

**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

IN RE PETITION OF REAPPORTIONMENT COMMISSION, EX. REL.

S.C. 18907

**REPLY OF THE REPUBLICAN MEMBERS OF THE CONNECTICUT
REAPPORTIONMENT COMMISSION TO THE MOTION AND MEMORANDUM OF
THE DEMOCRATIC MEMBERS**

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SUPREME COURT
APPELLATE COURT
2011 DEC 23 PM 12 19
231 CAPITOL AVENUE
HARTFORD, CT 06103

Pursuant to Practice Book § 66-2(a), the Republican members of the Reapportionment Commission ("Commission") hereby respectfully reply to the motion of the Democratic members, dated December 21, 2011. The Democratic members argue that the Court has a simple and straightforward redistricting task that can be accomplished by making minor and inconsequential adjustments to the 2001 congressional district map. This argument ignores the constitutional and practical complexities inherent in redistricting and diminishes the Court's duties. As explained below, it also disregards the entire history of congressional district mapping in Connecticut and ignores the glaring flaws in the 2001 map.¹

I. The 2001 Congressional Map Is an Anomaly in Connecticut History and Violates Well-Established Districting Principles.

Throughout the 20th century, Connecticut's congressional maps abided by the "traditional redistricting principles" that form the core of the United States Supreme Court's equal protection and voting rights jurisprudence. These principles include compactness, contiguity, conformity to political subdivisions, and respect for "communities of interest." See *Bush v. Vera*, 517 U.S. 952, 959-60 (1996); *Miller v. Johnson*, 515 U.S. 900, 919-920 (1995). Connecticut's congressional maps historically have also sought to achieve the constitutionally legitimate aim of "political fairness." See *Gaffney v. Cummings*, 412 U.S. 735, 752-53 (1973).

Notably, for much of the past century -- from 1910 - 1963 -- Connecticut had five congressional districts, as it does today. A copy of the map in effect during that time is attached as Exhibit A. It reflects five districts that almost precisely conform to the state's

¹ The factual and legal bases for this Reply were presented in the Position Statement of the Republican Members, submitted to this Court on December 21, 2011. In the interests of expediency, and given the unique nature of the present dispute, we respectfully request that the Court waive any requirement under Practice Book § 66-2 that those discussions be set forth separately herein.

county lines.² Each district was compact. The districts unified communities of interest. They were also devoid of any apparent political gerrymandering.

When a sixth congressional district was added in 1964,³ the resulting map also reflected compact districts that aligned communities of interest. A copy of this map is attached as Exhibit B. This map changed little from one redistricting cycle to the next. Copies of maps for the subsequent periods are attached as Exhibits C, D, and E.

By contrast, the congressional district map adopted in 2001 (Exhibit F) dramatically departs from traditional redistricting principles and deviates from Connecticut's historical approach to districting. On its face, it is apparent that it does not honor the principle of compactness. The current First Congressional District, for example, has been described as a "lobster claw,"⁴ and the Fifth is no better.⁵ The map divides no fewer than five counties, and fails to conform to natural geographic boundaries. It also fails to respect communities of interest. In addition, it has not achieved political fairness, producing members of Congress who are all of the same political party, contrary to both the state's party membership and recent voting patterns.

It is no coincidence that the 2001 map deviated from historical precedent and, at a minimum, pushed the limits of constitutional compliance. That map was the result of a difficult and partisan process that arose when the 2000 census required Connecticut's congressional delegation to shrink from six members to five. Given that Connecticut

² The sole exception was New Haven County, which was split between the Third and Fifth.

³ Two landmark United States Supreme Court cases handed down in 1964 required reapportionment consistent with the one man - one vote principle. See *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

⁴ <http://www.nationaljournal.com/almanac/2010/area/ct/01>

⁵ In *Shaw v. Reno*, 509 U.S. 630, 647 (1993), the United States Supreme Court noted that "reapportionment is one area in which appearances do matter."

had six incumbent representatives to Congress, all of whom wanted to seek re-election, two incumbents had to be placed in the same congressional district and run against each other. The members of the 2001 Reapportionment Commission thus had a daunting and politically fraught task. As noted at the time, “[s]tate lawmakers who created the new district boundaries acknowledge[d] that their main concern was ensuring a fair fight between [Fifth District democratic Representative James] Maloney and [Sixth District republican Representative Nancy] Johnson.”⁶ The map that was produced is the product of that challenge.

The context in which the 2001 map was created no longer exists. No additional Congressional seats have been lost, and no incumbent is running for Congress in the Fifth District, much less two incumbents running against each other. Consequently, there is no reason for this Court to perpetuate what was a unique and temporary departure from Connecticut’s adherence to constitutional requirements and commitment to traditional redistricting principles.

II. The Court’s Redistricting Task Is Not Simple and Would Benefit From the Appointment of a Qualified, Non-partisan Special Master.

Particularly in light of the flaws apparent in the 2001 redistricting plan, it is clear that the task before the Court involves more than merely tweaking the 2001 map. Were redistricting an easy job, the Reapportionment Commission would itself have done it, or, indeed, the map would have been completed by its predecessor, the Reapportionment Committee. The suggestion that the Court faces simple decisions is also belied by abundant case law. In *Fonfara v. Reapportionment Commission*, 222 Conn. 166, 183 (1992), this Court, citing the United States Supreme Court, recognized that “districting

⁶ Hartford Courant, “NAACP: New Congressional Districts Dilute Minority Vote,” January 29, 2002.

inevitably has and is intended to have substantial political consequences.”

Because of the inevitable political consequences of redistricting and this Court's constitutional mandate to complete the process upon the failure of the Reapportionment Committee and the Reapportionment Commission, a qualified, non-partisan special master should be appointed to assist the Court in complying with its constitutional obligation to ensure that Connecticut's congressional districts adhere to the state and federal constitutions, as well as to well-established principles of redistricting.

Respectfully submitted,

Lawrence Cafero, John McKinney, Leonard Fasano,
and Arthur O'Neill as the Senate and House
Republicans on the Reapportionment Commission

By 

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CERTIFICATION OF COMPLIANCE AND SERVICE

This is to certify that the foregoing complies with all the requirements of Practice Book §§ 62-7 and 66-3.

This is further to certify that on this 23rd day of December, 2011, a copy of the foregoing was mailed electronically to the following counsel of record, who have consented to electronic delivery, in compliance with the requirements of Practice Book § 62-7.

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Ross Garber

1911 to APRIL 1964 CONGRESSIONAL MAP

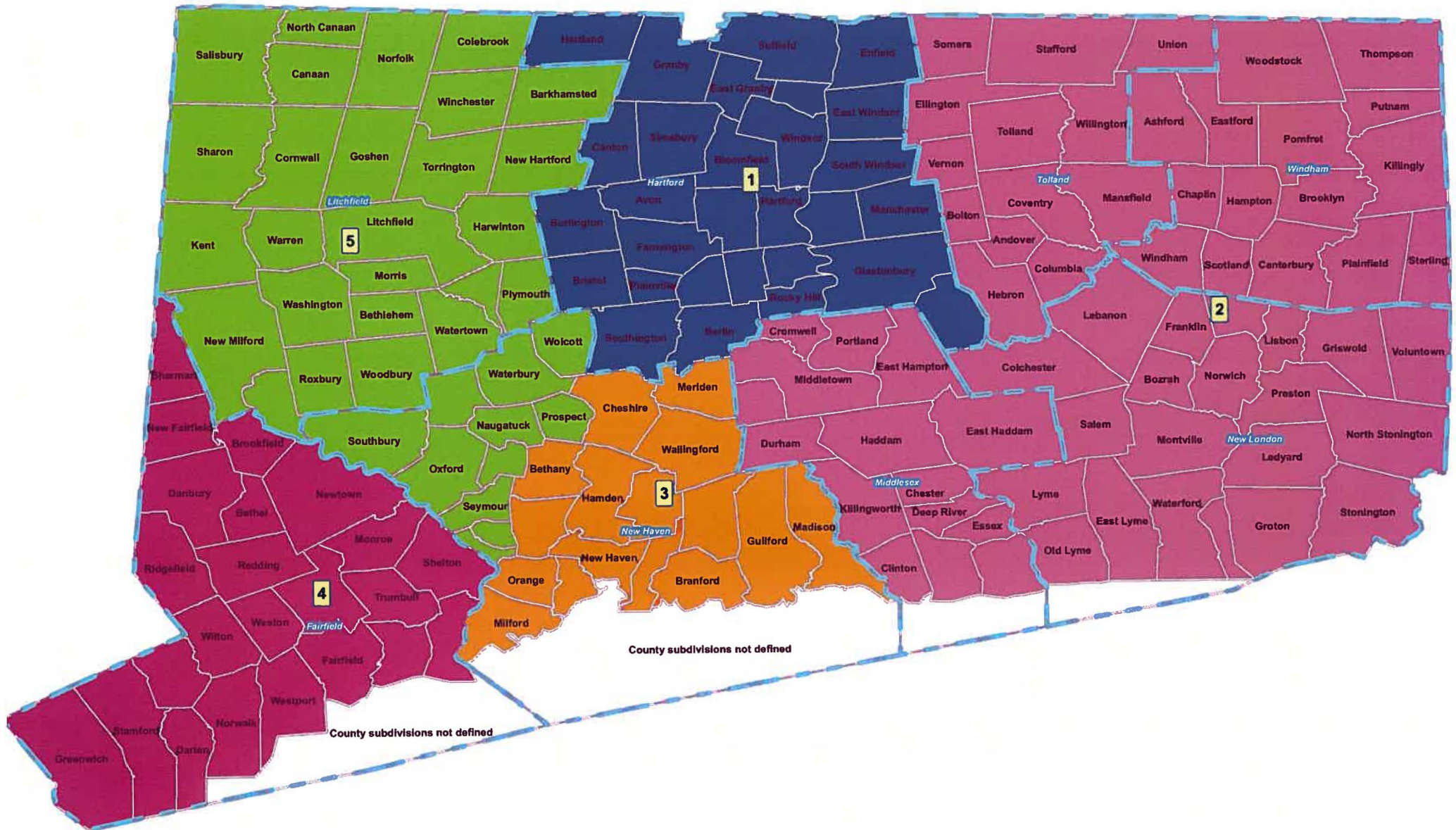


Exhibit A

Congress 1964-71

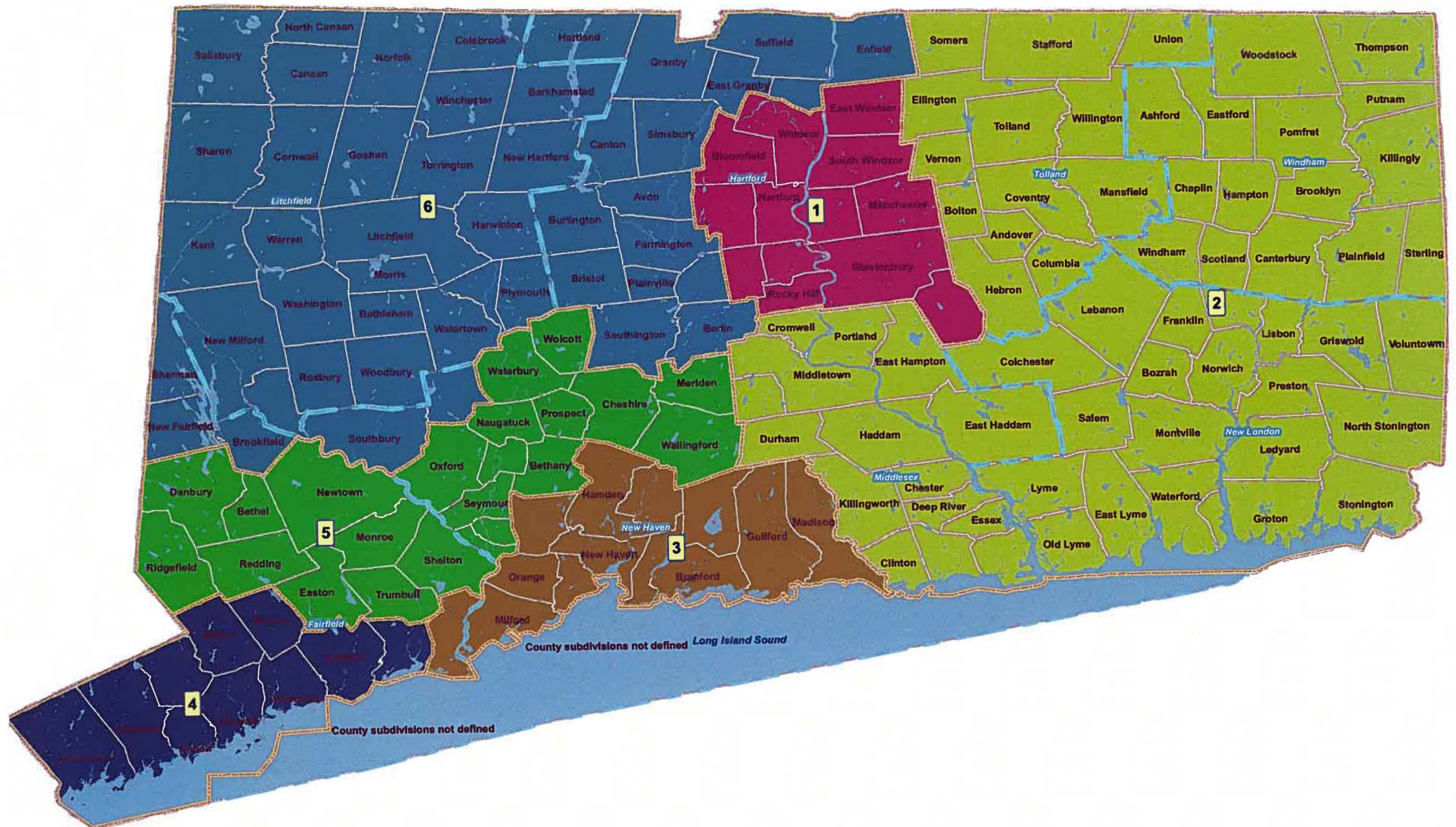


Exhibit B

Connecticut Congress 1972-81

****The splits in the towns of Clinton, Newtown, Portland, Somers and Westport may be slightly inaccurate due to changes in census geography.****

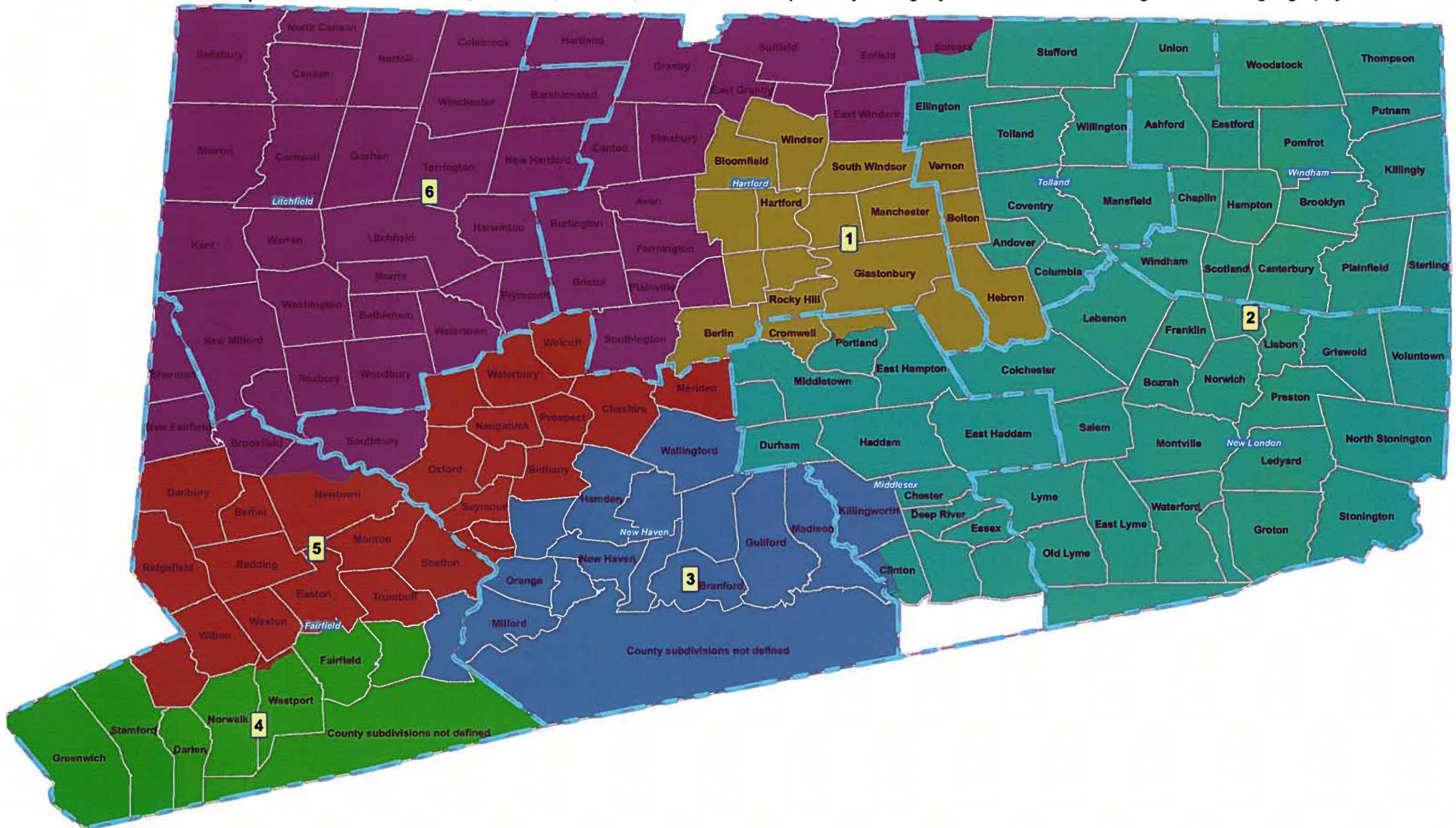


Exhibit C

Congress 1981-91

The split in Trumbull may be slightly inaccurate due to changes in census geography.

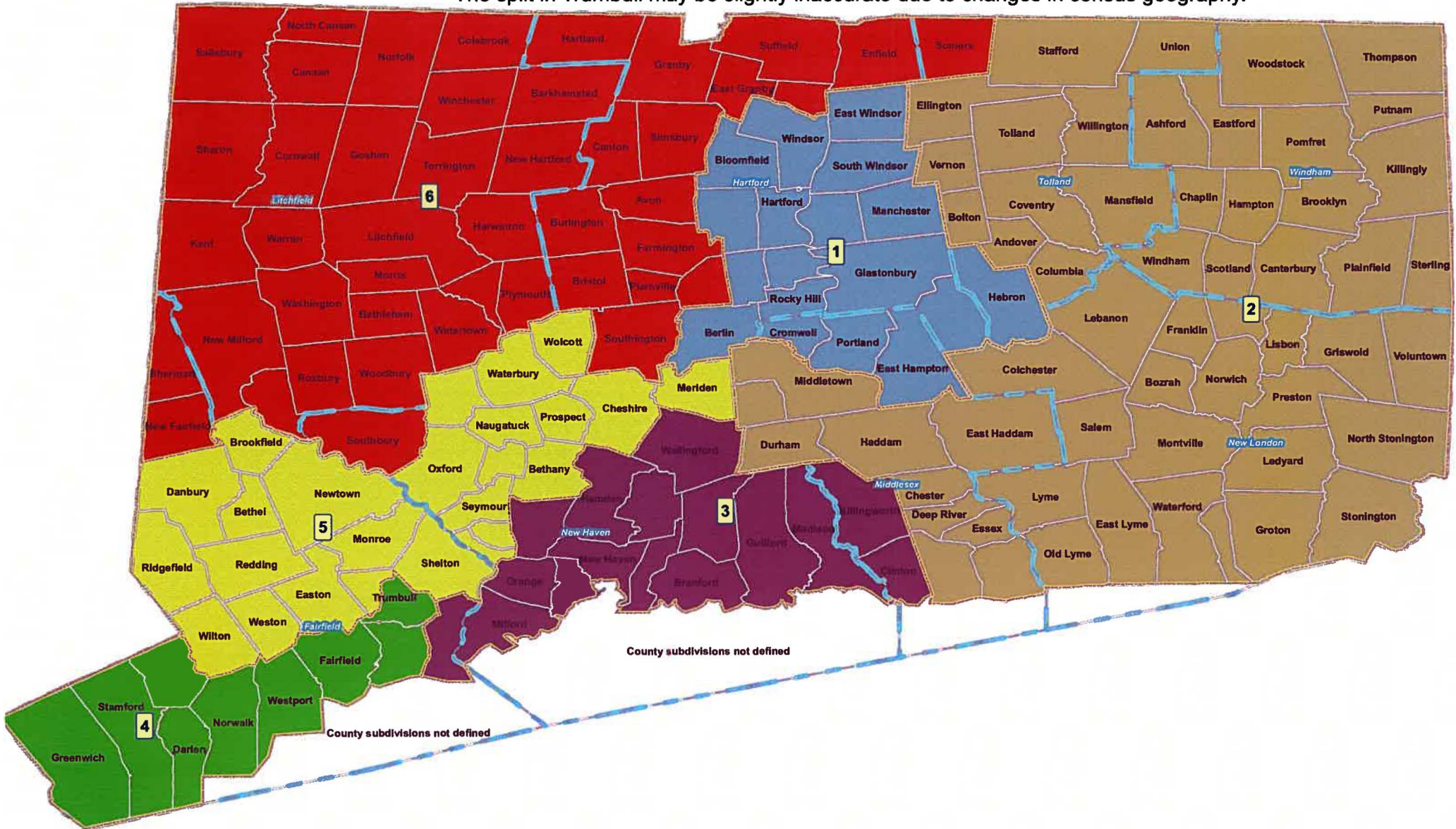


Exhibit D

Congress 1991-2001

****The splits in Bolton, Monroe, Southbury and Woodbridge may be slightly inaccurate due to changes in census geography.****

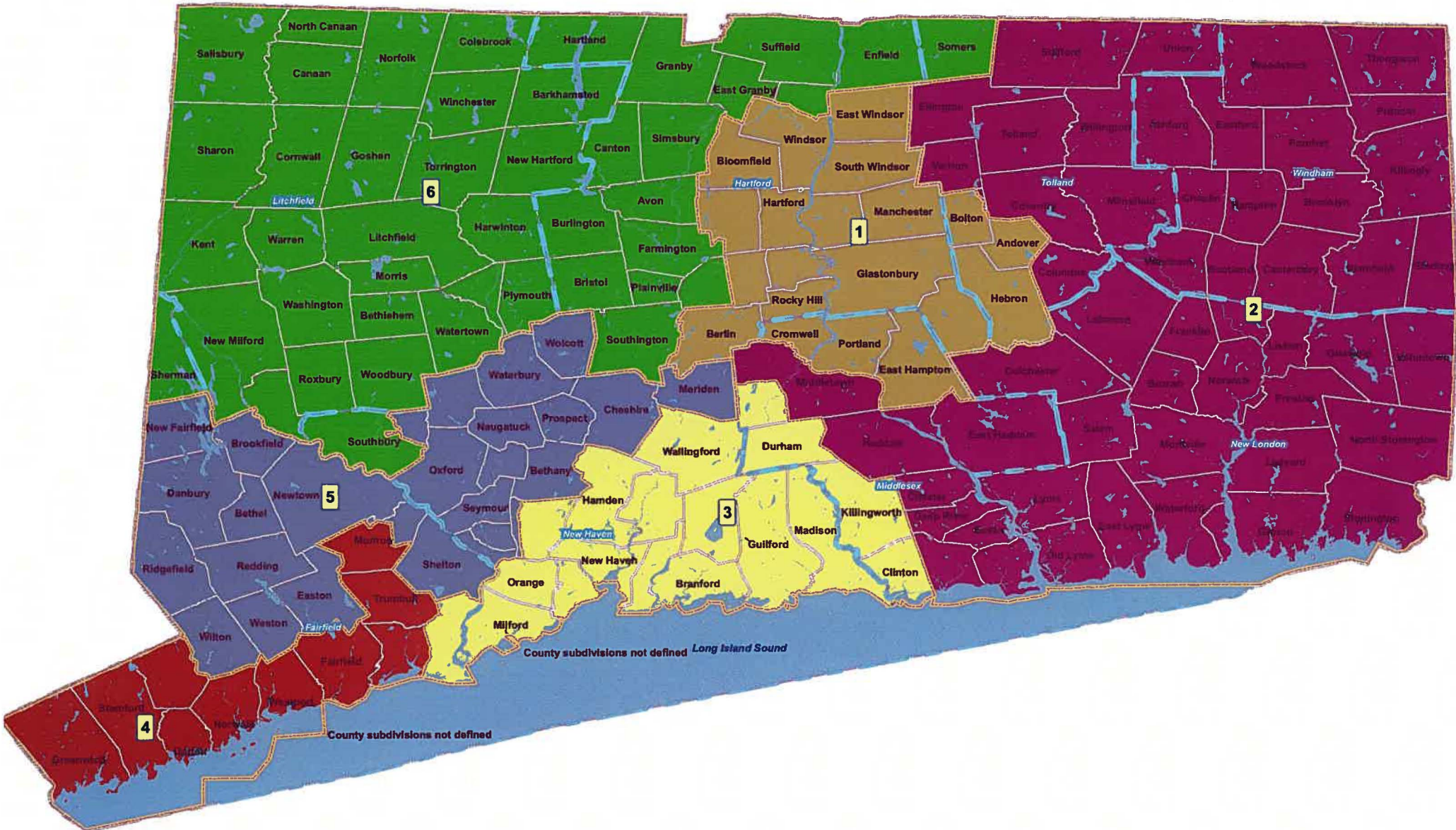


Exhibit E

CONGRESS 2001-2011

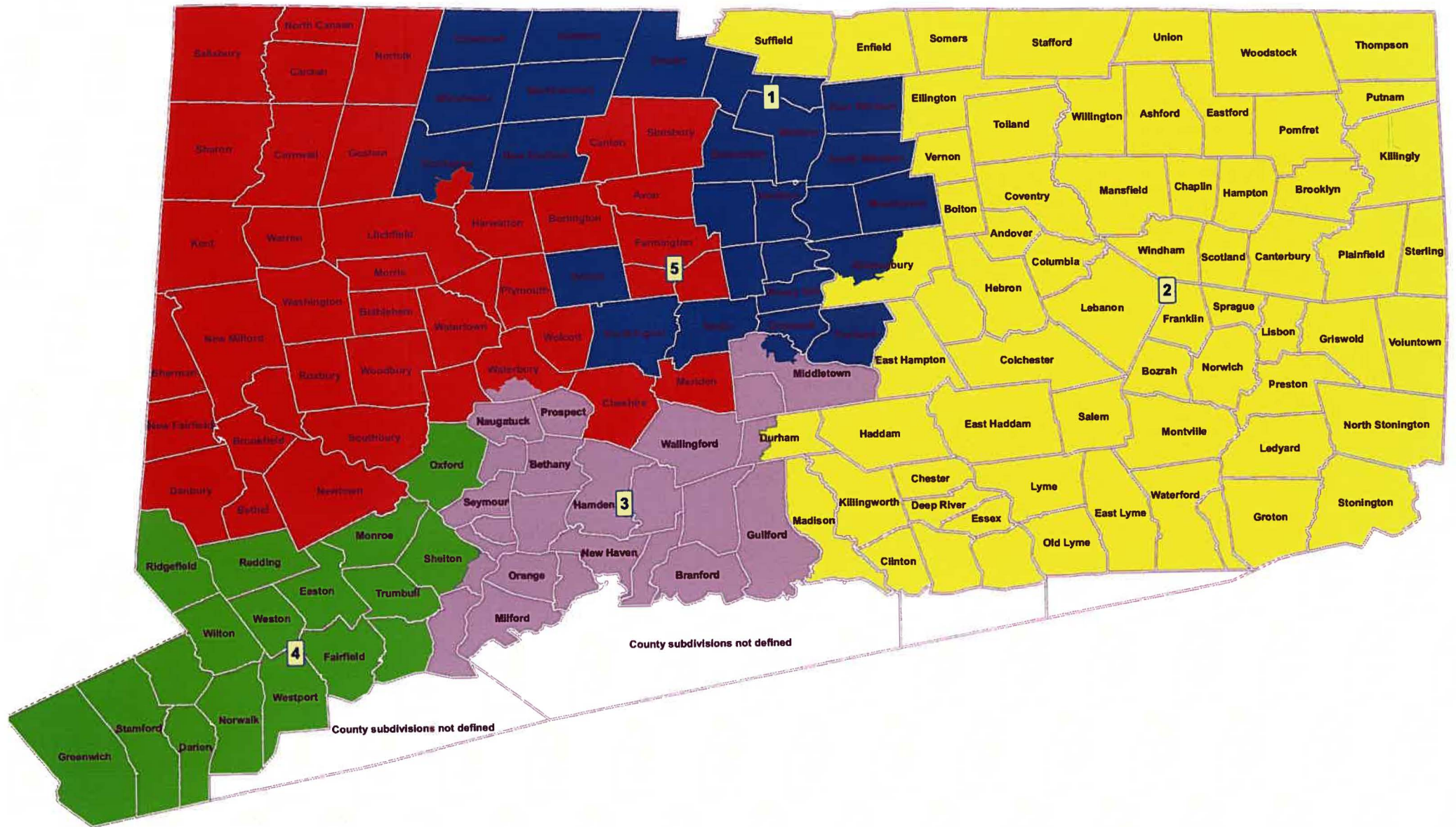


Exhibit F