing with a broad emergency, stated in a footnote that "this is not to suggest that only an emergency of great magnitude can constitutionally justify a state law impairing the obligation of contracts." 438 U.S. at 249 n.24 (citations omitted). The Court cited *East New York Savings* to support this proposition without noting that the Court, in that case, refused to even consider whether there was an emergency because that evaluation was a question which the legislature was exclusively competent to address. *See* note 31 and accompanying text *supra*.

85. *See* 438 U.S. at 243-44 n.14.

86. *See* City of El Paso v. Simmons, 379 U.S. at 516-17; notes 32-35 and accompanying text *supra*. Although the *El Paso* Court noted that the act in that case "was a mild one indeed, hardly burdensome," it is submitted that the Court was referring to the act's general application and not to the impact it had on impairing the contract of Mr. Simmons (who, in fact, lost his property as a result of the statute's application). *See* 379 U.S. at 516-17. Thus, it is suggested that the *El Paso* Court was not referring to the level of impairment suggested by the *Allied Structural Steel* Court; rather, when the *El Paso* Court spoke of the act as "hardly burdensome," it was referring to the ease of complying with the statute which, in turn, demonstrated its reasonableness.

87. 310 U.S. 32 (1940).

88. 438 U.S. at 242-43 n.13, 250.

89. Employee pension plans are subject, as the majority acknowledges, to § 401 of the Internal Revenue Code. *See* 438 U.S. at 236. Moreover, as the Court noted, the United States Congress had been considering a pension act that was similar to Minnesota's Pension Act. *Id.* at 248 n.21. Although these are not state measures, it is submitted that they nonetheless should put an employer on notice that his pension plan may be subject to new regulations. Moreover, since pension plans are but one aspect of labor-industrial relations—a highly regulated field—it would seem that pension plans are an area in which regulation is to be anticipated. *See id.* at 261 n.8 (Brennan, J., dissenting) (Pension Act operates in an area that is extensively regulated—employee compensation).

90. For a discussion of the Court's treatment of this issue, *see* note 47 *supra*.

91. *See* note 12 *supra*.

suggested that neither the text nor the documentary history of the contract clause compelled *Allied Structural Steel's* expansive interpretation of "impairment." Nor, it is submitted, was this expansive reading compelled by precedent, since the only cases cited by the Court in support of its liberal interpretation of "impairment" reflect the widely discredited juristic view of the early twentieth century which applied a standard of strict scrutiny under several constitutional provisions to protect private property from any legislative interference.[92]

It is further suggested that the Court's attempt to justify its expansive reading of "impairment" by logic borders on sophistry. The majority's response to the dissent's conservative view that the clause should only apply to laws diminishing contractual obligations was that "in any bilateral contract the diminution of duties on one side effectively increases the duties on the other."[93] It is submitted that this axiom simply misses the point because if there had been a statutory diminution of duties, the existence of an impairment would have been accepted by the dissent.[94] The problem in *Allied Structural Steel,* however, was that there was an *increase* of duties on one side which did not effectively *diminish* duties on the other.[95]

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92. The *Allied Structural Steel* Court had relied principally on two cases to support its proposition that the imposition of an additional burden on a contracting party violated the contract clause: Georgia Ry. & Power Co. v. Decatur, 262 U.S. 432 (1923), and Detroit United Ry. v. Michigan, 242 U.S. 238 (1916). *See* 438 U.S. at 244-45 n.16. These cases were both decided during the period directly following Lochner v. New York, 198 U.S. 45 (1905). *See* notes 18-19 and accompanying text *supra*. Thus, the dissent noted that "[t]hese opinions reflect the then-prevailing philosophy of economic due process which has since been repudiated." 438 U.S. at 259 n.7 (Brennan, J., dissenting). Indeed, under the majority's contract clause analysis, it is submitted that even today the minimum wage laws in Morehead v. New York *ex rel.* Tipaldo, 298 U.S. 587 (1936), could be found unconstitutional, depending solely upon whether the Court considers minimum wage laws to be reasonable and necessary. For a discussion of *Morehead* and how its views became discredited in later years, *see* note 18 *supra*.

Moreover, it is suggested that the cases cited by the Court to exemplify the contract clause's application to laws which increase contractual duties do not necessarily support the Court's position because none of these cases actually held that the *enlargement* of obligations constituted a proscribed *impairment*. *See* 438 U.S. at 244-45 n.16, *citing* Stockholders of Peoples Banking Co. v. Sterling, 300 U.S. 175 (1937) (law increasing the liability of stockholders *does not* impair the obligation of any contract); Columbia Ry., Gas & Elec. Co. v. South Carolina, 261 U.S. 236 (1923) (act attempting to work a *forfeiture* of property found to *impair* a contract); Nat'l Surety Co. v. Architectural Decorating Co., 226 U.S. 276 (1912) (law altering contractual remedy requirements of notice *does not impair* the obligation of contracts it affects); Henley v. Myers, 215 U.S. 373 (1910) (law requiring new procedures for transferring stock *does not impair* contracts); Bernheimer v. Converse, 206 U.S. 516 (1907) (statute enlarging enforcement procedures for stockholder liability *does not impair* contracts); Sherman v. Smith, 66 U.S. (1 Black) 587 (1861) (law making bank stockholders personally liable for debts of their bank *does not impair* contracts).

93. 438 U.S. at 245 n.16.

94. The dissent reasoned that the contract clause did not apply because the Pension Act merely imposed increased burdens on one contracting party without impairing any existing contractual obligations. *See id.* at 251 (Brennan, J., dissenting); notes 60-61 and accompanying text *supra*.

95. The Pension Act *increased* Allied's obligations by forcing it to pay a "pension funding charge" that it would not have had to pay under the pension agreement. 438 U.S. at 236-39.

The Court's indifference to the distinction between statutes which increase, as opposed to diminish, contractual duties[96] is, it is suggested, indicative of the Court's willingness to subordinate the technical meaning of constitutional language to the goal of protecting contractual expectations from any "unreasonable and unnecessary" interference by the democratic process.[97] The wisdom of applying such a policy both to laws which diminish and to laws which increase contractual duties is questionable, however, since an act which impairs an obligation affects the rights of an obligee in a fundamentally different way than an act which merely burdens a contracting party with an additional duty.[98]

Although the precedential value of *Allied Structural Steel* has not been established, it is submitted that this decision could have a far-reaching impact on state legislative programs. It is suggested that the intense judicial scrutiny employed by the Court in examining the state's need for the Pension Act and its purpose in enacting that law is strong evidence that the Court is once again willing to take an active stance in reviewing social and economic legislation which affects private property in a constitutionally questionable manner.[99] A critical question raised by *Allied Structural Steel* is whether intense scrutiny will be extended beyond those cases in which a statute affecting property interests is challenged under the contract clause to those in which a challenge is made under other constitutional provisions.[100]

This increased obligation did not, however, *diminish* the employees' obligations; their duties remained the same. *See* 438 U.S. at 238-39. The employer could receive all that his employees promised, without any legal interference, if he would continue to allow his employees the opportunity to earn the pension credits he had offered them. *Id.* The only contractual right diminished was Allied's ability to terminate the pension plan without having to pay accumulated pension credits to those employees who had worked for over a decade. *Id.* It is difficult to conceive of this diminution of Allied's right as a lessening of the obligations owed to Allied by its employees.

96. *Compare* the majority's summary treatment of this distinction, 438 U.S. at 244-45 n.16, *with* the dissent's analysis of the same issue, *id.* at 251, 255-59 (Brennan, J., dissenting). For a discussion of the dissent's approach to this issue, *see* notes 60-61 and accompanying text *supra.*

97. The thrust of the majority's analysis seems to be that state laws cannot significantly *alter* (*i.e.*, increase *or* diminish) contractual obligations without having a sufficiently important need and purpose demonstrated on the record. *See* notes 52-55 and accompanying text *supra.*

98. It is submitted that an obligee has a vested property right in a contractual obligation owed to him, and that this vested right is lost when the obligation is impaired by the state. However, there is no vested property right that is necessarily denied a contracting party by the state's imposing duties upon him. *See, e.g.*, St. Louis, Iron Mountain & St. Paul Ry. v. Paul, 173 U.S. 404 (1899) (law declaring when wages of terminated workers had to be paid held not to violate *due process* clause).

99. *See* note 92 and accompanying text *supra.*

100. Consider, for instance, the potential impact on constitutional law that would result if the same level of scrutiny employed in *Allied Structural Steel* was applied in equal protection, due process, and "taking" challenges to state regulatory measures that adversely affect property. *See, e.g.*, Railway Express Agency v. New York, 336 U.S. 106 (1949) (equal protection clause does not preclude city from prohibiting all advertising on trucks by anyone other than the truck's owner); Williamson v. Lee Optical, 348 U.S. 483 (1955) (equal protection and due process do not prohibit state from limiting who can fit and duplicate eye glass lenses to licensed optometrists and ophthalmologists); other cases cited note 70 *supra.* Arguably, these state laws could all

Even if intense scrutiny is limited to contract clause cases, it is submitted that *Allied Structural Steel* bases the validity of any state law which might significantly upset contractual expectations on whether the judges examining the statute subjectively approve of the substantive merits of the legislature's objectives.[101] If the judiciary is permitted to decide whether or not society actually needs the additional legal protection which the state representatives have devised, it is submitted that courts will have the power to effectively veto an enormous range of state legislation.[102]

The theoretical hazards inherent in allowing the judiciary to decide issues of conflicting economic interests under broad constitutional dictates, it is submitted, are amply demonstrated by the *Allied Structural Steel* Court's imaginative interpretation of fact and precedent which led to the demise of the Pension Act.[103] The problems of this decision, however, go beyond the Court's subjective treatment of the facts and its failure to defer evaluations of the need for complicated social and economic programs to the democratic organs of government. It is suggested that the Court in the present case, by applying the contract clause to a law which merely increased contractual obligations, struck down an act it had no authority even to consider under that constitutional provision.[104]

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have been deemed unconstitutional had the Court applied the same intense scrutiny to them which it utilized in *Allied Structural Steel.*

While it is perhaps too early to determine how the Court will address this problem, it appears that the Court has not yet expanded its strict scrutiny of economic regulations beyond cases involving contract clause challenges. *See, e.g.*, Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978) (law prohibiting landowner's use of valuable airspace valid under fifth amendment), *noted in* 24 VILL. L. REV. 610 (1979). It should be noted, however, that three Justices in *Penn Central* strongly dissented from the majority's holding. *See* 438 U.S. at 138 (Rehnquist, J., dissenting).

101. *See* 438 U.S. at 261 (Brennan, J., dissenting) (the consequence of the Court's criteria is to vest judges with the broad discretion to strike down laws which do not appeal to them); notes 65 & 70-72 and accompanying text *supra.*

102. Consider, for instance, the impact that *Allied Structural Steel* could have on statutes requiring employers to provide their workers with greater medical care, higher minimum wages, or longer work breaks. Consider also, the effect of the Court's analysis on social legislation requiring equal treatment of the sexes by insurance companies or other institutions which rely on actuarial calculations. If such legislation can be said to upset the contractual expectations of these companies, the act could be held unconstitutional. Another example would be legislation requiring the inclusion of normal pregnancies within employer disability plans. Arguably, this also could be a violation of the contract clause. *Cf.* Geduldig v. Aiello, 417 U.S. 484 (1974) (equal protection does not require inclusion of normal pregnancies in California employee disability plan).

103. *See* notes 73-89 and accompanying text *supra.*

104. *See* notes 90-98 and accompanying text *supra.*