

These days, James Ho spends most of his time protecting state laws from attack in a high profile job as Texas solicitor general. But Ho made his name and an impact on state law before Texas Attorney General Greg Abbott hired him for his current job a year-and-a-half ago.

Nowhere is that more apparent than in the area of religious freedom. In *Pastor Rick Barr, et al. v. City of Sinton*, Ho successfully represented a church ministry that serves ex-prisoners when the municipality challenged the location of the ministry based on a zoning ordinance.

The case was important because it involved the Texas Religious Freedom Restoration Act (RFRA), a 1999 law written to curtail government interference with religious practices. In 2007, Ho — then of counsel at Gibson Dunn & Crutcher in Dallas — argued the case at the Texas Supreme Court on behalf of the ministry.

In *Barr*, the issue was whether the RFRA applied to land use. In June, the high court sided with the pastor and warned municipal governments that they had to “tread carefully and lightly” when they enforce zoning ordinances that interfere with religious practices.

Not long after he became solicitor general in April 2008, Ho argued *Croft v. Perry* before the 5th U.S. Circuit Court of Appeals. In that case, the state maintained that a Texas law mandating a moment of silence in Texas schools was constitutional because it

had a secular purpose. Ho’s argument that the law did not violate the establishment clause of the U.S. Constitution prevailed at the 5th Circuit on March 16.

“The Texas Legislature decided that it was important to give every school child in Texas an opportunity to start the day off on the right note. Students can do whatever they want. They can contemplate whatever they want. What the litigation was about, of course, was prayer,” says Ho, a 1999 graduate of the University of Chicago Law School who clerked for U.S. Supreme Court Justice Clarence Thomas from 2005 until 2006.

Ho has not always been in the business of protecting state laws. While still in private practice, he represented several political organizations in the first challenge to a 35-year-old law regulating Texas speaker of the House races. Texas Government Code §302.17 limited campaign contributions to candidates for that post.

Ho argued that the law was so broad that it limited free speech about a speaker’s race. U.S. District Court Judge Lee Yeakel of Austin agreed with Ho and issued a preliminary injunction in *Free Market Foundation, et al. v. Reisman, et al.* in 2008 enjoining the state of Texas from enforcing that law.

Experience challenging state laws has served Ho well as solicitor general. Notes Ho, “If you want to do a good job defending, you should know how to challenge, and if you want to do a good job challenging, you should know how to defend.”

JAMES HO

TEXAS SOLICITOR GENERAL

AUSTIN

36



MARK MATSON

TEXAS LAWYER *Extraordinary* MINORITIES *in Texas Law*

