## Notes

This short Topicality violation and answers is intended to be read against one affirmative in the Novice Starter Pack. That affirmative is:

The United States federal government should suspend Foreign Military Sales and Direct Commercial Sales of arms to military corps that violate human rights.

The negative position is that suspending sales until a target country/countries behavior changes makes the reduction probabilistic. The ability for the affirmative to claim sales increase post the plan undermines links to the negatives core generic positions such as the Defense Industrial Base DA, Fill-in DAs, Allies DAs, and Relations DAs.

## Negative

### 1nc – not suspend

#### Interpretation --- reduce means to diminish in number --- allowing a subsequent replacement of previously foregone sales is not a reduction

* if it’s replaced, the ultimate impact is it has not been reduced

Robinson 13 – Appellant to Court of Appeals of Texas (Third District in Robinson v. Williams, 2013 TX App. Ct. Briefs)//BB

In fact, prior to this case, in matters involving the less severe action of simply not offering a teacher a new contract for the succeeding school year, the Commissioner embraced the concept that a district cannot even nonrenew a teacher's contract to reduce force when there are open positions for which the teacher is qualified: this based on the premise that merely replacing a teacher with a different person does not result in a reduction of personnel. Maintaining the current level of personnel does not and cannot, mathematically, constitute a reduction. Prior to this case, [\*15] the Commissioner has consistently held that, although a legitimate reduction in force is a valid reason for nonrenewal, it must be a "reason," not merely an excuse: [Reduction in force] certainly constitutes a valid reason if, as on the date on which notice in this case was given Plaintiff, a teacher's assigned position is eliminated and there are no other positions in the district which the teacher is qualified to fill. It does not constitute a reason if, as on the date of hearing in the present case, there is another position for which the teacher is qualified, unless the district has a reason, supported by substantial evidence, for not reassigning the teacher to that position. \* \* \* \* This decision holds only that the validity of the date reasons for a nonrenewal must be evaluated as of the date of the hearing and on the basis of the evidence presented therein. Since the vacancy situation had changed between the date of the notice and that of the hearing, the board should have discontinued the non-renewal process at that time due to the absence of any necessity for a non-renewal based upon a reduction in force. Strauch v. Aquilla ISD, No. 189-R1a-782 [\*16] (Comm'r Education. 1983). This principle makes sense. It requires a reduction in force to be just that: a reduction in the number of employees. It acknowledges that replacing one employee with someone from outside the district does not achieve the goal of reducing the number of employees. This rule against swapping an employee for a non-employee and calling it a reduction of personnel is even more compelling in the present case, which involves the proposed termination of an existing contract, than in Strauch, a nonrenewal case. Ms. Robinson, by virtue of her existing contract, had a vested property right to employment through the 2011-12 school year. As the Commissioner stated cogently and logically: "Since the vacancy situation had changed between the date of the notice and that of the hearing, the board should have discontinued the non-renewal process at that time due to the absence of any necessity for [terminating Ms. Robinson's contract] based upon a reduction in force." In Wasserman v. Nederland ISD, No. 171-R1-784 (Comm'r Education. 1984), the Commissioner reiterated this principle: Reduction in force does not constitute a valid reason for nonrenewal, [\*17] if on the date of nonrenewal, there is another position for which the teacher is qualified, unless the district has a valid reason, supported by substantial evidence at the local hearing for not reassigning the teacher. (Emphasis added.) In the present case, the facts clearly and conclusively established that, on August 1, 2011, the date of the termination, there were other positions open within the district for which Ms. Robinson was qualified, and that this had been the case every day since positions were opened to external candidates on July 1. The district offered no valid reason for failing to assign Ms. Robinson to an open position. The action to terminate Ms. Robinson's employment on August 1 did not, therefore, constitute a valid reduction in force. The reduction in the number of secondary English teachers that was required by the financial exigency had been accomplished by attrition. Terminating her employment at this time did nothing to accomplish the goal of reducing staff. The district had to turn around and hire someone else anyway, resulting in a net reduction of zero. If the financial exigency did not require the district to fire Ms. Robinson, [\*18] why, then, did it do so? No other reason was given. In fact, the district specifically stated that there was no other reason. As noted by the Commissioner in Strauch: What was "required" by the change in programs was an alteration in "assignments." An alteration in "staffing" was not "required" as long as there was a reasonable alternative to discontinuing the employment of one or more of the district's staff members. In the present case there was such an alternative; i.e., reassigning Plaintiff to another position for which she was qualified. It is clear that, prior to this case, the Commissioner construed the word "required" as meaning "no reasonable alternative." In the present case, whether the board liked it or not, whether its administration liked it or not, there was a reasonable alternative: i.e., assigning Ms. Robinson to another position for which she was certified. The Commissioner's analysis was spot-on in his cases prior to the one currently before this court. There is no logical reason for suddenly reversing course and adopting a nonsensical principle just for this case. The question, then, should not be whether the financial exigency "required" Ms. [\*19] Robinson's termination. It didn't. The correct questions are: (a) was the boardallowed to consider the facts that, if considered, conclusively established that her termination was not a matter of necessity, bit a matter of convenience? And, (b) if so, was the board required to acknowledge those facts? 2. Was the board justified in ignoring information within its own records when it acted to terminate Ms. Robinson's employment? A. was the board allowed to consider its own records in addition to the transcript of the preliminary hearing? The first rule of any decision maker is: Get the facts right. As this court understands, no decision is any better than the facts on which it is based. This court, as any court, takes great pains to ensure that its decisions are based on correctly stated facts. Normally, these are in the form of Findings of Fact made by the fact finder and any matter of which judicial notice is properly taken. Although every court is unfazed by a challenge to its decision on legal grounds, no court wants to be chastised on appeal as having based its decision on faulty facts. A difference of opinion as to the law comes with the territory. [\*20] A misstatement of the facts on which a legal conclusion is based is not only embarrassing, but difficult, if not impossible, to justify. In the present case, the board based its decision on bad facts-as in incomplete facts. Or, more specifically, incomplete facts that it knew were incomplete: the board chose to make a decision that was not fully informed when it knew that considering all of the relevant and material facts would have required (there's that word again) a different result. Why would the board be allowed to stick its head in the sand and ignore relevant and material facts, to pretend that reality is not reality? The Commissioner excuses the board's action by claiming that the board "lack[ed] authority to take evidence" because this was a termination proceeding. (See page 7 of his Decision.) He defends this stance on § 21.258 of the Education Code, which reads as follows: The board of trustees or board subcommittee may reject or change a finding of fact made by a hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence. Id. (Emphasis [\*21] the Commissioner's.) He adds that "the hearing to receive an independent hearing examiner's recommendation is not a preliminary hearing." Id. The most serious flaws in the Commissioner's rationale include the following: a. Official notice The board of trustees was not asked to hold a preliminary hearing. The board was asked only to acknowledge information from its own website: i.e., that the district was hiring English teachers at the same time that it was firing an English teacher (Ms. Robinson) to "reduce" personnel. This was not a matter about which the board needed to receive evidence. It was what the district was doing, the district was aware of what it was doing, and no one in the district claimed otherwise. This was not a matter of credibility, it was not something that might or might not be true that required the presentation of evidence, pro and con, in order to make a fact finding. It was a fact, and the board knew to a certainty that it was a fact. In other words, it was information of which "official notice," may ordinarily be taken by an administrative body. Under the Administrative Procedure Act, an administrative agency may take official notice of: (1) [\*22] All facts that are judicially cognizable; and (2) Generally recognized facts within the area of the body's specialized knowledge. Government Code § 2001.090(a)(1) and (2). This court has recognized, pursuant to this very language, that an administrative agency may take official notice of information within its own records: The [Savings and Loan] Commissioner took official notice of the names of all associations holding charters from the State and determined that there were no chartered savings and loan associations having the name "Southwestern Savings and Loan." This was done in accordance with the provisions of Article 6252-13a, Sec. 14(q), V.A.T.S. [now Gov't Code § 2001.090]: ". . . official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge." Chartering of savings and loan associations is peculiarly within the province of the Commissioner. The Commissioner's official records reflect every such institution doing business in the State. That the records revealed there were no chartered savings and loan associations in Texas having [\*23] the name "Southwestern Savings and Loan" was a fact "generally recognized" to be " . . . within the area of the agency's specialized knowledge," and was officially cognizable by the Commissioner. United Sav. Ass'n of Texas v. Vandygriff, 594 S.W.2d 163, 166-67 (Tex. Civ. App.-Austin 1980, writ ref'd n.r.e.). (Emphasis added.) Although a school district is not technically subject to the APA, there is no logical basis for concluding that, as an administrative body, it is prohibited from taking official notice of facts within its own purview. The United States Supreme Court has reasoned as follows with regard to a local authority that does not rise to the level of being an "administrative agency": The city council members, familiar with commercial downtown Erie, are the individuals who would likely have had firsthand knowledge of what took place at and around nude dancing establishments in Erie, and can make particularized, expert judgments about the resulting harmful secondary effects. Analogizing to the administrative agency context, it is well established that, as long as a party has an opportunity to respond, an administrative agency may take official [\*24] notice of such "legislative facts" within its special knowledge, and is not confined to the evidence in the record in reaching its expert judgment. City of Erie v. Pap's A.M., 529 U.S. 277, 297-98, 120 S. Ct. 1382, 1395, 146 L. Ed. 2d 265 (2000). In other words, a local authority can properly take official notice of what is generally known to be going on in its jurisdiction, let alone what it is on its own website. See also, McLeod v. I.N.S., 802 F.2d 89, 93 (3d Cir. 1986): Official notice, rather than judicial notice, is the proper method by which agency decision makers may apply knowledge not included in the record. The Administrative Procedure Act allows a decision maker to take "official notice" of material not appearing in the evidence in the record. 5 U.S.C. § 556(c). Official notice is a broader concept than judicial notice. See 4 Stein, Administrative Law § 25.01 (1986). Both doctrines allow adjudicators to take notice of commonly acknowledged facts, but official notice also allows an administrative agency to take notice of technical or scientific facts that are within the agency's area of [\*25] expertise. See NLRB v. Seven-Up Bottling Co., 344 U.S. 344, 73 S.Ct. 287, 97 L.Ed. 377 (1953). Also: It is true that ordinarily an administrative agency will act appropriately, in a proceeding of this sort, upon the record presented and such matters as properly may receive its attention through 'official notice.'[16] It is also true that this Court, in appropriate instances, has limited the use of the latter implement in order to assure that the parties will not be deprived of a fair hearing. See United States v. Abilene & S.R. Co., 265 U.S. 274, 286-290, 44 S.Ct. 565, 568-570, 68 L.Ed. 1016;Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U.S. 88, 93, 94, 33 S.Ct. 185, 187, 188, 57 L.Ed. 431. But in doing so it has not undertaken to make a fetish of sticking squarely within the four corners of the specific record in administrative proceedings or of pinning down such agencies, with reference to fact determinations, even more rigidly than the courts in strictly judicial proceedings. On the contrary, in the one case as in the other, the mere fact that the determining body has looked beyond the record [\*26] proper does not invalidate its action unless substantial prejudice is shown to result. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 529-30, 66 S. Ct. 687, 695, 90 L. Ed. 821 (1946). In the present case, the Commissioner's declaration that the board is not authorized to take official notice of its own website is contrary to the very purpose of official notice, which is that commonly acknowledged facts, or facts within the decision maker's own knowledge may be considered to maximize the likelihood of a reasoned, fully informed decision based on merit, not on procedure. The Commissioner's prohibition against the School board looking beyond the record proper and acknowledging facts within its own sphere of knowledge that no one disputes maximizes the likelihood of an unreasonable result. Indeed, although the legislature did not specifically mention official notice in the termination statute, it would be strange, indeed, for the state's lawmakers to declare that facts within an administrative body's knowledge are off limits for that body's consideration at any time during a contested case. As set forth in the Code Construction Act: In enacting [\*27] a statute, it is presumed that . . . a just and reasonable result is intended; Tex. Gov't Code Ann. § 311.021. b. Facts not in existence at preliminary hearing In fairness to the Commissioner, his decision would have some merit in certain cases. For example, if the information offered at the board hearing could have been introduced at the preliminary hearing before the hearing examiner, it might well be appropriate for the board to restrict its consideration to evidence in the transcript of that hearing. In the present case, this was not possible. The preliminary hearing was on June 20-21, 2011. The positions that could have and should have been offered to Ms. Robinson were opened to outsiders after June 30. Further, if the information offered for official notice at the board hearing were simply cumulative of the evidence already submitted at the preliminary hearing, it might be reasonable to decline that information. Again, that is not the case. The information at issue was not only completely different from what was addressed previously, it was relevant and dispositive. c. Board not a slave to process The board is under no compulsion to make any decision at [\*28] all or any findings of fact. It can always stop the process when it becomes aware of current information that negates the need to proceed to terminate a teacher in an effort to reduce force-such as when it is actually increasing force. There is no provision anywhere in the Education Code that requires a school board to continue with termination proceedings once those proceedings have no further purpose in the real world. That is, unless the Commissioner wants to adopt the proposition that the proceedings must continue even if the teacher submits his or her resignation, and the board is aware of that fact. Once the board knows that the reason for a reduction in force no longer exists, it is the essence of arbitrariness and capriciousness to fire a teacher and then replace that teacher with someone else, because that does not constitute a reduction by anyone's definition. However, just to cite some authority as to what constitutes a "reduction," here is a generally accepted definition of the word: "the act or process of reducing." Merriam-webster.com/dictionary. In case this definition is considered circular, "reduce" is defined as follows: "to diminish in size, amount, extent, [\*29] or number." Id. Firing one of 1,000 teachers and replacing that individual with a different teacher does not diminish the number of teachers to 999. It maintains the number of teachers at 1,000.

#### Violation --- the plan’s conditional --- that may prevent sales for a limited time, but any lost sale can be completely replaced after the condition is met.

#### Vote neg --- stable ground --- a mandatory reduction is key to fill-in, DIB, allies and politics DAs. Making the reduction probabilistic allows the aff to shift late in the debate to no link core positions.

### 2nc – change terms

#### Changing the terms of a sale is not a reduction

Supreme Court of Missouri 73 – (State ex rel. Cason v. Bond, 495 S.W.2d 385, Lexis)//BB

"\* \* \* The fact that this section relates solely to appropriation bills, in conjunction with the word 'reduce,' indicates clearly that the expression 'items or parts of items' refers to separable fiscal units. They are appropriations of sums of money. Power is conferred upon the Governor to reduce a sum of money appropriated, or to disapprove the appropriation entirely. No power is conferred to change the terms of an appropriation except by reducing the amount thereof. Words or phrases are not 'items or parts of items.' This principle applies to the condition [\*\*14] attached to the appropriation now in question. That condition is not an item or a part of an item. The veto power conferred upon the Governor was designed to enable him to recommend the striking out or reduction of any item or part of an item. In the present instance His Excellency the Governor did not undertake to veto the appropriation of $100,000 made by item 101, or any part of it, nor to reduce that amount or any part of it apportioned to a specific purpose. He sought, rather, as shown by his message, to enlarge the appropriation made by the General Court by throwing the $100,000 into a common fund to be used for any one of several different purposes. We are of opinion that the power conferred upon him by said article 63 does not extend to the removal of restrictions imposed upon the use of the items appropriated."

#### When authorized to ‘reduce’ the affirmative gets to decrease or eliminate --- changing the terms of the sale is not a reduction

Nebraska AG 73 (Office of the Attorney General of the State of Nebraska, 1973 Neb. AG LEXIS 25)//BB

In Commonwealth v. Dodson, 11 S. E. 2d 120, 176 Va. 281, the Virginia Supreme Court [\*4] stated that an item in an appropriation bill is an indivisible sum of money dedicated to a stated purpose. In State ex rel. Meyer v. State Board of Equalization and Assessment, 185 Neb. 490, 176 N. W. 2d 920, the court referred to and noted certain appropriation items. It also referred to five appropriation items, one of which was, for example, land acquisition (Medical Center, University of Nebraska) in the amount of one million dollars. This is certainly a clear example of an item of appropriation. It has been held that the power to veto item does not carry with it the power to strike out conditions or restrictions. Commonwealth v. Dodson, 11 S. E. 2d 120, 176 Va. 281. Under a Massachusetts constitutional provision which authorized the Governor to disapprove or reduce items or parts of items in any bill appropriating money the fact that the section relates solely to appropriation bills in conjunction with the word reduce shows that the expression "items or parts of items" refers to separable fiscal units and under such section, power is conferred on the Governor to reduce the sum of money appropriated [\*5] or to disapprove the appropriation entirely, but no power is conferred on him to change the terms of an appropriation except by reducing its amount. In re Opinion of the Justices, 2 N. E. 2d 789, 294 Mass. 616.

### 2nc – restrict vs reduce

#### The aff is a restriction, not a reduction---that’s distinct

Speirs 7 – brief in the District Ct of Eastern Texas (REEDHYCALOG v. BAKER HUGHES OILFIELD, 2007 U.S. Dist. Ct. Pleadings LEXIS 9234)//BB

Baker Hughes's interpretation should be adopted. The claims expressly use the word "limit," not "reduce." The plain meanings of those two words are not the same. "Limit" means "a boundary" or a "restrict[ion]." See, e.g., RANDOM HOUSE UNABRIDGED DICTIONARY, Exh. 5 (2006). "Reduce" means "to bring down to a smaller extent, size, amount, number, etc." Id. Accordingly, the word "reduce" cannot be substituted for the word "limit." Moreover, the specification discusses the two words disjunctively. See'631 patent, Exh. 4 at col. 3, lines 12-15 ("features which reduce, or limit, the extent" of "expos[ure]"); col. 6, line 61 ("reduced, or limited, exposure cutter").

### 2nc – not allow increase

#### Allowing the possibility of a future increase violates the core meaning of the term reduce

US Federal Court of Appeals 1999 “CUNA MUTUAL LIFE INSURANCE COMPANY, Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee,” Lexis

"The amount determined" under § 809, by which the policyholder dividend deduction is to be "reduced," is the "excess" specified in § 809(c)(1). Like the word "excess," the word "reduced" is a common, unambiguous, non-technical term that is given its ordinary meaning. See San Joaquin Fruit & Inv. Co., 297 U.S. at 499. "Reduce" means "to diminish in size, amount, extent, or number." Webster's Third International Dictionary 1905. Under CUNA's interpretation of "excess" in § 809(c), however, the result of the "amount determination" under § 809 would be not to reduce the policyholder dividends deduction, but to increase it. This would directly contradict the explicit instruction in § 808(c)(2) that the deduction "be reduced." The word "reduce" cannot be interpreted, as CUNA would treat it, to mean "increase."

### 2nc – quantitative

#### Reduce requires quantitative decrease

Passarello 13 – J.D. Candidate, Duke University School of Law, 2013. (Nicholas, NOTE: THE ITEM VETO AND THE THREAT OF APPROPRIATIONS BUNDLING IN ALASKA, 30 Alaska L. Rev. 125, Lexis)//BB

With respect to the item veto power, the question in the case was whether or not the governor could strike descriptive language without affecting the rest of the appropriation. The state constitution clearly guarantees the power to "strike or reduce items in appropriations bills." 61 To determine what exactly it is that the governor may strike, the Alaska Supreme Court here addressed the meaning of "item" for the first time. 62 The court concluded that "item" means "a sum of money dedicated to a particular purpose." 63 This holding rested on five lines of analysis, all of which indicate that the amount of an appropriation is the object affected by the item veto power. First, the court noted that the word "item" implies "a notion of unity between two essential elements of an appropriation: the amount and the purpose." 64 Altering the amount of an item is expressly allowed in the Constitution via the reduction power, 65 but to alter the purpose would destroy that unity by fundamentally changing the item into something else not enacted by the legislature. 66 Second, the use of the word "reduce" implies a quantitative effect, and the drafters likely intended the companion word "strike" to [\*136] have the same type of effect as well. 67 Third, "reduce" and "strike" describe the same action applied to different extents: when an amount is "reduced" to the point where it is lessened to nothing, it is effectively "struck." 68 Thus, the object of the "strike" must be associated with an amount of money to the extent that it can be lessened. 69 Fourth, the historical purpose of the item veto was to curtail the amount of state spending by mitigating the effects of log-rolling, a purpose most closely directed at the amount of the appropriation. 70 Fifth, "public policy disfavors a reading of "item' that would permit the executive branch to substantively alter the legislature's appropriation bills, resulting in appropriations passed without the protection our constitution contemplates." 71 For these reasons, the court concluded that the power to "strike" only refers to completely diminishing the amount of an appropriations item, not the descriptive language accompanying it.

### AT Williams

#### A benefit suspension is a reduction because the fixed payment that is lost is never recovered after the suspension expires. That is not analogous to the plan because unfettered sales continue after the suspension is complete

---If the employer had completely repaid the benefits, then the case wouldn’t even have been litigated.

**Williams, 2** – US Court of Appeals judge for the Seventh Circuit, writing the majority opinion (Thomas E. HEINZ and Richard J. Schmitt, Jr., Plaintiffs-Appellants, v. CENTRAL LABORERS' PENSION FUND, Defendant-Appellee. No. 00-3314. Decided: September 13, 2002, <https://caselaw.findlaw.com/us-7th-circuit/1161072.html>

The Fund argues that these cases are distinguishable because a change in the eligibility requirements, as in Ahng for example, differs from a change in the conditions triggering suspension of benefit payments in that the former permanently reduces benefits or eliminates certain participants' rights to benefits, whereas a suspension is temporary.   We find the distinction unconvincing.   Although with a suspension the interruption in benefit payments is temporary, the retiree never recovers the payments lost during the employment period.   The amendment thus “eliminates” monthly benefit payments for participants who take certain jobs after retirement and “reduces” the participant's total early retirement benefits by an amount determined by how long the disqualifying work continues.   Plaintiffs lost a valuable right they had earned before the amendment-the right to continue to work in the industry while receiving monthly benefit payments-and that loss was permanent.5  In our judgment, this was a reduction of early retirement benefits within the plain meaning of § 1054(g)(2).6

### AT Souter

#### Souter’s interpretation destroys stable neg ground --- it includes every condition even if the suspension is never imposed.

**Souter, 4** – Supreme Court Justice writing the opinion for a unanimous decision (Central Laborers' Pension Fund v. Heinz, 541 U.S. 739 (2004), <https://supreme.justia.com/cases/federal/us/541/739/>

Hence the question here: did the 1998 amendment to the Plan have the effect of “eliminating or reducing an early retirement benefit” that was earned by service before the amendment was passed? The statute, admittedly, is not as helpful as it might be in answering this question; it does not explicitly define “early retirement benefit,” and it rather circularly defines “accrued benefit” as “the individual’s accrued benefit determined under the plan … .” §1002(23)(A). Still, it certainly looks as though a benefit has suffered under the amendment here, for we agree with the Seventh Circuit that, as a matter of common sense, “[a] participant’s benefits cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit ‘reduces’ the benefit just as surely as a decrease in the size of the monthly benefit payment.” 303 F. 3d, at 805. Heinz worked and accrued retirement benefits under a plan with terms allowing him to supplement retirement income by certain employment, and he was being reasonable if he relied on those terms in planning his retirement. The 1998 amendment undercut any such reliance, paying retirement income only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. We simply do not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz’s pension rights and reducing his promised benefits.

B

 The Plan’s responses are technical ones, beginning with the suggestion that the “benefit” that may not be devalued is actually nothing more than a “defined periodic benefit the plan is legally obliged to pay,” Brief for Petitioner 28, so that §204(g) applies only to amendments directly altering the nominal dollar amount of a retiree’s monthly pension payment. A retiree’s benefit of $100 a month, say, is not reduced by a postaccrual plan amendment that suspends payments, so long as nothing affects the figure of $100 defining what he would be paid, if paid at all. Under the Plan’s reading, §204(g) would have nothing to say about an amendment that resulted even in a permanent suspension of payments. But for us to give the anti-cutback rule a reading that constricted would take textual force majeure, and certainly something closer to irresistible than the provision quoted in the Plan’s observation that accrued benefits are ordinarily “expressed in the form of an annual benefit commencing at normal retirement age,” 29 U. S. C. §1002(23)(A).

 The Plan also contends that, because §204(g) only prohibits amendments that “eliminat[e] or reduc[e] an early retirement benefit,” the anti-cutback rule must not apply to mere suspensions of an early retirement benefit. This argument seems to rest on a distinction between “eliminat[e] or reduc[e]” on the one hand, and “suspend” on the other, but it just misses the point. No one denies that some conditions enforceable by suspending benefit payments are permissible under ERISA: conditions set before a benefit accrues can survive the anti-cutback rule, even though their sanction is a suspension of benefits. Because such conditions are elements of the benefit itself and are considered in valuing it at the moment it accrues, a later suspension of benefit payments according to the Plan’s terms does not eliminate the benefit or reduce its value. The real question is whether a new condition may be imposed after a benefit has accrued; may the right to receive certain money on a certain date be limited by a new condition narrowing that right? In a given case, the new condition may or may not be invoked to justify an actual suspension of benefits, but at the moment the new condition is imposed, the accrued benefit becomes less valuable, irrespective of any actual suspension.

#### They aren’t the only one with a SCOTUS definition!

Scalia 8 – Supreme Court Justice (Oral Argument Transcript, 2008 U.S. Trans. LEXIS 74)//BB

JUSTICE SCALIA: "Reduce" in any event is -- is not -- is not the same as what you are arguing. You are arguing reduce to the maximum extent reasonably possible. The word "reduce" alone doesn't convey that. The word "reduce" would just mean, you know, if you -- if you knock it down any amount, you have reduced it.

#### One SCOTUS definition doesn’t mean it’s Truth

Baron 11 Dennis Baron is a professor of English and linguistics at the University of Illinois at Urbana-Champaign, Webster's lays down the law, JUN 15, 2011 8:45 PM BY DEBARON@ILLINOIS.EDU, <https://blogs.illinois.edu/view/25/54098>, D.A. 6/1/19

Sometimes the justices can’t find the support they’re looking for in dictionaries, and when a judicial interpretation of a law clashes with the lexical evidence, the justices are quick to reject the authority of the same dictionaries that in other cases they hold up as repositories of wisdom and reason. In Heller, none of the justices thought that the Second Amendment protected a citizen’s right to own a tank or a surface-to-air missile, even though such weapons fit the definition of arms. But they did argue over the meaning of the phrase bear arms, specifically, whether the amendment protects the right to bear arms only in connection with military service. The Court’s conservative majority decided that it did not, that it also guaranteed the right to bear arms for hunting and self-defense. Dictionaries, however, show that from the 18th century to the present, the phrase bear arms typically appears in military contexts, not ones involving individual self-defense, hunting, or sport. As the historian Garry Wills put it, “One does not bear arms against a rabbit.” But Justice Scalia rejected the dictionary evidence that did not support his understanding of the Second Amendment, writing in his majority opinion, “the fact that the phrase [bear arms] was commonly used in a particular context does not show that it is limited to that context.” In other cases, when one dictionary doesn’t give the justices what they want, they pick another, looking sometimes to the American Heritage for proof, other times to Webster’s Third, and still other times to the Oxford English Dictionary, in order to make the meaning come out right. To find out what a word might have meant to the Framers, the justices even quote the dictionaries of Noah Webster (1828) or Samuel Johnson (1755). And of course they use Black’s Law Dictionary to elucidate technical terms. This constant cherry-picking confirms that jurists do recognize dictionaries as fluid and context-bound, much like the words they define. The job of the lexicographer is not to give the law, or even to interpret it. Dictionaries don’t exist to create meaning. Instead, they record the meanings assigned to words and phrases by speakers and writers, by professionals and amateurs, by lawyers and judges, by upright citizens and criminal defendants. These meanings are multiple and changeable, and reliance on dictionaries should always be instructive, never absolute. Regardless of what the Framers thought or what the Constitution says, the meaning of our laws, like the meaning of the words they’re made of, is always open to interpretation: that’s why we have courts, and many, many lawyers, and it's why there are many dictionaries, not just one. Justice Scalia was right to go beyond the dictionary in Heller because, to paraphrase the slogan of the NRA and its gun aficionados, dictionaries don’t make meanings, people do. But sometimes, it seems, the dictionary helps.

#### SCOTUS doesn’t like reasonability either

Scalia 8 – Supreme Court Justice (Oral Argument Transcript, 2008 U.S. Trans. LEXIS 74)//BB

MR. JOSEFFER: No, because it does have to be a reasonable reduction, which would not be -- in this context would not be a trivial one. Reasonableness -- we may -- we may agree, depending on what one means by "reasonable." "Reasonableness" tends to connote a consideration of -- of all relevant factors.

JUSTICE SCALIA: Yes.

MR. JOSEFFER: And so when we're talking about a reasonable reduction, we are going to talk about a reduction that is reasonable in light of, among other things, the relationship between costs and benefits. So we may agree if that's what we both mean by "reasonableness."

JUSTICE SCALIA: Let me say it again and you tell me whether you agree. I had thought that what you meant the meaning of "minimize" was is that you reduce the -- the harm to the maximum extent reasonably possible, not merely that you reduce it to some extent.

MR. JOSEFFER: I think that's right with -- with "reasonably" entailing a consideration of -- of the relationship between costs and benefits.

JUSTICE SCALIA: Of course, "reasonable" includes everything.

### AT DSCA [conditions normal means]

#### There are actual bans. ‘Regularly’ is not the same as ‘always.’

**DSCA, 19** – Defense Security Cooperation Agency (The Management of Security cooperation, “Chapter 2: Security Cooperation Legislation and Policy: January, <https://www.discs.dsca.mil/documents/greenbook/02_Chapter.pdf?id=1>

Numerous legislative provisions are enacted annually which apply only to one specific country, or which may apply, on occasion, to a specified group of countries. Such statutes may range from a total prohibition on the provision of any form of U.S. assistance to a particular country, to a limited ban on furnishing certain types of assistance (e.g., a provision which prohibits military assistance but permits economic assistance). Thus, the S/FOAA for FY 2018 [Section 7007, P.L. 115-141] prohibits any direct assistance to Cuba, Iran, North Korea, or Syria. Of the FMFP funds earmarked for Egypt, approximately $300 million is withheld until Egypt demonstrates it is taking sustained and effective steps to improve various democratic and human rights issues [Section 7041(a), P.L. 115-141]. Of the funds provided by S/FOAA, at least $1.52 billion shall be made available for Jordan [Section 7041(d), P.L. 115-141]. No ESF funds are available for the Palestinian Authority [Section 7041(m) (2), P.L. 115-141]. No S/FOAA funds may be used by Ethiopia for any activity that supports forced evictions [Section 7042(d), P.L. 115-141]. No S/FOAA funds may be made available for assistance of the Government of Sudan [Section 7042((i), P.L. 115-141]. Outside of continued DoS human rights and disaster response consultations with its armed forces no IMET or FMFP funds may be available for Burma [Section 7043(a), P.L. 115-141]. FMFP shall only be made available for humanitarian and disaster relief and reconstructions in Nepal, and in support of related international peacekeeping operations [Section 7044 (b), P.L. 115-141]. For Sri Lanka, FMFP funds may only be available to support humanitarian, disaster response preparedness and maritime security and PKO funds may only be available for training and equipment of international peacekeeping operations only if Sri Lanka is taking steps to bring Sri Lankan peacekeeping troops who have engaged in sexual abuse to justice [Section 7044(d), 115-141]. The government of Haiti shall be eligible to purchase defense articles and services under the AECA (22 U.S.C. 2751 et seq.) for the Coast Guard [Section 7045(c), P.L. 115- 141]. Several other countries are limited during FY 2018 in receiving funding assistance until certain legislated conditions are achieved and notified to Congress.

The statutory provisions which set forth such a prohibition regularly include the required conditions under which a specific ban may be removed. The statutory language usually calls for a determination by the President, and a Presidential report to Congress, that the subject country has taken appropriate action (as required by Congress) to resolve the issue which led to the original prohibition (e.g., improved its human rights practices, eliminated corruption involving the management of U.S. grant funds, crack down on illicit drug trafficking, etc.).

#### Even if the status quo is normally conditional, that’s good --- it forces the aff to change course and criticize that approach. That guarantees inherent advantages and link uniqueness.

### AT AT DSCA – solvency advocates

#### Ukraine

Chrzanowski 18 – graduate student in the NYU Global Affairs graduate program, works as a researcher focusing on conflict in Russia and Eastern Europe, featured in The Strategy Bridge and Global Affairs Review (Brendan, “Arming Ukraine: Practicalities and Implications,” *Real Clear Defense*, [https://www.realcleardefense.com/articles/2018/09/05/arming\_ukraine\_practicalities\_and\_implications\_113769.html)//BB](https://www.realcleardefense.com/articles/2018/09/05/arming_ukraine_practicalities_and_implications_113769.html%29//BB)

America’s recent decision to authorize the sale and delivery of Javelin anti-tank missile systems to Ukraine was shortsighted and dangerous to all parties involved.[1] The provision of the Javelin weapons system, in particular, serves as little more than a symbolic gesture. In the end, the authorization will likely prove a maneuver in optics, not strategy. Furthermore, recent developments suggest the Ukrainian government, in an effort to secure the deal, may have interfered with the ongoing special counsel investigation in the United States.[2]

The following delineates the reasoning behind this conclusion, puts forward some of the stronger arguments in favor of the authorization, and describes why they are misguided. Amid the fraught U.S.-Russia relations of late, it is vital for American policymakers to consider each geopolitical decision with the utmost care, ensuring the best interests of the United States and her allies are always kept in mind.[3] An appropriate policy would include forgoing any further sale of lethal weaponry, replacing it instead with increased funds and non-lethal materiel such as counter-electronic warfare (EW) technology and the deployment of additional troops on a strictly train-and-advise basis.

The conflict in Eastern Ukraine has claimed over 10,000 lives and forced over a million more to flee their homes.[4] Taking these figures into consideration, it is evident that decisive action is necessary; thus far, however, the United States has taken the wrong approach. Arming Ukraine with Javelin anti-tank missiles runs the risk of reigniting what has become a relatively static engagement between the Ukrainian Army and Russian-backed separatists.[5] Skirmishes occur on a daily basis, and casualties continue to accrue, but a sudden injection of Western munitions into the hands of the Ukrainian Army is likely to prompt a disproportionate response from the side of the Russians, a reaction not without historical precedence.[6] Assuming the Russians respond not in kind, but with asymmetric force, where does that leave the United States? Is the United States to perpetually provide bigger and better arms as the process persists in some sort of vicious iteration of Robert Jervis’s spiral model?[7] For now, Russia has far more at stake in this conflict. With his population’s support and at least six more years at the helm, Vladimir Putin can and will broaden his country’s efforts in the region if need be.[8] Even if the United States were committed to meet every response with more firepower, the Russians have the overwhelming advantage of geography. Russia’s shared border with Ukraine, one that is reportedly near-impossible to effectively monitor, enables expedited resupplies.[9] Putin’s relative autonomy in terms of foreign policy decisions also adds to the potential for a rapid response.

#### Saudi

Friedman 18 – Benjamin H., Defense Priorities Senior Fellow and Defense Scholar, “Statement: The Trump Administration Should End U.S. Refueling and All Military Support for Saudi-Led War In Yemen”, Defense Priorities, 11/9/18, <http://www.defensepriorities.org/media/releases/2018-11-09-statement-the-trump-administration-should-end-us-refueling-and-all-military-support-for-saudi-led-war-in-yemen> //JSL

“The reported decision by the Trump administration to stop aerial refueling of Saudi bombing flights in Yemen is welcome but insufficient. “U.S. military support for this conflict is something President Obama should have never started. The military campaign launched by the Saudis and UAE in 2015 against Yemen’s Houthi rebels is a humanitarian disaster that does nothing to advance U.S. security—if anything it undermines it. “The United States should end the other forms of intelligence and logistical support provided to the Saudis, including the arms sales aiding their bombing campaign. America should recalibrate its relationship with the Gulf monarchies, treating them as neither adversaries nor allies, but as normal autocracies that we can work and trade with without endorsing their illiberal actions. “Houthi rule of part or all of Yemen may be undesirable, but it is no threat to the United States. Nor do the other stated reasons given for aiding our Gulf allies withstand scrutiny. Saudi oil, a diminishing asset, will flow because the kingdom depends on its profits—and the Saudis do nothing useful to balance Iran that they do not have a self-interest in doing, with or without U.S. support. “By backing the Saudi and UAE war in Yemen, Washington has exacerbated a civil war that has given refuge to anti-American terrorists, enabled a humanitarian crisis, and tarnished our standing as an exemplar of liberal values. These costs are not justified by any potential gains from our involvement in this civil war. “The Trump administration is right to press for an overdue settlement to the war. Limiting support for the Saudis advances encourages them to settle.”

#### The US should reduce arms sales to Taiwan

Gomez 16 – Eric, policy analyst in defense and foreign policy studies at the Cato Institute, “A Costly Commitment: Options for the Future of the U.S.-Taiwan Defense Relationship”, Cato Institute, 9/28/16, https://object.cato.org/sites/cato.org/files/pubs/pdf/pa800.pdf //JSL

If China proves unwilling to make concessions across multiple issue areas, the United States could still push for concessions on China's military posture toward Taiwan. In-stead of demanding a concession on the South China Sea dispute, U.S. policymakers could press China to take actions that reduce the military threat it poses to Taiwan via an incremental, reciprocal process of concessions.97 Refusing to sell Taiwan any new military equipment would be a good way to initiate a cooperation spiral. Stopping the sale of new equipment would not significantly reduce the Taiwanese military's ability to defend itself for three reasons. First, most equipment sold to Taiwan by the United States does not represent the latest in U.S. military technology and is not necessarily superior to new capabilities fielded by the PLA.98 Second, Taiwan's domestic defense industry is capable of producing new equipment that is well-suited to asymmetric defense, although it will take time for Taiwan's relatively small and underdeveloped defense industry to reach its full potential.99 Finally, stopping the sale of new weapons still gives the United States the latitude to sell spare parts and ammunition for weapons systems that have already been sold. Halting the sale of new types of weapons systems will signal a reduced U.S. commitment to Taiwan's security that would not be overly disruptive to Taiwan's self-defense.

#### Israel

Amnesty No Date – Amnesty International, “US Weapons Pour into Israel”, <https://www.amnestyusa.org/us-weapons-pour-into-israel/>

Despite reports of US weapons used in human rights violations in Gaza, another shipment has arrived and been unloaded in Israel. In January, Amnesty International along with other groups in Greece were able to divert and delay this shipment of arms, but on January 12, in the midst of the conflict, the ship disappeared from the radar near Greece. It reappeared March 23, traveling from Israel to the Ukraine. The Pentagon confirmed that on March 22, the cargo ship unloaded 300 containers of munitions to the Israeli port Ashdod. There is not too much to add to the statement of Amnesty’s Brian Wood: Legally and morally, this U.S. arms shipment should have been halted by the Obama administration given the evidence of war crimes resulting from military equipment and munitions of this kind used by the Israeli forces. Even still, President Obama has committed to a 10-year contract with a 25% increase in military aid totaling around $30 billion. There must be an immediate cease of arms trade to Israel and all Palestinian armed groups or the risk of serious human rights violations continues. The US government clearly owes us some answers as to why the recent arms shipment was delivered.

## Affirmative

### 2ac – T Reduce not suspend

#### We meet – the plan unconditionally cuts off weapons to human rights violators, doesn’t mandate future resumption of sales

#### Counterinterp – reduction can be conditional

**Blessing, 81 -** Professor of Political Science, Susquehanna University (“The Suspension of Foreign Aid: A Macro-Analysis” Author(s): James A. Blessing Source: Polity, Vol. 13, No. 3 (Spring, 1981), pp. 524-535, JSTOR)

As a first step towards such a comprehensive study, the period of 1948 to 1972 was selected for analysis.2 The first major problem encountered was that the relevant federal agencies and departments were either unable or unwilling to provide a list of such cases; therefore, a list of such cases had to be built from both official records and unofficial sources.3

**Footnote 3**

 3. Official publications and reports of AID and its predecessors, of the Department of State, of the Department of Defense; relevant congressional documents and reports; Facts on File; the New York Times; and relevant books and articles. One procedure utilized was comparing aid authorization data with later data on amounts expended. A few examples of official sources are: U.S. Congress, Senate, Foreign Aid Program: Compilation of Studies and Surveys (Washington, D.C.: Government Printing Office, 1957); the annual reports to Congress by AID, and so forth; Department of Defense, Military Assistance and Foreign Military Sales Facts, for each year (Washington, D.C.: Government Printing Office).

**Back to article**

The second problem encountered was the lack of terminological consistency in both official and unofficial sources. First, there is a lack of consistency regarding the use of the terms suspension and termination. For the most part, however, "termination" refers to instances where aid is permanently stopped either because the aid program was completed successfully or because the other country either requested the end of aid or became communist, at which point aid was terminated.4

"Suspension" on the other hand refers to the temporary stopping of aid due to some type of disagreement between the United States and the recipient country with the understanding or intent that aid would be resumed once the disagreement was resolved. It is the suspension of aid, not termination, that is used as a tactic to pressure other countries; and it is aid suspension, not termination, that is the subject of this study.

But even in regard to aid suspension there is terminological inconsistency. Four different actions by the United States have been officially (in relevant documents) and unofficially (in the literature) referred to by the term suspension: (1) the temporary stoppage of deliveries; (2) the decision to withhold new aid commitments; (3) a reduction in the amount of aid committed or delivered in comparison to previous amounts; and (4) a purposive delay by the United States in making a decision, one way or the other, about future aid to a country.5 It is these four types of actions that are here defined as suspensions.

#### Reducing arms sales can lessen their size, quantity, or frequency

**Gomez, 16 -** Eric Gomez is a policy analyst for defense and foreign policy studies at the Cato Institute. His research focuses on U.S. military strategy in East Asia, missile defense systems and their impact on strategic stability, and nuclear deterrence issues in East Asia. He received a Bachelor of Arts degree in International Relations from the State University of New York-College at Geneseo, and a Masters of Arts in International Affairs from the Bush School of Government and Public Service at Texas A&M University “A Costly Commitment: Options for the Future of the U.S.-Taiwan Defense Relationship” 9/28, <https://www.cato.org/publications/policy-analysis/costly-commitment-options-future-us-taiwan-defense-relationship>

Stepping down from the U.S. defense commitment would likely involve reductions in U.S. arms sales. Reductions in the size, quantity, and frequency of arms sales would likely precede any reductions to the defense commitment because arms sales are a measurable signal of American support for Taiwan. Lyle J. Goldstein of the U.S. Naval War College points out, “Arms sales have for some time taken on a purely symbolic meaning.”60 This implies that the negative effects of reducing arms sales would be relatively small, since China’s extant military advantages are not being offset by U.S. weaponry. Additionally, stopping the arms sales would not have to be instantaneous. The United States could reduce arms sales incrementally to give Taiwan time to improve its self-defense capabilities.

#### Prefer it –

#### Predictability – only our ev provides topic context – unpredictable definitions are arbitrary, cause shifting goalposts with no limiting function

#### Aff ground – most solvency advocates use ‘reduce’ and ‘suspend’ interchangeably – their interp precludes the most timely, relevant affs – ruins topic education

#### Reasonability – competing interps create a race to the bottom to the most limited topic, causes substance crowd-out – no unique abuse – they still get fill-in, DIB, politics, security K and condition CPs

### Contextual: Reduce is suspend

#### Both the AECA and FAA mandate conditionality as a means of substantially reducing arms

**Sandholtz, 16 -** Wayne Sandholtz holds the John A. McCone Chair in International Relations and is Professor of International Relations and Law at the University of Southern California(Wayne, “United States Military Assistance and Human Rights” Human Rights Quarterly, November, Project Muse)

Since the 1970s, US law has required that the allocation of economic and military assistance (foreign aid) take into account the human rights performance of potential recipients.2 In 1973, in the wake of revelations about the secret bombing of Cambodia and US support for dictators (including the CIA’s involvement in bringing Pinochet to power in Chile), Congress began to link US foreign aid to human rights.3

The initial steps were nonbinding “sense of Congress” statements, as in the 1974 amendment to the Foreign Assistance Act (FAA), which declared,

It is the sense of Congress that, except in extraordinary circumstances, the President shall substantially reduce or terminate security assistance to any government which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman or degrading treatment or punishment; prolonged detention without charges; or other flagrant denials of the right to life, liberty, and the security of the person.4

The same law required that the president inform Congress of such “extraordinary circumstances.” Congress also declared (in another nonbinding “sense of Congress” resolution) that foreign economic development assistance should be cut off for countries that consistently violate “internationally recognized human rights.”5 Facing vigorous White House resistance to human rights conditions on foreign assistance, in 1975, Congress made those conditions obligatory. The new law (known as the Harkin amendment) prohibited US economic assistance to “any country which engages in a consistent pattern of gross violations of internationally recognized human rights,” except when the aid would directly benefit the poor.6

The International Security Assistance and Arms Export Control Act of 1976 extended similar requirements to US military assistance. Under the law, countries that consistently engaged in gross human rights violations were ineligible for US security aid. The 1976 law also required that the Secretary of State submit to Congress annual reports on the human rights practices of each country “proposed as a recipient of security assistance”—the beginning of the State Department’s annual human rights country reports.7 The following [End Page 1072] year, Congress extended the human rights reporting requirement to countries that received economic development aid from the United States.8 Finally, in 1979, Congress required annual human rights reports for all members of the United Nations, not just recipients of US development and military assistance. In short, human rights conditionality for US military assistance has been US law and policy since the mid-1970s.

#### Substantial reductions are suspensions - even indefinite embargoes are eventually reversed

**Cohen, 82 –** professor of law at Georgetown (Stephen, “Conditioning U.S. Security Assistance on Human Rights Practices” 76 Am. J. Int’l L. 246 (1982), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2605&context=facpub>

Congress has successfully attached country-specific legislation to bills authorizing or appropriating military aid for every fiscal year since 1975.4 For example, Chile was prohibited from receiving any military aid in fiscal 197544 and the amount requested for South Korea was substantially reduced. 45

**\*\*Jump to Footnote 45\*\***

45 Congress provided that South Korea could receive only $145 million in military aid in fiscal year 1975 unless the President provided a report to Congress "stating that the government of South Korea is making substantial progress in the observance of internationally recognized standards of human rights." Id. §26(a). If the President submitted the report, South Korea could receive an additional $20 million in military aid. Id. §26(b).

**\*\*Return to paragraph\*\***

The legislation for fiscal 1976 contained an indefinite embargo on both military aid and arms sales to Chile.46 For fiscal 1977, military aid to Uruguay was banned.4 7 For fiscal 1978, proposed military aid was eliminated for Argentina, Brazil, El Salvador, Guatemala, 48 Nicaragua, Paraguay,49 and Uruguay,50 and reduced for the Philippines.51 Beginning in fiscal 1979, an indefinite ban was placed on both military aid and arms sales to Argentina. 2 In budgets for fiscal 1980 and 1981, Congress reduced military aid for Zaire.53 The legislation for fiscal 1981 also eliminated it for Guatemala. 54

**Footnote 46**

46 International Security Assistance and Arms Export Control Act of 1976, §406, 90 Stat. 758 (1976). At the end of 1981, the embargo was replaced with a directive that no security assistance be provided to Chile unless the President first certifies, inter alia, that the Government has made "significant progress in complying with international human rights." International Security Development Cooperation Act of 1981, Pub. L. No. 97-113, §726. A similar provision was enacted for Argentina. Id., §725.

#### the only real world substantial reduction of FMS and DCS occurred under Carter and it was conditional

**Apocaca, 6 –** associate professor in the Department of Political Science at Virginia Tech (Clair, Understanding U.S. Human Rights Policy, <https://epdf.pub/understanding-us-human-rights-policy-a-paradoxical-legacy.html>

Carter backed up these large symbolic gestures with tangible legislation. To emphasize his determination to incorporate morality into the foreign policy process, Carter signed Presidential Directive 13 (PD-13) in May 1977. PD-13 declared that arms transfers were to be exceptional tools of U.S. foreign policy. By presidential dictate, Carter greatly reduced the two largest security assistance programs, Military Assistance Program (MAP) and Foreign Military Sales (FMS), and prohibited the retransfers of U.S. military equipment, with the exception of retransfers to Israel, North Atlantic Treaty Organization (NATO), Japan, Australia, and New Zealand. He also prohibited any commercial arms sales. Furthermore, a proposed recipient’s ability to secure U.S. arms would be based on its human rights conditions and the economic impact on the recipient’s development. Before arms transfers could be authorized, the Bureau of Human Rights and Humanitarian Affairs would have to determine the human rights consequences of the transfers. Carter affirmed that his administration’s absolute commitment to human rights would apply to both pro-U.S. and anti-U.S. regimes.

#### Duration is limited in the context of arms sales reductions

**Apocaca, 6 –** associate professor in the Department of Political Science at Virginia Tech (Clair, Understanding U.S. Human Rights Policy, <https://epdf.pub/understanding-us-human-rights-policy-a-paradoxical-legacy.html>

In addition to the general legislation, listed above, linking human rights considerations to U.S. foreign policy initiatives, Congress also held country hearings and enacted country-specific legislations. In 1974, Congress began to pass human rights legislations that applied only to a specific country. Country-specific legislation is used when, in the opinion of David Forsythe, Congress “perceives both a human rights problem and an administration’s lack of attention to that problem” (1988, 160). Country-specific legislation is commonly used to deny or reduce security assistance to named countries on human rights grounds. Country hearings are in-depth investigations by the Subcommittee on International Organizations into the human rights issues of a particular foreign aid-receiving country and serve as a determination of the role of the United States in promoting human rights in that country. As chair of the subcommittee for the 94th Congress, Representative Fraser held a total of forty human rights hearings. The Subcommittee on International Organizations has jurisdiction over Section 116 and Section 502B of the Foreign Assistance Act. The subcommittee’s human rights hearings proved to be an important forum for witnessing human rights abuses around the world and in keeping human rights concerns in the forefront of U.S. foreign policy.

Country-specific legislation is generally effective for a single year and must be reviewed by Congress annually. Stephen Cohen asserts that

although usually applicable only to military aid and of limited duration, the country-specific legislation was also a finding by Congress that the Executive had failed to apply Section 502B to a government engaged in “gross violations” and that “extraordinary circumstances” would not justify past levels of military aid. (1982, 256)

#### that’s substantially reducing

**Apocaca, 6 –** associate professor in the Department of Political Science at Virginia Tech (Clair, Understanding U.S. Human Rights Policy, <https://epdf.pub/understanding-us-human-rights-policy-a-paradoxical-legacy.html>

Because the executive branch ignored the mood of Congress, in 1974 Representative Fraser delivered a letter, signed by 105 congressional members, to Kissinger warning that Congress’ support for foreign aid would depend on the inclusion of human rights concerns in the president’s foreign policy decisions. Nixon and Kissinger ignored the letter. As a result, Section 502B was added to the Foreign Assistance Act, to prohibit security assistance to governments that grossly violate human rights. However, this new section was still presented as a sense of Congress stipulation. 502B(a)(1) of the 1974 Foreign Assistance Act states,

It is the sense of Congress that, except in extraordinary circumstances[,] the President shall substantially reduce or terminate security assistance to any government which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman or degrading treatment or punishment; prolonged detention without charges; or other flagrant denials of the right to life, liberty, and the security of the person.

Section 502B was intended to prevent foreign governments from using U.S. security aid to violate the human rights of their citizens and to distance the United States from repressive regimes. The modification in the language of the legislation, from military assistance found in Section 32 to security assistance in 502B, reflects Congress’ intention to limit not only military aid but also arms sales and police equipment (S. Cohen 1982). Congress declared that the primary aim of Section 502B was to promote compliance with internationally recognized human rights.

#### The reduction was a suspension

**Apocaca, 6 –** associate professor in the Department of Political Science at Virginia Tech (Clair, Understanding U.S. Human Rights Policy, <https://epdf.pub/understanding-us-human-rights-policy-a-paradoxical-legacy.html>

In fact, the Carter Administration never formally determined that any country “engaged in a consistent pattern of gross violations of internationally recognized human rights.” Although a few countries had their security assistance reduced or denied, they were never formally called gross human rights violators. The request for aid was approved or disapproved with little explanation or clarification.2 Stephen Cohen (1982) believes that to do so would have restricted the president’s desired flexibility. Once a country was named a gross violator, any change in status due to claims of improved human rights conditions would be heavily scrutinized, as would the president’s motives for granting security assistance. Consequently, in the provision of security assistance, the Carter Administration divided countries into three categories: the good, the bad, and the ugly. In the first category were governments with decent human rights records. Granting security assistance to these countries was uncontroversial. The second category included countries that, although they had violated human rights, did not exhibit a consistent pattern of gross violations of human rights. These cases presented the administration with little difficulty, and military aid and arms sales could easily be justified. The third group, the ugly, involved countries that routinely murdered and tortured their citizens. So widespread and severe were the violations that these countries would be excluded from any consideration for security assistance due to their engagement in a constant pattern of gross violations of internationally accepted human rights.

Unfortunately, countries with a consistent pattern of gross violations of human rights, such as the Philippines, South Korea, Iran, and Zaire, were found to fit the extraordinary circumstances criteria and consequently did not suffer a reduction of U.S. foreign aid allocations. In a telling example, Vance (1978) reported to the Senate Subcommittee on Foreign Operations Appropriations that, regardless of South Korea’s human rights violations, the United States had fundamental security commitments—the deterrence and restraint of North Korea—and that, therefore, it was irresponsible to cut South Korea’s foreign aid.

The Carter Administration was able to get around the clause in 502B, which required the denial of aid to countries that display a consistent pattern of gross violations of human rights, by determining that steps, however imperceptible, were taken to curb the violations. Stephen Cohen reports

In some instances the Carter Administration adopted a highly strained reading of the statute (502B) which, although not contrary to its literal terms, produced a result contrary to Congressional intent. In other cases the language was simply disregarded, so that decisions violated even the letter of the law. (1982, 264)

### Reduce is suspend – legal

#### A suspension is a permanent reduction of what would have been delivered during the time of suspension

**Williams, 2** – US Court of Appeals judge for the Seventh Circuit, writing the majority opinion (Thomas E. HEINZ and Richard J. Schmitt, Jr., Plaintiffs-Appellants, v. CENTRAL LABORERS' PENSION FUND, Defendant-Appellee. No. 00-3314. Decided: September 13, 2002, <https://caselaw.findlaw.com/us-7th-circuit/1161072.html>

The Fund argues that these cases are distinguishable because a change in the eligibility requirements, as in Ahng for example, differs from a change in the conditions triggering suspension of benefit payments in that the former permanently reduces benefits or eliminates certain participants' rights to benefits, whereas a suspension is temporary.   We find the distinction unconvincing.   Although with a suspension the interruption in benefit payments is temporary, the retiree never recovers the payments lost during the employment period.   The amendment thus “eliminates” monthly benefit payments for participants who take certain jobs after retirement and “reduces” the participant's total early retirement benefits by an amount determined by how long the disqualifying work continues.   Plaintiffs lost a valuable right they had earned before the amendment-the right to continue to work in the industry while receiving monthly benefit payments-and that loss was permanent.5  In our judgment, this was a reduction of early retirement benefits within the plain meaning of § 1054(g)(2).6

#### The Supreme Court upheld there’s no meaningful difference between the two – any condition is a reduction

**Souter, 4** – Supreme Court Justice writing the opinion for a unanimous decision (Central Laborers' Pension Fund v. Heinz, 541 U.S. 739 (2004), <https://supreme.justia.com/cases/federal/us/541/739/>

Hence the question here: did the 1998 amendment to the Plan have the effect of “eliminating or reducing an early retirement benefit” that was earned by service before the amendment was passed? The statute, admittedly, is not as helpful as it might be in answering this question; it does not explicitly define “early retirement benefit,” and it rather circularly defines “accrued benefit” as “the individual’s accrued benefit determined under the plan … .” §1002(23)(A). Still, it certainly looks as though a benefit has suffered under the amendment here, for we agree with the Seventh Circuit that, as a matter of common sense, “[a] participant’s benefits cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit ‘reduces’ the benefit just as surely as a decrease in the size of the monthly benefit payment.” 303 F. 3d, at 805. Heinz worked and accrued retirement benefits under a plan with terms allowing him to supplement retirement income by certain employment, and he was being reasonable if he relied on those terms in planning his retirement. The 1998 amendment undercut any such reliance, paying retirement income only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. We simply do not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz’s pension rights and reducing his promised benefits.

B

 The Plan’s responses are technical ones, beginning with the suggestion that the “benefit” that may not be devalued is actually nothing more than a “defined periodic benefit the plan is legally obliged to pay,” Brief for Petitioner 28, so that §204(g) applies only to amendments directly altering the nominal dollar amount of a retiree’s monthly pension payment. A retiree’s benefit of $100 a month, say, is not reduced by a postaccrual plan amendment that suspends payments, so long as nothing affects the figure of $100 defining what he would be paid, if paid at all. Under the Plan’s reading, §204(g) would have nothing to say about an amendment that resulted even in a permanent suspension of payments. But for us to give the anti-cutback rule a reading that constricted would take textual force majeure, and certainly something closer to irresistible than the provision quoted in the Plan’s observation that accrued benefits are ordinarily “expressed in the form of an annual benefit commencing at normal retirement age,” 29 U. S. C. §1002(23)(A).

 The Plan also contends that, because §204(g) only prohibits amendments that “eliminat[e] or reduc[e] an early retirement benefit,” the anti-cutback rule must not apply to mere suspensions of an early retirement benefit. This argument seems to rest on a distinction between “eliminat[e] or reduc[e]” on the one hand, and “suspend” on the other, but it just misses the point. No one denies that some conditions enforceable by suspending benefit payments are permissible under ERISA: conditions set before a benefit accrues can survive the anti-cutback rule, even though their sanction is a suspension of benefits. Because such conditions are elements of the benefit itself and are considered in valuing it at the moment it accrues, a later suspension of benefit payments according to the Plan’s terms does not eliminate the benefit or reduce its value. The real question is whether a new condition may be imposed after a benefit has accrued; may the right to receive certain money on a certain date be limited by a new condition narrowing that right? In a given case, the new condition may or may not be invoked to justify an actual suspension of benefits, but at the moment the new condition is imposed, the accrued benefit becomes less valuable, irrespective of any actual suspension.

#### Reduce is a form of suspension

**Widener, 1 –** Judge for US Court of Appeals for the Fourth Circuit (CARRINGTON GARDENS ASSOCIATES, I, A VIRGINIA LIMITED PARTNERSHIP, Plaintiff-Appellant, v. HENRY G. CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Defendant-Appellee, 1 Fed. Appx. 239; 2001 U.S. App. LEXIS 634, 1/17, lexis)

Under the regulation, 24 C.F.R. § 886.123, the payments to Carrington could have been stopped for good, the contract terms aside. For construction of the contract terms, we adopt the wording of the opinion of the district court for the next three paragraphs of this opinion which follow:

The plain meaning of the word "withhold" is "to retain in one's possession that which belongs to or is claimed or sought by another. . . . To refrain from paying that which is due." Black's Law Dictionary 1602 (6th ed. 1990). Using this common meaning of "withhold," HUD clearly has the authority to retain housing assistance payments. But, the HAP Contract's withhold remedy also limits how long [\*\*7]  the funds may be retained. The housing assistance payments may be retained only "until the default under this Contract has been cured." Tr. Ex. 8, § 26. Once the default is cured, HUD may no longer keep the retained funds. This remedy, therefore, creates a trust type relationship where HUD has the authority to keep the withheld funds on the owner's account only while the owner is in default and thereafter must pay out the withheld funds when the default is cured.

In contrast, the reduce-or-suspend remedy suggests a more permanent forfeiture of funds. The word "suspend" means "to interrupt; to cause to cease for a time; to post pone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption." Black's Law Dictionary 1446 (6th ed. 1990). "Reduce" means "to diminish in size, amount, extent, or number." Webster's Third New International Dictionary 1905 (1981). <3> Based on these definitions, "reduce" is merely a less radical form of "suspend."

Under the common meanings of "reduce" and "suspend," HUD has the authority to discontinue housing assistance payments entirely or diminish the size of the payments while Carrington Gardens [\*\*8]  is in default. Like the withhold remedy, this remedy limits how long payments may be discontinued or diminished -- only "until the default under this Contract has been cured." Tr. Ex. 8, § 26. After the default has been cured, therefore, HUD must resume full housing assistance payments. Unlike the withhold remedy, however, under the plain language of the reduce-or-suspend remedy, HUD is under no obligation to pay out any discontinued or diminished funds. The words "suspend" or "reduce" furnish no inference or suggestion that HUD is obligated to retain suspended or reduced funds on the owner's account until a default is cured. This language in the HAP Contract speaks  [\*243]  only to HUD's obligation to begin full payments after the default is cured. JA 546-548.