

The Burger Court Opinion Writing Database

Sears, Roebuck & Co. v. County of Los Angeles

449 U.S. 1119 (1981)

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. 20543

CHAMBERS OF
THE CHIEF JUSTICE

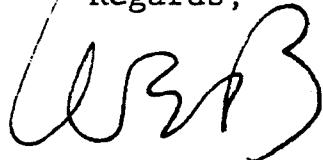
March 11, 1980

Re: 78-1577 - Sears, Roebuck & Co. v. County of
Los Angeles

Dear Byron:

In light of your memo of March 10 and further consideration, I am now ready to lend my vote to produce a 4/4 "equally divided" result and let the problem await another day.

Regards,



Mr. Justice White

Copies to the Conference

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice
Circulated: APR 21 1980

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
Petitioner,
v.
County of Los Angeles
and City of Compton. } On Writ of Certiorari to the Court of
Appeal of California, Second Ap-
pellate District.

[April —, 1980]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE STEWART took no part in the consideration or
decision of this case.

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

CHAMBERS OF
THE CHIEF JUSTICE

Deny?

Same issue
as in

April 22, 1980

RE: Hold for No. 78-1577, Sears, Roebuck and Co. v. County
of Los Angeles and City of Compton

MEMORANDUM TO THE CONFERENCE

No. 79-700, Walter Fleisher Co. v. County of Los Angeles,
has been held for the Sears case, which we are to affirm by an
equally divided Court.

I now see that the issue in Fleisher is identical to that
in Sears. The only distinction is that petitioner in Sears was
a retailer whereas petitioner in Fleisher is a wholesaler.
Petitioner has expressed the view, with which I tentatively
concur, that the distinction is without legal significance.

We thought that affirmation by an equally divided Court
would allow this issue to percolate for a while before it
returned to this Court. If Potter has no basis for recusal in
the Fleisher case, the issue may have reappeared before us
already.

I have therefore deferred issuance of the Sears decision
until the Conference has considered the alternative
dispositions of the Fleisher petition.

On the basis of an article in 28 Corporation Journal 267,
271 (Dec. 1979 - Feb. 1980), there is reason to believe that
only Florida shares California's particular brand of tax
discrimination. I would prefer to wait and see if this issue
has continued significance.

Regards,

WmB

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

CHAMBERS OF
THE CHIEF JUSTICE

July 21, 1980

PERSONAL

RE: 78-1577 Sears v. County of Los Angeles

Dear Bill:

I am not firm enough to be certain I will dissent.
It then falls to you or Thurgood to take it on.

Regards,

Mr. Justice Brennan

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

January 22, 1980

MEMORANDUM TO: The Chief Justice
Mr. Justice Marshall

RE: No. 78-1577 - Sears, Roebuck and Co. v. County
of Los Angeles

We three are in dissent in the above. I will
be happy to undertake the opinion in light of the
Chief's memorandum.

Sincerely,

Bill

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 11, 1980

RE: No. 78-1577 Sears, Roebuck & Co. v. County of
Los Angeles

Dear Byron:

I'll be circulating a dissent in due course.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackman
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Brennan
 FEB 26 1980
 Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles
 and City of Compton. } On Writ of Certiorari to the Court
 of Appeal of California, Second
 Appellate District.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

California Revenue and Taxation Code § 225, in force when this suit was brought, exempts from the state ad valorem property tax those goods transshipped through the State that either originate from, or are destined for, points outside the United States. The exemption does not apply, however, to goods transshipped between termini outside of California but within the United States. Thus, out-of-state American manufacturers who transship through California have a tax incentive to market their wares abroad, rather than in other American States. By the same token, foreign nations enjoy a competitive advantage over American States in marketing products transshipped through California to out-of-state American consumers. Because I believe that the Commerce Clause forbids California from exploiting its position as a major transportation center to discriminate among lines of commerce beyond its own borders, I respectfully dissent.

This is not a case in which state legislation only incidentally affects interstate commerce; on the contrary, the statute is specifically aimed at interstate and international trade. It overtly and designedly encourages certain out-of-state commercial transactions over others. This seems to me quite incompatible with the scheme of "free trade among the several States" which the Court correctly identifies as the

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 4, 1980

Re: No. 78-1577 Sears, Roebuck & Co. v. County of Los Angeles

Dear Lewis:

Thanks so much for your suggestions. I have incorporated them, with some minor modifications, in the accompanying draft. Do they meet your concerns?

Sincerely,



Mr Justice Powell

SEARS, ROEBUCK & CO. v. LOS ANGELES COUNTY (No. 78-1577)

MR. JUSTICE BRENNAN, dissenting.

California Revenue and Taxation Code § 225, in force when this suit was brought, exempts from the state ad valorem property tax those goods transshipped through the State that either originate from, or are destined for, points outside the United States. The exemption does not apply, however, to goods transshipped between termini outside of California but within the United States. Thus, out-of-state American manufacturers who must transship through California have a tax incentive to market their wares abroad, rather than in other American States. By the same token, foreign nations enjoy a competitive

1-2, b
& stylistic changes

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: MAR 6 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
Petitioner,
v.
County of Los Angeles and City of Compton. } On Writ of Certiorari to the Court
of Appeal of California, Second
Appellate District.

[February —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

California Revenue and Taxation Code § 225, in force when this suit was brought, exempts from the state ad valorem property tax those goods transshipped through the State that either originate from, or are destined for, points outside the United States. The exemption does not apply, however, to goods transshipped between termini outside of California but within the United States. Thus, out-of-state American manufacturers who must tranship through California have a tax incentive to market their wares abroad, rather than in other American States. By the same token, foreign nations enjoy a competitive advantage over American States in marketing products transshipped through California to out-of-state American consumers. Because I believe that the Commerce Clause forbids California from exploiting its position as a major transportation center to discriminate among lines of commerce beyond its own borders, I respectfully dissent.

This is not a case in which state legislation only incidentally affects interstate commerce; on the contrary, the statute is specifically aimed at interstate and international trade. It overtly and designedly encourages certain commercial transactions over others. As in *Boston Stock Exchange v. State Tax Comm'n*, 429 U. S. 318, 331 (1977), "a local commercial advantage accrues through [California's] favorable treatment

The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated MAR 17 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co., Petitioner, v. County of Los Angeles and City of Compton.	On Writ of Certiorari to the Court of Appeal of California, Second Appellate District.
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[February —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE POWELL join, dissenting.

California Revenue and Taxation Code § 225, in force when this suit was brought, exempts from the state ad valorem property tax those goods transshipped through the State that either originate from, or are destined for, points outside the United States. The exemption does not apply, however, to goods transshipped between termini outside of California but within the United States. Thus, out-of-state American manufacturers who must transship through California have a tax incentive to market their wares abroad, rather than in other American States. By the same token, foreign nations enjoy a competitive advantage over American States in marketing products transshipped through California to out-of-state American consumers. Because I believe that the Commerce Clause forbids California from exploiting its position as a major transportation center to discriminate among lines of commerce beyond its own borders, I respectfully dissent.

This is not a case in which state legislation only incidentally affects interstate commerce; on the contrary, the statute is specifically aimed at interstate and international trade. It overtly and designedly encourages certain commercial transactions over others. As in *Boston Stock Exchange v. State Tax Comm'n*, 429 U. S. 318, 331 (1977), "a local commercial advantage accrues through [California's] favorable treatment

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 11, 1980

Re: 78-1577 - Sears, Roebuck & Co. v. Los Angeles County

Dear Byron:

Please add the following at the foot of your opinion for the Court in this case:

Mr. Justice Stewart took no part in the consideration or decision of this case.

Sincerely yours,

PS

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
JUSTICE POTTER STEWART

February 29, 1980

Re: No. 78-1577, Sears, Roebuck & Co. v.
Los Angeles County

Dear Byron,

Please add the following at the foot
of your opinion:

Mr. Justice Stewart took no part
in the consideration or decision
of this case.

Sincerely yours,

P.S.
1/

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

MEMO TO THE CONFERENCE

Re: No. 78-1577 - Sears, Roebuck & Co.
v. County of L. A.

In view of the Conference vote, it
may be optimistic to circulate this as a
proposed opinion of the Court. But that's
the way it is around here.

Sincerely yours,



BRW

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White
 Circulated: 11 FEB 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles
 and City of Compton. } On Writ of Certiorari to the Court of
 Appeal of California, Second Ap-
 pellate District.

[February —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 225 of the California Revenue and Taxation Code exempts from the state ad valorem property tax goods manufactured or produced outside the United States and brought into California for transshipment and sale out of the State, as well as goods manufactured or produced in other States and brought into California for transshipment out of the United States.¹ The issue is the validity of § 225 under the Com-

¹ "California Revenue and Taxation Code.
 "§ 225. Personality in transit.

"Personal property manufactured or produced, (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property."

Section 225, though not repealed, has been superseded effective January 1, 1980, by Cal. Assembly Bill 66, ch. 1150 § 7 (1979), amending Cal. Rev. & Tax Code § 219. This provision exempts all business inventories from property taxation in California. Because some state statutes similar to § 225, see n. 6, *infra*, implicate the issues raised in this case, the resolution of those issues has importance extending beyond the interests of the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 25, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1577 - Sears, Roebuck and Company v. County
of Los Angeles

In response to Bill Rehnquist in the above case, I plan to add a footnote along the following lines.

We are unimpressed with Mr. Justice Rehnquist's dissenting view, which for all intents and purposes is that after Data Processing Service v. Camp, 397 U.S. 150 (1970), and Barlow v. Collins, 397 U.S. 159 (1970), Board of Education v. Allen, 392 U.S. 236 (1968), is no longer good law insofar as standing to litigate is concerned. But neither Data Processing nor Barlow is relevant in the present context.

In Data Processing, the Comptroller of the Currency ruled that a bank could make data processing services available to other banks and to bank customers. A data processing company selling data processing services sued to invalidate the ruling. The Court upheld the plaintiff's standing to sue. In Barlow v. Collins, tenant farmers sued to invalidate certain regulations issued by the Secretary of Agriculture under the Food and Agricultural Act of 1965. The District Court and the Court of Appeals held that the farmers were without standing to sue. We reversed. Both cases thus addressed the question whether certain administrative action could be challenged at the suit of particular plaintiffs. Both cases held that before the plaintiffs could challenge administrative action as inconsistent with the statute, there not only must be Article III injury in fact, but also plaintiffs must be shown to be within the zone of interests protected by the statute and their challenge must not otherwise be inconsistent with congressional intent.

Neither case, however, cited Allen or indicated that it was overturning or limiting that case. Neither case involved a state official who, as required by Article VI of the Constitution, is "bound by Oath of Affirmation, to support this Constitution." And neither involved such an official seeking judicial resolution of an arguable inconsistency between his duty under the Federal Constitution and his duty to enforce the laws of the state to which he also owes duties. As the dissent would have it, interpretations of the Constitution, issued by state courts entertaining such suits, would be immune from review here for lack of prudential standing in the public officials to have raised such claims in the first place. But the appropriate inquiry in the present context is not whether public officials are within the zone of interest protected by a statute or constitutional provision, but whether they are subject to a Federal Constitutional duty requiring them to disregard state law to the detriment of a taxpayer otherwise entitled to tax exemption. Under Allen, the decision of the state court is within our appellate jurisdiction in both the Article III and prudential sense.

Warth v. Seldin, 422 U.S. 490 (1975), therefore, does not advance the argument against standing. That case did not intimate that state officials were without standing to litigate in the circumstances of this case. The plaintiffs in Warth were subject to no constitutional duty to act and were simply attempting, as the opinion in Warth said, to assert the constitutional rights of others. Here, the officials who denied tax exemption did so on the ground that they, as state officials, were under a constitutional duty to do so since to grant the exemption would violate the Commerce Clause. Their claim was sustained by the state courts, and petitioner was required to pay a tax that otherwise would not have been due.



B. R. W.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 ✓ Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens,

- Pp. 5-6; footnotes renumbered. - From: Mr. Justice White

Circulated: _____

Recirculated: 26 FEB 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles
 and City of Compton. } On Writ of Certiorari to the Court of
 Appeal of California, Second Ap-
 pellate District.

[February —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 225 of the California Revenue and Taxation Code exempts from the state ad valorem property tax goods manufactured or produced outside the United States and brought into California for transshipment and sale out of the State, as well as goods manufactured or produced in other States and brought into California for transshipment out of the United States.¹ The issue is the validity of § 225 under the Com-

¹ "California Revenue and Taxation Code.

“§ 225. Personality in transit.

“Personal property manufactured or produced, (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property.”

Section 225, though not repealed, has been superseded effective January 1, 1980, by Cal. Assembly Bill 66, ch. 1150 § 7 (1979), amending Cal. Rev. & Tax Code § 219. This provision exempts all business inventories from property taxation in California. Because some state statutes similar to § 225, see n. 6, *infra*, implicate the issues raised in this case, the resolution of those issues has importance extending beyond the interests of the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 28, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1577 - Sears, Roebuck & Co. v. County
of Los Angeles and City of Compton

I am adding to the present circulation two additional footnotes. The following footnote will be inserted at the end of the first paragraph on page 6:

6/ Mr. Justice Brennan's dissenting opinion asserts that because § 225 "overtly and designedly encourages certain out-of-state commercial transactions over others," post, at 1, it is "quite incompatible" with the Commerce Clause's fundamental purpose of assuring "free trade among the several States." Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 335 (1976). This is so, the dissent continues, because "control over the course of national trade is constitutionally vested in the Federal Government." Post, at 2. In this respect the dissent fuses two distinct concerns-- free trade among the 50 States, and the role of the Federal Government vis-a-vis that of the States in determining the "course of the national trade." As to the former notion, it is incorrect to maintain that a provision such as § 225, which treats alike all commerce that originates and terminates in the United States, somehow impedes "trade among the several States." As to the latter, it is perfectly clear that Congress has the power under the Commerce Clause, should it choose to exercise the power, to prohibit state tax exemptions for foreign commerce. That Congress has not seen fit to act, however, is no mandate for this Court to interpret the Commerce Clause to proscribe variations in state taxing practices that in no way interfere with "free trade among the several States." See pp. 10-11, infra.

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1577 - Sears, etc.

p. 2

At the end of Part III, the following footnote will be added:

11/ As noted in the text, the failure of § 225 to discriminate in favor of local commercial interests serves amply to place this case outside the reach of Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318 (1976), upon which the Court of Appeals relied. But we do not hold, as Mr. Justice Brennan maintains in dissent, that the Commerce Clause permits a state to interfere with national and international commerce "so long as the interference does not facially or obviously advantage local business." Post at 2. As we understand the Commerce Clause, it does not constitute a per se rule forbidding a State in all circumstances from preferring one line of commerce to another. And we do hold that § 225, an across-the-board exemption for goods coming from abroad or destined for shipment to foreign markets, does not impede interstate or foreign commerce in violation of the Commerce Clause. But we go no farther. We stop far short of holding that a local commercial benefit is the only indicium of or a condition precedent to a Commerce Clause infraction.


B. R. W.

cmc

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

6, 7, 11

From: Mr. Justice White

Circulated: _____

Recirculated: 29 FEB 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles
 and City of Compton. } On Writ of Certiorari to the Court of
 Appeal of California, Second Appellate District.

[February —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 225 of the California Revenue and Taxation Code exempts from the state ad valorem property tax goods manufactured or produced outside the United States and brought into California for transshipment and sale out of the State, as well as goods manufactured or produced in other States and brought into California for transshipment out of the United States.¹ The issue is the validity of § 225 under the Com-

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To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
~~Mr. Justice Marshall~~
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 7 MAR 1980

Pp 6,12

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

<p>Sears, Roebuck and Co., Petitioner, v. County of Los Angeles and City of Compton.</p>	<p>On Writ of Certiorari to the Court of Appeal of California, Second Ap- pellate District.</p>
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[February —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 225 of the California Revenue and Taxation Code exempts from the state ad valorem property tax goods manufactured or produced outside the United States and brought into California for transshipment and sale out of the State, as well as goods manufactured or produced in other States and brought into California for transshipment out of the United States.¹ The issue is the validity of § 225 under the Com-

¹ California Revenue and Taxation Code.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 20, 1980

Re: 78-1577 - Sears, Roebuck & Co. v.
County of Los Angeles

Dear Chief,

In view of Bill Rehnquist's memo,
this case seems to be a candidate for
reassignment.

Sincerely yours,



The Chief Justice
Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

P.5
 From: Mr. Justice White

Circulated: _____

Recirculated: 27 MAR 1980

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles and City of Compton. } On Writ of Certiorari to the Court of
 Appeal of California, Second Appellate District.

[February —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 225 of the California Revenue and Taxation Code exempts from the state ad valorem property tax goods manufactured or produced outside the United States and brought into California for transshipment and sale out of the State, as well as goods manufactured or produced in other States and brought into California for transshipment out of the United States.¹ The issue is the validity of § 225 under the Com-

¹ "California Revenue and Taxation Code.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 28, 1980.

Re: No. 78-1577 - Sears, Roebuck and Co., v.
County of Los Angeles, et al.

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 13, 1980

Re: No. 78-1577 - Sears, Roebuck & Co. v.
County of Los Angeles, et al.

Dear Byron:

I go along. Please join me.

Sincerely,



Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1980

78-1577 Sears Roebuck v. County of Los Angeles

Dear Byron:

My vote at Conference to reverse was tentative. I remain quite in doubt, and will await Bill Brennan's dissent before reexamining carefully this difficult case.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

March 4, 1980

78-1577 Sears, Roebuck v. County of L.A.

Dear Bill:

Although I voted tentatively the other way, I think I could join your dissent.

I do have several suggestions that I would appreciate your considering. They are set forth in the enclosed memorandum. There may be a verbal change or two that my clerk can discuss with yours.

My suggested changes are not designed to alter your analysis. It seems to me that these changes will strengthen it, particularly by somewhat more specific reliance on Boston Stock Exchange.

Sincerely,

Mr. Justice Brennan

lfp/ss

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 7, 1980

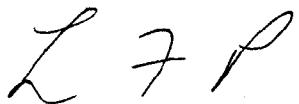
78-1577 Sears v. County of Los Angeles

Dear Byron:

I have now decided to join Bill Brennan's dissent.

I find none of our cases controlling. The closest case, at least for me, is Boston Stock Exchange. Its reasoning - though there are differences - suggests the invalidity of this rather curious tax exemption.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 11, 1980

Re: No. 78-1577 - Sears, Roebuck & Co. v. County
of Los Angeles

Dear Byron:

I will try my hand at a dissent on the standing issue
in this case.

Sincerely,

Mr. Justice White

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

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SUPREME COURT OF THE UNITED STATES

No. 78-1577

Sears, Roebuck and Co.,
 Petitioner,
 v.
 County of Los Angeles
 and City of Compton. } On Writ of Certiorari to the Court of
 Appeal of California, Second Ap-
 pellate District.

[February —, 1980]

MR. JUSTICE REHNQUIST, dissenting.

This case comes to us in a very peculiar posture. Sears, Roebuck and Co., petitioner herein, claimed the benefit of a tax exemption provided by the California Legislature for certain goods moving in foreign commerce. Respondents County of Los Angeles and City of Compton, which have been authorized by the California Legislature to collect such taxes, admit that as a matter of California law Sears is entitled to the claimed exemption. Nevertheless, these municipalities, which owe their existence and their authority to specific provisions of California law, contend that the claimed exemption violates the Commerce Clause of the United States Constitution.

A threshold issue presented in this case is whether respondent municipalities have standing to challenge acts of the California Legislature as violative of the Commerce Clause. In concluding that they do possess such standing, the majority relies exclusively on *Board of Education v. Allen*, 392 U. S. 236 (1968). Because I believe that *Allen* does not support a finding of standing in this case, I dissent.

In *Allen*, this Court considered the constitutionality of a New York law requiring local public school authorities to lend textbooks free of charge to all students in certain grades, including those students attending private schools. Various school officials challenged the requirement as violative of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 20, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1577 Sears, Roebuck & Co. v. County of
Los Angeles

I have rethought my solo dissent on standing, and at least for the present will adhere to it.

Sincerely,



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 11, 1980

78-1577 - Sears, Roebuck v. County of
Los Angeles

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White
Copies to the Conference