are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner."[147] The standard, apparently, in judging between permissible and impermissible federal regulation, is whether there is federal interference with "functions essential to separate and independent existence."[148] In the context of this case, state decisions with respect to the pay of their employees and the hours to be worked were essential aspects of their "freedom to structure integral operations in areas of traditional governmental functions."[149] The line of cases exemplified by *United States v. California* was distinguished and preserved on the basis that the state activities there regulated were so unlike the traditional activities of a state that Congress could reach them;[150] *Case v. Bowles* was held distinguishable on the basis that Congress had acted pursuant to its war powers and to have rejected the power would have impaired national defense;[151] *Fry* was distinguished on the bases that it upheld emergency legislation tailored to combat a serious national emergency, the means were limited in time and effect, the freeze did not displace state discretion in structuring operations or force a restructuring, and the federal action "operated to reduce the pressure upon state budgets rather than increase them."[152] *Wirtz*

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because of the breadth of the commerce power. But when he asserts that, say, the First or Fifth Amendment bars congressional action concededly within its commerce power, one interposes an affirmative constitutional defense that has a chance of success. It was the Justice's view that the state was "asserting an affirmative constitutional right, inherent in its capacity as a State, to be free from such congressionally asserted authority." Id. at 553. But whence the affirmative barrier? "[I]t is not the Tenth Amendment *by its terms*. . . ." Id. at 557 (emphasis supplied). Rather, the Amendment was an example of the Framers' understanding that the sovereignty of the states imposed an implied affirmative barrier to the assertion of otherwise valid congressional powers. Id. at 557–59. But the difficulty with this construction is that the equivalence that Justice Rehnquist sought to establish lies *not* between an individual asserting a constitutional limit on delegated powers and a state asserting the same thing, but *is* rather between an individual asserting a lack of authority and a state asserting a lack of authority; this equivalence is evident on the face of the Tenth Amendment, which states that the powers not delegated to the United States "are reserved to the States respectively, *or to the people*." (emphasis supplied). The states are thereby accorded no greater interest in restraining the exercise of nondelegated power than are the people. *See* Massachusetts v. Mellon, 262 U.S. 447 (1923).

[147] National League of Cities v. Usery, 426 U.S. 833, 845 (1976).

[148] 426 U.S. at 845.

[149] 426 U.S. at 852.

[150] 426 U.S. at 854.

[151] 426 U.S. at 854 n.18.

[152] 426 U.S. at 852–53.