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NOTES

At Last, Federal Wage and Overtime Protection For State and Municipal Employees: The F.L.S.A. After *Garcia v. San Antonio Metropolitan Transit Authority*

Congress enacted the Fair Labor Standards Act of 1938 to maintain the minimum standard of living necessary for the health, efficiency and general well being of workers.¹ To achieve this goal, the Act requires employers involved in commerce to pay a minimum hourly wage² and overtime for all hours over forty hours per week.³ The Act initially exempted all governmental workers.⁴ However, Congress has slowly eroded that exemption as applied to the states and their political subdivisions⁵ by using the power delegated to it under the Commerce Clause of the United States Constitution.⁶ The erosion of that exemption has caused some troublesome issues for the United States Supreme Court and state and local legislatures.

In 1976, the United States Supreme Court ruled in *National League of Cities v. Usery*⁷ that the tenth amendment of the United States Constitution⁸ renders immune from the Act states' "integral operations" which are within "traditional governmental functions." *National League* thus placed a limit on congressional commerce power and enabled the states to create their own labor

1. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (1940), amended by 29 U.S.C. §§ 201-219 (Supp. II 1964) and 29 U.S.C. §§ 201-219. (Supp. IV. 1970) (current version at 29 U.S.C. §§ 201-219 (1982 & Supp. III 1985)) [hereinafter cited as "the Act" or FLSA].

2. 29 U.S.C. § 206(a) (1940).

3. *Id.* at § 207(a)(3).

4. *Id.* at § 203(d). The Act defined an employer so as to exclude "the United States or any State or political subdivision of a State. . ."

5. 29 U.S.C. § 203(d) (Supp. II 1964); 29 U.S.C. § 203(d) (Supp. IV 1970). Both of these statutes are broad amendments to the FLSA which extended coverage to numerous classes of state and municipal employees.

6. U.S. CONST. art. I, § 8, cl. 3. "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes . . ."

7. 426 U.S. 833 (1976).

8. U.S. CONST. amend. X: "The 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."

standards within certain protected areas.⁹

The courts struggled with *National League*¹⁰ for nine years until it was overruled recently in *Garcia v. San Antonio Metropolitan Transit Authority*.¹¹ In *Garcia*, the United States Supreme Court attempted to eradicate numerous ambiguities created by *National League*.¹² In doing so, the Court created a new standard of congressional limitation that extends FLSA protection to numerous classes of state and municipal employees.

The impact of *Garcia* on both the public sector¹³ and this country's traditional concepts of federalism,¹⁴ will be enormous. Additionally, *Garcia* has created many new questions concerning the applicability of the FLSA to public employees.

This Note focuses on the effects *Garcia* will have upon the FLSA and the FLSA's application to state and municipal employees. To accomplish this, this Note first will examine the history of the FLSA and its tenuous application to state and municipal workers.¹⁵ This Note then will analyze *Garcia* itself, exploring both the analysis of the Supreme Court¹⁶ and some possible ramifications of the decision.¹⁷ Lastly, this Note will examine the emerging new standard of commerce clause application and the political impact that *Garcia* will have on the FLSA and the states.¹⁸

I. HISTORY OF THE FLSA APPLICATION TO THE STATES

Assessing the impact of the *Garcia* ruling on state and municipal employees requires an examination of both the history of the FLSA and the Act's delicate application to the states. Such a study reveals that Congress and the Supreme Court extended the protection of the FLSA beyond its originally contemplated beneficiaries. This activism, conducted under the auspices of the com-

9. Under the holding, the states and their political subdivisions could claim immunity from FLSA coverage with regard to functions which were essential attributes of state sovereignty. More specifically, employees within the police, firefighting, education and many other public fields were held immune from FLSA protection. See *infra* note 46 and accompanying text.

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

11. 469 U.S. 528 (1985).

12. See *infra* Part IV.

13. See 23 GOV'T EMPL. REL. REP. (BNA) 1432-35 (1985) [hereinafter cited as BNA], for a detailed discussion of some congressional amendments proposed in the wake of the *Garcia* decision.

14. See Comment, *The Changing Landscape of Federalism*, 28 WASH. J. URB. CONT. L. 445 (1985).

15. See *infra* notes 19-74 and accompanying text.

16. See *infra* notes 75-93 and accompanying text.

17. See *infra* notes 94-118 and accompanying text.

18. See *infra* notes 119-51 and accompanying text.

merce clause, significantly eroded states' control over their workers.

Initially, Congress intended the FLSA to apply solely to private employees engaged in interstate commerce.¹⁹ Construed narrowly, the Act was a valid exercise of congressional commerce power.²⁰ Under that narrow construction, the Act enabled Congress only to regulate those commercial activities involving more than one state. Under the tenth amendment, the states, not the federal government, legislated as to all other activities.²¹

This concept was eroded by the Supreme Court in *United States v. Darby*.²² There, the Court extended FLSA protection to purely intrastate activities as long as such activities affected interstate commerce.²³ Holding that the tenth amendment contains no limitation on federal power to regulate interstate commerce,²⁴ the *Darby* Court emphasized that the Act was a necessary and appropriate means to attain legitimate congressional ends.²⁵ Justice Stone, writing for the majority, concluded that interstate commerce should not be used as an "instrument of competition" in the distribution of goods produced under substandard labor conditions.²⁶

After *Darby*, courts broadly interpreted the provisions of the FLSA so as to further the Act's "legitimate ends."²⁷ Courts' broad interpretations resulted in the extension of FLSA protection to nearly all private employees engaged in the "production" of goods for commerce.²⁸ In 1961, Congress took a step to update the Act's provisions to keep it in line with these broader judicial interpretations.²⁹ In 1966, Congress removed the long held exemption favoring states and their political subdivisions by expanding cover-

19. 29 U.S.C. § 215(A)(1) (1940).

20. See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), which established the right of Congress to regulate commerce amongst the states. *Gibbons*, which was primary authority for Congress in 1938 to enact legislation protecting workers engaged in interstate commerce, defined such commerce as those activities which directly affect more than one state.

21. See *supra* note 8.

22. 312 U.S. 100 (1941).

23. *Id.* at 118.

24. *Id.* at 124, where the Court notes that the tenth amendment is but a truism.

25. *Id.* at 118.

26. *Id.* at 110.

27. See, e.g., *W. Union Tel. Co. v. Lenroot*, 323 U.S. 490 (1945).

28. See Annotation, 161 A.L.R. 1237 (1945). This annotation provides an excellent discussion on the Court's liberal expansion of the term "Production of goods for Commerce" as used in the Fair Labor Standards Act, so as to include all steps of production, whether manufacturing or not, and every kind of operation incidental thereto.

29. 29 U.S.C. §§ 203(r), 203(s), 206(b), 207(a)(2) (Supp. II 1964). These amendments extended coverage not only to those employees involved in the "production" of goods for interstate commerce, but also to all employees having "physical contact" with such goods.

age to include state and local employees working in education, public mass transit and health care.³⁰

The constitutionality of these amendments was upheld in *Maryland v. Wirtz*.³¹ In *Wirtz*, the Court extended FLSA coverage to all private employees who were part of an enterprise engaged in interstate commerce. Stating that the competitive position of an enterprise is affected by *all* of its labor costs and not solely those costs involved with the interstate activity, the Court upheld the 1961 Amendment.³² The *Wirtz* Court also found the 1966 FLSA Amendment constitutional, thereby extending FLSA coverage to state and municipal employees for the first time.³³ The Court noted the "substantial impact" that these public employees have on interstate commerce because their institutions are supplied with goods obtained through interstate commerce.³⁴ The Court reasoned that such an impact justified federal protection of state and municipal employees.³⁵

Using the *Wirtz* decision as a judicial mandate, in 1974 Congress broadened FLSA coverage to include public agencies.³⁶ This amendment virtually abolished any exemption Congress previously had afforded to states and their political subdivisions. FLSA protection was thus extended to practically all government employees.³⁷ Fearing bankruptcy, numerous states and municipalities acted swiftly by questioning the amendment's constitutionality in *National League of Cities v. Usery*.³⁸

In *National League*, the Court held the broad 1974 FLSA amendment unconstitutional and barred its application to many

30. *Id.* at § 203 (d).

31. 392 U.S. 183 (1968). In *Wirtz*, numerous states and cities petitioned the Court to enjoin the Department of Labor from enforcing the 1961 and 1966 FLSA Amendments. These governments contended that the tenth amendment should bar such enforcement.

32. *Id.* at 190.

33. *Id.* at 192.

34. *Id.* at 194. The Court explained that in 1965, 87% of the \$8 million spent to supply Maryland's public schools came directly from interstate purchases.

35. *Id.* at 194.

36. The term "public agency" was defined as including "the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency." 29 U.S.C. § 203(x) (Supp. IV 1970).

37. The only government employees still held exempt from the Act are executive, administrative or professional personnel, *Id.* at § 213(a)(1), and individuals holding public office or serving such an office holder in one of several specific capacities. *Id.* at § 203(e)(2)(c).

38. 426 U.S. 833 (1976). The plaintiff states and cities claimed that the 1974 amendments were prohibited by the tenth amendment because they regulated the states as states. The plaintiffs were seeking an injunction from the Court barring the Department of Labor from enforcing the amendments.

classes of state and municipal employees.³⁹ In a sharply divided plurality decision, the Court emphasized a state's tenth amendment right to remain sovereign.⁴⁰ Justice Rehnquist, writing for the plurality, stressed that Congress could not use its commerce power to restructure "integral operations" in protected areas of "traditional governmental functions."⁴¹ According to Justice Rehnquist, such powers are reserved to the states.⁴² The court noted, however, that the tenth amendment is not absolute; rather, under the commerce clause Congress may invade these "traditional areas" if an overriding federal interest exists.⁴³

An element essential to the plurality's rationale in *National League* was the adverse effect that observance of FLSA regulations would have had on state and municipal budgets.⁴⁴ The Court feared that state and local compliance would be "financially burdensome," ultimately forcing governments either to increase revenues or to cut back essential services.⁴⁵ The plurality reasoned that the 1974 amendment was such an onerous intrusion on state power that it would have prohibited the states from structuring various functions which are "essential attributes of state sovereignty."⁴⁶

In a separate concurring opinion, Justice Blackmun expressed the need for the Court to rely upon a balancing approach which would consider the relative federal and state interests. This concurrence created a dichotomy in the holding which later confused courts and diminished the effectiveness of the *National League* holding.⁴⁷

In *National League*, the Court attempted to stem the historic tide of judicial approval that favored congressional regulation of state and municipal employees. However, the *National League* rationale had many shortcomings that later plagued courts attempting to apply its holding.

39. *Id.* at 851.

40. *Id.* at 844.

41. *Id.* at 851. The Court noted that the structuring of employer-employee relationships typically was the function of state and local governments.

42. *Id.*

43. *Id.* at 853. The Court's decision is in line with the holding of *Fry v. United States*, 421 U.S. 542, 543 (1975). The Court in *Fry* upheld the constitutionality of the Economic Stabilization Act which imposed a temporary wage freeze on state and local governments. The Court noted that congressional commerce power is not so inflexible as to preclude emergency and temporary measures.

44. *National League*, 426 U.S. at 846.

45. *Id.* at 847. The Court mentioned as an example the curtailment of an Affirmative Action Program in Inglewood, California.

46. *Id.* at 851.

47. In a dissenting opinion, Justice Brennan argued that the plurality ignored the supremacy of federal power and broke a long line of judicial precedent. *Id.* at 856-80.

II. PROBLEMS ENCOUNTERED WITH *NATIONAL LEAGUE*

Although *National League* placed limits on congressional power in the context of the FLSA, it did not adequately identify those situations in which such limitations should apply.⁴⁸ Subsequently, lower courts had difficulty determining which state and local functions were protected by the Act.⁴⁹

Responding to these ambiguities, the Supreme Court restructured the *National League* criteria in *Hodel v. Virginia Surface Mining and Reclamation Association*.⁵⁰ In *Hodel*, a "three-prong plus balancing" test was created by incorporating the elements enunciated in the *National League* holding. Under this test, states were protected from Commerce Clause legislation if the challenged legislation (1) regulated the states as states, (2) infringed upon areas that were unquestionably attributes of state sovereignty, and (3) directly interfered with states' freedom to structure "integral operations" in areas of "traditional functions."⁵¹

The Court's attempt in *Hodel* to clear up the many unanswered questions left in the wake of *National League* ultimately failed. Lower courts continued to apply the test inconsistently.⁵² Part of the reason for the test's inconsistent application was the Supreme Court's failure to adequately define the scope of the state and local governmental functions deemed protected under the *National League* test.⁵³

The Court's final attempt at applying the *National League-Hodel* ruling was in *EEOC v. Wyoming*.⁵⁴ There, the Court upheld the application of the Age Discrimination in Employment Act (ADEA) against the State of Wyoming.⁵⁵ The Court stated that

48. For a thorough discussion of the problems inherent in the *National League* holding, see, e.g., Note, *The Constitutionality of ADEA After Usery*, 30 ARK. L. REV. 363, 366-68 (1977). That Note stresses that the Court's decision created a conflict between the direct interference test of the plurality and the balancing test of the concurrence.

49. Compare *United States v. Best*, 573 F.2d 1095, 1102-03 (9th Cir. 1978), which held that the licensing of automobile drivers was a traditional function of state government not protected by the Act, with *Friends of the Earth v. Carey*, 552 F.2d 25, 38 (2d Cir. 1977), which held that the regulation of traffic was *not* a traditional function of state governments and extended protection to the employee therein.

50. 452 U.S. 264 (1981).

51. *Id.* at 287-88. The *Hodel* decision apparently preserved the rule of *Fry v. United States*, 421 U.S. 542 (1975), that the states must submit to congressional commerce power in times of national emergencies. See *supra* note 43.

52. Compare *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1472 (9th Cir. 1983), upholding the application of FLSA provisions to state in-house domestic services employees, with *Williams v. Eastside Mental Health Center, Inc.*, 669 F.2d 671, 680-81 (4th Cir. 1982), holding a state run mental health facility immune from FLSA provisions.

53. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 541 (1985).

54. 460 U.S. 226 (1983).

55. *Id.* at 238-39. The rules of application of the ADEA are the same as those

the federal legislation did not impair Wyoming's ability to structure "integral operations" within "traditional areas" of state sovereignty.⁵⁶ The Court stressed the Act's limited intrusion and thereby carefully distinguished *National League of Cities*.⁵⁷ Essential to the Court's reasoning was the presence of the Bona Fide Occupational Qualification (BFOQ)⁵⁸ and the individual assessments within the ADEA itself.⁵⁹ The "burdensome financial impact" greatly feared in *National League* was dismissed in *EEOC*.⁶⁰

The nine year life of the *National League* holding was plagued by ambiguity and inconsistency. Attempts at refining its principles in cases such as *Hodel* and *EEOC* failed, prompting the majority in *Garcia* to label the *National League* doctrine "unsound in principle" and "unworkable in practice."⁶¹

III. HISTORY OF GARCIA

Three years after the Court's decision in *National League*, the Department of Labor issued an opinion stating that the San Antonio Metropolitan Transit Authority (SAMTA) was not constitutionally immune from FLSA provisions.⁶² Soon thereafter, SAMTA sought declaratory relief in district court,⁶³ asserting that it was exempt from the FLSA since it was a state mass transit authority.⁶⁴ The United States Secretary of Labor counterclaimed, seeking enforcement of the FLSA overtime and record-keeping requirements.⁶⁵ *Garcia*, a SAMTA employee, was allowed to intervene as a defendant in support of the Secretary.⁶⁶

The district court granted SAMTA's motion for summary judg-

adopted by Congress for the FLSA. Under both of these rules, the same definition of "employer" is used. See 29 U.S.C. § 630(b) (1982).

56. *EEOC*, 460 U.S. at 239.

57. *Id.* at 239-42.

58. 29 U.S.C. § 623 (f)(1) (Supp. III 1985). This statute provides an exception to the ADEA provisions when age is an occupational qualification necessary for the normal operation of a job.

59. 29 U.S.C. § 623(f)(3) (1982). This section provides that discharges or other actions for good cause are allowed by Congress and do not violate the ADEA provisions. The Court stated that the presence of these exceptions to the federal legislation lessened the impact of the ADEA on the states and their political subdivisions. *EEOC*, 460 U.S. at 239-42.

60. *EEOC*, 460 U.S. at 242-43 n.17. The Court noted that the "minimal character of the federal intrusion," when measured against the "well-defined federal interest in the legislation," justified state compliance with the FLSA.

61. *Garcia*, 469 U.S. at 546. *Garcia* was a 5-4 decision.

62. Opinion WH-499, 6 LRR 91:1138 (1979), cited in *Garcia*, 469 U.S. at 534.

63. *Garcia v. SAMTA*, Civil Action No. SA 79 CA 458 (W.D.Tex. 1983).

64. *Id.*

65. *Id.*

66. *Id.*

ment.⁶⁷ Both the Secretary and Garcia appealed directly to the Supreme Court.⁶⁸ The Supreme Court issued an order which vacated and remanded the case to the district court⁶⁹ in light of its ruling in *United Transportation Union v. Long Island Railroad*.⁷⁰ In *Long Island*, the Court held that a state-owned public commuter rail service was not immune from federal legislation because it did not constitute a "traditional governmental function."⁷¹

On remand, the district court in *Garcia* distinguished *Long Island* and held that SAMTA was immune from FLSA coverage.⁷² The court cited the long historical involvement of state and local governments in public transit as rationale for its conclusion that mass transit systems are "traditional functions" of these governments.⁷³ The district court also emphasized that the federal interest in transit wages was relatively new, stating that Congress first displayed an interest in transit workers in 1966.⁷⁴ The district court's decision was again appealed to the Supreme Court where the tenth amendment principles set forth in *National League* were reconsidered.

IV. THE GARCIA HOLDING

The Court initially addressed the issue of whether operation of a public mass transit system was a "traditional function" warranting tenth amendment immunity. After carefully examining *National League* and *Hodel*, the Court criticized those cases as troublesome and elusive. Citing confusion and inconsistency among the lower courts,⁷⁵ the Court recognized that it had made little progress in defining the scope of immunity granted to states by *National League*.⁷⁶

The Court discredited the purely historical approach applied by the district court as "prevent[ing] a court from accomodating

67. *Id.* The district court granted summary judgment, holding that public mass transit systems constitute integral operations in areas of traditional governmental functions. This decision was not published by the district court.

68. *Id.* 28 U.S.C. § 1252 (1982) allows for direct appeal to the Supreme Court.

69. 457 U.S. 1102 (1982).

70. 455 U.S. 678 (1982).

71. *Id.* at 684.

72. *San Antonio Metropolitan Transit Auth. v. Donovan*, 557 F. Supp. 445 (W.D.Tex. 1983), *aff'd sub. nom. Garcia*, 469 U.S. 528 (1985).

73. *Donovan*, 557 F. Supp. at 447-48.

74. *Id.*

75. *Garcia*, 469 U.S. at 538-39.

76. *Id.* More specifically, Justice Blackmun listed a number of lower court decisions in which state governmental "functions" warranting immunity under the *National League* doctrine were determined. He then contrasted these decisions with ones in which protection was not extended. In conclusion, he stated that it was virtually impossible to identify an organizing principle that determines which functions are protected and which are not.

changes in the historical functions of states.”⁷⁷ The Court went on to disregard numerous other approaches as “unworkable” before concluding that any attempt to define immunity by applying the *National League* prerequisites “inevitably invites an unelected judiciary to make decisions about which state policies it likes and which ones it dislikes.”⁷⁸ Using this criticism as its rationale, the Court overruled *National League* and formulated a new approach for determining state immunity from the FLSA.⁷⁹

V. A NEW APPROACH

The Court turned to the Constitution and examined the federal system’s true nature in order to decide whether Congress had acted properly in extending FLSA protection to the states.⁸⁰ Interpreting the Constitution, the Court recognized that states “unquestionably retain a significant measure of sovereign authority.”⁸¹ However, this state authority is limited “only to the extent that the Constitution has not divested [the states] of their original powers and transferred those powers to the federal government.”⁸²

The Court found an absence of specific constitutional limitations on federal authority.⁸³ Using this premise, the Court held that the founding fathers chose to rely on a federal system to limit federal powers and protect states’ interests.⁸⁴ The Court noted that “[s]tate sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal powers.”⁸⁵

The Court stated that the federal system provides a political process which serves as a restraint on federal power and thus pro-

77. *Id.* at 534-44.

78. *Id.* at 540-46. Among the other approaches examined were: (1) A “basic state prerogatives” approach under which immunity would be extended if the federal statute unduly handicapped a basic state prerogative. The problem with this approach was determining what constituted a basic state prerogative. In doing so, many of the problems encountered with the *National League* test would arise. (2) Distinguishing which functions were “strictly governmental” from those which were proprietary. Under this theory, if the function was that which was performed solely by government and not private individuals, the immunity would be extended. This test was abandoned for essentially the same reason as stated above. (3) A purely non-historical approach was also examined and disregarded by the Court.

79. See *infra* text accompanying notes 119-31, wherein the Court’s new standard is fully examined.

80. *Garcia*, 469 U.S. at 549-54.

81. *Id.* at 549 (citing *EEOC*, 460 U.S. at 269).

82. *Garcia*, 469 U.S. at 549.

83. *Id.* at 549-52. The Court stated that with few exceptions, the Constitution fails to express what elements of state sovereignty federal powers shall not displace.

84. *Id.*

85. *Id.* at 552.

fects state sovereignty.⁸⁶ The Constitution confers on states, through their citizens, the right to select both the executive and the legislative branches of the federal government. Through the national political structure, states can protect their sovereignty by influencing their elected federal representatives.⁸⁷

The majority noted further that the federal system's effectiveness in preserving state interests is "apparent even today in the course of federal legislation."⁸⁸ The Court then noted major examples of congressional legislation which benefited states financially, while at the same time expressly exempted them from federal regulations.⁸⁹

Applying its new outlook to the facts in *Garcia*, the Court examined the 1966 and 1974 FLSA amendments extending protection respectively to mass transit and state employees in general.⁹⁰ The Court noted that during those eight years, congress provided extensive funding for state and local transit systems through the United Mass Transportation Act.⁹¹ The Court noted further that the field of mass transit had been one in which the federal system benefited the states while at the same time protected states' interests.⁹²

In conclusion, the Court held that Congress' action in affording FLSA protection to SAMTA employees did not contravene any limit on congressional power under the commerce clause. The Court, however, did not speculate as to the effect *Garcia* would have on state interests in other commerce clause legislation.⁹³

86. *Id.* at 550-51.

87. *Id.*

88. *Id.* at 552.

89. *Id.* at 553. The Court mentioned that "the Federal Power Act [16 U.S.C. § 824(f) (1982)], the National Labor Relations Act [29 U.S.C. § 152(2) (1982)], the Labor-Management Reporting and Disclosure Act [29 U.S.C. § 402(e) (1982)], the Occupational Safety and Health Act [29 U.S.C. § 652(5) (1982)], the Employee Retirement Insurance Security Act [29 U.S.C. §§ 1003(b)(1), 1002(32) (1982)] and the Sherman Act [see *Parker vs. Brown*, 317 U.S. 341 (1943)] all contain express or implied exemptions for states and their subdivisions."

90. *Garcia*, 469 U.S. at 555.

91. *Id.* The Court mentioned that in two decades the U.M.T.A., 49 U.S.C. app. § 1601-1618 (1982), amended by 49 U.S.C. app. § 1601-1618 (Supp. I 1983), and 49 U.S.C. app. § 1601-1618 (Supp. II 1984), had provided over \$22 billion in mass transit aid to state and local governments, contributing over \$3.7 billion in 1983 alone.

92. *Garcia*, 469 U.S. at 555. The Court stated that the "individual mass transit systems [are] better off than they would have been had Congress never intervened at all in the area."

93. Justice Powell, in a forceful dissent, claimed that the majority opinion substantially alters the federal system embodied in the Constitution. He charged that the "decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause." *Id.* at 560. Justice Powell stressed further that the majority opinion would have an adverse effect on the Court and the importance of judicial review. He went on to defend the balancing approach mentioned in *National League* as "a

VI. PROBLEMS WITH *GARCIA*

Garcia has an enormous impact upon the FLSA and all levels of government. The courts are no longer the sole arbiters of disputes arising from FLSA protection of public employees.⁹⁴ Now, the federal government determines when the FLSA is extended and what classes of public employees are covered.⁹⁵ This centralizes a greater amount of control in the federal government and correspondingly limits the states' power to regulate their employees.⁹⁶ As a result, protection of state interests and regulation of state employees must be accomplished through the national political process; that is, by influencing representatives in the federal government.⁹⁷ This result has some shortcomings.

A major problem that confronts Congress is its inability to address the individual needs present within each state and municipal labor system. A highly diverse national economy, as exists in the United States, necessarily creates unique attributes in each state and municipality.⁹⁸ This diversity often creates competing eco-

functional doctrine . . . whose ultimate purpose is not to create a sacred province of state autonomy, but to ensure that the unique benefits of a federal system not be lost through undue federal interference in certain core state functions." *Id.* at 526-68 (citing *EEOC*, 460 U.S. at 236). Justice Powell concluded that the majority's sweeping holding does far more than answer the sole question it was presented and enables the national government to "devour the essentials of state sovereignty, though that sovereignty is attested by the Tenth Amendment." *Garcia*, 469 U.S. at 579 (quoting *Maryland v. Wirtz*, 392 U.S. 183, 205 (1968)).

Justice O'Connor, dissenting separately, assailed the majority's retreat from established principles of federalism. *Garcia*, 469 U.S. at 580. She found no basis for the expansion of federal power with respect to states, and stated that the abandonment of *National League* has left nothing between the remaining essentials of state sovereignty and Congress except Congress' "underdeveloped capacity for self-restraint." *Id.* at 587-88. Justice O'Connor concluded that "[t]he problems of federalism in an integrated national economy are capable of a more responsible resolution than holding that the States as States retain no status apart from that which Congress chooses to let them retain." *Id.*

Justice Rehnquist also dissented. He stated that he was confident the *National League of Cities* rule would "in time again command the support of a majority of this Court." *Id.* at 579-80.

94. *Id.* at 552-56. FLSA application to the states is an issue for the federal government to determine rather than an "unelected judiciary."

95. *Id.*

96. The *Garcia* decision focuses all attention upon the federal government in determining FLSA application. In essence, this limits the ability of the states and their subdivisions to regulate their employees.

97. *Id.* The *Garcia* Court claims that state sovereignty is better protected through the federal political process than by judicial definitions of state sovereignty given pursuant to the tenth amendment. This holding is in line with Justice Stevens' dissent in *National League of Cities v. Usery*, 426 U.S. 833, 880 (1976).

98. Obviously not all state and municipal governments possess the same attributes. Many governments, mainly those in the Sun Belt region, are better off financially than those in less affluent areas. These governments are therefore better able to meet the increased labor costs caused by full FLSA compliance. Other less fortunate governments will be forced to cut needed services or raise taxes to increase revenues. Both options are not

conomic interests among the states and municipalities. Nevertheless, *Garcia* demands that these competing economic interests as they relate to employment be resolved solely within the federal government.⁹⁹ As a result, many local labor interests are compromised to the larger national concerns as determined not by the states which are familiar with their particular needs, but rather by the federal government.¹⁰⁰

Another major problem with *Garcia* is the great reliance the Court places on the national political process.¹⁰¹ This process, as it currently stands, may not be the best vehicle to balance the exercise of federal power with the preservation of states' rights.¹⁰² The enormous increase of national legislation in the past thirty years, combined with

[t]he adoption of the seventeenth amendment (providing for direct election of senators), the weakening of political parties on the local level, and the rise of national media, among other things, have made Congress increasingly less representative of State and local interests, and instead, more likely to be responsive to the demands of various national constituencies.¹⁰³

The emergence of powerful lobbyists for both labor and governments helps illustrate this shift in congressional interest. This federal turnabout presently makes the national political process more likely to forsake local interests to the greater national concerns.¹⁰⁴

Lastly, the *Garcia* decision failed to define the role of the judiciary in determining the limits of congressional action.¹⁰⁵ This failure will have a negative impact upon future FLSA application and implementation. The *Garcia* holding has left the courts in a state of uncertainty. This is a result of the *Garcia* Court's failure

very favorable.

99. *Garcia*, 469 U.S. at 550-56.

100. This point was stated by Justice Rehnquist in *National League of Cities*, 426 U.S. at 848.

101. The effectiveness of the national political process to preserve states' rights was bitterly disputed by Justice Powell in his dissent. *Garcia*, 469 U.S. at 564-67. Justice Powell stated that "[m]embers of Congress are elected from the various States, but once in office they are members of the federal government." *Id.* at 564-65.

102. *Id.* at 564-67.

103. *Id.* at n.9. For more information, see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *REGULATING FEDERALISM: POLICY, PROCESS, IMPACT AND REFORM* 50 (1984). See also Kaden, *Politics, Money and State Sovereignty: The Judicial Role*, 79 COLUM. L. REV. 847 (1979). Professor Kaden proposes the theory that due to many political changes nationally, the political branches may no longer be able to safeguard state sovereignty within the federal system.

104. *Garcia*, 469 U.S. at 564-67.

105. *Id.* at 550-56. The Court merely stated that state sovereign interests are better protected through the federal government and the national political process. The Court makes no mention of the role the courts will have in defining the limits of Congressional action if the national political process fails to function effectively. *Id.* at 554-56.

to articulate specific limits upon congressional action.¹⁰⁶ This ambiguity will make it difficult for the Court to act decisively if the political process fails and limits upon the exercise of federal power need to be imposed. Thus, *Garcia* has left many questions concerning the effective functioning of our diverse federal system unanswered. Notwithstanding its shortcomings, *Garcia* also has numerous positive aspects that will contribute to effective administration of uniform labor regulations.

VII. POSITIVE IMPACT OF *GARCIA*

The *Garcia* ruling's positive elements greatly aid state and local employees. State and local governments no longer can claim unconditional immunity from federal labor standards which have protected private employees for almost fifty years. Minimum wage and overtime requirements finally will be extended to millions of previously exempted public employees. Labor standards throughout the country will become more uniform, making them easier to enforce. *Garcia* also places more reliance on democratic principles, thereby limiting the ability of an unelected judiciary to usurp the public's popular demands.

The *Garcia* decision ultimately benefits numerous classes of state and municipal employees.¹⁰⁷ State immunity, which has existed throughout the life of the FLSA, virtually is eliminated. Approximately sixty-five percent of all state and municipal workers should benefit from the decision.¹⁰⁸ Those benefiting the most are police, fire fighters and seasonal employees.¹⁰⁹

Another of the positive elements of *Garcia* is that it will make labor standards throughout the country more uniform and easier to enforce. The courts and the Department of Labor no longer need to concern themselves with the confusing *National League* test which was determined "unsound in principle" and "unworkable in practice."¹¹⁰ The conflicting labor standards which were

106. *Id.*

107. The number of state and municipal entities the *Garcia* holding aids is not easily ascertainable. With the *National League* holding and the exemption of many public employees from FLSA protection, union contracts were negotiated to give coverage equal to that provided under the FLSA. Currently, thirty-five percent of state and municipal workers are covered under these still existing contracts. BNA, *supra* note 13, at 1434.

108. *Id.* This figure is derived from taking the difference between those employees covered under union contracts and those who are not. This figure does not include those public employees who are expressly exempted from the Act. *See supra* note 37.

109. 29 U.S.C. § 207(o)(3)(A) (Supp. III 1985) which allows such workers to accumulate twice as much compensatory time as other employees. *See infra* notes 144-48 and accompanying text.

110. This point is based upon the presumption that by eliminating the "unsound and unworkable" *National League* doctrine, the courts and the Department of Labor will no

once the domain of numerous state and municipal governments now are regulated by one governmental entity.¹¹¹ This will assist aggrieved public employees in asserting claims against their governmental employers.¹¹² This centralized regulation also will keep administrative costs down at all levels of government¹¹³ and ultimately decrease the soaring court costs associated with *National League*.¹¹⁴

Finally, since control of FLSA application now rests not with an "unelected judiciary" but rather with the federal government, popular public demands will be heard.¹¹⁵ Both individual voters and large national lobbyists can have their views expressed through the political process.¹¹⁶ Congress should incorporate these views into employment law that are uniform and representative of workers' needs and desires.¹¹⁷ Congress is more inclined to deal with the numerous problems surrounding FLSA application to states and municipalities than are the courts.¹¹⁸

Garcia thus contains many positive elements that will aid in the effective and uniform regulation of state and municipal employees. However, the most far-reaching effect the decision will have is the establishment of a new standard of FLSA application.

longer be bothered with its troublesome application. See *supra* note 61 and accompanying text. Labor standards will be set by the federal government and their application to the states most likely will not be scrutinized.

111. *Garcia*, 469 U.S. at 550-56. The regulation of labor standards will now be done solely by the federal government. Still, for a municipal field to become subject to the FLSA, there must be an expressed or implied federal interest in the area to displace the state sovereign right. *Id.* See also *infra* text accompanying notes 119-31.

112. Each public employee who was previously exempted from FLSA protection was either protected by a union contract or some other state or local labor regulation. The result was an array of varying regulations that employment attorneys were forced to sift through. *Garcia* will make the labor standards for public employees more uniform nationally, thereby reducing previous conflicts between authorities and consequent problems for labor attorneys.

113. State and municipal governments no longer will need to expend costly resources to structure and monitor their own labor standards. This function will be assumed by the federal government. This will lower administrative costs for state and municipal governments and save them revenue.

114. The inconsistency and uncertainty brought on by the *National League* holding ultimately forced many states and municipalities into court to determine whether the FLSA applied to their activities. This litigation process was costly and should be greatly reduced by the *Garcia* holding.

115. *Garcia*, 469 U.S. at 552-56.

116. *Id.*

117. *Id.* The Court here was relying upon the federal legislative process to resolve many of the questions created by commerce clause application to the states. The Court listed some federal commerce clause legislation to support its point that the federal legislative process is better able to deal with this issue than the judiciary.

118. *Garcia*, 469 U.S. at 552-56.

VIII. NEW STANDARD OF FLSA APPLICATION

The Court's decision in *Garcia* creates a new standard of inquiry for determining when FLSA provisions are applied to the states and their political subdivisions. That determination no longer is gauged by a judicially-manufactured definition of state sovereignty. Now, the standard is based solely upon the actions of the federal government.¹¹⁹

Discerning the federal interest in the field of state and municipal employees is important in deciding which state or municipal employees are now protected. This interest appears to be lesser in degree than the "overriding" federal interest mentioned in *National League*.¹²⁰ Still, for Congress to legitimately exercise its power under the commerce clause, there must be some indication that Congress, through its legislation, has indicated an interest in a particular state activity.

In determining what constitutes a federal interest, an examination of both the express language and subsequent effect of congressional legislation is imperative. Although implicit in the opinion, a critical element of the *Garcia* rationale was the substantial amount of federal revenues Congress had provided state treasuries.¹²¹ The Court went on to explain that a major portion of SAMTA's operating costs came directly from federal subsidies.¹²² By focusing on federal expenditures, the Court was in essence providing a factor to be weighed in determining whether state compliance with the FLSA is mandated.¹²³ This federal assistance reduces "the risk of having [states'] functions . . . handicapped by

119. *Id.* at 550-56. The Court emphasized that state sovereign interests are better protected by the federal government and its national political process.

120. See *supra* note 43 and accompanying text. In *National League*, the Court mentioned that an "emergency" federal interest could subordinate the tenth amendment and compel state submission. Nowhere in the *Garcia* decision was there any indication that the federal interest needs to be so pervasive.

121. *Garcia*, 469 U.S. at 552. The Court mentioned that "[i]n the past quarter century alone, federal grants to States and localities have grown from \$7 billion to \$96 billion" and that "federal grants now account for about one-fifth of state . . . expenditures."

122. *Id.* at 532-33.

123. See *id.* at 555. The Court, however, stated in a footnote that compliance by SAMTA with FLSA provisions would have been required even absent the presence of "countervailing financial benefits." *Id.* at n.21. Still, the Court did imply throughout the decision that the presence of federal funding can be a factor in showing a pervasive federal interest. Two appellate courts considering the same question under the *National League-Hodel* standard came to the same conclusion. See *Dove v. Chattanooga Area Regional Transp. Auth.*, 701 F.2d 50 (6th Cir. 1983); and, *Kramer v. New Castle Transit Auth.*, 677 F.2d 308 (3d Cir. 1982) *cert. denied*, 459 U.S. 1146 (1983). These courts extended FLSA protection to employees of municipal transit services using the presence of federal financing as rationale for their holding these functions non-traditional. Although these cases were decided before *Garcia*, the use of federal financial assistance in determining state submission to FLSA regulations is not new to the courts.

Commerce Clause regulation.”¹²⁴ The assistance also confers a benefit upon the states and leaves their “[governmental programs] better off than if Congress had never intervened in the field.”¹²⁵

Another factor which can be used to determine whether a federal interest exists is the presence of other federal legislation within a given state field. Although this approach was not expressly mentioned in the *Garcia* decision, the Court indirectly endorsed it as a rationale.¹²⁶ The presence of other federal regulations in a state employment field can help display a federal interest in the workers employed in that field.¹²⁷ More specifically, state education, highway and environmental employees may be deemed protected under the FLSA simply because they are employed in activities which are highly regulated by the federal government.¹²⁸

In essence, the new standard prescribed by the *Garcia* Court is a means of determining the degree of federal interest in a specific field. The actual amount of federal interest needed to compel state conformity was not fully explained in the decision.¹²⁹ Still, the holding implies that some federal interest must be shown in order for the federal government to displace the state's sovereign interest reserved under the tenth amendment.¹³⁰ Whether this interest must be expressed through some type of federal legislation or may be implied through the presence of federal funding is not known.¹³¹

124. *Garcia*, 469 U.S. at 555.

125. *Id.*

126. *Id.* at 551-54. See also *supra* note 89. The Court, by examining other commerce clause legislation, was in essence examining how the federal government had both benefited the states and protected their individual sovereignty through such laws.

127. This approach is obviously subject to the various classes of employees who are exempted from the Act's provisions. See *supra* note 37.

128. *Garcia*, 469 U.S. at 551-54.

129. The Court in *Garcia* merely held that the extension of the FLSA to SAMTA employees did not contravene any limit upon federal commerce clause power. *Id.* at 555-56. The Court did not make a broad holding that all state and local public mass transit employees are covered by the Act.

130. The Court held that state sovereign powers exist if they are not displaced by a contravening federal power. *Id.* at 550-52. Therefore, the presence of some federal interest must be present to displace the state's sovereign right pursuant to the tenth amendment. Absent any federal interest, the state's right to regulate is superior to that of the federal government. *Id.* at 550-56.

131. The Court in *Garcia* indicated that the presence of an expressed federal interest without associated funding was enough to extend protection to SAMTA employees. See *id.* at 555 n.21. Whether the presence of federal financial assistance alone is sufficient to compel state submission was not mentioned by the Court. Past Court decisions have held, however, that the presence of federal financing is irrelevant to constitutional determinations. See *Pennhurst State School v. Halderman*, 451 U.S. 1, 17-18 (1981). The course that courts will choose with regard to the funding issue in future FLSA cases remains to be seen.

IX. IMPACT OF THE NEW STANDARD UPON FLSA

The impact that the new *Garcia* standard will have on FLSA application to state and municipal employees is uncertain. By eliminating the limits placed on the 1966 and 1974 FLSA amendments,¹³² the Court may have made the states and their political subdivisions fully amenable to the Act. The conspicuously expressed federal interest in these amendments was sufficient to displace sovereign state rights even in the absence of any countervailing financial assistance or other commerce clause legislation.¹³³ Therefore, FLSA protection should be extended to virtually all state and municipal employees.¹³⁴

Such a result surely will be at variance with the interests of state and local legislatures and the *Garcia* decision itself. Currently, state and municipal interests claim that the cost of complying with FLSA regulations could run as high as three to four billion dollars annually.¹³⁵ The intention of the *Garcia* Court, however, was not to place state and local governments in a financial predicament.¹³⁶ According to *Garcia*, the federal government's role is to protect the states and preserve their sovereignty, not to bankrupt them.¹³⁷

This consequence of *Garcia* creates a serious problem in reconciling the *Garcia* standard of FLSA application with the financial

132. These amendments extended FLSA protection to virtually all classes of state and municipal employees. See *supra* note 36 and accompanying text.

133. *Garcia*, 469 U.S. at 555 n.21. See also *supra* note 123. The Court's statement here that FLSA compliance need not be associated with countervailing federal assistance is somewhat misleading. The Court throughout its decision used the presence of federal funding as a means of showing an interest sufficient to displace SAMTA's sovereign rights pursuant to the tenth amendment. Then, in a footnote, the Court disclaimed this approach, stating that the presence of countervailing financial assistance need not be shown to compel state submission to commerce clause legislation. The *Garcia* Court, by placing this disclaimer in the decision, has created some uncertainty. Whether the disclaimer will be limited to the facts presented the Court in *Garcia* or expanded to all FLSA and commerce clause legislation remains uncertain.

134. In *Garcia*, the Court held that the presence of the 1966 and 1974 amendments alone was sufficient to display a federal interest and to compel state submission. Whether this holding is to be construed narrowly or broadly is not known. Because of the majority's reliance upon the national political process, the holding arguably will be construed broadly and will extend FLSA protection to virtually all public employees.

135. BNA, *supra* note 13, at 1434. The figures quoted are estimates made by interest groups representing state and local governments. These figures contradict the estimates of the two largest public employee unions, the American Federation of State, County and Municipal Employees and the Service Employees International Union. Nevertheless, the figures quoted are based on time and one-half cash overtime in excess of 40 hours a week.

136. *Garcia*, 469 U.S. at 459-56. The Court mentioned that state sovereign rights are to be protected by the federal government. Indeed, the great financial burden that FLSA compliance would put on states was the major rationale for the Court's decision in *National League*. See *supra* note 45 and accompanying text.

137. *Garcia*, 469 U.S. at 549-54.

realities of many states and municipalities. With regard to the FLSA, Congress has explicitly stated that it has an interest in state and municipal employees.¹³⁸ This interest apparently is enough to compel state and municipal compliance absent the presence of any countervailing financial assistance.¹³⁹ State and municipal compliance without any federal financial assistance is destined to become "financially burdensome" for these governments. The end result undermines the *Garcia* Court's contention that state sovereign interests are better protected by the federal government.¹⁴⁰

Garcia ultimately provides a solution to the dilemma it has created within the FLSA: the national political process. However, the effects of callously delegating what has traditionally been a judicial function to the federal legislators remains to be seen.

X. RECENT DEVELOPMENTS

The *Garcia* decision has created a backlash of outcries from state, county and municipal governments.¹⁴¹ Fearing the astronomical costs of compliance with FLSA regulations,¹⁴² these governments have been relentlessly pressuring Congress for relief. Their efforts have resulted in a number of House and Senate proposals.¹⁴³ The most significant proposal¹⁴⁴ was just recently signed into law by President Reagan.¹⁴⁵ Its proponents are optimistic that the law will answer some of the unresolved questions now facing the FLSA and its application to the states.

In essence, the new law will amend the FLSA's provisions to provide state and municipal governments the option of giving compensatory time off in lieu of cash overtime.¹⁴⁶ The compensatory time off will be given at a premium rate of time and one-

138. See *supra* notes 30 and 36 and accompanying text.

139. *Garcia*, 469 U.S. at 555 n.21. See also *supra* notes 131, 133 and 134 and accompanying text.

140. By placing states and their political subdivisions in financial peril, the federal government is not protecting sovereign rights, it is abolishing them.

141. BNA, *supra* note 13, at 1434.

142. See *supra* note 135 and accompanying text.

143. BNA, *supra* note 13, at 1432-33. This BNA cites a rash of recent congressional proposals which have varied from amending FLSA provisions to exclude public employees (Rep. Tom Loeffler, R.-Tex.), to delaying enforcement of the *Garcia* decision to allow more time to consider the issues (Rep. John E. Porter, R.-Ill.).

144. S. 1570, 99th Cong., 1st Sess. (1985). This was proposed by Senators Pete Wilson (R.-CA) and Don Nickles (R.-Okla.). The bill is nearly identical to H.R. 3530, 99th Cong., 1st Sess. (1985).

145. Fair Labor Standards Amendments of 1985, 29 U.S.C. §§ 201-216 (Supp. III 1985).

146. *Id.* at § 207(o)(1).

half.¹⁴⁷ The amount of compensatory time an employee can accumulate is subject to an annual limit of 240 hours. State and local police, firefighters and emergency workers can accumulate up to 480 hours a year.¹⁴⁸

The new legislation is aimed at relieving the financial burdens that full FLSA compliance will have on state and municipal governments by allowing a less onerous means of overtime compensation. Instead of paying cash, these governments can now compensate their employees with time off. While this legislation does make the *Garcia* decision more agreeable to the states and their political subdivisions, it does not affect the major issue of application discussed throughout this Note.¹⁴⁹

Overall, this legislation can be considered a victory for both public employees and their governmental employers. Those public workers who were previously not paid for overtime can now receive either compensatory time or cash payments at a time and one-half premium rate. Governments which were facing a great financial burden with FLSA compliance now will be given greater flexibility to meet the needs of both their citizens and their employees.¹⁵⁰

This amendment to the FLSA may also be considered a victory for the *Garcia* decision. Here, state and municipal governments, through the use of the national political process, were able to protect their sovereign interests. The federal government displayed its ability to protect public employees without unduly burdening the states and their political subdivisions. If this amendment proves to be successful, state sovereign interests may well be better protected by the federal government.¹⁵¹

147. *Id.*

148. *Id.* at § 207(o)(3)(A).

149. The new legislation merely changes the provisions of the FLSA to lessen the financial burdens full compliance with the Act will have on state and municipal governments. The legislation does not affect the central issue of FLSA application decided by the *Garcia* Court and discussed throughout this Note.

150. In essence, the new law is a compromise between various labor unions and state and local governments. The practice of granting compensatory time off in lieu of cash overtime is not new. Many union contracts negotiated after *National League* allow such a practice. By granting compensatory time, state and municipal governments are able to hire more employees to fill the gaps left by those employees using their time off. This ultimately enables governments to provide overtime compensation without spending too many resources or cutting back on essential services.

151. This statement may be limited to federal legislation pursuant to the FLSA. The ability of the courts to protect the sovereign interests of the states regarding other commerce clause legislation is beyond the scope of this Note.

CONCLUSION

Only in time will the long-term effects that the *Garcia* decision will have upon FLSA application to the states and their political subdivisions be realized. By eliminating the tenth amendment limits imposed by the Court in *National League*, the *Garcia* decision may have solved the confusing constitutional question of FLSA application to state and municipal employees. Still, in resolving that issue, the Court has created some new questions concerning the political functioning of our diverse federal system.

The *Garcia* Court stated that the federal government, with its national political process, was better able to protect individual state and local needs. In its decision, however, the Court failed to assess the ability of the federal government to adequately protect the unique and individual labor needs presently existing throughout the country. The *Garcia* majority also failed to consider the impact that large national constituencies have upon the political process.

The *Garcia* decision has extended FLSA protection to millions of public employees who previously were exempted. This certainly will make labor standards throughout the country more uniform and more easily enforced. However, the financial burden this extension will have upon the states will be great, even with the recent mitigating federal legislation. As yet, it is too early to determine if more restrictive federal legislation will be necessary in the future.

Ultimately, the success of the *Garcia* decision will depend upon the ability of the federal government to adequately protect state and municipal sovereign rights. No longer can states and their political subdivisions rely upon their powers of limitation previously granted under the tenth amendment. The burden now has been shifted from the courts to the federal government to protect state and municipal interests. If the federal government fails to carry its burden, states and municipalities no doubt will once again petition the courts for a new interpretation of the tenth amendment.

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