February 4, 1983

Re: No. 81-827 - Jefferson Co. Pharmaceutical Assn., Inc. v. Abbott Laboratories

Dear Lewis:

I join.

Regards,

[Signature]

Justice Powell

Copies to the Conference
February 4, 1983

Re: 81-827 - Jefferson County Pharmaceutical Assn. v. Abbott Laboratories

Dear Sandra:

Please join me in your dissent.

Respectfully,

[Signature]

Justice O'Connor

Copies to the Conference
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Supreme Court Bars Some Cut-Rate Sales

By Makers of Drugs

WASHINGTON—The Supreme Court said drug manufacturers must stop selling at cut-rate prices to commercial pharmacies run by government-owned hospitals.

The Justices ruled 5-4 that federal antitrust law doesn't permit drug companies to discriminate against private retail pharmacies by offering lower prices to state, city and county hospital pharmacies with which they compete.

The ruling, written by Justice Lewis Powell, didn't say whether manufacturers may still offer discounts to state and local governments for purchases of drugs or other items that aren't going to be sold over the counter. The decision was limited to commercial pharmacies run by public hospitals for their patients, often indigents.

In dissent, the high court reversed the ruling.

The opinion said the Robinson-Patman Act, which prohibits price discrimination, applies equally to drug-company sales to private hospitals and those of private pharmacies.

The case involved a lawsuit by a group of Alabama retail druggists, who claimed that 15 major drug makers were unfairly selling drugs for a group of Alabama retail druggists, who claimed that 15 major drug makers were unfairly selling drugs for a lower price to a pharmacy run by the University of Alabama Hospital in Birmingham.

A federal district court dismissed the suit, saying state and local governments were exempt from the price-discrimination law. The circuit court of appeals then ruled that the suit should go to trial in Atlanta, but the high court reversed the ruling.

Chief Justice William Rehnquist wrote the opinion for the court. The dissenting Justices—Sandra Day O'Connor, William Brennan, William Rehnquist and John Stevens—said purchases by state and local governments for purchases of drugs or other items that aren't going to be sold over the counter aren't covered by the state and local governments for purchases of drugs or other items that aren't going to be sold over the counter aren't covered by the Robinson-Patman Act.

Makers of Drugs

WASHINGTON—The second-ranking official at the Pentagon suggested the president should delay this year's tax-rate cut, but acknowledged he might be sent to the "woodshed" for the comment.

Paul Thayer, who recently became deputy Defense secretary, made the suggestion in questioning by the House Budget Committee. It sparked a heated exchange between Mr. Thayer and Rep. Jack Kemp (R., N.Y.), a champion of tax cuts, according to a transcript of the hearing.

Mr. Thayer, who has been chairman and chief executive officer of LTV Corp., has been in his job for only a few weeks. When asked at yesterday's hearing why the Pentagon didn't address the issue when it passed the law, Mr. Thayer and Rep. Jack Kemp (R., N.Y.), a champion of tax cuts, according to a transcript of the hearing.

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