

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2022-0184, Theresa Norelli & a. v. Secretary of State & a., the court on May 31, 2022, issued the following order:

In our May 12, 2022 opinion issued in this case, we addressed two preliminary questions. See Norelli v. Secretary of State, 175 N.H. ___, ___ (decided May 12, 2022) (slip op. at 2). First, whether the current statute establishing a district plan for New Hampshire’s two congressional districts, see RSA 662:1 (2016), violates Article I, Section 2 of the United States Constitution. Id. at ___ (slip op. at 2). Second, if so, whether this court must establish a new district plan if the legislature fails to do so according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. Id. at ___ (slip op. at 2) (quotation omitted). We answered the first question in the affirmative. Id. at ___ (slip op. at 2). In answering the second question, we determined that, upon a demonstrated impasse, this court must establish a new district plan and, in doing so, we would apply the “least change” approach. Id. at ___ (slip op. at 2). As a result of our answers to those preliminary questions, we further concluded that we would take the necessary steps to formulate a congressional district plan in the absence of a legally enacted plan. Id. at ___ (slip op. at 15).

Accordingly, on the date that we issued our opinion, we appointed Nathaniel Persily to serve as special master and directed him to prepare and issue to the court, no earlier than May 27, 2022, a report and a recommended congressional redistricting plan for New Hampshire pursuant to the “least change” approach and other criteria set forth in our opinion and in the appointment order. We identified May 27 because we had determined, based on representations made during oral argument on the preliminary questions, that May 26, 2022, was the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session.

As of May 27, no bill establishing new congressional districts had become a law pursuant to Part II, Article 44 of the State Constitution. The special master therefore issued on that date the Report and Plan of the Special Master, which proposes that the court adopt a plan that would equalize the populations of New Hampshire’s two congressional districts by moving the following towns from the First Congressional District to the Second Congressional District: Jackson;

Albany; Sandwich; Campton; and New Hampton. Upon receiving the special master's report and proposed plan, we provided the parties, intervenors, and amici curiae an opportunity to file supplemental memoranda on the report and proposed plan, as well as on the status of redistricting legislation and the related need for us to adopt a plan by June 1, 2022. We held oral argument on those issues on May 31. It is now undisputed that a demonstrated impasse has occurred as a result of the Governor's May 27 vetoes of two congressional redistricting bills, Senate Bill 200 and House Bill 52.

Having considered each of the proposed plans, written submissions, and oral arguments, the court hereby adopts as the congressional district plan for New Hampshire the plan recommended by the special master as depicted and described in exhibits 1 and 4 of the Report and Plan of the Special Master. The plan fully complies with our May 12 opinion and with the "least change" approach and other criteria set forth in our May 12 order appointing the special master.

Appended to this order is the Report and Plan of the Special Master, including its exhibits and appendix of documents. The clerk of this court is directed to file an attested copy of this order and the foregoing material, along with the census block equivalency files provided by the special master, with the Secretary of State on or before June 1, 2022. Upon filing, the congressional district plan shall take effect. Unless otherwise ordered by the court, the filing of any motion to reconsider shall not stay the effectiveness of the congressional district plan.

So ordered.

MACDONALD, C.J., and HICKS, BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Timothy A. Gudas,
Clerk**

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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2022-0184

Theresa Norelli & *a.* v. Secretary of State & *a.*

REPORT AND PLAN OF
THE SPECIAL MASTER

May 27, 2022

Nathaniel Persily
559 Nathan Abbott Way
Stanford, CA 94305

REPORT AND PLAN OF THE SPECIAL MASTER

By order dated May 12, 2022, this Court appointed me as Special Master in the above captioned matter. *See App. A at A2.*¹ In the order, this Court directed me to prepare and issue to the Court “a report and a recommended congressional redistricting plan for New Hampshire.” The Court instructed me to modify existing congressional district lines “only to the extent required to comply with the [Court’s] criteria and ‘least change’ standards.” *Id.*

Contained herein is my report and proposed congressional redistricting plan for the State of New Hampshire. Exhibit 1 presents a statewide map showing the two congressional districts comprising the Special Master’s Plan. Exhibit 2 highlights the Plan’s proposed changes in the boundaries from the existing congressional districts. Exhibit 3 presents a table of racial demographic data for each district in the Special Master’s Plan. Exhibit 4 presents a list of towns in each proposed congressional district in the Special Master’s Plan. Exhibit 5 presents statewide maps of the different proposals submitted in this case. Exhibit 6 presents a table comparing the Special Master’s Plan to the submitted proposals on the criteria specified in the Court’s order. Exhibit 7 presents, for comparison, maps of the existing congressional districts. For ease of reference, relevant orders, submissions, and transcripts are attached as appendices. Appendix A includes the order appointing me as Special Master. Appendix B includes the submission from the

¹ All page references to the Appendix refer to the repagination of the combined materials as indicated in the bottom right corner of each page in the Appendix.

Plaintiffs. Appendix C includes the submission from the President of the New Hampshire Senate and Speaker of the New Hampshire House. Appendix D includes the submission from the Minority Leaders of the Senate and House. Appendix E includes the Plaintiffs' reply brief. Appendix F includes a transcript of the hearing held before me on May 19, 2022, for which the full video is available at <https://livestream.com/nhjb/events/10045798/videos/231209113>. In addition to this Report and Plan, the Clerk of the Court has been provided a census block equivalency file of the Special Master's Plan for public distribution.

I. Introduction

The Court's May 12th order directed me to fashion a congressional redistricting plan for the state to be submitted to the Court no earlier than May 27, 2022. App. A at A2. Through its order, the Court notified the public of an in-person hearing that would be held at the Court on May 19, 2022, at 1:00 p.m. *Id.* at A3. Parties, intervenors, and amici curiae were directed to submit by 5:00 p.m. on May 16, 2022, any proposed redistricting plans, accompanied by supporting documentation, data, and memoranda. *Id.* Responses to any proposed redistricting plan were to be submitted by 1:00 p.m. on May 18, 2022. *Id.*

The Court's order instructed me to consider certain factors, while ignoring others, in drawing the plan for New Hampshire's congressional districts. In particular, the Court instructed:

In developing a recommended congressional redistricting plan, the special master shall use 2020 federal census data, P.L. 94-171, and shall modify the existing congressional districts, as established by RSA 662:1 (2016), only to the extent required to comply with the following criteria and “least change” standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;
2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., and any other applicable federal law;
3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, see *Below v. Secretary of State*, 148 N.H. 1, 13-14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and
6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

Id. at A2-3.

The Court made clear in its order, however, that its involvement and the Special Master’s plan were only necessary because of the failure of the political branches to agree on a congressional redistricting plan. Moreover, the court-directed process could and would shut down in the event a legal plan passed the Legislature was not vetoed by the Governor. “The special master’s appointment,” the order stated, “does not preclude the legislature from enacting a congressional redistricting plan on or before May 26, 2022 – the date

identified to us as the last date for legislative action in this session on a congressional redistricting plan.” *Id.* at A2. “[T]he court will terminate this proceeding if a congressional redistricting plan is validly enacted by the legislature at any time prior to the close of this case.” *Id.* at A3. Because a congressional district plan for New Hampshire has yet to be validly enacted, the development and submission of the Special Master’s Plan for the Court’s consideration has become necessary.

II. Submissions from the Parties

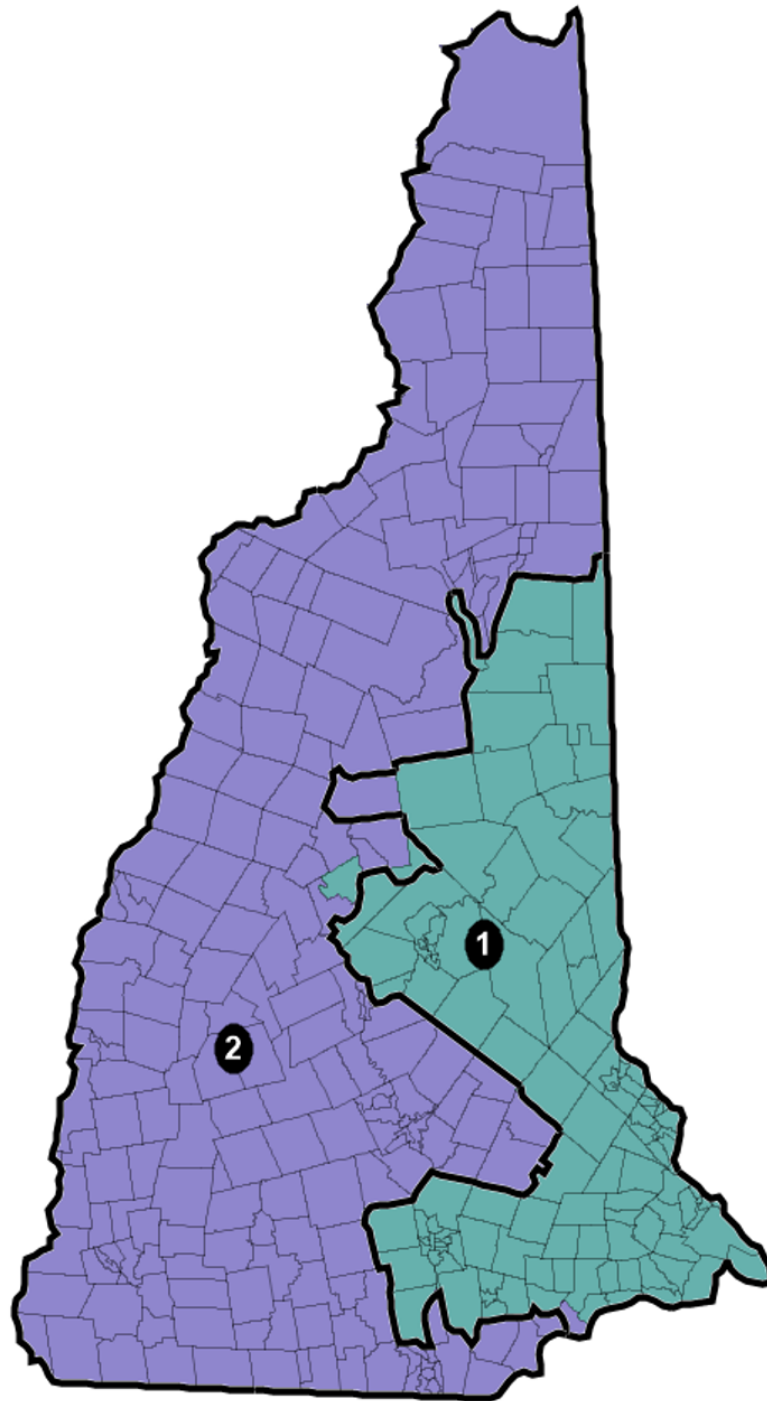
Prior to the May 19th hearing, I received submissions from the parties and amici offering four maps for consideration. I received one proposed map from the Plaintiffs, two from the President of the Senate and Speaker of the House (Majority Plan 1 and Majority Plan 2), and one (submitted earlier to the Supreme Court) from the Minority leaders of the House and Senate (“Minority Plan”). Their submissions are attached as Appendix B-D. I also received only one response brief, from the Plaintiffs, presented as Appendix E.

A. Plaintiffs’ Submission

The Plaintiffs’ proposal would move four towns and a total of 13,373 people between districts. It would move Plaistow and Campton from District 1 to District 2, and it would move Bridgewater and Center Harbor from District 2 to District 1. It has an overall deviation of only one person, with proposed District 1 containing 688,764 people and proposed District 2 containing 688,765 people. It does not substantially alter the shape or

compactness of the existing districts. *See* App. B at A10-13. The map submitted by the Plaintiffs is depicted below, with the proposed districts in green and purple and the existing districts depicted with black borders.

Figure 1. Plaintiffs' Plan



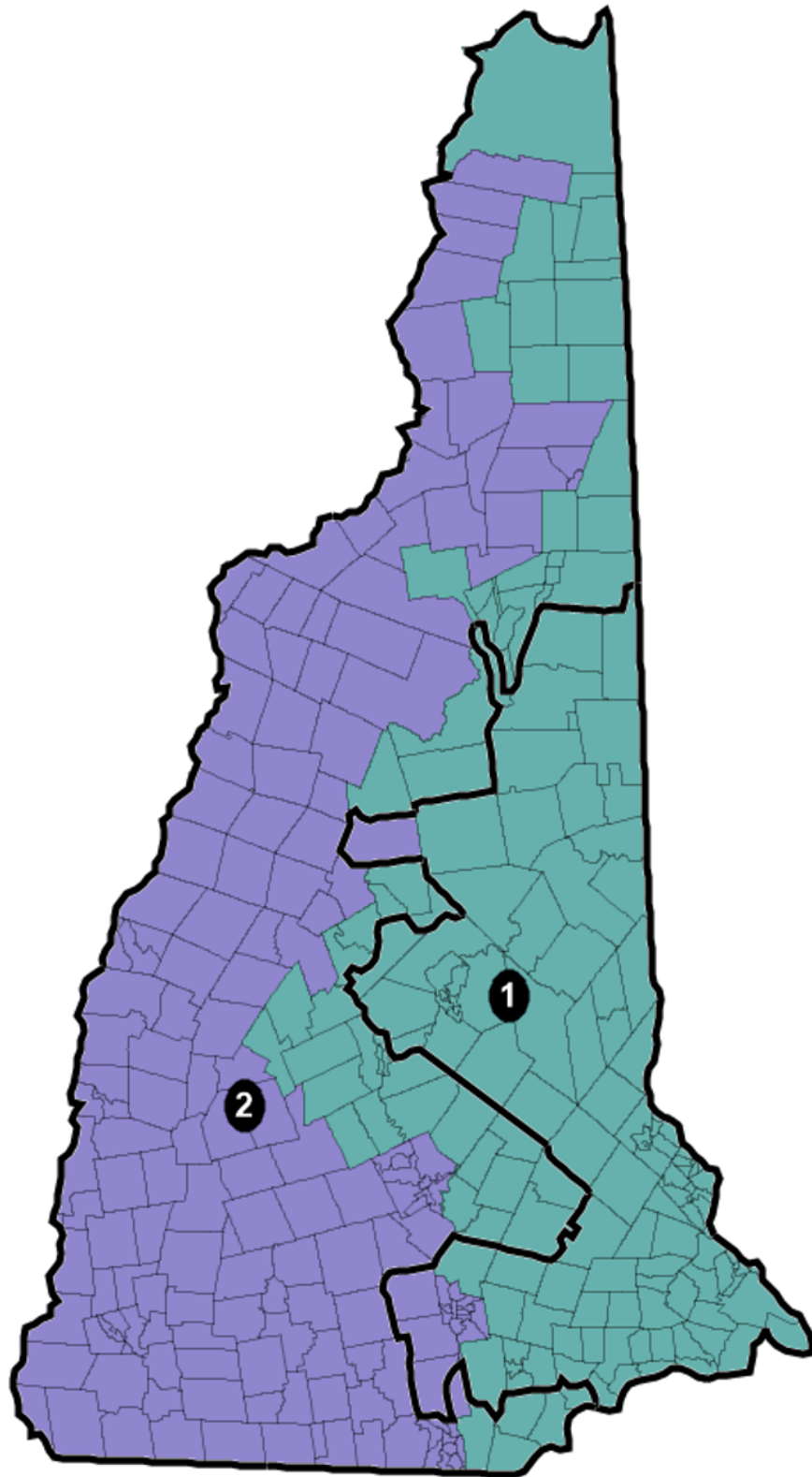
B. Submissions from State Senate President and Speaker of the House

The State Senate President and Speaker of the House submitted two plans: Majority Plan 1 and Majority Plan 2. The plans are very different from one another. Majority Plan 1 reconfigures both districts by moving the greatest number of people of any submitted plan, whereas Majority Plan 2 moves the fewest number of people of all submitted plans.

1. Majority Plan 1

Majority Plan 1 moves 75 towns and 358,976 people – roughly one quarter of the population of the state – between districts. It significantly alters the shape of districts by pushing District 1 up along the eastern boundary with Maine all the way to the northernmost point of the state bordering Canada. To compensate, it moves Manchester into the same District (District 2) as Nashua, among many other changes in the southern half of the state. Although Majority Plan 1 significantly reconfigures both districts, it achieves the lowest population deviation possible (just one person): District 1 would have 688,764 people, and District 2 would have 688,765 people. *See App. C at A19.*

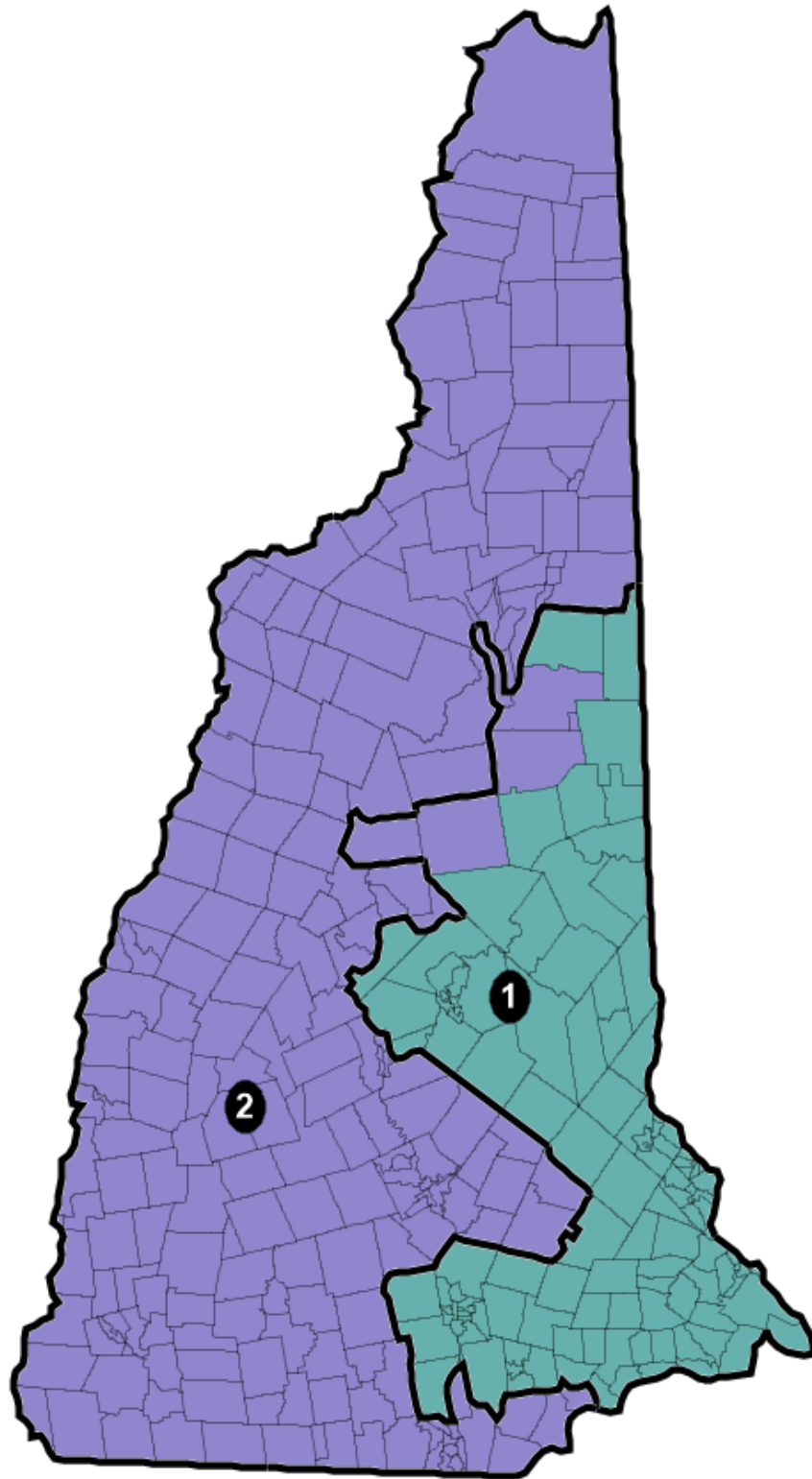
Figure 2. Majority Plan 1



2. Majority Plan 2

In contrast, Majority Plan 2 moves the fewest people between districts of all the submitted plans. It moves 8,968 people from District 1 to District 2. It does so by moving six whole towns – Albany, Bartlett, Campton, Hale’s, Hart’s Location, Sandwich – from District 1 to District 2, without requiring any compensating moves back from District 2 to District 1. It achieves a deviation of just 9 people: Proposed District 1 has 688,769 people; Proposed District 2 has 688,760 people. *See App. C at A19.*

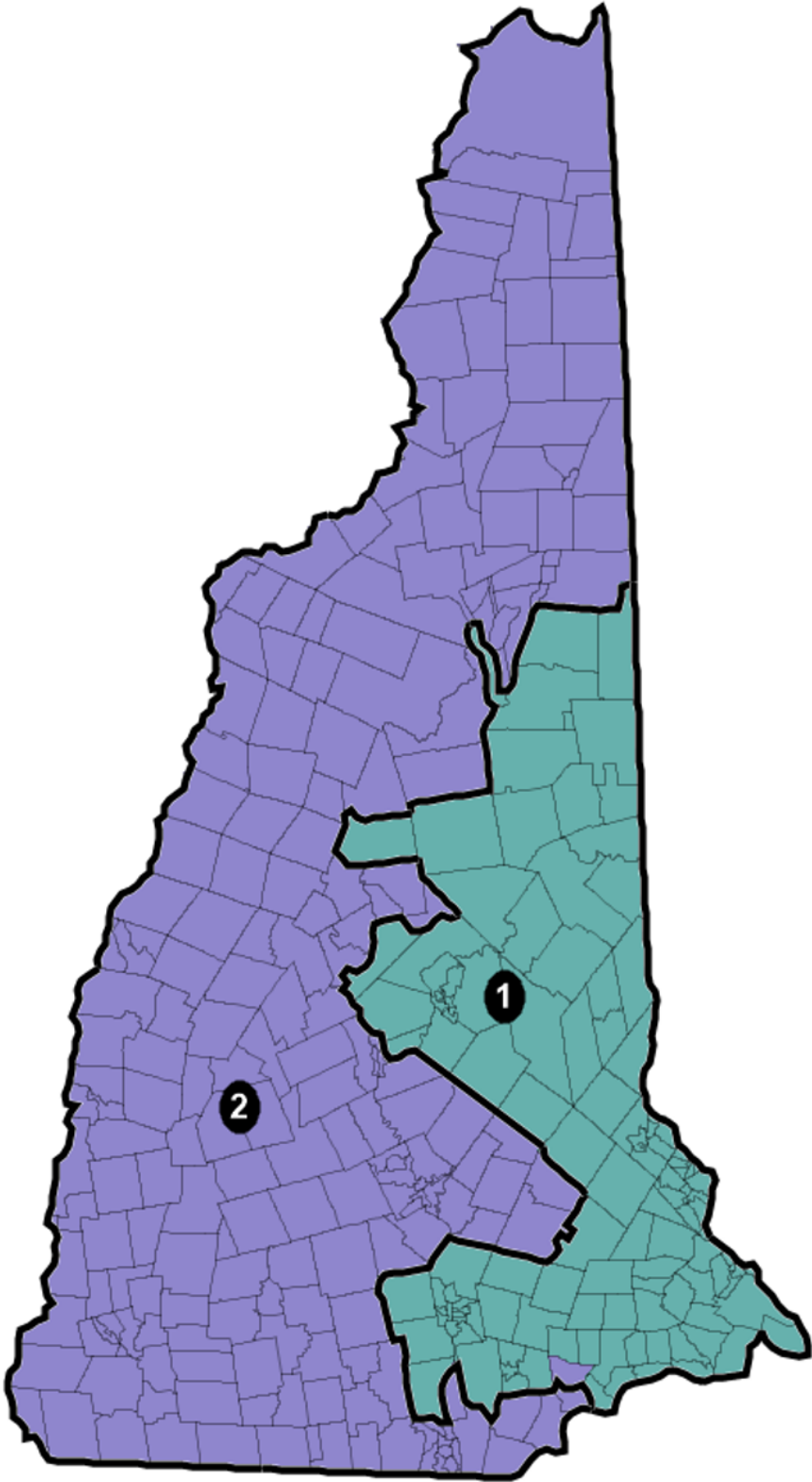
Figure 3. Majority Plan 2



3. Minority Plan

The Minority Plan was submitted on April 25, 2022, to the Court in an earlier round of briefing. *See* App. D. That plan is the simplest to describe. It would move a single town – the town of Hampstead (all 8,998 people) – from District 1 to District 2. District 1 would then have 688,739 people (26 below ideal population equality) and District 2 would have 688,790 people (25 people over ideal population equality), creating an overall deviation of 51 people. *Id.* at A34. The change in the southern part of the state, depicted below, is barely visible to the naked eye. In that sense and from the standpoint of the number of towns moved, it proposes the “least change” as compared to all other submissions. As discussed in the presentation of the Special Master’s Plan, the Minority Plan may move slightly more people than necessary, but it has the great advantage of maintaining the district configurations as close as possible. Were the Court to reformulate the least change principle in its order to focus on maintaining the same geography between plans, as opposed to minimizing the number of people moved, the Special Master would endorse the adoption of the Minority Plan, which should be considered as an alternative to the Special Master’s Recommended Plan.

Figure 4. Minority Leaders' Plan



B. The May 19th Hearing

Pursuant to the Court's May 12th Order, I presided over an in-person hearing at 1 p.m. on May 19th in the chamber of the New Hampshire Supreme Court. Oral arguments were presented by counsel for the Plaintiffs and counsel for the Senate President. Counsel for the Secretary of State also appeared to answer questions or respond to arguments. The hearing, which was live streamed on the Supreme Court's website and remains available at <https://livestream.com/nhjb/events/10045798/videos/231209113>, lasted under an hour. A transcript of the hearing is attached as Appendix F.

The Plaintiffs made clear in their oral argument that all submitted plans, except for Majority Plan 1, complied with the Court's Order. *Id.* at A76. Reiterating the arguments in their Reply Brief, App. E at A66-69, the Plaintiffs argued that Majority Plan 1 moved many more people than necessary to achieve population equality. As such, it violated the "least change" directive in the Court's order. As the Reply Brief puts it, Majority Plan 1 "defies the Court's intent to devise a remedial plan by, using the current plan as the 'benchmark,' 'add[ing] or subtract[ing]' 'contiguous populations' as 'necessary to correct the population deviations' while keeping each districts' constituents 'the same' 'to the greatest extent practicable.'" *Id.* at A67 (quoting App. A). Instead of moving the fewest residents possible, Plaintiffs argue, Majority Plan 1 would reallocate 75 towns, comprising 358,976 people. Moreover, in Plaintiffs' view, it "would also dramatically alter the historical nature of the state's congressional districts," *Id.* at A69, by dividing the North Country and placing Nashua and Manchester in the same district. Plaintiffs suggested that the significant reconfiguration of the districts in Majority Plan 1 was motivated by political

reasons, or at least that opening up the door to changes on this scale would lead to an “inevitable risk of political manipulation.” *See* App. F at A80.

Counsel for the Senate President advocated for his proposed plans, but also made several separation-of-powers arguments. In his view, “the best plan is one that’s not before the Court right now.” *Id.* at A81. Rather, it was one that had been favorably recommended out of the legislative committees and would receive a floor vote within a week. “[It] is the best plan that anybody’s considering right now, in part, because it’s being considered by the branch that’s appropriate to consider it in the first instance.” *Id.* at A82. The release of a court plan before the Governor has acted on a newly enacted plan coming from the Legislature, Senate Counsel argued, would upset checks and balances by effectively giving the Governor a choice between the Legislature’s plan and one proposed by the Court (which would go into effect were the Governor to veto the Legislature’s plan). Counsel urged the Court and the Special Master to delay the release of the Court plan in hopes that the Legislature and Governor could agree on a plan. *Id.* at A83.

In the alternative, Counsel for the Senate President proposed a brand-new map (designated here as Majority Plan 3) that had not been previously submitted to the Court, the Special Master, or opposing counsel.² In the words of the Counsel to the Senate President, “having seen the submissions and going through the process a little bit, [we] went back to the drawing board and came up with a . . . one-person deviation map with

² In rebuttal, Plaintiffs objected to consideration of this plan since it had not been submitted by the Court’s deadline. Indeed, to this date, the plan has not been formally submitted to the Special Master or to the Court. The sole description of the plan (and my understanding of it) comes from the above listing, at oral argument, of towns moved from one district to the other.

. . . lower than 13,373 persons moved.” *Id.* at A84-85. A plan could achieve population equality, he suggested, by moving the following towns from District 1 to District 2: Campton, Sandwich, Tamworth, Bartlett, Hale’s and Hart’s Location. To balance out those moves, the following towns would be moved from District 2 to District 1: Center Harbor, Bean’s Purchase, Shelburne, Cambridge, Dummer, Errol, Wentworth, Odell, and Martin’s Location. Only 13,069 people would be moved under such a proposal, which Senate Counsel emphasized was 304 fewer people moved than under the Plaintiffs’ proposed one-person deviation map. If the Court order were interpreted as directing the Special Master to achieve zero deviation through the movement of the fewest people possible, Senate Counsel argued, then “that’s the best one [map] I’ve heard about.” *Id.* at A87. The map was only described at oral argument through a listing of towns, but was never formally submitted to the Special Master.

III. The Special Master’s Recommended Plan

I have considered each of the redistricting plans submitted by the parties and *amici*. I agree with the Plaintiffs that each of the proposed plans, except Majority Plan 1, complies with the Court’s order. Majority Plan 1 moves too many people to be considered a least-change plan in compliance with the Court’s order. The remaining plans each move many fewer people (between 8,968 and 13,373 people) to achieve deviations between one and fifty-one persons. All of the submitted plans are comprised of whole towns, meaning that no town is split between districts, as required by the Court’s order. Were I to choose

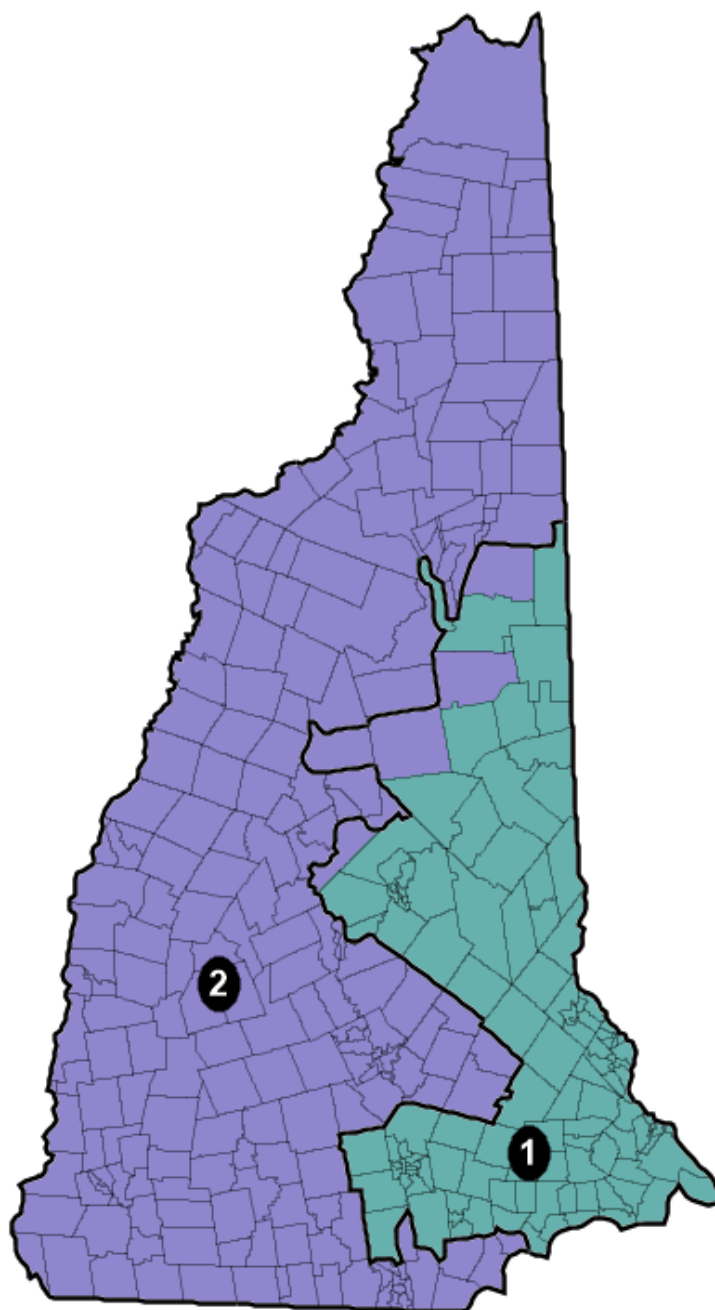
among the submitted plans, I would need to decide how to trade off and balance population equality with the “least change directive” of the Court’s order. Some plans move fewer people but achieve greater deviations, and others achieve lower deviations but move more people than necessary.

Contrary to suggestions made by the parties, however, a perfect population plan can be achieved by moving whole towns containing the exact number of people necessary to achieve a one-person deviation between the two districts. An ideal population plan can be achieved by moving only five towns, which together contain exactly 8,973 people. Those towns are Albany, Campton, Jackson, New Hampton, and Sandwich. By moving those towns from District 1 to District 2, District 1 would have a population of 688,764 people and District 2 would have a population of 688,765 people – a total deviation of one person, which is mathematically the lowest deviation possible. The Special Master’s Recommended Plan is depicted below, preceded by a table comparing the Recommended Plan to all others submitted.

Table 1. Comparison of Special Master’s Recommended Plan to Party Submissions

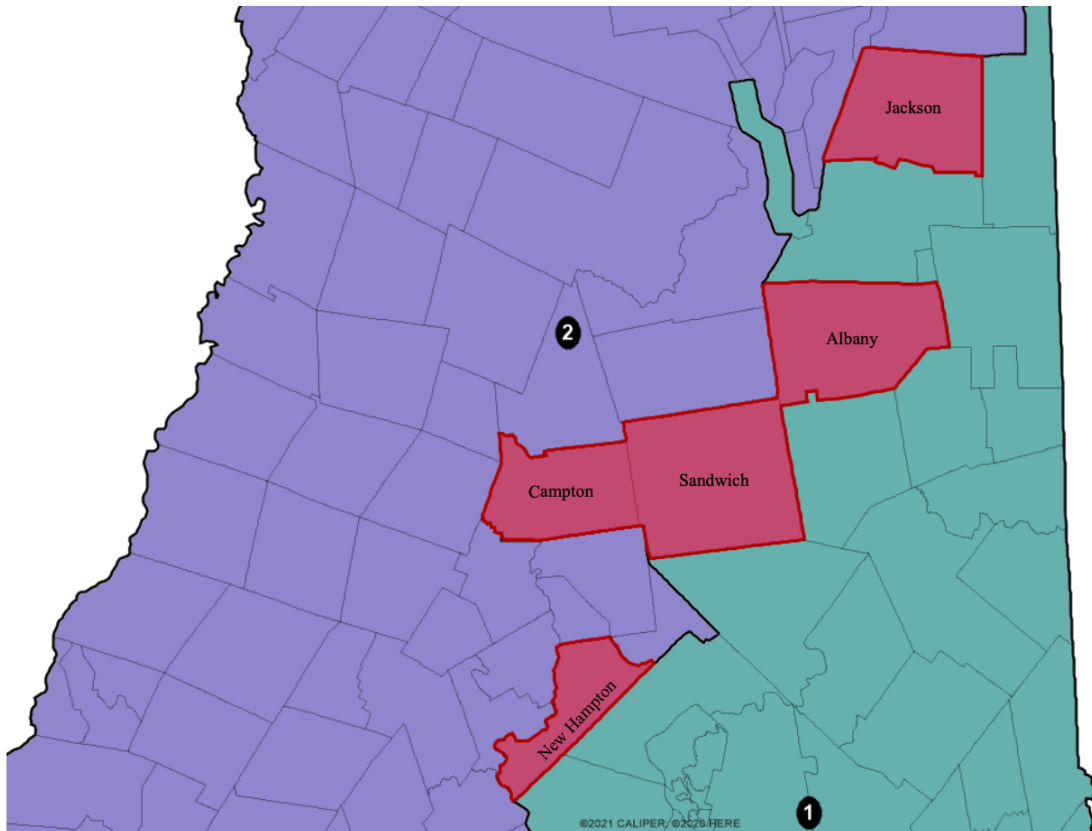
District	Existing	Special Master	Minority Leaders	Plaintiffs	Majority Leaders 1	Majority Leaders 2	Majority Leaders 3
1	8972	-1	-26	-1	-1	4	-1
2	-8973	0	25	0	0	-5	0
Total Deviation	17945	1	51	1	1	9	1
Number of Towns Moved	--	5	1	4	75	6	15
Number of People Moved	--	8973	8998	13373	358976	8968	13069

Figure 5. Special Master's Recommended Plan



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Figure 6. Special Master's Recommended Plan Inset With Moved Towns Highlighted



A. Compliance with One-Person, One-Vote

The 2020 Census revealed a population for New Hampshire of 1,377,529 people. Perfect population equality would require one district to have 688,764 people and one district to have 688,765 people. The existing districts are malapportioned, with a total deviation of 17,945, with District 1 overpopulated by 8,972 people and District 2 underpopulated by 8,973 people. To achieve perfect population equality 8,972.5 people must be moved from District 1 to District 2.

The Special Master's Recommended Plan complies with the constitutional requirement of one-person, one-vote, and the Court's directive to draw districts "as equal

in population as practicable.” *See* App. A at A2. The Special Master’s Plan achieves the lowest deviation possible: a single person. In this regard, it is “tied” with the Plaintiffs’ plan, Majority Plan 1, and Majority Plan 3. It is superior to the Minority Plan, which has a deviation of 51 people, and Majority Plan 2, which has a deviation of nine people.

To be fair, there is no functional difference between a one-person-deviation plan and one that has a deviation of nine or 51 people. Even leaving aside the number of people who moved between districts since April 1, 2020, when the Census was taken, the 2020 Census data themselves are not accurate with respect to deviations that small. Indeed, the Census has suggested that, for New Hampshire, the number of erroneous enumerations – due to duplications or other reasons – might be as high as two percent of the enumerated population and omissions might be as high as 4.5 percent; together, these figures suggest differences of tens of thousands of people from the final enumeration. *See* Courtney Hill, Krista Heim, Jinhee Hong, & Nam Phan, *Census Coverage Estimates for People in the United States by State and Census Operations: 2020 Post-Enumeration Survey Estimation Report* (May 2022) at 17, available at <https://www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/census-coverage-estimates-for-people-in-the-united-states-by-state-and-census-operations.pdf>.

When it comes to court-imposed plans, however, the strict population equality requirement serves other purposes besides political equality of potential voters. The Supreme Court has made clear that congressional districts must be “as equal as is practicable,” *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964), meaning that the “the State make a good-faith effort to achieve precise mathematical equality.” *Kirkpatrick v. Preisler*,

394 U.S. 526, 530-531 (1969). For congressional plans, population deviations under one percent have been rejected by the U.S. Supreme Court as violating the one-person, one-vote rule. *See Karcher v. Daggett*, 462 U.S. 725, 730-31 (1983). To the extent courts might allow for some deviations from strict equality among legislatively drawn plans based on a consistently applied state policy, *see Tennant v. Jefferson County*, 567 U.S. 758 (2012), the U.S. Supreme Court has warned that court-drawn plans must be held to an even higher standard of equality. *See Chapman v. Meier*, 420 U.S. 1, 26 (1975) (“A court-ordered plan, however, must be held to higher standards than a State’s own plan. With a court plan, any deviation from approximate population equality must be supported by the enunciation of historically significant state policy or unique features.”). The equal population requirement is stricter for court-drawn plans because courts are not in the best position to subordinate population equality, which can be easily measured and objectively defined, to other legitimate policy objectives, which the legislature might deem sufficiently weighty to justify population deviations. *See Nathaniel Persily, When Judges Carve Democracies*, 73 *Geo.Wash. L. Rev.* 1131, 1140 (2005) (citing cases).

These considerations guide the development of the Special Master’s Plan. The Supreme Court’s order limits the permissible considerations for the Special Master’s Plan to those that are legally required (such as compliance with federal law or the state requirement as to avoiding town splits) and the principle of “least change.” Choosing between the submitted plans, which attempt to strike the balance between “least change” and population equality in different ways, runs the risk of accusations of favoring one party’s proposal over another. Were one of the submitted plans clearly superior to all

others on *all* court-prescribed dimensions, accepting it as the Special Master's Plan could be justified on that clearly nonpolitical basis. But there is no clear formula for how to trade off small population variances against small differences between plans as to the number of people moved between districts.

Fortunately, the Special Master's Plan does not need to justify the prioritization of one principle over another because both can be optimally satisfied. The move of five towns from District 1 to District 2 in the Special Master's Plan achieves population equality by moving only the exact number of people necessary to do so. These mathematically governed changes inoculate the plan against charges that anything other than those two principles guided the creation of the districts in the Special Master's plan.

B. The Principle of "Least Change"

The Court's Order imposed a "least change" principle on the Special Master's Plan. As the Court directed, "the special master . . . shall modify the existing congressional districts . . . only to the extent required to comply with the following criteria and 'least change' standards." App A at 2. The requirement of "least change" was further operationalized in the fourth criterion for the Special Master's plan: "To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, see Below v. Secretary of State, 148 N.H. 1, 13-14, 28 (2002)." App. A at A3.

In other words, population should only be moved if necessary to correct the underlying malapportionment in the plan.

The Special Master's Plan moves the fewest number of people possible to bring the existing districts to population equality. Other submitted plans achieve population equality, but they do so by moving more people than necessary. Majority Plan 1 moves the greatest number of people – 358,976 – of the submitted plans. As described above, the plan is, therefore, inconsistent with the Court's order. In contrast, the Plaintiffs' plan moves 13,373 people, and the Majority Plan 3 (described at oral argument, but never submitted) moves 13,069 people. Both plans have deviations of only one person. The Minority Plan moves fewer people – 8,998 – but, as a result, it has a deviation of 51 people. Majority Plan 2 moves the fewest people of any of the submitted plans – only 8,968 people. It achieves a very low, if not perfect, population deviation of nine people, with District 1 being four people over population equality and District 2 being five people under population equality. (To reiterate the point made above, these small differences are not significant statistically or from the standpoint of political fairness, but they provide a nonpolitical criterion for comparing plans.) That being said, the Special Master's Plan moves only 8,973 people – no more nor less than is required to achieve population equality, in which no district in the plan has more than one person than the other.

C. Other criteria mentioned in Court's order

The Special Master's Plan complies with the other requirements of the Court's Order as well. The districts are made of contiguous territory, and they do not divide towns, city wards, or unincorporated places. No political data or partisan factors were considered

in the creation of the plan; indeed, the mathematics behind population equality and “least change” demonstrate that those were the only principles that guided the plan. Finally, the plan complies with the Voting Rights Act of 1965, 52 U.S.C. § 10101 et seq. No congressional districts, in which racial minorities could constitute a majority of the voting age population, can be created in New Hampshire. Liability under Section 2 of the VRA requires that such districts could be drawn in order for a court to impose them. *See Bartlett v. Strickland*, 556 U.S. 1 (2009). The racial breakdown of the voting age population in existing districts and those in the Special Master’s Plan is presented below.

Table 2. Racial Breakdown of New Hampshire's Voting Population Under Existing And Special Master's Proposed Districts

Existing Districts								
District	VAP	% NHVAP	% HVAP	% BVAP	% AVAP	% IVAP	% PVAP	% OVAP
1	568352	89.10%	3.49%	2.04%	2.94%	1.63%	0.11%	3.77%
2	552328	88.60%	3.61%	1.85%	3.10%	1.82%	0.11%	4.08%
Special Master Plan								
District	VAP	% NHVAP	% HVAP	% BVAP	% AVAP	% IVAP	% PVAP	% OVAP
1	560816	89.04%	3.52%	2.06%	2.96%	1.63%	0.11%	3.78%
2	559864	88.67%	3.58%	1.83%	3.07%	1.82%	0.11%	4.06%

VAP = Voting Age Population

NHVAP = Non-Hispanic White Voting Age Population

HVAP = Hispanic Voting Age Population

BVAP = Black Voting Age Population

AVAP = Asian Voting Age Population

IVAP = Amerian Indian or Alaska Native Voting Age Population

PVAP = Native Hawaiian or other Pacific Islander Voting Age Population

OVAP = Some Other Race Voting Age Population

IV. Conclusion

New Hampshire is the last state in the union to enact its congressional districts. With only two districts, relatively little population shift over the past decade, and a limited number of legal constraints as compared to other states, one might be puzzled as to why this process is “going down to the wire,” requiring court involvement. Although court

involvement may be an “unwelcome obligation,” *Connor v. Finch*, 431 U.S. 407, 415 (1977), it remains an *obligation* nonetheless if one-person, one-vote is to be respected and the state fails to remedy the malapportionment in the existing map.

As this Report and Plan attempt to demonstrate, even a two-district plan, highly constrained by neutral, court-ordered principles, requires the exercise of discretion. The challenge posed in this case is to explain that exercise of discretion with transparency and with appeal to neutral principles, lest observers suspect some other motivation is driving the process. Rarely can the creator of a redistricting plan say that the math determined the outcome. Such is the case here, however. The court-ordered principles fully determined the drawing of the districts. The five towns and 8,973 people moved from one district to the other represent the absolute minimum necessary to comply with the principles contained in the Court’s order. The Special Master’s plan complies with the Court’s order and all other requirements of state and federal law. All submitted proposals were considered, but none better complies with the principles contained in the Court’s order. I therefore submit to the Court for its adoption the Special Master’s Recommended Plan for congressional districts for the State of New Hampshire.

Exhibits to Special Master's Plan and Report

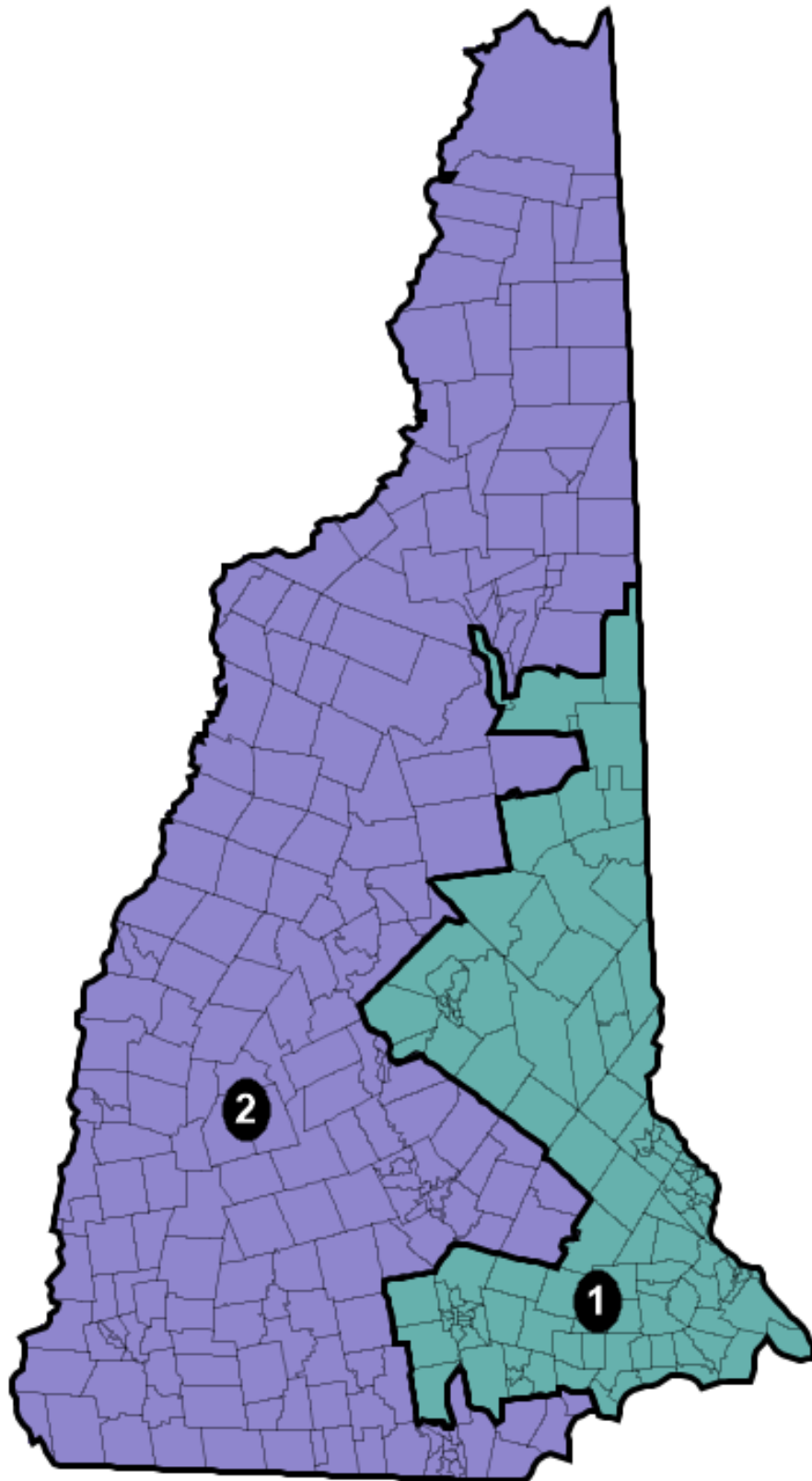
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|--|-------|
| 1. Special Master's Plan, Statewide Map | p. 28 |
| 2. Special Master's Plan, Statewide Map with Proposed Changes from Existing Districts. | p. 30 |
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| E. Plaintiffs' Reply Brief | p. A63 |
| F. Transcript of Special Master Hearing | p. A71 |

Exhibit 1.

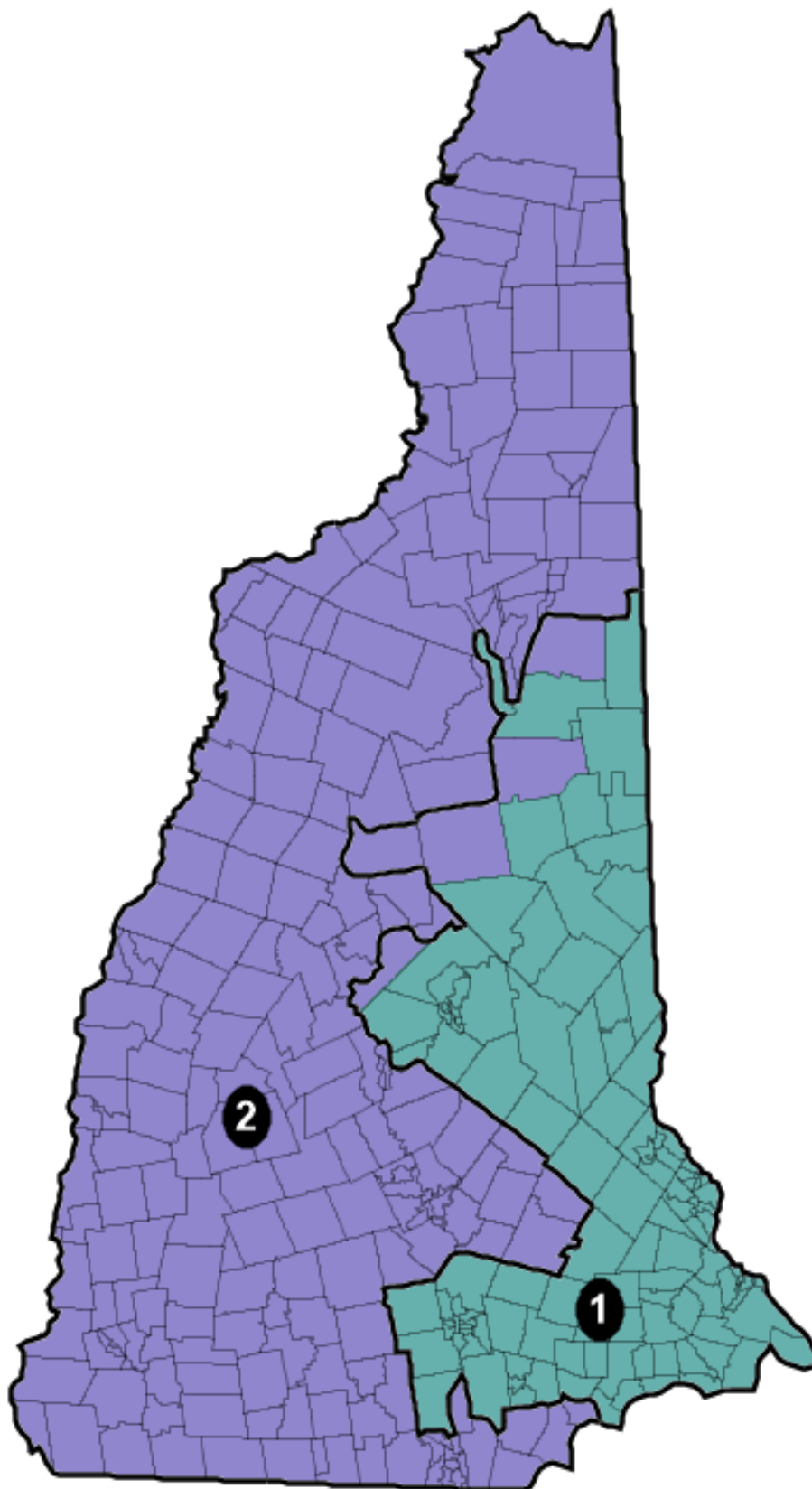
Special Master's Plan, Statewide Map.



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Exhibit 2.

Special Master's Plan, Statewide Map with Proposed Changes from Existing Districts.



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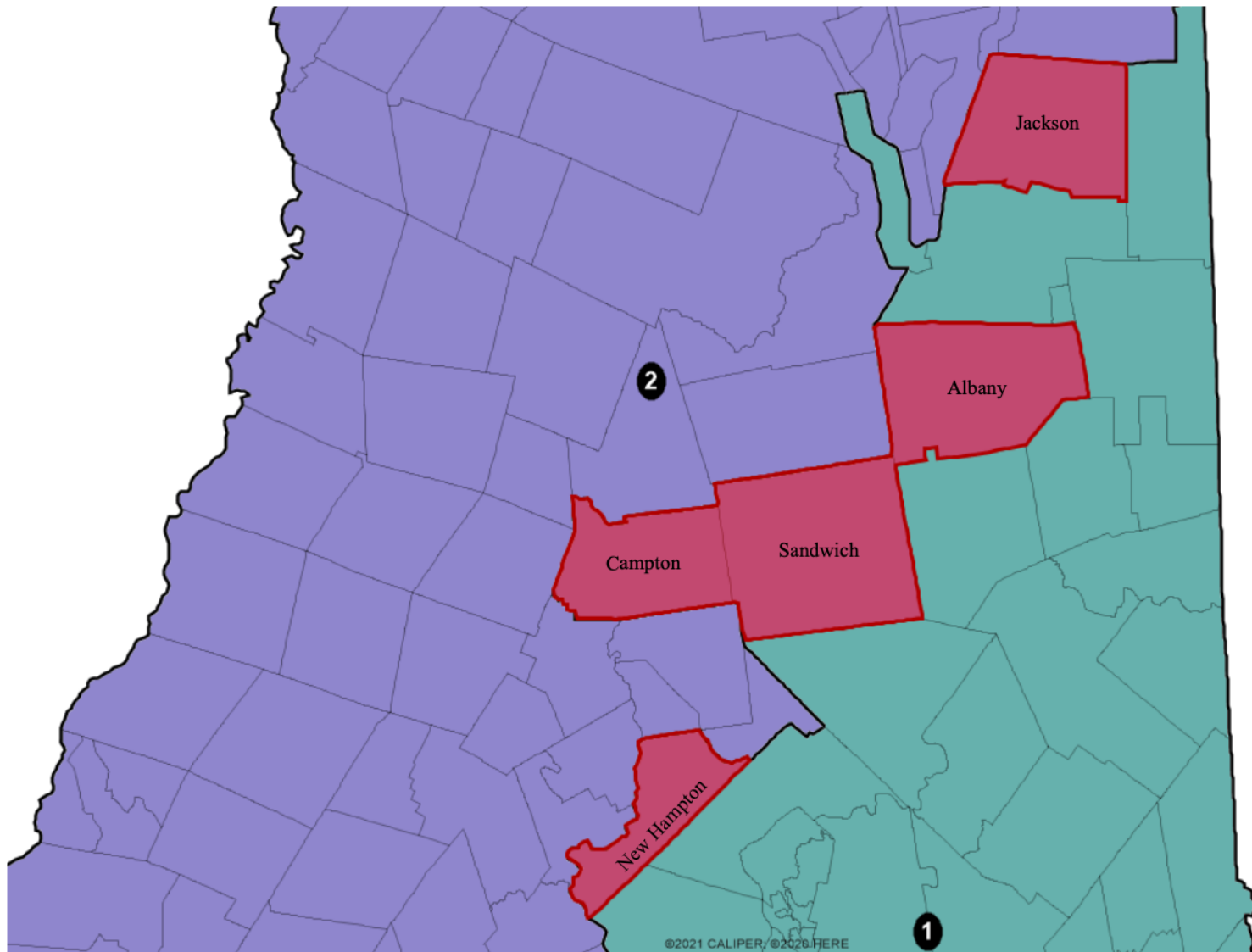


Exhibit 3.

Racial Breakdown of Existing Districts and Proposed Districts in Special Master's Plan.

Existing Districts								
District	VAP	% NHWVAP	% HVAP	% BVAP	% AVAP	% IVAP	% PVAP	% OVAP
1	568352	89.10%	3.49%	2.04%	2.94%	1.63%	0.11%	3.77%
2	552328	88.60%	3.61%	1.85%	3.10%	1.82%	0.11%	4.08%
Special Master Plan								
District	VAP	% NHWVAP	% HVAP	% BVAP	% AVAP	% IVAP	% PVAP	% OVAP
1	560816	89.04%	3.52%	2.06%	2.96%	1.63%	0.11%	3.78%
2	559864	88.67%	3.58%	1.83%	3.07%	1.82%	0.11%	4.06%

VAP = Voting Age Population

NHWVAP = Non-Hispanic White Voting Age Population

HVAP = Hispanic Voting Age Population

BVAP = Black Voting Age Population

AVAP = Asian Voting Age Population

IVAP = American Indian or Alaska Native Voting Age Population

PVAP = Native Hawaiian or other Pacific Islander Voting Age Population

OVAP = Some Other Race Voting Age Population

Exhibit 4.

List of Towns By Congressional District.

User:

Plan Name: **NH Plan 1**

Plan Type: **Congress**

Town List By District

Thursday, May 26, 2022

8:27 PM

Whole County Subdivision : 245

County Subdivision Splits: 0

Zero Population County Subdivision Splits: 15

District	County Subdivision	Population	% Pop	District	County Subdivision	Population	% Pop
1	Meredith NH	6,662	100.00%	1	Danville NH	4,408	100.00%
1	Laconia NH	16,871	100.00%	1	Fremont NH	4,739	100.00%
1	Gilford NH	7,699	100.00%	1	Newton NH	4,820	100.00%
1	Moultonborough NH	4,918	100.00%	1	Kingston NH	6,202	100.00%
1	Hart's Location NH	68	100.00%	1	Brentwood NH	4,490	100.00%
1	Merrimack NH	26,632	100.00%	1	East Kingston NH	2,441	100.00%
1	Bedford NH	23,322	100.00%	1	South Hampton NH	894	100.00%
1	Manchester NH	115,644	100.00%	1	Kensington NH	2,095	100.00%
1	Londonderry NH	25,826	100.00%	1	Exeter NH	16,049	100.00%
1	Auburn NH	5,946	100.00%	1	Seabrook NH	8,401	100.00%
1	Ossipee NH	4,372	100.00%	1	Hampton Falls NH	2,403	100.00%
1	Effingham NH	1,691	100.00%	1	Hampton NH	16,214	100.00%
1	Tamworth NH	2,812	100.00%	1	North Hampton NH	4,538	100.00%
1	Madison NH	2,565	100.00%	1	Raymond NH	10,684	100.00%
1	Freedom NH	1,689	100.00%	1	Epping NH	7,125	100.00%
1	Eaton NH	405	100.00%	1	Nottingham NH	5,229	100.00%
1	Hale's NH	132	100.00%	1	Barrington NH	9,326	100.00%
1	Conway NH	9,822	100.00%	1	Barnstead NH	4,915	100.00%
1	Wakefield NH	5,201	100.00%	1	Alton NH	5,894	100.00%
1	Rye NH	5,543	100.00%	1	Strafford NH	4,230	100.00%
1	New Castle NH	1,000	100.00%	1	Farmington NH	6,722	100.00%
1	Bartlett NH	3,200	100.00%	1	New Durham NH	2,693	100.00%
1	Chatham NH	341	100.00%	1	Middleton NH	1,823	100.00%
1	Tilton NH	3,962	100.00%	1	Lee NH	4,520	100.00%
1	Hooksett NH	14,871	100.00%	1	Newfields NH	1,769	100.00%
1	Candia NH	4,013	100.00%	1	Newmarket NH	9,430	100.00%
1	Belmont NH	7,314	100.00%	1	Durham NH	15,490	100.00%
1	Gilmanton NH	3,945	100.00%	1	Madbury NH	1,918	100.00%
1	Sanbornton NH	3,026	100.00%	1	Stratham NH	7,669	100.00%
1	Derry NH	34,317	100.00%				
1	Chester NH	5,232	100.00%				
1	Sandown NH	6,548	100.00%				
1	Plaistow NH	7,830	100.00%				
1	Hampstead NH	8,998	100.00%				

Town List By District

NH Plan 1

District	County Subdivision	Population	% Pop	District	County Subdivision	Population	% Pop
1	Greenland NH	4,067	100.00%	2	New Boston NH	6,108	100.00%
1	Newington NH	811	100.00%	2	Amherst NH	11,753	100.00%
1	Portsmouth NH	21,956	100.00%	2	Nashua NH	91,322	100.00%
1	Dover NH	32,741	100.00%	2	Litchfield NH	8,478	100.00%
1	Somersworth NH	11,855	100.00%	2	Hudson NH	25,394	100.00%
1	Rollinsford NH	2,597	100.00%	2	Pelham NH	14,222	100.00%
1	Rochester NH	32,492	100.00%	2	Surry NH	820	100.00%
1	Milton NH	4,482	100.00%	2	Alstead NH	1,864	100.00%
1	Tuftonboro NH	2,467	100.00%	2	Gilsum NH	752	100.00%
1	Wolfeboro NH	6,416	100.00%	2	Acworth NH	853	100.00%
1	Brookfield NH	755	100.00%	2	Sullivan NH	658	100.00%
1	Goffstown NH	18,577	100.00%	2	Nelson NH	629	100.00%
2	Thornton NH	2,708	100.00%	2	Stoddard NH	1,374	100.00%
2	Center Harbor NH	1,040	100.00%	2	Marlow NH	749	100.00%
2	Sandwich NH	1,466	100.00%	2	Lempster NH	1,118	100.00%
2	Waterville Valley NH	508	100.00%	2	Claremont NH	12,949	100.00%
2	Haverhill NH	4,585	100.00%	2	Unity NH	1,518	100.00%
2	Bath NH	1,077	100.00%	2	Cornish NH	1,616	100.00%
2	Monroe NH	864	100.00%	2	Newport NH	6,299	100.00%
2	Benton NH	374	100.00%	2	Goshen NH	796	100.00%
2	Landaff NH	446	100.00%	2	Croydon NH	801	100.00%
2	Lyman NH	585	100.00%	2	Sunapee NH	3,342	100.00%
2	Lisbon NH	1,621	100.00%	2	Antrim NH	2,651	100.00%
2	Easton NH	292	100.00%	2	Windsor NH	262	100.00%
2	Sugar Hill NH	647	100.00%	2	Washington NH	1,192	100.00%
2	Lincoln NH	1,631	100.00%	2	Bradford NH	1,662	100.00%
2	Franconia NH	1,083	100.00%	2	Bennington NH	1,501	100.00%
2	Bethlehem NH	2,484	100.00%	2	Albany NH	759	100.00%
2	Littleton NH	6,005	100.00%	2	Sargents NH	0	0.00%
2	Dalton NH	933	100.00%	2	Thompson and Meserves NH	1	100.00%
2	Whitefield NH	2,490	100.00%	2	Pinkhams NH	0	0.00%
2	Livermore NH	2	100.00%	2	Jackson NH	1,028	100.00%
2	Carroll NH	820	100.00%	2	Greens NH	0	0.00%
2	Hadleys NH	0	0.00%	2	Beans NH	0	0.00%
2	Beans NH	0	0.00%	2	Martins NH	2	100.00%
2	Crawfords NH	0	0.00%	2	Gorham NH	2,698	100.00%
2	Cutts NH	0	0.00%	2	Berlin NH	9,425	100.00%
2	Chandlers NH	0	0.00%	2	Shelburne NH	353	100.00%
2	Jefferson NH	1,043	100.00%	2	Success NH	4	100.00%
				2	Dummer NH	306	100.00%
				2	Milan NH	1,358	100.00%
				2	Millsfield NH	25	100.00%
				2	Cambridge NH	16	100.00%
				2	Errol NH	298	100.00%

Town List By District

NH Plan 1

District	County Subdivision	Population	% Pop	District	County Subdivision	Population	% Pop
2	Dixville NH	4	100.00%	2	Columbia NH	659	100.00%
2	Dixs NH	0	0.00%	2	Stark NH	478	100.00%
2	Webster NH	1,913	100.00%	2	Odell NH	1	100.00%
2	Andover NH	2,406	100.00%	2	Erving NH	0	0.00%
2	Boscawen NH	3,998	100.00%	2	Colebrook NH	2,084	100.00%
2	Franklin NH	8,741	100.00%	2	Stewartstown NH	813	100.00%
2	Northfield NH	4,872	100.00%	2	Clarksville NH	294	100.00%
2	Bow NH	8,229	100.00%	2	Windham NH	15,817	100.00%
2	Concord NH	43,976	100.00%	2	Salem NH	30,089	100.00%
2	Pembroke NH	7,207	100.00%	2	Atkinson NH	7,087	100.00%
2	Allenstown NH	4,707	100.00%	2	Deerfield NH	4,855	100.00%
2	Epsom NH	4,834	100.00%	2	Northwood NH	4,641	100.00%
2	Canterbury NH	2,389	100.00%	2	Hinsdale NH	3,948	100.00%
2	Loudon NH	5,576	100.00%	2	Winchester NH	4,150	100.00%
2	Chichester NH	2,665	100.00%	2	Chesterfield NH	3,552	100.00%
2	Pittsfield NH	4,075	100.00%	2	Westmoreland NH	1,706	100.00%
2	Hill NH	1,017	100.00%	2	Walpole NH	3,633	100.00%
2	Bristol NH	3,244	100.00%	2	Langdon NH	651	100.00%
2	Hebron NH	632	100.00%	2	Charlestown NH	4,806	100.00%
2	Plymouth NH	6,682	100.00%	2	Richmond NH	1,197	100.00%
2	New Hampton NH	2,377	100.00%	2	Swanzey NH	7,270	100.00%
2	Bridgewater NH	1,160	100.00%	2	Keene NH	23,047	100.00%
2	Ashland NH	1,938	100.00%	2	Troy NH	2,130	100.00%
2	Holderness NH	2,004	100.00%	2	Fitzwilliam NH	2,351	100.00%
2	Rumney NH	1,498	100.00%	2	Marlborough NH	2,096	100.00%
2	Ellsworth NH	93	100.00%	2	Roxbury NH	220	100.00%
2	Woodstock NH	1,434	100.00%	2	Harrisville NH	984	100.00%
2	Campton NH	3,343	100.00%	2	Jaffrey NH	5,320	100.00%
2	Wentworth NH	28	100.00%	2	Rindge NH	6,476	100.00%
2	Second College NH	1	100.00%	2	Dublin NH	1,532	100.00%
2	Atkinson and Gilman Academy NH	0	0.00%	2	Hancock NH	1,731	100.00%
2	Pittsburg NH	800	100.00%	2	Sharon NH	359	100.00%
2	Lancaster NH	3,218	100.00%	2	New Ipswich NH	5,204	100.00%
2	Low and Burbanks NH	0	0.00%	2	Temple NH	1,382	100.00%
2	Randolph NH	328	100.00%	2	Peterborough NH	6,418	100.00%
2	Kilkenny NH	0	0.00%	2	Greenfield NH	1,716	100.00%
2	Northumberland NH	2,126	100.00%	2	Greenville NH	1,974	100.00%
2	Stratford NH	662	100.00%	2	Wilton NH	3,896	100.00%
				2	Mason NH	1,448	100.00%

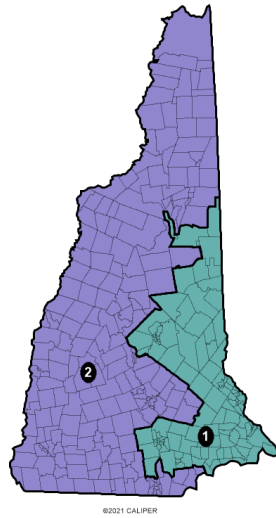
Town List By District

NH Plan 1

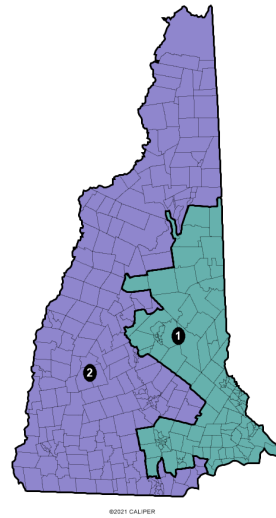
District	County Subdivision	Population	% Pop	District	County Subdivision	Population	% Pop
2	Lyndeborough NH	1,702	100.00%				
2	Brookline NH	5,639	100.00%				
2	Milford NH	16,131	100.00%				
2	Hollis NH	8,342	100.00%				
2	Mont Vernon NH	2,584	100.00%				
2	Deering NH	1,904	100.00%				
2	Hillsborough NH	5,939	100.00%				
2	Newbury NH	2,172	100.00%				
2	Springfield NH	1,259	100.00%				
2	New London NH	4,400	100.00%				
2	Sutton NH	1,978	100.00%				
2	Warner NH	2,937	100.00%				
2	Wilmot NH	1,407	100.00%				
2	Plainfield NH	2,459	100.00%				
2	Lebanon NH	14,282	100.00%				
2	Grantham NH	3,404	100.00%				
2	Enfield NH	4,465	100.00%				
2	Hanover NH	11,870	100.00%				
2	Lyme NH	1,745	100.00%				
2	Grafton NH	1,385	100.00%				
2	Canaan NH	3,794	100.00%				
2	Dorchester NH	339	100.00%				
2	Danbury NH	1,250	100.00%				
2	Alexandria NH	1,776	100.00%				
2	Orange NH	277	100.00%				
2	Groton NH	569	100.00%				
2	Orford NH	1,237	100.00%				
2	Piermont NH	769	100.00%				
2	Wentworth NH	845	100.00%				
2	Warren NH	825	100.00%				
2	Francestown NH	1,610	100.00%				
2	Weare NH	9,092	100.00%				
2	Henniker NH	6,185	100.00%				
2	Hopkinton NH	5,914	100.00%				
2	Dunbarton NH	3,005	100.00%				
2	Salisbury NH	1,422	100.00%				

Exhibit 5.

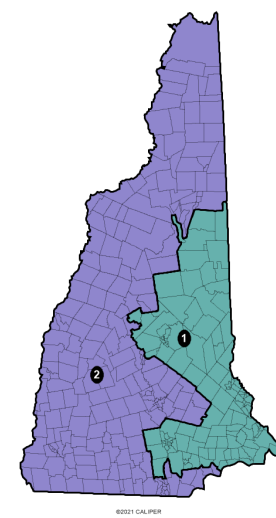
Comparison Images of Special Master's Plan to Party Submissions



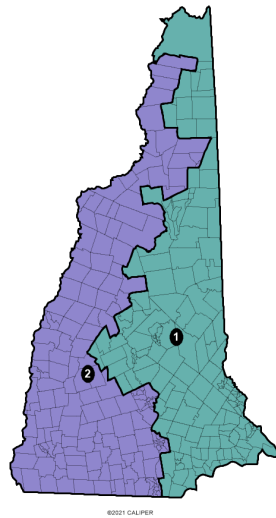
Special Master Plan



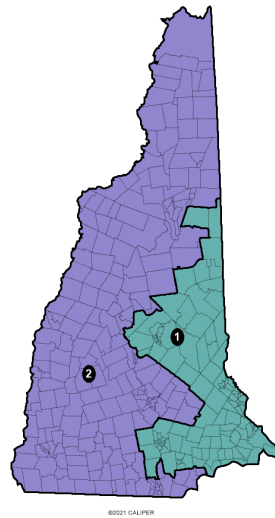
Minority Leaders Plan



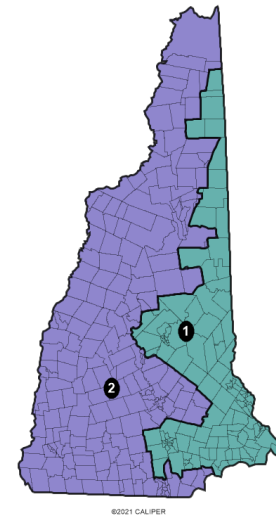
Plaintiffs Plan



Majority Leaders Plan 1



Majority Leaders Plan 2



Majority Leaders Plan 3

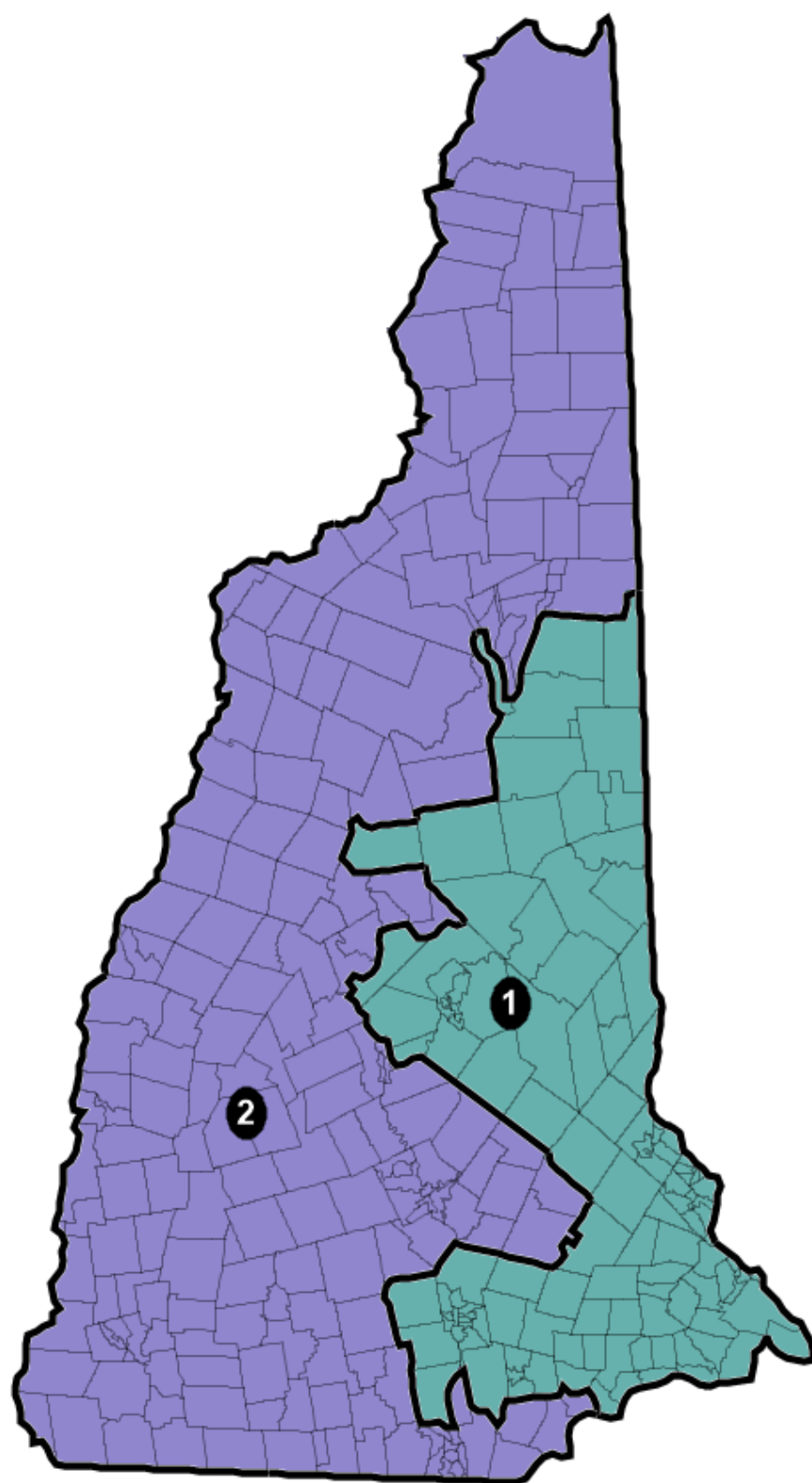
Exhibit 6.

Comparison Table of Special Master's Plan to Party Submissions

District	Existing	Special Master	Minority Leaders	Plaintiffs	Majority Leaders 1	Majority Leaders 2	Majority Leaders 3
1	8972	-1	-26	-1	-1	4	-1
2	-8973	0	25	0	0	-5	0
Total Deviation	17945	1	51	1	1	9	1
Number of Towns Moved	--	5	1	4	75	6	15
Number of People Moved	--	8973	8998	13373	358976	8968	13069

Exhibit 7.

Maps of Existing Congressional Districts



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Appendix A

Order Appointing Special Master

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2022-0184, Theresa Norelli & a. v. Secretary of State & a., the court on May 12, 2022, issued the following order:

In furtherance of our opinion issued today, the court hereby appoints Professor Nathaniel Persily to serve as special master in this case. See RSA 490:8 (2010). A special master is a judicial officer with the attendant obligation of impartiality. See Tuftonboro v. Willard, 89 N.H. 253, 260-61 (1938) (stating that the impartiality obligation of Part I, Article 35 of the New Hampshire Constitution applies to court-appointed masters, referees, and auditors); see also N.H. Sup. Ct. R. 38 (definition of “judge” in the Code of Judicial Conduct includes “a referee or other master”). Accordingly, ex parte communications with the special master are prohibited. See N.H. Sup. Ct. R. 38 (Rule 2.9 of the Code); N.H. R. Prof. Cond. 3.5. As a judicial officer, neither the special master nor staff members acting at his direction may be subjected to cross-examination, and all confidential computer and other confidential files prepared by or for the special master in connection with this case are entitled to the same level of protection from production or disclosure as are the confidential materials of the court itself.

The special master shall prepare and issue to the court, no earlier than May 27, 2022, a report and a recommended congressional redistricting plan for New Hampshire pursuant to the criteria set forth in our opinion and this order. The special master’s appointment, although effective immediately, does not preclude the legislature from enacting a congressional redistricting plan on or before May 26, 2022 — the date identified to us as the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session.

In developing a recommended congressional redistricting plan, the special master shall use 2020 federal census data, P.L. 94-171, and shall modify the existing congressional districts, as established by RSA 662:1 (2016), only to the extent required to comply with the following criteria and “least change” standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;

2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., and any other applicable federal law;
3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, see Below v. Secretary of State, 148 N.H. 1, 13-14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and
6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

The New Hampshire Senate Minority Leader and the New Hampshire House of Representatives Minority Leader (the legislative amici curiae) previously submitted, with their memorandum of law on the preliminary questions, a proposed congressional redistricting plan that they contend is a “least change” plan. By 5:00 p.m. on May 16, 2022, interested parties, intervenors, and any other person participating or seeking to participate as an amicus curiae may submit, through the court’s electronic filing (e-filing) system, their proposed redistricting plan, accompanied by such supporting data, documentation, or memoranda that they deem helpful to the special master’s evaluation of their proposed plan’s compliance with our opinion and this order.

By 1:00 p.m. on May 18, 2022, interested parties, intervenors, and any person participating or seeking to participate as an amicus curiae may submit, through the court’s e-filing system, a response to any proposed redistricting plan, including the proposed plan previously submitted by the legislative amici curiae.

An in-person hearing before the special master will be held at the court on May 19, 2022, at 1:00 p.m., to provide an opportunity for plan proponents to present arguments in favor of their plans and for opponents of particular plans to respond. Following the hearing, the special master shall select a proposed redistricting plan — or shall formulate one on his own — that he recommends for adoption by the court. The special master’s report and recommended

congressional redistricting plan shall be issued to the court no earlier than May 27, 2022, and then promptly distributed by the clerk's office to persons who have appeared in this case.

If necessary, oral argument on the special master's report and recommendation will be held before the justices of the supreme court on May 31, 2022, at 9:00 a.m.

As stated in our orders of April 11 and May 5, 2022, the court will terminate this proceeding if a congressional redistricting plan is validly enacted by the legislature at any time prior to the close of this case.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,
Clerk**

Distribution:

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Olivia Bensinger, Esq.
File

Appendix B
Plaintiff Submission

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2022-0184

Theresa Norelli & *a.*

Plaintiffs,

v.

Secretary of State & *a.*

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PROPOSED
CONGRESSIONAL DISTRICTING PLAN**

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Washington, DC 20002

INTRODUCTION

In this action, Plaintiffs challenge New Hampshire’s congressional districts, which were enacted in 2012 and were drafted based on data from the 2010 Census. In light of the results of the 2022 Census, those districts are unconstitutionally malapportioned in violation of the New Hampshire and United States Constitutions. Soon after the case was filed, this Court assumed supervisory jurisdiction and ordered briefing and argument on a series of specific questions, including questions relating to the criteria the Court should use if it is required to adopt a congressional districting map.

On May 12, 2022, the Court issued an opinion concluding: (1) the statute currently delineating New Hampshire’s congressional districts, RSA 662:1 (2016), violates Article I, Section 2 of the United States Constitution, and (2) “upon a demonstrated legislative impasse, this court must establish a new district plan” using a “‘least change’ approach.” *Norelli v. Sec’y of State*, No. 2022-0184 (N.H. May 4, 2022), slip. op. at 2. As to the first holding, the Court explained that the State had not demonstrated that the 2.6% overall deviation among the state’s current congressional districts is “necessary to achieve some legitimate state objective” and that the current districts therefore violate the U.S. Constitution. *Id.* at 11 (quoting *Karcher v. Daggett*, 462 U.S. 725, 740 (1983)).

As to the second holding, the Court rejected the State’s argument that “judicial non-intervention in this case is more important than protecting the voters’ fundamental rights under the United States Constitution.” *Id.* at 12. It further explained that it would use a “‘least change’ approach,” which uses the “one-person, one-vote” principle as its primary guide and the “existing congressional districts” as its “benchmark.” *Id.* at 13, 14. In other

words, the Court will adopt a plan that “reflect[s] the least change necessary to remedy the constitutional deficiencies in the existing congressional districts.” *Id.* at 13. To that end, as “contiguous populations are added or subtracted as necessary to correct the population deviations,” the remedial plan should, “to the greatest extent practicable,” “contain roughly the same constituents as the last validly enacted plan” and maintain “the core of the districts.” *Id.* at 14. The Court further recognized that New Hampshire’s historical practice of not “dividing towns, city wards, or unincorporated places unless they have previously requested to be divided by referendum” warrants requiring “any plan we adopt [to] reflect such historic redistricting policies to the greatest extent practicable so long as they are consistent with the ‘least change’ approach to achieving congressional districts with populations as close to perfect equality as possible.” *Id.* Finally, the Court explained that the least-change approach is preferable to any other approach because it best ensures that political considerations do not make their way into its remedial plan. *Id.* at 14–15.

Simultaneously with its opinion, the Court issued an order (“May 12 Order”) appointing Professor Nathaniel Persily as a special master and instructed Dr. Persily to propose a recommended remedial plan to the Court. May 12 Order at 1. In that order, the Court instructed Dr. Persily that his recommended plan “shall modify the existing congressional districts . . . only to the extent required to comply with the following criteria and ‘least change’ standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;
2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 *et seq.*, and any other applicable federal law;

3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, *see Below v. Secretary of State*, 148 N.H. 1, 13–14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and
6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

Id. at 1–2.

The Court noted that the New Hampshire Senate Minority Leader and the New Hampshire House of Representatives Minority Leader (the “Minority Leaders”) had previously submitted a proposed congressional plan they characterized as “least-change.” *Id.* at 2. The Court invited any other interested party, intervenor, or person seeking to participate as *amicus curiae* to submit their own proposed plan, accompanied by appropriate data, documentation, or memoranda.

Pursuant to that invitation, Plaintiffs have submitted a proposed remedial plan that fully satisfies the Court’s criteria for a remedial plan. Attached to this memorandum are maps of Plaintiffs’ proposed plan (Exhibit A), and a list of the towns, cities, and unincorporated places included in each of the plan’s two districts (Exhibit B). As directed by the Court’s supplemental order issued May 13, Plaintiffs have separately emailed the Court a census block equivalency file that correspond to their proposed plan.

ARGUMENT

Plaintiffs' plan satisfies each of the standards established by the May 12 Order. The plan achieves nearly perfect population equality without splitting any town or ward. It achieves this by moving just four towns from one district to the other: Plaistow and Campton from the First District into the Second, and Bridgewater and Center Harbor from the Second District into the First.

- **Standard 1: Population Equality.** Plaintiffs' plan achieves nearly perfect population equality. According to the 2020 Census, New Hampshire's population is 1,377,529, meaning the ideal population of each congressional district is 688,764.5. Under Plaintiffs' plan, District 1's population is 688,764, and District 2's population is 688,765. Because it is impossible to make the population among the districts more equal, the plan automatically satisfies the requirements of Article I, Section 2 of the U.S. Constitution. *Karcher*, 462 U.S. at 732 ("States must draw congressional districts with populations as close to perfect equality as possible.").

- **Standard 2: Compliance with the Voting Rights Act of 1965.** Plaintiffs' plan complies with the Voting Rights Act ("VRA"). Section 2 of the VRA prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right . . . to vote on account of race." 52 U.S.C. § 10301(a). Plaintiffs' plan was not drawn with the purpose of denying or abridging minority voting rights, nor would it have the effect of denying or abridging minority voting rights.

- **Standard 3: Contiguity.** Both of the districts in Plaintiffs’ plan are contiguous because all towns, city wards, and unincorporated places that comprise each district “adjoin[]” another town, ward, or unincorporated place in the same district. *Below*, 148 N.H. at 9.

- **Standard 4: Core retention.** Plaintiffs’ plan achieves nearly perfect population equality while maximizing core retention. Maximizing “core retention” means keeping as many people as possible in their current districts. Put another way, it means minimizing the number of people who are moved to a different congressional district.

Plaintiffs’ plan moves the smallest number of people necessary to achieve near-perfect population equality. Under Plaintiffs’ plan, 99.04% of New Hampshire residents are kept in the same congressional district. This is only slightly lower than the core retention of the Minority Leaders’ plan, which keeps 99.36% of the state’s residents in the same district as last cycle.

In this sense, Plaintiffs’ plan and the Minority Leaders’ plan are compliments of one another, demonstrating the necessary trade-off between maximizing core retention and population equality. While the Minority Leaders’ plan achieves the best possible core retention while minimizing population deviation, it results in a slightly higher population deviation (51 persons) than Plaintiffs’ plan. Meanwhile, to achieve nearly perfect population equality, Plaintiffs’ plan slightly sacrifices core retention, resulting in .32% fewer residents staying in the same congressional district.

Plaintiffs take no position as to whether their plan or the Minority Leaders’ is superior; both plans clearly comply with the Court’s criteria. While the Minority Leaders’

plan has slightly less-than-perfect population equality, that deviation in this instance is arguably justified by a legitimate state policy, *i.e.*, core retention.

- **Standard 5: Maintenance of towns, city wards, and unincorporated places.** Plaintiffs' plan does not divide any town, city ward, or unincorporated place.

- **Standard 6: Prohibition of political considerations.** Plaintiffs' plan was drawn without consideration of political data. Instead, Plaintiffs' plan was drawn to maximize core retention while maintaining perfect population equality. Thus, adoption of this plan would not involve prohibited political considerations.

- **Additional Principle: Compactness.** While the Court did not explicitly state that its proposed plan should contain compact districts, compactness is a widely accepted traditional districting principle. *See, e.g., Bush v. Vera*, 517 U.S. 952, 962 (1996) (noting that the state “neglected traditional districting criteria such as compactness”); *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (defining traditional districting principles to include compactness); *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 639 (Fla. 2012) (stating that Florida’s compactness criteria required the Legislature “to conform to traditional redistricting principles”). If the Court finds compactness to be relevant in adopting a plan, Plaintiffs note that their proposed plan contains districts that are slightly more compact than the state’s existing congressional districts.

Two of the most commonly used compactness metrics are Reock and Polsby-Popper. The Reock score measures the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure ranges from zero to one, with one being perfectly compact. The Polsby-Popper score measures the ratio of the district area to

the area of a circle with the same perimeter. Again, the measure ranges from zero to one, with one being maximally compact. The following scores for these metrics show that the districts in Plaintiffs’ proposed plan have Reock scores that are identical to those for the existing districts and Polsby-Popper scores that are slightly higher than those for the existing districts:

District	Reock – Existing Plan	Reock – Plaintiffs’ Plan	Polsby-Popper – Existing Plan	Polsby-Popper – Plaintiffs’ Plan
District 1	0.30	0.30	0.17	0.18
District 2	0.23	0.23	0.15	0.15

CONCLUSION

Plaintiffs respectfully submit that their proposed remedial plan achieves population equality, maximizes core retention, and complies with all of the other criteria set out by this Court.

Dated: May 16, 2022

Respectfully Submitted,

THERESA NORELLI, CHRISTINE
FAJARDO, MATT GERDING, and
PALANA HUNT-HAWKINS

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Appendix C

President of the New Hampshire Senate and Speaker of the New Hampshire House Submission

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Theresa Norelli & a.

v.

Secretary of State & a.

Case No. 2022-0184

**SUBMISSION OF SPEAKER OF THE HOUSE AND SENATE PRESIDENT
PURSUANT TO ORDER OF MAY 12, 2022**

By Order dated May 12, 2022, this Court invited interested parties, intervenors, and *amici curiae* to submit proposed redistricting plans, accompanied by such supporting data, documentation, or memoranda that they deem helpful to the special master’s evaluation of their proposed plan’s compliance with the criteria set forth in the Court’s Order and Opinion. The Court’s Opinion indicated that the Court will decide this case “..solely under the Federal Constitution..” *Opinion*, p. 8, May 12, 2022.

The Court’s May 12, 2022, Opinion further detailed that Article I, §2 of the U.S. Constitution requires that congressional districts be apportioned so that “‘as nearly as is practicable, one [person’s] vote in a congressional election is to be worth as much as another’s.’” *Id.* (citing *Wesberry v. Sanders*, 376 U.S. 1, 7-8, 17-18 (1964)). “Article I, Section 2 establishes a ‘high standard of justice and common sense’ for the apportionment of congressional districts: ‘equal representation for equal numbers of people.’” *Id.* “The ‘as nearly as practicable’ standard requires that the State make a good-faith effort to achieve

precise mathematical equality.” *Opinion*, p. 8 (citing *Karcher v. Daggett*, 462 U.S. 725, 732 (1983)). (quotation and brackets omitted).

“Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, **no matter how small.**” *Opinion*, p. 8 (citing *Karcher*, 462 U.S. at 732) (Emphasis added). Absolute population equality is the paramount objective, so “[s]tates must draw congressional districts with populations as close to perfect equality as possible.” *Opinion*, p. 8 (citing *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016); *Karcher*, 462 U.S. at 725).

In its May 12 Order, the Court tasked the appointed special master with modifying the existing congressional districts “only to the extent required to comply with the following criteria and “least change” standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;
2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., and any other applicable federal law;
3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, see *Below v. Secretary of State*, 148 N.H. 1, 13-14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and

6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

Of the six criteria listed in the Order, three are absolute and not subject to any balancing considerations: (2) requiring compliance with the Voting Rights Act of 1965 and other federal laws; (3) requiring contiguity; and (6) requiring the master to ignore political data or partisan factors. Criterion number five states that the plan shall not divide towns, city wards, or unincorporated places unless required by Article 1, Section 2 of the U.S. Constitution. One of the plans submitted by the Speaker and President contains the lowest mathematically possible deviation. Since the U.S. Constitution cannot require greater equality than is mathematically possible, there is no need for the master of the Court to consider whether dividing a town, city ward, or unincorporated place is required.

The word “practicable” must be considered alongside another word that the Court did not use in the Orders: “possible.” A criterion that contained a requirement that the master choose a redistricting plan with the lowest deviation “possible” would remove the possibility of the exercise of judgment that is inherent in the meaning of the word “practicable.” The Speaker and President do not take issue with the Court’s use of that word, nor is this submission a criticism of the Court’s reservation of the need to exercise some level of judgment. To the contrary, the Speaker and President continue to maintain that any action, whether by the General Court or this Court, necessarily involves the exercise of discretion and the balancing of interests. The use of the word “practicable” and the competing interests in population equality and “least change” reflect the inherent tension involved in making redistricting decisions.

It is unclear from the Court’s Order whether the master and Court intend to mechanically compare the population equality of all the plans, and if any plan achieves perfect equality, break the tie by determining which plan moves fewer people, or whether the master and Court intend to balance substantial population equality against the desire to effectuate a “least change” map.

The Speaker and President propose two plans for evaluation by the master. Depending on how the master, and ultimately the Court, weigh the competing interests detailed in the Orders, either of these two plans may best meet the Court’s balancing tests, as depicted in the data below.

	Plan 1 (0/-1)	Plan 2 (4/-5)
District 1 Population	688,764	688,769
District 2 Population	688,765	688,760
Absolute Deviation	1	9
“Change” Population	358,976	8968

As the above chart reflects, if the Court is going to place population equality above all other factors, then the Speaker and President Plan 1 is the superior of these two plans. However, if the Court is going to balance population equality with “least change,” then the Court should at least consider Plan 2. This raises the obvious question: Is Plan 1’s moving of roughly 350,000 people to different districts worth the cost in terms of “least change” in order to accomplish a decrease in population inequality equal to 8 persons? Or perhaps it is possible to achieve a perfect deviation while moving fewer people? Assuming that this

possibility turns out to be true, where is the line drawn to demarcate the point at which it is worth creating x units of “change” for each single unit of population equality? There simply is no answer to this question that does not require the master and the Court to weigh the importance of population inequality against the importance of the “least change” to the last enacted legislative plan.

On the other hand, perhaps the Court will decide to apply its criteria mechanically, by taking all possible “zero deviation” plans and simply seeing which one of them is the “least change,” without weighing the state objective question posed by part two of the *Karcher* analysis. This is not without its own risks, however. Any choice made by the Court will cause political consequences, as is the inherent nature of the task.

As the master will quickly discover, and as submitted plans may very well demonstrate, the easiest way to achieve very low population equality is to divide up northern Coos County, because the small sizes of the political subdivisions in the northernmost part of our state contain the low population numbers that are necessary to make the precise population adjustments required to achieve perfect equality. Achieving perfect population equality means that neighboring towns in the north country that clearly share important communities of interest are divided up into different congressional districts. Although the criteria put forward by the Court do not address these issues, the Speaker and President believe they are worthy of note. While the Speaker and President recognize the Court’s interest in adhering to its stated criteria, doing so is not without cost.

At the time of this submission, the Speaker and President cannot know what changes may be proposed by other parties, intervenors, or *amici curiae*. In their previous filing, the

legislative Minority Leaders proposed to move the Town of Hampstead from District 1 to District 2. The Minority Leaders’ plan leaves a total deviation of 51 people. Compared to the Speaker and President’s perfect population equality plan, Plan 1, it is obviously inferior according to the paramount objective of population equality as explained by *Karcher*. 462 U.S. at 725; *see also Evenwel*, 578 U.S. at 59.

	Plan 2 (4/-5)	Minority Leaders’ (-26/25)
District 1 Population	688,769	688,739
District 2 Population	688,760	688,790
Absolute Deviation	9	51
“Change” Population	8968	8998

The Minority Leaders’ plan is likewise inferior to the Speaker and President’s Plan 2 under both the population equality and least change criteria. As the above chart reflects, the Speaker and President’s “Plan 2” adheres more closely with the stated criteria because it: (1) results in a population deviation that is closer to the ideal number than the Minority Leaders’ plan; and (2) moves thirty fewer people between the Districts. By either objective standard, Plan 2 submitted by the Speaker and President is superior to the Minority Leaders’ plan.

CERTIFICATION

I, Sean R. List, hereby certify that on May 16, 2022, copies of the foregoing were forwarded to all counsel of record through the electronic filing system. Further, I certify that on May 16, 2022, the census block equivalency files for the proposed plans were

transmitted to the Clerk's Office by electronic mail, with all counsel of record copied on said transmission, in the manner indicated by the Court's May 13, 2022 Order.

Respectfully submitted,
The Honorable Sherman Packard,
Speaker of the N.H. House of Representatives
By his attorney,

Date: May 16, 2022

By: /s/ Sean R. List
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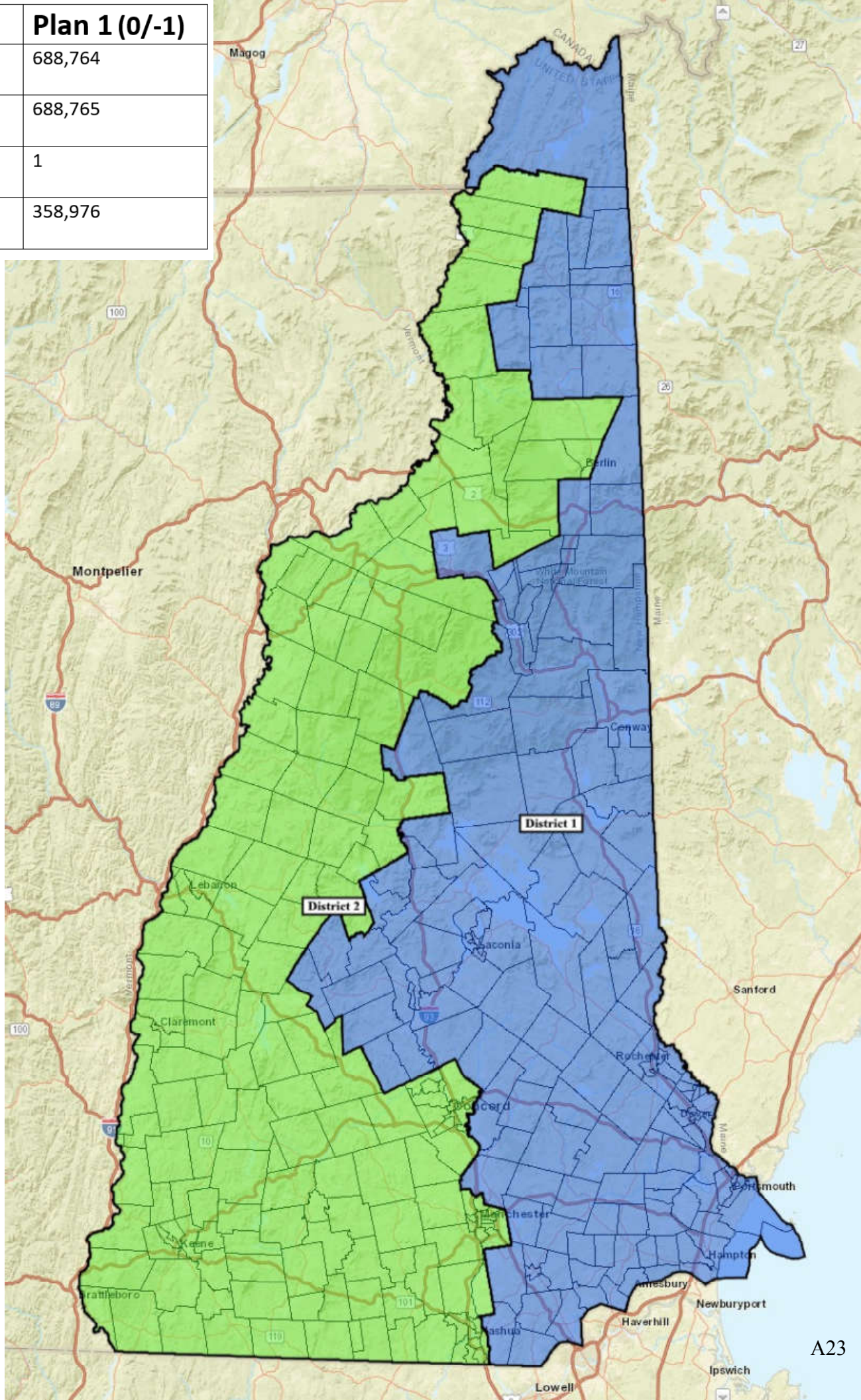
Respectfully submitted,
The Honorable Charles Morse,
President of the N.H. Senate
By his attorney,

Date: May 16, 2022

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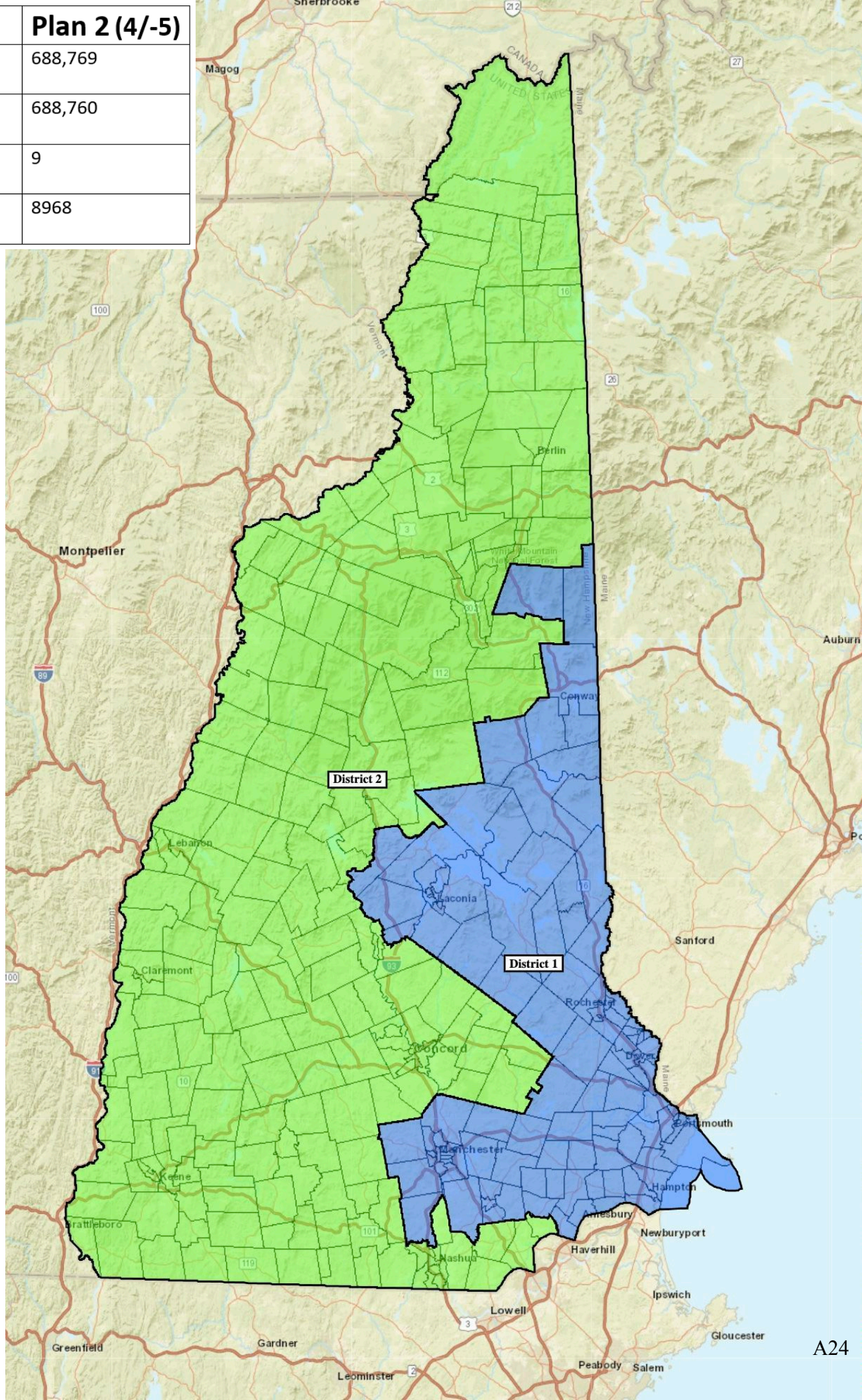
Plan 1 (0/-1)

District 1 Population	688,764
District 2 Population	688,765
Absolute Deviation	1
"Change" Population	358,976



Plan 2 (4/-5)

District 1 Population	688,769
District 2 Population	688,760
Absolute Deviation	9
"Change" Population	8968



Appendix D

Minority Leaders of the Senate and House Submission

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2022-0184

Theresa Norelli, et. al v. Secretary of State

**MEMORANDUM OF LAW OF AMICI CURIAE STATE SENATE
MINORITY LEADER SENATOR DONNA SOUCY AND HOUSE
MINORITY LEADER REPRESENTATIVE DAVID COTE IN SUPPORT
OF PLAINTIFF THERESA NORELLI, ET AL**

Pursuant to Supreme Court Rule 30, amici curiae State Senate Minority Leader Senator Donna Soucy and House Minority Leader Representative David Cote submit the following memorandum of law in support of the Plaintiffs Theresa Norelli, et al. (hereinafter, “Plaintiffs”):

INTRODUCTION

This matter comes before the court to determine the constitutionality of the New Hampshire congressional district maps. In the below brief, we address the applicable questions presented by the Court’s April 11, 2022 Order.

New Hampshire’s two congressional districts have remained virtually the same for the last 140 years. The longstanding map has remained compact, competitive, and reflective of communities of interest, only making the changes necessary to represent the state’s population shifts. We must update our congressional districts to adjust for the slight population change evident in the 2020 census data. We have suggested a map that would do just that. By shifting one town, Hampstead, from the First Congressional District into the Second Congressional District, our proposed map (hereafter, the “minority map”) corrects the constitutional deficiency while preserving the core of the longstanding prior district.¹ This plan would only change the congressional district of 8,998 Granite Staters.

¹ The minority map was introduced on March 16, 22 as Amendment 2022-1136s to House Bill 52. The bill and the corresponding map are attached as Exhibits C and D in the addendum to this memorandum. Also available at

In contrast, the Republicans seek to use their control of the legislature to, in the words of New Hampshire Republican State Committee Chair Stephen Stepanek “guarantee...send[ing] a conservative Republican to Washington, D.C. as a Congress person in 2022. See John DiStaso, *NH Primary Source: Stepanek guarantees at least one NH Republican will be elected to US House in '22*, WMUR (Jan. 28, 2021), <https://www.wmur.com/article/nh-primary-source-stepanek-guarantees-at-least-one-nh-republican-will-be-elected-to-us-house-in-22/35341751#>. To accomplish this goal, the map proposed by House Republicans, House Bill 52, shifts the congressional district of more than 250,000 Granite Staters.

Both parties know Granite Staters oppose this partisan approach. Over the past seven months, members of the New Hampshire legislature - both Republicans and Democrats - engaged in a statewide listening tour to hear the concerns of Granite Staters in advance of redistricting. Specifically, the Special Committee on Redistricting held in-person, public hearings in all ten New Hampshire counties. These public hearings revealed Granite Staters preference for fair congressional maps - and opposition to explicitly partisan gerrymanders.² Through these meetings and written testimony submitted to the Special Committee on Redistricting, hundreds of Granite Staters expressed their desire to avoid dramatic changes that served the interest of either political party.³ The

http://gencourt.state.nh.us/house/committees/committee_websites/Redistricting_2021/plans/Congressional%20Maps.pdf?mc_cid=52c4b5d600&mc_eid=UNIQID.

² “People are sick and tired of unfair maps and gerrymandering,” stated William Maddocks of Amherst; Kevin Fleming of Exeter “asked that the committee be attentive to be strong and fair and avoid accusations of gerrymandering”; Debra Altschiller of Stratham said the committee “must try hard to avoid gerrymandering and draw fair maps”; Steven Borne of Rye said the committee should “avoid the suspicion of gerrymandering and confirm a transparent process, which is what the citizens of NH want.” *Senate Special Committee on Redistricting*, NH General Court (last accessed Apr. 25, 2021), <http://gencourt.state.nh.us/Senate/committees/Redistricting/>.

³ A good “litmus test to determine whether the process was fair will be what they do with the two Congressional Districts. [...]. The population has not changed enough for any big changes to the Congressional Districts.” Chris Muns, Hampton, Rockingham County Input Session, October 5, 2021. David Andrews Of Chichester testified “that they try to keep the [congressional] districts as they are.” Merrimack County Community Input Session, September 14, 2021; Olivia Zink, of Franklin “added that the Congressional districts have pretty equal population and she would suggest keeping the existing maps.” *Id.*

listening tour also demonstrated that the legislature should adopt a congressional map that makes the least change possible.

Further, over seventy municipalities have passed fair redistricting warrant articles in 2020 and 2021, which specifically demand districts that ensure fair and effective representation and that are not gerrymandered to favor a political party.⁴ While these warrant articles are non-binding, they reflect the will of the people.

It is clear that New Hampshire residents want fair, equitable, non-partisan congressional maps. It is unfortunate that Republicans in the New Hampshire Legislature refused to listen to their constituents and instead put forth a gerrymandered map that Democrats - and Governor Sununu - could not support. Amici support Plaintiffs' attempt to resolve the impasse through the appointment of a special master to ensure Granite Staters receive the representation to which they are constitutionally entitled. Amici believe that the Court should adopt the minority map, which employs the "least change" methodology to keep our districts compact, competitive, and reflective of the communities they represent. This plan should be adopted prior to the June 1, 2022 commencement of the candidate filing period.

As Governor Sununu stated in his April 21, 2022 letter to the Members of the House Special Committee on Redistricting, "NH citizens have made it clear that they want a redistricting map that keeps our districts competitive and holds our incumbents accountable so that no one elected official is immune from challengers or constituent services." We agree.

⁴ See, e.g. Alstead [2021 Art. 20](#); Amherst [2021 Art. 34](#); Andover [2020 Art. 13](#); Atkinson [2021 Art. 21](#); Barrington [2020 Art. 22](#); Belmont [2021 Art. 26](#); Bethlehem [2021 Art. 25](#); Brookline [2021 Art. 21](#); Canterbury [2020 Art. 18](#); Chester [2021 Art. 29](#); Conway [2020 Art. 42](#); Cornish [2021 Art. 15](#); Deerfield [2021 Art. 7](#); Dunbarton [2020 Art. 21](#); Durham [2021 Resolution 21-01](#); Easton [2021 Art. 17](#); Effingham [2020 Art. 27](#); Epsom [2021 Art. 16](#); Exeter [2020 Art. 28](#); Franklin [2021 Resolution 15-21](#); Gilford [2021 Art. 30](#); Gilmanton [2021 Art. 18](#); Goffstown [2020 Art. 14](#); Grafton [2021 Art. 23](#); Hanover [2020 Art. 27](#); Hancock [2021 Art. 13](#); Henniker [2020 Art. 37](#); Hillsborough [2020 Art. 14](#); Hollis [2021 Art. 19](#); Hopkinton [2020 Art. 17](#); Littleton [2021 Art. 43](#); Loudon [2020 Art. 21](#); Lyman [2021 Art. 12](#); Madison [2021 Art. 23](#); Marlborough [2021 Art. 14](#); New Boston [2021 Art. 21](#); Nottingham [2020 Art. 18](#); Pembroke [2020 Art. 13](#); Rollinsford [2020 Art. 9](#); Roxbury [2021 Art. 20](#); Sanbornton [2021 Art. 11](#); Stratham [2020 Art. 20](#); Sugar Hill [2021 Art. 16](#); Tilton [2021 Art. 16](#); Weare [2021 Art. 25](#); Webster [2021 Art. 7](#); Windham [2021 Art. 19](#); Wolfeboro [2021 Art. 36](#). See also, Adam Drapcho, *Voters send clear message to Concord: No redistricting shenanigans*, Laconia Daily Sun (May 4, 2021), https://www.laconiadailysun.com/news/local/voters-send-clear-message-to-concord-no-redistricting-shenanigans/article_5fa3cd94-ad19-11eb-8a74-0b2d596c5b1d.html.

QUESTIONS PRESENTED

The Supreme Court of New Hampshire requested that interested parties file briefs answering the following questions:

1. **Would use of the existing congressional districts, *see* RSA 662:1, for the 2022 election be unconstitutional either as a violation of one person/one vote or as otherwise alleged in the complaint?**
2. **To determine the time frame for any judicial relief,**
 - A. What is the last date by which the court will have assurance that a congressional reapportionment plan will be validly enacted in time for the 2022 primary election for the purpose of nominating candidates for the United States House of Representatives? *See Below I*, 148 N.H. at 30 (reproducing court’s order dated May 17, 2002); *Burling*, 148 N.H. at 181 (reproducing court’s order dated May 17, 2002).
 - B. And, from the Secretary of State, what amount of time does he believe is required to prepare, print, and distribute ballots in advance of the primary election?
3. **If we conclude that use of the existing congressional districts for the 2022 election would be unconstitutional,**
 - A. Should we apply the “least change” approach to congressional redistricting in this case, as we did for state senate redistricting in *Below I*?
 - B. If “least change” is the correct approach, what measurement or factors should we use to assess “least change?” C. If “least change” is not the correct approach, what approach should we take for congressional redistricting in this case, and what measurement or factors should we use to assess that approach?
4. **Regarding the appointment of a special master,**

- A. Does the party, intervenor, or amicus object to the appointment of Professor Nathaniel Persily as special master? If so, what are the specific grounds for the objection?
- B. Does the party, intervenor, or amicus propose the appointment of someone else as special master? If so, who (name and contact information) should be appointed instead, and what are that person's qualifications to serve as special master?
- C. And, from the Secretary of State and any other interested party that is a State body or State official, is there a New Hampshire Maptitude license to make available for the special master to use for his or her work on this case, or, instead, might it be necessary for the special master to purchase a New Hampshire Maptitude license for this case if the special master does not already have one?

INTEREST OF THE AMICI CURIAE

Senator Donna Soucy is the Minority Leader of the New Hampshire Senate. Senator Soucy has served the residents of the 18th District since 2012. She is a former state representative, who has also served on the Manchester Board of Alderman and on the Manchester School Board

Representative David Cote is the Minority Leader of the New Hampshire House of Representatives. He has served the residents of Hillsborough County District 31 in the House of Representatives since 1982.

SUMMARY OF THE ARGUMENT

This brief addresses the relevant questions posed by the Court's April 11, 2022 Order. *First*, we argue that the existing congressional map is unconstitutional due to population shifts in the newly released decennial Census data. *Second*, we argue the Court should adopt a new congressional map no later than June 1, 2022, which commences the filing period for candidates to participate in the state primary election. *Third*, we advocate that the Court should

adopt a map based on the “least change” approach, which was used by the Minority in drafting its proposed map. *Fourth*, we support the appointment of Professor Nathaniel Persily as Special Master.

ARGUMENT

A. The Existing Congressional Map Unconstitutionally Violates the Fundamental Principle of “One Person, One Vote.”

New Hampshire’s existing congressional map is unconstitutional in violation of Part I, Articles 1, 10, 11, and 12 of the New Hampshire Constitution and Article I, Section 2 of the U.S. Constitution following the release of the 2020 Census data. “Existing apportionment schemes become instantly unconstitutional upon the release of new decennial Census data.” *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court). On August 12, 2021, the United States Census Bureau delivered 2020 Census data to New Hampshire allowing the state to commence its redistricting process, and in doing so, rendered the existing congressional map unconstitutional. Press Release, *2020 Census Statistics Highlight Local Population Changes and Nation’s Racial and Ethnic Diversity*, U.S. Census Bureau (Aug. 12, 2021), available at <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

The Census data confirmed that significant population shifts had occurred in New Hampshire since the last census in 2010. Under the latest Census estimates, the population of the First Congressional District is now 17,945 persons greater than the Second Congressional District. Given this, the current congressional maps violate the fundamental principle of “one person, one vote.” “The Equal Protection Clauses of the New Hampshire and Federal Constitutions demand no less than substantially equal state legislative representation for all citizens.” *Petition of Below I*, No. 2004-361 (N.H. 2004). Further, unlike with state legislative districts, with congressional redistricting, “absolute population equality [is] the paramount objective.” *Karcher v. Daggett*, 462 U.S. 725, 732-33, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983).

B. The Court Must Adopt a New Congressional Map Prior to June 1, 2022.

This court should move expeditiously to adopt a new congressional map to provide clarity to Granite Staters and potential candidates. Specifically, the Court should ensure a new congressional map has been adopted in advance of the commencement of the candidate filing for the state primary elections. This year, the filing period opens on June 1, 2022 and concludes on June 10, 2022. *See* RSA 655:14 (“...he or she shall file with the appropriate official between the first Wednesday in June and the Friday of the following week.”)

There is no realistic possibility that the legislature will validly enact a congressional redistricting plan in time for declarations of candidacy to be filed in accordance with RSA 655:14. After Governor Sununu promised to veto the Republican map proposed in HB 52, he proposed his own map. In a letter to Senate President Chuck Morse and House Speaker Sherman Packard, he proposed a map that he stated that he would be willing to sign into law because it “keeps our districts competitive, passes the smell test, and holds our incumbents accountable so that no one elected official is immune from challengers or constituent services.” This letter is attached as Exhibit A in the addendum to this memorandum. In a subsequent letter dated April 21, 2022, Governor Sununu conceded that his proposed map does not have the necessary support to advance through the committee. This letter is attached as Exhibit B in the addendum to this memorandum. No alternative maps remain on the table.

This Court should resolve this matter as soon as feasible. As of filing, New Hampshire is one of only two states (together with Missouri) which have thus far failed to adopt new congressional maps. *See What Redistricting Looks Like in Every State*, FiveThirtyEight (last updated April 21, 2022), available at <https://projects.fivethirtyeight.com/redistricting-2022-maps/>. Each day the Court delays in adopting a new map risks reducing the number of days a candidate has to decide to file for public office. While the Secretary of State maintains authority to change the filing period if a new map is not in place, this any such change risks

causing unnecessary confusion and burdens for candidates, voters, city and town clerks, moderators, volunteers, and other local election officials. *See* RSA 655:14-c.

C. The Court Should Apply the “Least Change” Approach to Congressional Redistricting.

The Special Master should adopt a congressional map in accordance with the “least change” methodology, which directs the map drawer to keep as many Granite Staters in their current district as possible. Adopting such a methodology in this matter would align with the approach adopted by this Court in previous redistricting cycles. Most notably, the Court used the “least change” methodology in resolving a dispute over the state house and senate maps after the 2000 Census. *Senator Below v. Gardner*, 148 N.H. 1, 4 (2002) (*Below I*).

In *Below I*, after the New Hampshire Senate and House of Representatives failed to pass new state legislative redistricting plans, Senate Democrats filed a similar petition for original jurisdiction in this Court, which was accepted. *Id.* at 4. There, the Court accepted the “unwelcome obligation” of drawing the legislative maps. We agree with this Court’s recognition in *Below I* that “[r]eapportionment is primarily a matter of legislative consideration and determination.” *Id.* at 5 (citing *Monier v. Gallen*, 122 N.H. 474, 476 (1982)). Yet, because the legislature has failed to adopt a congressional map, we believe the Court’s intervention here, as there, is necessary. *Id.*

In *Below I*, the “[C]ourt.. devised a redistricting plan consistent with neutral State and federal constitutional principles.” *Below I*, 148 N.H. at 13. The Court “determined that to remedy the population deviations in existing districts, it is preferable that the *core* of those districts be maintained, while contiguous populations are added or subtracted as necessary to correct the population deviations.” *Id.* In effect, the Court’s plan “imposed the least change for New Hampshire citizens.” *Id.* at 14.

The plan put forth by Democrats during the legislative session, introduced on March 16, 2022 as Amendment 2022-1136s, observed the “least change” principle. A copy of the amendment is attached as Exhibit C in the addendum to

this memorandum. A draft of the proposed map and a list of the towns and cities in each district are attached as Exhibit D in the addendum to this memorandum.

The map, which leaves existing political units intact, accomplishes population equality by moving only one town. By moving Hampstead from the First Congressional District into the Second Congressional District, Democrats were able to devise a map which only changes the district of 8,998 New Hampshire residents, or 0.65% of all Granite Staters. This small change would ensure New Hampshire's two congressional districts are as equal as practicable - 688,739 residents in District 1 and 688,790 residents in District 2, a deviation of +/- 0.0037%.

This methodology stands in stark contrast to the methodology adopted by Republicans in HB 52, which is rooted in cementing "calculated partisan political outcomes" that this Court expressed its distaste for in *Below I*. The map put forth by Democrats demonstrated that New Hampshire can achieve the fair, equitable, and non-partisan maps sought by residents, while providing minimal disruption for voters. The Court should adopt the "least change" methodology.

D. There is No Reasonable Alternative Methodology to the "Least Change" Methodology.

Amici believe that the only reasonable methodology to be used is "least change." We take no position on an alternative methodology.

E. Amici Do Not Oppose the Appointment of Professor Nathaniel Persily as Special Master.

Professor Nathaniel Persily is a well-respected expert on redistricting. He has decades of experience working on redistricting issues on both state legislative and federal congressional maps and has advised on other related issues including independent commissions. He is the author of "When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans," an essay which presents guidelines for courts that undertake to draw their own redistricting plans.

Persily has worked as a special master or court-appointed expert in at least six (6) states (Connecticut, Georgia, Maryland, New York, North Carolina, Pennsylvania). Specifically, Persily served as special master on congressional redistricting plans in Connecticut and New York. He is eminently qualified to serve as the special master in this matter and amici believe he will deliver fair congressional maps for the people of New Hampshire.

CONCLUSION

For these reasons, the court should 1) declare the existing congressional map unconstitutional; 2) grant the Special Master until June 1, 2022 to draw a new congressional map; 3) apply the “least change” approach to draft a new congressional map in this case as it did for senate redistricting in *Below I*; and 4) appoint Professor Nathaniel Persily as Special Master.

Dated: April 25, 2022

Respectfully submitted,

Senator Donna Soucy
Representative David Cote
By and through their attorney(s):

/s/ James J. Armillay, Jr.
James J. Armillay, Jr., Esq. #271651
S. Amy Spencer, Esq. #266617
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CERTIFICATE OF COMPLIANCE

I hereby certify that this memorandum of law complies with New Hampshire Supreme Court Rule 16(11) and Rule 22(2). It contains 3,044 words, therefore complying with the 4,000-word limit for memorandum of law.

/s/ James J. Armillay, Jr.
James J. Armillay, Jr. #271651

CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 25th day of April, 2022 through the electronic-filing system on all counsel of record.

/s/ James J. Armillay, Jr.
James J. Armillay, Jr. #271651

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2022-0184

Theresa Norelli, et. al v. Secretary of State

**MOTION FOR LEAVE TO FILE AN AMICUS BRIEF ON BEHALF OF
STATE SENATE MINORITY LEADER SENATOR DONNA SOUCY AND
STATE HOUSE MINORITY LEADER REPRESENTATIVE DAVID
COTE**

Pursuant to Supreme Court Rule 30(1), State Senate Minority Leader Senator Donna Soucy and State House Minority Leader Representative David Cote move to file an amicus brief. Our brief is attached and filed contemporaneously with this motion. The Plaintiffs and Defendants [assent to/take no position on] the filing of this amicus brief.

WHEREFORE, Amici respectfully request this Honorable Court:

- (a) Accept the brief of undersigned Amici Curiae; and
- (b) Grant any other relief deemed just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 25th day of April, 2022 through the electronic-filing system on all counsel of record.

/s/ James Armillay

James Armillay, Esq. (NH Bar #271651)

Shaheen & Gordon, P.A.

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Saspencer@shaheengordon.com

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ADDENDUM

EXHIBIT A



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

March 22, 2022

The Honorable Chuck Morse
President
New Hampshire Senate
State House, Room 302
107 North Main Street
Concord, NH 03301

The Honorable Sherman Packard
Speaker
New Hampshire House of Representatives
State House, Room 311
107 North Main Street
Concord, NH 03301

Dear President Morse and Speaker Packard,

I appreciate your willingness to meet this morning, where we discussed the ongoing redistricting process.

Attached to this letter you will find a draft Congressional redistricting map that I would sign should it reach my desk. This is certainly not the only solution, but hopefully will be helpful. It keeps our districts competitive, passes the smell test, and holds our incumbents accountable so that no one elected official is immune from challengers or constituent services.

There is still enough time in this process to deliver a map for our citizens that gets the job done, and I hope you will continue to work to get something done through the legislative process that meets the expectations of our citizens. They are counting on us to get this right.

Sincerely,

Christopher T. Sununu
Governor

Governor Proposal

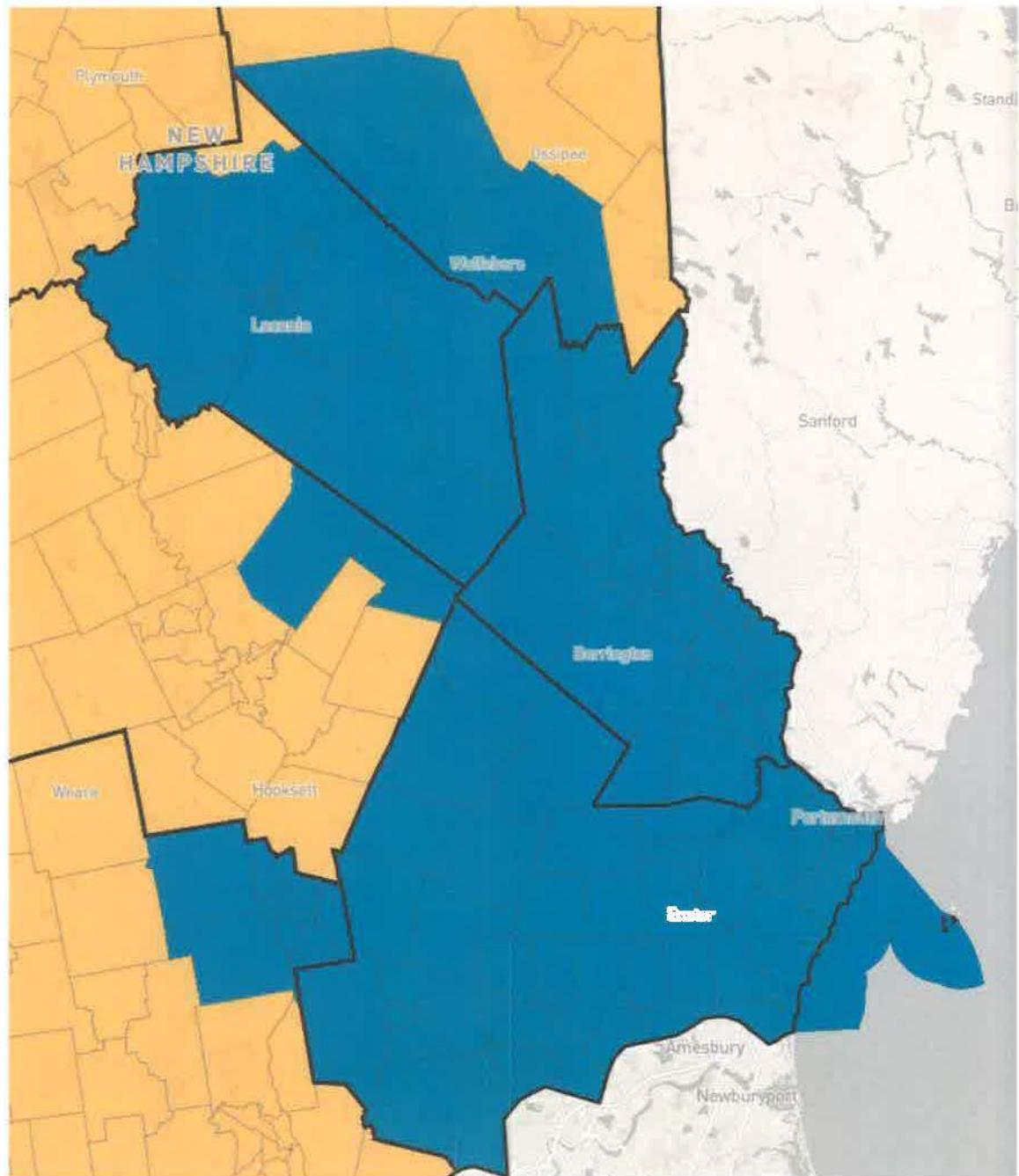


EXHIBIT B

April 21, 2022

Dear Members of the House Special Committee on Redistricting,

I would like to thank the members of the committee for their time and dedication to the redistricting process and for holding a committee hearing on amendment #2022-1523h to Senate Bill 200.

My office has been in communication with members of the committee to gather their thoughts on the proposed amendment. Based on those conversations, it is clear this amendment "as is" does not have the support of the majority of the committee members. One of the common concerns raised during these conversations was the deviation in population between the two districts proposed in the amendment. I appreciate the concerns that have been raised and believe this could be easily addressed by moving one or two towns.

The amendment is one of many potential solutions, and I am supportive of amendments that would look to further reduce population deviations to address the concerns of committee members. There are many avenues this committee can consider, and I look forward to seeing what other opportunities this committee brings to the table that can pass. NH citizens have made it clear that they want a redistricting map that keeps our districts competitive and holds our incumbents accountable so that no one elected official is immune from challengers or constituent services.

Sincerely,



Christopher T. Sununu

EXHIBIT C

Sen. Soucy, Dist 18
Sen. Perkins Kwoka, Dist 21
March 16, 2022
2022-1136s
10/05

Floor Amendment to HB 52

1 Amend RSA 662:1 as inserted by section 1 of the bill by replacing it with the following:

2
3 662:1 U.S. Representative Districts. The state is divided into 2 districts for the choosing of
4 representatives in the congress of the United States. Each district may elect one representative. The
5 districts shall be constituted as follows:

6 I. The first district is constituted of:

7 (a) The counties of:

8 (1) Carroll, and

9 (2) Strafford; and

10 (b) In the county of Belknap, the towns and city of:

11 (1) Alton,

12 (2) Barnstead,

13 (3) Belmont,

14 (4) Gilford,

15 (5) Gilmanton,

16 (6) Laconia,

17 (7) Meredith,

18 (8) New Hampton,

19 (9) Sanbornton, and

20 (10) Tilton; and

21 (c) In the county of Grafton, the town of:

22 (1) Campton; and

23 (d) In the county of Hillsborough, the towns and city of:

24 (1) Bedford,

25 (2) Goffstown,

26 (3) Manchester, and

27 (4) Merrimack; and

28 (e) In the county of Merrimack, the town of:

29 (1) Hooksett; and

30 (f) In the county of Rockingham, the towns and city of:

31 (1) Auburn,

Floor Amendment to HB 52
- Page 2 -

- 1 (2) Brentwood,
- 2 (3) Candia,
- 3 (4) Chester,
- 4 (5) Danville,
- 5 (6) Derry,
- 6 (7) East Kingston,
- 7 (8) Epping,
- 8 (9) Exeter,
- 9 (10) Fremont,
- 10 (11) Greenland,
- 11 (12) Hampton,
- 12 (13) Hampton Falls,
- 13 (14) Kensington,
- 14 (15) Kingston,
- 15 (16) Londonderry,
- 16 (17) New Castle,
- 17 (18) Newfields,
- 18 (19) Newington,
- 19 (20) Newmarket,
- 20 (21) Newton,
- 21 (22) North Hampton,
- 22 (23) Nottingham,
- 23 (24) Plaistow,
- 24 (25) Portsmouth,
- 25 (26) Raymond,
- 26 (27) Rye,
- 27 (28) Sandown,
- 28 (29) Seabrook,
- 29 (30) South Hampton, and
- 30 (31) Stratham.

31 II. The second district is constituted of:

- 32 (a) The counties of:
- 33 (1) Cheshire,
- 34 (2) Coos, and
- 35 (3) Sullivan; and
- 36 (b) In the county of Belknap, the town of:
- 37 (1) Center Harbor; and

Floor Amendment to HB 52
- Page 3 -

(c) In the county of Grafton, the towns, city, and unincorporated place of:

- (1) Alexandria,
- (2) Ashland,
- (3) Bath,
- (4) Benton,
- (5) Bethlehem,
- (6) Bridgewater,
- (7) Bristol,
- (8) Canaan,
- (9) Dorchester,
- (10) Easton,
- (11) Ellsworth,
- (12) Enfield,
- (13) Franconia,
- (14) Grafton,
- (15) Groton,
- (16) Hanover,
- (17) Haverhill,
- (18) Hebron,
- (19) Holderness,
- (20) Landaff,
- (21) Lebanon,
- (22) Lincoln,
- (23) Lisbon,
- (24) Littleton,
- (25) Livermore,
- (26) Lyman,
- (27) Lyme,
- (28) Monroe,
- (29) Orange,
- (30) Orford,
- (31) Piermont,
- (32) Plymouth,
- (33) Rumney,
- (34) Sugar Hill,
- (35) Thornton,
- (36) Warren,

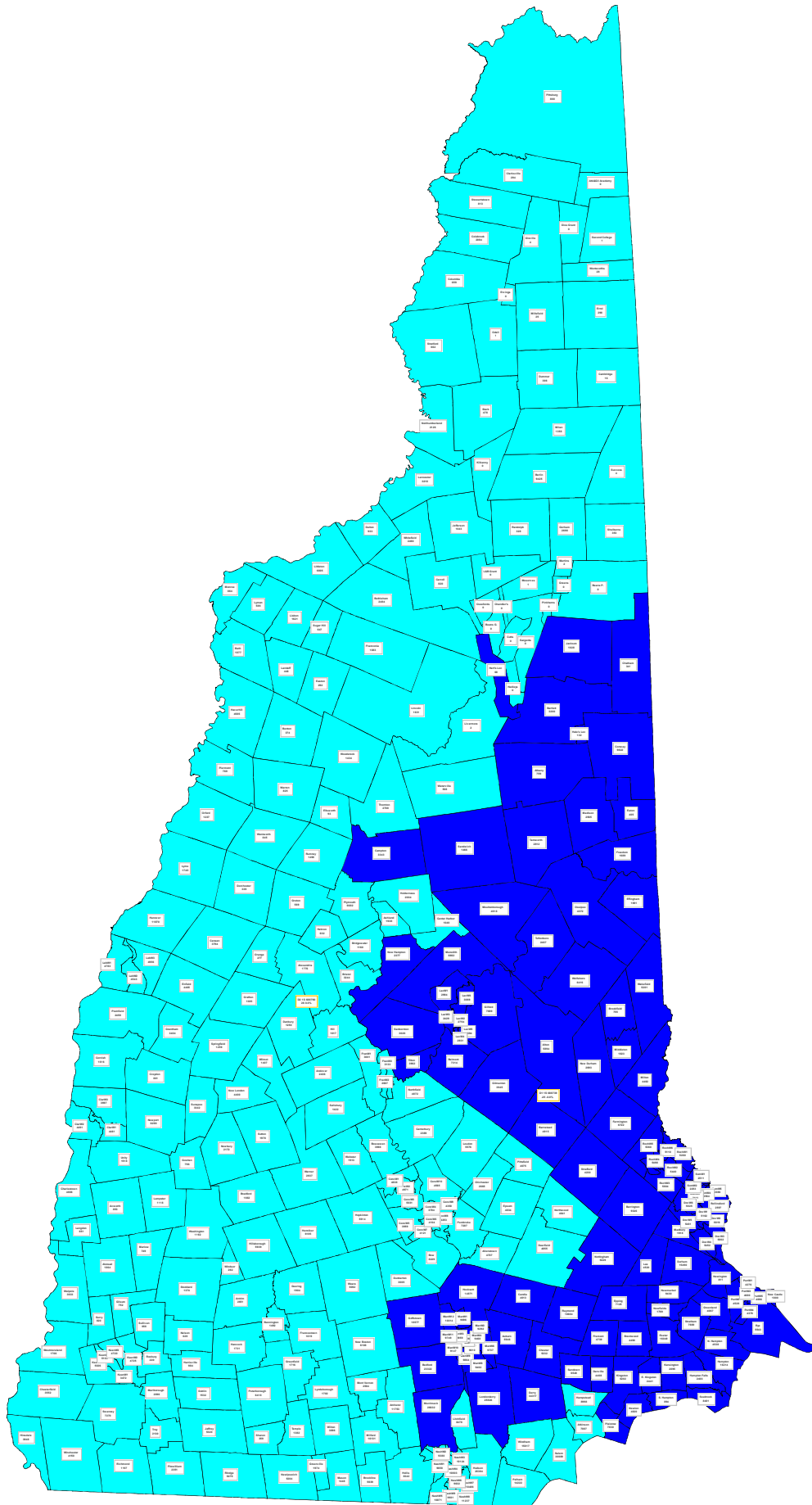
Floor Amendment to HB 52
- Page 4 -

- 1 (37) Waterville Valley,
2 (38) Wentworth, and
3 (39) Woodstock; and
4 (d) In the county of Hillsborough, the towns and city of:
5 (1) Amherst,
6 (2) Antrim,
7 (3) Bennington,
8 (4) Brookline,
9 (5) Deering,
10 (6) Frankestown,
11 (7) Greenfield,
12 (8) Greenville,
13 (9) Hancock,
14 (10) Hillsborough,
15 (11) Hollis,
16 (12) Hudson,
17 (13) Litchfield,
18 (14) Lyndeborough,
19 (15) Mason,
20 (16) Milford,
21 (17) Mont Vernon,
22 (18) Nashua,
23 (19) New Boston,
24 (20) New Ipswich,
25 (21) Pelham,
26 (22) Peterborough,
27 (23) Sharon,
28 (24) Temple,
29 (25) Weare,
30 (26) Wilton, and
31 (27) Windsor; and
32 (e) In the county of Merrimack, the towns and cities of:
33 (1) Allenstown,
34 (2) Andover,
35 (3) Boscawen,
36 (4) Bow,
37 (5) Bradford,

Floor Amendment to HB 52
- Page 5 -

- 1 (6) Canterbury,
- 2 (7) Chichester,
- 3 (8) Concord,
- 4 (9) Danbury,
- 5 (10) Dunbarton,
- 6 (11) Epsom,
- 7 (12) Franklin,
- 8 (13) Henniker,
- 9 (14) Hill,
- 10 (15) Hopkinton,
- 11 (16) Loudon,
- 12 (17) Newbury,
- 13 (18) New London,
- 14 (19) Northfield,
- 15 (20) Pembroke,
- 16 (21) Pittsfield,
- 17 (22) Salisbury,
- 18 (23) Sutton,
- 19 (24) Warner,
- 20 (25) Webster, and
- 21 (26) Wilmot; and
- 22 (f) In the county of Rockingham, the towns of:
- 23 (1) Atkinson,
- 24 (2) Deerfield,
- 25 (3) Hampstead,
- 26 (4) Northwood,
- 27 (5) Salem; and
- 28 (6) Windham.

EXHIBIT D



Whole state
Minority

Congressional Redistricting

WHOLE_STATE

Towns	Dist#	Seats	Deviation
-------	-------	-------	-----------

Albany			
Alton			
Auburn			
Barnstead			
Barrington			
Bartlett			
Bedford			
Belmont			
Brentwood			
Brookfield			
Campton			
Candia			
Chatham			
Chester			
Conway			
Danville			
Derry			
DovW1			
DovW2			
DovW3			
DovW4			
DovW5			
DovW6			
Durham			
E. Kingston			
Eaton			
Effingham			
Epping			
Exeter			
Farmington			
Freedom			
Fremont			
Gilford			
Gilmanton			

Goffstown
Greenland
Hale's Loc
Hampton
Hampton Falls
Hart's Loc
Hooksett
Jackson
Kensington
Kingston
LacW1
LacW2
LacW3
LacW4
LacW5
LacW6
Lee
Londonderry
Madbury
Madison
ManW1
ManW2
ManW3
ManW4
ManW5
ManW6
ManW7
ManW8
ManW9
ManW10
ManW11
ManW12
Meredith
Merrimack
Middleton
Milton
Moultonborough
New Castle
New Durham
New Hampton

Newfields			
Newington			
Newmarket			
Newton			
N. Hampton			
Nottingham			
Ossipee			
Plaistow			
PortW1			
PortW2			
PortW3			
PortW4			
PortW5			
Raymond			
RochW1			
RochW2			
RochW3			
RochW4			
RochW5			
RochW6			
Rollinsford			
Rye			
Sanbornton			
Sandown			
Sandwich			
Seabrook			
SomW1			
SomW2			
SomW3			
SomW4			
SomW5			
S. Hampton			
Strafford			
Stratham			
Tamworth			
Tilton			
Tuftsboro			
Wakefield			
Wolfeboro	1	1	-0.0%

Acworth
Alexandria
Allentown
Alstead
Amherst
Andover
Antrim
Ashland
Atkinson
Atk&Gil Academy
Bath
Beans G.
Beans P.
Bennington
Benton
Berlin
Bethlehem
Boscawen
Bow
Bradford
Bridgewater
Bristol
Brookline
Cambridge
Canaan
Canterbury
Carroll
Center Harbor
Chandler's
Charlestown
Chesterfield
Chichester
ClarW1
ClarW2
ClarW3
Clarksville
Colebrook
Columbia
ConcW1
ConcW2

ConcW3
ConcW4
ConcW5
ConcW6
ConcW7
ConcW8
ConcW9
ConcW10
Cornish
Crawfords
Croydon
Cutts
Dalton
Danbury
Deerfield
Deering
Dixs Grant
Dixville
Dorchester
Dublin
Dummer
Dunbarton
Easton
Ellsworth
Enfield
Epsom
Errol
Erving
Fitzwilliam
Fracestown
Franconia
FranW1
FranW2
FranW3
Gilsum
Gorham
Goshen
Grafton
Grantham
Greenfield

Greens
Greenville
Groton
Hadleys
Hampstead
Hancock
Hanover
Harrisville
Haverhill
Hebron
Henniker
Hill
Hillsborough
Hinsdale
Holderness
Hollis
Hopkinton
Hudson
Jaffrey
Jefferson
KeenW1
KeenW2
KeenW3
KeenW4
KeenW5
Kilkenny
Lancaster
Landaff
Langdon
LebW1
LebW2
LebW3
Lempster
Lincoln
Lisbon
Litchfield
Littleton
Livermore
Loudon
L&B Grant

Lyman
Lyme
Lyndeborough
Marlborough
Marlow
Martins
Mason
Milan
Milford
Millsfield
Monroe
Mont Vernon
NashW1
NashW2
NashW3
NashW4
NashW5
NashW6
NashW7
NashW8
NashW9
Nelson
New Boston
New Ipswich
New London
Newbury
Newport
Northfield
Northumberland
Northwood
Odell
Orange
Orford
Pelham
Pembroke
Peterborough
Piermont
Pinkhams
Pittsburg
Pittsfield

Plainfield
Plymouth
Randolph
Richmond
Rindge
Roxbury
Rumney
Salem
Salisbury
Sargents
Second College
Sharon
Shelburne
Springfield
Stark
Stewartstown
Stoddard
Stratford
Success
Sugar Hill
Sullivan
Sunapee
Surry
Sutton
Swanzey
Temple
Thornton
Meserves
Troy
Unity
Walpole
Warner
Warren
Washington
Waterville
Weare
Webster
Wentworth
Wentworths
Westmoreland

Whitefield			
Wilmot			
Wilton			
Winchester			
Windham			
Windsor			
Woodstock	2	1	0.0%

Total seats = 2

Deviation Range is -0.0% to 0.0%
or 0.0% overall

State Total Seats = 2

State Deviation Range is -0.0% to 0.0% or 0.0% overall

Appendix E

Plaintiffs' Reply Brief

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2022-0184

Theresa Norelli & *a.*

Plaintiffs,

v.

Secretary of State & *a.*

Defendants.

**PLAINTIFFS' RESPONSE TO OTHER PARTIES' PROPOSED
CONGRESSIONAL DISTRICTING PLANS**

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Aaron M. Mukerjee, *pro hac vice*
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10 G Street NE, Suite 600
Washington, DC 20002

INTRODUCTION

On May 12, 2022, this Court issued an opinion holding: (1) the statute currently delineating New Hampshire's congressional districts, RSA 662:1 (2016), violates Article I, Section 2 of the United States Constitution, and (2) "upon a demonstrated legislative impasse, this court must establish a new district plan" using a "'least change' approach." *Norelli v. Sec'y of State*, No. 2022-0184 (N.H. May 4, 2022), slip. op. ("May 12 Op.") at 2. With that opinion, the Court issued an order (the "May 12 Order") appointing a special master and setting forth six criteria he should use to develop a proposed remedial plan: (1) population equality as required by Article I, Section 2 of the United States Constitution; (2) compliance with the Voting Rights Act ("VRA") and other federal law; (3) contiguity; (4) core retention; (5) preservation of town, ward, and unincorporated-place lines; and (6) avoidance of political considerations. May 12 Order at 1–2.

The Court's order noted that the New Hampshire Senate Minority Leader and the New Hampshire House of Representatives (the "Minority Leaders") had submitted a proposed plan in their merits briefing, and it invited other interested parties to do the same. *Id.* at 2. The Court has since received three additional proposed plans: one from the Plaintiffs, and two from the Speaker of the New Hampshire House of Representatives and President of the New Hampshire Senate (the "Majority Leaders").

Thus, the Court currently has four proposed plans before it: the Minority Leaders' Plan, the Plaintiffs' Plan, the Majority Leaders' Plan 1, and the Majority Leaders' Plan 2.

ARGUMENT

Of the four submitted plans, three satisfy the criteria set forth in the Court’s May 12 Order (the Minority Leaders’ Plan, the Plaintiffs’ Plan, and Majority Leaders’ Plan 2), while one (the Majority Leaders’ Plan 1) does not. Plaintiffs therefore urge the Court not to adopt the Majority Leaders’ Plan 1 as its remedial plan in this case.

As an initial matter, all four of the proposed plans sufficiently comply with the Court’s criteria relating to population equality; compliance with federal law (including the VRA); contiguity; and preservation of town, ward, and unincorporated-place lines. However, with respect to core retention—the most important indicator of compliance with the court’s least-change approach—the Majority Leaders’ Plan 1 stands out as a clear, unacceptable outlier.

Plan	Total Population Deviation	Persons Moved	Core Retention	Towns, Wards, and Unincorporated Places Moved
Minority Leaders’ Plan	51	8,998	99.35%	1
Plaintiffs’ Plan	1	13,373	99.03%	4
Majority Leaders’ Plan 1	1	366,063	73.43%	75
Majority Leaders’ Plan 2	9	8,968	99.35%	6

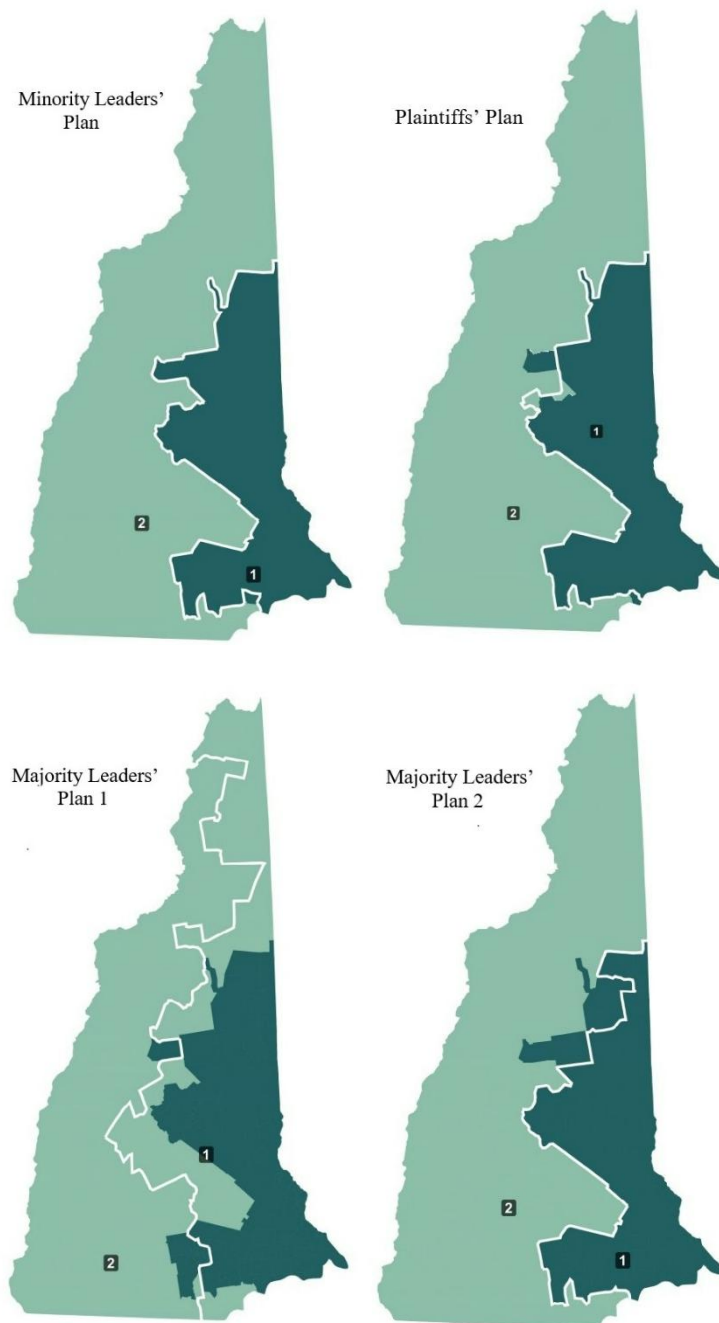
In no sense can the Majority Leaders’ Plan 1 be described as a “least-change”

approach to remedying the malapportionment between the state's current congressional districts. The current districts differ in population by 17,945 persons. May 12 Op. at 4. As a result, District Two needs to gain just 8,972 people to equalize the districts' populations. Nonetheless, the Majority Leaders' Plan 1 proposes to move 366,063 people—a quarter of the state's population and more than *27 times* the number of people that Plaintiffs' plan (which also achieves one-person deviation) moves. This proposal defies the Court's intent to devise a remedial plan by, using the current plan as the “benchmark,” “add[ing] or subtract[ing]” “contiguous populations” as “necessary to correct the population deviations” while keeping each districts' constituents “the same” “to the greatest extent practicable.” May 12 Op. at 14.

As the other three proposed plans make clear, there are several ways to reduce the deviation between the current districts while keeping far more people in the same district than the Majority Leaders' Plan 1 does. Contrary to the Majority Leaders' assertion that “the easiest way to achieve very low population equality is to divide up northern Coös County,” Submission of Speaker of the House and Senate President Pursuant to Order of May 12, 2022, at 5, Plaintiffs have demonstrated it is possible to achieve one-person deviation by moving less than one percent of the population and just four towns. Plaintiffs' plan does so without dividing the North Country at all, a result that the Majority Leaders themselves argue is worth pursuing. *Id.*

Also, unlike the other three proposed plans, the Majority Leaders' Plan 1 would dramatically alter the basic shapes of the state's congressional districts, resulting in a map that no New Hampshire voter would recognize. As the table above indicates, the Majority

Leaders' Plan 1 proposes to move 75 political subdivisions, while the other three proposed plans move at most six. The figures below, which overlay the proposed plans (represented by white lines) on top of the current districts, demonstrate how drastic this change would be.



The unwarranted changes proposed by the Majority Leaders' Plan 1 would also dramatically alter the historical nature of the state's congressional districts. For decades, New Hampshire's districts have each covered largely the same area. The First District has long contained Manchester, the Seacoast, and Belknap, Carroll, and Strafford Counties, while the Second District has long contained the North Country, the western half of the state, and Nashua. Despite claiming to follow a "least-change" approach, the Majority Leaders' Plan 1 would upend these historical lines by dividing the North Country and putting Manchester and Nashua in the same district.

The Majority Leaders' Plan 1 exemplifies how proper application of the least-change approach minimizes the risk that political considerations make their way into the adoption of the remedial plan. The more people the Court moves from one district to another, the more options there are as to who goes where. By choosing the Majority Leaders' Plan 1, the Court would be inviting political considerations that "have no place in a court-ordered remedial [redistricting] plan." May 12 Op. at 14 (quoting *Below v. Sec'y of State*, 148 N.H. 1, 11 (2002)). The Court need not do so here because the other three proposed plans show that it is possible to achieve population equality while moving far fewer people.

CONCLUSION

The Majority Leaders' Plan 1 is inconsistent with the Court's chosen criteria for modifying the existing congressional plan. As a result, it should not be adopted. By contrast, the other three proposed plans demonstrate slightly different ways the Court could properly balance its criteria and would each be an appropriate remedial plan in this case.

Dated: May 18, 2022

Respectfully Submitted,

THERESA NORELLI, CHRISTINE
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Appendix F

Transcript of Special Master Hearing

STATE OF NEW HAMPSHIRE

SUPREME COURT

THERESA NORELLI & a.,) Supreme Court Case No.
) 2022-0184
 Plaintiffs,)
 vs.) Superior Court Case No.
) 226-2022-CV-0126
 SECRETARY OF STATE & a.,)
) Concord, New Hampshire
) May 19, 2022
 Defendants.) 1:01 p.m.
)
)

SPECIAL MASTER HEARING
 BEFORE THE HONORABLE NATHANIEL PERSILY
 SPECIAL MASTER

APPEARANCES:

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Audio Operator: Electronically Recorded
 by Claire Mackinaw

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1 (Proceedings commence at 1:01 p.m.)

2 THE BAILIFF: Please rise for Special Master
3 Nathaniel Persily.

4 SPECIAL MASTER: Good afternoon.

5 MR. DEVANEY: Good afternoon.

6 MR. LEHMANN: Good afternoon.

7 MS. NORELLI: Good afternoon.

8 THE CLERK: This is case, Theresa Norelli, et al v.
9 Secretary of State, et al.

10 SPECIAL MASTER: Welcome everybody. I'm Nate
11 Persily. I'm a law professor at Stanford, but I appear here
12 in my individual capacity. I was appointed, pursuant to the
13 Order of the Supreme Court on May 12th to serve as Special
14 Master in this case, which concerns the redistricting of New
15 Hampshire's Congressional Districts.

16 The order from the Supreme Court on May 12th has
17 ordered me to conduct this hearing today, as well as to draw
18 or decide upon a Redistricting Plan, according to the
19 following criteria; specifically, to read from the Order, it
20 says that "The Special Master shall use the 2020 Federal
21 Census Data and shall modify the existing Congressional
22 Districts, only to the extent required to comply with the
23 following criteria and least changed standards.

24 "Districts shall be as equal in population as
25 practical, in accordance with the Constitution. The



1 Redistricting Plan shall comply with the Voting Rights Act of
2 1965, and any other applicable Federal law. Districts shall
3 be made of contiguous territory. To the greatest extent
4 practical, each district shall contain, roughly, the same
5 constituents as it does under the current Congressional
6 District statute, such that the core of each district is
7 maintained with contiguous populations added or subtracted as
8 necessary to correct the population deviations.

9 "The Plan shall not divide towns, city, wards, or
10 unincorporated places, unless they have previously requested
11 by referendum to be divided, or unless the division is
12 necessary to achieve compliance with the population equality
13 required by the U.S. Constitution. And the Special Master
14 shall not consider political data or partisan factors such as
15 party registrations, statistics, prior election results, or
16 future election prospects."

17 We've received three submissions, totaling four
18 Plans in this case, as I understand it. One from the
19 Plaintiffs, one from the Minority Leaders in the Legislature,
20 and two from the Senate President and House Speaker. I
21 understand that the advocates have either had a coin flip or
22 agreed on the sequence of speakers today, and each will have
23 15 minutes, and then 5 minutes for rebuttal.

24 And so I understand, I think, here we have John
25 Devaney for the Plaintiffs and Richard Lehmann for the Senate

1 President. Do we have representatives from the Secretary of
2 State and the State of New Hampshire here as well, or?

3 MR. MATTESON: Yes, Myles Matteson.

4 SPECIAL MASTER: Okay. And Myles Matteson from the
5 Secretary of State's Office. So why don't we start with Mr.
6 Devaney, and then followed by Mr. Lehmann. I may ask you
7 questions or I may just hear what you have to say here.

8 MR. DEVANEY: Good afternoon, Professor. John
9 Devaney for the Plaintiffs. I was going to walk through the
10 criteria you just articulated, so I will skip through that and
11 just go straight to the Plans. As you indicated, we have four
12 Plans before us. A Plan from the Minority Leaders, the
13 Plaintiffs' Plan, which we are sponsoring, and the Majority
14 Leaders, two Plans, Plans I and Plan II. The good news,
15 Professor, is that of these four Plans, three meet the Court's
16 criteria that you articulated a few minutes ago, and adoption
17 of any of those three would result in a Constitutional Voting
18 Plan that would protect the voting power of New Hampshire
19 citizens.

20 One of the maps, which is Majority Leaders Plan I,
21 clearly violates the Court's order for reasons I'll expand
22 upon, and the criteria the Court set forth. It would be
23 unlawful and would compromise the voting power of New
24 Hampshire citizens.

25 Turning, first then to the three lawful maps, and

1 just giving some highlights on those maps. I'll start, not
2 surprising, with our map, the Plaintiffs' (audio interference)
3 map. And it's lawful, complies with all the criteria that the
4 Court has established. First, it has almost perfect
5 population equality with only a one person, unavoidable,
6 deviation because that's how the math works. It has a core
7 retention score of 99.03 percent, and moves only a little more
8 than 13,000 people. It moves only four towns and it was
9 prepared without any consideration of the political
10 performance of the districts.

11 Would it be better if I put this back on? There we
12 go. Maybe that will stop the echo.

13 And in addition, our Plan divides no towns, wards,
14 municipalities, or unincorporated places, and it does well in
15 compactness as well. It's essentially identical to the
16 existing Plan with a slightly better Pulse v. Popper
17 (phonetic) score in District 1 than in the existing Plan. So
18 now, as far as we endorse our Plan, we crafted it to ensure
19 compliance with the Court's criteria and we think it does, in
20 fact, complies strictly with the criteria. It truly follows
21 the least change approach that's been commanded.

22 Turning then to the Minority Leaders' Plan. It
23 moves fewer people in towns than our map, but has higher
24 population deviation. The population deviation is plus 51 in
25 New Hampshire District 2. It has a good core retention score

1 of 99.35 percent, moves just under 9,000 people, and moves
2 only one town, Hampstead. It goes from District 1 to District
3 2 and it has no divisions of political boundaries. So again,
4 it's also a very acceptable, lawful, constitutional map that
5 complies with the Court's criteria. The only important
6 difference, potentially, is the population deviation is
7 different from ours.

8 And then of course, the Majority Leaders' Plan II,
9 we were happy to see, is another from Majority that also is
10 acceptable. It's a lawful, constitutional map. It moves
11 fewer people than the Plaintiffs' and the Minority Leaders'
12 Plans. It moves more towns than the Minority Leaders' Plan,
13 but it has higher population deviation than, at least, our
14 Plan with a deviation point, I think, it's plus nine in New
15 Hampshire District 1. It moves just under 9,000 people. A
16 good core retention score of 99.35 percent. And it moves six
17 towns in New Hampshire District 2. It also has no divisions
18 of local subdivisions.

19 Which takes me to the map that causes us significant
20 concern, and that is Majority Leader Plan II. It's a clear
21 outlier, with respect to comparison to the other three, and
22 particularly with respect to core retention, which is the most
23 important criteria when one thinks about a least change
24 approach. Core retention, case law across the country and
25 courts across the country applying least change have really

1 focused on that factor, as I'm sure you are aware.

2 The current districts differ in population by just
3 under 18,000 people, which means that New Hampshire District 2
4 needs to gain 8,972 people to equalize the district's
5 populations. But nonetheless, puzzlingly, the Majority
6 Leaders Plan I proposes to move about 366,000 people, which is
7 a quarter of the state's population, and more than 27 times
8 the number of people that our plan moves. Clearly, this
9 proposal conflicts with the Court's intent to devise our veto
10 Plan, by using the current Plan as the benchmark and keep each
11 district's constituents the same "to the greatest extent
12 practical".

13 We have provided, in the brief we submitted, visuals
14 that just show how different the outlines and boundaries of
15 this Plan II are from the current map. And just that visual
16 alone, I think, establishes that it doesn't comply with the
17 least change mandate from the Court.

18 And the other problem with the low core retention
19 and moving 360,000 people or so is, it allows political
20 factors and political performance to come into play because,
21 obviously, when you're moving that many people around, you can
22 effect political performance of the districts, which is,
23 again, something that the Court proscribed. And as shown in
24 the other maps, there are multiple ways to reduce the
25 deviation between the districts while keeping far more people

1 in the same district, and not violating the Court's mandate
2 that constituents remain the same as much as possible in
3 crafting the new map in accounting for this population
4 deviation that needs to be addressed.

5 All three maps that I've described show there's no
6 need to divide the north country at all, which Plan II of the
7 Majority does. I'm sorry. I said Plan II, I meant Plan I.
8 And the Plan I, also, just dramatically changes the shapes of
9 the districts. So it would move 75 political subdivisions,
10 while the other Plans move 6 at most. And it would also
11 dramatically change the historical nature of the State's
12 Congressional Districts.

13 For example, as I said, it would divide the north
14 country, it would put Manchester and Nashua in the same
15 district. Something that, to my knowledge, has not been done
16 before. And last, as I said before, moving so many people
17 deviating so much from the least change approach just brings
18 in inevitable risk of political manipulation, which this Court
19 has said is not proper.

20 So in conclusion, Professor, any of the three maps I
21 described at the start of my presentation are acceptable to
22 us. We think all would be lawful. All would protect the
23 voting power of citizens throughout New Hampshire. And for
24 the reasons I have described, Plan I is an outlier, and would
25 plainly be unconstitutional and inconsistent with the Court's

1 order. Thank you.

2 SPECIAL MASTER: Mr. Lehmann.

3 MR. LEHMANN: Thank you. Good afternoon, Professor.
4 My name's Richard Lehmann. I am a lawyer at Lehmann Major
5 List, right here in Concord, and I also am the legal counsel
6 to the State Senate here representing Senate President today.

7 From the Senate President's perspective, the best
8 Plan is one that's not before the Court right now, and I'm
9 happy to tell you where it is. It's a bill called SB 200.
10 It's been through the committee of conference process, so I
11 can report that all members of the House and Senate committees
12 of conference have signed off on it. It'll be voted on by the
13 full bodies a week from today.

14 After that, the process followed here in New
15 Hampshire is that the bill has to be enrolled, signed by the
16 presiding officers, the President and the Speaker. It's then
17 sent to the Secretary of State's Office and Secretary of State
18 presents it to the Governor. The Governor, upon
19 presentation -- which doesn't necessarily have to happen the
20 26th or the 27th; there's no mandated time line for that to
21 happen --constitutionally, in part to Article 44, the Governor
22 has five days to act on it, Saturdays and Sundays excluded,
23 from the date of presentation.

24 I can report to you, the deviation of SB 200 is 53
25 people. I can't report to you whether the bodies are going to

1 pass it. That's for them to decide a week from today. But it
2 is the Senate President's very strong view that that is the
3 best Plan that anybody's considering right now, in part,
4 because it's being considered by the branch that's appropriate
5 to consider it in the first instance.

6 I also, on his behalf, would like to express a
7 concern about the way it appears this process could play out.
8 In our very carefully thought-out constitutional balance of
9 powers, the Legislature passes bills, and then the Governor
10 either vetoes what the Legislature has provided, lets it
11 become law without a signature, or signs it in for law. We
12 don't have line-item veto or any of those sort of halfway in
13 between procedures in this state.

14 If the Court -- upon your recommendation -- or if
15 they don't approve your recommendation -- whatever they do,
16 releases an order stating what the Court's map would be,
17 before the Governor's time to act on a legislative Plan
18 expires, it'll upset the balance of powers between the three
19 branches, because the Governor will then be sitting looking at
20 something that passed the Legislature, or something that will
21 become law, if he chooses to veto it, effectively, giving the
22 Governor a choice of two Plans, instead of the choice of the
23 legislative Plan or an unknown resolution by the Court.

24 So from the President's perspective, maintaining the
25 legislative process as the primary manner in which

1 redistricting occurs is the singularly, first, most important
2 thing about this whole exercise. So I just --

3 SPECIAL MASTER: Can I just ask on that? Because
4 that I was going to ask you later on, what in this process can
5 I do to expedite that process, the constitutional process? It
6 doesn't sound like there's really anything in my power to do
7 that. I mean, there have been times when I've been Special
8 Master where we try to get the parties together, try to
9 mediate -- that's obviously a different situation than what
10 we're working with -- but there's a very specific order to me
11 about the dates when I have to have this Plan done by, or
12 accepted. And so I don't know, is there anything on my end of
13 the process that can facilitate this?

14 MR. LEHMANN: I don't think there's anything that
15 you can do to facilitate the legislative process from
16 happening, except, potentially, recommend to the Court that it
17 hold back on issuing an order to the public until the
18 legislative process has played itself out. The Secretary of
19 State in our state has the authority to push back the
20 legislation period --

21 SPECIAL MASTER: Filing deadlines, yeah.

22 MR. LEHMANN: -- and filing date, so hopefully -- I
23 don't know if it will come to that, but on Thursday we'll know
24 if there's a Plan going to the Governor's desk; Thursday the
25 26th, a week from today.

1 SPECIAL MASTER: Okay.

2 MR. LEHMANN: Concerning the Plans that have been
3 submitted for your consideration, Professor, I would agree
4 with some of what my colleague has indicated. I would say
5 that I don't believe that there is a constitutional core
6 retention standard. I know that the Court issued an order
7 stating that that is a criteria. Interestingly, the least
8 change language is not contained in the -- it's not clear to
9 what degree your recommendation is supposed to balance
10 population equality with maintaining the least change value.

11 And we submit that underscores the reason that the
12 legislative Plan is the most important Plan in this
13 proceeding. It's simply that the Legislature can make that
14 balance without it coming in the way of its doing its proper
15 constitutional duties. Because it's an inherently political
16 decision and it involves balancing competing interests, which
17 is what Legislatures do best.

18 That said, there is an additional Plan. When we
19 made our submissions, we had no idea what the other side's
20 submissions were going to look like, of course. And having
21 seen the submissions and going through the process a little
22 bit, went back to the drawing board and came up with a -- and
23 I would point out, you, of course, have the authority to
24 create your own map based on whatever you think is best, based
25 on what you learn or what you bring to the table yourself.

1 It's possible to have a one-person deviation map with a lower
2 than 13,373 persons moved score. And the way you would do it
3 is to move out of District 1 and into District 2, the
4 following towns: Campton, Sandwich, Tamworth, Bartlett, Hales
5 Location and Hart's Location. And out of 2 and into 1, Center
6 Harbor, Bean's Purchase, Shelburne, Cambridge, Dummer, Errol,
7 Wentworth, Odell, and Martin's Location. The deviation is
8 one, and by my calculation, the number of people moved is
9 13,069.

10 Now, as I stated in the pleadings we filed together,
11 the way you do that is to go up to the north country where we
12 have these various small towns. Some of which, one town has
13 one person, and another has two people. That's how you get
14 down to the low numbers, consistently. And whether or not
15 achieving population equality by driving contiguity up through
16 those small towns is, absolutely, a policy call, but it's a
17 policy call that underscores the tension between the least
18 change and the population equality values that are at play
19 here.

20 So I'm not suggesting one Plan or another, of the
21 ones we've submitted, whether it's better to have a deviation
22 of nine or whether it's better to have a deviation of one, or
23 whether it's worth adding those other towns and subtracting
24 towns. I would submit, probably, our Plan II balances those
25 the best, but again, that is a call, and from where we sit

1 simply underscores the fact that it really is best to leave it
2 to the Legislature, if at all possible. And for that reason,
3 we ask you to -- again, going back to my very first
4 argument -- continue to hold off and give the Legislature
5 every chance to put something in front of the Governor, and
6 give the Governor his authority to act on it within his
7 appropriate sphere as well.

8 The last comment I have, really, is to say I agree
9 with my friends at the ACLU, that the raw number of people
10 moved from one district to another is the way to measure least
11 change. It didn't sound like our friends on the other side
12 were disagreeing with that, but they do make some arguments
13 that, I think, really ask you to engage in the kind of
14 balancing that I think our Supreme Court is trying to avoid in
15 its order to you to make this decision.

16 So they talk about the basic shape of the district
17 or whether the New Hampshire voter would recognize the map as
18 it's drawn or the historical nature of the State's
19 Congressional Districts. Those factors aren't part of your
20 charge here. The Court didn't say to consider those and our
21 suggestion is that those are things you really shouldn't be
22 thinking about. The Court asked you to do it by criteria that
23 were sort of binary. Either the Plan violated the Voting
24 Rights Act or it didn't. The Plan is contiguous or it isn't.

25 Neither of us have a complaint about each other's

1 Plans, in those regards, and then from where I sit, it comes
2 to a simple factor of least change balanced against population
3 equality. And we would suggest that our Plan II, with the
4 nine deviation, is probably the best, but if you really want
5 to do the fully objective measure, the thing I just described
6 to you that could be your idea, would have a deviation of one
7 and the least people moved overall, and if it's really a
8 purely objective test, then that's the best one that I've
9 heard about. There may be others; I don't know what's
10 possible to hook that's better, but you never know what you
11 don't know. And I think that's all I have to say.

12 SPECIAL MASTER: The Plan that you're articulating,
13 that's a one-person deviation is different than the one you
14 submitted though?

15 MR. LEHMANN: It is. It does a couple different
16 things. It starts with the Plan II, and it does a couple of
17 different things to drive the deviation from nine down to one,
18 and it results in moving about 3,000 more people -- a little
19 over 4,000 more people to drive a deviation from nine to one.

20 SPECIAL MASTER: Right. Right. And it moves fewer
21 people than the Plaintiffs' submission?

22 MR. LEHMANN: It moves fewer Plaintiffs (sic) than
23 the Plaintiffs' Plan that goes to deviation of one by about
24 300.

25 SPECIAL MASTER: Okay. All right. I just want to

1 make sure. I mean, I haven't seen the Plan, so it's a little
2 hard to evaluate it.

3 MR. LEHMANN: Well, I mean, I can submit it to you
4 as an after-hearing memo, or show it recorded and it's easy
5 enough to draw it up --

6 SPECIAL MASTER: Okay.

7 MR. LEHMANN: -- from the existing Plan. It's not a
8 lot moving either way. It must be, frankly, from your
9 perspective, sort of an interesting exercise to look at this
10 situation where you're literally drawing one line instead
11 of --

12 SPECIAL MASTER: Yeah.

13 MR. LEHMANN: -- all over the map they way these
14 things usually go.

15 SPECIAL MASTER: Indeed.

16 Mr. Devaney.

17 MR. DEVANEY: Thank you. A few comments in
18 response. First, on the last point about a map that we
19 haven't seen. The Court established a procedure for
20 submitting maps. There is a deadline. I can't remember off
21 the top of my head what the deadline was, but it has past, and
22 to hear for the first time, now, that there is a new map out
23 there that we've never seen, and just to have an oral
24 description of it is not consistent with due process. It's
25 not consistent with the Court's procedures and that should not

1 be considered.

2 With respect to the suggestion that, somehow, the
3 view, I guess, should give the Legislature deference, and
4 allow the process to play out. There are a few points I'd
5 like to make in response to that. First of all, Missouri,
6 yesterday, I think, passed its congressional map, which means
7 New Hampshire is the only state left in the country that does
8 not have a congressional map. So here we are.

9 And the Court, in its order, this Court, was very
10 careful to respect the Legislature's role in redistricting.
11 It allowed the Legislature time to pass a map and
12 appropriately -- particularly given that New Hampshire is the
13 last state in country to have a map -- set a deadline. If the
14 Governor doesn't have a map by the end of this month, then
15 we're going to have a map that's ready to go to protect the
16 people of New Hampshire, and that's the Court's obligation
17 under the Grove decision from the U.S. Supreme Court and that
18 whole line of authority.

19 And so this argument that somehow the separation of
20 powers is being violated just doesn't hold any water, and the
21 Supreme Court has already addressed that. And as I said, has
22 given appropriate deference to the Legislature by allowing
23 them time to get a map together, get it passed, if they can,
24 and if they can't, for the Court to step in, for you to step
25 in, and play the role that has been established by the U.S.

1 Supreme Court in Grove and to protect the voting power of New
2 Hampshire citizens.

3 With respect to the Plan that my colleague noted, SB
4 200, which is, I guess, in before the Legislature now. We
5 don't have a full understanding of that Plan, but we do know a
6 few things about it that suggests it's quite similar to Plan I
7 that is before you. For example, I know it puts Manchester
8 and Nashua together, in the same district, which means that
9 it's moving people, significantly, and therefore, it cannot
10 have a good core retention score. It also cannot do a good
11 job of keeping constituents with their current Congress people
12 in their current districts.

13 Our understanding is, it creates, from a political
14 perspective, one safe Democratic seat and one safe Republican
15 seat, and in doing so violates the criteria of this Court as
16 established, which is do not take into consideration the
17 political performance of a district. So to the extent that
18 the Legislature is asking for consideration of that map in
19 this proceeding -- and they haven't submitted it, so I guess
20 in fairness, it's not before you -- but I think it's
21 appropriate to respond that there's some serious concerns with
22 that map's compliance or noncompliance with the criteria that
23 this Court has established.

24 Let's see, I had one or two other points. Counsel
25 said that we made the argument about the shape of the

1 districts and that that's not part of the criteria that should
2 be considered. Obviously, the reason we're pointing out the
3 shape is indicative, strongly, of noncompliance of Plan I with
4 the least change approach. When the boundaries of the
5 district have changed so dramatically, one, obviously, can
6 infer from that that people have been moved, and that towns
7 and cities have been put into new districts. And that's our
8 only point with that graphic, is to show, this is for the
9 demonstration of the fact that this map does not follow least
10 change approach. And that's the only reason we put in that
11 graphic, so that you could see it visually. And that visual
12 look is supported by the data and including the low core
13 retention score, and the fact that so many people are moved
14 under Plan I. So that's why we put that in there.

15 In conclusion, I was happy to hear my colleague say
16 that Plan II, in their perspective, does the best job of
17 balancing the various factors that are before you. Perhaps we
18 have some agreement, or close to something of an agreement,
19 and as I said in my opening, either Plan II, our Plan, or the
20 Minority Plan are acceptable, and I think that we've got a
21 pretty clear path forward here. So thank you.

22 MR. LEHMANN: Yes. Couple things. First, in terms
23 of New Hampshire being the last state to have a Congressional
24 Redistricting Plan done, I would say we are also the state
25 with the latest primary in the country, as I understand it.

1 So I don't actually think we're that far behind most of our
2 sister states, simply because if you measure from the date of
3 the primary backwards, we're right in the ballpark where, I
4 think, everybody was.

5 I guess, and I would point out in the Below case,
6 the 2002 Senate redistricting case from 20 years ago, in that
7 case, the Court didn't exercise jurisdiction until the -- or
8 final jurisdiction, anyway, until the Legislature had
9 adjourned without having adopted a Plan. We're far from that
10 right now. We've still got a Plan in the hopper. It's still
11 in the process.

12 What that Plan looks like or what it does, I would
13 respectfully submit, is none of the business of the Court at
14 this time, other than the fact that it exists. It's primary.
15 It exists and it's in the proper venue. That's it's primary
16 benefit, and it's the most important benefit. To the extent
17 that something that is under legislative consideration right
18 now doesn't line up with the criteria that the Court set for a
19 Court-Drawn Plan, I think, is -- well, it's irrelevant,
20 they're two different things.

21 Criteria for a Court-Drawn Plan are one thing. I
22 don't take anything that the Court said about the criteria it
23 would use to draw congressional districts to in any way
24 control, or purport to control, or attempt to influence in any
25 way what the Legislature's going to choose to do. And if it

1 comes before the Court to review something passed by the
2 Legislature and signed by the Governor, we will address the
3 criteria by which that gets done at another time. I would
4 submit that nothing that the Court has had to say about
5 criteria in this matter, in the Norelli case, as it now
6 stands, has anything to do with the review of the
7 legislatively inactive Plan.

8 So other than that, I don't believe I have anything
9 else to add.

10 SPECIAL MASTER: Let me ask you one other question,
11 which is, just on this -- as I understand the argument from
12 the separation of powers standpoint, you're saying that the
13 court shouldn't release anything because then somehow it
14 interrupts the bargain, so then it distorts the balance
15 between the Legislature and the Governor; is that --

16 MR. LEHMANN: Correct.

17 SPECIAL MASTER: -- the basic argument?

18 MR. LEHMANN: Yes.

19 SPECIAL MASTER: Because another option; if the
20 Governor is eventually going to veto it, right, part of what
21 sometimes happens in these cases is that you have the Court
22 Plan is the default, so that then the parties can,
23 essentially, negotiate around it, so that it can actually
24 facilitate -- so it can remove some of the uncertainty as to
25 what would be the eventual Plan that would go into effect,

1 absent agreement between the Governor and the Legislature.

2 MR. LEHMANN: That won't work in this case because
3 the Legislature will be done. The last day for the
4 Legislature to act, pursuant to its own rules without
5 suspending those rules by 2/3, two from majority vote, is next
6 Thursday, the 26th. So the Court Plan won't be released until
7 after the Legislature's gone home.

8 SPECIAL MASTER: Right.

9 MR. LEHMANN: So it won't be a situation where
10 there's legislative ability to engage in that kind of
11 negotiation.

12 SPECIAL MASTER: So is it your argument that, then,
13 the Court wait until the Governor vetoes this Plan? If the
14 Governor were to veto it?

15 MR. LEHMANN: Wait until the Governor takes action
16 on it, yes.

17 SPECIAL MASTER: Okay. Thank you. Is there
18 anything else?

19 MR. DEVANEY: The only point I would make is that,
20 obviously, you're under a directive from this Court to issue a
21 map, I think, by May 27th. And so while I hear my colleague's
22 arguments about timing and allowing the process to play out,
23 before us today is, we all have to deal with the fact that we
24 have a court order that requires issuance of a map on May
25 27th.

1 SPECIAL MASTER: Yeah.

2 MR. DEVANEY: So I just want to state the obvious.

3 SPECIAL MASTER: And I will follow the Court's order
4 to issue -- and interestingly, the Court phrased it as not
5 before, nor after, May 27th, which is an interesting way to
6 phrase. So I've got my directions on it. Yeah.

7 MR. LIST: Sean List on behalf of the Speaker of the
8 House. I'm not presenting oral argument, just in terms of the
9 time line. So the Court's order from May 12th states that the
10 Special Master shall prepare and issue to the Court no earlier
11 than May 27th. As far as how it works in New Hampshire,
12 constitutionally, if the bill passes the Legislature, when
13 it's presented to the Governor, the Governor has five days to
14 act. So when we're talking about holding off until the
15 Governor takes action, assuming the bill can be enrolled and
16 presented in an expedited fashion, we're talking about holding
17 off for less than a week. Thank you.

18 SPECIAL MASTER: Great.

19 MR. DEVANEY: I'm sorry.

20 SPECIAL MASTER: Sure.

21 MR. DEVANEY: Playing ping pong here.

22 SPECIAL MASTER: Well, literally, I am under a court
23 order.

24 MR. DEVANEY: Yeah.

25 SPECIAL MASTER: So I'm going to release a Plan on

1 May 27th, since that's what you've brought me here to do.

2 Then there are arguments that can be made to the Court as to
3 what it should do with it, and whether it should have -- as
4 sometimes happens with courts -- they may decide to give an
5 extension for -- give another bite of the apple to the
6 Legislature or to the Governor, but I will follow the Court's
7 order, both as to procedure and to the substance of the map.

8 Yes.

9 MR. MATTESON: Myles Matteson for the Secretary of
10 State.

11 UNIDENTIFIED SPEAKER: Can you move closer?

12 SPECIAL MASTER: Yeah. Go to the microphone. I do
13 feel like I'm running one of my law-school seminars at this
14 point, but yeah.

15 MR. MATTESON: Just referring to this Court's
16 orders. You had mentioned a not after --

17 SPECIAL MASTER: Right.

18 MR. MATTESON: -- May 27th. I don't believe that
19 that's the language in the orders, as issued. It appears,
20 looking at the May 5th order, and then the May 12th, that the
21 Congressional Redistricting Plan from the Special Master, on
22 or before -- or congressional action would be on or before May
23 26th, and then the report shall not be issued earlier than May
24 27th, but leaves open the possibility of issuing a report
25 later than that.

1 SPECIAL MASTER: I'm pretty sure that I've seen an
2 order that tells me that, but I'll review that and make sure
3 that's correct.

4 All right. Well, thank you very much. I will, as I
5 said, abide by the Court order. Thank you for your excellent
6 arguments today and for all of your submissions. I will,
7 obviously, analyze all of them. I've looked at all of the
8 maps that have presented thus far, and so I have not made a
9 decision as to which map I will choose or whether I'll draw my
10 own, but you'll have an answer within a week.

11 (Proceedings concluded at 1:36 p.m.)
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CERTIFICATE

I, Harold Ferguson, a court-approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

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May 20, 2022