

*United States Circuit Court of Appeals
For the Seventh Circuit*

*Chambers of
Judge Sherman Minton*

New Albany Ind
Dec 17 1942

My dear Bob:

This is a letter from one friend to another – not from a judge of an inferior (very inferior) Court to a justice of the Supreme Court. I just finished reading your very interesting opinion in *Wickard vs. Filburn*. On page 6 you state “Even today, when this power has been held to have great latitude there is no decision of this Court that such activities may be regulated where no part of the product is intended for interstate Commerce or intermingled with the subjects thereof.”

I venture to suggest that *M.S. vs. Longwood Dairy* 315 US.110 is in conflict with that statement. In that case the doing regulated didn’t produce or buy a drop of milk outside of Illinois. All its milk was produced in Illinois. It was processed wholly within Illinois & never touched a drop of milk from outside the state. It was all sold & intended to be sold in Illinois. And the Supreme Court held it could be regulated because it competed with interstate milk.

We are shifting our base & to make it appear that we are not we change the words we use. For instance on page 10 of the same opinion you say a matter maybe regulated by Congress “if it exerts a substantial economic effect on interstate Commerce,” as against the old test of whether it affects directly or indirectly interstate Commerce. I am afraid we will have as much trouble applying yours that as the old one.

What a pity *Mid. v. Butler* was ever written & we didn’t, so far as agriculture is concerned, assume to regulate it & subsidize it under the Welfare Clause instead of the Commerce clause. Then we wouldn’t have to do so much shadow boxing to get around old opinions.

If we are going to adopt the underwritten maps as to interstate Commerce why not say so & throw in the ash can the old cases that disagree. Lets be brutally frank – I suppose I am wrong & you are right – I never did have any finesse.

Whether one agrees with you or not one must admit that you write the clearest most readable opinions of all –

Sorry I didn’t have time to visit with you personally when I was in Washington.

With all good wishes for the holiday season, I am,

Sincerely yours,

Shay Minton

Hon. Robert Jackson
Washington,
D.C.