

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

THERESA NORELLI, ET AL

v.

SECRETARY OF STATE

DOCKET NO. 2022-0184

Supervisory Jurisdiction Pursuant to April 11, 2022 Order
From Hillsborough Superior Court Southern Division
Docket No. 226-2022-CV-00126

**BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES
UNION OF NEW HAMPSHIRE**

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QUESTIONS PRESENTED

1. Would use of the existing congressional districts, *see* RSA 662:1, for the 2022 election be unconstitutional either as a violation of one person/one voter or as otherwise alleged in the complaint?
2. If the Court concludes that use of the existing congressional districts for the 2022 election would be unconstitutional,
 - a. Should it apply the “least change” approach to congressional redistricting in this case, as it did for state senate redistricting in *Below v. Secretary of State*, 148 N.H. 1 (2002) (*Below I*)?
 - b. If “least change” is the correct approach, what measurement or factors should the Court use to assess “least change?”
 - c. If “least change” is not the correct approach, what approach should the Court take for congressional redistricting in this case, and what measurement or factors should it use to assess that approach?

STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of New Hampshire (“ACLU-NH”) is the New Hampshire affiliate of the American Civil Liberties Union (“ACLU”)—a nationwide, nonpartisan, public-interest organization with over 1.75 million members (including over 9,000 New Hampshire members and supporters). 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.2d (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). 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

The last time the State amended its congressional districts was in 2012, following the 2010 census. *See* Laws 2012, 18:1; RSA 662:1. For over 100 years prior to that, New Hampshire's two congressional districts have remained largely the same, with the occasional change to correct for population shifts. *See* <https://what-the-district.aclu.org/>. This time, with the Governor and the General Court in dispute over to what extent the districts should be redrawn to reduce competition and favor Republicans, the political branches are at an impasse.

Following the 2020 decennial census, *see* U.S. CONST. art. I, s. 2, cl. 3, in August 2021, the Census Bureau delivered New Hampshire's population data used to apportion congressional and other representative maps. As of April 1, 2020, New Hampshire's population is 1,377,529. New Hampshire again was determined to be entitled to two representatives in Congress, meaning that the ideal population of each congressional district (the total population divided by two) is 688,765.

While New Hampshire's population grew, it did not grow equally. Due to demographic trends, the southern and eastern parts of the State grew more relative to the northern and western parts of the state. As a result, the first congressional district as enacted in 2012, in the east of the state, has a

population of 697,737, while the second congressional district has a population of 679,792. This represents a total population deviation of 2.6% from the ideal district.¹

The General Court began the redistricting process in the fall of 2021. The House Special Committee on Redistricting held public listening sessions in each county. Following those sessions, the Committee began its work in earnest on House Bill 52, AN ACT apportioning congressional districts.² The majority of the Committee proposed amendment #2021-2271, which would have moved 75 different voting communities between the districts, while the minority proposed amendment #2021-2245 which just moved the town of Hampstead. An independent analysis conducted for ACLU-NH indicated that the majority's plan would move 28.6% of residents from one district to another, would create "substantially less competitive districts," and was "favorable to GOP electoral fortunes." *See* Add. 31-32.³ ACLU-NH opposed this plan. Add. 75-76. In other words, the plan would change New Hampshire's two competitive congressional districts and turn one into a "safe" Democratic district and one into a much

¹ This figure is calculated by dividing the deviation from the ideal population of a district by the ideal population, and then multiplying by 100. The first district has a deviation of 1.3%, and the second has a deviation of -1.3%, for a total deviation of 2.6%.

² The House and Senate were also charged with reapportioning districts for State House, State Senate, Executive Council and county commissions. Those plans are not before the Court on this matter.

³ Citations to the record are as follows: "Add. ___" refers to the addendum to this brief.

more Republican district. This was in keeping with a promise made in 2021 by Stephen Stepanek, the chair of the New Hampshire Republican Party: “Because of this we control redistricting. . . I can stand here today and guarantee you that we will send a conservative Republican to Washington, D.C. as a Congress person in 2022.” DiStaso, John, “NH Primary Source: Stepanek guarantees at least one N.H. Republican will be elected to US House in ’22.” *WMUR* (January 28, 2021)

<https://www.wmur.com/article/nh-primary-source-stepanek-guarantees-at-least-one-nh-republican-will-be-elected-to-us-house-in-22/35341751#>. The plan received bipartisan criticism, with the editorial board of the State’s largest newspaper asking: “Anybody have an eraser?” See “Redistrict Plan: Back to the drawing Board,” *New Hampshire Union Leader* (Nov. 7, 2021), https://www.unionleader.com/opinion/editorials/redistrict-plan-back-to-the-drawing-board/article_4ffbcaa9-c5a8-5d8d-862f-6b08b1bff21d.html.

The House Special Committee on Redistricting voted 8-7 on party lines to adopt the majority’s plan on November 16, 2021. See http://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=605&inflect=2. On January 5, 2022, the full House voted to approve that plan 184-171. See *Id.*

The Senate Election Law Committee held a public hearing on the plan on January 31, 2022, then voted 3-2 on party lines to approve the plan. On March 17, 2022, the Senate voted 13-11 in favor of adoption. See *id.* Almost immediately after the Senate vote, however, Governor Sununu announced his intention to veto the plan. Governor Sununu said: “The proposed Congressional redistricting map is not in the best interest of New Hampshire and I will veto it as soon as it reaches my desk.” Gokee,

Amanda, “Sununu says he will veto congressional district maps,” *New Hampshire Bulletin* (March 17, 2022)

<https://newhampshirebulletin.com/briefs/sununu-says-he-will-veto-congressional-district-maps/>. He continued “The citizens of this state are counting on us to do better.” *Id.* The Governor told WMUR: “It doesn’t really pass the smell test, right? It just looks really funky and they’ve really moved a lot of towns and whatnot. Again, on behalf of all the people of the state, I just think everyone wants it to be better, and I there there’s a lot of options out there to do that.”

<https://twitter.com/AdamSextonWMUR/status/1504530372180254723>. He added “Yeah, look: the way redistricting has been designed, the Democrats get their district and Republicans get their district—but that’s not who we are as a state. I want something that more matches the character of the state. We’re a purple state.” *Id.*

On March 22, 2022, the Governor proposed his own congressional plan. *See*

<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2022-0322-redistricting.pdf>. An independent analysis of this proposal indicates that “this map would create one Democratic leaning district and one GOP leaning district. However, both districts would be more competitive than those proposed under [the House plan].” Add. 77. On April 22, 2022, the House Special Committee on Redistricting held a public hearing on the Governor’s plan in the form of a non-germaine amendment, number 2022-1523h, to Senate Bill 200 (a bill which, as initially drafted, was relative to the election of district commissioners in Haverhill). The committee did not vote on the Governor’s proposal, but the Governor has recently admitted

that this proposal does not have the votes to advance. *See*

<https://twitter.com/klandriganul/status/1517277003769991173?s=21&t=VvZ0fEzN9mGJYWJxvqFg>.

As of the filing of this brief, *amicus* understands that HB 52 (the original legislative plan) is in the enrolled bills process and has not been formally acted on by the Governor.

http://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=605&inflect=2.

Following the veto statement, with the legislative session halfway over, the Plaintiffs in this case filed a Complaint on March 21, 2022 alleging that the political branches were at an impasse⁴ and asking the judicial branch to apportion the congressional districts. On April 11, 2022, this Court assumed jurisdiction and established a briefing schedule. On April 20, the Secretary of State filed a statement regarding material facts asserting that a number of the factual assertions in the Plaintiffs' complaint are not within his "jurisdictional realm." In particular, the Secretary stated that he has "no grant of authority or knowledge" pertaining to the Plaintiffs' allegations of the population changes in the last decade, but, to the extent that a response is required, he denied those allegations.

⁴ *Amicus* recounts the legislative history as background for the Court to consider, and is not arguing that a legal impasse has occurred such that this Court *must* take over the redistricting process. *See Growe v. Emison*, 507 U.S. 25 (1993). This Court explained that its "invocation of jurisdiction over this case in no way precludes the legislature from enacting a redistricting plan. . . . We will terminate this proceeding if a congressional reapportionment plan is validly enacted at any time prior to the close of this case." *See* April 11, 2022 Order. *Amicus* takes no position in this brief on the time frame for any judicial relief.

As of the filing of this brief, New Hampshire is one of only two states, along with Missouri, that have not adopted any congressional districts this cycle (although some districting plans remain in litigation).

SUMMARY OF ARGUMENT

Once again, this Court is called to apportion the State's elective districts. This time, it must draw the State's two congressional districts after the political branches reached an impasse over how dramatically to redraw the lines in favor of reducing competition and favoring the GOP. This Court accepted supervisory jurisdiction of a lawsuit recently filed by five registered voters in the first congressional district and solicited the views of the parties and others on four questions.

The American Civil Liberties Union of New Hampshire submits this brief to respond to two of the Court's four questions. *First*, it would be unconstitutional for the State to use the currently enacted congressional apportionment plan for the upcoming 2022 elections because population shifts revealed by the 2020 census reflect that almost 18,000 more people live in the first congressional district than the second. This population shift is beyond what is permissible under the state and federal constitutional provisions that ensure that one person's vote is approximately equal to every other person's vote.

Second, as it did in *Below I*, the Court should begin with the currently enacted congressional apportionment plan and draw a new plan using the "least change" methodology that moves the fewest number of people from one district to another to achieve constitutional compliance. This has the twin benefits of respecting the State's traditional congressional

redistricting policy and maintaining, to the extent possible, relationships between constituents and their representatives in Congress.

Finally, the Court should also ensure, to the extent possible, that it draws a congressional apportionment plan that is contiguous; respects ward, town, and unincorporated place boundaries; and does not consider the political implications of its plan.

ARGUMENT

The Court solicited from the parties and *amici* their views on four questions, and ACLU-NH submits this brief to answer the Court’s first and third questions.

First, the Court asks whether the use of the existing congressional districts for the 2022 elections would be unconstitutional. The answer to that question is yes. Population changes during the last decade have created too large of a deviation from the ideal population of congressional districts to comply with the constitutional mandate of one person/one vote.

Second, the Court asks whether it should apply the “least change” approach to congressional districting, and, if so, what measurement or factors should be used to assess “least change?” The answer to this question is also yes: districts must contain similar populations and be contiguous, should not divide towns or wards, and beyond that should be the least-changed from the last legislatively-enacted plan. “Least change” should be measured by a plan that moves the fewest number of people in the state from one district to another.

Finally, the Court should require that the districts be contiguous and respect the political boundaries of towns, wards, and unincorporated places.

Moreover, the Court should not consider the political ramifications of any changes it makes when reapportioning the state's congressional districts.

I. Using The Existing Congressional Districts For The 2022 Elections Would Be Unconstitutional

In response to the Court's first question, it would violate the Constitution to continue to use the existing congressional districts codified in RSA 662:1. "The New Hampshire Constitution guarantees that each citizen's vote will have equal weight." *Burling v. Chandler*, 148 N.H. 143, 146 (2002) citing N.H. CONST. pt. I, art. 11. So does the federal constitution. *See Baker v. Carr*, 369 U.S. 186 (1962) (recognizing claims of malapportionment as justiciable).

According to the Plaintiff's complaint, according to the 2010 census, District 1 had 658,233 people while District 2 had 658,237 people. The 2020 census revealed that the districts gained populations at different rates, however, and as of 2020, District 1 as currently constituted has 697,737 people while District 2 has a population of 679,792. In other words, 17,945 more people live in District 1 than District 2.

"The established method to determine whether a reapportionment plan affords citizens an equal right to vote is to calculate the extent to which the plan deviates from the ideal district population." *Burling v. Chandler*, 148 N.H. 143, 152 (2002). To do that, the Court first calculates the ideal population of a district, which is the state's population divided by the number of districts. *Id.* at 152-153. In this case, the ideal population of a district is 1,377,529 divided by two, or 688,765 (after rounding). The Court then calculates the relative deviation for each district, which is derived by dividing the difference between the district's population and the ideal

population by the ideal population. In this case, for District 1, the relative deviation is $(697,737 - 688,765) \div 688,765$, which equals .013 (1.3%). The relative deviation for District 2 is $(658,237 - 688,765) \div 688,765$, which equals -.013, or -1.3%. The Court then calculates the overall deviation, which is the total of the absolute values of relative deviation for the largest and smallest districts. *Id.* at 153; *accord Abrams v. Johnson*, 521 U.S. 74, 98 (1997) (“Overall population deviation is the difference in population between the two districts with greatest disparity”). The relative deviation of the current plan is 2.6%.

Under both the State and Federal Constitution, “there can be room for but a single constitutional rule – one voter, one vote.” *Below I*, 141 N.H. at 8 quoting *Gray v. Sanders*, 372 U.S. 368, 382 (1963) (*Stewart, J.* concurring). “The overriding objective of redistricting must be substantial equality of population among the various legislative districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.” *Id.* (cleaned up). Article 1, Section 2 of the United States Constitution requires “congressional districts to achieve population equality as nearly as is practicable.” *Abrams*, 521 at 98 (citation and quotation omitted). As “[p]recise mathematical equality . . . may be impossible to achieve in an imperfect world . . . the equal representation standard is enforced only to the extent of requiring that districts be apportioned to achieve population equality as nearly as is practicable.” *Karcher v. Daggert*, 462 U.S. 725, 730 (1983) (quotation omitted). “The ‘as nearly as practicable’ standard requires that the State make a good-faith effort to achieve precise mathematical equality.” *Id.* (brackets omitted). Courts evaluating congressional apportionment plans engage in a two-step

analysis. “First, the court must consider whether the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population.” *Id.* “If, however, the plaintiffs can establish that the population differences were not the results of a good-faith effort to achieve equality, the State must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal.” *Id.* at 731.

There is no precise mathematical test to determine what is a permissible, *de minimus* level of population deviation. “If state legislators knew that a certain *de minimis* level of population differences was acceptable, they would doubtless strive to achieve that level rather than equality.” *Id.* at 732. But in *Karcher*, the Supreme Court agreed that the State had not justified a congressional apportionment plan with population deviation of 0.6984%, and struck it down. *Id.* at 744.

In *Abrams*, the Court considered an appeal from a three-judge district court which drew Georgia’s congressional maps after the state’s political branches deadlocked. 521 U.S. at 82. After recognizing that “Court-ordered districts are held to higher standards of population equality than legislative ones,” *id.* at 98, the Court upheld a plan drawn by the district court, which had an overall population deviation of 0.35%, which was lower than “any other plan presented to the Court which was not constitutionally defective.” *Id.* at 99. (citation and quotation omitted). In short, the population deviation of 2.6% is significantly higher than that rejected in *Karcher*, and does not reflect only a *de minimus* difference in population. The first district has almost 18,000 more people than the second

district, which means that the power of a vote in that district is significantly diluted compared to a vote in the second district.

The State cannot justify this large population disparity. This is not a case where the State enacted a plan that deviates from absolute population compliance because it was attempting to comply with the Voting Rights Act in drawing majority-minority districts, or it was aiming to comply with other traditional redistricting criteria such as compactness or preserving the boundaries of political subdivisions. Instead, after the population changes reflected that the previous map did not contain population uniformity, the political branches deadlocked on to what extent the new boundaries shall disfavor competition and favor Republicans' electoral fortunes.

II. “Least-Change” Is An Appropriate Methodology For This Court To Use And Should Be Measured By The Number Of People Moved Between Districts

In 2002, this Court was called upon to redistrict the State Senate and State House following the Governor's veto of the legislative plans. In drawing State Senate Plans, the Court “use[d] as [its] benchmark the existing senate districts because the senate districting plan enacted in 1992 is the last validly enacted plan and is the clearest expression of the legislature's intent. We consider the 1992 Senate plan to be the best evidence of State redistricting policy.” *Below I*, 148 N.H. at 13 (citations and quotations omitted). In addition, by using the enacted plans as a baseline, the court was “able to ensure, to the greatest extent practicable, that each senate district contains roughly the same constituents as the last validly enacted plan.” *Id.* The court declined to use as a template the plan passed by the legislature but vetoed by the governor because “[e]ven

though SB 1 was passed by the legislature, it did not become law and thus, while some evidence of State redistricting policy, it is not entitled to the judicial deference accorded fully enacted redistricting plans.” *Id.* at 12-13. By contrast, when drawing the State House plans, the Court “did not use the 1992 house districting plan as its starting point because it was of dubious constitutionality at the time it was passed. The range of deviation for the 1992 plan, using the 1990 census figures, was at least 49.7%.” *Burling*, 148 at 158. “Moreover, the 1992 [House] plan relied heavily upon floterials,” which the Court viewed as an “unsound redistricting device.” *Id.* As a result, the Court recognized “that its redistricting plan changes house districts significantly” but contended “[t]hese changes were unavoidable because past house districting plans have not given the fundamental democratic principle of one person/one vote the attention and weight to which it is entitled.” *Id.* at 160.

In adopting a State Senate plan based on the previously enacted plan with the least changes, *see Below I*, 148 N.H. at 14, the Court correctly observed the twin benefits of not writing state redistricting policy and minimizing the changes in senatorial representation for the State’s citizenry. The drawing of political boundaries is, at base, an expression of state policy, and, like all state policy, is derived from the legislature’s passage of a bill which is presented to the Governor for approval or veto. *See* N.H. CONST. pt. II, art. 44. Redistricting bills can and usually do face litigation in state and federal courts related to claims of racial or partisan gerrymandering. *see, e.g., Adams v. DeWine*, __N.E.2d __, 2022-Ohio-89 (Ohio 2022) (ruling invalidating congressional apportionment plan as partisan gerrymander under state constitution); *Singleton v. Merrill*, 2022

U.S. Dist. LEXIS 17362 (N.D. Ala. January 24, 2022) (three-judge panel finding congressional apportionment plan violated the Voting Rights Act) stay granted *sub nom Merrill v. Milligan*, 142 S.Ct. 879 (2022). But in the first instance, the enacting of an apportionment plan is a declaration of state policy. States are free to delegate this policy making power to various entities or bodies. See *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 808 (2015) (“In sum, our precedent reaches that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include the referendum and the Governor’s veto.”). Some states have enacted independent redistricting commissions and some states leave apportionment to the political branches (still other states only have one congressional seat). See Brennan Center for Justice, “50 State Guide to Redistricting” (last updated June 7, 2019) available at <https://www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting>. In New Hampshire, nothing in state statute or the state constitution has moved this policy making power from the Legislature and Governor. See N.H. CONST. pt. II, art. 44.⁵ As a result, the power to determine state redistricting policy remains with the political branches.⁶

⁵ The New Hampshire Constitution is silent as to who apportions congressional districts, but is explicit that the State House, pt. II, art. 9, 11, State Senate, pt. II, art. 26, and Executive Council, pt. II, art. 65, shall be apportioned by the legislature.

⁶ In 2019, the legislature passed HB 706 (by voice vote in the Senate and 218-123 in the House) that would have established a fifteen member independent redistricting commission, but it was vetoed by Governor Sununu and his veto was sustained by the house. See

Since those entities are at an impasse and, as of the time of the filing of this brief, have not agreed upon an new apportionment plan, under the New Hampshire Constitution, it is reasonable for this Court to look to the last validly enacted congressional apportionment plan as the best evidence of the State’s redistricting policy, as it did in *Below I*.⁷

Moreover, the “least-change” rule has the added benefit of preserving to the greatest extent possible the existing relationships between

http://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=0192&sy=2019&sortoption=&txtsessionyear=2019&txtbillnumber=hb706. ACLU-NH publicly supported that effort. See Klementowicz, Henry “My Turn: We must draw fair lines for redistricting,” *Concord Monitor* (April 30, 2019) <https://www.concordmonitor.com/We-must-draw-fair-lines-for-redistricting-25109797>.

⁷ *Below I* and *Burling* can be synthesized for the proposition that the Court starts with the previous plan only where that plan was constitutional and legal. ACLU-NH’s institutional position is that Part I, Article 11 of the New Hampshire Constitution (“All 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”) cabins, to some degree, the legislature’s ability to draw overtly partisan maps for political purposes. *Accord Adams v. DeWine*, __ N.E.2d __, 2022-Ohio-89 (Ohio 2022) (ruling invalidating congressional apportionment plan as partisan gerrymander under state constitution); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (same); *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (same) stay denied *sub nom Moore v. Harper*, 142 S. Ct. 1089 (2022). However, the scope of that provision’s protection against partisan gerrymandering has not been interpreted by this Court, and no party has alleged or demonstrated that the currently enacted congressional districts are an unconstitutional partisan gerrymander, or otherwise unlawful (for example, as a racial gerrymander prohibited under the Voting Rights Act). Accordingly, the current congressional plan is more like the State Senate plan in *Below I* than the State House plan in *Burling* and therefore an appropriate starting point for this Court to use in apportioning new maps.

constituents and their representatives in Congress. *See Below I*, 148 N.H. at 13 (“In addition, by using the existing senate districts, we are able to ensure, to the greatest extent practicable, that each senatorial district contains roughly the same constituents as the last validly enacted plan.”). To be sure, there may be many valid reasons to depart from existing congressional districts, *e.g.* to comply with the Voting Rights Act or to promote partisan fairness. Those policy goals likely are more important than maintaining relationships between constituents and political officers, but they have not been raised in this case and are not before the Court. It is reasonable therefore for the Court to aim to ensure that the fewest relations between citizens and their members of Congress are disrupted.

Finally, the “least change” rule should be calculated by minimizing the number of voters, rather than the number of communities or area of law, which is switched between congressional districts. “Our State Constitution establishes only one yardstick as a legislative guide in making an apportionment. That yardstick is the last general census of the inhabitants of the state taken by authority of the United States or of this state.” *McGovern v. Secretary of State*, 138 N.H. 128, 131 (1993). Given that the constitution requires population equality, as measured by the census, it would make little sense to measure whether a proposal is the “least changed” from the previous plan by anything other than whether the plan moves the fewest number of people, as measured by the census, from one district to another. *Accord Johnson v. Wis. Elections Comm’n*, 2022 WI 14, **P7-8 (Wisc. March 1, 2022) (accepting the Governor’s proposed congressional and state legislative maps, which moved the smallest portion of the population to new districts) reversed in part on other grounds *sub*

nom Wisconsin Legislature v. Wisconsin Elections Commission, 142 S.Ct. 1245 (2022).

III. Other Redistricting Factors

In addition to population equality, there are other factors the Court should consider when drawing plans. *See Chapman v. Meier*, 420 U.S. 1, 26 (1975) (“With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features”); *Karcher*, 462 U.S. 725 at 640 (“Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbents.”).

First, the congressional districts should be contiguous. In other words, it should be possible to travel, as the crow flies, between any two points in each district without passing into the other district. New Hampshire law does not seem to explicitly require contiguity in congressional districts, although it does in districts for State House, N.H. CONST. pt. II, art. 11, and State Senate, pt. II, art. 26. Nonetheless, since at least 1883, New Hampshire’s two congressional districts have been contiguous. *See* what-the-district.aclu.org.⁸

Second, the congressional districts should respect the boundaries of towns and wards, and not further divide those entities. Like with contiguity,

⁸ What the District is a tool developed by the national ACLU to allow people to learn about the redistricting process and to explore historical congressional districts in the “District Time Machine.”

there is no explicit requirement that congressional districts observe town and ward lines, although there is for State House, pt. II, art. 9, 11, 11-a, and State Senate, pt. II, art. 26. And municipalities in other states routinely divide municipalities. For example, Boston is part of Massachusetts's 7th and 8th congressional districts. However, as a practical matter, it would be difficult to administer elections in New Hampshire if city wards or towns were divided in congressional districts. In general, each ward, town, or unincorporated place has one polling place, and (other than for partisan primaries) every voter in that town, ward, or unincorporated place receives the same ballot. In other words, in state elections, there is no elective district smaller than a town, ward, or unincorporated place.⁹ If this court were to subdivide a town, ward, or unincorporated place, then not all voters in that town, ward, or unincorporated place would receive the same ballot. This would, in turn, necessitate either an additional polling place or an additional check-in table at a polling place, likely with additional staff and resources required to direct voters to the problem location to ensure they vote in the proper congressional district. This would cost additional administrative resources and likely cause, at least for a time, additional confusion as voters acclimated to a changing electoral system. It may not be necessary to subdivide towns, wards, or unincorporated places to achieve substantial population equality differences between the districts, and if these burdens can be avoided, they should be.

⁹ Voters in a town, ward, or unincorporated place may request subdivision for State House districts under Part II, Article 11-a, but no town, ward, or unincorporated place has done so.

Third, this Court should not consider political implications as it draws its plan. The history of the legislature’s actions, including the Governor’s statements to WMUR after he announced he would veto the bill, demonstrate that the political branches are at an impasse over how much to reduce the competitiveness of the congressional districts and how much to favor Republicans’ electoral fortunes. But while those may be the motivations of actors in the political branches, they cannot be the basis for action by this Court. *Burling*, 148 N.H. at 156, (“[A]ll of the submitted plans openly embrace political agendas. . . While political considerations are tolerated in legislatively-implemented redistricting plans, they have no place in a court-ordered plan.”). While *amicus* believes that Part I, Article 11 of the New Hampshire Constitution prohibits partisan gerrymanders, short of definitively ruling that a plan is a prohibited partisan gerrymander, the Court should not consider the political impacts of its apportionment. *See supra*, note 7.

CONCLUSION

First, the Court asks whether the use of the existing congressional districts for the 2022 elections would be unconstitutional. The answer to that question is yes. Population changes during the last decade have created too large of a deviation from the ideal population of congressional districts to comply with the constitutional mandate of one person/one vote.

Second, the Court asks whether it should apply the “least change” approach to congressional districting, and, if so, what measurement or factors should be used to assess “least change?” The answer to this question is also yes: districts must contain similar populations and be contiguous, should not divide towns or wards, and beyond that should be the least-

changed from the last legislatively-enacted plan. Least change should be measured by a plan that moves the fewest number of people in the state from one district to another.

Finally, the Court should require that the districts be contiguous, respect the political boundaries of towns, wards, and unincorporated places, and not consider the political implications of its plan.

Respectfully Submitted,

American Civil Liberties Union of New
Hampshire,

By and through its attorneys,

/s/ Henry Klementowicz

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

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

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April 25, 2022

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's April 11, 2022 order, which states "On or before April 25, 2022, interested parties and any person seeking to participate as an intervenor or *amicus curiae* shall file simultaneous briefs, not to exceed 14,000 words." Counsel certifies that the brief contains 5,237 words (including footnotes) from the "Questions Presented" to the "Conclusion" of the brief.

/s/ Henry Klementowicz
Henry Klementowicz, Esq.

CERTIFICATE OF SERVICE

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

/s/ Henry Klementowicz
Henry Klementowicz, Esq.

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Mapping and Analysis: New Hampshire's Proposed U.S. House Districts

Gerrymandering in the Granite State, Visualized

A Report Commissioned by The American Civil Liberties Union of New Hampshire
December 15, 2021



MEMORANDUM

To: Devon Chaffee, Executive Director ACLU-NH Date: December 15, 2021
From: William Terry, Ph.D., Data Analyst
Tyler Vick, Managing Director Project No.: F2186.01.01

RE: Analysis of New Hampshire's Proposed U.S. House Districts

EXECUTIVE SUMMARY

Last month, New Hampshire's Special House Committee on Redistricting released HB52, a bill proposing new Congressional district lines that substantively depart from the map that currently governs the selection of the state's US House delegation. In its current form, HB52 would cleave the current map into two non-competitive districts – a prospective District 1 highly favorable to Republican candidates and a District 2 heavily concentrated with Democratic voters.

Elementary and straightforward calculations from publicly available 2020 Census population data and 2020 Presidential returns at the ward level show that the Majority's plan addresses the need for minor population reapportionment with a significant reshaping of New Hampshire's electoral map.

Straightforward analysis indicates HB52 is consistent with a canonical "pack-and-crack" gerrymandering technique, wherein one district – ostensibly New Hampshire's District 2 in this case – is sacrificed, "packed" with the opponent's voters, with the aim of increasing the gerrymanderer's prospects in the other district – as is ostensibly the case with New Hampshire's prospective First District.

In Summary, HB52 is:

- Significantly transformative of the current House boundaries. The reapportionment needed to bring the current map in line with 2020 Census data could be achieved by moving precisely one of New Hampshire's 320 voting wards – less than 1% of all wards. HB52, however, proposes moving 75 wards – 23.4% of the total and 28.6% of New Hampshire's residents would change districts.
- Divergent from previous House district maps. The current House map was drawn in 2012. Like HB52, the status quo map was created by a Republican House. Unlike the Republican status quo map, however, HB52 represents a departure from decades of decennial bipartisan redistricting: Between 1882 and 2020, New Hampshire's House districts were virtually unchanged.

- Polarizing. HB52 creates two stark House constituencies that look markedly different from the New Hampshire electorate writ large and especially different from each other. As constituted under HB52, District 2's vote share in 2020 for former President Donald J. Trump would have been 50.4% – very similar to North Carolina's. In the prospective District 1, in contrast, the Republican two-party vote share would have been nearly identical to Oregon's at 42.3% and just slightly below Trump's performance in his opponent's home state of Delaware.
- Advantageous to the GOP. New Hampshire's 2020 voting patterns indicate that its pair of House seats are slightly Democratic leaning – but still quite competitive. HB52 creates substantially less competitive districts – with a prospective Democratic-leaning Second District that falls definitively outside the standard classification of “swing” districts used by Cook's Political Report, and a First District that is GOP-leaning and also substantially safer than either of the current districts.

ANALYSIS

To preserve some of the Republic's most fundamental principles, the US Constitution requires that states revisit their 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 guarantees population parity between the State's two House districts – a necessary condition for preserving the established democratic principle of “one person-one vote.”

Context and Methodology

Concretely, the Legislature is called upon to assign each of the State's 320 voting wards to precisely one of its two House districts. Per New Hampshire's state constitution, it is not permissible to draw House lines that bisect its voting wards – each ward must be wholly in one district or the other.

Thus, in November 2021, pursuant with State and US Constitutional mandates, the Redistricting Committee reported bill HB52 to update its boundaries to account for the disparate population growth across its current House districts.

Drawing on calculations from publicly available data described below it may be seen that HB52 eschews minimal revisions to update the current map produced by a previous Republican majority after the 2010 Census.

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, the PL of a (current or proposed) House district is computed by comparing precisely how well the GOP fared in the most recent Presidential contest in the focal district minus the Party's performance in the US as whole.

In 2020, for instance, Donald Trump (R) won 47.5% of all votes cast for one of the two major parties in the US. In New Hampshire's House Districts 1 and 2, Trump's (R) two-party vote share was 47.2%

and 45.3%, respectively. Hence, the PL of the current districts were R-0.3 and R-2.2. Both districts, in other words, were competitive and, like the Granite State itself, relatively centrist.

HB52 is Favorable to GOP Electoral Fortunes

As Table 1 indicates, HB52 would create two less competitive districts – a prospective District 1, favorable to Republican candidates, and a prospective District 2 heavily concentrated with Democratic-leaning voters.

**Table 1: Partisan Leanings of New Hampshire's
U.S. House Districts Under the Current Map and Under Redistricting Proposal HB52**

	Current	Proposed
District 1	R-0.3 = (47.2% - 47.5%)	R+2.9 = (50.4% - 47.5%)
District 2	R-2.2 = (45.3% - 47.5%)	R-5.2 = (42.3% - 47.5%)

HB52 Creates a Polarized House Map

HB52 therefore turns two Democratic leaning but highly competitive districts into two non-competitive districts, one of which should be relatively comfortable for future Republican candidates. In so doing HB52 is likely to substantially increase the partisan polarization of the state delegation. The rationale is simple.

Notice that Trump won 46.3% of the two-party vote in New Hampshire. Thus, under the current configuration, both New Hampshire districts are similar to the state electorate, with deviations in 2020 GOP support from the state writ large of a modest 0.9 and 1.0 percentage points in Districts 1 and 2. HB52 increases the divergence relative to the New Hampshire electorate very significantly to 4.1 and 4.0 percentage points, respectively.

The polarizing effect of HB52 may be problematic in two senses: (1) It creates two “outlier” districts that are much farther apart from each other and the New Hampshire electorate; (2) It creates seats whose incumbents are much safer from interparty competition – these districts are not competitive in a partisan lean sense and political scientists argue that this tends to make incumbents hew closer to the fringes of the electorate because their most formidable opposition is more likely to appear in the party primary rather than the general election.

CONCLUSION

HB52 will be taken up in the New Hampshire House of Representatives on January 5 or 6, 2022. The analogous bills governing the New Hampshire State Senate and Executive Council district lines – HB51 and HB53 – are currently in the House Redistricting Committee and are expected to be taken up in earnest in the Senate Redistrict Committee in 2022.


Statewide

New Hampshire

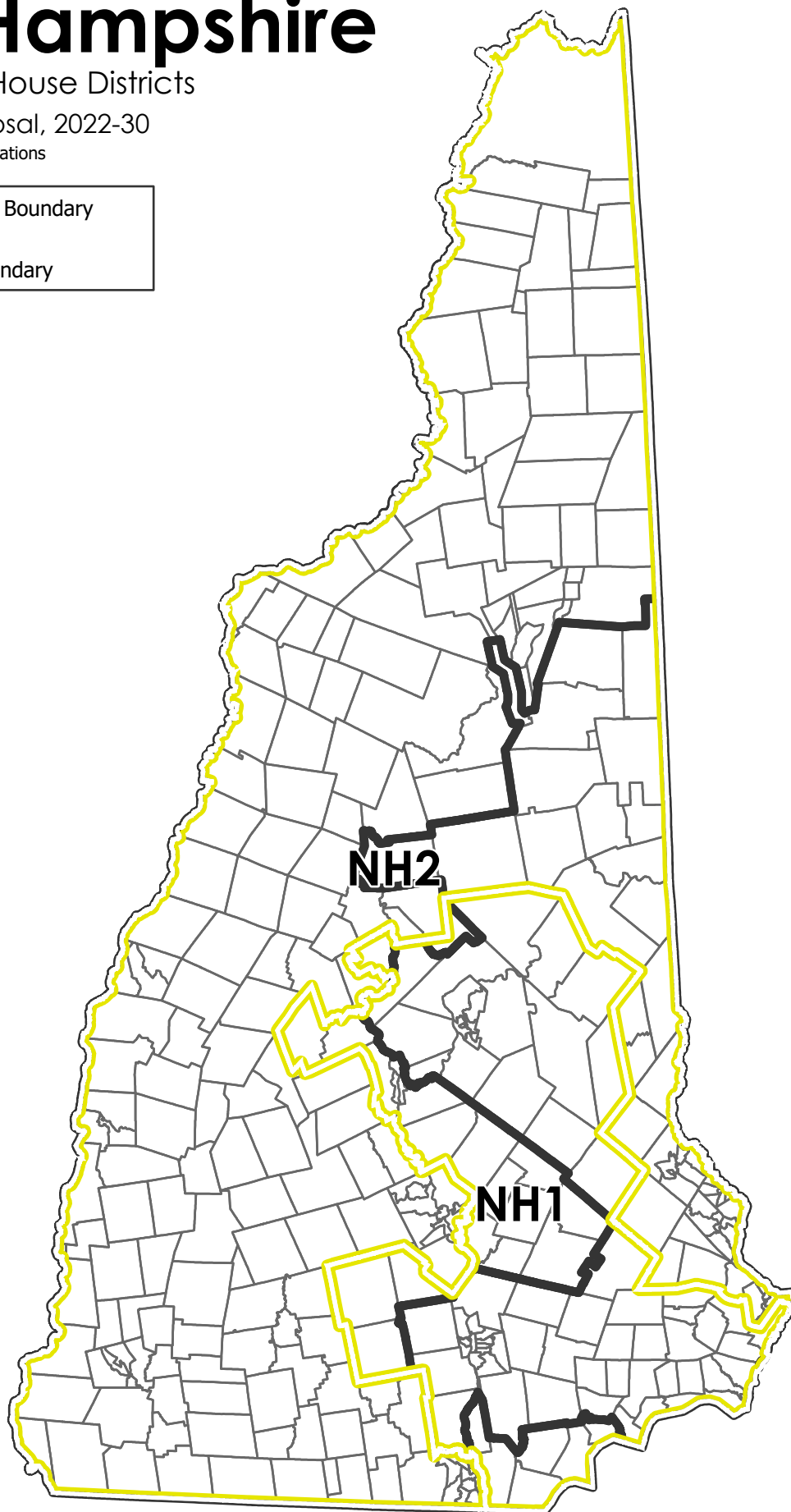
Proposed U.S. House Districts

Republican Proposal, 2022-30

Based on 2020 Census populations

 Proposed District Boundary
(Republican)

 2012 District Boundary



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.


Add 035

New Hampshire

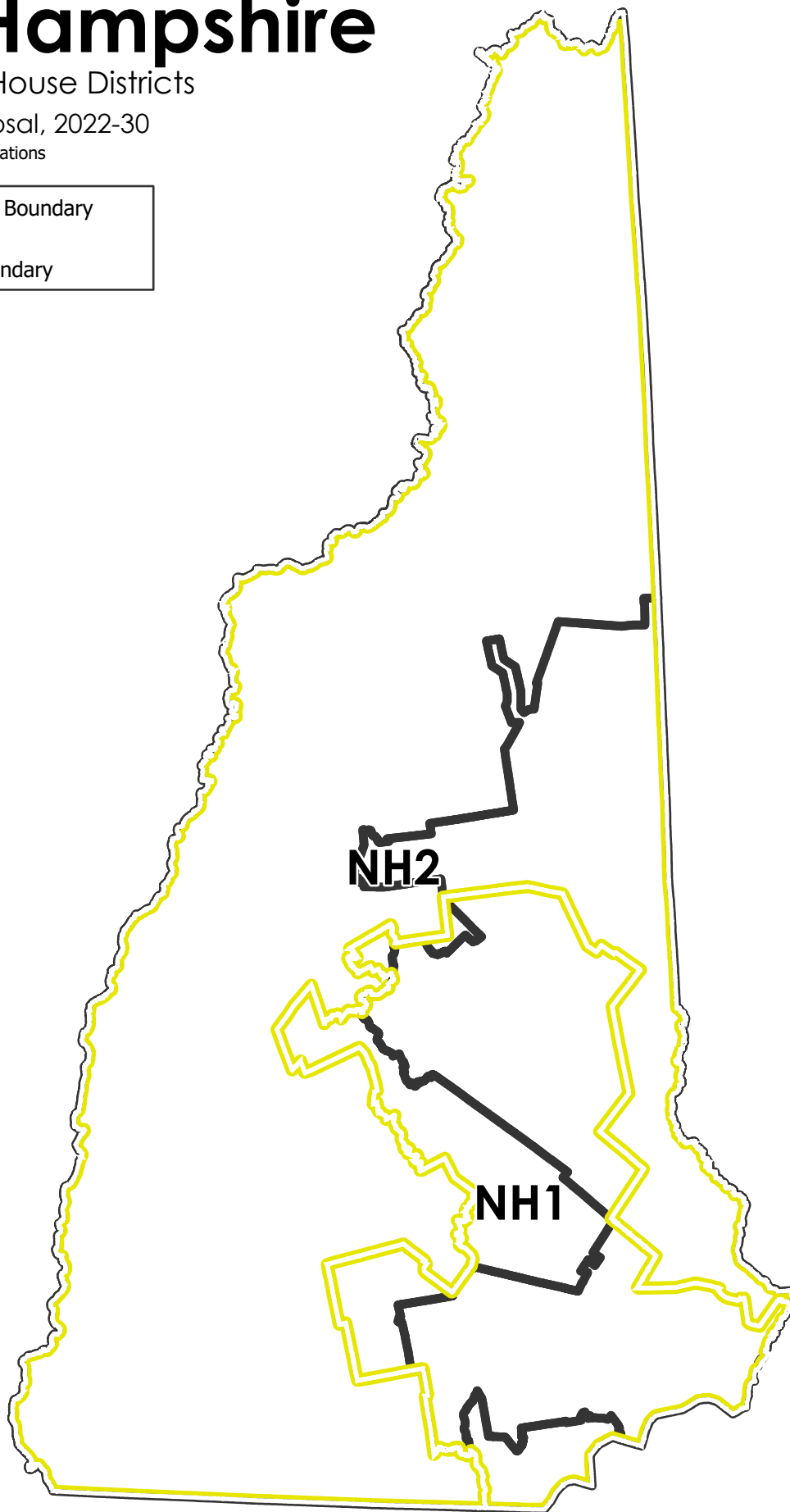
Proposed U.S. House Districts

Republican Proposal, 2022-30

Based on 2020 Census populations

 Proposed District Boundary
(Republican)

 2012 District Boundary



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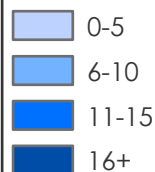
New Hampshire

Proposed U.S. House Districts

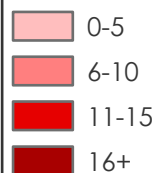
Republican Proposal, 2022-30

Based on 2020 Census populations

Democratic Leaning



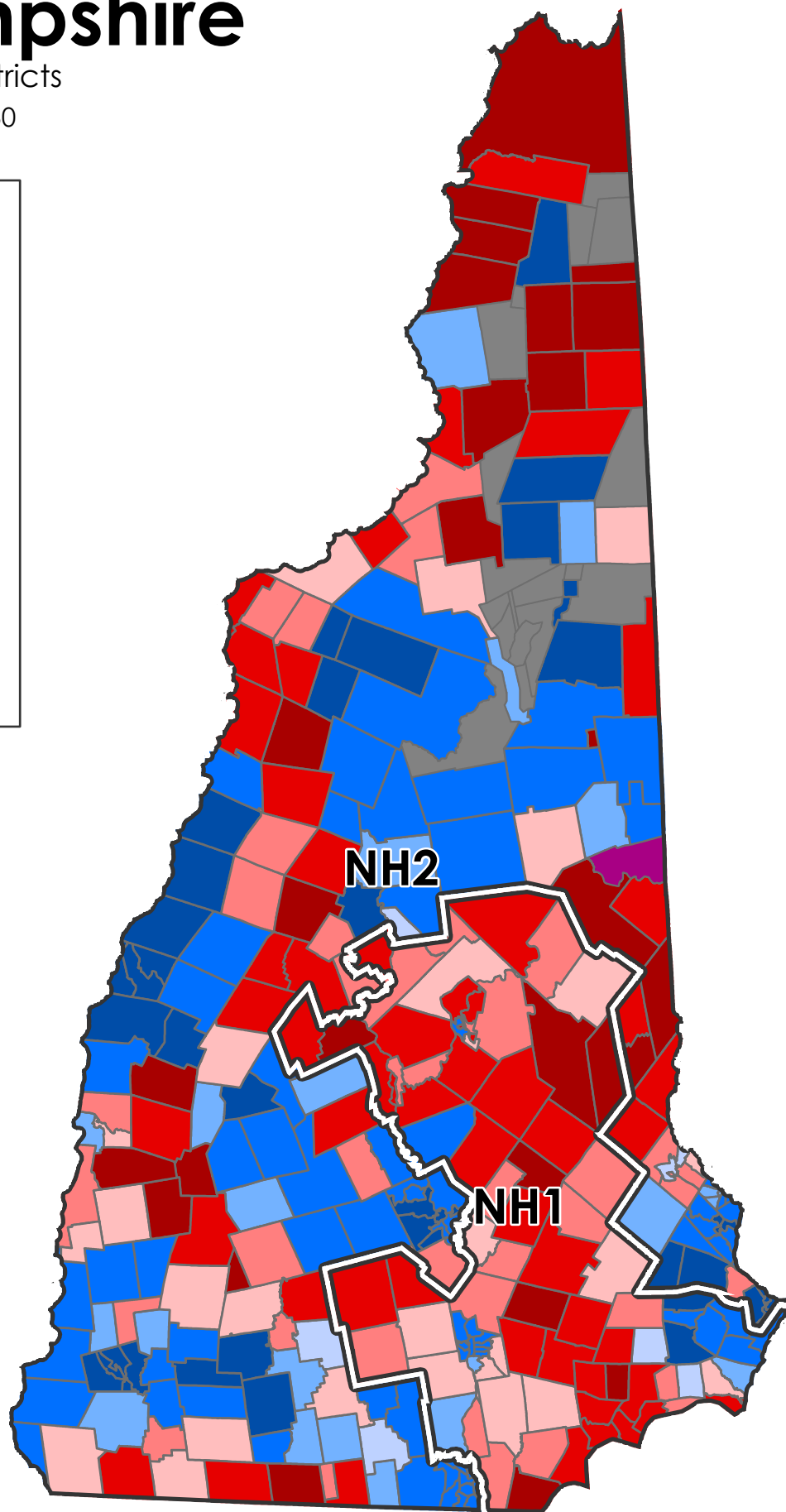
GOP Leaning



Tie (purple)

No Ballot Cast (gray)

Proposed District Boundary (Republican) (white outline)



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

Add 037

New Hampshire Voting Districts changing from NH1 to NH2

Proposed U.S. House Districts
Republican Proposal, 2022-30
Based on 2020 Census populations

Democratic Leaning

- 0-5
- 6-10
- 11-15
- 16+

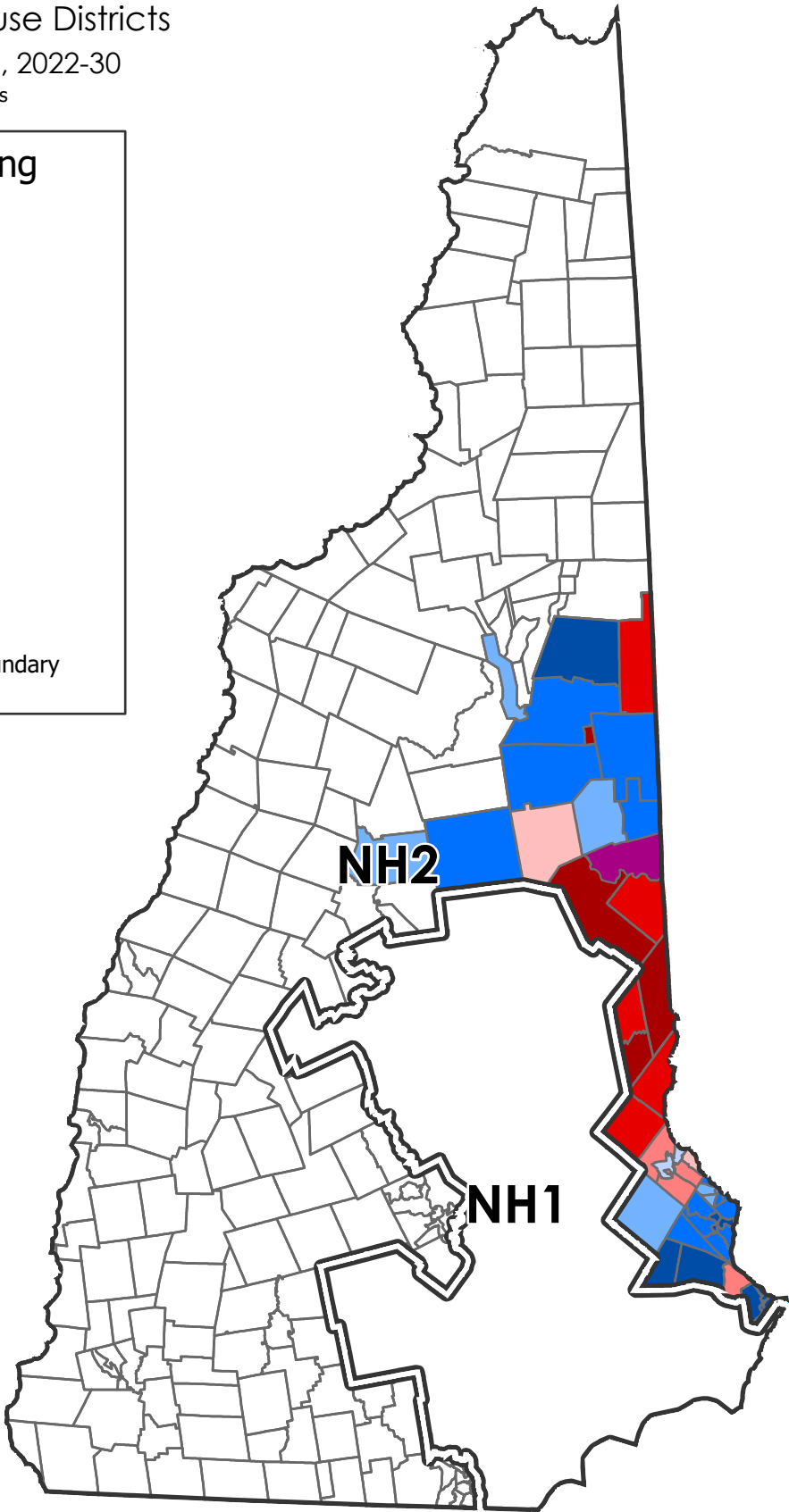
GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Tie

Not Affected

Proposed District Boundary
(Republican)



New Hampshire Voting Districts changing from NH2 to NH1

Proposed U.S. House Districts
Republican Proposal, 2022-30
Based on 2020 Census populations

GOP Leaning

0-5

6-10

11-15

16+

Democratic Leaning

0-5

6-10

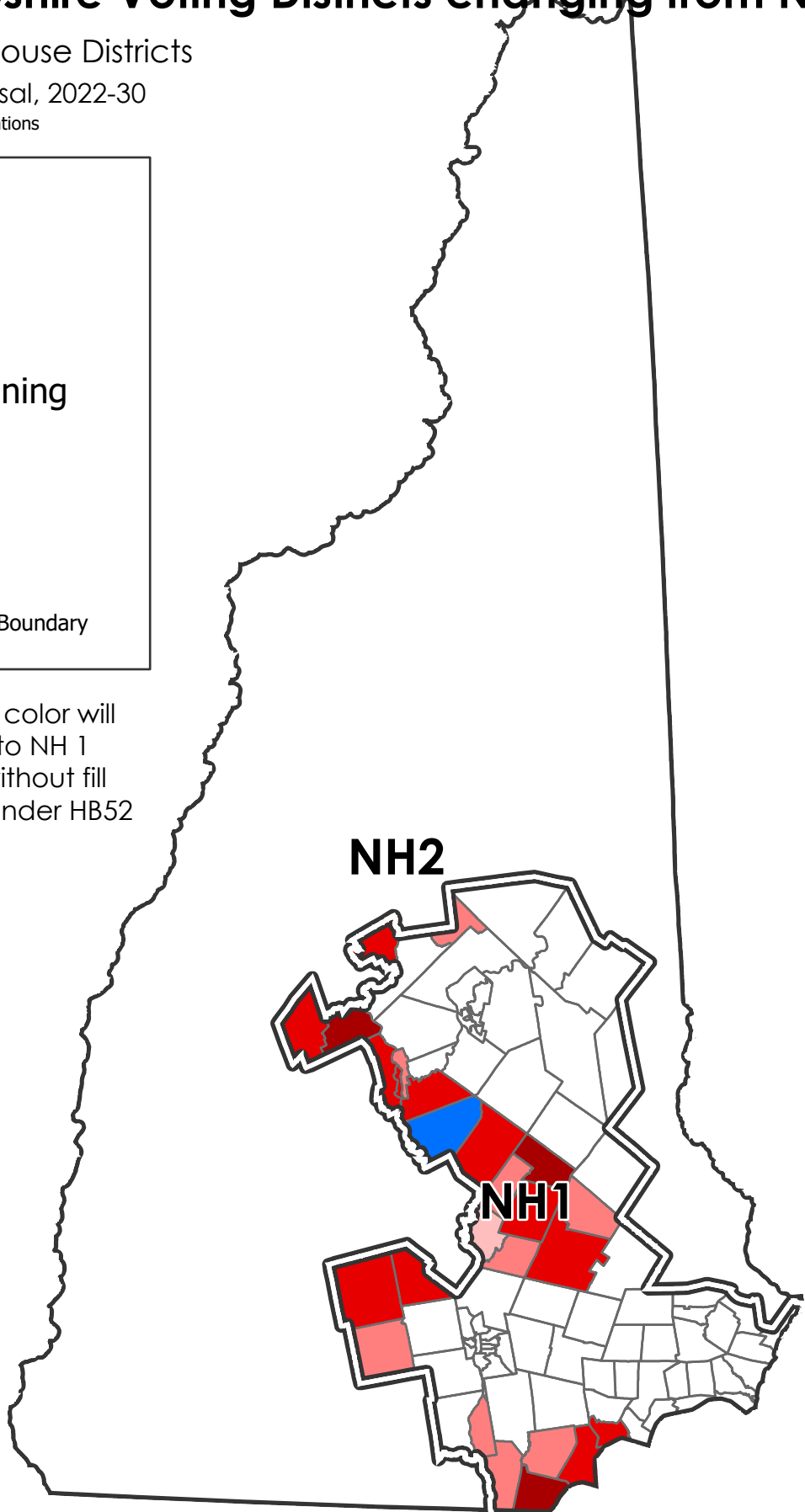
11-15

16+

Not Affected

Proposed District Boundary (Republican)

Voting districts with color will change from NH 2 to NH 1 under HB2. Areas without fill are not changing under HB52



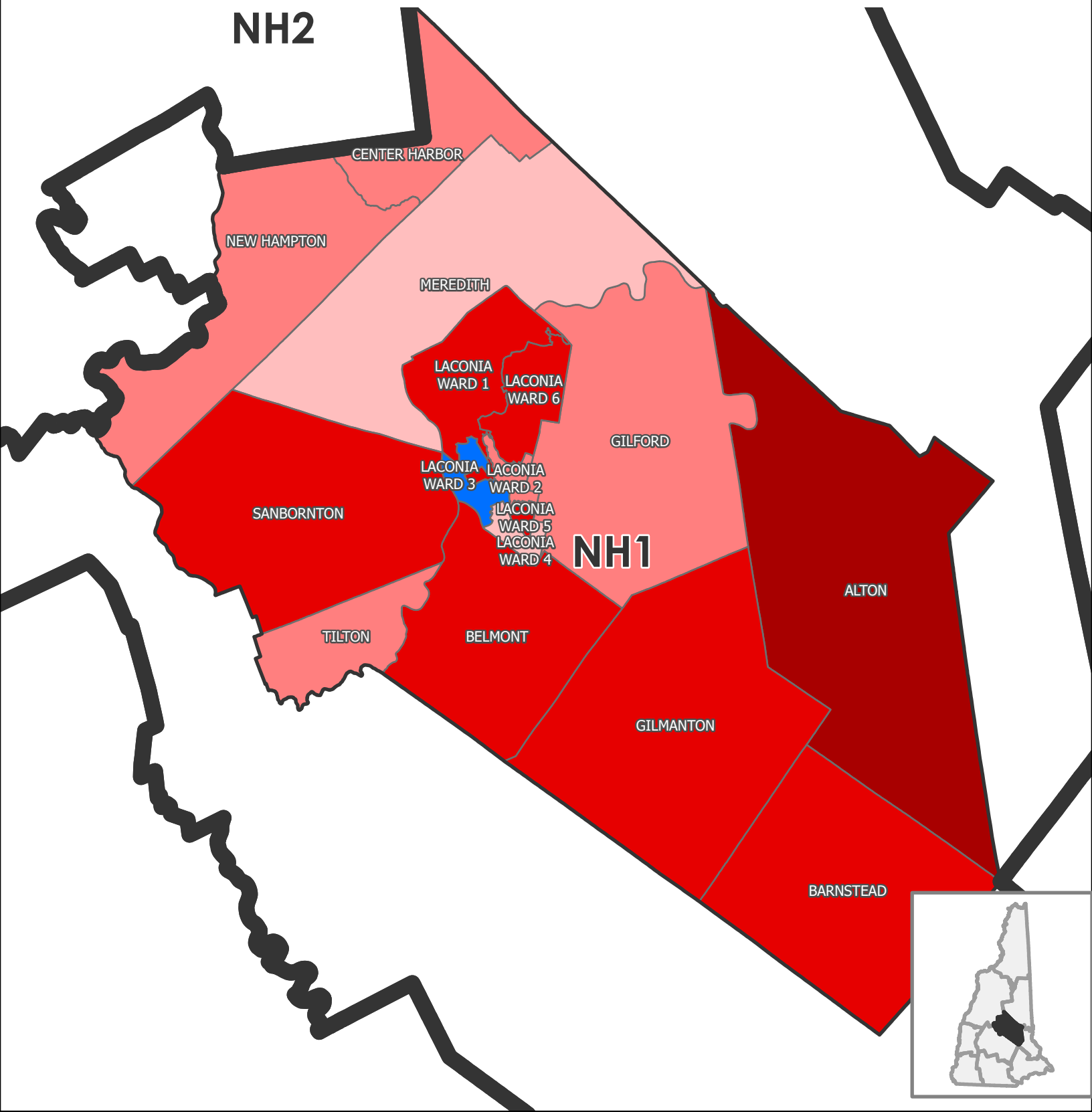
Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

Add 039

County

Showing Partisan Lean

New Hampshire



Belknap County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

Other

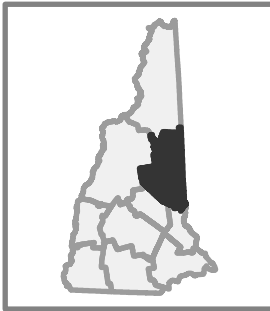
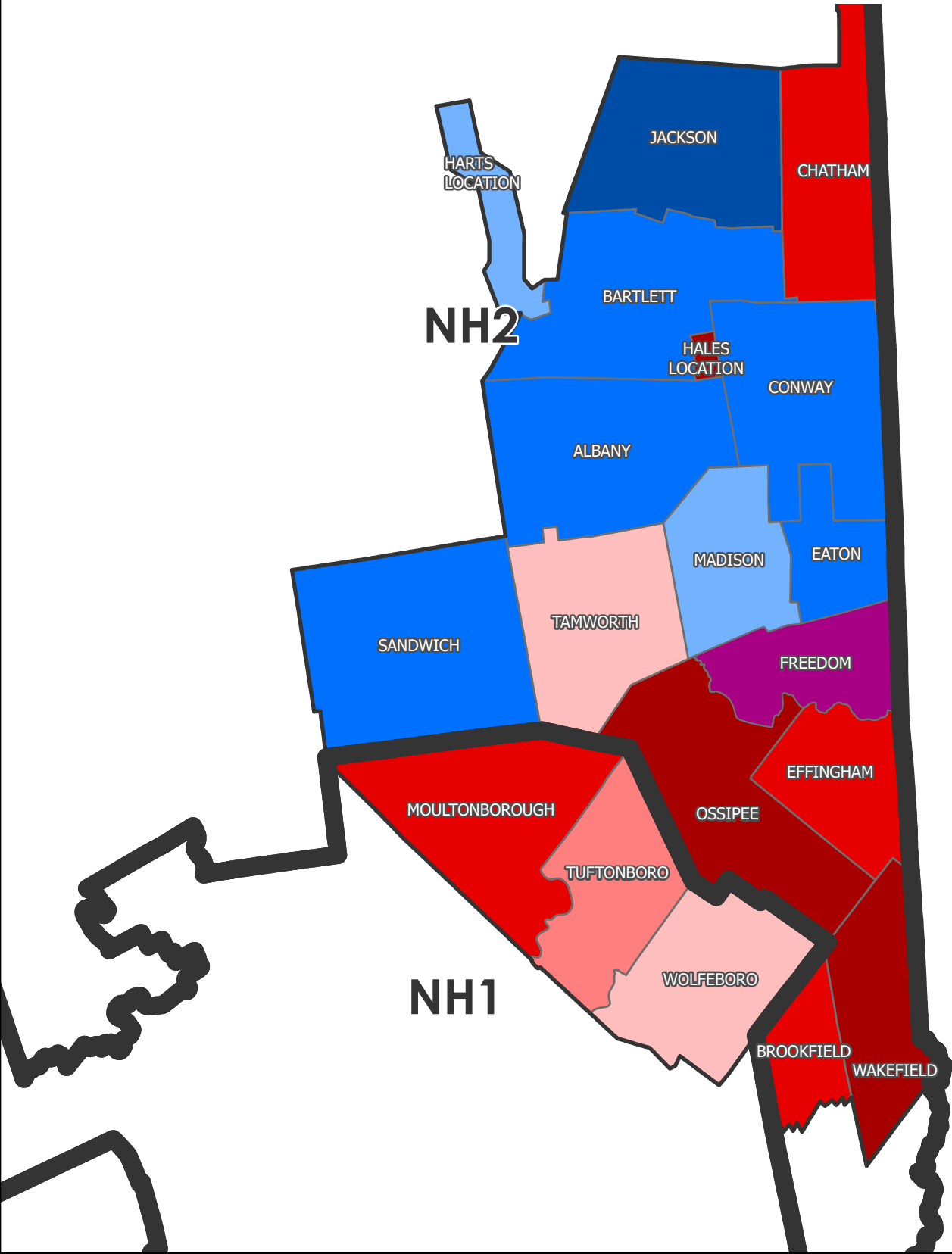
- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

0 2.5 5 Miles

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

Add. 041

New Hampshire



Carroll County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

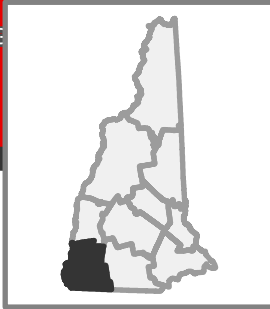
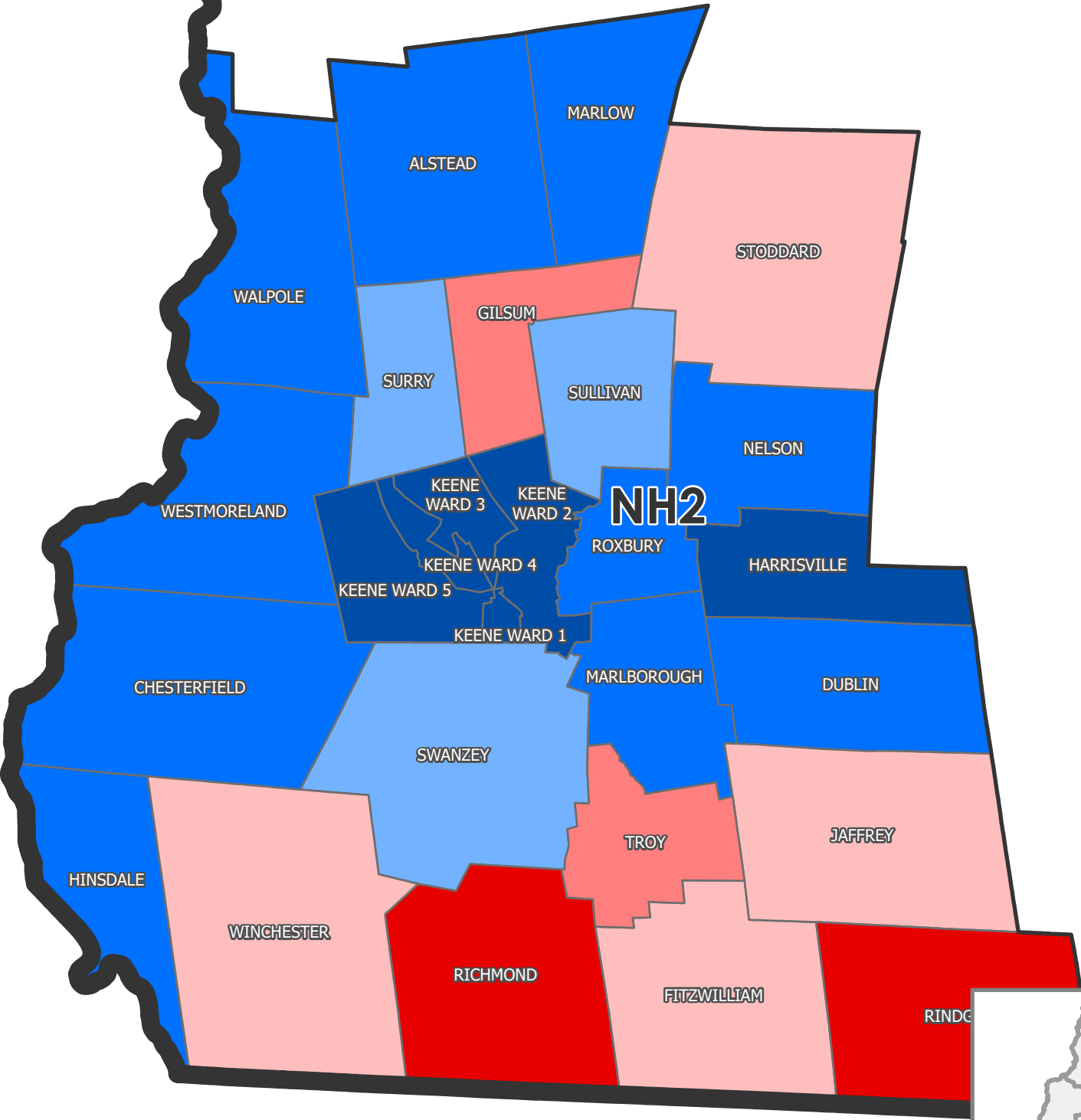
- 0-5
- 6-10
- 11-15
- 16+

Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



Cheshire County

GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

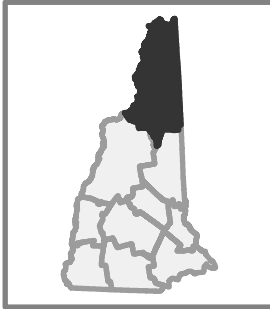
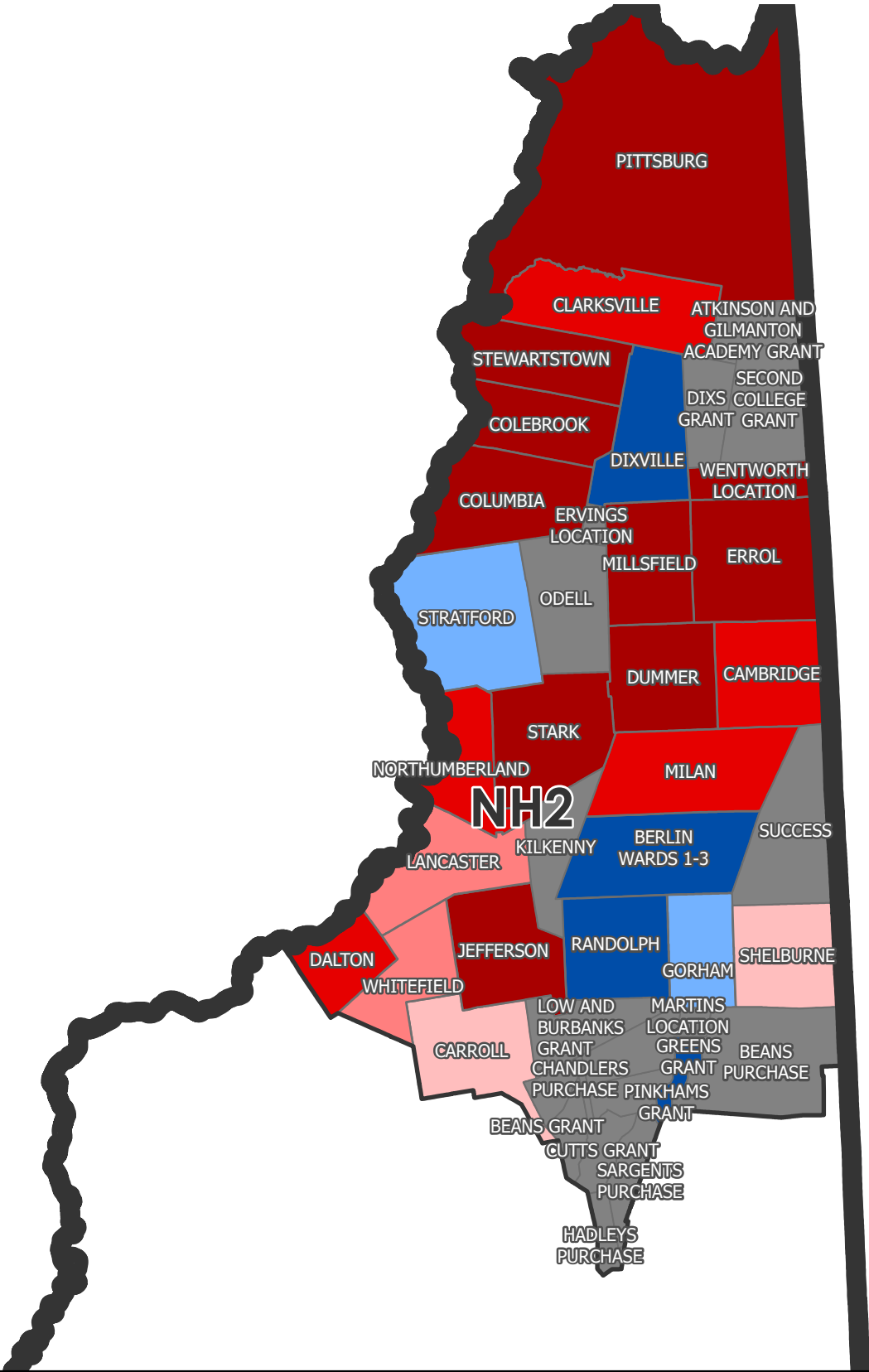
Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



Coos County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

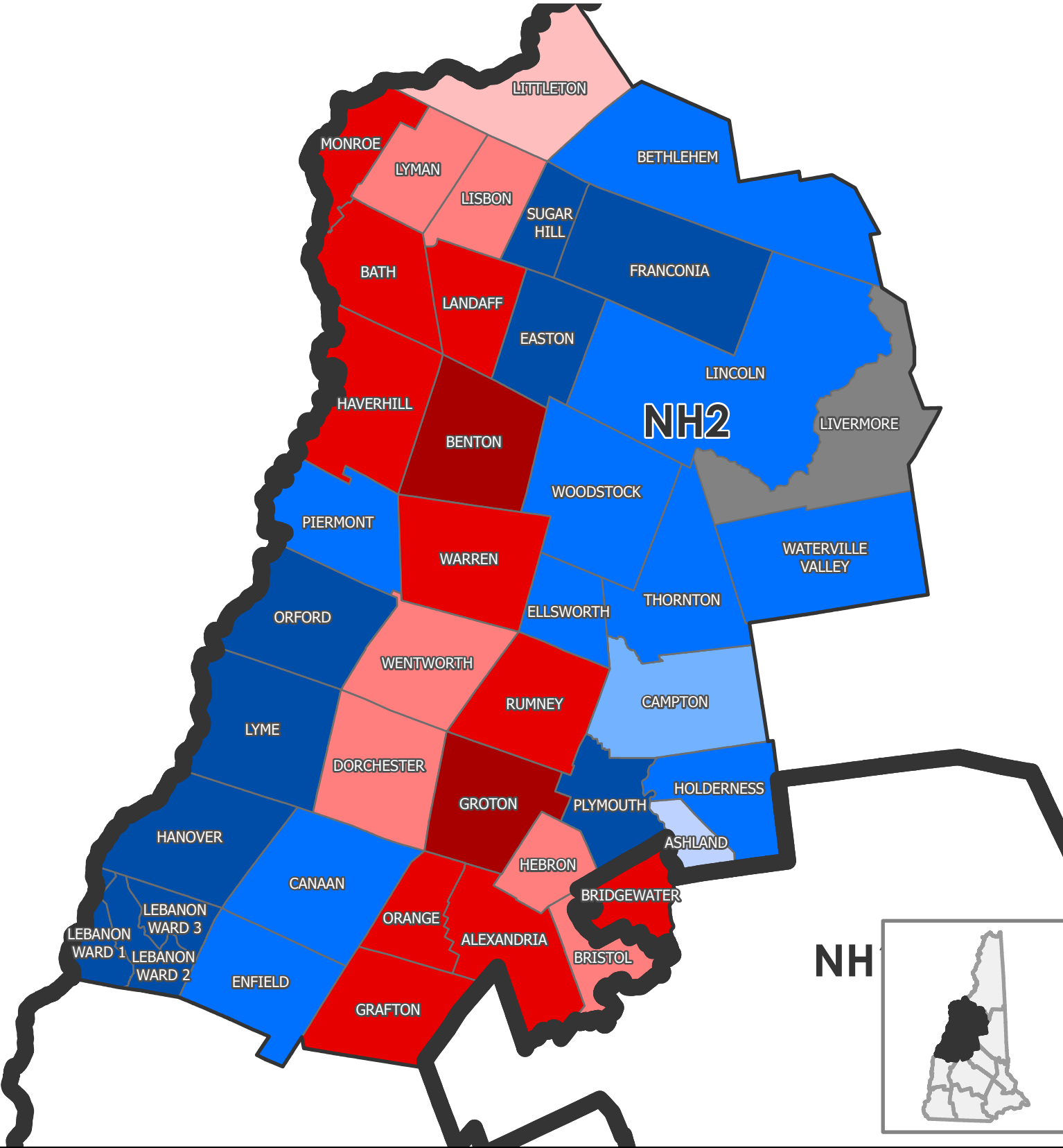
Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

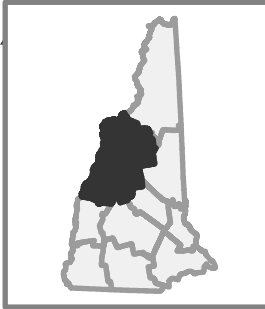
0 6 12 Miles

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



NH



Grafton County

GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

Other

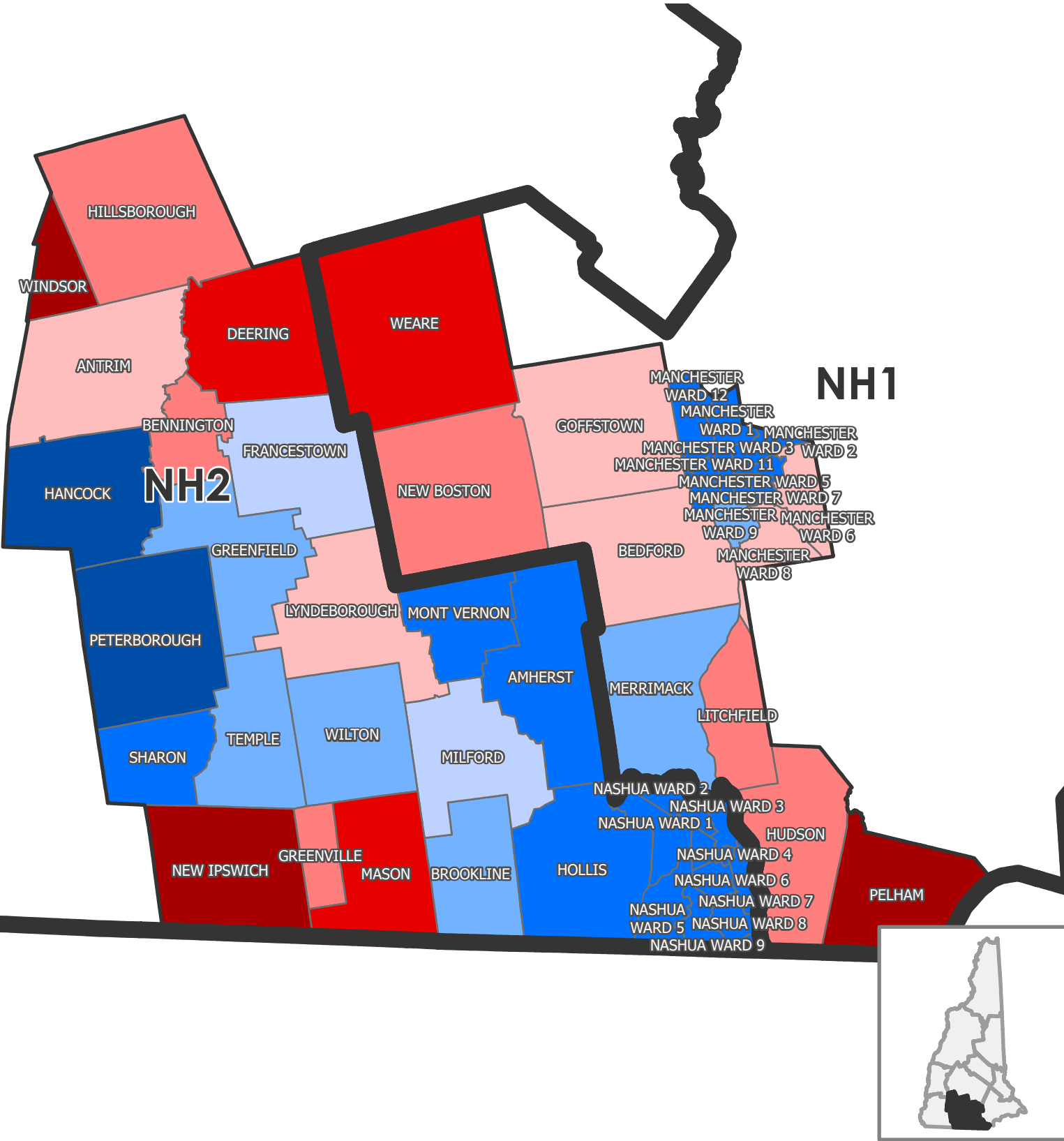
- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average - i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

Add. 045

0 4.5 9 Miles

New Hampshire



Hillsborough County GOP Proposal

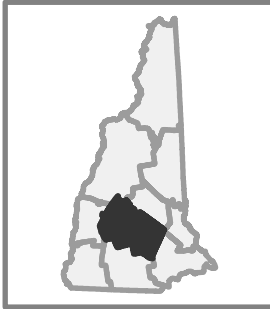
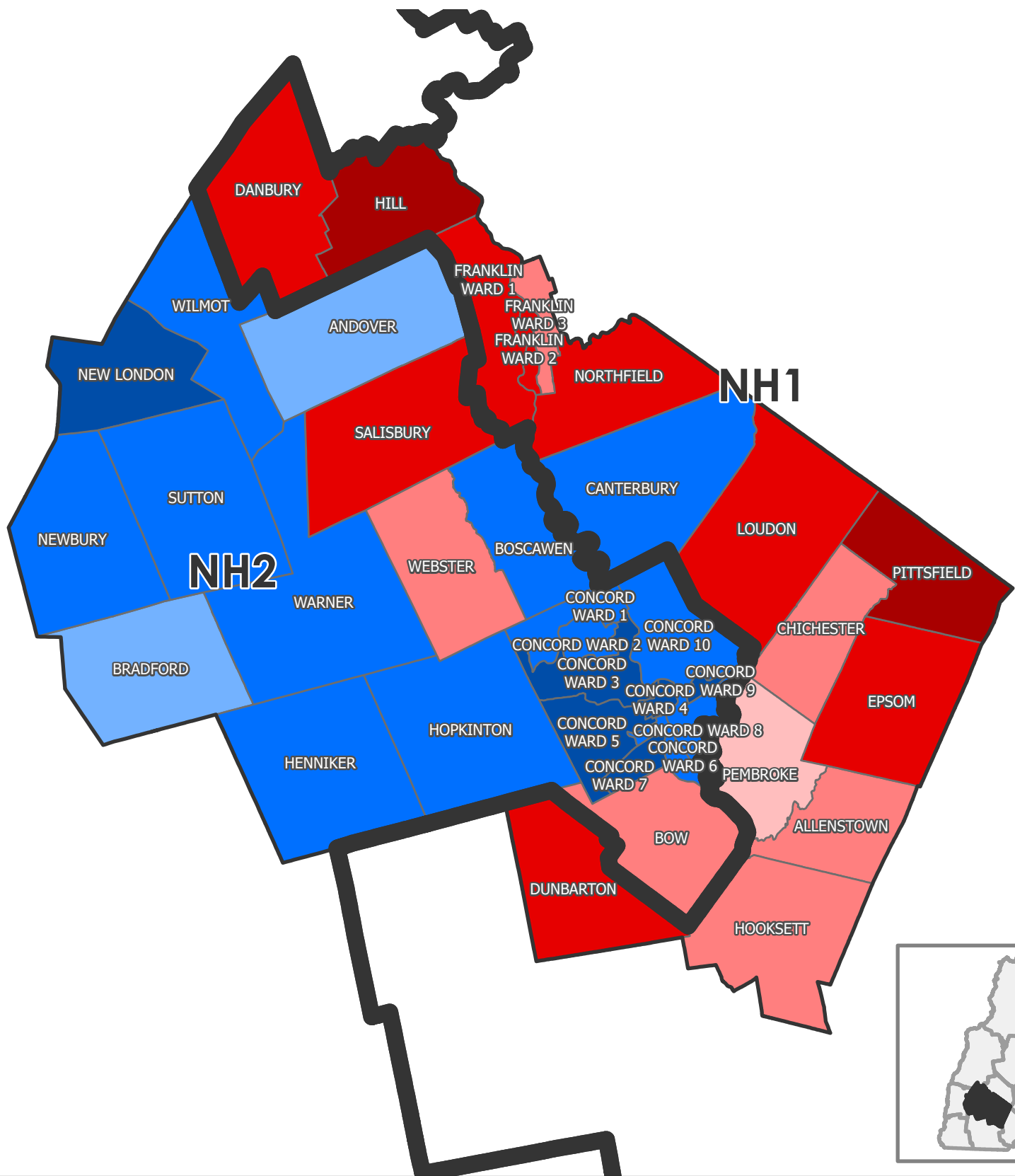
U.S. House Districts
Based on 2020 Census populations



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential tally. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average - i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

Add: 046

New Hampshire



Merrimack County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

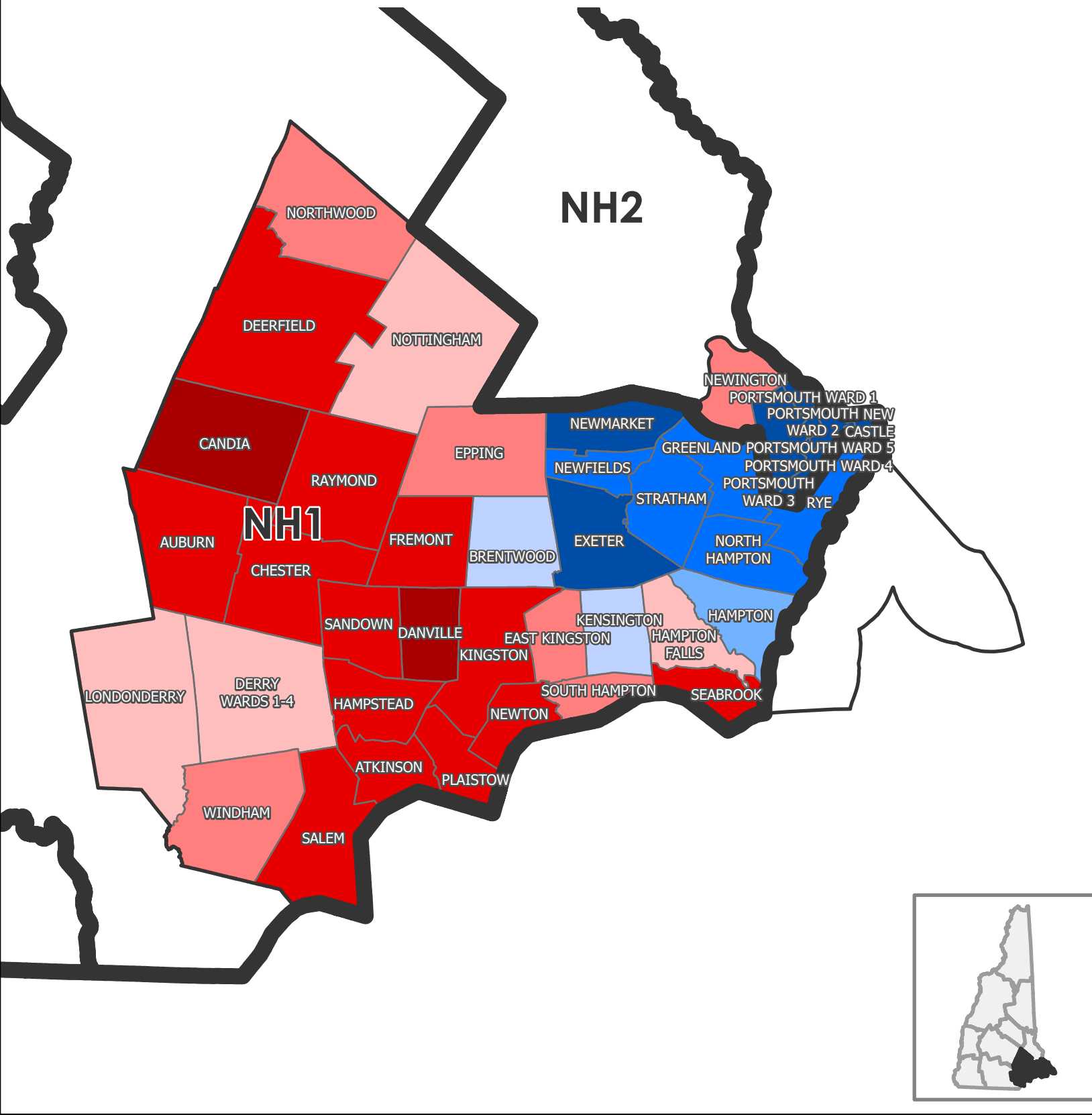
- 0-5
- 6-10
- 11-15
- 16+

Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average - i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



Rockingham County

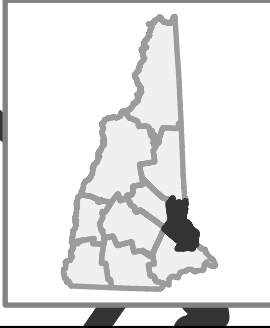
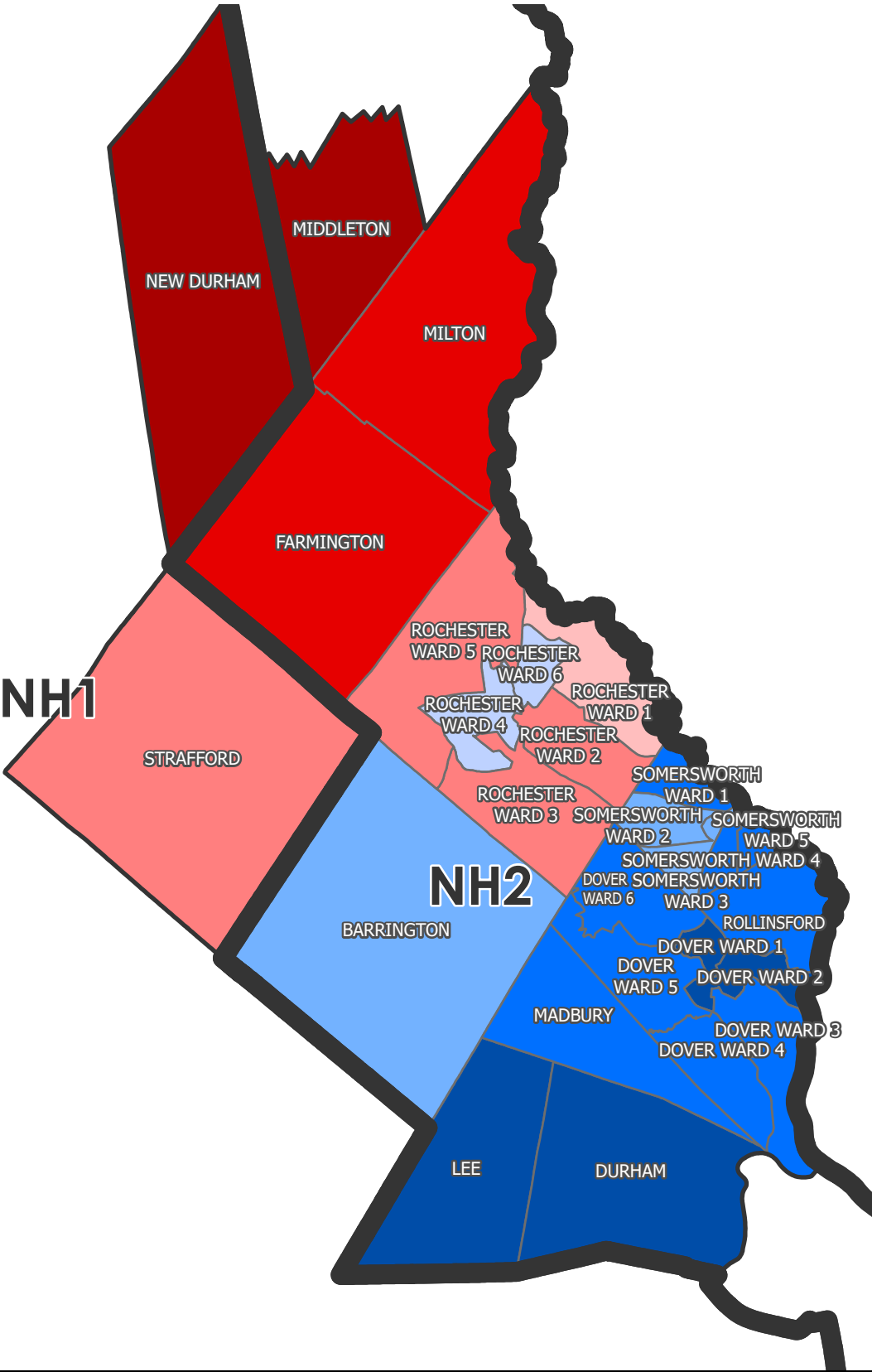
GOP Proposal

U.S. House Districts
Based on 2020 Census populations



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



Strafford County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

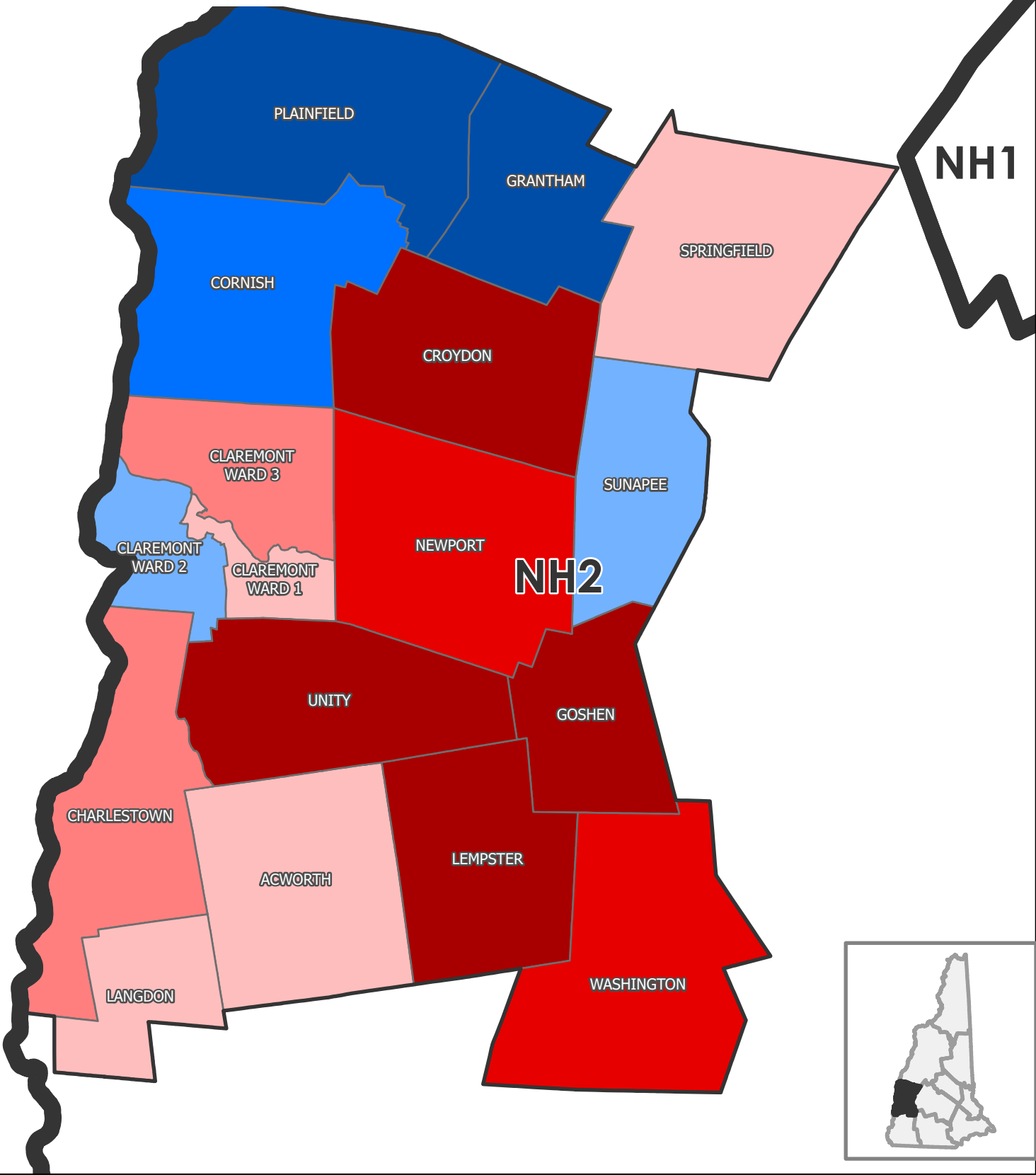
Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)

0 2.5 5 Miles

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average - i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire



Sullivan County GOP Proposal

U.S. House Districts
Based on 2020 Census populations

GOP Leaning

- 0-5
- 6-10
- 11-15
- 16+

Dem Leaning

- 0-5
- 6-10
- 11-15
- 16+

Other

- Tie
- No Ballot Cast
- Proposed District Boundary (Republican)



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

County

Showing Partisan Lean & District Shifts

New Hampshire

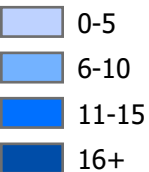
Belknap County

GOP Proposal, 2022-2030

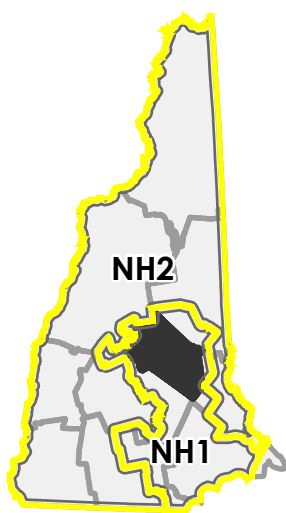
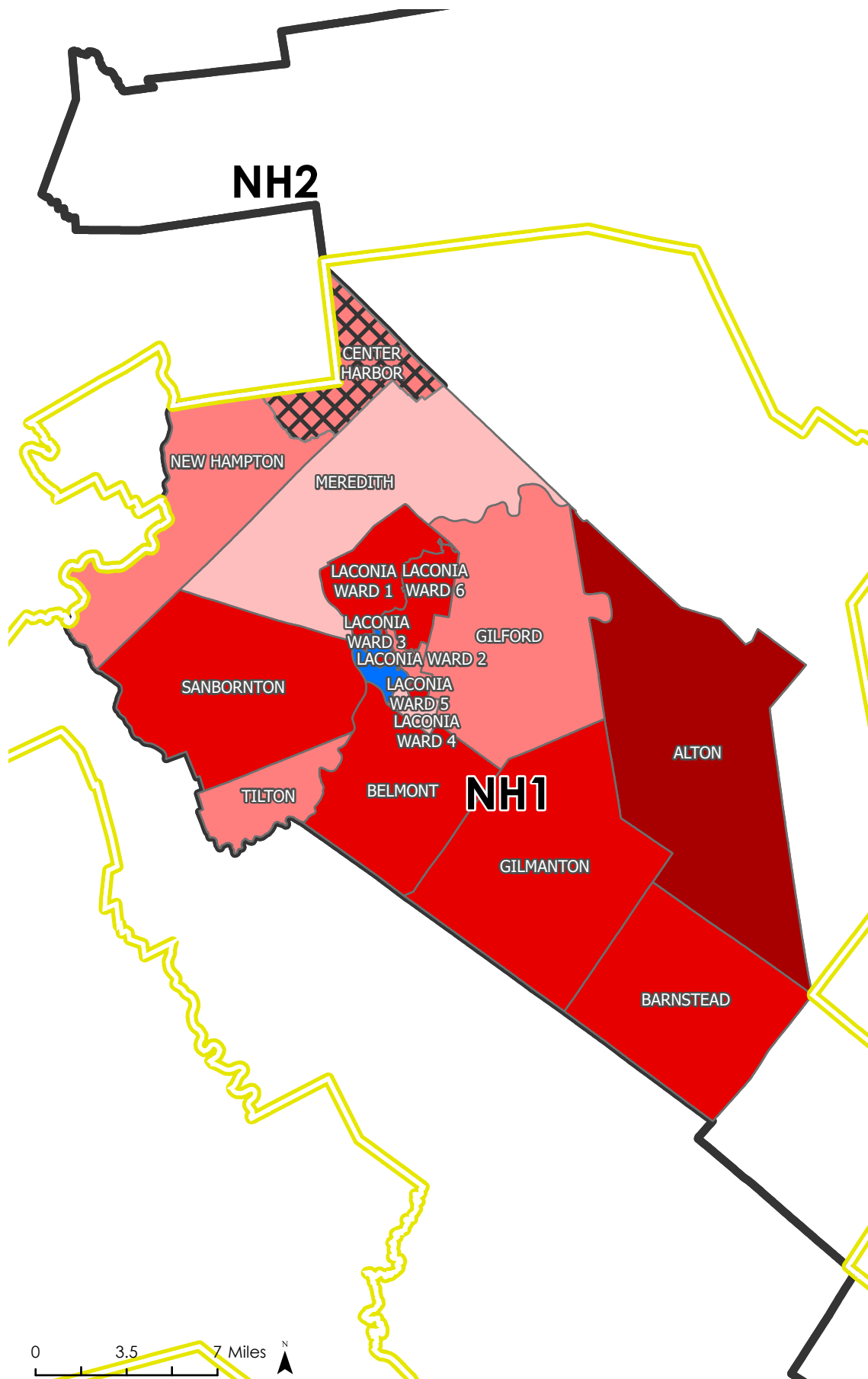
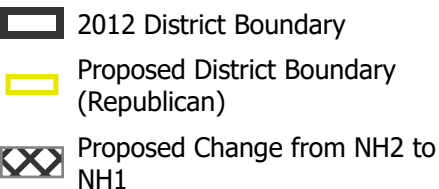
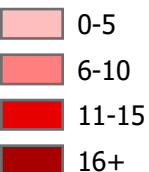
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries

Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

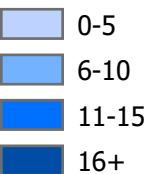
Carroll County

GOP Proposal, 2022-2030

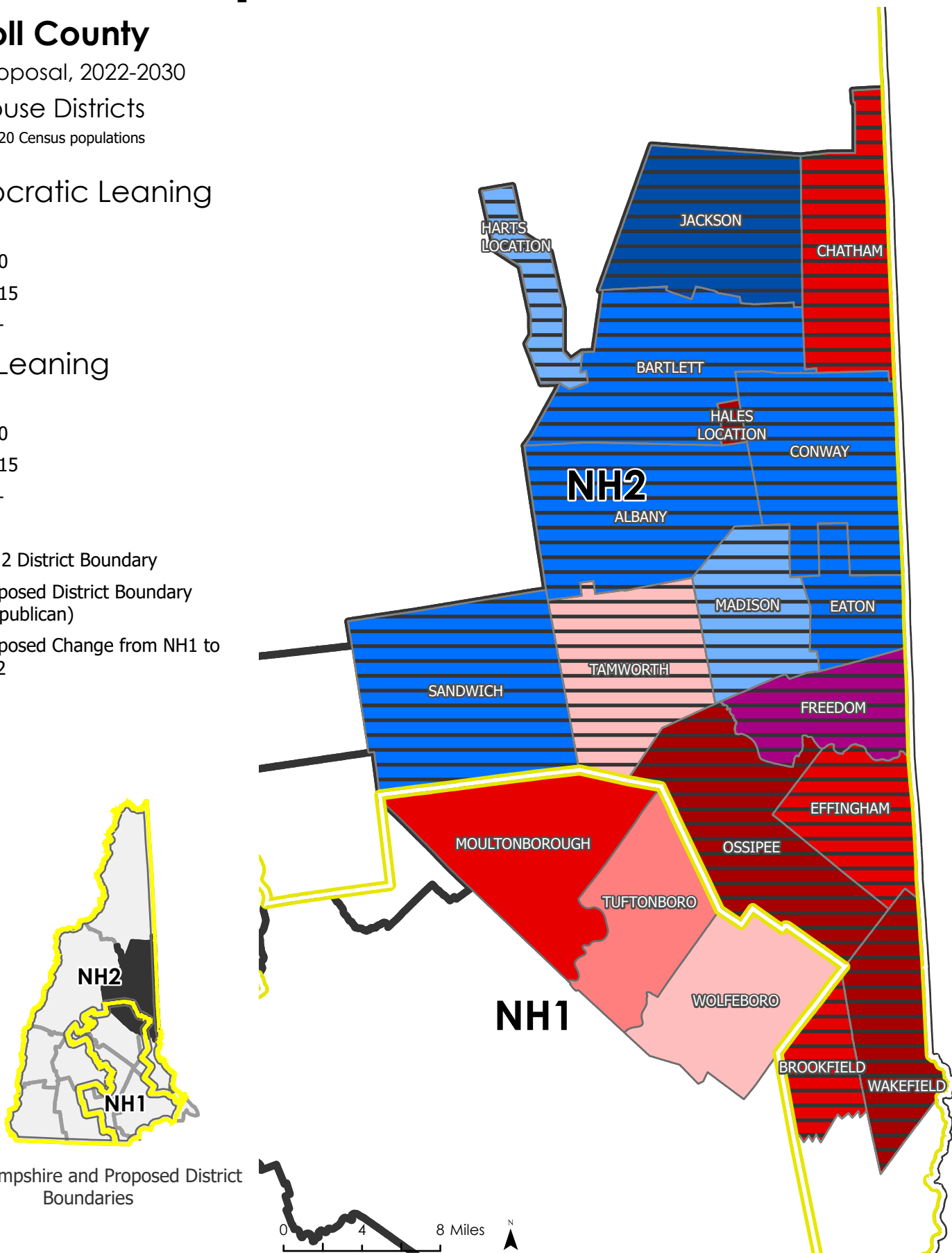
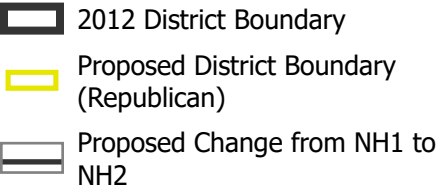
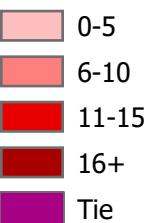
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



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New Hampshire

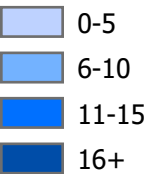
Cheshire County

GOP Proposal, 2022-2030

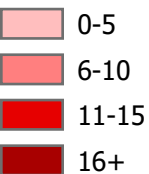
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning

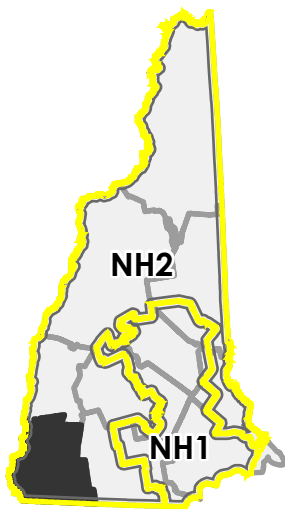
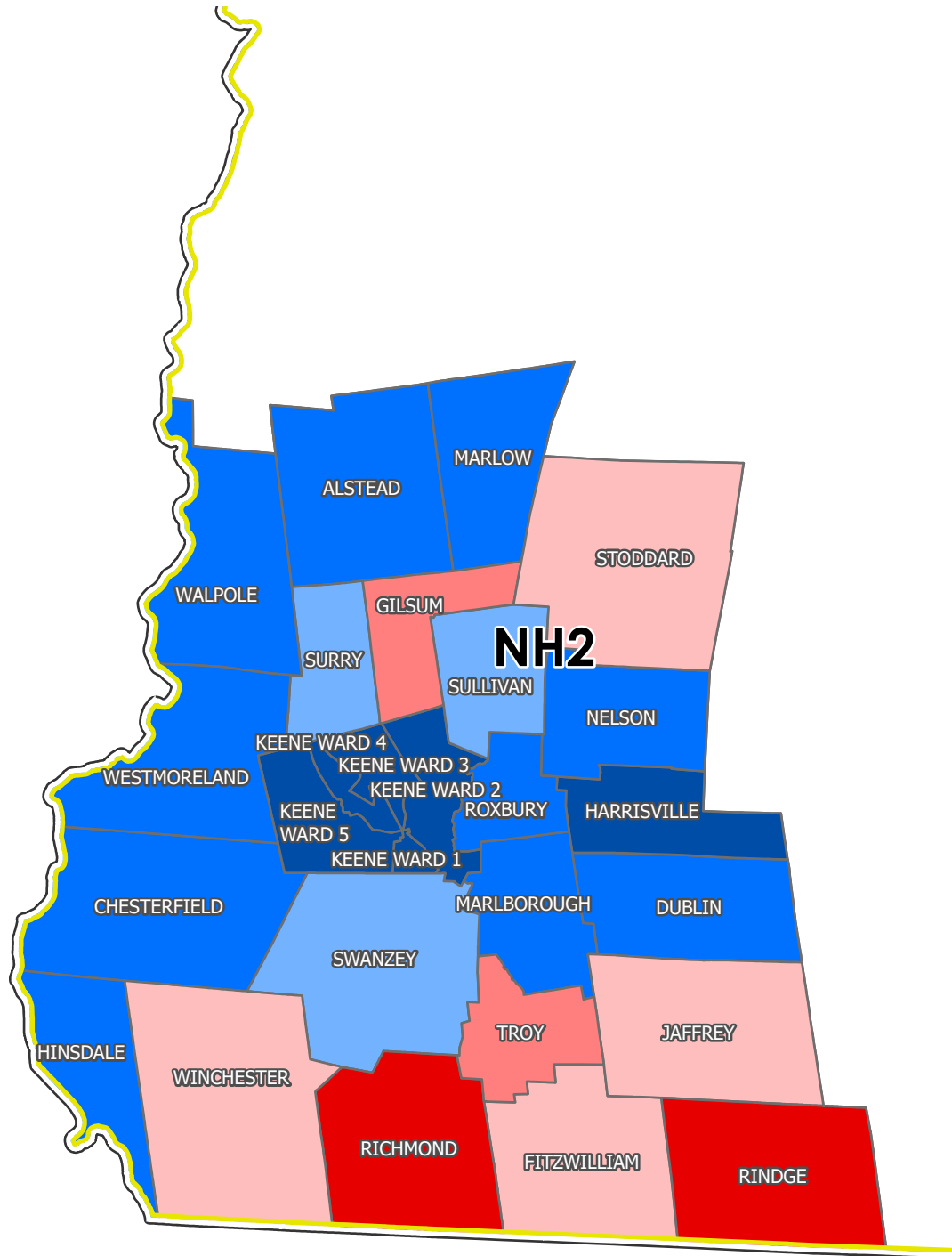


GOP Leaning



2012 District Boundary

Proposed District Boundary (Republican)



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

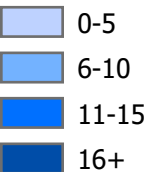
Coos County

GOP Proposal, 2022-2030

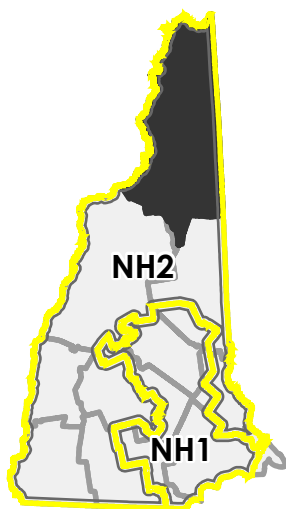
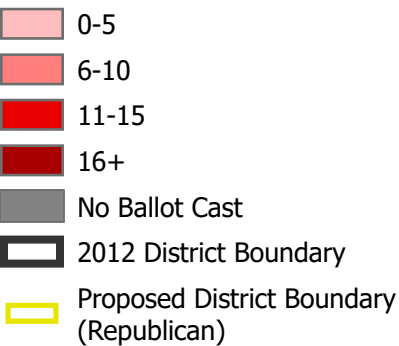
U.S. House Districts

Based on 2020 Census populations

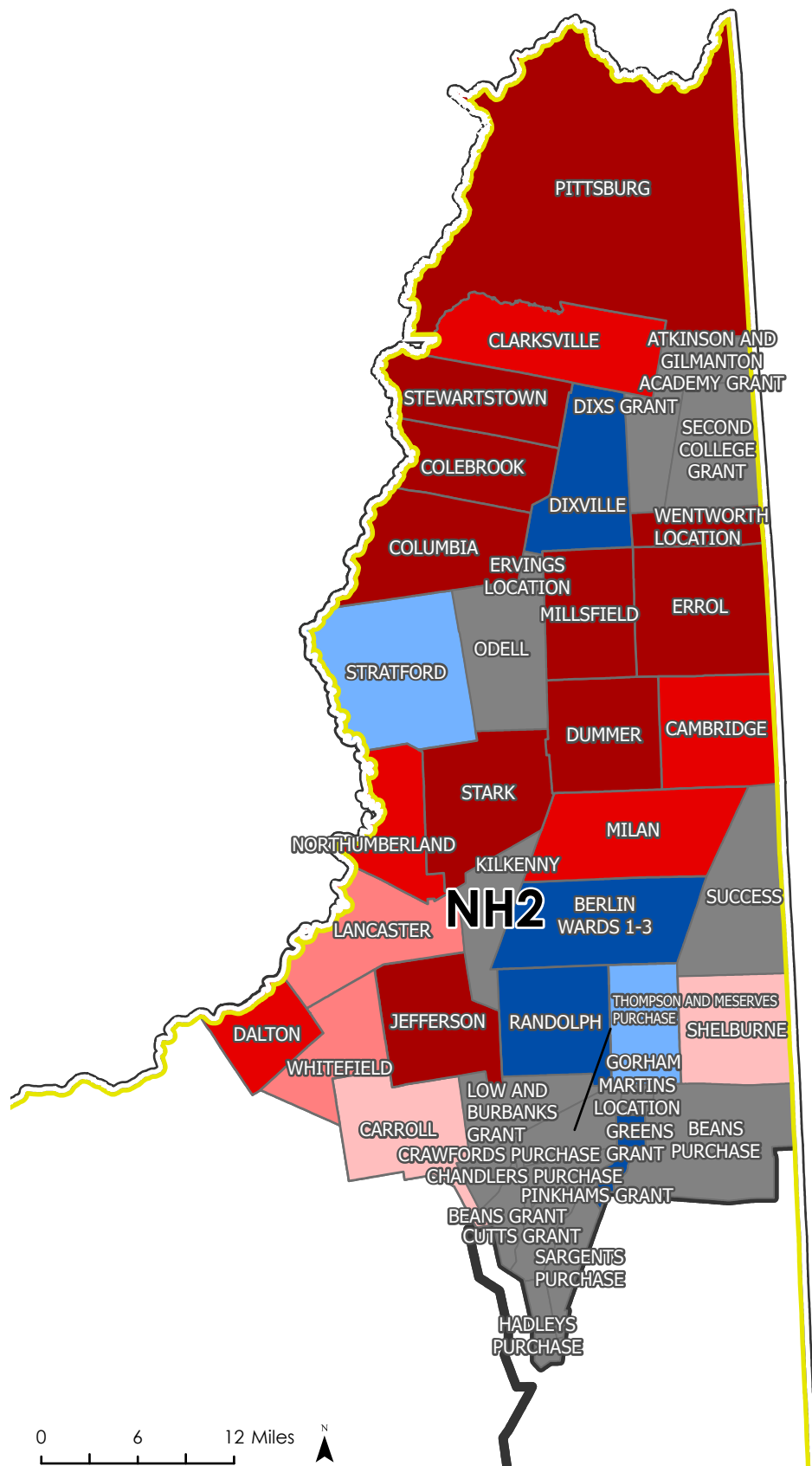
Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

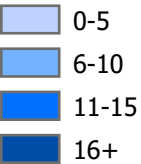
Grafton County

GOP Proposal, 2022-2030

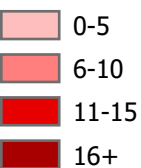
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



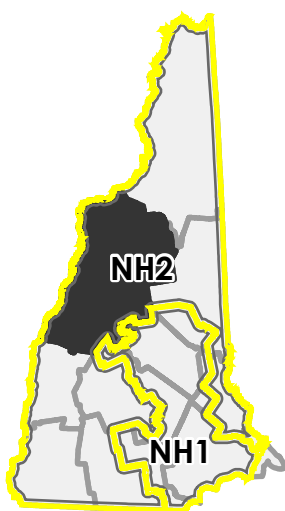
No Ballot Cast

2012 District Boundary

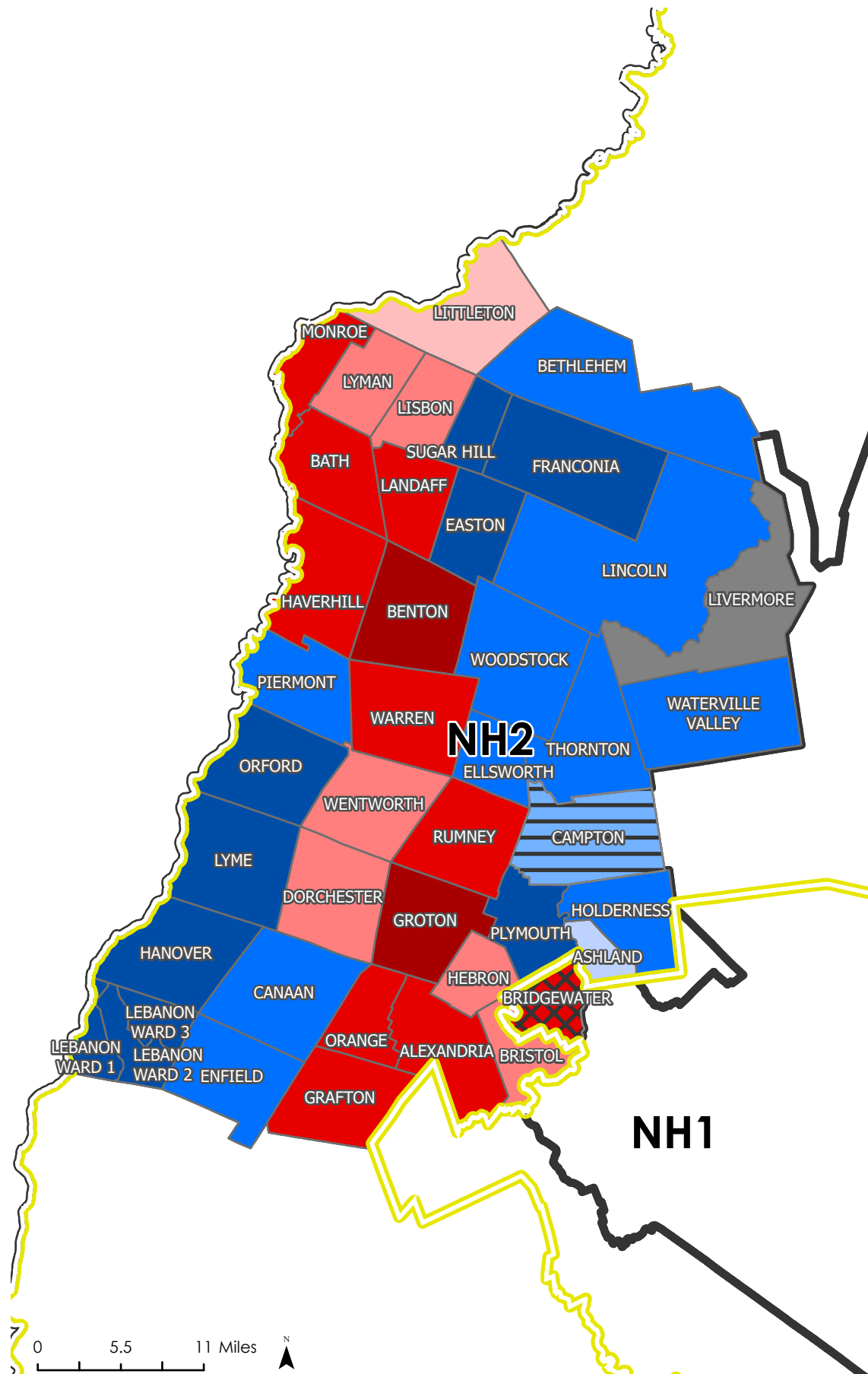
Proposed District Boundary (Republican)

Proposed Change from NH2 to NH1

Proposed Change from NH1 to NH2



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

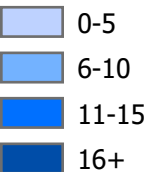
Hillsborough County

GOP Proposal, 2022-2030

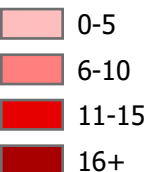
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



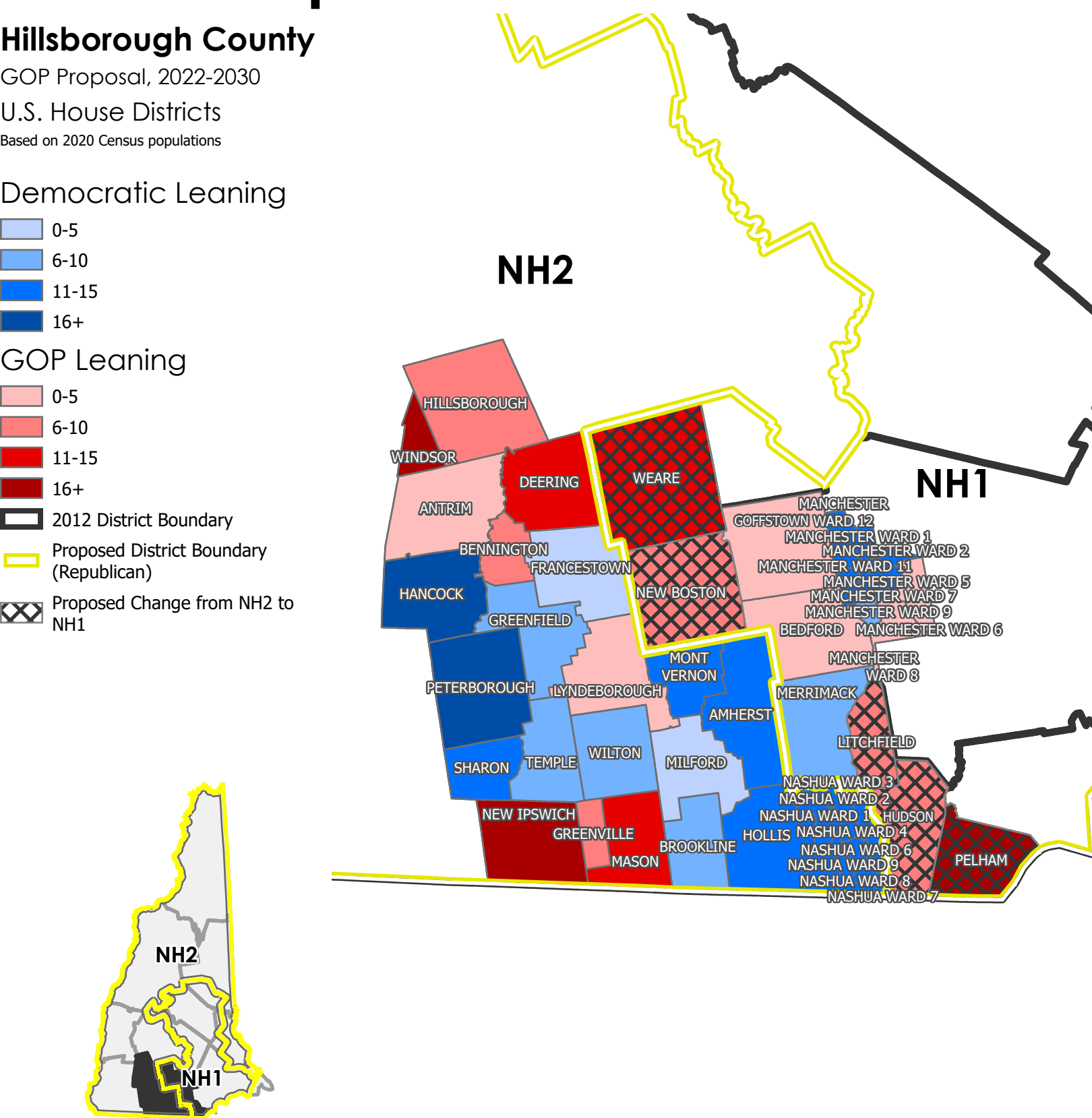
GOP Leaning



2012 District Boundary

Proposed District Boundary (Republican)

Proposed Change from NH2 to NH1



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

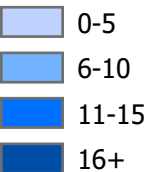
Merrimack County

GOP Proposal, 2022-2030

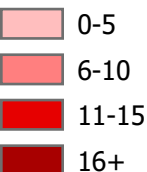
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



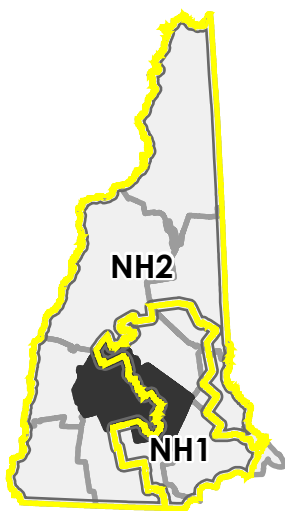
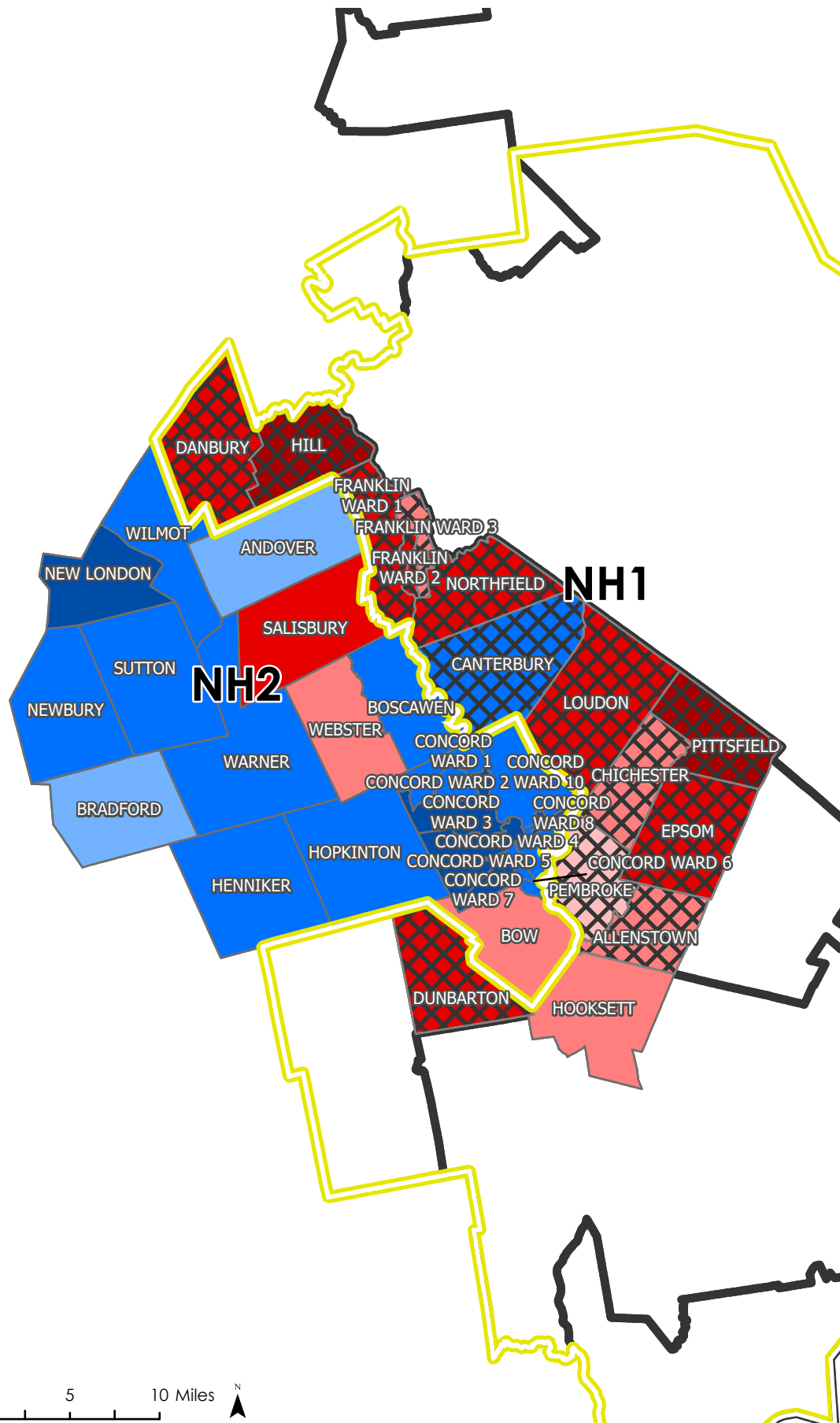
GOP Leaning



2012 District Boundary

Proposed District Boundary (Republican)

Proposed Change from NH2 to NH1



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

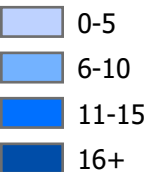
Rockingham County

GOP Proposal, 2022-2030

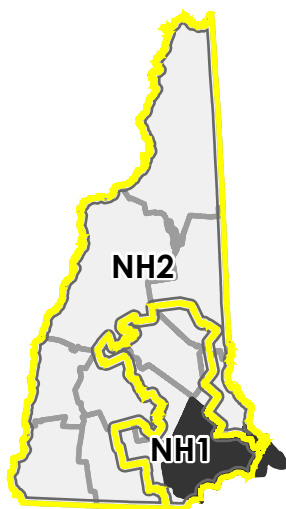
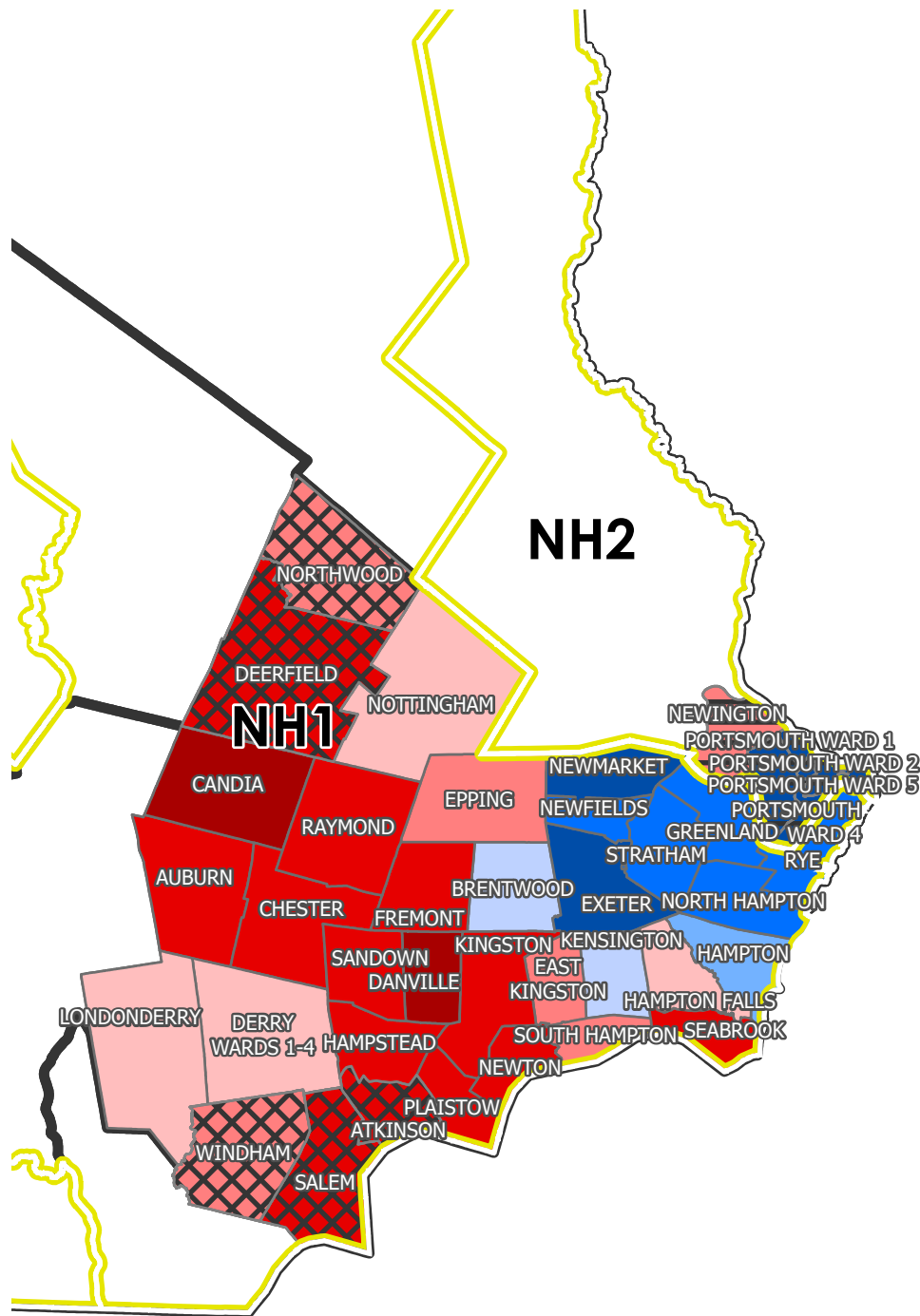
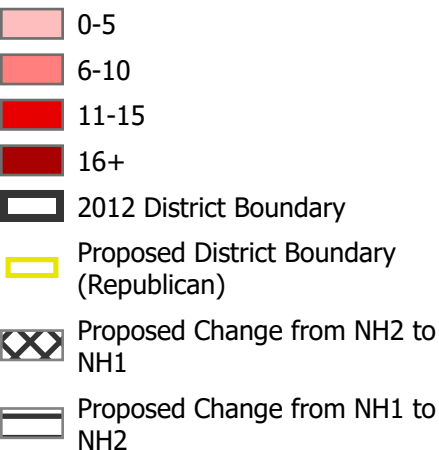
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

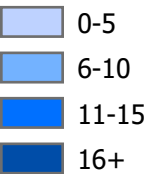
Strafford County

GOP Proposal, 2022-2030

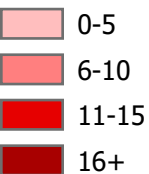
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



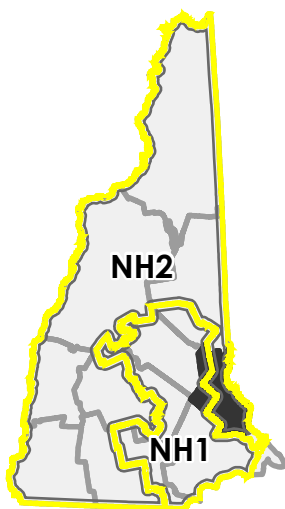
GOP Leaning



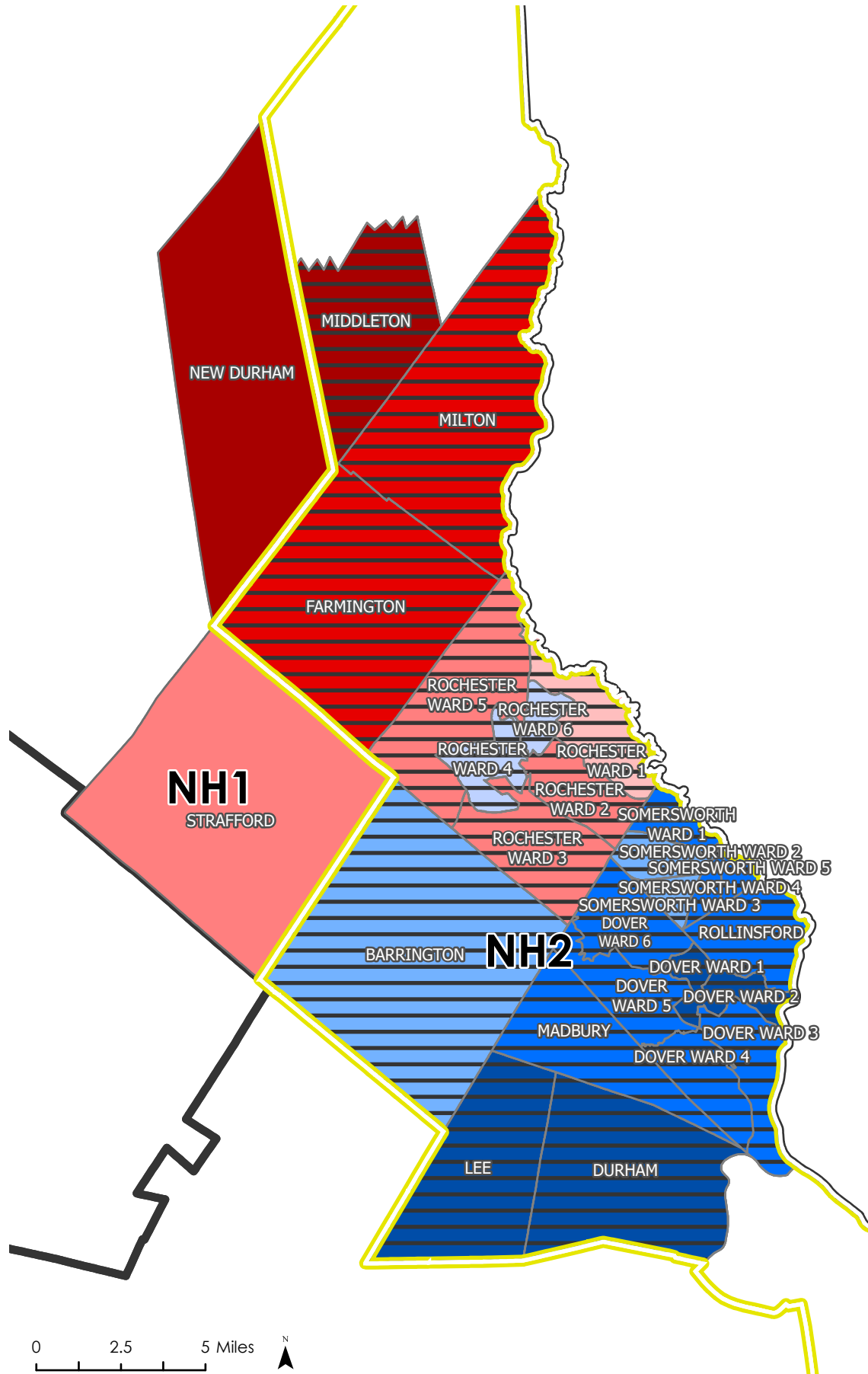
2012 District Boundary

Proposed District Boundary (Republican)

Proposed Change from NH1 to NH2



New Hampshire and Proposed District Boundaries



0 2.5 5 Miles



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New Hampshire

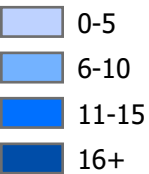
Sullivan County

GOP Proposal, 2022-2030

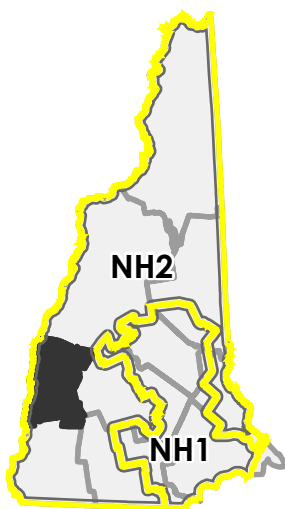
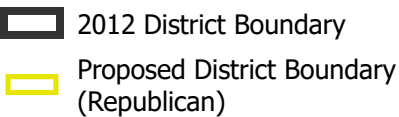
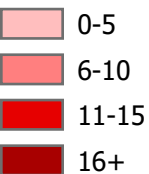
U.S. House Districts

Based on 2020 Census populations

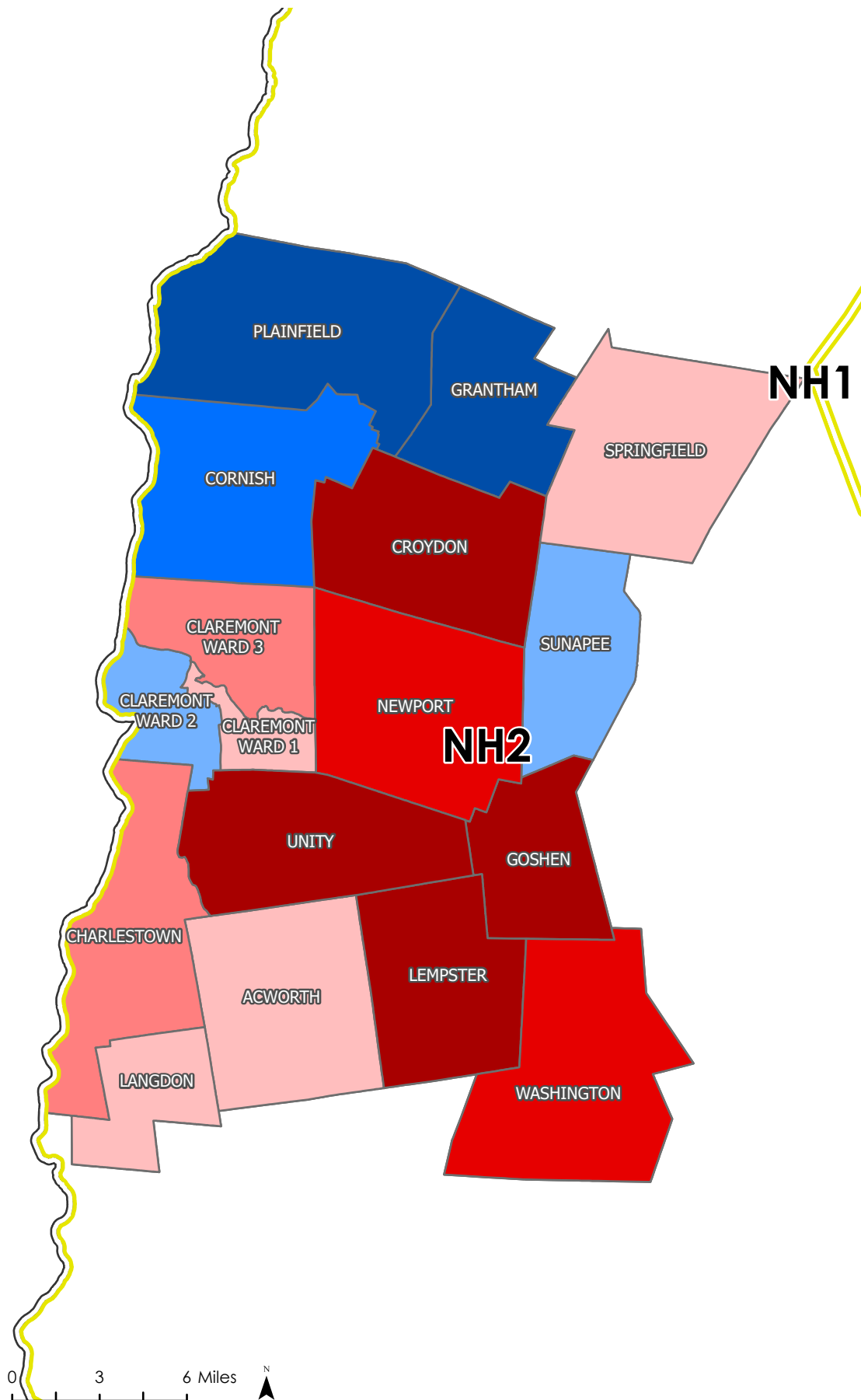
Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



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City

New Hampshire

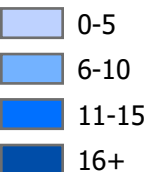
Claremont

GOP Proposal, 2022-2030

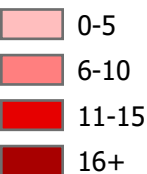
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning

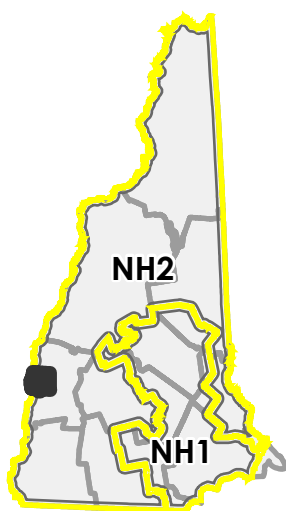
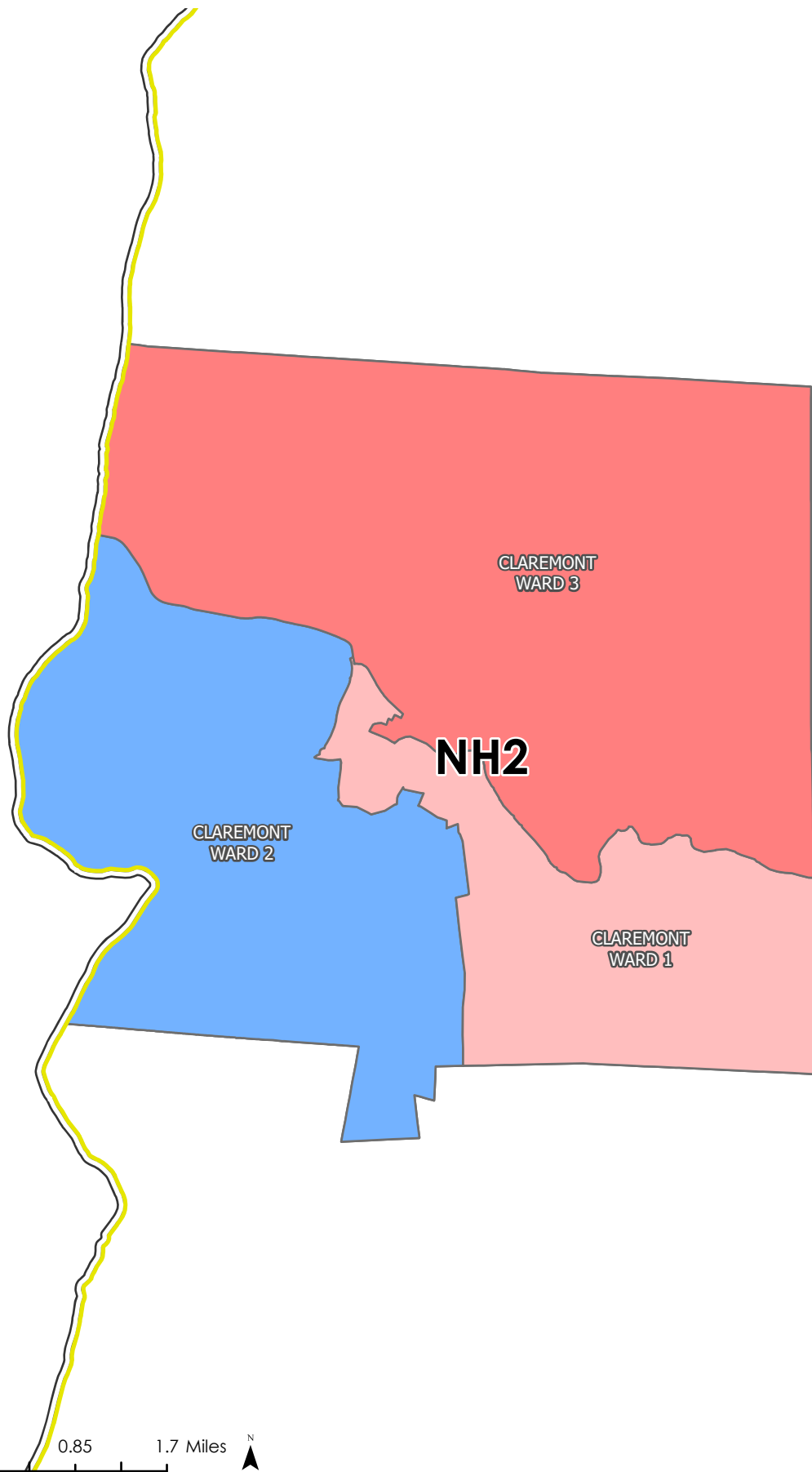


GOP Leaning



Proposed District Boundary (Republican)

2012 District Boundary



New Hampshire and Proposed District Boundaries



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Add. 063

New Hampshire

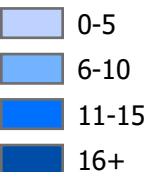
Concord

GOP Proposal, 2022-2030

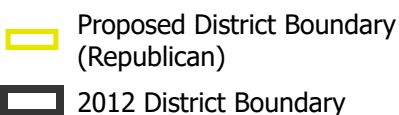
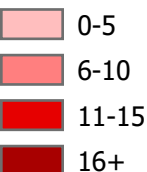
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



NH1

NH2

CONCORD
WARD 1

CONCORD
WARD 2

CONCORD
WARD 10

CONCORD
WARD 3

CONCORD
WARD 9

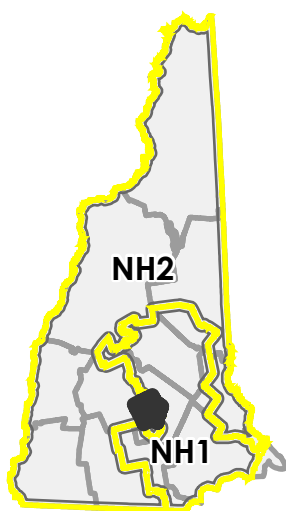
CONCORD
WARD 4

CONCORD
WARD 8

CONCORD
WARD 5

CONCORD
WARD 6

CONCORD
WARD 7



New Hampshire and Proposed District
Boundaries

0 1 2 Miles



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Add. 064

New Hampshire

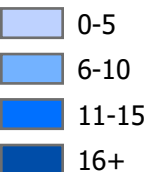
Dover

GOP Proposal, 2022-2030

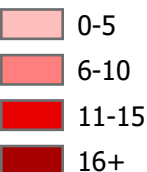
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



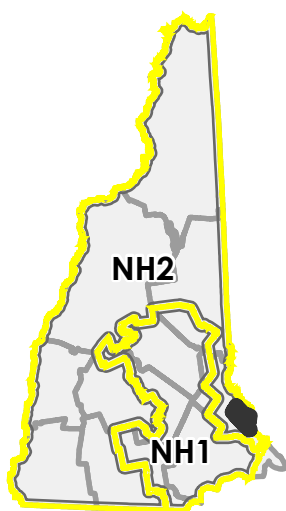
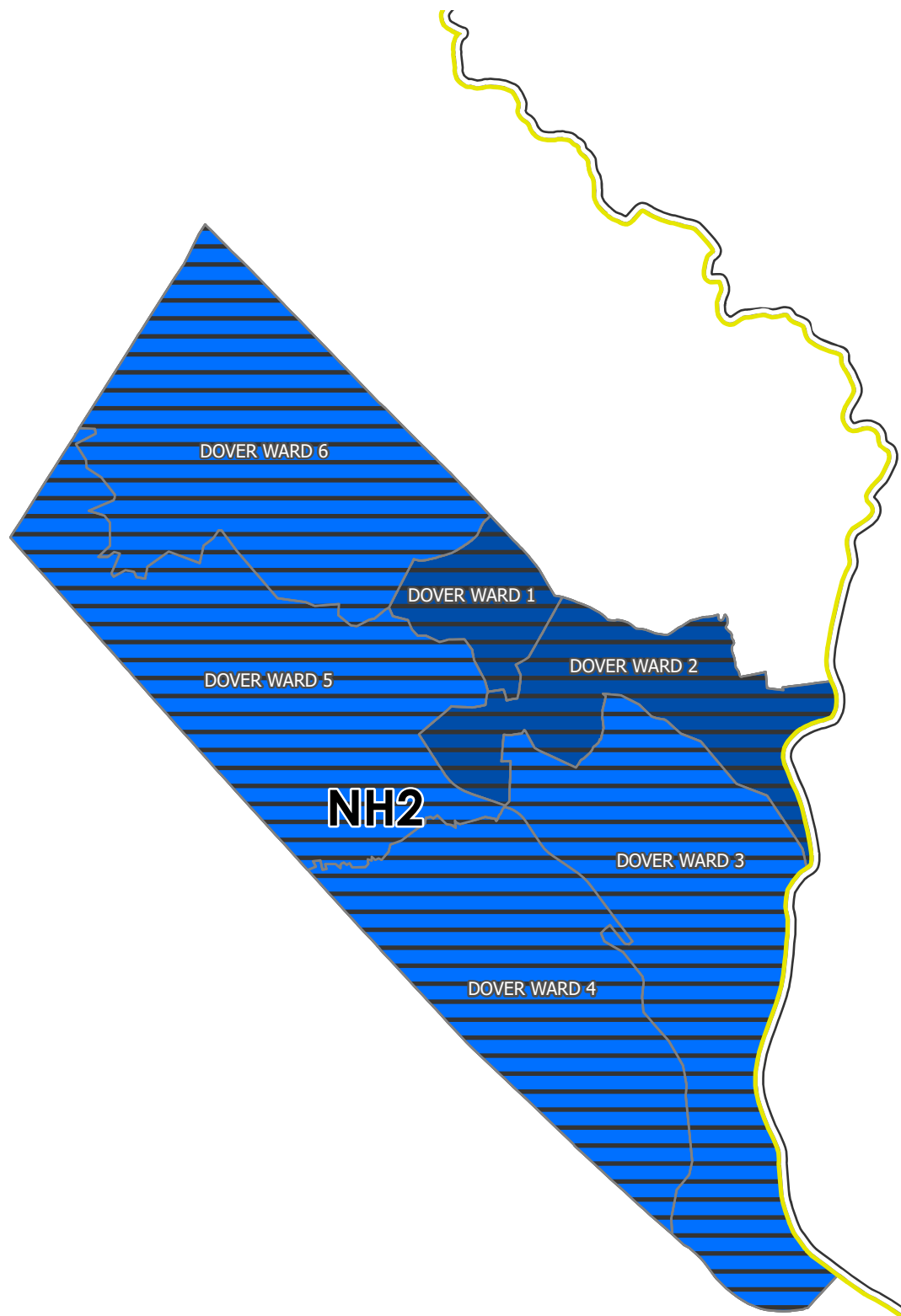
GOP Leaning



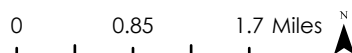
Proposed District Boundary (Republican)

2012 District Boundary

Proposed Change from NH1 to NH2



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districting are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

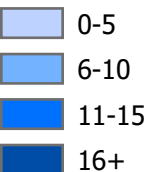
Franklin

GOP Proposal, 2022-2030

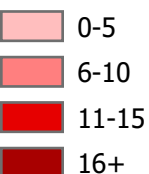
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning

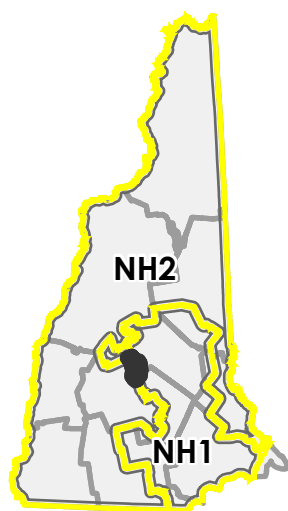


GOP Leaning



Proposed District Boundary (Republican)

2012 District Boundary



New Hampshire and Proposed District Boundaries

0 0.7 1.4 Miles



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Add. 066

New Hampshire

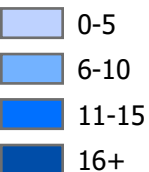
Keene

GOP Proposal, 2022-2030

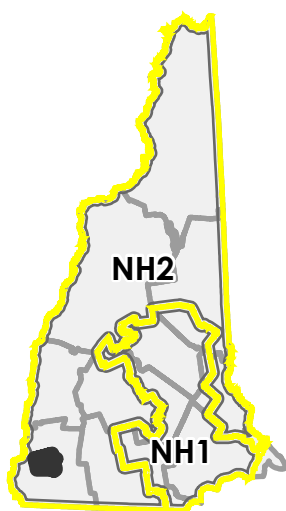
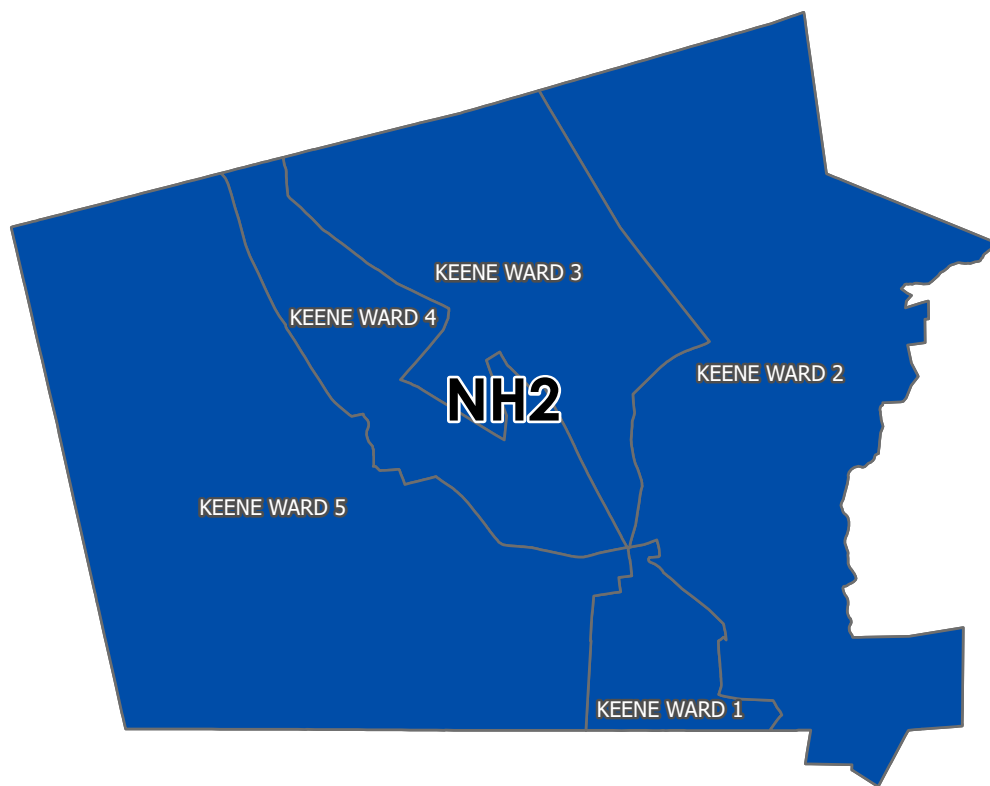
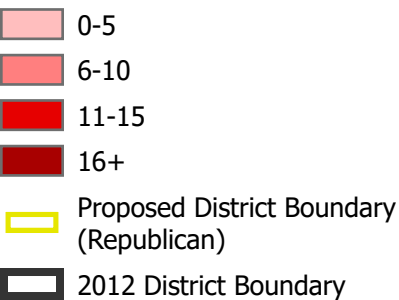
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



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New Hampshire

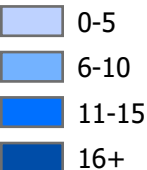
Laconia

GOP Proposal, 2022-2030

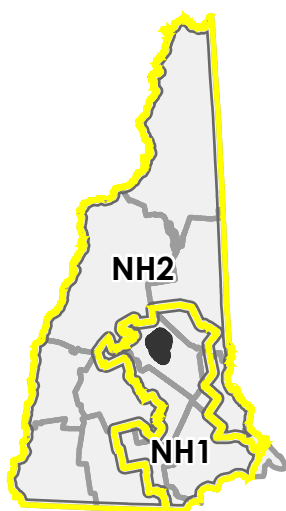
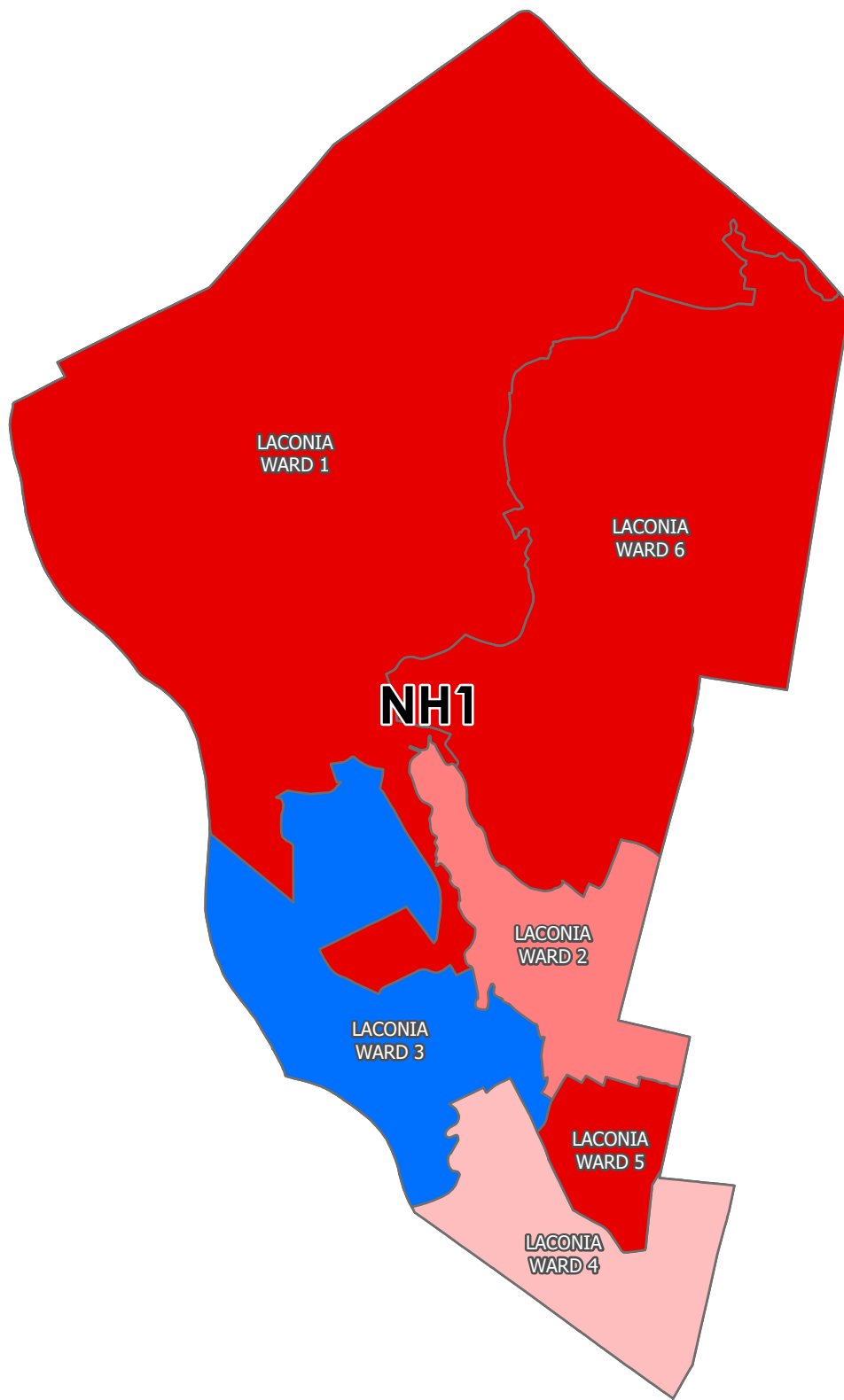
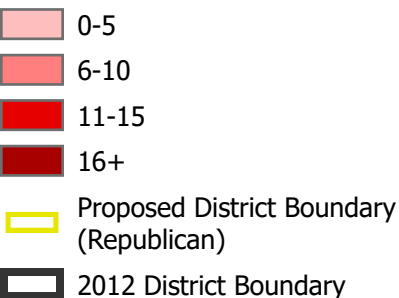
U.S. House Districts

Based on 2020 Census populations

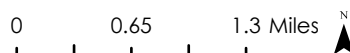
Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

New Hampshire

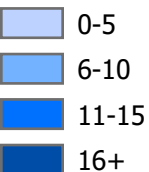
Lebanon

GOP Proposal, 2022-2030

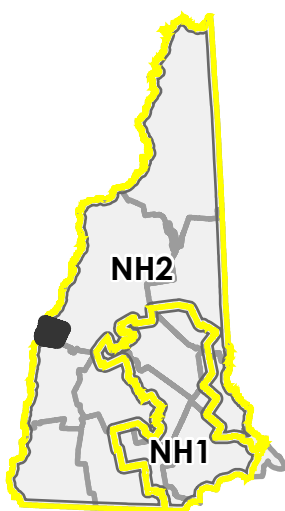
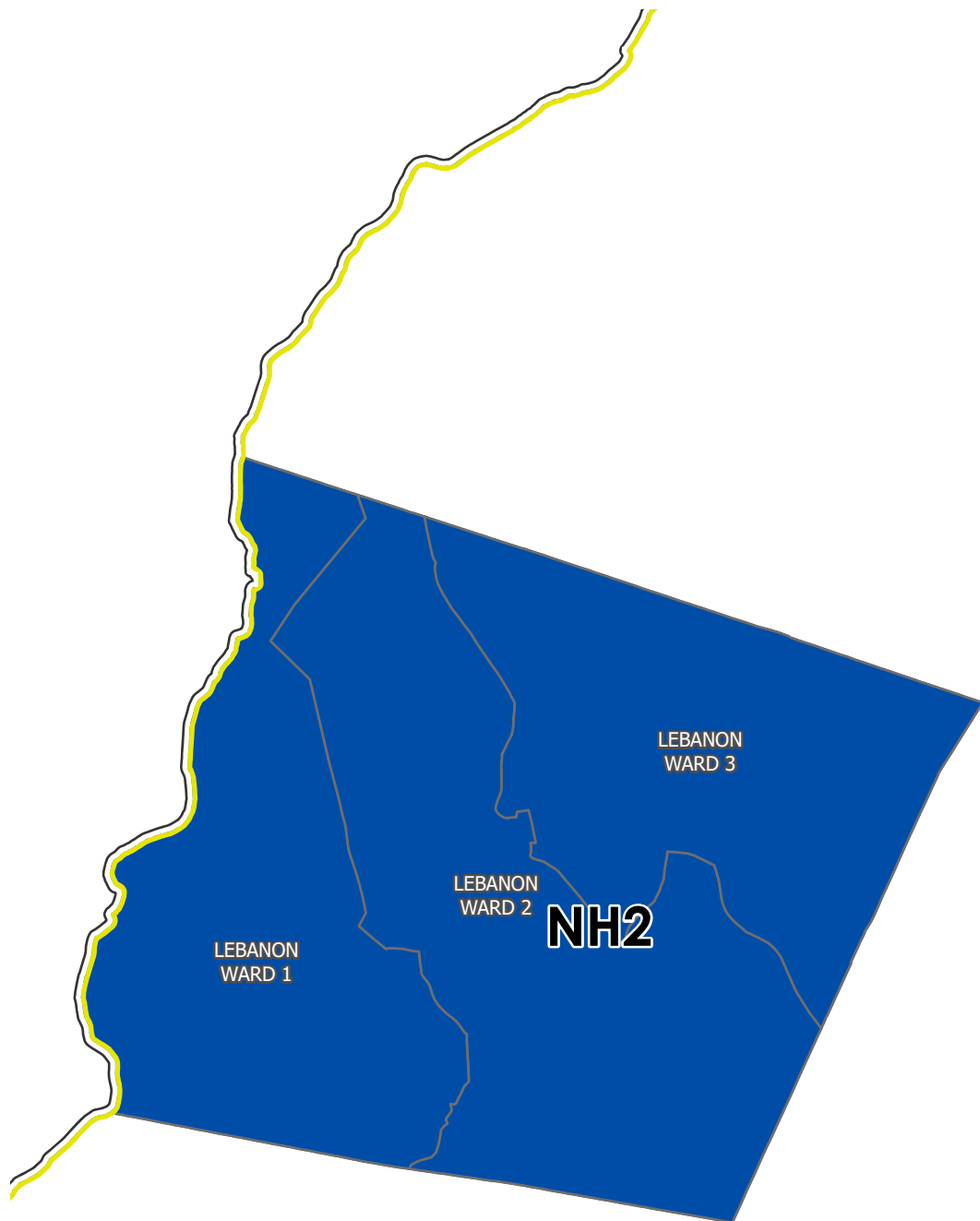
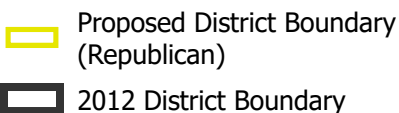
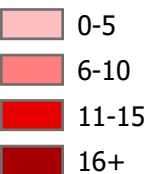
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.

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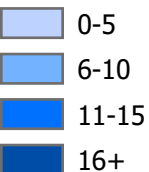
Manchester

GOP Proposal, 2022-2030

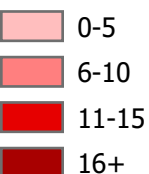
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning

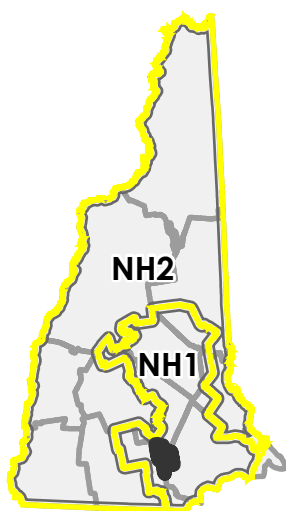
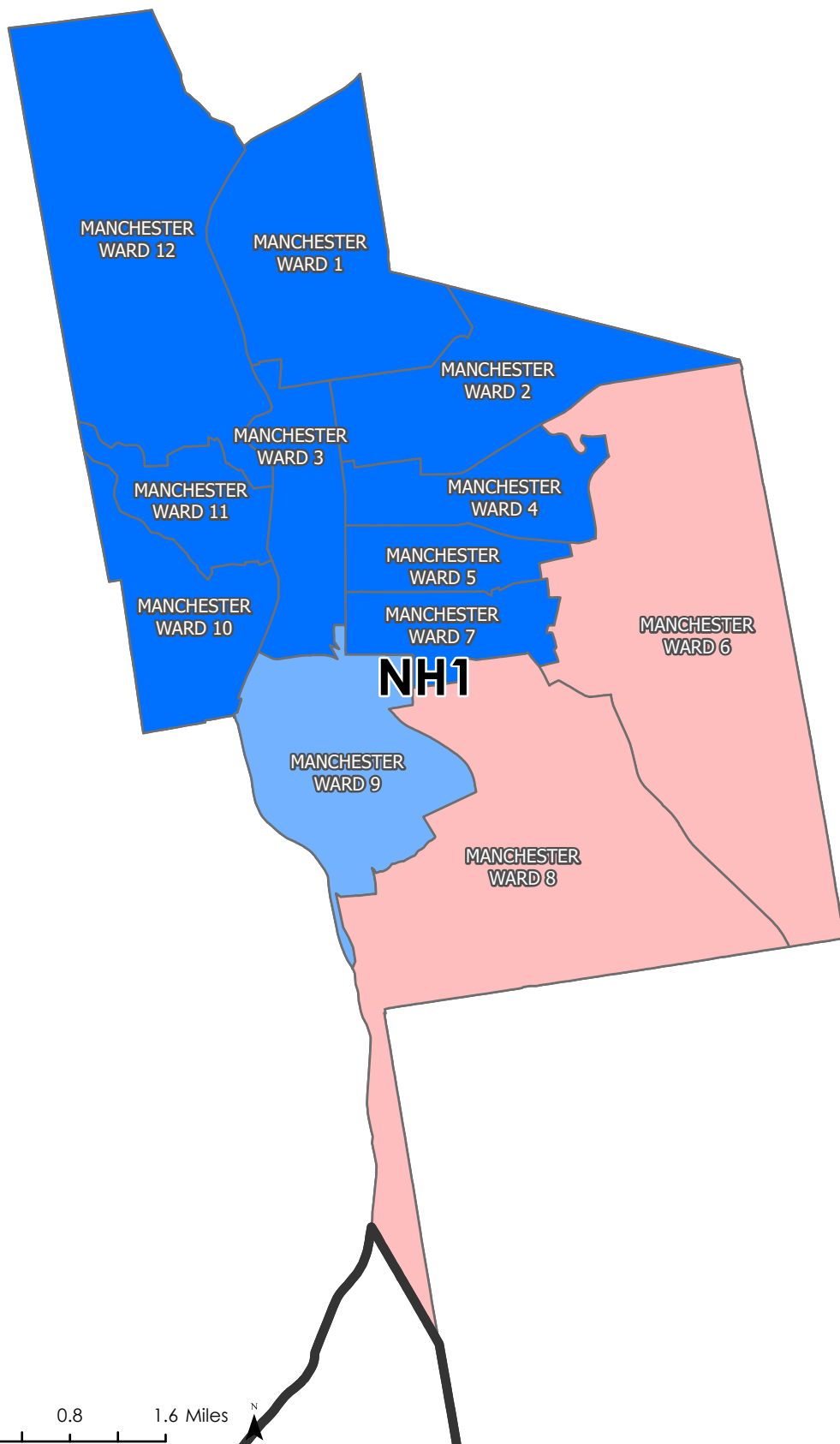


GOP Leaning



Proposed District Boundary (Republican)

2012 District Boundary



New Hampshire and Proposed District Boundaries

0 0.8 1.6 Miles

N

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New Hampshire

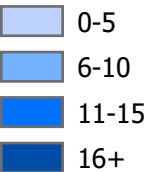
Nashua

GOP Proposal, 2022-2030

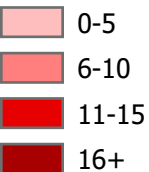
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



Proposed District Boundary (Republican)

2012 District Boundary

NH1

NASHUA WARD 2

NASHUA WARD 3

NASHUA WARD 1

NASHUA WARD 4

NASHUA WARD 6

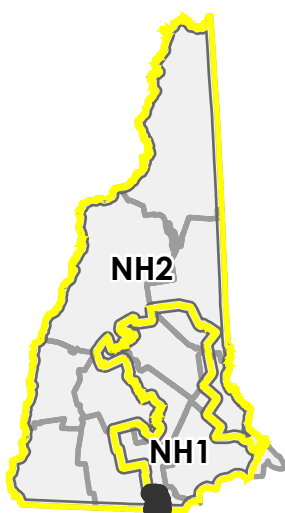
NASHUA WARD 7

NASHUA WARD 5

NASHUA WARD 9

NASHUA WARD 8

NH2



New Hampshire and Proposed District Boundaries

0 0.75 1.5 Miles



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Add. 071

New Hampshire

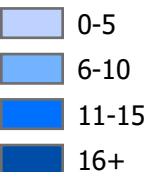
Portsmouth

GOP Proposal, 2022-2030

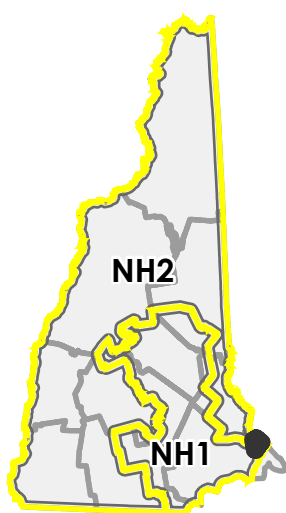
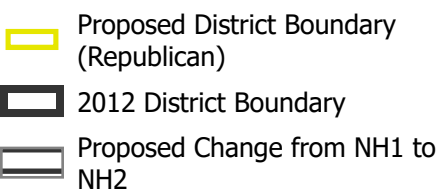
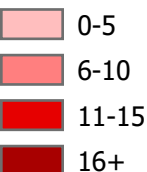
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District
Boundaries



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Add. 072

New Hampshire

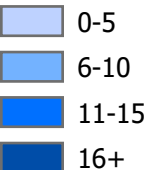
Rochester

GOP Proposal, 2022-2030

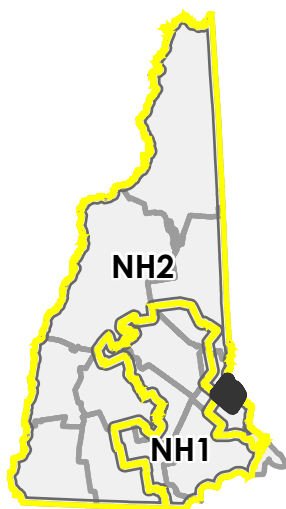
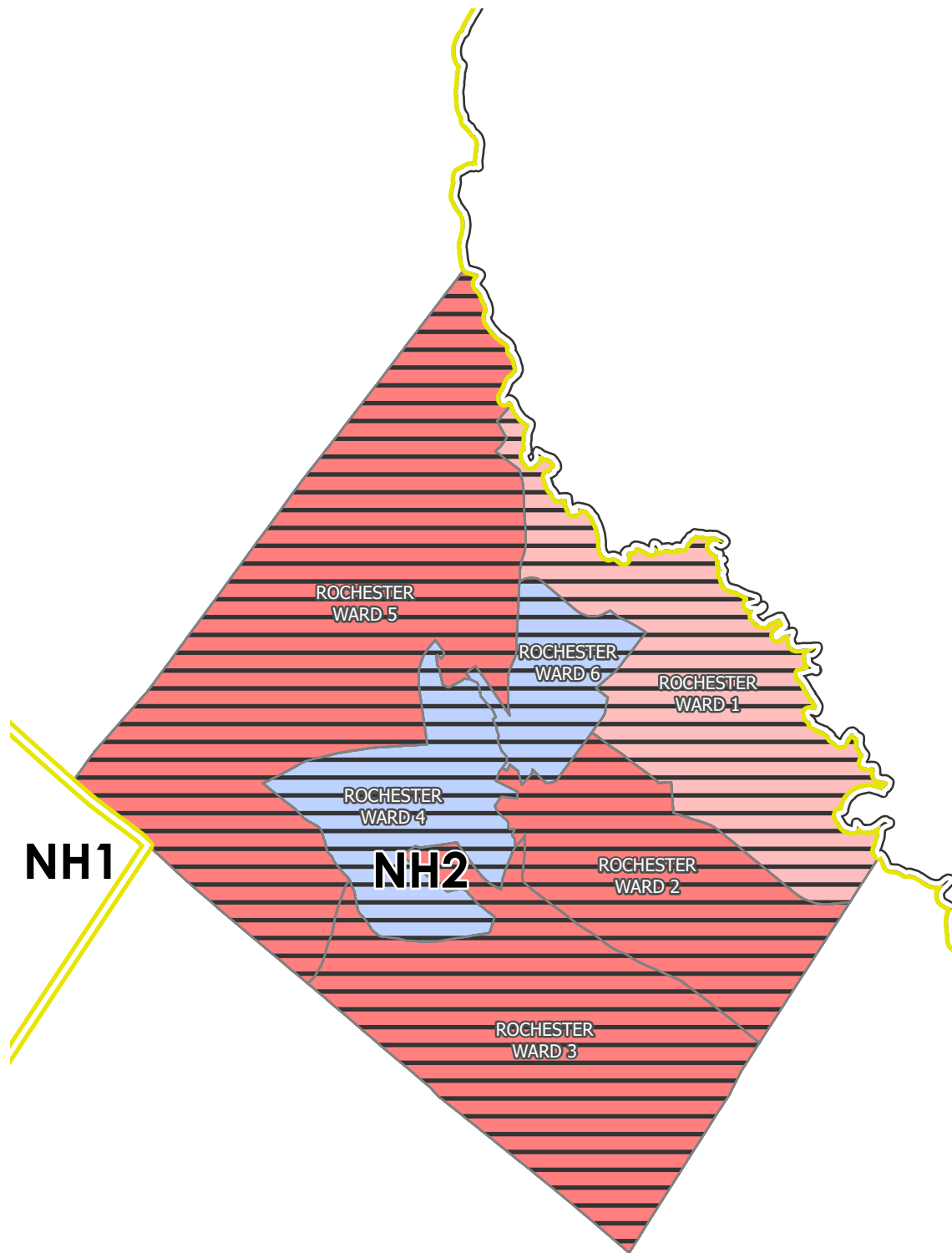
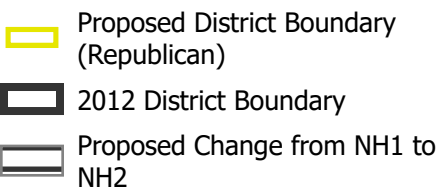
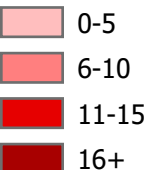
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



GOP Leaning



New Hampshire and Proposed District
Boundaries



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New Hampshire

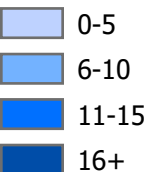
Somersworth

GOP Proposal, 2022-2030

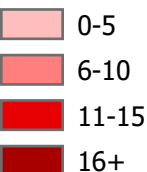
U.S. House Districts

Based on 2020 Census populations

Democratic Leaning



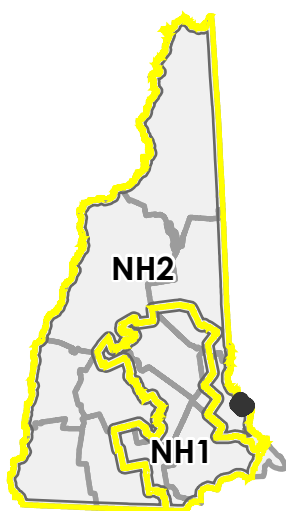
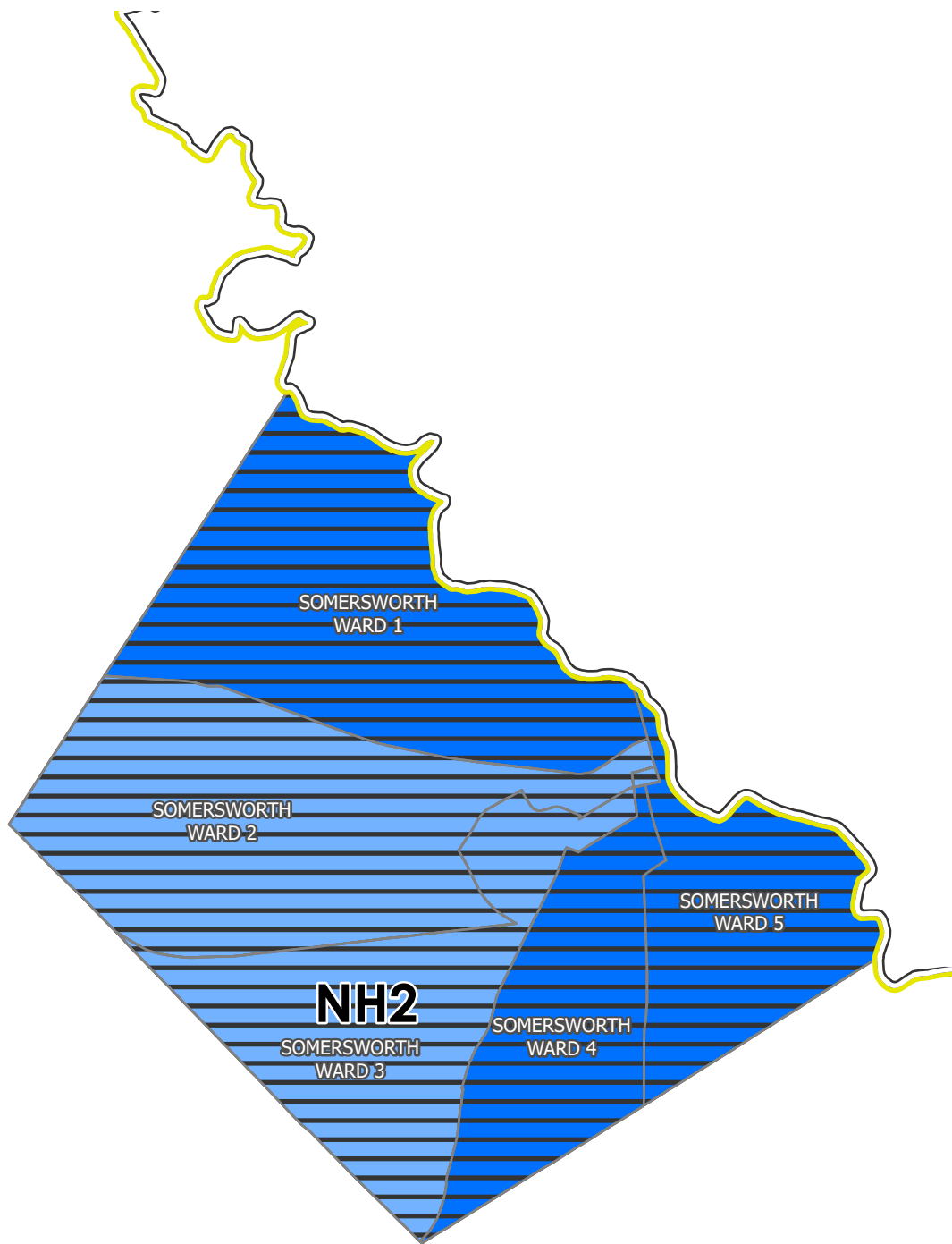
GOP Leaning



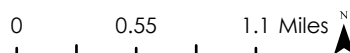
Proposed District Boundary (Republican)

2012 District Boundary

Proposed Change from NH1 to NH2



New Hampshire and Proposed District Boundaries



Prepared November 15th, 2021 by FLO Analytics. Partisan lean is computed at the voting district level based on the 2020 Presidential two-party vote. GOP leaning districts are those in which Trump (R) garnered a larger share than his national average -i.e., 47.7%. Conversely, in Democratic leaning districts - denoted in blue - Trump's share of the two-party vote was less than 47.7% by the amount indicated in the legend.



Statement by Henry Klementowicz, Staff Attorney, ACLU-NH
House Special Committee on Redistricting
House Bill 52
November 9, 2021

I submit this statement on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”)—a non-partisan, non-profit organization working to protect civil liberties throughout the state for over 50 years. I appreciate the opportunity to testify in opposition to HB 52, the proposed reapportionment of the state’s two congressional districts

This reapportionment plan is an example of the worst excesses of partisan gerrymandering. The proposed plan, according to statistical analysis from FiveThirtyEight, would turn New Hampshire’s two competitive congressional districts into one safe Democratic seat and one safe Republican seat.¹ For this reason, the *Union Leader* has opposed these maps, asking “Anybody have an eraser?”² For over one hundred years, New Hampshire’s congressional districts have largely remained the same—one district in the east, and one in the west, with shifts only to correct for population changes.³ However, this map would upend this long standing tradition and would cause 364,703 people—more than a quarter of New Hampshire residents—to end the year in a different congressional district than they began it in. The plan splits up the seacoast region and puts Durham, Rochester, and Portsmouth in the same congressional district as Keene.

So why was this done? The only explanation, as some members of the committee have acknowledged, is for partisan political gain. Respected University of New Hampshire Professor Dante Scala explained that he and his research assistant tried to create districts with more of a partisan advantage to Republicans than this proposed one. They couldn’t.⁴ Our analysis of the partisan lean of each district shows a clear partisan gerrymander. Under the current maps, in 2020, former President Trump would have one 46 percent of the vote in District 2 and 47 percent of the vote in District 1. Under the proposed plan, he would have won 42% of the vote in District 2, and 51% of the vote in District 1.

Voters should pick their politicians, and not the other way around. But this map does exactly the opposite—it moves a quarter of the state into a different district and up-ends more than a hundred years of precedent to maximize partisan advantage. Redistricting is a solemn, constitutional obligation for this committee, and the voters of New Hampshire deserve better.

¹ https://projects.fivethirtyeight.com/redistricting-2022-maps/new-hampshire/house_gop_proposal/

² https://www.unionleader.com/opinion/editorials/redistrict-plan-back-to-the-drawing-board/article_4ffbcaa9-c5a8-5d8d-862f-6b08b1bff21d.html

³ <https://what-the-district.aclu.org/>

⁴ <https://twitter.com/Graniteprof/status/1456236375569747971>



Statement by Henry Klementowicz, Senior Staff Attorney, ACLU-NH
Senate Election Law and Municipal Affairs
House Bill 52
January 31, 2022

I submit this statement on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”)—a non-partisan, non-profit organization working to protect civil liberties throughout the state for over 50 years. I appreciate the opportunity to testify in opposition to HB 52, the proposed reapportionment of the state’s two congressional districts

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So why was this done? The only explanation, as some members of the committee have acknowledged, is for partisan political gain. Respected University of New Hampshire Professor Dante Scala explained that he and his research assistant tried to create districts with more of a partisan advantage to Republicans than this proposed one. They couldn’t.⁴ Our analysis found that “In its current form, HB52 would cleave the current map into two non-competitive districts – a prospective District 1 highly favorable to Republican candidates and a District 2 heavily concentrated with Democratic votes.”⁵ Indeed, our analysis indicates HB 52 “is consistent with a canonical ‘pack-and-crack’ gerrymandering technique.” *Id.* The partisan lean of District 1 would go from R -0.3 to R +2.9, and District 2 would go from R -2.2 to R -5.2. *Id.*

Voters should pick their politicians, and not the other way around. But this map does exactly the opposite—it moves a quarter of the state into a different district and up-ends more than a hundred years of precedent to maximize partisan advantage. Redistricting is a solemn, constitutional obligation for this committee, and the voters of New Hampshire deserve better.

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³ <https://what-the-district.aclu.org/>

⁴ <https://twitter.com/Graniteprof/status/1456236375569747971>

⁵ https://www.aclu-nh.org/sites/default/files/field_documents/aclunh-redistrictinganalysis-cd.pdf



MEMORANDUM

To: Devon Chaffee, Executive Director ACLU-NH

Date: March 29, 2022

From: John McKenzie, Senior Analyst

Project No.: F2186.01.01

RE: **Analysis of Governor Sununu's Proposed US Congressional Districts**

This memo analyzes the likely consequences for the partisan composition of Governor Sununu's Proposed US House Districts for the State of New Hampshire.

Tabulating ward-level vote returns for the 2020 Presidential race facilitate a key analytical comparison between the partisan leanings of the US House districts as they are currently constituted, and prospectively, as they would be constituted in the Governor's proposal. Notice that the current map was enacted by a previous GOP majority ten years ago following the preceding decennial redistricting.

Several conclusions emerge from our analysis:

Partisan Lean: Similar to the HB52 proposal, this map would create one Democratic leaning district and one GOP leaning district. However, both districts would be more competitive than those proposed under HB52. The current map has one Democratic leaning district and one district that is virtually neutral.

**Table 1: Partisan Leanings of New Hampshire's
U.S. House Districts Under the Current Map, Redistricting Proposal HB52, and Governor
Sununu's Proposal**

	Current	HB52 Proposal	Governor's Proposal
District 1	D+ 0.5	R+ 3.19	R+ 2.33
District 2	D+ 2.2	D+ 5.4	D+ 2.99

Number of wards affected by redistricting: The Governor's proposed map would move 25 wards into a new US House district. Previous analysis by FLO showed that population balance could be achieved by moving as few as one ward in the entire state. The HB52 proposal would move 75 wards, significantly more than the Governor's proposal and than would be necessary to achieve a balanced population between the districts.

The Governor's proposal would move 25 wards into a new district, significantly less than the 75 that would move under the HB52 proposal.

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).

