NIELSEN MERKSAMER

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

POLITICAL & GOVERNMENT | LAW ADVOCACY LITIGATION

2020 Census Introduction to Districting

A Presentation to the

Covina City Council

November 16, 2021

Brief Recap

- City received letter alleging voting rights violations on September 7, 2021
- Roughly 300 public agencies in the State have received similar letters
  - To date, no public agency has successfully challenged these allegations in court.
  - Many have tried, only to pay large settlement awards/attorney fees AND move to district elections
    - Palmdale: $4.7 million
    - Modesto: $3 million
    - Anaheim: $1 million
    - Santa Monica: TBD (scheduled to be heard by the CA Supreme Court in early 2022
    - Whittier: $ 1 million
    - Santa Barbara: $600 thousand

Alternatives

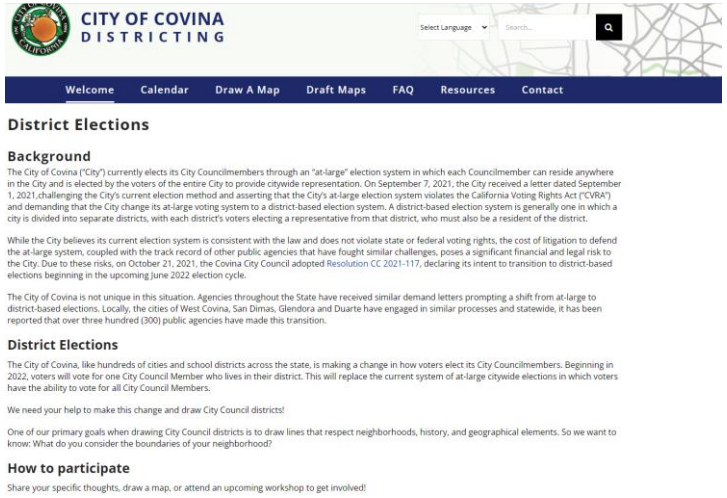
1. Challenge in Court
    - Likely Settlement Paid to Outside Attorney (Based on Previous Track Record of Agencies)
    - Possible Court Involvement – Judge Draws Boundaries or Orders a Transition to Districts
2. Move Forward with the Transition
    - Does not Concede that voting rights violations exist
    - Caps Outside Attorney Fees to $30 thousand
    - Retain Control over Local Elections, Receive Public Feedback Regarding How Boundaries are Established

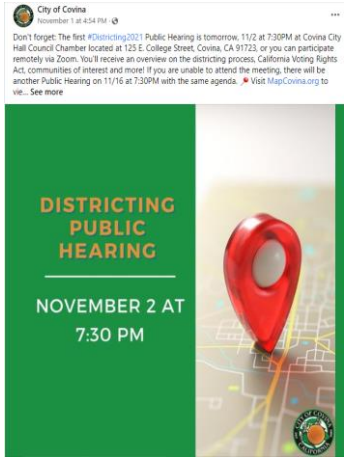
City Council Direction

- Adopted Resolution of Intent to Facilitate Transition to District Elections
- Identified a Series of Steps/Public Hearing Dates to Engage the Community on the Issue
  - Public Hearing #1 Held on November 2, 2021

City Council Feedback on 11/2

- Engage the Community
  - District Election Website
  - Press Releases
  - Social Media Outreach
  - Public Hearing Notices
  - Direct Outreach to Local Organizations
  - Consider Additional Public Workshops?





Process & Timeline

Districting Process: Anticipated Council Meetings/Hearings

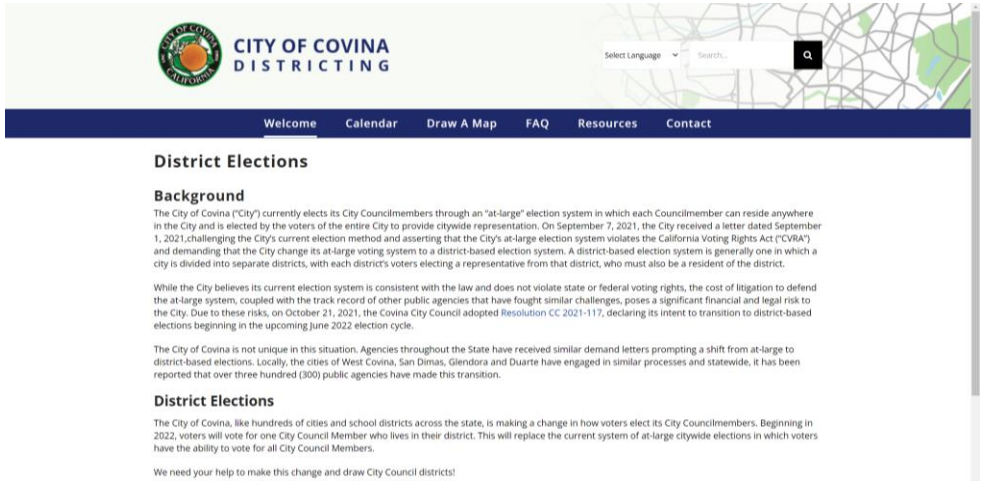
November 2, 2021 Council Meeting	Presentations at Council meeting re (1) legal and policy criteria governing redistricting, and (2) demographics of existing council districts; Council conducts first required public hearing on communities of interest and composition of the districts. Elec. Code § 10010(a)(1).
November 16, 2021 Council Meeting	Presentations at Council meeting re (1) legal and policy criteria governing redistricting, and (2) demographics of existing council districts; Council conducts second required public hearing on communities of interest and composition of the districts, instructs demographic consultant to prepare draft district plans. Elec. Code § 10010(a)(1).
December 21, 2021 Council Meeting	Demographic consultant to present initial draft district plan(s). Council holds first required public hearing on draft plan(s). Elec. Code § 10010(a)(2). Council may order modifications to any of the plan(s).
January 4, 2022 Council Meeting	Demographic consultant to present revised draft district plan(s), if any. Council holds second required public hearing on draft plan(s). Elec. Code § 10010(a)(2). Council introduces ordinance for adoption of district map.
January 18, 2022 Council Meeting	Council holds final public hearing on draft plans, adopts ordinance setting actual boundaries. Elec. Code § 10010(a).

Process: Effect on Current Councilmembers

- No councilmember's term cut short (*see* Gov. Code § 34873), but
- When his or her term ends, an incumbent can only run from the new district in which he or she resides.

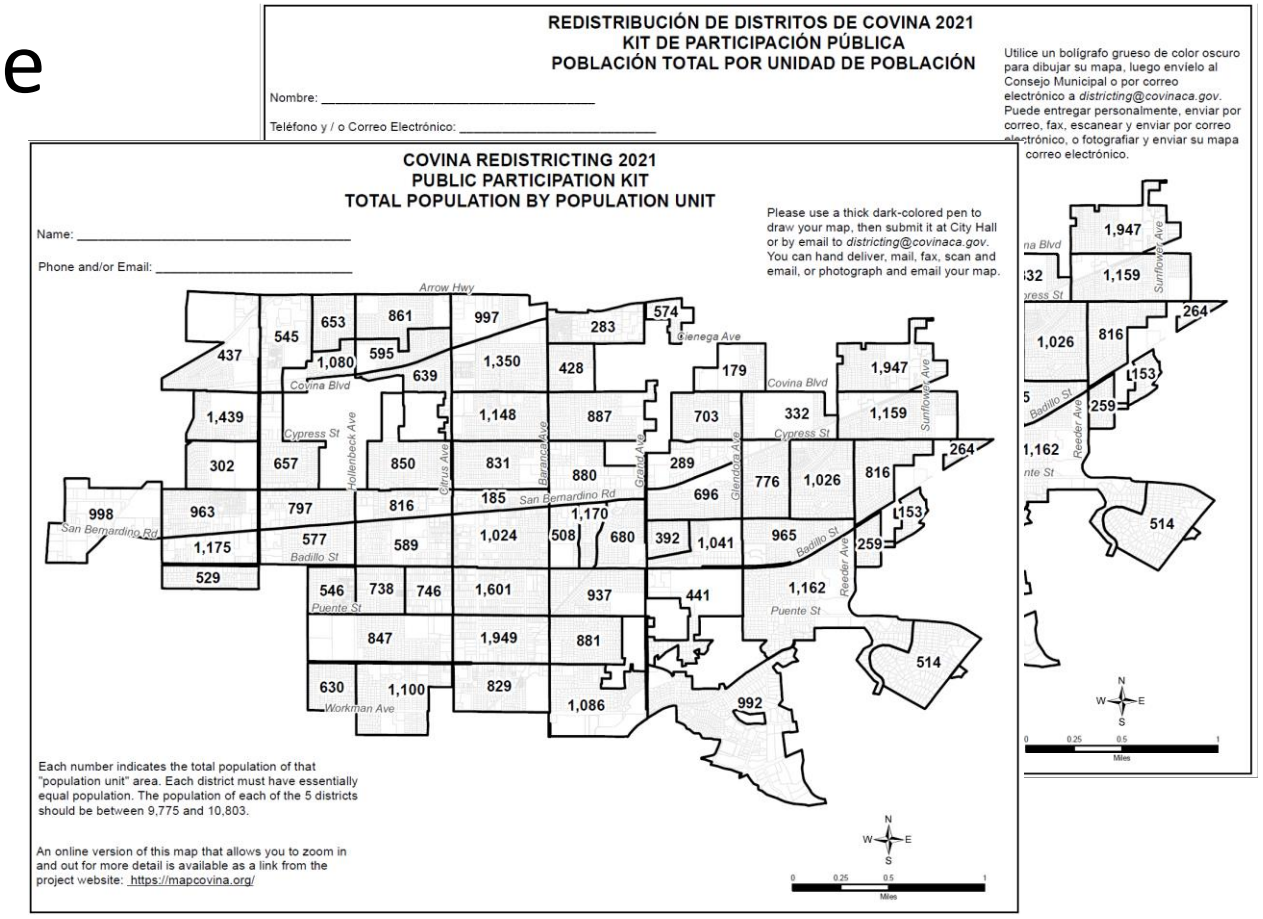
Public Participation: Redistricting Contact Info

- Website: https://mapcovina.org/
- Phone: (626) 384-5430
- E-mail: districting@covinaca.gov



Public Participation: Paper Mapping Kit

- Download from website
- Draw lines
- Send to City
- Available in English & Spanish
- Identify Election Sequence

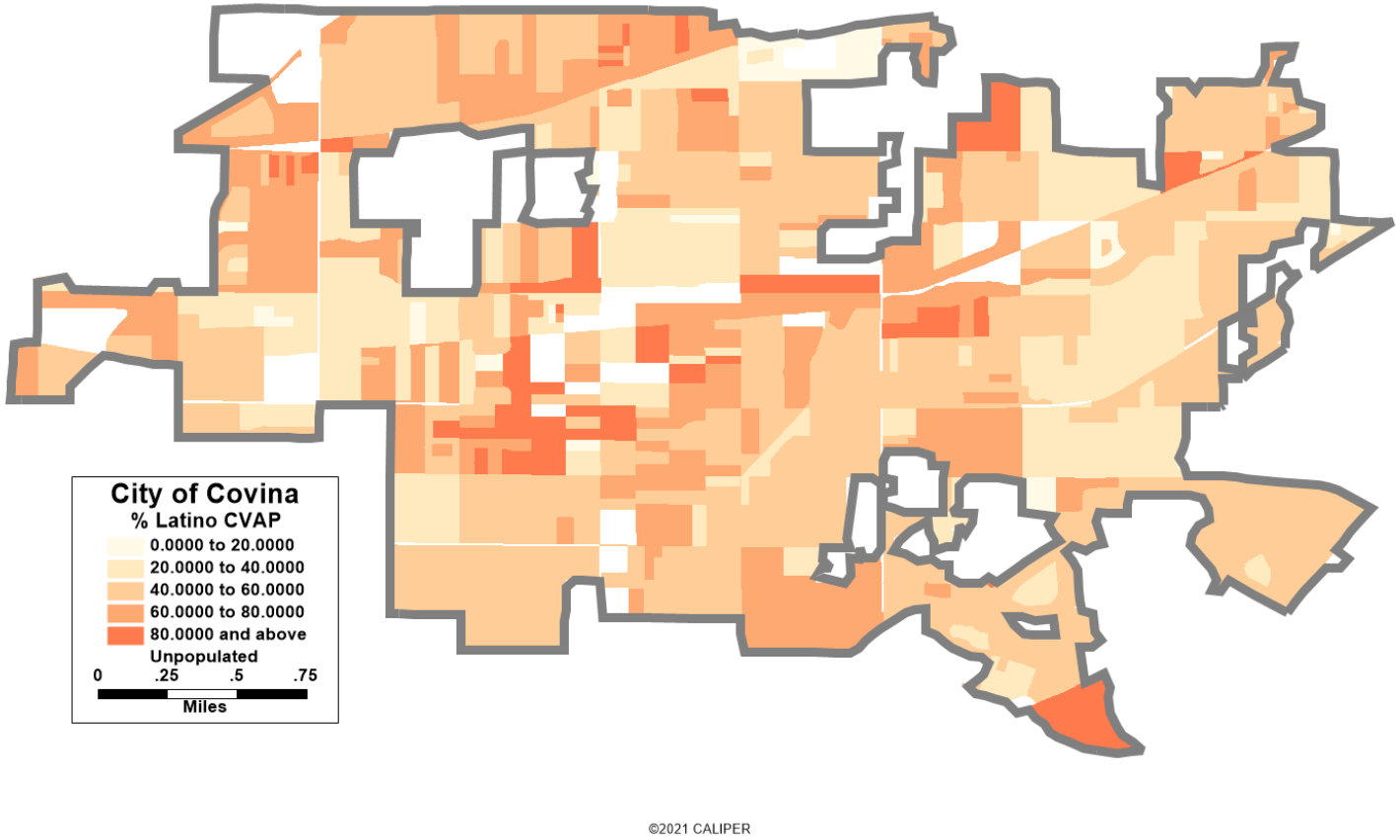


Summary Demographics

Summary Demographics

City of Covina	Totals	%
Total Pop. (SWDB 2021)	51,444	-
Hispanic Pop.	30,201	58.71%
NH White Pop.	10,075	19.58%
NH Black Pop. (DOJ)	1,977	3.84%
NH Indian Pop. (DOJ)	358	0.70%
NH Asian Pop. (DOJ)	7,997	15.55%
NH Hawaiian/Pacific Islander Pop. (DOJ)	116	0.23%
NH Other Pop. (DOJ)	412	0.80%
NH Other MR Pop. (DOJ)	308	0.60%
Voting Age Pop. (18+) (SWDB 2021)	40,681	-
Hispanic VAP	22,389	55.04%
NH White VAP	9,028	22.19%
NH Black VAP (DOJ)	1,652	4.06%
NH Indian VAP (DOJ)	299	0.73%
NH Asian VAP (DOJ)	6,652	16.35%
NH Hawaiian/Pacific Islander VAP (DOJ)	99	0.24%
NH Other VAP (DOJ)	346	0.85%
NH Other MR VAP (DOJ)	216	0.53%
CVAP (SWDB 2021)	33,555	-
Hispanic CVAP	17,704	52.76%
NH White CVAP	9,170	27.33%
NH Black CVAP	1,488	4.43%
NH Amer. Ind. CVAP	137	0.41%
NH Asian CVAP	4,617	13.76%

NH = Not of Hispanic Origin
MR = Multiracial
CVAP = Citizen Voting Age Population
SWDB = Statewide Database
DOJ = USDOJ/OMB's Aggregation



* Ideal District Population: 10,289 total persons

Legal & Policy Criteria

Federal Criteria:

- Equal Population
- Voting Right Act
- No Racial Gerrymandering

Statutory Criteria:

1. Geographically contiguous
2. Minimize division of neighborhoods and "communities of interest" to the extent practicable
3. Easily identifiable boundaries (major streets, etc.)
4. Compactness of population

Traditional Criteria:

- Keep incumbents in their current districts/respect voters' choices/avoid head-to-head elections
- Minimize election year changes
- Future population growth

Federal Criteria: Equal Population

- Overriding criterion is total population equality, *see Reynolds v. Sims*, 377 U.S. 533 (1964).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

Federal Criteria: Equal Population (cont.)

Total Population:	**414,076**		**1**	**2**	**3**	**4**	**5**
Ideal:	**82,815**	**Pop.**	**84,683**	**82,167**	**83,661**	**80,568**	**82,997**
Deviation Range:	**4,115**	**Dev.**	**1,868**	**-648**	**846**	**-2,247**	**182**
Total Deviation %:	**4.97%**	**Dev. %**	**2.26%**	**-0.78%**	**1.02%**	**-2.71%**	**0.22%**

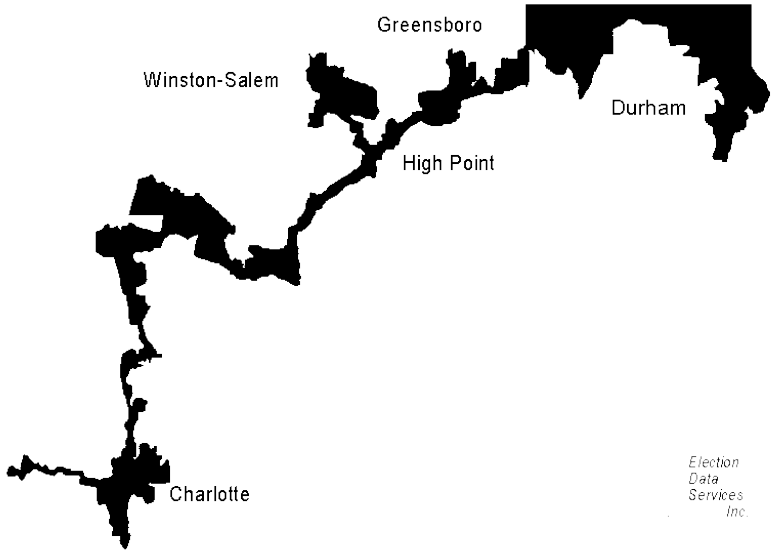
1. Divide the **total population** by the **number of seats** to get the **ideal population**
2. Subtract the **smallest district's population** from the **largest** to get the **deviation range**
3. Divide #2 by #1 to get the **total plan deviation**

Federal Criteria: Voting Rights Act

- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- "Language minorities" are specifically defined in federal law to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage.
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

Federal Criteria: No Racial Gerrymandering

- The Fourteenth Amendment restricts the use of race as the "predominant" criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno,* 509 U.S. 630 (1993); *Miller v. Johnson,* 515 U.S. 900 (1995).
  - Such predominant use must be justified as narrowly tailored to fulfill a compelling state interest – *i.e.*, strict scrutiny
- Bizarrely shaped electoral districts can be evidence that racial considerations predominate, but bizarre shape is not required for racial considerations to "predominate."



- Fourteenth Amendment does not, however, prohibit <u>all</u> consideration of race in redistricting. *Easley v. Cromartie,* 532 U.S. 234 (2001).
- **Focus on communities of interest.**

State Law Criteria (FAIR MAPS Act):

Used to be discretionary; now mandatory & ranked:

1. Contiguity
2. Geographic integrity of Neighborhoods/Communities of Interest (COIs)
3. Easily identifiable natural and artificial boundaries
4. Compactness of population

Elections Code § 21621(c):

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

COIs: What Are They?

- State Law Definition: "a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation"
- Application:
  - Must have a common social or economic interest
  - That has a connection to City policy
  - Can be geographically described
  - And benefits from being in a single district
- NOT a community of interest: "Communities of interest do not include relationships with political parties, incumbents, or political candidates."

COIs: What Could They Include?

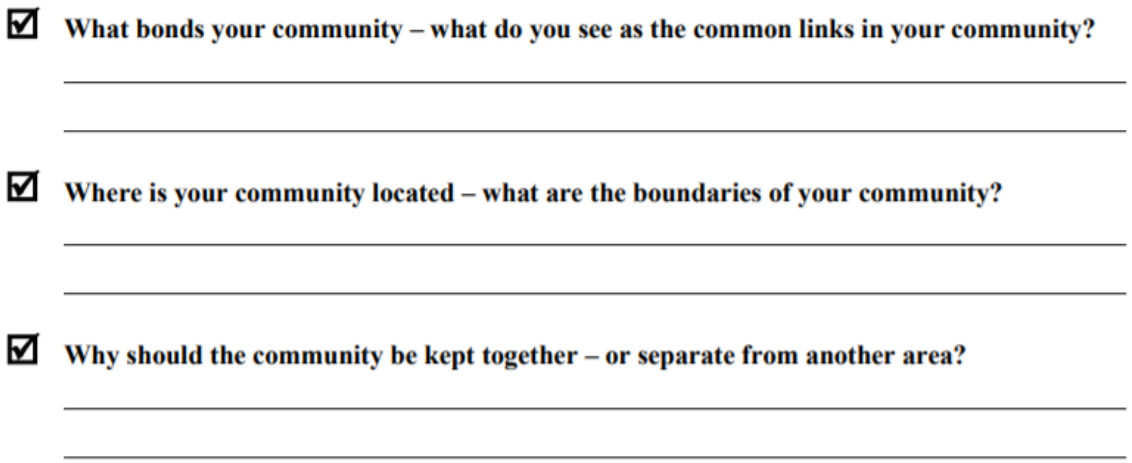
- Lifestyle: *e.g.,* community character, recreation, shared social gatherings
- Economy: *e.g.,* major employer/industry, commercial areas
- Demography: *e.g.,* race*, income, education, language, immigration status, housing, etc.
- Geography: *e.g.,* urban/suburban/rural, mountainous, coastal
- Political subdivisions: CSDs, planning areas, etc.
- Place-based issues/needs: *e.g.,* public safety (wildfire concerns), environmental (air pollution)

COIs: 2011 State Commission Examples

- "Its primary **shared economic interest is agriculture**, both valley agricultural bases, such as wheat, corn, tomatoes, alfalfa and various tree crops, and the wine-growing regions of Napa, Lake, and Sonoma counties."
- The district "includes communities of Crestline to Big Bear that share the **common lifestyle of the mountain forest area** of the county and **similar interests in wildlife and emergency services concerns regarding wildfire danger**."
- "This district also joins a **community of interest made up of Asian Americans and Pacific Islanders with shared economic and social ties based on income status, housing, language, and immigration status**, including a large Hmong immigrant community."
- "It includes the communities that surround Folsom Lake with its **shared recreational interests.**"
- "This district includes the **core neighborhoods containing the Lesbian Gay Bisexual Transgender ("LGBT") community**, as well as several **lower-income, immigrant and working-class neighborhoods**."
- "This district is characterized by the interests of the western Coachella Valley, and includes tourism, **a retirement community with needs for health care access**, and bedroom communities."
- "The district reflects **shared concerns about education, safety, and economic interests, along with transportation interests** among cities that share the 605 Freeway as a major corridor"
- "This district is characterized by common interests of the communities of western Riverside County**, animal-keeping interests of Jurupa Valley and Norco**; and shared interests between Eastvale, Norco, and Corona. Corona and Norco **share a common school district.**"
- "Cities and communities surrounding LAX **work together in addressing jet noise mitigation** issues and managing airport traffic."

Communities of Interest: Identifying Them

- Demographic data: *e.g.,* American Community Survey data, etc.
- Official county and city neighborhood maps/business districts
- Neighborhood groups/neighborhood watch groups/NextDoor groups/HOA Associations
- Welcome signs/gateway monument signs
- Online mapping tools
- **Community testimony**



☑ **What bonds your community – what do you see as the common links in your community?**

☑ **Where is your community located – what are the boundaries of your community?**

☑ **Why should the community be kept together – or separate from another area?**

"[T]he identification of a 'community of interest,' a necessary first step to 'preservation,' requires insights that cannot be obtained from maps or even census figures. Such insights require an understanding of the community at issue, which can often be acquired only through direct and extensive experience with the day-to-day lives of an area's residents." Favors v. Cuomo, *2012 U.S. Dist. LEXIS 36910, *27 (E.D.N.Y. Mar. 19, 2012) (footnote omitted).*

Limited Role of Other Traditional Criteria

- May be considered to the extent they do not result in violation of the mandatory statutory criteria.
- Examples:
  - Minimize shifting voters from one election year to another/retaining core of existing districts
    - Voters currently in districts scheduled to vote in 2022 could be redistricted into a 2024 district, meaning there would be a six-year gap between their voting in Board elections
  - Avoid head-to-head contests
  - Anticipating future growth?
  - Other political subdivisions' boundaries (*e.g.*, community service districts, school districts)

Questions?