

# The Burger Court Opinion Writing Database

## *Lehman v. Lycoming County Children's Services Agency*

458 U.S. 502 (1982)

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 7, 1982

Re: 80-2177 - Lehman v. Lycoming County Children's  
Services Agency

Dear Lewis:

I join.

Regards,

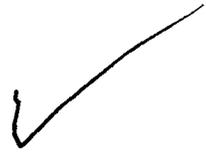


Justice Powell

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE



June 7, 1982

Re: 80-2177 - Lehman v. Lycoming County Children's  
Services Agency

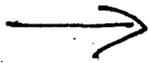
Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference



P.S. (LFP only) On page 8, there may be a "dictating-  
type" (idam so~~ams~~!) 12th line from bottom. "adopted" or  
"adoptive" (?)

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 24, 1982

RE: No. 80-2177 Lehman v. Lycoming County Children's  
Services

Dear Harry:

Please join me in your dissent.

Sincerely,



Justice Blackmun  
cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 15, 1982

80-2177 - Lehman v. Lycoming County  
Children's Services Agency

Dear Lewis,

Please join me.

Sincerely yours,

*Byron*

Justice Powell

Copies to the Conference

cpm

.85 12 11 1

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 24, 1982

Re: No. 80-2177 - Lehman v. Lycoming County  
Children's Services

Dear Harry:

Please join me in your dissent.

Sincerely,

*J.M.*  
T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

Circulated: JUN 24 1982

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

No. 80-2177 Lehman v. Lycoming County Children's Services

JUSTICE BLACKMUN, dissenting.

Although I can sympathize with what the Court seeks to accomplish in this case today, I cannot reconcile myself to its holding that "§2254 does not confer federal court jurisdiction," ante, at 13, to consider collateral challenges to state-court judgments involuntarily terminating parental rights. In my view, the literal statutory requisites for the exercise of §2254 federal habeas corpus jurisdiction are satisfied here -- in particular, the requirement that petitioner's children must be "in custody." Because I believe the Court could have achieved much the same practical result in this area without decreeing a complete withdrawal of federal jurisdiction, I respectfully dissent.

I

Justice Black, speaking for a unanimous Court in Jones v. Cunningham, 371 U. S. 236, 243 (1963), observed that the federal writ of habeas corpus "is not now and never has been a static, narrow, formalistic remedy."

"While limiting its availability to those 'in custody,' the statute does not attempt to mark the boundaries of 'custody' nor in any way other than by use of that word attempt to limit the situations in which the writ can be used. To determine whether habeas corpus could be used to test the legality of a given restraint on

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Blackmun**

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

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

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2177

MARJORIE LEHMAN, ETC., PETITIONER *v.*  
 LYCOMING COUNTY CHILDREN'S  
 SERVICES AGENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, and  
 JUSTICE MARSHALL, join, dissenting.

Although I can sympathize with what the Court seeks to accomplish in this case today, I cannot reconcile myself to its holding that "§ 2254 does not confer federal court jurisdiction," *ante*, at 13, to consider collateral challenges to state-court judgments involuntarily terminating parental rights. In my view, the literal statutory requisites for the exercise of § 2254 federal habeas corpus jurisdiction are satisfied here—in particular, the requirement that petitioner's children must be "in custody." Because I believe the Court could have achieved much the same practical result in this area without decreeing a complete withdrawal of federal jurisdiction, I respectfully dissent.

I

Justice Black, speaking for a unanimous Court in *Jones v. Cunningham*, 371 U. S. 236, 243 (1963), observed that the federal writ of habeas corpus "is not now and never has been a static, narrow, formalistic remedy."

"While limiting its availability to those 'in custody,' the statute does not attempt to mark the boundaries of 'custody' nor in any way other than by use of that word at

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 ✓ Justice Marshall  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Powell

Circulated: May 29, 1982

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2177

MARJORIE LEHMAN, ETC., PETITIONER *v.*  
 LYCOMING COUNTY CHILDREN'S  
 SERVICES AGENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the habeas corpus statute, 28 U. S. C. § 2254, confers jurisdiction on the federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights.

I

The facts of this case are described in detail in *In re William L.*, 477 Pa. 322, 383 A. 2d 228, cert. denied, 439 U. S. 880 (1978), the Pennsylvania Supreme Court decision terminating the parental rights of petitioner Marjorie Lehman with respect to three sons born in 1963, 1965, and 1969.<sup>1</sup> In 1971, Ms. Lehman discovered that she was pregnant again. Because of housing problems and her inability to find people to care for her three sons during her hospitalization, Ms. Lehman voluntarily placed them in the legal custody of the Lycoming County Children's Agency, and it placed them in foster homes.

Although Ms. Lehman visited her sons monthly, she did not request their return until 1974. At that point, the Lycoming

<sup>1</sup>Petitioner has never been married. The fathers to these sons voluntarily have relinquished their parental rights in state court proceedings.

Stylistic

Changes: 1, 5, 8, 9

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Powell

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

JUN 1 1982

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2177

MARJORIE LEHMAN, ETC., PETITIONER v.  
 LYCOMING COUNTY CHILDREN'S  
 SERVICES AGENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the habeas corpus statute, 28 U. S. C. § 2254, confers jurisdiction on the federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights.

## I

The facts of this case are described in detail in *In re William L.*, 477 Pa. 322, 383 A. 2d 228, cert. denied, 439 U. S. 880 (1978), the Pennsylvania Supreme Court decision terminating the parental rights of petitioner Marjorie Lehman with respect to three sons born in 1963, 1965, and 1969.<sup>1</sup> In 1971, Ms. Lehman discovered that she was pregnant again. Because of housing and other problems related to the care of her sons, Ms. Lehman voluntarily placed them in the legal custody of the Lycoming County Children's Agency, and it placed them in foster homes.

Although Ms. Lehman visited her sons monthly, she did not request their return until 1974. At that point, the Lycoming County Children's Services Agency initiated parental termi-

<sup>1</sup>Petitioner has never been married. The fathers to these sons voluntarily have relinquished their parental rights in state court proceedings.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 24, 1982

80-2177 Lehman v. Wyoming County

MEMORANDUM TO THE CONFERENCE:

In response to Harry's dissent, I am adding the enclosed two footnotes.

L.F.P.

L.F.P., Jr.

SS

Changes: 1, 5, 8, 9, 10  
 new footnote 16  
 footnotes 16 on renumbered.

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Powell

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

Recirculated: JUN 25 1982

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2177

**MARJORIE LEHMAN, ETC., PETITIONER v.  
 LYCOMING COUNTY CHILDREN'S  
 SERVICES AGENCY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT**

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether the habeas corpus statute, 28 U. S. C. § 2254, confers jurisdiction on the federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights.

I

The facts of this case are described in detail in *In re William L.*, 477 Pa. 322, 383 A. 2d/228, cert. denied, 439 U. S. 880 (1978), the Pennsylvania Supreme Court decision terminating the parental rights of petitioner Marjorie Lehman with respect to three sons born in 1963, 1965, and 1969.<sup>1</sup> In 1971, Ms. Lehman discovered that she was pregnant again. Because of housing and other problems related to the care of her sons, Ms. Lehman voluntarily placed them in the legal custody of the Lycoming County Children's Agency, and it placed them in foster homes.

Although Ms. Lehman visited her sons monthly, she did not request their return until 1974. At that point, the Lycoming County Children's Services Agency initiated parental termi-

<sup>1</sup>Petitioner has never been married. The fathers to these sons voluntarily have relinquished their parental rights in state court proceedings.

June 28, 1982

80-1888, Chastain v. Davis,

Heretofore held for No. 80-2177, Lehman v. Lycoming County  
Children's Services Agency

MEMORANDUM TO THE CONFERENCE

Chastain v. Davis is a case from the CA5 and is reported at 640 F. 2d 599 (1981) (en banc). In Chastain, the CA5 allowed an indigent mother to use a §2254 habeas proceeding to challenge collaterally the state's failure to provide her with counsel during a proceeding leading to temporary termination of her custody of her child. Chastain is in direct conflict with Lehman, in which we held that §2254 does not provide a forum for collateral challenges to final state-court child-custody determinations. I therefore recommend a GVR in light of Lehman.

L.F.P., Jr.

SS

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

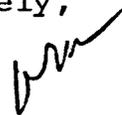
June 1, 1982

Re: No. 80-2177 Lehman v. Lycoming County

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 1, 1982

Re: No. 80-2177 - Lehman v. Lycoming County  
Children's Services Agency

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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.85 JUN 35 1982

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

80-2177

June 1, 1982

No. 80-2177 Lehman v. Lycoming County  
Children's Services Agency

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference