

ORANGE COUNTY REGISTER

Protecting the right to vote

[By ERWIN CHEMERINSKY](#)

2016-08-10 19:54:57

Several recent federal court decisions have invalidated state laws restricting voting, and have reaffirmed a basic principle: Laws adopted with the purpose of, or that have the effect of, keeping racial minorities from voting are invalid. No right is more precious in a democracy than the right to vote. As the U.S. Supreme Court declared long ago, it is preservative of all other rights. But in a number of states, Republican-controlled legislatures adopted laws that were clearly intended to keep African Americans and Latinos from voting. Rulings in the last few weeks striking down restrictive voting laws in Kansas, North Carolina, North Dakota, Texas and Wisconsin send a clear message: The government cannot act to suppress voting by racial minorities.

In North Carolina, 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 for which they would be eligible, greatly restricted early voting and refused to count ballots from those who mistakenly voted at the wrong polling place.

On Thursday, July 28, the United States Court of Appeals for the Fourth Circuit concluded that the North Carolina legislature carefully looked for, and chose, measures that would keep racial minorities from being able to vote. 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.”

A week earlier, the Fifth Circuit Court of Appeals struck down key provisions of a Texas law that is one of the most restrictive in the country in requiring photo identification for voting. 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 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 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. In fact, 10 of the 15 judges on the Fifth Circuit were Republican appointees.

The Supreme Court long has held that voting is a fundamental right under the Constitution, and that laws that are adopted with the purpose of harming minority voters are unconstitutional. The Fifteenth 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. Proponents 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 Court of Appeals said that the law's provisions "impose cures for problems that did not exist."

The United States has a dismal history of equality with regard to voting. The Fifteenth 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.

Donald Trump recently asserted that the November election will be rigged. There is no evidence to support this. And these recent decisions show that the federal courts will be vigilant in making sure that the polls across the country will be open to all eligible voters to cast ballots.

Erwin Chemerinsky is dean of the UC Irvine School of Law.

© Copyright 2016 Freedom Communications. All Rights Reserved.