

JAMES HO AND LGBTQ RIGHTS

Highlights:

- James Ho opposed LGBTQ rights, including same-sex marriage.
 - As solicitor general of Texas, Ho defended the state's same-sex marriage ban.
 - Ho endorsed a Texas assistant attorney general who called transgender children part of "Satan's plan."
 - Ho volunteered with an anti-LGBTQ law firm.
 - Ho misgendered and dead-named a plaintiff, arguing that refusing sex reassignment surgery to a transgender inmate was constitutional.
 - Ho stated that Texas' READER Act, which required booksellers to individually rate books for sexual content, was constitutional.

Ho Opposed LGBTQ Rights, Including Same-Sex Marriage

AS SOLICITOR GENERAL OF TEXAS, HO DEFENDED THE STATE'S SAME-SEX MARRIAGE BAN

As Solicitor General, Ho Defended Texas's Ban On Same Sex Marriage, Arguing That Same-Sex Couples Would Not Have "A Stable, Long-Term Relationship." According to the Senate Judiciary Committee, "FEINSTEIN: At your nomination hearing, Senator Coons asked you about your work as Texas Solicitor General in defending Texas's ban on same-sex marriage. In that case, *In re Marriage of J.B. and H.B.*, you argued that '[t]he naturally procreative relationship between a man and woman deserves special societal support and protection — both to encourage procreation . . . and to increase the likelihood that children will be raised by both of their parents, within the context of stable, long-term relationships.' Do you believe that same-sex marriages less likely to be 'stable, long-term relationships' than marriages between a man and a woman? If so, on what basis have you reached that conclusion? HO: The brief you quote represented the position of the State of Texas that '[t]he naturally procreative relationship between a man and a woman deserves special societal support and protection,' in part to 'increase the likelihood that children will be raised by both of their parents, within the context of stable, long-term relationships.' The brief cited several U.S. Supreme Court and other decisions, including *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942), *Loving v. Virginia*, 388 U.S. 1 (1967), and *Baker v. Nelson*, 409 U.S. 810 (1972), aff'g 191 N.W.2d 185 (Minn. 1971). The State of Texas acknowledged, however, that 'an individual may enter into any number of worthwhile and life-affirming relationships' outside of "[t]he naturally procreative relationship between a man and a woman.' To the best of my recollection, the State of Texas did not state a position on the question you pose." [Senate Judiciary Committee, [11/22/17](#)]

The Case Was Dismissed After The Death Of One Of The Petitioners. According to the Texas Supreme Court, "On April 11, 2015, Henry Buck (H.B.), the respondent in the trial court and spouse of the Petitioner, passed away. 8. The death of H.B. terminated the marriage between J.B. and H.B. as a matter of law, rendering this appeal and the underlying litigation moot. 9. Petitioner J.B. therefore requests that this Motion be granted and that the Court issue judgment (a) vacating the court of appeals' and trial court's decisions, (b) dismissing the case as moot, and (c) ordering costs of court to be paid by each party incurring them." [Texas Supreme Court, [4/17/15](#)]

HO PRAISED AN APPOINTEE TO TEXAS ASSISTANT ATTORNEY GENERAL WHO CALLED TRANSGENDER CHILDREN PART OF "SATAN'S PLAN"

2016: Ho Endorsed Jeff Mateer Who Referred To Transgender Children As Evidence Of "Satan's Plan." According to the Senate Judiciary Committee, "FEINSTEIN: In a 2016 op-ed you wrote in a San Antonio newspaper, you praised Jeff Mateer's appointment as the first assistant Attorney General of Texas, writing that Mateer 'firmly believes in the profound and abiding importance of protecting and enforcing the legal rights and civil liberties of every Texan.' Since that time, Mr. Mateer has been nominated to be a judge on the Eastern District of Texas, and it has come to light that he once referred to transgender children as evidence of 'Satan's plan.' Do you stand by your support of Mr. Mateer? HO: I was not aware of these

comments at the time I wrote the 2016 op-ed. As a pending judicial nominee, I would defer to the President and members of the United States Senate on who should be nominated and confirmed to the federal bench. It is my understanding that Mr. Mateer is widely regarded as a strong and effective First Assistant Attorney General. FEINSTEIN: Do you agree with Mr. Mateer's views on transgender children? HO: I believe that every child is a child of God." [Senate Judiciary Committee, [11/22/17](#)]

Ho Stood By His Endorsement Of Mateer During His Confirmation Hearing To The Fifth Circuit

During Confirmation Hearing, Ho Stood By His Endorsement Of Mateer, Noting He Was "Widely Regarded As A Strong And Effective First Assistant Attorney General" But Said He "Believe[d] Every Child Is A Child Of God."

According to the Senate Judiciary Committee, "In a 2016 op-ed you wrote in a San Antonio newspaper, you praised Jeff Mateer's appointment as the first assistant Attorney General of Texas, writing that Mateer 'firmly believes in the profound and abiding importance of protecting and enforcing the legal rights and civil liberties of every Texan.' Since that time, Mr. Mateer has been nominated to be a judge on the Eastern District of Texas, and it has come to light that he once referred to transgender children as evidence of 'Satan's plan.' Do you stand by your support of Mr. Mateer? I was not aware of these comments at the time I wrote the 2016 op-ed. As a pending judicial nominee, I would defer to the President and members of the United States Senate on who should be nominated and confirmed to the federal bench. It is my understanding that Mr. Mateer is widely regarded as a strong and effective First Assistant Attorney General. Do you agree with Mr. Mateer's views on transgender children? I believe that every child is a child of God." [Senate Judiciary Committee, [11/22/17](#)]

HO VOLUNTEERED WITH AN ANTI-LGBTQ LAW FIRM

Ho Volunteered With First Liberty, A Law Firm That Promoted Anti-LBGTQ Discrimination. According to Slate, "James Ho of the 5th U.S. Circuit Court of Appeals. Ho was confirmed to a lifetime appointment on the 5th Circuit on Dec. 14, 2017. [...] He also served as Texas solicitor general and later volunteered with First Liberty, a law firm that purports to defend religious freedom, often by promoting anti-LGBTQ discrimination." [Slate, [10/25/19](#)]

HO MISGENDERED AND DEAD-NAMED A PLAINTIFF, ARGUING THAT REFUSING SEX REASSIGNMENT SURGERY TO A TRANSGENDER INMATE WAS CONSTITUTIONAL

Ho Held That Texas Prison Refusing To Give Sex Reassignment Surgery To Transgender Inmate Did Not Amount To Cruel And Unusual Punishment. According to Ho in the United States Court of Appeals for the Fifth Circuit, "A state does not inflict cruel and unusual punishment by declining to provide sex reassignment surgery to a transgender inmate. The only federal court of appeals to decide such a claim to date has so held as an en banc court. See *Kosilek v. Spencer*, 774 F.3d 63, 76–78, 87–89, 96 (1st Cir. 2014) (en banc). The district court in this case so held. And we so hold today." [United States Court of Appeals for the Fifth Circuit, [3/29/19](#)]

Ho Misgendered And Dead-Named The Plaintiff In His Opinion. According to Ho in the United States Court of Appeals for the Fifth Circuit, "Gibson was born male. But as his brief explains, he has been diagnosed as having a medical condition known today as 'gender dysphoria' or 'Gender Identity Disorder' (GID). He has lived as a female since the age of 15 and calls himself Vanessa Lynn Gibson." [United States Court of Appeals for the Fifth Circuit, [3/29/19](#)]

HO STATED THAT TEXAS' READER ACT, WHICH REQUIRED BOOKSELLERS TO INDIVIDUALLY RATE BOOKS FOR SEXUAL CONTENT, WAS CONSTITUTIONAL

The READER Act Required Texas Booksellers To Individually Rate Books For Sexual Content To Sell To Public Schools. According to CNN, "Book vendors selling to Texas public schools, ranging from national sellers like Amazon to local bookstores with eight employees, must now rate all the books they sell based on sexual content, according to new legislation signed into law on June 12. If the book vendor fails to comply with state library standards that will be in place by January 1, 2024, they'd be barred from selling to Texas public schools. [...] Under the 'Restricting Explicit and Adult-

Designated Educational Resources' Act, or the READER Act, vendors that sell books to Texas public schools must assign every title that describes or portrays sexual conduct one of two labels: sexually explicit or sexually relevant.” [CNN, [7/4/23](#)]

A Judge Ruled That The READER Act Was Unconstitutional And Violated The First Amendment. According to Chron, “Just before the law was set to go into effect, U.S. District Court Judge Alan D. Albright issued a temporary stay prohibiting the state from enforcing it. Three weeks later, he ruled that portions of the law violated the Free Speech clause of the First Amendment by requiring private businesses to create speech (in the form of book ratings) on the government's behalf. Then, in January, a three-judge panel from the 5th Circuit unanimously agreed with Albright, while also letting stand another aspect of the law that created statewide library standards banning sexually explicit books in public schools.” [Chron, [4/17/24](#)]

Ho Disagreed With The Ruling And Argued That The Law Was Constitutional

Ho Argued That The Law Was Constitutional In A Dissent After The Fifth Circuit Voted To Not Rehear The Case. According to Ho in the United States Court of Appeals for the Fifth Circuit, “There is no basis for holding the READER Act unconstitutional under the First Amendment. The Supreme Court has long affirmed that schools have ‘the authority to remove books [from a school library] that are vulgar.’ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986) (citing *Bd. of Educ. v. Pico*, 457 U.S. 853, 871-72 (1982) (plurality opinion), *id.* at 879-81 (Blackmun, J., concurring in part and in judgment), and *id.* at 918-20 (Rehnquist, J., dissenting)). The panel concluded that the READER Act violates the First Amendment because the Act unconstitutionally compels speech. See *Book People, Inc. v. Wong*, 91 F.4th 318 (5th Cir. 2024). But I don't see how. The READER Act doesn't compel anyone to say anything. It simply provides that any vendor who wishes to sell books to public schools must answer certain questions prior to the sale—just as ordinary consumers often ask questions of merchants before deciding whether to make a purchase.” [CaseText, [4/16/24](#)]