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# **A SOCIAL SECURITY SYSTEM STUDY: HISTORY, PRESENT OPERATIONS, AND WHAT DOES THE FUTURE HOLD**

**Robert L Webster, Ouachita Baptist University**

## **ABSTRACT**

*The Social Security, old age pension system was begun in the depression era of the 1930s. The idea of a social contract for old age retirement run by the government however dates back long before. The system seems to have worked well until the early 1980s, when a congressional overall was required to save the system. Now, comes the baby boomer generation. The first baby boomers, those born in 1946, became eligible to receive social security benefits in 2008. This group is the first of a huge cohort that many have said will bankrupt the old age pension system. In fact, payments to beneficiaries will exceed receipts by the system in 2010 for the first time since the early 1980s. What lies ahead for the system? This paper looks at the history of the social security system from its inception to the present day highlighting various important changes over the years. Then, the paper looks at current problems facing the social security program and goes into depth in discussing numerous potential alternatives for saving the system. Finally, the paper discusses alternatives that beneficiaries have available in selecting when they and their spouses choose to start drawing benefits from the system.*

# **EDUCATION POLICY AND SCHOOL SEGREGATION: A STUDY OF THE DENVER METROPOLITAN REGION**

**David Aske, University of Northern Colorado**  
**Rhonda R. Corman, University of Northern Colorado**  
**Christine Marston, University of Northern Colorado**

## **ABSTRACT**

*This study examines the extent of segregation in low performing elementary schools in the Denver metropolitan area from 1984-2007. The combination of state school choice policies and the accountability requirements of The No Child Left Behind Act, have contributed to this segregation. In Colorado, parents have choices regarding what school they want their children to attend. The schools' ratings often influence the choice parents make. The ratings are primarily a reflection of student scores on standardized tests. The racial segregation of students in addition to school funding, and teacher stability, are just some of the issues associated with school choice.*

## **INTRODUCTION**

It is a popular belief in today's America that there are equal opportunities for educational attainment. It is, at the very least, assumed that the fundamental structure of our public education system provides a level playing field for all children, regardless of gender, race, or religion. However, beginning in the 1950s, racial segregation of metropolitan areas became more common as increasing numbers of white families began moving from inner-city urban areas to suburban areas. The relocation decision for white families has been based on a combination of push and pull factors. The pull factors include the attractiveness and amenities of the suburbs (less congestion, more green space, etc...) and perception of higher quality schools. The push factors include inner-city crime, racism and property values.

Property taxes provide the primary funding source for public education, therefore impoverished, economically depressed regions find it almost impossible to adequately fund public education at the level necessary to guarantee educational quality equal to that in more economically affluent areas. By the same token, school districts in economically depressed areas find it difficult to compete for high quality teachers and support staff. These facts seem to be either accepted or perhaps just ignored by school funding policies which seem to perpetuate the status quo for Americans in poverty.

Federal policy over the past decade has taken steps to employ standardized testing on a national level to ensure that the quality of intra-national public education be comparable. The No Child Left Behind Act of 2001 mandates the assessment of students in public schools in reading and mathematics. The Act also requires that states provide parents of students in poor performing schools the option of enrolling their children in a different school. These mandates are based on the widely supported idea that schools need to be held accountable to the public for

educational quality. Standardized testing has become the primary means of accessing school success and providing for school accountability.

Colorado educational policy addressed the issue of standards based education almost a decade earlier. In 1993, the Colorado legislature passed HB 93 – 1313. This law required the state to develop content standards in twelve subject areas and a procedure for assessing student achievement. The student assessment tool is called the Colorado Student Assessment Program (CSAP). The stated goals of CSAP are: 1) To determine the level at which Colorado students achieve the Colorado Model Content Standards, 2) To measure the progress of students over time, and 3) To add to the body of evidence to determine 3<sup>rd</sup> graders literacy levels (Colorado Department of Education, Unit of Student Assessment).

Student performance on the tests are categorized as unsatisfactory, partially proficient, proficient or advanced. The results of the tests are issued in state, district, school, and individual student reports. The reports provide data on the total and percentage of students who scored in each performance category as a whole and disaggregated based on various demographic variables such as gender and ethnicity. At the school level, CSAP scores are an important component of the School Accountability Report (SAR). The first SARs were issued in September 2001 and were based on the CSAP tests that were administered that spring (Colorado Department of Education, 2002). Schools are ranked on the basis of their students' scores on the CSAP tests. Schools are ranked as Unsatisfactory, Low, Average, High, or Excellent. In addition to the overall school ranking, the SAR includes other school level data such as safety and school environment, taxpayers' report, school history, and staff information.

### **IMPORTANCE OF THE STUDY**

We hypothesize that school choice policies in Colorado combined with school accountability reports and NCLB have resulted in increased school segregation. This research examines this relationship by analyzing the percentage of white students in Denver metro area schools that are classified as "low-performing" elementary schools by the Colorado Department of Education.

In Colorado, parents have choices regarding what school they want their children to attend. The schools' rating often influences the choice that parents make. The rating is mainly a reflection of student scores on standardized tests. School funding, teacher stability, and the potential segregation of students by race and/or socioeconomic status are just some of the possible consequences associated with school choice. Understanding the relationship between socioeconomic status and student performance will aid policymakers in evaluating the social impact and potential consequences of current education policies.

### **LITERATURE REVIEW**

In the early 1950s, migration of white families combined with the absence of desegregation policies created a separated public education system in many metropolitan areas between whites and non-whites. The 1954 Supreme court decision in *Brown vs. the Board of Education* overturned the separate but equal clause of *Plessy vs. Ferguson* regarding public education. Regarding the unanimous court decision, Earl Warren wrote:

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does... ..We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal (Brown v. Board, 1954).

In essence, the Brown decision put an end to mandatory segregation policies and paved the way for desegregation policies such as busing. However, the segregation of white and non-white students in public schools still exists.

According to a study by the Harvard Civil Rights project, much of the gains in desegregating schools after the Brown v. Board of Education decision of 1954 have now been reversed. Although the trend of resegregation is national in scope, some of the more dramatic trends are occurring with blacks in the South and Latinos in the West. In the South, the percent of blacks who attend predominantly white schools went from zero percent in 1954 to 43 percent in 1988, in 2001 that figure dropped to 30%. For Latinos in western states, 58% attended predominately white school in 1968 and by 2001 only 20% attended predominately white schools (Orfield, 2001).

The physical relocation of white families from predominately non-white school districts to predominately white school districts will lead to greater school segregation, however, schools may become more segregated without a physical household relocation if a school district has an open enrollment policy. Study after study, in state after state, reveal that open enrollment has led to resegregation, because affluent families (in the absence of busing) are much more likely to afford increased transportation costs and are more likely to take advantage of open enrollment than poor families.

Focusing on the impact of students attending racially segregated schools and their performance on standardized tests, researchers in Florida found that students who attended black segregated schools scored lower than students who attended white segregated schools, however when controlling for other determinants of school-level performance, students who attended integrated schools did not score significantly lower than students in white segregated schools (Borman, McNulty Eitle, & Eitle 2004). The researchers also found that student enrollment stability and free lunch eligibility had a negative and significant relationship with the percent of a school's students passing a state standardized test in reading and math.

The majority of studies concerned with school characteristics and student performance are regional in scope. The most common characteristics examined include; teacher experience, student attendance, student enrollment stability, class size, and student socioeconomic status. According to an Ohio study, the factors that have the greatest impact on student achievement include student teacher ratios, teacher quality, student attendance, and student mobility (Carr, 2006). The research found that a higher ratio of students to full-time teachers was associated with higher student achievement; however it also found that reducing class size by increasing the number of part-time teachers did not improve student performance. Regarding student mobility, schools that experience higher turnover rates have lower levels of student performance, even if the school has high attendance rates. Characteristics of the student body, including the number of minority and economically disadvantaged students were negatively related to student performance.



Research involving New York City schools revealed that the poor performing schools, as measured by student test scores, were schools that served mainly economically disadvantaged and minority students (Stiefel, Schwartz, & Iatarola, 2000, Stiefel, Schwartz, & Iatarola, 2001). Schools with a higher percentage of non-white students and a higher percentage of students eligible for free lunch had lower test scores. These schools were also associated with low student attendance rates and teachers with limited teaching experience.

In a study of the determinants of student achievement in San Diego, researchers found that the most important determinant of students' gain in test scores was the individual student's classroom peer achievement (Betts, Zau, & Rice 2003). The authors contend that students are greatly influenced by the achievement levels of the students around them. Attendance rates were also an important influence on gains in students test scores and class size was important at the elementary but not middle or high school levels.

Aske and Corman (2008), identified that student attendance rates, the percent of students eligible for the free lunch program, student enrollment stability, student-teacher ratio, teacher absence, and the percent of teachers at the school with tenure were statistically significant in determining student performance on standardized tests.

They found that the free lunch variable (which reflects the relative poverty level within the school) was significant and negative in its relation to high student scores, indicating that as the percent of students eligible for the free lunch program increases, the percent of students proficient or advanced in reading, writing, math declined. This result is consistent with results identified in other studies across the nation (e.g., Carr, 2006; Betts et al, 2003; Borman et al, 2004; Goodwin et al, 2006; Stiefel et al, 2000).

In addition, Aske and Corman discuss minority membership data within their study. They did not include the membership variable within their regression because of the high correlation with the free lunch variable, especially for Hispanic and White membership. A correlation coefficient of 82.5% was identified between Hispanic membership and free lunch. The correlation coefficient between White membership and free lunch was -82.04%. They report that correlation was found between the poverty measurement and Black, American Indian, and Asian Pacific Islander membership categories as well but not to the same degree.

## **METHODOLOGY**

The purpose of this study is to demonstrate the extent of segregation of low performing elementary schools in the Denver metro region. The population of interest in this study consisted of elementary schools from Adams, Arapahoe, Denver, and Jefferson Counties. There are 82 schools that we have identified as consistently low performing schools throughout the 2001-2007 time period, indicating that these schools have been open continually and have received a low performance rating for each of these years. For this study, a school is determined as low performing based on the School Accountability Report (SAR) by the Colorado Department of Education.

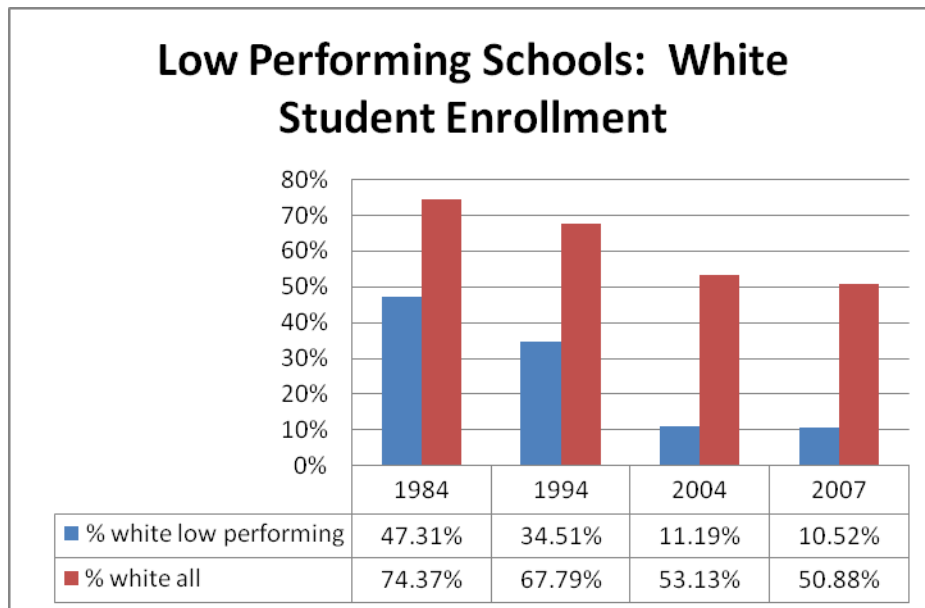
SARs are issued annually, the reports rate the schools based on student performance on the Colorado Student Assessment Program (CSAP) standardized tests. The CSAP test was first administered in 1997 to 4<sup>th</sup> graders in the subject areas of reading and writing. In 2004, the test was administered to grades 3 – 10 in reading and writing, grades 5 – 10 in math and grade 8 in science. For elementary schools, CSAP scores are used to determine the school's overall

academic performance. Based on these scores, schools are ranked as Unsatisfactory, Low, Average, High, or Excellent.

The extent of segregation from these low performing schools is examined by looking at the change in white student enrollment for these 82 schools from 1984 to 2007. For this analysis, the changing demographic characteristics of these counties is demonstrated by the change in white enrollment out of total school enrollment. In absolute terms, segregation is calculated as the change in the total number of white students enrolled. Relative segregation is demonstrated by the number of white students enrolled relative to the total number of students enrolled. This analysis is focused on a relative measurement of segregation; defining the degree of segregation by calculating the percent of total enrollment that is self-identified as white.

### FINDINGS OF THE STUDY

The following graph depicts the change in the percent of white students in the four selected counties in the Denver Metropolitan Region compared to the percent of white students in low performing schools in 1984, 1994, 2004 and 2007. As discussed in the previous section, the demographic changes within the four counties is represented by the percent change in white student enrollment in all schools since 1984. In 1984, white students comprised 74.3% of the student population. By 2007, that percentage had fallen to 50.8%. a decrease of over 23 percentage points. The increasing segregation of non-white students in low performing schools is indicated by the more dramatic decrease in the percent of white students attending the identified low performing schools during the same time period. In 1984, white students comprised 47.3% of the students in low performing schools. By 2007, this number had fallen to a mere 10.5% .



When calculating the percentage change between these statistics using the starting value as the base, this increase in segregation becomes even more evident. Using this approach, the

change in overall white enrollment decreased by 31% whereas the change in white enrollment in low performing schools declined by 78%.

This evidence indicates that the change in nonwhite enrollment in low performing schools is not simply the result of demographic changes within the region. It is the authors' contention that the increased degree of segregation of the nonwhite students in low performing schools can be attributed in part to demographic changes. However, the above analysis shows that a significant contributor to increased segregation is a direct result of deliberate choices made by white parents to enroll their children in schools that have not received a low performance rating. What directly affects this decision making process is not within the purview of this study, however the national education policy of NCLB and the pursuant state policies regarding accountability and school choice do seem to provide an impetus for their decisions. School choice has presented parents with enrollment options outside of their neighborhood schools and the mandates of school accountability in the form of school rankings have provided the parents with an indicator, although a narrow one, of school quality.

### **FURTHER CONSIDERATIONS**

Students differ regarding their level of motivation, performance preference, and capacity to respond to increases in educational opportunity. The range of innate or preparatory ability is wide among students from diverse family and socioeconomic backgrounds. While programs such as "Head Start" have narrowed the preparatory gap, students from affluent backgrounds begin school with higher levels of preparedness and consequently perform better than students without those preparatory opportunities. In addition, students from families with higher levels of educational attainment and higher incomes tend to place higher values on educational opportunity. Therefore, socioeconomic status contributes significantly to a student's motivation, performance preference, and ability to capitalize on increased educational opportunity.

Students with low motivation, low performance preference, and a lower propensity to capitalize on increases in opportunity may tend to respond to positive peer competitiveness. If then, through school choice, parents of students that generate positive peer effects pull them out of largely "ability heterogeneous" school and enroll them in a more "ability homogeneous" school, the educational progress of the students left behind will stagnate. No amount of additional funding will evoke a significant change in performance capacity or behavior for those remaining in the absence of the positive peer effects. Therefore, as schools become more economically segregated, attitudinal gains may dissipate as the economically challenged feel further marginalized within society and therefore become increasingly disenfranchised.

We suggest that educational leaders and policy makers address this issue of segregation and its relationship to poverty, CSAP scores, and SARs when determining future policies.

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# **IS THERE A “DIGITAL DIVIDE” IN THE PROVISION OF E-GOVERNMENT SERVICES AT THE COUNTY LEVEL IN THE UNITED STATES?**

**Jane E. Baird, Minnesota State University, Mankato**  
**Robert C. Zelin II, Minnesota State University, Mankato**  
**Queen Esther Booker, Minnesota State University, Mankato**

## **ABSTRACT**

*This study examines whether E-Government services provided at the county level in the United States (U.S.) are provided equally to citizens across income and poverty levels. A sample of 344 randomly selected counties was evaluated to assess whether or not they had a web presence. In addition, each county was evaluated based on the presence or absence of 12 e-services factors. The results indicate that counties with lower median incomes and higher poverty percentages were less likely to have a web presence as of January 2010. Results also showed that counties with lower median incomes and those with higher poverty percentages are less likely to offer any of the 12 e-services. These results indicate that efforts to reduce the “digital divide” in terms of citizen access to the Internet may not guarantee equal access to government services. Rather, a different type of “digital divide” may continue to exist if counties with less wealthy citizens cannot find ways to overcome barriers to increasing their level of e-government service offerings.*

# **SHE’S NOT HEAVY, SHE’S MY SISTER: DOES ANYONE REALLY GIVE A HOOT ABOUT OBESITY AND WEIGHT DISCRIMINATION? THE CASE OF THE “HEAVY” HOOTERS GIRLS**

**Linda L. Barkacs, University of San Diego**  
**Craig B. Barkacs, University of San Diego**

## **ABSTRACT**

*Hooters – along with their overtly conspicuous waitresses – opened their first restaurant in Florida in 1983. (About Hooters, 2008). Controversy would soon follow in the form of lawsuits for sexual harassment, men suing to become “Hooters Girls,” and allegations of one-sided arbitration agreements that purportedly disadvantaged employees. Most recently, however, Hooters was sued by two former waitresses who claim they were illegally fired because they were deemed to be overweight. (Roth, 2010). All of this comes at a time when the overall fitness of Americans has been called into question, as evidenced by the Centers for Disease Control and Prevention asserting that there has been a dramatic increase in obesity in the last twenty years. (Centers for Disease Control and Prevention, 2010). Given the reported expanding waistlines of Americans, should weight be a protected class covered by civil rights legislation? Or is this just a case of political correctness gone mad?*

# **BUSINESS STUDENT PERCEPTIONS OF ACTIVE VERSUS PASSIVE ACADEMIC DISHONESTY: ACCOUNTING VERSUS NON-ACCOUNTING MAJORS**

**Robert Elmore, Tennessee Tech University  
M. Meral Anitsal, Tennessee Tech University  
Ismet Anitsal, Tennessee Tech University**

## **ABSTRACT**

*Tracking investments and completing taxes, accounts must also financially protect investors. Rarely criticized for insufficient technical expertise, professional accountants are often reprimanded for being unethical. Because professional judgment is often necessary in the absence of a technical resolution, the accounting profession requires not only applying regulations and rules but also demonstrating moral integrity. Unfortunately, some companies disregard rules of conduct, resulting in a “credibility crisis” in the profession. Research shows a positive correlation between academic dishonesty and unethical workplace behavior. Consequently, awareness of college students’ views of academic dishonesty is paramount. This research study compares accounting and non-accounting majors’ views in a major Southeastern state university’s business college. To test the hypotheses, structural equation modeling has been used. The discussion focuses on the similarities and differences in the conceptual modeling as it pertains to active and passive academic dishonesty. Major differences between accounting and non-accounting majors are revealed.*



# **THE ETHICS OF TAX EVASION: AN INVESTIGATION INTO DEMOGRAPHIC DIFFERENCES**

**Robert W. McGee, Florida International University**  
**Inge Nickerson, Barry University**  
**Larry Pleshko, Kuwait University**  
**Michael Broihahn, Barry University**

## **ABSTRACT**

*The concept of tax evasion is the primary focus of the study. Data is gathered from a survey of approximately eleven hundred individuals across six countries. An eighteen-item scale is presented, analyzed, and discussed. Findings suggest that tax evasion has three overall perceptual dimensions across the items tested: (1) fairness, as related to the positive use of the money, (2) tax system, as related to the tax rates and negative use of the money, and (3) discrimination, as related to avoidance under certain conditions.*

# OMAHA UNILATERALLY CHANGES RETIREE'S BENEFITS – CONTRACT CLAUSE IMPLICATIONS

**Steven C. Palmer, Northwestern Oklahoma State University**  
**George McNary, Creighton University**  
**Lee Weyant, Kutztown University**

## ABSTRACT

*Many American cities are facing budget shortfalls in 2010. The mayor and city council in Omaha, Nebraska addressed the shortfall by unilaterally requiring retirees to pay a portion of their health insurance premiums, despite labor contracts requiring the city to pay the entire premium. The contract clause in the United States Constitution prohibits states (and cities) from interfering with the obligation of contract; however, this prohibition is not absolute. This paper examines whether or not Omaha can legally require retirees to pay a portion of the premium.*

## BACKGROUND

In April 2010 Mayor Jim Suttle (Omaha, Nebraska) was looking for ways to close the city's projected \$9.8 million budget shortfall. Faced with rising health insurance premiums (i.e., 117% from \$7,869 to \$17,111 per retiree in a decade) and the cost to maintain 34 different retiree health insurance plans (City of Omaha, 2010b; Suttle, 2010), the decision was made to unilaterally change the retirement health insurance benefits for its retirees and employees without consulting the unions (Goodsell & O'Brien, 2010). A majority of these retiree benefits were negotiated through collective bargaining agreements (CBAs) with various public service employee unions and required the city to pay 100% of the health insurance premium for approximately 84% of city retirees (Mastre, 2010).

Originally the mayor calculated the retiree's monthly premiums based on the job the retiree held with the city and the type of insurance coverage (single, single-plus one, family). This calculation allowed for premium differentials ranging from \$128 per month for a single retired police officer to \$702 per month for a civilian retiree with family coverage (Goodsell & O'Brien, 2010). The city estimated the plan would save \$6.75 million per year (O'Brien, 2010c).

Prior to city council holding a public hearing on the proposal, the city's projected budget shortfall was revised to \$12.3 million (O'Brien, 2010d). Mayor Suttle, in response to public feedback, revised the premium schedule so it was based on the annual pension payment to the retiree and the policy coverage. Retirees receiving less than \$20,000 per year in pension payments would pay between \$20 and \$60 in monthly insurance premiums. Those with pensions of \$60,000 or more per year would pay monthly premiums of between \$124 and \$487. The new plan was estimated to save the city \$4.1 million per year (O'Brien, 2010b). Finally, the city proposed collapsing the 34 retiree health plans into three plans resulting in an additional \$750,000 per year savings (City of Omaha, 2010b).

At the public hearing on the proposal several witnesses spoke in support of the proposal, using the private sector argument that private sector employees and retirees do not get free health insurance so public sector employees and retirees should not get free health insurance either.

Other arguments included that (1) the city could not afford to pay the expense anymore and should not raise taxes to do so; (2) the current retirement benefit was unfair to the taxpayers and was the result of unethical politicians; (3) the citizens of Omaha had not approved the contracts so the city was not bound to follow them; and (4) the union contracts were outrageous and resulted from city weakness so the city did not have to comply (City of Omaha, 2010a).

Nineteen witnesses, union representatives and retirees, testified at the public hearing in opposition to the proposal. Opponents argued that (1) the city made promises to them when they were employed and that the city should not back out of those promises now; (2) the retirement health insurance benefit was part of the compensation they earned for working their jobs; (3) the city was contractually obligated to pay the benefits; (4) representatives of the city's Human Resources Department told them at retirement meetings that the retirement health insurance benefits could not be changed; (4) the health insurance benefit was a significant factor in their personal decisions to retire when they did; and (5) the city had used the retirement health benefit as part of a carrot to encourage employees to enter early retirement (City of Omaha, 2010a).

The city council unanimously passed the change to the retiree health care benefits. City council members argued that not to do so would eventually bankrupt the city. (O'Brien, 2010e)

## LEGAL ANALYSIS

The first paragraph of Article 1, Section 10 of the United States Constitution, commonly known as the *Contract Clause*, provides in relevant part, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . ." (U.S. Constitution, article 1, section 10.) The Nebraska Constitution has a similar provision in article I, section 16. The retirees' position is that the unilateral change in retiree health insurance benefits is an impairment of the contractual obligation between the city and them, as third-party beneficiaries of the union contracts in violation of the United States Constitution, Nebraska Constitution and the Omaha City Charter.

The city, in its defense, argues that there is no impairment of contract because no contractual rights vested in the retirees. Contractual agreements do not exist *ad infinitum*. There must be specific language indicating that the rights vested and were intended to survive the contract. No such language exists in the union contracts. Under the Employee Retirement Income Security Act (ERISA), retiree medical benefits are a welfare benefit not a pension. Without specific vesting language, the employer is free to modify or terminate the benefit at will. The city also argues, even if there is a contractual right involved, that having the retirees pay a modest portion of the insurance premium does not constitute a substantial impairment. Finally the city argues that it is in dire financial condition and the retirement health insurance benefit is a significant financial burden on the taxpayers potentially leading to bankruptcy.

The United States Supreme Court, in 1934, ruled that the prohibition provided in the contract clause was not absolute and that states, under certain circumstances, could impair the obligation of contract (*Home Building & Loan Ass'n v. Blaisdell*, 1934). In 2008 the Eighth Circuit, in which Nebraska is located, set forth the following framework to analyze if a state/city law violated the Contract Clause. First it must be determine if: (1) a contractual relationship existed; (2) a change in law impaired that contractual relationship and (3) the impairment was substantial. Upon finding a substantial impairment, then the second step was to determine if there is a significant and legitimate public purpose behind the legislation. If the court found that the second step exists, the final step of the analysis is whether or not the impairment of the

contractual rights and responsibilities were reasonable and appropriate to the public purpose. (*American Federation of State, County and Municipal Employees v. City of Benton*, 2008)

The city places great weight on the lack of the contractual relationship. The Nebraska Supreme Court has recognized that Omaha police officers are third-party beneficiaries with rights to enforce the CBA between their union and the city (*Cavanaugh v. City of Omaha*, 1998). The city's position that no contractual rights vested in the retirees is contrary to the city charter which provides that "The legal right to a pension or benefit for the members and beneficiaries entitled thereto shall become effective when such pensions or benefits become payable, and the same shall not be impaired, abrogated, or diminished thereafter." (*Omaha City Charter*, section 6.09) Though the word *vest* is not contained in the charter, section 6.09 clearly describes vesting. Therefore, once a city employee retires, the benefit vests.

The city's position is diminished by its past practices. For more than thirty years the city of Omaha has been providing health insurance benefits to retirees under the provisions of the CBA in effect at the time of the specific employee's retirement. The city's Human Resources Department has, during that same time, advised city employees that the insurance benefit in effect at the time of their retirement will apply until their 65<sup>th</sup> birthday and cannot be changed. This indicates that the city believed that the provisions regarding retiree health insurance survived the expiration of the contract. The courts look at past practices, usage and custom between the parties to interpret contractual language. (*American Federation of State, County and Municipal Employees v. City of Benton*, 2008). Clearly, the contractual provisions in question were intended to survive the expiration.

Case law is also against the city in this matter. The United States Supreme Court ruled that once a state official renders services the compensation cannot be retroactively changed. (*State of Mississippi v. Miller*, 1928) The Nebraska Supreme Court has consistently ruled that pension benefits, including retiree health benefits, are deferred compensation. (*Halpin v. Nebraska State Patrolmen's Retirement System*, 1982; *Omer v. Tagg*, 1990)

Once the contractual relationship has been established the next inquiry is if there has been an impairment. If the change worsens the party's position, there is an impairment (*Caruso v. City of Omaha*, 1986). The question then is if the impairment is substantial. The city argues that an approximate 10% reduction in pay is not substantial; however few people on a fixed income could maintain their current lifestyle with 10% less money. The United States Supreme Court ruled that retroactively changing an employee's compensation is a substantial impairment (*Home Building & Loan Ass'n v. Blaisdell*, 1934). No court decision was found that held a unilateral, retroactive change in a government employee's compensation was not a substantial impairment.

The city of Omaha may still legally institute the change in retiree health insurance benefits if there is a significant and legitimate public purpose. The city argues that its fiscal condition and the costs of providing the benefit provide a significant and legitimate purpose. This is not the first time the city of Omaha has argued potential bankruptcy if it were not allowed to unilaterally change its benefits to retirees. The Nebraska Supreme Court rejected the argument in 1995 (*Calabro v. City of Omaha*, 1995). The Eighth Circuit has recognized that financial exigency may be a legitimate purpose but the court noted that the concerns must be unprecedented (*American Federation of State, County and Municipal Employees v. City of Benton*, 2008). The Nebraska Supreme Court ruled that the burden of retirement plans is not sufficient to justify unilaterally changing the plan (*Halpin v. Nebraska State Patrolmen's Retirement System*, 1982). The Third Circuit ruled in a case in which the state of Pennsylvania attempted to withhold retirement insurance benefits that any argument predicated on compelling

state interest fails when applied to an attempt to retroactively change previously vested retirement benefits (*Larsen v. Pennsylvania*, 1998).

Accepting that the city can successfully argue a valid significant public purpose to be served by the unilateral impairment of the contract, the city must show reasonableness and necessity. Justice Blackmun wrote that governmental entities can always find ways to spend money differently, especially if taxes do not have to be increased. A city reducing its financial obligations should not be regarded as an important public purpose. Blackmun wrote there is a two prong test for necessity: (1) can a more modest modification achieve the purpose or (2) are other alternatives available. Finally, an impairment is not reasonable if the circumstances are neither new nor unforeseen. (*United States Trust Company of New York v. New Jersey*, 1977)

The Ninth Circuit ruled that it is unreasonable for a government entity to balance its budget by unilaterally changing its obligations to employees. Just because other alternatives are politically more difficult does not justify unilaterally placing the brunt of the financial problems onto employees. (*University of Hawaii Professional Assembly v. Cayetano*, 1999)

The Nebraska Supreme Court ruled that it is unreasonable to unilaterally modify vested right without providing something of equal benefit in return (*Calabro v. City of Omaha*, 1995). The city has not provided any benefit in return for modifying the retiree insurance benefit.

Based on the city's projected savings of \$4.1 million, the average cost to the 1091 retirees is \$3700 per year. Property tax rates in Omaha are close to a 50-year low – 47.587¢ per \$100 value. The 50-year low is 42.53¢ per \$100 value. If the city increased the property tax rate by 10% to 52.346¢ per \$100 value it would collect sufficient revenue to cover the entire budget shortfall. Based on median home value in Omaha, this would result in an additional \$62 per year in taxes on the median valued home. (City of Omaha Finance Department, 2010)

## CONCLUSION

Federal and state case law on the Contract Clause present a substantial and probably insurmountable hurdle for the city of Omaha to overcome to unilaterally require retirees to pay a portion of their health insurance premiums. Courts have required greater scrutiny when a state or city tries to impair the obligation of its own contracts.

Omaha's argument that there is no contractual obligation is disingenuous. For almost thirty years the city has interpreted the union contractual obligation concerning retiree health benefits to survive the expiration of the collective bargaining agreement resulting in 34 different health insurance plans. The city charter explicitly indicates that those retirement benefits vest, without using the term vest, upon retirement. The Nebraska Supreme Court has consistently ruled that retirement benefits are deferred compensation that vest upon doing the work.

Courts have uniformly held that a governmental unit cannot unilaterally change vested rights. No court has allowed a public entity to unilaterally change provisions of a collective bargaining agreement with its employees if the modification put the employees in worse shape.

Apparently, the mayor and city council are taking the politically expedient path of placing the burden of the fiscal problems on 1091 retirees rather than the 425,000 residents.

Had the city collectively bargained for the changes, the outcome may have been different. The city may have been able to unilaterally change the retirement for its current employees. Had the city provided a different benefit to the retirees in exchange for them paying a portion of the insurance premium, the city may have been successful. These alternatives involve different issues of law that were not part of this research project.

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