The background of the slide features a close-up, artistic photograph of hands holding a document. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of focus and importance. The colors are muted, primarily in shades of blue and grey.

# **The Asian Americans Redistricting Project: Legal Background of the “Community of Common Interest” Requirement**

Carol Ojeda-Kimbrough, Eugene Lee, Yen Ling Shek

## PREFACE

The political rights of Asian Americans, as with other marginalized minorities, have been won through struggle, and one of the basic rights is having our voices heard through voting. Historically Asian Americans were barred from citizenship, thus by extensions ineligible to vote. Today, there remain numerous barriers to full participation, particularly for encountered immigrants. The efforts to increase voting have focused on helping Asian Americans to naturalize, register and turn out at the polls. Maximizing opportunities for individuals to become engaged also requires institutional changes. Included in this broader agenda is the ability to have a meaningful and fair chance to elect officials who best represent the group's concerns, interests and priorities. In part, this requires not fragmenting an Asian American neighborhood into small and ineffective slivers that are spread over many electoral districts. Whether this will happen in the near future depends on events over the next two to three years, particularly those associated with redistricting, the process of drawing boundaries for electoral districts. Asian Americans are relatively new to this process, with their first concerted effort occurring after the 1990 Census. Community-based organizations and public-interest groups now have greater technical and political capacities to participate in redistricting, but there are new challenges. Perhaps the most important is determining whether a neighborhood is a "community of common interest," a necessary but not sufficient criterion for keeping it intact. The courts have not stated precise standards, but solid evidence will be required, evidence based in large part on sound social science research methods. The University of California AAPI Policy Multi-Campus Research Program and the UCLA Asian American Studies Center have developed this series of pamphlets to Asian American stakeholders as a way to be more effective in gathering the information needed to determine whether their neighborhoods are communities with common interests.

This redistricting project has been made possible with the input and contributions of many individuals and organizations. This includes the Asian American Studies Department, Asian Pacific Policy and Planning Council (AP3CON), Asian Pacific American Legal Center, Koreatown Immigrant Workers Alliance, South Asian Network, Institute for American Cultures and the Asian American Community Research Roundtable. The project also benefited greatly from the students in the spring course on "Determining Communities of Common Interest", ASAM 187A at UCLA (Luchino Castagno, Phi Do, Ken Fukuda, Neha Gupta, Bing He, Lisa Ho, Regina Kim, Caroline La, Pearl Pagarigan, Bonnie Park, Jamie Pet, Wend Yamashita, Cara Smith, and Tiffany Yim). They helped test and refine many of the methodological tools in the pamphlets. We are also grateful for the support provided by Don Nakanishi, Melany Dela Cruz-Viesca, Eileen Ma, Hamid Khan, Eric Wat, and Mark Masaoka.

Paul Ong, Project Coordinator

# **The Asian Americans Redistricting Project: Legal Background of the “Community of Common Interest” Requirement**

**July 2009**

**University of California Asian American and Pacific  
Islander Policy Multi-campus Research Program  
UCLA Asian American Studies Center**

*The views expressed in this report are those of the authors and do not necessarily reflect the views or positions of the MRP, Asian American Studies Center, or the University of California, Los Angeles.*

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# I. Introduction

This is the first of a series of pamphlets covering the issue of redistricting as it applies to protecting the voting rights of minority communities as required by the Voting Rights Act and the Equal Protection Clause.

The federal laws, regulations and court rulings on redistricting are national in scope while drawing the political districts is done in the state level. Most of the information contained in these pamphlets is not specific to any particular state or community; however, where and when appropriate, the booklets include references that are specific to Asian American communities, and/or to particular states (e.g., the State of California). This serves several purposes:

- (1) To illustrate how redistricting, while a national requirement, is implemented by the fifty States, though not necessarily uniformly. For example, in some states, an independent Commission is assigned the task of drawing the political districts while in others, the State Legislatures handle this task. The State of California recently passed a measure (Proposition 11) transferring the responsibilities of redistricting to an independent Commission. A discussion of the composition and duties of this Commission is included (see Appendix A) to provide a more detailed level of discussion than what the general guidebook can provide.
- (2) To demonstrate how communities can successfully argue against legal challenges of racial gerrymandering using a strategy of community of common interest as shown by the experience of New York's 12th Congressional District, a predominantly Chinese American community, during redistricting in 2001.
- (3) To provide a case study of how communities have been fractured by redistricting – as in the case of Koreatown in Los Angeles. It should also be noted that the research and writing of the guidebooks were done in conjunction with a college level course at the University of California in Los Angeles using the neighborhood of Koreatown for their fieldwork and as the site for data gathering because of its proximity to the campus and access to available resources.

The pamphlets are intended for community-based organizations, service agencies, and college students interested in recent changes to the redistricting process, how it impacts the communities they serve, and what strategies they can use preserve their community's voting strength.

Specifically, the pamphlets utilize the *community of common interest* approach for determining whether or not a neighborhood should be kept intact or carved up during the redistricting process. It uses demographic and social science research methods to identify and articulate communities that share common interests, views, characteristics, and risks.

The pamphlet series is divided into two main sections: (1) Overview of Redistricting; and, (2) Research Methodologies for Determining Communities of Common Interest. In the first pamphlet, "Legal Background the 'Community of Common Interest' Requirement," a general overview and background information on redistricting is provided, including an explanation of relevant sections of the Voting Rights Act of 1965 as well as legal challenges to the provisions of this law and US Supreme Court decisions to these challenges. The second and third pamphlets contain a "step-by-step" procedure on conducting research through "Accessing Secondary Data" and "Conducting Stakeholder Surveys" – two research methodologies that are useful in determining if a neighborhood meets the criterion of "community of common interest."

## II. Introduction to Redistricting

Every ten years, after the U. S. Census enumeration, Congress “reapportions” the 435 seats in the House of Representatives to each state based on changes in each state’s population. States are then responsible for drawing their district boundaries for Congress, as well as the state legislatures, and other districts, again based on the new Census data, through a process called “redistricting.” In California, for example, this includes the 80 State Assembly districts, the 40 State Senate districts, and the four (4) Board of Equalization districts.

Last November, California voters approved Proposition 11, the *Voters First Act and Redistricting Initiative*, which removed the powers of redrawing the Assembly, Senate and Board of Equalization districts from the state legislature to a “Citizens Redistricting Commission.” Additionally, the courts have determined that census data alone is not sufficient to change/propose district boundaries, and established “community of common interest” as a factor for consideration. However, the courts were not explicit about what standards and criteria can be used to determine whether a neighborhood is a community of common interest.

## III. Redistricting – Compliance with the Voting Rights Act

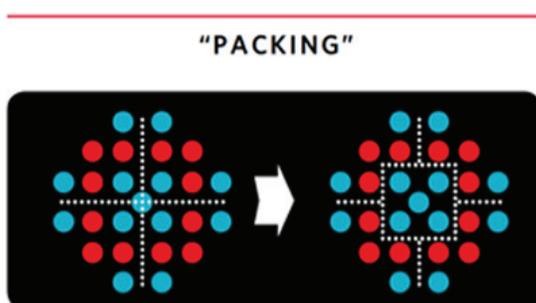
Voting rights has been a vital aspect of American civic participation, particularly for minorities and immigrants who have historically been barred from citizenship and voting. African Americans were denied the right to vote, primarily in the South. Devices such as poll taxes, literacy tests, and grandfather clauses were used to deny eligible voters access to the ballot. Other communities of color also faced barriers to voting. Asian Americans were barred from citizenship until 1952, effectively shutting them out from the franchise. When immigration quotas were increased for immigrants from Asia in 1965, voting as a form of political participation became even more important. However, Asian American voters faced barriers, such as language access, unfamiliarity with the voting process, and the societal perception of Asian Americans as outsiders.

The civil rights movement of the 1960s led to the passage of the federal Voting Rights Act of 1965 to help protect the legal right of all U.S. citizens to vote. The Voting Rights Act (VRA) contained several key provisions to ensure equal access to the ballots.

*Section 2* - prohibits racial discrimination in voting. This provision applies to all jurisdictions in the country and is a permanent provision. This section is most often used to challenge redistricting plans on the basis that they dilute minority voting power. Dilution is where line-drawers intentionally discriminate against a minority population or where a redistricting plan has the effect of diluting a minority population’s electoral strength.

Minority vote dilution typically happens through the process of “packing” or “cracking.” *Packing* is where there is an over-concentration of a minority population into a sub-optimal number of districts. For example, concentrating an African American population into one district where they make up 90% of the district, instead of two districts where they make up 50% of each district.

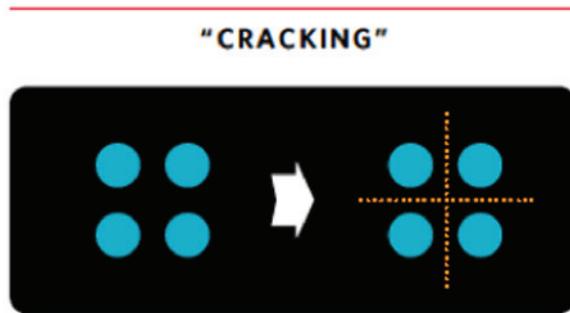
Figure 1. Packing



Data Source: Levitt, J. and B. Foster, *A Citizen’s Guide to Redistricting*, (2008) Brennan Center for Justice at NYU School of Law, downloaded from [www.brennancenter.org](http://www.brennancenter.org)

*Cracking* is where a minority community is split into two or more districts so that the minority community does not constitute a significant voting bloc in any district.

Figure 2. Cracking



Data Source: Levitt, J. and B. Foster, *A Citizen's Guide to Redistricting*, (2008) Brennan Center for Justice at NYU School of Law, downloaded from [www.brennancenter.org](http://www.brennancenter.org)

There is a three-pronged test for stating an effects claim in a Section 2 vote dilution case, from the U.S. Supreme Court case of *Thornburg v. Gingles*:

- (1) the minority group is sufficiently large and geographically compact to form a majority in a single-member district;
- (2) the minority group is politically cohesive; and,
- (3) the majority votes sufficiently as a bloc to consistently defeat the minority group's preferred candidate.

The second and third prongs are referred to as "racially polarized voting." In the first prong, one concern is related to whether or not a minority population can state a Section 2 claim if it does not make up at least 50% of a district's population. Until recently, there was no definitive Supreme Court ruling on this issue, while lower courts have gone both ways. In March 2009, the U.S. Supreme Court ruled that Section 2 requires parties to meet a 50% bright-line threshold (*Bartlett v. Strickland*).

*Section 5* - is an important element of redistricting because it concerns how minorities are being treated in areas where there has been a history of discrimination in voting against minorities. Section 5 requires certain jurisdictions, which now include nine whole states (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) and political subdivisions in seven others (California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota), to get approval from the federal government before they implement any changes in voting laws or procedures. This applies to any voting change, including polling place changes, new voting machines, and new redistricting plans. The changes proposed by a jurisdiction must meet the "retrogression" standard: the jurisdiction must show that the proposed change would not make minority voters worse off compared to the status quo. This section has a sunset provision, which means that in order for the section to remain in effect, Congress must renew the provision from time to time.

*Section 203* - requires certain jurisdictions to provide three types of language assistance to voters: (1) translations of written materials generally provided to voters; (2) oral assistance at polling sites; and, (3) pre-election publicity. Four language minority groups are entitled to receive assistance under Section 203: (1) Asian Americans; (2) Latinos; (3) American Indians; and (4) Alaskan Natives. Some states are covered in its entirety (e.g., California as a whole is covered for Spanish language assistance). Most jurisdictions that are covered include individual counties and any city within a covered county must also provide assistance to voters. This section has a sunset provision.

The protections afforded by this section of the VRA are especially important for the Asian American community given that some ethnic groups are majority limited English proficient (LEP). In California, 39% of Asian Americans are LEP, according to Census data. In 16 counties across 7 states, the government is required to provide language assistance in at least one Asian language. Seven counties in California must provide assistance in at least one Asian language. In Los Angeles County, language assistance is provided in Chinese, Tagalog, Japanese, Korean, Spanish, and Vietnamese.

*Section 208* - Provides voters with the right to take an assistant of their choice into the voting booth. "Assistant of choice" includes interpreters, but not someone from the voter's employment or union. Section 208 is a permanent, nationwide provision.

## IV. Redistricting – Voting Rights and Racial Gerrymandering

The Voting Rights Act of 1965 was enacted to protect minority voting rights and political representation and required state and local line drawers to create districts – known as *majority-minority districts* – that fairly reflect minority voting strength. However, this led to legal challenges of *racial gerrymandering*, or the deliberate drawing of district boundaries to secure an advantage for one race.

In *Shaw v. Reno* (1993), the U.S. Supreme Court created a new doctrine in redistricting – that the excessive and unjustified use of race in redistricting is prohibited by the federal Equal Protection Clause. Essentially, the Supreme Court ruled that race cannot be the predominant or controlling factor in drawing districts. But race can be one factor in drawing districts.

In *Miller v. Johnson* (1995), the Court created a "predominant factor" test for evaluating claims of unconstitutional racial gerrymandering under *Shaw*. The Supreme Court ruled that states may consider race as a factor in drawing districts, but may not subordinate "traditional race-neutral districting principles, including but limited to compactness, contiguity, respect for political subdivisions, or communities defined by actual shared interests, to racial considerations."

In 1996, in *Bush v. Vera* (1996), the Court established the rule that to defeat a claim of racial gerrymandering, line-drawers must consider data or evidence of communities of common interest at the time they drew the maps. In other words, communities must be truly considered when the districts are drawn, and not merely recited afterwards as pretext for race-based districts. Recognition of communities of common interest in a redistricting plan may justify bizarre-looking districts and refute allegations that race was the predominant factor in drawing the districts.

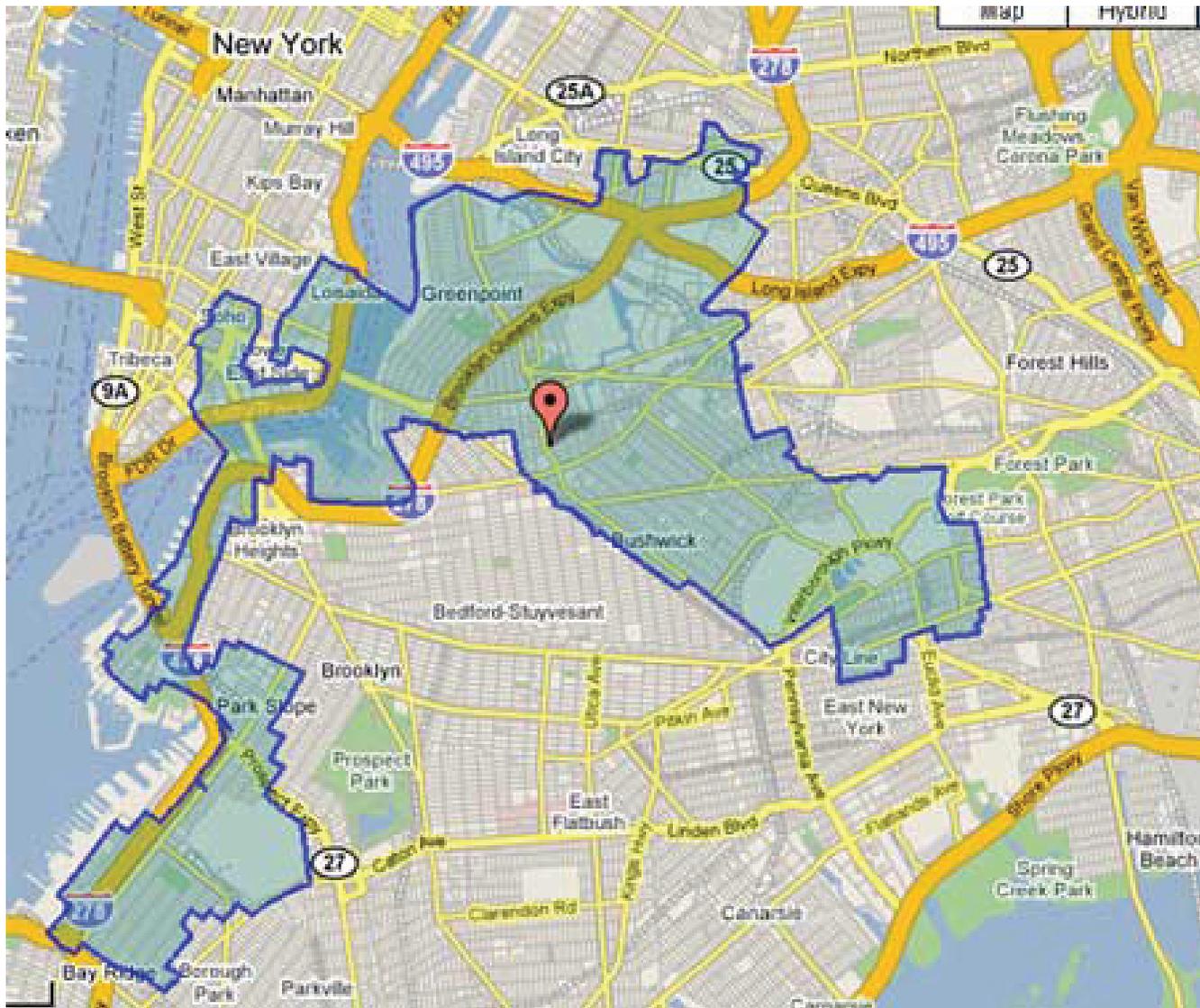
The creation of districts that provide minorities equal electoral opportunities without neglecting traditional districting criteria is the challenge facing many community advocates. What factors are important in articulating a community of interest for purposes of defeating a *Shaw v. Reno* claim of racial gerrymandering? To what extent can race be used in determining communities of interest?

Federal courts, where *Shaw v. Reno* claims are typically heard, tend to give weight to a population's common socio-economic status and characteristics. For example, in *Diaz v. Silver* (1997), a federal court heard a *Shaw v. Reno* challenge to New York's 12th Congressional District. The Court in *Diaz v. Silver* found that the Asian American community in the district, which lived in Manhattan's Chinatown and Brooklyn's Sunset Park, constituted a single community of interest because they shared common socio-economic characteristics. The community members:

- spoke a common Chinese dialect;
- read Chinese-language newspapers;
- were employed in low-wage industries;
- had low levels of formal U.S. education;
- rented their homes;
- rode the same subway lines;
- were immigrants and naturalized citizens;
- went to the same private and municipal health and social service agencies.

In this particular case, race was simply one of many factors considered in considering this population as a community of common interest. The criterion of “common interest” has not been clearly defined by the courts, leaving the task for community advocates.

Figure 3. New York’s 12th Congressional District

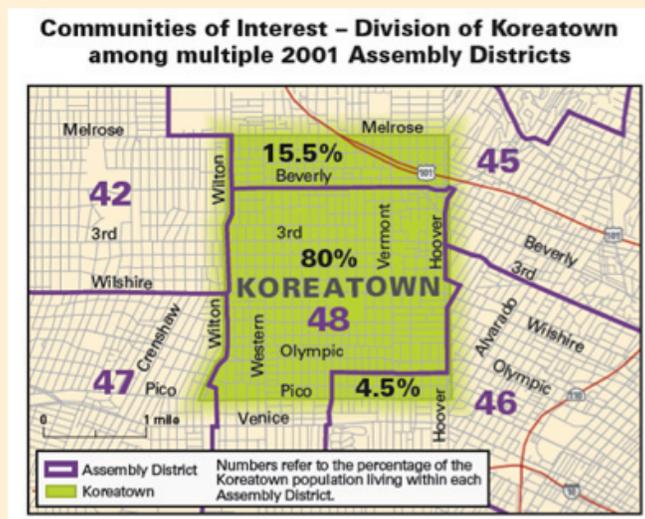


Data Source: <http://www.house.gov/velazquez/ny12/index.html>

Historically, Asian Americans have struggled to have fair representation in the redistricting process. Some examples in California include the struggles to keep the core of the San Gabriel Valley in one district. In the early 1980s, the district of the only Asian American Los Angeles City Councilmember was divided up. In 1992, race riots in Los Angeles took a heavy toll on many neighborhoods, including the area known as Koreatown. It is estimated that the city suffered damages of more than \$1 billion, much of it concentrated on businesses operated by Koreans and other Asian immigrants.

When residents of these neighborhoods appealed to their local officials for assistance with the cleanup and recovery effort, however, each of their purported representatives – members of the City Council and the state Assembly – passed the buck, claiming that the area was a part of another official’s district. The redistricting map, it turned out, fractured Koreatown. The area, barely over one mile square, was split into four City Council districts and five state Assembly districts, with no legislator feeling primarily responsible to the Asian-American community. (Levitt & Foster, 2008)

Figure 4. Koreatown



Data Source: <http://caredistricting.org>

Also, geographic dispersion of Asian American populations and questions about Asian American political cohesiveness create challenges in using Section 2 as a tool to secure fair representation. During the 2001 redistricting process, a California coalition called the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR) proposed the first-ever APIA statewide redistricting proposal. Because of *Shaw v. Reno* and the unlikelihood of being able to use Section 2, CAPAFR used a “communities of common interest” strategy to advocate for fair districts.

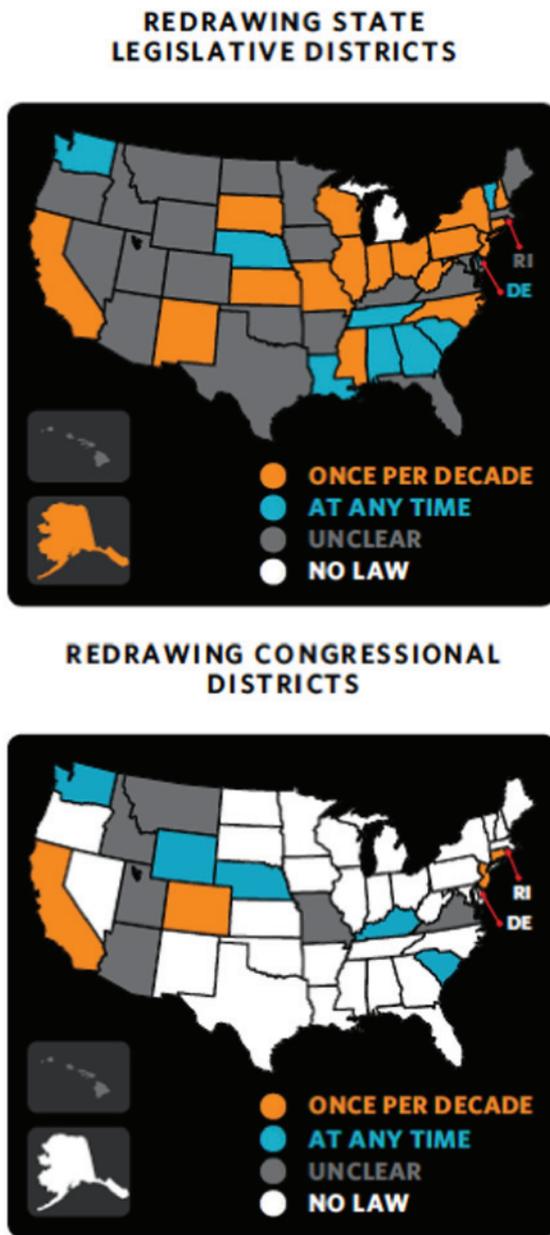
The communities of common interest approach meant using demographic and social science research to identify and articulate Asian American communities that shared common interests, views and characteristics. In many cases, these were multi-racial communities that also included Latino and/or African American populations.

## V. Redistricting – Definitions and Criteria

Redistricting is usually drawn by State legislatures, but in some instances or areas, the authority is given to a judicial entity or a commission. The process usually starts within a year after the completion of the federal Census; however, in some states, redistricting may take place at any time (see Figure 1.5 below). Other states have rules saying that district lines may not be redrawn before the next census, or that they may be redrawn only under certain circumstances – for example, if the courts so order. Moreover, most states have different

rules for drawing congressional districts and for drawing state legislative districts. And some have no rules at all for when the district lines may be redrawn (Levitt & Foster, 2008).

Figure 5. Redrawing Congressional Districts



Data Source: Levitt, J. and B. Foster, A Citizen's Guide to Redistricting, (2008) Brennan Center for Justice at NYU School of Law, downloaded from [www.brennancenter.org](http://www.brennancenter.org)

Line-drawers generally use various criteria for drawing maps – for example:

- Compliance with the Voting Rights Act
- Contiguity
- Compactness
- Keeping communities of interest intact
- Keeping city and counties intact
- Incumbency protection or other political factors

*Compactness* is considered important because political representation in our system is based on a belief that geographical “communities” share common interests. Another reason is the perception that elected officials can better serve their constituents if they are within a more limited geographical area, rather than in an

area extending over greater distances. Many state laws also require compactness in redistricting (MALDEF Redistricting Manual).

## VI. Neighborhood, Communities and Communities of Common Interest

In determining what is a community of common interest, an understanding of neighborhoods and communities is helpful. Though these terms are often used interchangeably, and at times may seem to have overlapping characteristics, the two are not synonymous and should be examined as separate concepts. A generally accepted distinction between the two concepts is that neighborhoods have a common locality as their basis while communities are not necessarily constrained spatially (Martin, 2003).

In this guidebook, the terms *neighborhood* and *community* will be examined as they relate to the drawing of political boundaries, a process that could result in either a gain or loss of political empowerment. This section of the guidebook will provide a working definition of neighborhood and communities; delineate the criteria as established by the courts for determining communities of common interest; and, identify the appropriate research methodology for each criteria.

### A. Neighborhood

Defining the concept of *neighborhood* has been the subject of interest among scholars, urban planners, sociologists and geographers. Definitions can vary based on the types and functions of neighborhoods (Martin, 2002).

“Great neighborhoods make great cities,” states the San Francisco Planning Department’s Elements of a Great Neighborhood ([http://www.sfgov.org/site/planning\\_index.asp?id=25174](http://www.sfgov.org/site/planning_index.asp?id=25174)). In Los Angeles, the vision of a citywide system of independent and influential neighborhood councils, and the creation of a city department – the Department of Neighborhood Empowerment (DONE) – to guide that process, was the centerpiece of the new City Charter that was approved by the voters in June 1999. One of the goals of DONE in establishing these neighborhood councils is to “foster a sense of community for all people to express ideas and opinions about their neighborhoods and their government,” ([http://www.lacityneighborhoods.com/about\\_us.htm](http://www.lacityneighborhoods.com/about_us.htm)).

While nowhere in these two statements could one find an explicit definition of the term “*neighborhood*,” one could infer from the context that neighborhood refers to a place within the larger city where people reside, work, or recreate. In other words, neighborhoods are sites of daily life and social interaction (Martin, 2003).

In defining neighborhood, clearly stated geographic units such as census tract, zip codes, political districts, school districts, service planning areas, or municipalities are used to denote boundaries (Sastry, Peibly & Zonta 2002; Guo and Bhat, 2007). These boundaries expand or contract over time, as drawn by municipalities. And while administrative agencies can set fixed boundaries, individual perception of where their neighborhood begins and ends may likewise shrink or expand depending on context, personal experience and other factors including their socio-economic status, educational attainment and whether they are recent immigrants or not. For example, “in general, residents who are more educated, higher income, not recent immigrants, and with more social ties in their neighborhood are more likely to say that their neighborhood is a larger area than other respondents.” (Sastry, Peibly & Zonta 2002) Residents may also “unofficially” designate an identity or character with their perceived neighborhood, with or without city action, based on what residents perceive their neighborhood to be.

Official designation or not, some neighborhoods are constructed and defined using a “set of characteristics of people and the physical environment” such as ethnicity, income, and housing stock that together constitute

a 'neighborhood' type" (Martin, 2002). Examples of neighborhood types include historical preservation areas, ethnic enclaves, ghettos, or the "hood" to distinguish a "type" of neighborhood.

A functional approach examines neighborhoods based on a wide variety of potential uses it serves, such as an administrative unit for urban services, as an economic area, or as a socially cohesive community.

Neighborhoods are always subject to redefinition depending on utility, stage of change, function and at times, sometimes even upon the perspective and agenda of the researcher. Nonetheless, there is some agreement that generally, a neighborhood is a place that contains residences and are the sites of social interaction.

## **B. Community**

The significance of communities in the redistricting process becomes apparent when the criteria of common interest is used. First of all, not all neighborhoods are communities – for example, suburban areas where residents do not know their neighbors and share little if any social interaction with other residents – or communities may exist but not be cohesive.

While neighborhoods are the physical areas where social interaction can take place, a community is made up of people organized around common values and social cohesion, sometimes within a shared geographical location; for example, a local neighborhood, suburb, village, town, city, or region. These types of communities are considered *spatial* or *communities of location*. This connection of community to neighborhood could explain why the two terms are sometimes seen as synonymous; i.e., the association of neighborhood with "nurturing places where families thrive and come together in communities" (Martin, 2002). An example of a community of location is the neighborhood of Chinatown, located just northeast of downtown Los Angeles, where new immigrants and long-time residents share the same space along with the institutions that support the relationship of its members; institutions such as churches, schools and civic organizations, important indicators of "*community*" (Keating, Krumholz & Star, 1996). A geographic community may contain a number of ethnic communities; e.g., Latino, South Asian and Korean-American communities make up the bulk of the population of the neighborhood and community of Koreatown in Los Angeles.

With technological advances and globalization, we see the formation of *aspatial* communities that function without having to be in the same location. These include communities sharing the same culture, identity, or need. For example, the community of hearing impaired share the same need and identity while not necessarily residing in the same neighborhood. Another example is the *Asian American community*, a community of people from different countries of origin but formed out of a shared identity and needs shaped by external or structural conditions in American society including racism and residential segregation.

Another type of *aspatial* community is organizations - ranging from informal family or kinship networks (e.g., *Gypsies* or other dispersed cultural groups) to more formal incorporated associations, political decision making structures, economic enterprises, or professional associations at a small, national or international scale (Tropman, Erlich & Rothman, 2006).

## **C. Communities of Common Interest**

How are communities of common interest defined and what methodologies can community advocates use to show compliance with this criteria?

In general, communities of common interest (*CCI*) are groups of people who share common interests or goals, share a common destiny, belong to the same set of organizations, interact frequently with each other, and act collectively. Some neighborhoods are *CCIs*, but other may not qualify. Geographically defined communities

can include neighborhoods that are historical preservation areas, ethnic and cultural enclaves, economic and business districts, or other characteristics. Line-drawers partially base their determination of which neighborhoods will be kept whole based on social science evidence. The goal is to protect neighborhoods that are “communities of common interest” from being cut into different districts. When communities of interest are split into several different districts, the residents of the area can face significant challenges to having their needs and interests addressed (Source: <http://caredistricting.org/mechanics/criteria/19>). Consequently, a critical first step is to identify the criteria used and gathering information to determine if a neighborhood is a CCI.

What constitutes an “interest” for the purpose of redistricting is varied. In defining a possible community of interest, one could refer to the census, demographic studies, surveys, or political information to assess what social and economic characteristics community members share, such as:

- Income levels
- Educational backgrounds
- Housing patterns and living conditions (urban, suburban, rural)
- Cultural and language backgrounds
- Employment and economic patterns
- How are community residents employed?
- What is the economic base of the community?
- Health and environmental conditions
- Issues of concern raised with their representative (concerns about crime, education, etc.) (MALDEF Redistricting Guide)

While the concept of “community of interest” has legal implications in the political redistricting process, how this concept is applied to protect minority voting rights and political representation has largely been untested (Hum 2002). UCLA Urban Planning Professor Paul Ong proposed four conceptual approaches to defining “communities of interest” based on a variety of social science disciplines including political science, sociology, urban planning, and economics. The concepts below offer potential approaches and rationales, to the degree that it motivates the residents of a neighborhood to take collective action, to defining what are “communities of common interest” (Hum, 2002).

- a community of limited liability - concerns about crime and public safety, health and environmental conditions and how a community stands to lose as a group;
- a community of opportunities - where one immigrant community (e.g., Asian) share interests with other immigrant communities—Latino, African American, Caribbean in an after-school program for all children of the neighborhood;
- a community of shared institutions - community, religious & civic organizations, schools; and,
- a community bound by common goods – where everyone can share the benefits of the neighborhood; for example, fresh air, a public park.

A community of common interest is a state-level redistricting standard, not a federally mandated standard like population equality or compliance with the Voting Rights Act. There is no uniform definition of communities of common interest used by states. Several states require line-drawers to respect communities of common interest; these states’ constitutions or statutory codes include communities of common interest as a mandated standard that line-drawers must abide by.

A handful of state courts permit line-drawers to use communities of common interest as a criterion for drawing district lines, recognizing communities of common interest as an important and legitimate standard. A few state courts have held communities of common interest not to be an important redistricting standard. A few of these courts view the use of communities of common interest as improper, while other courts do not

view communities of common interest as an improper standard to use, provided that other constitutional requirements are met.

How do state courts, where claims that a redistricting plan violates the state constitution are typically heard, define communities of interest? Many state courts tend to focus on whether there is common and shared economic activity within a geographic area, i.e. whether there is a nexus between geographic and economic activity. This might be common participation in local markets, the presence of a common employment base, shared patronage of professionals and financial institutions serving the needs of major economic activities, or the existence of a dominant local industry.

This could also include shared interests of a population on growth, development, tax or other economic issues. State courts also look at other forms of activity, such as political activity consisting of relationships established between an area's inhabitants and their elected officials. The California Supreme Court has looked at geographic commonalities, industry, transportation and human activity as indicators of communities of interest – examples of such interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.

The U.S. Supreme Court and lower federal courts have recognized communities of common interest as a legitimate redistricting standard that states may use. This comes up in the context of claims of racial gerrymandering under *Shaw v. Reno*.

In California, prior to Proposition 11, there was no state constitutional mandate for line-drawers to respect communities of common interest. However, the California Supreme Court has **upheld the use of communities of common interest as an important and legitimate standard** (*Legislature v. Reinecke* decision in 1973 and *Wilson v. Eu* decision in 1992), and line-drawers have commonly used communities of interest as a redistricting standard.

Proposition 11 amended the State Constitution to explicitly include communities of interest:

The geographic integrity of any city, county, city and county, **neighborhood, or community of interest** or of any geographical region shall be respected to the extent possible without violating the requirements of any of the preceding subdivisions. **Communities of interest shall not include relationships with political parties, incumbents or political candidates.** (Source: <http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop11-title-sum.htm>)

Proposition 11's standards apply to redistricting of Congressional, State Assembly, State Senate, and Board of Equalization districts. With regard to county supervisor and city council redistricting, the California Elections Code specifies that county boards (Section 21500) and city councils (Section 21601) may consider communities of common interest as a factor in drawing district boundaries. (Appendix A contains a more detailed discussion of the provisions of Prop 11).

There are two concepts to consider when thinking about communities of interest:

1. When determining communities of interest, what factors are important to arguments that a state's redistricting plan was not based on illegal racial gerrymandering? (i.e. playing defense against challenges to a state's redistricting plan claiming that the plan was impermissibly based on race?)

2. When determining communities of interest, what factors are important to arguments that a state should draw districts in a certain way in order to respect communities of interest? (i.e. playing offense to compel a state to draw districts in a certain way or playing defense against a challenge that districts should have been drawn a different way?)

Table 1.1 below lists these criteria and the corresponding research methodology identified as appropriate for each criterion. Most of the socio-economic status (SES) data (for example, income, educational attainment, or home ownership) can be accessed through secondary sources such as the U.S. Census. Other SES indicators like media usage (e.g., use of ethnic media) are not going to be available using the previous sources; and in these instances, a primary research tool such as a survey is more appropriate. Other criteria that may support a community of common interest designation include political engagement, social capital and common risks. Compiling data for these criteria requires qualitative research methodologies (e.g., one-on-one surveys, interviews with community organizations, and other stakeholders within the particular neighborhood).

Figure 6. Criteria for Determining a Community of Common Interest and Research Methodology

Criteria	Research Methodology			
	Stakeholder Survey	Voting Patterns	Organizational Analysis	Secondary Data Analysis
<b>Socioeconomic Status</b>				
Income/Economic class/Occupation				x
Education				x
Homeownership				x
Mode of Travel				x
Media Usage	x			
Language				x
Connections to Economy (production & consumption)	x		x	
<b>Political</b>				
Voting (political stance)	x	x		
Other forms of engagement (protest, attend Town Hall or neighborhood meetings, etc.)	x		x	
<b>Social Capital / Networks</b>	x		x	
Information Network (Ethnic media)	x		x	
<b>Common Risks</b>	x		x	
Environmental risks (TRTs, Prop 65)	x		x	
Public Safety	x		x	

The next two pamphlets provide the procedures for the particular research methodology that a community advocate, for example, can use in researching, analyzing and assembling a strong argument for keeping neighborhoods intact during redistricting because they meet the criteria of having communities of common interest.

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## APPENDIX A – REDISTRICTING: CALIFORNIA’S PROPOSITION 11

In California, after the passage of a ballot initiative (Proposition 11) in November 2008, the authority of drawing maps was removed from the state legislature and instead, the responsibility was placed on a Commission of 14 members, of which

- 5 must be affiliated with largest political party (Democrat)
- 5 must be affiliated with second-largest political party (Republican)
- 4 must be affiliated with neither party (third-party and decline-to-state voters)

Eight of the 14 commissioners are randomly selected. The remaining six are selected by these eight randomly selected commissioners.

The State Auditor is charged with overseeing the process for appointing commissioners. The State Auditor must open up the application process no later than January 2010 or sooner. The commission must be appointed no later than December 31, 2010.

In order to apply for the commission, a person must be a continuously registered voter in California for five years leading up to the date of the appointment to the commission. The date of appointment must be no later than December 31, 2010, so you must have been registered to vote by January 1, 2006 or earlier. Also you must have had the same party affiliation (or nonaffiliation) for the past five years.

Secondly, there are a few voting history requirements. The applicant must have voted in two of the last three statewide general elections preceding his or her application.

For this purpose, the last three general elections are November 2004, November 2006 and November 2008 (November 2010 will not count). An applicant is disqualified if he or she did any of the following during the 10 years preceding the date of application (since January 1, 2000 assuming one submits an application on January 1, 2010) –

- Was appointed or elected to federal or state office, or was a candidate for federal or state office
- Served as an officer, employee or paid consultant of a political party, or of the campaign committee of a candidate for federal or state office
- Served as an elected or appointed member of a political party central committee
- Continued – list of disqualifying activities
- during previous 10 years:
- Were a registered federal, state or local lobbyist
- Served as a paid congressional, legislative or Board of Equalization staffer
- Contributed \$2,000 or more to any congressional, state or local candidate for elective public office in any year

The applicant is also disqualified if an immediate family member did any of the above, although it is unclear what immediate family means – presumably spouse, parents, children, siblings and in-laws according to Prop. 11’s language, but it may be interpreted differently. Also, an applicant cannot be a staffer, consultant, person under a contract with, or an immediate family member of the Governor, or a member of Congress, State Legislature, or Board of Equalization.

### Stage 1

- State Auditor conducts outreach to prospective applicants
- State Auditor has an obligation to conduct the application process “in a manner that promotes a diverse and qualified applicant pool”

## **Stage 2**

- Interested persons submit applications
- State Auditor is in the process of developing the application form – not sure what the application form will look like, but the application will likely be vetted through a formal rulemaking process initiated by State Auditor

## **Stage 3**

- State Auditor reviews applications for compliance with eligibility and disqualification requirements

## **Stage 4**

- Applicant Review Panel (ARP) evaluates applications
- Applicants are evaluated on basis of the three criteria –
  1. Relevant analytical skills,
  2. Ability to be impartial, and
  3. Appreciation for California's diverse demographics and geography

## **Stage 5**

- ARP selects 60 applicants to move on into final nominee pool
- 60-person nominee pool is made up of three "subpools" – 20 Democrats, 20 Republicans, and 20 other (third-party and decline-to-state voters)

## **Stage 6**

- The four legislative leaders remove up to 24 applicants from 60-person nominee pool
- Each legislative leader can strike up to two applicants from each of the three subpools
- 36 nominees remain, assuming the legislative leaders exercise all of their strikes

## **Stage 7**

Eight of the 14 commissioners are randomly selected from the remaining 36-person nominee pool:

- 3 are randomly selected from the Democrat subpool,
- 3 are randomly selected from the Republican subpool, and
- 2 are randomly selected from the other subpool

## **Stage 8**

The 8 randomly selected commissioners pick 6 commissioners from the remaining 28-person nominee pool –

- 2 are chosen from the Democrat subpool,
- 2 are chosen from the Republican subpool, and
- 2 are chosen from the other subpool

It takes 5 of the 8 randomly selected commissioners to select the 6 remaining commissioners, including –

- 2 of the 3 randomly selected Democrats,
- 2 of the 3 randomly selected Republicans, and
- 1 of the 2 randomly selected other commissioners

Prop. 11 provides that the remaining 6 commissioners shall be chosen to ensure the commission reflects the state's diversity, including but not limited to racial, ethnic, geographic and gender diversity.

## **Commitment and Rules for Commissioners**

Main period of activity for commissioners is from Jan. 1, 2011 to Sept. 15, 2011 (deadline for commission to approve maps). The formal term of office for commissioners extends until when the next commission is appointed, so the term is for 10 years.

Commissioners receive \$300 for each day they are engaged in commission business. Commissioners and their staff may not communicate with anyone about redistricting outside of a public hearing – this does not apply to communications between commissioners, staff, legal counsel and consultants. For a period of ten years from their date of appointment, commissioners are ineligible to hold elected office in California at the federal,

state, county or city level. For a period of five years, commissioners are ineligible to hold appointed office at the federal, state or local level, serve as paid staff for the State Legislature or any individual legislator, or to register as a federal, state or local lobbyist in California.

## **Other changes under Prop 11**

There are new redistricting criteria for Congressional, State Assembly, State Senate and Board of Equalization districts. There are new transparency and public notice requirements for redistricting hearings and display of draft maps.

## **Strategies for 2011**

Strategies to increase the likelihood of API representation on the commission:

- Outreach and education to communities across the state re: the importance of redistricting and the redistricting commission
- Training and guidance for candidates on the following –
- Eligibility and disqualification provisions
- Criteria for selection
- How to fill out the application form
- Training on redistricting basics so candidates can be competitive in interviews

Strategies for the statewide redistricting process:

- Statewide organizing around communities of interest
- Multi-racial dialogue to identify and manage potential points of conflict
- Submission of mapping proposals and testimony

## ABOUT THE ORGANIZATIONS

**The University of California Asian American & Pacific Islander Policy Multi-Campus Research Program (MRP)** promotes and supports applied research on policy issues related to AANHPIs in California, and its faculty affiliates are experts from a wide range of disciplines with knowledge about the complex nature of AANHPI communities. The MRP works with elected officials and their staff, community organizations, and public interest groups. Additional information can be found at: <http://www.aasc.ucla.edu/policy/>.

**UCLA Asian American Studies Center**, established in August 1969 as one of four ethnic studies centers, has become the foremost national research center on Asian Pacific Americans. As an official Organized Research Unit (ORU) of the University of California, the Center has sought to bridge the educational, social, political, and cultural concerns of the Asian Pacific community, with the overall mission of the University through research and creative endeavors, curriculum development, publications, library and archival work, public educational activities and partnerships with local and national organizations through its programs in the social sciences, arts, professional school disciplines and the humanities. For more information, please visit our website: <http://www.aasc.ucla.edu>

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