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A series of recent federal court decisions have powerfully reaffirmed a basic constitutional principle: The government cannot act to suppress voting by racial minorities.

In a number of states, Republican-controlled legislatures adopted laws that were clearly intended and unquestionably would have the effect of keeping African-Americans and Latinos from voting. Rulings in the last few weeks, by federal district courts and federal courts of appeals, striking down restrictive voting laws in Kansas, North Carolina, North Dakota, Texas and Wisconsin send a clear message that laws that such laws are unconstitutional.

In Crawford v. Marion County Election Board, 553 U.S. 181 (2008), the Supreme Court upheld a facial challenge to an Indiana law requiring photo identification for voting. In the Indiana Legislature, every Republican voted in favor of the measure and every Democrat voted against it. There was no doubt that its largest effect would be to keep African-Americans, who overwhelmingly vote Democratic, from being able to cast ballots. But the Supreme Court, in a 6-3 decision, said that a requirement for photo identification was on its face racially neutral and was facially constitutional. The court, though, explicitly left open the possibility for challenges to this and other similar laws based on how they are applied.

Now, courts throughout the country are rightly holding that these laws as applied have a discriminatory effect against minority voters, as well as having been motivated by a racially discriminatory purpose. The North Carolina law is illustrative. A conservative, Republican state legislature imposed restrictions on voting knowing that the effect would be disproportionately to keep racial minorities, who tend overwhelmingly to vote Democratic, from being able to cast ballots. The law required that individuals present photo identification in order to vote, eliminated same day registration on Election Day, prevented those under 18 from registering to vote at the next election where they would be eligible, greatly restricted early voting, and refused to count ballots from those who mistakenly voted at the wrong polling place.

On July 28, the 4th U.S. Circuit Court of Appeals concluded that the North Carolina Legislature carefully looked for and chose measures that would keep racial minorities from being able to vote. North Carolina State Council of NAACP v. McCrory, 16-1468. The court declared: "We cannot ignore the record evidence that, because of race, the legislature enacted one of the largest restrictions on the franchise in modern North Carolina history." The said that "[t]he new provisions target African Americans with almost surgical precision."

A week earlier, the 5th U.S. Circuit Court of Appeals, in an en banc decision, struck down key provisions of a Texas law that is one of the most restrictive in the country in requiring photo identification for voting. Veasey v. Abbott, 14-41127 (July 20, 2016). The court concluded that the Texas law disproportionately burdened black and Hispanic voters, thereby violating the federal Voting Rights Act's ban on racial discrimination in American elections. The federal district court, after a lengthy hearing, concluded that the law would keep 600,000 eligible voters, overwhelmingly African-American and Latino, from being able to vote. The Court of Appeals declared: "The record shows that drafters and proponents of SB 14 were aware of the likely disproportionate effect of the law on minorities, and that they nonetheless passed the bill without adopting a number of proposed ameliorative measures that might have lessened this impact."

Critics of these decisions immediately said that they were partisan rulings by Democratic judges. But that is false; judges appointed by both Democratic and Republican presidents were in the majority in these decisions. The 5th Circuit decision was written by Judge Catharina Haynes, who had been appointed to the court by President George W. Bush. In fact, there are 15 judges on the 5th Circuit and 10 were Republican appointees; nonetheless, with all 15 judges participating in the en banc decision, the court overwhelmingly voted to invalidate the Texas law.

The Supreme Court long has held that the right to vote is a fundamental right under the Constitution and laws that are adopted with the purpose of harming minority voters are unconstitutional. The 15th Amendment says that the right to vote cannot be denied on account of race. Additionally, the Voting Rights Act prevents the government from acting with the purpose or the effect of harming minority voters.

The evidence is overwhelming that restrictions, such as strict requirements for photo identification, will have a disproportionate effect on minority voters. In fact, all of the recent decisions have invalidated these requirements on exactly that basis. Proponents of the law argue that the laws were motivated by a desire to stop voter fraud. But many studies have demonstrated that voter fraud rarely occurs through people claiming a false name. In striking down the North Carolina law, the 4th Circuit said that it "impose[s] cures for problems that did not exist."

It will be interesting to see what the eight-member Supreme Court will do in the weeks before the election. Of those who participated in Crawford, six justices remain on the court: John Roberts, Anthony Kennedy, Clarence Thomas and Samuel Alito, who upheld the law, and Justices Ruth Bader Ginsburg and Stephen Breyer who voted to strike it down as facially unconstitutional. There is every reason to believe that Justices Sonia Sotomayor and Elena Kagan would join them. At the very least, this would mean 4-4 splits, which would uphold the lower court decisions striking down these restrictions on voting. Or perhaps, with the compelling evidence found by the lower courts, a majority would vote to affirm and invalidate the restrictions. Of course, it also is possible that the Supreme Court will deny review in some or all of these cases, which also would leave the lower court decisions in place.

The United States has a dismal history of equality with regard to voting. The 15th Amendment was adopted in 1870, but it was rarely enforced until the Voting Rights Act of 1965. Throughout American history, states have repeatedly adopted a wide array of restrictions on voting designed to keep racial minorities from being able to cast ballots. The recent decisions of federal courts of appeals and federal district courts are crucial in ensuring that state legislatures no longer can enact laws to keep African-Americans and Latinos from voting.

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