



ROPE & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704
WWW.ROPEGRAY.COM

DATE: October 11, 2021
TO: Citizens Redistricting Commission
FROM: Ropes & LLP
SUBJECT: Redistricting: LGBTQ+ Communities as Communities of Interest

EXECUTIVE SUMMARY

Geographically connected LGBTQ+ communities are communities of interest that should be considered in redistricting efforts. So long as an LGBTQ+ community can be shown to be within a contiguous population, the numerous shared social and economic interests of LGBTQ+ people require that LGBTQ+ communities be considered communities of interest. Thus, redistricting commissions must draw district lines that take effort to minimize the division of LGBTQ+ communities. In so doing, redistricting commissions are not limited to considering U.S. census data, and can consider other data sources such as personal testimony, community surveys, and polling. Indeed, the 2011 California Redistricting Commission considered LGBTQ+ communities of interest in drawing district lines.

LEGAL FRAMEWORK

The Supreme Court of the United States has mandated that communities of common interest be considered in redistricting efforts.¹ Redistricting in the State of California is governed by Article XXI of the California Constitution. Article XXI sets out the process a 14-member Citizens Redistricting Commission (“Commission”) must follow as it draws the lines for California Assembly and Senate districts, federal congressional districts, and Board of Equalization districts. Section 2(d)(4) of Article XXI requires the Commission to consider communities of interest in establishing districts and defines “community of interest” as:

[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 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.

¹ See *Miller v. Johnson*, 515 U.S. 900, 920 (1995).

California courts have developed factors to guide the analysis of whether a community falls within this definition. For example, the California Supreme Court illustrated the wide range of communities that fall within this definition, including communities with similar economic interests, travel patterns, and geographic interests.² Similarly, a California federal court explained that, “in defining communities of interest, [it] must look to socioeconomic status, education, employment, [and] health.”³ Based on these factors, that court defined a Latino community “fac[ing] similar issues,” including issues “related to . . . public health,” as a community of interest.⁴ Courts in other states have also developed factors for determining whether a community is a community of interest, including “share[d] . . . service organizations [and] . . . health clinics”⁵ and “social, historical, and cultural bonds.”⁶

Scholars have supplemented the work of courts, also offering insight as to what factors are key in defining communities of interest. These factors include (1) discrimination related to socioeconomic status, education, health, and employment,⁷ (2) historical affiliation,⁸ (3) “cultural . . . and social ties,”⁹ (4) “shared institutions,”¹⁰ and (5) “similar values [and] shared interests.”¹¹

EXAMPLES OF “COMMUNITIES OF INTEREST”

Based on the factors described above, the Commission must determine what constitutes a community of interest within the bounds provided by the California Constitution. The Commission’s past redistricting efforts highlight the wide range of communities, *including LGBTQ+ communities*, that fall within the definition of community of interest. For example, when drawing Assembly, Senatorial, and Congressional districts, the 2011 Commission defined the following as communities of interest:

- Wine tourism industries;¹²
- Communities with recreational interests in a lake;¹³
- Populations across two cities that expressed in public testimony a shared sense of community;¹⁴

² See *Legislature v. Reinecke*, 516 P.2d 6, 19 (Cal. 1973).

³ *Luna v. Cty. of Kern*, No. 116CV00568DADJLT, 2017 WL 2379934, at *6 (E.D. Cal. June 1, 2017).

⁴ *Id.*

⁵ *Diaz v. Silver*, 978 F. Supp. 96, 123-24 (E.D.N.Y. 1997).

⁶ *Goddard v. Babbitt*, 536 F. Supp. 538, 540 (D. Ariz. 1982); see also *Diaz*, 978 F. Supp. at 123-24.

⁷ Stephen J. Malone, *Recognizing Communities of Interest in A Legislative Apportionment Plan*, 83 VA. L. REV. 461, 468 (1997).

⁸ *Id.*

⁹ Tarry Hum, REDISTRICTING AND THE NEW DEMOGRAPHICS: DEFINING “COMMUNITIES OF INTEREST” IN NEW YORK CITY, 14-15 (2002).

¹⁰ *Id.*

¹¹ Glenn D. Magpantay, *A Shield Becomes A Sword: Defining and Deploying A Constitutional Theory for Communities of Interest in Political Redistricting*, 25 Barry L. Rev. 1, 18 (2020).

¹² Citizens Redistricting Commission, *Final Report on 2011 Redistricting* 28 (Aug. 15 2011), https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/08/crc_20110815_2final_report.pdf.

¹³ *Id.* at 29.

- A large concentrated population of Hmong immigrants;¹⁵
- Communities who expressed in testimony a shared commitment to coastal conservation;¹⁶
- An expansive retirement community with similar healthcare needs;¹⁷
- A community with similar social activities and nightlife;¹⁸

And most notably, several different communities of LGBTQ+ people.¹⁹

LGBTQ+ PEOPLE IN LOCAL COMMUNITIES ARE “COMMUNITIES OF INTEREST”

As defined by the law, geographically connected LGBTQ+ communities are communities of interest that should be considered in redistricting efforts. So long as an LGBTQ+ community can be shown to be within a contiguous population, the numerous shared social and economic interests of LGBTQ+ people require that LGBTQ+ communities be considered communities of interest. Thus, redistricting commissions must draw district lines that take effort to minimize the division of LGBTQ+ communities.

Many LGBTQ+ people are geographically concentrated such that they may be considered a “contiguous population.” For example, LGBTQ+ people make up approximately 5.3% of adults within California.²⁰ And there are many geographically compact pockets of the LGBTQ+ community within California. For example, there is already documentation of compact communities of LGBTQ+ people in West Hollywood,²¹ the Castro in San Francisco,²² and in Hillcrest in San Diego.²³ These LGBTQ+ communities have already been considered by the 2011 Commission in drawing California Assembly District 17, Senate District 39, and Congressional Districts 12, 52, and 53.²⁴

These are not the only potential LGBTQ+ communities that may be considered. There is no bright-line population percentage required to be considered a community of interest. In addition to the percentage of LGBTQ+ people in any given area, other factors such as the population growth or relative concentration of LGBTQ+ people may establish that there is a geographically “contiguous

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 32.

¹⁷ *Id.* at 35.

¹⁸ *Id.* at 37.

¹⁹ *Id.* at 30, 51, 54, 62.

²⁰ UCLA School of Law Williams Institute, *LGBT Proportion of Populations: California*, <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=6#density> (Accessed June 22, 2021).

²¹ West Hollywood Marketing Corp., *LGBTQ*, VISITWESTHOLLYWOOD.COM, <https://www.visitwesthollywood.com/lgbtq/> (Accessed June 22, 2021).

²² KQED, *The History of the Castro*, THE CASTRO, <https://www.kqed.org/w/hood/castro/castroHistory.html> (Accessed June 23, 2021).

²³ Adrian Florido, *Downtown’s Boom Becomes Gay Community’s Boon*, VOICE OF SAN DIEGO (Aug. 31, 2011), <https://www.voiceofsandiego.org/neighborhoods/downtowns-boom-becomes-gay-communitys-boon/> (Accessed June 23, 2021).

²⁴ See Citizens Redistricting Commission, *supra* note 16.

population” required for a community of interest.²⁵ And these facts need not be established by U.S. Census data. Many other data sources, such as personal testimony, community surveys, and polling, have been relied upon in determining communities of interest.²⁶

COMMUNITIES OF LGBTQ+ PEOPLE SHARE COMMON “SOCIAL AND ECONOMIC INTERESTS”

LGBTQ+ people broadly share common social and economic interests, and individual communities may further share more specific interests. In particular, LGBTQ+ people share employment, healthcare, cultural, and historic interests, among others. These common interests have been recognized as creating a community of interest.

Employment: The court in *Luna* recognized shared employment interests as a valid rationale for a community of interest.²⁷ LGBTQ+ people share common interests in employment, and in particular, in prevention of employment discrimination. In a 2017 study, 59% of LGBTQ+ people believed that they had fewer employment opportunities because they were LGBTQ+.²⁸ Twenty percent of LGBTQ+ people reported experiencing discrimination based on sexual orientation or gender identity when applying for jobs.²⁹ The Supreme Court has recognized the need for employment protections on the basis of sexual orientation.³⁰

In addition to the general LGBTQ+ employment concerns, certain LGBTQ+ communities may share further employment interests on the basis of being concentrated in certain fields. For example, nearly 40% of LGBTQ+ people, as compared to 22% of non-LGBTQ+ people, are concentrated in five fields: (1) restaurant and food services; (2) hospitals; (3) K-12 education; (4) colleges and universities; and (5) retail.³¹ To the extent LGBTQ+ people are concentrated in these or other fields in a particular community, the particular interests of the fields may be further shared employment concerns.

Healthcare: The court in *Luna* also recognized shared health interests as a valid rationale for a community of interest.³² LGBTQ+ people share many common healthcare interests, including barriers to access, risk of disease, and discrimination. LGBTQ+ people are at a heightened risk for

²⁵ See *Diaz*, 978 F. Supp. at 102.

²⁶ See *id.* at 101-102; Univ. of Cal., Los Angeles – Redistricting Workgroup, *The Asian Americans Redistricting Project: Accessing Secondary Data*, UCLA Asian American Studies Ctr. 12-16 (2009).

²⁷ *Luna v. Cty. of Kern*, No. 116CV00568DADJLT, 2017 WL 2379934, at *6 (E.D. Cal. June 1, 2017).

²⁸ See “Discrimination in America: Experiences and Views of LGBTQ Americans,” NPR & Harvard School of Public Health (November 2017), <https://www.rwjf.org/en/library/research/2017/10/discrimination-in-america--experiences-and-views.html>.

²⁹ *Id.*

³⁰ *Bostock v. Clayton County, Georgia*, 590 U.S. ___ (2020).

³¹ See “The Lives and Livelihoods of Many in the LGBTQ Community are at Risk Amidst COVID-19 Crisis,” Human Rights Campaign (March 2020), <https://www.hrc.org/resources/the-lives-and-livelihoods-of-many-in-the-lgbtq-community-are-at-risk-amidst-covid-19-crisis>.

³² *Luna v. Cty. of Kern*, No. 116CV00568DADJLT, 2017 WL 2379934, at *6 (E.D. Cal. June 1, 2017).

physical and mental health problems, due to associated “social and structural inequities.”³³ In addition to concerns regarding prevention of HIV/AIDS,³⁴ LGBTQ+ people are at heightened risk for mental health problems.³⁵ LGBTQ+ people are twice as likely to be uninsured, and report having difficulty accessing adequate, non-discriminatory health providers.³⁶

In addition to general healthcare concerns, individual communities may be able to point to specific clinics or healthcare service providers in the community that service LGBTQ+ people.³⁷ This can be a particularly concrete, powerful example of a shared interest.

Cultural/Social Ties: Multiple courts and scholars have identified shared cultural interests as valid bases for a community of interest.³⁸ Over sixty percent of LGBTQ+ adults identified being LGBTQ+ as at least “somewhat important” to their overall identity.³⁹ And LGBTQ+-specific community engagement, such as pride events, LGBTQ+ rights activism, and LGBTQ+ organization membership, are important to large portions of the LGBTQ+ community.⁴⁰ Further, LGBTQ+ persons have shared cultural interests in the maintenance of queer gathering places.⁴¹

In addition to general cultural interests, individual communities may be able to craft more specifically tailored interests based on community-specific events, organizations, and spaces that cater to LGBTQ+ people. For example, specific LGBTQ+ businesses or social groups may provide concrete examples for a community of interest.

Historical Bonds: Courts and scholars have recognized shared historical bonds as valid bases for a community of interest.⁴² LGBTQ+ people have shared a history of legal discrimination⁴³ and social discrimination that have resulted in shared political interests. This shared discrimination includes marriage inequality,⁴⁴ discrimination based on intimate relationships,⁴⁵ and ongoing discrimination

³³ See “Lesbian, Gay, Bisexual, and Transgender Health,” CDC, <https://www.cdc.gov/lgbthealth/about.htm> (accessed August 13, 2021).

³⁴ Human Rights Campaign, *How HIV Impacts LGBTQ People*, HRC RESOURCES, <https://www.hrc.org/resources/hrc-issue-brief-hiv-aids-and-the-lgbt-community> (Accessed June 23, 2021).

³⁵ “Anti-LGBT Discrimination in US Health Care,” Human Rights Watch (July 23, 2018),

https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care#_ftn5.

³⁶ *Id.*

³⁷ See *Diaz v. Silver*, 978 F. Supp. 96, 123-24 (E.D.N.Y. 1997).

³⁸ See, e.g., *Goddard v. Babbitt*, 536 F. Supp. 538, 540 (D. Ariz. 1982); *Diaz*, 978 F. Supp. at 123-24.

³⁹ See “A Survey of LGBT Americans: Chapter 5: Identity and Community,” Pew Research Center (June 13, 2013), <https://www.pewresearch.org/social-trends/2013/06/13/chapter-5-identity-and-community/>.

⁴⁰ See *id.*

⁴¹ Ian Lovett, *Changing Nature of West Hollywood, Long a Gay Haven, Becomes an Election Issue*, NEW YORK TIMES (Mar. 6, 2011), <https://www.nytimes.com/2011/03/07/us/07westhollywood.html> (Accessed June 23, 2021).

⁴² See *Goddard v. Babbitt*, 536 F. Supp. 538, 540 (D. Ariz. 1982); Stephen J. Malone, *Recognizing Communities of Interest in A Legislative Apportionment Plan*, 83 VA. L. REV. 461, 468 (1997).

⁴³ This shared history of discrimination has been recognized by multiple court rulings. For examples, see *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), *Obergefell v. Hodges*, 576 U.S. 644 (2015), *Bostock v. Clayton County, Georgia*, 590 U.S. ___ (2020).

⁴⁴ See *Obergefell*, *supra* note 2.

⁴⁵ See *Bowers v. Hardwick*, 478 U.S. 186 (1986).

in housing and other accommodations.⁴⁶ The shared legal discrimination has resulted in common political goals among LGBTQ+ people to remedy the discrimination. Additionally, LGBTQ+ people have been historically underrepresented in elected office.

The shared history of legal discrimination of LGBTQ+ people includes the criminal justice system. LGBTQ+ people, and in particular transgendered people, are arrested and incarcerated at higher rates than non-LGBTQ+ people: they are 2.25 times more likely to be arrested and over 3 times more likely to be incarcerated.⁴⁷ These statistics reflect law enforcement's unequal treatment of the LGBTQ+ community and evince LGBTQ+ people's particular shared interest in law enforcement issues. Notably, oversight of law enforcement may occur at various levels of government. For example, the City of West Hollywood contracts the Los Angeles County Sheriff's Department, and not a local city police, to provide public safety services.⁴⁸ Thus, it is particularly important for LGBTQ+ communities to be properly represented at all levels.

Thus, due to the shared interests in employment and other economic concerns, healthcare, cultural/social ties, and historical bonds, LGBTQ+ people should be considered cohesive "communities of interest," and should be minimally divided in district drawing efforts.

⁴⁶ Maya Brennan, Ally Livingston, and Veronica Gaitán, *Five Facts about Housing Access for LGBT People*, HOUSING MATTERS (June 13, 2018), <https://housingmatters.urban.org/articles/five-facts-about-housing-access-lgbt-people> (Accessed June 23, 2021).

⁴⁷ Alexi Jones, "Visualizing the unequal treatment of LGBTQ people in the criminal justice system," Prison Policy Initiative (Mar. 2, 2021).

⁴⁸ Sheriff's Department, City of West Hollywood <https://www.weho.org/services/public-safety/sheriff-fire-security-ambassadors/sheriff-s-department> (Accessed Oct. 6, 2021).