

PAN-ETHNICITY REVISITED: ASIAN INDIANS, ASIAN AMERICAN POLITICS,
AND THE VOTING RIGHTS ACT

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I. INTRODUCTION

- A. DEVELOPING IDENTITIES
- B. PAN-ETHNICITY

II. ASIAN INDIANS AS A POLITICAL GROUP

- A. NOTIONS OF ASIAN INDIAN POLITICAL ACTIVITY
- B. IDENTITY POLITICS

III. FEDERAL ELECTION COMMISSION'S CAMPAIGN FINANCE DATA

- A. FINDINGS
- B. BUILDING COALITIONS WITHIN AND ACROSS ETHNIC GROUPS

IV. ASIAN INDIANS AND THE ELECTORAL PROCESS

- A. THE VOTING RIGHTS ACT
- B. SECTION 2, *GINGLES* AND BEYOND
- C. ASIAN AMERICANS AND THE VOTING RIGHTS ACT
- D. ACHIEVING POLITICAL EMPOWERMENT

V. CONCLUSION

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Thanks to Suneet Lad and Sangmee Lee for helpful research assistance. Thanks to James Gimpel for helpful comments.

I. INTRODUCTION

A. DEVELOPING IDENTITIES

Asian Americans are both expanding in population size and constantly evolving as a group. The community presents a diverse range of social, economic, and political characteristics. Given their relatively recent immigration histories, many Asian ethnic groups are at the early stages of embracing a broader Asian identity that transcends individual ethnic identities. Asian Americans represent a conglomerate of various ethnic groups who are themselves fluid, rather than static, entities. Asian American demographics have been completely redefined since the Immigration Act of 1965. Prior to 1965, government restrictions on immigration prevented the entrance of large numbers of Asians into the United States. Accordingly, the majority of the group was native-born.¹ Some forty years later, with the revamping of U.S. immigration law, the group now reflects a larger foreign-born population.² Additionally, in the 1990 U.S. Census, Asian Americans numbered just over 7 million.³ As of 2002, the number had swelled to 12.5 million.⁴

As Asian immigrant groups begin to acculturate, their foray into the political scene becomes more likely. The next generation of this large immigrant group will more likely be socialized into mainstream American politics, instilled with a sense of civic duty, and groomed to believe in the democratic institutions that shape this country. For Asian Americans, the ripeness of the political calling is also affected by the aging of their population. As a group, they have a lower median age than non-Hispanic whites.⁵ Many questions regarding the political representation of Asian Americans remain unanswered. Will they exhibit enough of a pan-ethnic consciousness to reap the benefits of the large umbrella group? Will they be able to capitalize on existing legislation such as the Voting Rights Act of 1965 (“VRA”), meant to enhance minority representation? Is their political potential limited to success only in locales with high concentrations of Asian Americans?

How and whether Asian Americans will emerge as a viable political force remains uncertain.⁶ Analyzing the political potential of this group is a

¹ BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990* (1993).

² *See id.*

³ *See* U.S. Census Bureau (1990) *available at* <http://www.census.gov/main/www/cen1990.html>.

⁴ *See* Terrance Reeves and Claudette Bennett, “The Asian and Pacific Islander Population in the United States: March 2002,” *Current Population Reports, P20-540*, U.S. Census Bureau, Washington, DC and Claudette E. Bennett and Robert Bernstein, “Asian and Pacific Islander Americans: A Profile,” *Statistical Brief*, U.S. Census Bureau, Washington, DC.

⁵ *See* Reeves & Bennett, *supra* note 4.

⁶ *See, e.g.,* Pei-te Lien, *THE MAKING OF ASIAN AMERICA THROUGH POLITICAL PARTICIPATION* (2001); Wendy K. Tam, *Asians—A Monolithic Voting Bloc?* 17 *POL. BEHAV.* 223–249 (1995); Don Nakanishi, *The Next Swing Vote? Asian Pacific Americans and California Politics*, in *RACIAL AND ETHNIC POLITICS IN CALIFORNIA* 25 (Byran O. Jackson & Michael B. Preston, eds., 1991); CAROLE J. UHLANER, BRUCE E. CAIN, AND D. RODERICK KIEWIET, *Political Participation of Ethnic Minorities in the 1980s*, 11 *POL. BEHAV.* 195–232 (1989).

challenging endeavor because of its exceptionally fluid composition. Immigration from Asia forges ahead at a rapid pace, the proportions of the various ethnicities continue to shift, and the balance between foreign-born and native-born fluctuates.

B. POLITICAL EMPOWERMENT THROUGH PAN-ETHNICITY

An assessment of the ideal method of political emergence for Asian Americans requires exploration of the pan-ethnicity concept. Pan-ethnicity refers to different ethnic groups identifying themselves as a single bloc along political, social, or economic interests.⁷ This is an intriguing and complex phenomenon. The degree of pan-ethnicity has been cited as a key to political empowerment through both electoral processes and remedial statutory schemes.⁸ In particular, such a cohesive political block is essential for access to relief under the Voting Rights Act.

We examine the pan-ethnicity question by focusing on the political emergence of Asian Indians. Specifically, we attempt to assess their political interests and the potential for political cohesiveness by exploring patterns evident in campaign contributions.⁹ We also take note of the popular notions of Asian Indian political participation by the mass media, as well as the conceptions of Asian Indian identity through the eyes of Asian Indian political candidates. By examining the experiences and issues faced by the Asian Indian community, we assess whether Asian Americans will find the Voting Rights Act to be an aid in a quest for political empowerment, or whether they will be unable to access the relief provided for in the VRA.

II. ASIAN INDIANS AS A POLITICAL GROUP

Investigating the political identity of Asian Indians uncovers intriguing issues because their racial identity has been one of the most volatile. In 1923, the Supreme Court held in *Bhagat Singh Thind v. United States* that Asian Indians are considered Caucasian, but not white.¹⁰ At that time, naturalized citizenship extended only to “free white persons” and those of African descent. Therefore, defining Asian Indians as Caucasian, but not white, barred naturalization applications by Asian Indians.¹¹ Furthermore, it challenged the validity of

⁷ YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 2 (1992).

⁸ CITE

⁹ While survey data for Asian Indians would be ideal, it is difficult to obtain because Asian Indians constitute such a small portion of the overall population in the United States. Moreover, the secret ballot obscures attempts to determine voter preferences directly. Hence, to address the pan-ethnicity question, we focus on campaign finance data.

¹⁰ 261 U.S. 204, 207 (1923) (stating that “[i]f the applicant is a white person, within the meaning of this section, he is entitled to naturalization; otherwise not”).

¹¹ See Section 2169, Rev. Stats, (provides that the provisions of the Naturalization Act shall apply to aliens, being free white persons, and to aliens of African nativity and to persons of African descent). Immigration Act of 1917, ch. 29, 9 Stat 874 (1917) (repealed 1952) (restricting the legal entry of Asian Indians into the United States).

naturalization petitions already granted.¹² The U.S. Census later (1920–1940) regarded all Asian Indians as “Hindoo” (irrespective of whether they were followers of the Hindu religion).¹³ In 1973, the Federal Interagency Committee on Education (“FICE”) offered Directive 15, which recommended that Asian Indians be ethnically and racially classified as a people distinct from the broader Asian American group.

The official designation of Asian Indians as Asian Americans has been a recent phenomenon, dating back just two decades. Although the 1980 Census incorporated most of the racial and ethnic designations for other groups in Directive 15, the Office of Management and Budget (“OMB”) deviated from the recommendations for Asian Indians.¹⁴ Instead, the OMB officially designated Asian Indians, for the first time in U.S. history, as falling within the category of Asian American. Asian Indians became categorized alongside Chinese, Filipino, Japanese, Korean, and Vietnamese. Because of this evolving label of “Asian American,” it is not surprising that political cohesiveness might not be immediate. Given this history, Asian Indians, as well as other Asian American subgroups, face significant barriers in embracing an Asian American identity.¹⁵

Moreover, the demographic composition of Asian Americans, including Asian Indians, has been rapidly changing.¹⁶ According to the U.S. Census, from 1990–2000, the Asian Indian population has grown by 106%, the fastest rate among all of the Asian ethnicities.¹⁷ They are now the second largest Asian ethnic group, smaller only than the Chinese. Although poverty is a rising concern, the Asian Indian group scores well on average socio-economic indicators. According to the U.S. Census, the Asian Indian group has one of the highest income and education levels in the United States.¹⁸ Like many of the other Asian groups, these socio-economic indicators have risen and changed dramatically in the course of their history in the United States.¹⁹

¹² At the time of the suit, Thind was applying for U.S. citizenship, which the federal district court had granted over the objection of the Naturalization Examiner for the United States, 268 F. 683 (D.C. Or. 1920), only to be reversed by the U.S. Supreme Court. For a discussion of the broader effects of the *Thind* decision, see JOAN M. JENSEN, *PASSAGE FROM INDIA: ASIAN INDIAN IMMIGRANTS IN NORTH AMERICA*, 259–65 (1988).

¹³ See U.S. Census 1920–1940.

¹⁴ See JUANITA TAMAYO LOTT, *ASIAN AMERICANS: FROM RACIAL CATEGORY TO MULTIPLE IDENTITIES* (1998).

¹⁵ See, e.g., Wendy K. Tam, *Asians—A Monolithic Voting Bloc?* 17 *POL. BEHAV.* 223–249 (1995); Wendy K. Tam Cho, *Tapping Motives and Dynamics Behind Campaign Contributions: Insights from the Asian American Case*, 30 *AM. POL. RES.* 347–383 (2002); Wendy K. Tam Cho, *Foreshadowing Strategic Pan-Ethnic Politics: Asian American Campaign Finance Behavior in Varying Multicultural Contexts*, 1 *ST. POL. & POL’Y Q.* 273–294 (2001); Yen Le Espiritu, *ASIAN AMERICAN PANETHNICITY* (1992); Don Nakanishi, *The Next Swing Vote? Asian Pacific Americans and California Politics*, in *RACIAL AND ETHNIC POLITICS IN CALIFORNIA* 25, (Byran O. Jackson & Michael B. Preston, eds., 1991).

¹⁶ See HING, *supra* note 1.

¹⁷ See Official census figures: Asian Indian 1990 population: 815,447; 2000 population: 1,678,765 - a 105.87% increase.

¹⁸ See *Id.*

¹⁹ See HING, *supra* note 1.

A. NOTIONS OF ASIAN INDIAN POLITICAL ACTIVITY

There has been relatively little research into the role of Asian Indians in American politics.²⁰ This article bases its analysis on several indicia relevant to Asian Indian political participation. First, we utilize observable trends in political contributions by Asian Indians to electoral candidates (the overwhelming majority of whom are not Asian Indian).²¹ Second, the observations of and comments from Asian Indian political candidates are analyzed. Finally, we examine political patterns such as the number of Asian Indian electoral candidates and the levels of government in which they have made noticeable impacts.

Since the majority of Asian Indians in the United States are recent immigrants, one might not expect them to have emerged as a viable political force through their participation in the American political process. As with many of the Asian groups, the majority of the Asian Indian population arrived in the U.S. following the 1965 immigration reforms. These reforms eliminated the existing national origins quota system, which had severely restricted immigration from Asian countries, and expanded the quota of immigrants from each country to 20,000 persons.²² In 1965, only 300 immigrants came from India; by 1975, immigration had risen to 14,000,²³ increasing the then-total number to over 175,000.²⁴ According to the Immigration and Naturalization Services (“INS”),²⁵ in 1980, over 80% of the Asian Indian group was foreign born. Since 1980, roughly 25,000 immigrants have arrived annually. Although unemployment and poverty are not insignificant, it is notable that, as a whole, Asian Indians have a higher than median income per worker than the general population.²⁶ Notably, the Asian Indian group comprised a large proportion of the immigrants who utilized the investor provision of immigration laws. Thus, the Asian Indian group is relatively new, but also relatively affluent.

²⁰ But see Vinjay Lal, *A Political History of Asian Indians in the United States*, in *LIVE LIKE THE BANYAN TREE: IMAGES OF THE INDIAN AMERICAN EXPERIENCE*, 42–48 (Leela Prasad ed., 1999) (describing the discrimination Asian Indians and all Asian Americans by the federal government with respect to immigration and citizenship); Karen McBeth Chopra, *A Forgotten Minority An American Perspective: Historical and Current Discrimination Against Asians from the Indian Subcontinent*, 1995 *Det. C. of L. Mich. St. U. L. Rev.* 1269 (1995) (describing discriminatory immigration, citizenship, educational, and employment bias established against Asian Indians).

²¹ See, e.g., Vindu P. Goel, *The Rise of Asian Indians*, *THE PLAIN DEALER*, July 28, 1996, at 8. (describing how in Ohio, Asian Indians contributed \$85,000 to Governor George V. Voinovich for the 1990 gubernatorial election, and have since contributed \$133,000 more).

²² See Stephen H. Legomsky, *Immigration, Equality, and Diversity*, 31 *COLUM. J. TRANSNAT'L L.* 319, 327 n.34 (1993).

²³ See Lydia Anderson, *Immigration* 33 (Franklin Watts 1981).

²⁴ See Lal, *supra* note 20, at ____.

²⁵ “On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) as the U.S. Citizenship and Immigration Services (USCIS).” About Us, US Citizenship and Immigration Services webpage, available at <http://uscis.gov/graphics/aboutus/index.htm>.

²⁶ See U.S. Census Bureau, *supra* note 13. NOTE 13 NO LONGER APPLIES.

Unlike most new immigrant groups which typically take time to adapt to new political structures, the Asian Indian group has already shown trends indicating a rising political consciousness. For instance, in recent years, there has been a surge in Asian Indians seeking elected office. During the 2002 midterm elections, Asian Indian candidates sought various public offices, from city council seats, to the U.S. Senate. It is not surprising that the majority of these candidates ran for office in New York and California, where there are large concentrations of Asian Indians.²⁷ Asian Indians who have served in state legislatures include Nimi McConigley of Wyoming, along with current legislators Satveer Chaudhary of Minnesota, Kumar Barve of Maryland, Upendra Chivukula of New Jersey, and the recently elected Swati Dandekar of Iowa. Most recently, in November 2003, Piyush “Bobby” Jindal ran a spirited and close campaign for the governorship of Louisiana. Jindal, a Republican, was leading throughout the race, only to lose narrowly against the incumbent Democrat Lieutenant Governor, Kathleen Blanco, arguably a result of his political inexperience.²⁸ At the local level, at least three Asian Indians have held the position of mayor: Bala K. Srinivas in Hollywood Park, Texas; John Abraham of Teaneck, New Jersey; and Arun Jhaveri of Burien, Washington.

Most Asian Indian candidates have run at the local and state levels, but there have been some notable federal campaigns as well. One of the most noted Asian Indian elected officials is Dalip Singh Saund, a member of the House of Representatives (D-CA) from 1957–1963, who helped develop diplomatic relationships between the United States and India.²⁹ In 2004, Bobby Jindal won a congressional seat for the first district of the state of Louisiana and is the second Asian Indian ever elected to federal office. The latest census figures estimate the Asian Indian population at approximately 1.7 million nationally,³⁰ so the potential voter base is significant. However, since the Asian Indian population is not geographically compact, obtaining relief under the Voting Rights Act as well as securing an electoral base may be problematic. According to the Indian American Center for Political Awareness, under a system of proportional government, the existing Asian Indian population figures would roughly translate into three seats in the U.S. Congress and forty-five seats in the various state legislatures.

Several factors may explain the lack of electoral success for Asian Indian candidates. Some pundits claim that many Asian Indians simply set their sights too high—some run for federal office having held no previous elected office, or having never waged a meaningful political campaign. Perhaps the greatest benefit Asian Indians have accrued from running for federal office is simply experience. Consider, for instance, the 2002 midterm elections. Ela Dutta and Vasantha Arora note in their *Desi Talk* article (November 1, 2002),

²⁷ See Wendy K. Tam Cho & Suneet P. Lad, *Subcontinental Divide: Asian Indians and Asian American Politics*, AM. POL. RES. (forthcoming 2004).

²⁸ Leading in the polls days before the election, Jindal, former Secretary of Health and Hospitals for Louisiana, chose not to respond to political advertisements attacking his health care proposal. He subsequently lost the election by a 52–48 margin. Jeffrey Gettleman, *In Louisiana Election, a First and a Near First*, N.Y. TIMES, Nov. 17, 2003, at A12.

²⁹ See D. S. SAUND, CONGRESSMAN FROM INDIA (1960).

³⁰ See U.S. Census Bureau, QT-p.3. Race and Hispanic or Latino: 2000 (2000), available at <http://www.census.gov/main/www/cen2000html>.

...of the Congressional races where Indian Americans are running, they are pitted against safe winning candidates, signifying almost that Indian Americans chose to run or were chosen to run losing campaigns just to gain the experience of the political process. For example, in New York's District 26, which is a safe Republican District, the Democratic Party put up Ayesha Nariman against Republican incumbent Thomas M. Reynolds. Meanwhile, Democrat Edolphus Towns of District 10 in New York, who speaks frequently against India, is unopposed. Again, in the safe Republican District 29 in New York, Democrat Peter Kisun has little chance of getting anywhere against incumbent Amo Houghton. In New Jersey's District 11, a safe Republican district, Democrat Vij Pawar is facing incumbent Rodney Frelinghuysen.

This situation appears to be the norm for Asian Indians who have waged campaigns for elected office, especially Congressional seats.

A constant flow of Asian Indian immigrants has led to the growth of an electoral base from which Asian Indian candidates can draw. These demographic trends alone do not empower Asian Indians to become a formidable political force. However, a closer examination of Asian Indian political participation reveals that this group has the potential to appear on the political landscape more quickly than most would expect. For example, as noted above, Asian Indians already comprise a relatively large number of electoral candidates. In addition, the socio-economic and demographic indicators among the grassroots electorate suggest a rapid road to political assimilation and participation.

B. IDENTITY POLITICS

Identity issues have posed a concern for Asian Indians who have forayed into the political scene. Specifically, it is unclear what position Asian Indians occupy in relation to the broader Asian American population. Consider the candidacy of Ram Uppuluri, a Democrat from Tennessee who ran for Congress in 1994. Although his mother was Japanese and his father was Asian Indian, Uppuluri identified himself as a Tennessean throughout his campaign.³¹ By labeling himself in an ethnically-neutral manner, Uppuluri had hoped to vanquish concerns about which constituent group he was seeking to serve.³² Uppuluri's attempts to tap into ethnic communities outside the Asian Indian ethnic group yielded only moderate success.³³ His efforts to reach out to the Japanese American community were met with failure, despite a concerted effort to increase his visibility within the Japanese American community through interaction with prominent Japanese Americans and

³¹ Rajini Srikanth, *Ram Yoshino Uppuluri's Campaign: The Implications for Panethnicity in Asian America*, in *A PART, YET APART: SOUTH ASIANS IN ASIAN AMERICA* 189, Lavina Dhingra Shankar & Rajini Srikanth, eds. 1998).

³² Id.

³³ Id.

the Japanese American press.³⁴ Some considered Uppuluri's effort to be "unfocused and not targeted to a specific type of Japanese American contributor or voter."³⁵

In the end, his efforts to include the Japanese American community proved futile because Uppuluri was considered to be a candidate for only Asian Indians. By contrast, his efforts to gain campaign support from the Asian Indian community were eagerly embraced. The popular press wrote articles referring to Uppuluri as an Indian American politician. Moreover, among Uppuluri's 260 campaign contributions, the majority (approximately 80%) were from Asian Indians, while a scant 1.25% were from Japanese Americans.³⁶ Identity played a key role in the ultimate failure of Uppuluri's campaign.

Moreover, interviews with a number of Asian Indian candidates reveal that their main concerns do not center upon an Asian American or Asian Indian identity. According to Minnesota State Senator Satveer Chaudhary, currently the highest ranking Asian Indian in elected office, "[T]he beauty of Indian issues and Asian issues is that our concerns are mainstream. We want solid education—both secondary and post-secondary. We have an interest in workplace equity and job growth, especially high tech growth We have an interest in a society free from racism."³⁷ Neil Dhillon, a candidate for the U.S. House of Representatives in 1994, stated that his campaign focus was job creation. His bottom line is that "you are working for the people of this country." Former Wyoming state legislator, Nimi McConigley, states that "Indian Americans must consider mainstream issues such as a balanced budget, health care, and social security as well, if they seek to win more support. If they think only of immigration issues, they will seem self-serving." Ayesha Nariman, a Democrat who ran unsuccessfully for Congress in New York's 26th district, had a campaign focused on frugality in government and balancing federal budgets. Lastly, recently-elected Iowa state representative Swati Dandekar believes that her friends and constituents see her as "mainstream American, part of America," with little thought about her Indian American heritage. She ran on a platform focused on education and economic development. Clearly, Asian Indian politicians focus their campaigns on broader constituents' issues and not on Asian Indian or Asian American issues alone.

Despite the increase in Asian Indian political activity, the role of Asian Indians within Asian American politics is not clear. Nonetheless, the Asian Indian group is poised in a unique position to make a clear political mark. Asian Indians have high socio-economic indicators and high rates of English proficiency, implying that they are likely to have and maintain high levels of political participation. They have also fielded an impressive number of viable political candidates for office at all levels of government. Within the broader Asian American population, Asian Indians are making a strong bid to become one of the most politically active and politically successful ethnic groups.

³⁴ Id.

³⁵ Id.

³⁶ See id. at 198.

³⁷ Anne Kim, *Chaudhary's Appeal—South Asian Sensibility*, ASIAN WEEK, Sept. 15, 2000, at 18. available at http://www.asianweek.com/2000_09_15/feature.html.

III. FEDERAL ELECTION COMMISSION'S CAMPAIGN FINANCE DATA

Determining how Asian Indians behave politically is not a simple task. In the United States, because ballots are secret, the political preferences of an ethnic group remain largely hidden. Surveys and exit polls allow some glimpses into political preferences, but it is rare to find an abundant number of Asian American responses in either surveys or exit polls. If the focus is on an even smaller group, such as Asian Indians, the possibilities become even scarcer. However, campaign finance data present a rich source of information illustrating Asian Indian political preferences. For some ethnicities, including Asian Indians, names are fairly distinctive. Therefore, we can reliably parse data with name records for Asian Indians. Our observations are based on the Asian Indian contributors in the Federal Election Commission ("FEC") data from 1980–2000. This list is a *comprehensive* list of Asian Indian contributions to federal campaigns, Political Action Committees ("PACs"), and party organizations for this twenty-year time period. We also examine contributions from any donor to Asian Indian candidates for federal office. This data set is also a comprehensive list of Asian Indian candidates for the same time period. For each of these candidates, we have the full set of recorded contributions for each specific campaign, as well as a list of Asian Indian contributors. Thus, this data allows us to track political activity for all Asian Indian candidates as well as Asian Indian campaign donors.

A. FINDINGS

Asian Indians contributions have risen significantly since 1980. In 1980, they gave a total of approximately \$129,000, but by the 2000 election cycle, this total amount had risen to over \$8 million dollars. Donations are clearly trending upward, and in quite a dramatic fashion. The rapid increase in donation amounts, coupled with the fact that Asian Indians have one of the highest median incomes of any group in the United States, implies that their potential monetary support for political candidates is enormous. Note as well that the rate of growth in contributions exceeds the growth rate of the population.³⁸ While the population has doubled in the last two decades, the rise in contributions has far overshadowed even this phenomenal population growth.

For our purposes, the more interesting question is not how much money Asian Indians contribute, but for what causes the money is donated. Are these patterns similar to other Asian American groups? Is there some obvious connection of interests that is evident across various ethnicities? In the political realm, the most obvious divide is partisan in nature. Figure 1 shows that Asian Indian contributors favor Democrats, a preference that has been almost constant throughout the period for which data is available. The 1990s were especially divisive on the party front. The Asian Indian group is not as strongly in the Democratic camp as blacks and Latinos, but their preferences, as indicated by their financial contributions, clearly lean in that direction. While this campaign contribution data does not necessarily represent the sentiments of the entire Asian Indian electorate, it is indicative of some general tendencies. Inauspiciously for

³⁸ See U.S. Census Bureau, *supra* note 17.

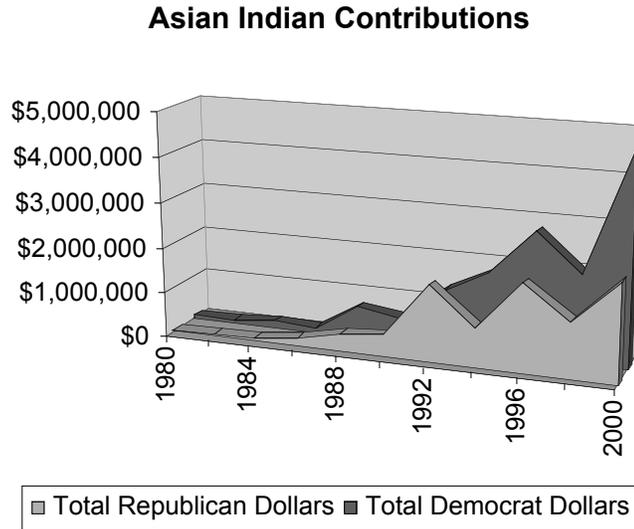


Figure 1. Asian Indian Campaign Contributions by Party (1980–2000).

voting rights issues, many of the other Asian groups tend to lean in the other direction. In particular, the Chinese and Koreans lean more Republican.³⁹ The newer immigrant and refugee groups tend to lean Republican as well. The notable exception to these Republican tendencies is the Japanese, who appear to clearly favor the Democratic party.⁴⁰ These patterns are evident in both registration preferences as well as vote choices.

Also, examining the patterns of who contributes to Asian Indian candidates can help explain the potential for a pan-ethnic Asian American political emergence. Table 1 is a listing of contributions to Asian Indian candidates who ran for federal office from 1980–1998. Table 2 displays contributions to Asian American candidates (of ethnicities other than Asian Indian) who ran for federal office from 1980–1998.⁴¹ The tables list each candidate's name, the elected seat he or she sought (*Race*), the year of the race (*Year*), the number of contributors (*N*), the total amount in contributions (*Amount*), the percentage of total contributions donated by Asian Americans (*Asian*), and the percentage of the Asian American contribution that came from the candidate's own ethnic group (*Ethnic*).

The results reveal that as a general matter, Asian American candidates rely heavily on contributions from Asian American donors, and donors within their own ethnic group. There are subtle differences across subgroups, with candidates of Korean ethnicity more reliant on contributions within their own

³⁹ Tam, *supra* note 6 at 241.

⁴⁰ *See id.* at 238.

⁴¹ Table 2 does not include data for incumbent Representatives Robert Matsui (D–CA) and Norman Mineta (D–CA). Both Matsui and Mineta were in public office for many terms. Since contributions for incumbents are affected by additional factors, data for Matsui and Mineta are not included in this table.

Table 1. Contributions to Asian Indian Candidates.

<u>Candidate</u>	<u>Race</u>	<u>Year</u>	<u>Contributions</u>			
			<u>N</u>	<u>Amount</u>	<u>Asian</u>	<u>Ethnic</u>
Indian						
Yash Aggarwal (D)	NY-20	1996	194	\$87,221	95.8%	100%
Jorawar Misir (R)	NY-6	1996	12	\$5,950	50%	100%
Dianand Bhagwandin (R)	NY-6	1992	39	\$16,375	69%	100%
Dianand Bhagwandin (R)	NY-6	1994	0	\$0	0%	0%
Neil Dhillon (D)	MD-6	1994	496	\$263,038	85.8%	99.5%
Peter Mathews (D)	CA-38	1992	30	\$14,771	83.3%	100%
Peter Mathews (D)	CA-38	1994	544	\$267,569	88%	100%
Peter Mathews (D)	CA-38	1996	80	\$34,731	67.5%	100%
Peter Mathews (D)	CA-38	1998	160	\$68,639	90%	100%
Ram Uppuluri (D)	TN-3	1994	261	\$95,771	78%	97.5%
Nag Nagarajan (D)	IN-6	1996	18	\$6,676	100%	100%
Nag Nagarajan (D)	IN-6	1998	1	\$500	100%	100%
Nag Nagarajan (D)	IN-6	2000	7	\$2,551	85.7%	100%
Nimi McConigley (R)	WY	1996	79	\$42,750	72.2%	100%

ethnic group than Chinese, Japanese, or Vietnamese candidates. The trend, however, is most pronounced for Asian Indians; for all candidates, except Neil Dhillon and Ram Uppuluri, any contribution from an Asian donor came from an Asian Indian donor.⁴² Even Dhillon and Uppuluri received virtually 100% of their contributions from Asian Indians (99.5% and 97.5%, respectively). The examination of this FEC contribution data, both of the political perspectives of Asian American donors and the political supporters of Asian American candidates, suggests that the notion of pan-ethnicity does not exist.

The strong nationalistic theme in the contributions data do not differ based on the type of election, the type of candidate, or the percentage of the electorate that is Asian. Candidates who raised a lot of money failed to tap into the broader Asian American network. Likewise, candidates who raised less money drew their funds from the same group of contributors. Nor did the seriousness of the candidacy, as measured by the amount in contributions and the percentage of the vote that the candidate received, affect these trends. Candidates who ran in both a primary and general election could not collect any more money from the pan-ethnic contribution network than those who lost their primary bid.

Tables 1 and 2 raise a question of causality prevalent in electoral politics. Are Asian Indians unsuccessful because they cannot raise sufficient funds, or have they been unable to mount credible campaigns, or both? An Asian Indian

⁴² Anecdotal accounts suggest that for Asian Indian contributors, ethnicity transcends politics. In the Louisiana gubernatorial race, registered Asian Indian Democrats nonetheless contributed to Piyush "Bobby" Jindal, a Republican. One Democratic contributor remarked, "[Political affiliation] doesn't matter. Bobby is one of us. And blood is thicker than water." See Gettleman, *supra* note 24.

candidate who wishes to mount a serious campaign for federal office likely needs to raise money not only from the broader Asian American base (perhaps a natural constituency), but also from the general population.⁴³ In general, Asian Indian candidates have yet to seriously contend for federal office. Perhaps the lack of financial contributions stems from this political invariability. Or, perhaps the inability to court a diverse financial and electoral base has thwarted otherwise serious campaigns. The origin or cause of Asian Indian candidates' invariability remains unclear. However, the disjuncture between Asian Indians and other Asian American groups, appears undeniable.

Although donations data indicate that Asian Indian contributors prefer to support Democrats over Republicans, no such bias for one party emerges among Asian Indian candidates. Asian Indian candidates identified with the two major parties in nearly equal proportions. Moreover, neither Republican nor Democratic candidates acquired significant political donations outside the Asian Indian group.

The demographic make-up of a particular geographical district also did not factor into patterns observed from the FEC data. Districts exist in the West, the East, and the Midwest. The presence of Asian Indians and other minorities in these districts does not seem related to the contribution levels examined. Only a handful of congressional districts have a sizeable number of Asian Americans.⁴⁴ Districts with a 1% Asian population are not unusual, so a district with an Asian American population of 9% would have a relatively high concentration. Perhaps somewhat unexpectedly, the behavior of Asian Americans and Asian Indians in a district with a relatively high proportion of Asian Americans, and one with a low proportion of Asian Americans, seems comparable.

Essentially, one clear and definite pattern emerges from this data, unaffected by any other variables: Asian Indian candidates are successful at courting only the Asian Indian constituency. They have failed at tapping into the support of the larger Asian American population base. Whether this inability arises from a lack of interest, is a separate matter outside the scope of these data.

B. BUILDING COALITIONS WITHIN AND ACROSS ETHNIC GROUPS

The challenges of achieving political cohesion within the Asian Indian community replicate the difficulties that Asian Indians face in building inter-ethnic political cohesion across the broader Asian American community. In comparison to

⁴³ Wendy K. Tam Cho, *Tapping Motives and Dynamics Behind Campaign Contributions: Insights from the Asian American Case*, 30 AM. POL. RES. 347–383 (2002) (showing the extent of the nationalistic theme in contributions to Asian American candidates), Wendy K. Tam Cho, *Foreshadowing Strategic Pan-Ethnic Politics: Asian American Campaign Finance Behavior in Varying Multicultural Contexts*, 1 ST. POL. & POL'Y Q. 273–294 (2001) (demonstrating many of the same themes within the context of Hawaiian politics), Yen Le Espiritu, ASIAN AMERICAN PANETHNICITY (1992) (displaying evidence from two races), and James S. Lai, *Asian Pacific Americans and the Pan-Ethnic Question*, in RICHARD A. KEISER AND KATHERINE UNDERWOOD, EDS, MINORITY POLITICS AT THE MILLENNIUM (2000) (showing many of the same patterns among local races).

⁴⁴ See MICHAEL BARONE & RICHARD E. COHEN, ALMANAC OF AMERICAN POLITICS (Charles Mahtesian ed., 2004).

Table 2. Contributions to Asian American Candidates (excluding Asian Indians).

<u>Candidate</u>	<u>Race</u>	<u>Year</u>	<u>Contributions</u>			
			<u>N</u>	<u>Amount</u>	<u>Asian</u>	<u>Ethnic</u>
Korean						
Sang Korman (R)	CA-21	1988	121	\$99,000	99%	100%
Sang Korman (R)	CA-21	1990	281	\$172,800	99%	99%
Sang Korman (R)	CA-24	1992	112	\$75,600	96%	100%
Sang Korman (R)	CA-24	1994	68	\$46,800	96%	100%
Jay Kim (R)	CA-41	1992	644	\$319,590	85%	85%
Jay Kim (R)	CA-41	1994	740	\$374,258	85%	85%
Jay Kim (R)	CA-41	1996	635	\$361,340	81%	93%
Jay Kim (R)	CA-41	1998	351	\$235,182	89%	94%
Kyo Paul Jhin (R)	CA-24	1996	60	\$31,850	93%	89%
Jay W. Khim (R)	VA-11	1992	40	\$23,150	60%	96%
Paull Shin (D)	WA-2	1994	193	\$125,985	77%	97%
Paul Park (D)	IL-Senate	1996	53	\$20,400	98%	100%
John Lim (R)	OR-Senate	1998	428	\$302,406	93%	91%
Chinese						
Dan Wong (R)	CA-34	1982	9	\$5,100	100%	100%
Lily Chen (D)	CA-30	1988	137	\$112,548	96%	98%
Albert C. Lum (D)	CA-30	1992	263	\$172,588	86%	96%
Elsa Cheung (R)	CA-8	1994	13	\$5,000	92%	85%
Doris Liu (R)	CA-15	1994	3	\$1,750	33%	33%
Matt Fong (R)	CA-Senate	1998	11,171	\$7,995,453	27%	89%
Jesse Chiang (I)	WA-Senate	1982	1	\$500	0%	0%
Soleng Tom (D)	AZ-5	1982	4	\$3,000	100%	100%
S.B. Woo (D)	DE-Senate	1988	1287	\$1,063,158	93%	93%
S.B. Woo (D)	DE-AL	1992	994	\$485,366	93%	92%
Esther Lee Yao (R)	TX-25	1992	206	\$108,732	91%	99%
Cheryl Lau (R)	NV-2	1996	168	\$85,805	83%	96%
David Wu (D)	OR-1	1998	1388	\$672,293	35%	92%
Japanese						
Rose Ochi (D)	CA-30	1982	25	\$17,500	84%	67%
Mark Takano (D)	CA-43	1992	137	\$72,926	65%	82%
Mark Takano (D)	CA-43	1994	262	\$120,405	53%	37%
Tom Shimizu (D)	UT-2	1986	99	\$72,570	11%	91%
Glenn Sugiyama (D)	IL-9	1992	50	\$28,851	28%	79%
Vietnamese						
Binh Ly (R)	FL-19	1994	31	\$20,860	62%	89%

Chinese, Japanese, and Korean Americans, the Asian Indian group is somewhat of an anomaly. Previous research indicates that Chinese, Japanese, and Korean campaign contributors generally favor the Republican group.⁴⁵ In contrast, the data for the Asian Indian group shows that they appear to prefer the Democratic camp. Heterogeneity in political preferences between Asian Indians and other Asian ethnicities make it difficult for these subgroups to exhibit pan-ethnicity along political grounds. Moreover, the campaign finance data does not support the conclusion that a pan-ethnic identity is emerging. Instead, a nationalistic theme underlies the pattern of campaign contributions. Asian Indians collect the vast majority of their campaign contributions from within their own ethnic community, while failing to draw support from outside the Asian Indian community. Similarly, Chinese, Japanese and Korean candidates tend to raise funds within their own subgroups with few contributions from other subgroups.

Asian Americans need to demonstrate political cohesiveness in order to gain political strength through the provisions of the Voting Rights Act. However, as described in the next section, heterogeneity in political preferences among Asian Americans may block such judicial relief under the Voting Rights Act. Even if a court accepted the political cohesiveness argument, the data indicates that significant challenges face the consolidation of Asian Americans into a powerful and unified bloc. Admittedly, the campaign finance data speak only to an elite group of individuals who have the capacity to donate capital to political causes, and not the larger Asian American group. However, the limited data that does exist on voter registration or voters' choices verify the Democratic leanings of the Asian Indian community.⁴⁶

IV. ASIAN INDIANS AND THE ELECTORAL PROCESS

A. THE VOTING RIGHTS ACT

Voting rights legislation and anti-discrimination laws have a fairly lengthy history. However, prior to 1965, these measures were largely inefficient and ineffective in guaranteeing the right to vote for all citizens.⁴⁷ This right, while constitutionally protected by the Fifteenth Amendment,⁴⁸ was largely ignored by the states, which continued to practice *de jure* and *de facto* discrimination. States

⁴⁵ See Cho & Lad, *supra* note 23.

⁴⁶ See Pei-te Lien, Janelle Wong, & M. Margaret Conway, *Party Identification Among Asian Americans: Acquisition and Patterns* (2002), available at <http://apsaproceedings.cup.org/Site/papers/032/032007ConwayM.00.pdf>.

⁴⁷ The Civil Rights Acts of 1957, 1960, and 1964 were designed, in part, to address racially motivated actions, both public and private, that interfered with minority individuals' right to vote. See, e.g. *S.C. v. Katzenbach*, 383 U.S 301, 313 (1964) (describing the ineffectiveness of these acts). For a comprehensive history of voting rights legislation, see KEITH BYBEE, *MISTAKEN IDENTITY: THE SUPREME COURT AND THE POLITICS OF MINORITY REPRESENTATION* 12–30 (1998).

⁴⁸ See U.S. Const. Amend. XV, § 1. ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.").

discouraged minority groups, predominantly African-Americans, from voting through obstacles such as literacy tests, fitness of character tests, and poll taxes.⁴⁹

The Voting Rights Act of 1965 (“VRA”) is notable for its effectiveness in restoring the right to vote.⁵⁰ What began as litigation initiated by the U.S. Department of Justice on behalf of African American citizens unsuccessfully attempting to vote, culminated in sweeping federal legislation.⁵¹ The Act effectively shifted the burden of proof from plaintiffs (voters), who claimed discrimination, to voting officials by requiring them to demonstrate not merely that the voting practices in question lacked a discriminatory *purpose*, but also lacked a discriminatory *effect*. The Act consisted of two major provisions: Section 2 created a cause of action for any “denial or abridgment” of the right to vote on the basis of race;⁵² Section 5 required that electoral jurisdictions with a history of discriminatory voting practices submit for approval by the U. S. Attorney General any proposed procedural changes with respect to voting.⁵³ While Section 5 is arguably the centerpiece of the Act, Section 2 provides the mechanism by which voters can seek redress through the drawing of voting districts.

B. SECTION 2, GINGLES AND BEYOND

Section 2 adheres closely to the language of the Fifteenth Amendment, and applies a nationwide prohibition on the denial or abridgment of the right to vote based on race or color. The Supreme Court initially adopted a narrow view of Section 2. To mount a successful Fifteenth Amendment challenge, the Court required that plaintiffs first establish that voting officials possessed a “racially discriminatory motivation” when adopting the electoral system in question.⁵⁴ In 1982, Congress amended Section 2 of the Act to “provide minority groups a remedy for vote dilution without requiring a showing that the majority engaged in intentional discrimination.”⁵⁵ In effect, Congress recast the inquiry of discrimination away from intent and towards outcome.⁵⁶ In particular, this Section protects minority communities against dilution of their interests through

⁴⁹ For a discussion of discriminatory practices, see Voting Rights: Hearings on H.R. 6400 Before Subcomm. No. 5 of the House Comm. on the Judiciary, 89th Cong., 1st Sess. 9 (1965).

⁵⁰ J. MORGAN KOUSSER, *COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION* 19 (1999) (documenting the rise in elected black legislators since 1965); BERNARD GROFMAN, LISA HANDLEY AND RICHARD G. NIEMI, *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY* 23–24 (1992) (describing the closing registration gap between whites and blacks).

⁵¹ *Id.*

⁵² Voting Rights Act, § 2, 79 Stat. 437.

⁵³ Alternatively, jurisdictions can seek approval from the U.S. District Court for the District of Columbia. See 42 U.S.C. 1973c.

⁵⁴ *Mobile v. Bolden*, 446 U.S. 55, 62 (1980).

⁵⁵ *Garza v. County of Los Angeles*, 918 F.2d 763, 769–70 (9th Cir., 1990), *cert. denied*, 498 U.S. 1028 (1991).

⁵⁶ For a succinct discussion of the 1982 Amendments, see Samuel Issacharoff, *Polarized voting and the Political Process: The Transformation of Voting Rights Jurisprudence*, 90 MICH. L. REV. 1833, 1835 (1992).

redistricting⁵⁷ by enabling the creation of majority-minority districts that would virtually ensure minorities the ability to elect a representative of their choice.⁵⁸

In the seminal case, *Thornburg v. Gingles*, the Supreme Court affirmed the constitutionality of the 1982 amendments to the VRA.⁵⁹ In interpreting Section 2, it outlined three conditions for creating a majority-minority district. First, the minority community must be sufficiently large and geographically compact to constitute a majority in a single-member district.⁶⁰ Second, the minority group must demonstrate political cohesiveness.⁶¹ Third, the white majority must vote sufficiently as a bloc such that, in the absence of special circumstances such as a minority candidate running unopposed, it usually defeats the minority's preferred candidate.⁶² Plaintiffs must satisfy each of these conditions,⁶³ upon which the court decides whether relief will be granted under the Act.⁶⁴ Although the test appears straightforward, debate remains as to what constitutes "cohesiveness" and "bloc voting" and how courts should measure these elements.⁶⁵ In the aftermath of *Gingles*, lower courts have differed on their interpretations of the three-pronged test.⁶⁶

Since *Gingles*, the Court has since qualified its position on the appropriate role of ethnicity on redistricting.⁶⁷ In *Shaw v. Reno*, the Court held that a plaintiff

⁵⁷ See 42 U.S.C. § 1973 (2003). Specifically, Section 2 of the Voting Rights Act prohibits states and localities from vote discrimination, including vote dilution.

⁵⁸ See SAMUEL ISSACHAROFF ET. AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 741-45, 859-66 (2001) (discussing lower court decisions concerning the constitutionality of the 1982 Amendments).

⁵⁹ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁶⁰ *Id.* at 49-50.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *Overton v City of Austin*, 871 F.2d 529, 538 (5th Cir. 1989) (holding that "We need not address all of (the plaintiffs') contentions, however, because failure to establish any single criterion of (*Gingles*) is fatal to their case."); *McNeil v Springfield Park Dist.*, 851 F.2d 937, 942 (7th Cir. 1988) (ruling that "To pass the summary judgment threshold, . . . the *Gingles* preconditions (must be) met.").

⁶⁴ See *Thornburg*, 478 U.S. 30 at 43.

⁶⁵ See, e.g., Paul McCaskle, *The Voting Rights Act and the "Conscientious Redistricter"*, 30 U.S.F. L. REV. 1, 74-77 (1995) (describing the conceptual unwieldiness of cohesiveness and bloc voting). See also Wendy K. Tam Cho and Albert Yoon, *Strange Bedfellows: Politics, Courts, and Statistics: Statistical Expert Testimony in Voting Rights Cases*, 10 CORNELL J. L. & PUB. POL'Y. 237, 255-56 (2001) (describing the obstacles of using ecological inference techniques to determine cohesiveness and bloc-voting).

⁶⁶ In *Solomon v. Liberty County*, 899 F.2d 1012 (11th Cir. 1990) (en banc) (5-4 decision) *cert. denied*, 498 U.S. 1023 (1991), a majority held that satisfying the three part *Gingles* test was sufficient to make a Section 2 claim, with the dissent requiring an additional showing of bias by the legislature or community. Conversely, in *Brewer v. Ham*, 876 F.2d 448, 452 (5th Cir. 1989), the court rejected total population data in favor of voting age population data to demonstrate, pursuant to *Gingles*, geographical compactness and numerical sufficiency constituting a majority in a single member district.

⁶⁷ As scholars have noted, Section 2, in conjunction with *Gingles*, had the consequence of creating non-compact, and often bizarre, drawing of electoral districts. See Richard H. Pildes & Richard G. Niemi, *Symposium: The Future of Voting Rights After Shaw v. Reno, Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v.*

may challenge a North Carolina reapportionment statute under the Equal Protection Clause by alleging that the legislation, although race-neutral on its face, unjustifiably separates voters into different districts on the basis of race.⁶⁸ *Shaw* set the boundaries of permissible race-conscious districting, applying strict scrutiny when evaluating districts which are “highly irregular,” “tortured,” “bizarre,” and “irrational on its face.”⁶⁹ The Court revisited the constitutionality of the same state reapportionment statute in *Shaw v. Hunt*, striking it down on grounds that the district was not narrowly drawn to meet a compelling state interest.⁷⁰ These two cases left unanswered whether courts should apply strict scrutiny when generally evaluating race-conscious districts, an issue which the Court addressed in *Miller v. Johnson*.⁷¹

In *Miller*, the Court announced for the first time that race cannot be the predominant factor motivating the drawing of a district.⁷² Courts, upon determining that racial considerations were the “predominant motive” for the drawing of a given district—irrespective of shape—would apply strict scrutiny.⁷³ In that same term, the Court reinforced this principle in *Bush v. Vera*, striking down three majority-minority Congressional districts that it deemed were created primarily to increase the strength of the African American and Hispanic vote.⁷⁴

While scholars have debated the doctrinal implications of *Shaw* and its progeny,⁷⁵ they generally agree that these cases created uncertainty over the efficacy of Section 2 and the Act itself.

C. ASIAN AMERICANS AND THE VOTING RIGHTS ACT

For Asian Americans, relief under the Voting Rights Act has always been a challenge. The legislation was crafted with African Americans in mind. While the provisions apply to other minority groups,⁷⁶ they clearly present a much

Reno, 92 MICH. L. REV. 483, 575 (1993) (discussing how *Gingles* was a factor contributing to the drawing of non-compact districts).

⁶⁸ See *Shaw v. Reno*, 509 U.S. 630, 649 (1993).

⁶⁹ See *id.* at 652.

⁷⁰ See *Shaw v. Hunt*, 517 U.S. 899, 902 (1996).

⁷¹ See *Miller v. Johnson*, 515 U.S. 900 (1995).

⁷² See *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

⁷³ See *id.*

⁷⁴ See *Bush v. Vera*, 517 U.S. 952, 959 (1996).

⁷⁵ Laughlin McDonald, *Can Minority Voting Rights Survive Miller v. Johnson?*, 1 MICH. J. RACE & L. 119 (1996) (describing *Miller* as a “confusing decision” which “obscures the law surrounding redistricting”); Pamela S. Karlan, *Still Hazy After All These Years: Voting Rights in the Post-Shaw Era*, 26 CUMB. L. REV. 287, 310 (1995) (describing the districting doctrine as “inherently unstable”).

⁷⁶ Section 2 of the 1965 Voting Rights Act (prohibiting obstacles to voting on account of race or color); see also Bernard Grofman and Lisa Handley, *1990s Issues in Voting Rights*, 65 MISS. L. J. 205 (1995) (describing the 1982 Congressional amendment to the Voting Rights Act of 1965).

higher bar for other minorities.⁷⁷ For instance, Asian Americans have historically experienced difficulty fulfilling the first part of the *Gingles* test that requires a showing of sufficient size and geographic compactness.⁷⁸ Some courts have allowed plaintiffs to aggregate different minority groups to meet the *Gingles* test.⁷⁹ Given trends in population growth among Asian American groups, it is conceivable that Asian Americans might achieve a critical mass to enable them to satisfy the first threshold without aggregation. That scenario, however, remains in the indeterminate future. Until that time, Asian Americans may need to aggregate their numbers, both across subgroups and perhaps with other ethnic groups.

Notwithstanding the aggregation across different minority groups, plaintiffs must still demonstrate political cohesiveness across the groups, a burden that Asian American plaintiffs have failed to satisfy.⁸⁰ States may challenge the cohesiveness of Asian Americans as this group consists of many ethnicities and identities with varied paths of development. Indeed, the concept of pan-ethnicity across the various ethnic groups that comprise the Asian American community has been the subject of much debate.⁸¹

Tables 1 and 2 support the view that, using political affiliation as a proxy, Asian American subgroups cannot be categorized as politically cohesive. Korean and Vietnamese candidates ran for federal office as predominantly Republicans, Japanese and Asian Indian candidates ran predominantly as Democrats, and Chinese candidates evenly split between the parties. At the same time, each of these candidates, irrespective of political affiliation, receive most, if not all, of their contributors from their own subgroups, but little or none from other subgroups. Taken together, political cohesion across different Asian American groups appears uneven at best when looking at party identification of political

⁷⁷ Bruce E. Cain and Kenneth P. Miller, *The Fragile Logic of Voting Rights: Extending the VRA to Other Minorities*, in *VOTING RIGHTS AND REDISTRICTING IN THE UNITED STATES*, MARK E. RUSH, ED. (1998).

⁷⁸ *Diaz v. Silver*, 978 F.Supp. 96, 129 n.22 (E.D.N.Y. 1997), *aff'd* 522 U.S. 801 (1997).

⁷⁹ *Campos v. Baytown*, 840 F.2d 1240, 1245 (5th Cir. 1988), *cert. denied*, 492 U.S. 905 (1989) (allowing African Americans and Hispanics in Texas to aggregate their votes on the basis of both groups experiencing political repression); *But see Nixon v. Kent County*, 76 F.3d 1381, 1387-90 (6th Cir 1996) (en banc) (prohibiting aggregation for African-Americans and Hispanics in Michigan, holding that neither the text nor legislative history of the Act, nor sound policy considerations supported this view). The Supreme Court has not yet explicitly ruled on this issue, but has implicitly allowed it. *See Grove v. Emison*, 507 US 25, 41 (1993) ("(a)ssuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2").

⁸⁰ *See Campos*, 840 F.2d at 453 (holding that the minority group consisting of African-Americans, Hispanics, and Asian-Americans were unable to show political cohesion for an at-large school district); *DeBaca v. County of San Diego*, 794 F. Supp. 990, 998 (S.D.Cal. 1992) (concluding that the same ethnic groups were unable to show political cohesion for a county district).

⁸¹ *See, e.g.*, PEI-TE LIEN, *THE MAKING OF ASIAN AMERICA THROUGH POLITICAL PARTICIPATION* (2001); Wendy K. Tam, *Asians – A Monolithic Voting Bloc?* 17 *POL. BEHAV.* 223–249 (1995); Don Nakanishi, *The Next Swing Vote? Asian Pacific Americans and California Politics*, in *RACIAL AND ETHNIC POLITICS IN CALIFORNIA* 25, (Byran O. Jackson & Michael B. Preston, eds., 1991).

candidates, and very weak with respect to party support in political contributions.

The third prong of the *Gingles* test also poses fundamental difficulties for the Asian American group. Historically, the racial divide has most often been characterized as dichotomous, with whites on one side and blacks on the other. How Asian Americans fit into this racial landscape remains more ambiguous. A showing of racial bloc voting means that not only do Asian Americans band together as a cohesive unit, but the other voters unite to support an opposing candidate. Whites often reside in close proximity to Asian Americans, but it is not at all clear that the interests of Asian Americans and whites always significantly diverge.⁸² Hence, political cohesiveness remains a critical question around the pan-ethnic nature of the Asian American group. However, even a satisfactory analysis of that component of the *Gingles* test leaves other foundational issues unresolved in a potential Asian American Voting Rights Act claim.

Thus, Asian Indians face dim prospects in seeking relief from the Voting Rights Act. The climate for any minority group pursuing a Section 2 claim is much less favorable in the aftermath of the Court's decisions in *Shaw* and *Miller*. Should plaintiffs pass the three-part test set forth in *Gingles*, courts will scrutinize what they perceive as race-conscious districting. However, Asian Indians, like their Asian American counterparts, may have trouble surviving any part of *Gingles*. First, they lack the critical mass to constitute a majority in any single-member district. Courts would likely be wary of allowing them to aggregate their claim with other subgroups, at least other Asian American subgroups, given the variation in political affiliation within and across these groups. Lastly, it is not clear that the interests of Asian Indians sufficiently contrast with that of the white majority.

C. ACHIEVING POLITICAL EMPOWERMENT

Significantly, whether the pan-ethnic identity currently exists in some form, or whether it will exist (in the same form or a different form) in the future, poses separate questions. Certainly, the lack of pan-ethnic identity now does not necessarily negate its formation in the future. As a population group, the Asian American group exploded onto the scene post-1965. Therefore, their large presence is a recent occurrence, and it follows that the unfolding of this group is a phenomenon in the making. We can catch glimpses and clues about the future that will unravel, but should recognize that we are truly in the midst of the Asian American identity-formation process. Therefore, the degree of pan-ethnicity that currently symbolizes the Asian American group may carry less importance than current trends at play in the definition of this emerging group.

It is unclear what conditions might expedite the emergence of pan-ethnicity—different ethnic groups identifying themselves as a single bloc along political, social, or economic interests.⁸³ David Lopez and Yen Espiritu cite

⁸² See e.g., Wendy K. Tam Cho & Bruce E. Cain, *Asian Americans as the Median Voters: An Exploration of Attitudes and Voting Patterns on Ballot Initiatives*, in *ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS* 133 (Gordon H. Chang, ed., 2001).

⁸³ See YEN LE ESPIRITU, *supra* note 7.

structural factors such as common material concerns, class, generation, and geographic proximity as the key to the emergence and success of pan-ethnicity.⁸⁴ They claim that cultural similarities across ethnic groups are not as germane to the process. In this sense, they argue that this psychological processes of group formation begins with such events as the Vincent Chin campaign.⁸⁵ When, whether, and how often these events will occur is uncertain.⁸⁶ While legal scholars have written about the role of Asian Americans in electoral politics⁸⁷ and their relationship with other ethnic groups,⁸⁸ the issue of *intra*-racial politics in the Asian American community remains relatively unexplored.⁸⁹

At the same time, to complicate matters, the composition of the various Asian American ethnic groups has been in a state of rapid flux. The most notable changes include the rise in general socio-economic indicators for Asian Americans and the shifting of the population group from predominantly native-born, to predominantly foreign-born individuals.⁹⁰ Socio-economic

⁸⁴ David Lopez & Yen Espiritu, *Panethnicity in the United States: A Theoretical Framework*, 13 ETHNIC AND RACIAL STUD. 198–224 (1990).

⁸⁵ In 1982, Vincent Chin was a Chinese-American engineer living in Detroit who was killed by two Caucasian men who worked at the Chrysler auto plant; some groups, including the Asian American community, believe the homicide was racially motivated. For a detailed description of this event, see Shiela A. Bedi, *The Constructed Identities of Asian and African-Americans: A Story of Two Races and the Criminal Justice System*, 19 HARV. BLACKLETTER L. J. 181, 195–97 (2003).

⁸⁶ Interestingly, Lopez and Espiritu primarily examine the Asian Indian group in isolation from the broader Asian American group. They cite that the Asian Indian group is strongly divided by factors such as religion and lingering caste and clan divisions. They also acknowledge the recent arrival and change in these groups and note that the drive toward pan-ethnicity is led by the more established groups with smaller recent immigrant groups (such as Asian Indians) following.

⁸⁷ See, e.g., Pei-te Lien, *The Participation of Asian Americans in U.S. Elections: Comparing Elite and Mass Patterns in Hawaii and Mainland States*, 8 ASIAN PAC. AM. L. J. 55, 66–75 (2001) (providing information on Asian Americans of various subgroups who have served in the U.S. House or Senate); Glenn D. Magpantay, *Asian American Voting Rights and Representation: A Perspective from the Northeast* 28 FORDHAM URB. L. J. 739, 753–69 (2001) (describing in part the ability of Asian-Americans to form majority-minority districts); Su Sun Bai, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731, 736–63 (outlining the internal and external obstacles facing Asian Americans in electoral politics).

⁸⁸ See, e.g., ROBERT CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* 11 (1999) (describing how viewing race only in terms of black and white overlooks the history and contemporary status of Asian Americans); ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 175–209 (1999) (offering a four-step framework – recognition, responsibility, reconstruction, and reparation—for developing coalitions across different ethnic groups).

⁸⁹ For some exceptions in the campaign finance arena, see Wendy K. Tam Cho, *Foreshadowing Strategic Pan-ethnic Politics: Asian American Campaign Finance Behavior in Varying Multicultural Contexts*, 1 ST. POL. & POL'Y Q. 273–294 (2001); Wendy K. Tam Cho, *Tapping Motives and Dynamics Behind Campaign Contributions: Insights from the Asian American Case*, 30 AMER. POL. RES. 347–383 (2002).

⁹⁰ See HING, *supra* note 1; Jessica S. Barnes & Claudette E. Bennett, U.S. Census Bureau, *Census 2000 Brief C2KBR 01-16, The Asian Population: 2000* (Feb. 2002).

indicators, as well, change as the character of the population evolves. This volatility must be considered in an assessment of the potential rise or decline in pan-ethnic identity.

Given the limited applicability of the Voting Rights Act for their group, the decision of Asian Indians to run for office themselves may be their best strategic move. It is also their best chance at having their interests represented, particularly for issues unique to their ethnic group. Unfortunately, their small population, one of the factors that undermines their Section 2 claim, also weakens their chances of electing Asian Indian candidates. At the federal level, Asian Indian candidates draw financial support from their ethnic group, but appear largely unable to draw support from a broader base, even among other Asian American groups. This trend likely recurs for state, as well as many local elections. The strategy of running for high-level positions poses high risks; many of these candidates run with little or no experience in electoral politics. At the same time, it offers high rewards; the election of even a single Asian Indian candidate could bring attention to issues of interest to the ethnic group. While they were unsuccessful in electing anyone to federal office for forty years, Asian Indians have made significant strides in local and state elections, and have begun making credible runs at higher ranking state and federal elected positions.⁹¹

V. CONCLUSION

Certainly, any form of Asian American politics will emerge gradually and from an evolutionary process. The courts could speed along or hinder this process, primarily through provisions of the Voting Rights Act. A number of volatile factors will determine the direction of the courts. Since the arrival of Asians to the United States is a relatively recent phenomenon, the immigrant group still largely navigates an economic, political, and social environment that stands in stark contrast to the one from which they came. How these events will play out is left to be seen. Some will certainly attain secure social and economic stability, and this may turn attention to advancement through the political process.

Asian American participation in the political process naturally raises the notion of pan-ethnicity. As a conglomerate of a large number of different ethnicities, the growth among Asian American subgroups—Chinese, Japanese, Korean, Filipino, Vietnamese, Asian Indian, Samoan, Guamanian, Hmong, Cambodian, etc.—has brought visibility to the broader group as the fastest growing minority group in the United States. This growth in numbers creates a natural tension, where each subgroup balances their numerous common interests with those interests that may differ from those of other subgroups. Indeed, the ability of Asian Americans to use the Voting Rights Act as a mechanism for greater political empowerment depends upon exhibiting political cohesion among subgroups, at least until their numbers increase to the point where a given subgroup can exhibit a politically free-standing critical mass. Accordingly, as

⁹¹ See Gittleman, *supra* note 24, discussing the campaign of Piyush “Bobby” Jindal, who narrowly lost in the Louisiana 2003 gubernatorial election. In 2004, however, Jindal won a Congressional seat for Louisiana.

these differences subside with time, the notion of a powerful Asian American political group continues to loom.⁹² As future generations come of age, the cultural and historical divides begin to lessen for many of the groups. But again, the process is gradual, and as yet, incomplete.

However, the evidence provided here indicates that the lessening of these distinctions is less clear for Asian Indians and the broader Asian American group than for, say, the Chinese, Japanese, and Korean groups and the broader Asian American group. The challenges, whether imposed by the government or from within, are greater for Asian Indians. In some respects, the Asian Indian group may be, among the Asian ethnicities, one of the most ideally poised to enter the political arena. They have signaled a strong political presence with the large number of viable candidates and their campaign donations have no plateau in sight. At the same time, their political clout remains in the developmental stage. Notwithstanding their surge in population, they remain small in absolute numbers. This relative paucity translates into the electoral arena, where Asian Indians cannot yet make a credible claim for a majority-minority district.⁹³ At the same time, they appear more politically distinguishable from other Asian American subgroups. Asian Indians lean more strongly toward the Democratic party, making it difficult to develop political cohesion with other Asian American subgroups. In short, their identity appears to sit on the margins of the larger group, which makes the ability to survive the *Gingles* three-prong test difficult. Moreover, the Court's interpretation of the Voting Rights Act in the last round of redistricting litigation has created a more difficult climate for Asian American claims. While the future remains unclear, the current writing on the wall suggests that Asian Indians may best serve their interests by pursuing political empowerment apart from the broader Asian American group. While the other Asian ethnicities are perhaps not as distinct, their fastest track to increasing political representation may lie along the same path.

⁹² See Wendy K. Tam Cho, *Naturalization, Socialization, Participation: Immigrants and (Non-) Voting*, 61 J. POL. 1140–1155 (1999).

⁹³ For example, based on the 2000 Census, Asian Indians comprise no more than seven percent of the population of any congressional district. Percent of Persons Who Are Asian Indian Alone, US Census Bureau, Census 2000 Summary File 1.