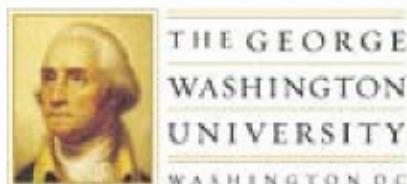


The Burger Court Opinion Writing Database

Colonial Pipeline Co. v. Traigle
421 U.S. 100 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20549

CHAMBERS OF
THE CHIEF JUSTICE

April 8, 1975

Re: 73-1595 - Colonial Pipeline Co. v. Traigle

MEMORANDUM TO THE CONFERENCE:

Bill Brennan's proposed opinion deals as well as can be done with this "perennial problem." That we add nothing to the jurisprudence is suggested by the several separate opinions. The confusion in this area will remain and I wonder if we would not be well advised to consider affirming without opinion as that would satisfy the dissenting and concurring views.

Regards,

WHD

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

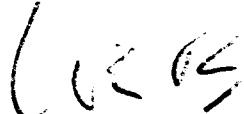
April 22, 1975

Re: No. 73-1595 - Colonial Pipeline Co. v. Traigle

Dear Bill:

Please join me in your 2/13/75 circulation.

Regards,



Mr. Justice Brennan

Copies to the Conference

JWB

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Powell
Mr. Justice Rehnquist

From: [Redacted]

Circulated:

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1595

Colonial Pipeline Company, }
Appellant, }
v. } On Appeal from the Su-
Joseph N. Traigle, Collector } preme Court of Louisi-
of Revenue. } ana.

[February —, 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We have once again a case that presents "the perennial problem of the validity of a state tax for the privilege of carrying on, within a state, certain activities" related to a corporation's operation of an interstate business. *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 85 (1948).¹ The issue is whether Louisiana, consistent with the Commerce Clause, Art. I, § 8, cl. 3, may impose a fairly apportioned and nondiscriminatory corporation franchise tax on appellant, Colonial Pipeline Co., a corporation engaged exclusively in interstate business, upon the "incident" of its "qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form." No question is raised as to the reasonableness of the apportionment of appellant's capital deemed to have been employed in Louisiana and it is not claimed that the tax is discriminatory. The

¹ "This Court alone has handed down some three hundred full-dress opinions spread through slightly more than that number of our reports. . . . [T]he decisions have been 'not always clear . . . consistent or reconcilable.'" *Northwestern Cement Co. v. Minnesota*, 358 U. S. 450, 457-458 (1959).

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 8, 1975

RE: No. 73-1595 - Colonial Pipeline v. Traigle

Dear Chief:

I cannot agree that we should dispense with an opinion in this case. Ever since Mr. Justice Brandeis expressed the strong view that a tax imposed directly and in terms on the privilege of doing interstate business violated the Commerce Clause, e.g., Ozark Pipeline, 266 U.S., at 569, the Court has taken that position. I realize that Harry can find support in Tom Clark's Spector dissent and in other dissents for his view but I suggest respectfully that that view has been espoused only in dissents. I think the Brandeis concern (certainly it is mine) is that we cannot foresee the Pandora's Box we'd open up were we to sanction direct impost on the privilege of doing an interstate business.

In any event the Louisiana tax before us is not a direct tax on the privilege of doing an interstate business and I should think we'd at least wait such a tax before thinking it was necessary to re-examine Spector.

I feel strongly enough about this to say that even were Harry's concurrence to command a Court I would adhere to my view as expressed in the circulated opinion.

Sincerely,



The Chief Justice

cc: The Conference

Page 14.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Brennan, J.

Circulated:

Recirculated: 4-23-75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1595

Colonial Pipeline Company,
Appellant,
v.
Joseph N. Traigle, Collector
of Revenue. } On Appeal from the Su-
preme Court of Louisi-
ana.

[February — 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We have once again a case that presents "the perennial problem of the validity of a state tax for the privilege of carrying on, within a state, certain activities" related to a corporation's operation of an interstate business. *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 85 (1948).¹ The issue is whether Louisiana, consistent with the Commerce Clause, Art. I, § 8, cl. 3, may impose a fairly apportioned and nondiscriminatory corporation franchise tax on appellant, Colonial Pipeline Co., a corporation engaged exclusively in interstate business, upon the "incident" of its "qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form." No question is raised as to the reasonableness of the apportionment of appellant's capital deemed to have been employed in Louisiana and it is not claimed that the tax is discriminatory. The

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 14, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1595, Colonia Pipeline Co. v. Traigle

I have sent a short dissent to the printer and shall be circulating it shortly.

P.S.

P.S.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

1st DRAFT *Circulated: FEB 14 1975*

SUPREME COURT OF THE UNITED STATES

No. 73-1595

Colonial Pipeline Company,
Appellant, | On Appeal from the Su-
v. | preme Court of Louisi-
Joseph N. Traigle, Collector | ana.
of Revenue.

[February —, 1975]

MR. JUSTICE STEWART, dissenting.

All agree that the petitioner is engaged *exclusively* in interstate commerce. Yet the Court says that Louisiana can nonetheless impose this franchise tax upon the petitioner because it is for the privilege of engaging in interstate commerce "in the corporate form." * Under this reasoning, the State could impose a like franchise tax for the privilege of carrying on an exclusively interstate business "in the partnership form"—or, for that matter, in the "form" of an individual proprietorship. For, whatever its "form," the exclusively interstate business would still be "owning or using [a] part of its capital, plant, or other property in Louisiana," *ante*, p. 9, and would still be "furnished" equivalent "protection and benefits" by the State, *ante*, p. 14.

The fact is that Louisiana has imposed a franchise tax upon the petitioner for the privilege of carrying on an exclusively interstate business. Under our established precedents, such a tax is constitutionally impermissible. *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602; *Railway Express Agency, Inc. v. Virginia*, 347 U. S. 359. I would understand if the Court today were forthrightly to overrule these precedents and hold that a state fran-

*The petitioner is not, of course, incorporated in Louisiana.

J

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES FEB 17 1975

No. 73-1595

Colonial Pipeline Company,
Appellant,
v.
Joseph N. Traigle, Collector
of Revenue. } On Appeal from the Su-
preme Court of Louisi-
ana.

[February —, 1975]

MR. JUSTICE STEWART, dissenting.

All agree that the petitioner is engaged *exclusively* in interstate commerce. Yet the Court says that Louisiana can nonetheless impose this franchise tax upon the petitioner because it is for the privilege of engaging in interstate commerce "in the corporate form." * Under this reasoning, the State could impose a like franchise tax for the privilege of carrying on an exclusively interstate business "in the partnership form"—or, for that matter, in the form of an individual proprietorship. For, whatever its form, the exclusively interstate business would still be "owning or using [a] part of its capital, plant, or other property in Louisiana," *ante*, p. 9, and would still be "furnished" equivalent "protection and benefits" by the State, *ante*, p. 14.

The fact is that Louisiana has imposed a franchise tax upon the petitioner for the privilege of carrying on an exclusively interstate business. Under our established precedents, such a tax is constitutionally impermissible. *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602; *Railway Express Agency, Inc. v. Virginia*, 347 U. S. 359. I could understand if the Court today were forthrightly to overrule these precedents and hold that a state fran-

*The petitioner is not, of course, incorporated in Louisiana.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 14, 1975

Re: No. 73-1595 - Colonial Pipeline Co. v.
Traigle

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D.C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 27, 1975

Re: No. 73-1595 -- Colonial Pipeline Company v.
Joseph N. Traigle

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
IN THE LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Blackman, J.

Circulated: 2/19/75

Recirculated:

SUPREME COURT OF THE UNITED STATES

No 73-1595

Colonial Pipeline Company, }
Appellant,
v. } On Appeal from the Su-
Joseph N. Traigle, Collector } preme Court of Louisi-
of Revenue. } ana.

[February —, 1975]

MR. JUSTICE BLACKMUN, concurring.

I share the misgivings that are suggested by MR. JUSTICE STEWART in his dissent, but I join the judgment of the Court.

I am not at all satisfied that this Court's decisions of the past 30 years, some of them by sharply divided votes, are so plain and so analytically consistent as the Court's opinion would seem to imply. Thus, I find it difficult to reconcile *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602 (1951), with today's holding. And if the present case had gone the other way, I would find it difficult to reconcile the judgment with *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80 (1948). If, however, the Court's decisions of the past are consistent—and if there is consistency between what the Louisiana legislature and that State's courts have done in Colonial's 1969 case and in the present one—then, for me, the legal distinctions this Court and the Louisiana courts (under the compulsion of our decisions) have drawn are too finespun and far too gossamer. They fail to provide what taxpayers and the lawyers who advise them have a right to expect, namely, a firm and solid basis of differentiation between that which runs afoul of the Commerce Clause, and that which is consistent with that Clause. It makes little constitu-

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated:

Recirculated: 3/5/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1595

Colonial Pipeline Company,
Appellant,
v.
Joseph N. Traigle, Collector
of Revenue. } On Appeal from the Supreme Court of Louisiana.

[February —, 1975]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, concurring.

I share the misgivings that are suggested by MR. JUSTICE STEWART in his dissent, but I join the judgment of the Court.

I am not at all satisfied that this Court's decisions of the past 30 years, some of them by sharply divided votes, are so plain and so analytically consistent as the Court's opinion would seem to imply. Thus, I find it difficult to reconcile *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602 (1951), with today's holding. And if the present case had gone the other way, I would find it difficult to reconcile the judgment with *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80 (1948). If, however, the Court's decisions of the past are consistent—and if there is consistency between what the Louisiana legislature and that State's courts have done in Colonial's 1969 case and in the present one—then, for me, the legal distinctions this Court and the Louisiana courts (under the compulsion of our decisions) have drawn are too finespun and far too gossamer. They fail to provide what taxpayers and the lawyers who advise them have a right to expect, namely, a firm and solid basis of differentiation between that which runs afoul of the Commerce Clause, and that which is consistent with that Clause. It makes little constitu-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1975

No. 73-1595 Colonial Pipeline v. Traigle

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

1fp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1975

Re: No. 73-1595 - Colonial Pipeline Co. v. Traigle

Dear Harry:

Please join me in the concurring opinion you have prepared in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference