

WRITTEN TESTIMONY OF CHRIS COBEY ACCOMPANYING THE SEPTEMBER 8-10 AND 13, 2021, PUBLIC HEARINGS OF THE OREGON HOUSE AND SENATE REDISTRICTING COMMITTEES

(submitted September 13, 2021)

*Co-Chairs Boshart Davis and Salinas, Chair Taylor, Vice-Chair Knopp, and members of
the redistricting committees:*

My name is Chris Cobey. I reside in the Pearl District of Portland, in current congressional district (CD) 1, state House district (HD) 33, and state Senate district (SD) 17. My comments apply to the entire state. However, because of where I live, my comments have a Pearl District (“the Pearl”) and west Portland¹-centric orientation.

Thank you -- for your time, service, and energy. As a former elected official, I can empathize with the demands on your time, attention, and effort in engaging in the redistricting process. In 2021, each of you spent dozens of hours in public hearings alone on that single subject, and likely hundreds of hours on the subject of redistricting this year. Should redistricting have been one of your top five legislative priorities, in terms of your time and effort? Is drawing the lines of their own districts the best use of legislators’ time?

This submission supplements and amplifies my oral testimony given on September 8 in your 12 public hearings on September 8-10, and 13.

The criteria for redistricting are well-known, and are found on the Legislative Assembly’s redistricting website (“redistricting website”).²

SUMMARY

The Pearl (2020 population: 11,019) should not be split. It should be put into a House district (HD; ideal size: 70,621) and a Senate district (SD; ideal size: 141,242) each of which lie *completely within* west Portland (population: 149,913).

The September 3 draft maps proposed by each party have been analyzed by outside experts. These draft maps have been found to create the conditions for a more partisan and polarized major party political climate in the Oregon Legislative Assembly. Some have labeled the draft maps “gerrymanders.”

¹ For the purpose of these comments, “west Portland” (total 2020 population: 149,913) means that area bounded by the Willamette River on the east, and by the borders of Multnomah County (total 2020 population: 815,428) on the south, north, and west. Portland to the west of the Willamette constitutes the vast majority of this territory; unincorporated Multnomah County, which is included in this designation, the rest. See map of west Portland at end of this statement.

² From the public testimony, what may not be as well-known are what are not redistricting criteria in Oregon: compactness; political competitiveness, and use of the core of existing districts to draw new districts.

The constituent questions the legislature should answer *now*, and again *after* they draft their *final* maps, before their final votes

1. Do you disagree with the outside analyses and conclusions done to date of the draft plans, such as those produced by Fivethirtyeight, PlanScore, and the Campaign Legal Center, and those done by using Dave's Redistricting App? If you do, on what facts do you base your disagreement?
2. In your draft maps, how have you ensured (and, in your final plans, how will you ensure) that no district shall be drawn for the purpose of:
 - a. diluting the voting strength of any language or ethnic minority group? (ORS 188.010(3))
 - b. increasing or decreasing the advantage of any political party? (ORS 188.010(2))
 - c. increasing or decreasing the advantage of any incumbent legislator? (ORS 188.010(2))
3. Are the drafted and amended maps truly the best work product the Oregon legislature can produce, given its responsibility for redistricting?

THE PEARL DISTRICT
IS A COMMUNITY OF COMMON INTEREST

The testimony of the public hearing witnesses this month demonstrate why the criterion of "communities of common interest" (COCI) is important. A COCI is not an individual's *preference*, but a person's conclusion of what area constitutes their neighborhood, what constitutes their group or collective. The Oregon Supreme Court has referred to the COCI criterion as "important," "longstanding and politically significant," and "a central feature of Oregon redistricting law ... for many years."

By any measure, the Pearl is a geographically and politically well-defined, substantial, and long-term COCI:

- As shown in the map at the end of this testimony, the Pearl's boundaries are distinct: the Willamette River on the north, I-405 to the west, the city demarcation street of Burnside on the south, and Broadway on the east.
- The population of the Pearl (11,019) is more than that of seven Oregon counties. If the Pearl were a city, it would be the 57th largest in population in the state.

- The Pearl has had its [own neighborhood association](#) and [business and property association](#) for years.
- The Pearl District is designated by name in a “topper” on every intersection sign in the District.
- As the Pearl is a part of Portland, the Pearl’s residents use Portland streets, Portland streetcars, Portland busses, and Portland schools. They consume Portland media. If they have a physical work location, the vast majority of employees in the Pearl have jobs in Portland -- not Hillsboro or Astoria. When they go out to shop, they shop in Portland -- not Scappoose or Cannon Beach.
- The Pearl even has its own [Wikipedia entry](#).

The problem is that, for at least twenty years, the Pearl and Northwest Portland have been separated from the rest of Portland in all three state and federal legislative districts, ignoring both the political lines of Portland and Multnomah County, and the geographic boundaries of the Tualatin Mountains and the Willamette River. The Pearl has been lumped in with Washington County, when it should be rejoined with the rest of Portland, west of the Willamette River.³

MY SUBMITTED MAPS

These maps focus first on west Portland, then Portland. There was inadequate time both to learn the necessary skills to draft in a way that took into account the various required factors in the process, and to experiment with various combinations.

Two arguments concerning districts generally have been made which bear addressing. The first is that it is somehow beneficial to have your county, city, school district, or COCI split, on the basis that such an area will then have multiple representatives, not a single representative, and thus greater influence and power. This is not only contrary to the statutory direction not to divide COCI, but also ignores practical politics -- that frequently, when several are “responsible,” nobody’s responsible. Moreover, of those representatives who share responsibility for an area, any given representative may be inclined to suggest that a constituent check with “another” legislator for the area.

The second argument is that certain plans “pack” people (especially voters of the majority party) into Portland and Multnomah County. The strategy of “packing” voters into specific areas in redistricting applies to *drawn districts* (which usually remain intact for ten years at the most), not to city and counties, the boundary lines of which have existed for as long as 170 and 163 years, respectively. Moreover, when one selects a residence, it is the rare person who expresses a preference to live in a specific CD, SD, or HD, compared to a city or county.

³ I previously provided oral testimony on this point to the committee on March 9 (at 33:05 on the recording timeline), and in my March 10, 2021, [written testimony](#) and [maps](#).

INDEPENDENT ANALYSES OF THE COMMITTEES' SEPTEMBER 3 DRAFT MAPS

A cynic might say that the Legislative Assembly couldn't have picked a better time and day to release the draft maps: on the Friday morning of a three-day holiday weekend. The first analyses of the effect of the new districts were released in the middle of a temporal "news desert" -- in the middle of a holiday weekend, virtually no one would read about the nature of the maps released.

Little effort seems to have been made to minimize crossing of city and county lines. It is this tendency which led many witnesses to complain of Portland's perceived outsized representation in the Legislative Assembly. A frequently-heard complaint of the September witnesses was that Portland has 15 percent of the state's population, but that legislators whose districts include any portion of the city make up 30 percent of the state's legislators.

The media have been at least skeptical in reporting their analyses of these draft maps.⁴ These maps would create a political "Night of the Long Knives." The maps attempt to disrupt, if not end the political careers of opposition (and some same-) party legislators, including a chamber party leader, and even two members of the House redistricting committee. Perhaps the virtuoso touch was the draft Senate map of the minority party which managed to put -- not just two, not three -- but **four** incumbent Senators of the majority party into the same SD.

Norman Turrill, on behalf of the League of Women Voters of Oregon, in his testimony this afternoon, detailed the various national organizations that have studied the partisan implantation of the draft maps, and the tools available to assess the existence and degree of partisan redistricting. It would be refreshingly pro-active (and transparent) of the committees to release their revised maps accompanied by such analyses.

PARTISAN GERRYMANDERING

"At its most extreme ... the practice [of partisan gerrymandering] amounts to 'rigging elections.' "

Rucho v. Common Cause, — U.S. —, 139 S. Ct. 2484, 2512, 204 L.Ed.2d 931 (2019) (Kagan, J., dissenting, quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317, 124 S.Ct.

⁴ See OPB, "Lawmakers unveil starkly different plans for redrawing Oregon's political landscape," September 3, 2021, <https://www.opb.org/article/2021/09/03/oregon-politics-redistricting-map-democrats-republicans-debate-congressional-districts/> (referencing Campaign Legal Center and Fivethirtyeight analyses of release draft plans); *The Oregonian*, "Oregon Legislature's Democratic majority would gain power under redistricting plans", online: September 9, 2021; print: September 11, 2021, p. 1; OPB, 'OPB Politics Now': Oregon's dueling redistricting plans, September 10, 2021 (audio); "Democrats Want to Redraw Congressional Districts so They Can Control Oregon's New Seat. Get Ready for Some Gerrymandering.", *Willamette Week*, August 25, 2021.

1769, 158 L.Ed.2d 546 (2004) (Kennedy, J., concurring in judgment)).

Yet to be explored is the possible novel application, to any final partisan gerrymandering, of the Oregon Constitution's Article II, section 1, provision that "All elections shall be free and equal". So far, the draft maps suggest that a partisan gerrymander is quite possible. The National Conference of State Legislatures' "redbook" devotes 19 pages to partisan gerrymandering, including challenges brought in state courts under "free and equal" election clauses, such as that found in Oregon's Constitution. Legislative districts developed by state legislatures have been considered and overturned based on such provisions.

THE 2021 PERFORMANCE OF THE REDISTRICTING COMMITTEES

The committees excelled at providing opportunities for public comment, with at least 22 public hearings in the spring and September. The hearings were conducted with dispatch by the presiding officers. The instructional materials for ESRI, including the videos, were excellent. ESRI was a challenge to use.

What was lacking were any substantive interchanges between members of the committee, and members of the public who testified.

Where the sought-for transparency failed was in the committees' absence of response to repeated specific questions sent to them during the year, and their refusal to post the maps enacted in previous redistrictings going back to 1981. The State Archives gathered these materials this spring and summer, and posted them on their [legislative materials website](#).

Finally, in the spring public hearings, when the scope of the testimony invited was broader than that invited in the September hearings, the committees heard from dozens of witnesses who specifically expressed a preference for an independent redistricting commission (IRC) performing that function, rather than the legislators. During a subsequent hearing to summarize that set of public hearings, observers learned that the number of witness comments concerning an IRC were being compiled, and would be provided to the committees. If the compilations were done, the results were never released to the public.

REFORMING THE SYSTEM

While some might react with surprise to the majority party's heavy-handed dominance of the 2021 redistricting process, even casual observers of the political process will recognize the historical and current infection of redistricting by partisan gerrymandering.⁵

⁵ See, e.g., People Not Politicians (<https://www.peoplenotpoliticiansoregon.com>); Eberhard, *Becoming A Democracy: How We Can Fix the Electoral College, Gerrymandering, and Our Elections* (2020); Daley, *Ratf**ked: The True Story Behind the Secret Plan to Steal America's Democracy* (2016); Monmonier,

Previous attempted legislative redistrictings in Oregon have usually been unsuccessful, and required the intervention and final decision of the judiciary. The 2001 redistricting was highlighted by the walkout of the minority party to prevent the legislature from acting. The only recent arguably successful redistricting was that of 2011, which was not challenged in court, in part because the House that agreed to it had a membership that was equally split, 30-30. One of the co-chairs of the House redistricting committee, and others, characterized the 2011 Oregon redistricting as an incumbent gerrymander.

A [nonpartisan commission](#) appointed by then-Secretary of State Dennis Richardson in 2017 recommended that Oregon use an IRC for this function. Previously, the [City Club of Portland](#) (in 2012), had come to the same conclusion. The League of Women Voters conducted a [study](#) of redistricting in Oregon in 2007, and also considered the use of an IRC.

Commentators have recognized the basic and obvious conflict of interest in having elected legislators determine the configuration of districts to which they seek re-election. By drawing the districts, the legislators are choosing their voters -- not, as it should be, the voters choosing their legislators.

More and more states have turned to IRCs to replace redistricting by legislators. So far, there seem to have been no states that have discontinued an IRC in favor of legislative redistricting.

When a group of Oregon electors proposed an IRC in the form of Initiative Petition (IP) 57 and began gathering signatures during the pandemic in 2020, their efforts were repeatedly and firmly challenged. In the end, notwithstanding gathering more than 60,000 signatures and an initial favorable ruling from the US District Court in Eugene, the continued opposition of the Attorney General (a member of the majority party) to the presence of IP 57 on the ballot doomed the proposal.

With all the other pressing demands on the finite time and energy of Oregon legislators, is this enormous time and energy sink, and conflict of interest, worth it for the legislators?

CONCLUSION

The time permitted for public discussion of the draft maps has ended. You will now draw your final set of maps, on which you will apparently not allow the public to testify at all. And the largest single group of voters in the state -- the non-affiliated and minor-party voters, numbering over one million voters -- will constitute just one percent of the legislative decisionmakers in this process.

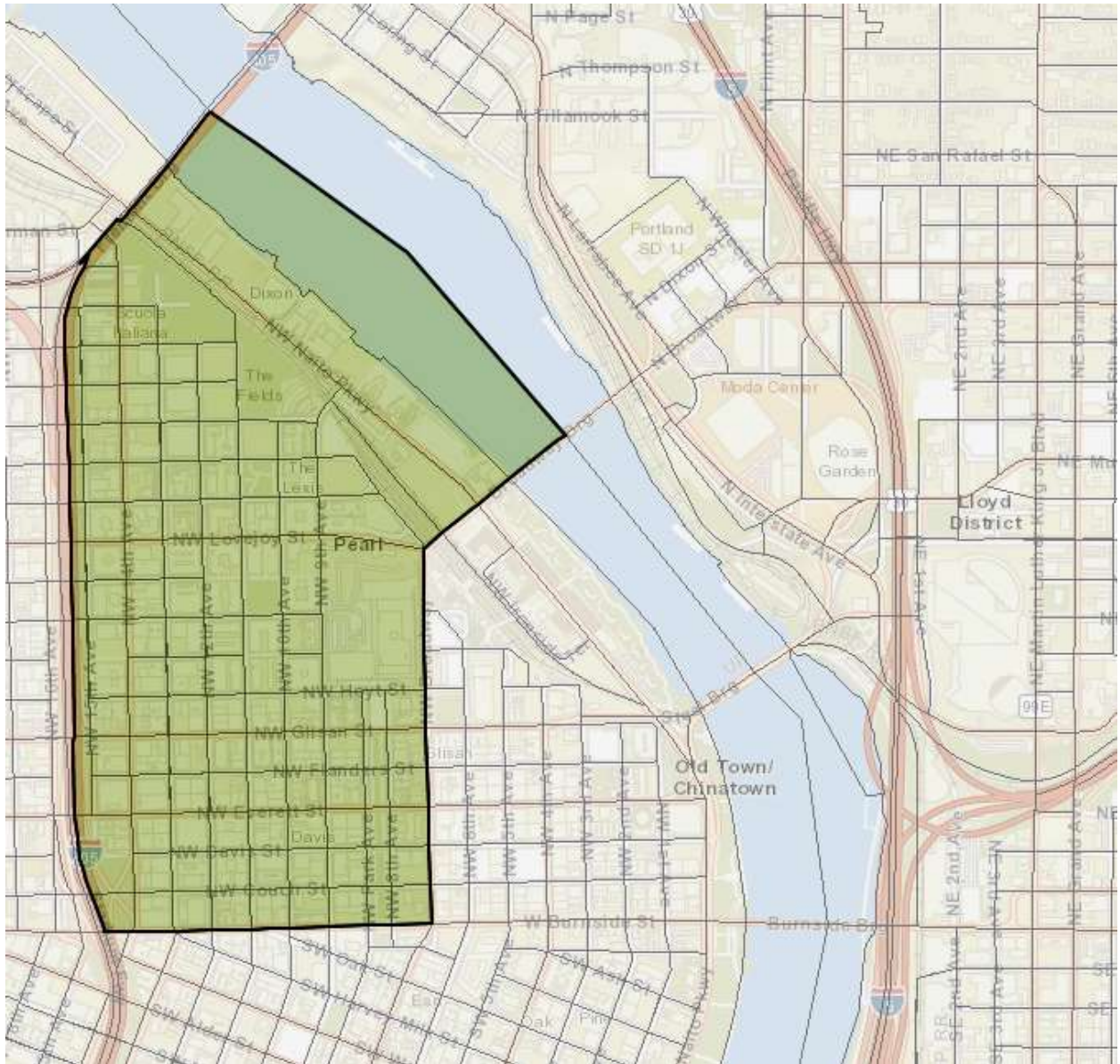
Bushmanders & Bullwinkles: How Politicians Manipulate Electronic Maps and Census Data to Win Elections (2001).

Your actions through September 27 (and, if necessary, beyond) will be followed with great interest by Oregonians looking for you to produce fair district maps, generated by a transparent and nonpartisan process. It will take all your skills as legislators to do so.

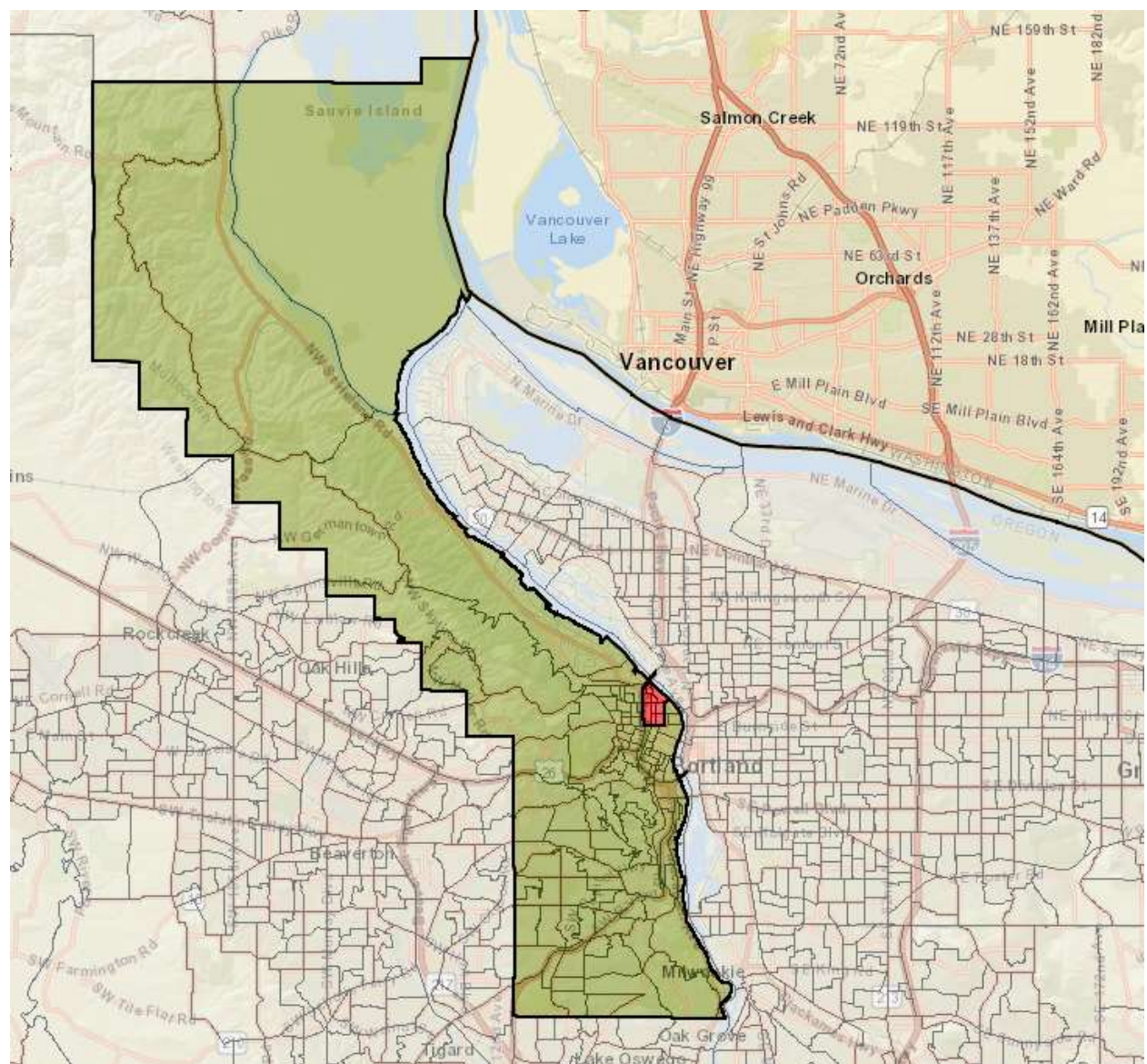
Good luck.

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THE PEARL DISTRICT (2020 population: 11,019)



WEST PORTLAND, AS USED IN THIS TESTIMONY (2020 population: 149,913)
(includes all portions of unincorporated Multnomah County; Pearl District in red)



APPENDIX A:

THE SEPTEMBER 3 DRAFT MAPS
WHICH WOULD DO THE LEAST DAMAGE TO THE PEARL

- Congress Plan B. It still splits the Pearl from the rest of west Portland and combines it with Washington County, but keeps it closer than the coastside. It is unnecessary if a single congressional district with includes all of Portland is created.
- House Plan A. Plan A's HD 33 does not split the Pearl, as House Plan C's HD 36 and 44 do, and it unites the Pearl with more of downtown Portland than House Plan B's HD 35.
- Senate Plan B. Plan B's SD 18 lies entirely within west Portland, and probably contains more of Portland overall than Senate Plan A, though it excises three notable chunks, including downtown. (This is also the notorious minority party plan, referenced above, that put four incumbent Senators of the majority party into a single district.) Senate Plan A's SD 17 links the Pearl with downtown Portland, but makes two separate forays into Washington County, and does not include south Portland. Senate Plan C splits the Pearl into two SDs: SD 22 jumps both the Willamette into N and NW Portland, and the Tualatins, into Washington County; SD 14 jumps "only" the Tualatins into Washington County, but takes in more of Washington County than does SD 22.

APPENDIX B:

30 YEARS OF REDISTRICTING THE PEARL AND WEST PORTLAND (based largely on materials provided by the Oregon State Archives with the assistance of Mary McRobinson, CA)

CONGRESS

In the 1981 redistricting, west Portland was made the eastern border of new CD 1, which stretched west to the coastside.

In the 1991 redistricting, the map labeled “1991 June 18 Congressional Redistricting Map” appears to place the Pearl in a Multnomah County CD (blue), in which the northern and southern parts of west Portland are included, with the central portion of west Portland (yellow) in a CD taking in all of Washington County, part of Yamhill County, and the three other counties (coastal-Columbia River NW Oregon).

The legislative materials in the State Archives had no materials on the final congressional districts, as the legislature’s congressional districting bill was vetoed by the governor, and a state court judge produced the final maps.

In the 2011 redistricting, CD 1 was created, which includes all or parts of five counties, and stretched from the Pearl District on the eastern edge through NW Portland, through Washington County, to the coastside.

In the draft maps released by the legislative redistricting committees on September 3, 2021, the Plan A map for new CD 1 is essentially as 2011’s CD 1 was, with the Pearl and west Portland in it, and pieces of N and NE Portland added. The Plan B map for new CD 1 is more compact, taking in almost all of west Portland and all of Washington County, and excluding other rural counties and the coastside.

HOUSE

In the 1981 redistricting, new HD 10 took in what would become the Pearl District, much of downtown, a small chunk of NE Portland across the Willamette, and a bigger chunk of SE Portland to 20th and 22nd Avenues on the east.

In the 1991 redistricting, the “1991 Secretary of State Redistricting multiple Redistricting Map” had the Pearl and most of west Portland in a single (orange) HD that stretched from the Fremont Bridge south to the southern Multnomah County border.

In the 2001 redistricting, the Pearl was placed in new HD 33, which placed it and the Old Town District of Portland, north of Burnside Street, to the east at the eastern end of a district which stretched west into Washington County, where the bulk of the district lay.

In the 2011 redistricting, parts or all of six HDs (27, 31, 33, 35, 36, 38) were created in the west Portland area. This area could probably justify only two full HDs (and not three complete HDs).

In the September 3, 2021, draft redistricting maps, the three draft maps contained 15 to 17 full and partial districts for Multnomah County. House Plan C would split the Pearl at Lovejoy Street into northern and southern sections.

SENATE

In the 1981 redistricting, new SD 3 apparently covered most of west Portland, and some of adjacent Washington County.

In the 1991 redistricting, the Secretary of State published a map of Senate District 8, which included what is now the Pearl District; the map in that area was labeled "P. & S. RR" (reflecting its previous status as a railroad yard)

In the 2001 redistricting, the Pearl was placed in new SD 17, a major portion of which was in Washington County.

In the 2011 redistricting, the Pearl remained in SD 17, which was comprised of HD 33 (mostly in Washington County, and HD 34, which is entirely in Washington County.

For a summary of the September 3, 2021, draft redistricting maps, see the previous Appendix.

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