

11/28/01 "See News Release93 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-C-0511

ARCHER DANIELS MIDLAND COMPANY, et al.

Versus

The PARISH SCHOOL BOARD of the PARISH OF ST. CHARLES,  
Individually and as Collecting Agent for the Parish Council of St. Charles,  
et al.

Consolidated with

Tulane Fleeting, Inc.

Versus

The Parish School Board of the Parish of St. Charles, Individually and as  
Collecting Agent for the Parish Council of St. Charles, et al.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL  
FIFTH CIRCUIT, PARISH OF ST. CHARLES

JOHNSON, J., dissenting

In *Sales Tax Dist. No. 1 of Lafourche Parish v. Express Boat Co., Inc.*, 500 So.2d 364 (La. 1987), this court relied on federal jurisprudence to interpret the meaning of the phrase "operating exclusively in foreign or interstate coastwise commerce." I must support the broad federal definition of foreign and interstate commerce.

Federal courts have historically considered certain activities to be interstate or foreign commerce, even when the activities are performed entirely within one state, if the activity is part of or facilitates the stream of interstate or foreign commerce. *See Dept. of Rev., Etc. v. Ass'n of Wash. Steve. Co.*, 435 U.S. 734, 98 S.Ct. 1388, 55 L.Ed.2d 682 (1978); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326, *fn. 4* (1977); *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 67 S.Ct. 815, 91 L.Ed. 993 (1947), overruled on other grounds by

*Dept. of Rev., Etc. v. Ass'n of Wash. Steve. Co., supra; The Daniel Ball v. United States*, 77 U.S. 557, 19 L.Ed. 999 (1871); *Foster v. Davenport*, 63 U.S. 244, 16 L.Ed. 248 (1859); *Higginbotham v. Public Belt Railroad Commission*, 192 La. 525, 188 So. 395 (1938).

The services performed by the river tugboats herein are clearly “part of or facilitates the stream of interstate or foreign commerce.” The evidence shows that the tugboats, while operating exclusively in St. Charles Parish, are integral and necessary to the transportation of grain in interstate and foreign commerce. The parties stipulated that the grain is loaded onto river barges in the northern and mid-western states. When the barges subsequently arrive in St. Charles Parish, the grain is either loaded onto an ocean-going vessel for a foreign destination, or unloaded into a grain elevator until a ship becomes available.

I believe the correct analysis is to focus on the cargo which enters interstate and/or foreign commerce in the northern and mid-western states. Surely, every state, county, and parish cannot tax the cargo’s movement from loading onto the barges to unloading onto the ocean-going vessels. Such an outcome would be a prohibited burden on interstate commerce.