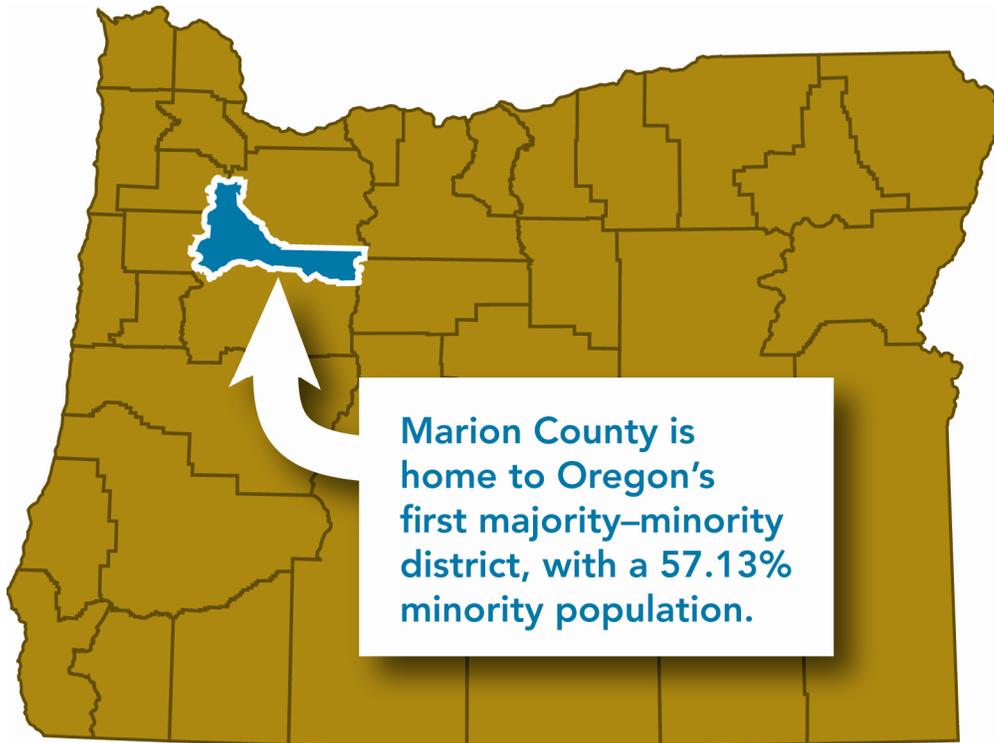


# Oregon's 2011 Redistricting: Successes, Concerns, and Recommended Improvements



February 2012



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Thanks to Oregon Voice for use of the cover graphic.

# **OREGON’S 2011 REDISTRICTING: SUCSESSES, CONCERNS, AND RECOMMENDED IMPROVEMENTS**

## **EXECUTIVE SUMMARY**

The modern era of redistricting in Oregon began in 1961 after voters enacted a ballot measure in 1952 that established the Secretary of State as the back up entity in the event of legislative failure to draw new district lines. Then-Representative Mark O. Hatfield wrote in support of the 1952 measure: “...the legislature has refused to obey the constitution. Because of inertia, personal political interests, and vote-trading, Oregon’s legislature has not reapportioned itself since 1910.”<sup>1</sup>

That the 2011 Legislature adopted new legislative and congressional maps was remarkable and due to hard work and a commitment to compromise by legislative leaders and members of the House and Senate redistricting committees, particularly the committee chairs. This 2011 success is comparable, perhaps even surpassed, by redistricting in 1981 when a Republican governor signed congressional and legislative plans adopted by a Legislature controlled by Democrats even though a veto would have meant that drawing new legislative districts would have fallen to a Republican Secretary of State. The 1981 plan did require minor adjustments due to litigation while no legal objections were filed against the 2011 redistricting maps. Even in 1981 and 2011, however, redistricting was a political process. This highlights that drawing new districts is inherently political and of great concern to partisan interests.

The political nature of redistricting would not be removed by shifting line drawing responsibility from the Legislature to an independent commission. However, public trust would be increased if those drawing new lines were not the same people who would subsequently run from the districts they adopted. Adopting an independent redistricting commission, however, is politically challenging. Careful review of independent commission proposals is also essential since Oregon’s redistricting criteria are among the clearest and most detailed of all other states. For this reason proposals to change “who” draws the lines shouldn’t inappropriately tamper with our state’s rules governing “how” to draw new districts.

This report discusses independent commission options with a focus on the California independent redistricting law and its implementation in 2011. Development of a reform proposal, however, needs to be tailored for each individual state.

This report focuses on nine recommendations to improve future redistricting in Oregon that are applicable no matter who draws new districts.

The most important recommendation is to stop the “wink and a nod” practice of political players paying for partisan analysis of proposed districts that are shared with legislators behind closed doors. At a minimum voter registration data should accompany draft maps to facilitate analysis

by the public and the press regarding compliance with the required goal of not drawing district lines for partisan advantage. Public access to voter registration and other political data is also needed to assess future compliance with Section 2 of the Voting Rights Act.

Oregon's commendable history of hearings should be codified by requiring at least ten field hearings and a minimum of five hearings on draft maps. Field hearings held after census data is released but before draft maps are prepared are an empty exercise, if not a sham, if not followed by a significant number of hearings on draft maps showing new proposed districts.

Oregon participation in preparation for the 2020 census should be improved to help prevent subsequent implementation problems and to facilitate political analysis of proposed maps. Resources should be provided to the Legislative Committee Services office for outreach to increase local government participation in preparing for future censuses.

County election officials should be given technical information to allow for review of draft maps and a ten day period to assess redistricting legislation before its final adoption. Local election officials implement redistricting legislation and should be given information and time for meaningful involvement in this important process.

An ongoing redistricting task force should be created to deal with the loss of institutional memory due to redistricting only occurring every ten years. A redistricting task force would be staffed by Legislative Committee Services staff and would meet at strategic times between redistricting years to assist with census preparation and as needed to provide continuity from one round of redistricting to the next.

Distortion of drawing new districts due to prison populations should be eliminated.

Congressional redistricting rules should be clarified regarding the timeline of drawing these new districts. Procedures should also be clarified when post-redistricting vacancies and congressional special elections are required.

## INTRODUCTION

Redistricting, the process of drawing new congressional and legislative districts to achieve equal population targets based on new census data, is critically important because it influences who will represent Oregonians in Washington, D.C. and Salem for the next 10 years.

Oregon's 2011 House and Senate redistricting committees deserve high praise for their preparation of new maps for both legislative and congressional districts. Their effort was marked by hard work, persistence, and a collegial commitment to reaching compromise by the redistricting committees, particularly their chairs, and legislative leadership. Oregon's redistricting criteria are among the clearest and most detailed in the country. Support by legislative staff to the 2011 process was exceptional. **Nevertheless, good rules and a good process can be improved.**

Common Cause Oregon testified with suggestions for the House and Senate redistricting committees and wrote about our ideas in guest opinion pieces in *The Oregonian* and *Portland Tribune*. A major suggestion was to hold a meaningful set of hearings on draft maps. We also worked to improve participation in the 2011 redistricting hearings, particularly by groups underrepresented in the political process.

**Common Cause Oregon's priority recommendation in this report is to end the "wink and a nod" use of political data behind closed doors during redistricting.** Redistricting is an inherently political process, but skepticism about elected officials designing their own districts is heightened when the process is not fully transparent. This suggestion and other recommendations in this report, however, are applicable regardless of "who" carries out redistricting. Alternatives to who should draw new district lines are also discussed as are inappropriate changes to Oregon's redistricting process.

The report begins by placing the 2011 redistricting into political and historical context. A detailed history of Oregon redistricting law is in Appendix 1. Appendix 2 summarizes redistricting from 1961 through 2001. Appendix 3 includes Common Cause Oregon's testimony during the 2011 redistricting process. Appendix 4 summarizes the Census Bureau's redistricting program. Appendix 5 discusses other options to improve future redistricting efforts in our state.

## HISTORICAL and POLITICAL CONTEXT

Legislative passage in 2011 of both legislative and congressional redistricting plans is commendable. Analysis of redistricting work by the Legislative Assembly in 2011, however, must begin by putting it into the appropriate historical context.

**The modern era of redistricting in our state began in 1961 when new lines were drawn after passage of a 1952 ballot measure in response to the failure of the Legislative Assembly to carry out this job between 1910 and 1950.** This failure violated their constitutional mandate, but legislators could get away with it because no entity was designated to draw new district lines in the event of legislature inability or unwillingness to adopt a redistricting plan.

Then-Representative Mark O. Hatfield wrote the following in a letter to the editor in support of the 1952 measure:

“Oregon’s founding fathers made one mistake. They put too much trust in human nature. They said, in the constitution, that the legislature should reapportion itself every 10 years – and took for granted that the legislature would do it.

But the legislature has refused to obey the constitution. Because of inertia, personal political interests, and vote-trading, Oregon’s legislature has not reapportioned<sup>2</sup> itself since 1910.”<sup>3</sup>

Voters adopted the 1952 measure that established the Secretary of State as the backup if the Legislature failed to draw new legislative districts and granted judicial review authority for that plan to the Oregon Supreme Court. Appendix 1 provides more detail about the problem addressed by the 1952 measure and other aspects of our state’s redistricting regulations.

Since Oregon’s modern era of redistricting began in 1961, **the 2011 process is best compared to the previous five rounds of drawing new districts in 1961, 1971, 1981, 1991, and 2001.**

Table 1 puts the Legislature’s line drawing success in 2011 into the political context within which redistricting occurred between 1961 and today.

In 2011 Democrats had a narrow margin in the Senate, but Senate President Peter Courtney signaled his interest in compromise by putting an equal number of Republicans and Democrats on that chamber’s redistricting committee. The House was split equally between Republicans and Democrats so that chamber’s redistricting committee was evenly split. Both the Governor and Secretary of State, John Kitzhaber and Kate Brown, were Democrats. The Legislative Assembly adopted new maps for both Congressional and legislative districts that were signed by the governor. There were no legal challenges.

Republican Representative Kevin Cameron characterized his party’s work on the 2011 legislative plan as negotiating with one hand behind their backs because of the prospect of a gubernatorial veto resulting in Secretary of State Kate Brown taking over the job.<sup>4</sup> The final vote, however, on the legislative plan (SB 989) was 47 to 10 in the House and 27 to 3 in the Senate. The vote on the congressional plan (SB 990) was 58 to 2 in the House and 24 to 6 in the Senate.

Representative Cameron voted for both the legislative and congressional redistricting bills and was joined by most of his colleagues. Ten Republicans, two in the Senate and eight in the House, voted against the new plans for legislative districts and they were joined by three Democrats, one in the Senate and two in the House. No Democrat and only eight Republicans, six in the Senate and two in the House, opposed the Congressional redistricting bill. This level of bipartisan support presumably set the stage for no legal challenges being filed.

**Legislative agreement on redistricting in 2011 was a remarkable achievement, but may be eclipsed in its level of bipartisanship by the 1981 redistricting process when congressional and legislative plans from the Democratically-controlled Legislative Assembly were both**

**signed into law by a Republican governor.** This 1981 achievement occurred even though a Republican Secretary of State would have taken on the job of drawing new legislative districts if there had been a gubernatorial veto. Legal challenges to the 1981 plan were not extensive and only one change was made so this litigation doesn't detract from the 1981 bipartisan redistricting achievement.

**Table 1 – Redistricting History 1961-2011 and Political Dynamics<sup>5</sup>**

Year	Legislative Agreements		Legal Challenges	Political Dynamics			
	Congressional	Legislative		House	Senate	SoS	Governor
1961	NO	YES, passed by House and Senate and signed by Governor	Yes, Supreme Court approved SOS changes to plan adopted by Legislature	D	D	Howell Applin-R, involved due to legal challenge	Mark O. Hatfield-R
1971	YES, passed by House and Senate and signed by Governor	NO, went to SoS	Yes, changes to SoS plan approved by Supreme Court	R, passed a bill that was tabled in Senate	D, House didn't concur with Senate amendments to a plan in conference committee upon adjournment	Clay Myers-R, did legislative redistricting	Tom McCall-R
1981	YES, passed by House and Senate and signed by Governor	YES, passed by House and Senate and signed by Governor	Yes, Supreme Court approved SOS changes to plan adopted by Legislature	D	D	Norma Paulus-R, involved due to legal challenge	Vic Atiyeh-R
1991	NO, U.S. District Court adopted Interim Special Joint Committee plan	NO, went to SoS	Yes, changes to SoS plan approved by Supreme Court	R	D	Phil Keisling-D, did legislative redistricting	Barbara Roberts-D
2001	YES, vetoed by Governor and Multnomah County Circuit Court drew plan	YES, but vetoed by Governor and went to SoS	Yes, Supreme Court sustained one court challenge related to census error about federal prison by Sheridan. With this change the SoS plan was approved by Supreme Court.	R	R	Bill Bradbury-D, did legislative redistricting	John Kitzhaber-D
2011	YES	YES	No	even split	D	Kate Brown-D	John Kitzhaber-D

\* See Appendix 2 for more details on redistricting from 1961 through 2011.

**Whether redistricting in 1981 or 2011 is the best example of bipartisanship, however, it is naïve to think that line drawing in those years was devoid of politics.** Certainly these years bracket more partisan redistricting, especially in 2001. The bottom line is that redistricting is an inherently political process. Appendix 2 provides more details on redistricting from 1961 through 2001.

## **2011 REDISTRICTING and COMMON CAUSE GOALS**

Common Cause Oregon suggested additional principles to the House and Senate redistricting committees in testimony we prepared in cooperation with League of Women Voters of Oregon. Appendix 3 provides more background, but this section discusses compliance of the 2011 redistricting process with Common Cause Oregon’s major goals:

- Holding a significant number of hearings on draft maps
- Avoiding sweetheart gerrymandering
- Considering race when drawing new district lines

### Hearings

In 2011, and during previous rounds of legislative redistricting, field hearings occurred to obtain testimony on communities of interest and input on how to draw redraw local districts to meet new population targets. These legislative hearings were held after release of census data, but before draft maps are prepared. **Though commendable, field hearings are a hollow exercise if not followed by a significant number of hearings on draft maps.**

Common Cause Oregon recommended avoiding a repeat of the 2001 post-field hearings process when only one bill summarizing new legislative maps and one bill describing congressional maps received the pro forma hearing needed to move legislation out of committee. Legislative leaders presenting their legislative and congressional maps dominated testimony during the 2001 hearings that included essentially no public input.

**Common Cause Oregon was pleased that in 2011 a significant number of hearings, three, were held on draft maps as we recommended.** We consider it likely, however, that if the redistricting committees had come up with a compromise map from the beginning, the 2011 hearing schedule in terms of number and timing would likely have been a repeat of the “push it through” scenario in 2001. Recommendations to ensure that this positive element of 2011 redistricting continues into the future are discussed on page 13.

### Sweetheart Gerrymandering

Oregon law dictates that lines cannot be drawn for partisan advantage. Common Cause Oregon’s concern was that violating this criterion could be avoided in a plan with “sweetheart gerrymandering” or new maps that enable each party to maintain the same number of districts it currently controls to the detriment of consideration of other redistricting criteria.

**Both Democrats and Republicans prepared draft maps in 2011, which is an indication that egregious sweetheart gerrymandering did not occur.** One of the most dramatic examples of redistricting deal-making between political parties occurred in California in 2001. That year Democrats controlled both legislative chambers and the governor’s office in California. Republicans, however, threatened to put a redistricting reform initiative on the ballot and there

was also concern that a plan from Democrats would be challenged by President George W. Bush's Justice Department. As reported by the *Sacramento Bee*: "Ultimately, the two parties struck a deal, designed to protect the status quo in the Assembly, state Senate and congressional delegation, but at the expense of competitive races."<sup>6</sup>

If the Oregon redistricting committees had only released one set of maps, a reasonable assumption would have been that sweetheart gerrymandering like that described above in California was a factor. For this reason Common Cause Oregon didn't share the view raised in some testimony that it would have been better if the redistricting committees had released just one legislative and one congressional map.<sup>7</sup>

We were also less concerned than some commentators that both the Democrats and Republican plans put incumbents, including several from the same party, into the same district.<sup>8</sup> We recognize the partisan edge to the treatment of incumbents by both parties in their initial drafts, but one indication that sweetheart gerrymandering isn't occurring is that some incumbents end up in the same district.

Since the bill outlining the final compromise on House and Senate districts needed to garner enough votes, however, it also isn't a surprise that SB 989 didn't put any current members of the Legislative Assembly into another legislator's district. Implicitly this would indicate that there was some level of sweetheart gerrymandering going on during Oregon's 2011 redistricting, but not at the egregious level exemplified by the 2001 California example. Another indication that sweetheart gerrymandering didn't occur to an extravagant extent is that other redistricting criteria, particularly race, were also factored into drawing the final legislative maps.

Addressing sweetheart gerrymandering raises questions about considering competition in redistricting and this topic is addressed in Appendix 5 on page 35.

## Race

Common Cause Oregon testified that race should be a priority when balancing the different aspects of our state's redistricting legal guidelines and drawing new district lines. Both Oregon and federal law bans dilution of minority voting strength, though race cannot be a predominant factor. We urged the redistricting committees to ensure effective representation and electoral opportunities by giving race priority consideration. There are legal reasons for this priority, but Common Cause Oregon also testified that it was good public policy given that the Oregon Legislature does not reflect the growing diversity of our state.

The 2010 census shows that Latinos now comprise 12 percent of Oregon's population and is the fastest growing group in the state. The numbers of those of Asian and Pacific Islander descent is also growing and now comprise 4 percent of Oregon's population. Overall minority population is 21.5 percent.

**Testimony about race, with one exception, was reflected in the final map of legislative districts.** The Urban League of Portland, CAUSA, and Asian Pacific American Network of Oregon (APANO) were the primary groups whose testimony focused on race and Oregon's growing diversity. Rogue Valley Oregon Action, Rural Organization Project, and Oregon Rural

Action also urged consideration of race in several rural areas. Common Cause Oregon provided background information and technical assistance to these groups.

The Urban League of Portland provided testimony that was heeded about drawing House District 43 to minimize, as much as possible, dilution of African Americans in Northeast Portland due to Blacks moving out of this area because of urban renewal policies and gentrification.

CAUSA and others gave testimony that contributed to House District 22 becoming Oregon's first majority-minority district with a 51.1 percent Latino population and a 57.1 percent people of color percentage. Latino opportunity districts were created in House District 29 in the Forest Grove/Cornelius area with a 34.5 percent Latino population and in House District 57 with a 31.3 percent Latino population in Northwest Oregon.

APANO provided testimony at several redistricting hearings but their request for districts in the western and eastern Portland metro area with 20 percent Asian/Pacific Islander (API) populations was not fully addressed. On the west side this goal was nearly reached in House District 33 that has an API population of 18 percent. On the eastside, however, the highest API population is only 12.2 percent in House District 46. This was disappointing, especially given how clearly APANO communicated its interests at each step of the redistricting process.

A final note about race and redistricting is that 2011 is that it probably isn't a coincidence that deference to testimony about how to factor race into drawing new district lines typically seemed to have minimal political consequences.

## **RECOMMENDATIONS TO IMPROVE FUTURE REDISTRICTING**

Regardless of who draws new district lines, Common Cause Oregon makes nine recommendations to improve the process in 2021 and beyond. **Our priority recommendation is to make political data available to the public and end the “wink and a nod” dynamic seen in 2011 (and previous rounds of redistricting) where outside political players with money produced political data and provided it to legislators behind closed doors.**

We make two recommendations regarding hearings to codify into law good features seen, but not required, in the 2011 process. A fourth recommendation is to increase Oregon participation in Census Bureau suggestion program on block boundaries in advance of future redistricting. The fifth recommendation focuses on improving redistricting by requiring review by county election administrators with the goal of reducing implementation problems. The sixth recommendation is for an ongoing redistricting task force to provide institutional continuity between rounds of redistricting since this process only occurs every ten years. A seventh recommendation addresses prison gerrymandering. The final two recommendations relate to congressional redistricting.

### **1. End the “wink and a nod” use of political data behind closed doors**

#### **BACKGROUND**

Oregon's statutory redistricting criteria include a requirement that district lines are not to be drawn for partisan advantage. Redistricting law does not say that political data can't be used in

drawing new district maps, but the final product of redistricting is not to result in partisan advantage. While it may seem counterintuitive, Common Cause Oregon believes that complying with this legal requirement is best served by inclusion of political data in the redistricting process.

The current practice of the redistricting committees to not officially use voter registration and other political data gives the appearance that Oregon’s redistricting occurs without partisan analysis of proposed maps. **This is a “look good” façade, however, and the reality is that partisan review is occurring – just behind closed doors.**

It is imperative to end the practice of political players with financial and technical resources collecting political data and analyzing draft maps and then sharing that information behind closed doors with legislators. It should be noted that this “wink and a nod” dynamic also occurred in 2001 with “behind closed doors” political analysis of redistricting proposals using resources purchased by the leadership PACs.<sup>9</sup>

This “wink and a nod” practice is facilitated by Oregon being one of only three states that did not participate in the transmission of precinct boundaries to the Census Bureau in preparation for the 2010 count.<sup>10,11</sup>

Political scientist Dr. Michael McDonald, a redistricting expert at George Mason University, describes the importance of precinct boundaries to facilitate political analysis of proposed district maps below:

If the precinct boundaries are part of the census geography, it is then possible to merge election data to the census data. Otherwise, merging election and census data requires collecting precinct boundaries from local election officials. Sometimes these boundaries are in electronic form and sometimes they are paper maps that need to be digitized. Once in electronic form, they can be overlaid on the census geography. Typically, only well-financed organizations like the political parties (or their consultants) have the resources to do this data collection.<sup>12</sup>

**Facilitating assessment of potential legal challenges under Section 2 of the Voting Rights Act (VRA) is another important reason for Oregon to provide precinct boundary data to the Census Bureau.** Section 2 enables court challenges to redistricting that dilutes the voting power of communities of color. More proactively, to draw districts that don’t violate Section 2 of the VRA, voting patterns by race must be analyzed. This analysis requires merging precinct level election data with census data on race. This process is hindered by Oregon not providing precinct boundary data to the Census Bureau so that is readily available to the public and those concerned about VRA Section 2 compliance.

(The Census Bureau’s redistricting program had five phases that in preparation for the 2010 count began in 2005. More details are provided in Appendix 4 on page 33, but phase two includes asking counties for precinct boundary data. The importance of improved interaction with the census also contributes to recommendations four and six on pages 14 and 18.)

## THE 2011 “WINK AND NOD” POLITICAL ANALYSIS STORY

The redistricting “wink and a nod” story in 2011 about political analysis behind closed doors began when *The Oregonian’s* political reporter Jeff Mapes put voter registration data for the new legislative and congressional districts proposed by both political parties on his blog. Mapes was given this data by the Republican House Caucus who, in turn, had reportedly gotten the information from a private vendor.<sup>13</sup>

That vendor, however, excluded minor-party voters so the percentages provided to Mapes only considered Republican, Democratic and non-affiliated voters. Mapes then heard from Democratic redistricting experts that the Republican data and voter registration figures available from the Secretary of State didn’t match. This led to a follow-up “buyer beware” blog posting by Mapes titled *Read GOP redistricting numbers for Oregon with caution*.<sup>14</sup> By not including minor-party registrations, the Republican data inappropriately nudged up the percentage share held by the two major parties.

One outcome of this bickering in blog entries and elsewhere about these data differences is that the Republicans and Democrats had to resolve which data they would use.<sup>15</sup> The catch, of course, is that data wasn’t made available to the public. **It is quite appalling that the only public source of data needed for political analysis of draft maps came via a political reporter’s blog when leaked by one political entity without the opportunity for the public and press to independently verify its accuracy.** This is not to criticize the reporter, but to highlight that this is no way to conduct a critically important public process like redistricting.

It seems obvious that what was going on is that outside political players, both Republican and Democratic, had the financial resources to carry out the process described above by Dr. McDonald.

## SOLUTION

**The first step is legislation mandating that counties provide precinct boundaries to the Census Bureau.**<sup>16</sup> It should be noted that the time required to provide precinct boundaries to the census does not seem significant.<sup>17</sup> Such legislation, however, should make it clear that precinct boundary information would be submitted in the format in use by each county. In other words, if a county did not have precinct boundary available in a digital form that could be transmitted electrically, preparation of the information in that format would not be required, rather the information would be submitted in whatever form is used by that county.

Voter registration information is public record, but obviously money and technical expertise is needed to link this data to the geography of precincts. This means that ensuring that precinct boundaries are readily available for the entire state via the census doesn’t make political analysis of new districts a completely open and free process. The cost of political analysis, however, is significantly reduced if precinct boundaries are provided through the census process.

The second step, then, to end “wink and a nod” use of political data behind closed doors is legislation requiring that staff of future legislative redistricting committees link the political data with precinct boundary information so that it is public record and available for anyone to analyze the political dynamics of draft redistricting plans. **At the very least, when draft maps are**

**released they should be accompanied by voter registration data. How else can the public and press assess whether line drawing has been done for partisan advantage?**

#### **CONSIDERATIONS REGARDING POLITICAL DATA**

Three considerations require discussion regarding this recommendation.

The first consideration relates to Oregon's vote-by-mail process. A motivation in some states to provide precinct boundaries to the Census Bureau is so new districts can respect precinct lines to avoid voter confusion about polling places. In Oregon polling place confusion is not an issue, but precincts are still important even with our vote-by-mail system to ensure that county election administrators send the correct ballot to each voter. This dynamic about precinct lines, however, means that Common Cause Oregon is open to other options for providing public access to precinct boundaries, keeping in mind that the goal is to eliminate the costly process of collecting this boundary information from each individual county.

Indeed, the second consideration is recognition of another technical approach to political analysis of redistricting described below by Dr. Michael McDonald.

There is an alternative to collecting precinct boundaries, which is to geocode voter registration addresses and assign each voter to a census geography. Difficulties arise when addresses do not match the address ranges provided by the Census Bureau for such reasons as errors in the addresses or new streets that are not described in the census geography. If there is a precinct I.D. provided on the voter registration file - some states record this information on the voter registration files - it is possible to then merge the election results to census data through the voter registration files.<sup>18</sup>

The catch, of course, is that political players are likely to be the ones with resources for this geocoding.<sup>19</sup> The result is "behind closed doors" analysis while the information needed for this review is not provided in a setting that puts it on the public record. In other words, the recommendation above may need to be applied to ensuring public access to geocoded political data.<sup>20</sup>

The third consideration is recognition that future technology may shift the nature of the information that is important to have publicly available to facilitate political analysis of redistricting and future compliance with Section 2 of the Voting Rights Act.<sup>21</sup>

### **2. Codify into law a requirement to hold at least ten field hearings**

During Oregon's redistricting in 2011 there were thirteen field hearings held across the state. In addition testimony could be given via video at 16 other sites, though there were no testifiers at two satellite sites. The field hearings occurred from March 18, 2011 to April 19, 2011, after new census data was available but before release of draft maps. Field hearings were also a feature of several previous rounds of redistricting and provide an opportunity to get input on communities of interest and share with the public the extent to which current districts need to shrink or grow to meet new population targets.

**Because field hearings in 2011 and previous rounds of redistricting are only a tradition it is recommended that a minimum requirement of ten hearings be codified into law.** Also recommended is continued use of technology to increase opportunities for participation.

From the perspective of legislators one important reason for field hearings is that it helps build camaraderie among committee members. Another reason is that the legislators responsible for drawing districts for all of Oregon get a chance to visit parts of the state beyond their own districts. Several legislators commented that they hadn't been in a particular part of the state prior to the 2011 field hearings.

Equally important, field hearings provide an opportunity for participation across the state from people who best know their neighborhoods and regions. Residents of the areas visited during field hearings best understand local communities of interest. Forty-nine public officials (as self-identified on sign-in sheets or in how they introduced themselves) testified at redistricting hearings. It is helpful that these people - mayors, county commissioners, and city council members, and public servants – testified because they know their areas and how interactions between different political jurisdictions that can help identify communities of interest. It should not be assumed that elected officials only testified for political purposes.

**There are political dynamics behind field hearings, however, that must be understood.**

Players with affiliations to both political parties encourage participation and provide talking points that, without allusion to explicit partisan concerns, are designed to bolster partisan interests in suggestions for new lines and how to define communities of interest. As an example, *Oregonian* political reporter Jeff Mapes in a blog entry about the field hearing in Beaverton, characterized several of those testifying as party activists and named their party affiliations though they weren't stated by the testifier.<sup>22</sup> Given the requirement that line drawing may not be for partisan advantage it should be no surprise that those testifying at redistricting hearings rarely identified their party affiliations.

**Analysis by Common Cause Oregon indicates that 47 percent of those who testified at field hearings and hearings on draft maps were contributors to political campaigns. This clearly demonstrates that those providing redistricting testimony are far more politically active than the typical Oregonian.**

Excluding the 49 public officials noted above, another 317 people testified at redistricting hearings, some twice. Of these 148, or 47 percent, were contributors to political campaigns as indicated by review of records entered since 2007 into ORESTAR, Oregon's online campaign finance database. When there was any doubt about a testifier being a political donor, they were included in the group of 169 who testified but not found in ORESTAR. Given the caution used in making these determinations, that 148 testifiers were campaign contributors is likely a conservative figure, especially since any public official who participated in hearings who may have also been a campaign donor isn't included in this count. Clearly, individuals providing testimony at redistricting hearings have made campaign contributions at a far higher rate than the general public.<sup>23</sup>

Another major purpose of field hearing testimony is to provide a record for use during possible lawsuits challenging redistricting plans. **Those legal challenges are typically filed by political players and rely on the record laid during the field and subsequent redistricting hearings. Another reason, then, that political players recruit testers and make suggestions for testimony is to seek an advantage in court if litigation occurs.**

That field hearings include testimony on communities of interest that really intended to advance partisan redistricting goals may lead some to propose elimination of this step. This problem is better addressed, however, by changing the group listening to testimony and drawing new maps to an independent commission rather than legislators, with their inherent conflict of interest.

Regardless of the redistricting entity, then, there will be partisan goals behind much of the testimony at field hearings. Nevertheless, these informational hearings are still a positive element of redistricting in Oregon and deserve to be codified into law. Requiring a minimum number of ten field hearings should be added to redistricting law.

### **3. Codify into law a requirement for at least five hearings on draft maps**

Oregon's 2011 redistricting committees held three hearings on draft maps, a step recommended by Common Cause Oregon to ensure opportunities for meaningful public input on actual maps. These hearings occurred over one week with the first session on a Tuesday evening, then a Friday morning session, and the third hearing on the following Tuesday evening. To ensure that redistricting in 2021 and beyond includes this commendable feature of the 2011 process, a requirement for at least five hearings on draft maps should be codified into law.

That three hearings were held on actual draft maps in 2011 was a marked improvement over the 2001 hearings when the Republican legislative leaders dominated the short pro forma set of hearings with nominal public input. (More details provided in Appendix 3 on page 32.) We recognize, however, that multiple hearings on draft maps aren't an antidote against partisanship. For example, in 2001 Secretary of State Bill Bradbury held numerous hearings on his proposed legislative districts, but his final map has been considered partisan.

It seems likely that if one party or the other controlled the Legislature in 2011, release of two sets of draft maps would not have occurred nor would there have been three public hearings on those maps. That reality doesn't diminish praise for holding those three hearings on actual maps, but pointing out this likelihood is necessary to put this 2011 accomplishment into perspective.

**Ensuring meaningful opportunities for public input on draft maps for both legislative and Congressional districts in the future requires codifying a requirement for at least five such hearings into law.**

The best option is to hold hearings on draft maps both in Salem and at satellite locations. A helpful feature of these hearings in 2011 was committee services staff identifying the concerns of those testifying on an enlarged electronic version of the compromise map. This works best when redistricting committee members and a testifier are in the same room looking at the same graphic.

Holding these hearings in Salem could suffice, but only if there is a legal requirement to provide opportunities for long distance testimony via video at the sites of the earlier field hearings.

The feasibility of using technology for providing off-site testimony was well proven during the 2011 process and presumably technical tools for this purpose will only improve in the future. Use of video technology for testimony on draft maps from the sites of earlier field hearings during 2011, for example, would have prevented the ire of some testifiers who drove from the coast and other locations across the state only to be given three minutes for their testimony. Limiting time for testimony is often needed, but its impact is mitigated by providing opportunities to reduce travel time and expense by testifying via video.

Requiring five hearings on draft maps will take time, but this is an essential step. **Without meaningful opportunities for public input on draft maps, the initial field hearings are a sham.** That the 2011 process included 13 field hearings and 3 hearings on draft maps indicates that this report's recommended mandates for at least 10 field hearings and at least 5 hearings on draft maps are feasible.

#### **4. Facilitate more input from local governments and others in establishing census block boundaries via the Census Bureau's suggestion program conducted prior to 2020**

Census blocks follow physical features whenever possible and since these characteristics can change over time, providing updates to the Census Bureau is important to facilitate easier and more accurate reworking of precincts to reflect newly drawn legislative and congressional districts.

A feature of Phase 2 of the Census Bureau's redistricting program is seeking suggestions for improving block boundaries. Census tabulation blocks are the smallest units that serve as building blocks for census tracts. Oregon's redistricting maps are defined in law by listing the census blocks in each new district.<sup>24</sup> Implicitly this means that if some census blocks have confusing or unclear boundaries, this problem can affect some district boundaries. This problem can be minimized by increased involvement in the Census Bureau's block boundary suggestion program in their preparation for the 2020 census. (See Appendix 4 for more details about the five phases of the Census Bureau's redistricting program on page 33.)

The Census Bureau's block boundary suggestion process isn't perfect and not all unclear boundaries can be identified in advance. This is why we also make recommendation five mandating time for review of proposed legislative and congressional districts by county elections administrators. Trying to prevent redistricting implementation problems in the first place, though, is why Common Cause Oregon recommends increased involvement by local election administrators and their technical local government colleagues in future block boundary suggestion programs.

That broader participation would help in implementation of redistricting by election officials is indicated in interviews in a report prepared for the Oregon Secretary of State Elections Groups. The major focus of this analysis was assessing options for adding GIS capacity to Oregon centralized voter registration database. Interviews with election officials and other stakeholders,

however, also demonstrated the need for more local level involvement in early phases of the census many years in advance of the Legislature starting to draw new districts:

Often census boundaries will be misaligned with local data, running irregularly across or offset from local features such as arterial streets or other clear landmarks and geographic features. In the vast majority of cases, stakeholders note that census boundary lines do not coincide well with either state geographic layers or with local layers. Thus a challenging and time consuming process of reconciling these datasets must be undertaken, and the process by which this is done tends to be one that is devised at the local level with whatever resources are available during a time of great time pressure to complete redistricting work.

There are a couple examples of local stakeholders who have had success in engaging census representatives to collaborate in effecting better agreement between the census geographic line work and local points of reference. In localities where this has been done, it promises to ease the redistricting process considerably, as it will free local officials from having to interpret the proper or intended positions of census boundaries during redistricting efforts, saving them from precious time and helping them avoid problems or inaccuracies in data that might stem from misinterpretation.

Skepticism about the accessibility of census officials and their willingness to participate in such efforts tends to run very high among election officials. However, this would seem to be a crucial step to improve the efficiency and accuracy of redistricting over time and one that may be pursued with more success and vigor by the state.<sup>25</sup>

The mechanism for facilitating increased participation in the block boundary suggestion program is improved outreach from the individual or agency designated as the state liaison to the Census Bureau. This designation is made after the introductory meeting between legislative leadership and Census Bureau staff, a session that in preparation for the 2010 census in Oregon occurred in October 11, 2005. The Legislative Committee Services office has been and will likely continue to be Oregon's liaison to the redistricting staff at the Census Bureau.<sup>26</sup> **More resources should be allocated by the Legislative Committee Services to conduct outreach to facilitate improved interaction with the Census Bureau and Oregon stakeholders in advance of the 2020 census and 2021 redistricting process. The need for this outreach also contributes to recommendation number six to establish an ongoing redistricting task force.**

### **5. Provide two opportunities for review by county election administrators prior to final adoption of legislation enacting congressional and legislative districts.**

That the redistricting legislation adopted in Salem is not always easy to implement by county election administrators was also identified in the Elections Division report mentioned above:

Many interviewees said that the district boundaries that were drawn and provided by the state to local officials made little sense and appeared to not have been developed through any practical reference to extant and easily distinguishable local geographic features. Stakeholders gave examples such as district lines that ostensibly follow drainages that are no longer identifiable on the landscape or in local datasets (as they had long ago been paved over). One official light-heartedly referred to a district line that followed a “timber race” (an artificial channel to carry logs) that has been in disuse since the 1920s. Many officials mentioned receiving boundary lines from the state that run through tax lots and force local officials to do interpretive work to determine how best to adjust lines and to make them rationally work with local geography and the understood intent of the state deliverables.<sup>27</sup>

Some of these concerns could be prevented in the future by more extensive participation in the Census Bureau’s block boundary suggestion program. But that won’t solve all the redistricting implementation issues faced by election administrators as they identify the voting addresses in new legislative and congressional districts and adjust precinct lines. Election administrators can also identify problematic interactions between legislative and congressional districts and other political boundaries like special districts and school districts.

For example, election administrators are concerned about the confidentiality of how some residents voted when a new legislative district line requires drawing odd shaped precincts or create areas where a small number of voters will receive a ballot with a particular combination of offices. For example, there is one voter in a Hillsboro school district zone in Multnomah County and if that person casts a ballot the privacy of their vote is jeopardized. In Deschutes County there are several small lots adjacent to a city that have different house and senate districts than the surrounding unincorporated area resulting in an area with only 11 voters who will receive one particular ballot. **Slight changes in legislative district lines could have eliminated this small island of voters.** In general, drawing legislative and congressional districts with an awareness of other political jurisdictions would reduce the likelihood of splits in precincts. Several county clerks particularly recommended consideration of school district boundaries.<sup>28</sup>

There are times when election administrators would find metes and bounds legal descriptions for new districts helpful in their redistricting implementation.<sup>29</sup> One option, then, is to require redistricting legislation to include this type of legal descriptions. However, this would be a challenging burden on legislative counsel staff writing the redistricting legislation, typically on a tight timeline. Also metes and bounds legal descriptions were not verifiable in the redistricting software used in 2011 and not used for that reason.<sup>30</sup> Providing this option, however, could be a helpful feature to consider when purchasing redistricting software in 2021.

Another redistricting implementation concern is when opportunities to link congressional and legislative districts are not reflected in the work by the legislature’s redistricting committees. One example in Multnomah County is a site where legislative and congressional district lines are only a block or two apart.<sup>31</sup> This increases the difficulty of drawing new precincts and sets the stage for voter confusion because residents on one side of the block will be voting on one combination of legislative and congressional candidates while right across the street that

combination will be different.<sup>32</sup> The catch, of course, is that draft legislative and congressional maps are not always available at the same time so carrying out this category of cross-referencing can be difficult. One advantage of an independent redistricting commission that takes on both legislative and congressional line drawing is the ability to control the timing of those two procedures to facilitate cross-referencing by election administrators.

Common Cause Oregon recommends providing county election administrators with two opportunities for review.

**First, provide county election administrators the technical documentation of the draft maps during the window that these maps are undergoing public review at the five hearings recommended above.** This would provide the opportunity for local election administrators to identify concerns about unclear boundaries or where proposed district lines could be adjusted to ease election administration. It may be that not all county clerks will take the opportunity to review draft maps depending on their work load and the extent to which their area is affected by proposed redistricting plans. Providing this option, however, could provide valuable early input to the legislative redistricting committees. Indeed, making this technical data available to the general public should be considered as an ancillary step to this report's first recommendation.

In 2011, each county election administrator received an email from legislative redistricting committee staff with the technical documentation of the final bills summarizing the new legislative and congressional districts. It seems that this step could have been done regarding draft maps during the time period when the three hearings occurred on the 2011 draft proposals. If there were technical challenges to taking this action in 2011, that concern would likely be eased by 2021.

**Second, mandate a ten day period for review by county election administrators of the legislation describing either new congressional or legislative district maps before final enactment.** The bill defining congressional districts was voted into law on June 30, 2011, the last day of the legislative session, which illustrates the challenge of providing ten days for administrative review. That providing a ten-day review period is feasible, however, is demonstrated by enactment on June 10, 2011 of the bill defining legislative districts, almost three weeks in advance of the July 1<sup>st</sup> deadline for action by the Legislature.

It is a matter of planning and political will to insert a ten day administrative review period into the redistricting process. However, it was beyond the scope of this report to ensure that this review period would be useful to all county election administrators so this ten day review mandate does require further vetting.

One concern about this ten day review period is that it would also give time for a fragile legislative compromise to dissolve. Instead of not allowing this administrative review, however, a better way to mitigate this concern is to adopt an independent redistricting proposal. Redistricting by an independent redistricting commission would still be a political process, but the potential for conflicts of interest is reduced compared to legislators drawing new maps.

## **6. Create an ongoing redistricting task force**

**A major challenge is that redistricting only occurs once every ten years resulting in the loss of institutional memory about this important process.** To address this challenge and to facilitate carrying out recommendations four and five the Oregon legislature should create an ongoing redistricting task force.

The ongoing redistricting staff force would be staffed by Legislative Committee Services staff and include representatives from the Oregon Association of County Clerks, legislative leadership offices, and GIS and technical resource people from the Department of Administrative Services. Legislative Committee Services staff should play this role because they have been the liaison with the Census Bureau redistricting program and assist legislative redistricting committees.

The first meeting of this task force should be a debriefing session about that year's redistricting process. This task force would be reconvened on an as-needed basis as census preparation activities begin in the middle of the decade. Regarding the 2011 redistricting this would mean a debriefing in 2012, then reconvening in 2015 or 2016 to begin facilitating interaction by Oregon stakeholders with the Census Bureau. **In other words, this task force wouldn't have frequent meetings.** Rather it would focus on improving Oregon interactions with the 2020 census and carrying over more institutional history from preparation of new maps in 2011 to the redistricting process in 2021 with the process continuing into the future between each successive round of redistricting.

It seems possible, even likely, that members of a 2012 configuration of this task force would change between its initial debriefing meeting and the 2020 census and 2021 redistricting. To maintain institutional continuity, however, the entities represented on this task force would be required to name new representatives.

## **7. Stop prison populations from distorting redistricting**

The Census Bureau counts people in prison where they are jailed rather than at their last pre-incarceration address. This practice is inconsistent with many court decisions and state laws indicating that a person doesn't lose their residency status during a temporary absence. When redistricting in areas with a prison uses this data, districts include people who have no connection to the district's other residents or its community welfare. **Also called prison gerrymandering, this distorts redistricting by artificially inflating the representation of citizens in districts containing prisons and deflating representation of those in other districts.**

This distortion affects state legislative districts with prisons but can be especially striking in local jurisdictions. During the last decade in City Council Ward 2 of Anamosa, Iowa, for example, 1,300 of its voting age residents were prisoners resulting in 100 people receiving "super representation" compared to residents in other council wards where each council member represented 1,400 people. In 2006, just two write-in votes were enough to elect the city councilmember for Ward 2.<sup>33</sup>

**The City of Pendleton in Umatilla County provides an Oregon example of the negative effect on democracy of claiming incarcerated people as constituents of the prison location.** The Eastern Oregon Correctional Institution is 28 percent of a Pendleton city council district,

giving every 3 residents of the ward with the prison the political power of 4 residents in other parts of the city. Department of Corrections statistics show that virtually everyone incarcerated at the Eastern Oregon Correctional Institution comes from other parts of the state.

The Oregon State Constitution is clear that a prison is not a residence: "[f]or the purpose of voting, no person shall be deemed to have gained, or lost a residence ... while confined in any public prison."<sup>34</sup>

The ultimate remedy is for the Census Bureau to count people where they are from rather than where they are incarcerated. Prior to that step, however, more than 100 cities and counties in states ranging from Alabama to South Dakota to Virginia excluded prisoners when drawing local districts after the census in 2000.<sup>35</sup> Delaware, Maryland, New York, and California have adopted legislation to adjust redistricting regarding prison populations. This policy will be used for redistricting after the 2020 census in California and Delaware, but affects current redistricting in Maryland and New York.<sup>36</sup>

Common Cause Oregon recommends legislative action to end prison gerrymandering in 2021 by excluding prisoners in redistricting unless the Census Bureau changes its policy of counting prisoners where they are confined in its 2020 count.

One criticism is that excluding prisoners from redistricting could geographically increase the size of already large districts in eastern Oregon where many, though not all, prisons are located. This is a valid concern, but one best addressed by ensuring a "rural fairness differential" in legislative office budgets and per diem payments based on size of districts and distance from Salem. Common Cause Oregon coined this "rural fairness differential" phrase when testifying at hearings in support of increasing legislative pay, per diem and office budgets to reflect the large size of many of Oregon's legislative districts. Including a rural fairness differential just becomes all the more important to address the possibility of larger districts after prison gerrymandering is eliminated.

## **8. Clarify current law on post-redistricting congressional special elections**

If a vacancy occurs before the end of a term, that replacement process should focus on the district and its residents who elected the person who left office. **The replacement representative only serves to the end of the vacated term and then must run for office again.** This is why a vacancy that occurs in the window between enactment of new legislative boundaries and the next regular election for that position is replaced by an appointment process involving the county (or counties) within which the district is located. This process is outlined for legislative districts in ORS 171.068.

Congressional vacancies are filled by special elections and this process is outlined in ORS 188.120. **However, the legal clarity about filling legislative vacancies in a post-redistricting window is not found in the law regarding congressional replacement procedures.** Applying the rationale in the law about post-redistricting legislative district vacancies seems appropriate and is why the Congressional District 1 special elections in 2011 and early 2012 gave the residents of "old" District 1 the authority to choose who will serve out the term of former-Representative David Wu who they elected in the first place. At the next regular elections later in 2012 the residents within the "new" boundaries of Congressional District 1 drawn in 2011 will

vote for their new representative. The catch is that this policy is not codified in ORS 188.120 and this should be remedied prior to redistricting in 2021.

## **9. Clarify the timeline for Congressional redistricting**

The criteria in Article IV Section 6 of the Oregon Constitution and ORS 188.010 for redistricting by the Legislative Assembly apply to both legislative and congressional districts. However, for congressional redistricting there are no deadlines or timelines. During the last round of redistricting the last day for candidate filing for the May 2012 primary was the ultimate deadline for drawing congressional boundaries while the end of the 2011 legislative session became the practical deadline. Legislative inaction or gubernatorial veto of a congressional map goes to the courts because an individual or a group petitions for correction of the inequality of congressional district populations based on the new census data.

**We recommend that deadlines be adopted for congressional redistricting.** The deadline for action by the Legislature would be July 1. If a new plan isn't enacted the deadline to petition the courts would be August 1. The deadline for court action would be October 15. Adjustment of these timeline suggestions may be required if there is a change to an independent redistricting commission.

## **ALTERNATIVES TO WHO SHOULD DRAW THE LINES**

### **The Problem**

**Having legislators pick their own voters when they draw new boundaries of their own districts is similar to foxes designing the hen houses they will raid.** The problem addressed by an independent commission is that the current system turns on its head the conventional wisdom that voters select their state legislators and federal representatives. Obviously voters have the ultimate say in selecting their elected officials. However, the relative voting strength of different communities within districts and the resulting viability of candidates are just as obviously influenced by how legislators drew new district lines.

This problem was demonstrated by a comment at one of the 2011 redistricting field hearings. After Representative Matt Wand testified about his view of communities of interests in his area at the Gresham field hearing, a follow up comment from a redistricting committee member was basically: OK, you want Corbett. Appropriately, Rep. Wand responded by saying he would be happy to represent any community within a new district drawn after going through the redistricting process. However, that comment, even if said inadvertently or in jest, reveals the current process for what it is: legislators and their respective political allies vying with each other to select their voters.

That is why Common Cause supports an independent redistricting commission. **The devil is in the details, however, and an independent commission doesn't remove politics from this inherently political process. The details are especially important in Oregon since there are many positive aspects of our state's redistricting process that must be retained.** This means that reform proposals considered adequate in some states would not be acceptable in Oregon.

On the other hand, just because the redistricting process in Oregon hasn't been as partisan as in other states or resulted in egregious examples of partisan gerrymandering doesn't reduce the

need to consider an independent redistricting commission. The perception of legislators choosing their own voters undermines the credibility of the Legislature. Another concern is that election results are more likely to be attributed to partisan redistricting by the Legislature without consideration of the many other factors that influence election outcomes such as fundraising, incumbent advantage, and shifts in the mood of the electorate.

### **California's Independent Redistricting Commission**

Common Cause and many other allies in California worked on two ballot measures adopted by California voters to establish an independent redistricting commission to draw both legislative and congressional district lines. **Redistricting reform needs to be state specific so the applicability of every details of California law in Oregon may not be appropriate.** The California measures and their implementation in 2011, however, provides valuable insight about important features to include in a reform proposal such as ensuring that commission members are independent, knowledgeable, and have the training and resources needed to draw new district maps.

The California commission has 14 members with requirements for both geographic and ethnic/racial diversity and must include five Democrats, five Republicans, and four members who register as not affiliated with any political party.<sup>37</sup> It should be noted that this equal split of commission members between the two major parties does not reflect California's voter registration patterns. (Nor would it do so in Oregon. In 2010 Oregonians registered as Democrats were 42 percent of registered voters while Republicans comprised 32 percent of registered voters. Non-affiliated voters and those with minor party registrations came to 26 percent of Oregon's registered voters.)<sup>38</sup>

Commission members were randomly selected from a pool developed by an extensive two-round application process that included questions about professional expertise and knowledge about California communities and the redistricting process. The applications were reviewed by three auditors from the Bureau of State Audits who then selected 120 applicants who were divided into three groups based on membership in the major parties and non-affiliation status. These applicants were interviewed and the pool was reduced to 60 with the same set of three sub-pools related to voter registration status. Legislative leadership exercised the right given in the ballot measure to remove up to 24 applicants from this group of 60. From the remaining group, the State Auditor<sup>39</sup> randomly drew the names of 3 Democrats, 3 Republicans, and 2 non-affiliated members. This group of 8 then selected the final 6 commissioners, choosing 2 Democrats, 2 Republicans, and 2 non-affiliated members. The redistricting commission had a budget for staff, training, outreach, and hearings. Training is very important to avoid falling into simplistic evaluation of districts such as by shape alone.

California's 2011 redistricting process provided far more opportunities for public participation than in the past. Redistricting criteria were also improved and clearer than in the past. Based on the varied type and sources of criticism of the new maps developed by the California redistricting commission it seems like they did a pretty good job. Challenges to the California Supreme Court by Republican players have been denied. Republican activists have submitted referendum petitions to overturn the Senate district plan developed by the independent commission. If this referendum qualifies it will go before California voters in November of 2012.

The California Supreme Court unanimously decided on January 27, 2012 that the Senate districts drawn by the independent commission will be used for the June 2012 primary election and the November 2012 general election. As reported in the *Sacramento Bee*: “In a 73-page decision, justices evaluated several proposed alternative maps and concluded that the Senate lines drawn by the 14-member commission were the most appropriate and least disruptive to this year's elections.”<sup>40</sup>

Republican opposition is interesting since their representation on the commission exceeded their registration status of California voters and numerous Republican players were reform supporters due to a perception of a history of gerrymandering by Democrats. There have also been claims of Democratic influence on the work of the independent commission, but a California political reporter who closely followed the process takes issue with several of those claims in a more nuanced discussion about what constitutes redistricting success.<sup>41</sup>

An academic analysis concludes:

“There is little doubt that the maps produced by the California Redistricting Commission, and the process through which these plans came about, represented an important improvement on the legislature-led redistricting of 2001. The new district boundaries kept more communities together and created more compact districts while at the same time increasing opportunities for minority representation. If these maps survive the coming referendum and legal challenges, they have the potential to modestly increase competition in California elections and the responsiveness of the legislative branch to changing voter preferences.”<sup>42</sup>

It isn't clear that the level of partisan gerrymandering in Oregon's redistricting process occurs at the scale that historically had been seen in our neighbor to the south. One indication of the level of concern about redistricting in California is that adequate resources were raised to convince voters to enact that state's independent redistricting commission ballot measures. Whether or not there are similar political dynamics in Oregon is an important question since there are obvious challenges to the Legislature successfully developing a redistricting reform plan to refer to the voters. It is no coincidence that redistricting reform has typically been adopted using the ballot measure process. For all these reasons other reform options about “who draws the lines” are discussed next.

### **Independent Commission with Legislative Input**

Legislators do know a lot about their districts and communities of interest so completely cutting them out of the redistricting process has disadvantages. Some reform proposals give the initial line drawing responsibility to an independent commission but allow for legislative review and suggestions.

Authority can also be given for the legislature to make changes, though often with supermajority requirements that set a high bar for tinkering with the product of the independent commission. For example, Washington allows the Legislature to modify the plan of its independent commission as long as it affects no more than 2 percent of the population of the adjusted district and if both the House and Senate support the change by a 2/3 vote.<sup>43</sup>

## **Independent Commission as Backup Option**

Oregon's redistricting history illustrates the influence of who plays the backup role in drawing new legislative districts.

In 1961 and 1981, the Legislature controlled by Democrats in both the House and the Senate passed legislative district plans that were signed by Republican Governors even though a veto would have given this job to a Republican Secretary of State. Legal challenges in both those years meant the Secretary State made relatively minor modifications. Democrats seemed to moderate their redistricting partisanship to the extent that a gubernatorial veto was avoided. A more jaundiced view of these scenarios, though, is that sweetheart gerrymandering occurred that preserved the number of districts held by both parties in those years.

In 2001, however, the Legislature controlled by Republicans in both the House and Senate adopted a new map for legislative districts that was vetoed by Democratic governor John Kitzhaber resulting in line drawing by a member of his party, Secretary of State Bill Bradbury. Unlike in 1961 and 1981 and perhaps because the Republicans were in control after a significant stretch of being the minority party the party in control, they did not draw a plan that avoided gubernatorial veto and subsequent line drawing by the Democratic Secretary of State.

In 1971 and 1991, split Legislatures couldn't come to agreement on new legislative maps. The legislative chamber controlled by the party whose colleagues were Governor and Secretary of State (Republicans in 1971 and Democrats in 1991) presumably had little motivation to compromise with the other chamber (the Senate controlled by Democrats in 1971 and the House controlled by Republicans in 1991).

In 2011, Republicans felt their negotiating clout was diminished by threat of a gubernatorial veto by John Kitzhaber resulting in line drawing by his fellow Democrat, Secretary of State Kate Brown.

An independent commission replacing the Secretary of State as the backup entity may provide adequate incentive for divided Legislative Assemblies to compromise, though the prospects for sweetheart gerrymandering could increase. If the primary concern is the inability of a divided Legislature to agree on redistricting and one's prediction is that Oregon's future will include split legislative chambers, then the backup independent commission may be worth considering. This option, however, does present timing and logistical concerns. When the Secretary of State plays the backup role, that officeholder is given only six weeks to prepare a legislative plan. It seems likely that a backup redistricting committee would require more time, especially if the selection of this backup group doesn't occur until after there is a legislative deadlock or a gubernatorial veto.

**There are two major problems, however, with this backup independent commission reform option.**

First, it isn't clear that this approach would prevent or minimize sweetheart gerrymandering when the Legislature is held by one political party while members of the other party are Governor and Secretary of State.

Second, and even more troubling, an independent commission serving only on a backup basis does not prevent partisan gerrymandering by a Legislative Assembly controlled by one political party when members of the same party also hold the offices of Governor and Secretary of State.

## WHAT SHOULDN'T HAPPEN

Common Cause Oregon's baseline for evaluating an independent redistricting commission proposal is that it has to be as good as or better than current law. **A proposal that changes who draws the lines, but also makes damaging changes to Oregon's tradition of hearings and current redistricting criteria is not acceptable.**

There isn't just one "right" plan that can draw to comply with the redistricting criteria and it is not possible to draw a perfect map that will keep everyone happy. **Monitoring the 2011 process reveals that the equal weight given to the multiple criterion in Oregon law is prudent since redistricting is not a "one size fits all" process.** The reality is that one set of criterion may be most important in some areas while another combination of criterion is most applicable to line drawing in other parts of the state.

Ranking of redistricting criteria just doesn't work because the combination of factors most appropriate to guide redistricting in one area frequently doesn't make sense in other areas. A single-minded focus on shape and compactness also doesn't work. Oregon's relatively long and thin coastal legislative districts, for example, wouldn't meet the compactness criteria preferred by some. But long and narrow coastal districts make far more sense than square blocks that extend from the coast to the Willamette Valley that could result from a primary emphasis on compactness.

**The notion that redistricting can be done electronically using computers is also inappropriate given the "one size doesn't fill all" complexities of this process.** This topic is fully discussed in a paper by redistricting expert Justin Levitt who teaches at Loyola Law School and previously worked for the Brennan Center for Justice. Though Levitt sees a role for scientific analysis he writes: "it seems wise to reject an understandable desire to 'solve' the redistricting puzzle with traditional scientific methods alone..."<sup>44</sup>

Common Cause Oregon understands the attraction of placing line drawing authority in the hands of retired judges given the role of the judicial branch in providing impartial analysis of actions by the legislative and executive branches of government. **Retired judges, however, are probably even less representative of Oregon's population than the Legislature, which raises questions about whether they are the appropriate group to tap to draw new district lines.** During testimony on April 18, 2011 on HJR 46 before the House Rules Committee a representative from the Department of Justice, though neutral on that proposal, identified numerous logistical and other concerns regarding placing retired judges on an independent redistricting commission. Anyone interested in this idea should listen to that testimony to inform their development of that aspect of an independent redistricting commission proposal.

Attempting to provide more guidance about the definition of communities of interest may seem like a good idea but would likely introduce as many problems as it solves. The reality is that communities of interest overlap in varying patterns across Oregon. This contributes to the “one size does not fit all” nature of redistricting that, though frustrating, is a reality of drawing new maps. This also contributes to the importance of not ranking redistricting criteria because of how balancing of criteria to best meet local needs varies across the state.

Even if writing a definition of community of interest made sense, it is difficult to do. For example, California’s law includes this line: “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.”<sup>45</sup> While sometimes both social and economic interests define a community of interest, there are also times when primarily social or primarily economic factors define communities that shouldn’t be divided during redistricting. Just including one word – and – in the California definition seems to have introduced a potential barrier for redistricting to reflect the variety of ways that communities of interest are defined across the state.

Finally, as was discussed earlier, the solution to partisan redistricting goals hiding behind testimony about communities of interest is best addressed by changing to an independent redistricting commission.

## CONCLUSION

**The most important step to increase trust in legislative redistricting is to stop the “wink and a nod” history of political players paying for partisan analysis of proposed districts that are shared with legislators behind closed doors.** This recommendation should also apply to an independent redistricting commission. Even though an independent commission would have fewer conflicts of interest in assessing this information compared to legislators, political data should still be part of the public record so it can be used for analysis by the press and general public. **Public access to voter registration and other political data is also needed to assess future compliance with Section 2 of the Voting Rights Act.**

Oregon has a commendable history of hearings that should be codified with particular emphasis on ensuring meaningful opportunities for public input on draft maps. Field hearings held after census data is released but before draft maps are prepared are an empty exercise, if not a sham, if not followed by at least five hearings on maps showing new proposed districts. **Field hearings are important and at least ten should be mandated, but they don’t replace the need for a minimum of five hearings on draft maps.**

**Oregon participation in preparation for the 2020 census should be improved to help prevent subsequent implementation problems and to facilitate political analysis of proposed maps.** Resources should be provided to the Legislative Committee Services office to carry out reach to increase local government participation in preparation of future census proceedings.

**County election officials should be given ten days to review redistricting legislation** before its final enactment to improve the efficiency of implementation of new maps and subsequent

election administration. Technical data about draft maps should also be provided to county election officials to facilitate obtaining their input during the recommended five hearings on redistricting proposals.

**One reality of the redistricting process is that it only occurs every ten years, which sets the stage for losing institutional memory from one round of redistricting to the next. This dynamic can be mitigated by formation of an ongoing redistricting task force.** This task force should be staffed by Legislative Committee Services staff. The task force can improve interaction with the Census Bureau prior to future redistricting as well as providing continuity between successive rounds of redistricting.

Distortion of redistricting by prison populations should be eliminated. Congressional redistricting rules should be clarified regarding timeline of drawing these new districts. Clarity is also needed regarding and post-redistricting vacancies and special elections.

**These nine process recommendations are applicable no matter who draws new district lines.**

**There are serious concerns about the Legislature carrying out redistricting but the political dynamics of adopting an independent redistricting commission are challenging.** Several reform options, however, are discussed. Given that Oregon's redistricting criteria are among the clearest and most detailed in the country, **proposals to change "who" draws the lines shouldn't inappropriately tamper with our state's rules governing "how" to draw new districts.**

## **APPENDIX 1 - Steps to Current Redistricting Law in Oregon**

The modern era of redistricting in Oregon began in 1961 after passage in November 1952 of a measure put on the ballot by the Non-Partisan Committee for Constitutional Reapportionment. The motivation for this measure was that the Legislature, though charged with the job of drawing new district lines, had not completed this task since 1910. This violation of their constitutional mandate could occur because the original Constitutional language did not designate an entity to carry out redistricting in the event of legislative inaction.

The Legislature was controlled by one party, Republicans, in the redistricting years of 1911, 1921, 1931, 1941, and 1951. Republicans also controlled the Legislature in 1901 when redistricting did occur. This domination presumably contributed to satisfaction with the same set of districts for the next five decades and likely would have been the case if the Democrats were the controlling political party during those years prior to the modern era of redistricting in Oregon.

Legislative inaction on redistricting was foreshadowed by a delegate to Oregon's Constitutional Convention that developed the state's initial redistricting procedures who said, "I am satisfied from my experience in this country that the legislative assembly can never – will never – justly and equitably apportion the representation of the several counties of the state if left to them."<sup>46</sup>

There was bipartisan support for the 1952 ballot measure. In a letter to the editor in October of 1952, Mark O. Hatfield, a first term Republican member of the Oregon House, wrote a letter to the editor advocating support for the measure. The following excerpt from Hatfield's letter explains why the measure was needed:

What the measure does is very simple. It sets the number of state senators and representatives from Oregon's various counties according to the counties' present population. The number is now set – absurdly enough – according to the population of 40 years ago.

Oregon's founding fathers made one mistake. They put too much trust in human nature. They said, in the constitution, that the legislature should reapportion itself every 10 years – and took for granted that the legislature would do it.

But the legislature has refused to obey the constitution. Because of inertia, personal political interests, and vote-trading, Oregon's legislature has not reapportioned itself since 1910.

The results are ridiculous. For instance, there is one senator from the district comprising Klamath, Crook, Deschutes, Jefferson and Lake counties. There is one senator from Gilliam, Wheeler and Sherman counties. Forty years ago that was perfectly sensible.

But today? Today the Klamath-Crook-Deschutes-Jefferson-Lake district has a population of more than 85,000, the Gilliam-Wheeler-Sherman district fewer than 8500. Yet both districts have exactly the same representation in the senate.<sup>47</sup>

Oregonians agreed with then-Representative Hatfield and this measure passed with a 65 percent “yes” vote. The measure also established the Secretary of State as the backup if the Legislature failed to draw new House and Senate districts and granted judicial review authority to the Oregon Supreme Court. The measure also removed the reference in the original Constitution to only count white Oregonians in apportionment. It also included a temporary reapportionment to provide more population equity between districts prior to the 1961 redistricting.

The 1952 ballot measure put Oregon ahead of the curve with its focus on population-based reapportionment that came into effect across the country due to decisions during the 1960’s by the U.S. Supreme Court. *Baker v. Carr* in 1962 began involvement of the U.S. Supreme Court in redistricting, overturning past precedent of the courts giving deference to plans drawn by state legislatures. Justice William O. Douglas in *Gray v. Sanders* that overturned weighed voting systems in 1963 wrote these familiar words: “The conception of political equality...can mean only one thing—one person, one vote.” *Reynolds v. Sims* in 1964 required that legislative districts be substantially equal in population. This affected state rules regarding contiguous borders and prohibiting splitting county lines with those goals becoming secondary to the equal population requirement.

Since 1952 only two, relatively minor, changes have been made in the Oregon constitution regarding redistricting. One was a legislative referral in 1954 that addressed how to split up more populous counties. In 1986 the Legislature referred a measure that provided more time for work by the Secretary of State to draw new maps or to make corrections that result from a court challenge. Both referrals were adopted by voters.

The following statutory criteria for redistricting in Oregon are in ORS 188.010:

- Each districts, as nearly as practicable, shall:
  - Be contiguous;
  - Be of equal population;
  - Utilize existing geographic or political boundaries;
  - Not divide communities of common interest; and
  - Be connected by transportation links.
- No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.
- No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.
- Two state House of Representative districts shall be wholly included within a single state senatorial district.

These criteria were adopted by the Legislative Assembly in 1979 in a bill that originally established a State Reapportionment Commission. Though that change in who drew new districts wasn’t adopted, the criteria outlined above were enacted.<sup>48</sup> The 1979 legislation also included a requirement that no state Senate districts should be split between Congressional districts. Evidently this was not practical and evidently led to population deviations that were legally vulnerable, which presumably contributed to repeal of this requirement in 1981.

In the event that the Secretary of State draws new legislative boundaries, Oregon Administrative Rule 165-008-0060 requires following federal and state law but adds three additional guidelines:

- (a) "Utilize existing geographic or political boundaries." When possible, districts will be drawn to utilize county lines and to maintain cities within a single district;
- (b) "Not divide communities of common interest." Where urban neighborhoods, rural communities or other communities can be identified, an effort will be made to retain that community within a single district. Consideration will be given to market areas covered by local media;
- (c) "Be connected by transportation links." Road connections of at least a county road should be available within the district from one area of the district to another. This does not apply to unpopulated areas of the district.

These rules were adopted by Secretary of State Phil Keisling who also provided the following details about his line drawing process<sup>49</sup>:

1. Fully incorporate cities within a single district when possible. Possible exceptions are below with a possible guideline being that the more dependent a city's economy is on resources in unincorporated areas the more justifiable to divide
  - a. City boundaries cross a county line (e.g. Lake Oswego; Mill City)
  - b. Can be shown that compelling interest exists to divide.
  - c. If a city is divided, at a minimum it should be reunited in a Senate district, not further divided.
2. Respect for County Boundaries with the possible exception being to cross county lines to maximize minority representation.
  - a. Wherever practicable, a county that could be wholly incorporated in a single district should not be divided among more than two districts; if in two, then among three; if in three, then among four, etc.
  - b. Especially pay heed to county lines in more rural areas, where community activities are more tied to counties.
3. Minimize Population Deviation
  - a. West side of the Cascades, to  $\pm 1\%$  population deviation; more urban a district, the less deviation within that range.
  - b. For the approximately eight districts East of the Cascades, allow up to  $\pm 3\%$ , if:
    - Such deviation is necessary to meet other strategies, especially with respect to county boundaries and/or community of interest
    - Such deviation does not have adverse effects on the West
    - If East is short, explore desirability/legality of compensating with higher populations in the four Jackson/Josephine Districts that would logically complete the Second Congressional District.
    - A possible guideline is that among these eight districts to under populate those most likely to grow in next decade while keeping close to zero deviation or slightly overpopulate those likely to lose population.

In 2001, Secretary of State Bill Bradbury used these guidelines and added a goal of “no division of cities with less than 58,000 population and serious consideration of the role that counties play in rural areas.”<sup>50</sup>

## **APPENDIX 2 – Modern Era of Redistricting in Oregon – 1961 through 2001**

In 1961 Democrats controlled both the House and the Senate and drew new legislative district boundaries that were adopted in a bill signed by Republican Governor Hatfield. The Republican Secretary of State, however, got involved due to a legal challenge and the Oregon Supreme Court accepted his adjustments that primarily dealt with underrepresentation in Multnomah and Lane Counties.<sup>51</sup> What is striking about the 1961 process is that the Democratic controlled Legislative Assembly adopted new legislative maps that weren’t vetoed by the Republican governor. The Republican Secretary of State only got involved in response to legal challenges and his work was limited to those concerns; he did not start from scratch and draw an entirely new map. Multiple political dynamics were likely in play and perhaps this plan reflected sweetheart gerrymandering between the parties. This experience, however, could indicate the moderating influence on partisan line drawing by the political party in power to avoid a veto by a governor who is a member of the other party that would give the job to a Secretary of State who was also a member of the governor’s party.

New congressional districts were not drawn by the Legislature in 1961. This seems to be due to Oregon’s 1952 ballot measure on redistricting not designating an entity to draw new congressional boundaries in the event of inaction by the Legislative Assembly, as it did regarding legislative districts. That the courts didn’t get involved is evidently because this was before the *Baker v. Carr* U.S. Supreme Court decision in 1962 that signaled their willingness to get involved in review of redistricting plans, overturning their past practice of deference to state legislative action (or inaction) on redistricting. (See Appendix 1 for more details.)

In 1971 the House was controlled by Republicans while the Senate had a Democratic majority. Nevertheless, they agreed on a new Congressional map that was signed by Republican Governor Tom McCall. The split House and Senate, however, could not agree on new maps for legislative districts and that job went to Republican Secretary of State Clay Myers. There were legal challenges to Myers’ new plan, but most of his work was upheld by the Supreme Court. One motivation for a bipartisan compromise on the congressional map may have been uncertainty about the outcome of judicial line drawing. Regarding new legislative districts, the Republican House may have been less willing to negotiate with the Democratic Senate because the Secretary of State who would take over this task in the event of legislative inaction was also a Republican.

In 1981 both the House and Senate were controlled by Democrats. They adopted new maps for both congressional and legislative districts. Both plans were signed by Republican Governor Vic Atiyeh, even though one veto would have given legislative line drawing authority to Republican Secretary of State Norma Paulus and another would have sent congressional line drawing to the courts. The new maps for legislative districts were challenged in court and overturned because one district would not have had a Senator for two years.<sup>52</sup> Secretary of State Paulus made relatively minor adjustments that were approved by the Supreme Court. Perhaps the signature of a Republican governor on the redistricting bills enacted by a democratically controlled

Legislature indicates sweetheart gerrymandering. During this period, however, there were examples of bipartisan cooperation on hard policy issues like a tax increase to deal with the 1982 recession. Another interpretation then, is that the 1981 agreement on redistricting was fair and not just mutually beneficial to both political parties. Or perhaps, like in 1961, the Legislative Assembly controlled by one party moderated partisanship in their redistricting to avoid a gubernatorial veto and subsequent preparation of a new map by the Secretary of State when both of those state office holders were in the other political party.

In 1991 Republicans had a majority in the House while the Senate was controlled by Democrats. The two chambers could not agree on either congressional or legislative redistricting plans. The congressional line drawing went to the U.S. District Court. Compared to 1971, the uncertainty of judicial line drawing seems to have been more attractive than a compromise between the two political parties. Secretary of State Phil Keisling, a Democrat, drew new legislative districts that, though challenged in court, were approved by the Supreme Court with minor modifications. Obviously multiple political dynamics were likely in play, but the Democratic Senate may have been less willing to negotiate with the Republican House on legislative redistricting because both the Governor and the Secretary of State were Democrats. This is a similar to the dynamic seen in 1971; just with a switch in which legislative chamber was in a good position to be resistant to compromise given the party affiliation of the Governor with veto power and of the Secretary of State who would take on legislative redistricting.

In 2001 Republicans controlled both legislative chambers and passed both Congressional and legislative districts. Both plans were vetoed by Governor John Kitzhaber, a Democrat. The Multnomah Circuit Court drew the new congressional lines. Democratic Secretary of State Bill Bradbury drew new maps for legislative districts. This is in marked contrast to the 1981 redistricting when a democratically controlled Legislative Assembly drew plans that were signed by a Republican governor. Numerous political dynamics were presumably in play, but the uncertainty of judicial drawing of new congressional districts and the prospect of a Democratic Secretary of State drawing new legislative maps was evidently not adequate incentive for the Republican Legislative Assembly to draw plans acceptable to a Democratic governor. A contributing factor might have been that Republicans were in control after having been the minority party for several previous legislative sessions.

A major talking point in testimony during redistricting hearings in 2011 was that Secretary Bradbury's plan in 2001 was very partisan. There was testimony, though, that the Republican redistricting during the 2001 legislative session was also partisan.<sup>53</sup> It seems clear to Common Cause Oregon that there was plenty of partisanship on all sides from the beginning to the end of the 2001 redistricting process.

### **APPENDIX 3 – Common Cause Recommended Five Additional Redistricting Principles**

Common Cause Oregon suggested five additional principles to the House and Senate redistricting committees in testimony we prepared in cooperation with League of Women Voters of Oregon. What follows is an excerpt from our April 2011 testimony to provide more background for the discussion on pages 4-6 of redistricting from the perspective of Common Cause Oregon's goals:

- 1) Everybody deserves representation, which is why the Census counts everyone, including young people and others who can't vote. Redistricting should consider not only electoral opportunities but also ensure effective representation.
- 2) It is both legal and good public policy to factor race into redistricting. It is also critical to do so if the Oregon Legislature is to reflect the growing diversity of our state.
- 3) District shapes should be determined by careful consideration of all redistricting criteria. Some shapes that look odd may be appropriate to preserve communities of interest.
- 4) The Legislature should not conduct "sweetheart" redistricting, but rather consider the full range of allowed criteria when drawing new district lines.
- 5) Redistricting should be transparent, with public input sought after draft maps are prepared by the Legislature, in addition to the hearings to obtain initial input.

A more discussion of these five principles is in Appendix 3.

Regarding principles one and two, we realize that race cannot be a predominant factor in redistricting, but it is a factor that deserves priority attention when balancing all the criteria and drawing new district maps. Redistricting should avoid splitting population centers of communities of color due to state and federal law banning the dilution of minority voting strength and the need to facilitate representation of historically disenfranchised groups within our increasingly diverse state.

Regarding principle three, because communities come in all sizes and shapes, a district can't be evaluated by its appearance. Some may appear misshapen, but keeping a community of interest intact could involve drawing a district with an odd shape to reflect population patterns and redistricting criteria.

Regarding principle four, Oregon law dictates that lines cannot be drawn for partisan advantage. The concern, however, is that violating this criterion could be avoided in a plan with "sweetheart gerrymandering" or new maps that enable each party to maintain the same number of districts it currently controls to the detriment of consideration of other redistricting criteria.

Regarding principle five, we strongly urge that draft maps be made available as early in May as possible to allow time for additional testimony before the legislative deadline on June 30th. Due to time constraints we recognize that these hearings will likely need to be held in Salem. Without another round of public input on draft maps, however, the initial set of hearings becomes a hollow exercise.

We urge you to not repeat what happened in 2001. That year's HB 2001 pertaining to legislative redistricting with the accompanying maps showing new district lines was presented in a public hearing with testimony only from legislators except for one letter submitted by a member of the public. That hearing lasted slightly more than an hour and was followed by a work session on the same day. In 2001 SB 500 pertaining to congressional redistricting had only one

hearing in the Senate that lasted almost two hours. Legislators dominated the testimony on the Senate side though there were two members of the public there and some written testimony, primarily from local governments. The work session on SB 500 was held the next day. In 2001, like this year, there were hearings prior to presentation of the new district maps, but essentially no opportunity for public input on draft maps. We urge that you not repeat this second element of the process ten years ago and provide meaningful opportunities for public review and testimony on draft maps.<sup>54</sup>

#### **APPENDIX 4 – Census Bureau’s Redistricting Program**

The Census Bureau’s redistricting program had five phases<sup>55</sup> and began with a visit from Census Bureau staff with legislative leadership across the country. In Oregon that meeting occurred on October 11, 2005.<sup>56</sup> One result of these meetings is designation of a contact liaison with the Census Bureau, which is the office of Legislative Committee Services in Oregon. Phases 1 and 2 are voluntary and involve asking state submission and review of data. Phase 1 occurred in 2005-2006 and involved collection of state legislative district boundaries and related data. Phase 2 occurred in 2008-2010 and had two components. One was accepting precinct boundaries, which is an important element of this report’s first recommendation.<sup>57</sup> The second is making suggestions to improve boundaries of census blocks, the smallest units that are the building blocks of redistricting. States received TIGER/Line shapefiles and MAF/TIGER Partnership Software (MTPS) to electronically collect precinct boundaries and to make suggestions for block boundaries.

Phase 2 requests other valuable information from the states and the Census Bureau has made improvements to make submitting information easier.<sup>58</sup> For example, the importance of increased participation in the block boundary suggestion program is discussed in recommendation four discussed on page 14.<sup>59</sup>

Phase 3 is delivery of the 2010 census data which, in Oregon, occurred on February 23, 2011. Phase 4 is collection in 2011 through 2013 new legislative and congressional district plans.

Phase 5 is an evaluation of the 2010 census work on redistricting and will include solicitation of recommendations for 2020. That there is no Oregon entity charged with participating in phase 5 regarding evaluation of the 2010 census regarding redistricting contributes to this report’s recommendation six to create an ongoing redistricting task force discussed on page 18.

#### **APPENDIX 5 – Other Process Ideas**

##### **Codify into law the 2011 process of House and Senate redistricting committees meeting together by requiring formation of a joint committee on redistricting.**

The House and Senate redistricting committees met jointly at every step of the 2011 process. This facilitated an atmosphere of cooperation and opportunities for the group to build rapport and trust that contributes to compromise. That redistricting success was a priority in 2011 reflected a commitment to achieve bipartisan cooperation from legislative leadership, Senate President Peter Courtney and Co-Speakers Arnie Roblan and Bruce Hanna.

Whether legislative leaders in 2021 and beyond will share this commitment can't be foreseen. Without that commitment, requiring a joint redistricting committee in the future may be a futile gesture. There are also examples of non-compliance with mandates for joint legislative committees. Nevertheless this structural change could facilitate carrying the cooperative spirit in the 2011 redistricting process into the future.

### **Public Access to Redistricting Tools**

A public terminal loaded with 2010 census data and redistricting software was made available during the 2011 process. Common Cause Oregon used this resource and believes that continuing to provide this kind of public access is an important tradition to continue in 2021. Online access to draft maps was provided. Though this may have facilitated public comments, no option for drawing new district boundaries was provided. One improvement for the next round of redistricting is to provide long distance access rather than requiring travel to the public terminal in Salem and for online access to include line drawing capacity. Because it isn't known what technological advances will occur between now and 2021 that could meet this public access goal, Common Cause Oregon makes no specific recommendation on this topic beyond advocating for a continuation of the laudable efforts made by 2011 redistricting staff to provide public access to redistricting tools.

### **Deadlines**

The July 1<sup>st</sup> deadline worked, especially now that the deadline for legislative adjournment in odd-numbered years is June 30<sup>th</sup>. While redistricting takes time, it will also take whatever time is allowed for the process. Meeting redistricting deadlines in 2011 were likely assisted by the 2010 census data being released somewhat earlier than anticipated, February 23<sup>rd</sup> rather than the mid-March estimate. It seems likely, however, that technology improvements will enable the Census Bureau to continue beating its legally mandated April 1<sup>st</sup> deadline to an even greater extent in the future.

The 2011 process didn't include preparation (or at least not public release) of a backwards calendar as recommended by Common Cause Oregon to facilitate inclusion of multiple hearings on draft maps. Preparing such a calendar would be helpful in 2021, especially if the ten day window for review of redistricting legislation by county election administrators is added to the process.

A redistricting step that could be trimmed is reducing the number of field hearings. Holding thirteen field hearings in 2011 seemed to work, but after a while the level of repetitive testimony increased. As discussed above the field hearings are valuable, but also serve the political needs of both major parties and this contributes to trimming their number as one way to make time for other redistricting steps. Particularly important is making time for meaningful testimony on actual draft maps, even if it means fewer field hearings that can become as much about putting political points on the record as gathering input on communities of interest.

The timeline for a Secretary of State to draw new legislative districts is short and lengthening the time for this stage of drawing new maps could be considered.

An independent redistricting commission's timeline should provide for improved coordination between drawing legislative and congressional district lines and include time for both field hearings and hearings on draft maps as discussed in recommendations two and three.

### **Competition**

Political scientists frequently advocate for redistricting to encourage competition. Given the number of incumbents who readily return to office, this is worth considering. But there are many factors contributing to incumbent advantage and the number of competitive districts possible is also influenced by where people decide to live. The Big Sort by Bill Bishop discusses how "America may be more diverse than ever coast to coast, but the places where we live are becoming increasingly crowded with people who live, think, and vote like we do."<sup>60</sup> This has significant implications for redistricting.

This subject is also influenced by Oregon's requirement that line drawing not be done to gain partisan advantage. Does this mean that whenever possible districts should be drawn to be as competitive as possible? This approach would comply with the ban on partisan line drawing by giving neither political party an advantage whenever possible. However, this approach would also increase the numbers of Oregonians who don't feel represented by their elected officials. The question becomes how a redistricting plan should balance encouraging competition and ensuring fair representation.

Even if one agreed with the premise that competition should be a focus of redistricting how does one account for the large number of Oregonians who do belong to either major political party? For example, in 2010, 26 percent of registered voters were either registered with a minor party or were not affiliated with any political party.<sup>61</sup> If history is any indication, the number of Oregonians who are not registered as members of one of the two major parties will increase. For this reason, Common Cause Oregon does not find adding competition as a redistricting consideration to be feasible.

### **Multi-Member Districts**

Multi-member districts ease the difficulties of drawing individual district lines while also addressing an interest in providing representation for those in the political minority. This option is summarized below by redistricting expert Justin Levitt at Loyola Law School who previously worked on this topic at the Brennan Center for Justice:

A central recurring tension in the redistricting process involves the desire to hold representatives accountable to cohesive popular majorities without losing minority preferences entirely. When districts elect only one representative, it is difficult (and often impossible) to draw districts keeping like voters together that are also competitive and responsive to minority concerns.

For much of the country's history, state and local legislatures accommodated these concerns by drawing bigger districts that elected more than one representative. For example, for 100 years, 3 Illinois representatives were chosen from each state district, using an alternative voting system that allowed both majorities and minorities to elect representatives of choice. In these structures, the voting system

(like cumulative voting or choice voting) is key to ensure that minorities retain voice within the legislature.

Federal currently limits congressional districts to one member per district, but states are subject to their own laws alone in deciding whether to utilize these larger multi-member "superdistricts."<sup>62</sup>

Though there are significant political challenges to changing from our current single member districts to multi-member districts and related changes in election methods, the viability of this option may increase in the future.

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<sup>1</sup> Mark O. Hatfield, “Reapportionment Plan Fair.” *The Oregonian*, October 29, 1952, p. 22. Available online via Multnomah County Library

<sup>2</sup> Article I, Section 2 of the U.S. Constitution establishes the size of the federal House of Representatives at 435. Current terminology is that reapportionment refers to the process of re-dividing those 435 seats, based upon each state’s proportion of the national population. At the state level reapportionment means setting population targets for House and Senate districts. Redistricting refers to the process of redrawing the boundaries of state legislative districts and U.S. House districts.

<sup>3</sup> Mark O. Hatfield, “Reapportionment Plan Fair.” *The Oregonian*, October 29, 1952, p. 22. Available online via Multnomah County Library

<sup>4</sup> Jeff Mapes blog, “Can Oregon Legislators cut a deal on congressional redistricting”, June 9, 2011 accessed in October 2011 at [http://blog.oregonlive.com/mapesonpolitics/2011/06/can\\_oregon\\_legislators\\_cut\\_a\\_d.html](http://blog.oregonlive.com/mapesonpolitics/2011/06/can_oregon_legislators_cut_a_d.html)

<sup>5</sup> Two major resources for this table and Appendix 1 are “Legislative Redistricting in Oregon” prepared by then-Secretary of State Phil Keisling in the summer of 1991 (for a copy contact Common Cause Oregon) and “Basics about Redistricting 2011” by Erin Seiler of Legislative Committee Services prepared in February 2011, accessed in October 2011 at <http://www.leg.state.or.us/redistricting/docs/basics2011.pdf>

<sup>6</sup> Jim Sanders, “Precursor to Prop. 77” Orchestrated Well,” Sacramento Bee, Oct. 19, 2005. Available from Sacramento Bee online archives at: [http://nl.newsbank.com/nl-search/we/Archives?p\\_product=SB&p\\_theme=sb&p\\_action=search&p\\_maxdocs=200&s\\_dispstring=%28precursor%20to%20prop.%2077%20%27orchestrated%20well%27%29%20AND%20date%282005%29&p\\_field\\_date-0=YMD\\_date&p\\_params\\_date-0=date:B,E&p\\_text\\_date-0=2005&p\\_field\\_advanced-0=&p\\_text\\_advanced-0=%28%22precursor%20to%20prop.%2077%20%27orchestrated%20well%27%22%29&p\\_perpage=10&p\\_sort=YMD\\_date:D&xcal\\_useweights=no](http://nl.newsbank.com/nl-search/we/Archives?p_product=SB&p_theme=sb&p_action=search&p_maxdocs=200&s_dispstring=%28precursor%20to%20prop.%2077%20%27orchestrated%20well%27%29%20AND%20date%282005%29&p_field_date-0=YMD_date&p_params_date-0=date:B,E&p_text_date-0=2005&p_field_advanced-0=&p_text_advanced-0=%28%22precursor%20to%20prop.%2077%20%27orchestrated%20well%27%22%29&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no)

<sup>7</sup> Sal Peralta testified with concerns about the tenor of debate during the hearings on draft maps in Salem during May 2011 and suggested that it might have been better if only one map had been released. Though Common Cause Oregon shares Peralta’s concern about the vitriolic tone of some comments, we agree with the response of Representative Chris Garrett to Peralta that democracy can be messy and that the debate over the two maps was better than the committee producing one map behind closed doors.

<sup>8</sup> Kari Chisholm, “Redistricting: When it comes to incumbents, GOP legislative map clearly a partisan hack job”, *Blue Oregon*, May 15, 2011 accessed in October 2011 at <http://www.blueoregon.com/2011/05/redistricting-gop-legislative-map-clearly-partisan-hack-job/>

<sup>9</sup> Steve March, Multnomah County Auditor and former State Representative, personal communication with Common Cause Oregon, October 27, 2011. March was active in Oregon’s 2001 redistricting process as a legislator and staffed redistricting commission in 1991. March also worked as staff in the California legislature during the 1970’s and 1980’s.

<sup>10</sup> The other states were Kentucky and Rhode Island. Montana and Ohio only partially participated. Dr. Michael McDonald, email to Common Cause Oregon, October 27, 2011.

<sup>11</sup> 2010 Census Program Phases accessed in October 2011 at: [http://www.census.gov/rdo/program\\_phases/2010\\_census\\_program\\_phases.html](http://www.census.gov/rdo/program_phases/2010_census_program_phases.html) notes that Multnomah County provided precinct boundary information. James Whitehorne, Assistant Director of the Census Bureau Redistricting Data Office said that they work with one county in each state in an initial submittal of precinct boundaries. The purpose is to fine-tune that process and made state specific adjustments in their procedures. Multnomah County was the county the Census Bureau worked with to develop Oregon specific protocols, which is why their precinct boundary information was submitted. The Census Bureau’s follow up request to the entire state to get precinct boundaries got no response. Personal conversation with Common Cause Oregon on October 27, 2011.

<sup>12</sup> Dr. Michael McDonald, email to Common Cause Oregon, October 27, 2011.

<sup>13</sup> Jeff Mapes, “Redistricting: Blumenauer reaction, voter registration numbers and more”, May 12, 2011, accessed in October 2011 at: [http://blog.oregonlive.com/mapesonpolitics/2011/05/redistricting\\_blumenauer\\_react.html#incart\\_mrt](http://blog.oregonlive.com/mapesonpolitics/2011/05/redistricting_blumenauer_react.html#incart_mrt)

<sup>14</sup> Jeff Mapes, “Read GOP redistricting numbers for Oregon with caution,” May 16, 2011 accessed in October 2011 at: [http://blog.oregonlive.com/mapesonpolitics/2011/05/read\\_gop\\_redistricting\\_numbers.html](http://blog.oregonlive.com/mapesonpolitics/2011/05/read_gop_redistricting_numbers.html)

<sup>15</sup> Representative Chris Garrett, personal communication with Common Cause Oregon, August 10, 2011.

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<sup>16</sup> Mandating this step rather than urging voluntary compliance by counties is deemed necessary to reassure counties that their work will really be used for transparent availability of political data during the legislative redistricting process.

<sup>17</sup> Andrea Westersund, Multnomah County GIS-elections, indicated that she did not remember this process. Since difficult or time-consuming interactions with the census were memorable to her, this lack of recall about transmitting the precinct boundary data indicates that her work on this was not difficult or time-consuming. Personal communication with Common Cause Oregon, October 28, 2011.

<sup>18</sup> Dr. Michael McDonald, email to Common Cause Oregon, October 27, 2011.

<sup>19</sup> Elections Division staff is working with county level GIS and elections staff to increase GIS integration with the Oregon Centralized Voter Registration (OCVR) database that should help with redistricting implementation. The focus is on transferring the GIS information from each county to OCVR. In counties without GIS capacity or where redistricting implementation doesn't require the specificity facilitated by use of GIS data participation is not required. Adding this GIS capacity to OCVR could facilitate the geocoding discussed by Dr. McDonald. Making this public record, however, could raise confidentiality concerns with the pros and cons described below in the next footnote.

<sup>20</sup> One advantage of geocoding compared to use of precinct boundaries is that new line drawing could retain some precinct boundaries that have created election administration problems.

<sup>21</sup> For example, during the 2010 census the GPS location of every address was collected. This information would be very helpful to state and county election administrators but can't be shared by the Census Bureau due to strict confidentiality restrictions. Those restrictions, however, are increasingly outdated since tools like Google Earth allows anybody with access to a website to visually walk down streets and see the exact location of addresses. Thanks to Andrea Westersund, Multnomah County, GIS-Elections, for identifying this problem (personal conversation with Common Cause Oregon on October 26, 2011) and to James Whitehorne, Assistant Director Census Redistricting Data Office (personal conversation with Common Cause Oregon on October 27, 2011) for more background on constraints facing the Census Bureau and information on the extent to which this concern is being actively discussed by his colleagues in the Geography Division of the Census Bureau.

<sup>22</sup> Jeff Mapes, "Does Portland really have three congressional representatives?" June 8, 2011 accessed in October 2001 at: [http://blog.oregonlive.com/mapesonpolitics/2011/04/does\\_portland\\_really\\_have\\_thre.html](http://blog.oregonlive.com/mapesonpolitics/2011/04/does_portland_really_have_thre.html)

<sup>23</sup> Analysis of contributions to Oregon's 2008 primary and general election candidates for statewide and legislative office indicates that an estimated 22,000 donors gave during the primary and approximately 13,000 giving to general election candidates.<sup>23</sup> Assuming that all of these donors are people they would represent tiny percentages of the 2,796,210 Oregonians who comprised the voting eligible population in 2008, 0.8 percent during the primary and 0.5 percent during the general election of this group. Even if these percentages were multiplied by ten (a generous allowance) to account for contributions to ballot measures and local elections, that almost half (47%) of those testifying at the redistricting hearings made political contributions is an indication that they are much more politically active than most of their fellow Oregonians.

<sup>24</sup> Given the bigger size of congressional districts, both census tracts and census blocks are used in their descriptions in redistricting legislation, reducing the length of that bill.

<sup>25</sup> Bryce Gattrell, Dr. Paul Gronke, Ben McLeod, Dr. Tony Iaccarino, Dr. Tim Fiez, Findings & Recommendations for Integrating GIS into the Oregon Central Voter Registration System. Made available to Common Cause by Elections Division in August 2011.

<sup>26</sup> Rick Berkobien, manager of Legislative Committee Services, confirmed that his office plays this liaison role with the Census Bureau. He cited staff turnover issues as concern regarding retaining institutional memory between rounds of redistricting. Personal communication with Common Cause Oregon on December 16, 2011.

<sup>27</sup> Bryce Gattrell, Dr. Paul Gronke, Ben McLeod, Dr. Tony Iaccarino, Dr. Tim Fiez, Findings & Recommendations for Integrating GIS into the Oregon Central Voter Registration System. Made available to Common Cause by Elections Division in August 2011.

<sup>28</sup> Personal conversations with Common Cause Oregon: Tim Scott, Multnomah County Elections Director on October 27 and December 22, 2011, Terri Turi, Coos County Clerk on December 15, 2011, Nancy Blankenship, Deschutes County Clerk on December 16, 2011, and Steve Druckenmiller, Linn County Clerk on December 21, 2011.

<sup>29</sup> The need for legal descriptions in the law enacting redistricting plans was mentioned by staff in both Linn and Multnomah County. Andrea Westersund, Multnomah County GIS-elections, conversation with Common Cause Oregon on October 26, 2011. Derrick Sterling, Linn County Clerk's office, conversation with Common Cause Oregon on October 28, 2011

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- <sup>30</sup> Gina Zjedlik of the Oregon Legislative Counsel office, personal conversation with Common Cause Oregon on November 8, 2011.
- <sup>31</sup> Tim Scott, Multnomah County Elections Director, personal conversation with Common Cause Oregon on October 27, 2011.
- <sup>32</sup> Due to different allowances for population variety between state legislative and federal congressional districts some of these kinds of situations won't be avoidable.
- <sup>33</sup> Justin Levitt, "Ideas for Reform", from his *All About Redistricting* website, accessed in October 2011 from <http://redistricting.lls.edu/reform.php>
- <sup>34</sup> Article II, Section 4 of Oregon Constitution
- <sup>35</sup> Prisoners of the Census, "Local governments that exclude prison populations", accessed in October 2011 from <http://www.prisonersofthecensus.org/local/>
- <sup>36</sup> Peter Wagner, Prison Policy Initiative. Email to Common Cause Oregon on October 25, 2011
- <sup>37</sup> Oregon labels voter without a party affiliated as non-affiliated voters or NAV. California's designation is called Decline to State. More information on the commission selection process is at this FAQ webpage accessed in October 2011 <http://wedrawthelines.ca.gov/faq.html>
- <sup>38</sup> Calculated by Common Cause Oregon from Secretary of State data at <http://bluebook.state.or.us/state/elections/elections07.htm>
- <sup>39</sup> California's State Auditor is appointed by the Governor from a list of three candidates selected by the Joint Legislative Audit Committee. The State Auditor is chosen without reference to party affiliation and must meet eligibility requirements regarding education and experience in auditing. The closest equivalent to this position in Oregon is the head of the Audits Division of the Secretary of State.
- <sup>40</sup> Capitol Alert, Sacramento Bee, January 27, 2012, downloaded on February 3, 2012 <http://blogs.sacbee.com/capitolalert/latest/2012/01/supreme-court-a-matter.html>
- <sup>41</sup> John Moyer, "The Frenzy over ProPublica's redistricting report," *KQED Capitol Notes*, December 21, 2011 downloaded December 23, 2011 at <http://blogs.kqed.org/capitalnotes/2011/12/21/the-frenzy-over-propublicas-redistricting-report/>
- <sup>42</sup> Vladimir Kogan (University of California, San Diego) and Eric McGhee (Public Policy Institute of California), September 12, 2011 *Redistricting Commission: An Evaluation of the Citizens Commission Final Plans*, downloaded on December 23, 2011 <http://polisci2.ucsd.edu/vkogan/research/redistricting.pdf>
- <sup>43</sup> Justin Levitt, Brennan Center for Justice, *A Citizen's Guide to Redistricting*, p.77.
- <sup>44</sup> Justin Levitt, *The Legal Context for Scientific Redistricting Analysis*, Loyola Law School Legal Studies Paper No. 2011-13. March 28, 2011 Accessed in October 2011 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1798005](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1798005)
- <sup>45</sup> Section 2(d)(4) of Article XXI of the California Constitution
- <sup>46</sup> Charles H. Carey, *Oregon Constitution: Proceedings and Debates of Constitutional Convention of 1857* (Salem: State Printing Department 1926), p. 129 but quoted in Waldo Schumacher, *Reapportionment in Oregon, The Western Political Quarterly*, Vol. 3, No. 3 (Sept. 1950) p. 428.
- <sup>47</sup> Mark O. Hatfield, "Reapportionment Plan Fair." *The Oregonian*, October 29, 1952, p. 22. Available online via Multnomah County Library
- <sup>48</sup> The redistricting criteria were in Chapter 667 of 1979 Oregon laws and came from SB 305 adopted during the 1979 legislative session. The description of SB 305 in the 1979 Senate and House Journal indicate that the bill, as introduced, would have established the State Reapportionment Commission, but those provisions were replaced by amendments outlining the redistricting criteria.
- <sup>49</sup> League of Women Voters, "Redistricting in Oregon", page 24, 2007. <http://voteoregon.org/files/pdf/Redistricting2007.pdf>
- <sup>50</sup> League of Women Voters, "Redistricting in Oregon", page 8, 2007. <http://voteoregon.org/files/pdf/Redistricting2007.pdf>
- <sup>51</sup> Erin Seiler, Legislative Committee Services, "Basics about Redistricting 2011," February 2011 and accessed in October 2011 at <http://www.leg.state.or.us/redistricting/docs/basics2011.pdf>
- <sup>52</sup> Erin Seiler, Legislative Committee Services, "Basics about Redistricting 2011," February 2011 and accessed in October 2011 at <http://www.leg.state.or.us/redistricting/docs/basics2011.pdf>
- <sup>53</sup> At the field hearing in Gresham on April 9, 2011 Senator Laurie Monnes Anderson characterized the 2001 legislative redistricting process controlled by Republicans as being very partisan.
- <sup>54</sup> The entire testimony is available at: <http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/CCOR%20LWV%20OR%20LEGISLATIVE%20TESTIMONY%20FINAL.PDF>

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<sup>55</sup>2010 Census Program Phases accessed in October 2011 from:

[http://www.census.gov/rdo/program\\_phases/2010\\_census\\_program\\_phases.html](http://www.census.gov/rdo/program_phases/2010_census_program_phases.html)

<sup>56</sup> James Whitehorne, Assistant Director of the Census Bureau Redistricting Data Office. Personal conversation with Common Cause Oregon on October 27, 2011.

<sup>57</sup> The official term used by the Census Bureau is Voting Tabulation Districts (VTD) since not all states use the precinct terminology. This is the phrase primarily used in Oregon, however, so it is used in this report.

<sup>58</sup> Andrea Westersund, Multnomah County GIS-elections, indicated that in the lead up to the 2000 census the Census Bureau requested block boundary suggestions but did not provide the technical tools for effective submittal of this information. Tools were provided for this purpose during the 2010 census. Though there are always opportunities for improvement and presumably technology will make this process even easier in preparation for the 2020 census, the changes in this regard between 2000 and 2010 were significant. Personal communication with Common Cause Oregon, October 27, 2011

<sup>59</sup> Separate from the five phase process described above regarding the census and redistricting, the Census Bureau also request input on block groups, census tracts, and census county divisions. Suggestions are particularly sought from Metropolitan Planning Organizations. Charles Rynerson, Portland State University Population Research Center. Personal communication with Common Cause Oregon, December 14, 2011.

<sup>60</sup> <http://www.thebigsort.com/home.php>

<sup>61</sup> Calculated by Common Cause Oregon from Secretary of State data at <http://bluebook.state.or.us/state/elections/elections07.htm>

<sup>62</sup> Justin Levitt, Reform section of All About Redistricting website, <http://redistricting.lls.edu/reform.php>