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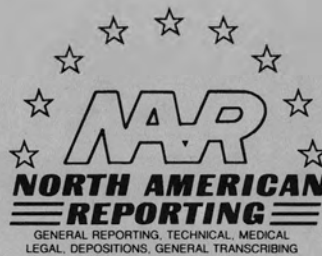
Supreme Court of the United States

WALTER FLEISHER CO., INC.,)
)
) PETITIONER,)
)
) V.)
) No. 79-700
)
COUNTY OF LOS ANGELES ET AL.,)
)
) RESPONDENTS.)
)

Washington, D.C.
November 4, 1980

Pages 1 thru 45

ORIGINAL



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IN THE SUPREME COURT OF THE UNITED STATES

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WALTER FLEISHER CO., INC., :
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Petitioner, :
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v. : No. 79-700
:
COUNTY OF LOS ANGELES ET AL., :
:
Respondents. :
:
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Washington, D. C.
Tuesday, November 4, 1980

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:00 o'clock p.m.

APPEARANCES:

GERALD T. MANPEARL, ESQ., 350 South Figueroa Street, Suite 900, Los Angeles, California 90071; on behalf of the Petitioner.

PHILIP H. HICKOK, ESQ., Deputy County Counsel, County of Los Angeles, 648 Hall of Administration, Los Angeles, California 90012; on behalf of the Respondents.

C O N T E N T S

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ORAL ARGUMENT OF

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P R O C E E D I N G S

1
2 MR. CHIEF JUSTICE BURGER: Immediately at 1 o'clock
3 counsel may be ready to take up Fleischer v. County of Los
4 Angeles.

5 (Recess)

6 MR. CHIEF JUSTICE BURGER: Mr. Manpearl, you may
7 proceed whenever you are ready.

8 ORAL ARGUMENT OF GERALD T. MANPEARL, ESQ.,

9 ON BEHALF OF THE PETITIONER

10 MR. MANPEARL: Mr. Chief Justice, and may it please
11 the Court:

12 The issue before this Court is whether a state pro-
13 perty tax exemption statute so interferes with interstate or
14 foreign commerce that this Court must declare it unconstitu-
15 tional. At the outset it should be noted that the state courts
16 have ruled that the statute is a reasonable classification
17 statute and that it does not violate equal protection stan-
18 dards.

19 Also before this Court is a question of whether the
20 County of Los Angeles has standing to raise a federal consti-
21 tutional objection to this legislation. The County of Los
22 Angeles places great reliance on the argument --

23 QUESTION: Mr. Manpearl, let me ask you, did you
24 argue the Sears case when it was here?

25 MR. MANPEARL: No, I did not.

1 QUESTION: I'd like to ask the same question I asked
2 of counsel there. The County of Los Angeles is attacking the
3 statute here?

4 MR. MANPEARL: That is correct.

5 QUESTION: And I'm impressed by the utter absence of
6 the Attorney General of California.

7 MR. MANPEARL: In California there is no requirement
8 that the Attorney General appear in cases in which a state
9 statute is under consideration or under attack. We did not --

10 QUESTION: Is it not his general duty to defend the
11 statutes of the State?

12 MR. MANPEARL: We know of no such duty. We've had
13 many instances in the state courts -- quite honestly, I've been
14 litigating property tax matters in the state courts for over
15 ten years and I have never seen the Attorney General intervene
16 in a case. Although the Fleisher case was not reported in the
17 official reports, the Sears case was; he was well aware of it.
18 I assume he was well aware of it.

19 QUESTION: Well, it isn't your responsibility, in
20 any event.

21 MR. MANPEARL: No.

22 QUESTION: But it does seem strange when he is the
23 principal legal officer of the State and he's not here.

24 MR. MANPEARL: Well, I know there are many states
25 which have procedures requiring notification. California does

1 not have such a procedure.

2 QUESTION: It isn't likely that he's unaware, as
3 Mr. Justice Blackmun has suggested.

4 MR. MANPEARL: Well, Mr. Chief Justice, I have to
5 make the assumption that the Attorney General's Office does
6 read the advance sheets in California and at least is fully
7 aware of the Sears case, although he may not be aware of this
8 case because it is unrecorded. However, the Department of
9 Economic and Business Development in California, which is a
10 branch of the State administration, was aware of this case,
11 and they were interested and concerned with it. But I know of
12 no communication between either party or, in the Sears case,
13 regarding the Attorney General.

14 The County of Los Angeles in this case places great
15 reliance on the fact that the statute before this Court dis-
16 criminate or makes a distinction between foreign commerce on
17 the one hand and inter- and intrastate commerce on the other.
18 However, a property tax exemption statute by its very defini-
19 tion must discriminate, make a distinction, against those
20 groups that are not similarly exempted.

21 The issue which must be resolved is not whether
22 there's a distinction; obviously there's a distinction.
23 The question that must be resolved is whether such distinction
24 is so burdensome, so unreasonable, that it places an undue
25 burden on interstate or foreign commerce and must be struck

1 down under the Commerce Clause.

2 QUESTION: Is the material involved here in the same
3 relationship in terms of the movement in commerce as material
4 coming from -- let me put it another way: is the material
5 that's moving into California or originating in California,
6 destined for interstate commerce, different in some respects
7 from the material coming from Korea or Japan, coming to rest
8 temporarily in warehouses in California, and then going into
9 interstate commerce?

10 MR. MANPEARL: Well, economics would dictate that
11 there are different types of materials, there's different
12 products and commodities that are manufactured in Korea than
13 are manufactured in California. But, you know, I assume we
14 could find an example where there might be some similarity, but
15 generally different products come to California from overseas
16 than are manufactured in California. And to that extent, the
17 goods that are manufactured in California do not receive this
18 exemption, even if they're being shipped out of state, while
19 the overseas goods would receive the exemption.

20 QUESTION: And the exemption was enacted by the
21 California Legislature, wasn't it?

22 MR. MANPEARL: Yes, Mr. Justice.

23 QUESTION: So that whether the Attorney General of
24 California is here or not presumably it's entitled to the
25 benefit of constitutional presumption of validity unless your

1 opponent can show some constitutional defect.

2 MR. MANPEARL: Yes; we would agree with that. Yes,
3 Your Honor.

4 QUESTION: And how are California's counties created?
5 Are they created by the Legislature?

6 MR. MANPEARL: Yes. They are creatures of the
7 State. They are --

8 QUESTION: So Los Angeles County is nothing more
9 than a creature of the State?

10 MR. MANPEARL: That is correct; yes. It is our
11 contention that as a creation of the State it has no constitu-
12 tional standing to attack the statute before this Court today,
13 and I would cite this Court to the decision in Williams v.
14 Mayor and City Council of Baltimore, decided by this Court in
15 1933. I believe that case is analogous, if not on all fours,
16 with the instant situation. There Maryland adopted a tax
17 exemption for the Washington, Baltimore, and Annapolis Electric
18 Railroad Company because it was in receivership and it was
19 important to the state because it was the only link between
20 Annapolis and the Capital. The cities of Maryland and Annapo-
21 lis proceeded to attempt to impose taxes on the railroad,
22 saying the statute was an unconstitutional exemption under the
23 Commerce Clause and due process.

24 Justice Cardozo, speaking for this Court, stated,
25 "A municipal corporation created by a state for the better

1 ordering of government has no privileges or immunities under
2 the Federal Constitution which it may invoke in opposition to
3 the will of its creator."

4 QUESTION: Well, Mr. Manpearl, I take it that as far
5 as the courts of California are concerned, they could permit
6 Los Angeles to challenge this statute if they wanted to,
7 and we have no authority to tell the California courts not to
8 entertain a challenge to this statute by Los Angeles County,
9 do we?

10 MR. MANPEARL: Mr. Justice, I think that that ques-
11 tion was exactly --

12 QUESTION: You may be quite right in saying that we
13 have no -- you could be quite right in saying that there is no
14 standing, that Los Angeles would have no standing in this
15 Court, as a constitutional matter. But I don't know how we
16 could set aside the judgment of a court of appeals in Califor-
17 nia, and that would leave you behind the 8-ball, wouldn't it?

18 MR. MANPEARL: Well, Mr. Justice, I would contend
19 that standing to raise a federal question is itself a federal
20 question.

21 QUESTION: A Case or Controversy type of thing?

22 MR. MANPEARL: Yes.

23 QUESTION: But not in the state courts. They don't
24 need cases or controversies.

25 MR. MANPEARL: That's correct, but the question of

1 whether a subdivision of the State has standing to raise a
2 federal constitutional question, I believe, must be a consti-
3 tutional question in and of itself.

4 QUESTION: You mean you're asking us not only to --
5 what you're really asking us to do is to vacate the judgments
6 of the California courts?

7 QUESTION: On the standing ground?

8 MR. MANPEARL: On the ground that the County of Los
9 Angeles does not have standing to raise a federal constitu-
10 tional objection. If it were a state --

11 QUESTION: In a state court, even?

12 MR. MANPEARL: In a state court or a federal court;
13 yes.

14 QUESTION: Even though you have named the County as
15 a defendant?

16 MR. MANPEARL: Well, we sued the County for a refund
17 of taxes. The County defended on a number of grounds. They
18 defended on the grounds that the interpretation of the statute
19 didn't grant an exemption, and a number of others. The state
20 courts ruled against the County on all grounds except the
21 federal question, the federal question being the Commerce
22 Clause issue.

23 QUESTION: If we can segregate these issues, as Justice
24 Blackmun has implied, how can you say they're a party for one
25 purpose but not for other purposes?

1 MR. MANPEARL: Well, we're not saying that they're
2 not a party. We believe they are a proper party, they obvious-
3 ly have an interest. What we're saying as a matter of federal
4 constitutional law, they have no right to raise a federal con-
5 stitutional objection to a statute on a ground in which they
6 have no direct interest whatsoever.

7 QUESTION: Well, isn't that a question of state law?
8 Suppose the state statute said specifically that the counties
9 who are enforcing state property tax laws can -- suppose the
10 statute specifically gave the counties standing to challenge
11 the state taxes, state statutes in the state courts, would you
12 be making the same argument here? I think you would make the
13 same argument as far as your being able to come here; we might
14 not recognize standing. But I don't know how you could argue
15 that as a matter of state law the County couldn't challenge
16 the State.

17 MR. MANPEARL: I don't know whether they could or not
18 pass a statute. I don't think they could, although that's not
19 our specific situation.

20 QUESTION: Well, in effect, the California courts re-
21 jected your standing claim and they said --

22 MR. MANPEARL: Yes.

23 QUESTION: -- as a matter of California or any other
24 law, at least as a matter of California law, Los Angeles County
25 has standing.

1 QUESTION: It's just like saying, a state saying
2 that in our state a taxpayer suit can raise a federal constitu-
3 tional issue. And that would be wholly acceptable as a matter
4 of state law, although a taxpayer as such might not have
5 standing as a matter of federal law in the federal court, or
6 specifically this Court. Isn't this the same analogy?

7 MR. MANPEARL: Mr. Justice --

8 QUESTION: And many states do recognize taxpayer
9 suits. The federal courts, generally speaking, do not.

10 MR. MANPEARL: But I believe they do under state law.
11 You could have --

12 QUESTION: But a taxpayer can raise under state law
13 that recognizes taxpayer suits any sort of federal constitu-
14 tional claims.

15 MR. MANPEARL: I believe that they cannot. I be-
16 lieve it's analogous to the Williams v. Mayor and City of
17 Baltimore, where this Court said that the cities could not
18 raise such a federal constitutional question in this Court.

19 QUESTION: Mr. Manpearl, it seems to me that that
20 you may be arguing against your client's interest, because if
21 there is no federal jurisdiction to entertain a federal claim,
22 maybe we have a duty to dismiss the appeal, and maybe we
23 should look at your adversary's argument for that. It seems
24 to me you've taken opposite positions on the case.

25 MR. MANPEARL: No, let me very briefly address that

1 question, Mr. Justice. I don't think that's the case, because
2 generally you have an appellee arguing there is no standing,
3 and relief in those circumstances is to dismiss the action.
4 Where you have an appellant arguing that there is no standing
5 to raise a particular defense --

6 QUESTION: Well, you're arguing there is no proper
7 federal question presented in this case --

8 MR. MANPEARL: Right. I --

9 QUESTION: -- which a federal court has power to
10 decide, isn't that correct?

11 MR. MANPEARL: I believe there is a federal question
12 and that federal question is the issue, the very issue of whe-
13 ther a county has standing to raise a federal question.

14 QUESTION: Who presents the federal question to us?

15 MR. MANPEARL: The County of Los Angeles. Well, we
16 -- the appellant has presented the federal question of whether
17 or not the County has the ability to raise a federal constitu-
18 tional provision as a defense. However, I think that the ques-
19 tion of standing, the question of the County's interest in this
20 litigation is really as relevant or perhaps more relevant to
21 the question of whether there has been a Commerce Clause vio-
22 lation at all. I think it goes at the very heart of this
23 very issue before the Court.

24 Because, if we look at the cases that have come be-
25 fore this Court in recent years under the Commerce Clause,

1 in every case the question has been the extent of the burden
2 of interference with commerce.

3 QUESTION: But that goes to the merits.

4 MR. MANPEARL: That goes -- yes. I was saying,
5 Mr. Justice, that I believe this question of the County's in-
6 terest in the litigation goes not only to the standing question
7 which I've argued, but I believe it goes to the merits of the
8 Commerce Clause question itself.

9 QUESTION: If the standing question is resolved in
10 your favor and, as Justice Stevens has suggested, we find that
11 the County has no standing to challenge a state statute, we
12 don't then go further and decide the merits of the case.

13 MR. MANPEARL: Yes, Mr. Justice. I would agree with
14 that. At that point I think it would be appropriate for this
15 Court to reverse the holding of the Court of Appeal of Cali-
16 fornia.

17 QUESTION: How would we do that?

18 QUESTION: How could we do that?

19 QUESTION: We could just dismiss; we would just have
20 to dismiss and leave the judgment against you.

21 MR. MANPEARL: I would submit that that would leave
22 a plaintiff an appellant in the position of Walter Fleisher
23 Company without relief to an improperly raised federal ques-
24 tion. I believe where an appellant is entitled --

25 QUESTION: You're really saying one party to the

1 controversy has a forum and the other party doesn't. Is that
2 what you're saying?

3 MR. MANPEARL: No, Mr. Chief Justice. I believe
4 we're saying that the very issue, the very issue of who may
5 raise a federal question is a federal question itself, and
6 you can resolve that issue in favor of the appellant, and re-
7 verse the holding of the Court of Appeal saying, as a matter
8 of federal law the County of Los Angeles does not have standing
9 to raise a federal Commerce Clause question. But --

10 QUESTION: But in our other cases regarding standing such
11 as Arlington v. Village of Metropolitan Heights, and the one
12 we decided the year before, we haven't gotten to the merits
13 of the claims. We have simply said there was not sufficient
14 standing, and therefore we wouldn't decide them.

15 MR. MANPEARL: Well, I believe, Mr. Justice, you
16 could do the same in this case, but the form of relief would
17 then have to take a reversal.

18 QUESTION: It could be a vacation. You'd vacate the
19 judgment because you would argue that the state courts had no
20 jurisdiction to decide the federal question --

21 MR. MANPEARL: Yes, Mr. Justice.

22 QUESTION: -- despite the fact that under state law
23 the County would have power to challenge the statute.

24 MR. MANPEARL: Well, I think the state court has
25 ruled on a question of federal constitutional law.

1 QUESTION: And a question of standing?

2 MR. MANPEARL: Yes.

3 QUESTION: But we are not bound under federal law
4 by their rulings as to standing.

5 MR. MANPEARL: I would agree with that, Mr. Justice;
6 yes, sir. If I may proceed to the merits of the Commerce
7 Clause question itself, I think this case stands in contrast
8 to the numerous cases that have come before this Court in the
9 last ten years on the Commerce Clause. I think in the cases
10 that have come before this Court, the major distinguishing
11 factor is that in every single case we had a party standing
12 before this Court saying, I have been injured by the Commerce
13 Clause violation.

14 In this case the County of Los Angeles is not saying,
15 I have been injured by the Commerce Clause violation. Clearly
16 the County of Los Angeles is losing tax money. They clearly
17 have an interest. They are not, however, an injured party under
18 the Commerce Clause violation. They are the champion of some
19 hypothetical manufacturers that are not receiving a similar
20 exemption. They are saying, we are protecting the rights of
21 others albeit we are doing it so we can save taxes or collect
22 more tax money. They are championing somebody else and that,
23 I would submit, is a major distinction between all the cases
24 that have troubled this Court in the last ten years.

25 QUESTION: You think they're not doing both?

1 MR. MANPEARL: I don't believe they are saying, we
2 are a victim of the Commerce Clause violation. They are the
3 champion for someone else. And I would submit, that's a major
4 distinction between cases that have come before this court,
5 like Lewis v. BT Investments, where you had Florida trying to
6 prevent out-of-state investment advisors, and you had before
7 this Court a New York corporation saying, Florida can't keep
8 us out.

9 In Raymond Motor Transport you had an interstate
10 transport carrier coming before this Court and saying, I'm in-
11 jured by the statutes of Wisconsin which prevent trucks that
12 are over 55 feet in length; I'm injured. And this Court looked
13 at the statute and said, not only was there no basis for the
14 statute, but there was a favoritism of Wisconsin truckers vis-
15 a-vis out-of-state truckers.

16 QUESTION: What if the trucking company had simply
17 been a subsidiary and a creature of the State of Wisconsin?

18 MR. MANPEARL: You mean, involved in a --

19 QUESTION: Supposing Wisconsin decided, we're going
20 to socialize our trucking industry, and the trucking company
21 was simply an arm or a creature of the State of Wisconsin,
22 and it didn't like what -- it lost the fight in the Wisconsin
23 Legislature and so it came here?

24 MR. MANPEARL: I think you would have -- similarly,
25 you would have a case where somebody is injured, somebody is

1 fighting. You would have a case similar to Reeves v. State,
2 where the South Dakota Cement Commission attempted to sell
3 their proprietary product only to South Dakota manufacturers
4 or users. But you would have before this Court a party
5 saying, I am injured by the Commerce Clause violation, I am
6 the victim. I think you've had that in every case.

7 QUESTION: But in my hypothetical the person who
8 would be saying it is a creature of the state just like the
9 Baltimore case in 1933.

10 MR. MANPEARL: Mr. Justice, I agree that that would
11 certainly go to the standing question again. As to the merits,
12 I think the merits would be no different. On the standing
13 issue, you would have the same problem you have here. You
14 would have a creature of the state attacking the state statute.
15 In Reeves v. State you had no such problem, because it was
16 the Wyoming consumer that was objecting to the Commerce Clause
17 injury.

18 My analogy was not as to the standing question but
19 as to the merits themselves. On the merits we don't have a
20 party before this Court that is saying, look, I'm the victim
21 of this Commerce Clause violation, I am being injured because
22 of something the State of California has done to interfere and
23 burden commerce.

24 QUESTION: But that's the meaning of standing, what
25 you have just said.

1 MR. MANPEARL: I totally agree, but I also would
2 submit that such considerations go equally to the merits of
3 the Commerce Clause question, because ultimately, assuming
4 that this Court finds against me on the standing question,
5 that simply gets us to the merits of the case. Now, on the
6 merits of the case I would submit that we still must find under
7 all of the decisions of this Court in the last ten years, we
8 must find, first, whether there is a burden on interstate
9 commerce. And if the Court finds that there is a burden on
10 interstate commerce, that burden then has to be balanced
11 against the state interest, the state needs, and the Commerce
12 Clause considerations for free and unhindered commerce among
13 the states and foreign countries. And I submit that the ques-
14 tion of the county's interest goes as much to the merits as
15 anything else, because without a party standing before this
16 Court saying, I am injured, I have been hurt, where is the
17 burden on interstate commerce? Where has the County of Los
18 Angeles shown a burden as the regional stock exchanges did in
19 Boston Stock Exchange v. the Tax Commissioner? Where is the
20 burden that someone is showing, as the cantaloupe grower did
21 in Pike v. Bruce Church, Inc., where he said the Arizona
22 regulations preventing me from having my cantaloupes packaged
23 in California are a burden? Where is the burden that was
24 shown in Hunt v. Washington Apple Advertising Company?

25 QUESTION: Mr. Manpearl, are you saying that

1 if this case had been brought by a competing importer of
2 personal property -- I don't know just what your client
3 warehouses -- that all the goods came from Arizona instead
4 of from across the Pacific Ocean somewhere, and that person
5 said, well, I can't make as much money, because he gets his
6 tax exemption and therefore there's no profit margin left for
7 me, that he would prevail?

8 MR. MANPEARL: Mr. Justice, I'm not saying he'd pre-
9 vail, but I'm saying --

10 QUESTION: Then what's the point of your argument
11 that the --

12 MR. MANPEARL: Well, I'm saying that at least at
13 that point he'd have someone before this Court that was saying,
14 I am injured, and the Court would be in a position to make
15 the judgment as to whether there's a burden on interstate com-
16 merce. We have nobody showing --

17 QUESTION: You're really arguing standing again, as
18 Mr. Justice Rehnquist just indicated, then.

19 MR. MANPEARL: I don't believe so. I believe I'm
20 arguing the merits of whether --

21 QUESTION: But do the merits depend on who was
22 raising the claim?

23 MR. MANPEARL: Well, no, the merits may not. But
24 they do in terms of trying to evaluate the burden. We haven't
25 -- I don't believe the County of Los Angeles has shown any

1 burden on interstate commerce.

2 QUESTION: Well, supposing we're talking about
3 automobiles being imported from Japan, and all the competing
4 automobile companies said, well, they get a tax exemption.
5 That enables us to undersell them in the automobile market
6 throughout the State. Would they have a different case than
7 your client here?

8 MR. MANPEARL: I certainly think they would have
9 standing. I think there'd be no question that they would have
10 standing to raise this objection. But the objection would
11 come in the form of them objecting to the California legisla-
12 tion that imposes the tax on them. They wouldn't come before
13 this Court or the California court and say, tax the Japanese
14 manufacturers.

15 QUESTION: In other words, you're saying, the only
16 relief is not to take away the exemption but to grant the
17 exemption to everybody?

18 MR. MANPEARL: Well, it would be one alternative
19 the California court had. I would submit that in Boston Stock
20 Exchange that's exactly what happened. We would have this
21 type of case if the Tax Collector of New York said, I'm going
22 to collect the higher tax from everybody who transfers.
23 We would never be able to see the burden. Instead, we have it
24 in a proper context in the Boston Stock Exchange, where the
25 regional stock exchanges came into court and said, imposing a

1 higher tax rate on transfers, stock transfers on the regional
2 exchanges vis-a-vis the New York stock exchanges, is a burden
3 on interstate commerce. We are --

4 QUESTION: Mr. Manpearl, supposing the exemption
5 instead of being for goods of foreign source, said, for
6 all goods of foreign source and from all states east of the
7 Mississippi River. Would there be any burden there?

8 MR. MANPEARL: I don't know whether there would or
9 not, Mr. Justice. There may very well be a burden, or more
10 importantly, I think it might be considered an unreasonable
11 classification. And if the --

12 QUESTION: That's what they say we've got here.

13 MR. MANPEARL: No, Mr. Justice, they do not. The
14 State of California court conceded that if we were talking
15 about equal protection as --

16 QUESTION: Oh, I see.

17 MR. MANPEARL: -- a classification, they conceded
18 it was a reasonable classification. And historically the
19 differentiation between imported goods and --

20 QUESTION: Well, then instead of all goods east of
21 the Mississippi River, all goods that don't have their origin
22 in the State of California. Say, the exemption for all goods
23 that are shipped, that do not originate in California, then.
24 Would there be no discrimination --

25 MR. MANPEARL: I think we would be getting back to a

1 very classic equal protection argument as we had in Allied
2 Stores v. Bowers. The basis -- they judged a very similar
3 exemption statute. They had an exemption statute similar to
4 that. They exempted the warehoused goods, Ohio did, exempted
5 the warehoused goods of all out-of-state warehousing activities
6 but not Ohio companies. And this Court said, that was not a
7 violation of equal protection. That's the question that ought
8 to be raised in these type of cases, not a Commerce Clause
9 violation, but the question ought to be whether the classifi-
10 cation is reasonable and sustainable under the Equal Protection
11 Clause of the Constitution.

12 Mr. Chief Justice, I would reserve the balance of my
13 argument for rebuttal, if I may.

14 MR. CHIEF JUSTICE BURGER: Very well, Mr. Manpearl.
15 Mr. Hickok.

16 ORAL ARGUMENT OF PHILIP H. HICKOK, ESQ.,

17 ON BEHALF OF THE RESPONDENTS

18 MR. HICKOK: Thank you, Mr. Chief Justice, and may
19 it please the Court:

20 I think Mr. Manpearl and the Court have
21 noted the primary issue in this case as a threshold issue
22 that must be addressed, and that is the standing issue.
23 It is our position that if this standing issue is not favor-
24 ably resolved in favor of the County of Los Angeles, poten-
25 tially devastating results will result to public entities as

1 we know them now.

2 This is because Article III jurisdiction for this
3 Court, requires Case or Controversy standing as an aspect of
4 that. It's a plaintiff-oriented concept. The complaining
5 party must have that requisite degree or stake in the outcome
6 of the decision which guarantees that the issues are sharpened
7 and presented in the proper manner to this Court. There are
8 other aspects that are applicable to defendants, but standing
9 is not one of them.

10 The Court has further found that true Article III
11 jurisdiction requires injury in fact to be shown by a plain-
12 tiff. The zone of interest concept that was talked about in
13 the Data Processing and Warth cases is, as Justice Powell
14 pointed, more of a prudential concern of this Court should
15 jurisdiction be taken; not, is jurisdiction available?

16 We have in this case a prudential jurisdiction, a
17 prudential standing case.

18 QUESTION: Counsel, what if the State of California
19 permitted friendly bondholder suits to establish the validity of
20 bonds so that someone who was simply a person with no inten-
21 tion of buying a particular water bond issue but simply said
22 he was a plaintiff and wanted to find out whether these bonds
23 were valid or not, he could sue the district and the California
24 courts would permit that case to be litigated up through them?
25 Do you think that that would confer jurisdiction in any way

1 upon this Court?

2 MR. HICKOK: If the plaintiff in that case suffered
3 actual or injury in fact; yes. Now, that is an example also
4 where you can look at the defendant. Is it a collusive law-
5 suit? Is it a friendly lawsuit? That might well be a collu-
6 sive lawsuit. If you take our current case and have an inter-
7 state shipper as the plaintiff against the County of Los
8 Angeles, that also would be a collusive lawsuit. Both the
9 parties would be raising the same issues. The county would
10 agree with the interstate shipper that it's a violation of the
11 Commerce Clause.

12 QUESTION: How do you distinguish the Baltimore case
13 that your opponent relies on?

14 MR. HICKOK: Williams v. the City of Baltimore --
15 first of all, I think it's 50 years old. Second of all, it in-
16 volved a public entity bringing, initiating a lawsuit in
17 federal court against the state. It also raised Fourteenth
18 Amendment grounds, Equal Protection. It did not -- the federal
19 question involved is not the Commerce Clause.

20 Our suit has to be looked at from the fact that it
21 began as a taxing event at the local level. The County
22 Assessor denied an exemption for goods under 225. Walter
23 Fleisher asked for that exemption. Walter Fleisher submitted
24 a formal claim for a refund to the County. The Board of
25 Supervisors of the County denied that claim.

1 QUESTION: Counsel, at that point, are members,
2 individual members of the Board also defendants here?

3 MR. HICKOK: No, they are not, Your Honor. The
4 state statute is a procedural statute. It requires the lawsuit
5 for refund of taxes only to be brought against the taxing
6 authorities. It's a procedural statute in the State of
7 California.

8 QUESTION: Well, who are these "Does" that are men-
9 tioned in the complaint?

10 MR. HICKOK: They were never identified and I be-
11 lieve that if normal practice was followed, they were dis-
12 missed -- at the time of trial.

13 QUESTION: So that the only defendants are the City
14 and the County?

15 MR. HICKOK: That is correct. They represent the
16 only taxing authorities before this Court, the only defendants.

17 QUESTION: Then they are both attacking a statute
18 passed by the State Legislature, the same legislature which
19 created them?

20 MR. HICKOK: No. Initially --

21 QUESTION: Well, it may be a different legislature in
22 time, but the same body which created them.

23 MR. HICKOK: The County of Los Angeles was estab-
24 lished by the California Constitution, not the California
25 Legislature. The counties within the State of California are

1 different from counties on the East Coast and in other areas
2 of the nation. They are the largest political subdivision of
3 the State; they have corporate powers to sue and to be sued;
4 the Legislature cannot restrict and has not restricted the
5 counties' ability to sue the State. Counties in California
6 have independent grounds to sue the State of California and
7 its various state agencies and officials.

8 QUESTION: Well, didn't we reject that distinction
9 several years ago in a civil rights case involving 1988, where
10 the State was claiming its counties were different than the --

11 QUESTION: Reitman v. Mulkey.

12 QUESTION: Yes.

13 MR. HICKOK: An analogy under the Civil Rights Act
14 is also an excellent reason why the County has to be allowed
15 to have this prudential standing. It is now a person under the
16 Civil Rights Act; the Court in Monell held that.

17 Now this Court is also saying that counties are
18 strictly liable for any official actions taken by it or its
19 officials which happen to deny the person's constitutional
20 rights. That was your Owen decision, earlier this year.
21 If the County is not allowed to stand before you and argue
22 standing, argue the constitutionality --

23 QUESTION: And argue that my duty is to obey the
24 Federal Constitution and that that's what it means.

25 MR. HICKOK: Federal and state. -- That's right.

1 What I'm saying is, we'll be in the Catch-22 situation. Under
2 an Owen theory, we would be strictly liable should the statute
3 as we believe be declared unconstitutional. Under a pruden-
4 tial standing decision, we'd go back to our local superior
5 court; we could not raise the constitutionality of the statute
6 as defense; and judgment would be entered against the County
7 there also.

8 We have 88 lawsuits pending, in excess of \$10 mil-
9 lion, currently, and that's just the tip of the iceberg. There
10 are at least that many claims pending in front of the Board of
11 Supervisors. If we have to sit in this untenable position of
12 being strictly liable if we follow the statute and strictly
13 liable if we disobey the statute, the resulting financial
14 damage suits could be devastating.

15 QUESTION: But the reason for the lawsuits is a
16 statute passed by your own legislature.

17 MR. HICKOK: That is correct. It is an exemption
18 to a taxing, to the ad valorem tax system.

19 QUESTION: Was a declaratory judgment open to either
20 Los Angeles or the taxpayers?

21 MR. HICKOK: At that time, no. We could -- California
22 now has enacted a section in the Revenue and Taxation Code
23 which gives specific authority to the local assessors to
24 bring a declaratory judgment action against the State regard-
25 ing state tax policies. It was not done and that statute was

1 post --- postscases--in it.

2 QUESTION: Mr. Hickok, at one time there was some
3 legislation pending in Sacramento which would have provided
4 refunds of this type. What is the status of that?

5 MR. HICKOK: It is still pending, Your Honor.
6 And that is exactly -- that is at least a second reason why
7 there has to be standing in this case, to resolve the issue,
8 because the Sacramento Legislature cannot, I don't believe,
9 enact that refund legislation. I think that we have a Califor-
10 nia Court of Appeals that has declared the section unconstitu-
11 tional. If Sacramento enacted refund legislation, it would be
12 in violation of our constitution, the California Constitution,
13 being a gift of public funds. Therefore there is no reason
14 for this Court to not invoke its Article III jurisdiction.
15 There is no danger that you're going to be intruding into an
16 area more appropriately addressed by other governmental bodies.
17 This is the only forum left to resolve this issue.

18 QUESTION: Well, no litigant is guaranteed
19 a forum.

20 MR. HICKOK: That would be fine from the County
21 standpoint, Your Honor. If no standing was found here, we
22 would retain the monies. However, the precedental value of
23 this Court deciding the County has no standing in a situation
24 like this is farreaching. Who is to say that tomorrow this
25 precedent might be applied to a non-tax --

1 QUESTION; Well, the Baltimore case has stood on the
2 books for 50 years, as you've said.

3 MR. HICKOK: That's correct, Your Honor. The county,
4 the public entity in that case was the initiator. It was the
5 plaintiff in federal court. It had to meet federal standing,
6 Article III standing requirements. Article III standing re-
7 quirements have been met in this case. The plaintiff has
8 suffered injury in fact. It has paid taxes and it wants to
9 get them back. That's injury right there. The plaintiff is
10 also within the zone of interest that surrounds Section 225.
11 I have to hark back to my initial statement that this is a
12 plaintiff-oriented concept. Public entities have to be
13 allowed to defend their agents and employees and their actions
14 on constitutional grounds.

15 If not, another reason would be an anomalous result.
16 The Boston Stock Exchange case indicated that state courts of
17 general jurisdiction can entertain lawsuits that involve
18 federal questions. Our Court of Appeal in California did just
19 that. It rendered a decision declaring the statute to be
20 unconstitutional. If this Court then finds the public entity
21 has no standing, the decision is nonreviewable by the federal
22 court. That's an untenable position.

23 QUESTION: Well, you say it's untenable. All it
24 means is that the decision of the California Court of Appeal
25 will stand and perhaps in some other litigation this Court

1 will reach the merits.

2 MR. HICKOK: That would be fine in this case, Your
3 Honor. We'll just be worried --

4 QUESTION: Probably by some other litigation.

5 MR. HICKOK: Yeah; I would be worried about future
6 litigation myself.

7 Those are the basic reasons why we feel this standing
8 issue has to be resolved in our favor. True, Article III
9 jurisdiction is present. It's present by virtue of the injury
10 to the plaintiff. The prudential concerns of the Court,
11 the zone of interests, is also present, both on the plaintiff's
12 side and on the County's side. It's an issue which this
13 Court must resolve.

14 QUESTION: Well, wouldn't the standing issue be re-
15 solved in your favor if we just dismissed this action?

16 MR. HICKOK: In this case? Yes. However --

17 QUESTION: Leaving the judgment below upholding your
18 standing intact.

19 MR. HICKOK: Probably if the Court said that --

20 QUESTION: If we just dismissed this appeal for want
21 of jurisdiction, because we didn't think you had standing as
22 a federal matter in this Court, and we just dismissed the
23 appeal, but did nothing to the judgment of the California
24 Court of Appeal, you would win the case.

25 MR. HICKOK: We would win the case and lose the war.

1 QUESTION: Why?

2 MR. HICKOK: Because if the Court goes on to say
3 that public entities cannot defend the actions of its em-
4 ployees --

5 QUESTION: No, we didn't say that. We didn't say
6 that.

7 MR. HICKOK: Okay. If the Court just chose --

8 QUESTION: We'd just say, if the California courts,
9 if they want to, could still continue to entertain judgments
10 like this, cases like this, defenses like this, as a matter of
11 California law they would let their courts do that.

12 MR. HICKOK: In that situation we would win, Your
13 Honor.

14 QUESTION: You'd be just where you were before an
15 appeal --

16 MR. HICKOK: Was brought to this Court.

17 QUESTION: Before your friend brought you up here.

18 MR. HICKOK: We should point out, we are not the
19 litigating party. We were brought here against our will, but
20 we are still, we are here.

21 QUESTION: You are contending to be litigating. You
22 are not the initiating party.

23 MR. HICKOK: That is correct. We are defending the
24 action of our employees, or our officials. We are not allowed,
25 the Assessor and the Board are not allowed to sit here. It is

1 only the County, the public entity, the City and the County.

2 QUESTION: Under the new statute if that occurred,
3 could your -- could the taxpayer bring a declaratory judgment
4 suit and perhaps wind up in the Supreme Court of California
5 and perhaps with a different result?

6 MR. HICKOK: It's conceivable, Your Honor. It's
7 conceivable also that the City -- or, excuse me, the Assessor
8 could bring a declaratory action against the State with tax-
9 payers joining in as being interested parties. There's a
10 procedure for that also.

11 On the merits of the case, on the constitutionality
12 of the statute in question, the Court must first address itself
13 to a threshold question, and that is whether under any situa-
14 tion, under any circumstances, can a state's treatment of
15 foreign commerce ever be discriminatory towards interstate
16 commerce. Obviously the Congress has the authority to regulate
17 interstate commerce, and a state statute which places a dis-
18 criminatory burden on interstate commerce is violative of the
19 Commerce Clause.

20 Here we have a situation where a state statute treats
21 foreign commerce differently from interstate. Is that consti-
22 tutional? Can it ever be unconstitutional? We feel that a
23 statute that discriminates against interstate commerce and
24 in favor of foreign commerce is just as objectionable as one
25 that discriminates against interstate in favor of local

1 economic interests.

2 QUESTION: Do you think that statement is consistent
3 with the underlying tone of Japan Lines?

4 MR. HICKOK: Yes, because in Japan Lines you had the
5 complete auto test, which was the underlying Commerce Clause
6 question. On top of that a two-pronged foreign commerce test
7 was imposed. In that situation the four-pronged complete auto
8 test still had to be resolved. One of the aspects there is
9 whether the statute is discriminatory or not. Does the stat-
10 ute regulate evenhandedly? If it does it probably will be
11 upheld unless there is an excessive burden placed on commerce.
12 In this case, we have a statute which does not regulate even-
13 handedly on its face. Therefore, the Court of Appeal properly
14 looked at the statute itself as opposed to the interest to be
15 justified by the State. It did not have the benefit of your
16 decisions in Hughes v. State of Oklahoma, or Lewis v. BT
17 Investments, but it did have before it Boston Stock Exchange.

18 I think the Court of Appeal correctly interpreted
19 the decision in Hughes. Hughes talks about an Oklahoma statute
20 which was discriminatory on its face. That's a conclusionary
21 term. However, the statute differentiated on its face between
22 commerce interstate and domestic. This Court found that once
23 you have shown that a statute treats commerce differently,
24 it may fall. Contrary to the Petitioner's position, it might
25 be per se invalid.

1 This Court held in Philadelphia v. New Jersey a
2 statute to be per se invalid. It decided that even admittedly
3 legitimate state interests cannot be achieved through a dis-
4 criminating means. Similar, our statute operates the same
5 way. We have a legitimate means, legitimate interests in
6 California in protecting its port and warehousing trade as
7 a pure economic interest. It's not health and safety; pure
8 economics.

9 It cannot justify a discriminatory statute, especi-
10 ally when there are at least two alternatives available to it
11 to achieve this same purpose with no discriminatory impact on
12 interstate commerce. California could have exempted all busi-
13 ness inventory to be shipped out of the State. That would have
14 had the same effect in fostering and encouraging the local
15 economic interest. Or it could have exempted all business
16 inventory within the State. That too is an available non-dis-
17 criminatory alternative. California finally chose the latter
18 course of action. It amended Section 219, which had the effect
19 of repealing Section 225, the statute in question.

20 Hence, California has recognized the invalidity of
21 the statute and now has moved to cure it in a manner in accord
22 with other states in the nation. Only if the Court --

23 QUESTION: Is that new statute presently effective?

24 MR. HICKOK: Yes, it is, Your Honor. Only if the
25 Court finds that the statute regulates evenhandedly will it

1 usually go to the successive burden test under Lewis, as an
2 example, Pike v. Bruce Church as another example.

3 Look at the statute. If it regulates evenhandedly,
4 then look at the excessive burden placed on interstate com-
5 merce. In this particular case the burden which is placed on
6 interstate commerce is easily ascertainable. It can be derived
7 simply by looking at the benefit to be obtained by foreign
8 commerce. In this particular case Walter Fleisher stands to
9 benefit by a dollar equivalent of 1.68 percent of the market
10 value of its goods. The case argued earlier this year, Sears,
11 they stand to benefit by close to 1-1/2 percent of the dollar
12 equivalent of the market value of their goods.

13 Conversely, a United States businessman shipping his
14 goods through California is burdened by exactly the same
15 amount.

16 QUESTION: Unless they're going overseas.

17 MR. HICKOK: Unless they're exporting it.

18 QUESTION: So the exception does apply to goods
19 going through California that are bound for export?

20 MR. HICKOK: Yes it does, Your Honor. If they are
21 exported out of the United States. However, goods coming from
22 Hawaii on the same boat as Japanese goods to be shipped to
23 Philadelphia do not qualify, even if --

24 QUESTION: Or goods coming through Los Angeles bound
25 for Hawaii?

1 MR. HICKOK: That's correct. That's correct. So
2 there's discrimination on the face of the statute. We don't
3 have to look at the excessive burden placed on commerce.
4 The statute should be struck down on its face as being
5 invalid, especially when you have at least two available al-
6 ternatives that would achieve the same legitimate purpose.

7 QUESTION: Do you think before Michelin Tire that
8 California constitutionally could have levied this kind of a
9 tax on these imported goods?

10 MR. HICKOK: The goods were not in transit; we had
11 agreed to that. So --

12 QUESTION: Do you think the rule before Michelin was
13 just bound to transit goods? It wasn't, was it?

14 MR. HICKOK: No. I'm sorry, it wasn't, Your Honor.
15 However, it was --

16 QUESTION: It was bound in original packages, wasn't
17 it?

18 MR. HICKOK: That was the original package concept,
19 overruling of *Lowe v. Austin*.

20 QUESTION: And the Export-Import Clause of the
21 Constitution?

22 MR. HICKOK: Correct. Exactly.

23 QUESTION: And then Michelin tire held what?

24 MR. HICKOK: Michelin held that the states and the
25 local counties can levy an ad valorem property tax on goods

1 coming in, that are in the mass of property within the State.

2 QUESTION: But it didn't rule that it couldn't
3 exempt them.

4 MR. HICKOK: No, it did not. And California has the
5 authority to exempt goods, if it does it in an evenhanded
6 manner. If the State of California wishes to exempt certain
7 goods, that's fine. I think they have to exempt them in a
8 manner that treats all goods, be they interstate, intrastate,
9 foreign, they have to regulate evenhandedly.

10 QUESTION: Well, do you think, before Michelin, if
11 California had just exempted imported goods from the tax, that
12 they would have had to have taxed -- they would have had to
13 have exempted all other goods too, from other states, for
14 example?

15 MR. HICKOK: Well, you get into --

16 QUESTION: Before Michelin they would have had to
17 exempt goods in their original packages coming from abroad.

18 MR. HICKOK: That's correct.

19 QUESTION: Do you think they would also have had to
20 exempt goods in their original packages from other states bound
21 for other states?

22 MR. HICKOK: No, Your Honor, we don't because --

23 QUESTION: Well, that would be a burden on commerce.

24 MR. HICKOK: However, we were governed at that point
25 in time by decisional law saying that these foreign commerce

1 goods had to be exempted. Also, we're talking about a differ-
2 ent clause, too; we're talking about the Import-Export Clause.
3 Here, we're talking about the Commerce Clause. Analogies are
4 good but they're not conclusive.

5 QUESTION: Yes, but before Michelin you could have
6 enforced them both by saying, you can't tax the foreign goods,
7 and live up the Export-Import Clause. And to comply with
8 the Commerce Clause, you should not discriminate against non-
9 international goods.

10 MR. HICKOK: That's right. I think the Court spe-
11 cifically left open that question, though, and in Japan Lines
12 the Court also did not address itself to the inter-intrastate
13 argument. It was a strict foreign commerce case.

14 All I'm really saying is that a statute, a tax
15 statute which is nondiscriminatory on its face, as is Califor-
16 nia's ad valorem property tax, can be made discriminatory
17 by enacting certain exemptions that directly affect interstate
18 commerce, as Section 225 does. Once the court, California or
19 U.S. Supreme Court, finds this difference in treatment, it
20 must invoke the closest scrutiny under the Commerce Clause, to
21 see why the statute should be upheld.

22 QUESTION: It would seem to me that even if
23 before Michelin, ~~with the~~ Export-Import Clause, had required
24 the exemption, you'd still have the same burden on interstate
25 commerce, wouldn't you?

1 QUESTION: Yes.

2 QUESTION: And therefore, really, if your view is
3 correct, prior to Michelin there was a requirement that the
4 exemption be given to all foreign and interstate commerce.

5 QUESTION: You could have enforced both clauses that way.

6 MR. HICKOK: That's correct.

7 QUESTION: What if the State of California had
8 brought this action? Or did the action --

9 MR. HICKOK: Against the County?

10 QUESTION: No, against Walter Fleisher. Do you
11 think all of the same answers that you gave to the standing
12 question would be relevant? The State of California simply
13 says, we don't think the statute our legislature passed was
14 constitutional?

15 MR. HICKOK: I'm not sure from a practical procedural
16 standpoint how the State would bring the statute against
17 Walter Fleisher. I could see a situation where --

18 QUESTION: Well, supposing there was an application
19 for refund --

20 MR. HICKOK: -- with the State.

21 QUESTION: With the State.

22 MR. HICKOK: Which was denied by the State.

23 QUESTION: Which was denied by the State.

24 MR. HICKOK: Well, the State would then be in a
25 defendant's posture.

1 QUESTION: Right.

2 MR. HICKOK: It would be a very similar argument.
3 Now, I can't see the State simply defending a lawsuit and
4 raising that as an affirmative defense because the State
5 through the Legislature has the power to repeal and revise
6 the statutes.

7 QUESTION: Well, if the tax collection people have
8 had an opinion from the Attorney General that their exemption
9 was unconstitutional and the State then, because the tax col-
10 lection people are supposed to listen to the Attorney General,
11 they don't give the exemption.

12 MR. HICKOK: That's true. They would have a very
13 similar argument to ours, and I think that the State, also --
14 the State is in a little bit different position from public
15 entities. However, the same issues and the same arguments
16 regarding standing could and probably would be raised by the
17 State.

18 QUESTION: Why is the State in a different position
19 from the County in the context of this case?

20 MR. HICKOK: I'm talking about the State's authority.
21 First of all, under the Civil Rights Act it is not a person.
22 Second of all, the State has the authority not to appropriate
23 funds to pay damages. The counties have no such luxury.
24 The counties can be held strictly liable, by my Catch-22
25 analysis. That's an aside and that should not enter too much

1 into the decision in this case.

2 I would just like to conclude at this point by saying
3 that the case is a very important one. However, it's a more
4 important case from a standing issue than it is from a
5 Commerce Clause issue. The counties have to be allowed to
6 raise the constitutionality of a statute in defending the ac-
7 tions of their employees and themselves.

8 Owen v. City of Independence taught us that counties
9 have a negative incentive to try and protect all persons'
10 civil rights. If we are faced with strict liability under an
11 Owen situation and faced with strict liability under a pruden-
12 tial standing situation, there will be no incentive for public
13 officials to attempt to bend over backwards to err on the side
14 of protecting civil rights of others. They will close their
15 eyes to the Constitution and say, well, we'll take our chances
16 under an Owen theory; we'll go ahead and follow the statute
17 even though we think it's unconstitutional.

18 QUESTION: Even though we're public officials who are
19 presumably bound by the statute?

20 MR. HICKOK: That's true because they can always
21 justify their actions on a defense of the state statute. They
22 relied on a previously valid state statute. Therefore they
23 are not going to have any individual liability.

24 The public entity will, but they won't. And that
25 might be a safer course of conduct for them.

1 When we talk about a Commerce Clause issue, we're
2 talking about an initial look to see whether the statute regu-
3 lates evenhandedly. If it does, it will be upheld unless
4 there is an excessive burden. If it doesn't regulate even-
5 handedly, then it can be either struck down as being per se
6 invalid, or invalid because there are available alternatives.

7 Thank you very much.

8 MR. CHIEF JUSTICE BURGER: You have two minutes
9 left, Mr. Manpearl.

10 ORAL ARGUMENT OF GERALD T. MANPEARL, ESQ.,
11 ON BEHALF OF THE PETITIONER -- REBUTTAL

12 MR. MANPEARL: Mr. Chief Justice, and may it please
13 the Court:

14 I think Mr. Hickok has placed incorrect emphasis on
15 the distinction between interstate goods or intrastate and
16 foreign goods. I think the real distinction is in the question
17 of whether or not California is discriminating, not against
18 different types of goods, but is attempting protectionist
19 legislation. Is it attempting to isolate itself?

20 I would refer this Court to the language of Phila-
21 delphia v. New Jersey, in which the Court said, "The opinions
22 of the Court through the years have reflected an alertness to
23 the evils of economic isolation and protectionism."

24 The Court went on: "The critical inquiry therefore
25 must be directed to determining whether Chapter 363 is

1 basically a protectionist measure." I submit that California
2 has not instituted a protectionist measure. They have insti-
3 tuted a measure which falls evenhandedly on California busi-
4 nesses, U.S. businesses, and foreign businesses.

5 QUESTION: Well, now, isn't it true, though, that
6 this exemption discriminates between interstate commerce and
7 foreign commerce?

8 MR. MANPEARL: Yes, Mr. Justice.

9 QUESTION: And don't you have to just say that the
10 State is empowered to make that kind of a discrimination?

11 MR. MANPEARL: Yes, I agree, Mr. Justice, and I sub-
12 mit that the Court is empowered to make such discrimination --

13 QUESTION: The State is. The State is.

14 MR. MANPEARL: -- the State is, unless it violates
15 equal protection standards, is an unreasonable classification.
16 But if we're talking about Commerce Clause, we are talking
17 about State attempts at protectionism, at isolation. We do
18 not have that here.

19 I think this case is similar to the Exxon v. Maryland
20 case of last year, in which Maryland attempted to prohibit
21 refiners and distributors from owning gas stations. And this
22 Court pointed out --

23 QUESTION: Well, suppose California, though, taxed
24 the goods that are bound from Oregon to Utah but didn't tax
25 goods that are bound from Washington for Utah, and both of

1 them came through. Would you think that would be bad on
2 Commerce grounds, or Equal Protection grounds, or both?

3 MR. MANPEARL: Well, I strongly suspect that somebody
4 would be before the courts complaining that they had been
5 injured, and they would be arguing that it's an illogical
6 classification and no good under equal protection laws. They
7 would also be saying -- and demonstrating, not just saying
8 hypothetically -- they would be demonstrating how their com-
9 merce had been interfered with.

10 QUESTION: Well, that's true of almost every event
11 that happens, every day, in human life. Someone is before
12 the court complaining about it.

13 MR. MANPEARL: Yes, Mr. Justice, I agree that in
14 virtually every case decided by this Court in the last five
15 years, more, there have been protectionist overtones, a State
16 attempt to isolate itself in some economic manner to benefit
17 its citizens, its industry vis-a-vis out-of-state industry.
18 We do not have protectionist measures here. There is no
19 attempt by California to isolate itself or its businesses.
20 The exemption is granted evenhandedly to anybody who wishes
21 to import foreign commodities, or export.

22 MR. CHIEF JUSTICE BURGER: Your time has expired.

23 MR. MANPEARL: Thank you for your attention.

24 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

25 The case is submitted.

1 (Whereupon, at 2:00 o'clock p.m., the case in the
2 above-entitled matter was submitted.)

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North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-700

Walter Fleisher Co., Inc.,

v.

County of Los Angeles et al.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: William J. Wilson
William J. Wilson

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