

**ST. BERNARD PORT,
HARBOR & TERMINAL
DISTRICT**

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NO. 2016-CA-0096

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**VIOLET DOCK PORT, INC.,
LLC**

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STATE OF LOUISIANA

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CONSOLIDATED WITH:

CONSOLIDATED WITH:

**ST. BERNARD PORT, HARBOR &
TERMINAL DISTRICT**

NO. 2016-CA-0262

VERSUS

VIOLET DOCK PORT, INC., LLC

CONSOLIDATED WITH:

CONSOLIDATED WITH:

**ST. BERNARD PORT, HARBOR &
TERMINAL DISTRICT**

NO. 2016-CA-0331

VERSUS

VIOLET DOCK PORT INC., LLC

LOVE, J., CONCURS AND ASSIGNS REASONS

I respectfully concur in the majority’s decision to deny rehearing. I find the following:

VDP is correct in stating in its Application for Rehearing that La. Const. art. I, §4(B)(6) provides that “No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise . . . a municipality may expropriate a utility within its jurisdiction.” However, the trial court found that “the purpose of operating that enterprise or halting competition” was not the Port’s primary motivation in expropriating VDP’s property.

This Court previously found that La. Const. art. I, §4(B)(1) was designed

“merely” to prevent “expropriations **initiated** with the goal of transferring private property to a specific recipient, rather than as a bar to expropriation with a legitimate basis that may include a subsequent transfer.” *New Orleans Redevelopment Auth. v. Burgess*, 08-1020, p. 21 (La. App. 4 Cir. 7/8/09), 16 So. 3d 569, 584. This Court found that “[t]he potential subsequent transfer of the blighted property to third parties who are private entities is incidental to the duty of a municipality to remove a public threat to the health and safety of its occupants.” *Id.* Accordingly, this Court held that the expropriation of blighted property that would later be sold to a private party for rehabilitation was not violative of La. Const. art. I, §4(B). *Id.*, 08-1020, p. 23, 16 So. 3d at 585.

Likewise, the trial court in the present matter found that “[t]he St. Bernard Port’s stated reason for expropriating was to build and operate a terminal to accommodate transport of liquid and solid bulk commodities into national and international commerce to and from St. Bernard.” Further, the trial court reasoned that the expropriation was a “logical extension of port services in St. Bernard.” The majority then held that the trial court was not manifestly erroneous for so finding.

Therefore, the majority did not find that La. Const. art. VI, § 21 exempted “public port takings from the prohibitions contained in La. Const. art. I, §4(B)(6)” as VDP claims. Rather, we found that the trial court was not manifestly erroneous in finding that the Port’s primary motivation was not to operate VDP’s enterprise or halt competition by expropriating VDP’s property. We did not “render Section 4(B)(6) meaningless through judicial interpretation,” as asserted by VDP. Rather, we found the facts and circumstances presented by this case simply did not satisfy the requirements of the restrictions of La. Const. art. I, §4(B)(6).