Judge Not Afraid to Admit He Got It Wrong

By Donald Scarinci

It's not easy to admit being wrong, particularly if you are one of the most respected judges in the country. Yet, that is precisely what Judge Richard Posner did.

The admission did not involve a trivial matter, but rather a decision he authored in the landmark voter identification case *Crawford v. Marion County Election Board*. Posner took part in the case as a member of the United States Court of Appeals for the Seventh Circuit, on which he still serves.

The case was one of the first to consider mandatory voter ID laws. The Seventh Circuit concluded that the risk of disenfranchising certain voters was outweighed by the government's interest in deterring voter fraud. The U.S. Supreme Court ultimately upheld the decision, which is frequently cited by proponents of voting restrictions.

"I think we did not have enough information," Judge Posner stated in a <u>Huffington Post</u> interview regarding his new book, *Reflections On Judging*. "If the lawyers had provided us with a lot of information about the abuse of voter identification laws, this case would have been decided differently."

According to Posner, dissenting justice Terence T. Evans was the one who got it right. He argued "The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic." In his book, Posner further acknowledged that the Indiana statute at the center of the case is "a type of law now widely regarded as a means of voter suppression rather than of fraud prevention."

Posner isn't the first high-profile judge to admit he got it wrong. Earlier this year, former Supreme Court Justice Sandra Day O'Connor questioned whether the Court should have agreed to hear *Bush v. Gore*, the controversial case that ultimately decided the 2000 presidential election. In an Interview with the Chicago Tribune, she stated, "It took the case and decided it at a time when it was still a big election issue. Maybe the court should have said, 'We're not going to take it, goodbye.'"

While the admissions will not change the legal precedent established by these decisions, it is refreshing that judges are willing to take accountability and admit that they are not infallible.

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