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THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

Case No. 2022-0184

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Theresa Norelli & *a.*

*Plaintiffs,*

v.

Secretary of State & *a.*

*Defendants.*

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

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## INTRODUCTION

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

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

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

## ARGUMENT

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

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

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

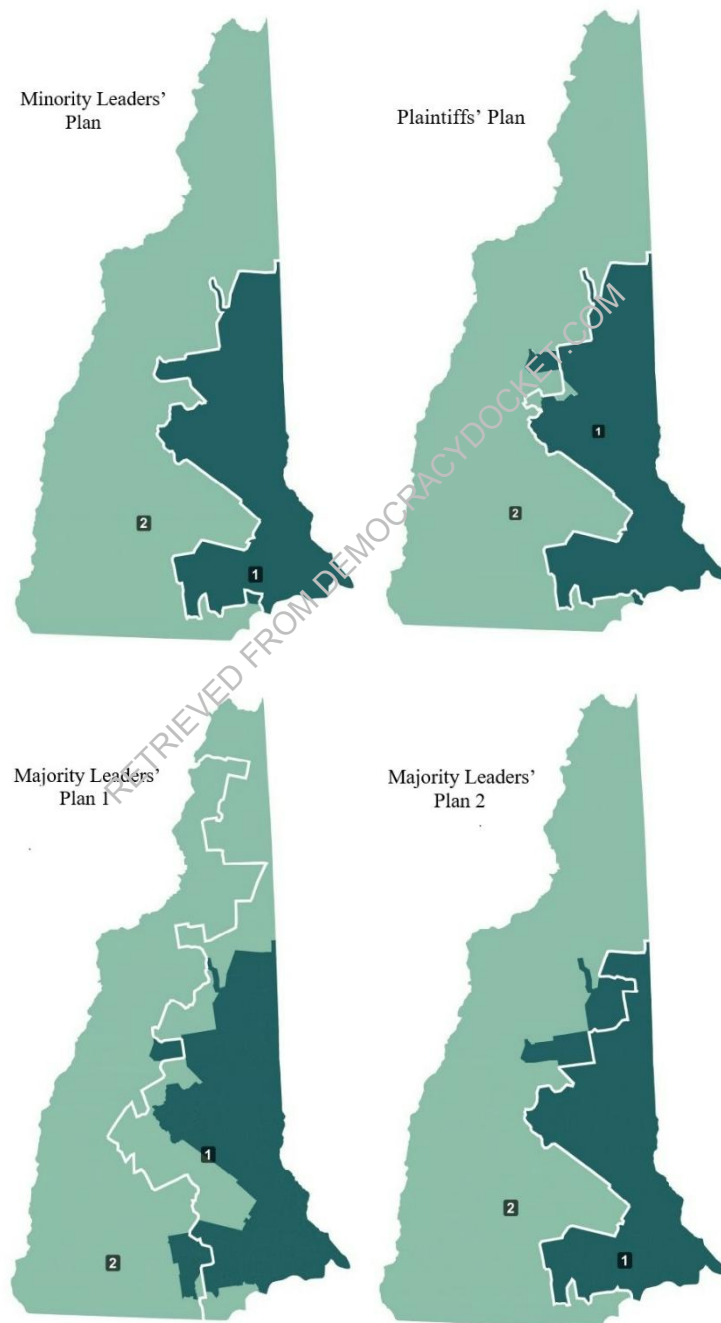
In no sense can the Majority Leaders’ Plan 1 be described as a “least-change”

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

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

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

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



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

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

## CONCLUSION

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

Dated: May 18, 2022

Respectfully Submitted,

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