

JAMES HO AND DEMOCRACY

Highlights:

- James Ho opposed campaign contribution limits.
 - Ho wrote an article calling to “abolish all restrictions on campaign finance.”
 - Ho wrote a lengthy opinion in favor of eliminating campaign contribution limits in his first case on the Fifth Circuit.
- James Ho opposed voting rights.
 - Ho concurred with a decision to prevent Texas voters under 65 years old to qualify for mail-in ballot during the COVID-19 pandemic.

Ho Opposed Campaign Contribution Limits

1997: HO WROTE AN ARTICLE CALLING TO “ABOLISH ALL RESTRICTIONS ON CAMPAIGN FINANCE”

1997: Ho: “Abolish All Restriction On Campaign Finance.” According to the Senate Judiciary Committee, “FEINSTEIN: In a 1997 article, you expressed your support for ‘abolish[ing] all restrictions on campaign finance,’ with the exception of the mandatory disclosure of campaign contributions.” [Senate Judiciary Committee, [11/22/17](#)]

Ho Claimed That Campaign Finance Regulations Would Result In “The End Of Free Speech.” According to the Senate Judiciary Committee, “FEINSTEIN: In a 1997 article, you expressed your support for ‘abolish[ing] all restrictions on campaign finance,’ with the exception of the mandatory disclosure of campaign contributions. You argued that the ‘inevitable result’ of an ‘expansion’ of laws regulating campaign finance was ‘the end of free speech.’ In the same piece, you wrote that the debate over campaign finance reform ‘obscure[d] the true cause of corruption. Politicians can coerce campaign contributions from ever-willing donors for one simple reason: the state intrudes upon so many areas of personal and commercial life that success is impossible without permission from the sovereign.’ Please describe your understanding of how campaign finance regulations will lead to ‘the end of free speech.’” [Senate Judiciary Committee, [11/22/17](#)]

HO WROTE A LENGTHY OPINION IN FAVOR OF ELIMINATING CAMPAIGN CONTRIBUTION LIMITS IN HIS FIRST CASE ON THE FIFTH CIRCUIT

April 2018: Ho’s First Opinion Was A Dissent In A Case About Campaign Contribution Limits. According to NPR, “Ho’s first opinion, in April, was a dissent in a case involving limits on campaign contributions in Austin, Texas.” [NPR, [7/26/18](#)]

- **The Case Concerned Campaign Contribution Limits In Austin, Texas Where Candidates Representing Fewer Than 100,000 People Were Barred From Accepting Donations Over \$350.** According to NPR, “Ho’s first opinion, in April, was a dissent in a case involving limits on campaign contributions in Austin, Texas. Candidates for municipal elections — people like mayors and city council representatives who represent fewer than 100,000 people — are barred from accepting donations of more than \$350.” [NPR, [7/26/18](#)]

Ho Voted In Favor Of Rehearing The Case. According to the United States Court of Appeals for the Fifth Circuit, “The Petition for Rehearing is DENIED and the court having been polled at the request of one of its members, and a majority of the judges who are in regular active service and not disqualified not having voted in favor (Fed. R. App. P. 35 and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED. United States Court of Appeals Fifth Circuit FILED April 18, 2018 Lyle W. Cayce Clerk No. 16-51366 2 In the en banc poll, two judges voted in favor of rehearing (Judges Jones and Ho) and twelve judges voted against rehearing (Chief Judge Stewart and Judges Smith, Dennis, Clement, Owen, Elrod, Southwick, Haynes, Graves, Higginson, Costa, and Willett). [...] The First Amendment therefore protects campaign contributions. For example, in

Randall v. Sorrell, the Supreme Court invalidated various campaign contribution limits imposed by the State of Vermont. 548 U.S. 230 (2006). That included a limit of \$300 per election cycle—that is, \$150 per election (primary and general), or \$215 in 2015 dollars—for state senators representing between 20,000 and 120,000 people. Id. at 236–38 (plurality); see also Joint App’x at 21–22, Randall, 548 U.S. 230 (Nos. 04-1528, 04-1530, 04-1697), 2005 WL 3477006, at *55–56, 79” [United States Court of Appeals for the Fifth Circuit, [2/1/18](#)]

Ho Argued That Since The Government Can “Take And Redistribute Man’s Livelihood,” Citizens Should Be Allowed To Use “Their Hard Earned Income” To “Speak” To The Government. According to Ho in the United States Court of Appeals for the Fifth Circuit, “To be sure, many Americans of good faith bemoan the amount of money spent on campaign contributions and political speech. But if you don’t like big money in politics, then you should oppose big government in our lives. Because the former is a necessary consequence of the latter. When government grows larger, when regulators pick more and more economic winners and losers, participation in the political process ceases to be merely a citizen’s prerogative—it becomes a human necessity. This is the inevitable result of a government that would be unrecognizable to our Founders. See, e.g., NFIB v. Sebelius, 567 U.S. 519 (2012) So if there is too much money in politics, it’s because there’s too much government. The size and scope of government makes such spending essential. See, e.g., EMILY’s List v. FEC, 581 F.3d 1, 33 (D.C. Cir. 2009) (Brown, J., concurring) (“The more power is at stake, the more money will be used to shield, deflect, or co-opt it. So long as the government can take and redistribute a man’s livelihood, there will always be money in politics.”). But whatever size government we choose, the Constitution requires that it comply with our cherished First Amendment right to speak and to participate in our own governance. If we’re going to ask taxpayers to devote a substantial percentage of their hard-earned income to fund the innumerable activities of federal, state, and local government, we should at the very least allow citizens to spend a fraction of that amount to speak out about how the government should spend their money. I respectfully dissent.” [United States Court of Appeals for the Fifth Circuit, [2/1/18](#)]

Ho Opposed Voting Rights

HO CONCURRED WITH A DECISION TO PREVENT TEXAS VOTERS UNDER 65 YEARS OLD TO QUALIFY FOR MAIL-IN BALLOT DURING COVID-19 PANDEMIC

Ho Concurred With A Decision To Prevent Texas Voters Under 65 Years Old To Qualify For Mail-In Ballot During COVID-19 Pandemic. According to Courthouse News Service, “The Fifth Circuit on Thursday rebuked a San Antonio federal judge in its unanimous order blocking an injunction that would have allowed any Texan to qualify for a mail-in ballot during the Covid-19 pandemic. [...] ‘The district court ignored virtually the entire body of governing Supreme Court precedent relevant to this case,’ U.S. Circuit Judge James Ho, a Donald Trump appointee, wrote in a concurring opinion for the Fifth Circuit, which granted a stay of the lower court’s order.” [Courthouse News Service, [6/4/20](#)]