

JAMES HO AND GUNS

Highlights:

- James Ho opposed gun safety efforts.
 - Ho complained that the Second Amendment was treated as a “second class” right.
 - Ho wrote an amicus brief challenging a Chicago gun ban and called the Second Amendment the “ultimate guarantor of all other liberties.”
 - In *United States v. Rahimi*, Ho voted to strike down a law prohibiting gun possession by people under a domestic violence protection order.

Ho Opposed Gun Safety Efforts

HO COMPLAINED THAT THE SECOND AMENDMENT WAS TREATED AS “SECOND CLASS” RIGHT

Ho Complained The Second Amendment Was Treated As A “Second Class” Right And Said Fear Of Guns Should Not Threaten Constitutional Rights. According to NPR, “More recently, in a case involving the ban on interstate handgun sales, Ho complained, ‘the Second Amendment continues to be rated as a ‘second class’ right,’ borrowing language from his mentor, Clarence Thomas, and new Supreme Court Justice Neil Gorsuch. ‘Law-abiding Americans should not be conflated with dangerous criminals,’ Ho added. ‘Constitutional rights must not give way to hoplophobia.’” [NPR, [7/26/18](#)]

Ho Described The Second Amendment As “The Ultimate Guarantor Of All Other Liberties Enjoyed By Americans.” According to the Senate Judiciary Committee, “FEINSTEIN: As Solicitor General of Texas, you submitted an amicus brief on behalf of 38 states in *McDonald v. Chicago*, a 2009 case following on the heels of *District of Columbia v. Heller* that challenged Chicago’s ban on handguns. In your brief, you wrote that ‘the right to keep and bear arms [is] the ultimate guarantor of all the other liberties enjoyed by Americans.’ Please describe how the Second Amendment is ‘the ultimate guarantor of all the other liberties enjoyed by Americans.’ HO: The amicus brief filed by 38 states in *McDonald* relies upon the decision of the U.S. Supreme Court in *Heller*, among other authorities, for the proposition that an ‘indispensable’ ‘safeguard[] of liberty . . . under the Constitution’ is ‘a man’s ‘right to bear arms for the defense of himself and family and his homestead.’” *District of Columbia v. Heller*, 554 U.S. 570, 616 (2008).” [Senate Judiciary Committee, [11/22/17](#)]

HO WROTE AN AMICUS BRIEF CHALLENGING A CHICAGO HANDGUN BAN

As Solicitor General Of Texas Ho Wrote An Amicus Brief To Challenge Chicago’s Handgun Ban. According to the Senate Judiciary Committee, “FEINSTEIN: As Solicitor General of Texas, you submitted an amicus brief on behalf of 38 states in *McDonald v. Chicago*, a 2009 case following on the heels of *District of Columbia v. Heller* that challenged Chicago’s ban on handguns.” [Senate Judiciary Committee, [11/22/17](#)]

The Supreme Court Struck Down The Handgun Ban

The Supreme Court Struck Down The Handgun Ban. According to NPR, “The high court has ruled in a 5-4 decision that ‘the right to keep and bear arms’ applies to cities and states, effectively striking down 30-year-old handgun bans in Chicago and its suburb of Oak Park, Ill.” [NPR, [6/28/10](#)]

HO FAVORABLY CITED HELLER AND REFUSED TO COMMENT ON WHETHER HELLER DEPARTED FROM PRECEDENT

In *DC v. Heller*, The Supreme Court Decided That The Second Amendment Guaranteed An Individual’s Right To Own Guns Separate From A Militia Service. According to the Washington Post, “The Supreme Court struck down the District of Columbia’s ban on handgun possession yesterday and decided for the first time in the nation’s history that the

Second Amendment guarantees an individual's right to own a gun for self-defense. The court's landmark 5 to 4 decision split along ideological grounds and wiped away years of lower court decisions that had held that the intent of the amendment, ratified more than 200 years ago, was to tie the right of gun possession to militia service.” [Washington Post, [6/27/08](#)]

Ho Favorably Cited From Heller When Asked If Heller Allowed Room For Common Sense Gun Regulation During Confirmation Hearing. According to the Senate Judiciary Committee, “FEINSTEIN: Did Heller leave room for common-sense gun regulation? HO: The Supreme Court in Heller stated, ‘We are aware of the problem of handgun violence in this country The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns.’ 554 U.S. 570, 636 (2008). See also id. at 626-27 & n. 26.” [Senate Judiciary Committee, [11/22/17](#)]

Ho Did Not Comment On Whether Heller Departed From Decades Of Supreme Court Precedent. According to the Senate Judiciary Committee, “FEINSTEIN: Did Heller, in finding an individual right to bear arms, depart from decades of Supreme Court precedent? HO: As a pending judicial nominee, it would not be appropriate for me to opine on my personal views as to the merits or reasoning of a particular U.S. Supreme Court decision. If I am so fortunate as to be confirmed to be a federal judge, I would follow all Supreme Court precedents concerning the regulation of guns.” [Senate Judiciary Committee, [11/22/17](#)]

HO VOTED TO STRIKE DOWN A LAW PROHIBITING GUN POSSESSION BY PEOPLE UNDER A DOMESTIC VIOLENCE PROTECTION ORDER

In United States v. Rahimi, Ho Voted To Strike Down A Law Prohibiting Gun Possession By People Under A Domestic Violence Protection Order. According to CNN, “A federal law that prohibits people subject to domestic violence restraining orders from possessing firearms is unconstitutional, a conservative-leaning appeals court ruled Thursday. [...] The court’s opinion was written by Judge Cory Todd Wilson, who was appointed by former President Donald Trump. He was joined by Reagan-appointee Judge Edith Jones and Judge James Ho, another Trump appointee who also wrote a concurrence.” [CNN, [2/2/23](#)]

Ho Wrote That Domestic Violence Restraining Orders Are “Too Often Misused As A Tactical Device In Divorce Proceedings” As A Reason To Strike Down The Law. According to Ho in the United States Court of Appeals for the Fifth Circuit, “Moreover, there are additional reasons why disarmament based on civil protective orders should give us pause. Scholars and judges have expressed alarm that civil protective orders are too often misused as a tactical device in divorce proceedings—and issued without any actual threat of danger. That makes it difficult to justify § 922(g)(8) as a measure to disarm dangerous individuals.” [CaseText, [3/2/23](#)]

The Supreme Court Reversed The Fifth Circuit’s Ruling And Upheld The Law

The Supreme Court Reversed The Fifth Circuit’s Ruling And Upheld The Law Prohibiting Gun Possession By People Under A Domestic Violence Protection Order. According to the New York Times, “The case decided Friday, United States v. Rahimi, asked whether a Texas man could be prosecuted under federal law making it a crime for people subject to domestic violence restraining orders to possess guns. Chief Justice John G. Roberts Jr., writing for the majority in the 8-to-1 decision, said that the answer was yes and that Second Amendment rights have limits.” [New York Times, [6/21/24](#)]