



Gregg J. Costa

Judge on the United States Court of Appeals for the Fifth Circuit

On May 20, 2014, the Senate voted 97-0 to confirm Gregg J. Costa to a seat on the United States Court of Appeals for the Fifth Circuit. Previously, Costa served as a United States District Judge in the Southern District of Texas. Following his nomination to the circuit court, President Obama observed that Judge Costa had “displayed exceptional dedication to public service throughout [his] career,” and that he will be a “judicious and esteemed addition[] to the . . . Fifth Circuit.”¹

Biography

Judge Costa was born in 1972 in Baltimore, Maryland,² but was raised in Richardson, Texas, where he attended Richardson High School. In 1994, he earned his Bachelor of Arts degree from Dartmouth College. After college, Judge Costa joined Teach for America and taught the third and fourth grades at East Sunflower Elementary School in Sunflower, Mississippi. He then earned his J.D. in 1999 from the University of Texas Law School, where he was Editor in Chief of the *Texas Law Review* and graduated with highest honors.

After law school, Judge Costa clerked for Judge A. Raymond Randolph on the U.S. Court of Appeals for the D.C. Circuit. He spent the following year as a Bristow Fellow in the Office of the U.S. Solicitor General, and then clerked for Chief Justice William Rehnquist on the U.S. Supreme Court. From 2002 to 2005, Judge Costa was a civil litigation associate at Weil, Gotshal & Manges in Houston, Texas. In 2005, he left private practice and joined the U.S. Attorney’s Office for the Southern District of Texas. Judge Costa served there as a prosecutor in the Major Offenders and Major Fraud sections until President Obama appointed him to the federal bench in 2012.

Legal Experience and Expertise

Before taking the bench, Judge Costa spent most of his career prosecuting complex fraud. In 2012, he was lead counsel in the prosecution of R. Allen Stanford, the head of Stanford Financial Group who engaged in a \$7 billion investment fraud relating to the sale of certificate of deposits. After a seven-week trial, a jury found Stanford guilty on 13 of 14 counts and he was later sentenced to 110 years imprisonment. For his work on the Stanford prosecution, Costa received the John Marshall Award for Performance in Prosecuting White Collar Crime—the Department

¹ White House Press Release, President Obama Nominates Two to Serve on the United States Courts of Appeals (Dec. 19, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/12/19/president-obama-nominates-two-serve-united-states-courts-appeals>.

² Senate Judiciary Committee Background Questionnaire, *available at* <http://www.judiciary.senate.gov/nominations/113thCongressJudicialNominations/upload/Costa-Senate-Questionnaire-Final.pdf>.

of Justice's highest award for specialized areas of legal performance. Similarly, Costa led the prosecution of two brothers who created a fraudulent Salvation Army website, and then falsely claimed that donations went to Hurricane Katrina victims.³ Finally, in 2006, he successfully prosecuted a lawyer and her legal assistant who obtained visas using falsified documents, and then sold them to Chinese nationals for large sums of money.⁴

Judge Costa acquired substantial *pro bono* experience during his years in private practice. In 2003, he worked with the NAACP Legal Defense Fund to file a *habeas* petition on behalf of an inmate serving an 18 year prison sentence. Texas Governor Rick Perry later pardoned the petitioner and his codefendants. In 2004, Costa worked with the Lawyers' Committee for Civil Rights Under Law to protect the voting rights of college students in Waller County, Texas. Costa helped to bring two lawsuits: One that challenged Waller County's failure to seek pre-approval under the Voting Rights Act before reducing the number of hours at the polling place closest to campus, and another against the District Attorney who falsely warned students that they could not vote where they attended school. In response to the lawsuits, the defendants settled and agreed to alter the challenged practices.

Judge Costa has also protected voting rights as a district court judge. In *Voting for America v. Andrade*,⁵ nonprofit organizations that help register voters brought suit to challenge eight Texas statutes governing voter registration activities. Judge Costa ruled that the organizations had standing to sue, and issued a preliminary injunction enjoining five of the eight challenged provisions. A divided Fifth Circuit panel later vacated the injunction.⁶

As a judge on the Fifth Circuit, Judge Costa has written several opinions favorable to plaintiffs' employment discrimination claims, including claims of disability discrimination⁷ and age discrimination.⁸ He also wrote an opinion upholding, against a First Amendment facial challenge, Mississippi's campaign financial disclosure laws.⁹ In a forced arbitration case, Judge Costa wrote the majority opinion that declined to follow a corporate defendant's expansive reading of a later-added arbitration clause that would have curtailed the plaintiffs' ability to sue in court.¹⁰

Finally, in a blow to a suit trying to protect voting rights in Texas, Judge Costa voted to allow Texas' Voter ID law to go into effect pending appeal.¹¹ On October 11, 2014, nine days prior to the start of early voting in the general election, a district court ruled that the Voter ID law was discriminatory and enjoined its enforcement. In an emergency application, Texas asked the Fifth Circuit to stay the district court's ruling and allow the law to go into effect. On October 14, 2014, the Fifth Circuit ruled in Texas' favor and issued the stay to avoid confusion at the polls. Judge Costa concurred in the decision and wrote separately to explain that while "[w]e should be extremely reluctant to have an election take place under a law that a district court has found, and

³ See *United States v. Stephens and Stephens*, 571 F.3d 401 (5th Cir. 2009).

⁴ See *United States v. Liu*, 288 Fed. App'x 193 (5th Cir. 2008).

⁵ *Voting for Am., Inc. v. Andrade*, 888 F. Supp. 2d 816 (S.D. Tex. 2012).

⁶ *Voting for Am., Inc. v. Steen*, 732 F.3d 382 (5th Cir. Tex. 2013).

⁷ *Cannon v. Jacobs Field Servs. N. Am.*, No. 15-20127, 2016 U.S. App. LEXIS 531 (5th Cir. Jan. 13, 2016).

⁸ *Goudeau v. Nat'l Oilwell Varco, L.P.*, 793 F.3d 470 (5th Cir. 2015).

⁹ *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014).

¹⁰ *Sharpe v. AmeriPlan Corp.*, 769 F.3d 909 (5th Cir. 2014).

¹¹ *Veasey v. Perry*, 769 F.3d 890 (5th Cir. 2014).

that our court may find, is discriminatory,” Supreme Court precedent disfavored allowing major changes to voting rules on the eve of an election.¹² The law remains tied up in appeals and is still in effect to this day.

Professional and Community Activities

Throughout his legal career, Judge Costa has been actively involved in community service and various professional activities. For example, he is the co-founder and a current board member of the Sunflower County Freedom Project, a nonprofit educational organization that prepares low-income students for college through after-school and summer programs. He also served as an adjunct professor at the University of Houston Law Center, teaching courses on federal jurisdiction in 2004 and 2005.

¹² *Id.* at 896–97 (Costa, J., concurring).