

12 *Explainer: Communities of interest*

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“I have called my tiny community a world, and so its isolation made it; and yet there was among us but a half-awakened common consciousness, sprung from common joy and grief, at burial, birth, or wedding; from a common hardship in poverty, poor land, and low wages; and, above all, from the sight of the Veil that hung between us and Opportunity.”

—W.E.B. Du Bois, *The Souls of Black Folk*.

BACKGROUND: THE COMMUNITIES OF INTEREST CRITERION

One of the most enigmatic of the “traditional districting criteria” is that districts should try to preserve so-called *communities of interest*, or COIs. Though not among the two federal criteria for drawing districts, the importance of drawing district boundaries to not split up communities is invoked in many states. As Chapter 11 recognizes and as Du Bois elaborates above, the question of what unites people in a place has many answers, and these answers are not always conscious or articulated. And indeed, COI rules are not always found in one place. Sometimes they are defined in state legislation, but other times they emerge in litigation, are carefully considered by mapmakers and community activists without any laws compelling them, or are celebrated (whether sincerely or not) in narrative descriptions after district creation entirely.

Within these rules, norms, and practices, what is a COI, and what is its significance for redistricting? The answers to these questions are necessarily multiple, ambiguous, and sometimes contradictory. This explainer does not attempt to smooth over this—the fuzziness comes with the territory. What it does attempt, though, is to clarify some points of law, history, and current practice around community thinking in redistricting. Although fuzzy, consideration of communities can be crucial to developing meaningful districts.

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States with requirements to preserve Communities of Interest (COI)

A first point worth noting about COIs, in legislation and in general, is that they are more qualitative than other districting criteria. Most other such criteria can be measured, if in multiple ways with their own challenges.¹ COIs, by contrast, are primarily based on description—not entirely unlike that presented by Du Bois above (although Du Bois was not trying to describe a COI at all!).

- Alaska: “...a relatively integrated socio-economic area.”
- California: “A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples

¹For instance, a close examination of the Census complicates the straightforward notion of population balance, and “compactness” has many incompatible definitions (see Chapter 1).

of such shared interests 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. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”

- Colorado: “communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.”
- Alabama: “community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, geographic, governmental, regional, social, cultural, partisan, or historic interests; county, municipal, or voting precinct boundaries; and commonality of communications.”

We can observe from these examples that COIs are frequently defined in terms of economic commonality or shared industry. Besides the explicit legislative citations, COI references can be found repeatedly in defense of a plan. For example, the Colorado redistricting commission based one district on the desire to connect several ski areas, and a court affirmed that this was a legitimate COI consideration. Another Colorado district was permitted to break county lines to unite a technology-oriented business district: the Denver Tech Center [3]. To this end, Du Bois’ community might be considered a COI if its members were commonly employed by one or only a few specific industries. The references to cultural, racial, and ethnic similarities are also salient and would speak to Du Bois’ community, although as we shall see, COIs cannot be characterized primarily in terms of race.

Just as often, however, the term is left as self-explanatory, as in the following states’ statutes:

- Idaho: “To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.”
- Oregon: “Each district, as nearly as practicable, shall ... Not divide communities of common interest.”
- South Dakota: “Protection of communities of interest by means of compact and contiguous districts.”

These sets of references offer much less information, lacking details or practical guidance. Perhaps the most interesting case is that of South Dakota, where it seems to be suggested that just drawing nice shapes, vaguely following other districting criteria, will tend to capture common interests all on its own.

PRINCIPLES FOR COMMUNITIES OF INTEREST

Having established that many states prioritize COIs, we turn to the question of how to find them and figure out their boundaries. Ideally, COIs should be co-extensive with districts—if the goal is to make districts respect the structure of

these communities—but of course this is rarely possible on the nose. The size of districts is prescribed by law, and organic communities won't be exactly the right size, and only sometimes have clear boundaries. Where COIs are smaller than districts, one interpretation of the rules is that *a community should not be split by district lines*. We can justify this by a desire to give the community group a strong voice with the district's representative by making up a significant share of the constituents, or at least not splitting the community such that it has to use divided resources to reach multiple representatives.

Several authors have taken the logic farther and argued that where districts are large enough to contain multiple communities, mapmakers should attempt to unite those with similar features and avoid combining different ones. Law professor Nick Stephanopoulos writes that “district and community boundaries should coincide ‘to the extent possible’ because the one-person, one-vote rule makes perfect congruence impossible. When communities must be disrupted, however, the disruption should be minimized—for instance, by joining groups that are as similar in their interests and affiliations as is practicable.” That is, good districting should avoid both the “unnecessary merger of disparate communities and [the] division of unified communities” [15].

OK, but how can mapmakers identify a COI? You can ask people, and many good districting practitioners do just that! (See Chapter 18.) Still others have argued that the identification of communities should follow guidelines that are clear enough that they can be automated, or just read off of an appropriate dataset. In one influential example, Stephanopoulos proposed a “top-down” COI identification method that could be run by computer, based on socio-economic and demographic data found in the American Community Survey and patterns of voting support for ballot initiatives [15]. Political scientists Karin Mac Donald and Bruce Cain have argued that this is unworkable, at least in California, because of rapid change and because of the poor correspondence of ACS data with the lived reality of communities [11]. They write, “[t]he ‘interest’ in a COI is not merely a clustering of some measurable social or economic characteristic. Residents in that area have to perceive and acknowledge that a social, cultural, or economic interest is politically relevant.” Scholars and practitioners who reject top-down identification often advocate for public mapping initiatives as an alternative—in other words, there's no getting around asking people if you want to know how they think about where they live.

THE GAP BETWEEN NARRATIVE AND DATA

In terms of meaningful public input—how has it worked to ask people to define their communities for the purpose of drawing districts? At its most precise, public mapping might be able to show us communities as regions delineated on a map accompanied by a clear description of shared interests. It's worth thinking about what kinds of themes come up in public mapping, and how they fit in, and can fit in, to the practices of redistricting.

12.1 CASE LAW

It's instructive to review what courts have found about the definitions and salience of communities of interest. This is drawn largely from Gardner [7].

The following descriptions have counted as COIs:

- Justice Sandra Day O'Connor, writing for the Supreme Court plurality, cites "for example, shared broadcast and print media, public transport infrastructure, and institutions such as schools and churches" as arguable "manifestations of community of interest," but warns that these are not easily disentangled from race (*Bush v. Vera*, 517 U.S. at 964 (1996))
- A "predominantly urban, low-income population" (*Lawyer v. Dept of Justice*, 521 U.S. 567, 581–82 (1997));
- Satisfactory evidence of shared socio-economic status (*Chen v. City of Houston*, 206 F.3d 502, 513 (5th Cir. 2000));
- "[L]ess-educated" citizens, or those "more often unemployed" have "common social and economic needs" suitable for a COI (*Theriot v. Parish of Jefferson*, 185 F.3d 477, 486 (5th Cir. 1999));
- "There are no doubt religious, class, and social communities of interest that cross county lines and whose protection might be a legitimate consideration in districting decisions." (*Kelley v. Bennett*, 96 F. Supp. 2d 1301 (M.D. Ala.))
- Lower courts have affirmed that Latino or Hispanic groups can constitute a COI (*Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998) and *Meza v. Galvin*, 322 F. Supp. 2d 52, 75 (D. Mass. 2004)), but there are ample indications that the Supreme Court would not agree (*Miller*, Session, etc.).
- Census tracts can serve as evidence: the California Supreme Court approved the plan of an outside expert (or "special master"), in part on the reasoning that building it out of whole census tracts contributed to preserving COIs (*Wilson v. Eu*, 823 P.2d 545, 556 (Cal. 1992)).

On the other hand, the following have been rejected as a basis for COI or defining them:

- Keeping urban apart from rural areas (*In re Legislative Districting of Gen. Assembly*, 193 N.W.2d 784, 789 (Iowa 1972));
- A court itself may not "define what a community of interest is and where its boundaries are" (*In re Legislative Districting of State*, 805 A.2d 292, 297, 298 (Md. 2002)).

Finally, heterogeneity itself—just the fact that the district is not cohesive—is sometimes taken to show that race or ethnicity predominated over COIs as criteria for drawing districts, as in the following:

- Evidence of "fractured political, social, and economic interests" argues against specific COIs (*Miller v. Johnson*, 515 U.S. 900, 919 (1995));

- “Plaintiffs presented evidence of differences in socio-economic status, education, employment, health, and other characteristics between Hispanics who live near Texas’s southern border and those who reside in Central Texas” in order to argue that ethnicity had predominated over COIs in forming the districts (Session v. Perry, 298 F. Supp. 2d 451, 512 (E.D. Tex. 2004));

These are hints, but, as promised, they don’t add up to a very clear picture! In fact, legal scholar James Gardner argues that only Alaska, Colorado, New Jersey (pre-1966), Vermont, and Virginia even have clear precedent in law for COI considerations at all [7].

As one major example, the California Citizens Redistricting Commission (CRC), an independent redistricting commission, coordinated a substantial public mapping effort to get community input for drawing districts. Table 12.1 shows the most common themes that were identified in COI submissions.

COI Theme	Count
Environmental concerns	495
Common culture/cultural community	440
Recreation	251
Fire danger/services	220
Ethnic community	164
High-tech industry	104
Aerospace industry	97
Religious community	62
Air quality	38

Table 12.1: Top themes in 12,425 written COI submissions to California Citizens Redistricting Commission, by frequency [11].

The diversity of themes here cuts both ways: on one hand, it can be seen as a testament to the success of the CRC in terms of the breadth of public input. On the other hand, this list might suggest that the sheer number of possible COIs makes the concept less viable. The Maryland Court of Appeals came to the latter conclusion, arguing that the COI concept is “nebulous and unworkable” because “the number of such communities is virtually unlimited and no reasonable standard could possibly be devised to afford them recognition in the formulation of districts.” (In re Legislative Districting of State, 475 A.2d 428, 445 (Md. 1984).)

As in the case of Maryland, the open-endedness of the task of collecting public input has most often led states to decline even to try to define and locate communities formally. The defendants in the major Supreme Court case, Bush v. Vera, were chastised for this omission: the decision stated that “it is, however, *evidentially* significant that at the time of the redistricting, the State had compiled detailed racial data for use in redistricting, but made no apparent attempt to compile, and did not refer specifically to, equivalent data regarding communities of interest.” (emph. original).

Political geographer Benjamin Forest offers a different sort of warning. His claim is

that when using GIS software to identify communities of interest, the data available when you draw the lines—such as race and political party—can subtly dictate which COIs are mapped, and which maps are accepted [5]. *Bush v. Vera* tells us that race cannot predominate over other considerations, so it might follow that racial data cannot be the primary data shown in tools for redistricting, and specifically in tools for community input.

On the other hand, abandoning mapping altogether is not a solution either, of course. A court case in Hawaii makes the connection clear: if you can't map COIs, you can't tell a mapper to preserve them. As the court stated: “[t]he lack of defined boundaries precludes reapportionment based upon a strict recognition of community interests” (*Kawamoto v. Okata*, 868 P.2d 1183, 1187 (Haw. 1994)).

Public mapping tools, which are gaining in popularity,² need to account for the fact that their interfaces have influence. Which data they show will impact both what the maps ultimately look like and whether the maps are seen as valid.

POST HOC COMMUNITY AND THE POTENTIAL FOR GAMING

Though not all states have a mandate to preserve COIs, many authorities will describe districts after drawing them using the *language* of community. This can be relatively innocuous or can even create meaningful logic in district plans, but in some cases it can also engender concerns about gaming the system.

As an example of the former, after California's commission collected public testimony, they did indeed weave language about community intricately together with other districting criteria to describe their plan. For example: “CD 16 includes all of Merced County and portions of Madera and Fresno counties. The city of Fresno is split in this district to achieve population equality and in light of the Section 5 benchmark for Merced County. The western valley portion of Madera County is included in this district, as well as many of the Highway 99 communities from Merced County into the city of Fresno, such as Livingston, Atwater, Chowchilla, and the city of Madera. Communities in this district share the common links of agriculture, water, and air issues, along with the serving as the main transportation routes connecting northern and southern California. This district complies with Section 5 of the Voting Rights Act” [2].

As an example that didn't involve collecting public testimony, a court case in Virginia used the language of community to distinguish districts: “[t]he evidence shows a greater community of interest among the people of the Tenth District, which is a part of metropolitan Washington, than between the people of that district and those of the adjoining Eighth.” The contrast here is between interests “primarily centered in Washington” as a whole and “largely agricultural” concerns in the Eighth district (*Wilkins v. Davis* 139 S.E.2d 849, 853 (Va. 1965)). Especially

²This is especially the case in the face of the coronavirus pandemic. With in-person meetings for collecting community feedback being shut down, state and community groups collecting COIs are increasingly turning to web-based programs.

notable here is that community identity was used as a descriptor of a district in its entirety rather than a smaller geographic region preserved within a district.

A more extreme recent example of using the language of community without grassroots input was the sprint to remake Congressional redistricting through the Pennsylvania Supreme Court in 2018. Democratic Governor Tom Wolf filed a benchmark map with the court that was rife with COI-heavy narrative. For example, the court filing described the district comprising Pittsburgh and some of its suburbs as follows: “These communities share significant interests economically, including an evolving technology sector and strong educational and medical institutions.” Likewise, the description for an Eastern Pennsylvania district began: “District 15 combines the region’s four third-class cities of Allentown, Bethlehem, Easton, and Reading, with their shared heritage of manufacturing and common interests, into one district. This map recognizes the communities are similar in economies and histories and should be together” [16]. Pennsylvania has no requirement to preserve COI, so the narratives here serve a softer, persuasive purpose: they are intended to confer legitimacy and consolidate support for the plan, either with the public or possibly with the court.

At worst, community narratives can be a completely empty gesture. In a study of community participatory development in Boston, sociologist Jeremy Levine observed that “residents’ membership in ‘the community’ affords them legitimacy and recognition in redevelopment decision-making.” These invocations of “community” and especially “community participation” are promissory—and such promises do not always bear fruit. In practice, Levine finds that community participation did not lead to residents having concrete influence. In this way, community was constructed in a hollow and ultimately cynical way, enabling redevelopment authorities to claim community input through holding meetings, while they ultimately retained control over decision making [4, 9].

WHAT IS COMMUNITY, AND WHAT CAN IT DO FOR US?

In the 1920s, a group of sociologists at the University of Chicago divided the city into 72 pieces, calling them “community areas.” These community areas were used—and are still used—for studying neighborhood characteristics and change over time. While originally intended as a way to group Census data “to reflect real, not arbitrary, divisions within the city,” the program was controversial from the start. The Encyclopedia of Chicago reflects popular sentiment about the community areas, saying that “[f]rom the beginning they only unevenly reflected the actual experience of community within the spaces, and over time many of them have become even less indicative of the perceptions of their residents, whose characteristics have shifted considerably due to migration. As ossified zones, they capture neither individual community identity nor the territorial reality of social groups” [13]. The contentious nature of the Chicago community areas encapsulates the themes of this explainer: how, when, and by whom community is defined and demarcated matter. These debates come to a head in redistricting.

To conclude, it is worth stepping back and situating communities of interest in broader debates about community as a component of representative democracy. We've seen that many people in redistricting want to interpret community in terms of industrial sectors, others want to define it after drawing districts to support existing plans, and that despite attempts to define it, it remains nebulous. Martin Luther King, Jr. had a very different vision. Throughout his writings, King, Jr. voiced a commitment to what he called Beloved Community, a sense of community "in which all persons are respected and enjoy the economic benefits of the nation" [8]. The respect of all persons included affirming difference, especially racial difference, and addressing poverty and inequality.

The whole concept of community exists with a fundamental tension: bringing people together across difference and working to address inequality, as in King, Jr.'s Beloved Community, or just affirming sameness in a narrow sense. As geographer Lynn Staeheli writes, the concept of community risks "the construction of sameness, rather than a recognition of what is common; it [community] can create something totalizing, rather than something based on sharing" [14]. Because of this tension, some are fundamentally skeptical of the concept of COIs in redistricting. Gardner, for instance, writes: "[t]o speak of a community of interest is to presuppose a thin form of community based on nothing more than shared interests—we are all poor, perhaps, and thus share an interest in poverty programs; or we are all riparian homeowners and thus share an interest in flood protection. A shared interest is central to an advocacy organization, perhaps, but it hardly describes a three-dimensional political community" [6].

Others see the promise of fairer outcomes. For the 2020 redistricting cycle, more states have turned to official and unofficial citizens' and people's redistricting commissions [12]. Using public mapping tools and working with community-based organizations, these commissions are centering the collection of COI maps and narratives in their efforts to democratize redistricting. To that end, we'll close with a much more hopeful note from Staeheli, who writes, "the powers to define community and to exclude on the basis of that definition are also the powers to reorder the public, and we can imagine the possibility of doing this to *enhance* democratic citizenship" (emph. added) [14]. So the stakes are high: community lets us reimagine coalitions and alignments, and therefore lets us reimagine representation. It is for this reason that the work of public mappers and negotiating the conflicting logics of community are especially important in redistricting.

WHERE TO READ MORE

In addition to the references discussed above, several chapters in this book add insight to the questions raised here. Readers may be interested in the description of redistricting rules in Chapter 2, which situates COIs among other criteria. Chapter 11 speaks to the inherent tensions between people and place in what come to be called communities, and Chapter 10 gestures toward the significance of defining community for addressing racial inequality. Chapter 18 offers practitioner perspectives on districting, including the challenge of collecting community input for COIs. Finally, Chapter 21 discusses how communities of color were able to gain

representation, not through COIs, but through coalition claims.

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