

The Burger Court Opinion Writing Database

Lehman v. Shaker Heights

418 U.S. 298 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

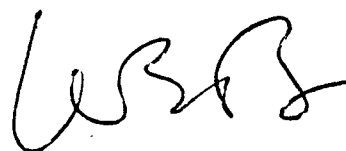
June 6, 1974

Re: No. 73-328 - Harry J. Lehman v. City of Shaker Heights

Dear Harry:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be "WB", written in a cursive, stylized manner.

Mr. Justice Blackmun

Copies to the Conference

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To : The Chief Justice
The American Bar Association
The American Political Science Association
The American Sociological Association
The American Anthropological Association
The American Economic Association
The American Historical Association
The American Linguistic Association

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

6-3

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE DOUGLAS, concurring.

Petitioner, a candidate for state office, attempted to purchase space for paid political advertising on vehicles of the Shaker Heights Rapid Transit System, a system owned and operated by the city of Shaker Heights, Ohio. Metromedia, Inc., the exclusive advertising agent for the system, refused petitioner the space on the basis of a contract with the system prohibiting the acceptance of political advertisements. Lehman unsuccessfully sought injunctive relief in the state courts to restrain the city and Metromedia from refusing his advertising.

The petitioner contends that, by selling advertising space, the city has turned its buses into free speech forums and the city is now prohibited by the First Amendment, applicable to the States through the Fourteenth,¹ from refusing space for political advertisements. In asking us to force the system to accept his message as a vindication of his constitutional rights, the petitioner

¹ The Court has frequently rested state free speech and free press decisions on the Fourteenth Amendment generally rather than on the Due Process Clause alone. See, e. g., *Bridges v. California*, 314 U. S. 252, 263 n. 6 (1941); *Saia v. New York*, 334 U. S. 558, 560 (1948); *Elfbrandt v. Russell*, 384 U. S. 11, 18 (1966); *Mills v. Alabama*, 384 U. S. 214, 218 (1966).

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Thurgood Marshall
Mr. Justice White

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

Circulate: _____
Recirculated: 6-11

[June —, 1974]

MR. JUSTICE DOUGLAS, concurring.

Petitioner, a candidate for state office, attempted to purchase space for paid political advertising on vehicles of the Shaker Heights Rapid Transit System, a system owned and operated by the city of Shaker Heights, Ohio. Metromedia, Inc., the exclusive advertising agent for the system, refused petitioner the space on the basis of a contract with the system prohibiting the acceptance of political advertisements. Lehman unsuccessfully sought injunctive relief in the state courts to restrain the city and Metromedia from refusing his advertising.

The petitioner contends that, by selling advertising space, the city has turned its buses into free speech forums and the city is now prohibited by the First Amendment, applicable to the States through the Fourteenth,¹ from refusing space for political advertisements.

My Brother BRENNAN would find that "[a] forum for communication was voluntarily established when the city

¹ The Court has frequently rested state free speech and free press decisions on the Fourteenth Amendment generally rather than on the Due Process Clause alone. See, e. g., *Bridges v. California*, 314 U. S. 252, 263 n. 6 (1941); *Saia v. New York*, 334 U. S. 558, 560 (1948); *Eljbrandt v. Russell*, 384 U. S. 11, 18 (1966); *Mills v. Alabama*, 384 U. S. 214, 218 (1966).

To: The Chief Justice
The Justices
The Clerk
The Reporter
The Solicitor General
The Attorneys General
The Attorneys
The Law Clerks
The Secretaries
The Messengers
The Pages
The Constables
The Sheriffs
The Marshals
The Deputies
The Bailiffs
The Wardens
The Keepers
The Wardens of the Prison
The Wardens of the House of Correction
The Wardens of the House of Detention
The Wardens of the House of Reformation
The Wardens of the House of Education
The Wardens of the House of Industry
The Wardens of the House of Agriculture
The Wardens of the House of Commerce
The Wardens of the House of Manufactures
The Wardens of the House of Arts and Sciences
The Wardens of the House of Letters
The Wardens of the House of Music
The Wardens of the House of Painting
The Wardens of the House of Sculpture
The Wardens of the House of Architecture
The Wardens of the House of Engineering
The Wardens of the House of Medicine
The Wardens of the House of Law
The Wardens of the House of Theology
The Wardens of the House of Philosophy
The Wardens of the House of History
The Wardens of the House of Geography
The Wardens of the House of Natural History
The Wardens of the House of Botany
The Wardens of the House of Zoology
The Wardens of the House of Mineralogy
The Wardens of the House of Metallurgy
The Wardens of the House of Chemistry
The Wardens of the House of Physics
The Wardens of the House of Astronomy
The Wardens of the House of Mathematics
The Wardens of the House of Logic
The Wardens of the House of Ethics
The Wardens of the House of Politics
The Wardens of the House of Economics
The Wardens of the House of Social Sciences
The Wardens of the House of Human Sciences
The Wardens of the House of Life Sciences
The Wardens of the House of Physical Sciences
The Wardens of the House of Earth Sciences
The Wardens of the House of Environmental Sciences
The Wardens of the House of Interdisciplinary Sciences
The Wardens of the House of Transdisciplinary Sciences
The Wardens of the House of Multidisciplinary Sciences
The Wardens of the House of Cross-disciplinary Sciences
The Wardens of the House of Converging Sciences
The Wardens of the House of Diverging Sciences
The Wardens of the House of Complementary Sciences
The Wardens of the House of Contradictory Sciences
The Wardens of the House of Incompatible Sciences
The Wardens of the House of Incommensurable Sciences
The Wardens of the House of Incommensurate Sciences
The Wardens of the House of Incommensurable Sciences
The Wardens of the House of Incommensurate Sciences

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Circulate: _____

Recirculate: 6-18

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE DOUGLAS, concurring.

Petitioner, a candidate for state office, attempted to purchase space for paid political advertising on vehicles of the Shaker Heights Rapid Transit System, a system owned and operated by the city of Shaker Heights, Ohio. Metromedia, Inc., the exclusive advertising agent for the system, refused petitioner the space on the basis of a contract with the system prohibiting the acceptance of political advertisements. Lehman unsuccessfully sought injunctive relief in the state courts to restrain the city and Metromedia from refusing his advertising.

The petitioner contends that, by selling advertising space, the city has turned its buses into free speech forums and the city is now prohibited by the First Amendment, applicable to the States through the Fourteenth,¹ from refusing space for political advertisements.

My Brother BRENNAN would find that "[a] forum for communication was voluntarily established when the city

¹The Court has frequently rested state free speech and free press decisions on the Fourteenth Amendment generally rather than on the Due Process Clause alone. See, e. g., *Bridges v. California*, 314 U. S. 252, 263 n. 6 (1941); *Saia v. New York*, 334 U. S. 558, 560 (1948); *Elfbrandt v. Russell*, 384 U. S. 11, 18 (1966); *Mills v. Alabama*, 384 U. S. 214, 218 (1966).

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

RE: No. 73-328 Lehman v. Shaker Heights

I shall in due course circulate a dissent in the
above.

W.J.B.Jr.

40 2007

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Harry J. Lehman, Petitioner, v. City of Shaker Heights et al.	}	On Writ of Certiorari to the Supreme Court of Ohio.
---	---	--

[May —, 1974]

MR. JUSTICE BRENNAN, dissenting

The city of Shaker Heights owns and operates the Shaker Heights Rapid Transit System, an interurban electric railroad line consisting of approximately 55 transit cars which transport passengers between Shaker Heights and Cleveland. Each of the cars contains 20 interior advertising spaces available for lease through the Metro Transit Division of Metromedia, Inc., the transit system's exclusive advertising agent. By agreement with the city, Metromedia accepts commercial and public service advertising, but will not accept "political advertising."

Prior to Ohio's 1970 general election, Harry J. Lehman, a candidate for the office of State Representative to the Ohio General Assembly for the 56th District, attempted to lease advertising space on the Shaker Heights Rapid Transit System, because, as he later testified, "the vast majority of its six to eight thousand riders each day are residents of the district" (Appendix, p. 11A). Although advertising space was available and Lehman's proposed advertisement¹ met Metromedia's copy stand-

¹ The text of the proposed advertisement read as follows:

"Harry J. Lehman Is Old Fashioned About Honesty, Integrity, And Good Government State Representative, District 56"

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 6/7/74

No. 73-328

Recirculated: _____

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al. } On Writ of Certiorari to the
Supreme Court of Ohio.

[May —, 1974]

MR. JUSTICE BRENNAN, dissenting.

The city of Shaker Heights owns and operates the Shaker Heights Rapid Transit System, an interurban electric railroad line consisting of approximately 55 transit cars which transport passengers between Shaker Heights and Cleveland. Each of the cars contains 20 interior advertising spaces available for lease through the Metro Transit Division of Metromedia, Inc., the transit system's exclusive advertising agent. By agreement with the city, Metromedia accepts commercial and public service advertising, but will not accept "political advertising."

Prior to Ohio's 1970 general election, Harry J. Lehman, a candidate for the office of State Representative to the Ohio General Assembly for the 56th District, attempted to lease advertising space on the Shaker Heights Rapid Transit System, because, as he later testified, "the vast majority of its six to eight thousand riders each day are residents of the district" (Appendix, p. 11A). Although advertising space was available and Lehman's proposed advertisement¹ met Metromedia's copy stand-

¹ The text of the proposed advertisement read as follows:

"Harry J. Lehman Is Old Fashioned About Honesty, Integrity, And Good Government State Representative, District 56"

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Harry J. Lehman, Petitioner, v. City of Shaker Heights et al.	}	On Writ of Certiorari to the Supreme Court of Ohio.
---	---	--

[May —, 1974]

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

The city of Shaker Heights owns and operates the Shaker Heights Rapid Transit System, an interurban electric railroad line consisting of approximately 55 transit cars which transport passengers between Shaker Heights and Cleveland. Each of the cars contains 20 interior advertising spaces available for lease through the Metro Transit Division of Metromedia, Inc., the transit system's exclusive advertising agent. By agreement with the city, Metromedia accepts commercial and public service advertising, but will not accept "political advertising."

Prior to Ohio's 1970 general election, Harry J. Lehman, a candidate for the office of State Representative to the Ohio General Assembly for the 56th District, attempted to lease advertising space on the Shaker Heights Rapid Transit System, because, as he later testified, "the vast majority of its six to eight thousand riders each day are residents of the district" (Appendix, p. 11A). Although advertising space was available and Lehman's proposed advertisement¹ met Metromedia's copy stand-

¹ The text of the proposed advertisement read as follows:
"Harry J. Lehman Is Old Fashioned About Honesty, Integrity, And
Good Government State Representative, District 56"

87

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Circulated: _____

Recirculated: 6-14-74

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

[May —, 1974]

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

The city of Shaker Heights owns and operates the Shaker Heights Rapid Transit System, an interurban electric railroad line consisting of approximately 55 transit cars which transport passengers between Shaker Heights and Cleveland. Each of the cars contains 20 interior advertising spaces available for lease through the Metro Transit Division of Metromedia, Inc., the transit system's exclusive advertising agent. By agreement with the city, Metromedia accepts commercial and public service advertising, but will not accept "political advertising."

Prior to Ohio's 1970 general election, Harry J. Lehman, a candidate for the office of State Representative to the Ohio General Assembly for the 56th District, attempted to lease advertising space on the Shaker Heights Rapid Transit System, because, as he later testified, "the vast majority of its six to eight thousand riders each day are residents of the district . . ." (Appendix, p. 11A). Although advertising space was available and Lehman's proposed advertisement¹ met Metromedia's copy stand-

¹ The text of the proposed advertisement read as follows:

"Harry J. Lehman Is Old Fashioned About Honesty, Integrity, And Good Government State Representative, District 56"

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1974

Re: No. 73-328, Lehman v. City of
Shaker Heights

Dear Bill,

Please add my name to your dissenting opinion
in this case.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1974

Re: No. 73-328 - Lehman v. City of Shaker
Heights

Dear Harry:

Please join me in your opinion in this
case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

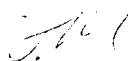
June 11, 1974

Re: No. 73-328 -- Lehman v. City of Shaker Heights

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES: 5/31/74

No. 73-328

Recirculated: _____

Harry J. Lehman,
Petitioner.
v.
City of Shaker Heights
et al. } On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a city which operates a public rapid transit system and sells advertising space for car cards on its vehicles is required by the First and Fourteenth Amendments to accept paid political advertising on behalf of a candidate for public office.

In 1970, petitioner Harry J. Lehman was a candidate for the office of State Representative to the Ohio General Assembly for District 56. The district includes the city of Shaker Heights. On July 3, 1970, petitioner sought to promote his candidacy by purchasing car card space on the Shaker Heights rapid transit system for the months of August, September, and October. The general election was scheduled for November 3. Petitioner's proposed copy contained his picture and read:

"HARRY J. LEHMAN IS OLD-FASHIONED!
ABOUT HONESTY, INTEGRITY AND GOOD
GOVERNMENT

State Representative—District 56 [X] Harry J.
Lehman." App. 39A.

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

pp. 647

Mr. The
Mr.
Mr.
Mr.
Mr. Justice
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Re: Blackmun, J.

No. 73-328

Circulated:

Recirculated: 6/5/74

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a city which operates a public rapid transit system and sells advertising space for car cards on its vehicles is required by the First and Fourteenth Amendments to accept paid political advertising on behalf of a candidate for public office.

In 1970, petitioner Harry J. Lehman was a candidate for the office of State Representative to the Ohio General Assembly for District 56. The district includes the city of Shaker Heights. On July 3, 1970, petitioner sought to promote his candidacy by purchasing car card space on the Shaker Heights rapid transit system for the months of August, September, and October. The general election was scheduled for November 3. Petitioner's proposed copy contained his picture and read:

"HARRY J. LEHMAN IS OLD-FASHIONED!
ABOUT HONESTY, INTEGRITY AND GOOD
GOVERNMENT

State Representative—District 56 [X] Harry J.
Lehman." App. 39A.

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

pp 1, 3, 6

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 73-328

Circulated: _____

Recirculated: 6/10

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE BLACKMUN announced the judgment of the Court and an opinion, in which THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join.

This case presents the question whether a city which operates a public rapid transit system and sells advertising space for car cards on its vehicles is required by the First and Fourteenth Amendments to accept paid political advertising on behalf of a candidate for public office.

In 1970, petitioner Harry J. Lehman was a candidate for the office of State Representative to the Ohio General Assembly for District 56. The district includes the city of Shaker Heights. On July 3, 1970, petitioner sought to promote his candidacy by purchasing car card space on the Shaker Heights rapid transit system for the months of August, September, and October. The general election was scheduled for November 3. Petitioner's proposed copy contained his picture and read:

"HARRY J. LEHMAN IS OLD-FASHIONED!
ABOUT HONESTY, INTEGRITY AND GOOD
GOVERNMENT

State Representative—District 56 [X] Harry J.
Lehman." App. 39A.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Transmitted: _____
Circulated: _____
Recirculated: 4/1

Harry J. Lehman,
Petitioner,
v.
City of Shaker Heights
et al.

} On Writ of Certiorari to the
Supreme Court of Ohio.

[June —, 1974]

MR. JUSTICE BLACKMUN announced the judgment of the Court and an opinion, in which THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST join.

This case presents the question whether a city which operates a public rapid transit system and sells advertising space for car cards on its vehicles is required by the First and Fourteenth Amendments to accept paid political advertising on behalf of a candidate for public office.

In 1970, petitioner Harry J. Lehman was a candidate for the office of State Representative to the Ohio General Assembly for District 56. The district includes the city of Shaker Heights. On July 3, 1970, petitioner sought to promote his candidacy by purchasing car card space on the Shaker Heights rapid transit system for the months of August, September, and October. The general election was scheduled for November 3. Petitioner's proposed copy contained his picture and read:

"HARRY J. LEHMAN IS OLD-FASHIONED!
ABOUT HONESTY, INTEGRITY AND GOOD
GOVERNMENT

State Representative—District 56 [X] Harry J.
Lehman." App. 39A.

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1974

No. 73-328 Lehman v. City of Shaker Heights

Dear Harry:

I voted the other way at Conference, and will await further circulations.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 13, 1974

No. 73-328 Lehman v. Shaker Heights

Dear Bill:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

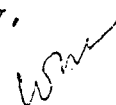
June 5, 1974

Re: No. 73-328 - Lehman v. City of Shaker Heights

Dear Harry:

Please join me in your opinion for the Court in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10-10-2001 BY 60322 UCBAW