

ELECTION LAW — STATE LEGISLATION — CALIFORNIA  
SUPREME COURT INTERPRETS STATE ACT TO EXPAND REACH  
OF VOTE DILUTION PROTECTION. — *Pico Neighborhood Ass'n v.  
City of Santa Monica*, 534 P.3d 54 (Cal. 2023).

“[A] triumph for freedom as huge as any victory that has ever been won on any battlefield.”<sup>1</sup> These words, spoken by President Lyndon B. Johnson at the signing ceremony for the federal Voting Rights Act of 1965<sup>2</sup> (VRA), illustrate the envisioned potential of the landmark legislation.<sup>3</sup> However, the Supreme Court has, decision by decision, constrained the reach of the civil rights law.<sup>4</sup> As a result, the charge of guaranteeing this right, long thought to be the purview of the federal government, has been taken up by the states. Recently, the California Supreme Court’s interpretation of the California Voting Rights Act<sup>5</sup> (CAVRA), in *Pico Neighborhood Ass’n v. City of Santa Monica*,<sup>6</sup> expanded the notion of what it means for a protected minority group to have electoral power beyond what is currently recognized under the VRA. This decision has the potential to expand minority voting rights and representative power in jurisdictions that have state voting rights acts (SVRAs) similar to California’s, though only a minority of states have been able to pass such legislation. The current system, created by judicial abdication and congressional silence, has resulted in a splintering of voting rights protection. However, as *Pico* demonstrates, SVRAs can serve as grounds for innovation for novel conceptions of voting rights and political power that can be transplanted to the federal VRA to update and bring the landmark legislation in line with current needs.

Santa Monica, with a population of roughly 90,000,<sup>7</sup> uses an at-large system of voting<sup>8</sup> to elect its seven-member city council.<sup>9</sup> Latinos comprise nearly 14% of Santa Monica’s citizen-voting-age population, but that demographic makes up 30% of the citizen-voting-age population of

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<sup>1</sup> Lyndon B. Johnson, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965), <https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act> [<https://perma.cc/B2NG-TAQ9>].

<sup>2</sup> 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702.

<sup>3</sup> *Voting Rights Act of 1965 Speech and Bill Signing*, C-SPAN (Aug. 6, 1965), <https://www.c-span.org/video/?326896-1/voting-rights-act-1965-speech-bill-signing> [<https://perma.cc/TNQ5-7WWV>].

<sup>4</sup> See, e.g., *Shelby County v. Holder*, 570 U.S. 529, 557 (2013); *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2350 (2021); *Bartlett v. Strickland*, 556 U.S. 1, 25–26 (2009) (plurality opinion).

<sup>5</sup> See CAL. ELEC. CODE §§ 14025–14032 (West 2023).

<sup>6</sup> 534 P.3d 54 (Cal. 2023).

<sup>7</sup> *QuickFacts: Santa Monica City, California*, U.S. CENSUS BUREAU (July 1, 2023), <https://www.census.gov/quickfacts/fact/table/santamoniacitycalifornia/PST04522> [<https://perma.cc/TSM9-BW8Q>] (listing 2022 population count).

<sup>8</sup> In at-large elections, voters cast a ballot for all open positions. See David C. Powell, *The California Voting Rights Act and Local Governments*, 10 CAL. J. POL. & POL’Y, no. 2, 2018, at 1, 1. In district-based elections, by contrast, voters only vote for the seat representing their district. *Id.*

<sup>9</sup> *Pico*, 534 P.3d at 60. Council members hold four-year terms with four seats open during the presidential election year and the other three during the gubernatorial election year. See *id.*

Pico, a neighborhood within Santa Monica.<sup>10</sup> At the time of complaint, allegedly only one Latino had been elected to the council in the seventy-two years since the city had begun using an at-large system.<sup>11</sup> Against this backdrop, in April 2016, the Pico Neighborhood Association and a former Latina candidate filed a vote dilution claim arguing that the at-large method violated the CAVRA and the Equal Protection Clause of the California Constitution by unfairly impairing the ability of the minority community to elect its candidates of choice.<sup>12</sup>

The CAVRA, enacted in 2002, was created to build upon the voter protections offered by the federal VRA with a specific focus on nonpartisan, local governmental elections.<sup>13</sup> The CAVRA reduces the evidentiary bar plaintiffs must meet to have a cognizable vote dilution claim by explicitly disposing of one of the preconditions the VRA requires.<sup>14</sup>

The trial court found that the at-large voting system diluted the minority community's vote and thereby violated the CAVRA.<sup>15</sup> Its analysis centered on a finding of racially polarized voting,<sup>16</sup> and the court found there to be two key tenets to such a showing: (1) "the minority group" must be "politically cohesive" and (2) "the [w]hite majority [must] vote[] sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."<sup>17</sup> In analyzing the claim, the trial court relied on expert statistical analysis of elections, which demonstrated that in races in which at least one candidate was a member of a protected class, non-Latino whites voted in a significantly distinct manner from Latinos,<sup>18</sup> the Latino community voted in a politically cohesive manner,<sup>19</sup> and the Latino candidate consistently lost in every race except one.<sup>20</sup> The court also confirmed the existence of racial polarization in voting by examining qualitative factors like "a history of discrimination" and evidence of socioeconomic disparities.<sup>21</sup> On the basis of this

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Pico Neighborhood Ass'n v. City of Santa Monica*, No. BC616804, 2019 WL 10854474, at \*1–2 (Cal. Super. Ct. Sept. 13, 2019).

<sup>13</sup> See Powell, *supra* note 8, at 1.

<sup>14</sup> See *id.* at 2. The CAVRA disposed of the first *Gingles* precondition: the ability of the protected class to constitute a majority-minority district. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

<sup>15</sup> *Pico*, 2019 WL 10854474, at \*14. The trial court also found the scheme to be violative of the Equal Protection Clause of the state constitution. *Id.* at \*16.

<sup>16</sup> Racially polarized voting is where "there is a difference . . . in the choice of candidates or other electoral choices that are preferred by voters in a protected class" versus those "preferred by voters in the rest of the electorate." CAL. ELEC. CODE § 14026(e) (West 2023).

<sup>17</sup> *Pico*, 2019 WL 10854474, at \*3 (quoting *Gomez v. City of Watsonville*, 863 F.2d 1407, 1413 (9th Cir. 1988)).

<sup>18</sup> *Id.* at \*7. This demonstrates the phenomenon of white bloc voting.

<sup>19</sup> *Id.* This shows the political cohesiveness of the minority community.

<sup>20</sup> *Id.* The results of the elections showcase the existence of racially polarized voting.

<sup>21</sup> *Id.* at \*11, \*13. This qualitative inquiry, while required under the federal VRA as per *Thornburg v. Gingles*, 478 U.S. 30, 36–37 (1986), is not necessary under the CAVRA but is probative in showing racial polarization and lack of electoral participation. *Pico*, 2019 WL 10854474, at \*11.

evidence, the trial court found that the at-large election system illegally diluted the Latino vote in Santa Monica city council elections.<sup>22</sup>

The California Court of Appeals reversed this decision, holding that the voting system violated neither the CAVRA nor the state constitution.<sup>23</sup> Writing for the court, Judge Wiley stated that the CAVRA requires plaintiffs to prove five separate elements in a vote dilution claim.<sup>24</sup> The appeals court found that the lower court solely focused on the existence of racially polarized voting without *separately* analyzing whether the system diluted the Latino vote.<sup>25</sup> As part of the dilution factor, plaintiffs must present an alternative voting practice that can serve as a nondilutive benchmark; here, the plaintiffs proposed a districting scheme where one district would have thirty percent Latino voting power.<sup>26</sup> The appeals court found there to be no vote dilution because “30 percent is not enough to win a majority and to elect someone,”<sup>27</sup> and the result would be the same with or without an alternative remedy — that is, no representation.<sup>28</sup> Plaintiffs argued that non-Latinos could “cross over” and vote for the Latino-preferred candidate, “clearing the 50 percent threshold to electoral success.”<sup>29</sup> The appeals court dismissed this argument and reversed, worried that it would “create[] a manipulable standard” where “plaintiff[s] always win[.]”<sup>30</sup>

The California Supreme Court reversed and remanded.<sup>31</sup> Justice Evans held that plaintiffs need not prove “that the protected class would constitute a majority — or . . . [even] a near majority — of a hypothetical single-member district,” in order to have a viable vote dilution claim under the CAVRA.<sup>32</sup> In so holding, Justice Evans defined key terms of the CAVRA, distinguishing it from its federal counterpart. First, agreeing with the appeals court, he defined the term “dilution” to require a showing of both “racially polarized voting” and “that the protected class thereby has less ability to elect its preferred candidate or influence the election’s outcome than it would have” in an alternative system.<sup>33</sup>

Justice Evans then moved to the term “ability . . . to elect candidates of its choice.”<sup>34</sup> Here, the court found that the legislature crafted the

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<sup>22</sup> *Pico*, 2019 WL 10854474, at \*23.

<sup>23</sup> *Pico Neighborhood Ass’n v. City of Santa Monica*, 265 Cal. Rptr. 3d 530, 533 (Cal. Ct. App. 2020).

<sup>24</sup> *Id.* at 544–45. Plaintiffs must prove that (1) they are members of a protected class (2) residing in the political subdivision they are suing, and that the subdivision (3) uses an at-large method of voting that is (4) plagued by racially polarized voting resulting in (5) dilution or abridgement of the class’s ability to vote. *Id.*

<sup>25</sup> *Id.* at 547–49.

<sup>26</sup> *Id.* at 547.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 550.

<sup>30</sup> *Id.*

<sup>31</sup> *Pico*, 534 P.3d at 71.

<sup>32</sup> *Id.* at 59–60.

<sup>33</sup> *Id.* at 64.

<sup>34</sup> *Id.* at 65 (quoting CAL. ELEC. CODE § 14027 (West 2023)).

CAVRA to make it “easier” for plaintiffs to bring claims by explicitly discarding the “majority-minority” and “compactness” requirements of the VRA.<sup>35</sup> As such, the court found that the appeals court’s emphasis on a fifty-percent threshold was “misguided.”<sup>36</sup> The court further supported this stance by specifying how, first, the CAVRA allows remedies that do not require the protected class to constitute a majority in order to prevail.<sup>37</sup> Second, plaintiffs can still “demonstrate sufficient voting strength” by relying on “crossover votes,” or showing that “racially polarized voting by other voters in the hypothetical district is lower than in the community as a whole.”<sup>38</sup> Justice Evans then put these two terms together to explain what is required for a plaintiff to show “[d]ilution’ of ‘the [a]bility . . . to [e]lect [c]andidates of [the racial minority’s] [c]hoice.’”<sup>39</sup> The opinion further instructed lower courts to engage in a flexible, fact-specific “functional analysis of the political process”<sup>40</sup> of the locality to make two determinations: (1) what percentage of the vote would be required for a protected class to elect its candidate of choice in an alternative system, and (2) whether the class, either on its own or with the help from crossover voters, could feasibly achieve that percentage.<sup>41</sup> Since there was no basis to arbitrarily limit the plaintiff’s ability to demonstrate dilution by setting a strict “majority” threshold, the court remanded the case for the lower court to reconsider with the novel dilution standard it set forth in the opinion.<sup>42</sup>

The California Supreme Court’s approach to vote dilution in *Pico* was a marked departure from the Supreme Court’s interpretation of the federal VRA on the same issue. In *Thornburg v. Gingles*,<sup>43</sup> the Supreme Court interpreted section 2 of the VRA to require three preconditions for plaintiffs to have a cognizable vote dilution claim.<sup>44</sup> These *Gingles* preconditions, as they have been construed and refined in subsequent case law, arguably have drastically limited the ability to bring dilution claims under the VRA by imposing increasingly less relevant gateways and restricting the statute’s remedial reach. Recently, in *Allen v. Milligan*,<sup>45</sup> the Supreme Court noted the dwindling efficacy of section 2 litigation: “[A]s residential segregation decreases — as it has ‘sharply’ done since the 1970s — satisfying traditional districting

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<sup>35</sup> *Id.* The relevant language from the CAVRA is as follows: “The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting . . . .” *Id.* (quoting CAL. ELEC. CODE § 14028(c) (West 2023)).

<sup>36</sup> *Id.* at 66.

<sup>37</sup> *Id.* at 65–68.

<sup>38</sup> *Id.* at 67 (emphasis omitted).

<sup>39</sup> *Id.* at 68.

<sup>40</sup> *Id.* (quoting *Thornburg v. Gingles*, 478 U.S. 30, 62 (1986) (opinion of Brennan, J.)).

<sup>41</sup> *Id.* at 68–70.

<sup>42</sup> *Id.* at 71.

<sup>43</sup> 478 U.S. 30 (1986).

<sup>44</sup> *Id.* at 50–51.

<sup>45</sup> 143 S. Ct. 1487 (2023).

criteria . . . ‘becomes more difficult,’” which is why “[s]ince 2010, plaintiffs nationwide have apparently succeeded in fewer than ten [section] 2 suits.”<sup>46</sup> This decreasing efficacy is not evidence of diminished need for voting rights protection but rather the product of the Supreme Court’s limited remedial imagination and antiquated understanding of dilution of political power. The proliferation of SVRAs like California’s have begun to correct for this federal shortcoming. However, this state-by-state system has resulted in a splintering of voting rights protections, where the level of protection is contingent on the state one resides in. Instead of abdicating its judicial role of giving effect to this landmark federal legislation, the Supreme Court can and should use the SVRAs’ novel standards to inform and update its existing section 2 interpretation.

Under the *Gingles* preconditions, the minority group must demonstrate that: (1) “it is sufficiently large and geographically compact to constitute a majority in a single-member district,” (2) “it is politically cohesive,” and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”<sup>47</sup> The Court has held that to allege the first precondition, the minority group, *on its own*, must constitute a majority of a potential single-member district.<sup>48</sup> This is especially significant as current trends demonstrate potential for increased white crossover voting<sup>49</sup> and minority coalitions.<sup>50</sup>

Consequently, the current section 2 standard represents an incomplete, rigid approach toward vote dilution, which is a practice that can manifest itself in a variety of forms and therefore requires a flexible approach. The existing jurisprudence allows protection against dilution when the minority group represents a majority in a district, but not when that minority group engages in political collaboration with the majority group that would result in electoral success.<sup>51</sup> Moreover, the current framework allows a remedy when a district is easy to draw but not when an alternative voting system, like ranked-choice voting, can offer a nondilutive alternative that better serves the community.

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<sup>46</sup> *Id.* at 1509 (quoting Travis Crum, *Reconstructing Racially Polarized Voting*, 70 DUKE L.J. 261, 279 & n.105 (2020)).

<sup>47</sup> *Gingles*, 478 U.S. at 50–51. This test has two key presumptions that limit the VRA’s remedial efficacy: first, that the proper judicial remedy is the creation of a single-member district; and second, that such a remedy is only proper in response to a specific showing of, among other things, residential segregation, compactness, and racial numerosity.

<sup>48</sup> See *Bartlett v. Strickland*, 556 U.S. 1, 26 (2009) (plurality opinion).

<sup>49</sup> See Perry Bacon Jr., *American Politics Now Has Two Big Racial Divides*, FIVETHIRTYEIGHT (May 3, 2021, 6:00 AM), <https://fivethirtyeight.com/features/american-politics-now-has-two-big-racial-divides> [<https://perma.cc/QY5U-SQBG>] (“American voters . . . [w]ere less polarized by racial identity in 2020 compared to 2016 . . .”).

<sup>50</sup> See Andre M. Perry & Manann Donoghoe, *Recognizing Black and Latino-Majority Cities Is the First Step to Finding a Real World Wakanda*, BROOKINGS (Jan. 26, 2023), <https://www.brookings.edu/articles/recognizing-black-and-latino-majority-cities-is-the-first-step-to-finding-a-real-world-wakanda> [<https://perma.cc/HMX4-G7H5>].

<sup>51</sup> See *Bartlett*, 556 U.S. at 14–19 (plurality opinion).

Thus, it makes sense why SVRAs have begun to proliferate in a context where the two key provisions of the federal VRA — section 2 and section 5 — have been rendered ineffective, the latter explicitly<sup>52</sup> and the former through the judicial interpretation in *Gingles* and its progeny. SVRAs have worked to fill in these gaps. For example, the CAVRA explicitly dispenses with the first *Gingles* precondition requiring plaintiffs to show that the minority group could constitute a geographically compact majority in a district.<sup>53</sup> The Connecticut,<sup>54</sup> New York,<sup>55</sup> Oregon,<sup>56</sup> Virginia,<sup>57</sup> and Washington<sup>58</sup> SVRAs all followed suit.<sup>59</sup> The significance of this alternative approach is high — more than a third of section 2 challenges over the past two redistricting cycles have failed due to an insufficient showing under the first *Gingles* prong.<sup>60</sup>

Specifically, getting rid of the numerosity and compactness requirements provides freedom for minority plaintiffs to demonstrate a legally redressable injury in a wider set of circumstances that better reflect the present reality and voting dynamics. The Washington SVRA, passed in 2018, explicitly states this, allowing for the creation of crossover and coalition districts<sup>61</sup> as an acceptable remedy if there is “demonstrated political cohesion among the protected classes.”<sup>62</sup> The Connecticut, New York, and Washington SVRAs allow for multiple minority groups to jointly file vote dilution claims against electoral systems that dilute their combined voting preferences and power.<sup>63</sup> This liberalization also extends to the realm of remedies, with SVRAs allowing solutions beyond the single-member district that has been the preeminent solution under the federal VRA. This remedial flexibility is especially key given the

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<sup>52</sup> See *Shelby County v. Holder*, 570 U.S. 529, 550, 557 (2013) (holding that the coverage formula underlying section 5 was out of date, and therefore could no longer be used to enforce the provision).

<sup>53</sup> Compare CAL. ELEC. CODE § 14028(c) (West 2023), with *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).

<sup>54</sup> See An Act Concerning the State Budget for the Biennium Ending June 30, 2025, and Making Appropriations Therefor, and Provisions Related to Revenue and Other Items Implementing the State Budget, Pub. Act No. 23-204, §§ 410–418, 2023 Conn. Acts 819–48 (Reg. Sess.) [hereinafter CTVRA].

<sup>55</sup> See N.Y. ELEC. LAW § 17-206(2)(b) (McKinney 2023).

<sup>56</sup> OR. REV. STAT. § 255.411(4) (2023).

<sup>57</sup> See VA. CODE ANN. § 24.2-126(B) (2023).

<sup>58</sup> WASH. REV. CODE § 29A.92.030(5) (2023).

<sup>59</sup> Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 EMORY L.J. 299, 312 (2023).

<sup>60</sup> *Id.* at 311.

<sup>61</sup> WASH. REV. CODE § 29A.92.005; Greenwood & Stephanopoulos, *supra* note 59, at 313 (“[A] coalition district is one where no single minority group can elect its own preferred candidate — but where two or more minority groups voting cohesively can elect their mutual candidate of choice.”).

<sup>62</sup> WASH. REV. CODE § 29A.92.110; *Portugal v. Franklin County*, 530 P.3d 994 (Wash. 2023).

<sup>63</sup> See CTVRA, Pub. Act No. 23-204, § 411, 2023 Conn. Acts 824 (Reg. Sess.); N.Y. ELEC. LAW § 17-206(8) (McKinney 2023); WASH. REV. CODE § 29A.92.090(2) (2023).

growing geographic dispersion of minority voters, which limits the efficacy of single-member districts.<sup>64</sup>

The California Supreme Court's decision in *Pico* and the language of the various SVRAs begin to paint the realm of what is possible under a broader conception of voting rights that focuses on the lived experience of a protected class within a certain electoral system. However, these innovations need not only exist at the state level. The current, constrained federal *Gingles* approach to vote dilution claims is not one of legislative mandate, but rather one of judicial creation. When Congress passed the amended version of the VRA in 1982, it left terms like "participate in the political process" and "less opportunity" largely undefined.<sup>65</sup> While the legislation made clear that it did not require proportional representation, its text presented an open concept that was to be expounded and implemented by the courts.<sup>66</sup> The *Gingles* standard that the Court first articulated in 1986 and refined through subsequent case law created a circumscribed pathway in response to this expansive congressional mandate — "connect[ing] the election of minorities' candidates of choice to segregation . . . in ways the phenomena had not previously been tied."<sup>67</sup> As such, it is within the Supreme Court's prerogative to once again reinterpret the language and update the standard to better reflect today's political realities.

In fact, the Court can do exactly what the California Supreme Court did in *Pico*. The terms Justice Evans gave meaning to, including "dilution" and "ability to elect,"<sup>68</sup> have counterparts in the VRA: "[P]olitical processes . . . [that] are not equally open to participation" and "members [that] have less opportunity . . . to participate in the political process."<sup>69</sup> SVRAs are allowing state courts the opportunity to expand the substance of voting rights, but not through novel language. Rather, they are attaching new meaning to age-old concepts like "ability to elect" and "opportunity to politically participate." Because the Court has access to similar terms in the VRA, it can engage in a similar exercise of redefinition at the federal level, building on the learnings from SVRAs.<sup>70</sup>

Additionally, while SVRAs are and will continue to be important, they do not offer comprehensive protection. The Reconstruction

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<sup>64</sup> See *Allen v. Milligan*, 143 S. Ct. 1487, 1509 (2023) (quoting Brief of Amici Curiae Professors Jowei Chen et al. in Support of Appellees/Respondents at 15–16, *Milligan*, 143 S. Ct. 1487 (No. 21-1086)).

<sup>65</sup> See Nicholas O. Stephanopoulos, *Race, Place, and Power*, 68 STAN. L. REV. 1323, 1325 (2016).

<sup>66</sup> See *id.*

<sup>67</sup> See *id.* at 1328.

<sup>68</sup> See *Pico*, 534 P.3d at 64–70.

<sup>69</sup> 52 U.S.C. § 10301(b).

<sup>70</sup> As is common with remedial legislation, SVRAs have already invited claims of constitutional violations, with some arguing that they are based on racially discriminatory motives and invite racial classification and gerrymandering. See Greenwood & Stephanopoulos, *supra* note 59, at 330–37. But rather than creating a standardless remedial path based purely on race, SVRAs are simply updating the VRA to make the elements to prove liability more accurately reflect the injury.

Amendments — including the Fifteenth Amendment, which the VRA was passed to enforce — gave sweeping powers to the federal government to effectuate national, uniform voting protection.<sup>71</sup> The current system under *Gingles* splinters this fundamental protection. For example, the majority of the states that were at one point covered in their entirety by section 5 of the VRA<sup>72</sup> do not currently have an enacted SVRA.<sup>73</sup> This means that minority voters in those states that have been historically deemed to have some of the highest levels of voter discrimination — and continue today to have dilutive voting schemes — are now solely reliant on the limited protection of the VRA, while minority voters in other states with SVRAs benefit from a broader conception of their voting rights. Further, to date, most of the states that have passed SVRAs are those with unified Democratic governments.<sup>74</sup> Thus, many states with Republican or divided governments have significant Black and Hispanic minority populations that will most likely have to “settle” for the federal VRA’s formalistic and weaker “defenses against racial discrimination in voting.”<sup>75</sup> Voting rights should not be contingent on a state’s political makeup or legislative ability to pass more robust protection. Any “skepticism has nothing do with the merits of SVRAs,” but rather with their limited reach, as they are necessarily constricted to the boundaries of the state they are passed within.<sup>76</sup>

Advocates should continue to push for SVRAs, but they should not rely solely on states to protect this right, forgetting about the judicial and congressional abdication of duty. Remedial legislation is created in response to indignation with the status quo. By its nature, it is meant to reorient existing societal power structures and move the polity closer to an ideal. Congress pronounced the greatest of those ideals in the Voting Rights Act of 1965. States can and should help carry out this mission but cannot permanently be the contingency plan for failed federal enforcement, especially when such a system creates a splintering across the nation. After all: “The vote is precious. It is almost sacred. It is the most powerful non-violent tool we have in a democracy.”<sup>77</sup>

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<sup>71</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966) (“As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.”).

<sup>72</sup> These include Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. *About Section 5 of the Voting Rights Act*, U.S. DEP’T OF JUST. (Nov. 17, 2023), <https://www.justice.gov/crt/about-section-5-voting-rights-act> [<https://perma.cc/CS52-J6RL>].

<sup>73</sup> See Greenwood & Stephanopoulos, *supra* note 59, at 301.

<sup>74</sup> See *id.* at 360.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 360–61.

<sup>77</sup> Press Release, Rep. John Lewis, Rep. John Lewis on the Mandate to Restore Voting Rights in America (June 25, 2019), <https://web.archive.org/web/20190706155330/https://johnlewis.house.gov/media-center/press-releases/rep-john-lewis-mandate-restore-voting-rights-america> [<https://perma.cc/F8A2-R2CF>].