

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
SOUTHERN DISTRICT

SUPERIOR COURT

Docket No. \_\_\_\_\_

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.”<sup>1</sup>

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.”<sup>2</sup>

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<sup>1</sup> 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-sununus-veto-will-allow-and-encourage-gerrymandering>.

<sup>2</sup> *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.”<sup>3</sup>

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.”<sup>4</sup>

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

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<sup>3</sup> 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>.

<sup>4</sup> *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.”<sup>5</sup>

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.”<sup>6</sup>

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.<sup>7</sup>

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

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<sup>5</sup> 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>.

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

<sup>7</sup> *Special Committee on Redistricting - Executive Session (11/16/21)*, YouTube (Nov. 16, 2021), [https://www.youtube.com/watch?v=wcMw\\_gym2zo](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.<sup>8</sup> 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.

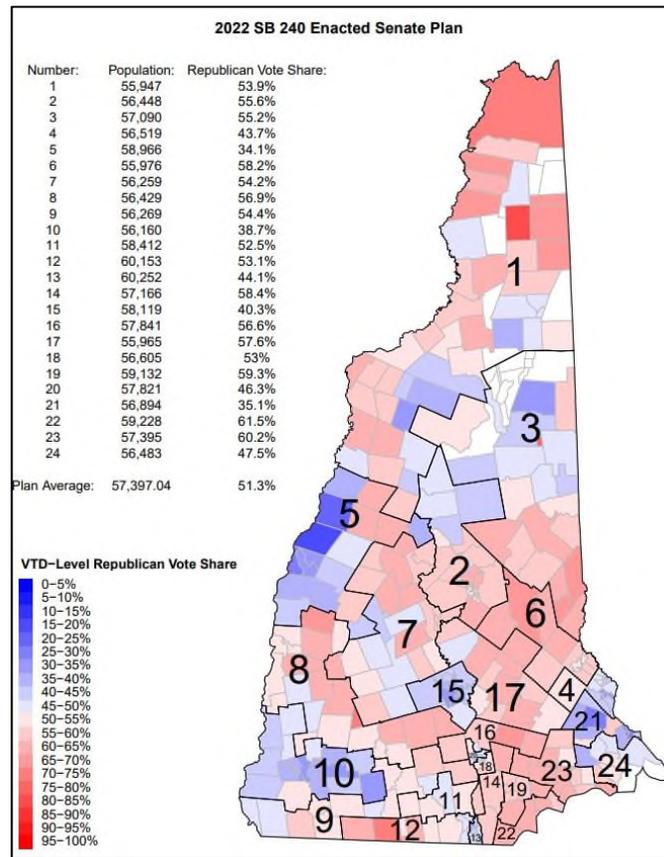
55. Even a cursory review of the district shapes found in the Senate Plan make clear that something besides traditional redistricting criteria—such as geographic compactness or the maintenance of communities of interest—was at work. This is particularly evident when considering the partisan voting patterns 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

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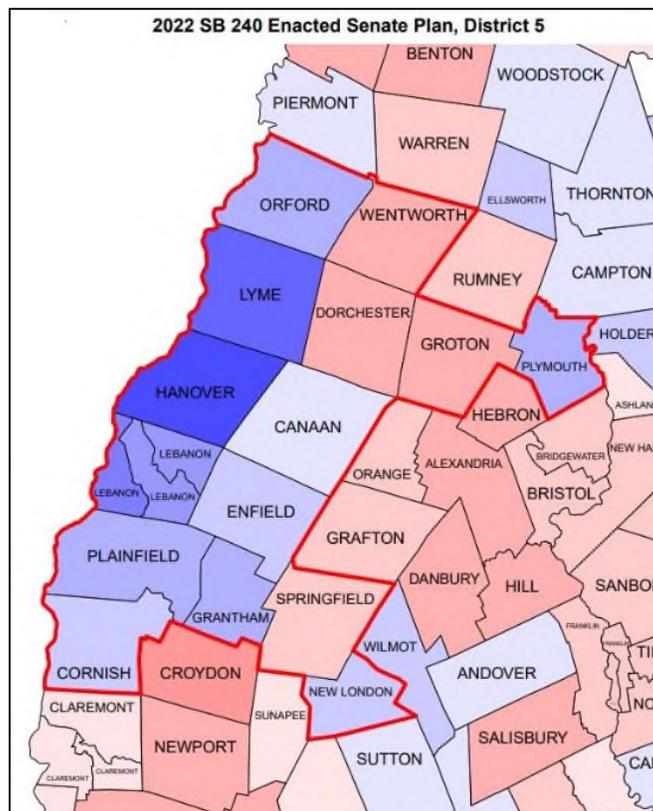
<sup>8</sup> Kevin Landrigan, *State House Dome: Some Big Winners, Losers in Senate GOP Redistricting Plan*, N.H. Union Leader (Jan. 3, 2022), [https://www.unionleader.com/news/politics/statehouse\\_dome/state-house-dome-some-big-winners-losers-in-senate-gop-redistricting-plan/article\\_ff4d25c5-3f3e-58bb-a764-ea18ac372df7.html](https://www.unionleader.com/news/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.



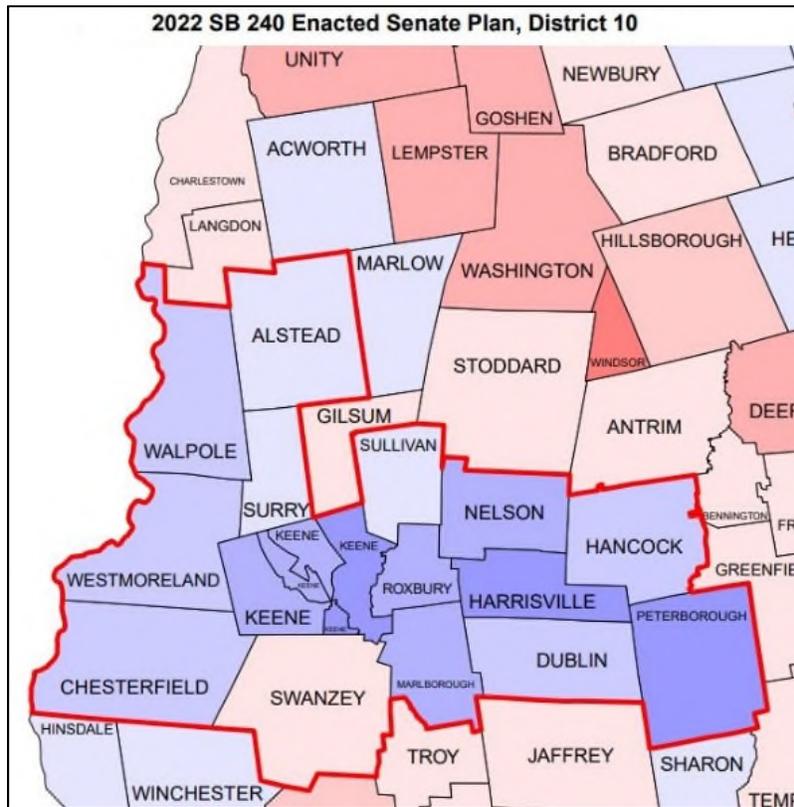
57. The southwestern portion of the plan provides a telling illustration of this pattern: there, Republicans will easily win six out of nine districts despite the presence of a sizeable number of Democratic-leaning towns and wards. The General Court achieved this effect by packing Democratic voters into 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.<sup>9</sup>



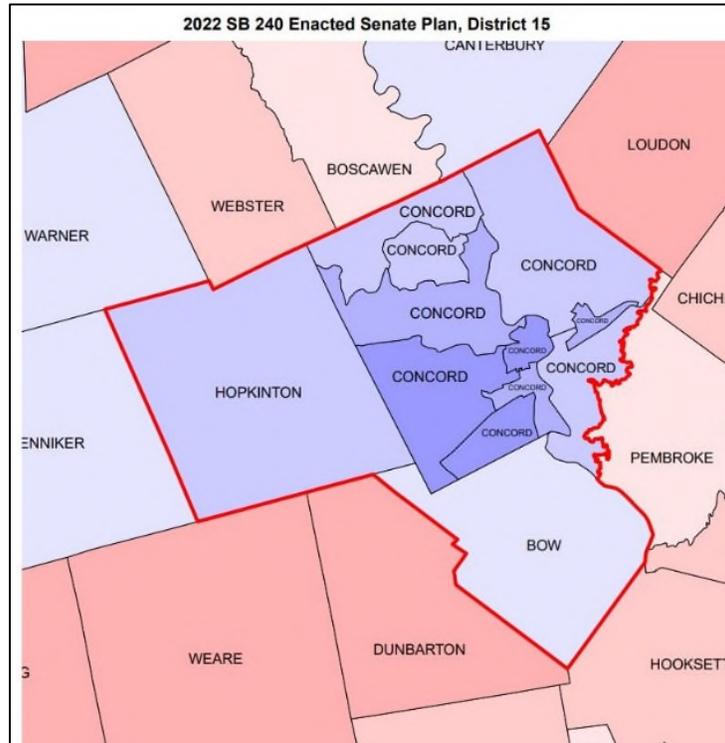
<sup>9</sup> The partisan “vote share” figures included throughout this complaint were calculated using the same combined election-results composite discussed above: each presidential, U.S. Senate, and gubernatorial race between 2016 and 2020.

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

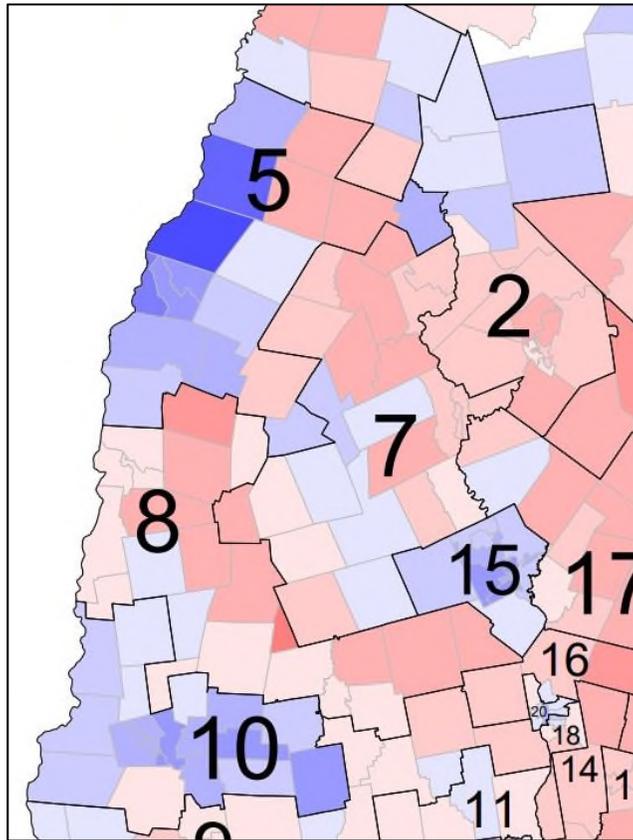
Bow. Like Districts 5 and 10, the result is an overwhelmingly Democratic district: 59.7% of voters in District 15 support Democratic candidates.



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.

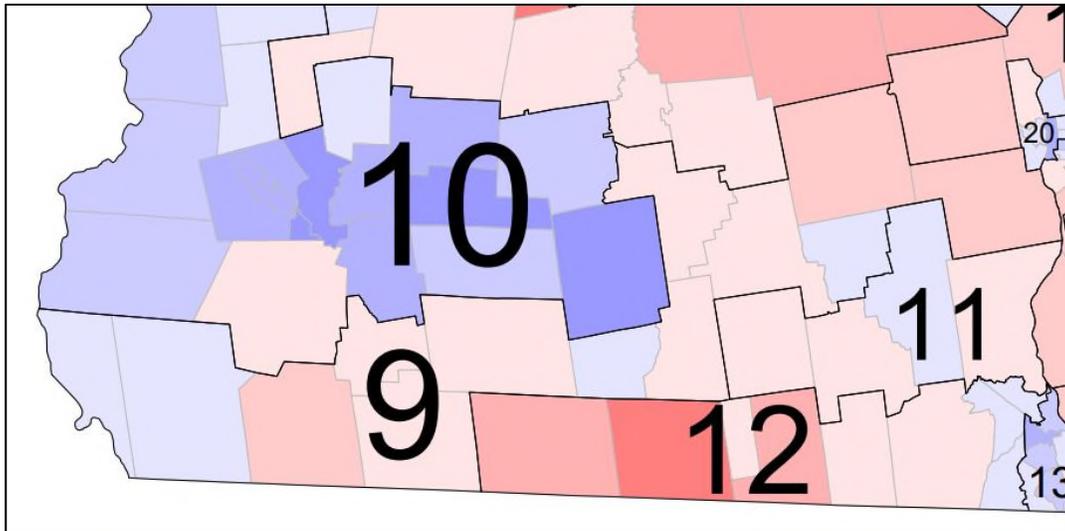
Meanwhile, District 2 collects Republican voters and pairs them with the remaining Democratic towns east of District 5, effectively neutralizing those Democratic votes.



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.



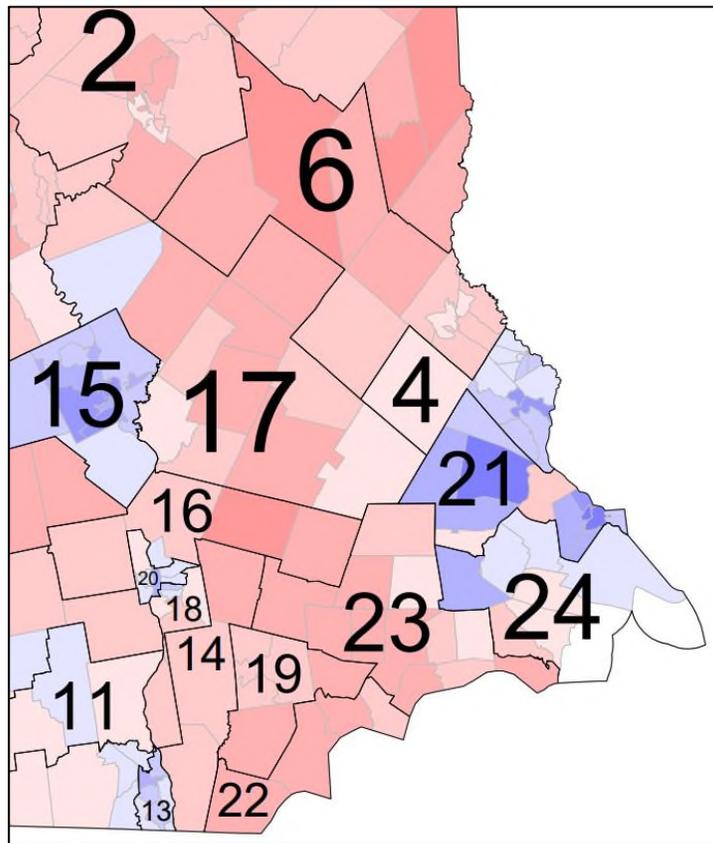
65. Elsewhere along the state’s southern border, Districts 11 and 12 crack Democratic strongholds in Mount Vernon, Amherst, and western Nashua, ensuring that Republican voters more than offset Democratic votes in each district.

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.

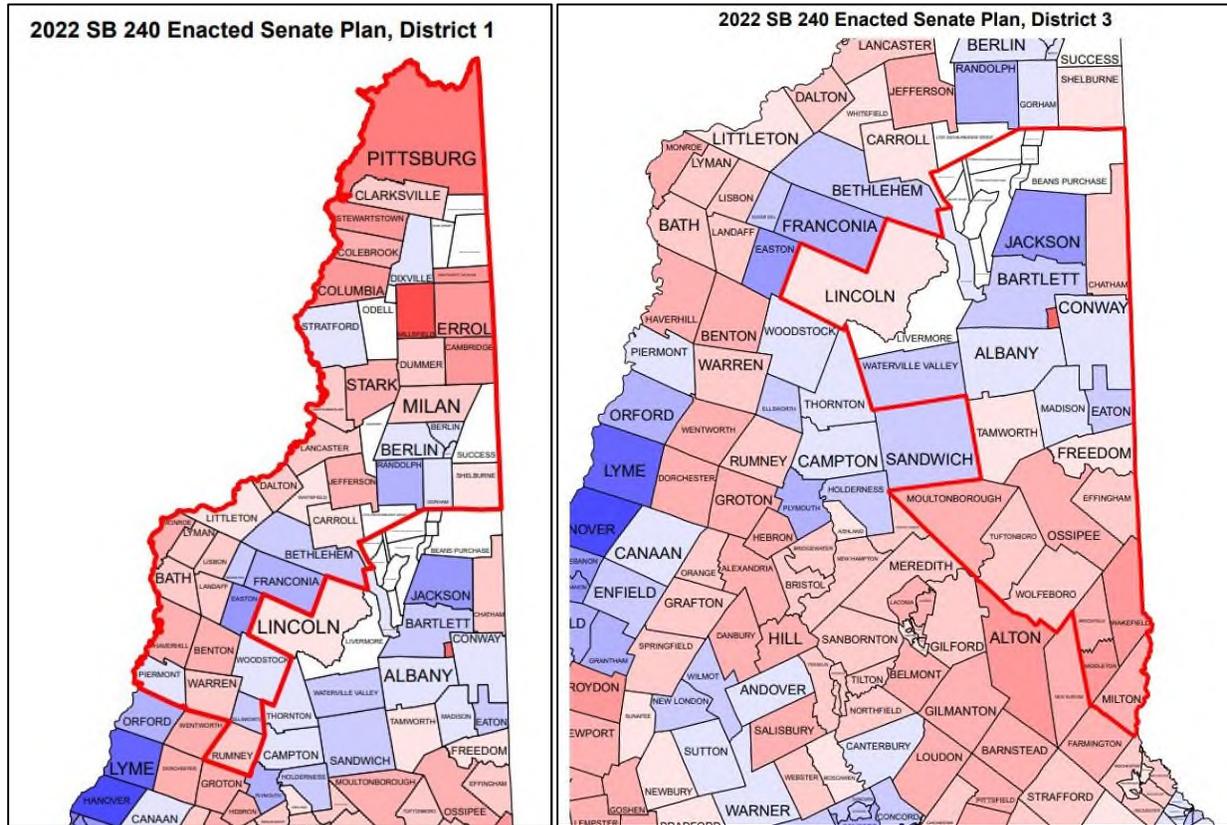
68. The 13 districts in the southeast region of the state also systematically pack and crack Democrats. Democrats are packed tightly into just five of these 13 districts: Districts 4 (56.3% Democratic vote share), 13 (55.9%), 20 (53.7%), 21 (64.9%), and 24 (52.5%). The

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.<sup>10</sup> 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."<sup>11</sup>

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.

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<sup>10</sup> 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).

<sup>11</sup> 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[.]”<sup>12</sup>

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.

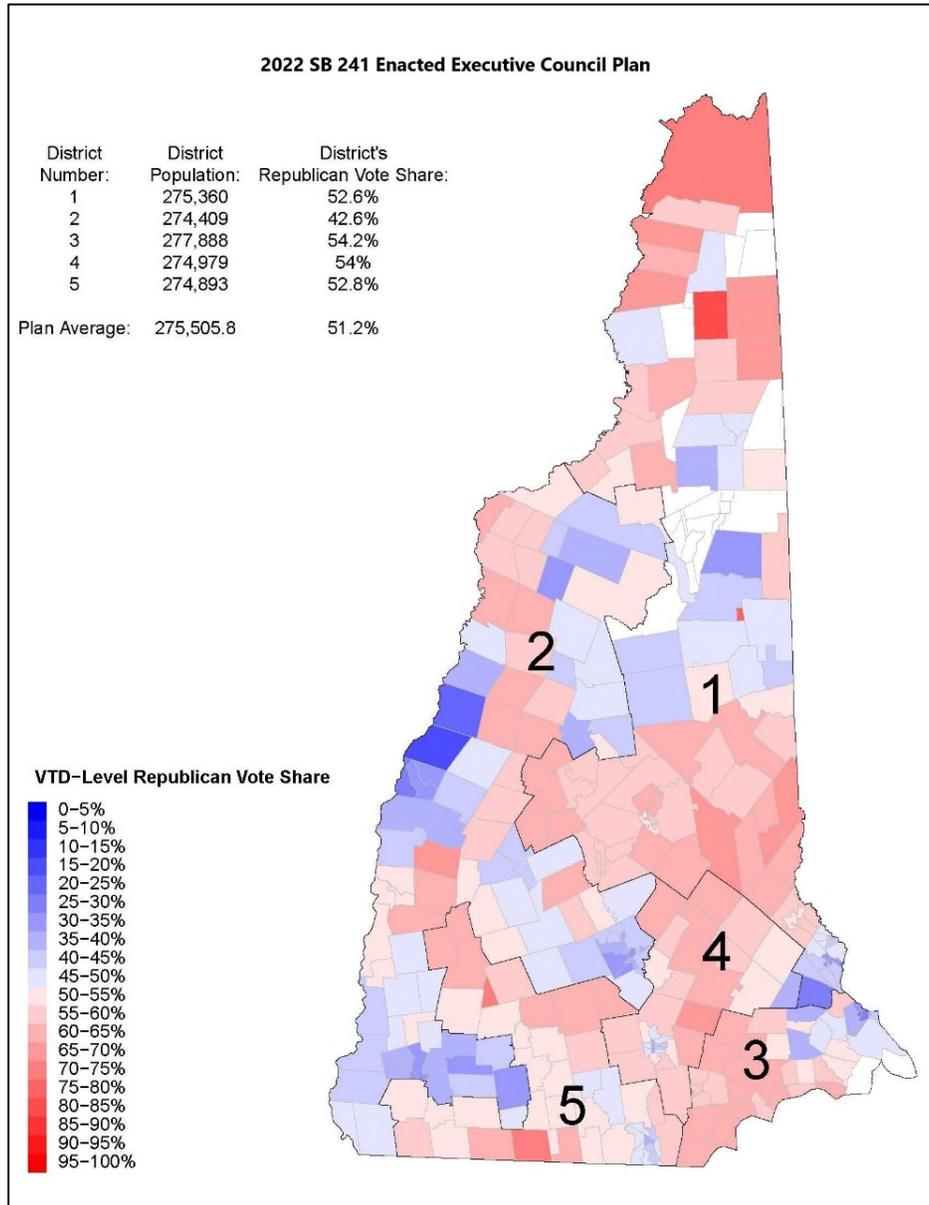
86. As it did with the Senate Plan, the General Court crafted the 2022 Executive Council Plan to dilute the voting power of Democratic voters and maximize the voting power of Republican voters. It achieved this effect by packing Democratic voters into District 2 and cracking other Democratic voters among 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

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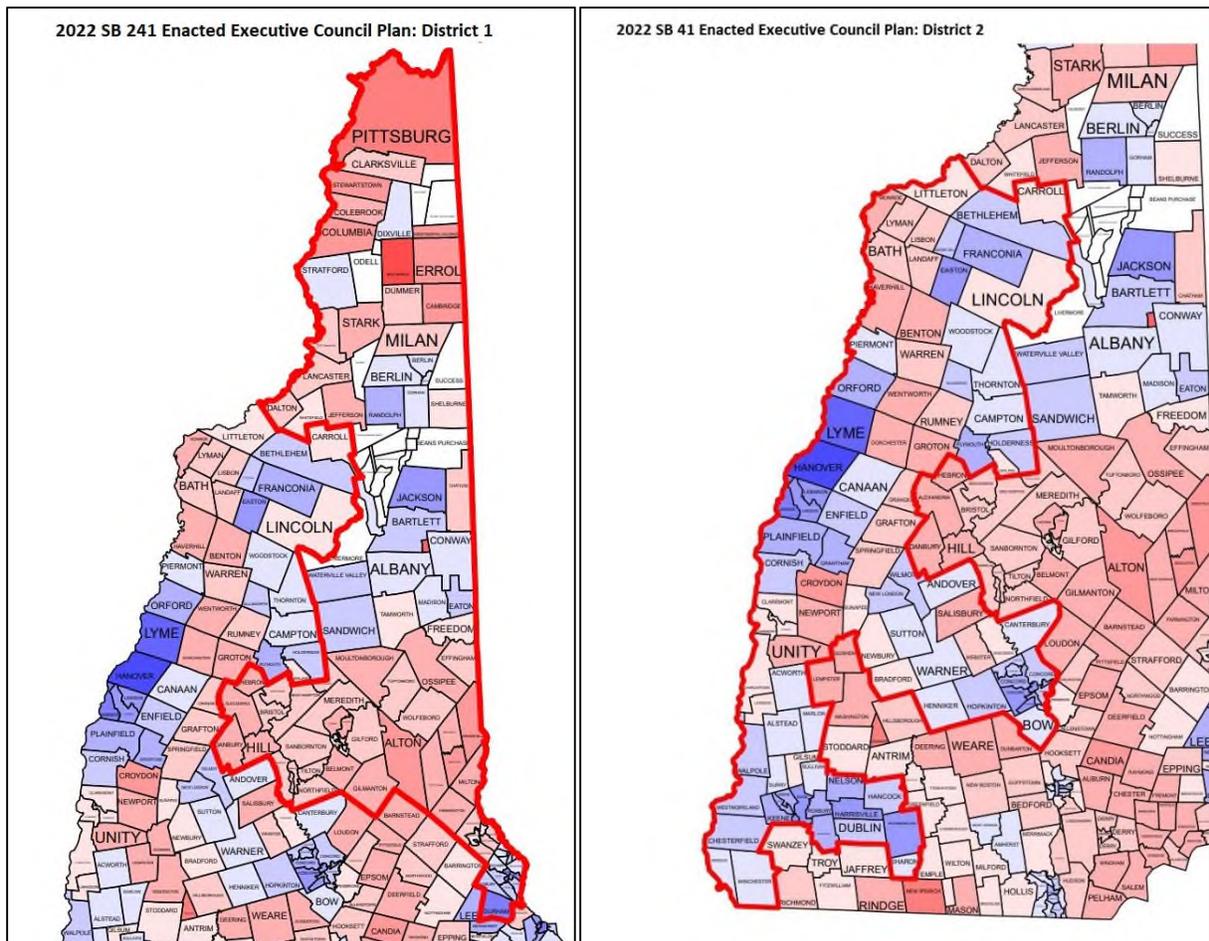
<sup>12</sup> *Senate Election Law and Municipal Affairs*, YouTube (Jan. 10, 2022), <https://www.youtube.com/watch?v=TfOv4N8IG9U> (video at 8:20).

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.”<sup>13</sup>

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

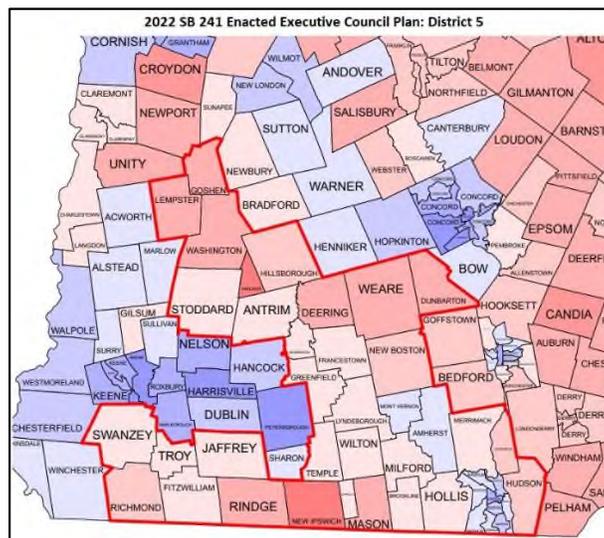
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<sup>13</sup> Garry Rayno, *Gerrymandering Is Alive and Well in the Granite State*, InDepthNH (Mar. 26, 2022), <https://indepthnh.org/2022/03/26/gerrymandering-is-alive-and-well-in-the-granite-state>.

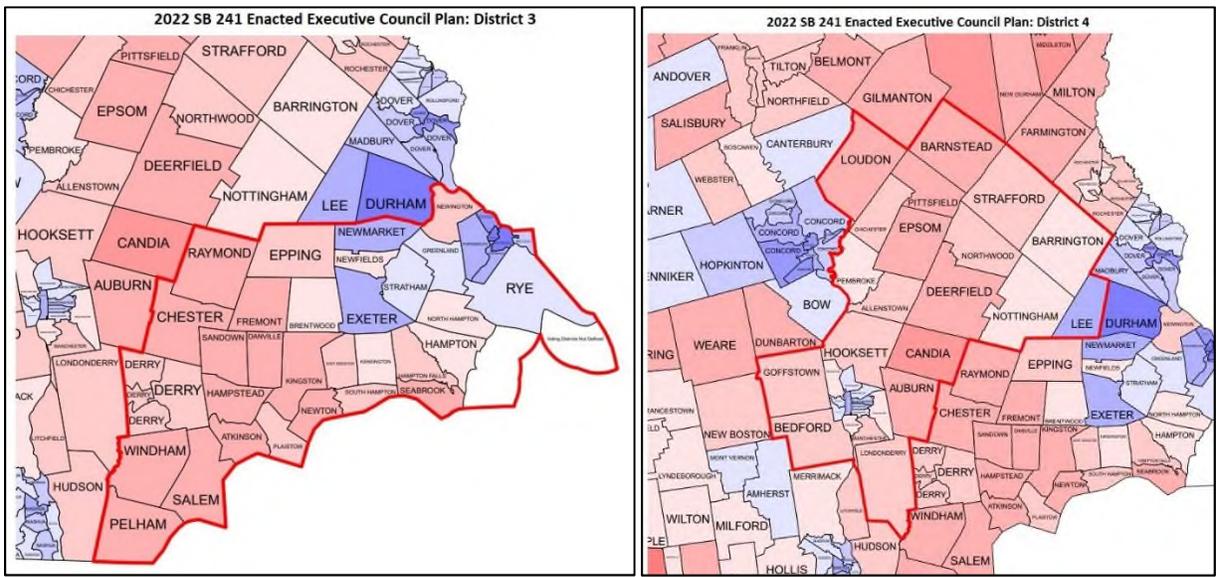
Kenney in the last three elections—and into District 2, which is currently represented by Democrat Cinde Warmington.

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,

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