

# What to expect if Bend minuses the minimums

Buffalo, New York, dramatically rewrote its development DNA in 2017. The city transformed its zoning code after more than 242 public meetings. Included in that change, the city repealed minimum parking requirements.

Bend is not Buffalo, but there are some things Bend may learn from Buffalo as Bend councilors consider eliminating or reducing parking minimums in Bend.

Bend has requirements now that dictate the number of off-street parking spaces for homes, apartments and businesses. The city has already reduced parking requirements in Bend's Central District, which is the area near the Bend Parkway and downtown. For instance, it exempted any parking requirements for the first 10,000 square feet of a building's footprint.

We looked at Buffalo not because it's an ideal parallel for Bend. There has been, though, a more formalized analysis of the impact of eliminating parking minimums there. One confounding factor to remember is Buffalo did not just eliminate parking minimums. It made many other zoning changes. One example: It added some bicycle parking minimums.

The study we looked at — "Minus Minimums" — was by two professors of planning at the University of Buffalo. They do seem to look optimistically at the idea of reducing parking minimums. The study analyzed 36 more major developments in the first two years after the parking minimums were eliminated. You can read it yourself at [tinyurl.com/Buffalominimum](http://tinyurl.com/Buffalominimum).

Before the new Buffalo policy became law, the response to the idea had some of the same flavors that people have expressed in Bend. Some worried about not being able to find parking. Some developers believed that the requirements were getting in the way of developments. Well, the sky did not fall — to

paraphrase a city of Buffalo official. Parking lots did not disappear from buildings. There were notable changes.

Almost half of the developments included fewer parking spaces than were previously allowed. Mixed-use developments — such as housing and businesses in the same building — had 53% fewer parking spaces than would have been required under the old rules. Some buildings continued to exceed the previous minimum parking requirements, such as those built only for housing. The study did not apparently interview developers to find out why they did what they did. It just looked at what they did.

Bend City Councilor Melanie Kehler has been the driving force to change parking minimums. And as she told The Bulletin's community editorial board this week, she hopes reducing parking minimums might help free up more space for building and that might help keep Bend more affordable or less unaffordable. It would also likely make a community denser and that in turn, could make public transportation make more sense. And that may mean people have less need for a car.

The study of Buffalo didn't confirm all those changes. It didn't attempt to. It would also be wrong to assume the same sorts of thing the study found would happen in Bend.

It would be a good guess to assume some developers will build much less parking, some will build about the same, finding parking will be more challenging and Bend will become more densely populated. For some, perhaps, the sky will fall. For others, Bend will have taken a smart step for its future.

# Money adds up in school board race

We don't have much to say about the campaign finances in the races for the Bend-La Pine Schools. But because some of the candidates have not been speaking with The Bulletin in any detail we thought we should take a look.

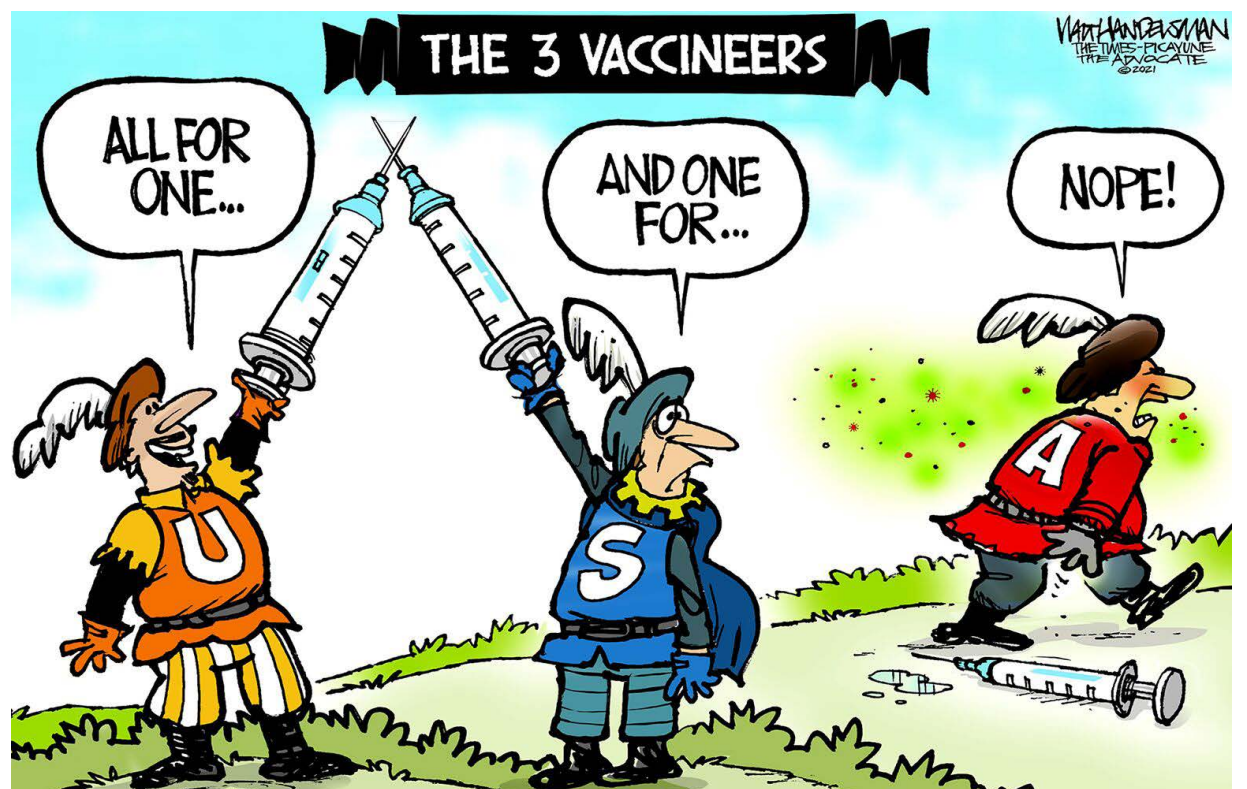
Most interesting maybe is what has been reported so far in the campaign finance disclosures in the race between incumbent Carrie McPherson Douglass and her challenger Maria Lopez-Dauenhauer. Both these candidates have spoken to a Bulletin reporter.

McPherson Douglass began the year with about \$4,000 left from her last run for office. That was from multiple donations of a number of people. There hasn't been that much

activity this year, except there was a \$500 contribution from the Democratic Party of Oregon. The school board is officially a nonpartisan office, though political parties can try to influence the election.

Lopez-Dauenhauer had total contributions of more than \$26,000 from a single member of her immediate family. (Full disclosure: A hefty chunk went for ads in The Bulletin.) Running a city-wide campaign does take money. And it is challenging taking on an incumbent.

You can check out any campaign finances you are interested in by going to the Secretary of State's website and clicking on what is called Orestar. Here's a shortcut: [tinyurl.com/Orestarcash](http://tinyurl.com/Orestarcash).



# Census is bad news for progressive policy

BY HENRY OLSEN  
Special to The Washington Post

The release of the 2020 Census on Monday did more than show how political power in the next decade will flow a bit toward Republican-controlled states. It also showed why full-bore progressive economic policy is unlikely to become the new orthodoxy anytime soon.

This year's census data continues a decades-long trend of a migration of people — and thus political power — away from the Northeast and Midwest and toward the South and some Western states. This year's changes in reapportionment — seven states will lose one House seat each; five will gain one, and Texas will gain two — are actually smaller than in previous years. Indeed, this seven-seat shift was the smallest following any census since the current formula for allocating House seats was adopted in 1941.

That's small comfort to Democrats in the short term. The changes result in a three-seat shift away from states carried by Joe Biden. In an extremely tight race, those three seats — which translate to three electoral college votes — could be the difference between a Republican or a Democrat in the White House. This transfer will also slightly improve the GOP's chances of retaking House control in 2022. Election analyst Kyle Kondik of Sabato's Crystal Ball estimates that Republicans will gain a net two House seats simply because of reapportionment. Since they start only five seats down, that small advantage could be decisive.

The longer-term trends should worry Democrats more. Since 1960, states in the Midwest or Northeast have lost 66 House seats. Forty-seven of those seats came from states Biden carried while 19 came from Trump

states. States, mainly in the South or West, that received the lion's share of these people tend to have much lower taxes and less business regulation than do the states they left. Thirty-seven of those 66 seats went to states without an income tax, while another 12 went to states whose combined state and local tax burdens ranked among the 10 lowest.

Even outlier states that have gained seats, such as California, Colorado and Oregon, stand out as cautionary tales. Oregon has no state sales tax, and Colorado is ranked 34th among the 50 states and the District of Columbia in its tax burden. Biden carried Colorado by 13.5 points in 2020, but those same people also voted to cut the state's flat income tax in a ballot measure. California, meanwhile, lost a congressional seat this census for the first time since it joined the Union in 1850. Hundreds of thousands of Americans are leaving the state each year, mainly from the high-cost regions of Los Angeles and the San Francisco Bay area, to move to other states. Even those who stay don't always vote for progressive policies, as evidenced by the defeat last year of a ballot initiative that would have raised property taxes on business.

People have been voting with their feet for 60 years, and the verdict is clear: People prefer economic policies that generate growth and jobs without increasing taxes. Yet the Biden administration is proposing a raft of policies that will massively increase government spending while increasing taxes on businesses of all stripes and families who make \$400,000 or more. And that doesn't account for the economic effects of Biden's climate policies, which are sure to harm millions of Americans whose livelihoods rely on the production or extensive use of

fossil fuels.

None of this means that Americans favor libertarian, small government economics. States that are destinations for migration spend a lot to support an extensive array of public services. But they don't embrace the Northeast and California models of hiking spending in good years and raising taxes during downturns. Instead, they employ a prudent, centrist approach of investing in sound government programs and cutting taxes on the margin. Biden seemed to campaign as a person who would pursue prudent centrism, but instead he is governing like a governor of a deep blue state from which many of these voters fled.

Demography is not destiny, but facts don't lie either. The same Americans whose migration is making historically Republican states toss-ups also favor economic policies that are significantly to the right of progressive orthodoxy. This fact creates a real dilemma for Biden and the Democrats.

Trying to capture these more centrist voters could create an intraparty civil war, as progressives already unhappy with the slow state of change might erupt. But ignoring those voters risks the real possibility of a rapid Republican comeback — provided that the GOP avoids the Donald Trump-era image of an intolerant, nativist party. Perhaps that is why Democrats are doubling down on their divisive tactics to portray the Republican Party as racist and sexist. That might be good for Democrats, but it's not good for America.

Every 10 years the census shows us Americans' revealed preferences as they vote with their feet. Maybe this time, those in power will listen.

Henry Olsen is a Washington Post columnist and a senior fellow at the Ethics and Public Policy Center.

# Cheerleader speech case puts liberals in bind

BY NOAH FELDMAN  
Bloomberg

"Cheerleader" and "Supreme Court" are not concepts you often see juxtaposed. But they are now, as Supreme Court considers the case of Brandi Levy, who was punished by her school for a profane Snapchat post.

The facts of Levy's case, Mahanoy School District v. B.L., are simple. In the spring of 2017, Levy, then 14, tried out for the varsity cheer squad at Mahanoy Area High School, but only managed to make the JV team. She expressed her reaction on Snapchat in a post that read "F — school f — softball f — cheer f — everything" (Our version is expurgated; hers was not.) The post went up on a Saturday, reached some 250 of her friends and, like all other posts to the social media platform, disappeared after 24 hours. Nevertheless, a classmate showed a screenshot to her mother, who happened to be one of the cheer coaches.

The coaches disciplined Levy by suspending her from the team for a year. She had broken two team rules, they said. One prohibited "foul language" — although only at "games, fundraisers, and other events." The other said that "there will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet." For good measure, the school district said she'd also violated school rules stating that members of teams

must "conduct themselves in such a way that the image of the Mahanoy School District would not be tarnished in any manner."

What is most significant legally about Levy's case is that she was punished for conduct that took place outside of school. In the landmark 1969 case Tinker v. Des Moines Independent School District, the Supreme Court held that kids have First Amendment rights in public schools, provided their speech doesn't disrupt classwork or invade the rights of others. But the Supreme Court has never said whether speech outside of school can be regulated by administrators.

Obviously, the stakes are huge — especially in the era of social media, when conversations in school are inextricably intertwined with what happens online outside of school hours.

If kids can't be disciplined for what they say outside of the school, administrators may feel that they have no meaningful control over students and can't stop bullying or harassment.

Yet if schools can discipline students for what they say online, then the public schools, which are arms of the state, could easily become the speech police for everyone who attends U.S. public schools, which is the overwhelming majority of kids and teens. The school rules that applied to Levy go pretty far in limiting free expression. Read closely, they might prohibit any meaningful criticism of teams or coaches. And the school is ultimately the judge of which student

speech "tarnishes" the school's image, which would certainly seem to chill many forms of legitimate criticism.

In the absence of direct Supreme Court guidance, the lower federal courts have mostly tried to carve out a compromise position: that schools may discipline off-campus speech when it has a "close nexus to the school environment." Measured by that test, the Mahanoy rules would likely be allowed. But the majority of the panel of U.S. Court of Appeals for the Third Circuit that heard the case ruled that the school cannot discipline speech that was off-campus unless it was reasonably interpreted as bearing the imprimatur of the school. That led the school district to seek review by the Supreme Court.

Where you come down on this case says a lot about your free-speech instincts.

The ACLU, which represents Levy, is arguing for near-absolute protection for off-campus speech, because it deeply distrusts the government as the regulator of our communications. Lots of conservative organizations find themselves aligned with the ACLU on this one.

Regardless of the outcome, Levy's case will set a benchmark for how schools may regulate students' social media use. From a parent's perspective, it's hard to think of many subjects more immediately relevant.

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