

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

MILES BROWN, ET AL

v.

SECRETARY OF STATE

DOCKET NO. 2022-0629

Rule 7 Mandatory Appeal
From Hillsborough Superior Court Southern Division
Docket No. 226-2022-CV-00181

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION
AND AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE**

Gilles R. Bissonnette
(N.H. Bar. No. 265393)
Henry R. Klementowicz
(N.H. Bar No. 21177)
AMERICAN CIVIL LIBERTIES UNION
OF NEW HAMPSHIRE FOUNDATION
18 Low Avenue
Concord, NH 03301
Tel. 603.224.5591
gilles@aclu-nh.org
henry@aclu-nh.org

Julie A. Ebenstein*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Voting Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Tel. 212.549.2500
jebenstein@aclu.org

* - *pro hac vice* application filed
contemporaneously

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QUESTIONS PRESENTED

1. Plaintiffs allege that the 2022 State Senate districting plan and the 2022 Executive Council districting plan are partisan gerrymanders because they were designed to, and do, unfairly and unequally benefit Republican voters and candidates. Are Plaintiffs' claims of unconstitutional partisan gerrymanders non-justiciable political questions?

2. Does the New Hampshire Constitution prohibit partisan gerrymandering?

STATEMENT OF INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. Since its founding in 1920, the ACLU has frequently appeared before courts throughout the country in cases involving the exercise of voting rights, both as direct counsel and as *amicus curiae*.

The American Civil Liberties Union of New Hampshire ("ACLU-NH") is the New Hampshire affiliate of the ACLU and has more than nine thousand members and supporters across the state. ACLU-NH engages in litigation, by direct representation and as *amicus curiae*, to encourage the protection of individual rights guaranteed under state and federal law, including voting rights. *See Casey v. Secretary of State*, 173 N.H. 266 (2020) (challenge to law requiring voters to get driver's licenses); *Saucedo v. Gardner*, 335 F.Supp.3d 202 (D.N.H. 2018) (challenge to signature comparing for absentee ballots); *Libertarian Party of New Hampshire v. Gardner*, 843 F.3d 20 (1st Cir. 2016) (challenge to ballot access

requirements); *Rideout v. Gardner*, 838 F.3d 65 (1st Cir. 2016) (challenge to ban on ballot selfies); *Guare v. State*, 167 N.H. 658 (2015) (challenge to confusing registration forms); *Norelli v. Secretary of State*, 175 N.H. 186 (2022) (challenge to failure of political branches to redistrict congressional plan, as *amicus*). ACLU-NH believes that its experience in these issues will make its brief of service to this Court.

STATEMENT OF FACTS AND OF THE CASE

Following the 2020 decennial census, *see* U.S. CONST. Art. 1, Sec. 2, cl. 3, New Hampshire, like all states, began the redistricting process. Because New Hampshire’s population grew unevenly, the General Court was tasked with drawing new electoral districts for the United States House of Representatives, the Executive Council, the New Hampshire Senate, and the New Hampshire House of Representatives. Ultimately, the political branches were unable to agree on a plan for the U.S. House, and this Court was called upon to design the new plan. *See generally Norelli v. Secretary of State*, 175 N.H. 186 (2022). They did, however, enact new plans for the state bodies.

On May 6, 2022, twelve registered voters filed this case challenging Senate Bill 240 (the 2022 State Senate Plan) and Senate Bill 241 (the 2022 Executive Council Plan) as unconstitutional partisan gerrymanders that “were enacted to entrench Republican Party control over New Hampshire’s Senate and Executive Council regardless of the wishes of the electorate.” Compl., ¶ 3, Add. 31.¹ According to the Complaint, the General Court did

¹ Refences to the record are as follows:
Add. __ refers to the addendum to this brief.

this by “packing” and “cracking”; i.e. by combining Democratic voters into a small number of districts where they would easily win, and dispersing the rest of the Democratic voters into a larger number of districts such that they would have little or no ability to influence elections. Compl., ¶ 4, Add. 31. Together, these techniques would lead to Democrats “wasting” comparatively more votes than Republicans by winning fewer districts but by larger margins. Plaintiffs’ legal theory is that by drawing the districts in a way to entrench Republican control in Concord regardless of the will of the electorate, the State has violated the Free and Equal Elections Clause, as well as guarantees of equal protection and free speech and association, of the New Hampshire Constitution. Plaintiffs alleged that Republican candidates were favored to win a majority of seats on the basis of districting even if they won fewer votes. *See* Compl. ¶¶ 75, 87, Add. 52, 55-56.

ACLU-NH hired an independent company, FLO Analytics, to conduct a non-partisan analysis of the state senate plan, and FLO released its report on January 31, 2022. *See* Add. 68. The plan increased the number of Republican leaning districts in the Senate from 11 to 13 and moved the median seat further from the state median. Add 69. The entire report concerning the Senate is appended to this brief. *See id.* ACLU-NH also hired FLO Analytics to analyze the Executive Council plan that was ultimately adopted, and that analysis was released on April 14, 2022. That report is appended to this brief. *See* Add. 105. Significantly, the report found that (1) Democratic voters are heavily concentrated within a single district, District 2; (2) that the boundary of District 2 bypasses nearby wards in favor of more distant wards, resulting in a high concentration of

Democratic voters in that district, and (3) that the boundary of District 1 bypasses nearby wards in favor of more distant wards, reducing the number of Democratic voters in District 3. *Id.* As a result, the map “establishes districts that are likely to reduce the ability of Democratic leaning voters to elect their favored candidates in Districts 1, 3, 4, and 5, while heavily concentrating democratic voters in District 2.” Add. 107. The report continued, “The line drawing process appears to have prioritized partisan leanings over other redistricting criteria (e.g. following established boundaries, creating compact districts).” *Id.*

On May 9, 2022—one business day after Governor Sununu signed Senate Bill 240 and Senate Bill 241—the Plaintiffs moved for a preliminary injunction, asking the trial court to enjoin the Secretary from conducting the 2022 elections using the challenged plan. However, the trial court did not act on the motion before the candidate filing period ran between June 1 and June 10. Instead, the trial court certified to this Court three questions: whether the New Hampshire Constitution prohibits drawing districts in a manner that heavily favors one political party over another, whether political gerrymandering claims are justiciable in New Hampshire courts, and what framework should a court use in evaluating such claims. This Court declined to accept the interlocutory transfer. The trial court subsequently granted a motion to dismiss on October 5, 2022, and the Plaintiffs timely appealed.

While the appeal was pending, the plaintiffs’ predictions about the effects of the challenged plans largely came to pass, as in each body Republican candidates won more seats, despite Democratic candidates receiving more votes overall. According to the Secretary of State’s office,

in the November 8, 2022 General Election, Republican candidates for Executive Council received 301,723 votes statewide. *See* Add. 110-118. Democratic candidates for Executive Council received 303,233 votes. *Id.* However, Republican candidates won 4 out of the five seats. In races for State Senate, Republican candidates received 293,299 votes statewide. Add. 119-134. Democratic candidates received 299,382 votes. *Id.* Yet, Republican candidates won 14 of the 24 seats. *Id.*²

SUMMARY OF ARGUMENT

This is a challenge to the egregious partisan gerrymander the General Court created when it drew new apportionment plans for the Executive Council and State Senate. Through the districting process, the General Court created maps designed to systematically benefit Republican candidates and voters over Democratic candidates and voters in those two bodies. The plaintiffs allege that this benefiting Republican voters over Democratic voters violates the guarantee that elections are to be free and fair under Part I, Article 11 of the New Hampshire Constitution.

² These figures are based on returns following the recount in Senate District 24. In addition, there was one seat for each party which was not contested in the General Election.

The trial court granted Defendants' Motion to Dismiss, and in doing so erred in two ways. *First*, the trial court erred by ruling that the plaintiffs' claims present non-justiciable political questions. The trial court's opinion cited *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019) for the proposition that partisan gerrymandering claims are not justiciable in state courts when, in fact, *Rucho* suggests the opposite. Moreover, the trial court erred by concluding that the mere fact that the New Hampshire Constitution contains several explicit districting requirements prohibits adjudication of the rights contained in Part I, Article 11. This Court's precedents demonstrate that this case *is* justiciable because the courts of this state can (and indeed, must) adjudicate matters of constitutional or other fundamental rights. This is true whether those constitutional rights are implicit or explicit.

Second, the trial court erred when it failed to recognize that the New Hampshire Constitution prohibits partisan gerrymandering. Courts in six states have adjudicated partisan gerrymandering claims and held that district maps violate their state constitutions (including in three states—North Carolina, Pennsylvania, and Maryland—with constitutional provisions that do not explicitly address partisan gerrymandering). Like courts in those states have done, this Court should recognize that partisan gerrymanders like the ones here unfairly take political power away from the electorate and hand it instead to the politicians that draw the district lines.

To be clear, this Court need not conclude in this case that partisan gerrymandering occurred (though it did). It need only conclude that a claim exists to vindicate an important constitutional right that, absent judicial review, can become a dead letter. The decision of the trial court to grant Defendants' Motion to dismiss should be reversed, and the case should be remanded.

ARGUMENT

The plaintiffs brought this challenge in response to the legislature's carving up the state to ensure Republican dominance in the Senate and Executive Council regardless of the wishes of the broader electorate. The districts were drawn in a way that ensures Republican candidates disproportionately win more seats per vote received than Democratic candidates, and thus to entrench Republican control in Concord. For example, Republican candidates for Executive Council and Senate won fewer votes than Democratic candidates for the same offices in the 2022 General Election, yet Republicans won 4 of 5 seats on the Council and 14 of 24 seats in the Senate. The drawing of the districts disproportionately favors Republican voters over Democratic voters, thus violating the New Hampshire Constitution's guarantee that "[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election." N.H. CONST. Pt. I, Art. 11.

The trial court did not recognize that the New Hampshire constitution's guarantee of free and equal elections bars excessive partisan gerrymandering, and as a result it ruled that such a challenge is a non-justiciable political question. This was error.

I. The Trial Court Erred in Holding Plaintiffs' Challenge Were Non-Justiciable

On October 5, 2022, the trial court (Colburn, J.) granted the Defendants' joint motion to dismiss because it concluded that the plaintiffs' challenge to the constitutionality of excessive political gerrymandering present non-justiciable political questions. The trial court's ruling was incorrect because the courts of this state are empowered (and, indeed, required) to address unconstitutional actions by other branches of government and, as discussed *infra* at Section II, the New Hampshire Constitution prohibits partisan gerrymandering.

A. Supreme Court of the United States Precedent Supports a Finding of Justiciability

The trial court suggests it followed the U.S. Supreme Court decision in *Rucho v. Common Cause* by finding petitioners' partisan gerrymandering claims non-justiciable. 139 S. Ct. 2484 (2019). Quite the opposite. The trial court's decision to dismiss petitioners' claims for lack of jurisdiction abrogates *Rucho*'s assurance that state courts will play an important role in limiting political gerrymandering.

Rucho reiterated that gerrymandering is "incompatible with democratic principles," *id.* at 2506 (citing *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015)), and recognized that "excessive partisanship in districting leads to results that reasonably seem unjust," *id.* at 2507. The Court in *Rucho* was clear that the fact that federal courts "have no license" to adjudicate partisan gerrymandering claims did not "condemn complaints about districting to

echo into a void,” *Rucho*, 139 S. Ct. at 2507, because state courts retain the power to apply “standards and guidance” arising from “state statutes and state constitutions” to check partisan gerrymandering, *id.* Far from excluding partisan gerrymandering claims from all judicial review, the Court invited state courts to apply state constitutional law to adjudicate them. *Id.* By dismissing petitioners’ claims, the superior court has now put partisan gerrymandering in New Hampshire beyond review by *any* court.

In describing why *Rucho* does not “condemn complaints about districting to echo in the void,” *id.* at 2507, the Court provides a broad range of examples of states addressing partisan gerrymandering. The Court does not limit its discussion to states that have “outright prohibited partisan favoritism in redistricting,” such as Florida, Ohio, and New York. It *also* recognizes states thwart partisan gerrymandering by other means, such as mandating traditional districting criteria, *id.* at 2507-08 (“Other States have mandated at least some of the traditional districting criteria for their mapmakers.”), and as we have seen since *Rucho*, by state courts interpreting and applying broader guarantees of fairness in elections in their state constitutions. Rather than serve *Rucho*’s expectation that voters will have a state forum for these claims, the trial court limits New Hampshire courts’ jurisdiction over redistricting to challenges based in “the mandatory, express requirements of [Part II,] Article 26 and Article 65.” *Order on Defendants’ Joint Motion to Dismiss*, p. 6.

B. New Hampshire Law Shows This Case is Justiciable

“The justiciability doctrine prevents judicial violation of the separation of powers by limiting judicial review of certain matters that lie

within the province of the other two branches of government.” *Hughes v. Speaker, N.H. House of Representatives*, 152 N.H. 276, 283 (2005).

“Deciding whether a matter has in any measure been committed by the Constitution to another branch of government is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the [State] Constitution.” *Id.* Whether a particular case is nonjusticiable is “a question of law, which [this Court] review[s] *de novo*.” *Id.*

To determine whether a particular controversy is non-justiciable, this Court conducts a two-step inquiry. First, the Court must determine whether the constitution had committed the question to another branch of government. “A controversy is nonjusticiable – *i.e.*, involves a political question—where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department.” *Burt v. Speaker of the House of Representatives*, 173 N.H. 522, 525 (2020) (quotation omitted). “Where there is such a commitment, [the Court] must decline to adjudicate the matter to avoid encroaching upon the powers and functions of a coordinate political branch.” *Hughes*, 152 N.H. at 283.

However, this Court’s “conclusion that the constitution commits to the legislature [such] exclusive authority ... does not end the inquiry into justiciability.” *Horton v. McLaughlin*, 149 N.H. 141, 145 (2003). As a second step, this Court must evaluate whether controversy implicates the constitution. *See id.* (“The court system [remains] available for adjudication of issues of constitutional or other fundamental rights.”). As this Court has explained, “While it is appropriate to give due deference to a co-equal branch of government as long as it is functioning within constitutional

constraints, it would be a serious dereliction on our part to deliberately ignore a clear constitutional violation.” *Burt*, 173 N.H. at 526 quoting *Baines v. N.H. Senate President*, 152 N.H. 124, 129 (2005).

In *Hughes*, the Court considered a challenge brought by a Representative against the chamber leaders and members of the House and Senate conference committees. 152 N.H. at 279. The plaintiff alleged that the defendants violated the open meeting law, RSA ch. 91-A, and Part I, Article 8 of the New Hampshire Constitution by secretly negotiating a committee of conference report out of sight of the public. *Id.* at 282. Considering first the statutory challenge, the Court observed that “the New Hampshire Constitution commits to each house of the legislature the authority to adopt its own rules of proceedings and as there is no constitutional mandate that committee of conference proceedings be open, the question of whether the defendants violated the procedures set forth in RSA chapter 91-A is nonjusticiable.” *Id.* at 287.

But while the Court found the plaintiff’s Right-to-Know challenge was not justiciable, it reached the opposite conclusion with respect to the Part I, Article 8 challenge. It noted that “claims regarding compliance with these kinds of mandatory constitutional provisions are justiciable.” *Id.* at 288 (quotation omitted). It observed that “[w]hile the constitution vests the legislature with the authority to create its own rules of procedure, no provision of the constitution commits to the legislature the determination of whether the public’s right of access to governmental proceedings has been unreasonably restricted.” *Id.* In other words, while the General Court is constitutionally empowered to set its own rules governing committees of conference, whether those rules comply with the Constitution’s guarantee

of open government is subject to judicial review. The same is true here. The legislature is directed by the Constitution to create electoral districts, but it *does not* provide that those districts escape all judicial review.

Similarly, in *Burt*, this Court considered a challenge brought by five Representatives to a rule passed by the New Hampshire House of Representatives which, with limited exceptions, prohibited the carrying or possession of any deadly weapon in Representatives Hall. 173 N.H. at 522. This Court began its analysis by noting that Part II, Article 22 provided that the House of Representatives was entitled to “settle the rules of proceedings in their own house.” *Id.* The Court then quoted *Hughes* and observed its prior ruling that “the legislature’s internal rulemaking authority, although ‘continuous’ and ‘absolute,’ remains subject to constitutional limitations.” *Id.* at 526 quoting *Hughes*, 152 N.H. at 284, 288. The Court noted that, “although claims regarding the legislature’s compliance with such rule-based or statutory procedures are not justiciable, claims regarding compliance with mandatory constitutional provisions *are* justiciable.” *Id.* (cleaned up). Ultimately, the Court concluded that whether the rule limiting guns in Representatives Hall complied with the fundamental right to keep and bear arms under Part I, Article 2-a was justiciable. *Id.* at 528.

In light of this court’s precedent, the trial court erred in determining that this claim was not justiciable. It is true, as the trial court held, that the New Hampshire Constitution places redistricting authority with the legislature. *See* N.H. CONST., Pt. II, Art. 26, 65. But this argument proves too much, as the Constitution likewise places the responsibility for the passing of *all* laws with the legislature. *See* N.H. CONST., Pt. II, Art. 44. (“Every bill which shall have passed both houses of the general court, shall,

before it becomes a law, be presented to the governor...”). This is the reason this Court’s precedents require the second step in the analysis—a question is justiciable if it implicates constitutional or fundamental rights. Indeed, just last year this Court resolved a challenge to the Congressional districting plan after the political branches failed to redistrict following the census—holding that the old plans violated the one-person/one-vote standard in the United States Constitution. *See Norelli*, 175 N.H. at 199.

Instead of conducting a detailed analysis of whether the New Hampshire Constitution protects against partisan gerrymandering, which would make plaintiffs’ challenge justiciable, the trial court rejected the claim because the state constitution does not explicitly identify partisan fairness as a component of free and fair elections. *See Order on Defendants’ Joint Motion to Dismiss*, p. 7 (“Rather, the Court believes that if [sic] the citizens of this State intended to require the legislature to meet additional criteria in drawing legislative and executive council districts, they would have explicitly provided those requirements alongside the existing ones in Part II of the constitution.”), p. 8 (“Accordingly, once the legislature performs its decennial redistricting duties in compliance with the explicit requirements of Articles 26 and 65, this Court should not reexamine or micromanage all the difficult steps the legislature took in performing the high-wire act that is legislative district drawing”) (cleaned up).

But constitutional rights need not be explicit to be protected. Indeed, this Court has recognized constitutional rights exist in the state Constitution, even where not spelled out with granularity. *See, e.g., Martineau v. Helgemoe*, 117 N.G. 841, 842 (1977) (state Constitution

includes a right to a public trial); *State v. Zorzy*, 136 N.H. 710 (1993) (state Constitution prohibits criminal trial for incompetent defendant); *Opinion of the Justices*, 121 N.H. 434, 436 (1981) (state Constitution protects right to association). Even more to the point, courts have adjudicated redistricting cases where the challenge was that districts were not of the same population, even though the United States Constitution does not explicitly require uniformity of population. *See Baker v. Carr*, 369 U.S. 186 (1962) (Fourteenth Amendment challenge to malapportioned state legislative districts justiciable); *Reynolds v. Sims*, 377 U.S. 533 (1964) (Fourteenth Amendment requires state electoral districts be roughly equal in population); *Norelli*, 175 N.H. at 199 (existing congressional districting statute violates Article 1, Section 2 of United States Constitution).

In sum, because questions involving constitutional or fundamental rights are justiciable, and because the New Hampshire Constitution prohibits partisan gerrymandering, *see infra* section II, the trial court erred in concluding that plaintiffs' challenge is not justiciable.

II. The New Hampshire Constitution Prohibits Partisan Gerrymandering

This Court has never before addressed whether and to what extent the New Hampshire Constitution prohibits partisan gerrymandering by cabining the legislature's ability to apportion districts to maximize the majority party's ability to preserve its power. It is true that this court has recognized political considerations *may* be permissible in a legislatively-implemented redistricting plan. *See Below v. Gardner*, 148 N.H. 1, 11 (2002). But the trial court goes further, in essence holding that excessive

partisanship—no matter how ruthlessly implemented or what effect it has on voters’ ability to elect their preferred candidates—may never infringe on the electorate’s right to a free and fair election. This case shows why that is wrong: the facts alleged in the plaintiffs’ complaint (and supported by the results of the 2022 general election) show that the Republican majority in the General Court drew districts for the State Senate and Executive Council so that, regardless of the outcome of the election, Republican candidates would be overrepresented in office as compared to their vote share in the electorate. Put another way, the General Court drew the districts to make Republican votes more successful in their seat-share than they were in their vote-share. And this plan achieved its intended results during the 2022 General Election—results which the trial court was unable to consider given the timing of its decision.

While the Constitution may tolerate some political considerations in districting, this Court has never decided whether the New Hampshire Constitution’s Free and Equal Elections clause permits the General Court to favor one party’s voters and candidates over another in excess and with no forum for review.³ Defendants would limit *Rucho*’s expectation of state court review to states with explicit prohibitions on partisan gerrymandering in their state constitutions. But a state constitution need not have an outright prohibition on partisan gerrymandering to raise a cognizable claim. And while this may be an issue of first impression in New Hampshire, it has

³ Given the procedural posture, *amici* do not believe it is necessary for this Court to announce the standard of review for partisan gerrymandering claims now. Rather, that can be developed by the trial court on remand.

been addressed in other states. The weight of authority in other state courts' interpretation of their state constitutions following *Rucho* supports the justiciability of political gerrymandering claims. That holds true both where state constitutions prohibit partisan gerrymandering explicitly, and where a state constitution more broadly guarantees fairness and equality in elections. Courts have applied free and equal election clauses like Part I, Article 11 to claims of excessive partisanship, and done so as a matter of first impression, before and after *Rucho*.

Notably, three state courts have undertaken the task set forth by *Rucho* and ably adjudicated partisan gerrymandering claims under their state constitutions' broader guarantees of voting rights. But the trial court did not engage with these decisions, and instead cited only the one state court case that came out the other way.⁴ Other state court decisions interpreting similar constitutional provisions provide persuasive authority that Part I, Article 11 of the New Hampshire Constitution (like its counterparts in North Carolina, Pennsylvania, and Maryland) prohibits excessive partisan gerrymandering.

Last year, the North Carolina Supreme Court struck down congressional district plans as a partisan gerrymander. *See Harper v. Hall*, 868 S.E.2d 499, 508 (N.C. 2022) (“[D]oes our state constitution recognize that the people of this state have the power to choose who govern us, by giving each of us an equally powerful voice through our vote? Or does our constitution give to members of the General Assembly...unlimited power

⁴ The trial court does cite Chief Justice Newby's dissent, but does not mention the portion of the opinion that commanded a majority of the Court.

to draw electoral maps that keep themselves and our members in Congress as long as they want, regardless of the will of the people?”). The state court applied a substantive standard based on more general rights incorporated into the state constitution of 1776 through a free and fair elections provision with language nearly identical to N.H. Constitution. *See id.* at 510–11 (N.C. 2022) quoting N.C. CONST. art. I, § 10 (“All elections shall be free.”). The text of New Hampshire’s constitution is *more* explicit than North Carolina in also requiring equal voting rights. N.H. Const. Pt. I, Art. 11 (“every inhabitant of the state of 18 years and upwards shall have an equal right to vote in any election.”)

The Supreme Court of Pennsylvania also recently considered a free elections clause that does not explicitly address partisan gerrymandering, and interpreted it as “indicative of the framers’ intent that all aspects of the electoral process. . . be kept open and unrestricted to the voters of our Commonwealth” and guarantee “equal participation in the electoral process for the selection of [a voter’s] representatives in government.” *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018) (“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” quoting PA. CONST. Art I §5). The court looked to the text, history and case law of the clause to ascertain and apply a manageable standard, *see id.* at 801-14, and concluded that the challenged plan violated the commonwealth’s free and equal elections clause because it was the product of politically-motivated gerrymandering, *id.* at 811. And a magistrate court in Maryland concluded that the state’s free elections clause, adopted in 1776, “was meant to secure a right of participation,” and struck down a

redistricting plan that suppressed the will of voters through partisan gerrymandering. *Kathryn Szeliga, et al. v. Linda Lamone, et al.*, 2022 M.D. Cir. Ct. LEXIS 9, *30 (Md. Cir. Ct. Mar. 25, 2022), appeal dismissed by appellants, 478 Md. 241 (April 4, 2022).⁵ All three derived manageable standards for adjudicating partisan gerrymandering claims as matters of first impression and based on language similar to, or less explicit than, part 1, Article 11 of the New Hampshire Constitution.

State courts have also ably adjudicated political gerrymandering claims where their state constitution explicitly prohibits it. In *League of Women Voters of Florida v. Detzner*, cited approvingly in *Rucho*, 139 S. Ct. at 2507, the Florida supreme court struck down a congressional district map based on the 2010 state constitutional amendment prohibiting maps “drawn to favor or disfavor an incumbent or political party.” 172 So.3d 363, 399 (Fla. 2015). In *Harkenrider v. Hochul*, the New York court struck down state legislative maps based on a state constitutional amendment prohibiting partisan gerrymandering, requiring expedited judicial review of redistricting, and authorizing judicial remedies in the absence of a constitutionally viable legislative plans. 197 N.E.3d 437, 440 (N.Y. 2022). And in Ohio, the state supreme court struck down both congressional and state legislative maps that violated the 2019 constitutional amendments prohibiting excessive partisanship in districting. *See Adams v. DeWine*, 195

⁵ After the trial court had struck down the Maryland congressional districting plan as a partisan gerrymander, a political compromise was reached between the Republican governor and Democratic legislature that led to the appeal being dismissed. *See* <https://wtop.com/maryland/2022/04/hogan-to-sign-maryland-redistricting-map-into-law/>.

N.E.3d 74 (2022) (holding congressional maps “unduly favor or disfavor a political party or its incumbents”); *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 192 N.E.3d 379 (Ohio 2022) (holding that state legislative maps were “drawn primarily to favor or disfavor a political party.”).

The trial court neither acknowledges nor discusses any of these recent state court decisions. Instead, the court cites only *Rivera v. Schwab*, 512 P. 3d 168 (Kan. 2022), a state court case that declared partisan gerrymandering claims non-justiciable under section 2 of the Kansas bill of rights. But the Kansas court determined that plaintiffs political gerrymandering claims were governed by equal protection rights co-extensive with federal Fourteenth Amendment guarantees of equal protection. *Rivera*, 512 P.3d at 178. Notably, like Pennsylvania and North Carolina, New Hampshire courts have a long history of recognizing that the state constitution is *more* protective than the federal constitution. *See State v. Ball*, 124 N.H. 226, 231 (1983) (“[A]lthough we have often treated Federal and New Hampshire constitutional protections similarly, our citizens are entitled to an independent interpretation of State constitutional guarantees”)⁶; *see also League of Women Voters of Pa.*, 178 A.3d at 812-13

⁶ This court has developed precedent interpreting and applying Part I, Article 11 and the equal protection guarantees of the New Hampshire Constitution, separate and apart from, although consistent with, the Fourteenth Amendment of the U.S. Constitution. *See N.H. Democratic Party v. Secretary of State*, 174 N.H. 312, 325-27 (2021) (applying intermediate scrutiny to a voting rights challenge under Part 1, Article 11 of the N.H. constitution); *Guare v. State*, 167 N.H. 658, 665-68 (2015) (same)

(“Indeed, the unique historical reasons discussed above, which were the genesis of Article I, Section 5, and its straightforward directive that “elections shall be free and equal” suggests such a separate analysis is warranted.”); *Harper*, 868 S.E.2d at 377-78 (“our state constitution's equal protection clause in article I, section 19 provides greater protections in redistricting cases than the federal constitution.”). And, in any event, the Kansas court’s decision is contrary to the weight of authority discussed above.

The Kansas court itself also recognized that it differs from states like North Carolina, which properly applied discernable standards from case precedent. *See Rivera*, 512 P.3d at 186 (discussion of *Harper v. Hall*, 380 N.C. at 317, 364, 385, 389). The Kansas court noted that North Carolina *could* validly determine that its constitutional incorporation of “traditional neutral” principles for reapportionment provided its state court with adequate guidance to distinguish constitutional redistricting plans from partisan gerrymanders, thereby rendering political gerrymandering claims justiciable. *Id.* at 186-87 (citing *Harper*, 380 N.C. at 317). New Hampshire courts can do the same.

No principle is more basic than the constitutional constraint on all branches of state government and judicial review for constitutional violations. The court cannot avoid its integral role in enforcing the voting rights guarantees in the state constitution because this case arises as a matter of first impression.

CONCLUSION

For the reasons discussed above, the decision of the trial court to grant Defendants' Motion to dismiss should be reversed, and the case should be remanded.

Respectfully Submitted,

American Civil Liberties Union and American
Civil Liberties Union of New Hampshire,

By and through their attorneys,

/s/ Henry Klementowicz

Gilles R. Bissonnette (N.H. Bar No. 265393)

Henry R. Klementowicz (N.H. Bar No. 21177)

AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE FOUNDATION

18 Low Avenue

Concord, NH 03301

Tel. 603.224.5591

gilles@aclu-nh.org

henry@aclu-nh.org

Julie A. Ebenstein, *pro hac vice* application
filed contemporaneously

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Voting Rights Project

125 Broad Street, 18th Floor

New York, NH 10004

Tel. 212.549.2500

jebenstein@aclu.org

January 20, 2023

STATEMENT OF COMPLIANCE

Counsel hereby certifies that pursuant to New Hampshire Supreme Court Rule 26(7), this brief complies with New Hampshire Supreme Court Rule 26(2)–(4). Further, this brief complies with New Hampshire Supreme Court Rule 16(11), which states that “no other brief shall exceed 9,500 words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.” Counsel certifies that the brief contains 5,241 (including footnotes) from the “Question Presented” to the “Conclusion” sections of the brief.

/s/ Henry Klementowicz
Henry Klementowicz, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 20th day of January, 2023 through the electronic-filing system on all counsel of record.

/s/ Henry Klementowicz
Henry Klementowicz, Esq.

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STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

Docket No. 226-2022-CV-00181

MILES BROWN,
ELIZABETH CROOKER,
CHRISTINE FAJARDO,
KENT HACKMANN,
BILL HAY,
PRESCOTT HERZOG,
PALANA HUNT-HAWKINS,
MATT MOOSHIAN,
MACKENZIE MURPHY,
THERESA NORELLI,
NATALIE QUEVEDO, and
JAMES WARD,

v.

DAVID M. SCANLAN,
in his official capacity as the New Hampshire Secretary of State

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Miles Brown, Elizabeth Crooker, Christine Fajardo, Kent Hackmann, Bill Hay, Prescott Herzog, Palana Hunt-Hawkins, Matt Mooshian, Mackenzie Murphy, Theresa Norelli, Natalie Quevedo, and James Ward, by and through counsel Paul Twomey, Esq.; McLane Middleton, P.A.; Elias Law Group LLP; and Perkins Coie LLP, bring this Complaint for Declaratory and Injunctive Relief and state as follows:

INTRODUCTION

1. Partisan gerrymandering, in which partisan mapmakers manipulate district boundaries to maximize their party's advantage before anyone casts a ballot, is incompatible with our democratic system and New Hampshire voters' fundamental rights.

2. This action challenges the legality of two statewide redistricting plans (together, the “Challenged Plans”) recently enacted into law using the results of the 2020 census: Senate Bill 240 (the “Senate Plan” or “2022 Senate Plan”), which creates new districts for the New Hampshire State Senate, and Senate Bill 241 (the “Executive Council Plan” or “2022 Executive Council Plan”), which creates new districts for the New Hampshire Executive Council.

3. The Challenged Plans are partisan gerrymanders that defy the basic principles of representative government. They were enacted to entrench Republican Party control over New Hampshire’s Senate and Executive Council regardless of the wishes of the electorate—and will have that intended effect. Apparently distrustful of the choices that New Hampshire voters will make at the polls, the General Court has decided for itself which party will control the Senate and Executive Council, rather than allowing the voters to freely choose the representatives they prefer. This violates the “core principle of republican government, namely, that the voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824 (2015) (cleaned up).

4. In drawing the Challenged Plans, the Republican-controlled General Court intentionally and systematically subordinated nonpartisan, traditional redistricting criteria to its overarching goal of achieving partisan gain for Republicans. It did so through the well-known strategy of “packing” and “cracking”: packing Democratic voters into a small number of districts (or, for the Executive Council Plan, just one district), and then cracking other Democratic voters among many more districts such that they have little or no ability to influence elections. Through this strategy, the General Court has created artificial Republican districts in both plans.

5. For decades, New Hampshire’s voters have been fiercely independent, closely divided in their support for Republican and Democratic candidates in statewide races. New

Hampshire is currently represented by two Democratic Senators, and Democratic presidential candidates have won the state in every presidential election since 2000, nearly all in close races. In the state's 2016 U.S. Senate race, Democrat Maggie Hassan defeated incumbent Republican Kelly Ayotte by just over 1,000 votes. Meanwhile, Republican Governor Chris Sununu has been reelected three times.

6. By enacting the Challenged Plans, the General Court has taken this political competition away from the voters.

7. The Senate Plan is an unlawful partisan gerrymander that will artificially warp the outcome of elections to that body in favor of Republican candidates. Republicans are poised to take veto-proof, *supermajority* control of the Senate (16 of 24 districts), even though in recent years Republican candidates have received votes from just over half the electorate in statewide races. This partisan gerrymander is so durable and extreme that Republicans could *lose* the statewide popular vote but nonetheless acquire a supermajority in the Senate. The General Court achieved this feat by packing Democrats into just eight districts where they comprise an overwhelming majority of voters, and carefully drawing the remaining 16 to ensure Republican control.

8. The Executive Council Plan will similarly distort the results of New Hampshire's elections to benefit the Republican Party. If the Executive Council Plan is used in upcoming elections, Republicans will have a significant advantage in four of five—that is, 80%—of Executive Council districts, notwithstanding the evenly divided support that Republican and Democratic candidates generally receive from New Hampshire voters.

9. The basic shapes of the Executive Council Plan's districts make the General Court's partisan intent readily apparent. Most notably, the General Court drew Executive Council District

2 as a Democratic “vote-sink” covering half of the state, surgically grabbing Democratic strongholds while carefully excluding Republican-leaning municipalities in the same areas. The result is that a significant portion of the state’s Democratic voters are packed into just one Executive Council district, while other Democratic voters are carefully diluted across the remaining four districts such that they have little or no chance of electing their preferred candidates.

10. Under both plans, Republicans can attain overwhelming control of the Senate and Executive Council even if they amass less than half of the statewide vote. Meanwhile, just to win a bare majority of districts under either plan, Democrats must amass well more than half of the statewide vote.

11. The Challenged Plans violate the New Hampshire Constitution in three independent ways.

12. First, they violate the Free and Equal Elections Clause of the New Hampshire Constitution, *see* N.H. Const. pt. I, art. 11, because they were enacted with impermissible partisan intent—specifically, to prevent Democratic voters from fairly and equally participating in the political process—and will achieve their intended effect.

13. Second, the Challenged Plans violate the New Hampshire Constitution’s guarantee of equal protection, *see id.* pt. I, arts. 1, 10, 12, because they dilute the voting strength of Democratic voters and deny them their right to substantially equal votes compared to Republican voters.

14. Third, the Challenged Plans violate the New Hampshire Constitution’s guarantees of free speech and association, *see id.* pt. I, arts. 22, 32, because, in enacting these plans, the General Court engaged in viewpoint discrimination by retaliating against Democratic voters based

on their political views and diluting their ability to band together and elect candidates of their choice.

15. Significantly, the Challenged Plans serve no legitimate—let alone compelling—state interest. Indeed, the only conceivable justification for the Challenged Plans is an effort to achieve a pro-Republican outcome in the Senate and Executive Council that would not naturally result from the state’s political geography.

16. This Court should vindicate the fundamental rights of New Hampshire voters by enjoining future use of the Challenged Plans and ordering the creation and implementation of new Senate and Executive Council plans that comply with the requirements of the New Hampshire Constitution.

PARTIES

17. Plaintiff Miles Brown is a college student who is registered to vote at 10 Massachusetts Row, Room 307, Hanover, New Hampshire 03755. Under the Challenged Plans, Mr. Brown is registered to vote in Senate District 5 and Executive Council District 2, both of which are among the districts where the General Court intentionally packed Democrats such that they form overwhelming majorities, preventing them from offsetting Republican votes in neighboring districts. Mr. Brown is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

18. Plaintiff Elizabeth Crooker is an editor who is registered to vote at 18 Colburn Road, Temple, New Hampshire 03084. Under the Challenged Plans, Ms. Crooker is registered to vote in Senate District 9 and Executive Council District 5, districts where the General Court intentionally cracked Democrats such that they form ineffective minorities and have little or no chance of electing Democratic candidates. Ms. Crooker is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

19. Plaintiff Christine Fajardo is a product designer who is registered to vote at 472 East High Street, Manchester, New Hampshire 03104. Under the Challenged Plans, Ms. Fajardo is registered to vote in Senate District 20, one of the districts where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts, and Executive Council District 4, a district where the General Court intentionally cracked Democrats such that they form an ineffective minority and have little or no chance of electing Democratic candidates. Ms. Fajardo is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

20. Plaintiff Kent Hackmann is a retired college professor who is registered to vote at 1273 Franklin Highway, Andover, New Hampshire 03216. Under the Challenged Plans, Dr. Hackmann is registered to vote in Senate District 7, a district where the General Court intentionally cracked Democrats such that they are an ineffective minority and have little or no chance of electing Democratic candidates, and Executive Council District 2, the district where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts. Dr. Hackmann is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

21. Plaintiff Bill Hay is a high school tennis coach and teaching professional who is registered to vote at 22 Middle Street, Keene, New Hampshire 03431. Under the Challenged Plans, Mr. Hay is registered to vote in Senate District 10 and Executive Council District 2, both of which are among the districts where the General Court intentionally packed Democrats such that they form overwhelming majorities, preventing them from offsetting Republican votes in neighboring districts. Mr. Hay is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

22. Plaintiff Prescott Herzog is a college student who is registered to vote at 7 Bavier Street, Claremont, New Hampshire 03743. Under the Challenged Plans, Mr. Herzog is registered to vote in Senate District 8, a district where the General Court intentionally cracked Democrats such that they are an ineffective minority and have little or no chance of electing Democratic candidates, and Executive Council District 2, the district where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts. Mr. Herzog is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

23. Plaintiff Palana Hunt-Hawkins is an activist who is registered to vote at 4 Old Dover Road, Rochester, New Hampshire 03867. Under the Challenged Plans, Ms. Hunt-Hawkins is registered to vote in Senate District 6 and Executive Council District 1, both of which are among the districts where the General Court intentionally cracked Democrats such that they form ineffective minorities and have little or no chance of electing Democratic candidates. Ms. Hunt-Hawkins is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

24. Plaintiff Matt Mooshian is a community organizer who is registered to vote at 30 Bible Hill Road, Claremont, New Hampshire 03743. Under the Challenged Plans, Mr. Mooshian is registered to vote in Senate District 8, a district where the General Court intentionally cracked Democrats such that they form an ineffective minority and have little or no chance of electing Democratic candidates, and Executive Council District 2, the district where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts. Mr. Mooshian is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

25. Plaintiff Mackenzie Murphy is registered to vote at 20 Brenda Lane, Merrimack, New Hampshire 03054. Under the Challenged Plans, Ms. Mackenzie is registered to vote in Senate District 11 and Executive Council District 5, both of which are districts in which the General Court intentionally cracked Democrats such that they form ineffective minorities and have little or no chance of electing Democratic candidates. Ms. Murphy is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

26. Plaintiff Theresa Norelli is a former Speaker of the New Hampshire House of Representatives who is registered to vote at 198 Thaxter Road, Portsmouth, New Hampshire 03801. Under the Challenged Plans, Ms. Norelli is registered to vote in Senate District 21, one of the districts where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts, and Executive Council 3, a district where the General Court intentionally cracked Democrats such that they form an ineffective minority and have little or no chance of electing Democratic candidates. Ms. Norelli is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

27. Plaintiff Natalie Quevedo is a project manager who is registered to vote at 112 Ashuelot Street, Winchester, New Hampshire 03470. Under the Challenged Plans, Mrs. Quevedo is registered to vote in Senate District 9, a district where the General Court intentionally cracked Democrats such that they form an ineffective minority and have little or no chance of electing Democratic candidates, and Executive Council District 2, the district where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts. Mrs. Quevedo is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

28. Plaintiff James Ward is a retired educator who is registered to vote at 16 Houghton Point, Swanzey, New Hampshire, 03431. Under the Challenged Plans, Mr. Ward is registered to vote in Senate District 10, one of the districts where the General Court intentionally packed Democrats such that they form an overwhelming majority, preventing them from offsetting Republican votes in neighboring districts, and Executive Council District 5, a district where the General Court intentionally cracked Democrats such that they form an ineffective minority and have little or no chance of electing Democratic candidates. Mr. Ward is a Democrat and intends to support Democratic candidates in the upcoming 2022 elections and beyond.

29. Defendant David M. Scanlan is the New Hampshire Secretary of State (the “Secretary”), with a business address at the New Hampshire Secretary of State’s Office, State House, Room 204, 107 North Main Street, Concord, New Hampshire 03301. The Secretary is named as a Defendant in his official capacity. The Secretary is the chief elections officer in charge of administering New Hampshire’s election laws. RSA 652:23. His responsibilities include, but are not limited to, preparing ballots for use in all state elections, RSA 656:1; preparing a political calendar for state and town elections, RSA 652:21; publishing the elections manual and procedures for conducting elections, RSA 652:22; and providing information regarding voter registration and absentee ballot procedures, RSA 652:23. The Secretary, personally and through the conduct of his employees and agents, acted under color of state law at all times relevant to this action.

JURISDICTION AND VENUE

30. This Court has jurisdiction to hear this action. RSA 491:7.
31. This Court has jurisdiction to grant Plaintiffs declaratory relief. RSA 491:22.
32. This Court has jurisdiction to grant Plaintiffs equitable relief. RSA 498:1.

33. This Court has personal jurisdiction over the Secretary, who is sued in his official capacity, is an elected official in New Hampshire, and works and resides in New Hampshire. RSA 510:2.

34. Venue is proper in this judicial district under RSA 507:9 because Plaintiffs Crooker and Murphy reside in this district. As a result, the constitutional violations caused by the Challenged Plans will occur in this district.

STATEMENT OF FACTS

I. After Governor Sununu vetoed the creation of an independent redistricting commission, New Hampshire Republicans took control of the General Court and prepared themselves to enact pro-Republican gerrymanders.

35. In 2019, the General Court passed House Bill 706, which would have created an independent redistricting commission in New Hampshire. Senator Melanie Levesque, then-chair of the Senate Election Law and Municipal Affairs Committee, explained the motivation behind the bill: “In my district and at the State House, I hear calls for fairer elections every day. Not one person testified against H.B. 706 at the Senate hearing. It is clear New Hampshire voters are fed up with the status quo in which politicians pick their voters.”¹

36. In vetoing House Bill 706, Governor Sununu claimed that “[w]e should all be proud that issues of gerrymandering are extremely rare in New Hampshire. Our current redistricting process is fair and representative of the people of our State.”²

¹ Casey Junkins, *Dems Say Sununu’s Veto Will Allow and Encourage Gerrymandering*, Nashua Telegraph (Aug. 13, 2019), <https://www.nashuatelegraph.com/news/local-news/2019/08/13/dems-say-sununu-veto-will-allow-and-encourage-gerrymandering>.

² *Governor’s Veto Message Regarding House Bill 706*, Office of Governor (Aug. 9, 2019), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/hb-706-veto-message.pdf>.

37. The following year, the General Court passed similar legislation, House Bill 1665, but Governor Sununu vetoed it again. House Bill 1665’s prime sponsor, Democratic Representative Marjorie Smith, responded that “Gov. Sununu’s veto of independent redistricting—yet again—is a blow to individual rights and transparency in government. The people of New Hampshire expect fairness in elections and strongly support this effort to end gerrymandering.”³

38. Senator Shannon Chandley raised a similar alarm following Governor Sununu’s veto of House Bill 1665, stating, “When we allow those with the most vested interest to determine our districts, we become gerrymandered, and in turn silence the voices and will of Granite State voters,” and that “[o]ver 80 percent of New Hampshire voters believe that gerrymandering creates unfair districts and agree that a neutral commission could correct unfair district lines.”⁴

39. As a result of Governor Sununu’s vetoes, the General Court retained the authority to draw new districting maps after the release of the 2020 census results (subject to gubernatorial vetoes).

40. Following the 2020 general election, New Hampshire Republicans retained control of the governorship and took control of both chambers of the General Court.

41. During the New Hampshire Republican Party’s first meeting after the new General Court was seated in January 2021, party chairman Stephen Stepanek proclaimed that, because “we

³ Garry Rayno, *Sununu Vetoes Independent Redistricting Commission and SMART Act*, InDepthNH.org (July 31, 2020), <https://indepthnh.org/2020/07/31/sununu-vetoes-independent-redistricting-commission-and-smart-act>.

⁴ *Id.*

[now] control redistricting,” the party could “stand here today and guarantee you that we will send a conservative Republican to Washington, D.C. as a Congress person in 2022.”⁵

42. As the General Court went to work on New Hampshire’s redistricting, Republicans admitted that they were using political data to tilt the new plans in their favor.

43. In November 2021, Republican Representative Bob Lynn was asked by one of his Democratic colleagues on the House Special Committee on Redistricting whether political data were used to draw Republicans’ proposal for a new congressional plan; he responded, “[I]f your question is ‘were political considerations something that were in the mix,’ of course they were. . . . Was that something that was taken into account? Of course it was.”⁶

44. Going even further, Representative Lynn stated two weeks later that “political affinity would seem to be *among the most important considerations*” in drawing district lines.⁷

45. While these statements specifically referenced New Hampshire’s congressional plan, there is no reason to believe Republicans’ intentions as to state legislative and Executive Council plans were any different. Indeed, after introducing the Senate and Executive Council Plans, the General Court ignored overwhelming public testimony that the plans were unfair partisan gerrymanders that ignored neutral redistricting principles.

46. In a final attempt to prevent Republicans from enacting extreme partisan gerrymanders, Democrats introduced legislation earlier this year providing that, among other criteria, redistricting plans “as a whole shall not have the intent or the effect of unduly favoring or

⁵ John DiStaso, *After 4-Hour Zoom Chaos, NHGOP Adjourns Annual Meeting with No Vote on Chair, Vice Chair*, WMUR (Jan. 23, 2021 5:03 PM), <https://www.wmur.com/article/after-4-hour-of-zoom-chaos-nhgop-abruptly-adjourns-annual-meeting-with-no-vote-on-chair-vice-chair/35298030>.

⁶ *Special Committee on Redistricting - Full Committee Work Session (11/4/21)*, YouTube (Nov. 4, 2021), <https://youtu.be/TwdEXiXO2Ws> (video at 2:03:35).

⁷ *Special Committee on Redistricting - Executive Session (11/16/21)*, YouTube (Nov. 16, 2021), https://www.youtube.com/watch?v=wcMw_gym2zo (video at 4:07:16) (emphasis added).

disfavoring any political party, incumbent, or candidate for office.” S.B. 255, 2022 Sess. (N.H.). The Republican-controlled Senate rejected consideration of this legislation on party lines, with every present Republican voting not to consider the bill.

47. Keeping true to their intentions, the General Court created, and Governor Sununu signed into law, districting plans for the Senate and Executive Council that allow Republicans to entrench their control of those two bodies in a way that would not naturally occur under New Hampshire’s political geography.

II. The Senate Plan is an impermissible partisan gerrymander.

48. The Senate Plan, enacted by the Republican-controlled General Court and signed by Republican Governor Sununu, unjustifiably imposes irregularly shaped districts carefully tailored to entrench Republican control of the Senate.

49. During the first public hearing on the plan on January 10, 2022, the Senate Election and Municipal Affairs Committee heard overwhelmingly critical testimony from the public, including claims that the plan had not incorporated suggestions and recommendations made during prior public hearings and that the Senate Plan was a blatant pro-Republican gerrymander. The committee nonetheless passed the plan along party lines, as did the Senate itself.

50. The House Redistricting Committee took up the Senate Plan on April 14, where again there was unanimous public testimony in opposition to the plan’s clear partisan tilt. Nonetheless, the House committee passed the Senate Plan on a party-line vote the same day, as did the full House on April 21.

51. Governor Sununu signed the Senate Plan into law on May 6, 2022.

52. The Senate Plan builds on the prior plan, enacted in 2012, which itself had a significant pro-Republican bias. During an interview with the *New Hampshire Union Leader*, the sponsor of the Senate Plan, Senate Redistricting Committee Chairman Jim Gray, stated that his

top priority was to make only those adjustments to the existing Senate map that were needed to ensure acceptable population deviations.⁸ And in presenting his plan to the House Special Committee on Redistricting, Senator Gray claimed that population equality was the highest priority behind the Senate Plan.

53. However, contrary to Senator Gray’s assertion, his map—now the 2022 Senate Plan—configures districts in ways that are clearly meant to benefit Republicans rather than ensure population equality among districts.

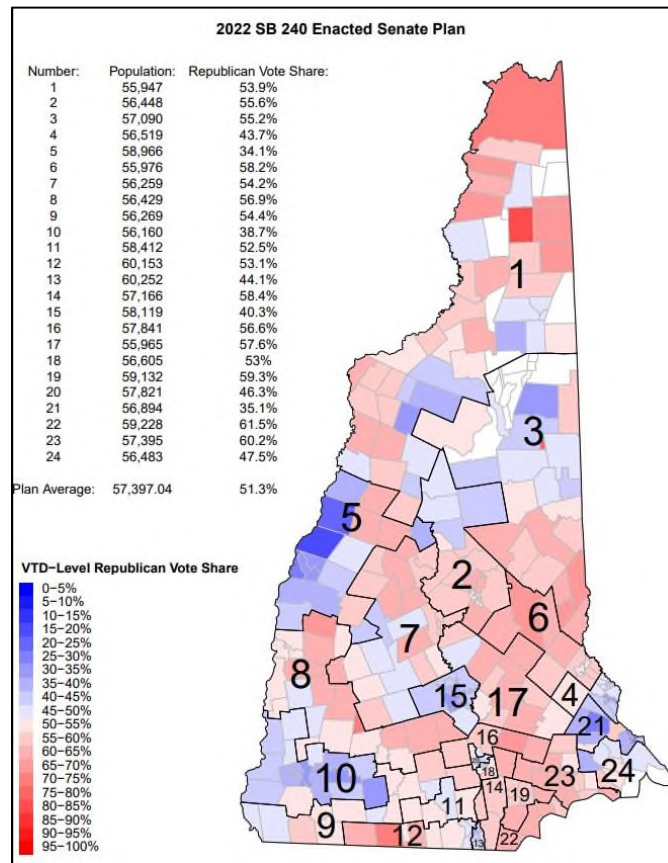
54. The predominant partisan intent behind the Senate Plan is obvious from the face of the map.

55. Even a cursory review of the district shapes found in the Senate Plan make clear that something besides traditional redistricting criteria—such as geographic compactness or the maintenance of communities of interest—was at work. This is particularly evident when considering the partisan voting patterns of those living in the districts, which Representative Lynn admitted he and his Republican colleagues consulted when drawing new redistricting plans.

56. The figure below shows the Senate Plan’s districts overlaid onto the Republican vote share of each town and ward, determined by compiling the two-party election results in each election for president, U.S. Senate, and governor between 2016 and 2020. It demonstrates that the Senate Plan exhibits “the key signature of intentional partisan redistricting”: packing and cracking of Democratic-leaning towns and wards. *Harper v. Hall*, 868 S.E.2d 499, 553 (N.C.), *stay denied sub nom. Moore v. Harper*, 142 S. Ct. 1089 (2022). The General Court “packed” Democratic voters

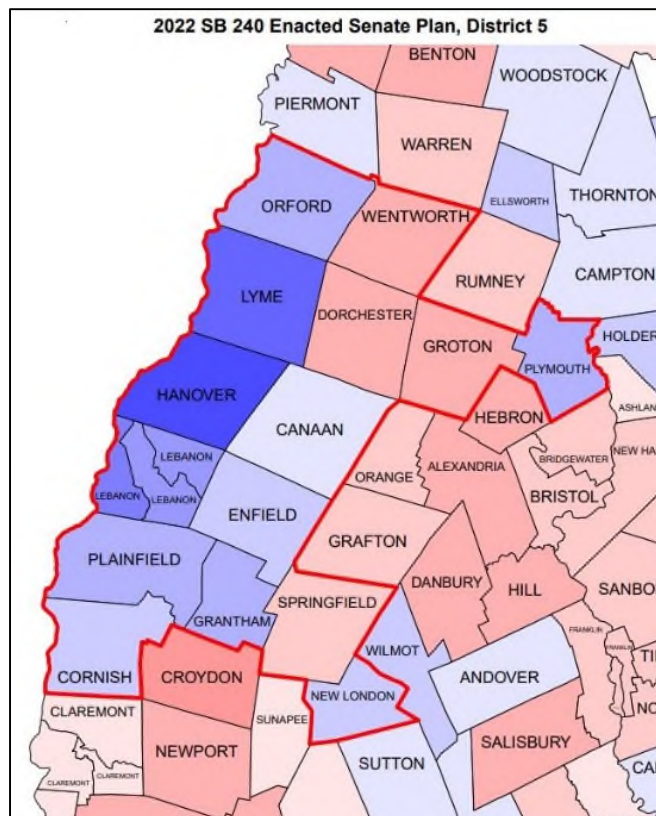
⁸ Kevin Landrigan, *State House Dome: Some Big Winners, Losers in Senate GOP Redistricting Plan*, N.H. Union Leader (Jan. 3, 2022), https://www.unionleader.com/news/politics/statehouse_dome/state-house-dome-some-big-winners-losers-in-senate-gop-redistricting-plan/article_ff4d25c5-3f3e-58bb-a764-ea18ac372df7.html.

tightly into a small number of districts where they form overwhelming majorities, minimizing their impact—and maximizing Republican voters’ impact—in neighboring districts. The General Court then “cracked” the remaining Democratic voters, distributing them among the vast majority of districts in such a way that those districts are dominated by Republican voters.



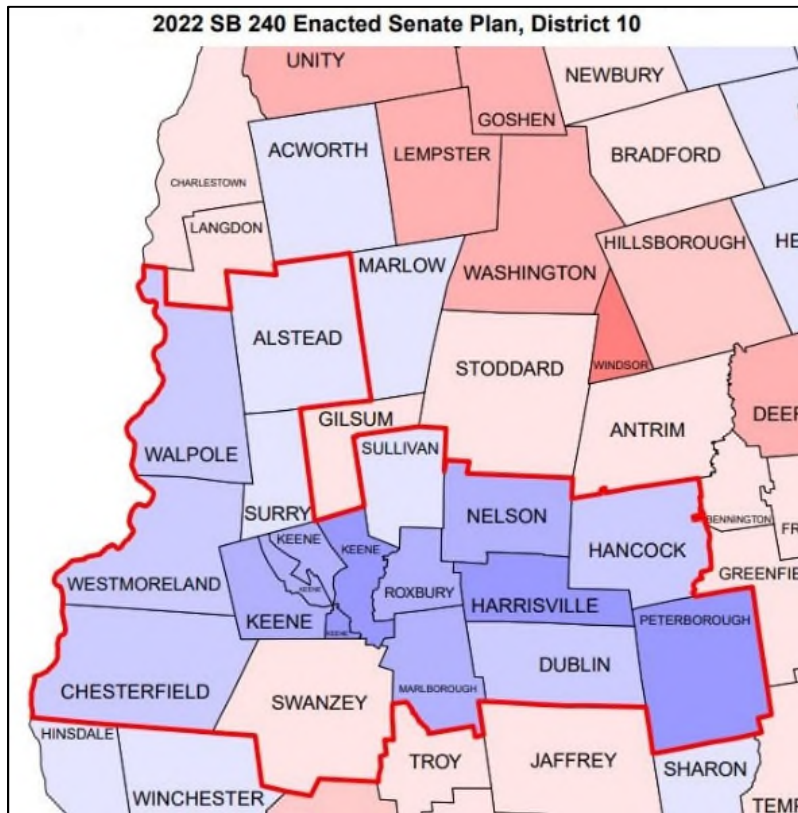
57. The southwestern portion of the plan provides a telling illustration of this pattern: there, Republicans will easily win six out of nine districts despite the presence of a sizeable number of Democratic-leaning towns and wards. The General Court achieved this effect by packing Democratic voters into three Senate districts—Districts 5, 10, and 15—and then cracking the rest of the region’s Democratic voters among the remaining six districts in the area—Districts 2, 7, 8, 9, 11, and 12—such that they constitute ineffective minorities having little or no chance of electing Democratic candidates.

58. Senate District 5—which resembles a “C”—sits on the middle of the state’s western border, picking up nearly every Democratic-leaning town and city on New Hampshire’s western edge. To pack the district even further with voters who support Democrats, the General Court attached eastward-reaching arms at the top and bottom of the district: one that grabs overwhelmingly Democratic Plymouth, and another that grabs overwhelmingly Democratic New London. The only plausible explanation for District 5’s irregular shape is an intent to make it as heavily Democratic as possible, thereby significantly bolstering the prospects of Republican candidates in neighboring districts. Ultimately, the General Court achieved its goal of maximizing the number of Democrats (and minimizing the number of Republicans) in District 5: As drawn, the district has a 65.9% Democratic vote share.⁹



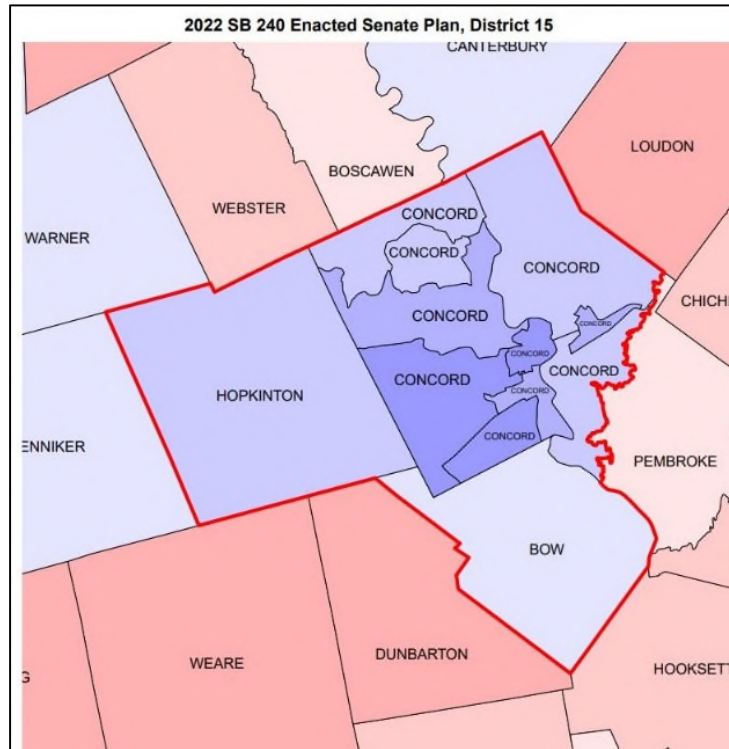
⁹ The partisan “vote share” figures included throughout this complaint were calculated using the same combined election-results composite discussed above: each presidential, U.S. Senate, and gubernatorial race between 2016 and 2020.

59. The General Court applied the same packing strategy to Senate District 10, which sits near the southwest corner of the state. This district picks up almost every single Democratic-leaning municipality south of District 5, forming a highly irregular shape. The district begins on the state's western border and extends eastward along a narrow corridor, carefully collecting Democratic-leaning municipalities while excluding Republican-leaning areas. The result is, like District 5, a district dominated by Democratic voters, with a 61.3% Democratic vote share.



60. Senate District 15, the third and final district packed with Democrats in this part of the plan, encompasses heavily Democratic Concord and Hopkinton, as well as Democratic-leaning

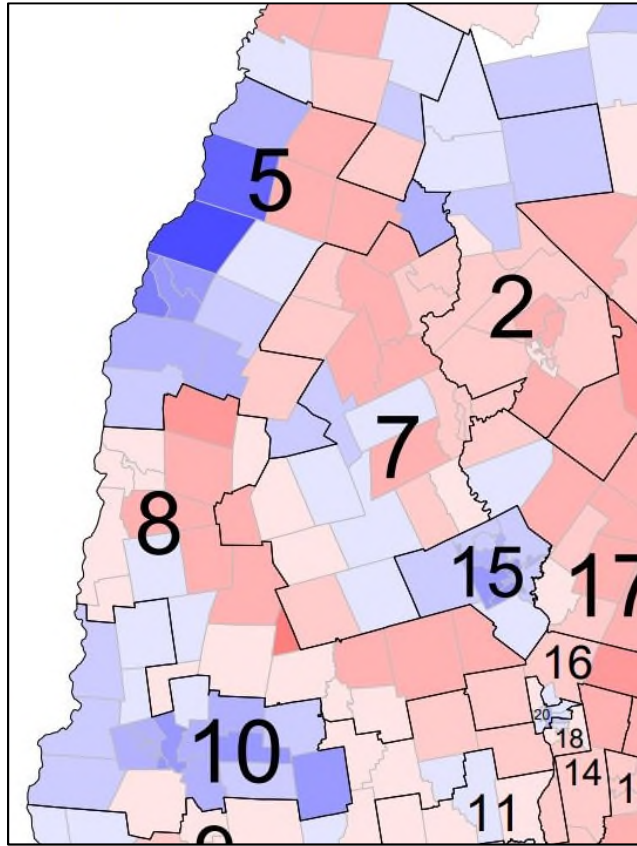
Bow. Like Districts 5 and 10, the result is an overwhelmingly Democratic district: 59.7% of voters in District 15 support Democratic candidates.



61. Having packed Democratic voters residing in this portion of the plan into just three districts, the General Court drew *twice* that number of safe Republican seats in the same area. The Republican vote share in each of Districts 2, 7, 8, 9, 11, and 12, is no less than 52.5%, making it extremely difficult, if not impossible, for Democrats to prevail.

62. Districts 2, 7, and 8—all safe Republican seats, with 55.6%, 54.2% and 56.9% Republican vote shares, respectively—fill in the heavily Republican area left between Districts 5, 10, and 15. Due to District 10’s irregular shape (the result of an effort to pack as many Democratic-leaning towns as possible into the district), District 8 takes on an unusual “L” shape, starting along the western border but suddenly jetting eastward to grab a narrow band of Republican towns.

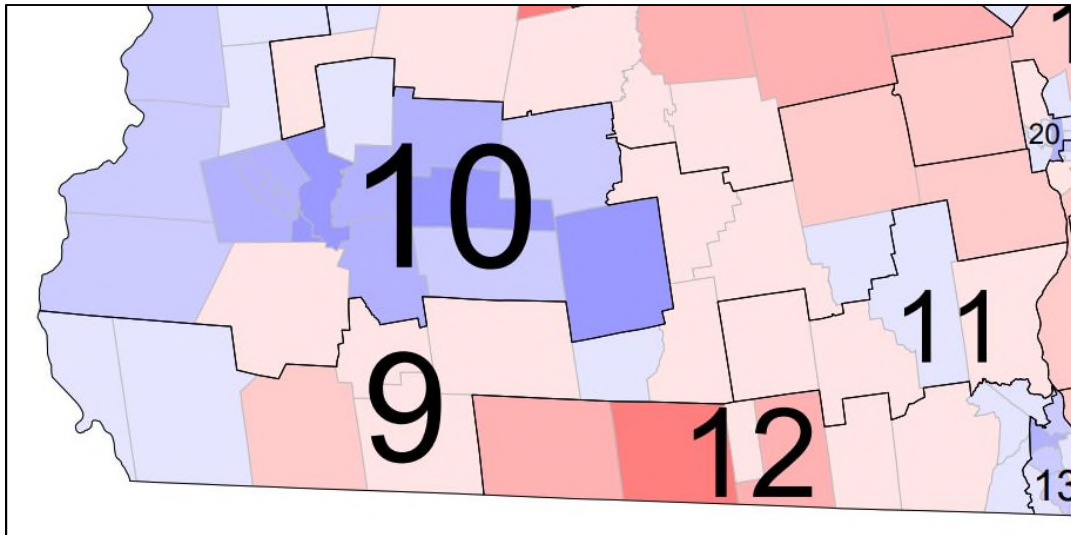
Meanwhile, District 2 collects Republican voters and pairs them with the remaining Democratic towns east of District 5, effectively neutralizing those Democratic votes.



63. Senate Districts 9, 11, and 12 divide the remaining southern portion of the region, which, given District 10’s effective packing of Democratic voters, is populated overwhelmingly with Republican voters. The General Court was nonetheless careful to craft each of these districts in a manner that dispersed the various Democratic-leaning municipalities among these three safe Republican districts, ensuring that Democratic votes were offset in each district by a larger number of Republican votes.

64. Along New Hampshire’s southern border, District 9—which perhaps features the most bizarre shape of all districts in the Senate Plan—offsets the Democratic towns of Hinsdale and Winchester by connecting them in a winding district that snakes all the way to Bedford,

carefully collecting Republican-leaning municipalities along the way. In doing so, District 9 pieces together extremely dissimilar communities: wealthy, suburban towns in the east and small, rural towns in the west.



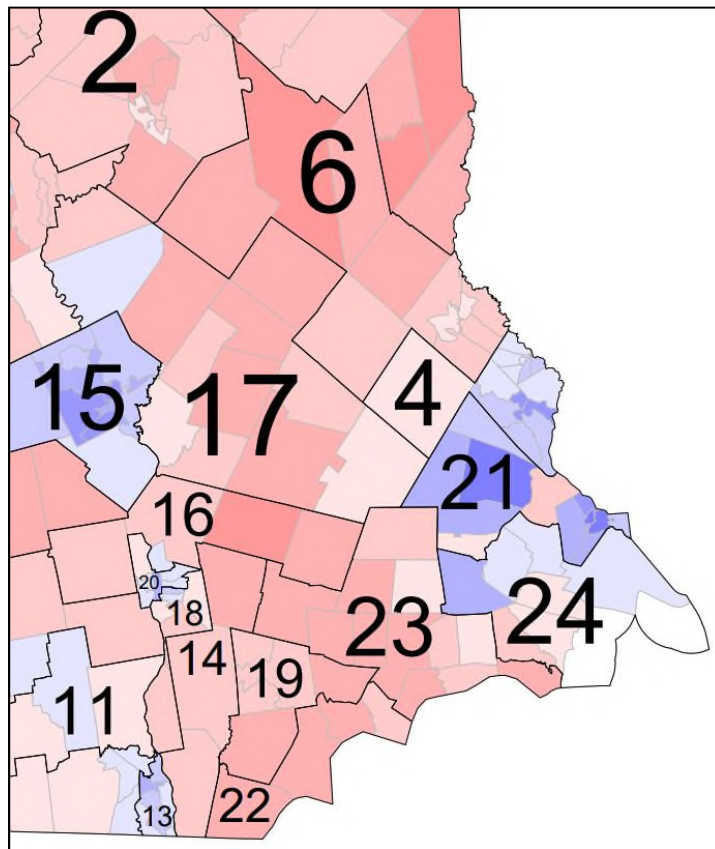
65. Elsewhere along the state’s southern border, Districts 11 and 12 crack Democratic strongholds in Mount Vernon, Amherst, and western Nashua, ensuring that Republican voters more than offset Democratic votes in each district.

66. The General Court succeeded in these efforts to minimize the number of Democratic districts and maximize the number of Republican districts along the southern border: District 9’s vote share is 54.4% Republican; District 11’s is 52.5%; and District 12’s is 53.1%. A Democratic candidate in each of these districts is extremely unlikely to prevail.

67. While the Senate Plan’s southwest portion exemplifies its subordination of traditional redistricting principles to Republican gain, other areas of the state exhibit the same pattern.

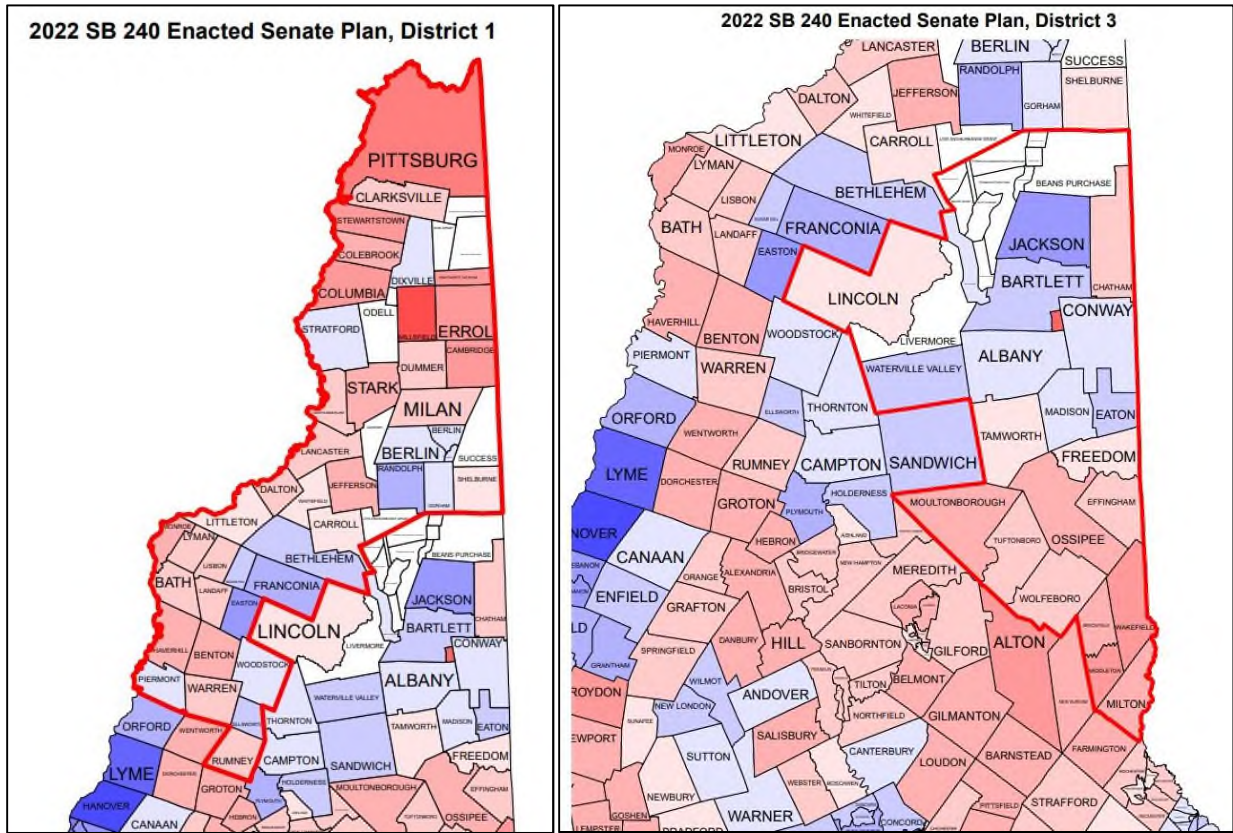
68. The 13 districts in the southeast region of the state also systematically pack and crack Democrats. Democrats are packed tightly into just five of these 13 districts: Districts 4 (56.3% Democratic vote share), 13 (55.9%), 20 (53.7%), 21 (64.9%), and 24 (52.5%). The

remaining Democratic voters in the region are distributed among eight districts, each of which has a Republican vote share of not less than 53%: Districts 6 (58.2%), 14 (58.4%), 16 (56.6%), 17 (57.6%), 18 (53%), 19 (59.3%), 22 (61.5%), and 23 (60.2%). Some of these districts have remarkably irregular shapes; most glaringly, Districts 4, 14, and 17.



69. The Senate Plan's remaining two districts, Districts 1 and 3, divide Democratic voters in the North Country in a manner that ensures that both districts will elect Republicans: District 1 has a Republican vote share of 53.9%, while District 3's is 55.2%. The General Court achieved this feat by drawing District 2 to conspicuously reach north into Grafton and Carroll Counties, selectively grabbing only the Democratic-leaning towns of Thornton, Campton, Holderness, Ashland, and Sandwich. Meanwhile, it stretched District 3 south along the state's

eastern border, splitting Strafford County to pick up the heavily Republican towns of Middleton and Milton.



70. The Senate Plan’s irregular district shapes and obvious partisan pattern make clear that the General Court subordinated neutral redistricting criteria to the predominant intent of entrenching Republican control of the Senate.

71. The districts contained in the Senate Plan cannot be justified by an effort to connect communities of interest. As discussed above, many of the districts in the plan connect far-flung communities having little in common. And the highly irregular, decidedly noncompact district shapes in the Senate Plan belie any effort to respect the traditional principle of compactness.

72. Nor can the Senate Plan’s irregular districts be justified by an effort to minimize population deviation. During his presentation to the House Special Committee on Redistricting,

Senator Gray admitted that the plan could have had better population deviation, particularly with respect to the districts in the Nashua area.

73. Put simply, New Hampshire Republicans drew the Senate Plan with bizarrely shaped, noncompact districts that unnecessarily deviate from population equality and divide communities of interest, all to accomplish their clear and predominant objective: entrenching and expanding Republican control of the Senate.

74. In recent years, New Hampshire has become a perennial swing state. The combined two-party election results of all presidential, U.S. senate, and gubernatorial elections between 2016 and 2020 report that just over half (51.2%) of New Hampshire voters supported Republican candidates. But the same election results show that if the Senate Plan is allowed to take effect, Republicans would amass *supermajority* control of the Senate by winning 16 of 24 seats (67%).

75. In other words, the Senate Plan makes it significantly easier for Republicans rather than Democrats to win a majority of seats in the Senate. Indeed, under the Senate Plan, Republicans could win a majority of seats if they received just 47.3% of the statewide vote, and a two-thirds supermajority by winning just 48.7% of the statewide vote. In other words, Republicans can lose the statewide popular vote and still hold a *veto-proof majority* in the Senate. Meanwhile, to win a bare majority of seats, Democrats would have to win 53% of the statewide vote.

76. Moreover, beyond ensuring a significant benefit for Republicans, the Senate Plan makes New Hampshire's senatorial elections remarkably noncompetitive: there is not a single district in the Senate Plan in which the margin between the parties is less than 5%, and in two-thirds of the districts, the margin between the parties is more than 10%.

Senate District	Republican Vote Share	Senate District	Republican Vote Share
1	53.9%	13	44.1%
2	55.6%	14	58.4%
3	55.2%	15	40.3%
4	43.7%	16	56.6%
5	34.1%	17	57.6%
6	58.2%	18	53.0%
7	54.2%	19	59.3%
8	56.9%	20	46.3%
9	54.4%	21	35.1%
10	38.7%	22	61.5%
11	52.5%	23	60.2%
12	53.1%	24	47.5%

77. In addition to directly harming Democrats, the Senate Plan’s lack of competition also harms the uniquely high number of New Hampshire voters who do not belong to one of the major parties and instead shift from one party to the other, depending on the given election and the available candidates. When elections are competitive, these voters’ support is determinative. By making Senate elections noncompetitive, the General Court has left these voters without a voice.

78. In sum, in crafting the Senate Plan, the General Court intentionally subordinated traditional redistricting criteria to the predominant purpose of entrenching Republican control in the Senate. And they achieved their goal: If used, the Senate Plan will result in Republicans obtaining supermajority control of the Senate even in years when Republicans lose the statewide popular vote.

III. The Executive Council Plan is an impermissible partisan gerrymander.

79. The Executive Council Plan, enacted by the Republican-controlled General Court and signed by Republican Governor Sununu, also disregards neutral redistricting principles and employs irregularly shaped districts carefully tailored to entrench Republican control of the Executive Council.

80. The Executive Council is a five-member statewide body that acts as a check on the Governor's authority. The Executive Council, which has a "negative" power on the Governor, N.H. Const. pt. II, art. 47, is responsible for, among other things, approving nominees for various offices (including judicial appointments, heads of state agencies, and state board members and commissioners) and state contracts. *See id.* pt. II, arts. 46–47, 56; *see also, e.g.*, RSA 21-I:2; RSA 21-O:11; RSA 282-A:108; RSA 326-D:3; RSA 430:54(h).

81. The previous Executive Council plan was drawn using 2010 census data. That prior plan was widely criticized because of its bizarrely shaped District 2, which snaked across the southern half of the state, picking up heavily Democratic areas including Keene in the southwest corner of the state, Concord in the middle, and Dover on the eastern border.¹⁰ The logical effect of the prior plan's packing of Democrats into District 2 was that Republicans enjoyed better election prospects in the Executive Council's other four districts. Even Governor Sununu criticized the second district as it had been drawn, stating in 2021 that he hoped the General Court would "fix" the "funky Executive Council District 2."¹¹

82. Curiously, the 2020 census results indicated that the overall population deviation among the Executive Council districts, as drawn a decade earlier, had *decreased* in the prior decade to just 2.87%. As a result, Republicans in the General Court indicated they intended not to alter the Executive Council districts using the results of the 2020 Census.

¹⁰ For a map of the 2012 Executive Council plan, see *Committee of Conference Report 2012-2452-CofC*, N.H. Exec. Council, <https://www.nh.gov/council/districts/documents/2012-executive-council-map.pdf> (last visited Apr. 29, 2022).

¹¹ Adam Sexton, *Focus Turns to Redistricting With State Budget Signed*, WMUR (June 29, 2021), <https://www.wmur.com/article/focus-turns-to-redistricting-with-state-budget-signed/36879846#>.

83. In January 2022, Senator Gray told the Senate Election Law and Municipal Affairs Committee that reapportioning the Executive Council was unnecessary: “Although there may be people out there that think that map was gerrymandered when it was originally done [] there is no statutory reason to have to make any changes[.]”¹²

84. Notwithstanding Senator Gray’s earlier indication that the Executive Council districts would not be redrawn, in late March he presented a floor amendment proposing to entirely overhaul the Executive Council map. No one in the Senate—including Senator Gray—provided the public with any prior notice of this floor amendment. Nevertheless, the Senate passed Senator Gray’s amendment that same day.

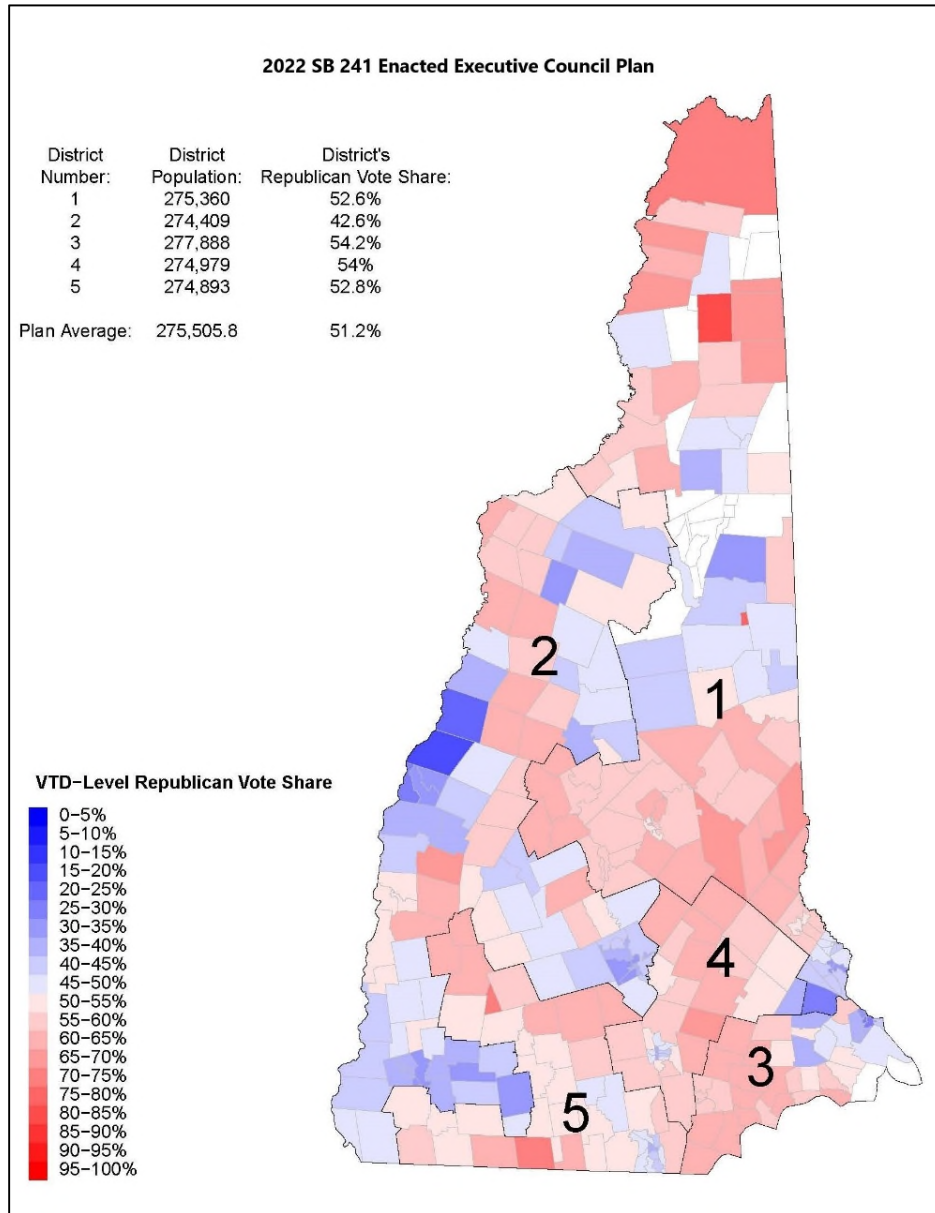
85. The House Redistricting Committee took up the Executive Council Plan on April 14. Despite unanimous public testimony against the plan due to its clear partisan tilt in favor of Republicans, the House Committee passed the Executive Plan on a party-line vote. On April 21, the House passed the plan along party lines. Governor Sununu signed the Executive Council Plan into law on May 6, 2022.

86. As it did with the Senate Plan, the General Court crafted the 2022 Executive Council Plan to dilute the voting power of Democratic voters and maximize the voting power of Republican voters. It achieved this effect by packing Democratic voters into District 2 and cracking other Democratic voters among the remaining districts—Districts 1, 3, 4, and 5—such that those districts are more easily winnable by Republican candidates.

87. The Executive Council Plan will result in Republicans entrenching their control of that body—with 80% of its seats—even though, since 2016, Republicans have received just over

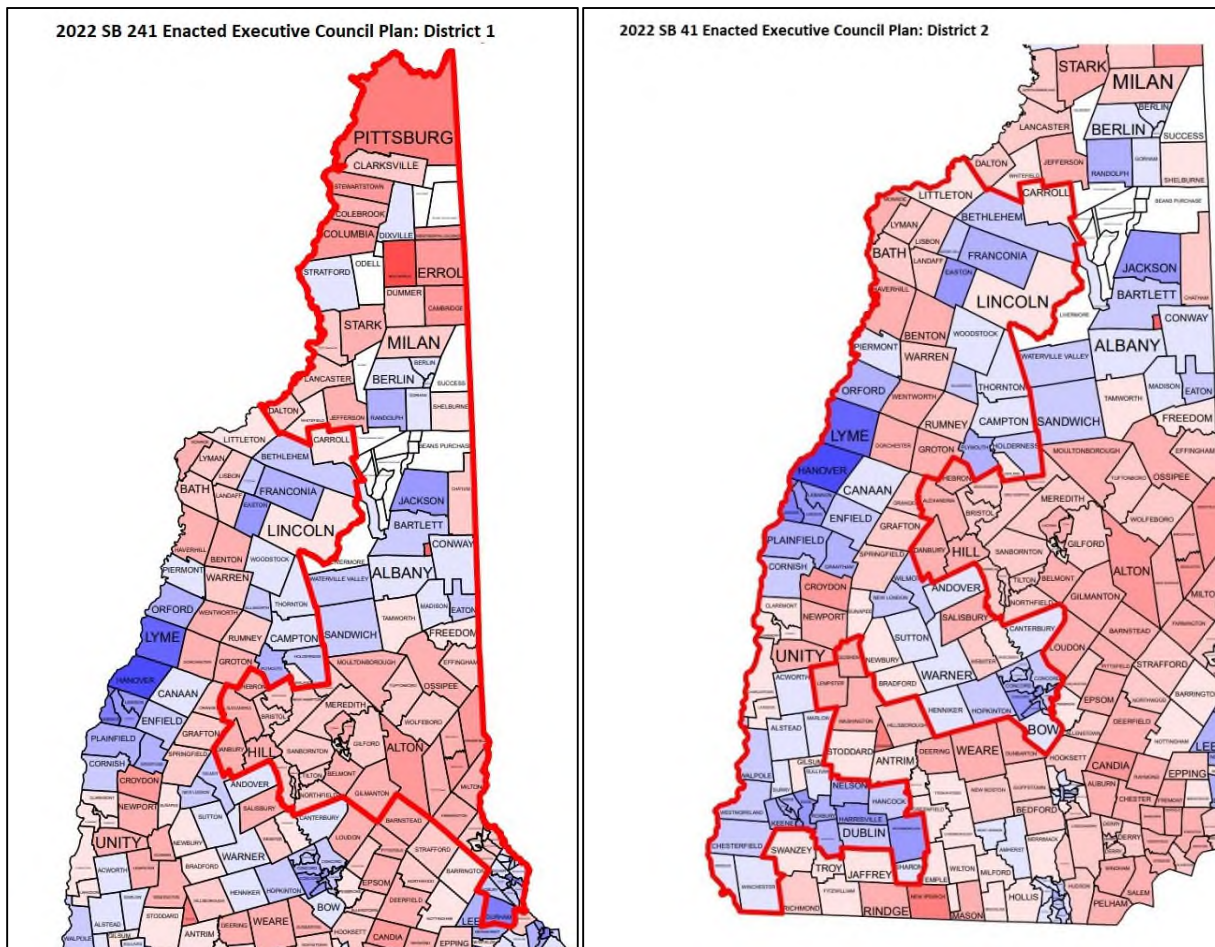
¹² *Senate Election Law and Municipal Affairs*, YouTube (Jan. 10, 2022), <https://www.youtube.com/watch?v=TfOv4N8IG9U> (video at 8:20).

half of all votes in statewide elections. Indeed, Republicans can win 80% of the Executive Council’s seats even if they win less than half of the statewide vote.



88. The most significant changes made by the General Court in enacting the 2022 Executive Council Plan concern Districts 1 and 2. In the prior Executive Council map, District 1 logically encompassed the entire North Country—including all of Coös, Grafton, and Carroll Counties—as well as northern portions of Sullivan, Merrimack, Belknap, and Strafford Counties.

By contrast, the 2022 Executive Council Plan draws District 1 to cover only the eastern side of the state, encompassing most (but not all) of Coös County, all of Carroll County, and then stretching all the way south to Dover and Durham. Meanwhile, District 2—which previously snaked horizontally through the southern half of the state—now runs vertically along the western border of the state, stretching all the way from the southeast corner of the state through Grafton County. But, in a blatant attempt to pack District 2 with Democratic voters, the General Court extended parts of the district eastward to pick up Democratic strongholds in Cheshire, Hillsborough, and Merrimack Counties. The result is a district the resembles a scrawled “E.”



89. Having reconfigured District 2 in this way, the General Court made it *even more* packed with Democratic voters than its predecessor, increasing the proportion of voters in the district who support Democratic candidates from 54.6% to 57.4%.

90. By further packing District 2 with Democratic voters, the General Court made District 1, which was previously a competitive district, into a safe Republican seat. District 1 now has a Republican vote share of 52.6%.

91. These new configurations of Districts 1 and 2 make little attempt to connect communities of interest, and instead pair communities having little in common. For example, District 1 connects the northernmost rural areas of the state with urban and college areas in the southeast that are among the state's fastest growing and most prosperous.

92. District 2 in turn splits communities of interest. While the district covers much of the Connecticut River Valley community, it conspicuously carves out Republican-leaning municipalities in that region, sending them either to District 1 or District 5. District 2 also connects entirely different parts of the state by, for example, including both the rural areas of Cheshire and Sullivan Counties (and even some of Coös County) *and* urban Concord. As one commentator recently wrote, to say that the “Coös County towns [included in District 2] have shared concerns with Keene, Concord, Hanover, Lebanon and Claremont is whimsical.”¹³

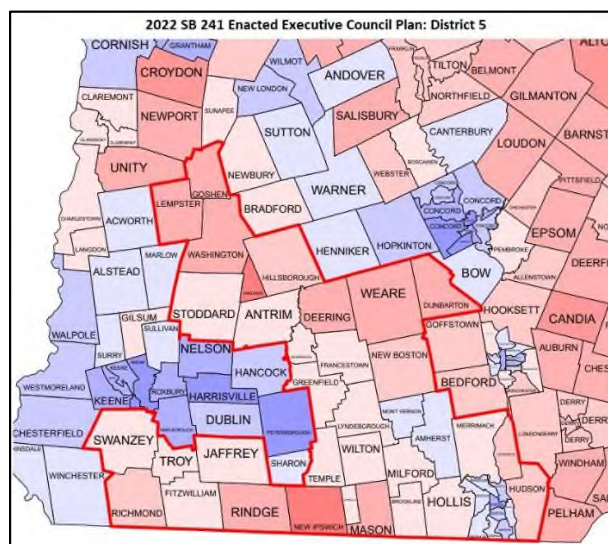
93. In addition to making District 1 a more safely Republican seat, the 2022 Executive Council Plan neutralizes Republican incumbent Joseph Kenney's main competition. The plan moves Democrat Michael Cryans out of District 1—where he has traded election victories with

¹³ Garry Rayno, *Gerrymandering Is Alive and Well in the Granite State*, InDepthNH (Mar. 26, 2022), <https://indepthnh.org/2022/03/26/gerrymandering-is-alive-and-well-in-the-granite-state>.

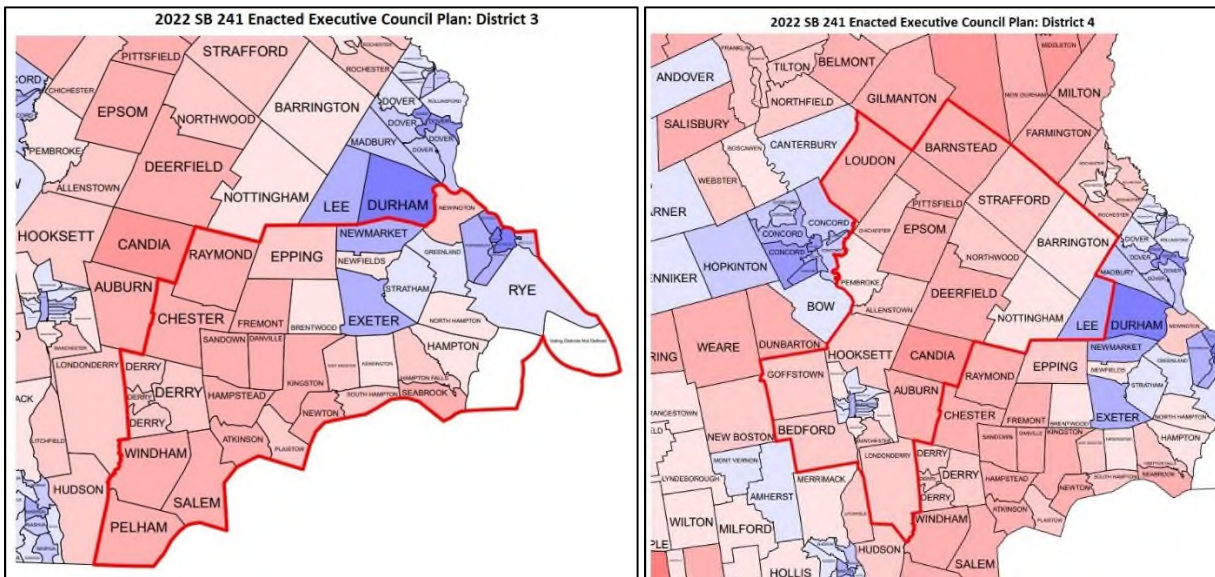
Kenney in the last three elections—and into District 2, which is currently represented by Democrat Cinde Warmington.

94. The 2022 Executive Council Plan’s alterations to District 2 also make District 5 a safer Republican seat. In 2018 and 2020, District 5 switched between Democrats and Republicans, with Democrat Debora Pignatelli defeating Republican Dave Wheeler in 2018 and Wheeler defeating Pignatelli in 2020. To make District 5 a safer Republican seat, the General Court shifted the Democratic-leaning towns of Peterborough and Sharon out of District 5 and into District 2, trading them with heavily Republican Goshen, Lempster, Stoddard, and Washington.

95. Because of District 2’s bizarre shape—driven by the intent to maximize Republican advantage overall by packing District 2 with Democratic voters—District 5 *also* has a bizarre shape that cannot be explained by any neutral redistricting principles. While centered in Hillsborough County, District 5 includes one appendage that reaches west along the southern border of the state, gathering Republican-leaning municipalities in southern Cheshire County, and another that reaches northwest into Sullivan County—again selecting only Republican-leaning towns. The only identifiable characteristic shared by these disparate communities is the partisan lean of their voters. District 5 is now solidly Republican, with a Republican vote share of 52.8%.



96. Rounding out the Executive Council Plan, Districts 3 and 4 crack the Democratic-leaning areas in the southeastern region of the state left out of Districts 1, 2, and 5. District 3, which sits along the southern and eastern border of the state, collects Democratic-leaning Newmarket, Exeter, and Portsmouth, and pairs them with the heavily Republican areas to the southwest, neutralizing the strength of its Democratic voters. Meanwhile, District 4 sits to District 3's north, collecting the Democratic strongholds of Manchester and Lee and pairing them with heavily Republican areas farther to the north—but carefully excluding any portion of Democratic-leaning Concord, which is instead placed in one of District 2's eastward-reaching arms. Districts 3 and 4 are safe Republican seats, with respective Republican votes shares of 54.2% and 54%.



97. Like the 2022 Senate Plan, the 2022 Executive Council Plan has a significant statewide pro-Republican bias. If allowed to take effect, the 2022 Executive Council Plan will result in Republicans reliably controlling 80% of Executive Council seats even when Republican candidates receive less than half of the statewide vote. By contrast, to win a bare majority of seats, Democrats would need to obtain 51.6% of the statewide vote.

98. The Executive Council Plan’s bizarrely shaped districts cannot be explained by anything other than an intent to warp that body’s elections in favor of Republicans.

CAUSES OF ACTION

COUNT I

Violation of the Free and Equal Elections Clause of the New Hampshire Constitution

99. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

100. The New Hampshire Constitution requires that “[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election.” N.H. Const. pt. I, art. 11.

101. Partisan gerrymandering—“[t]he practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition’s voting strength,” *Below v. Gardner*, 148 N.H. 1, 9–10 (2002) (quoting *Gerrymandering*, *Black’s Law Dictionary* (7th ed. 1999))—violates the New Hampshire Constitution’s requirement that elections be free and equal.

102. An election is free only when it is “conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018). “[A] legislative body can only reflect the will of the people if it is elected from districts that provide one person’s vote with substantially the same power as every other person’s vote.” *Harper*, 868 S.E.2d at 509. Accordingly,

partisan gerrymandering, through which the ruling party in the legislature manipulates the composition of the electorate to ensure that members of its party retain control, is cognizable under [a] free elections clause because it can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation. Partisan gerrymandering

prevents election outcomes from reflecting the will of the people and such a claim is cognizable under [a] free elections clause.

Id. at 542.

103. The Challenged Plans are partisan gerrymanders that undermine free and equal elections in New Hampshire by effectuating preordained outcomes without regard to the expressed will of the state's voters. Under these plans, voters are not freely choosing their representatives; rather, representatives are choosing their voters. Even if more than half of the statewide electorate votes for Democratic candidates, Republicans can still obtain control of both the Senate and Executive Council with large margins. This is the outcome that the General Court intended and that the Challenged Plans will achieve.

104. The Challenged Plans cannot satisfy strict scrutiny because their warping of New Hampshire's political geography in a manner that artificially benefits Republican candidates is not narrowly tailored to any compelling (let alone legitimate) state interest.

105. Because the Senate and Executive Council plans were enacted with the intent to artificially advantage Republican candidates by systematically packing and cracking Democratic voters to diminish their voting strength, because they will have this effect, and because they are not necessary to comply with any government interest, they violate the guarantee of free and equal elections under Part I, Article 11 of the New Hampshire Constitution.

COUNT II
Violation of the Equal Protection Provisions of the New Hampshire Constitution

106. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

107. Under the New Hampshire Constitution, “[a]ll men are born equally free and independent; Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good.” N.H. Const. pt. I, art. 1.

108. Moreover, the New Hampshire Constitution guarantees that the government be “instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men.” *Id.* pt. I, art. 10.

109. The New Hampshire Constitution further guarantees that “[e]very member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property,” and “the inhabitants of this state [are not] controllable by any other laws than those to which they, or their representative body, have given their consent.” *Id.* pt. I, art. 12.

110. Together, these provisions provide a constitutional guarantee of equal protection, which “ensure[s] that State law treats groups of similarly situated citizens in the same manner.” *McGraw v. Exeter Region Coop. Sch. Dist.*, 145 N.H. 709, 711 (2001). Indeed, the “principle of equality pervades the entire constitution.” *State v. Pennoyer*, 65 N.H. 113, 114 (1889); *see also Rosenblum v. Griffin*, 89 N.H. 314, 321 (1938) (referring to New Hampshire Constitution’s “organic principle of equality”).

111. “The first question in an equal protection analysis is whether the State action in question treats similarly situated persons differently.” *McGraw*, 145 N.H. at 711 (quoting *LeClair v. LeClair*, 137 N.H. 213, 222 (1993)). There can be no dispute that all New Hampshire voters are similarly situated in their exercise of the franchise. And by diluting the voting strength of half of the state’s electorate, the Challenged Plans single out New Hampshire voters who support Democratic candidates and treat them differently in a manner that harms their voting strength. “[W]hen on the basis of partisanship” a legislature

enacts a districting plan that diminishes or dilutes a voter’s opportunity to aggregate with likeminded voters to elect a governing majority—that is, when a districting plan systematically makes it harder for one group of voters to elect a governing majority than another group of voters of equal size—the [legislature] unconstitutionally infringes upon that voter’s fundamental rights to vote on equal terms and to substantially equal voting power.

Harper, 868 S.E.2d at 544. That is, “if through state action the ruling party chokes off the channels of political change on an unequal basis, . . . the principle of political equality that is fundamental to . . . our democratic constitutional system is violated.” *Id.* at 539; *see also Rivera v. Schwab*, No. 2022-CV-000089, slip op. at 178–82 (Kan. Dist. Ct. Apr. 25, 2022) (concluding that “partisan gerrymandering—the drawing of district lines to dilute the votes of those likely to vote for a disfavored party—deprives voters of substantially equal voting power” in violation of state constitution’s equal protection provisions).

112. The Challenged Plans cannot satisfy strict scrutiny because their differential treatment of similarly situated voters is not narrowly tailored to any compelling (let alone legitimate) state interest.

113. The Challenged Plans dilute the voting strength of New Hampshire voters who support Democratic candidates and stymie their ability to transform their votes into representation in the Senate and Executive Council. In doing so, they deny Democratic voters their right to a substantially equal vote in violation of the equal protection provisions of the New Hampshire Constitution.

COUNT III

Violation of the Free Speech and Assembly Provisions of the New Hampshire Constitution

114. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

115. Because “[f]ree speech” is “essential to the security of freedom in a state,” the New Hampshire Constitution requires that the freedom of speech “be inviolably preserved.” N.H. Const. pt. I, art. 22.

116. Moreover, the New Hampshire Constitution protects the right of association: “The people have a right, in an orderly and peaceable manner, to assemble and consult upon the common

good, give instructions to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer.” *Id.* pt. I, art. 32.

117. As the North Carolina Supreme Court recently explained,

[p]artisan gerrymandering violates the freedoms of speech and association and undermines their role in our democratic system. . . . When legislators apportion district lines in a way that dilutes the influence of certain voters based on their prior political expression—their partisan affiliation and their voting history—it imposes a burden on . . . the fundamental right to equal voting power on the basis of their views. When [a legislature] systematically diminishes or dilutes the power of votes on the basis of party affiliation, it intentionally engages in a form of viewpoint discrimination and retaliation that triggers strict scrutiny.

Harper, 868 S.E.2d at 546; *see also Szeliga v. Lamone*, No. C-02-CV-21-001816, slip op. at 93–94 (Md. Cir. Ct. Mar. 25, 2022) (holding that partisan gerrymander violated Maryland Constitution’s guarantee of free speech); *Rivera*, slip op. at 183–87 (concluding that “[p]artisan gerrymandering constitutes viewpoint discrimination in violation” of state constitution’s free speech protections and applying strict scrutiny); *State v. Lilley*, 171 N.H. 766, 781–82 (2019) (strict scrutiny applies to content-based restrictions on speech); *Op. of Justs.*, 121 N.H. 434, 436 (1981) (explaining that “the New Hampshire Constitution guarantees the same right to free speech and association” as First Amendment).

118. The Challenged Plans engage in viewpoint discrimination by retaliating against Democratic voters in a manner that dilutes their voting strength. The reason the General Court targeted Democratic voters in this way is because of their political views and association with other voters who similarly support Democratic candidates.

119. The Challenged Plans cannot satisfy strict scrutiny because their viewpoint discrimination and retaliation against Democratic voters are not narrowly tailored to any compelling (let alone legitimate) state interest.

120. Because the Challenged Plans unjustifiably target and dilute the voting strength of New Hampshire citizens on the basis of their political views, association, and voting history, they violate Part I, Articles 22 and 32 of the New Hampshire Constitution.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that this Court enter judgment in their favor against Defendant, and:

A. Declare that the Senate Plan as enacted by Senate Bill 240 and the Executive Council Plan as enacted by Senate Bill 241 violate Part I, Articles 1, 10, 11, 12, 22, and 32 of the New Hampshire Constitution.

B. Preliminarily and permanently enjoin Defendant, his respective agents, officers, employees, successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to the Senate Plan as enacted by Senate Bill 240 or the Executive Council Plan as enacted by Senate Bill 241.

C. Adopt plans for New Hampshire's Senate and Executive Council districts that comply with the New Hampshire Constitution.

D. Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to the Court's inherent equitable power. *See Claremont Sch. Dist. v. Governor*, 144 N.H. 590, 595 (1999).

E. Grant such other or further relief as the Court deems just and proper.

Dated: May 6, 2022

Respectfully submitted,

MILES BROWN, ELIZABETH CROOKER,
CHRISTINE FAJARDO, KENT
HACKMANN, BILL HAY, PRESCOTT
HERZOG, PALANA HUNT-HAWKINS,
MACKENZIE MURPHY, MATT
MOOSHIAN, THERESA NORELLI,
NATALIE QUEVEDO, and JAMES WARD

By Their Attorneys,

By: /s/ Steven J. Dutton

Steven J. Dutton, NH Bar No. 17101
steven.dutton@mclane.com
McLANE MIDDLETON, P.A.
900 Elm Street
Manchester, New Hampshire 03101
Telephone: (603) 628-1377

Paul Twomey, NH Bar No. 2589
paultwomey@comcast.net
P.O. Box 623
Epsom, New Hampshire 03234
Telephone: (603) 568-3254

John M. Devaney*
jdevaney@perkinscoie.com
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005
Telephone: (202) 654-6200

Counsel for Plaintiffs

**Motion for Pro Hac Vice Forthcoming*

Abha Khanna*

akhanna@elias.law
Jonathan P. Hawley*
jhawley@elias.law
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177

Daniel C. Osher*

dosher@elias.law
Aaron M. Mukerjee*
amukerjee@elias.law
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4654

Mapping and Analysis: New Hampshire's Proposed Executive Council & State Senate Districts

Gerrymandering in the Granite State, Visualized

A Report Commissioned by The American Civil Liberties Union of New Hampshire
January 31, 2021



MEMORANDUM

To: Devon Chaffee, Executive Director ACLU-NH

Date: January 31, 2022

From: FLO Analytics

Project No.:

F2186.01.001

RE: **Analysis of the Gray Amendment #2022-0013S to SB240 and the Status Quo New Hampshire Executive Council Districts**

EXECUTIVE SUMMARY

This memo analyzes the Gray Amendment #2022-0013S to SB240 and its likely consequences for the partisan composition of New Hampshire’s state senate. Additionally, we provide an analysis of the state’s status quo executive council districts.

Tabulating ward-level vote returns for the 2020 Presidential race facilitate a key analytical comparison – i.e., between the partisan leanings of the state house districts as they are currently constituted, and prospectively, as they would be constituted in Senator Gray’s proposed map. Notice that the status quo electoral map was enacted by a previous GOP majority ten years ago following the preceding decennial redistricting.

In sum, three clear and politically significant conclusions emerge from our analysis of the Gray Amendment:

- The Gray Amendment #2022-0013S to SB240 would increase the number of GOP-leaning districts represented in the state senate. Specifically, the proposal would reverse the current political makeup of the senate. In its current form, the New Hampshire senate has 13 democratic leaning districts and 11 GOP leaning districts, according to our analysis of partisan lean. Under the proposal, this would change to 13 GOP leaning districts and 11 democratic leaning districts.
- The Gray Amendment #2022-0013S to SB240 would increase the “median seat lean difference” – a technical term discussed below which simply captures the degree to which the partisan leanings of the political significant median district created by a districting plan diverges from the state at large.

Concerning the status quo New Hampshire executive council districts, the clear takeaway is that while four of the five districts are competitive, much like the Granite State itself, District 2 leans heavily Democratic, with a partisan lean of DEM + 6.3.

INSTITUTIONAL CONTEXT

To preserve some of the Republic’s most fundamental principles, the New Hampshire state constitution requires that its legislature revisit its Congressional boundaries on a ten-year basis, after each decennial Census. Following a decade of significant population growth between 2020 and 2010 – especially in southern areas of the state – New Hampshire’s state legislature has been tasked with passing a plan that preserves the established democratic principle of “one person-one vote.”

Significantly, the legislature’s decennial map-making is constitutionally constrained to respect the municipal boundaries of the state’s constituent townships – i.e., it is enjoined from drawing senate lines that bisect town or city ward boundaries.

ANALYSIS

Concretely, our objective is to evaluate the Gray Amendment #2022-0013S’s impact on the distribution of partisan lean among the 24 senate districts that elect New Hampshire’s upper house and analyze the partisan leanings of the five status quo executive council districts.

Methodology

The standard metric used to quantify a party’s support in a particular district is a concept known as “partisan lean” (PL). In the present context, we compute the PL of a (current or proposed) house district by comparing precisely how well the GOP fared in the focal district during the most recent Presidential contest minus the Party’s performance in the US as whole.

In 2020, for instance, Donald Trump (R) won 47.7% of all votes cast for one of the two major parties in the US. In New Hampshire’s two current US House districts, however, Trump’s (R) two-party vote share was 47.2% and 45.3%, respectively. The PL of the congressional districts were thus R-0.5 and R-2.5. Both US House electorates, in other words, were competitive and, like the Granite State itself, relatively centrist.

It is worth noting that there are a variety of alternative ways one might choose to compute partisan lean – for example, by measuring GOP (or Democratic) support using vote shares in down-ballot state or federal contests, or (since New Hampshire has a partisan voter registry) using the proportion of registrants in the focal district who identify as Republicans. These alternatives are not without logical merit.

Nevertheless, we eschew down-ballot contests because local idiosyncrasies among the state’s 24 elections (e.g., a political scandal or candidate’s death during the campaign) would provide a distorted view of the parties’ strength in that district. One adverse consequence of this choice is that, though we may capture the relative strength of GOP support, we may understate GOP support insofar as (1) the Republican Presidential standard-bearer in 2020 (Donald J. Trump) was comparatively unpopular and (2) Republicans do better relative to Democrats in down-ballot races compared to more prominent ones. These observations are in fact strong possibilities but tend to make our estimates more conservative.

We focus on vote shares rather than the partisan composition of the voter registration rolls because, if one looks at the population of registered voters at any given time, one is almost certainly going to find a biased sample of the general population that overstates the GOP vote to some degree. This follows from the notion that the citizens most likely to be on the roll at any given time are more apt to be residentially stable. Democrats, traditionally mobilize to get out their vote with registration drives – a phenomenon which may be exacerbated by New Hampshire’s move to Election Day registration (EDR).

Gray Amendment #2022-0013S to SB240 is Favorable to GOP Electoral Fortunes

As Table 1 indicates, Gray Amendment #2022-0013S to SB240 would increase the number of GOP-leaning state senate districts. The table shows the net effect is to increase the number of GOP-leaning seats by 2, reversing the current political makeup of the senate from democratic leaning to republican leaning. Furthermore, the 11 democratic leaning districts would be far more concentrated with democratic voters than the GOP leaning districts are with GOP voters. For example, the average PL for democratic leaning districts is DEM + 9.11 whereas in GOP leaning districts it is GOP + 5.04. The significance of this is that a higher proportion of democratic votes are “wasted”, in that they are not necessary to elect the democratic candidate. This point is illustrated in Figure 1.

Gray Amendment #2022-0013S to SB240 Moves the Median Seat Further from the State Median

Building on the district-level partisan lean variable, political analysts employ a metric known as the “median seat lean differences” as a means of judging the degree to which the partisan leanings of the politically important median district differ from the leanings of the state as a whole.

Specifically, the median seat lean difference (MSLD) is defined as the difference between the partisan leanings of the state’s median district and the state as a whole. For example, as it pertains to vote shares, if one arrays New Hampshire’s senate districts from least to most Republican in the 2020 presidential election, one finds the median Republican share is 47.5% in the state house districts as they are currently configured and 49.6% were the Gray Amendment enacted in its present form, increasing the difference from the 46.3% of the two-party vote he won in New Hampshire as a whole. The median electoral district assumes special significance because of the majoritarian rules that govern the legislature. By definition, if it is Republican leaning, then a majority of districts in the legislature are as well. The MSLD therefore provides an indication as to how much partisan bias is inherent in a particular political map. Note, per our standard definition, Trump need not have obtained a plurality of the two-party vote in a district for it to qualify as “GOP-leaning,” he simply needed to do better there than he did in the nation at-large.

CONCLUSION

The Gray Amendment #2022-0013S to SB240 is favorable to GOP prospects in future New Hampshire state senatorial elections. According to our analysis the two districts with a partisan lean that moves from one party to the other, both change from democratic to republican leanings. The partisan leanings of the status quo executive council districts are largely centrist, with the notable exception of District 2, which skews heavily democratic.

Table 1: Partisan Lean by District – SB240

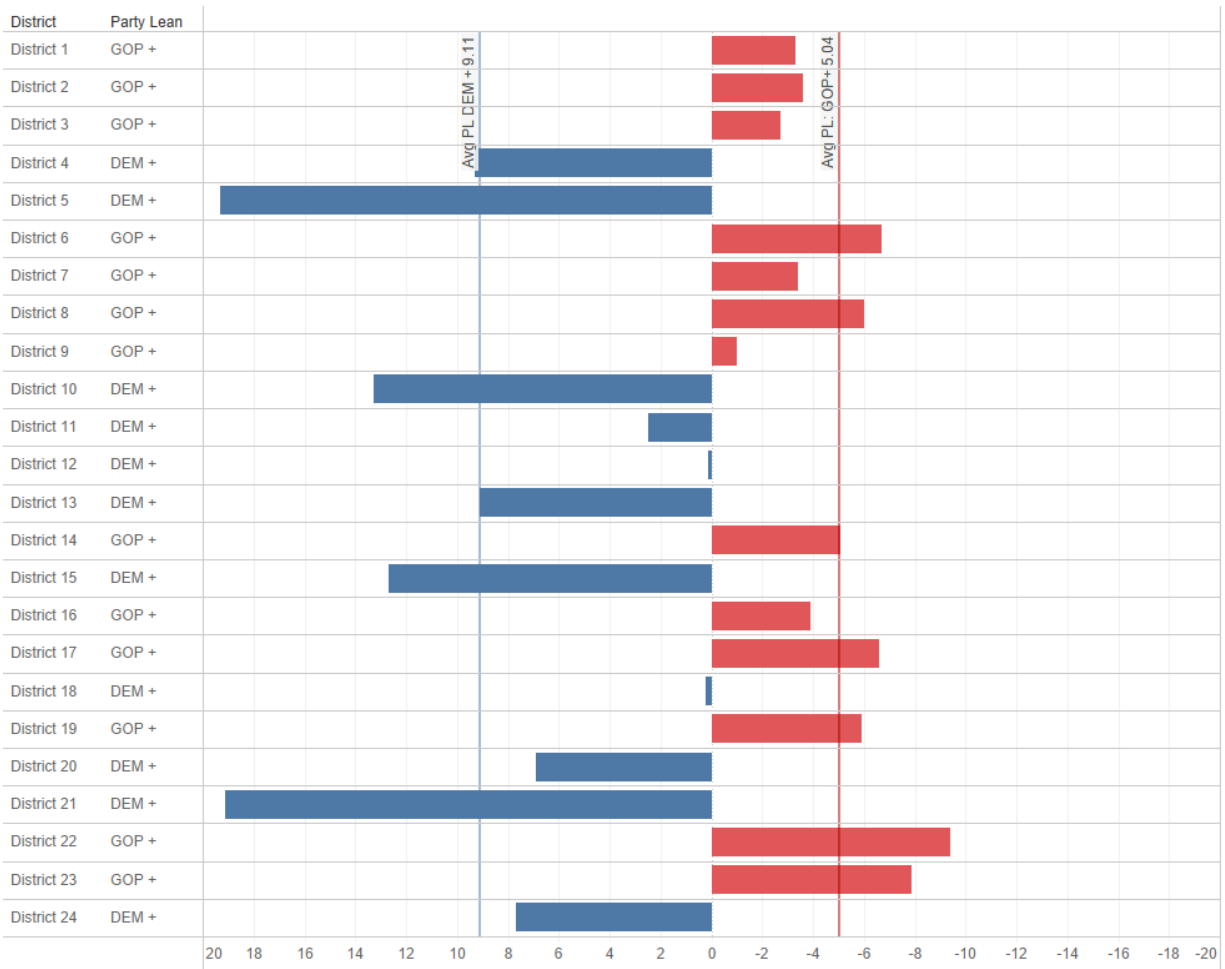
District	Partisan Lean - Status Quo		Partisan Lean - Proposed		Median Seat Lean Difference (MSLD)
District 1	GOP +	2.1	GOP +	3.3	Avg. GOP Vote Share State: 46.3% Status Quo: 47.5% Gray Amendment: 49.6% MSLD: GOP +3.3
District 2	GOP +	2.1	GOP +	3.6	
District 3	GOP +	2.5	GOP +	2.7	
District 4	DEM +	9.3	DEM +	9.3	
District 5	DEM +	16.9	DEM +	19.3	
District 6	GOP +	7.5	GOP +	6.7	
District 7	GOP +	5.8	GOP +	3.4	
District 8	GOP +	2.4	GOP +	6.0	
*District 9	DEM +	2.2	GOP +	1.0	
District 10	DEM +	10.6	DEM +	13.3	
District 11	DEM +	2.5	DEM +	2.5	
District 12	DEM +	0.1	DEM +	0.1	
District 13	DEM +	9.1	DEM +	9.1	
District 14	GOP +	5.1	GOP +	5.1	
District 15	DEM +	12.5	DEM +	12.7	
*District 16	DEM +	1.7	GOP +	3.9	
District 17	GOP +	7.3	GOP +	6.6	
District 18	DEM +	0.2	DEM +	0.2	
District 19	GOP +	5.9	GOP +	5.9	
District 20	DEM +	3.3	DEM +	6.9	
District 21	DEM +	19.2	DEM +	19.1	
District 22	GOP +	9.4	GOP +	9.4	
District 23	GOP +	1.7	GOP +	7.9	
District 24	DEM +	2.4	DEM +	7.7	
GOP Leaning Districts		11	13		
DEM Leaning Districts		13	11		

*Partisan lean party change

Table 1: Partisan Lean by District – Status Quo NH Executive Council Districts

District	Partisan Lean	
District 1	DEM +	1.4
District 2	DEM +	6.3
District 3	GOP +	1.0
District 4	GOP +	0.2
District 5	DEM +	1.1
GOP Leaning Districts		2
DEM Leaning Districts		3

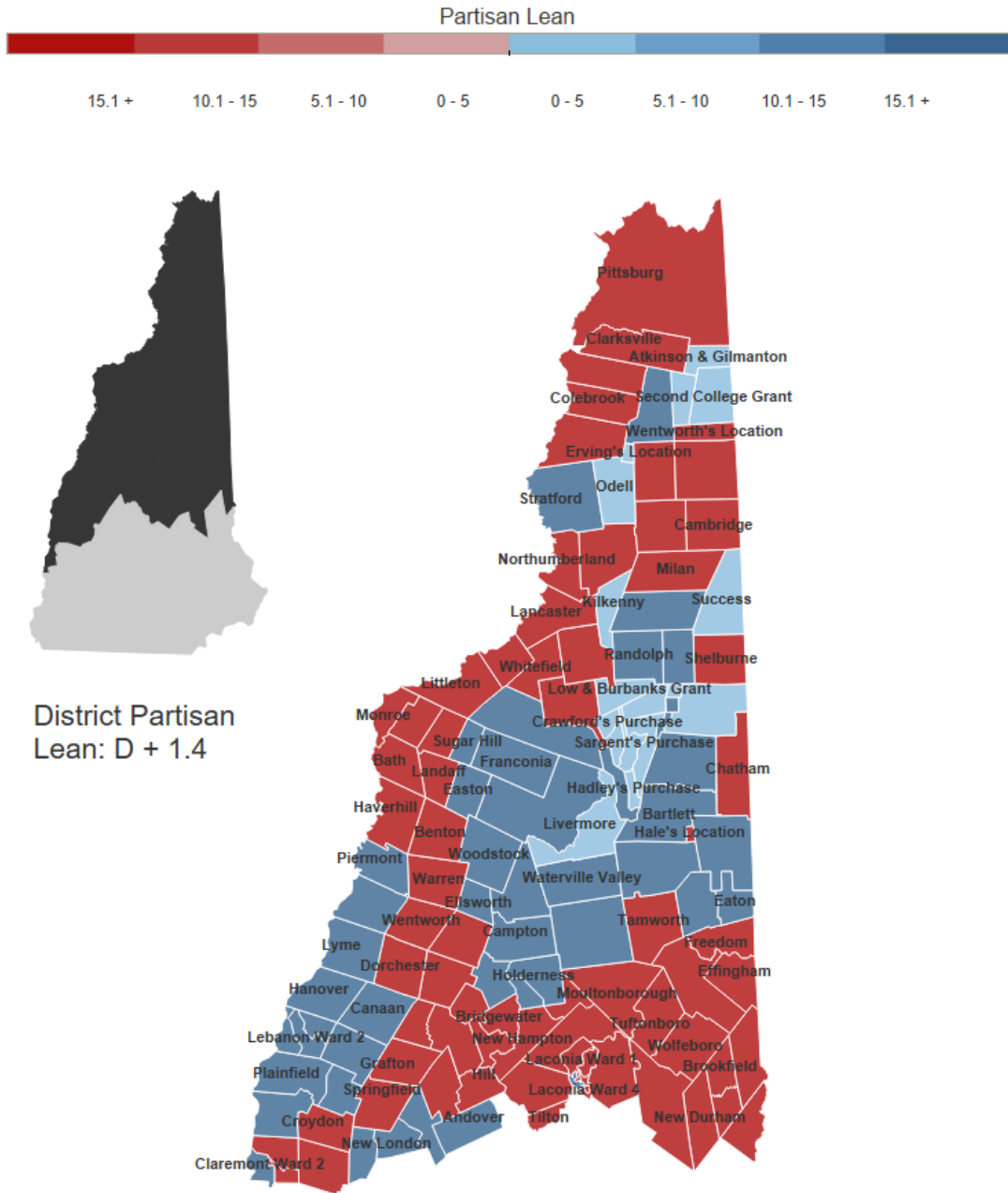
Figure 1: Partisan Lean by District – SB240



Executive Council

Showing Partisan Lean

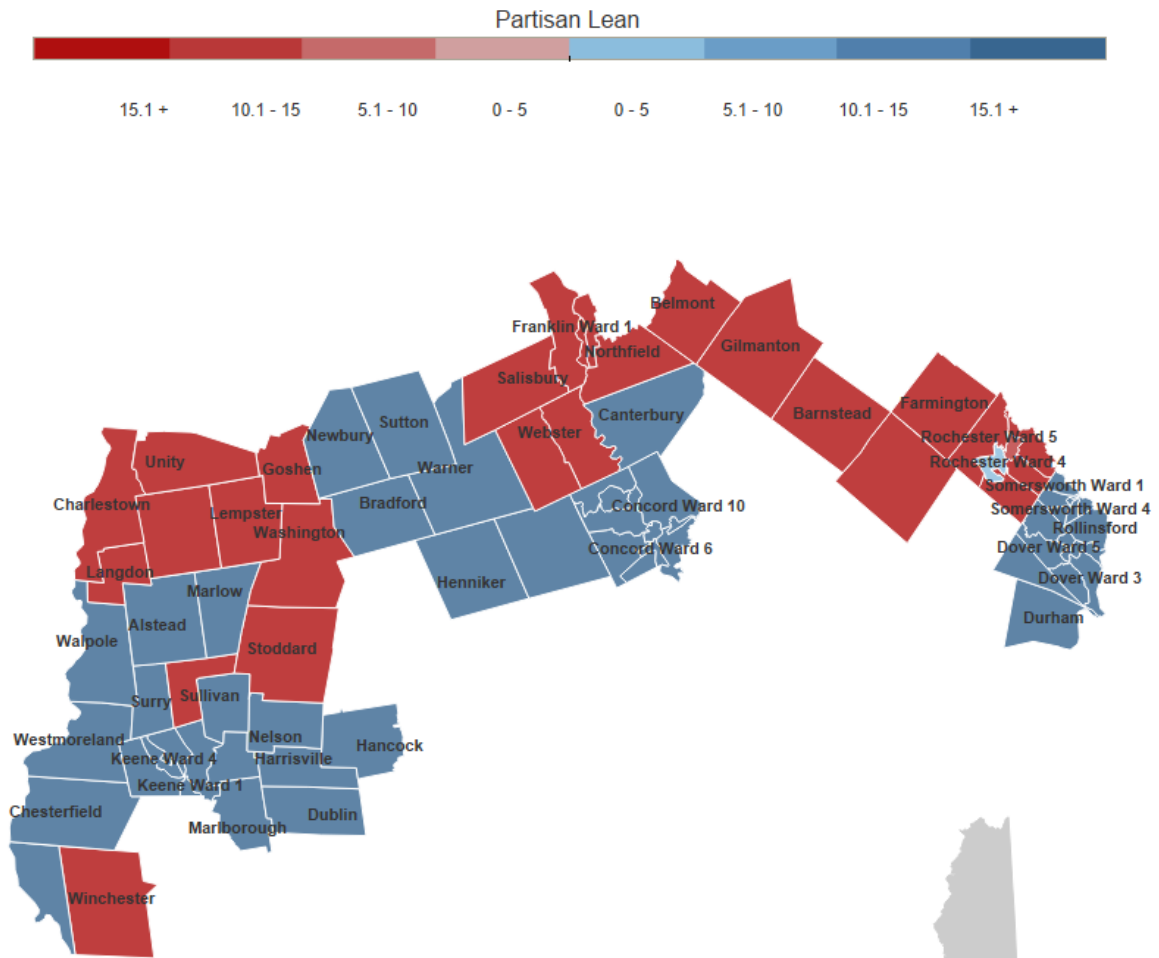
New Hampshire Executive Council District 1



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Data Sources: The General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

New Hampshire Executive Council District 2



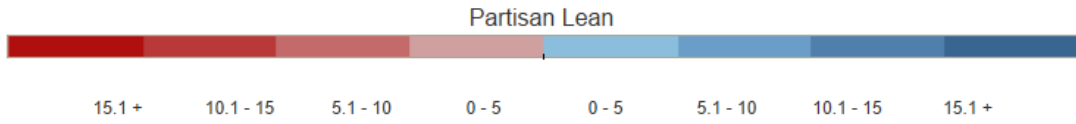
District Partisan Lean: D + 6.3



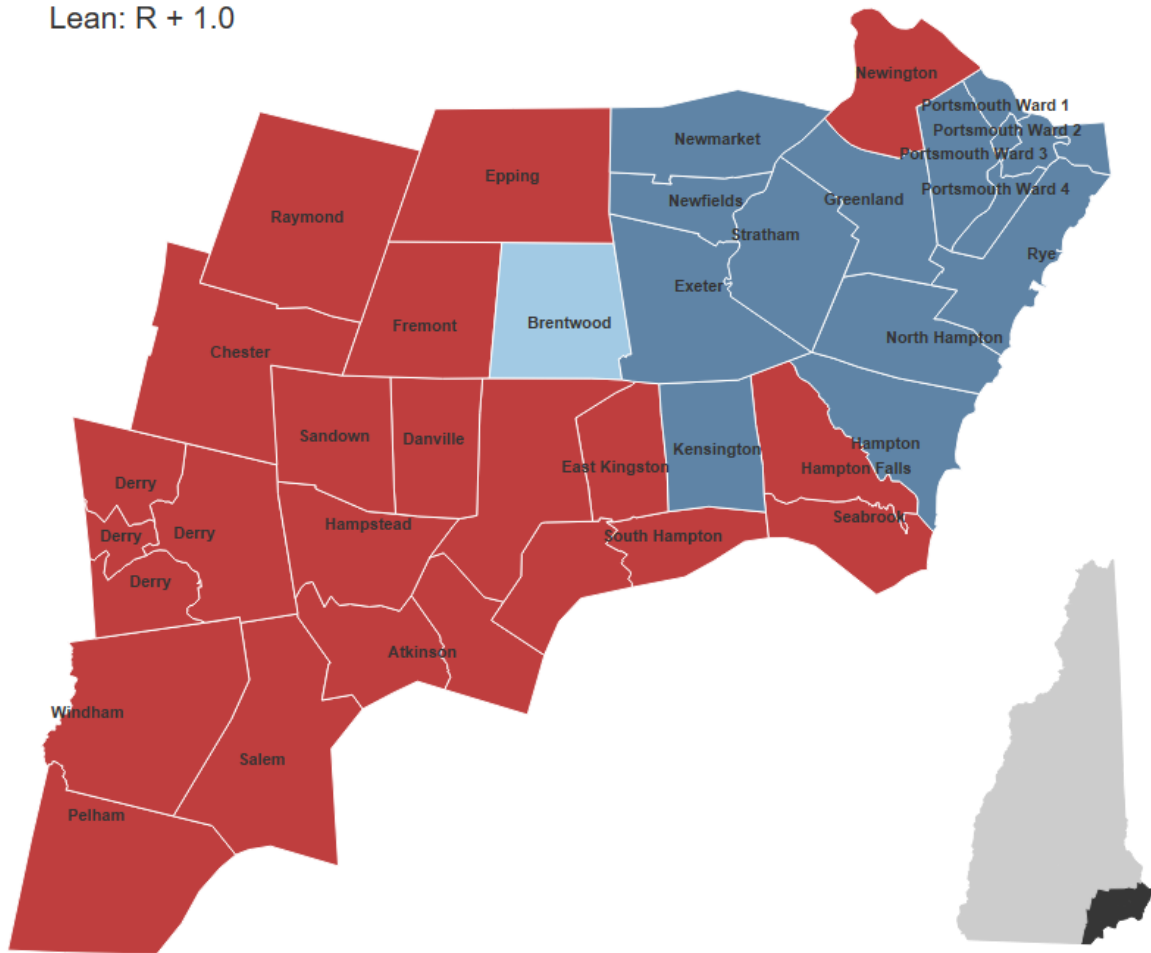
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Data Sources: The General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

New Hampshire Executive Council District 3



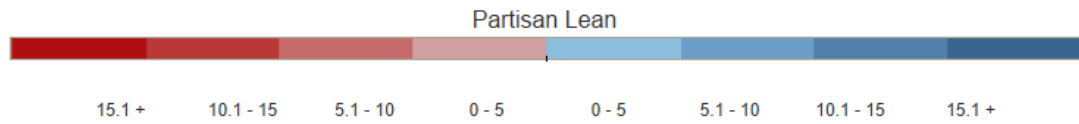
District Partisan Lean: R + 1.0



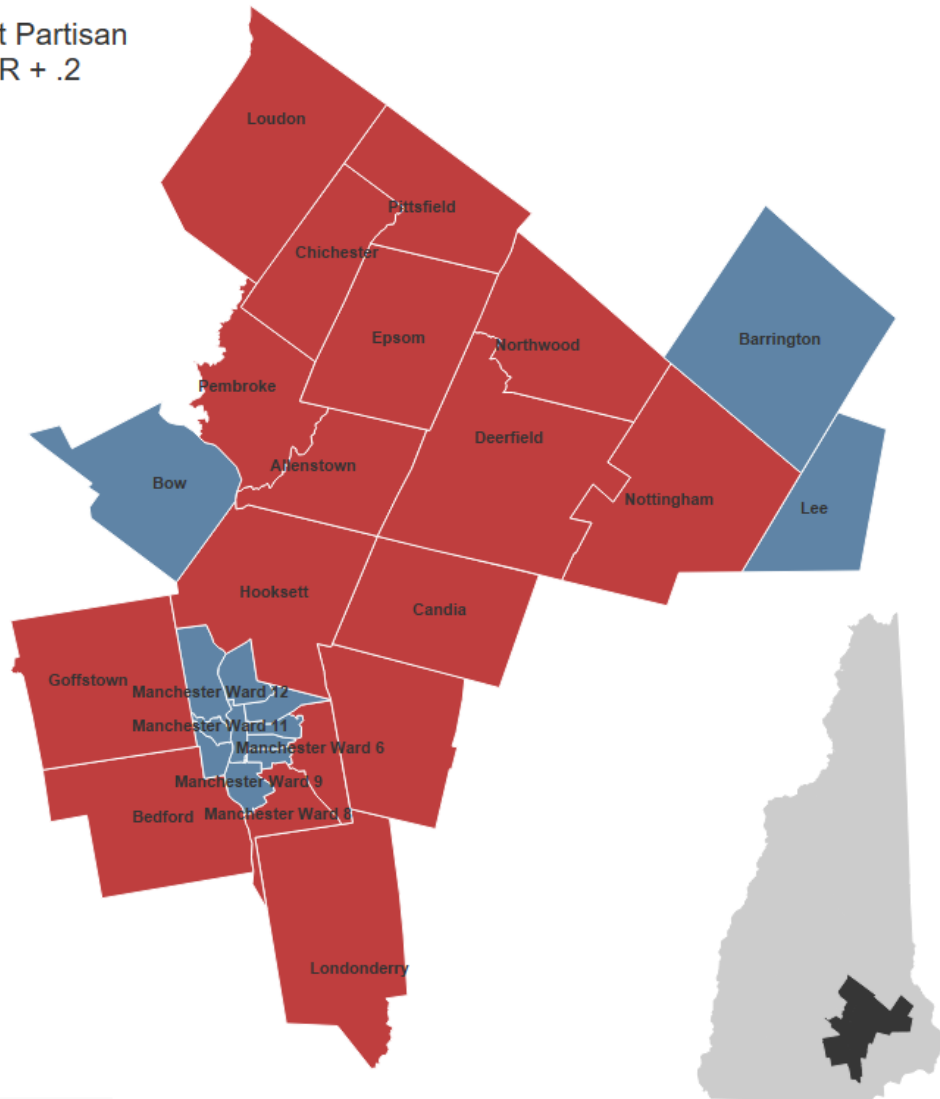
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Data Sources: The General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

New Hampshire Executive Council District 4



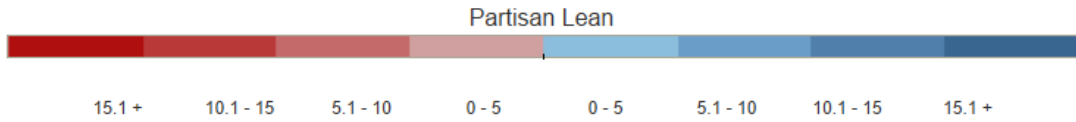
District Partisan Lean: R + .2



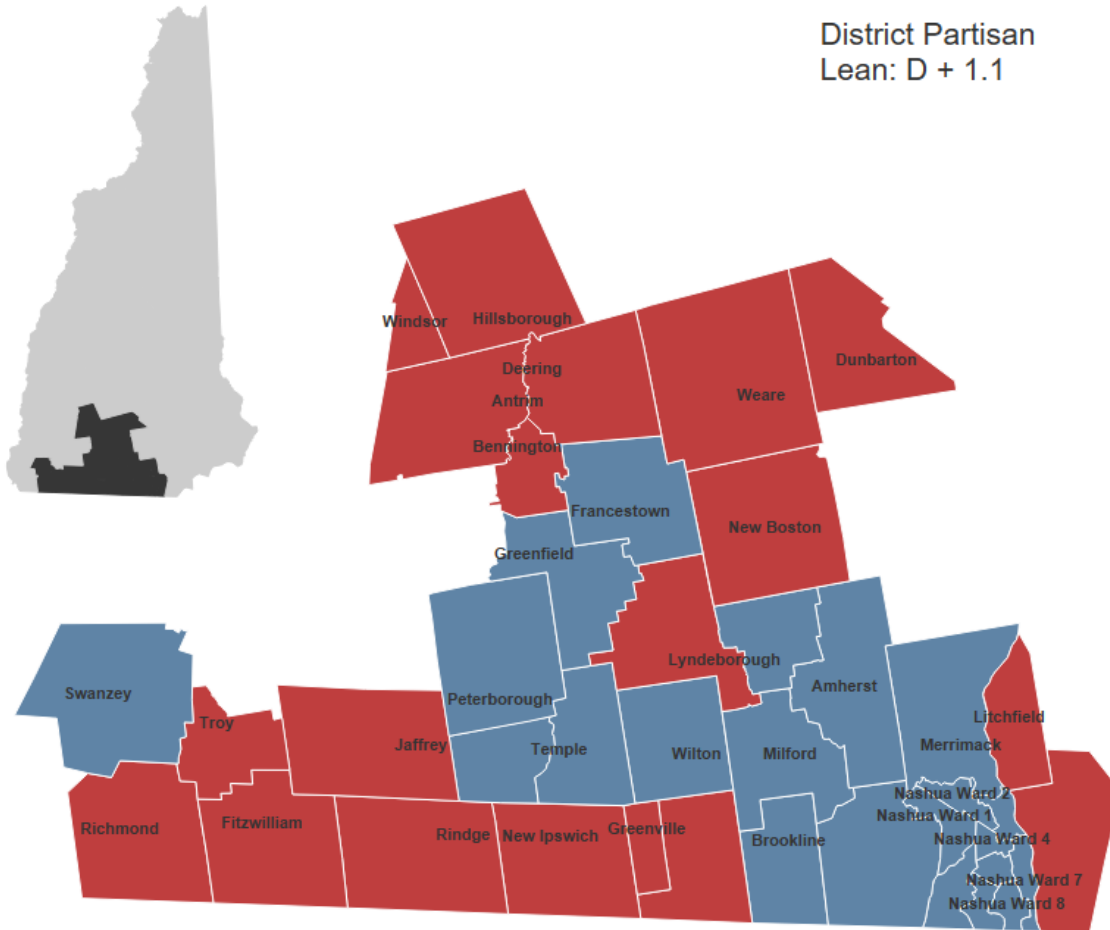
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Data Sources: The General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

New Hampshire Executive Council District 5



District Partisan Lean: D + 1.1



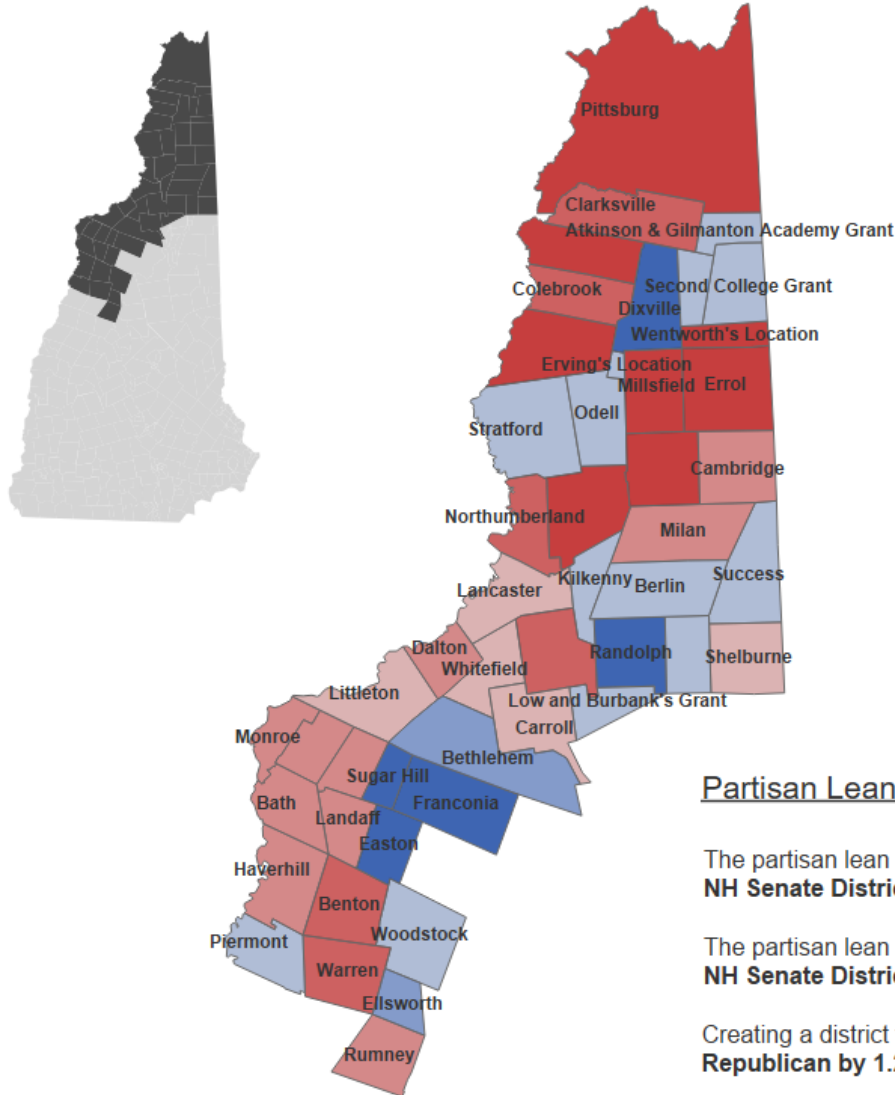
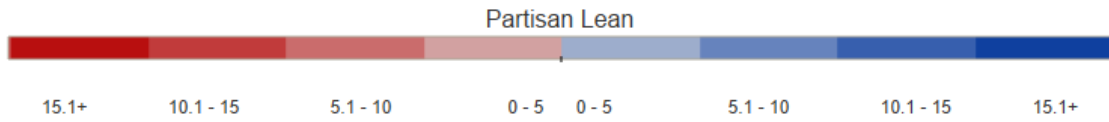
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Data Sources: The General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

N.H. Senate by District

Showing Partisan Lean

Proposed NH Senate District 1



Partisan Lean Summary

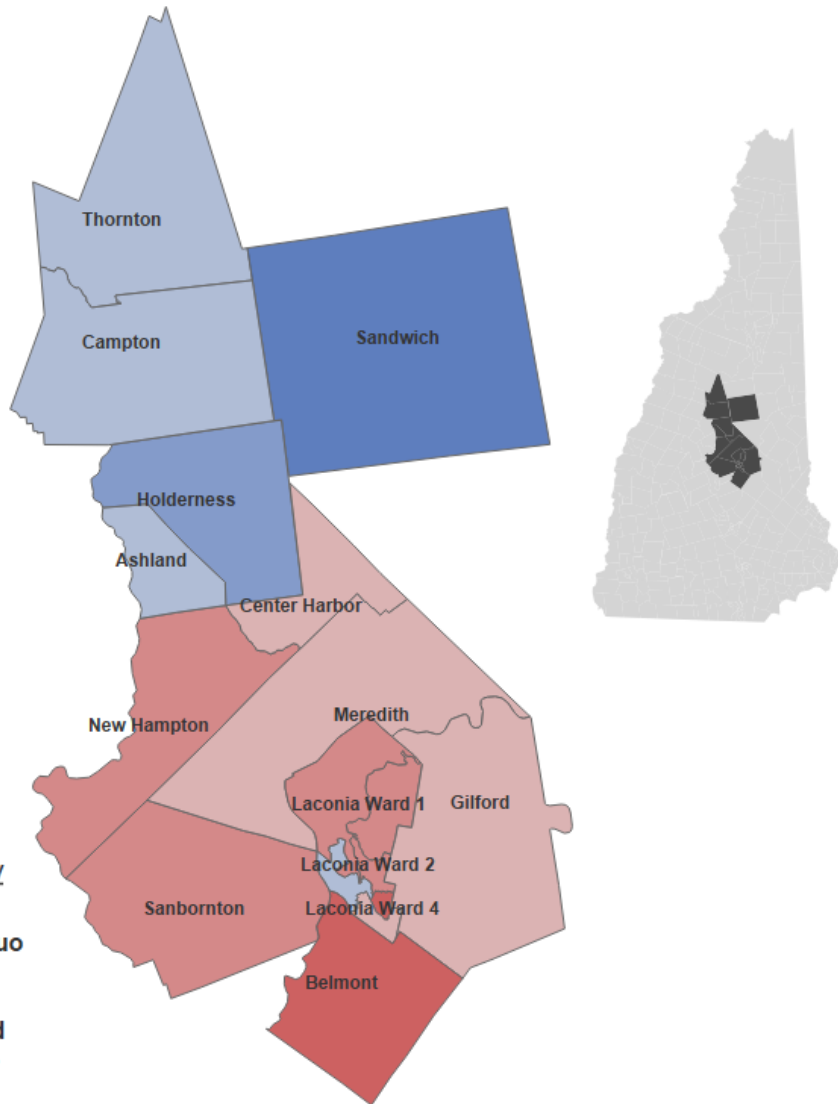
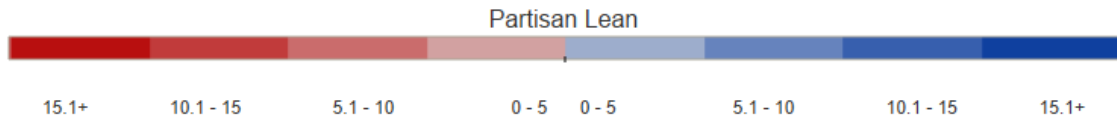
The partisan lean for **Status Quo NH Senate District 1** is **R+ 2.1**

The partisan lean for **Proposed NH Senate District 1** is **R+ 3.3**

Creating a district that leans **more Republican by 1.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 2



Partisan Lean Summary

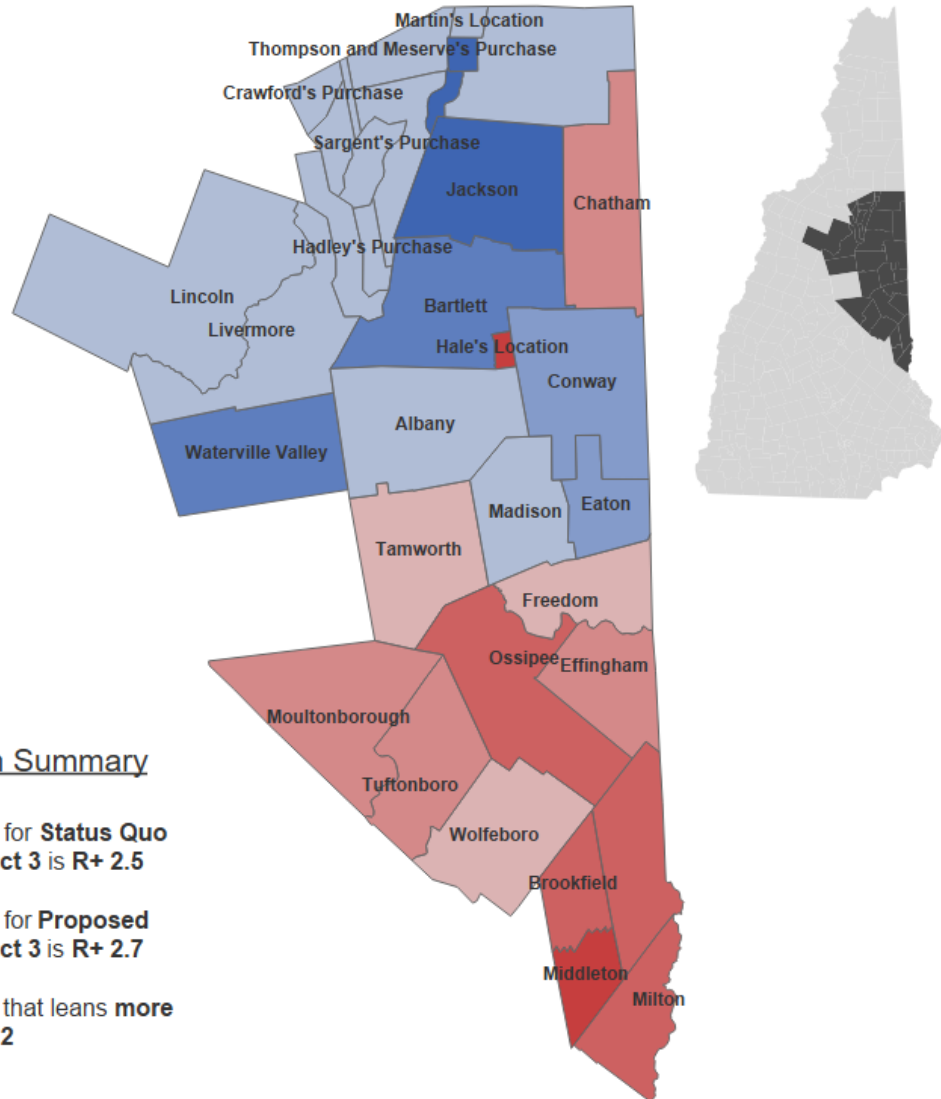
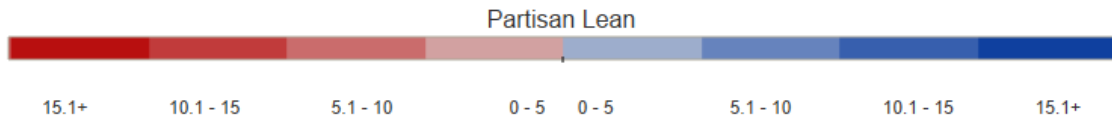
The partisan lean for **Status Quo NH Senate District 2** is **R+ 2.1**

The partisan lean for **Proposed NH Senate District 2** is **R+ 3.6**

Creating a district that leans **more Republican by 1.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 3



Partisan Lean Summary

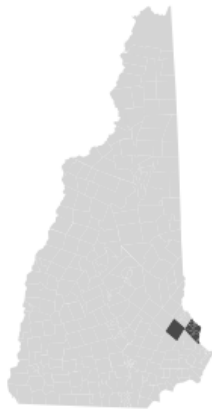
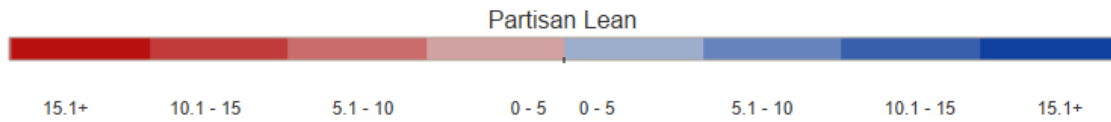
The partisan lean for **Status Quo NH Senate District 3** is **R+ 2.5**

The partisan lean for **Proposed NH Senate District 3** is **R+ 2.7**

Creating a district that leans **more Republican by 0.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

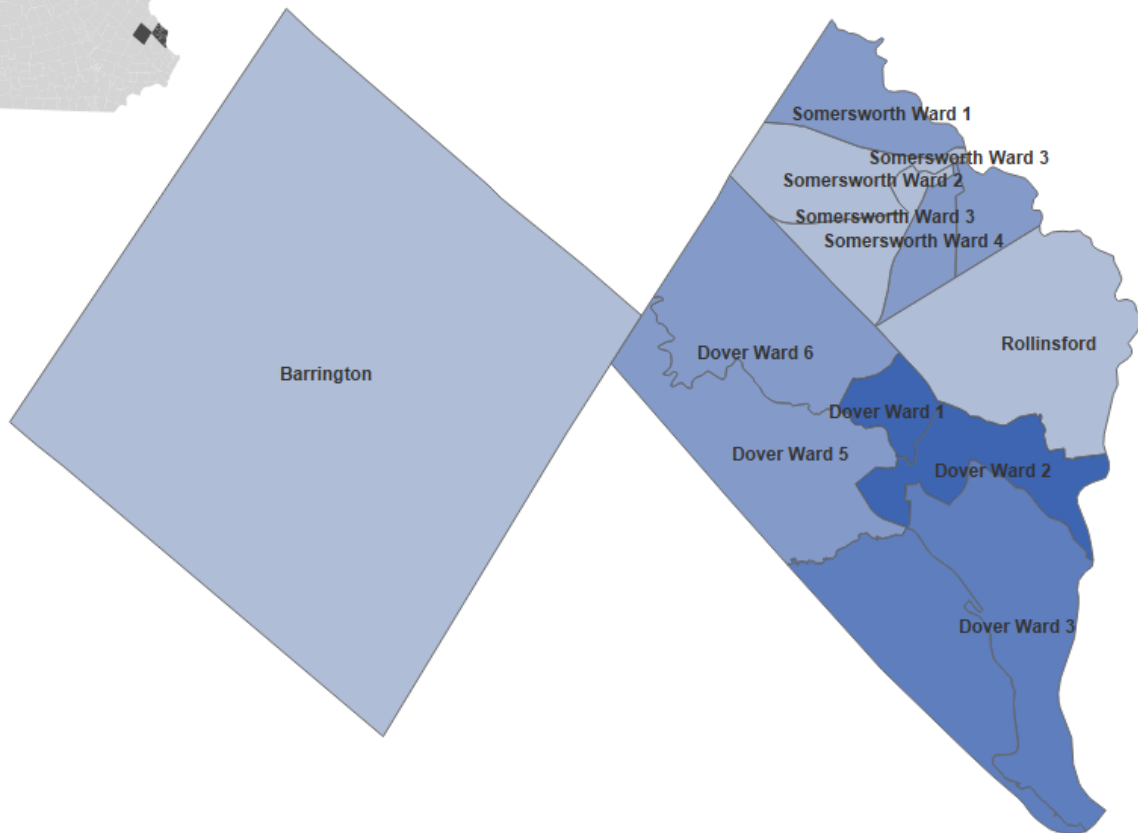
Proposed NH Senate District 4



Partisan Lean Summary

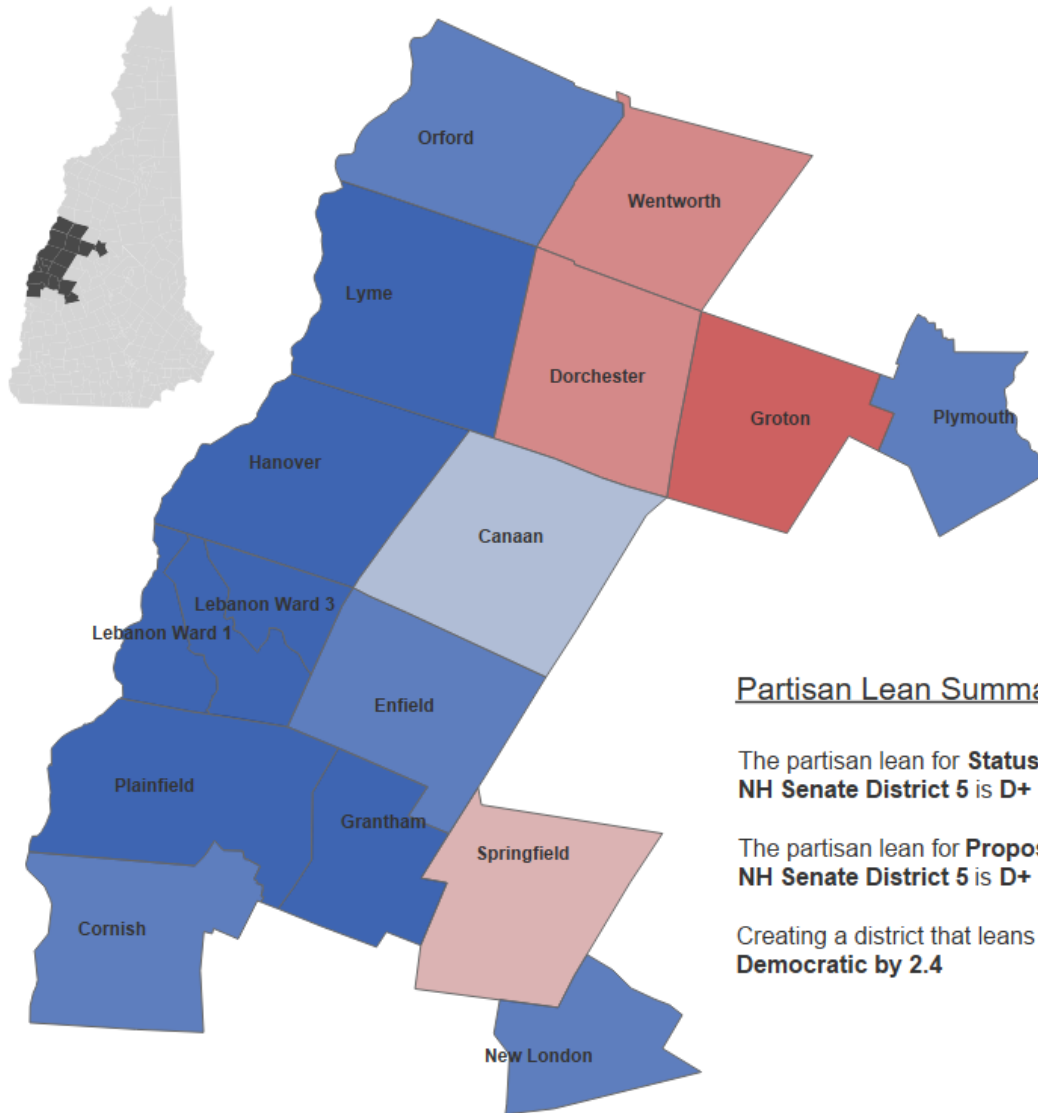
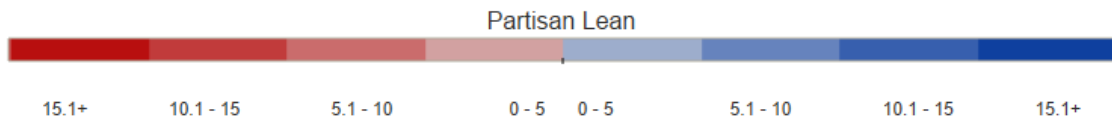
The partisan lean for **Status Quo NH Senate District 4** is **D+ 9.3**

The partisan lean for **Proposed NH Senate District 4** is **D+ 9.3**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 5



Partisan Lean Summary

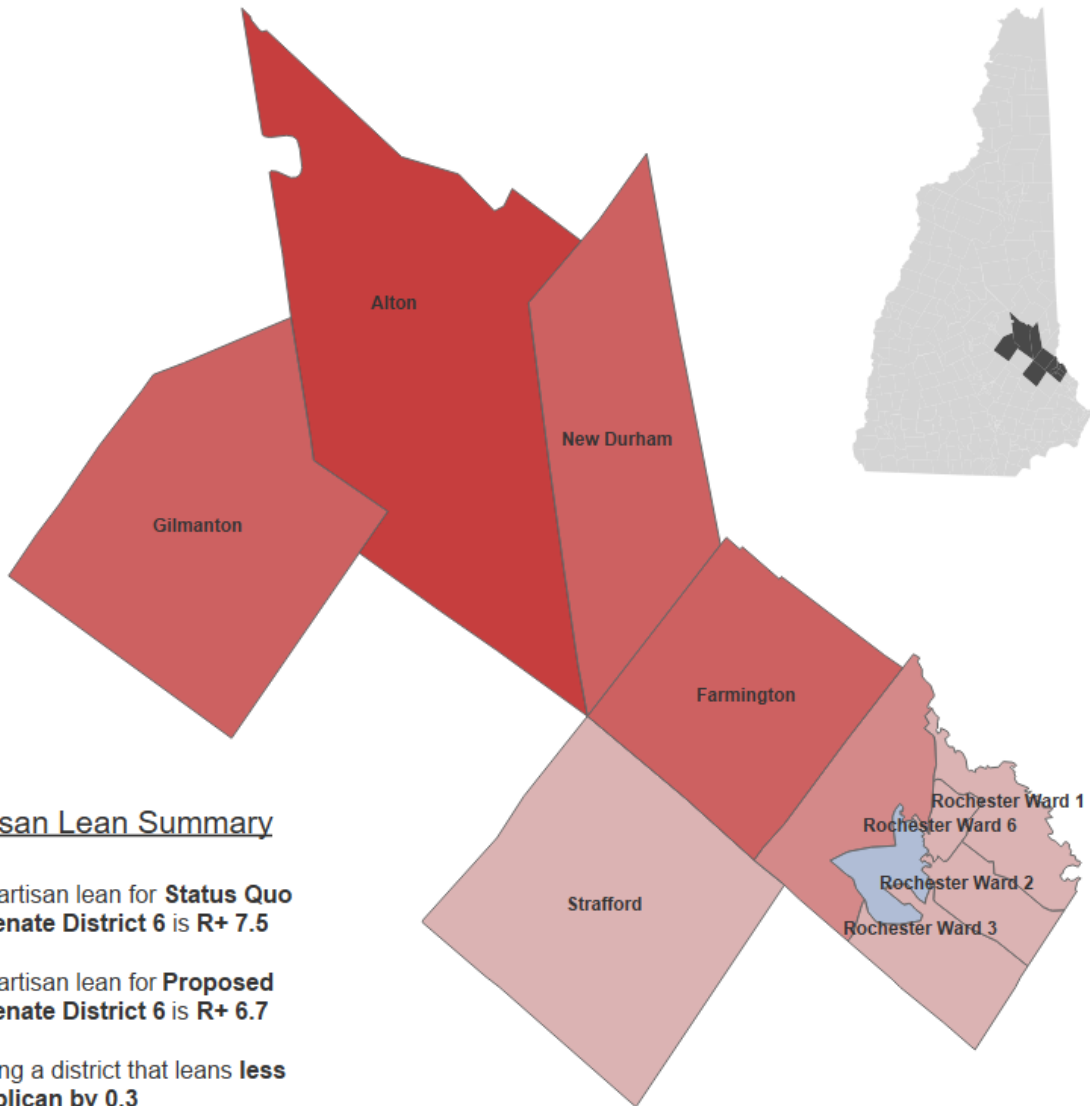
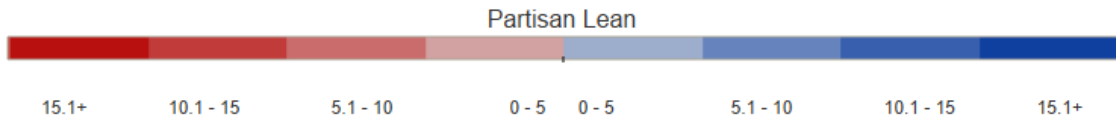
The partisan lean for **Status Quo NH Senate District 5** is **D+ 16.9**

The partisan lean for **Proposed NH Senate District 5** is **D+ 19.3**

Creating a district that leans **more Democratic by 2.4**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 6



Partisan Lean Summary

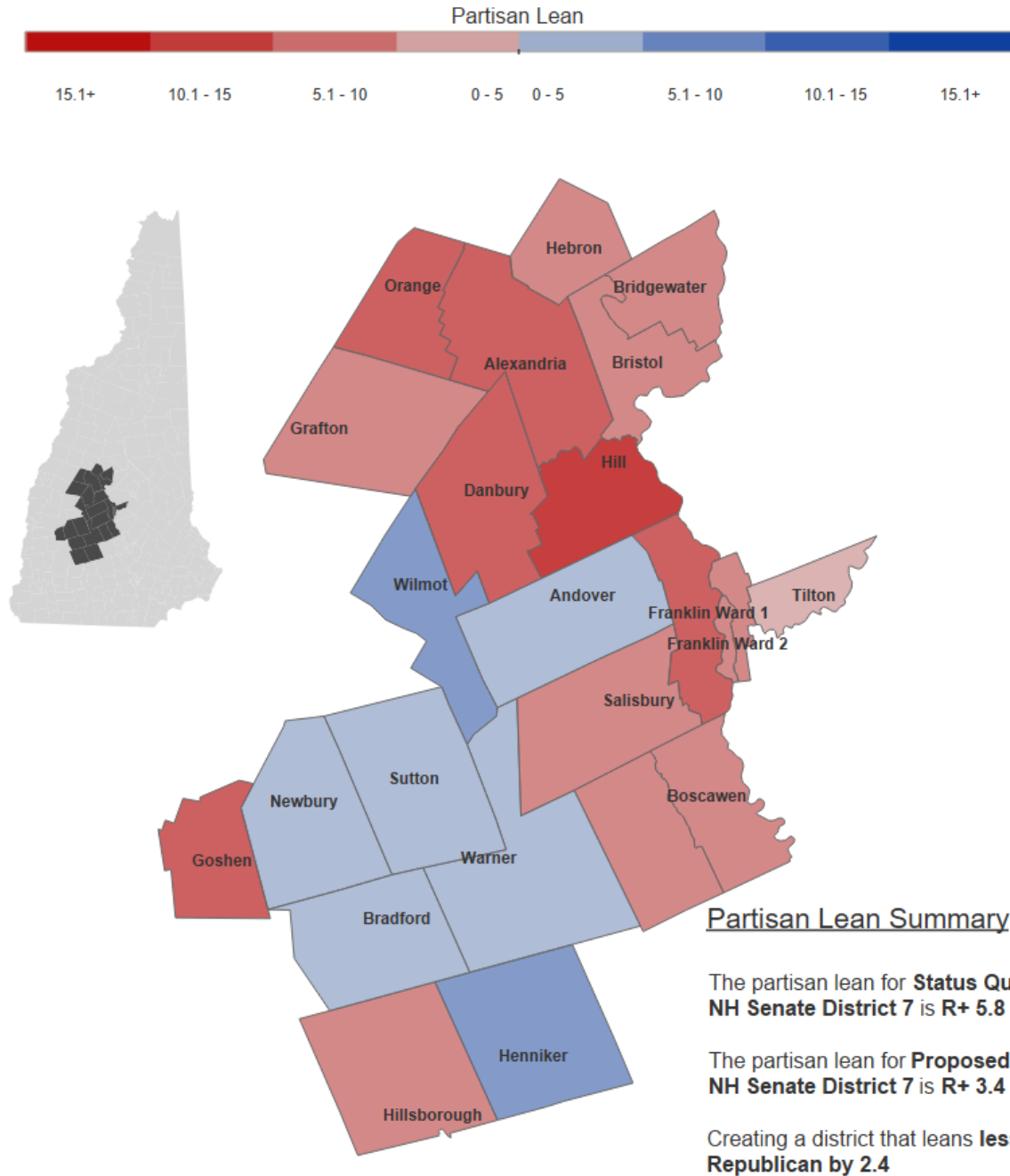
The partisan lean for **Status Quo NH Senate District 6** is **R+ 7.5**

The partisan lean for **Proposed NH Senate District 6** is **R+ 6.7**

Creating a district that leans **less Republican by 0.3**

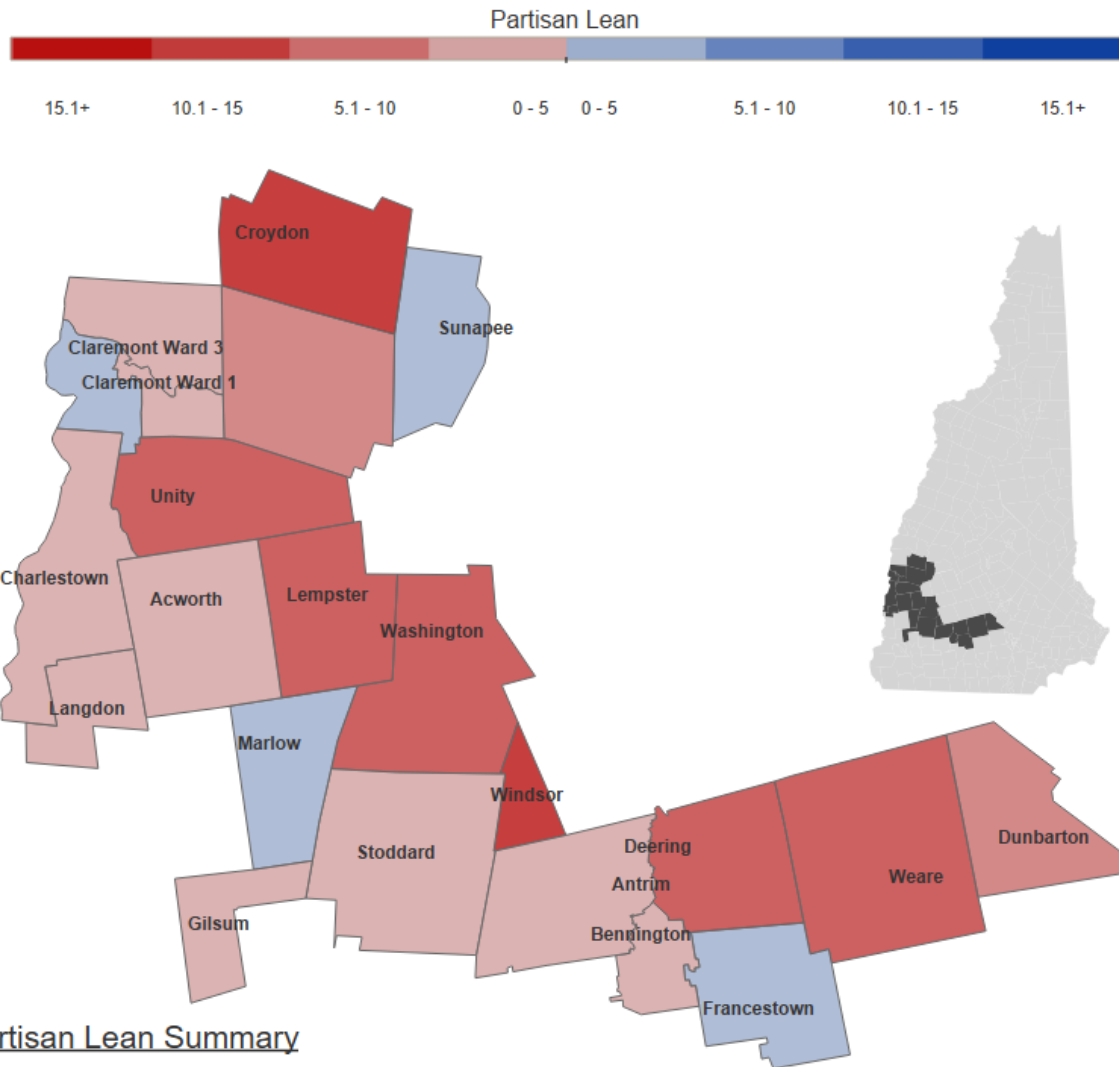
Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 7



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 8



Partisan Lean Summary

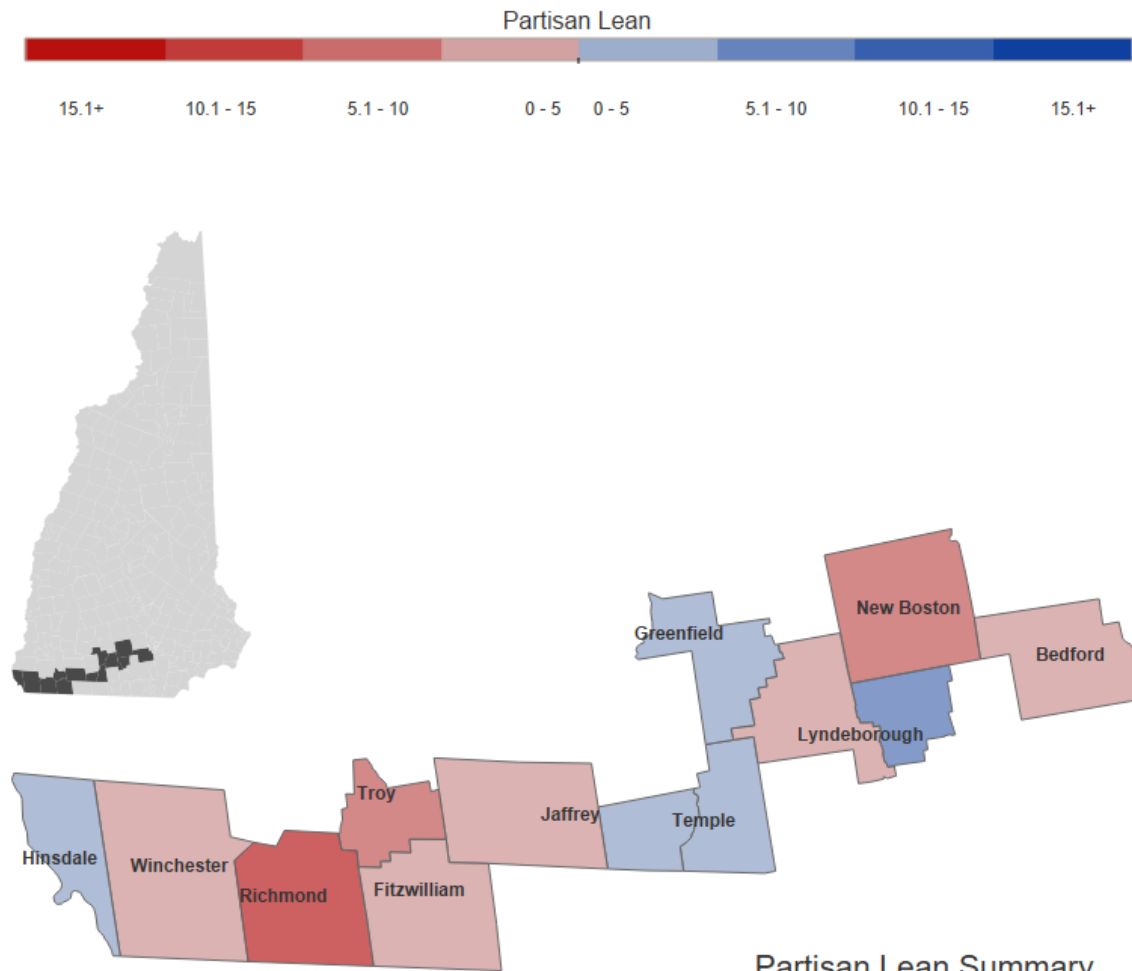
The partisan lean for **Status Quo NH Senate District 8** is **R+ 2.4**

The partisan lean for **Proposed NH Senate District 8** is **R+ 6.0**

Creating a district that leans **more Republican by 3.6**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 9



Partisan Lean Summary

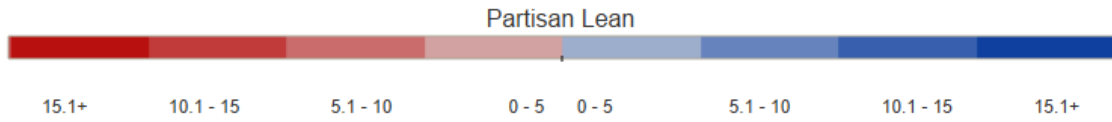
The partisan lean for **Status Quo NH Senate District 9** is **D+ 2.2**

The partisan lean for **Proposed NH Senate District 9** is **R+ 1.0**

Creating a district that leans **more Republican by 3.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 10

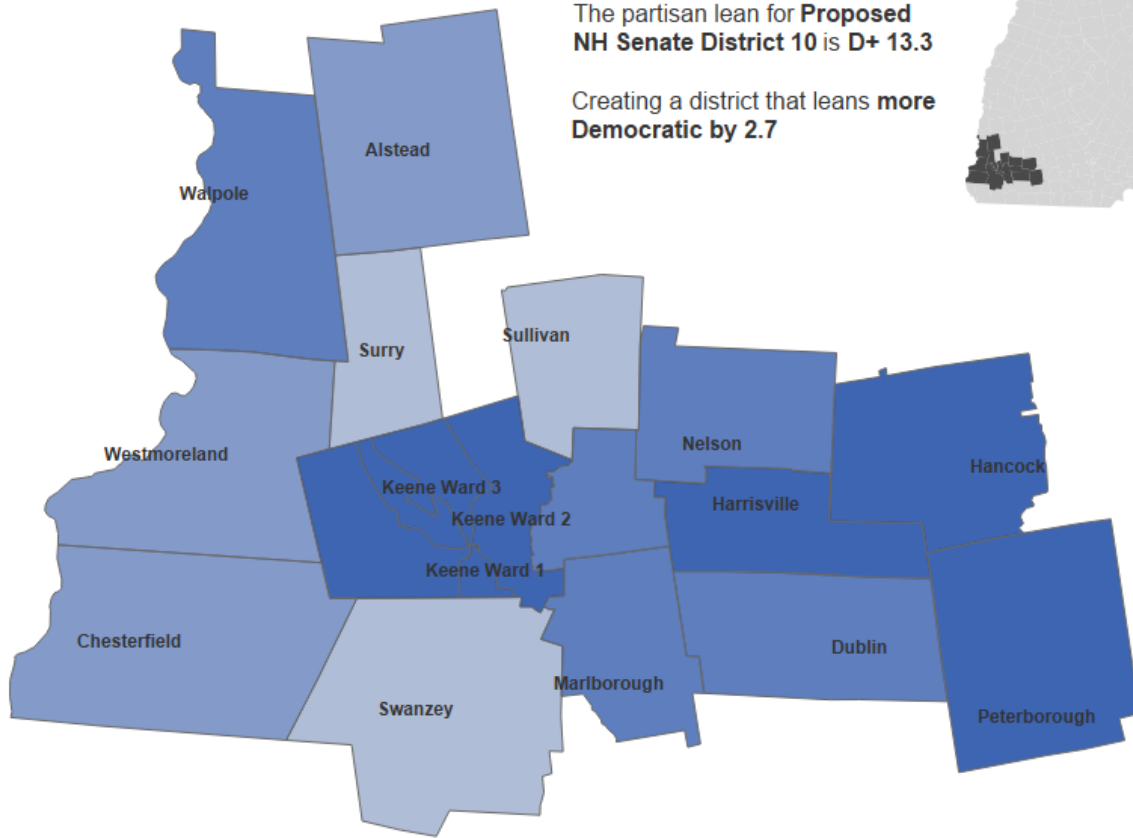
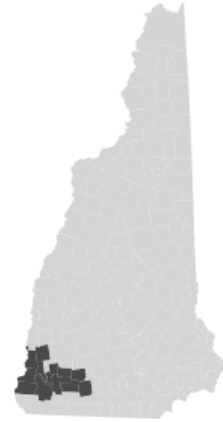


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 10** is **D+ 10.6**

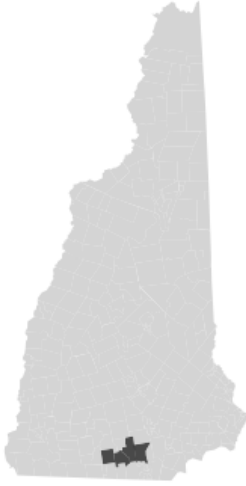
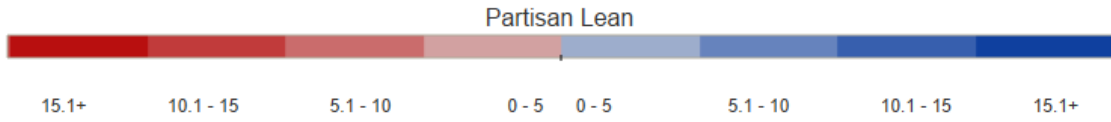
The partisan lean for **Proposed NH Senate District 10** is **D+ 13.3**

Creating a district that leans **more Democratic by 2.7**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

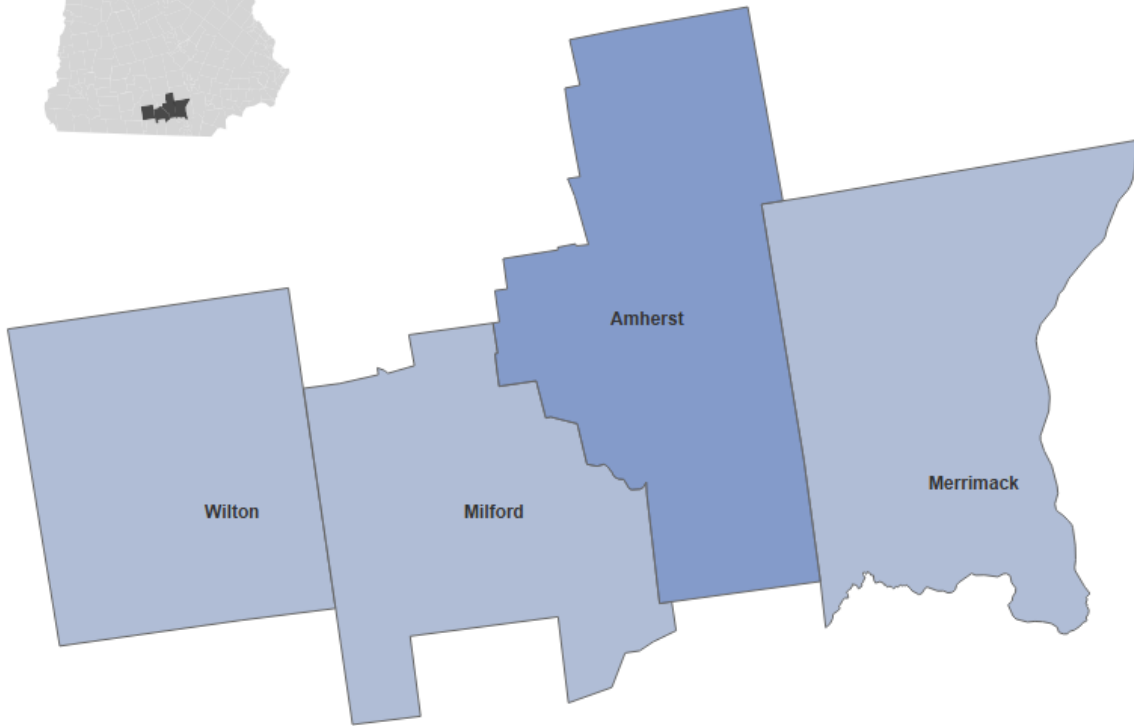
Proposed NH Senate District 11



Partisan Lean Summary

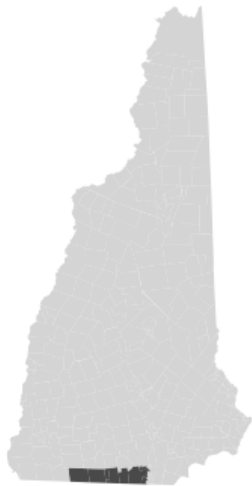
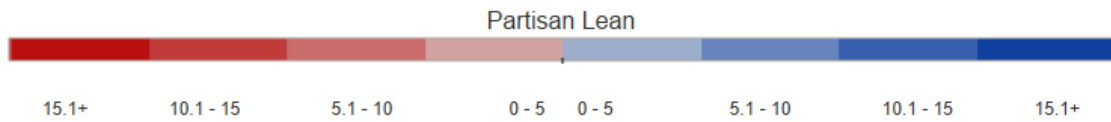
The partisan lean for **Status Quo NH Senate District 11** is **D+ 2.5**

The partisan lean for **Proposed NH Senate District 11** is **D+ 2.5**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

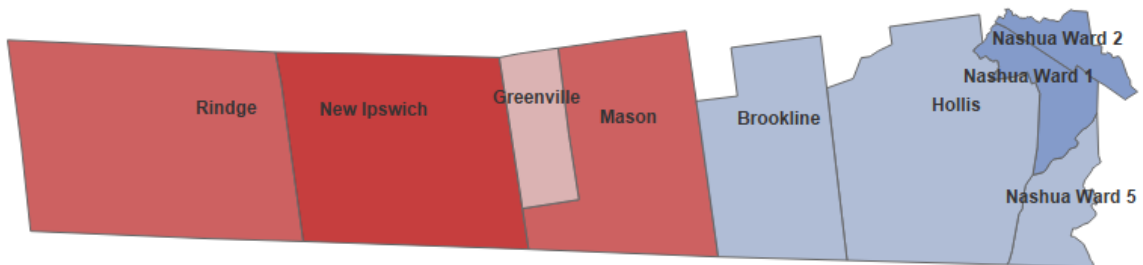
Proposed NH Senate District 12



Partisan Lean Summary

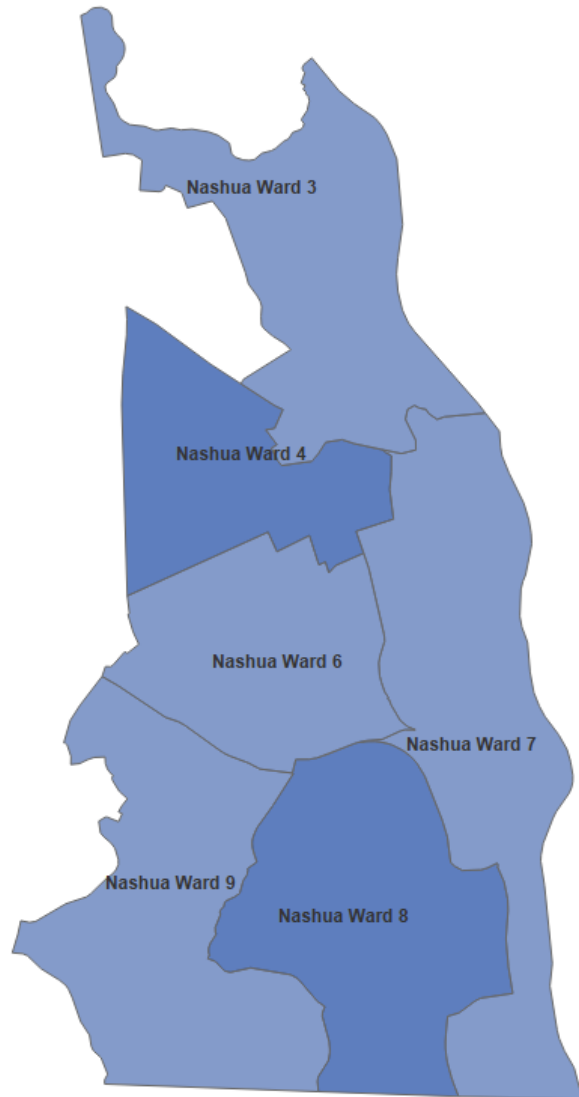
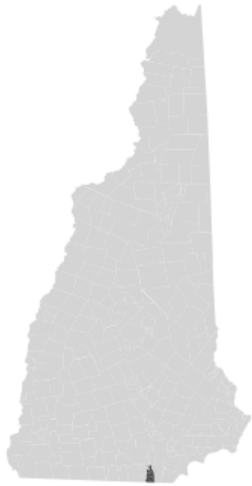
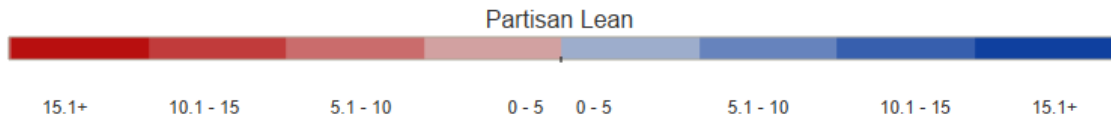
The partisan lean for **Status Quo NH Senate District 12** is **D+ 0.1**

The partisan lean for **Proposed NH Senate District 12** is **D+ 0.1**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 13



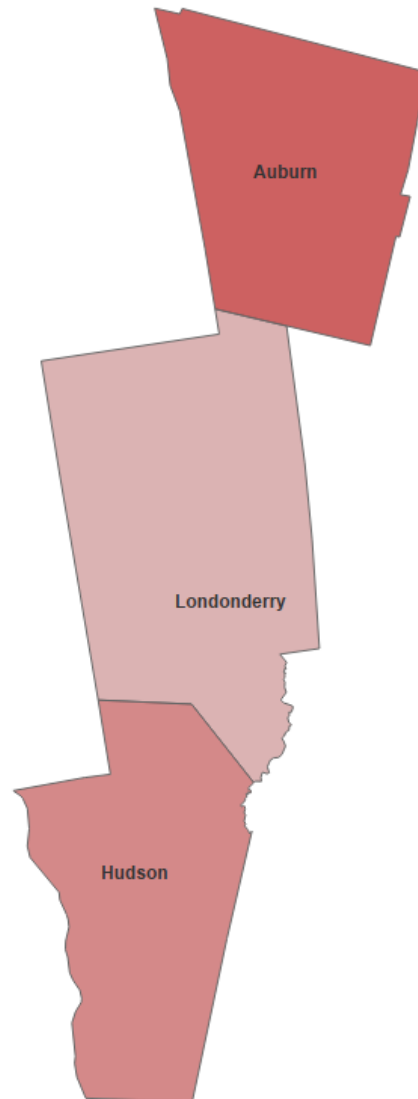
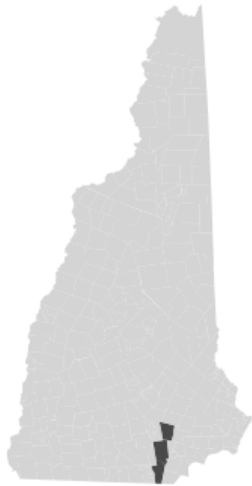
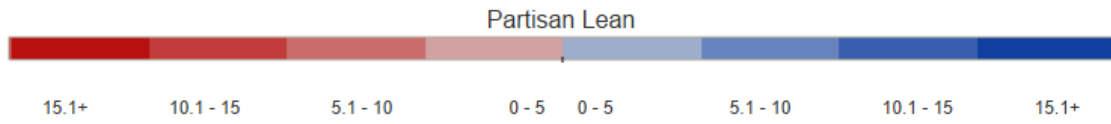
Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 13** is **D+ 9.1**

The partisan lean for **Proposed NH Senate District 13** is **D+ 9.1**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 14



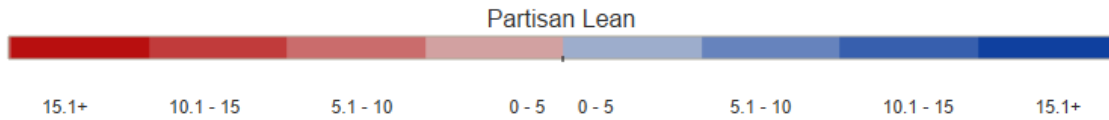
Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 14** is **R+ 5.1**

The partisan lean for **Proposed NH Senate District 14** is **R+ 5.1**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 15

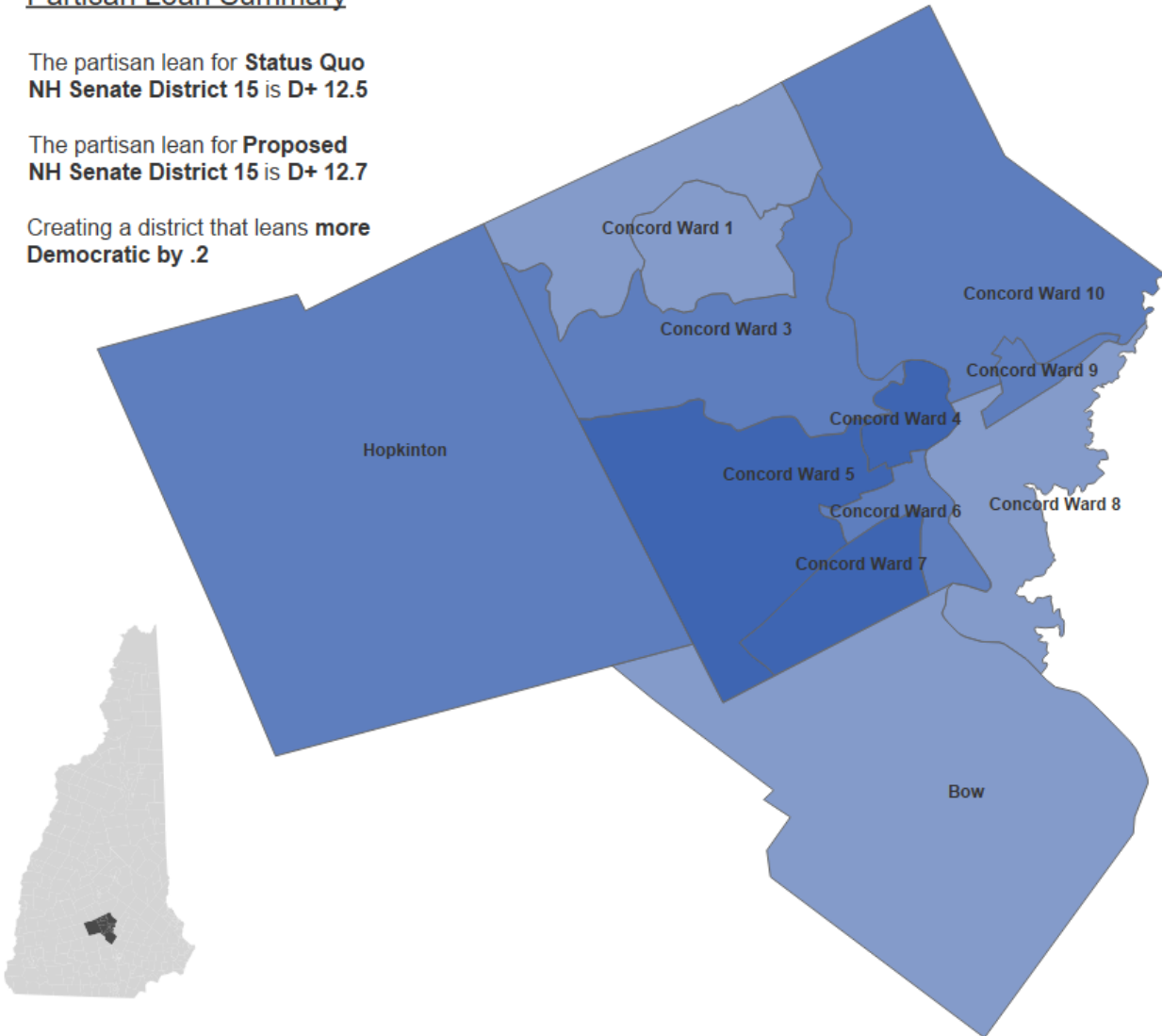


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 15** is **D+ 12.5**

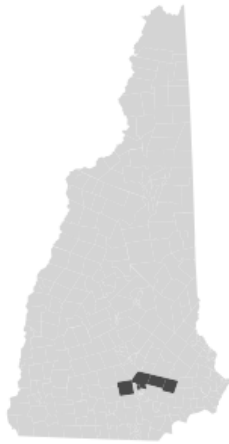
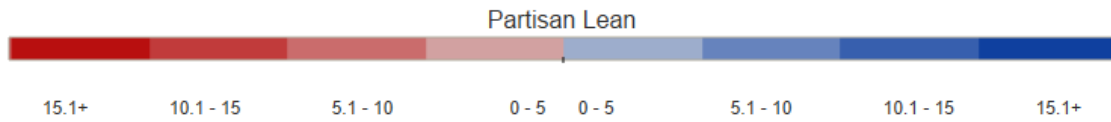
The partisan lean for **Proposed NH Senate District 15** is **D+ 12.7**

Creating a district that leans **more Democratic by .2**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 16

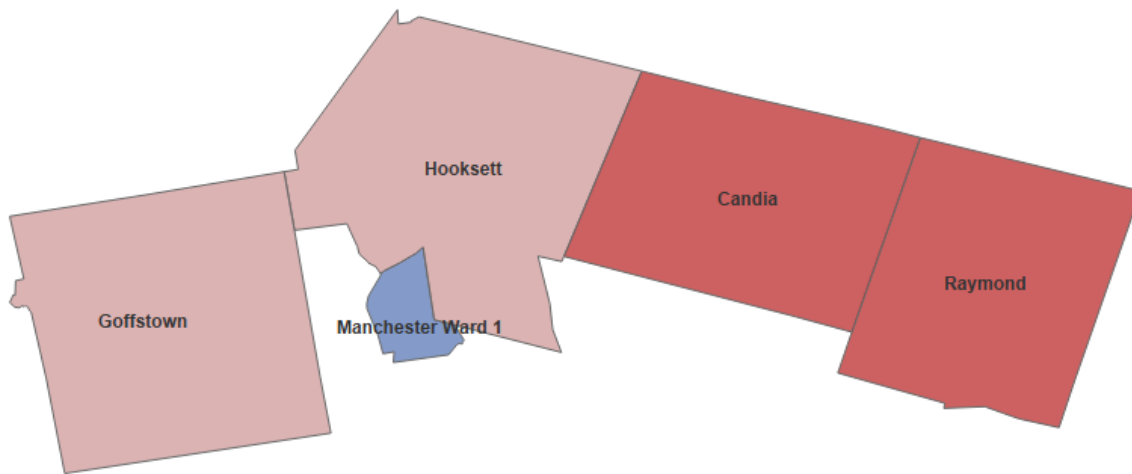


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 16** is **D+ 1.7**

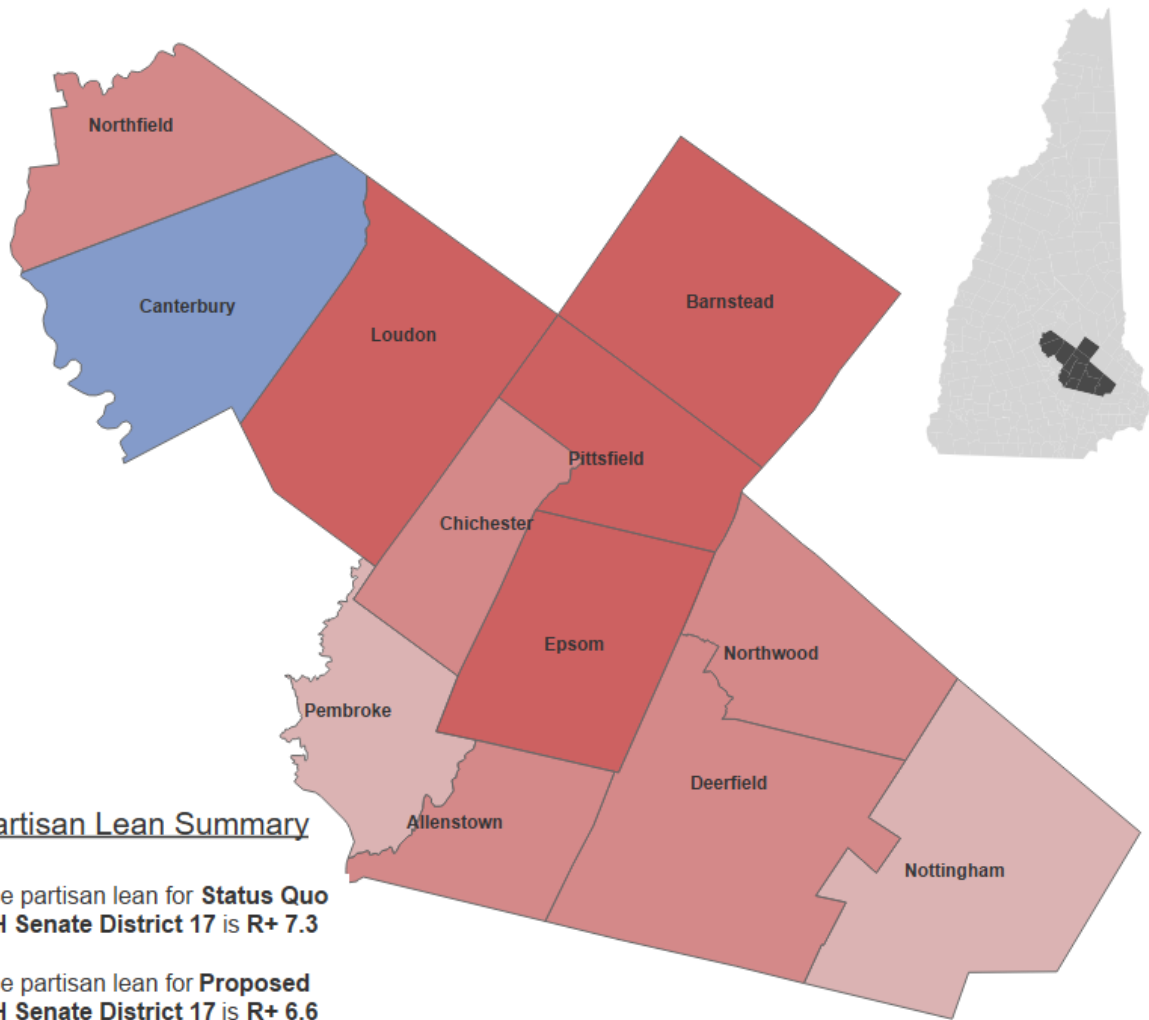
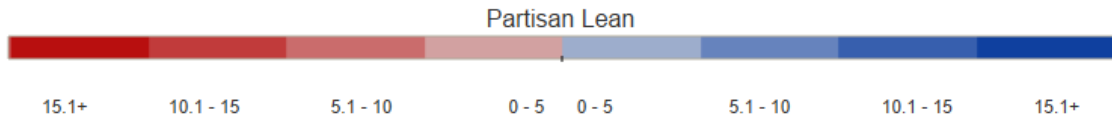
The partisan lean for **Proposed NH Senate District 16** is **R+ 3.9**

Creating a district that leans **more Republican by 4.2**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 17



Partisan Lean Summary

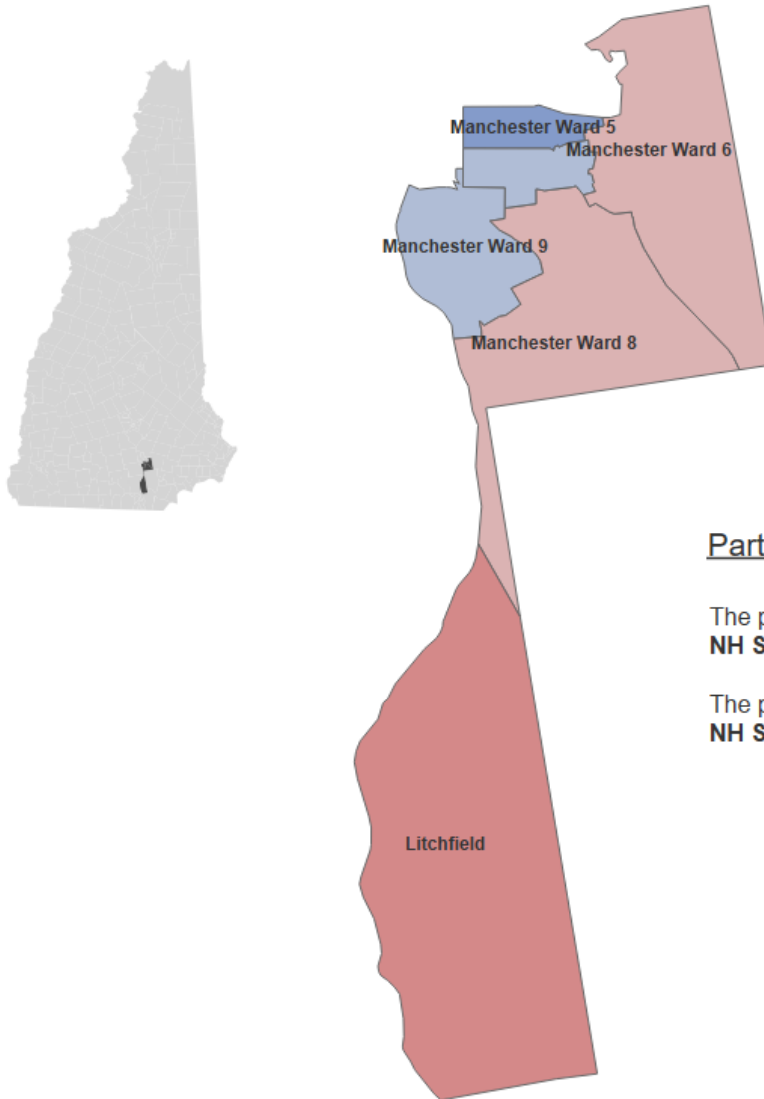
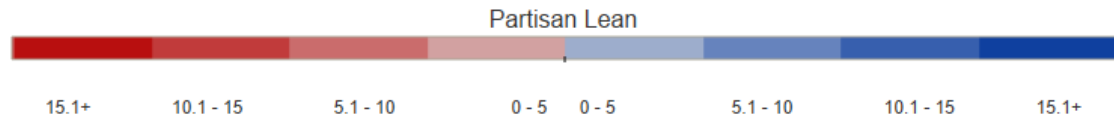
The partisan lean for **Status Quo NH Senate District 17** is **R+ 7.3**

The partisan lean for **Proposed NH Senate District 17** is **R+ 6.6**

Creating a district that leans **less Republican by 1.7**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 18



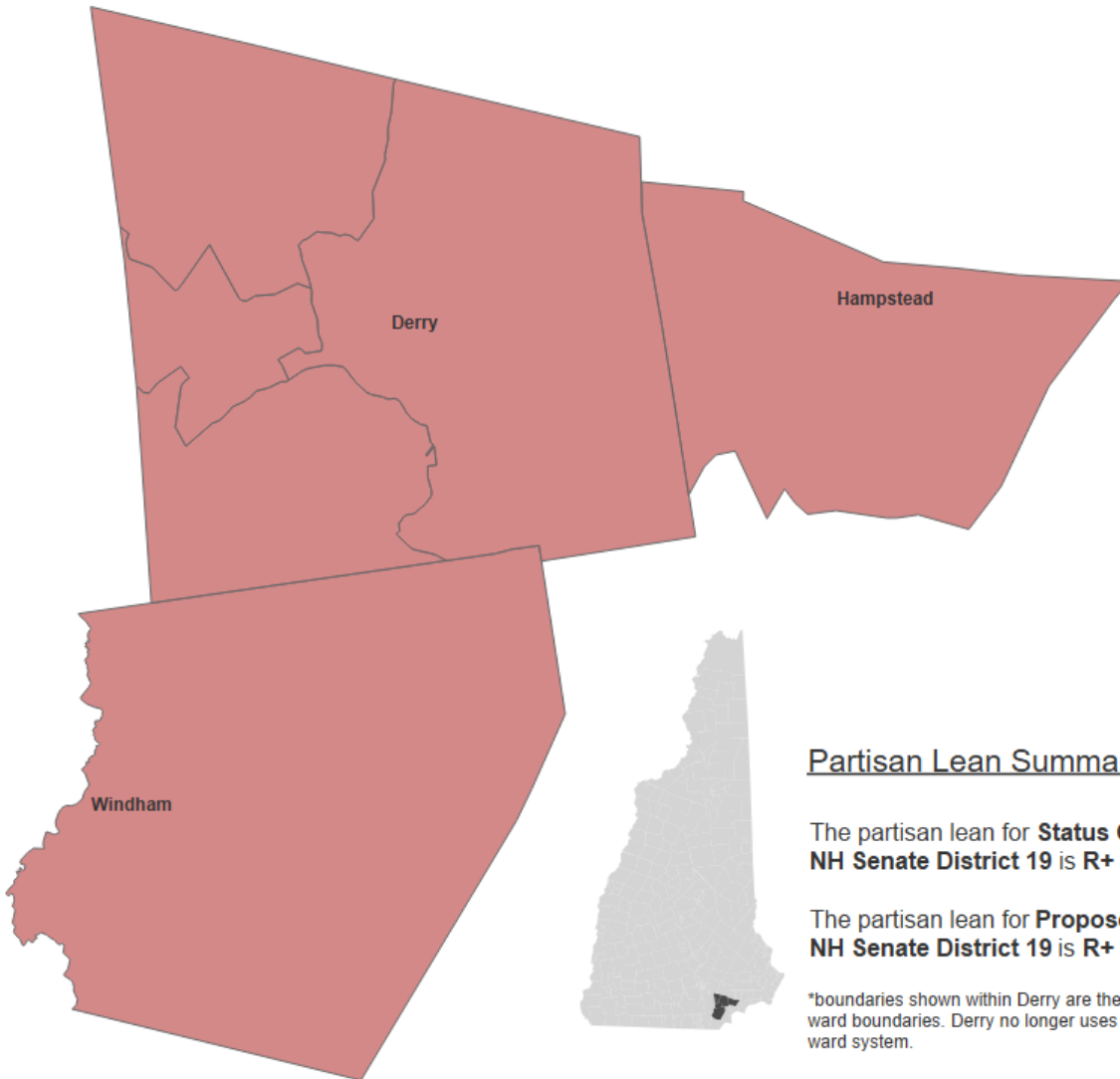
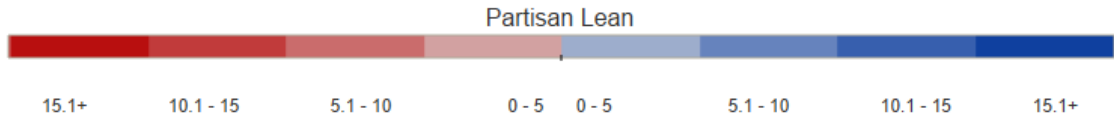
Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 18** is **D+ 0.2**

The partisan lean for **Proposed NH Senate District 18** is **D+ 0.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 19



Partisan Lean Summary

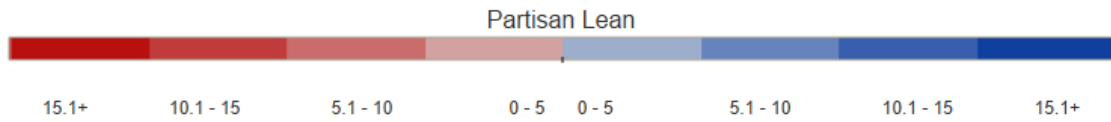
The partisan lean for **Status Quo NH Senate District 19** is **R+ 5.9**

The partisan lean for **Proposed NH Senate District 19** is **R+ 5.9**

*boundaries shown within Derry are the former ward boundaries. Derry no longer uses the ward system.

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 20

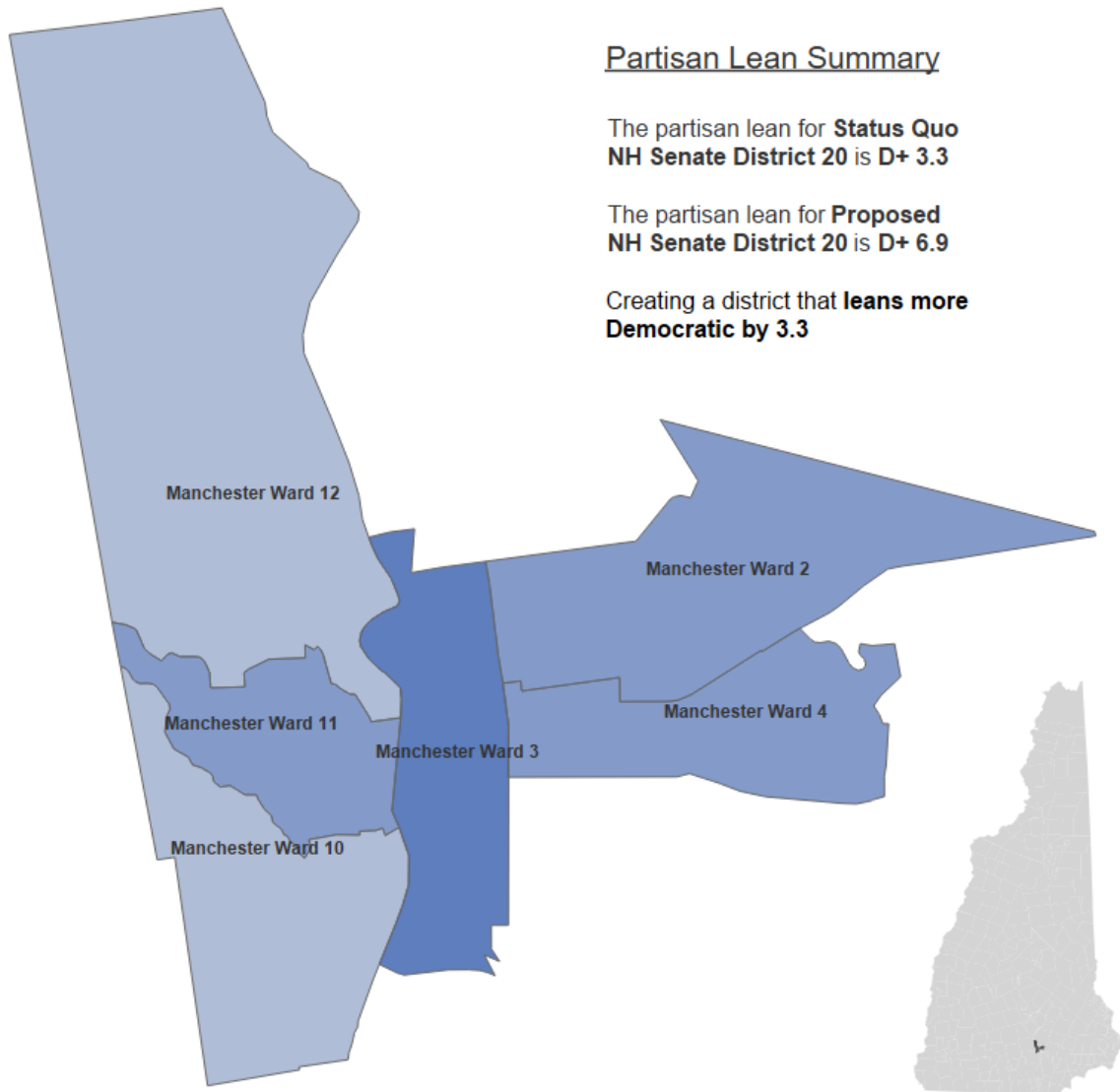


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 20** is **D+ 3.3**

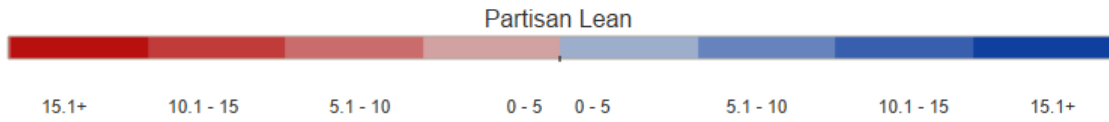
The partisan lean for **Proposed NH Senate District 20** is **D+ 6.9**

Creating a district that **leans more Democratic by 3.3**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 21

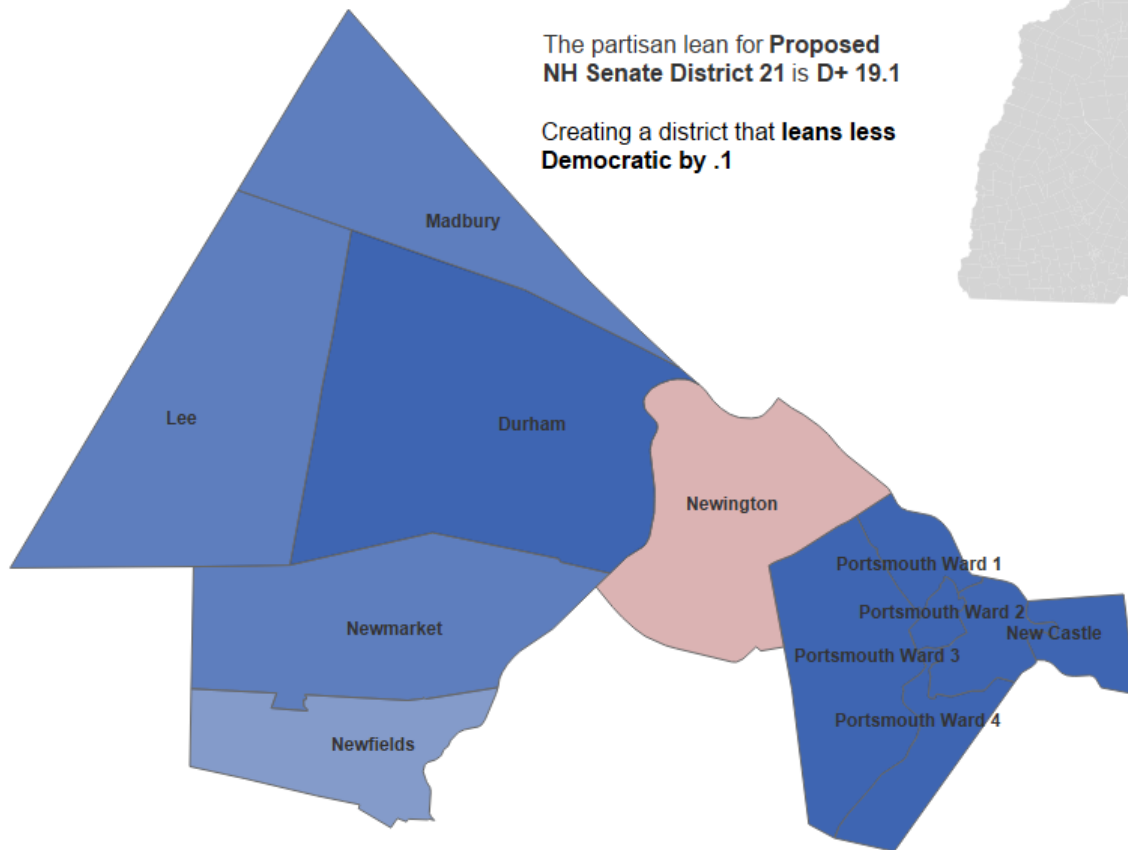
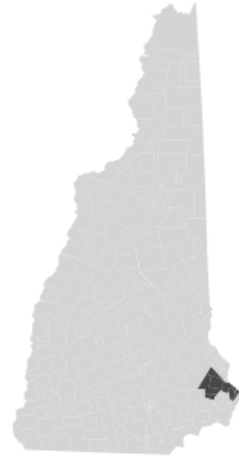


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 21** is **D+ 19.2**

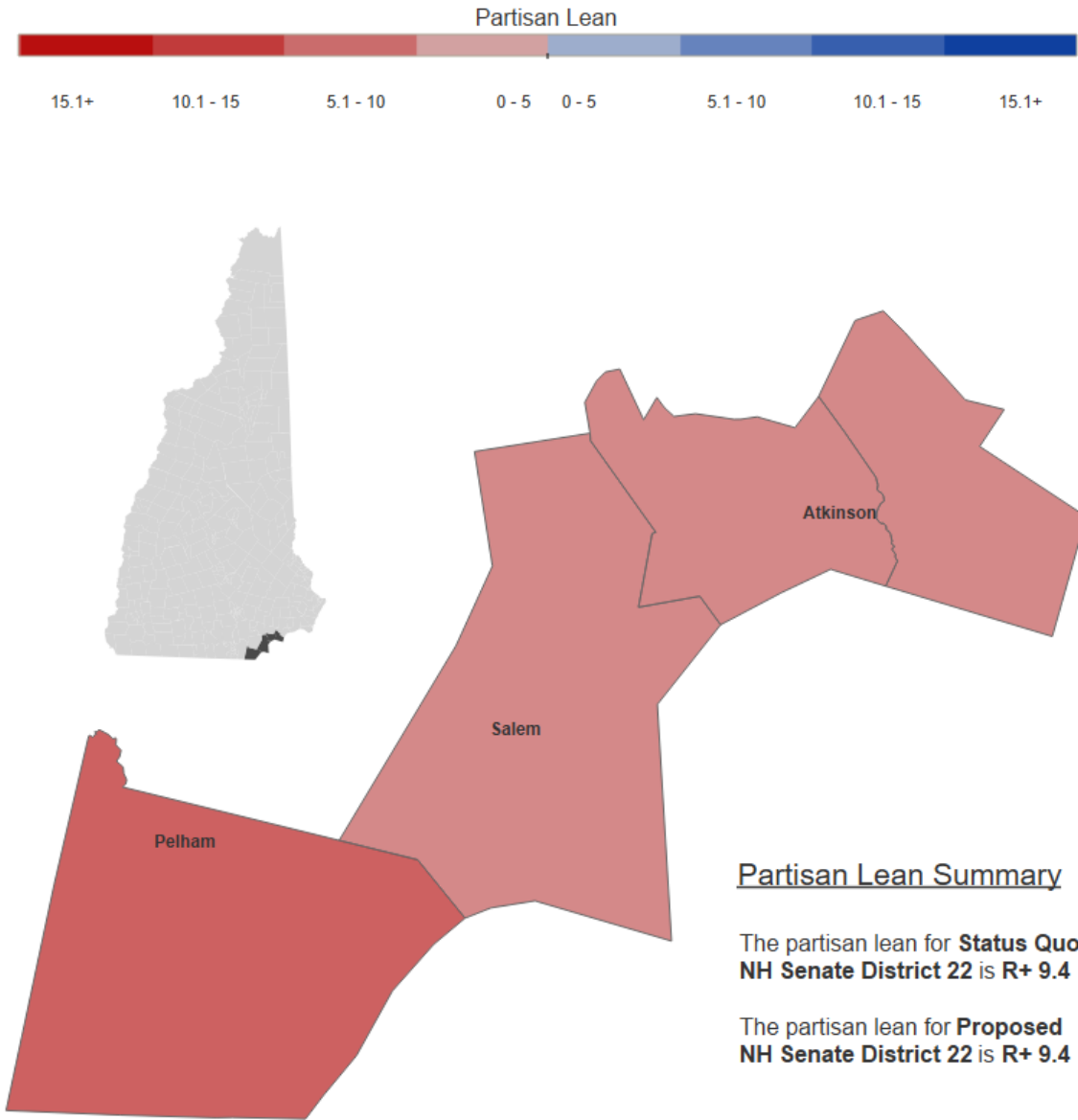
The partisan lean for **Proposed NH Senate District 21** is **D+ 19.1**

Creating a district that **leans less Democratic by .1**



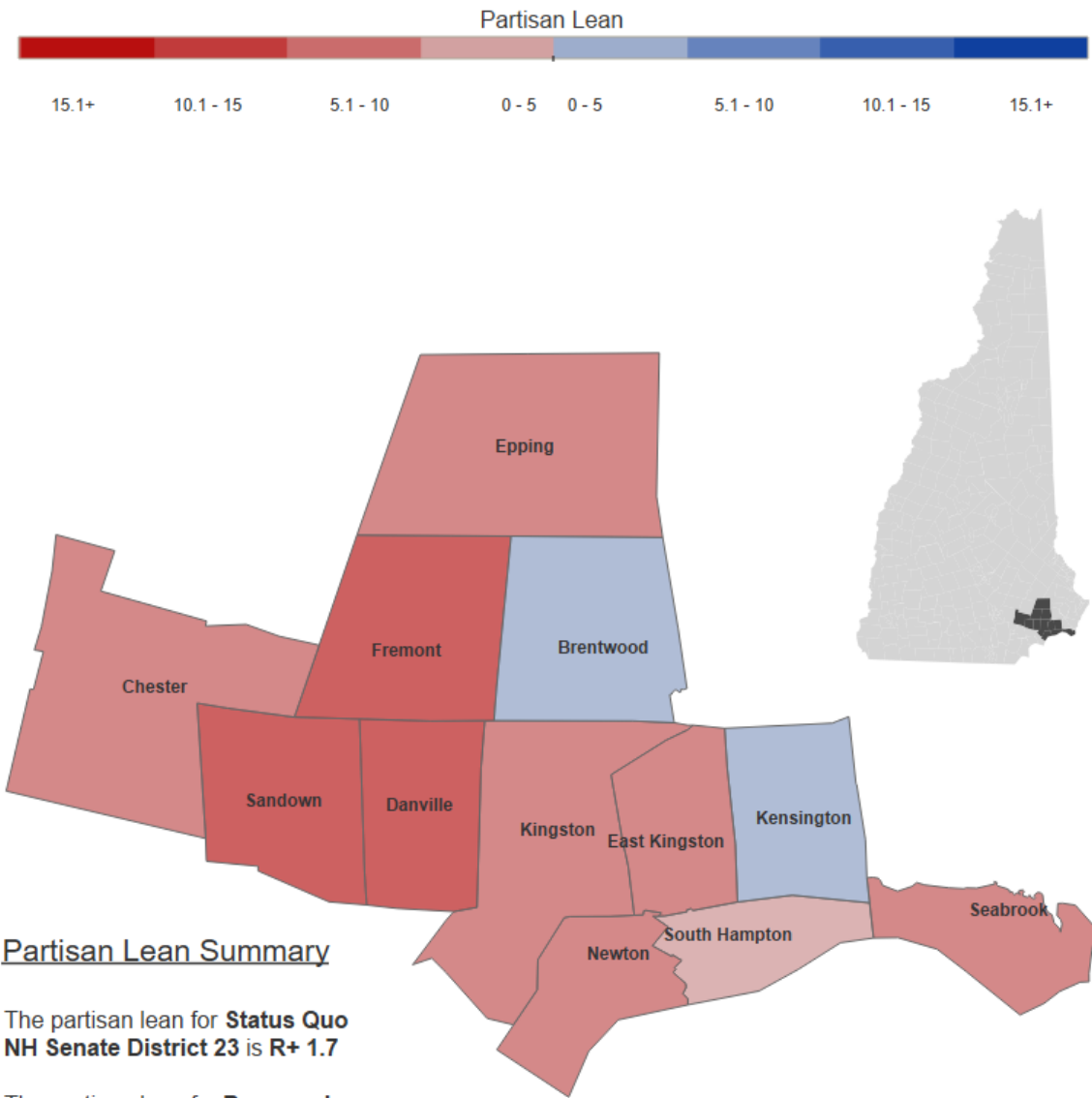
Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 22



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 23



Partisan Lean Summary

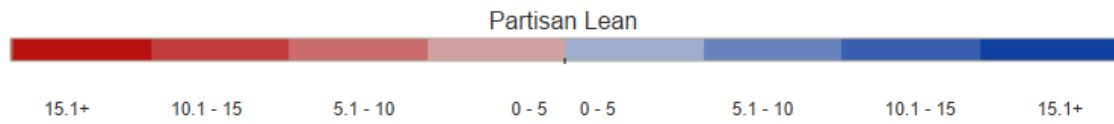
The partisan lean for **Status Quo NH Senate District 23** is **R+ 1.7**

The partisan lean for **Proposed NH Senate District 23** is **R+ 7.9**

Creating a district that **leans more Republican by 6.2**

Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.

Proposed NH Senate District 24

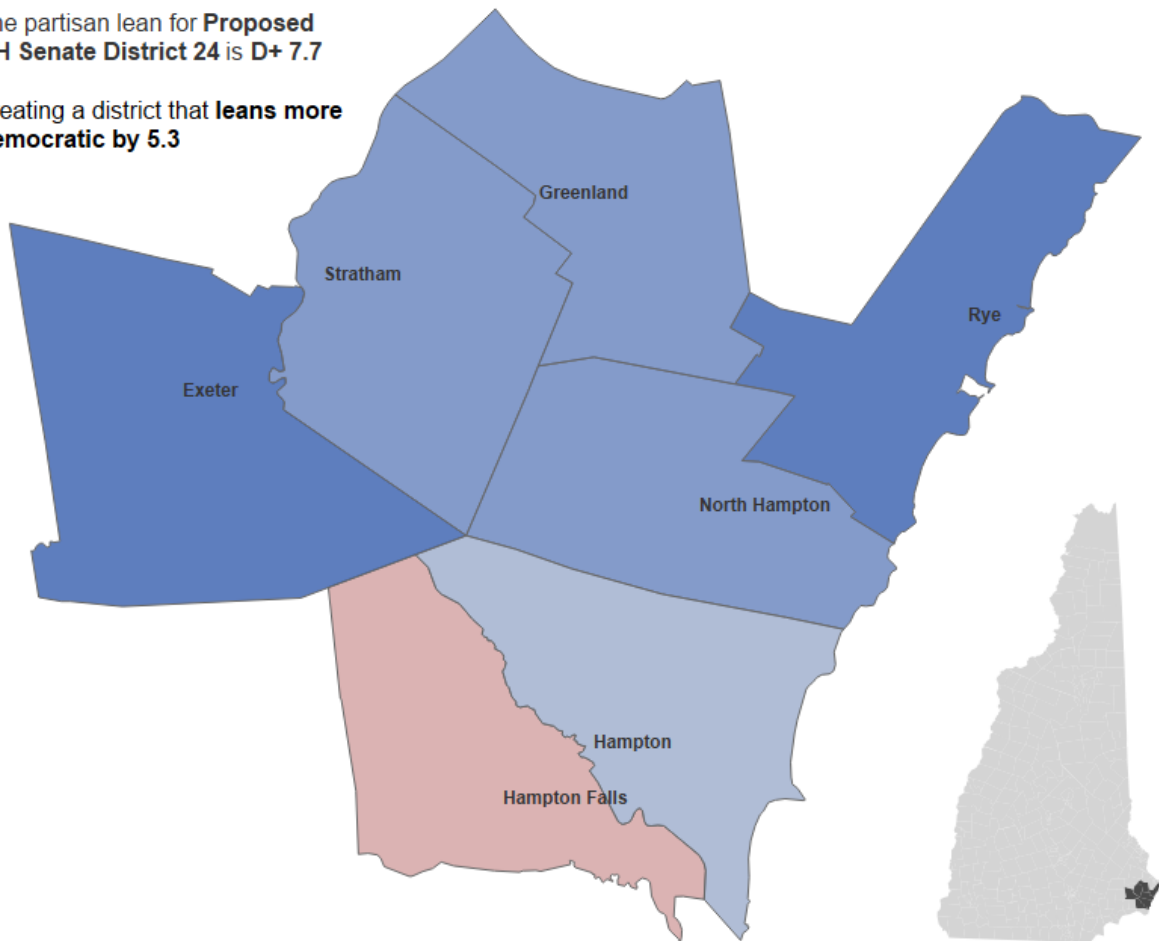


Partisan Lean Summary

The partisan lean for **Status Quo NH Senate District 24** is **D+ 2.4**

The partisan lean for **Proposed NH Senate District 24** is **D+ 7.7**

Creating a district that **leans more Democratic by 5.3**



Data Sources: Senator Gray Amendment to SB 240 and the General Court of New Hampshire (status quo). Partisan lean computed at the ward level based on 2020 two-party Presidential vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average (47.7%). Conversely, democratic districts - denoted in blue - are those in which Trump's two-party vote share was less than his national average.



MEMORANDUM

To: Devon Chaffee, Executive Director ACLU-NH Date: April 14, 2022
From: FLO Analytics Project No.: F2186.01.001

RE: Analysis of the New Hampshire Executive Council Districts passed by the New Hampshire Senate on Thursday, March 24th, 2022.

EXECUTIVE SUMMARY

This memo analyzes the New Hampshire Executive Council districts as recently passed by the New Hampshire Senate.

Our analysis tabulated ward-level vote returns for the 2020 Presidential race to determine the partisan leanings of the executive council districts they are constituted in the map recently passed by the New Hampshire Senate. Notice that the existing map was enacted by a previous GOP majority ten years ago following decennial redistricting.

In sum, three significant conclusions emerge from our analysis of the proposed map:

- Democratic voters are heavily concentrated within a single district, District 2.
- The boundary of District 2 bypasses nearby wards in favor of more distant wards, resulting in a high concentration of democratic voters.
- The boundary of District 1 bypasses nearby wards in favor of more distant wards, reducing the number of democratic voters in District 3.

INSTITUTIONAL CONTEXT

To preserve some of the Republic’s most fundamental principles, New Hampshire’s state constitution requires that its legislature revisit its Executive Council boundaries on a ten-year basis, after each decennial Census. Following a decade of significant population growth between 2020 and 2010 – especially in southern areas of the state – New Hampshire’s state legislature has been tasked with passing a plan that preserves the established democratic principle of “one person-one vote.”

Significantly, the legislature’s decennial map-making is constitutionally constrained to respect the municipal boundaries of the state’s constituent townships – i.e., it is enjoined from drawing senate lines that bisect town or city ward boundaries.

ANALYSIS

Methodology

The standard metric used to quantify a party's support in a particular district is a concept known as "partisan lean" (PL). In the present context, we compute the PL of a (current or proposed) executive council district by comparing precisely how well the GOP fared in the focal district during the most recent Presidential contest minus the Party's performance in the US as whole.

In 2020, for instance, Donald Trump (R) won 47.7% of all votes cast for one of the two major parties in the US. In New Hampshire's five current executive districts, however, Trump's (R) two-party vote share was 46.3%, 47.5%, 44.2%, 52.1%, and 43.7%, respectively. The PL of the executive council districts were thus D+1.4, D+2.4, D+3.5, R+4.4, and D+4. The executive council districts, in other words, were generally competitive and, like the Granite State itself, relatively centrist.

It is worth noting that there are a variety of alternative ways one might choose to compute partisan lean – for example, by measuring GOP (or Democratic) support using vote shares in down-ballot state or federal contests, or (since New Hampshire has a partisan voter registry) using the proportion of registrants in the focal district who identify as Republicans. These alternatives are not without logical merit.

Nevertheless, we eschew down-ballot contests because local idiosyncrasies among the state's 24 elections (e.g., a political scandal or candidate's death during the campaign) would provide a distorted view of the parties' strength in that district. One adverse consequence of this choice is that, though we may capture the relative strength of GOP support, we may understate GOP support insofar as (1) the Republican Presidential standard-bearer in 2020 (Donald J. Trump) was comparatively unpopular and (2) Republicans do better relative to Democrats in down-ballot races compared to more prominent ones. These observations are in fact strong possibilities but tend to make our estimates more conservative.

We focus on vote shares rather than the partisan composition of the voter registration rolls because, if one looks at the population of registered voters at any given time, one is almost certainly going to find a biased sample of the general population that overstates the GOP vote to some degree. This follows from the notion that the citizens most likely to be on the roll at any given time are more apt to be residentially stable. Democrats, traditionally mobilize to get out their vote with registration drives – a phenomenon which may be exacerbated by New Hampshire's move to Election Day registration (EDR).

Democratic voters are heavily concentrated within District 2

As Figure 1 illustrates, the recently passed executive council map creates a District 2 that is highly concentrated with democratic voters. District 2 leans 9.9 points more democratic than New Hampshire as a whole. This results in adjacent districts (4 and 5, specifically) having fewer democratic voters, which will likely favor republican electoral fortunes.

The boundary of District 2 bypasses nearby wards in favor of more distant wards, resulting in a high concentration of democratic voters.

Figure 2 clearly demonstrates that the boundary of District 2 navigates around nearby GOP leaning wards to include more distant democratic leaning wards. For example, the southeastern boundary circumvents eight GOP leaning towns (Goshen, Lempster, Washington, Stoddard, Hillsborough, Windsor, Antrim, Bennington) with a combined population of 14,833 to encapsulate

nine democratic leaning towns (Sullivan, Roxbury, Marlborough, Nelson, Harrisville, Dublin, Hancock, Peterborough, and Sharon) with a nearly equal population (14,627) that lie further from the district's geographic center.

The boundary of District 1 bypasses nearby wards in favor of more distant wards, reducing the number of democratic voters in district 3.

As shown in Figure 2, District 1 follows a serpentine path into the southeast portion of the state, bypassing more northerly towns. The resulting districts split the City of Portsmouth from its democratic leaning neighbors along routes 4 and 16 (Durham, Madbury, Dover, and Somersworth) and establishes GOP leaning districts in District 1 and District 3.

CONCLUSION

The recently passed New Hampshire executive council map establishes districts that are likely to reduce the ability of democratic leaning voters to elect their favored candidates in Districts 1, 3, 4, and 5, while heavily concentrating democratic voters in District 2. The line drawing process appears to have prioritized partisan leanings over other redistricting criteria (e.g. following established boundaries, creating compact districts).

Figure 1: Partisan Lean by District – Executive Council districts as passed by the New Hampshire Senate on March 22, 2022

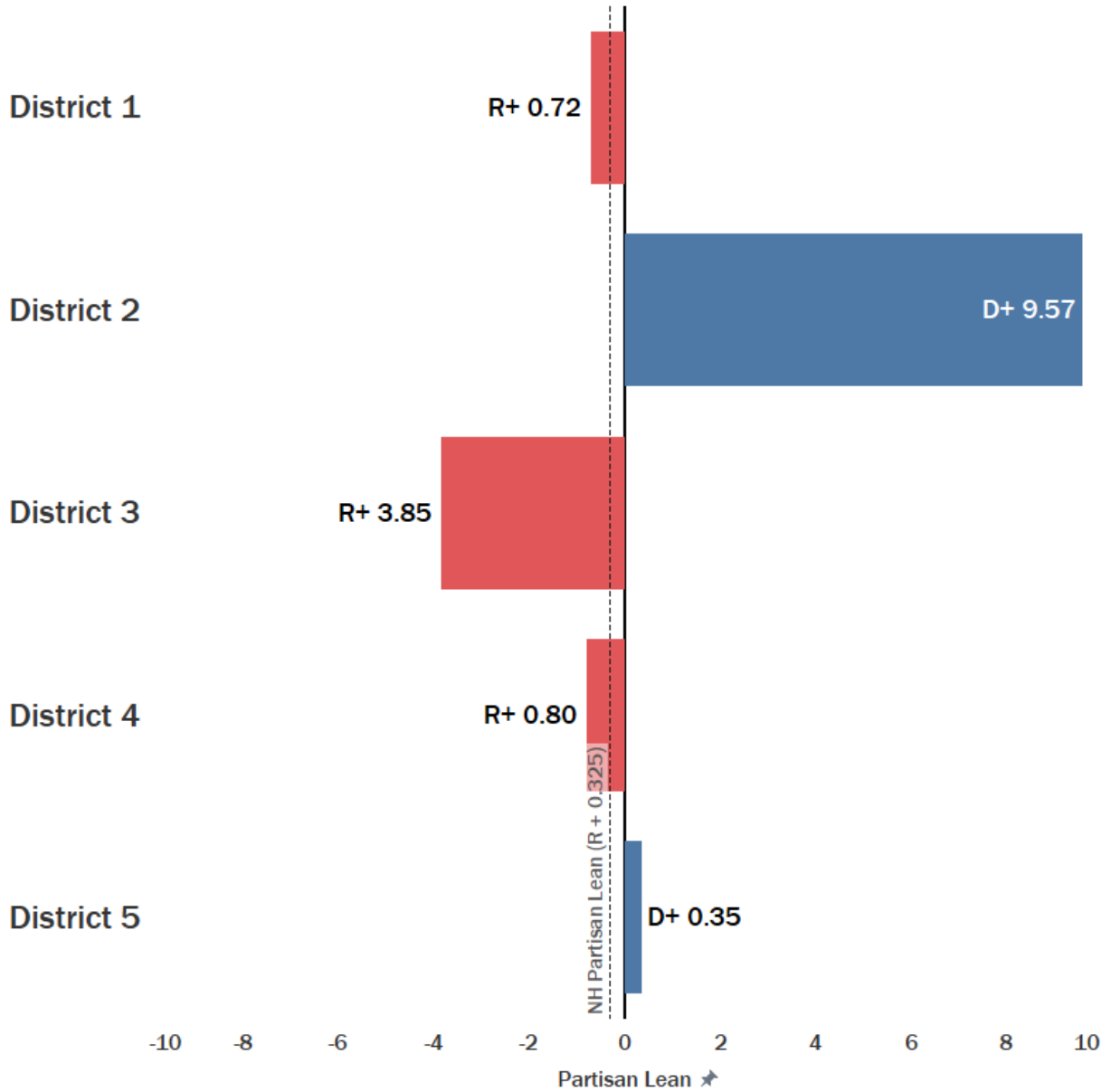
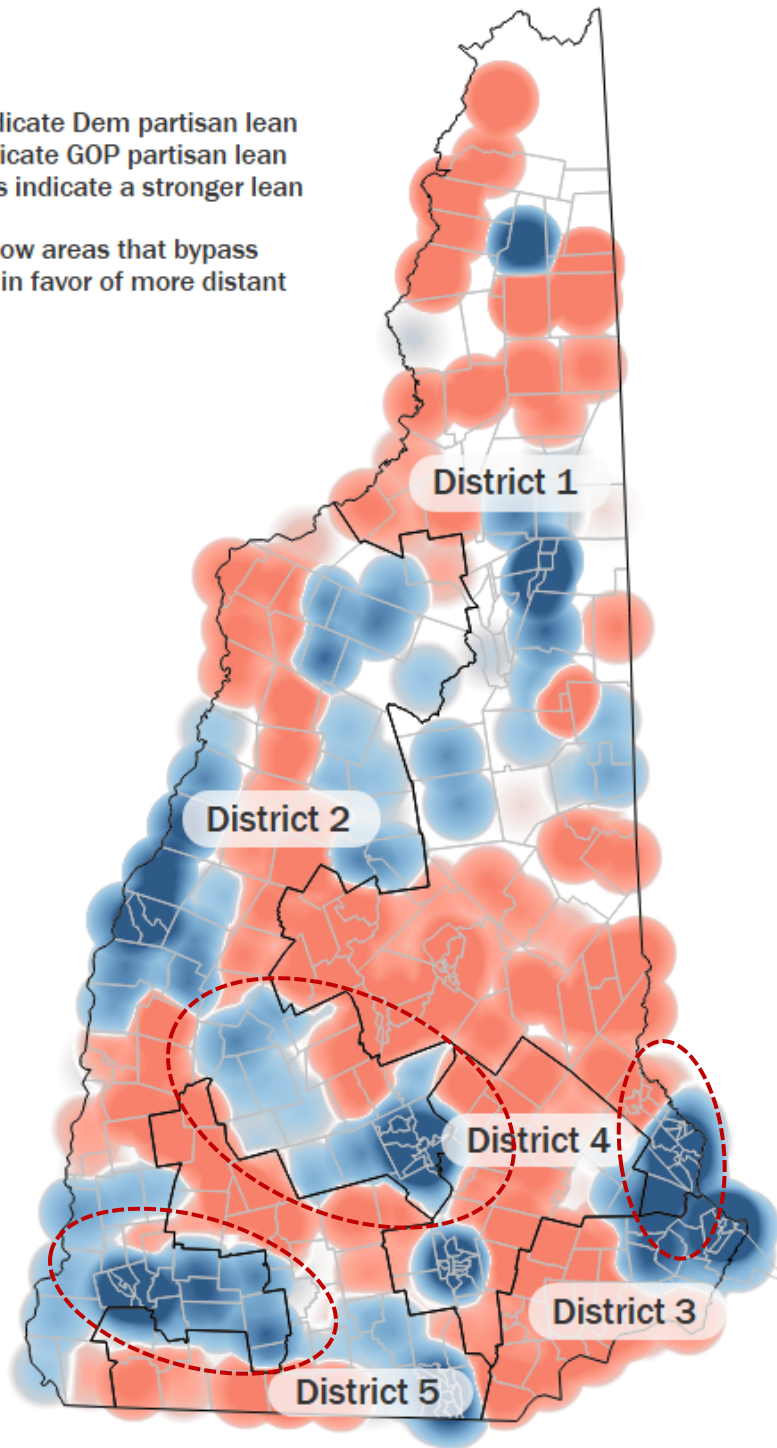


Figure 2: Partisan Lean overlayed on Executive Council District Map

Blue areas indicate Dem partisan lean
Red areas indicate GOP partisan lean
Darker shades indicate a stronger lean

Red circles show areas that bypass nearby wards in favor of more distant wards



State of New Hampshire - General Election			
Executive Council - District No. 1			
November 8, 2022	Joseph D. Kenney, r	Dana S. Hilliard, d	Scatter
Albany	164	184	0
Alexandria	511	308	0
Alton	2,059	1,052	0
Atkinson & Gilm Academy Gt	0	0	0
Bartlett	751	1,022	0
Bean's Grant	0	0	0
Bean's Purchase	0	0	0
Belmont	1,934	1,130	1
Berlin	1586	1314	1
Bridgewater	422	277	1
Bristol	837	663	1
Brookfield	297	167	0
Cambridge	2	-	0
Center Harbor	368	288	0
Chandler's Purchase	0	0	0
Chatham	107	82	0
Clarksville	103	50	0
Colebrook	616	244	0
Columbia	220	78	0
Conway	1,987	2,281	1
Crawford's Purchase	0	0	0
Cutt's Grant	0	0	0
Dalton	268	179	0
Danbury	356	231	0
Dix's Grant	0	0	0
Dixville	4	1	0
Dover Ward 1	577	1,771	3
Dover Ward 2	620	1,718	0
Dover Ward 3	1,104	1,796	2
Dover Ward 4	898	1,711	1
Dover Ward 5	739	1,368	0
Dover Ward 6	943	1354	2
Dummer	87	40	0
Durham	1200	4548	3
Eaton	106	154	1
Effingham	458	268	1
Errol	128	46	0
Erving's Location	0	0	0
Farmington	1,473	979	4
Franklin Ward 1	615	443	2
Franklin Ward 2	418	308	1
Franklin Ward 3	679	558	1
Freedom	537	396	0
Gilford	2,323	1,733	0
Gilmanton	1,204	779	2
Gorham	660	605	2

State of New Hampshire - General Election			
Executive Council - District No. 1			
November 8, 2022	Joseph D. Kenney, r	Dana S. Hilliard, d	Scatter
Green's Grant	0	1	0
Hadley's Purchase	0	0	0
Hale's Location	82	40	0
Hart's Location	22	15	0
Hebron	257	190	0
Hill	325	177	1
Jackson	238	452	0
Jefferson	362	169	0
Kilkenny	0	0	0
Laconia Ward 1	937	654	1
Laconia Ward 2	495	445	0
Laconia Ward 3	529	596	0
Laconia Ward 4	489	392	0
Laconia Ward 5	472	354	2
Laconia Ward 6	908	522	0
Lancaster	741	525	0
Livermore	0	0	0
Low & Burbank's Grant	0	0	0
Madbury	391	621	0
Madison	669	701	1
Martins' Location	0	0	0
Meredith	2,003	1,531	1
Middleton	550	240	0
Milan	367	230	0
Millsfield	16	2	0
Milton	1,207	676	1
Moultonborough	1,896	1,168	1
New Durham	955	540	0
New Hampton	750	535	1
Northfield	1,036	839	1
Northumberland	505	232	0
Odell	0	0	0
Ossipee	1,271	683	0
Pinkham's Grant	1	0	0
Pittsburg	358	105	0
Randolph	84	149	0
Rochester Ward 1	1,181	1,144	0
Rochester Ward 2	1,100	1,026	3
Rochester Ward 3	1,152	890	0
Rochester Ward 4	972	962	4
Rochester Ward 5	1,111	967	3
Rochester Ward 6	871	900	1
Rollinsford	571	779	0
Sanbornton	981	697	0
Sandwich	370	625	0
Sargent's Purchase	0	0	0

State of New Hampshire - General Election			
Executive Council - District No. 1			
November 8, 2022	Joseph D. Kenney, r	Dana S. Hilliard, d	Scatter
Second College Grant	0	0	0
Shelburne	131	86	0
Somersworth Ward 1	472	673	0
Somersworth Ward 2	376	486	0
Somersworth Ward 3	363	477	0
Somersworth Ward 4	369	698	0
Somersworth Ward 5	217	401	0
Stark	182	69	0
Stewartstown	246	48	1
Stratford	137	100	0
Success	0	0	0
Tamworth	717	668	1
Thompson & Meserve's Pur	0	0	0
Tilton	817	676	1
Tuftonboro	933	616	1
Wakefield	1,771	791	0
Waterville Valley	168	183	0
Wentworth's Location	15	4	0
Whitefield	576	474	0
Wolfeboro	2,154	1,710	1
Totals	63,230	59,060	56

State of New Hampshire - General Election			
Executive Council - District No. 2			
November 8, 2022	Harold F. French, r	Cinde Warmington, d	Scatter
Acworth	217	239	0
Alstead	393	513	0
Andover	585	602	2
Ashland	478	443	2
Bath	282	198	0
Benton	114	62	0
Bethlehem	517	825	4
Boscawen	816	637	3
Bow	1,905	2,429	0
Bradford	441	440	0
Campton	819	845	3
Canaan	672	876	0
Canterbury	630	798	1
Carroll	233	183	0
Chesterfield	838	1,063	0
Charlestown	975	798	1
Claremont Ward 1	523	593	0
Claremont Ward 2	809	818	0
Claremont Ward 3	747	642	0
Concord Ward 1	700	1,077	0
Concord Ward 2	645	968	3
Concord Ward 3	371	628	0
Concord Ward 4	508	1,301	1
Concord Ward 5	612	1,763	3
Concord Ward 6	459	1,005	1
Concord Ward 7	710	1,620	1
Concord Ward 8	698	1,015	0
Concord Ward 9	537	992	0
Concord Ward 10	929	1,492	0
Cornish	395	524	1
Croydon	283	144	0
Dorchester	93	85	0
Dublin	364	541	0
Easton	59	148	0
Ellsworth	30	31	0
Enfield	789	1,373	0
Franconia	242	441	1
Gilsum	195	193	0
Grafton	358	244	0
Grantham	678	1,370	0
Groton	194	112	0
Hancock	364	773	0
Hanover	746	4,662	3
Harrisville	168	460	0
Haverhill	996	659	0
Henniker	895	1,146	3
Hinsdale	588	682	0
Holderness	500	681	1

State of New Hampshire - General Election			
Executive Council - District No. 2			
November 8, 2022	Harold F. French, r	Cinde Warmington, d	Scatter
Hopkinton	1,298	2,110	4
Keene Ward 1	335	1,063	2
Keene Ward 2	513	1,386	0
Keene Ward 3	550	1,273	0
Keene Ward 4	603	1,265	0
Keene Ward 5	648	1,486	0
Landaff	134	76	0
Langdon	173	145	0
Lebanon Ward 1	476	1,498	3
Lebanon Ward 2	485	1,502	2
Lebanon Ward 3	517	1,530	1
Lincoln	328	365	0
Lisbon	339	249	1
Littleton	1,281	1,111	3
Lyman	189	130	0
Lyme	184	860	0
Marlborough	326	640	0
Marlow	172	186	0
Monroe	252	151	0
Nelson	134	221	0
New London	982	1,643	0
Newbury	663	686	0
Newport	1,313	938	0
Orange	78	70	0
Orford	215	418	1
Peterborough	1,032	2,429	4
Piermont	181	167	1
Plainfield	424	900	1
Plymouth	773	1,453	6
Roxbury	34	72	0
Rumney	474	308	0
Salisbury	463	291	0
Sharon	105	124	2
Springfield	372	356	1
Sugar Hill	144	261	0
Sullivan	154	157	1
Sunapee	995	956	0
Surry	198	237	0
Sutton	525	588	0
Thornton	678	731	1
Unity	404	220	0
Walpole	685	1132	1
Warner	693	845	1
Warren	236	125	0
Webster	555	426	1
Wentworth	304	186	0
Westmoreland	366	519	0
Wilmot	330	468	0

State of New Hampshire - General Election			
Executive Council - District No. 2			
November 8, 2022	Harold F. French, r	Cinde Warmington, d	Scatter
Winchester	724	682	4
Woodstock	291	338	2
Totals	49,428	74,107	77

State of New Hampshire - General Election			
Executive Council - District No. 3			
November 8, 2022	Janet Stevens, r	Katherine Harake, d	Scatter
Atkinson	2,435	1,542	1
Brentwood	1,257	1116	0
Chester	1,649	998	2
Danville	1,348	721	1
Derry	6,462	5,033	0
East Kingston	800	564	0
Epping	2,015	1,423	0
Exeter	2,938	5,261	0
Fremont	1,505	807	1
Greenland	1,066	1,259	1
Hampstead	2,802	1,685	2
Hampton	4,450	4,582	4
Hampton Falls	793	595	0
Kensington	639	567	1
Kingston	1,871	1,211	3
New Castle	291	442	0
Newfields	484	570	1
Newington	296	231	0
Newmarket	1,647	2,937	5
Newton	1,352	871	1
North Hampton	1,283	1,445	2
Pelham	4,168	2,269	3
Plaistow	1,992	1,286	4
Portsmouth Ward 1	687	1,573	1
Portsmouth Ward 2	608	1,993	0
Portsmouth Ward 3	734	1,444	2
Portsmouth Ward 4	755	1,194	1
Portsmouth Ward 5	598	1,698	3
Raymond	2,804	1,618	4
Rye	1,636	2,001	4
Salem	7,791	4,687	19
Sandown	1,886	1,055	1
Seabrook	2,182	1,250	3
South Hampton	282	220	0
Stratham	2,000	2,499	3
Windham	4,392	2,859	10
Totals	69,898	61,506	83

State of New Hampshire - General Election			
Executive Council - District No. 4			
November 8, 2022	Ted Gatsas, r	Kevin J. Cavanaugh, d	Scatter
Allenstown	992	722	0
Auburn	1,943	1,153	5
Barnstead	1,402	786	2
Barrington	2,237	2,387	0
Bedford	6,049	5,257	3
Candia	1,462	800	4
Chichester	803	562	4
Deerfield	1,470	1,092	4
Epsom	1,408	863	2
Goffstown	4,075	3,499	6
Hooksett	3,499	3,075	10
Lee	815	1,521	0
Londonderry	6,414	5,248	6
Loudon	1,810	1,070	7
Manchester Ward 1	1,913	2,596	2
Manchester Ward 2	1,673	2,196	4
Manchester Ward 3	865	1,355	1
Manchester Ward 4	1,087	1,299	5
Manchester Ward 5	789	879	3
Manchester Ward 6	2,071	1,828	3
Manchester Ward 7	1,193	1,302	2
Manchester Ward 8	2,208	1,824	1
Manchester Ward 9	1,395	1,472	1
Manchester Ward 10	1,489	1,441	5
Manchester Ward 11	1,100	1,236	3
Manchester Ward 12	1,561	1,738	0
Northwood	1,167	977	4
Nottingham	1,479	1,409	3
Pembroke	1,589	1,613	3
Pittsfield	951	613	10
Strafford	1,214	1,045	1
Totals	58,123	52,858	104

State of New Hampshire - General Election			
Executive Council - District No. 5			
November 8, 2022	Dave Wheeler, r	Shoshanna Kelly, d	Scatter
Amherst	2,995	3,571	6
Antrim	680	585	1
Bennington	378	300	0
Brookline	1,538	1,334	0
Deering	581	321	1
Dunbarton	986	635	3
Fitzwilliam	603	504	0
Francestown	469	477	0
Goshen	245	107	0
Greenfield	422	387	0
Greenville	429	296	1
Hillsborough	1,344	1,071	0
Hollis	2,283	2,362	1
Hudson	5,952	4,091	2
Jaffrey	1,219	1,129	1
Lempster	363	199	0
Litchfield	2,382	1,633	2
Lyndeborough	487	433	0
Mason	482	272	0
Merrimack	6,447	5,989	0
Milford	3,468	3,343	0
Mont Vernon	712	761	0
Nashua Ward 1	2,206	2,483	0
Nashua Ward 2	1,831	2,281	0
Nashua Ward 3	1,336	1,793	0
Nashua Ward 4	657	990	0
Nashua Ward 5	2,280	2,485	0
Nashua Ward 6	1,282	1,504	0
Nashua Ward 7	1,282	1,491	0
Nashua Ward 8	1,399	2,233	0
Nashua Ward 9	1,870	2,166	0
New Boston	1,723	1,402	0
New Ipswich	1,779	618	1
Richmond	342	184	1
Rindge	1,775	1,000	1
Stoddard	369	317	0
Swanzey	1,551	1,432	0
Temple	386	397	0
Troy	474	321	0
Washington	381	261	0
Weare	2,654	1,544	2
Wilton	927	969	0
Windsor	75	21	0
Totals	61,044	55,692	23

New Hampshire - General Election**State Senate District 1**

November 8, 2022	Carrie L. Gendreau, r	Edith Tucker, d	Scatter
Atkinson and Gilmanton Ac. Gt.	0	0	0
Bath	297	200	0
Benton	119	62	0
Berlin	1,533	1,394	3
Bethlehem	519	841	0
Cambridge	2	1	0
Carroll	227	193	1
Clarksville	106	50	1
Colebrook	581	294	0
Columbia	202	97	0
Dalton	253	196	2
Dix's Grant	0	0	0
Dixville	2	3	0
Dummer	83	46	0
Easton	64	147	0
Ellsworth	31	29	0
Errol	120	56	0
Erving's Location	0	0	0
Franconia	243	447	0
Gorham	621	651	2
Haverhill	1,063	634	0
Jefferson	341	198	1
Kilkenny	0	0	0
Lancaster	695	580	1
Landaff	137	81	0
Lisbon	353	244	2
Littleton	1,308	1,138	0
Low and Burbank's Grant	0	0	0
Lyman	189	135	0
Milan	350	254	0
Millsfield	13	4	0
Monroe	256	162	0
Northumberland	434	309	0
Odell	0	0	0
Piermont	181	175	0
Pittsburg	337	122	1
Randolph	69	168	0
Rumney	472	322	0
Second College Grant	0	0	0
Shelburne	123	98	0
Stark	176	76	0
Stewartstown	232	71	0
Stratford	124	118	0
Success	0	0	0
Sugar Hill	148	263	0
Warren	234	127	0
Wentworth's Location	14	4	0
Whitefield	550	528	2

New Hampshire - General Election

State Senate District 1

November 8, 2022	Carrie L. Gendreau, r	Edith Tucker, d	Scatter
Woodstock	310	337	0
Totals	13,112	10,855	

**New Hampshire - General Election
State Senate District 2**

November 8, 2022	Timothy Lang, r	Kate Miller, d	Scatter
Ashland	486	442	1
Belmont	1,993	1,080	3
Campton	828	852	4
Center Harbor	362	297	0
Gilford	2,346	1,708	2
Holderness	520	673	0
Laconia Ward 1	950	634	3
Laconia Ward 2	515	433	1
Laconia Ward 3	521	597	2
Laconia Ward 4	507	381	0
Laconia Ward 5	495	343	1
Laconia Ward 6	931	506	1
Meredith	1,989	1,570	5
New Hampton	758	530	1
Sanbornton	1,069	630	2
Sandwich	369	630	0
Thornton	682	732	1
Totals	15,321	12,038	27

New Hampshire - General Election			
State Senate District 3			
November 8, 2022	Jeb Bradley, r	Bill Marsh, d	Scatter
Albany	189	162	1
Bartlett	850	950	1
Bean's Grant	0	0	0
Bean's Purchase	0	0	0
Brookfield	297	179	1
Chandler's Purchase	0	0	0
Chatham	110	79	0
Conway	2,120	2,188	9
Crawford's Purchase	0	0	0
Cutt's Grant	0	0	0
Eaton	119	148	0
Effingham	473	266	0
Freedom	574	366	1
Green's Grant	0	1	0
Hadley's Purchase	0	0	0
Hale's Location	84	38	0
Hart's Location	23	15	0
Jackson	280	426	0
Lincoln	366	337	0
Livermore	0	0	0
Madison	729	657	1
Martin's Location	0	0	0
Middleton	558	229	0
Milton	1,267	633	3
Moultonborough	1,983	1,134	0
Ossipee	1,330	650	3
Pinkham's Grant	1	0	0
Sargent's Purchase	0	0	0
Tamworth	747	660	1
Thompson & Mes's Purchase	0	0	0
Tuftonboro	974	602	2
Wakefield	1,807	786	2
Waterville Valley	172	179	0
Wolfeboro	2,283	1,624	3
Totals	17,336	12,309	28

New Hampshire - General Election**State Senate District 4**

November 8, 2022	Seamus Casey, r	David H. Watters, d	Scatter
Barrington	2,147	2,462	0
Dover Ward 1	546	1,816	2
Dover Ward 2	595	1,742	2
Dover Ward 3	1,088	1,830	2
Dover Ward 4	882	1,733	2
Dover Ward 5	716	1,393	0
Dover Ward 6	887	1,416	3
Rollinsford	555	793	0
Somersworth Ward 1	457	681	0
Somersworth Ward 2	376	472	0
Somersworth Ward 3	369	462	0
Somersworth Ward 4	372	684	0
Somersworth Ward 5	217	395	0
Totals	9,207	15,879	11

New Hampshire - General Election			
State Senate District 5			
November 8, 2022	John McIntyre, r	Suzanne M. Prentiss, d	Scatter
Canaan	695	875	0
Cornish	396	530	1
Dorchester	98	83	0
Enfield	812	1,370	16
Grantham	687	1,374	1
Groton	199	112	0
Hanover	833	4,631	6
Lebanon Ward 1	486	1,527	1
Lebanon Ward 2	505	1,504	0
Lebanon Ward 3	541	1,522	1
Lyme	204	850	0
New London	1,015	1,627	1
Orford	263	377	2
Plainfield	449	901	1
Plymouth	789	1,448	5
Springfield	383	355	1
Wentworth	301	183	0
Totals	8,656	19,269	36

New Hampshire - General Election			
State Senate District 6			
November 8, 2022	James P. Gray, r	Ruth Larson, d	Scatter
Alton	2,006	1,128	0
Gilmanton	1,195	815	1
Farmington	1,466	990	1
New Durham	940	561	1
Rochester Ward 1	1196	1137	4
Rochester Ward 2	1,123	1,023	2
Rochester Ward 3	1,159	891	2
Rochester Ward 4	962	973	3
Rochester Ward 5	1,031	955	2
Rochester Ward 6	893	899	3
Strafford	1,196	1062	1
Totals	13,167	10,434	20

**New Hampshire - General Election
State Senate District 7**

November 8, 2022	Daniel E. Innis, r	Richard A. Lobban, Jr., d	Scatter
Alexandria	520	301	0
Andover	595	588	2
Boscawen	797	631	4
Bradford	445	434	6
Bridgewater	412	288	0
Bristol	817	683	1
Danbury	354	211	3
Franklin Ward 1	635	408	4
Franklin Ward 2	431	295	4
Franklin Ward 3	710	512	0
Goshen	241	106	3
Grafton	353	245	0
Hebron	251	201	0
Henniker	924	1,118	5
Hill	330	167	0
Hillsborough	1,366	1,042	0
Newbury	707	646	0
Orange	82	67	0
Salisbury	469	283	0
Sutton	550	567	2
Tilton	843	630	0
Warner	694	838	0
Webster	544	427	0
Wilmot	343	458	0
Totals	13,413	11,146	34

New Hampshire - General Election			
State Senate District 8			
November 8, 2022	Ruth Ward, r	Charlene Marcotte Lovett, d	Scatter
Acworth	248	220	-
Antrim	675	589	-
Bennington	371	307	-
Charlestown	1,008	793	2
Claremont Ward 1	535	617	-
Claremont Ward 2	832	840	-
Claremont Ward 3	772	648	-
Croydon	298	134	-
Deering	594	315	2
Dunbarton	955	655	2
Francestown	481	470	-
Gilsum	206	189	-
Langdon	181	139	-
Lempster	368	201	-
Marlow	185	179	-
Newport	1,400	893	-
Stoddard	378	315	1
Sunapee	1,053	950	2
Unity	416	227	-
Washington	405	256	-
Weare	2,643	1,563	1
Windsor	76	20	-
Totals	14,080	10,520	10

New Hampshire - General Election State Senate District 9			
November 8, 2022	Denise Ricciardi, r	Matthew McLaughlin, d	Scatter
Bedford	5,976	5,364	5
Fitzwilliam	610	502	-
Greenfield	418	397	-
Hinsdale	588	689	-
Jaffrey	1,171	1,186	3
Lyndeborough	500	424	1
Mont Vernon	699	765	-
New Boston	1,667	1,480	-
Richmond	332	191	-
Sharon	109	123	3
Temple	386	393	-
Troy	473	321	-
Winchester	758	675	2
Totals	13,687	12,510	14

New Hampshire - General Election			
State Senate District 10			
November 8, 2022	Sly Karasinski, r	Donovan Fenton, d	Scatter
Alstead	379	539	1
Chesterfield	819	1,096	1
Dublin	360	544	0
Hancock	359	740	0
Harrisville	165	466	0
Keene Ward 1	317	1,093	2
Keene Ward 2	477	1,444	1
Keene Ward 3	524	1,338	0
Keene Ward 4	567	1,344	1
Keene Ward 5	610	1,577	0
Marlborough	322	654	0
Nelson	124	232	0
Peterborough	1,006	2,446	7
Roxbury	36	69	0
Sullivan	152	156	2
Surry	184	259	0
Swanzey	1,447	1,583	0
Walpole	662	1,177	0
Westmoreland	350	548	0
Totals	8,860	17,305	15
State Senate District 11			
	Gary L. Daniels, r	Shannon E. Chandley, d	Scatter
Amherst	2,861	3,758	1
Merrimack	6,359	6,184	2
Milford	3,453	3,395	0
Wilton	918	983	0
Totals	13,591	14,320	

New Hampshire - General Election

State Senate District 12			
November 8, 2022	Kevin A. Avard, r	Melanie Levesque, d	Scatter
Brookline	1,449	1,456	1
Greenville	422	311	0
Hollis	2,249	2,436	1
Mason	467	289	0
Nashua Ward 1	2,182	2,533	
Nashua Ward 2	1,798	2,344	
Nashua Ward 5	2,250	2,564	
New Ipswich	1,741	662	1
Rindge	1,756	1,031	0
Totals	14,314	13,626	

State Senate District 13			
	Stephen Scaer, r	Cindy Rosenwald, d	Scatter
Nashua Ward 3	1211	1947	
Nashua Ward 4	627	1014	
Nashua Ward 6	1197	1569	
Nashua Ward 7	1199	1571	4
Nashua Ward 8	1340	2087	1
Nashua Ward 9	1745	2257	3
Totals	7,319	10,445	

New Hampshire - General Election			
State Senate District 14			
November 8, 2022	Sharon M. Carson, r	John Robinson, d	Scatter
Auburn	1,972	1,094	4
Hudson	5,979	4,039	4
Londonderry	6,680	5,000	4
Totals	14,631	10,133	12

State Senate District 15			
	Linda Rae Banfill, r	Becky Whitley, d	Scatter
Bow	1,852	2,478	1
Concord Ward 1	690	1,084	-
Concord Ward 2	607	996	1
Concord Ward 3	365	632	1
Concord Ward 4	484	1,314	3
Concord Ward 5	595	1,782	3
Concord Ward 6	440	1,025	-
Concord Ward 7	686	1,633	1
Concord Ward 8	695	1,014	-
Concord Ward 9	543	983	-
Concord Ward 10	923	1,479	4
Hopkinton	1,191	2,205	5
Totals	9,071	16,625	19

State Senate District 16			
	Keith Murphy, r	June Trisciani, d	Scatter
Candia	1,458	799	1
Goffstown	3,927	3,570	6
Hooksett	3,548	2,982	7
Manchester Ward 1	1,774	2,671	6
Raymond	2,787	1,761	4
Totals	13,494	11,783	24

New Hampshire - General Election			
State Senate District 17			
November 8, 2022	Howard Pearl, r	Christine M. Tappan, d	Scatter
Allenstown	974	737	2
Barnstead	1,402	792	3
Canterbury	625	806	2
Chichester	821	555	1
Deerfield	1,469	1,086	3
Epsom	1,415	862	-
Loudon	1,873	1,034	6
Northfield	1,111	781	1
Northwood	1,159	1,001	2
Nottingham	1,465	1,427	4
Pembroke	1,590	1,615	3
Pittsfield	974	615	5
Totals	14,878	11,311	32

State Senate District 18			
	George A. Lambert, r	Donna M. Soucy, d	Scatter
Litchfield	2,175	1,854	7
Manchester Ward 5	696	977	3
Manchester Ward 6	1,841	2,041	9
Manchester Ward 7	1,061	1,431	-
Manchester Ward 8	2,007	2,015	6
Manchester Ward 9	1,235	1,602	1
Totals	9,015	9,920	26

**New Hampshire - General Election
State Senate District 19**

November 8, 2022	Regina Birdsell, r		Scatter
Derry	7,111		0
Hampstead	3,111		12
Windham	4,921		98
Totals	15,143		110

State Senate District 20

	Richard H. Girard, r	Lou D'Allesandro, d	Scatter
Manchester Ward 2	1,578	2,258	8
Manchester Ward 3	781	1,427	2
Manchester Ward 4	1,027	1,371	1
Manchester Ward 10	1,331	1,608	8
Manchester Ward 11	993	1,354	2
Manchester Ward 12	1,462	1,841	4
Totals	7,172	9,859	25

State Senate District 21

		Rebecca Perkins Kwoka, d	Scatter
Durham		4,729	33
Lee		1,610	31
Madbury		664	4
New Castle		484	10
Newfields		608	6
Newington		261	2
Newmarket		3,193	21
Portsmouth Ward 1		1,726	13
Portsmouth Ward 2		2,119	16
Portsmouth Ward 3		1,572	34
Portsmouth Ward 4		1,305	42
Portsmouth Ward 5		1,813	19
Totals		20,084	231

New Hampshire - General Election			
State Senate District 22			
November 8, 2022	Daryl Abbas, r	Wayne Haubner, d	Scatter
Atkinson	2,443	1,571	3
Pelham	4,208	2,321	2
Plaistow	2,014	1,292	3
Salem	7,957	4,743	12
TOTALS	16,622	9,927	20

State Senate District 23			
	Bill Gannon, r	Brenda Oldak, d	Scatter
Brentwood	1,251	1,147	-
Chester	1,673	1,024	1
Danville	1,366	736	1
East Kingston	789	597	-
Epping	2,049	1,441	-
Fremont	1,518	831	4
Kensington	627	602	1
Kingston	1,913	1,215	-
Newton	1,353	894	2
Sandown	1,933	1,054	3
Seabrook	2,162	1,279	3
South Hampton	268	244	-
Totals	16,902	11,064	15

State Senate District 24				
	Lou Gargiulo, r	Recount	Debra Altschiller, d	Recount
Exeter	2,908	2,915	5,408	5,425
Greenland	1,060	1,060	1,312	1,312
Hampton	4,649	4,654	4,513	4,521
Hampton Falls	821	824	598	597
North Hampton	1,299	1,300	1,480	1,482
Rye	1,619	1,623	2,036	2,037
Stratham*	1,930	1,932	2,622	2,646
Totals	14,286	14,308	17,969	18,020

*correction received from clerk