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Energy Reserves Group v. Kansas Power & Light Co, 103 S. Ct. 697 (1983)

Robert G. Hertel Jr.
Washington University School of Law

Energy Reserves Group v. Kansas Power & Light Co., 103 S. Ct. 697 (1983).

In *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*,[1] the United States Supreme Court further defined the scope of the revitalized[2] contract clause[3] by employing a three-pronged test[4] to find that state impairment of a private contract involving a regulated public utility did not violate the Constitution.

In 1975, respondent Kansas Power & Light Company (KP&L), a public utility, entered into two natural gas supply contracts with the corporate predecessor of Energy Reserves Group, Inc. (ERG). Each contract contained two price escalator clauses providing for increases in the contract price to levels that any government authority might subsequently establish.[5]

In 1978, Congress passed the Natural Gas Policy Act,[6] which established federal ceiling prices on natural gas and authorized states to set prices as long as these prices did not exceed the federally established ceilings. In response to the federal statute, the Kansas legislature enacted the Kansas Natural Gas Price Protection Act,[7] which prohibited the consideration of federal price ceilings in the application of price escalator clauses.

After a disagreement over price increases pursuant to the escalator clauses, ERG filed suit in the Kansas courts to terminate its contracts with KP&L.[8] ERG argued that the Kansas statutory prohibition on the use of the federal price ceiling in applying the contractual price escala-

1. 103 S. Ct. 697 (1983).

2. *See infra* notes 28-39 and accompanying text.

3. *See infra* note 9.

4. *See infra* notes 40-54 and accompanying text.

5. Each contract contained two distinct indefinite price escalator clauses. The first, the governmental price escalator clause, allowed contract prices to rise to whatever level any government agency later established. The second, a price redetermination clause, gave Energy Reserves Group, Inc. the option to negotiate a redetermination of the contract price no more than once every two years. The last increase under this second clause had occurred in 1977. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 103 S. Ct. 697, 701 (1983).

6. Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432 (1982).

7. Kansas Natural Gas Price Protection Act, KAN. STAT. ANN. § 55-1401 to-1415 (Supp. 1982).

8. 103 S. Ct. at 703. The contracts provided that should Energy Reserves Group seek a price increase pursuant to either escalator clause, Kansas Power & Light Co. must "seek from the Kansas Corporation Commission approval to pass the increase through to consumers." *Id.* at 701. If the Commission refused the pass-through request, and if Kansas Power & Light Co. chose not

tor clauses violated the contract clause of the United States Constitution.[9] The Supreme Court of Kansas unanimously upheld the trial court's determination that the state statute did not violate the contract clause.[10] The United States Supreme Court affirmed[11] and held that the state's impairment of a private contract involving a regulated public utility was not substantial enough to constitute a violation of the contract clause.[12]

The contract clause attracted little attention or debate at the Constitutional Convention in 1787.[13] Many states considered the clause in enacting liberal debtor relief laws soon after the Revolutionary War.[14]

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to pay the increase, then Energy Reserves Group could terminate the contract on 30 days written notice. *Id.*

In late 1978, Energy Reserves Group notified Kansas Power & Light Co. that gas prices would rise pursuant to the governmental price escalator clause. *Id.* at 703. After Kansas Power & Light Co. failed to make timely application to the Commission for pass-through authority and refused to pay the increase, Energy Reserves Group served notice of its intent to terminate the contracts. Kansas Power & Light Co. replied that the Federal Act had not triggered the escalator clause and, further, that the Kansas Act prohibited activation of the governmental price escalator clause. *Id.*

Energy Reserves Group filed suit seeking a declaratory judgment that it had a right to terminate the contracts. Energy Reserves Group also sought a new increase by invoking the price redetermination clause, which Kansas Power & Light Co. claimed the Kansas Act had nullified. Kansas Power & Light Co. then counterclaimed for a declaratory judgment that the contracts were still in effect. *Id.*

9. *Id.* at 704. The Contract Clause provides that "[n]o state shall . . . pass any . . . Law impairing the obligation of contracts. . . ." U.S. CONST. art. I, § 10, cl. 1.

10. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 230 Kan. 176, 630 P.2d 1142 (1981). The state supreme court followed the trial court in employing a deferential means-end analysis and concluded that the Kansas Act was "an appropriate exercise of the police power of the state, that it was reasonable and fully justified under the circumstances, and that it is not unconstitutional upon the basis of its retroactivity." *Id.* at 190, 630 P.2d at 1153.

11. 103 S. Ct. 697 (1983).

12. *Id.* at 709. Affirmation of the judgment was unanimous. Justice Blackmun authored the Court's opinion, in which five other Justices joined. Justice Powell, joined by Chief Justice Burger and Justice Rehnquist, concurred in the judgment and that portion of the Court's opinion which they felt disposed of the issue. *See infra* notes 40-54 and accompanying text. Although the case also raised a question of the statutory construction of the Federal and State Acts, that issue lies beyond the scope of this comment.

13. Madison's notes of the convention indicate that discussion or mention of the commerce clause occurred on only three non-contentious occasions. *See* J. MADISON, DEBATES IN THE FEDERAL CONVENTION OF 1787, at 478-79, 549, 567 (G. Hunt & J. Scott ed. 1920). Nor did the clause arouse much debate during the ratification process. *See* B. WRIGHT, THE CONTRACT CLAUSE OF THE CONSTITUTION 12-13 (1938).

14. *See* G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 554 (10th ed. 1980); B. WRIGHT, *supra* note 13, at 4-13.

Although few believed that the clause possessed the potential for broader application, some indications that its scope was not necessarily limited to debtor relief did exist. *See, e.g.,* THE FEDERALIST No. 44 (J. Madison); B. WRIGHT, *supra* note 13 at 13.

The Marshall Court expanded the reach of the clause in two ways. First, the Court imposed a bar against the impairment of contracts in general, whether or not the offending state legislation involved debtor relief.[15] Second, the Court extended the clause to include contracts to which states were parties.[16]

At the same time, the Marshall Court recognized limits on the reach of the contract clause. The Court restricted application of the clause to legislation that acted retrospectively.[17] The Court also acknowledged the state's need to impair contractual obligations for the public good by refusing to construe ambiguous terms of public contracts in favor of a private party.[18]

15. *See, e.g.,* Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819); Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810). As early as *Dartmouth College*, however, the Court recognized the right of a state to impair its own obligations under corporate charters that involved grants of political power or created civil institutions of government. *See* Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) at 629-30.

16. *See, e.g.,* Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819); New Jersey v. Wilson, 11 U.S. (7 Cranch) 164 (1812).

17. *See* Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827). This case contains Marshall's sole constitutional dissent. *Id.* at 332-58 (Marshall, C.J., dissenting). Marshall argued for an interpretation of the clause that would forbid state legislation whether it acted prospectively or retrospectively. *Id.* at 354 (Marshall, C.J., dissenting). The majority of the Court, however, rejected Marshall's approach, resting their view in part on the conjunction of the contract clause with prohibitions on bills of attainder and ex post facto laws. *Id.* at 286 (juxtaposition of these three provisions reveals framers' intent to prohibit legislation against already-existing rights). *But cf.* J. ELY, DEMOCRACY AND DISTRUST 90-92 (1980) (contract clause is distinct from bills of attainder and ex post facto laws).

18. *See, e.g.,* Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. (11 Pet.) 420, 544, 547-48 (1837); Providence Bank v. Billings, 29 U.S. (4 Pet.) 514, 561-63 (1830).

In the nineteenth century, the Court articulated two other limiting principles of contract clause jurisprudence that, while of importance as late as the 1940's, have played relatively minor roles in the clause's more recent resurgence. First, the Court distinguished limitations on a remedy from limitations on the substantive rights of the contracting parties and held that state laws involving only the former were valid. *See, e.g.,* Von Hoffman v. City of Quincy, 71 U.S. (4 Wall.) 535, 553 (1867) (states may change the form of the remedy as long as they do not impair any substantive contractual rights); Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 200 (1819) (inherent distinction between substantive contractual obligation and statutory remedy to enforce that obligation allows state to modify the latter at will). This approach resurfaced in the 1930's and 1940's, but has played no role in contract clause analysis since. *See generally* Note, *Revival of the Contract Clause: Allied Structural Steel Co. v. Spannaus and United States Trust Co. v. New Jersey,* 65 VA. L. REV. 377, 379-81 (1979). For a brief discussion of the artificial nature of the distinction between limitations on remedies and limitations on substantive rights, see G. GUNTHER, *supra* note 14, at 556.

Second, the Court initially held that the enlargement of contractual obligations lies beyond the scope of the contract clause. *See* Satterlee v. Matthewson, 27 U.S. (2 Pet.) 380, 412-13 (1829) (creation of a contract is different from the destruction or impairment of a contract). By the

Acting within the limits established during the Marshall era, the Supreme Court employed the contract clause as the major restraint on state economic regulation throughout most of the nineteenth century.[19] By the end of the century, however, the contract clause declined in importance as the Court primarily employed substantive due process as a restraint on state economic regulation[20] and increasingly recognized the states' police power as a restraint on the application of the contract clause.[21]

The Court's deference toward state impairment of contractual obligations under the police power grew during the first half of the twentieth century. In *Home Building and Loan Association v. Blaisdell*,[22] the Court held that a Minnesota statute granting relief from mortgage foreclosures did not violate the contract clause. The Court employed a deferential means-end test similar to that adopted in substantive due process cases that same year.[23] The Court focused on five factors to determine the legitimacy of the ends and the reasonableness of the

twentieth century, however, the Court had determined that the contract clause forbade the enlargement of contractual obligations. *See* Columbia Ry., Gas & Elec. Co. v. South Carolina, 261 U.S. 236, 251 (1923) (increasing contractual obligations as much an impairment of those obligations as decreasing them). *See generally* Hale, *The Supreme Court and the Contract Clause* (pt. 1), 57 HARV. L. REV. 512, 514-16 (1944). This continues to be the Court's position, although it has not been the focus of recent analysis. *See* Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244-45 n.16 (1978).

19. G. GUNTHER, *supra* note 14, at 554. *See also* B. WRIGHT, *supra* note 13, at 95 (contract clause the constitutional justification for striking down almost half of state laws so invalidated by the Supreme Court).

20. *Cf.* B. WRIGHT, *supra* note 13, at 95 (stating that in many cases involving the contract clause plaintiff relied upon due process grounds as well).

21. The Court adopted two doctrines defining the police power. The first, a doctrine of "inalienability," applies to public contracts and provides that "the legislature cannot bargain away the police power of a State." Stone v. Mississippi, 101 U.S. 814, 817 (1880). The second, a doctrine of "reserved power," applies to private contracts and provides that "the police power . . . is paramount to any rights under contracts between individuals." Manigault v. Springs, 199 U.S. 473, 480 (1905). *See also* Note, *A Process-Oriented Approach to the Contract Clause*, 89 YALE L.J. 1623, 1626-27 (1980) (discussion of the two doctrines and their origins).

An additional reason for the clause's decline was the legislative reservation of power to amend corporate charters either in the charters themselves or in incorporation statutes and state constitutions. Although reservation clauses in charters and laws existed prior to early Marshall Court decisions such as *Dartmouth College*, recourse by states to these clauses increased as the Court's contract clause jurisprudence became clearer. B. WRIGHT, *supra* note 13, at 58-60, 168-70.

22. 290 U.S. 398 (1934).

23. "The question is . . . whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." *Id.* at 438. *Cf.* Nebbia v. New York, 291 U.S. 502, 525 (1934) (leading case employing deferential means-ends analysis in context of economic substantive due process).

means: the existence of emergency economic conditions, the broad societal nature of the ends, the appropriate character of the means employed, the reasonableness of the conditions imposed, and the temporary duration of the legislation.[24]

In *City of El Paso v. Simmons*,[25] the Court adhered to the deferential approach to state legislative acts developed in *Blaisdell*. However, the Court referred to contractual obligations in terms of expectancy and held that laws that restrict a party to gains reasonably expected from the contract do not violate the contract clause even if such laws technically impair contractual obligations.[26] The Court thus appeared to render the contract clause a virtual nullity.[27]

In *United States Trust Co. v. New Jersey*,[28] a state law failed for the first time in almost forty years to withstand a challenge under the contract clause[29] when the Supreme Court invalidated a New Jersey statute repealing a prior covenant between the state and bondholders.[30] The Court found that a statute could meet the constitutional requirement only if the means employed were reasonable and necessary to serve an important public purpose.[31] When applying this standard, however, the Court distinguished public from private contracts;[32] increased judicial scrutiny of the reasonableness and necessity of the legislature's judgment was appropriate in those cases in which the state was a party to the contract, for the state's own interests were involved.[33]

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24. 290 U.S. at 444-47.

25. 379 U.S. 497 (1965).

26. *Id.* at 515. This "reasonable expectations" approach differs considerably from Chief Justice Marshall's definition of a contractual obligation as "the law [that] binds [one]to perform his undertaking." Sturges v. Crowinshield, 17 U.S. (4 Wheat.) 122, 197 (1819).

27. *See* B. WRIGHT, *supra* note 13, at 258.

28. 431 U.S. 1 (1977).

29. Prior to 1977, the Supreme Court last to struck down a state law under the contract clause in Wood v. Lobett, 313 U.S. 362 (1941). Between *Blaisdell* and *Wood*, the Court decided eleven contract clause cases and invalidated the state statutes in five of those cases. The Court generally employed the deferential *Blaisdell* test and invalidated the state law when it failed to satisfy one of the five factors identified in *Blaisdell*. In none of the cases did the Court overturn *Blaidsell* or materially alter its test. For a brief discussion and a list of the cases, see Power, *Populist Fiscal Restraints and the Contract Clause*, 65 Iowa 963, 966-67 & nn.38-39 (1980).

30. 431 U.S. at 32.

31. *Id.* at 25. The Court in *United States Trust* substituted the word "necessary" for the word "appropriate" in its articulation of the *Blaisdell* means-ends test. For the distinction and the difference it makes, see *infra* note 52 and accompanying text.

32. *Id.* at 21-26.

33. *Id.* at 26. The Court defined "necessity" as the exhaustion of "less drastic" alternatives by the legislature before it chose a means that impaired contractual obligations. *Id.* at 29-31. In

The Court's dictum in *United States Trust* suggesting that it would employ relaxed scrutiny in private contract cases implied a limit to the revival of the contract clause.[34] The following year, however, in *Allied Structural Steel Co. v. Spannaus*,[35] the Supreme Court extended the reach of the revived contract clause to private contracts, overturning a Minnesota statute subjecting employers to a "pension funding charge" if they closed their Minnesota offices or terminated their pension plans. Noting that the contract clause did not function as an absolute ban on impairments of contractual obligations,[36] the Court held that the threshold inquiry in each case was whether the impairment was "substantial," based upon interference with the reasonable expectations of the parties.[37] A finding of substantial impairment, the Court held, triggers strict judicial scrutiny of the "nature and purpose" of the state legislation,[38] under a balancing-of-factors approach derived in large part from *Blaisdell*.[39]

In *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*,[40] the Court created a tripartite test by which to measure state impairments of contractual obligations, composed of elements of *Allied Structural Steel* and *United States Trust*. Justice Blackmun, writing for the Court, held that the first step is to examine whether the state law in fact substantially impairs the contractual relationship.[41] If the impairment is substantial, Justice Blackmun continued, the strictness of the subsequent

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contrast, in cases involving private contracts, the Court would grant great deference to the legislature's judgment of the reasonableness and necessity of the statute. *Id.* at 22-23.

34. Note, *supra* note 18, at 392.

35. 438 U.S. 234 (1978).

36. *Id.* at 240. This flexible reading of the language is long-standing contract clause jurisprudence, dating back at least to the late nineteenth century cases that established police power limits on the clause. *See supra* note 21.

37. 438 U.S. at 244.

38. *Id.* at 245.

39. *Id.* at 250. *See supra* notes 22-24 and accompanying text. The Court noted that (i) the state law focused on a narrow class of private employers rather than on a broad social or economic problem, (ii) the state law operated in an area heretofore not subject to regulation, and (iii) the state law worked a severe and permanent impairment on contractual relationships. Because of the presence of these factors, the presumption of the reasonableness of the legislative choice failed, and the Court invalidated the law. *Id.*

40. 103 S. Ct. 697 (1983).

41. *Id.* at 704-05 (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). If the complainant failed to establish "substantial impairment", the Court implied that the inquiry would be at an end. The Court articulated the threshold test using an "if . . . then" format: *if* a "substantial impairment" has occurred, *then* the Court will move to the second and third prongs of the test. The clear implication is that failure to find a "substantial impairment" would obviate

scrutiny of the legislation will be directly proportional to the severity of the impairment.[42] Statutes which do not impair the parties' reasonable contractual expectations, the Court suggested, do not constitute substantial impariment.[43] Moreover, Justice Blackmun added, the Court will consider past regulation of an industry in determining the extent of the impairment.[44] Applying this analytical framework, Justice Blackmun held that because a public utility with a past history of regulation was a party to the contract, the Court presumed that the other party entered the contract with the knowledge that subsequent price regulation probably would occur.[45] As a result, the Kansas law restricted the parties to reasonably expected gains and could not, by the terms of the test, constitute a substantial impairment.[46]

Although the statute in question failed to satisfy the threshold inquiry, the Court articulated two other elements of its test and applied them to the facts of the case. If a substantial impairment has occurred, Justice Blackmun stated, the Court must determine whether the state has a "significant and legitimate public purpose" underlying the statute.[47] The purpose of this ends scrutiny is to ensure that the state is exercising its police power for the public good rather than providing

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the need to continue the inquiry and result in a finding that the law did not violate the Constitution. *Id.* at 705 (citing Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1978).

42. *Id.*

43. *Id.* (citing United States Trust Co. v. New Jersey, 431 U.S. 1, 26-27 (1977); El Paso v. Simmons, 379 U.S. 497, 515 (1965)). *See also supra* notes 25-26 and accompanying text (discussion of *El Paso* and its changing definition of a contractual obligation and impairment).

44. 103 S. Ct. at 705. The Court draws not only on Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242-43 n.13, but also on an earlier case. Veix v. Sixth Ward Bldg. & Loan Ass'n., 310 U.S. 32, 37-38 (1940) in which New Jersey regulation of the banking industry antedated the contract by more than two decades.

45. 103 S. Ct. at 706-08. *See also* Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32, 38 (1940) (purchase into a regulated enterprise subject to subsequent regulation by the state). Thus, by first equating "substantial impairment" with the impairment of "reasonable expectations," and then finding that the "reasonable expectations" of one who contracts with a regulated industry includes subsequent price alterations, the Court has effectively insulated those industries with a history of regulation from the reach of the contract clause, at least on issues of price.

46. 103 S. Ct. at 706-08.

47. *Id.* at 705 (citing United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977)). The public purpose need not involve a response to an emergency or temporary situation. *E.g.,* United States Trust Co. v. New Jersey, 431 U.S. 22 (1977); Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32, 39-40 (1940). *But see* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 444-47 (1934) (emergency situation a major factor in determining that legislative end was a legitimate exercise of the police power).

benefits to a narrow group of special interests.[48] In this case, the Court found that the protection of consumers from the escalation in gas prices after deregulation was a significant and legitimate purpose for which the state could exercise its police power.[49] At the same time, the Court found that unlike the state law invalidated in *Allied Structural Steel*,[50] the aim of the legislation was not to benefit a narrow group of special interests.

If the Court determines that the end is legitimate, Justice Blackmun continued, the inquiry shifts to a consideration of the means employed by the legislature.[51] The statutory impairment must rest upon "reasonable conditions" and be "appropriate" to the public purpose which justified adoption of the legislation.[52] When the state is not a party to the contract, he added, the Court will generally defer to the legislature's judgment of the reasonableness of the means employed.[53] In this case, the Court, deferring to the legislature's judgment, found that the means employed by the Kansas legislature bore a rational relation to the purpose of the statute.[54]

At first glance, the Court appears not only to have brought a more rational structure to its recent contract clause jurisprudence, but also to have retreated toward the deferential stance to state legislation that it

48. 103 S. Ct. at 705. This provision obliquely recalls the framers' purpose of prohibiting legislation beneficial to another limited class, debtors. *See supra* note 14 and accompanying text.

49. 103 S. Ct. at 708. The Court's scrutiny of the purpose of the legislation in this instance was cursory at best. The Court noted that the Kansas legislature reasonably could have found that higher gas prices were inimical to the public good, although there was no indication in the opinion that the Kansas legislature had in fact made such a finding. The mere possibility that a rational purpose underlay the statute appears to have been sufficient to meet this prong of the test. *Id.* at 708. Such relaxed scrutiny is not necessarily inconsistent with the test which the court developed in this case nor with such precedents as *Allied Structural Steel*. These cases call for a sliding scale of scrutiny: when the impairment of contractual obligations is slight, the level of scrutiny to which the Court subjects the legislation correspondingly decreases. *See supra* note 42 and accompanying text. Here, the legislation appears to include both the legislative purpose and the means employed to achieve that purpose. Because the Court found that the impairment was slight to non-existent, it adopted a deferential stance toward the scrutiny both of legislative means *and* of legislative ends.

50. 103 S. Ct. at 708 n.25.

51. *Id.* at 705.

52. *Id.* (citing United States Trust Co. v. New Jersey, 431 U.S. 1, 22 (1977)). This element of the *Energy Reserves Group* test substitutes the word "appropriate" for "necessity," which appeared in *United States Trust*. The choice of "necessity" is indicative of the stricter means scrutiny reserved in *United States Trust* for public contracts.

53. *Id.* at 705-06.

54. *Id.* at 709.

had assumed prior to *United States Trust*.[55] A closer reading suggests, however, that the usefulness of the Court's test in future cases is limited and that a final judgment on the direction of the Court must await later decisions.

The test itself presents several problems. First, the Court's guidance on what constitutes a substantial impairment outside the context of a regulated industry is unnecessarily vague. Within the context of regulated industries, the Court holds that future state price regulation *is* the reasonable expectation of the parties; yet the key phrase "reasonable expectation" receives no further elucidation that would give it explanatory force in other contexts.[56] Nor does the source of this element of the test, *Allied Structural Steel*, provide any guidance.[57] Second, the Court incorporates inconsistent approaches to the contact clause derived from *United States Trust* and *Allied Structural Steel*. The first part of the test, which comes from *Allied Structural Steel*, compels strict scrutiny of ends and means for severe impairments of contractual obligations.[58] This requirement clashes directly with the third part of the test, adopted from *United States Trust*[59], which requires deference to legislative means.

Beyond the test's internal inconsistencies lies the questionable precedential value of *Energy Resources Group*. As the concurring opinion suggests, the Court had no need to go beyond the threshold inquiry to dispose of the case.[60] The last two elements of the test, therefore, are dicta, and need not bind the Court in the future.

Another case decided later in the same term, *Exxon Corp. v. Eagerton*,[61] buttresses the foregoing analysis. Although *Eagerton* did

55. *See supra* notes 22-27 and accompanying text.

56. 103 S. Ct. at 705. *See supra* note 37 and accompanying text. The Court in *Allied Structural Steel* did not articulate a test to determine when an impairment is of sufficient severity to constitute a "substantial impairment." The Court instead reviewed the particular facts before it and concluded that the statute nullified express terms of the contract. This destruction of contractual expectations lies at one extreme of the scale of severity of impairments and is, therefore, a relatively easy case. What the Court failed to suggest is how to decide when a less drastic, but nonetheless severe, impairment would qualify as substantial. 438 U.S. at 245-47.

57. *See supra* note 37 and accompanying text.

58. *See supra* note 42 and accompanying text.

59. *See supra* notes 51-54 and accompanying text.

60. 103 S. Ct. at 710 (Powell, J., concurring). When the appellant failed to show that the Kansas law substantially impaired contractual obligations, inquiry into the ends and means pursued by the state legislature became unnecessary. *See supra* text accompanying notes 47-54.

61. 103 S. Ct. 2296 (1983).

not overturn *Energy Reserves Group*, neither did it employ *Energy Reserves Group*'s tripartite test.[62] Consequently, all that the Court has clearly indicated in *Energy Reserves Group* is that it will grant substantial deference to state legislation affecting price provisions in contracts that involve regulated industries in the face of challenges under the contract clause. Beyond that narrow application, the importance of *Energy Reserve Group* in the resurrection of the contract clause remains doubtful.

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62. In *Eagerton*, the Court upheld an Alabama statute that prohibited oil and gas producers from passing severance taxes on to customers and exempted royalty owners from the tax increase. The challenge to the royalty exemption failed because the exemption simply did not impair any contractual obligations. *Id.* at 2304-05. The Court found, on the other hand, that the pass-through prohibition did restrict or nullify contractual obligations. *Id.* at 2305-07. Instead of employing the remaining elements of the *Energy Reserves Group* tripartite test, however, the Court began by distinguishing statutes that "imposed a generally applicable rule of conduct designed to advance a broad societal interest" from statutes that prescribed "a rule limited in effect to contractual obligations or remedies." *Id.* at 2306. Statutes that fell in the former category, such as the Alabama pass-through provision, appear to be constitutional, while those in the latter category are probably invalid. Generally applicable rules of conduct aimed at broad interests affect contractual obligations only indirectly, whereas narrower rules directly adjust the rights of the contracting parties. *Id.* Thus the Court appears to be articulating an "effects" test, in which the constitutionality of the state statute depends upon the directness of the effect that the statute has on contractual obligations.

This case, furthermore, highlights the inconsistencies in the *Energy Reserves Group* test. The *Eagerton* Court, although avoiding the use of the phrase "substantial impairment," found enough of an impairment of contractual obligations to cross the threshold requirement of the *Energy Reserves Group* test. *Id.* at 2305. One could consider the Court's focus on the broad societal aim of the law to be an examination of the ends of the statute as required by the second prong of the *Energy Reserves Group* test. At this point, however, the Court appeared to find the legitimacy of the purpose sufficient to determine the constitutionality of the statute. There was no consideration of the reasonableness and appropriateness of the statutory means in conjunction with the discussion of the contract clause issue. Although the Court discussed means in its consideration of an equal protection issue, it offered no more than a conclusory statement finding a rational relation between means and ends in conformity with the lenient standard that the Court normally applies to economic and commercial regulation under equal protection analysis. *Id.* at 2307-08. Use of a rational relation test, however, conflicts with the heightened scrutiny of means and ends required by the *Energy Reserves Group* test when there has been a finding of substantial impairment.