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Walter Fleisher Co. v. County of Los Angeles

449 U.S. 608 (1981)

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

CHAMBERS OF
THE CHIEF JUSTICE

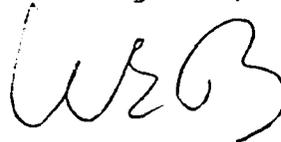
November 26, 1980

RE: 79-700 - Fleisher Co. v. County of Los Angeles
78-1577 - Sears Roebuck v. County of Los Angeles

Dear Lewis:

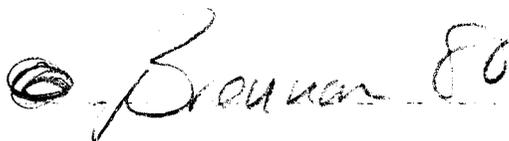
I agree it would be helpful to put these cases over
for a "second look."

Regards,



Mr. Justice Powell

Copies to the Conference



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

CHAMBERS OF
THE CHIEF JUSTICE

January 22, 1981

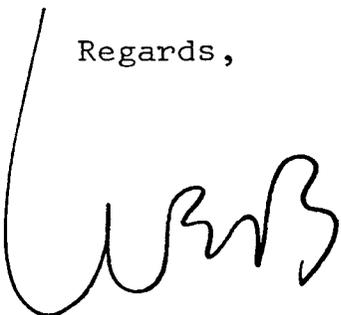
Re: (78-1577 - Sears, Roebuck & Co. v. County of Los Angeles)
(79-700 - Walter Fleisher Co. v. County of Los Angeles)

MEMORANDUM TO THE CONFERENCE:

I have been mulling over these cases with a view to possibly changing my vote and breaking the four to four tie. I conclude, however, that I will stand on my initial vote. Unless someone else changes the vote, I would like to see these cases come down next Monday.

I recommend that No. 79-700 - Walter Fleisher Co. v. County of Los Angeles be disposed of by the attached per curiam order. With regard to No. 78-1577 - Sears, Roebuck & Co. v. County of Los Angeles, which was argued last Term and held over but not re-argued this Term, I suggest that we enter a separate order on the Order List stating: "The judgment is affirmed by an equally divided Court. Justice Stewart took no part in the consideration or decision of this case."

Regards,



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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-700

Walter Fleisher Co., Inc., Petitioner, v. County of Los Angeles et al.	}	On Writ of Certiorari to the Court of Appeal of California, Second Appellate District.
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[January —, 1981]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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

CONFERENCE

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 26, 1980

79-700 Fleisher Co. v. County of Los Angeles
78-1577 Sears Roebuck v. County of Los Angeles

Dear Chief:

I was reminded when these cases came up for discussion this morning of the concern all of us share because of the unsatisfactory result of affirming both cases by an equally divided vote. It is not unusual, of course, for us to have a 4-4 vote in a case or two almost every Term. In the present situation, however, we carried Sears Roebuck over - not for a reargument of it - but for argument in Fleisher, which presents the same question. Thus, we have divided evenly on the same issue after two separate arguments.

The question presented by these cases always has been a close one for me. My original Conference vote in Sears was tentatively to reverse (as I recall). After taking another look, I advised the Conference that I was not at rest and would await the opinions. I ended up joining Bill Brennan's circulation in which he would have held the California statute invalid. I adhered to that position in my Fleisher vote.

I would like to take a final look before we bring these cases down, and therefore request that they be relisted for the December 12 Conference. It may be that it is more important to have a Court decision than for me to adhere to a view that always has been an extremely close call.

Possibly other Justices also may wish to take a final look.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Brennan 80

December 12, 1980

79-700 Walter Fleisher v. Los Angeles

Dear Chief:

For understandable reasons, you and I have had no opportunity to discuss this since we agreed to take a second look.

In a word, I think I would be inclined to reconsider and change my vote if you conclude that you also would do this. This would give us a solid majority, sustaining the statute.

I have always viewed the case as extremely close. Although I do not think of it as a case of vast importance, it would be regrettable for the Court to divide 4-4 after carrying the Sears case over and having, in effect, a reargument in this case.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 22, 1981

79-700 Walter Fleisher Co. v. County of Los Angeles

Dear Chief:

I also took a second look at this case hoping possibly, as you say, to break the "four to four tie".

I am disinclined, however, to change my vote. Accordingly, I join your suggested Per Curiam disposition of this case.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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