

# The Burger Court Opinion Writing Database

*Smith v. Organization of Foster Families for Equality & Reform*

431 U.S. 816 (1977)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 8, 1977

RE: (76-180 - Smith v. Organization of Foster  
    | Families for Equality and Reform  
    |  
    | (76-183 - Shapiro v. OFFER  
    |  
    | (76-5193 - Rodriguez v. OFFER  
    |  
    | (76-5200 - Gandy v. OFFER

Dear Potter:

Please show me joining your opinion and  
concurrence in the judgment.

Regards,

WBB

Mr. Justice Stewart

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 5/19/66

Recirculated:

## 2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-180, 76-183, 76-5193, AND 76-5200

Henry Smith, individually and as  
Administrator of New York City  
Human Resources Administra-  
tion, et al., Appellants.

76-180 *v.*

## Organization of Foster Families for Equality and Reform et al.

Bernard Shapiro, individually and  
as Executive Director of the New

York State Board of Social  
Welfare, et al., Appellants,

76-183 *v.*

## Organization of Foster Families for Equality and Reform et al.

Naomi Rodriguez et al.,  
Appellants,

76-5193 v.

## Organization of Foster Families for Equality and Reform et al.

Danielle Gandy et al., Appellants,  
76-5200 v.

## Organization of Foster Families for Equality and Reform et al.

On Appeals from the United  
States District Court for  
the Southern District of  
New York.

[May —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

22, 26, 28, 34, 36

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

From: Mr. Justice Brennan

Circulated: \_\_\_\_\_

circulated: 5/26/77

### 3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-180, 76-183, 76-5193, AND 76-5200

Henry Smith, individually and as Administrator of New York City Human Resources Administra-  
tion, et al., Appellants,

76-180 *v.*

## Organization of Foster Families for Equality and Reform et al.

Bernard Shapiro, individually and  
as Executive Director of the New

York State Board of Social  
Welfare, et al., Appellants,  
76-183 v.

### Organization of U.

## Organization of Foster Families for Equality and Reform et al.

Naomi Rodriguez et al.,  
Appellants,

76-5193 v.

## Organization of Foster Families for Equality and Reform et al.

Danielle Gandy et al., Appellants,  
76-5200 v.

## Organization of Foster Families for Equality and Reform et al.

On Appeals from the United  
States District Court for  
the Southern District of  
New York.

[May —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

stylistic changes and  
26-27, 29

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

From: Mr. Justice Brennan

Circulated:

Recirculated:

## 4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-180, 76-183, 76-5193, AND 76-5200

Henry Smith, individually and as Administrator of New York City Human Resources Administration, et al., Appellants,

76-180 v.

## Organization of Foster Families for Equality and Reform et al.

Bernard Shapiro, individually and  
as Executive Director of the New

York State Board of Social  
Welfare, et al., Appellants,

76-183 v.

## Organization of Foster Families for Equality and Reform et al.

Naomi Radu

Appellants,  
5193 "

### Organization of

## Organization of Foster Families for Equality and Reform et al.

Danielle Gandy et al., Appellants,  
76-5200 v.

## Organization of Foster Families for Equality and Reform et al.

On Appeals from the United  
States District Court for  
the Southern District of  
New York.

[May —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

MEMORANDUM TO THE CONFERENCE

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rabinowitz  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 1/14/71

Recirculated: 1/14/71

*Foster parent*  
RE: Cases Held for No. 76-180, Smith v. Foster Families

No. 76-5889 Eason v. Maloney

Debra, then aged four months, was informally placed with petitioner by her natural mother in 1968. In February 1974, after a neglect proceeding against the mother, custody of Debra was awarded to respondent state welfare commissioner, who placed her with petitioner as foster parent. In October 1974, respondent returned Debra to her mother. (Petitioner claims that she was given no notice or explanation of this action, pet. at 4; respondent says the removal was at petitioner's request, resp. at 3, and that procedures for administrative review are available on request, resp. at 1a-4a. The state courts made no finding on this point.) Petitioner then sought to reopen the original neglect proceeding, at which she had been represented, to have the commissioner's custody revoked and custody awarded to her. The Juvenile Court held that it had no jurisdiction over this motion, because by statute such a motion could only be made by specified individuals, not including a foster parent. The Connecticut Supreme Court affirmed, by a 3-2 vote, rejecting petitioner's contention that this interpretation of the statute denied her due process and equal protection.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 24, 1977

Re: No. 76-180, Etc., Smith v.  
Organization of Foster Families

Dear Bill,

I hope to write a short concurring opinion  
in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshal  
Mr. Justice Blackmu  
Mr. Justice Powell  
Mr. Justice Rehnqui  
Mr. Justice Stevens

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stewa:

Circulated: JUN 6 197

Nos. 76-180, 76-183, 76-5193, AND 76-5200

Recirculated: \_\_\_\_\_

Henry Smith, individually and as  
Administrator of New York City  
Human Resources Administration,  
et al., Appellants,  
76-180 v.

Organization of Foster Families  
for Equality and Reform et al.

Bernard Shapiro, individually and  
as Executive Director of the New  
York State Board of Social  
Welfare, et al., Appellants,  
76-183 v.

Organization of Foster Families  
for Equality and Reform et al.

Naomi Rodriguez et al.,  
Appellants,  
76-5193 v.

Organization of Foster Families  
for Equality and Reform et al.

Danielle Gandy et al., Appellants,  
76-5200 v.

Organization of Foster Families  
for Equality and Reform et al.

On Appeals from the United  
States District Court for  
the Southern District of  
New York.

[May   , 1977]

MR. JUSTICE STEWART, concurring in the judgment.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Stewart

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1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-180, 76-183, 76-5193, AND 76-5200

Henry Smith, individually and as  
 Administrator of New York City  
 Human Resources Administra-  
 tion, et al., Appellants,

76-180                    v.

Organization of Foster Families  
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76-183                    v.

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76-5193                    v.

Organization of Foster Families  
 for Equality and Reform et al.

Danielle Gandy et al., Appellants,  
 76-5200                    v.

Organization of Foster Families  
 for Equality and Reform et al.

On Appeals from the United  
 States District Court for  
 the Southern District of  
 New York.

[June —, 1977]

MR. JUSTICE STEWART, with whom THE CHIEF JUSTICE and  
 MR. JUSTICE REHNQUIST join, concurring in the judgment.

The foster parent-foster child relationship involved in this  
 litigation is, of course, wholly a creation of the State. New

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 1, 1977

Re: Nos. 76-180, 76-183, 76-5193 & 76-5200 -  
Smith v. Organization of Foster Families

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 23, 1977

Re: Nos. 76-180, 76-183, 76-5193, and 76-5200, Smith v. Organization  
of Foster Families

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Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Brennan

cc: The Conference

✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1977

Re: Nos. 76-180, 76-183, 76-5193,  
76-5200 - Smith v. OFFER

Dear Bill:

Please join me.

Sincerely,

*HAB.*

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 1, 1977

No. 76-180 Smith v. Organization of  
Foster Families

Dear Bill:

Please join me.

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 7, 1977

Re: Nos. 76-180, 76-183, 76-5193, and 76-5200 -  
Smith v. Organization of Foster Families, et al.

Dear Potter:

Please join me in your concurring opinion.

Sincerely,

W

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1977

RE: 76-180 - Smith v. Organization of Foster Families

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference