U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

IN THE MATTER OF:

SIMON D. DEAN,

COMPLAINANT,

v.

HEALTH CARE DISTRICT OF PALM BEACH COUNTY,

RESPONDENT.

ARB CASE NO. 2025-0055

ALJ CASE NO. 2024-AIR-00020
ALJ DIERDRA M. HOWARD

DATE: September 4, 2025

Appearances:

For the Complainant:
Arthur T. Schofield, Esq.; *Arthur T. Schofield, P.A.*; West Palm Beach, Florida

For the Respondent:
John W. Terwilleger, Esq., Joseph G. Santoro, Esq., and Meredith B. Plummer, Esq.; *Gunster, Yoakley & Stewart, P.A.*; West Palm Beach, Florida

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL and KIKO, Administrative Appeals Judges

DECISION AND ORDER

This case arises under the employee protection provisions of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR21) and its implementing regulations.[1] In this interlocutory appeal, we consider whether Respondent Health Care District of Palm Beach County is entitled to sovereign immunity under the Eleventh Amendment of the United States Constitution.

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[1] 29 U.S.C. § 42121; 29 C.F.R. Part 1979 (2024).

For the reasons set forth below, we conclude that Respondent is not an "arm of the state" of Florida and is therefore not entitled to sovereign immunity.

BACKGROUND

Respondent is an "independent special district" created by the Florida Legislature to provide "comprehensive planning, funding, and coordination of health care service delivery" to the indigent and medically needy residents of Palm Beach County, Florida.[2] Complainant filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent terminated his employment in violation of AIR21 after he reported unsafe workplace conditions and potential violations of federal aviation regulations to Respondent and the Federal Aviation Administration.

On August 24, 2023, OSHA issued findings dismissing Complainant's complaint. Complainant filed objections to OSHA's findings with the Department's Office of Administrative Law Judges, and the case was assigned to an Administrative Law Judge (ALJ).

On November 22, 2024, Respondent filed a Motion to Dismiss with the ALJ, arguing: (1) the Department of Labor cannot exercise "jurisdiction over states and their political subdivisions," under the United States Constitution;[3] (2) the ALJ lacked jurisdiction over Respondent as a "political subdivision" of Florida, pursuant to the Occupational Safety and Health Act of 1970 (OSH Act);[4] (3) the ALJ lacked jurisdiction over Respondent because it is not an "air carrier" as defined by AIR21;[5] (4) the ALJ was not permitted to "reopen" OSHA's determination;[6] (5) Complainant's claim is barred by the doctrine of res judicata;[7] (6) Complainant's

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2 Ch. 2003-326, §§ 2-3, Fla. Laws.

3 Motion to Dismiss at 2-3.

4 *Id.* at 3.

5 *Id.* at 4-5.

6 *Id.* at 5-6.

7 *Id.* at 6-9.

claim is barred by the doctrine of collateral estoppel;[8] and (7) Complainant's pleading complaint before the ALJ was untimely.[9]

On April 22, 2025, the ALJ issued an Order Denying Motion to Dismiss (ALJ Order), rejecting each of Respondent's arguments. First, the ALJ interpreted Respondent's Constitutional challenge as an invocation of sovereign immunity under the Eleventh Amendment.[10] Applying the Eleventh Circuit's[11] sovereign immunity test, the ALJ determined that Respondent had not shown that it was an "arm of the state" that was entitled to sovereign immunity.[12] The ALJ next rejected Respondent's "jurisdiction" arguments that it was not an "air carrier" under AIR21 and was excluded from coverage as a "political subdivision" under the OSH Act. The ALJ determined that Respondent was covered as a certificate holder under AIR21, as amended in 2020, and that the OSH Act did not apply to these proceedings.[13] The ALJ also rejected Respondent's argument that it could not "reopen" OSHA's determination, because any decision or finding by OSHA is irrelevant to the de novo proceeding before the ALJ.[14] The ALJ also rejected Respondent's res judicata argument because the state court action upon which Respondent relied would not have been a "court of competent jurisdiction" to hear Complainant's AIR21 claims.[15] The ALJ similarly rejected Respondent's collateral estoppel argument because Respondent failed to present any evidence that the issues in the state court proceeding were actually litigated or decided.[16] Finally, the ALJ excused Complainant's untimely filing of a pleading complaint, and found the untimeliness did not warrant dismissal.[17]

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8 *Id.* at 9.

9 *Id.* at 9-11.

10 ALJ Order at 4.

11 Because the violation in this case occurred in Florida, this case is subject to the jurisdiction of the Eleventh Circuit Court of Appeals. *See* 29 C.F.R. § 1979.112(a).

12 ALJ Order at 4-6.

13 *Id.* at 7-8.

14 *Id.* at 3.

15 *Id.* at 9-10.

16 *Id.* at 10-11.

17 *Id.* at 11-13.

On May 2, 2025, Respondent filed a Petition for Review with the Administrative Review Board (Board), appealing the ALJ Order. Because the ALJ has not yet issued a decision fully disposing of all claims in Complainant's complaint, Respondent's Petition for Review is for interlocutory review (i.e., review of a non-final decision).[18] The Board's delegated authority includes the consideration and disposition of interlocutory appeals only "in exceptional circumstances."[19] The Secretary of Labor and the Board have repeatedly held that "interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals."[20]

When a party seeks interlocutory review of an ALJ's non-final order, the Board has elected to look to the interlocutory review procedures used by federal courts, including those providing for review under the collateral order doctrine.[21] The collateral order doctrine applies to the "small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated."[22] To fall within the "collateral order" exception and be subject to immediate appeal, the order appealed must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment.[23]

The Board issued an Order to Show Cause on May 15, 2025, directing Respondent to explain why the Board should not dismiss this interlocutory appeal. The Board specifically instructed Respondent to respond with respect to each of its

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18 *See Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022) (citation omitted).

19 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

20 *Lewis v. Deepwell Energy Servs., LLC*, ARB Nos. 2025-0037, -0039, -0051, ALJ No. 2024-STA-00042, slip op. at 5-6 (ARB Apr. 23, 2025) (citations omitted).

21 *Id.* at 6 (citation omitted). The Board may also consider an interlocutory appeal when it has been certified by the ALJ under 28 U.S.C. § 1292(b). The ALJ did not certify Respondent's appeal to the Board.

22 *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

23 *Lewis*, ARB Nos. 2025-0037, -0039, -0051, slip op. at 6-7 (citation omitted).

arguments raised in the Motion to Dismiss, and to explain why each was subject to immediate interlocutory appeal.[24]

Respondent filed a Response to Order to Show Cause on May 29, 2025. In it, Respondent addressed only (1) the ALJ's "jurisdiction" to hear this case, and (2) sovereign immunity.[25] Regarding jurisdiction, Respondent argued that "[s]ubjecting a state to OSHA's jurisdiction under AIR21, for the first time ever, is a 'compelling public end[ ]' that needs to be addressed immediately."[26] Regarding sovereign immunity, Respondent argued that the benefit of sovereign immunity would be "'for the most part lost as litigation proceeds past motion practice.'"[27] Complainant filed a Reply to Respondent's Response to Order to Show Cause on June 12, 2025, urging the Board to decline to accept interlocutory review in this case.

On July 28, 2025, we issued an Order Accepting Interlocutory Appeal in Part. We declined to accept most of the interlocutory issues raised by Respondent. Specifically, we determined that Respondent's arguments as to the Department's "jurisdiction" to hear this case were not effectively unreviewable on appeal from a final judgment.[28] We also declined to accept Respondent's arguments as to the ALJ's ability to "reopen" OSHA's determination, the application of the doctrines of res judicata and collateral estoppel, and the timeliness of Complainant's pleading complaint before the ALJ, which Respondent did not address in response to our Order to Show Cause.[29]

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[24] Order to Show Cause at 3.

[25] Respondent's Response to Order to Show Cause at 5-8.

[26] *Id.* at 7 (emphasis original) (quoting *Will v. Hallock*, 546 U.S. 345, 350 (2006)).

[27] *Id.* (quoting *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993)).

[28] Order Accepting Interlocutory Appeal in Part at 9-10. As we concluded in our order, what Respondent labeled as issues of "jurisdiction" were really issues of coverage under the statute. *Id.*

[29] *Id.* at 10-11.

However, we elected to accept Respondent's Petition for Review with respect to the issue of Eleventh Amendment sovereign immunity.[30] Accordingly, we ordered the parties to submit briefs concerning the merits of Respondent's appeal of the ALJ's decisions with respect to sovereign immunity. Both parties filed briefs with the Board.[31]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of the Department of Labor has delegated authority to the Board to review appeals from ALJ decisions and to issue agency decisions in cases arising under AIR21.[32] The Board reviews questions of law presented on appeal de novo, but is bound by the ALJ's factual findings that are supported by substantial evidence.[33]

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[30] *Id.* at 6-7. Respondent also presented a Constitutional challenge under the Tenth Amendment and separation of powers principles. However, we agreed with the ALJ that Respondent had not yet clearly explained why it believed this case violated the Tenth Amendment or separation of powers principles, independent of its other arguments, including under the Eleventh Amendment. *Id.* at 7-8. We elected to accept for review Respondent's Tenth Amendment arguments to the extent they directly related to its Eleventh Amendment sovereign immunity argument, but declined to accept for review Respondent's arguments to the extent they were independent or distinct from its Eleventh Amendment sovereign immunity argument. *Id.* at 8-9. Respondent stated in its Opening Brief that "[f]or purposes of this Opening Brief, the Tenth and Eleventh Amendment arguments are the same." Respondent's Opening Brief (Resp. Br.) at 2 n.1.

[31] Respondent has again raised arguments concerning coverage under the statute and other issues that the Board did not accept for appeal. *E.g., id.* at 6-8. In accordance with our Order Accepting Interlocutory Appeal in Part, we limit our review to the issue of whether Respondent has sovereign immunity under the Eleventh Amendment.

[32] Secretary's Order No. 01-2020; 29 C.F.R. § 1979.110(a).

[33] *Jones v. Exclusive Jets, LLC*, ARB No. 2023-0035, ALJ No. 2022-AIR-00003, slip op. at 8-9 (ARB Dec. 31, 2024) (citations omitted).

DISCUSSION

The Eleventh Amendment to the United States Constitution restricts the ability of individuals to bring suit against a state in federal court or in certain administrative proceedings[34] without their consent. It provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.[35]

Eleventh Amendment immunity extends to the states themselves, as well as to agencies and entities that function as an "arm of the state."[36] However, immunity does not "extend to counties, municipal corporations, or similar political subdivisions of the state."[37]

Whether an entity is an "arm of the state" must be assessed "in light of the particular function in which [the entity] was engaged when taking the actions out of which liability is asserted to arise."[38] Thus, "our question is not simply whether [Respondent] acts as an arm of the state generally," but whether it does so specifically when terminating employees like Complainant.[39]

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34 Sovereign immunity extends to administrative proceedings when the adjudication sufficiently resembles civil litigation in federal court. *Fed. Mar. Comm'n v. S.C. St. Ports Auth.*, 535 U.S. 743, 760 (2002); *Yagley v. Hawthorn Ctr. of Northville Twp.*, ARB No. 2009-0061, ALJ No. 2009-CAA-00002, slip op. at 4 (ARB Apr. 30, 2010) (citing *Fed. Mar. Comm'n*, 535 U.S. at 760).

35 U.S. CONST. amend. XI.

36 *Lightfoot v. Henry Cnty. School Dist.*, 771 F.3d 764, 768 (11th Cir. 2014) (citation omitted).

37 *Id.* (citation omitted).

38 *Id.* (citation omitted).

39 *Freyre v. Chronister*, 910 F.3d 1371, 1381 (11th Cir. 2018); *accord Lightfoot*, 771 F.3d at 768 (stating, in discrimination and retaliation case, that the relevant function for purposes of analyzing Eleventh Amendment sovereign immunity was the respondent's "employment of teachers, and specifically, to its discipline, evaluation, and termination of teachers").

In determining whether an entity functions as an "arm of the state," the Eleventh Circuit considers four factors: (1) "how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity."[40] As the party asserting sovereign immunity, Respondent carries the burden of establishing that it is an "arm of the state" of Florida.[41]

We address each factor in turn below, and conclude that Respondent has failed to carry its burden to establish that it is an "arm of the state" of Florida.

1. How Florida Law Defines Respondent

The first factor we consider is how Florida law defines Respondent. The Legislature created Respondent to provide "comprehensive planning, funding, and coordination of health care service delivery" to "indigent and medically needy residents of Palm Beach County."[42] In 2003, the Florida Legislature recodified a series of special acts relating to the creation and operation of Respondent into a single, comprehensive act, called the Palm Beach County Health Care Act (PBCHCA).[43]

Notably, the PBCHCA does not identify Respondent as a state agency or actor, or give any other clear indication that the Legislature intended for Respondent to serve as an "arm of the state." To the contrary, the Florida Legislature defined Respondent as an "independent special district," which Florida law defines as "a unit of **local government** created for a special purpose . . . which has jurisdiction to operate within a limited geographic boundary . . . ."[44]

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40 *Lightfoot*, 771 F.3d at 768 (quoting *Manders v. Lee*, 338 F.3d, 1309 (11th Cir. 2003)).

41 *See Miller v. Advantage Behav. Health Sys.*, 677 F. App'x 556, 559 (11th Cir. 2017) (citation omitted); *Haven v. Bd. of Trustees of Three Rivers Reg'l Libr. Sys.*, 625 F. App'x 929, 933 (11th Cir. 2015) (citations omitted).

42 Ch. 2003-326, § 2, Laws of Fla.

43 *Id.* §§ 1-2.

44 *Id.* at § 3; FLA. STAT. § 189.012(6) (emphasis added); *see also id.* § 189.055 (stating that "special districts shall be treated as municipalities" for purposes of other state law). Florida law provides for the creation of "dependent" special districts, which are interwoven with a county or municipality, and "independent" special districts, which are not. *Id.* § 189.012(2)-(3). Both types of special districts are defined as units of "local government." *Id.* § 189.012(6).

Additionally, as detailed in Section 2, below, Florida gave Respondent almost total, independent, autonomous control over its own operations and the achievement of its mission within the boundaries of Palm Beach County. We agree with the ALJ that the "independent special district" designation, together with the powers and autonomy the Legislature bestowed on Respondent, supports the conclusion that Florida state law treats Respondent more like a county, municipality, or similar independent or local agency or entity, rather than as an arm of the state itself.[45]

Nevertheless, Respondent contends that it should receive Eleventh Amendment sovereign immunity because the Florida Legislature has granted it sovereign immunity under state law.[46] We disagree. As observed above, the reach of immunity under the Eleventh Amendment is limited—immunity extends only to the state itself as well as to state agencies and entities that function as an "arm of the state," but it does not "extend to counties, municipal corporations, or similar political subdivisions of the state."[47] Immunity under Florida state law extends much further—unless waived, it extends not just to the state, but also to "independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities . . . ."[48] Thus, local and independent government entities and agencies, like counties, municipalities, and other independent entities, may receive sovereign immunity under Florida state law, but may not receive sovereign immunity under the Eleventh Amendment. The fact that the Florida Legislature may grant Respondent sovereign immunity for state law purposes does not control our analysis, especially

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45 *See Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 313 (1990) (Brennan, J., concurring in part and concurring in the judgment) ("[T]he Eleventh Amendment shields an entity . . . only when it is so closely tied to the State as to be the direct means by which the State acts . . . . In contrast, when a state creates subdivisions and imbues them with a significant measure of autonomy, such as the ability to levy taxes, issue bonds, or own land in their own name, these subdivisions are too separate from the State to be considered its 'arms.'").

46 Resp. Br. at 10-12; Ch. 2003-326, § 6(6), Fla. Laws.

47 *Lightfoot*, 771 F.3d at 768.

48 FLA. STAT. § 768.28(1)-(2) (defining "state agencies or subdivisions," for which Florida provides a limited waiver of sovereign immunity under state law in tort actions); *see also, e.g., Maloy v. Bd. of Cnty. Com'rs of Leon Cnty.*, 946 So. 2d 1260, 1263-64 (Fla. Dist. Ct. App. 2007) ("Florida's counties, as divisions of the state, enjoy the state's sovereign immunity unless the Legislature by a general law provides otherwise.") (citation omitted).

where the Florida Legislature designated that Respondent acts as an independent special district—i.e., an independent "local government."[49]

Respondent also contends that it should be considered an "arm of the state" because its "power stems solely from and is limited by the State, not any county, municipality or other local government."[50] While it may be true that Respondent was created by the state Legislature, the Eleventh Circuit has cautioned that "it is not sufficient that [a respondent's] powers and duties are derived from state law" to establish an entitlement to immunity, where the respondent is otherwise granted "a significant amount of autonomy" by the state legislature.[51] Again, Florida has designated Respondent as an independent special district and granted it significant autonomy over its operations. Thus, the fact that it was created and imbued with

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[49] *See Lightfoot*, 771 F.3d at 771 ("State-law immunity does not control our analysis, [ ] particularly because Georgia also extends immunity to counties, which are clearly not immune under the Eleventh Amendment.") (citation omitted); *Singleton v. Public Health Trust of Miami-Dade Cnty.*, 203 F. Supp. 3d 1181, 1185 (M.D. Fla. 2016) (distinguishing state sovereign immunity from Eleventh Amendment immunity, and distinguishing cases that granted state sovereign immunity but did not "parse the distinction between county agencies, municipal agencies, and state agencies"); *Magula v. Broward Gen. Med. Ctr.*, 742 F. Supp. 645, 648 (S.D. Fla. 1990) ("Thus, while an entity may be a state establishment for purposes of the state constitution and state statutes, it may also exercise sufficient independence so that it cannot claim eleventh amendment immunity as an arm of the state under federal law."). For this reason, Respondent's reliance on *Lee Mem'l Health Sys. v. Hilderbrand*, 304 So. 3d 58, 60-61 & n.2 (Fla. Dist. Ct. App. 2020), *Palm Beach Cnty. Health Care Dist. v. Pro. Med. Educ., Inc.*, 13 So. 3d 1090, 1092 (Fla. Dist. Ct. App. 2009), and *Eldred v. N. Broward Hosp. Dist.*, 498 So. 2d 911, 913-14 (Fla. 1986), is misplaced. Those cases dealt with immunity under state law, and did not address or discuss immunity under the Eleventh Amendment, which is much narrower.

[50] Resp. Br. at 10; *accord id.* at 9 ("[Respondent] is dependent on the State for its existence, authorization, and authority to tax.").

[51] *Lightfoot*, 771 F.3d at 771 (citation omitted). Respondent cites *U.S. ex rel. Lesinski v. S. Fla. Water Mgmt. Dist.*, 739 F.3d 598 (11th Cir. 2014) in support of its argument. Resp. Br. at 10. In that case, the Eleventh Circuit found that the fact that the entity there "derives both the authority and the obligation to exercise those powers directly from the State" weighed in favor of finding that the State controlled the entity for Eleventh Amendment purposes. *Lesinski*, 739 F.3d at 604. However, the Eleventh Circuit subsequently cautioned not to take this principle "too far," "as *every* power [the entity] exercises is ultimately granted by state law." *Freyre*, 910 F.3d at 1383-84 (citation omitted) (emphasis original). Additionally, in *Lesinkski*, the Eleventh Circuit found it important that the respondent "answers only to the State and is not independently autonomous." *Lesinkski*, 739 F.3d at 604 n.6. For the reasons set forth in Section 2, the PBCHCA, in contrast, provides that Respondent does *not* "answer to the State" and *is* "independently autonomous."

power by the state does not render it an arm of the state under the Eleventh Amendment.

2. What Degree of Control Florida Maintains Over Respondent

The second factor we consider is what degree of control Florida maintains over Respondent. Under the PBCHCA, the state granted significant autonomy to Respondent to direct its own operations and act independently, with little or no state oversight. The PBCHCA created a District Board, and vested the District Board with "the authority and responsibility to provide for the comprehensive planning and delivery of adequate health care facilities . . . and services for the citizens of the County."[52]

To fulfill this mission, the state granted the District Board the power to, among other things: (1) plan, set policy guidelines for, fund, establish, construct, lease, operate, and maintain health care facilities; (2) provide health care services to Palm Beach County residents, and establish the criteria for the provision thereof; (3) sue and be sued in its own name; (4) acquire by purchase, lease, gift, or otherwise, real and personal property; (5) make and execute leases, contracts, deeds, mortgages, and other notes; (6) borrow money and issue bonds; (7) raise money; (8) assess and impose ad valorem taxes; (9) determine and approve its own budget; (10) establish or become part of qualified self-insurance trust funds; (11) promulgate and adopt policies and rules for the District's operation; and (12) "do all things necessary to carry out the purposes of" the PBCHCA.[53] And, most importantly for our present analysis, the state imbued the District Board with the power over personnel decisions, like the termination that occurred in this case.[54] The state retained little or no oversight over any of these functions, and Respondent has not alleged or provided any evidence that the state had any role in, or power over, Complainant's termination in this case. The Supreme Court, Eleventh Circuit, and District Courts in Florida have found that similar authority and power vested

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[52] Ch. 2003-326, § 6, Fla. Laws.

[53] *Id.* § 6(1), (3), (6)-(7), (9), (12)-(13), (19)-(20), (22), (25), (31).

[54] *Id.* § 6(14) (granting the power "[t]o employ administrators, physicians, attorneys, accountants, financial experts, consulting engineers, architects, surveyors, and such other employees and agents as may be necessary in its judgment and to fix their compensation"); *see also Lightfoot*, 771 F.3d at 768 (stating that the relevant inquiry is the level of control the state has over the specific function at issue in the case).

in an independent entity establishes that the state lacks the control necessary to render the entity an arm of the state.[55]

Respondent contends that it is controlled by the state because the majority of its seven-member Board is "directly appointed by the State."[56] Pursuant to the PBCHCA, three members of the District Board are appointed by the Governor, three members are appointed by the Board of County Commissions of Palm Beach County, and one is the Director of the Palm Beach County Public Health Department, who is appointed by the state Surgeon General.[57] Besides having the power to appoint certain Board members, Respondent has not cited any evidence or authority that the state maintains any power to control or direct the members once appointed, retains any control over Respondent's decision-making (especially with respect to the employment matters at issue here), or otherwise directs the operations of Respondent. Thus, while the power to appoint some members to the

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[55] *Compare Mt. Heatlhy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (finding no immunity for entity that was "subject to some guidance from the" state, but had "extensive powers to issue bonds" and "to levy taxes within certain restrictions of state law"), *Lightfoot*, 771 F.3d at 771-72 (finding no state control where entity had "substantial autonomy over their affairs," including power to sue and be sued, purchase property, borrow money, enter contracts, and issue bonds), *Magula*, 742 F. Supp. at 649 (finding no state control where entity had power to sue and be sued, contract, acquire property, appoint employees, borrow money, issue bonds, and tax), *and Coffey v. Higher Educ. Loan Auth.*, 770 F. Supp. 3d 1322, 1344-45 (M.D. Fla. 2025) (finding no state control where entity "can independently engage in all manner of ordinary business-like activities without [the state's] control," including adopting bylaws, appointing director, entering contracts, purchasing and issuing loans, and prosecuting and defending lawsuits), *with Ross v. Jefferson Cnty. Dept. of Health*, 701 F.3d 655, 660 (11th Cir. 2012) (finding state control where entity was headed by state employee who controlled the ability to terminate employees), *Manders*, 338 F.3d at 1320 (finding state control over sheriff where state "mandat[ed] and control[ed] sheriffs' specific duties . . . [and] only the State possesse[d] control over sheriffs' force policy and that control is direct and significant in many areas . . ."), *and Miccosukee Tribe of Indians of Fla. v. Fla. State Athletic Comm'n*, 226 F.3d 1226, 1232-33 (11th Cir. 2000) (finding state control where state gave guidelines to entity's ability to make regulations and limited grounds for the entity to suspend or revoke licenses, the specific function at issue).

[56] Resp. Br. at 12.

[57] Ch. 2003-326, § 4(1); FLA. STAT. § 154.04(1)(b).

District Board may evidence some degree of control, we find that it is not sufficient to override the significant autonomy otherwise afforded to Respondent.[58]

Respondent also asserts that the state controls Respondent because Respondent "is exercising the traditional state power to regulate health of its citizens," citing *Manders v. Lee*.[59] Respondent has not cited any authority for the proposition that the provision of healthcare services is a "traditional state power" that has traditionally only been wielded or overseen by the state itself.

Even if the provision of healthcare services might be considered a "traditional state power," Respondent's argument is unpersuasive. In *Manders*, the Eleventh Circuit determined that a county sheriff was an arm of the state with respect to his operation of a jail.[60] As observed by Respondent, the Eleventh Circuit considered, among other things, that most of the sheriff's duties "are an integral part of the State's criminal justice system and are state functions."[61] However, the Eleventh Circuit also considered various other factors in concluding that the sheriff functioned as an arm of the state, including that the state mandated and controlled the sheriff's specific duties, the state possessed control over the use-of-force policy at issue in the case, and the state funded annual training for sheriffs and the disciplinary procedure over the use of excessive force.[62] This differs significantly from the present case, where even if the state delegated authority over a "traditional state power" to Respondent, it also vested nearly complete autonomy over that power to Respondent.[63]

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58 *See Coffey*, 770 F. Supp. 3d at 1344-45 (stating state's right to appoint board members "is not dispositive because 'the power to appoint is not the power to control,'" especially where entity "can independently engage in all manner of ordinary business-like activities without [the state's] control or supervision") (quoting *Good v. Dept. of Educ.*, 121 F.4th 772, 803 (10th Cir. 2024)).

59 Resp. Br. at 13 (citing *Manders*, 338 F.3d at 1314-15). We note that Respondent cites *Manders*' reference to traditional state powers in the context of the "control" factor, but *Manders* considered it in the context of the factor concerning how the state defines the entity. *Manders*, 338 F.3d at 1319. For the reasons discussed in Section 1, above, even if the provision of healthcare is a traditional state power, it remains clear that the state established Respondent as an autonomous, independent entity.

60 *Id.* at 1306.

61 *Id.* at 1319.

62 *Id.* at 1319-23.

63 *See Magula*, 742 F. Supp. at 647-49 (finding local healthcare entity was not entitled to sovereign immunity).

3. Where Respondent Derives its Funds

The third factor we consider is where Respondent derives its funds. Respondent asserts that it "receives funding from the State."[64] Respondent does not cite any evidence or law in support of this proposition and does not attempt to explain how such alleged state funding relates to its personnel decisions. Because Respondent carries the burden to establish that it is an arm of the state of Florida, its failure to cite evidence or law in support of its conclusory allegation precludes us from finding that this factor weighs in its favor.[65]

Furthermore, it appears from the PBCHCA that Respondent largely, if not exclusively, funds its own operations. For example, the PBCHCA provides that Respondent has the power to determine and approve its own budget, "[t]o raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the District's activities and services," to borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness, and to levy taxes, including ad valorem taxes.[66] These powers—especially the ability to issue bonds and levy taxes—have been found by the

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64 Resp. Br. at 13.

65 *See Brown v. E. Cent. Health Dist.*, 752 F.2d 615, 617-18 (11th Cir. 1985) (finding the record did not establish an adequate factual basis to determine respondent was an arm of the state in part because "the record is silent as to who pays the salaries of [respondent's] employees, and it is silent as to what portion of the district's budget is county or state funded. Likewise, the record does not reveal whether [respondent] has the power to issue bonds or levy taxes for its own financial benefit.") (citation omitted); *Fonte v. Lee Mem'l Health Sys.*, No. 2:19-cv-54-FtM-38NPM, 2019 WL 4060163, at *4 (M.D. Fla. Aug. 28, 2019) ("[Respondent] has not shown that it receives any state funding or how any such funding relates to its personnel decisions.").

66 Ch. 2003-326, §§ 6(12), (13), (19)-(20), 8-9, Fla. Laws.

Supreme Court and other federal courts to preclude Eleventh Amendment immunity, even if the entity also receives allocations from the state.[67]

4. Who is Responsible for Judgments Against Respondent

The final factor we consider is who is responsible for judgments against Respondent. Respondent asserts that although it has the "capability of paying most adverse judgments," if it could not, "the State would ultimately have to choose between making up the shortfall or shirking its health care duties."[68] Once again, though, Respondent has not cited any evidence for the proposition that the state might be subject to any duty to pay a judgment against Respondent.[69] And again, Respondent's failure to offer evidence in support of its proposition precludes us from finding that this factor weighs in its favor.[70]

Furthermore, there is no indication in the PBCHCA that the state would be obligated to pay for an adverse judgment against Respondent. To the contrary, the

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67 *Mt. Healthy*, 429 U.S. at 280-81 (finding that although entity "receives a significant amount of money from the State," the ability to issue bonds and to levy taxes supported finding that entity was not an arm of the state); *Lightfoot*, 771 F.3d at 776 ("First, it is not sufficient that the [respondent] receives significant funding from the State.") (citation omitted); *Coffey*, 770 F. Supp. 3d at 1345-46 ("Here, although [respondent] is authorized to accept appropriations and other external funding, . . . the Act contemplates and [respondent] concedes that [respondent] is sustained primarily by revenue it generates through its business operations."); *Magula*, 742 F. Supp. at 649 (finding powers to issue bonds and levy taxes "have been determined to preclude eleventh amendment immunity, even if an entity also receives allocations from the general state revenues") (citation omitted).

68 Resp. Br. at 13.

69 Respondent cites *Lesinski*. *Id.* The *Lesinski* court cited a Florida constitutional duty that would have been impacted had the entity there—the regional South Florida Water Management District—become insolvent. *Lesinski*, 739 F.3d at 605 (citing FLA. CONST. art. II, § 7(a)). The court stated that this constitutional duty "directly implicated" the state's duty to financially support the respondent. *Id.* (citation omitted). Here, Respondent cites no constitutional (or statutory) duty that would require the state to fund Respondent if it were unable to satisfy adverse judgments. Furthermore, the Eleventh Circuit later distinguished *Lesinksi* in *Lightfoot*, specifying that *Lesinksi*'s holding was largely driven by the first two factors—how the state defines the entity and whether the state controls the entity. *Lightfoot*, 771 F.3d at 778. Here, as in *Lightfoot* and in contrast to *Lesinski*, the first two factors favor finding that Respondent is not an arm of the state, even if there might be some indirect implication for the state if Respondent suffered an adverse judgment for which it could not pay.

70 *See Brown*, 752 F.2d at 617-18; *Fonte*, 2019 WL 4060163 at * 4.

PBCHCA provides that Respondent is vested with the power to sue and be sued in its own name.[71] The PBCHCA also allows Respondent to secure insurance on its own behalf.[72] This supports a finding that Respondent is not an arm of the state of Florida.[73]

CONCLUSION

For the foregoing reasons, we conclude that Respondent has failed to carry its burden to show that the relevant factors, on balance, favor finding that it is an "arm of the state" of Florida.[74] Therefore, we **AFFIRM** the ALJ's conclusion that Respondent is not entitled to sovereign immunity under the Eleventh Amendment.

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[71] Ch. 2003-326, § 6(6), Fla. Laws.

[72] *Id.* §§ 6(22), 7(8).

[73] *See Lightfoot*, 771 F.3d at 778 (finding that respondent's autonomy "means that it cannot be said that a judgment against [the respondent] will come from state funds.") (quoting *Stewart v. Baldwin Cnty. Bd. of Educ.*, 908 F.2d 1499, 1510-11 (11th Cir. 1990)); *Coffey*, 770 F. Supp. 3d at 1346 ("[T]he Act carefully and repeatedly specifies that both [respondent's] assets and its liabilities are its own. . . . While it is conceivable that a significant judgment against [respondent] could quiet its eagerness to provide grants and scholarships to Missouri students . . . [respondent] fails to identify any source of obligation for Missouri to fill whatever gap in this funding an adverse judgment against [respondent] might create.").

[74] On August 20, 2025, the Acting Assistant Secretary (Assistant Secretary) of Occupational Safety and Health (OSHA) filed an Amicus Brief pursuant to 29 C.F.R. § 1979.108(a)(1). The Assistant Secretary states that Respondent made assertions in its briefs in this case that suggest that it believes that state sovereign immunity bars not only claims by a private litigant like Complainant against states, but also bars the federal government, including OSHA, from investigating or litigating against states as well. Amicus Brief at 4-5. Citing ARB and federal court precedent, the Assistant Secretary filed the Amicus Brief "for the limited purpose of clarifying that to whatever extent Eleventh Amendment state sovereign immunity may apply to the Respondent and the Administrative Law Judge ('ALJ') proceedings in this case, it does not apply to the [OSHA] whistleblower investigations or to administrative adjudications in which OSHA is a party." To the extent Respondent makes such a suggestion, we agree with Assistant Secretary. *Conn. Dep't of Env't Prot. v. OSHA*, 356 F.3d 226, 233-35 (2d Cir. 2004); *R.I. Dep't of Env't Mgmt. v. United States*, 304 F.3d 31, 53-54 (1st Cir. 2002); *Yagley v. Hawthorne Ctr. of Northville*, ARB No. 2006-0042, ALJ No. 2005-TSC-00003, slip op. at 5 (ARB May 29, 2008). Furthermore, even if Respondent was correct in this proposition, the Eleventh Amendment would still not serve as a bar to this case, or to a case in which OSHA was a party, because Respondent is not an "arm of the state."

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge