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Presidential Pensions and Impeachment: A Proposal for Reform

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PRESIDENTIAL PENSIONS AND IMPEACHMENT: A PROPOSAL FOR REFORM

The Former Presidents Act[1] grants annual monetary and clerical allowances and free office space[2] to "former Presidents."[3] Under the Act a

[1] 3 U.S.C. § 102 note (1970) [hereinafter cited as Former Presidents Act]. The predecessor of the Former Presidents Act, S. 1516, 84th Cong., 1st Sess. (1955), was passed unanimously by the United States Senate on May 5, 1955. However, no action on the bill was taken by the House of Representatives during the remainder of the Eighty-fourth Congress. The Act was passed in its present form in 1958. *See* note 2 *infra*. For legislative history of S. 1516, see S. REP. No. 205, 84th Cong., 1st Sess. (1955); 101 CONG. REC. 5731-32 (1955); 13 CONG. Q. W. REP. 487, 514 (1955).

The Presidential Transition Act of 1963, 3 U.S.C. § 102 note (1970), also allocates certain benefits to former Presidents, but only for an interim period of the six months following the expiration of his or her term of office as President. The Presidential Transition Act will not be discussed in this article because its essential purposes are distinct from those of the Former Presidents Act.

[2] In its original form, the Former Presidents Act granted each "former President" a monetary allowance of $25,000 per year for life. In addition, each former President was granted free office space, free mailing privileges, and $50,000 per year to maintain an office staff. The Act also authorized a $10,000 annual pension for widows of former Presidents. For the legislative history of the original version of the Former Presidents Act, see S. REP. No. 47, 85th Cong, 1st Sess. (1957); H.R. REP. No. 2200, 85th Cong., 2d Sess. (1958); H.R. REP. No. 2657, 85th Cong., 2d Sess., (1958); *Hearings on H.R. 4401 and S. 607 Before the House Comm. on the Post Office and Civil Service,* 85th Cong., 1st Sess. (1957); 103 CONG. REC. 1386, 1411, 1457-59 (1957); 104 CONG. REC. 14167, 15619-41, 17961-62, 18940-44 (1958); N.Y. Times, Feb. 1, 1957, at 16, col. 7; N.Y. Times, Feb. 5, 1957, at 1, col. 1; N.Y. Times, June 27, 1958, at 9, col. 1; N.Y. Times, July 18, 1958, at 19, col. 3; N.Y. Times, July 30, 1958, at 14, col. 1; N.Y. Times, July 31, 1958, at 1, col. 1; N.Y. Times, Aug. 16, 1958, at 8, col. 4; N.Y. Times, Aug. 22, 1958, at 12, col. 8; N.Y. Times, Aug. 26, 1958, at 19, col. 4.

The annual monetary allowance has been raised to $60,000; this amount being equivalent to the annual salary of the head of an executive department. Former Presidents Act § a. *See also* 2 U.S.C. § 358 (1970); 5 U.S.C. § 5312 (1970). Nevertheless, a former President who holds an elective or appointive position in the federal or District of Columbia governments for which he receives other than a nominal salary cannot receive this monetary allowance during the period he holds such a position. Former Presidents Act § a.

Each former President is entitled under the Act to an office staff and office space provided by the Administrator of General Services. Former Presidents Act §§ b, c. The aggregate amount of allowable staff salaries has been raised to $96,000 per year. Also, at present, no individual staff member's salary may exceed $42,500 per year; this amount is the highest annual salary provided by law for level II positions of the Executive Schedule under 5 U.S.C. § 5313 (1970), *as amended,* (Supp. 1973). Former Presidents Act § b. The office space allocated to a former President must be "suitable," "appropriately furnished and equipped," and located within the United States at such place the former President shall specify. Former Presidents Act § c.

In 1960, Congress repealed the "free mailing privileges" provision of the Former Presidents Act and recodified it in two separate statutes, now 39 U.S.C. § 3214 (Supp. 1973) and 39 U.S.C. § 3216(b) (Supp. 1973). These two statutes provide free

President is ineligible to receive any retirement benefits if he or she is removed from office by impeachment and conviction in the Congress of the United States.[4] However, a President facing imminent impeachment can retain the benefits by resigning before the impeachment process culminates in his removal from office.[5] Constitutional considerations indicate that the benefits conferred by the Act could not be revoked or reduced by special congressional legislation upon resignation; such action could be challenged as a bill of attainder[6] or an ex post facto law.[7] Such special legislation could also deprive a former President of his or her due process[8] and equal protection rights.[9] This article will focus on the various means available to deny or reduce these benefits in appropriate circumstances and will explore possible alternatives to the present system.[10]

I. THE ACT'S OBJECTIVES

The general provisions of the Former Presidents Act achieve valuable social and political goals. The statute seeks to enable former Presidents to

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mailing privileges for nonpolitical items for former Presidents and their widows and reimbursement, out of the general funds of the Treasury, to the United States Postal Service for the postal revenue lost because of this privilege.

The yearly monetary allowance to "widows" of former Presidents presently amounts to $20,000 per year. Former Presidents Act § e. In light of the recent decision in Weinberger v. Wiesenfeld, 420 U.S. 636 (1975), a widower of a former President would also be entitled to these benefits. *Wiesenfeld* held that a social security provision awarding survivors benefits to the widow and children of a deceased wage earner while denying them to the widower of a female wage earner violated the "implied" equal protection guarantee of the fifth amendment. *See* Note, *Presumption of Dependence in Worker's Compensation Death Benefits as a Denial of Equal Protection*, 9 U. MICH. J.L. REFORM 138 (1975). *But see* Kahn v. Shevin, 416 U.S. 351 (1974) (denying a property tax exemption to widowers while granting it to widows does not violate the fourteenth amendment's equal protection clause).

Certain restrictions are imposed upon the eligibilty of widows (and widowers) for this allowance. First, in order to claim it, the widow must waive the right to any other federal annuity or pension to which she is entitled. Second, the allowance, which is to be paid to the widow of a former President beginning on the day after that former President dies, is to terminate on the last day of the month before the widow dies, or remarries before reaching 60 years of age. Finally, the widow may not receive this pension while holding an elective or appointive position in the federal or District of Columbia government "to which is attached a rate of pay other than a nominal rate." Former Presidents Act § e.

[3] The Former Presidents Act § f, defines a "former President" as a person

> (1) who shall have held the office of President of the United States of America;
>
> (2) whose service in such office shall have terminated other than by removal pursuant to section 4 of article II of the Constitution of the United States of America; and
>
> (3) who does not then currently hold such office.

[4] *See* note 3 *supra*. A President of the United States may be removed from office upon impeachment and conviction for "Treason, Bribery, or other high Crimes and Misdemeanors." U. S. CONST. art. II, § 4.

[5] *See* notes 16-18 and accompanying text *infra*.

[6] *See* notes 20-33 and accompanying text *infra*.

[7] *See* notes 34-42 and accompanying text *infra*.

[8] *See* notes 43-85 and accompanying text *infra*.

[9] *See* notes 86-134 and accompanying text *infra*.

[10] *See* notes 135-75 and accompanying text *infra*.

continue their accustomed life style without financial hardship and thereby maintain the dignity of the Presidency.[11] Through the compensation and facilities granted them, former Presidents are encouraged to meet the public demands upon their time and financial resources.[12] The Former Presidents Act also endeavors to make former Presidents available for further public service.[13]

II. TERMINATION AND REDUCTION OF RETIREMENT BENEFITS

There are some circumstances under which the grant of retirement benefits to a former President may violate the underlying policy of the Former Presidents Act.[14] For example, the objectives outlined above would not be fulfilled by granting retirement benefits to a former President who had committed a serious impeachable offense while in office.[15] With this situation in mind, the remainder of this section will examine and discuss various methods whereby the retirement benefits granted to a former President may be terminated or reduced.

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[11] S. REP. No. 47, 85th Cong., 1st Sess. 2 (1957). For further discussion of the general purposes of the Former Presidents Act of 1958, see H.R. REP. No. 2200, 85th Cong., 2d Sess. (1958); H.R. REP. No. 2657, 85th Cong., 2d Sess. (1958); 103 CONG. REC. 1458, (1957) (remarks of Senator Johnson); 104 CONG. REC. 15622-23 (1958) (remarks of Representative Morrison); 104 CONG. REC. 15624-25 (1958) (remarks of Representative McCormack). On the past financial difficulties of former Presidents, see *Hearings on H.R. 4401 and S. 607 Before the House Comm. on the Post Office and Civil Service,* 85th Cong., 1st Sess., 5-6 (1957); 77 U.S. NEWS & WORLD REP., Sept. 16, 1974, at 26; Drury, *Ex-President's Lot Is Not Easy,* N.Y. Times, July 27, 1958, § 4, at 6, col. 1; Walz, *Why Pensions for Ex-Presidents?,* N.Y. Times, Feb. 10, 1957, § 4, at 6, col. 6.

[12] S. REP. No. 47, 85th Cong., 1st Sess. 2 (1957).

[13] *Id.*

[14] For example, note the outrage expressed by certain public sectors at the grant of these pension benefits to former President Richard M. Nixon following his resignation in August, 1974. *See generally* 77 U.S. NEWS & WORLD REP., Sept. 16, 1974, at 26; N.Y. Times, Dec. 28, 1974, at 6, col. 4; N.Y. Times, Oct. 3, 1974, at 1, col. 4; N.Y. Times, Sept. 12, 1974, at 28, col. 1; N.Y. Times, Aug. 30, 1974, at 5, col. 6.

[15] "Treason" and "Bribery" are the only specific impeachable offenses in the Constitution; other grounds for impeachment are defined only as "other high Crimes and Misdemeanors." U.S. CONST. art. II, § 4. The precise scope of this category of impeachable offenses has never been authoritatively defined. *See, e.g.,* C. BLACK, IMPEACHMENT: A HANDBOOK 25-52 (1974); R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 53-102 (1973); STAFF OF HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., REPORT ON CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT (Comm. Print 1974). One of the broadest interpretations of what constitutes an impeachable offense was advanced by then Congressman Gerald Ford in 1970 when he declared that

> an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. . . . [T]here are few mixed principles among the handful of precedents.

116 CONG. REC. 11913 (1970).

Notwithstanding this uncertainty as to the proper scope of impeachable offenses, there is little doubt that a President who is convicted in a court of law of certain

A. Under the Former Presidents Act

The current statute provides that an ex-President of the United States cannot received retirement benefits if he or she is removed from office by the impeachment process.[16] The text of the statute indicates, however, that a President who "leaves" office[17] before conviction in the Senate remains eligible for retirement benefits since his service in office was terminated "other than by removal pursuant to section 4 of Article II of the Constitution."[18] This result would violate the spirit and purpose of the Former Presidents Act in that the grant of such benefits would not dignify the Presidential office, a former President who escaped impeachment and conviction by resigning would not have the "public demands" upon his time and financial resources contemplated by Congress when it enacted the Former Presidents Act, and it is unlikely that such a former President would be called upon for further public service.[19]

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grave offenses such as perjury or obstruction of justice should not receive these pension benefits in the light of the professed objectives of the Act, which are to maintain the dignity of the office of the Presidency, to enable former Presidents to meet public demands upon their time and resources, and to make them available for further public service.

[16] Former Presidents Act § f(2).

[17] In addition to being removed from office by impeachment and conviction, a President may "leave" office by resigning pursuant to 3 U.S.C. § (1970), dying in office, permitting the official term to expire, or by being succeeded by the Vice-President pursuant to the twenty-fifth amendment to the Constitution.

[18] Former Presidents Act § f(2). A President who faces imminent removal from office by the impeachment process could leave office before being impeached in the House of Representatives. Alternatively, he could be impeached while still in office but leave office before being convicted in the Senate. At least one commentator has asserted that there might be an important difference between the alternatives in terms of the scope of Congress' impeachment power:

> The power of impeachment is granted for the public protection in order to not only remove, but perpetually disqualify for office a person who has shown himself dangerous to the commonwealth by his official acts. The object of this salutary constitutional provision would be defeated, could a person by his resignation from office obtain immunity from impeachment. . . .
>
> If it be conceded that in any case a person can be convicted by the Senate upon an impeachment when out of office, the rule must apply to all. . . . Consequently, if the view maintained . . . is correct, a public officer may resign his office during an impeachment, after his conviction, at any time before the sentence has been actually pronounced. That would be to render the whole proceedings nugatory and absurd. It cannot be that the Constitution warrants such an absurdity.
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> The last part of this argument seems not beyond dispute. There is a wide distinction between an exit from office pending an impeachment and one before. After the jurisdiction of the court has one attached, by the vote of the House of Representatives that an officer be impeached, it may well be claimed that no subsequent act by him or by the President can divest it.

1 R. FOSTER, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 575-76 (1895) (footnote omitted). Thus, if Foster's distinction between these alternatives is correct, a President who left office after his impeachment but before his subsequent conviction would be disqualified from receiving these retirement benefits under the Former Presidents Act; the Senate conviction effectively removing him from office notwithstanding his prior departure.

[19] Of course, it is possible that a former President who resigned in the face of

B. Pursuant to Special Congressional Legislation

Although a President facing impeachment could preserve his pension benefits under the Act by resigning prior to conviction in the Senate, Congress could terminate such rights by enacting special legislation to this effect. Such legislation, however, would be subject to constitutional challenges as being: (1) a bill of attainder; (2) an ex post facto law; and (3) a denial of the former President's due process and equal protection rights. Each of these challenges will be discussed below in an effort to determine what type of legislation in this area would meet each of these constitutional challenges. Specific proposals for legislation that will enable Congress to limit or deny Presidential pensions in particular cases will be made in part III.

1. Bill of Attainder—The federal government is prohibited by the Constitution from enacting any "bill of attainder."[20] In *United States v. O'Brien*,[21] the Supreme Court defined a "bill of attainder" as

> a legislative Act which inflicts punishment on named individuals or members of an easily ascertainable group without a judicial trial. In determining whether a particular statute is a bill of attainder, the analysis necessarily requires an inquiry into whether the three definitional elements—specificity in identification, punishment, and lack of a judicial trial—are contained in the statute. The inquiry into whether the challenged statute contains the necessary element of punishment has on occasion led the court to examine the legislative motive in enacting the statute.[22]

Under this definition, congressional legislation revoking or reducing retirement benefits due a former President under the Former Presidents Act would be a constitutionally prohibited bill of attainder since the legislation would specifically identify its subject. Whether the bill referred to the particular former President by name or to a class of former Presidents sharing a common characteristic, for example, all former Presidents who were impeached and resigned before conviction, the bill's limited applicability and predictable practical effect would indicate a clear intent to affect only a certain individual or individuals. In *United States v. Lovett*,[23] the Supreme Court struck down a statute denying three named employees of federal agencies compensation for services rendered in their

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imminent impeachment would be called upon for further public service and would have to meet pressing public demands. For example, he may have been pardoned and thereafter led an exemplary life. Also, it might not dignify the Presidential office to have a former President, found guilty of bribery, to live in abject poverty. However, these occurrences are improbable at best.

[20] U.S. CONST. art. I, § 9. For the constitutional history of the bill of attainder in England and the United States, see Z. CHAFFEE, THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787, 90-161 (1956); THE FEDERALIST NO. 44, at 301-02 (J. COOKE ed. 1961) (J. Madison); Note, *The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause*, 72 YALE L.J. 330 (1962).

[21] 391 U.S. 367 (1968).

[22] *Id.* at 383-84 n.30.

[23] 328 U.S. 303 (1946).

official capacities. *Lovett* can be contrasted with *United States v. Brown*,[24] where the Court invalidated a federal law making it a crime for an individual who belonged to the Communist Party to serve on a labor organization's executive board. Although the statute at issue in *Brown* made no reference by name to specific indivduals, the Court refused to distinguish *Lovett*, relying upon English history which is replete with "acts of attainder [inflicting] their deprivations upon relatively large groups of people, sometimes by description rather than name."[25] The Court followed two Civil War cases, *Cummings v. Missouri*[26] and *Ex parte Garland*[27] which struck down state and federal laws requiring that loyalty oaths be taken as a condition to the continued practice of certain professions. The "identifiable class" subject to these bills of attainder were those unnamed individuals who could not subscribe to the oaths.

Legislation reducing or revoking a former President's benefits would be "punishment" if the legislative record displayed a desire to penalize the former President because of his conduct in office. In *Lovett*, the Court noted that the challenged legislation was enacted with punitive intent:

> The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty, makes it no less galling or effective than if it had been done by an Act which distinguished the conduct as criminal.[28]

Thus, if legislation terminating or reducing a particular former President's retirement benefits were enacted after he had resigned to avoid certain impeachment and conviction in Congress, such legislation would be characterized as "punishment" in light of *Lovett*, especially if the legislative record indicated a congressional desire to penalize him for his conduct in office. However, if the legislation were drafted to regulate the behavior of former Presidents and did not focus on a particular individual, the legislation would be immune from a bill of attainder challenge.[29] For example, if the statute declared that all former Presidents convicted of a felony under state or federal law would be ineligible for further retirement benefits, the legislation would probably be upheld against a bill of attainder

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[24] 381 U.S. 437 (1965).

[25] *Id.* at 461.

[26] 71 U.S. (4 Wall.) 277 (1867).

[27] 71 U.S. (4 Wall.) 333 (1867).

[28] 328 U.S. at 316.

[29] The test of what constitutes proscribed "punishment" and permissible "regulation" for purposes of the bill of attainder clause was expressed by the Supreme Court in Flemming v. Nestor, 363 U.S. 603 (1960), discussed in part II *B* 4(b) *infra:*

> In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected. The contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified.

363 U.S. at 613-14.

challenge as a proper exercise of the federal spending power.[30] In *Flemming v. Nestor*,[31] the Supreme Court rejected a bill of attainder challenge to federal legislation terminating old-age social security benefits payable to an alien who was deported after the date of enactment. After examining a "meagre" legislative history, the Court found that the legislation was neither "aimed at particular individuals" nor "concerned alone with the grounds of deportation" and thus was a proper exercise of the spending power.[32]

Finally, as in *Lovett*, the congressional enactment of such legislation terminating or reducing a particular President's retirement benefits and otherwise qualifying as a bill of attainder, would not involve a judicial trial,[33] and would, therefore, bear all three marks of a classic bill of attainder.

2. Ex Post Facto Law—The Constitution also forbids the federal government from enacting any "ex post facto law."[34] A noted commentator, Professor John Norton Pomeroy, defines such laws as

> [laws which] declare an act criminal, and provide for its punishment, which, at the time of its commission, was not a crime; or such as change the punishment of a known crime in any other manner than by mitigating it, and are to operate upon past as well as future offenses. . . .[35]

Traditionally, only laws imposing criminal sanctions after the commission of acts which give rise to such sanctions have been characterized as ex post facto laws.[36] However, at least one federal court has given the ex post facto law proscription a broader reading so as to encompass civil legislation which adversely affects individuals. In *Hiss v. Hampton*,[37] the Federal District Court of the District of Columbia invalidated two statutes authorizing the federal government to deny civil service pensions to former governmental employees who had falsely testified about national security matters or who had concealed the fact of their membership in the Community Party. Both plaintiffs were denied pensions on account of events occurring before the passage of the statutes. Indeed, the statutes were enacted in a conscious effort to rescind the pension of one of the plaintiffs, Alger Hiss, who had been convicted of perjury and was thought to be a Communist spy.[38] The court examined the legislative history of

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[30] U.S. CONST. art. I, § 8.

[31] 363 U.S. 603 (1960).

[32] *Id.* at 619.

[33] 328 U.S. at 316.

[34] U.S. CONST. art. I, § 9.

[35] J. POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES 420 (10th ed. 1888). *See also* Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798); Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 138 (1810).

[36] This restrictive interpretation of ex post facto laws, confining them to criminal legislation, has been challenged as being contrary to the intent of the framers and ratifiers of the Federal Constitution. *See generally* DeWitt, *Are Our Legal Tender Laws Ex Post Facto?*, 15 POL. SCI. Q. 96 (1900); McAllister, *Ex Post Facto Laws in the Supreme Court of the United States*, 15 CALIF. L. REV. 269 (1927).

[37] 338 F. Supp. 1141 (D.D.C. 1972).

[38] *See generally* F. COOK, THE UNFINISHED STORY OF ALGER HISS (1958).

the statutes and found them to be "punitive and not regulatory,"[39] reasoning that "[r]etroactive punishment of former employees for their past misdoings has no reasonable bearing upon regulation of the conduct of those presently employed."[40] The court then stated that an ex post facto law need not be criminal but need only display a punitive intent.

In light of *Hiss*, congressional legislation terminating or reducing the retirement benefits of a former President for prior misconduct would constitute an invalid ex post facto law; it could not be excused on the basis that it regulated the behavior of Presidents of the United States. However, such legislation would escape the prohibition against ex post facto laws if the means chosen by Congress to terminate or reduce the benefits had some rational nexus to the congressional objective of regulating the conduct of former Presidents. Thus, the Supreme Court, in *DeVeau v. Braisted*,[41] rejected an ex post facto challenge to a New York statute disqualifying felons from holding office in any waterfront labor organization. The plurality opinion in *DeVeau* declared that the statute was not a proscribed ex post facto law, since the "restriction of the individual [came] about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession."[42] Thus, if it could be shown that Congress' termination or reduction of pension benefits sought to regulate the current behavior of former Presidents, *Hiss* could be distinguished on the basis that the behavior of former Presidents during retirement must be regulated because of the President's prominent and powerful position in our constitutional system and the example former Presidents must set for the people of this nation.

3. Substantive Due Process—Under the fifth amendment, the federal government is prohibited from depriving any individual of his "life," "liberty," or "property" without "due process of law." Thus, legislation terminating or reducing a former President's retirement benefits might deprive the former President of his "substantive"[43] due process rights depending upon the nature of the interest terminated or reduced. The interest

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[39] 338 F. Supp. at 1148.

[40] *Id.*

[41] 363 U.S. 144 (1960).

[42] *Id.* at 160.

[43] The distinction between "substantive" and "procedural" due process has been defined as follows:

> Taken literally, the term *due process* relates to the mode of proceeding that must be pursued by governmental agencies. Due process of law, in this sense, denotes *proper procedure*, and it was the meaning primarily intended by the men who drafted the Bill of Rights.
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> From the beginning, however, a broader conception has been urged. Under it, the Due Process Clause imposes requirements of *substance* as well as *procedure*. . . .
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> . . . Substantive due process has been erected by the Supreme Court as the essential bulwark against arbitrary government action. Arbitrary action in the due process sense, means action that is willful and unreasonable—depending on the will alone and not done according to reason or judgment.

B. SCHWARTZ, CONSTITUTIONAL LAW 165 (1972).

of a former President in the continued receipt of his entire pension might be characterized alternatively as (a) a preferred "personal privacy" interest, (b) a "vested" property or contractual right, (c) an interest in having his eligibility for the pension determined in an individual hearing, or (d) an unpreferred "economic" interest. The characterization of this interest for the purposes of substantive due process analysis will determine the level of judicial scrutiny applicable to the contemplated congressional legislation.

(a) Preferred "Personal Privacy" Interest—If the interest of the former President in the continued receipt of his full retirement benefits were deemed a "preferred" constitutional interest, *i.e.*, a fundamental right or liberty, a strict standard of due process would apply to protect his interest against which only a "compelling state interest" could justify the termination or reduction of his retirement benefits.[44] One source of such a preferred interest is a zone of personal privacy.[45] Nevertheless, a fundamental right to receive Presidential retirement benefits would probably not be recognized; recent Supreme Court decisions have recognized only those interests which intimately relate to an individual's life style as fundamental

[44] *See* Roe v. Wade, 410 U.S. 113, 155 (1973). *See also* Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973). Although *Roe* applied the "compelling interest" test to state legislation under the due process clause of the fourteenth amendment, the same test is applicable under the fifth amendment. *Compare* Adair v. United States, 208 U.S. 161 (1908) *with* Coppage v. Kansas, 236 U.S. 1 (1915) where the Court invalidated federal and state attempts to outlaw "yellow dog" labor contracts on the grounds of substantive due process under the fifth and fourteenth amendments.

Assuming arguendo that such a fundamental right were recognized and Presidential pensions were scrutinized under the strict due process standard, legislation affecting a former President's retirement benefits could be upheld only if a "compelling state interest" outweighed the former President's right to such benefits. If a President resigned after committing a serious impeachable offense but before being impeached, legislation terminating or reducing his pension would satisfy the "compelling state interest" test if the federal government could show a compelling interest in regulating the conduct of future Presidents in office by deterring them from committing impeachable offenses or in regulating the conduct of former Presidents once they have left office. A "compelling state interest" was found in *Roe* to the extent that the state protected health, medical standards and prenatal life by regulating abortions during the second and third trimesters of pregnancy. 410 U.S. at 162-65.

In order to pass strict due process scrutiny, legislation must be narrowly drawn to further only the legitimate state interests at stake. 410 U.S. at 155. For example, Congress could not restrict a former President's first amendment activities, such as speechmaking and writing, in addition to terminating or reducing his or her retirement benefits. To illustrate this "overbreadth" aspect of due process analysis, the Court, in Aptheker v. Secretary of State, 378 U.S. 500 (1964), invalidated a federal provision denying passports to Communist Party members because it "too broadly and indiscriminately restricts the right to travel and thereby abridges the liberty guaranteed by the Fifth Amendment." 378 U.S. at 505.

[45] Roe v. Wade, 410 U.S. at 152. The Court there states that

> [t]he Constitution does not explicitly mention any right of privacy. In a line of decisions, however . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment . . . in the Fourth and Fifth Amendments . . . in the penumbras of the Bill of Rights . . . in the Ninth

rights entitled to stringent due process protection. Thus, in *Roe v. Wade*,[46] the Court recognized that a pregnant woman has a fundamental right to have an abortion; in *Griswold v. Connecticut*[47] the Court declared that married couples have a fundamental right to use contraceptives. Legislation terminating or reducing a former President's retirement benefits would not affect delicate and intimate aspects of a former President's life style of the nature involved in *Roe* and *Griswold* and would not, therefore, be scrutinized under the strict due process standard applied where a fundamental interest is at issue.

(b) Vested Property Rights and Entitlements—Prior to 1960 the Supreme Court distinguished between vested property or contractual rights and gratuities.[48] Gratuities were defined as pensions, compensation allowances, and privileges which, because they were conferred by Congress at its discretion, were subject to revision or withdrawal by Congress without regard to due process considerations.[49] The mere fixing of a pension or compensation allowance is insufficient to create a vested right in an employee to receive the benefits.[50] In *Pennie v. Reis*,[51] the Court held that until a pension or retirement payment is due, the employee's right thereto is "a mere expectancy, created by the law and liable to be revoked or destroyed by the same authority."[52]

Vested property or contractual rights, which the Court held could be modified only in compliance with the fifth amendment due process provisions,[53] arose when the party claiming the benefits of the rights had acted to his or her detriment[54] or when the benefits were actually paid by the government making the original gratuitous promise enforceable.[55] In *Johnson v. United States*,[56] the court found the pension of a retired federal judge vested since the judge's retirement was induced by the pension benefits. The court stated:

> [The judge] has a right to demand it not as a pension or a gratuity, but as the consideration offered to induce him to give up his right to hold office as long as lives.[57]

Amendment . . . or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty" . . . are included in this guarantee of personal privacy.

46 410 U.S. 113 (1973).

47 381 U.S. 479 (1965).

48 *See, e.g.*, Lynch v. United States, 292 U.S. 571, 577 (1934).

49 *Id.* at 577.

50 *Id.*

51 132 U.S. 464 (1889).

52 *Id.* at 471.

53 *See* Lynch v. United States, 292 U.S. 571, 579. The Court also indicated that the fifth amendment's command that private property not be taken by the federal government without making just compensation to the owner operates to protect a vested property or contractual right. *Id.* at 579.

54 *See, e.g.*, Johnson v. United States, 79 F. Supp. 208, 210 (Ct. Cl. 1948).

55 *See* Rafferty v. United States, 210 F.2d 934, 936 (3d Cir. 1954); Nordstrom v. United States, 342 F.2d 55, 60 (Ct. Cl. 1965).

56 79 F. Supp. 208 (Ct. Cl. 1948).

57 *Id.* at 210.

Although the judge's act in *Johnson* was deemed sufficient consideration to vest his rights to the pension, the fact that a person was induced, at least in part, to perform a certain job in reliance upon pension benefits was never deemed sufficient to give rise to the vesting of those benefits.[58]

The Former Presidents Act, by granting benefits to a President who resigns before the impeachment process is consummated, induces Presidents facing imminent impeachment and conviction to resign and thereby to save the nation from the agony of a quasi-criminal trial of its Chief Executive.[59] Therefore, a former President whose resignation was induced by the promise of a pension could claim a vested right to that pension, and any legislation terminating the pension would come under due process scrutiny.[60]

Since 1960, however, the Court has apparently rejected this distinction between vested rights and gratuities for purposes of substantive due process analysis[61] and has given all property interests fifth amendment protection.[62] Property interests, or "entitlements,"[63] are examined under the "minimal scrutiny" test of equal protection analysis. Thus, regarding federal legislation interfering with individual property interests in noncontractual governmental benefits,

> the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.[64]

The Former Presidents Act is analyzed under the minimal scrutiny standard of equal protection in part II *B* 4 below.

(c) Interest in an Individualized Determination—Legislation providing for the termination or reduction of Presidential retirement benefits upon the occurrence of certain conditions would interfere with a former President's interest in having an individualized determination of his eligibility for these benefits and could thereby trigger the "irrebuttable presumption" doctrine of substantive due process. This doctrine was summarized in *Vlandis v. Kline*,[65] where the Supreme Court invalidated certain Connecticut procedures for determining resident and nonresident tuition rates and stated that

> it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence when that presumption is not necessarily or universally true in fact, and when the State has

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[58] *See, e.g.*, Stouper v. Jones, 284 F.2d 240, 242-43 (D.C. Cir. 1960).

[59] *See* note 175 and accompanying text *infra*.

[60] *See, e.g.*, Lynch v. United States, 292 U.S. 571, 579 (1934).

[61] *See* Flemming v. Nestor, 363 U.S. 603, 610 (1960).

[62] *Id.* at 611. *See also* United States v. Macioci, 345 F. Supp. 325, 327-28 (D.R.I. 1972).

[63] The "entitlement" concept as it relates to property interests protected by the due process clauses of both the fifth and fourteenth amendments is derived from Board of Regents of State Colleges v. Roth, 408 U.S. 564, 576-78 (1972).

[64] Flemming v. Nestor, 363 U.S. 603, 611 (1960).

[65] 412 U.S. 441 (1973).

> reasonable alternative means of making the crucial determination.[66]

For example, if legislation terminating the retirement benefits of former Presidents who were found guilty of a felony as defined by federal law were enacted, a former President who had been convicted of a felony could claim that, notwithstanding his felony conviction, he remains within the class of former Presidents Congress intended to reward by passing the Former Presidents Act; due process requires that he be entitled to an individualized determination as to his right to receive these benefits.[67] Such legislation would create an irrebuttable presumption that all former Presidents found guilty of a felony under federal law are undeserving of these benefits. This presumption is not necessarily or universally true in fact since a former President could live an exemplary life yet technically be a felon.[68] The federal government could provide reasonable alternative means for determining whether or not a former President is worthy of retirement benefits; for example, a special administrative tribunal could be created to review all cases.

Even though the irrebuttable presumption doctrine might analytically apply to this situation, the substantive due process claim to an individual determination is probably untenable here. In *Weinberger v. Salfi*,[69] the Court refused to apply the irrebuttable presumption doctrine and upheld Social Security Act provisions prohibiting a wage earner's spouse from receiving insurance benefits unless the spouse's relationship to the wage earner had existed for at least nine months prior to the wage earner's death. The district court in *Salfi* applied the irrebuttable presumption doctrine and invalidated the legislation; it found that the Social Security Act provisions employed an irrebuttable presumption that marriages which did not precede a wage earner's death by at least nine months were entered into for the fraudulent purpose of securing social security benefits.[70] The Supreme Court reversed, holding that the irrebuttable presumption doctrine of substantive due process is inapplicable to this "noncontractual claim to receive funds from the public treasury."[71] The Court added that the district court's

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[66] *Id.* at 452.

[67] Nevertheless, the irrebuttable presumption doctrine would not apply to legislation passed with respect to a specific former President, since in that situation Congress would have individually determined his claim to these Presidential retirement benefits. However, such legislation would be invalid either as a bill of attainder or ex post facto law. *See* parts II *B* 1 and 2 *supra*.

[68] For example, a former President could be a felon if he were an outside director of a corporation which violated the antitrust prohibitions of the Sherman Act. Since his crime could conceivably involve no "moral turpitude," the presumption that he would be unworthy of these retirement benefits would not be necessarily or universally true. *See* 15 U.S.C.S. §§ 1, 2 (Supp. 1975).

[69] 95 S. Ct. 2457 (1975).

[70] Salfi v. Weinberger, 373 F. Supp. 961, 965 (N.D. Cal. 1974), *rev'd*, 95 S. Ct. 2457 (1975).

[71] 95 S. Ct. at 2470. Although the language the Court uses here might recall the old distinction between "vested rights" and "gratuities," it should be noted that the Supreme Court has apparently abandoned this substantive due process test and afforded constitutional protection to all property interests. *See, e.g.*, Flemming v. Nestor, 363 U.S. 603, 610 (1960) and part II *B* 3(b) *supra*.

application of this doctrine to the eligibility requirement in issue

> would turn the doctrine of [*Vlandis v. Kline*] into a virtual engine of destruction for countless legislative judgments which have heretofore been thought consistent with the Fifth and Fourteenth Amendments to the Constitution[72]

and that the proper standard of review of social security legislation is the minimal scrutiny equal protection test,[73] discussed below in part II *B* 4.

Thus, on the basis of *Salfi*, the "irrebuttable presumption" doctrine would not be applied to legislation terminating or reducing Presidential retirement benefits upon the occurrence of certain conditions. Since a former President's interest in his retirement benefits resembles a claim to social security benefits, his interest can be classified as a "noncontractual claim to receive funds from the public treasury,"[74] to which only the safeguard of equal protection applies.[75]

(d) Unpreferred "Economic" Interest—Legislation terminating or reducing Presidential retirement benefits would interfere with a former President's receipt of his entire pension, thereby triggering the "rational relationship" test of substantive due process. This test was articulated by the Court in dicta in *Nebbia v. New York*,[76] where a state milk price control scheme was upheld against a substantive due process challenge under the fourteenth amendment:

> The Fifth amendment, in the field of federal activity . . . [does] not prohibit governmental regulation for the public welfare. [It] merely condition[s] the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process . . . demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.[77]

This standard of review under the fifth amendment's due process clause is extremely lax, granting Congress extensive freedom to legislate in the economic arena so long as such legislation does not infringe any fundamental rights or liberties.[78] Indeed, the rational relationship test presumes

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[72] 95 S. Ct. at 2470. This comment reflects criticism of the "irrebuttable presumption" doctrine that there is no principled basis upon which to limit its application. *See, e.g.*, Comment, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 HARV. L. REV. 1534 (1974); Note, *The Conclusive Presumption Doctrine: Equal Process or Due Protection*, 72 MICH. L. REV. 800 (1974). For a recent defense of the doctrine see Tribe, *From Environmental Foundations to Constitutional Structures: Learning from Nature's Future*, 84 YALE L.J. 545 (1975).

[73] 95 S. Ct. at 2470.

[74] *Id.*

[75] *But see* United States Dep't of Agriculture v. Murry, 413 U.S. 508 (1973), where the Court relied upon the irrebuttable presumption doctrine to invalidate federal legislation restricting food stamp allocations to individuals not classified as "dependent children" for federal income tax purposes. The *Salfi* Court incorrectly cites this decision as an equal protection case. 95 S. Ct. at 2470.

[76] 291 U.S. 502 (1934).

[77] *Id.* at 525.

[78] As early as 1938 the Supreme Court recognized that federal and state legislation infringing on fundamental rights and liberties would be subject to stricter judicial scrutiny. *See* United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938).

that the legislation is consonant with the demands of the due process clause:

> Even in the absence of [legislative histories] the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators.[79]

Whether federal interference with a former President's economic interest in the continued receipt of his pension would violate his substantive due process rights depends on whether the legislation depriving the former President of the benefits bears a rational relation to the objective sought to be achieved. If the objective of the legislation was the regulation of the behavior of Presidents and former Presidents, the fact that most people's behavior is affected by the prospect of a monetary award shows a rational relation of the legislation to the objective of the legislature. Also, no Supreme Court case since 1936[80] has invalidated federal or state economic regulations under the rational relationship test; even the most specious means have been found to possess a "real and substantial relation" to the desired objective.[81] For example, in *Williamson v. Lee Optical Co.*,[82] the Court sustained an Oklahoma statute which prohibited anyone except a licensed optometrist or ophthalmologist from fitting lenses. The Court reasoned that the legislation was consistent with substantive due process since a legislature in its discretion might conclude that a professional fitting is needed with sufficient frequency to warrant such a fitting in every case. The Court added that the legislation

> need not be in every respect consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.[83]

Legislation terminating or reducing Presidential retirement benefits appears to bear sufficient relationship to the congressional purpose to survive a due process challenge. However, it is unlikely that a pure due process argument would be advanced. Since 1960[84] the Supreme Court has also reviewed challenges to federal "economic" legislation under the "implied" equal protection clause of the fifth amendment.[85] This aspect of judicial

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[79] *Id.* at 152.

[80] Morehead v. New York *ex rel.* Tipaldo, 298 U.S. 587 (1936).

[81] *See generally* McCloskey, *Economic Due Process and the Supreme Court: An Exhumation and Reburial,* 1962 SUP. CT. REV. 34 (1962).

[82] 348 U.S. 483 (1955).

[83] *Id.* at 487-88.

[84] Flemming v. Nestor, 363 U.S. 603, 610-11 (1960).

[85] *See generally* Tussman & TenBroek, *The Equal Protection of the Laws,* 37 CALIF. L. REV. 341 (1949). Although the Constitution contains no equal protection clause that explicitly applies to the federal government, the Supreme Court applies equal protection analysis to claims under the fifth amendment's due process clause. *See* Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975).

review under the fifth amendment will be discussed below in part II *B* 4.

4. Equal Protection—Legislation terminating or reducing Presidential retirement benefits would be subject to equal protection challenges as being "underinclusive" or "overinclusive" depending upon the background and nature of the legislation.[86] For example, if the legislation revoked only a specific former President's benefits because he had been found guilty of a felony under federal law, the legislation would be "underinclusive" since it would not affect other former Presidents found guilty of felonies. On the other hand, if the legislation revoked these benefits with respect to all former Presidents found guilty of a felony under federal law, it would be "overinclusive" since there might be former Presidents who, though technically felons, actually deserved these benefits.[87] The degree to which such "malinclusiveness" will be tolerated varies with the level of judicial scrutiny applied to the legislative classification. Generally, there are three recognized levels of judicial scrutiny under equal protection analysis, strict, minimal, and intermediate, each of which will be discussed below.

(a) Strict Scrutiny—Under the two-tier strict and minimal scrutiny equal protection framework developed by the Warren Court[88] federal regulations are strictly scrutinized when "fundamental interests," such as the rights to vote,[89] to procreate,[90] to travel,[91] and to have access to the judicial process,[92] are affected and when "suspect classifications," such as race,[93] alienage,[94] and possible illegitimacy[95] and gender,[96] are created by governmental classifications. Under this rigorous standard of review, the government must demonstrate that the challenged classification is justified by a "*compelling* state interest."[97] Nevertheless, the relevant judicial precedents in this area indicate that legislation terminating or reducing Presidential retirement benefits would never trigger strict scrutiny, such legislation would not directly infringe on a "fundamental interest" of a former President nor would it create a "suspect classification" as those concepts have been defined.[98]

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[86] *See* note 85 *supra*.

[87] For an example of a situation in which a former President committed a felony but would still deserve the Presidential retirement benefits, see note 68 *supra*.

[88] For discussion of the two-tier equal protection analysis, see *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

[89] *See, e.g.*, Storer v. Brown, 415 U.S. 724 (1974); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

[90] *See, e.g.*, Skinner v. Oklahoma, 316 U.S. 535 (1942).

[91] *See, e.g.*, Memorial Hosp. v. Maricopa County, 415 U.S. 250 (1974); Shapiro v. Thompson, 394 U.S. 618 (1969).

[92] *See, e.g.*, Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[93] *See, e.g.*, Loving v. Virginia, 388 U.S. 1 (1967); Korematsu v. United States, 323 U.S. 214 (1944).

[94] *See, e.g., In re* Griffiths, 413 U.S. 717 (1973); Sugarman v. Dougall, 413 U.S. 634 (1973).

[95] *See, e.g.*, Glona v. American Guarantee & Liab. Ins. Co., 391 U.S. 73 (1968); Levy v. Louisiana, 391 U.S. 68 (1968).

[96] *See* Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality opinion).

[97] *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

[98] *See* notes 88-96 and accompanying text *supra*.

(b) Minimal Scrutiny—Legislation terminating or reducing Presidential retirement benefits upon the occurrence of certain conditions but with reference to a specific former President would satisfy the "minimal scrutiny" standard of equal protection if such legislation were rationally related to a legitimate governmental goal. However, if legislation were enacted to terminate or reduce the pension of a specific former President, such legislation would be invalid under the "closed class" doctrine of equal protection analysis. The Supreme Court has traditionally applied an extremely deferential standard of review, otherwise known as "minimal scrutiny," to equal protection challenges to federal regulations governing disbursements of governmental benefits.[99] This standard was summarized in *Richardson v. Belcher*,[100] in which the Court upheld federal social security legislation reducing insurance benefits to reflect state worker's compensation payments against an equal protection challenge and stated:

> A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is "rationally based and free from invidious discrimination." . . . While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment's Equal Protection Clause, a classification that meets the test articulated [above] is perforce consistent with the due process requirement of the Fifth Amendment. . . .
>
> If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.[101]

In *Flemming v. Nestor*,[102] the Court applied the "minimal scrutiny" test of equal protection to federal legislation terminating old-age social security benefits payable to aliens deported for certain specified reasons. The Court found that the legislation was not a "patently arbitrary classification, utterly lacking in rational justification"[103] since the economic benefits of the social security system, the increased overall national purchasing power resulting from monetary allotments to senior citizens, would not result in cases where payments were made to persons permanently residing abroad because of deportation.[104] The Court added that

> [n]or, apart from this, can it be deemed irrational for Congress to have concluded that the public purse should not be utilized to contribute to the support of those deported on the grounds specified in the statute.[105]

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[99] *See Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1078 (1969). *See also* Weinberger v. Salfi, 95 S. Ct. 2457 (1975), in which the Court applied the "minimal scrutiny" test, upholding federal social security legislation which denied benefits to a wage earner's widow and stepchild if their relationship to the wage earner did not exist at least nine months prior to his death. *See* notes 69-71 and accompanying text *supra*.

[100] 404 U.S. 78 (1971).

[101] *Id.* at 81, 84.

[102] 363 U.S. 603 (1960).

[103] *Id.* at 611.

[104] *Id.* at 612.

[105] *Id.*

In *United States Department of Agriculture v. Moreno*,[106] however, the Supreme Court, employing the minimal scrutiny test, invalidated certain amendments to the federal Food Stamp Act of 1964 which were intended to deprive "hippies" and members of "hippie communes" of the continued receipt of federal food stamps. The amendments excluded from participation in the food stamp program any household containing an individual who was unrelated to any other household member. After reviewing the legislative record in which the purpose of the classification was clearly articulated, the Court declared that the

> challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest. As a result, "[a] purpose to discriminate against hippies cannot in and of itself, and without reference to [some independent] considerations in the public interest, justify the 1971 amendment."[107]

The Court also held that the challenged classification could not be upheld as rationally related to the legitimate governmental interest in minimizing fraud in the administration of the food stamp program since "the challenged classification simply does not operate so as rationally to further the prevention of fraud;"[108] because of defects in the drafting of the law, two unrelated individuals living together could legally avoid the "unrelated person" exclusion by simply altering their living conditions so as not to constitute an ineligible "household." Thus, the Court concluded that

> in practical operation, the 1971 amendment excludes from participation in the food stamp program, *not* those persons who are "likely to abuse the program" but, rather, *only* those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility. Traditional equal protection analysis does not require that every classification be drawn with precise " 'mathematical nicety.' " . . . But the classification here in issue is not only "imprecise," it is wholly without any rational basis [and therefore] invalid under the Due Process Clause of the Fifth Amendment. . . .[109]

In light of *Flemming* and *Moreno*, legislation terminating or reducing Presidential retirement benefits upon the occurrence of certain conditions but without reference to a specific former President would satisfy the "minimal scrutiny" test of equal protection if such legislation bore a rational relationship to a legitimate governmental goal. For example, legislation which terminated the pension of any former President convicted of a felony as defined by federal law would have the same effect that the legislation in *Flemming* and *Moreno* had: denial of certain governmental

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[106] 413 U.S. 528 (1973).
[107] *Id.* at 534-35.
[108] *Id.* at 537.
[109] *Id.* at 538.

benefits to a class of individuals deemed unworthy to receive them. Such legislation would be rationally related to the legitimate governmental goal of deterring Presidents and former Presidents from enaging in criminal conduct during their tenure in office and during retirement, in order to maintain the dignity of the Presidency. Such legislation can be distinguished from that involved in *Moreno* since it constitutes more than a "bare congressional desire to harm a politically unpopular group"[110] and refers to the independent public interest in upholding the dignity of the office of the Presidency by deterring criminal acts by occupants and former occupants of that office. However, if the legislation terminated the retirement benefits of any former President who is or has been a member of the Ku Klux Klan or the Rainbow Peoples Party, for example, such legislation would be invalid under *Moreno* since Congress would be motivated by a desire to punish a politically unpopular group and no countervailing public considerations would justify the legislation.[111]

Conversely, legislation terminating or reducing retirement benefits allocated to a specific former President, for example, a congressional act declaring that "former President X" will no longer receive Presidential retirement benefits, would be constitutionally prohibited by the "closed class" doctrine of equal protection.[112] This doctrine, developed by the Supreme Court in *Cotting v. Kansas City Stock Yards Co. and the State of Kansas*[113] and *Morey v. Doud*,[114] applies whenever legislation grants or denies certain benefits to members of a specific group to the exclusion of all others. If the statutory classification bears no more than a remote relationship to the legislative purpose, such legislation violates the constitutional guarantee of equal protection. In *Cotting*, the Court invalidated a Kansas statute regulating certain aspects of "public stock yards."[115] The statute had the practical effect of regulating only one stockyard,[116] although the regulated class of "public stock yards" remained theoretically "open" — any stockyard which met the statutory definition of a public stockyard would be subject to the regulations.[117] Nevertheless, the Supreme Court found the statute

> in violation of the Fourteenth Amendment of the Constitution of

[110] *Id.* at 534.

[111] Not only would this legislation violate the equal protection guarantee of the fifth amendment, it would also be an unconstitutional bill of attainder. *See* part II *B* 1 *supra*. In addition, the legislation might violate the former President's first amendment right of association. *See* United States v. Robel, 389 U.S. 258 (1967), in which the Court invalidated, on first amendment grounds, federal legislation making it a crime for any member of a Communist-action organization to be employed in any defense facility with knowledge or notice that there was in effect a final order from the federal government requiring the organization to register under the Subversive Activities Control Act of 1950.

[112] Such legislation would also be a constitutionally prohibited bill of attainder. *See* part II *B* 1 *supra*.

[113] 183 U.S. 79 (1901).

[114] 354 U.S. 457 (1957).

[115] 183 U.S. at 81-82.

[116] *Id.* at 114-15.

[117] 354 U.S. at 467.

> United States, in that it applies only to the Kansas City Stock Yards Company and not to other companies or corporations engaged in like business in Kansas, and thereby denies to that company the equal protection of the laws.[118]

In *Morey*, the Supreme Court invalidated an Illinois statute excepting money orders issued by the American Express Company from the requirement that any firm selling or issuing money orders in the state must secure a license and submit to state regulation. The Court's decision that the statutory classification was invalid under the fourteenth amendment equal protection clause was influenced by three factors: (1) the statutory classification bore only a remote relationship to the legislative purpose;[119] (2) the creation of a "closed class;"[120] and (3) the grant of economic advantages to the closed class.[121] The Court noted that the intention of the legislature was to afford the public protection against the financial collapse of the drawers of money orders.[122] The Court reasoned that the statutory classification bore only a remote relationship to this legislative purpose since it was based on the erroneous assumption that the financial condition of the American Express Company would remain stable and that competing sellers of money orders would not secure a comparable status.[123] The Court also noted that the classification did not consider the peculiar characteristics of the local outlets selling American Express money orders, since there was a "distinct possibility that they . . . may afford less protection to the public than . . . retail establishments that sell competing money orders."[124] The Court found that by limiting the exception to American Express the legislature created a "closed class."[125] Other drawers of money orders could not ascribe to this class by showing financial stability; they were excluded from the relief from licensing granted to American Express under the law.[126] Moreover, the exemption from licensing bestowed upon American Express substantial economic benefits. For example, American Express, unlike similarly situated companies regulated by the legislation, could sell its money orders in retail establishments, was not required to furnish a surety bond and insurance policy, did not have to pay annual license and investigation fees, and did not have to submit annual financial reports to the state auditor.[127] The Supreme Court concluded that, "[t]aking all of these factors in

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[118] 183 U.S. at 114-15 (Harlan, J., concurring). The Court's opinion invalidated the legislation on equal protection and substantive due process grounds. *Id.* at 112.

[119] 354 U.S. at 467-68.

[120] *Id.* at 467.

[121] *Id.* at 468-69.

[122] *Id.* at 460.

[123] *Id.* at 466-67.

[124] *Id.* at 467.

[125] The Illinois statute also exempted money orders of the United States Post Office, the Postal Telegraph Company and the Western Union Telegraph Company. Nevertheless, the appellees did not challenge these exceptions. The Court noted, 354 U.S. at 462 n.5, that a prior lower court decision, Currency Services, Inc. v. Matthews, 90 F. Supp. 40 (W.D. Wis. 1950), had validated similar exceptions in a similar Wisconsin statute.

[126] 354 U.S. at 458-59.

[127] 354 U.S. at 460-61.

conjunction . . . we hold that the application of the Act to appellees deprives them of the equal protection of the laws."[128]

Legislation terminating or reducing a particular former President's retirement benefits would involve each of the three factors of the closed class doctrine and would, therefore, violate the equal protection guarantee of the fifth amendment's due process clause. If the legislation terminated "former President X's" retirement benefits because he had been found guilty of a felony as defined by federal law, this statutory classification would bear no more than a remote relationship to the legislative purpose of upholding the dignity of the Presidency and insulating the political process from criminal abuses, since the statute would not withhold retirement benefits from other former Presidents found guilty of federal felonies. By terminating or reducing his retirement benefits, the legislation would be exclusively penalizing one former President, just as the legislation in *Cotting* penalized only the one Kansas stockyard.[129]

(c) Intermediate Scrutiny—The Supreme Court has recently departed from a strict two-tier equal protection analysis by developing an intermediate level of scrutiny between "strict" and "minimal."[130] An authoritative standard for this level of judicial scrutiny has yet to be announced by the Court itself, but Professor Gerald Gunther has described this developing means-oriented level of equal protection analysis as follows:

> The model suggested by the recent developments would view equal protection as a means-focused, relatively narrow, preferred ground of decision in a broad range of cases. Stated most simply, it would have the Court take seriously a constitutional requirement that has never been formally abandoned; that legislative means must substantially further legislative ends. . . . Putting consistent new bite into the old equal protection would mean that the Court would be less willing to supply justifying rationales by exercising its imagination. It would have the Court assess the means in terms of legislative purposes that have a substantial basis in actuality, not merely in conjecture. Moreover, it would have the Justices gauge the reasonableness of questionable means on the basis of materials that are offered to the Court, rather than resorting to rationalizations created by perfunctory judicial hypothesizing.[131]

It is unlikely that intermediate scrutiny would be triggered by an equal protection challenge to legislation terminating or reducing Presidential retirement benefits. Although the Supreme Court has not specifically identified the types of legislative classifications which will demand the application

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[128] *Id.* at 469.

[129] Recent applications of the "closed class" standard have been rare. *See, e.g.*, Dukes v. City of New Orleans, 501 F.2d 706 (5th Cir. 1974) (invalidating city ordinance regulating food licenses via a grandfather clause).

[130] For an extensive discussion of this new "intermediate" scrutiny, see Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

[131] *Id.* at 20-21.

of intermediate scrutiny, the Court has generally restricted its application to cases involving sex discrimination[132] and individual privacy interests.[133] Since neither of those two factors would be involved in legislation affecting Presidential retirement benefits,[134] intermediate scrutiny would not be triggered by such legislation.

III. ALTERNATIVES TO THE PRESENT SYSTEM

Three alternatives to the present system of allocating retirement benefits to former Presidents are possible. Congress could repeal the Act altogether, depriving all Presidents of benefits upon leaving office. Alternatively, Congress could amend the Act, conditioning the grant of pension benefits on a former President's good conduct in office or retirement. Finally, Congress could amend the Act to require the termination of a former President's benefits if he is impeached and convicted at any point during his lifetime.

A. Repeal

Repeal of all current statutes granting retirement benefits[135] would enable Congress to consider former Presidents' petitions for such benefits on an ad hoc basis and provide special relief as needed. The costs of such a scheme would probably outweigh the benefits inherent in allocating money on the basis of need and worthiness. The scheme could personally embarrass many former Presidents who would, in effect, be required to petition Congress for relief. More importantly, this scheme could generate political abuse: Congress might withhold benefits from a needy former President on partisan grounds. Also, this scheme is inconsistent with other federal pension systems for members of the legislative and judicial branches of government; former Vice-Presidents,[136] Senators,[137] Congressmen[138] and retired federal judges[139] receive regular retirement benefits pursuant to

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[132] *See, e.g.*, Weinberger v. Wiesenfeld, 420 U.S. 636 (1975) (federal social security provisions discriminating between widows and widowers of deceased wage earners regarding survivors' benefits violate the equal protection guarantee of the fifth amendment) and Reed v. Reed, 404 U.S. 71 (1971) (Idaho probate statute giving preference to males over females in the assignment of executors of decedents' estates held to violate the equal protection clause of the fourteenth amendment).

[133] *See, e.g.*, Eisenstadt v. Baird, 405 U.S. 438 (1972) (Massachusetts statute prohibiting distribution of contraceptives to unmarried individuals held to violate the equal protection clause of the fourteenth amendment).

[134] *See* part II *B* 3(a) *supra*. *See also* Comment, *"Newer" Equal Protection: The Impact of the Means-Focused Model*, 23 BUFFALO L. REV. 665 (1974), for a review of lower court decisions applying this standard.

[135] 3 U.S.C. § 102 note (1970); 39 U.S.C. § 3214 (Supp. 1973); 39 U.S.C. § 3216(b) (Supp. 1973).

[136] 5 U.S.C. §§ 2106, 8331-8348 (1970), *as amended*, (Supp. 1973).

[137] *Id.*

[138] *Id.*

[139] 28 U.S.C. §§ 371-376 (1970), *as amended*, (Supp. 1973).

federal statutes.[140] In addition, blanket repeal might be attacked as a bill of attainder or ex post facto law.[141]

B. Proscription of Certain Conduct

Another alternative to the present system of allocating Presidential retirement benefits is to amend the Former Presidents Act to withhold benefits in the event a former President engages in certain conduct. The optimal provision, in light of the policy objectives of the Former Presidents Act,[142] would be to withhold these benefits when a former President commits an "impeachable offense" during his official tenure and afterward. Nonetheless, this provision raises two problems. First, Congress may not have the constitutional power to define the category of impeachable offenses outside a particular impeachment situation. Many commentators assume that Congress does possess such power, but the design of the Constitution seems to leave the definition of impeachable offenses to be determined case by case.[143] Second, assuming that Congress has the constitutional power to enumerate prospective impeachable offenses, it is not clear that Congress would be wise in making this enumeration or that it would be possible for it to do so. In addition to treason and bribery, a President may be impeached for committing "other high Crimes and Misdemeanors."[144] Although the meaning of this phrase has been extensively discussed, scholars have yet to agree on its specific content.[145] This inability of scholars to agree on an appropriate meaning of "other high Crimes and Misdemeanors," coupled with the necessary function of impeachment as a "constitutional safety valve [which] must be flexible enough to cope with exigencies not now foreseeable,"[146] makes it imprac-

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[140] When the Former Presidents Act was introduced in Congress in 1957, proponents of the measure emphasized that inactive five-star generals and admirals received full salaries during their lifetimes as "elder military statesmen" while former Presidents, as elder political statesmen, received no retirement benefits whatsoever. *See, e.g., Hearings on H.R. 4401 and S. 607 Before the House Comm. on the Post Office and Civil Service,* 85th Cong., 1st Sess. 3-4 (1957). Great Britain, Canada and Ireland have statutory pension plans for their retired heads-of-state which resemble the present American System. *See* Ministerial Salaries Consolidation Act 1965, c. 58, § 3; Ministerial Salaries and Members' Pension Act 1965, c. 11, § 17; Parliamentary and Other Pensions Act 1972, c. 48, §§ 26-31 (Great Britain); CAN. REV. STAT. c. M-10, § 16 (1970), *as amended,* CAN. REV. STAT. c. 25 (1st Supp. 1970), CAN. REV. STAT. *c.* 18 (2d Supp. 1970), CAN. REV. STAT. c. 14 (2d Supp. 1972); 2 CAN. STAT. CITATOR c. 36, § 12 (1973) (Canada); Presidential Establishment Act 1938, No. 24, §§ 3-5, *as amended,* Pensions (Abatement) Act 1965, No. 13, § 3 (Ireland).

[141] *See* parts II *B* 1 and 2 *supra.*

[142] *See* part I *supra.*

[143] *See, e.g.,* R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 77-78 (1973); J. STORY, COMMENTARIES ON THE CONSTITUTION §§ 796-97 (4th ed. 1873).

[144] U.S. CONST. art. II, § 4.

[145] *See, e.g.,* R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 53-102 (1973); C. BLACK, IMPEACHMENT: A HANDBOOK 25-52 (1974).

[146] STAFF OF HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., REPORT ON CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT 25 (Comm. Print 1974).

tical and unwise for Congress to specifically define the category of impeachable offenses.[147]

Alternatively, Congress could amend the Former Presidents Act to withhold retirement benefits in the event a former President commits certain specified crimes during his tenure in office and afterward. Under the federal civil service retirement system, the pension benefits of former Vice-Presidents, Senators and Congressmen are terminated if they are convicted of certain crimes which pertain to national security.[148] The payment of veterans benefits is conditioned on similar forfeiture provisions.[149] Nevertheless, the wisdom of such an approach is questionable since, in terms of the overall policy objectives of the Former Presidents Act,[150] it would be difficult to define which acts would justfy the termination of these retirement benefits in every case.[151]

C. Termination Pursuant to Impeachment: A Proposal for Reform

The most promising alternative to the present pension system is to amend the Former Presidents Act to deny any President retirement benefits upon his or her impeachment and conviction by Congress, even when he or she leaves office before conviction. To implement this proposal, section (f) of the Former Presidents Act should be amended as follows:

> As used in this section, the term "former President" means a person—
> (1) who shall have held the office of President of the United States of America;
> (2) who shall not have been impeached and convicted by Congress pursuant to the Constitution of the United States of America either before or after leaving office; and
> (3) who does not currently hold such office.

The major problem with this proposal is that it contemplates impeachment and conviction of a President after the expiration of his official tenure; whether this is constitutionally permissible is unresolved. The framers of the impeachment provisions never addressed this specific issue[152] and commentators are divided as to the constitutionality of such

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147 *Accord,* J. STORY, COMMENTARIES ON THE CONSTITUTION § 797 (4th ed. 1873).

148 5 U.S.C. §§ 8312-8322 (1970), *as amended,* (Supp. 1973).

149 38 U.S.C. §§ 3501-3504 (1970), *as amended,* (Supp. 1973). These forfeiture provisions were upheld in Thompson v. Whittier, 185 F. Supp. 306 (D.D.C. 1960), *appeal dismissed,* 365 U.S. 465 (1961).

150 *See* part I *supra.*

151 Indeed, such a statutory amendment may violate a former President's equal protection rights guaranteed by the fifth amendment's due process clause. *See* part II *B* 4 *supra.*

152 *See generally* 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 64-69, 550-52 (1st ed. 1911); 4 J. ELLIOTT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 32-37, 43-50, 281 (2d ed. 1881).

action.[153] Nevertheless, the historical background of impeachment and the desirability of such a process support the position that a President may be impeached and convicted by Congress after leaving office.[154]

The history of impeachment in England and America indicates that a President may be impeached after leaving office. Under the English practice prior to the American Revolution and for some time thereafter, private citizens were subject to the impeachment power of Parliament.[155] During the period in which the American Constitution was formulated and ratified, the former governor-general of India, Warren Hastings, was impeached by Parliament more than two years after resigning his office.[156] During this same period the state constitutions of Virginia and Delaware contained provisions subjecting their governors to impeachment only after their official tenure had expired.[157] In *The Federalist*, James Madison compared these state impeachment provisions with those in the Federal Constitution, emphasizing the latter extended the liability of the President by denying him immunity "during his continuance in office."[158] In 1876, President Grant's Secretary of War, William W. Belknap, resigned from office hours before the House of Representatives voted articles of impeachment against him.[159] At trial, the Senate rejected Belknap's defense that the Senate lacked the constitutional power to conduct the trial because he was no longer in office.[160] Nevertheless, this precedent is weakened by the subsequent acquittal of Belknap on all charges, with twenty-two Senators voting

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153 Examples of commentators asserting that a person who has resigned from office prior to Congressional action may not be impeached or convicted by the Senate include T. COOLEY, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 204-05 (4th ed. 1931); 1 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 586-87 (5th ed. 1905).

Those who maintain the opposite position include 1 B. SCHWARTZ, A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES: THE POWERS OF GOVERNMENT 113 (1963); 3 W. WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 1448-49 (2d ed. 1929); Potts, *Impeachment as a Remedy*, 12 ST. LOUIS L. REV. 15 (1927).

154 *See generally* Potts, *supra* note 153.

155 *See, e.g.*, Bestor, Book Review, 49 WASH. L. REV. 255, 277 (1973).

156 *See generally* P. MARSHALL, THE IMPEACHMENT OF WARREN HASTINGS (1965).

157 The Virginia constitutional provision provided that

> [t]he Governor, when he is out of office, and others, offending against the state, either by mal-administration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the House of Delegates.

VA. CONST. (1776), *reprinted in* 7 F. THORPE, FEDERAL AND STATE CONSTITUTIONS 3812, 3818 (1909).

The Delaware constitution imposed a time limit on the impeachment process:

> The President when he is out of office and within eighteen months after, and all others, offending against the state either by mal-administration, corruption or other means . . . shall be impeachable by the House of Assembly before the Legislative Council.

DEL. CONST. art. 23 (1776).

158 THE FEDERALIST No. 39, at 252-53 (J. Cooke ed. 1961) (J. Madison).

159 PROCEEDINGS OF THE SENATE SITTING FOR THE TRIAL OF WILLIAM W. BELKNAP, LATE SECRETARY OF WAR, ON THE ARTICLES OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES, 44th Cong., 1st Sess. 1, 760-61 (1876).

160 *Id.* at 239-41.

to acquit on the ground that Congress lacked power to impeach and convict an official who resigned.[161] Congress addressed this issue on two other occasions without ever resolving the problem;[162] the federal courts have never been confronted with the issue.[163]

Although these historical precedents do not conclusively prove the existence of congressional power to impeach and convict a President after he leaves office, there are cogent policy reasons for interpreting the Constitution to allow impeachment of officials who have left office. Article I, section 3 of the Constitution subjects an impeached and convicted official to the penalties of removal from office and disqualification from holding any other federal office. Thus, in order to protect the political system from future abuses, it is desirable to impeach and convict an official who has previously left office to disqualify him from holding any future federal position.[164] If Congress attempted to disqualify such an official other than pursuant to the impeachment power, the necessary legislation would constitute a bill of attainder.[165]

IV. CONCLUSION

By providing former Presidents with monetary and clerical allowances, free office space, and free mailing privileges, Congress seeks to achieve

[161] *Id.* at 1165-66. For the statements of individual Senators explaining their votes, see *id.* at 1049-1122.

[162] In the first impeachment proceeding in American history, that of William Blount in 1797, Congress was confronted with the question whether it possessed the constitutional power to impeach and convict a United States Senator after he had left office. The Senate dismissed the charges brought by the House against Blount on the ground that a Senator was not a civil officer of the United States and therefore not subject to impeachment under article II, section 4 of the Constitution. The Senate discussed, but did not resolve, the issue of whether Congress may impeach and convict an individual after leaving office. *See generally* F. WHARTON, STATE TRIALS OF THE UNITED STATES 200-321 (1849).

In 1926 George W. English, a federal district court judge, was impeached by the House of Representatives on charges of financial corruption. Before the Senate trial commenced, English resigned from the bench; six days after his resignation the Senate voted to dismiss the charges against him. At the time the vote to dismiss was taken, many senators discussed but did not resolve, whether they could have proceeded with the trial notwithstanding his resignation. *See* 6 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 778-86 (1936); 67 CONG. REC. 6735-36 (1926); 68 CONG. REC. 3-4 (1926).

In addition, a number of judges have avoided imminent impeachment by the House of Representatives by resigning before action could be taken. The record contains no discussion of the issue at hand after their departure. *See* 3 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 981-1034 (1907); J. BORKIN, THE CORRUPT JUDGE 200-04 (1962).

[163] Nevertheless, two state courts, construing state constitutional provisions similar to the federal impeachment sections, appear to have reached divergent results. State v. Hill, 37 Neb. 80, 55 N.W. 794 (1893) (former state officers held not constitutionally subject to impeachment and conviction after their terms of office had expired); Ferguson v. Maddox, 114 Tex. 85, 263 S.W. 888 (1924) (former governor declared constitutionally subject to impeachment and conviction after he had resigned from office).

[164] This argument is elaborated in Potts, *Impeachment as a Remedy*, 12 ST. LOUIS L. REV. 15, 21-23 (1927).

[165] *See* parts II *B* 1 and 2 *supra*.

valuable social and political objectives affecting the office of the Presidency and its occupants.[166] Nevertheless, there is a flaw in this pension scheme which could operate to defeat the laudable goals of the Former Presidents Act.

As previously noted,[167] a President who resigns from office to avoid impeachment is eligible for retirement benefits under the Former Presidents Act, resulting in many cases in the grant of a pension to a former President under inappropriate circumstances.[168] Any special legislation enacted to revoke or reduce a former President's retirement benefits could be struck down as a bill of attainder,[169] as an ex post facto law,[170] or as a deprivation of due process[171] and equal protection rights.[172]

The proposed amendment of the Former Presidents Act, on the other hand, would reduce the possibility of awarding retirement benefits to a former President who should not receive them. Nevertheless, this amendment would increase the opportunities for political abuses of the impeachment power, such as impeaching an unpopular former President.[173] The possibility of such abuse is slight, however, because the institutional restraints on the impeachment power—the heavy economic, social and political costs an impeachment engenders—would discourage the use of impeachment as a tool for partisan sanction.[174] The proposed amendment, therefore, offers a pragmatic and desirable solution to the Presidential pension problem.[175]

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166 *See* notes 11-13 and accompanying text *supra.*

167 *See* notes 14-19 and accompanying text *supra.*

168 *Id.*

169 *See* part II *B* 1 *supra.*

170 *See* part II *B* 2 *supra.*

171 *See* part II *B* 3 *supra.*

172 *See* part II *B* 4 *supra.*

173 An example of such a partisan impeachment was that of President Andrew Johnson in 1867. *See generally* M. BENEDICT, THE IMPEACHMENT AND TRIAL OF ANDREW JOHNSON (1973).

174 These economic, social and political costs generated by the invocation of the impeachment process have been enumerated as follows: (1) the process demands heavy financial expenditures, (2) the process forces Congress to neglect other national concerns, (3) the procedures involved are baroque and inefficient, and (4) the experience is politically divisive and rends the national political fabric. R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 122-23, 140, 156-57 (1973); Potts, *Impeachment as a Remedy,* 12 ST. LOUIS L. REV. 15, 31-37 (1927); Shartel, *Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution,* 28 MICH. L. REV. 870, 870-73 (1930); Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless?,* 57 CALIF. L. REV. 659, 666-67 (1969).

175 It is arguable, however, that the present aspect of the Former Presidents Act which permits a president to resign under political pressure and thereby to become eligible for retirement benefits actually produces a desirable result in that the President is given his benefits in exchange for avoiding the expense and turmoil associated with impeachment. *See* note 174 and accompanying text *supra.*