

James C. Ho



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Representative Appellate and Constitutional Matters

Supreme Court of the United States

- Won 6-2 “victory for state sovereignty against federal power” (*National Law Journal*), defeating federal claim for money damages. *Sossamon v. Texas*, 131 S. Ct. 1651 (2011).
- Successfully represented two of the nation’s largest wine distributors against certiorari petition challenging constitutionality of Texas wine-shipping laws, described by industry observers as “the most important wine shipping-related case currently moving through the federal courts.” *Wine Country Gift Baskets.com v. Steen*, 131 S. Ct. 1602 (2011).
- Represented 38 state attorneys general in successful effort to enforce the Second Amendment against municipalities; amicus brief cited three times in the Court’s principal opinion. *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).
- Obtained unanimous summary reversal of Fifth Circuit in defense of Texas procedures for adjudicating peremptory strikes—an “unusual ruling” (*Dallas Morning News*) with “the rare result that the high court reinstated a death sentence that the [Fifth] Circuit had set aside” (*National Law Journal*). *Thaler v. Haynes*, 130 S. Ct. 1171 (2010).
- Defeated certiorari petition challenging the Texas parental termination law, after receiving first invitation in U.S. Supreme Court history to a state solicitor general to file a brief expressing the views of a state. *Rhine v. Deaton*, 130 S. Ct. 357, 1281 (2009).
- Won 5-4 ruling rejecting attempt to stay execution to enforce an adverse judgment of the International Court of Justice against the State of Texas—“a big day in the world of international law” (*Wall Street Journal*). *Medellin v. Texas*, 554 U.S. 759 (2008).

Federal Courts of Appeals

- Won “watershed ruling” (*Wall Street Journal*) upholding the use of affirmative action in undergraduate admissions. *Fisher v. Univ. of Texas*, 631 F.3d 213 (5th Cir. 2011).
- Successfully defended ban on public discussion of curriculum matters by state education officials against First Amendment attack. *Comer v. Scott*, 610 F.3d 929 (5th Cir. 2010).
- Won reversal of ruling invalidating Texas wine-shipping laws under dormant Commerce Clause. *Wine Country Gift Baskets.com v. Steen*, 612 F.3d 809 (5th Cir. 2010).
- Defeated multi-billion dollar consumer privacy class action on behalf of Texas attorney general’s consumer protection division; Fifth Circuit credited Texas for articulating winning interpretation of the Act. *Taylor v. Axiom Corp.*, 612 F.3d 325 (5th Cir. 2010).
- Represented coalition of state attorneys general in opposition to climate change lawsuit against numerous energy companies; obtained favorable ruling on other grounds. *Comer v. Murphy Oil USA*, 607 F.3d 1049 (5th Cir. 2010) (en banc).
- Represented all 50 states in defense of prayer during inauguration ceremonies; court ruled favorably on other grounds. *Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010).
- Secured rejection of adverse jury verdict in dispute over proper interpretation of university intellectual property policy, in a high-profile dispute within the academic community. *Stotter v. Univ. of Texas*, 369 F. App’x 641 (5th Cir. 2010).
- Defeated First Amendment attack on state moment of silence laws in two circuits; amicus brief on behalf of 17 state attorneys general cited by Seventh Circuit. *Croft v. Perry*, 562 F.3d 735 (5th Cir. 2009); *Sherman v. Koch*, 623 F.3d 501 (7th Cir. 2010).
- Secured 16-1 en banc ruling against local officials challenging Texas open meetings law, vacating adverse panel ruling. *Rangra v. Brown*, 584 F.3d 206 (5th Cir. 2009).
- Won reversal in action to enforce State interests in multi-million dollar antitrust class action settlement. *In re Lease Oil Antitrust Litigation*, 570 F.3d 244 (5th Cir. 2009).

State Supreme Courts and Courts of Appeals

- Secured favorable settlement of multi-million dollar indemnity dispute following close of briefing before the New York Supreme Court Appellate Division, First Department.
- Defeated First Amendment attack on Texas adult business fee, reversing both rulings below—“a victory for both the state and victims of sexual assault” (*New York Times*) that “cash-strapped states” and industry are “watching . . . closely” (*Wall Street Journal*). *Combs v. Texas Entertainment Ass’n, Inc.*, 347 S.W.3d 277 (Tex. 2011).

- Persuaded Texas Supreme Court to review consumer protection case under Lottery Act, on grounds that ultimately prevailed when the Legislature enacted S.B. 626 (2011). *Texas Lottery Commission v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).
- Successfully defended Texas ban on alcohol sales by adult businesses against state constitutional attack, reversing adverse trial court ruling. *Tex. Alco. Bev. Comm'n v. Silver City Club*, 315 S.W.3d 643 (Tex. App.—Dallas 2010, pet. denied).
- Successfully defended Texas medical malpractice statute of repose against state constitutional attack on behalf of the State as amicus curiae, reversing adverse appellate court ruling. *Methodist Healthcare System v. Rankin*, 307 S.W.3d 283 (Tex. 2010).
- Persuaded Texas Supreme Court to reverse its prior ruling granting review of claims arising out of the Texas A&M bonfire collapse under Texas proportionate responsibility law. *Zachry Constr. Corp. v. Texas A&M Univ.*, 298 S.W.3d 617 (Tex. 2009).
- Won reversal of adverse workers compensation ruling regarding workplace injury. *State Office of Risk Management v. Lawton*, 295 S.W.3d 646 (Tex. 2009).
- Secured “home run” win (*Associated Press*) in “landmark case” (*San Antonio Express-News*) invalidating local zoning ordinance as a violation of state law, reversing both adverse rulings below. *Barr v. City of Sinton*, 295 S.W.3d 287 (Tex. 2009).
- Defeated constitutional attack on statutory limits on judicial review of arbitration rulings in employment disputes. *City of Pasadena v. Smith*, 292 S.W.3d 14 (Tex. 2009).
- Prevailed in constitutional dispute with Department of Family and Protective Services regarding a parent’s right to counsel; brief quoted in concurring opinion. *In re J.O.A.*, 283 S.W.3d 336 (Tex. 2009).
- Secured favorable settlement with Hawaii Attorney General in dispute over funeral industry regulations following close of mandamus briefing in Hawaii Supreme Court.

Federal and State District Courts

- Engineered successful effort to block the deposition of the chief executive of Dallas County and other members of the Dallas County Commissioners Court on grounds of legislative immunity. *Villareal v. Dallas County*, 2011 WL 4850258 (N.D. Tex. 2011).
- Defeated federal constitutional attack on caps on non-economic damages in medical malpractice liability cases. *Watson v. Hortman*, 2010 WL 3566736 (E.D. Tex. 2010).
- Defeated First Amendment attack on Texas open meetings law by municipalities for lack of standing. *City of Alpine v. Abbott*, 730 F. Supp. 2d 630 (W.D. Tex. 2010).

- Successfully defended affirmative action at the University of Texas; oral argument quoted in opinion. *Fisher v. Univ. of Texas*, 645 F. Supp. 2d 587 (W.D. Tex. 2009).
- Won landmark ruling enjoining 35-year old Texas law regulating campaigns regarding election of Texas Speaker. *Free Market Foundation v. Reisman*, 540 F. Supp. 2d 751 (W.D. Tex. 2008).
- Authored key briefs asserting constitutional and other theories, resulting in post-trial vacatur of \$350 million punitive damage jury verdict—the largest in Oregon history—and favorable settlement of related \$210 million suit filed by Oregon Attorney General.

Other Forums

- Advised and represented clients in legal disputes involving federal, state, and local governmental agencies across the country, including the U.S. Department of Justice, the U.S. Department of Homeland Security, the Federal Trade Commission, state attorneys general nationwide, and a wide range of Texas state and local governmental entities.
- Persuaded U.S. Department of Homeland Security to reverse prior agency interpretation of EB-5 visa regulations, on behalf of foreign investors in Dallas County.
- Persuaded Federal Trade Commission to withdraw all charges in telemarketing investigation, after initially demanding multi-million dollar civil penalty and injunction.
- Counseled numerous clients on constitutional and other legal issues presented by legislation in Congress, the Texas Legislature, and other state legislatures—including alcohol, gaming, health care, insurance, media, tourism, and tax law.
- Testified before Congressional subcommittee regarding state regulation of alcohol.
- Testified before numerous Texas House and Senate committees concerning the constitutionality of various Texas bills.
- Drafted Congressional legislation in diverse areas, including the enactment of new laws in the areas of intellectual property, federal courts, and the Freedom of Information Act.
- Drafted and testified in support of Texas legislation concerning the role of the Attorney General in constitutional litigation, resulting in the enactment of H.B. 2425 (2011).
- Counseled various Presidential, Senate, and House campaigns.