

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,



Mr. Justice Blackmun

Copies to the Conference

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); *Elfrbrandt v. Russell*, 384 U. S. 11, 18 (1966); *Mills v. Alabama*, 384 U. S. 214, 218 (1966).

To : The Chief Justice
Mr. Justice BRENNAN
Mr. Justice CLARK
Mr. Justice HARLAN
Mr. Justice MARSHALL
Mr. Justice POWELL
Supreme Court Clerk
Mr. Justice REHNQUIST

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Federal Building, D.C.

No. 73-328

Circulate:

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

Recirculated: 6-11

[June —, 1974]

MR. JUSTICE DOUGLAS, concurring.

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

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To: *Mr. Justice*
Mr. Justice
Mr. Justice

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-328

Classified:

Recirculated:

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.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1974

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.

(20)
XO

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: 6/4/74

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]

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

Circulated
6-5-74

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."

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

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."

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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,

DB

Mr. Justice Brennan

Copies to the Conference

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

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.
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 Brennan

From: Breyer, J.

1st DRAFT

5/31/74

SUPREME COURT OF THE UNITED STATES:

No. 73-328

Recirculated:

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

[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.

PP. 647

2nd DRAFT

For: The
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice Blackmun, J.
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

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]

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GOVERNMENT

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

PP 13.6
Top: 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

From: Blackmun, J.

Circulated:

Recirculated: JJC

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.

[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:

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ABOUT HONESTY, INTEGRITY AND GOOD
GOVERNMENT

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

To: The Chief Justice
Mr. Justice BREWSTER
Mr. Justice BURGER
Mr. Justice COHN
Mr. Justice FRIEDMAN
Mr. Justice REHNQUIST
Mr. Justice ROBERTS
Mr. Justice STEVENS
Mr. Justice THOMAS
Mr. Justice WARREN
Mr. Justice WHITE

4th DRAFT

Transcript: _____

Circulated: _____

Recirculated: 6/11/74

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.

[June —, 1974]

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Lehman," App. 39A.

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,



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,



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,

W.H.R.

Mr. Justice Blackmun

Copies to the Conference