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Constitutonal Law: Quasi-Public Institution Not Protected from Fair Labor Standards Act by State Sovereignty Claim

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CONSTITUTIONAL LAW: QUASI-PUBLIC INSTITUTION NOT PROTECTED FROM FAIR LABOR STANDARDS ACT BY STATE SOVEREIGNTY CLAIM - *Williams v. Eastside Mental Health Center, Inc.*, 669 F.2d 671 (11th Cir. 1982), *cert. denied*, 51 U.S.L.W. 3335 (U.S. Nov. 2, 1982) (No. 82-207).

I. INTRODUCTION

The period from 1937 to 1976 marks an era of expanded congressional power under the commerce clause of the United States Constitution.[1] Despite this expansion, the United States Supreme Court decision in *National League of Cities v. Usery*[2] restricts congressional authority to enact commerce clause legislation when that authority encroaches upon the states' sovereign governmental functions.[3] Conse-

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1. The commerce clause gives Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3.

For a more complete picture of the expansion of congressional power under the commerce clause from 1937 until 1976, see L. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 5-4 to 5-6 (1978). For examples of the expansion of congressional power under the commerce clause, see Maryland v. Wirtz, 392 U.S. 183 (1968). The Court upheld the application of the federal minimum wage requirements to employees of state and local government institutions such as public hospitals and schools. *Id.* at 188; Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). The Court found that Congress had a rational basis for finding that racial discrimination by motels affected commerce, and the passage of the Civil Rights Act of 1964 was a reasonable and appropriate means to eliminate the evil. *Id.* at 252-53; California v. Taylor, 353 U.S. 553 (1957). The Court upheld the application of statutes affecting railroad companies engaged in interstate commerce owned by *state* governments. *Id.* at 568. United States v. Darby, 312 U.S. 100 (1941). In upholding the FLSA of 1936 prescribing minimum wages and maximum hours for employees engaged in commerce, the Court noted the tenth amendment states "but a truism that all is retained which has not been surrendered." *Id.* at 124; NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937). The Court upheld both the National Labor Relations Act regulating labor practices "affecting commerce" and a National Labor Relations Board order against an employer's unfair interference with union activities. *Cf.* Fry v. United States, 421 U.S. 542 (1975). For an explanation of *Fry*, see *infra* note 3.

2. 426 U.S. 833 (1976).

3. State sovereignty is defined as "[t]he right of a state to self-government. The role of supreme authority or rule exercised by every state within the Union." BLACK'S LAW DICTIONARY 1264 (5th ed. 1979). State sovereignty concerns have been expressed by the Court before 1976. *See, e.g.*, Coyle v. Smith, 221 U.S. 559 (1911) (Court determines the power to locate its own seat of government is an aspect of state sovereignty.) In *Coyle*, the Court stated, "there is to be found no sanction for the contention that any state may be deprived of any of the power constitutionally possessed by other states, as states. . . ." *Id.* at 570.

In Metcalf & Eddy v. Mitchell, 269 U.S. 514 (1926), the Court referred to the respective taxing powers of the federal and state governments by stating "that each government in order that it may administer its affairs within its own sphere must be left free from undue interference by the other. . . . But neither government may destroy the other nor curtail in any substantial manner the exercise of its powers." *Id.* at 523. For further analysis of state sovereignty and the taxing power, see New York v. United States, 326 U.S. 572, 588 (1946) (Stone, J., concurring) (observing that a non-discriminatory tax may unduly interfere with the state's functions of government

quently, the *Usery* holding has precipitated actions by states and their subdivisions challenging the constitutionality of federal legislation when it violates the guarantee of state sovereignty provided by the tenth amendment.[4] However, in creating such a claim, the Court failed to affix a sufficiently clear standard for lower courts to use in assessing the validity of a claim asserting encroachment upon state sovereignty.[5]

In *Usery*, the National League of Cities[6] brought an action against the Secretary of Labor challenging the constitutionality of the 1974 amendments to the Fair Labor Standards Act (FLSA) as applied to the states.[7] The amendments extended the minimum wage and maximum hour provisions to virtually all employees of the states and their

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when the subject of taxation is state property or state activity).

Additionally, the necessities of a national economic emergency prompted the Court to hold a federal statute limiting increases in wages and prices valid as applied to state employees. Fry v. United States, 421 U.S. 542 (1975). However, in a footnote, the Court indicated it was willing to reassess the meaning of the tenth amendment when it pronounced, "[t]he Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." *Id.* at 547.

4. The tenth amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

5. The lack of clarity regarding the *Usery* Court's definition of protected sovereign governmental functions has spawned much criticism. *See, e.g.*, Michelman, *States' Rights and States' Roles: Permutations of "Sovereignty" in* National League of Cities v. Usery, 86 YALE L.J. 1165 (1977); Tribe, *Unraveling* National League of Cities: *The New Federalism and Affirmative Rights to Essential Government Services*, 90 HARV. L. REV. 1065 (1977); The ambiguity regarding the *Usery* definition of integral governmental functions has proved to be problematic to lower courts in their attempts to determine the intent of the Court. *See e.g.*, Amersbach v. City of Cleveland, 598 F.2d 1033 (6th Cir. 1979) (four part test developed to determine whether a governmental function is integral); Virginia Surface Mining and Reclamation Ass'n, Inc. v. Andrus, 483 F. Supp. 425 (1980) (state's ability to make essential decisions regarding a traditional governmental function of regulating land use of private entities encroached upon the state's sovereignty), *rev'd sub nom.* Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc., 452 U.S. 264 (1981). *See also* United Transp. Union v. Long Island R.R. Co., 634 F.2d 19 (2d Cir. 1980) (Railway Labor Act is unconstitutional because it interferes with the state's ability, as the sole provider of an *essential* public service, to structure employer-employee relations in the intrastate commuter rail transportation system), *rev'd*, 102 S. Ct. 1349 (1982); Richland County Ass'n for Retarded Citizens v. Donovan, 91 Lab. Cas. (CCH) ¶ 34,018 at 49,680 (1981) (*Amersbach* test endorsed in determining that the application of the FLSA requirements to a *private* provider of services to mentally retarded citizens interfered with the manner in which Montana chose to provide integral services to its citizens), *withdrawn and rev'd sub nom.* Richland County Ass'n for Retarded Citizens v. Marshall, 660 F.2d 388 (9th Cir. 1981), *vacated per curiam sub nom.* Donovan v. Richland County Ass'n for Retarded Citizens, 102 S. Ct. 713 (1982). In the *per curiam* opinion, the Court ruled that the Ninth Circuit lacked jurisdiction in the case because the government failed to opt for a direct appeal to the United States Supreme Court as required by 28 U.S.C. § 1252 (1976). Consequently, the district court decision was reinstated. 102 S. Ct. at 714. *See also* Richland County Ass'n for Retarded Citizens v. Marshall, 86 Lab. Cas. (CCH) ¶ 33,799 (1978).

6. The National League of Cities is a group of cities, states and intergovernmental organizations.

7. *See infra* note 26.

subdivisions. The Court held that "insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I § 8 cl. 3."[8]

In the 1981 case of *Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc.*,[9] the United States Supreme Court attempted to remedy the inadequacy of the *Usery* standard. The *Hodel* Court synthesized the reasoning in *Usery* and developed a three-pronged conjunctive test to determine whether enactment of a federal statute or regulation was an invalid exercise of congressional power under the commerce clause. First, the challenged statute must regulate the "States as States."[10] Second, the statute must address matters that are indisputably "attributes of state sovereignty."[11] Third, the states' compliance with the federal law must directly impair its ability "to structure integral operations in areas of traditional functions."[12] Although one might reasonably conclude that a regulation should be deemed unconstitutional because all three requirements are met, the Court indicated that situations may arise where the nature of the federal interest may preclude the possibility of sustaining a tenth amendment challenge to Congress' commerce power.[13]

Since 1981, the Supreme Court has continued to apply the three-pronged test it developed in *Hodel*.[14] However, even the *Hodel* refinement of the *Usery* rule has not substantially assisted lower courts in their attempts to assess state sovereignty claims. *Williams v. Eastside Mental Health Center, Inc.*[15] provided the United States Court of Appeals for the Eleventh Circuit with the opportunity to assess the validity of a quasi-public institution's claim that compliance with the FLSA encroached upon the guarantee of state sovereignty. This note will examine the *Williams* court's interpretation and application of the *Usery* and *Hodel* decisions. Given that prongs two and three of the *Hodel* test[16] are satisfied, this note will also explore the position that state sovereignty claims will be upheld only when "States as States"[17] are

8. 426 U.S. at 852 (footnote omitted).

9. 452 U.S. 264 (1981).

10. *Id.* at 287 (quoting 426 U.S. at 854).

11. *Id.* at 288 (quoting 426 U.S. at 845).

12. *Id.* (quoting 426 U.S. at 852).

13. *Id.* at 288 n.29. *Accord* Fry v. United States, 421 U.S. 542 (1975).

14. *See* Federal Energy Regulatory Comm'n v. Mississippi, 102 S. Ct. 2126 (1982); United Transp. Union v. Long Island R.R., 102 S. Ct. 1349, 1353 (1982).

15. 669 F.2d 671 (11th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3120 (U.S. Aug. 24, 1982) (No. 82-207).

16. *See supra* notes 11-12 and accompanying text.

17. *See infra* note 52.

"directly"[18] affected by a statute jeopardizing its "separate and independent existence."[19]

II. FACTS AND HOLDING

Eastside Mental Health Center[20] incorporated under Alabama's not-for-profit statute[21] rather than under a separate incorporation statute designed for community mental health centers (CMHCs).[22] The CMHC statute allowed only one facility per county to be incorporated under it and, in the case of Eastside, another agency had previously filed for incorporation under the statute.[23]

Eastside employed David R. Williams from February, 1977, until May, 1979. He worked as a home manager in the transitional home program.[24] Williams was required to be on duty during a continuous ninety-six hour shift which was followed by ninety-six hours of time off.[25] Eastside paid Williams on a fixed-salary basis.

In 1980, Williams filed an action in the United States District Court for the Northern District of Alabama alleging he worked in excess of forty hours a week at a rate of pay less than that prescribed under the Fair Labor Standards Act (FLSA).[26] He sought $27,000 in

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18. *See infra* note 51.

19. *See infra* notes 67-72 and accompanying text.

20. Eastside was established to provide comprehensive mental health services to the surrounding geographical area. "[It] provides both inpatient and outpatient care, emergency care, consultation and educational services, as well as specialized services for children, elderly persons, and persons with alcohol or drug-related problems." 669 F.2d at 675.

21. ALA. CODE § 10-3-1 (1980). A not-for-profit corporation is defined as "[a] corporation no part of the income of which is distributable to its members, directors or officers." *Id.* § 10-3-2.

22. Prior to the 1960's, Alabama provided its citizens with mental health treatment in large state institutions. Subsequent to a 1965 study to plan for mental health services, the state passed legislation creating the Department of Mental Health. *See* ALA. CODE § 22-50-1 (1977). Alabama also established regional authorities to administer the state-wide system of CMHCs. *See id.* § 22-51-1 "All boards and corporations established pursuant to . . . [§ 22-51-1] are statutorily designated as public corporations." 669 F.2d at 673 (citing § 22-51-2 (1977)). Alabama was divided into mental health regions and mental health authorities were established under § 22-51-2 to organize and provide for regional mental health services. However, Eastside is incorporated under the Alabama Nonprofit Corporation Act. 669 F.2d at 673-74; *See* ALA. CODE § 10-3-1. (1980).

23. The district court determined that Eastside could not incorporate under § 22-51-2. 669 F.2d at 674 n.3.

24. The transitional home program "operates as a type of half-way house, providing psychological rehabilitation services for individuals recently released from state mental hospitals or persons who might otherwise be heading for commitment to a state mental hospital." *Id.* at 672. For a more comprehensive description of the half-way house movement, see R. BUDSON, THE PSYCHIATRIC HALF-WAY HOUSE: A HANDBOOK OF THEORY AND PRACTICE (1978).

25. However, Williams was only required to be at the home during the four working days from 5 p.m. until 8 a.m.. He was allowed to leave the home during the day if he was not needed. 669 F.2d at 672-73.

26. The Fair Labor Standards Act, enacted in 1938, requires private employers to pay mini-

back pay, the amount necessary to meet the FLSA requirements.[27] The district court agreed with Eastside's contention that it was a public corporation providing traditional governmental services and consequently held it exempt from the application of the FLSA.[28]

The United States Court of Appeals for the Eleventh Circuit, however, reversed the trial court's decision.[29] The appeals court considered the dispositive fact to be that Eastside was not the State of Alabama or a political subdivision thereof.[30] The court noted that consideration of whether the services performed by Eastside were integral or traditional governmental functions was not essential to its determination of the case.[31] Since Eastside was found to be a private, non-profit corporation subject to insignificant control by the state, the court held it subject to the application of the FLSA.[32]

III. ANALYSIS

The court's analysis of the state sovereignty question began with an historical review of the concept.[33] It recognized "that the notion of state sovereignty is as important to a truly federal system of government as it is hard to define, . . ."[34] The court correctly concluded it was faced with the constitutional "problem of affixing a clear and workable boundary between the two sovereignties in our federal system."[35]

A. Background - Appellate Court Decisions Since 1976

Other circuit courts of appeals have recently been confronted with similar state sovereignty questions. However, the *Williams* court was

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mum wages within a maximum hour workweek or the payment of overtime for hours worked in excess of 40 hours in a workweek. 29 U.S.C. §§ 206, 207 (1976 & Supp. IV 1980). Although the United States and any state or subdivision of a state was initially excluded from complying with the Act, it was later amended to include employees of state hospitals, institutions and schools. In 1974, the Act was amended to include all state employees and employees of state political subdivisions except for executive, administrative, or professional personnel and elected officials. 29 U.S.C. § 203(d), (e), (x) (1976), § 203(s)(5) (Supp. IV 1980).

27. The court assumed the facts alleged by Williams in the trial court proceeding as true. 669 F.2d at 673.

28. Williams v. Eastside Mental Health Center, Inc., 509 F. Supp. 579 (N.D. Ala. 1980), *rev'd*, 669 F.2d 671 (11th Cir. 1982). Moreover, the trial judge "emphasized that the issue is not merely whether the defendant is a public corporation, but whether it provides a traditional government function." *Id.* at 580.

29. 669 F.2d at 681.

30. *Id.* at 678.

31. *Id.* at 679.

32. *Id.*

33. *Id.* at 675-76. For some examples of the cases considered by the court, see *supra* note 3.

34. 669 F.2d at 675. *See supra* note 3.

35. 669 F.2d at 675. The *Usery* Court was confronted with the same problem.

presented with a case of first impression of state sovereignty protection to a quasi-public institution. Generally, unlike *Williams*, other courts have only been presented with cases where it was stipulated that the first prong of the *Hodel* test[36] was not in issue.[37]

The appellee in *Williams* relied heavily upon *Richland Association for Retarded Citizens v. Donovan*,[38] a case on point which was currently before the Ninth Circuit Court of Appeals.[39] Significantly, less than six months after the initial decision in *Richland Association for Retarded Citizens*, and three months after the *Hodel* decision was announced, the same court withdrew and reversed its prior decision.[40] The initial court of appeals decision identified the issue as whether Richland performed integral governmental functions.[41] However, in withdrawing the opinion, the court recognized the necessity of implementing the first requirement of the *Hodel* test: whether the federal regulation affected the "States as States."[42]

B. Definition of Exempt Political Subdivision Under Usery *and* Hodel

In stating that political subdivisions may be exempt from complying with federal regulations,[43] the Court in *Usery* and *Hodel* was not suggesting that private or quasi-public entities providing traditional or integral governmental services may seek refuge under the protective umbrella of state sovereignty. A careful scrutiny of these cases supports a more restrictive test than that expressed by the *Williams* court adaptation of a rule developed by the NLRB.[44] The Court in *Usery* and *Hodel* acknowledged and indeed reaffirmed prior decisions granting

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36. *See supra* note 10 and accompanying text.

37. *See, e.g.*, Molina-Estrada v. Puerto Rico Highway Auth., No. 81-1447 (1st Cir. June 8, 1982) (available July 16, 1982, on LEXIS, Genfed library, Cir file). In determining that employees of the defendant were not due additional wages under the FLSA, the only question was whether the services performed were integral governmental functions because the Highway Authority was considered the alter ego of Puerto Rico. Amersbach v. City of Cleveland, 598 F.2d 1033 (6th Cir. 1979) (concerned the third prong of the *Hodel* test, whether employees of the City of Cleveland who worked at a municipal airport were performing integral governmental services). *Id.*

38. *See* 91 Lab. Cas. (CCH) ¶ 34,018 at 49,682.

39. Appellee's Brief at *passim*, Williams v. Eastside Mental Health Center, Inc., 669 F.2d 671 (11th Cir. 1982) (on file with the University of Dayton Law Review).

40. *See* 660 F.2d at 391.

41. *See* 91 Lab. Cas. (CCH) ¶ 34,018 at 49,682.

42. *See* 660 F.2d at 391.

43. Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc., 452 U.S. 264 (1981); National League of Cities v. Usery, 426 U.S. 833 (1976).

44. For a discussion of the rule developed by the NLRB to exempt political subdivisions from the provisions of the National Labor Relations Act, see *supra* notes 60, 61, 64 and accompanying text.

Congress the power, under the commerce clause, to regulate private businesses. This power is limited only by the requirement that the means chosen by Congress be reasonably adapted to the end, even if it preempts express state law determinations.[45]

However, a concern for states' "separate and independent existence,"[46] or "their ability to function effectively in a federal system"[47] prompted the Court in *Usery* and *Hodel* to indicate that when Congress attempts to "directly"[48] regulate the "States as States,"[49] the tenth amendment mandates that attributes of state sovereignty may not be impaired by Congress.[50] Further, the *Usery* and *Hodel* Courts determined, "one undoubted attribute of state sovereignty is the States' power to determine the wages which shall be paid to those whom they [the States] employ."[51] Throughout the *Usery* and *Hodel* opinions, the Court repeatedly refers to federal regulations that "directly"[52] affect

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45. 426 U.S. at 840. *See also* Federal Energy Regulatory Comm'n v. Mississippi, 102 S. Ct. 2126 (1982). Mississippi claimed that the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. No. 95-617, 92 Stat. 3117, constituted an invasion of state sovereignty. Section 210 of PURPA authorized the Federal Energy Regulatory Commission (FERC) to exempt small power facilities from certain state and federal regulations. In upholding the constitutionality of the regulations the Court cited its reasoning in *Hodel* when it stated that federal law prevails over conflicting state law even though Congress exercises its authority in a manner that displaces the States' police powers or "curtail[s] or prohibit[s] the States' prerogatives to make legislative choices respecting subjects the states may consider important." *Id.* at 2141 (quoting 452 U.S. at 290).

46. 426 U.S. at 845 (quoting Lane County v. Oregon, 74 U.S. (7 Wall.) 71, 76 (1869)).

47. 426 U.S. at 843, 852 (quoting Fry v. United States, 421 U.S. 542, 547 n.7 (1975)).

48. *See infra* note 52 and accompanying text.

49. *See infra* note 53 and accompanying text.

50. 452 U.S. at 286-87 (quoting 426 U.S. at 845). *Cf.* Michelman *supra* note 5, at 1172-80 (*Usery* might suggest that extension of minimum wage laws to states is unconstitutional because it affects the states' ability to function effectively within the federal system of government by interfering with their essential role as the provider of important social services to their citizens).

51. 426 U.S. at 845; 452 U.S. at 287 (quoting 426 U.S. at 845).

52. 426 U.S. at 840-41. The following passages are illustrative of the *Usery* Court's intent. "Appellants[']. . . contention, . . . is that when Congress seeks to regulate *directly* the activities of *States* as *public employers*, it transgresses an affirmative limitation on the exercise of its power akin to other commerce power affirmative limitations contained in the Constitution." 426 U.S. at 841 (emphasis added). "Appellants' essential contention is that the 1974 amendments to the Act, . . . encounter a similar constitutional barrier because they are to be applied *directly* to the . . . *States* as *employers*." *Id.* (emphasis added). "It is one thing to recognize the authority of Congress to enact laws regulating individual businesses necessarily subject to the dual sovereignty of the government of the Nation and of the State. . . . It is quite another to uphold . . . authority *directed*, . . . to the *States as States*." *Id.* at 845 (emphasis added). "But it cannot be gainsaid that the federal requirement *directly* supplants the considered policy choices of the States' elected officials and administrators as to how they wish to structure pay scales in *state employment*." *Id.* at 848 (emphasis added). "[T]he vice of the Act as sought to be applied here is that it *directly* penalizes the *States* for choosing to hire *governmental employees* on terms different from those which Congress has sought to impose." *Id.* at 849 (emphasis added). "We hold that insofar as the challenged amendments operate to *directly* displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted

the "States as States"[53] and the states as employers.[54] Even though Eastside was providing an integral governmental function, its compliance with the FLSA merely had an *indirect* affect on the state.[55]

Eastside appears to fail the *Usery* and *Hodel* test for exempting political subdivisions from complying with the FLSA. Eastside's employees are not employed by the state. The FLSA only indirectly affects the State of Alabama by preempting state policies regarding private activity. This preemption is in accord with both *Usery* and *Hodel*.[56]

Additionally, the Court in *Usery* was referring to local governmental units as the political subdivisions sharing the state's sovereignty.[57] These local governmental units derive their authority and power from their respective states.[58] Therefore, given the *Usery* Court's obvious determination to limit the protection of sovereignty to states and local governmental units, it was unnecessary for the *Williams* court to engage in the ambiguous NLRB analysis of the political subdivision

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Congress by Art. I § 8, cl. 3." *Id.* at 852 (emphasis added).

Additionally, the *Hodel* Court reviewed the *Usery* decision and observed that "the only question presented was whether that particular exercise of the commerce power 'encounter[ed] a . . . constitutional barrier because [the regulations] applied *directly* to the States as States and subdivisions of States as employers.' " 452 U.S. at 286 (quoting 426 U.S. at 841) (emphasis added) (footnote omitted). Further, the Court recognized that "[w]e began [in *Usery*] by drawing a sharp distinction between congressional regulation of private persons and businesses . . . and federal regulation '*directed* not to private citizens but to the *States as States*.' " *Id.* (quoting 426 U.S. at 845 (emphasis added). *But see* Richland County Ass'n for Retarded Citizens v. Donovan, 91 Lab. Cas. (CCH) ¶ 34,018 at 49,680 (1981) (finding that *Usery* does not require *direct* state involvement).

53. 426 U.S. at 842, 845, 847, 854. *See supra* note 52. The following passages in *Usery* support the contention that the federal regulation must affect the *states as states*. "Appellee Secretary . . . has agreed that our federal system of government imposes definite limits upon the authority of Congress to regulate the activities of the *States as States* by means of the commerce power." 426 U.S. at 842 (emphasis added). "But we have reaffirmed today that the *States as States* stand on a quite different footing from an individual or a corporation when challenging the exercise of Congress' power to regulate commerce." *Id.* at 854. (emphasis added).

54. 426 U.S. at 841, 845, 848, 849, 851. *See supra* note 52. The following authority supports the *Usery* Court's reference to state employment decisions as an attribute of state sovereignty. "One undoubted attribute of state sovereignty is the States' power to determine the wages which shall be paid to those whom *they employ*." 426 U.S. at 845 (emphasis added). "If Congress may withdraw from the States the authority to make those fundamental *employment decisions* . . . we think there would be little left of the States' 'separate and independent existence.' " *Id.* at 851 (quoting Coyle v. Oklahoma, 221 U.S. 559, 580 (1911)) (emphasis added).

55. A federal regulation based on Congress' commerce clause power will be held unconstitutional only in those cases where the state is directly affected. *See supra* note 8 and accompanying text. For the *Usery* Court's contrast between federal regulations affecting the states as states and those affecting corporations, see *supra* note 53 and accompanying text.

56. *See supra* note 45 and accompanying text.

57. *See* 426 U.S. at 855 n.20.

58. *Id. But cf.* 91 Lab. Cas. (CCH) ¶ 34,018 at 49,680 (1981) (suggesting that political subdivisions need not be local governmental units).

exemption.

C. *Adaptation of the NLRB Exempt Political Subdivision Rule*

In accordance with the first prong of the *Hodel* test, the *Williams* court applied parallel principles established by the NLRB to determine whether Eastside's compliance with the FLSA addressed Alabama as Alabama.[59] The cases involved the issue of whether a particular entity was a political subdivision and thus exempt from the provisions of the NLRA.[60] In these cases, an exempt political subdivision was determined to exist by the extent of control exerted by the state over the activities and administration of the entity.[61]

In its reasoning, the *Williams* court may have incorrectly adapted the NLRB provisions for exempt political subdivisions to help resolve the question of exempting political subdivisions from the FLSA. Nowhere in the *Usery* and *Hodel* decisions were such guidelines suggested. Although the court deemed the NLRB cases to be sufficiently analogous to *Williams*, it admitted the NLRB cases turned on the construction of the NLRA, not on constitutional considerations of state sovereignty.[62] Furthermore, the adaptation of the NLRB rule may result in including private and quasi-public parties in state sovereignty claims as a consequence of its expansion of the eligible field of exempt entities. This result was not contemplated by the *Usery* Court.[63]

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59. 669 F.2d at 677. For a discussion of the parallel principles adapted by the *Williams* court from NLRB cases, see *infra* notes 60, 61, 64 and accompanying text.

60. 669 F.2d at 677. Political subdivisions are exempt from the provisions of the National Labor Relations Act. *See* 29 U.S.C. § 152(2) (1976). *See also* NLRB v. Natural Gas Util. Dist., 402 U.S. 600 (1971) (Court endorsed the NLRB rule for exempting political subdivisions).

61. 669 F.2d at 677. *See also* NLRB v. Natural Gas Util. Dist., 402 U.S. 600 (1971). For examples of how other courts have interpreted the political subdivision question in NLRB cases, see Crestline Memorial Hosp. Ass'n v. NLRB, 668 F.2d 243 (6th Cir. 1982); Board of Trustees of Memorial Hosp. v. NLRB, 624 F.2d 177 (10th Cir. 1980); NLRB v. Highview, 590 F.2d 174, (5th Cir.), *vacated in part per curiam*, 595 F.2d 339 (5th Cir. 1979). For an engaging discussion of the political subdivision tests for exemption from the NLRA provisions, see Kiss, *The Effect of* National League of Cities *on the Political Subdivision Exemption of the NLRA*, 32 LAB. L.J. 786 (1981).

62. 669 F.2d at 677.

63. The *Usery* Court did not challenge the breadth of Congress' authority under the commerce clause except in special circumstances when the federal regulation affects the states directly. *See supra* notes 45, 52-54 and accompanying text. If the NLRB rule is enforced it will provide a more liberal approach to exempting political subdivisions than that endorsed by the *Usery* Court. See *supra* text accompanying notes 52-54 for the rule endorsed by the *Usery* Court. States and political subdivisions will have an open invitation to solve their fiscal problems by contracting with private companies to provide integral governmental services. The private companies would then be exempt from complying with the FLSA provisions. *See* 91 Lab. Cas. (CCH) ¶ 34,018 at 49,684 (Alarcon, C.J., dissenting). The dissenting opinion became the basis for the majority opinion prior to the vacation of the decision by the United States Supreme Court based on procedural errors. The dissent pointedly stated,

> the states have no inherent tenth amendment right to *demand* that contracts with private

Arguably, the NLRB rule is also inapplicable because it fosters arbitrary court decisions. As a component of the NLRB test to assess the control the state maintains over the entity, the *Williams* court considered whether Eastside was "administered by individuals responsible to elected officials or to the general public."[64] The court did not, however, indicate to what extent the individuals who administer private or quasi-public entities must be responsible to public officials or to the general public; rather, it seemed to dismiss this problem with a cursory conclusion that the controls exercised by the state over Eastside are "not so significant as to justify characterizing the Center as an arm of the state."[65] The ambiguity of the NLRB rule could lead other courts confronted with similar facts to reach contrary conclusions.[66]

It is also significant that the court did not attempt to define the word "responsible." Surely Eastside's primary dependence upon the state for funding[67] indicates that it *is* responsible to public officials for the operation of the facility. A lack of accountability to public officials on the part of Eastside's management would undoubtedly produce a cut in Eastside's public funding or revocation of its license.

D. Alabama's Separate and Independent Existence is Not Threatened

The obvious deleterious effect the *Williams* decision may have upon the provision of mental health services in Alabama,[68] and perhaps

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> businesses (must) always be cheaper or more desirable than providing the services themselves. The state must come to the private sector as it is, evaluating whether the private sector, subject as it is to minimum wage laws, . . . can still provide equivalent services at a lower cost.

Id. at 49,685.

64. 669 F.2d at 677. *See* NLRB v. Natural Gas Util. Dist., 402 U.S. 600 (1971).

65. 669 F.2d at 679.

66. Indeed, the lower court did reach a different conclusion when it found that Eastside's administration was responsible to public officials. Among the facts that both courts considered to reach different opinions are: Eastside's board of directors was externally appointed by public or governmental and private organizations as compared to elections generally held by corporations (over 50% of the appointing agencies were acknowledged as public agencies); copies of the minutes from every board of director's meeting were required to be submitted to the State Department of Mental Health; Eastside was subject to fiscal and program audits by the State of Alabama; Eastside had to comply with Alabama's Standards for Community Mental Health Centers; Eastside had to comply with Alabama's competitive bid process; Eastside's employees participated in the Alabama retirement and pension system; the state had absolute power of ratification and approval of Eastside's operating budget. Williams v. Eastside Mental Health Center, Inc., 509 F. Supp. 579, 581, 584 (N.D. Ala. 1980), *rev'd*, 669 F.2d 671 (11th Cir. 1982).

67. 669 F.2d at 673-74.

68. There was a possibility that the financial burden might cause irreparable harm to the transitional homes in Alabama, perhaps forcing some programs to close. Appellee's Petition for Rehearing and En Banc Consideration at 4-8, Williams v. Eastside Mental Health Center, Inc., 669 F.2d 671 (11th Cir. 1982) (on file with the University of Dayton Law Review).

nationwide, was not crucial to the resolution of the issue presented.[69] In *Williams*, there was no displacement of the state's ability to structure employer-employee relationships.[70] Although the court's decision may force the state to restructure its mental health delivery system, congressional power may preempt state law or state policy determinations in areas of private endeavor.[71]

Unlike the appellants in *Usery* who would have been directly affected by the application of the FLSA, Alabama decided not to operate Eastside as a state institution with state employees. The court correctly remarked that "[Eastside] cannot claim an immunity based on a condition which it itself sought to avoid."[72] Essentially, Alabama waived the tenth amendment right to protection when it developed the structure of its mental health system. Certainly, Alabama or its local governmental units had the option to directly operate CMHCs with governmental employees and claim sovereign protection under the tenth amendment.[73]

E. Form Over Substance?

The court also stated that the "determinative fact in the case is simply that the entity . . . is not a state or a political subdivision of a state . . . ."[74] Moreover, the court implied that Eastside's non-profit status under section 10-3-1 was crucial to this determination.[75] However, in assessing a claim of state sovereignty, little weight should be given to the statute of incorporation. The labeling of a corporation as public or private is seemingly irrelevant in comparison to factors more

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69. In *Usery*, the Court noted the disagreement between the parties regarding the precise effect the FLSA amendment would have on the members of the National League of Cities. However, it stated, "[w]e do not believe particularized assessments of actual impact are crucial to resolution of the issue presented. . . ." 426 U.S. at 851.

70. Eastside's employees were not state employees.

71. *See supra* note 45 and accompanying text.

72. 669 F.2d at 678.

73. However, the *Williams* court would not have recognized Eastside's tenth amendment claim of sovereignty had it been operated by the State of Alabama. *See infra* note 78 and accompanying text. *Cf.* Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc., 452 U.S. 264 (1981), (allowing a state the choice of implementing the Surface Mining Control Act itself or yielding to a federally administered regulatory program); Federal Energy Regulatory Comm'n v. Mississippi, 102 S. Ct. 2126 (1982). The Court stated there was nothing in PURPA "directly compelling" states to enact a legislative program; therefore, Mississippi's "separate and independent existence" was not threatened. The states had a *choice* of either abandoning regulations of the field or of considering the federal standards. Further, the Court held "only that Congress may impose conditions on the State's regulation of private conduct in a pre-emptible area. This does not foreclose a Tenth Amendment challenge to federal interference with the State's ability 'to structure employer-employee relationships,' . . . while providing 'those governmental services which [its] citizens require, . . .' *Id.* at 2142-43 n.32.

74. 669 F.2d at 678.

75. *Id.*

pertinent to the *Hodel* analysis, such as the directness of the corporation's relationship with the state, and the functions which the corporation performs. Even a public corporation attempting to invoke the protection of state sovereignty is subject to the *Usery* and *Hodel* test for exempting states or political subdivisions.[76] The potential result of applying the *Hodel* test to a public corporation is the loss of exemption from the FLSA.

However, the court was ostensibly correct in distinguishing the facts in *Usery* from the facts in *Williams*. Eastside was not exempt from complying with the FLSA because "[t]here is thus no [direct] impact on the state in its relation with its *own* employees."[77]

F. Provision of Mental Health Services is a Traditional, Essential, Integral Governmental Function

The *Williams* court was apparently mistaken in asserting that "even if the State of Alabama had chosen to operate Eastside as a state agency, the Center is not performing an 'integral' function and thus the *Usery* exemption would not apply."[78] Although the court stated it was not necessary to decide whether the provision of mental health services was "traditional or essential,"[79] it attempted to apply the concept to the facts in *Williams* because it considered the use of the term "integral" significant in *Usery*.[80]

A dictionary was the only authority used by the *Williams* court to determine the meaning of "integral" in the context of a question relating to state sovereignty. The court completely overlooked the *Usery* Court's citation of public health as an example of an integral governmental function. More importantly, the court disregarded the *Usery* Court's express overruling of *Maryland v. Wirtz*.[81] The effect of overruling *Wirtz* was to deem the provision of public health services as traditional governmental functions.

The *Williams* court distinguished an integral from a non-integral function by determining the number of citizens who are affected by the

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76. *See supra* notes 52-54 and accompanying text. Specifically, note 53 refers to the "States as States stand[ing] on a quite different footing from an individual or a corporation . . ." 426 U.S. at 854. The *Usery* Court expressly did not differentiate between public and private corporations.

77. 669 F.2d at 678 (emphasis added).

78. *Id.* at 680.

79. *Id.* at 679.

80. *Id.* at 679-80.

81. 392 U.S. 183 (1968). For the *Wirtz* holding, see *supra* note 1. *See also* 29 C.F.R. § 775.2 (1981). The U.S. Department of Labor cited the *Usery* inclusion of public health as a traditional governmental function. The Department excluded the traditional governmental functions of states and political subdivisions from its enforcement of the FLSA.

function.[82] To qualify as an integral function, the court considered it crucial that the function affect all persons in the state.[83] The court mentioned interference with the state's provision of police protection or its ability to pass laws as examples of integral functions.[84] Therefore, it was determined that Eastside's provision of services to the citizens of Alabama was not integral because it "addresse[d] a specific problem affecting a limited class of persons within the state."[85]

This analysis of the term "integral" completely misconstrued the *Usery* Court's discussion of integral governmental functions. Nowhere in its analysis of integral governmental functions did the *Usery* Court mention that such functions were to be determined according to the *quantity* of people affected by the service. Rather, in describing integral functions, the *Usery* Court stated that "it is functions such as these which . . . the States have traditionally afforded their citizens."[86] Through its own admission in the early part of its decision, the *Williams* court said that "[t]he state of Alabama first began treating mental patients in its state hospitals in 1861. Up through the 1960's Alabama provided comprehensive mental health services in *state* institutions . . . ."[87] The court did not explain why Alabama's provision of mental health services to its citizens for 121 years did not support the contention that Alabama has traditionally afforded its citizens mental health services. Indeed, throughout history, state governments have always been the primary providers of mental health services for their citizens.[88] The *Williams* court should have considered Eastside as part of a total CMHC network of facilities which collectively provide integral services to the entire state population.

Lastly, perhaps the court declined to recognize the provision of mental health services as integral because in this case, the provision of transitional mental health services is a relatively new concept. However, in *United Transportation Union v. Long Island Railroad Co.*,[89] the Supreme Court indicated that an "emphasis on traditional governmental functions and traditional aspects of state sovereignty was not

82. 669 F.2d at 680.

83. *Id.*

84. *Id.*

85. *Id.* at 680-81.

86. 426 U.S. at 851.

87. 669 F.2d at 673 (emphasis added).

88. For further discussion of the lengthy history of the states' traditional role in providing mental health services to its citizens, see NATIONAL INSTITUTE OF MENTAL HEALTH, FINANCING MENTAL HEALTH CARE IN THE U.S.: A STUDY AND ASSESSMENT OF ISSUES AND ARRANGEMENTS, DHEW PUBLICATION NO. (HSM) 73-9117, 72-74 (1973) [hereinafter cited as NATIONAL INSTITUTE] (reviewing the role of state and local governments in financing mental health care).

89. 102 S. Ct. 1349 (1982), *rev'g* 634 F.2d 19 (2d Cir. 1980).

meant to impose a static historical view of state functions generally immune from federal regulation."[90] The evolution of the transitional home must be considered as a logical extension of the traditional, integral governmental function of providing mental health services at the large public hospital.[91]

III. CONCLUSION

In *Williams*, the United States Court of Appeals for the Eleventh Circuit correctly determined that a quasi-public community mental health center could not invoke the tenth amendment protection of state sovereignty. Eastside does not survive the tests developed by the Supreme Court in *Usery* and *Hodel* to exempt states and their political subdivisions from compliance with federal regulations. Alabama's separate and independent existence is not threatened by requiring Eastside to comply with the FLSA nor are its options for delivering mental health care to its citizens foreclosed by the *Williams* decision.

If Alabama wishes to maintain a successful tenth amendment challenge to federal interference with its ability to structure minimum wage and overtime provisions, it must operate Eastside directly. Further, the *Usery* Court precluded quasi-public and private entities from seeking refuge under the protective umbrella of state sovereignty by expressly equating political subdivisions with local governmental units.

Consequently, it was unnecessary for the court to engage in an ambiguous analysis of the application of the NLRB political subdivision exemption rule. The NLRB guidelines provide exemptions from the NLRA to political subdivisions controlled by their respective states. However, the NLRB rule will foster arbitrary court decisions because it does not indicate the amount of control necessary to qualify for an exemption. Most importantly, the adaptation of the NLRB rule would result in an increase of state sovereignty claims by expanding the eligible field of exempt entities to include private or quasi-public parties. This effect was not contemplated by the *Usery* or *Hodel* Courts.

Lastly, the *Williams* court was apparently incorrect in insisting that Eastside was not performing an integral governmental function in providing mental health services to the citizens in the surrounding area. Indeed, the *Usery* Court considered the provision of public health services as an integral governmental function when it expressly overruled

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90. *Id.* at 1354. The Court found, therefore, that the proper inquiry was "whether the federal regulation affects basic State prerogatives in such a way as would be likely to hamper the state government's ability to fulfill its role in the Union and endanger its 'separate and independent existence.'" *Id.* at 1355.

91. *See generally* R. BUDSON, *supra* note 24; NATIONAL INSTITUTE, *supra* note 88, at 73-74.

Wirtz. Further, Alabama's long history of providing mental health services to its citizens, dating back to 1861, is typical of the state government's role as the primary provider of mental health services.

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