

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 159 MM 2017

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL,
JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT,
THOMAS RENTSCHLER, MARY ELIZABETH LAW, LISA ISAACS, DON LANCASTER,
JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA
MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE
PETROSKY,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL
ASSEMBLY; THOMAS W. WOLF, IN HIS CAPACITY AS GOVERNOR OF
PENNSYLVANIA; MICHAEL J. STACK III, IN HIS CAPACITY AS LIEUTENANT
GOVERNOR OF PENNSYLVANIA AND PRESIDENT OF THE PENNSYLVANIA
SENATE; MICHAEL C. TURZAI, IN HIS CAPACITY AS SPEAKER OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES; JOSEPH B. SCARNATI III, IN HIS
CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO TEMPORE; ROBERT
TORRES, IN HIS CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA; JONATHAN M. MARKS, IN HIS CAPACITY AS COMMISSIONER OF
THE BUREAU OF COMMISSIONS, ELECTIONS, AND LEGISLATION OF THE
PENNSYLVANIA DEPARTMENT OF STATE,

Respondents.

BRIEF OF AMICUS CURIAE FAIR DEMOCRACY

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Philadelphia, PA 19103
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Pennsylvania Constitution Article 1, Section 51, 2, 4

INTRODUCTION

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(1)(iii), amicus curiae Fair Democracy submits this brief in support of its request that the Court adopt one of its two alternative proposed plans as Pennsylvania's new Congressional districting plan. This appeal, and the opportunity to propose its districting plans in the appeal, are of particular concern to Fair Democracy because it has a strong interest in ensuring free and equal voting rights, as mandated in Pennsylvania by Article 1, Section 5 of the Pennsylvania Constitution. It believes that its proposed plans will better achieve these goals and are superior with respect to the indicators this Court has identified than the plans that others will submit. Fair Democracy's proposed plans will have fewer split counties, municipalities, boroughs, and precincts than any other proposed plan. Its plans will have more compact districts than those of other plans. Its plans will also achieve fairness because they ensure that incumbent representatives who are running for re-election remain in their home districts.

STATEMENT OF INTEREST

Fair Democracy is a nonprofit unincorporated association that is a social welfare organization under 26 U.S.C. §501(c)(4) and registered with the Internal Revenue Service. Fair Democracy was established and operates to promote social welfare, including ensuring voting rights in this country. Fair Democracy has a

strong interest in ensuring free and equal voting rights, as mandated in Pennsylvania by Article 1, Section 5 of the Pennsylvania Constitution, including by preventing the dilution of individuals' electoral power, preventing the corruption of elections by gerrymandering and partisan dilution of votes, and preventing the deprivation of voters' state constitutional right to free and equal elections.

Advocacy in the area of fair districting is an important part of Fair Democracy's mission. Fair Democracy has followed this appeal closely because it has an interest in the issues of fair and equal voting representation that it raises, as well as in the Court's announced intent to adopt a fair, new redistricting plan for Pennsylvania. Fair Democracy is aware that the Court has allowed the participation of a number of intervenors and amici to help inform it on the important public issues pertinent to this appeal, and that, to that end, the Court has invited the submission of proposed redistricting plans for the Court and its appointed master, Nathaniel Persily, to consider in adopting Pennsylvania's new plan. Fair Democracy is participating as an amicus curiae in order to propose to the Court two alternative Congressional redistricting maps that will comply with the requirements of the Pennsylvania Constitution, that more accurately reflect the partisan makeup of the Commonwealth, and that are more compact with minimal splits of counties and municipalities, while not removing any incumbent

representative who is running for re-election from that representative's home district.

In connection with this appeal, and with the hope of contributing positively to the Court's adoption of a new districting plan for Pennsylvania, Fair Democracy retained an experienced consulting firm, Haystaq DNA ("Haystaq"), to prepare two alternative districting maps for Pennsylvania that Fair Democracy could propose to this Court as fair, constitutional, and non-partisan alternatives to Pennsylvania's current Congressional plan. Fair Democracy believes that these proposed plans are superior to those in the plans that others will submit with respect to the indicators this Court has identified. For that reason, it has an interest in presenting its proposed plans to this Court and advocating for their adoption in this appeal.

Pursuant to Pa. R.A.P. 531(b), the amicus curiae states that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

SUMMARY OF ARGUMENT

The Court should adopt one of Fair Democracy's two alternative proposed districting plans as Pennsylvania's Congressional district plan. As Fair Democracy has established, and as its submissions and data show, the proposed plans meet the criteria this Court has identified for a fair, non-partisan district plan that complies with Pennsylvania's constitutional guarantee of free and equal elections. The plans

more accurately reflect the partisan makeup of the Commonwealth. They incorporate districts that are more compact under a number of different measures. They split fewer counties, municipalities, and voting districts than the current plan. They avoid unfairness because they ensure that incumbent representatives who are running for re-election remain in their home districts. They are politically neutral, fair, and constitutional because they achieve a configuration that more accurately reflects the partisan composition of the electorate, rather than packing Democratic voters into a small handful of districts and diluting their votes.

ARGUMENT

I. THIS COURT REQUESTED THE SUBMISSION OF PROPOSALS FOR A FAIR AND NON-PARTISAN CONGRESSIONAL REDISTRICTING PLAN THAT WILL COMPLY WITH ARTICLE 1, SECTION 5 OF THE PENNSYLVANIA CONSTITUTION

By order dated January 22, 2018, this Court held that Pennsylvania's current Congressional districting plan violates Article 1, Section 5 of the Pennsylvania Constitution due to its partisan gerrymandering of Congressional districts which favors the election of Republican candidates and disfavors the election of Democratic candidates, and therefore fails to ensure fair and equal voting. The Court ordered that if the General Assembly did not submit a congressional districting plan on or before February 9, 2018, or if the Governor should not approve the General Assembly's plan on or before February 15, 2018, the Court "shall proceed expeditiously to adopt a plan based on the evidentiary record

developed in the Commonwealth Court,” and that “[i]n anticipation of that eventuality, the parties shall have the opportunity to be heard; to wit, all parties and intervenors may submit to the Court proposed remedial districting plans on or before February 15, 2018.” Order at 2-3. The Court stated that

any congressional districting plan shall consist of congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.

Id. at 3.

In a follow-up Order dated January 26, 2018, the Court made several orders “in anticipation of the possible eventuality that the General Assembly and the Governor do not enact a remedial congressional districting plan by the time periods specified in [the Court’s January 22, 2018 Order].” Those orders included the appointment of Professor Nathaniel Persily “as an advisor to assist the Court in adopting, if necessary, a remedial congressional redistricting plan.” The court also ordered that “any redistricting plan the parties or intervenors choose to submit to the Court for consideration include the following”:

- a. A 2010 Census block equivalency and ESRI shape file expressing the plan;

b. A report detailing the compactness of the districts according to each of the following measures: Reock; Schwartzberg; Polsby-Popper; Population Polygon; and Minimum Convex Polygon;

c. A report detailing the number of counties split by each district and split in the plan as a whole;

d. A report detailing the number of municipalities split by each district and the plan as a whole;

e. A report detailing the number of precincts split by each district and the plan as a whole;

f. A statement explaining the proposed plan's compliance with this Court's Order of January 22, 2018.

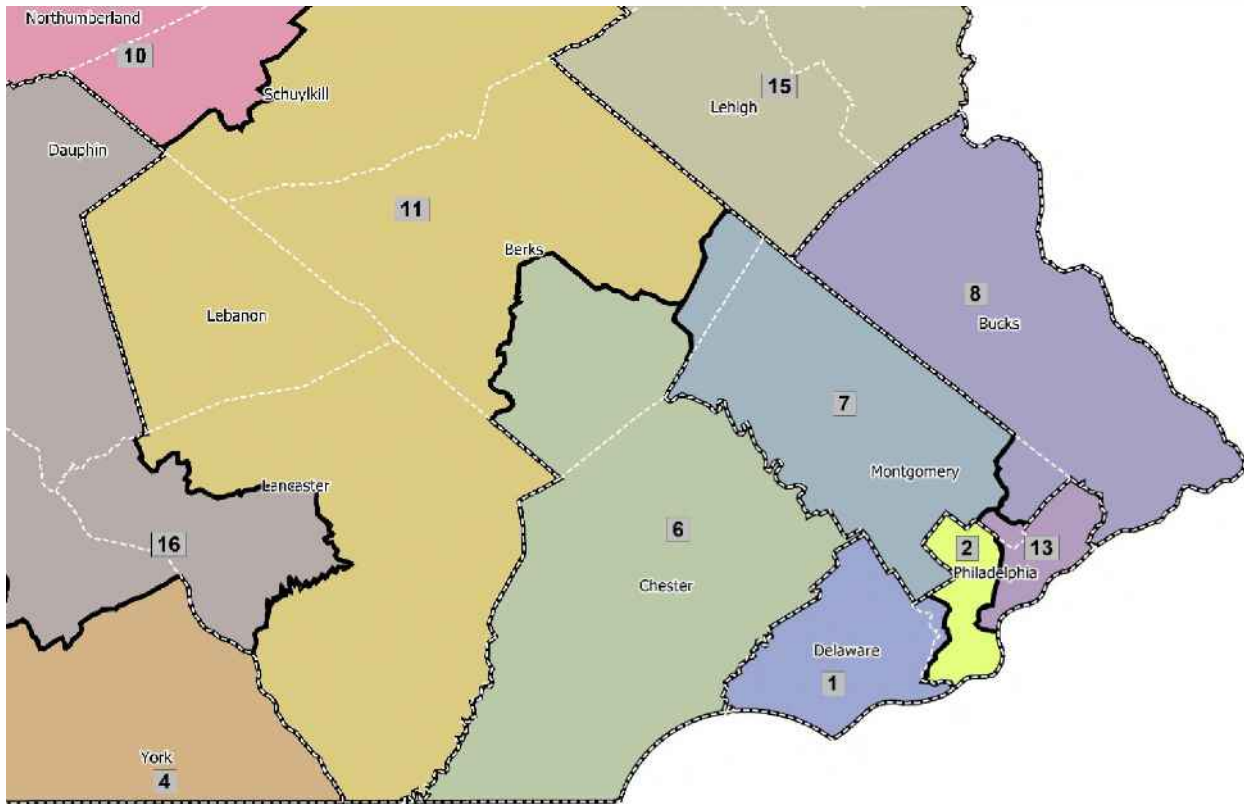
II. FAIR DEMOCRACY HAS PREPARED TWO ALTERNATIVE CONGRESSIONAL DISTRICTING PLANS TO ASSIST THIS COURT IN ADOPTING A NEW DISTRICTING PLAN FOR PENNSYLVANIA

In connection with this appeal, Fair Democracy directed its consultant to prepare districting maps for Pennsylvania that meet the requirements set forth in this Court's order of January 26, 2018, and that Fair Democracy could propose to this Court as fair, constitutional, and non-partisan alternatives to Pennsylvania's current Congressional plan. Two alternative redistricting plans were prepared, "FD1" and "FD2". The two plans are essentially identical except for the configuration of the proposed Congressional districts in Southeastern Pennsylvania

and Lehigh County. In “FD1,” Montgomery County is divided among three different Congressional districts, while the entirety of Lehigh County and Delaware County are each in one Congressional district. In “FD2,” Montgomery County, Lehigh County, and Delaware County are each divided among two different Congressional districts. The configurations of proposed Congressional districts 1, 2, 7, 8, 10, 11, 13, and 15 differ between the two alternative proposed plans. *See* Figures 1 through 4 below.

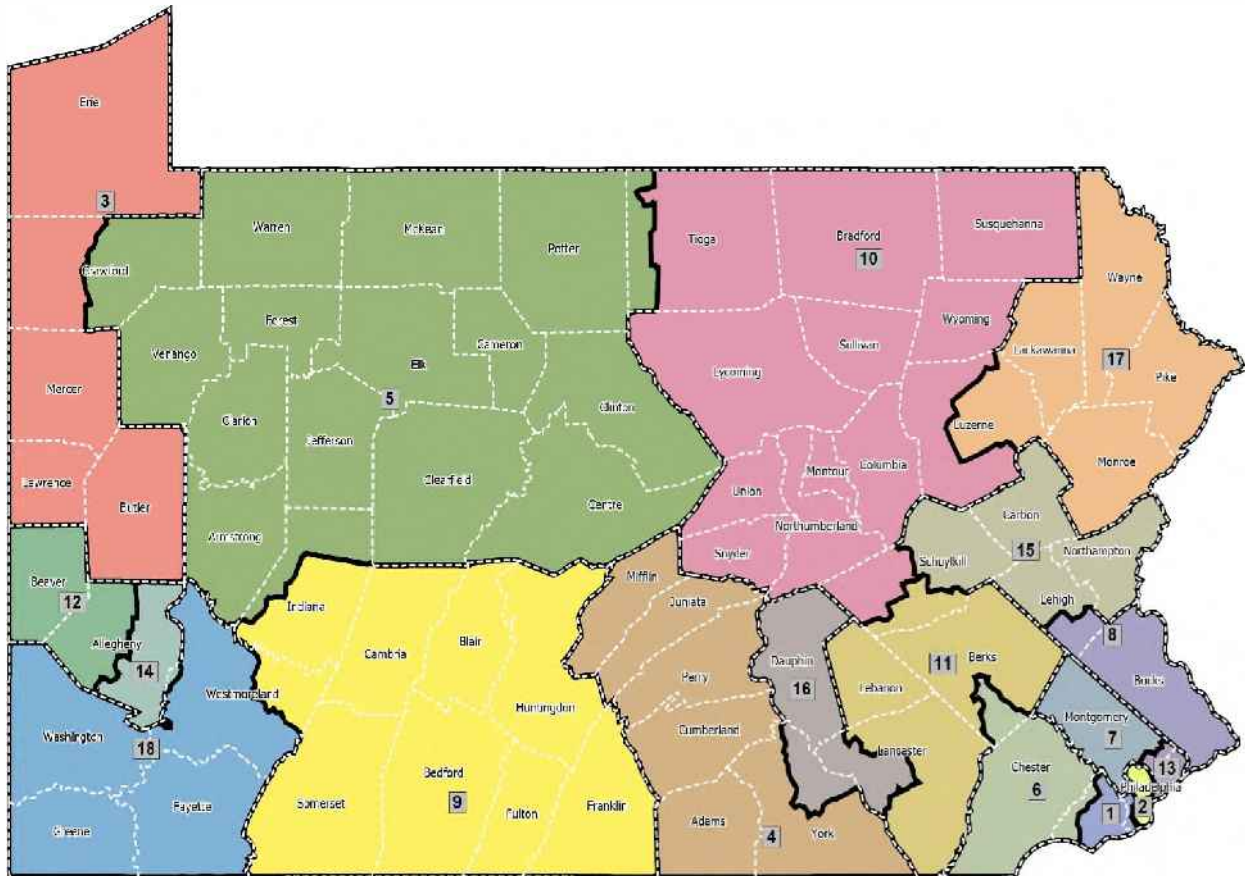
The maps of the districts in the two alternative proposed plans are set forth hereto as Appendices A and B, respectively, and the statewide maps and maps for Southeastern Pennsylvania for both proposals are identified below as well. Fair Democracy also proposes to submit to the Court the detailed data used in the plan in electronic form (thumb drive) simultaneously with the electronic filing of its application for leave to file amicus brief and its amicus brief.

The map of Fair Democracy's proposed FD1 plan for Southeastern Pennsylvania (**Figure 2**) is as follows:

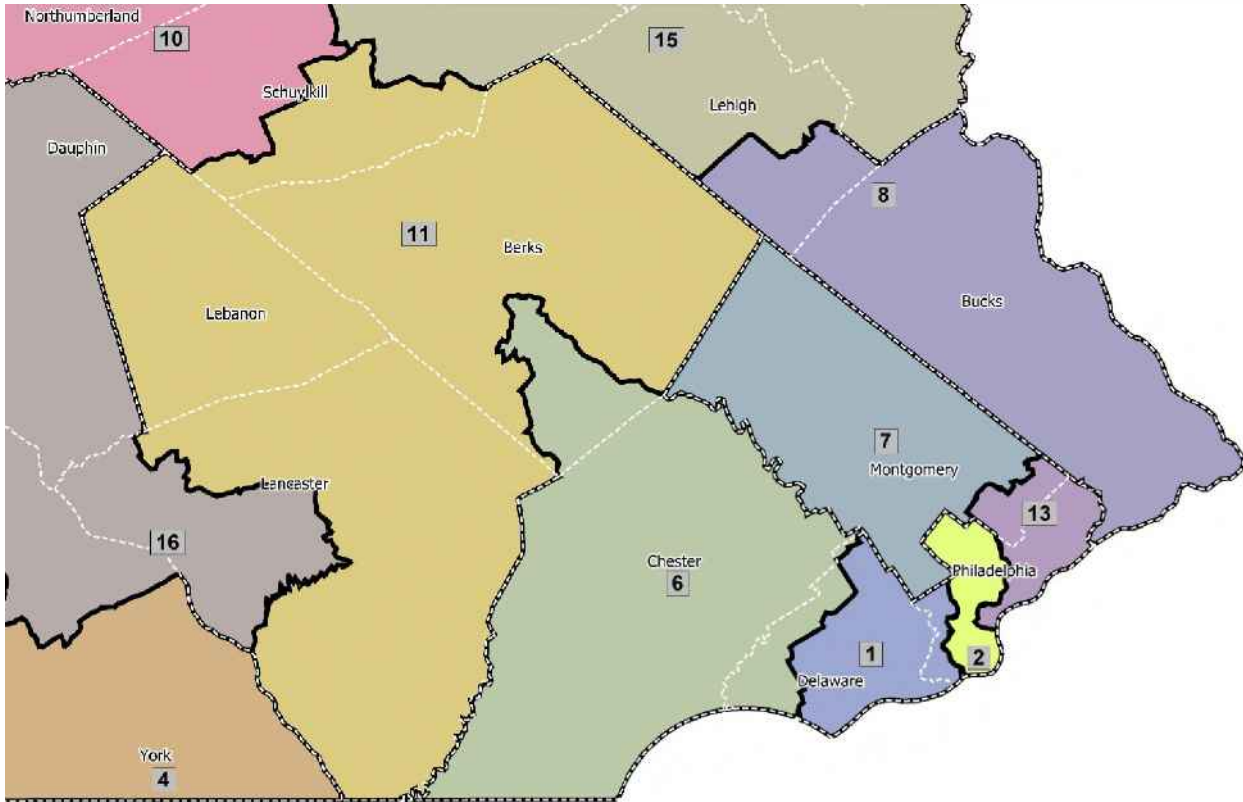


B. The Proposed FD2 Plan

The statewide map of Fair Democracy's proposed FD2 plan (**Figure 3**) is as follows:



The map of Fair Democracy’s proposed FD2 plan for Southeastern Pennsylvania (**Figure 4**) is as follows:



III. FAIR DEMOCRACY’S PROPOSED PLANS ARE SUPERIOR TO OTHER PROPOSALS

The alternative plans that Fair Democracy’s consultant prepared are superior to other proposals because they more accurately reflect the partisan makeup of the state and incorporate districts that are more compact and have fewer splits than the current plan. The unfairness of a new plan is avoided because both proposed plans ensure that incumbent representatives who are running for re-election remain in

their home districts. The maps were also drawn to ensure that, as in the current plan, District 2 would remain more than 50% African-American. In FD1, District 13 would be more than 50% minority voters. In FD2, District 1 would be approximately 50% minority voters.

Each of Fair Democracy's alternative proposed plans includes the following elements as required by this Court's January 26, 2018 Order:

- a. a 2010 Census block equivalency and ESRI shape file expressing the plan;
- b. a report detailing the compactness of the districts according to each of the following measures: Reock; Schwartzberg; Polsby-Popper; Population Polygon; and Minimum Convex Polygon;
- c. a report detailing the number of counties split by each district and split in the plan as a whole;
- d. a report detailing the number of municipalities split by each district and the plan as a whole;
- e. a report detailing the number of precincts split by each district and the plan as a whole.

As discussed below, both of the proposed plans comply with this Court's Order of January 22, 2018, for the following reasons.

First, Fair Democracy believes that the greater geographic compactness and smaller number of splits on both of its proposed plans are superior to those in the plans that others will submit. Fair Democracy believes that both of its proposed plans will have fewer splits than any other plan that will be proposed, and will therefore satisfy the criteria this Court has identified for a new redistricting plan. Both of Fair Democracy's plans significantly reduce the numbers of splits of counties and municipalities: while the current Pennsylvania map splits 28 counties, Fair Democracy's FD1 plan splits only 13 counties, and its FD2 plan splits only 14 counties. While the current Pennsylvania map splits 68 municipalities, Fair Democracy's FD1 plan splits only 37 municipalities and its FD2 plan splits only 36.

Second, both of Fair Democracy's proposed plans also substantially revise and simplify the districts, including the most problematic districts identified in the Court's opinion such as the 7th District. Rather than "Goofy kicking Donald Duck," the 7th District in both of Fair Democracy's plans is a logically shaped district that generally follows county lines without "wandering," "jutting," or "sprawling" appendages. Fair Democracy's proposed plans do not split Montgomery County, the third most populous county in the Commonwealth, among 5 districts, as the previous plan did, which prevented it from constituting a majority in any district. The other districts in Fair Democracy's proposed plans

(including the 1st, 3rd, and 12th Districts) are likewise devoid of the “isthmuses,” “tentacles,” and “geographic idiosyncrasies” that the Court found rife in Pennsylvania’s current plan, and instead follow the integrity of the political subdivisions they encompass.

Third, Fair Democracy’s proposed plans were intentionally drawn with voting precinct boundaries in mind, and they split a very small number of voting districts (the FD1 plan splits only 36, and the FD2 plan splits only 35, of the statewide total of 9,253).

Fourth, both of Fair Democracy’s proposed plans are more compact than Pennsylvania’s existing plan, under a number of objective indicia. The current Pennsylvania district map has a total perimeter of 7,220.73 miles, while that of Fair Democracy’s FD1 plan is 4,544.80 miles and that of its FD2 plan is 4581.11 miles— both of which are less than two-thirds of the existing plan’s total borders. Fair Democracy’s proposed plans are also significantly more compact than the existing plan as indicated by other measures.

Specifically, Fair Democracy’s **FD1** plan is more compact than the existing plan as indicated by each of the following measures: Reock (.46 compactness on average as compared to current plan’s .278); and Polsby-Popper (.36 compactness on average as compared to current plan’s .164). The compactness of the FD1 plan

by the population polygon measure is .74, by the Schartzberg measure is 1.61, and by the minimum convex polygon is 0.79.

And Fair Democracy's **FD2** plan is more compact than the existing plan as indicated by each of the following measures: Reock (.46 compactness on average as compared to current plan's .278); and Polsby-Popper (.35 compactness on average as compared to current plan's .164). The compactness of the FD1 plan by the population polygon measure is .73, by the Schartzberg measure is 1.63, and by the minimum convex polygon measure is 0.78.

The compactness of the current Pennsylvania plan and of both of Fair Democracy's alternative proposed plans (under the Reock and Polsby-Popper indices) were also compared to the compactness of other states' districting plans. In contrast with Pennsylvania's current plan, which ranks among the worst in the country in compactness (it is among the 7 worst states in the country on **both** the Reock and the Polsby-Popper indices), both of Fair Democracy's proposed plans for Pennsylvania would rank among the best in the country in compactness (among the 4 best states on the Reock index, and among the 5 best on the Polsby-Popper index).

A number of data sources were utilized to evaluate the partisan makeup of Fair Democracy's proposed plans, including 2011 adjusted Census data, statewide election results from 2000 to 2016, and partisan voter registration data. Both of

Fair Democracy's proposed plans are politically neutral, fair, and constitutional because they more accurately reflect the partisan makeup of Pennsylvania. They now achieve a configuration that more accurately reflects the partisan composition of the electorate, rather than packing Democratic voters into a small handful of districts.

Fair Democracy believes that its proposed alternative plans represent a fair and constitutional redistricting plan for Pennsylvania as contemplated in the Court's Orders of January 22 and 26, 2018, and its Opinion issued on February 7, 2018; are superior to other proposals; and that the Court should adopt one of Fair Democracy's two alternative plans as Pennsylvania's new districting plan.

CONCLUSION

For the foregoing reasons, amicus curiae Fair Democracy requests that the Court adopt one of its proposed plans as Pennsylvania new districting plan.

Dated: February 15, 2018

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

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CERTIFICATE OF COMPLIANCE

It is hereby certified that this brief is in compliance with the word count limitations of Pennsylvania Rule of Appellate Procedure 2135 because this brief does not exceed 7,000 words as calculated by the Word Count feature of Microsoft Word 2010, excluding the materials specified in Pa. R. A. P. 2135(b).

Dated: February 15, 2018

/s/ John P. Lavelle, Jr.
John P. Lavelle, Jr.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 15, 2018

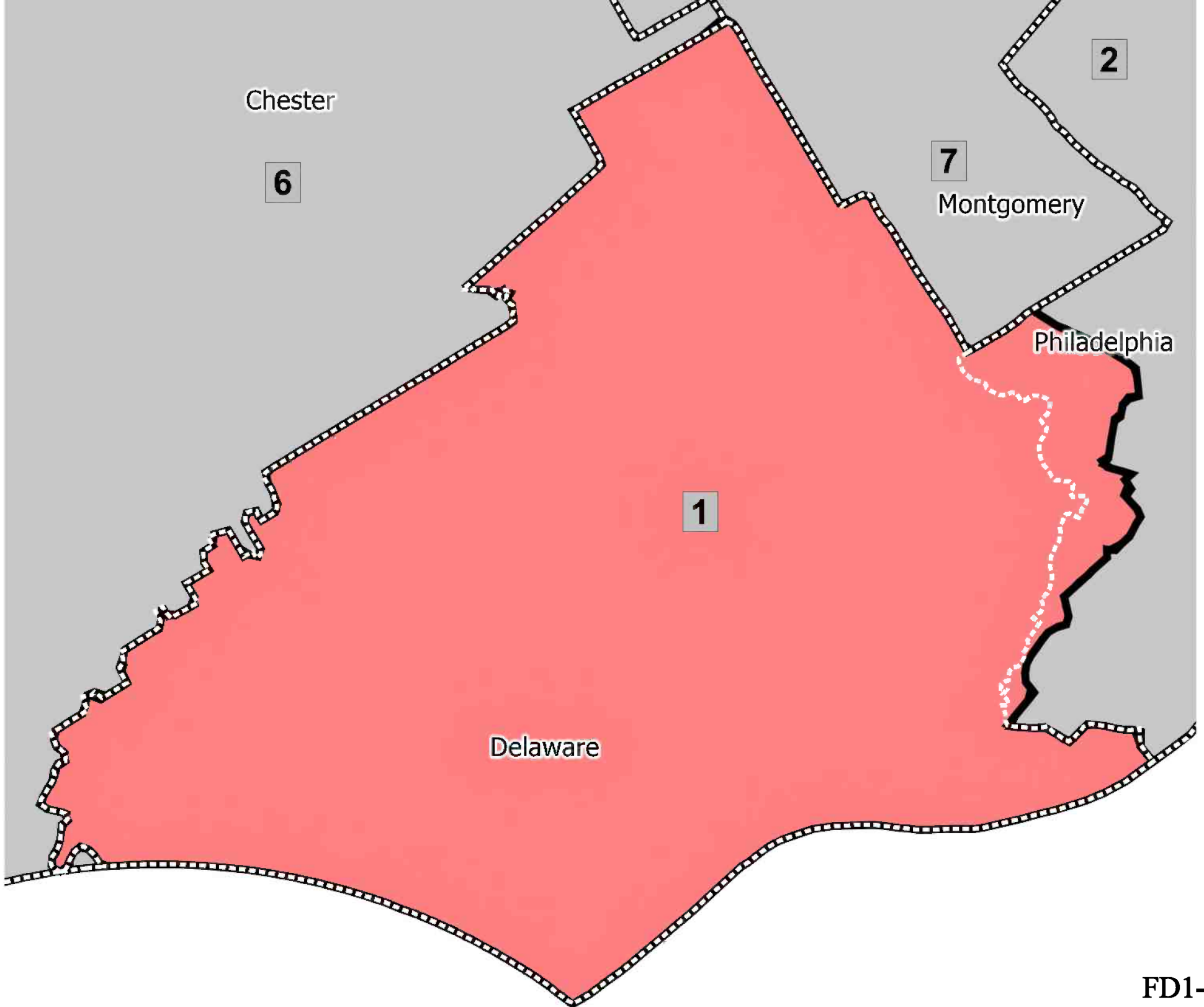
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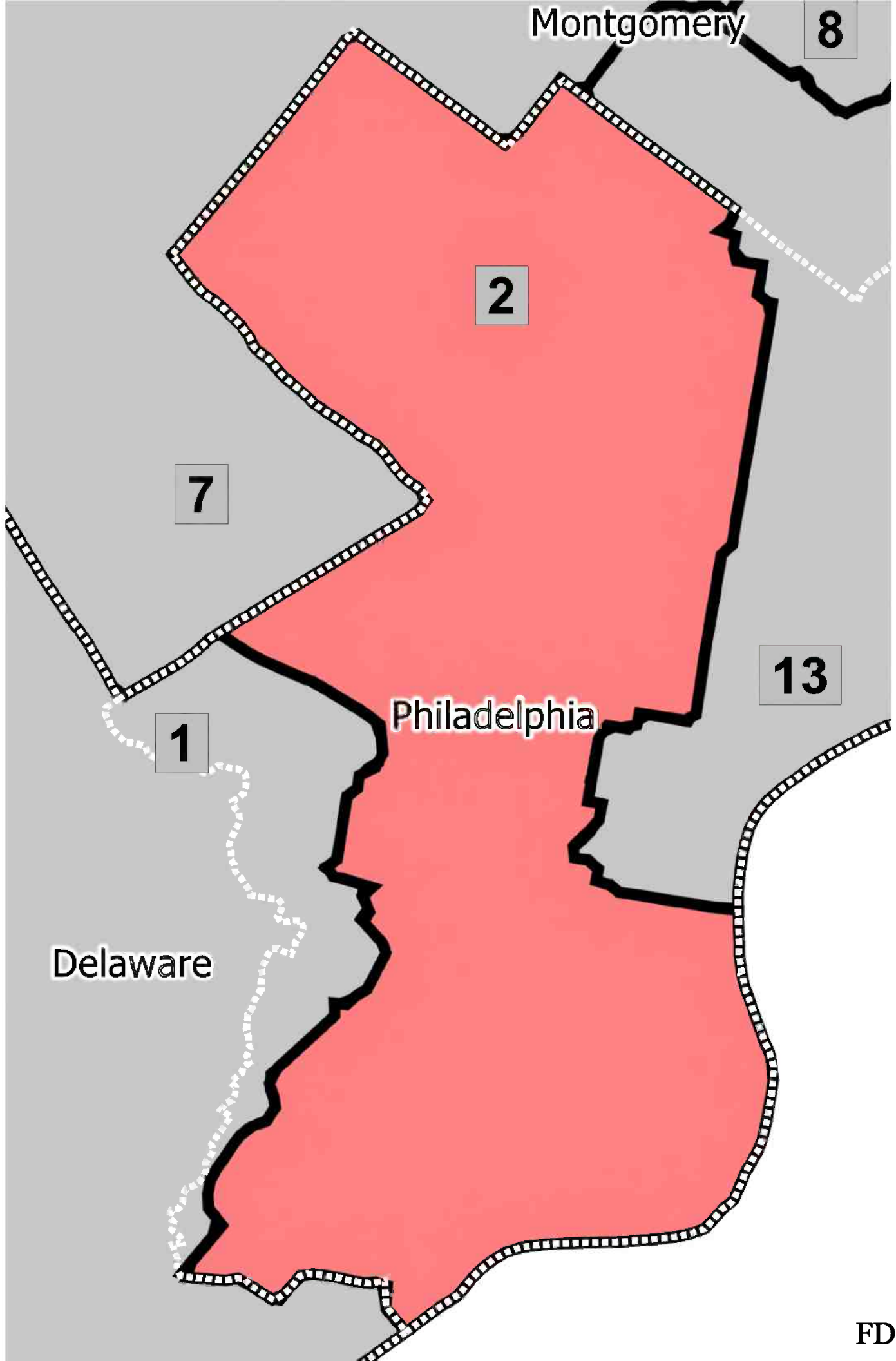
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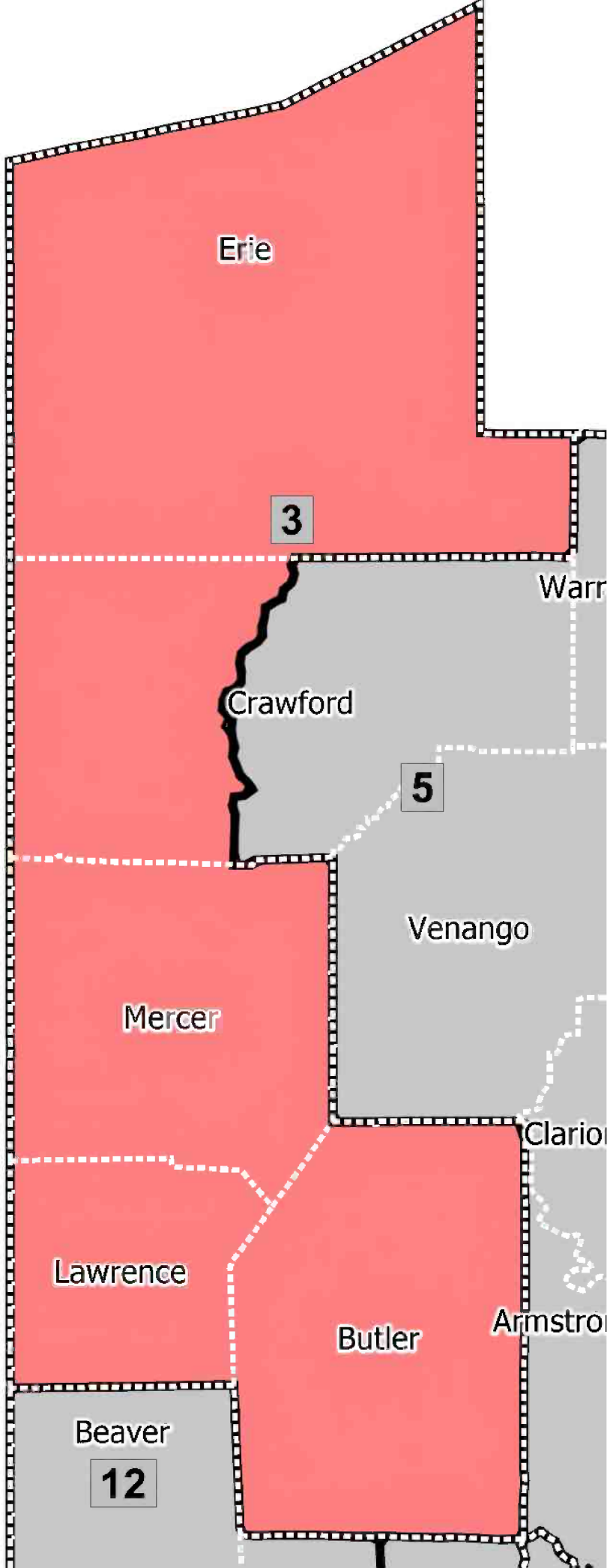
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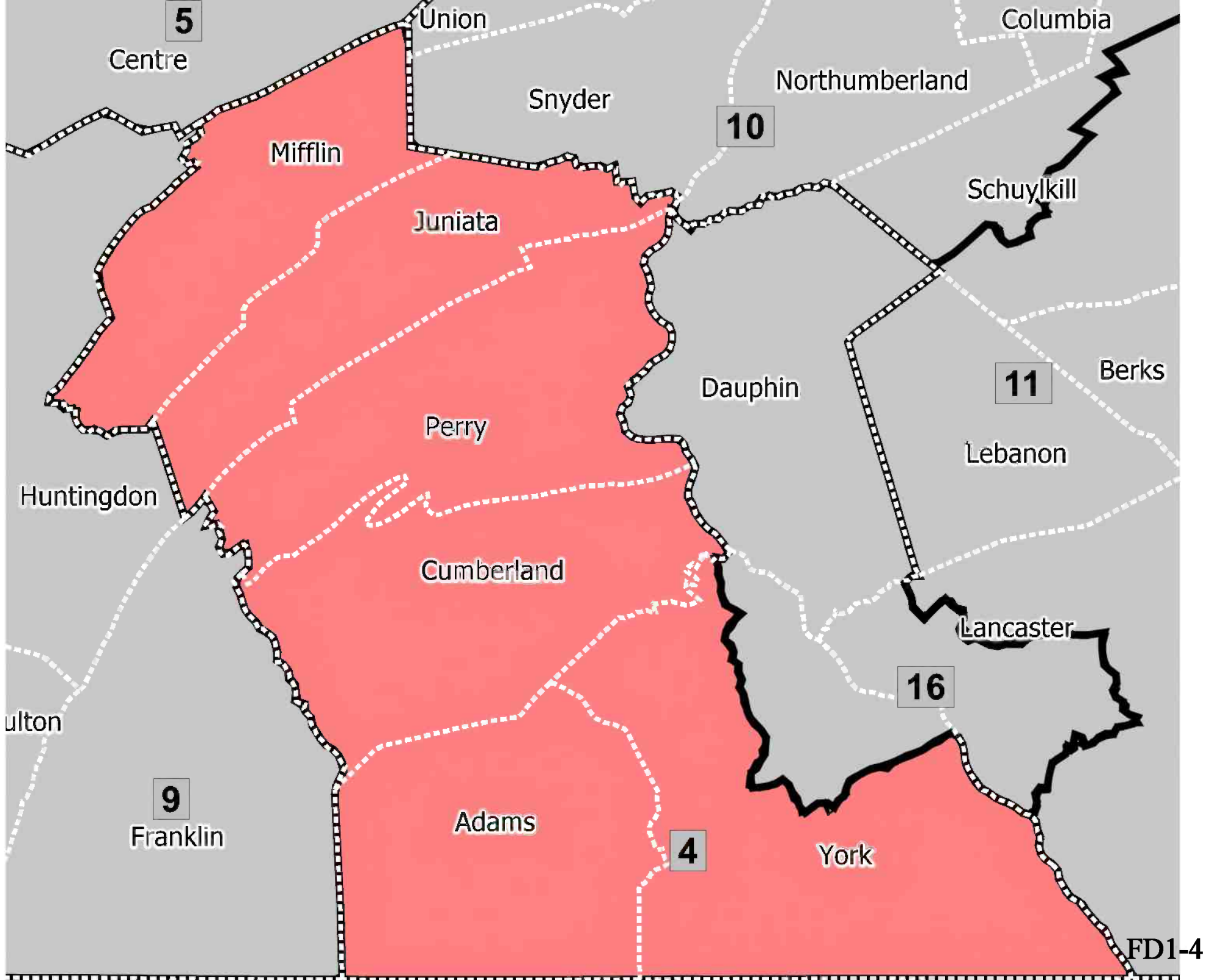
Attorney No. (if applicable): 54279

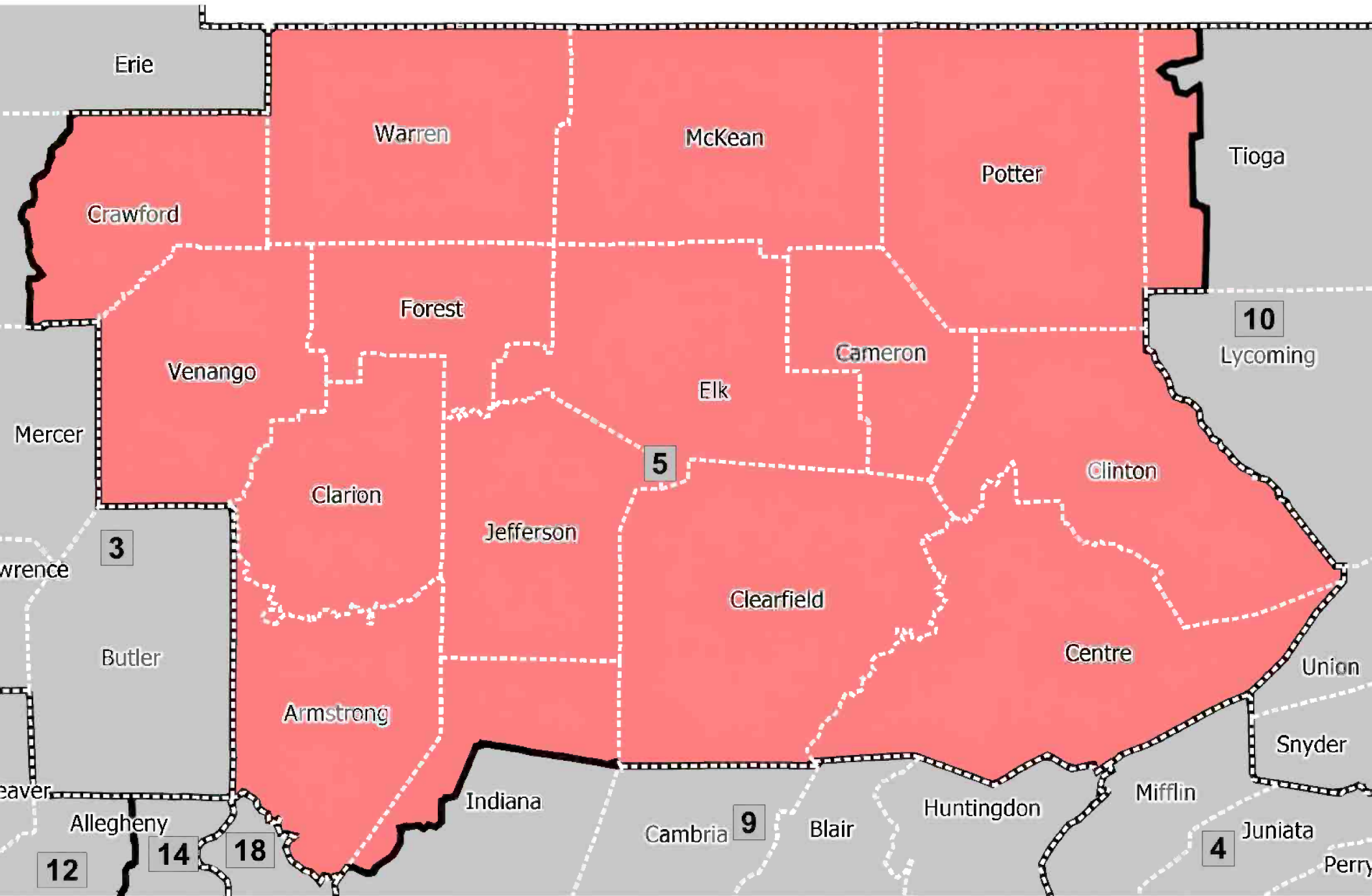
APPENDIX A

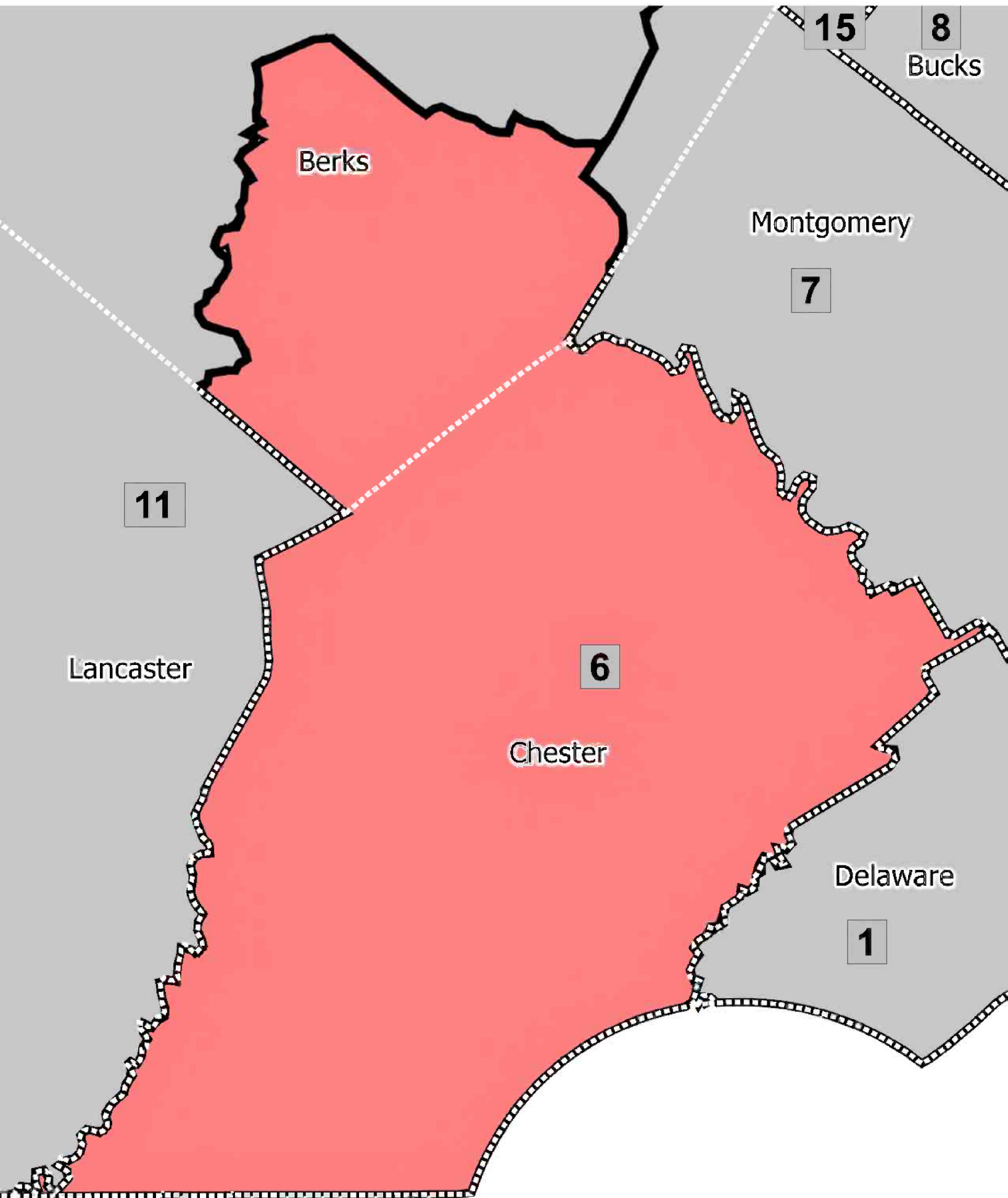


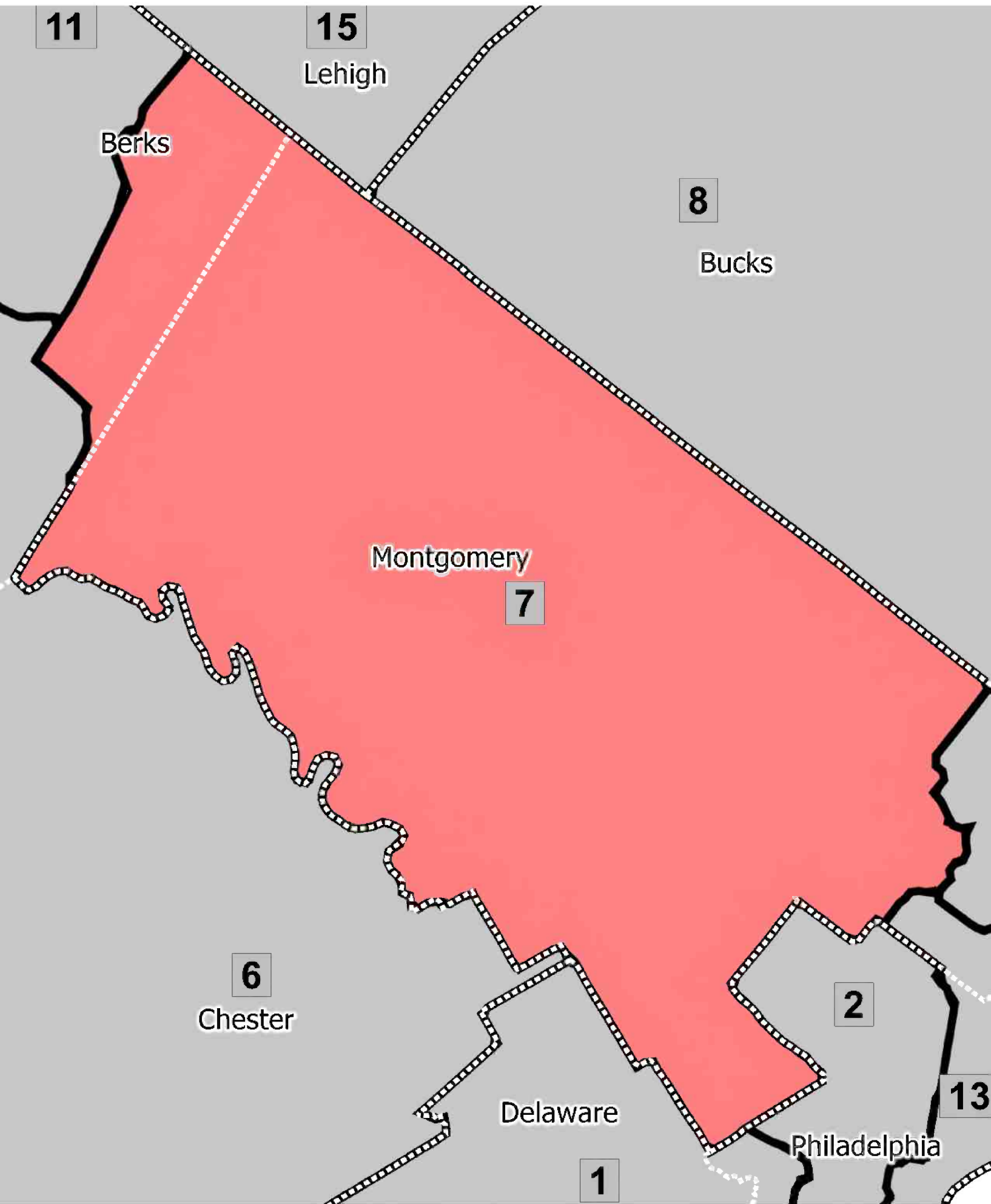


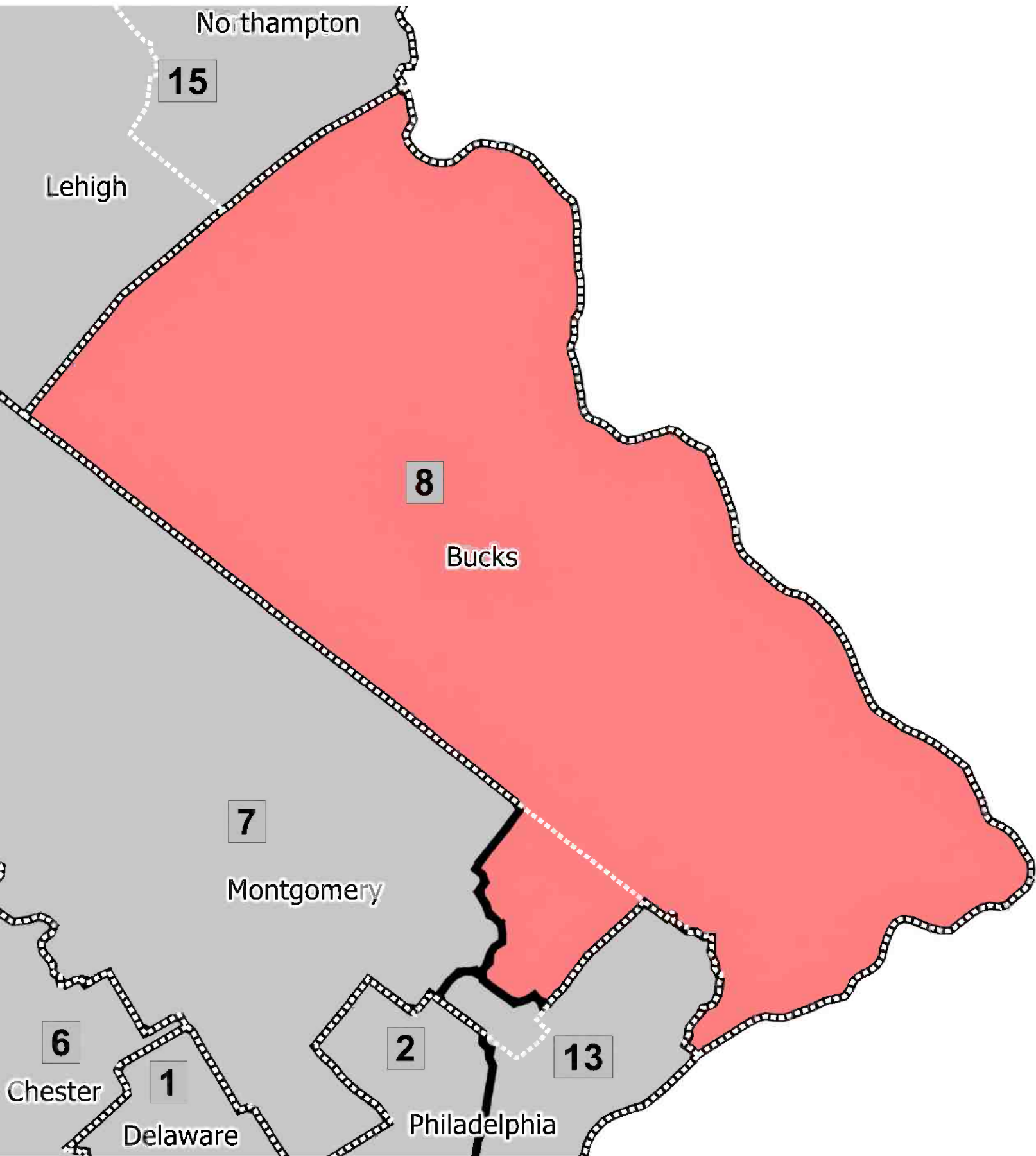


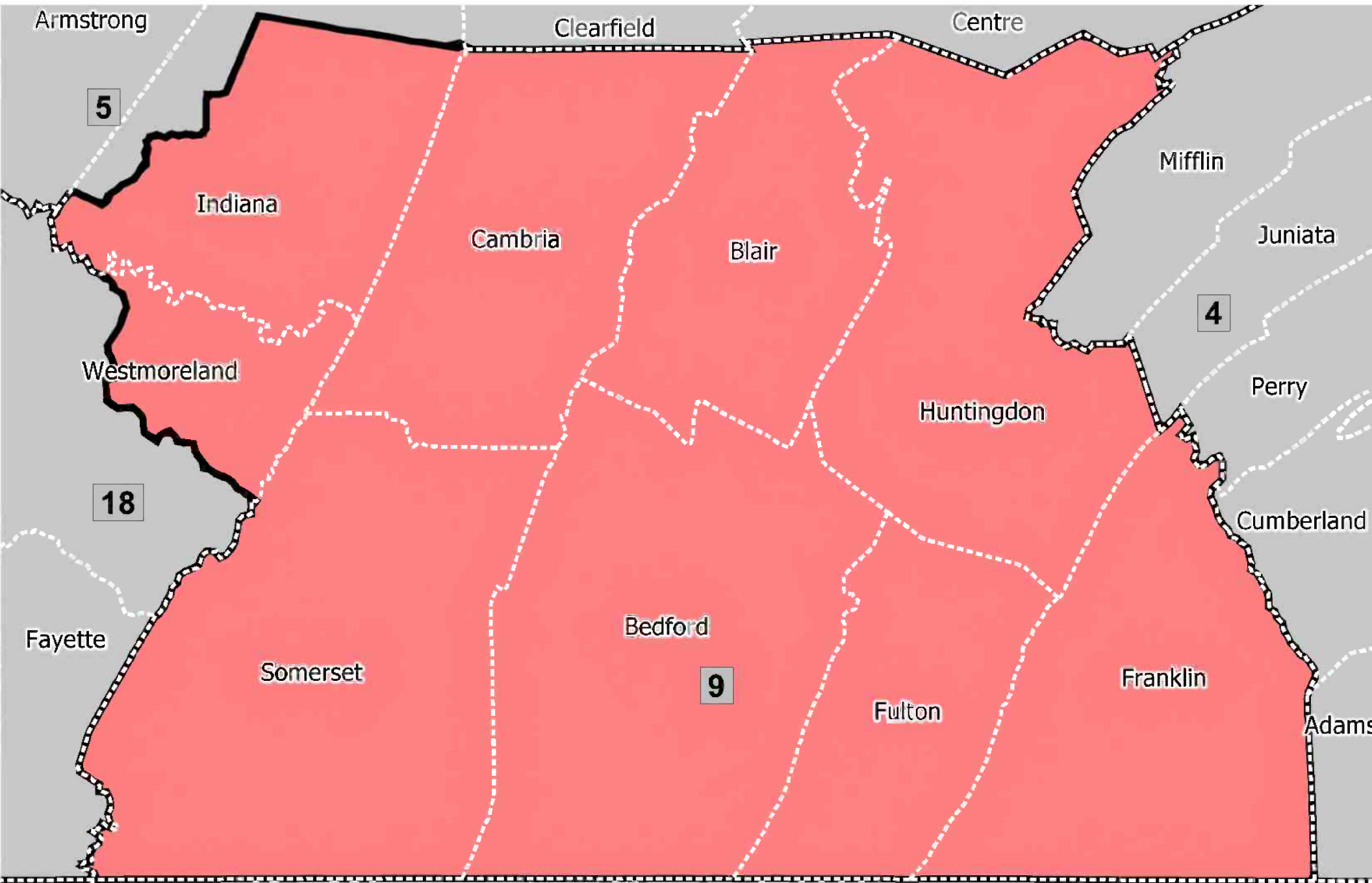


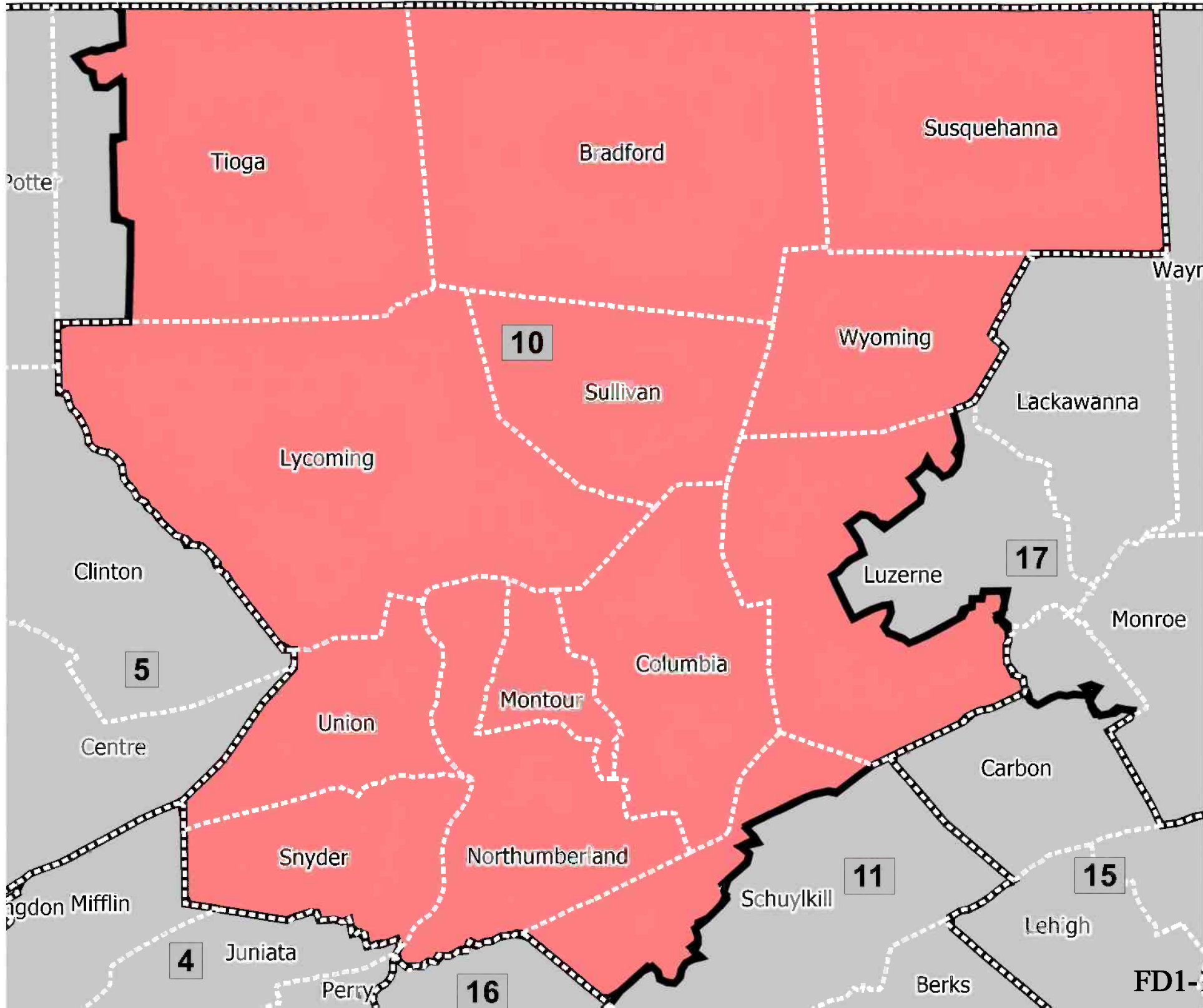


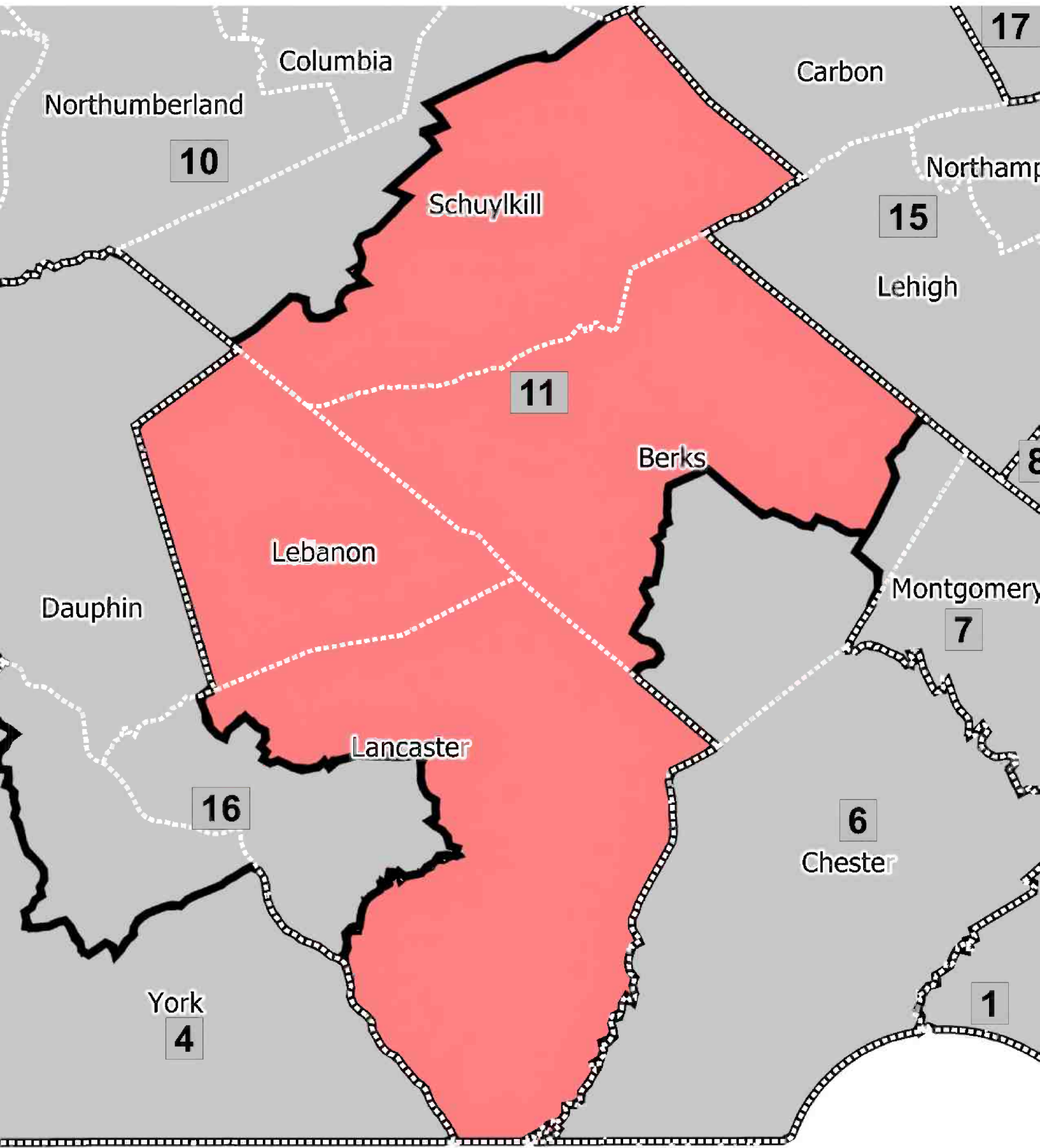


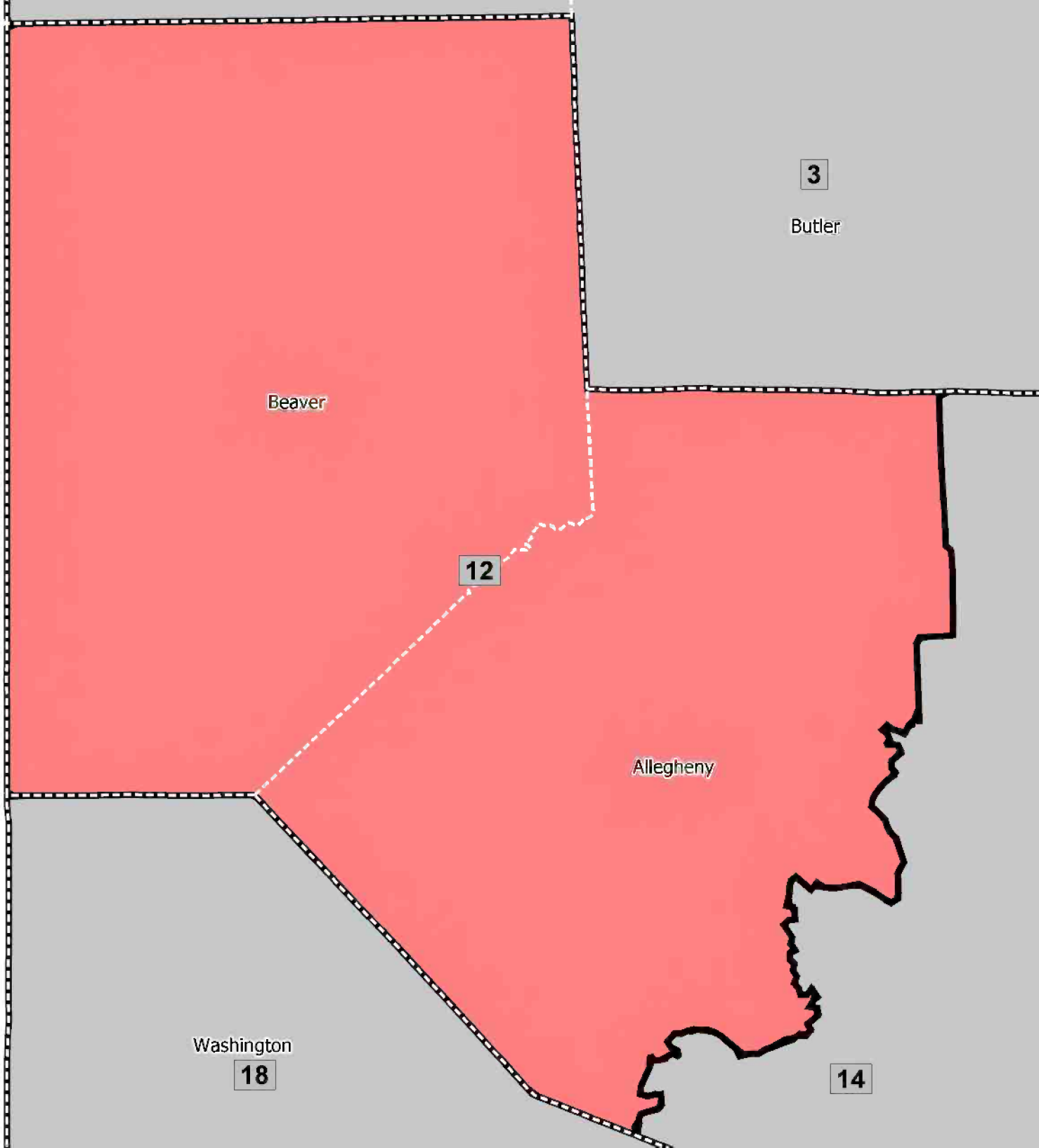












Beaver

3

Butler

12

Allegheny

Washington

18

14

Montgomery

8

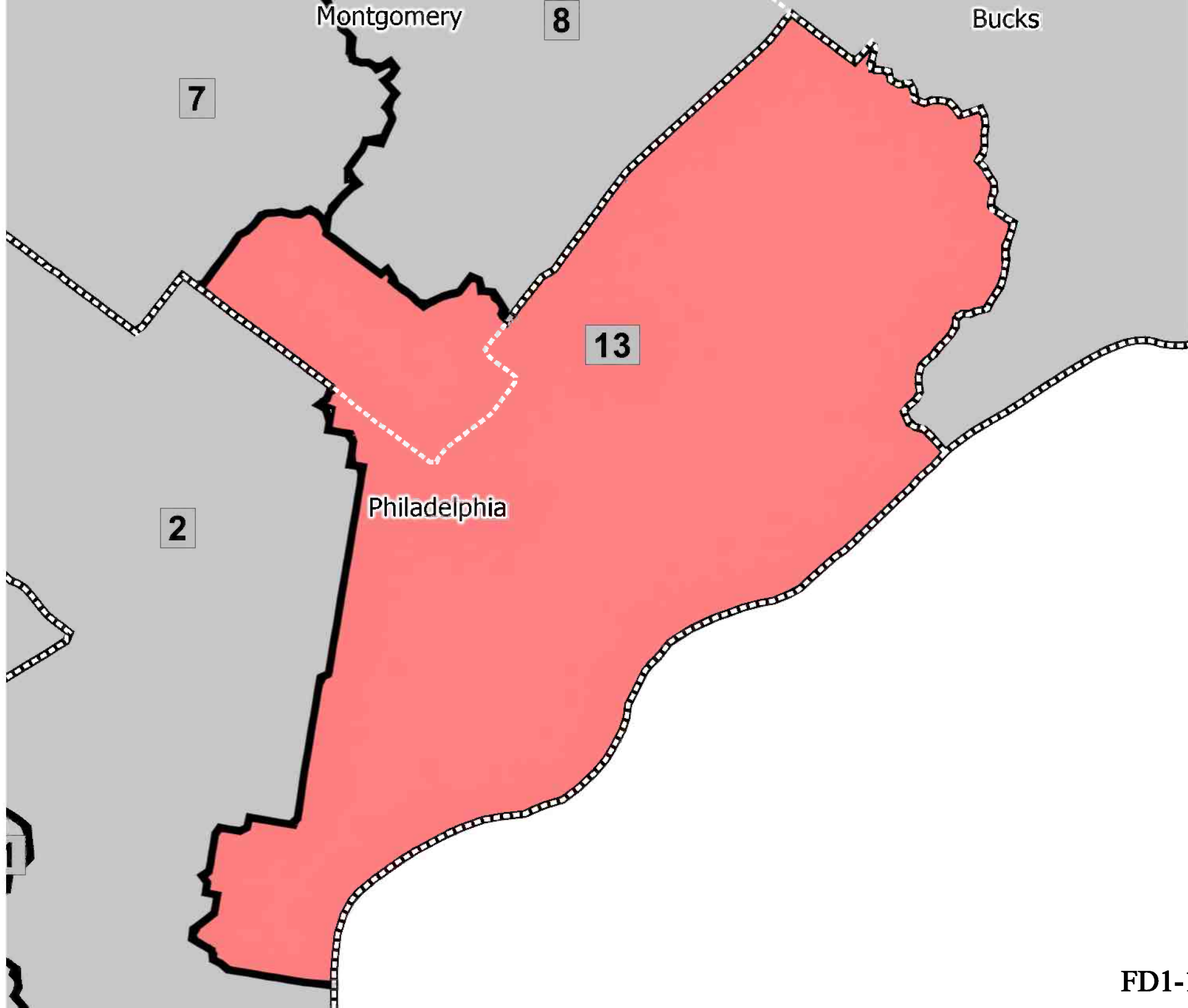
Bucks

7

13

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Philadelphia



12

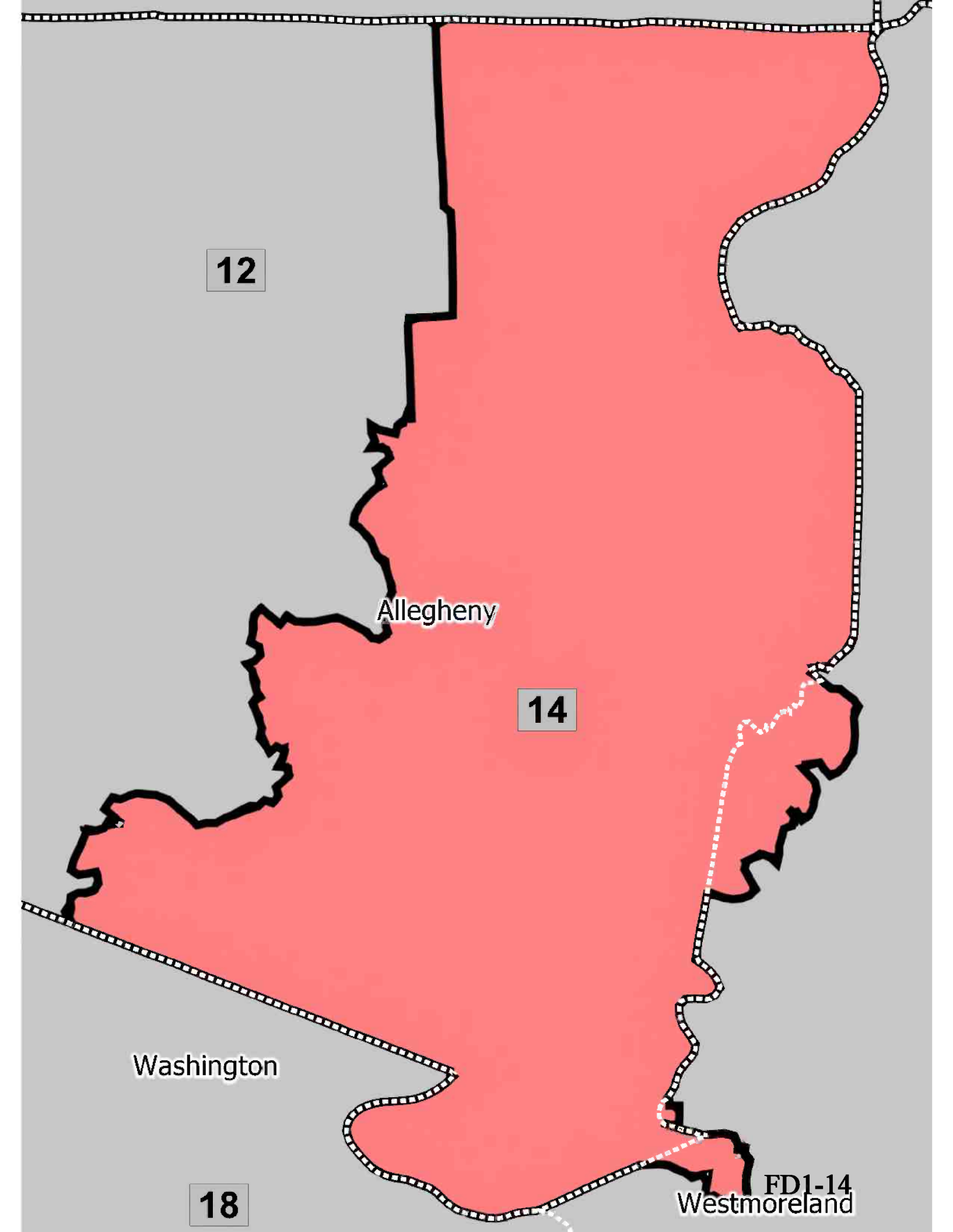
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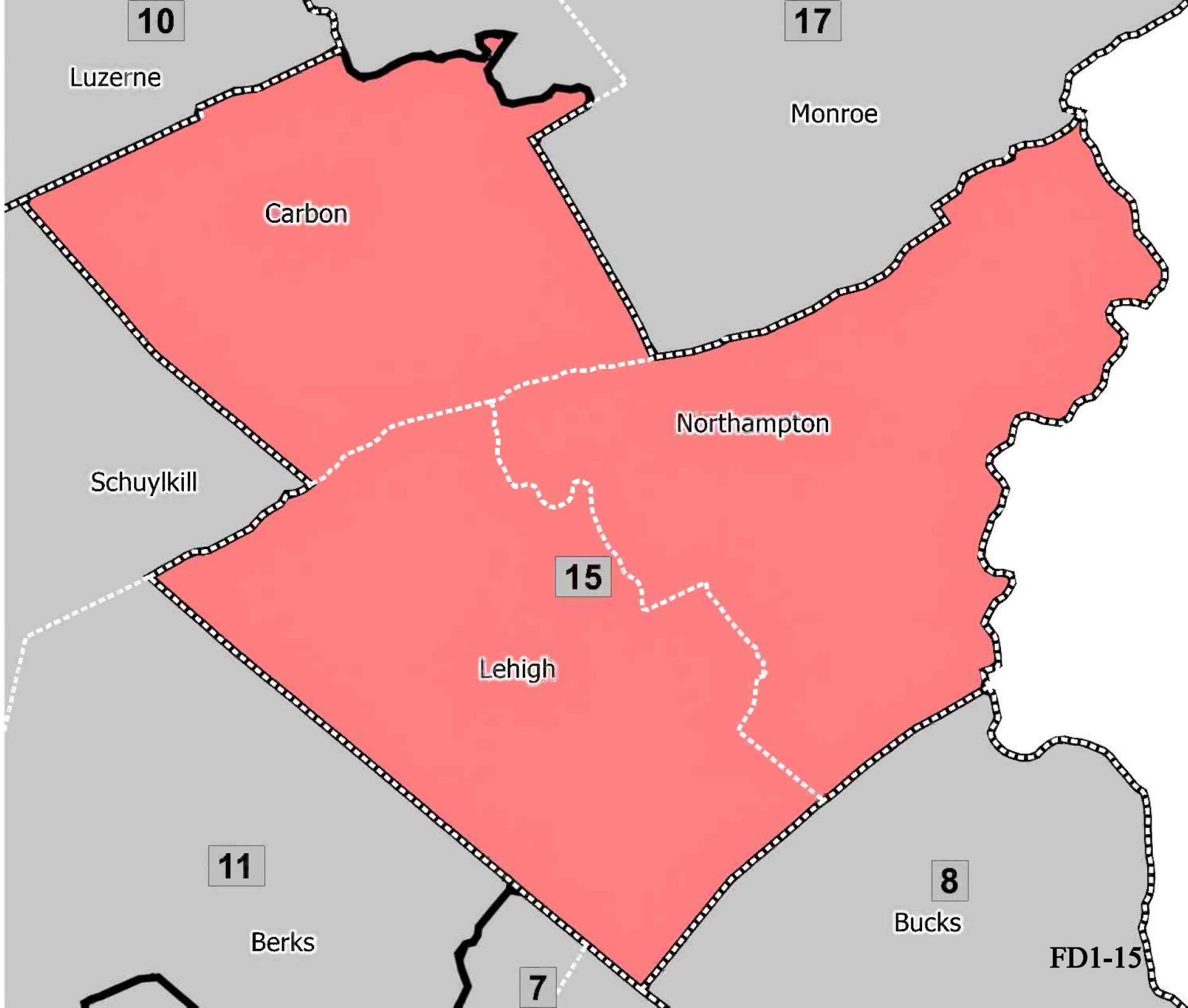
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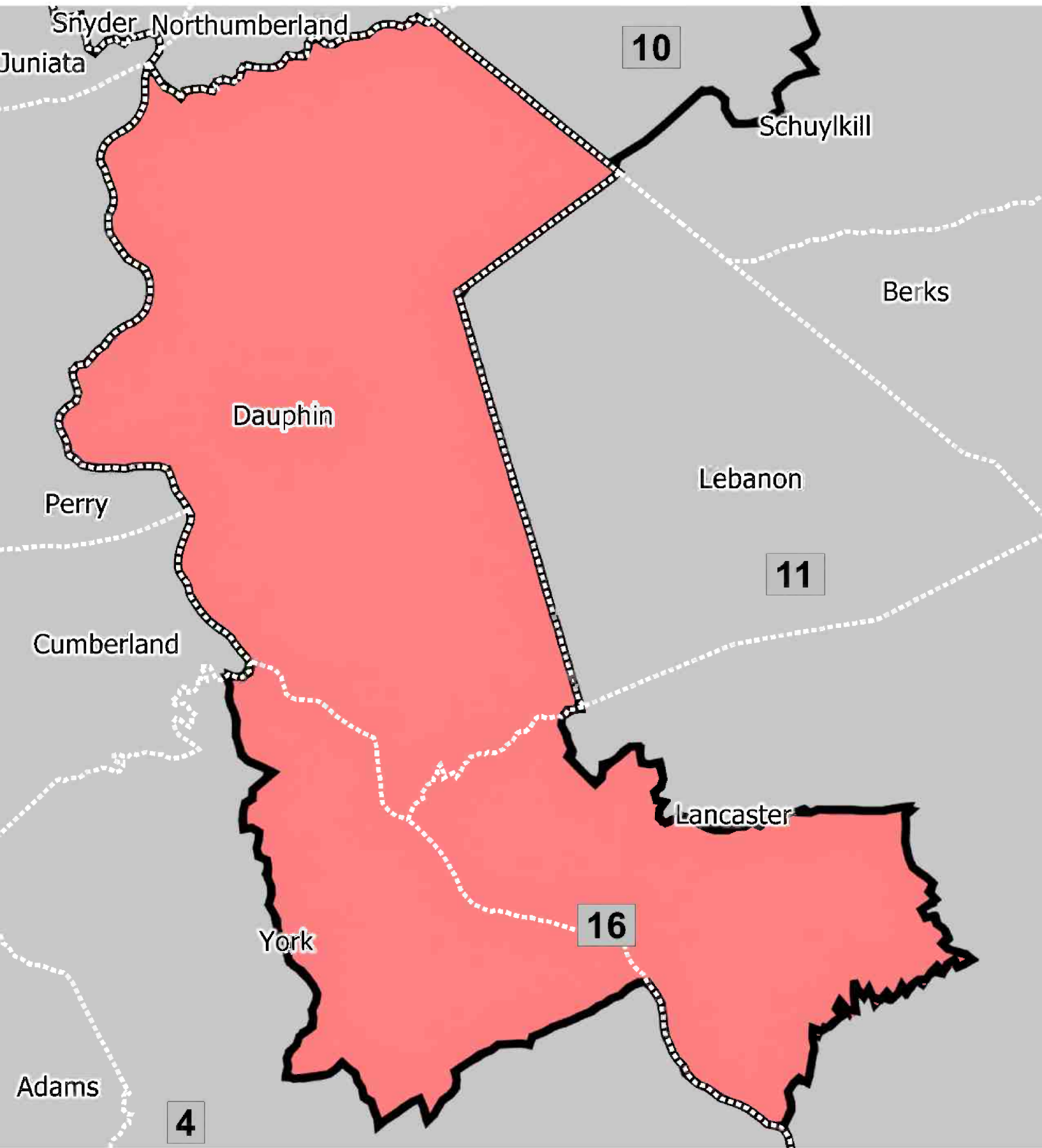
Washington

18

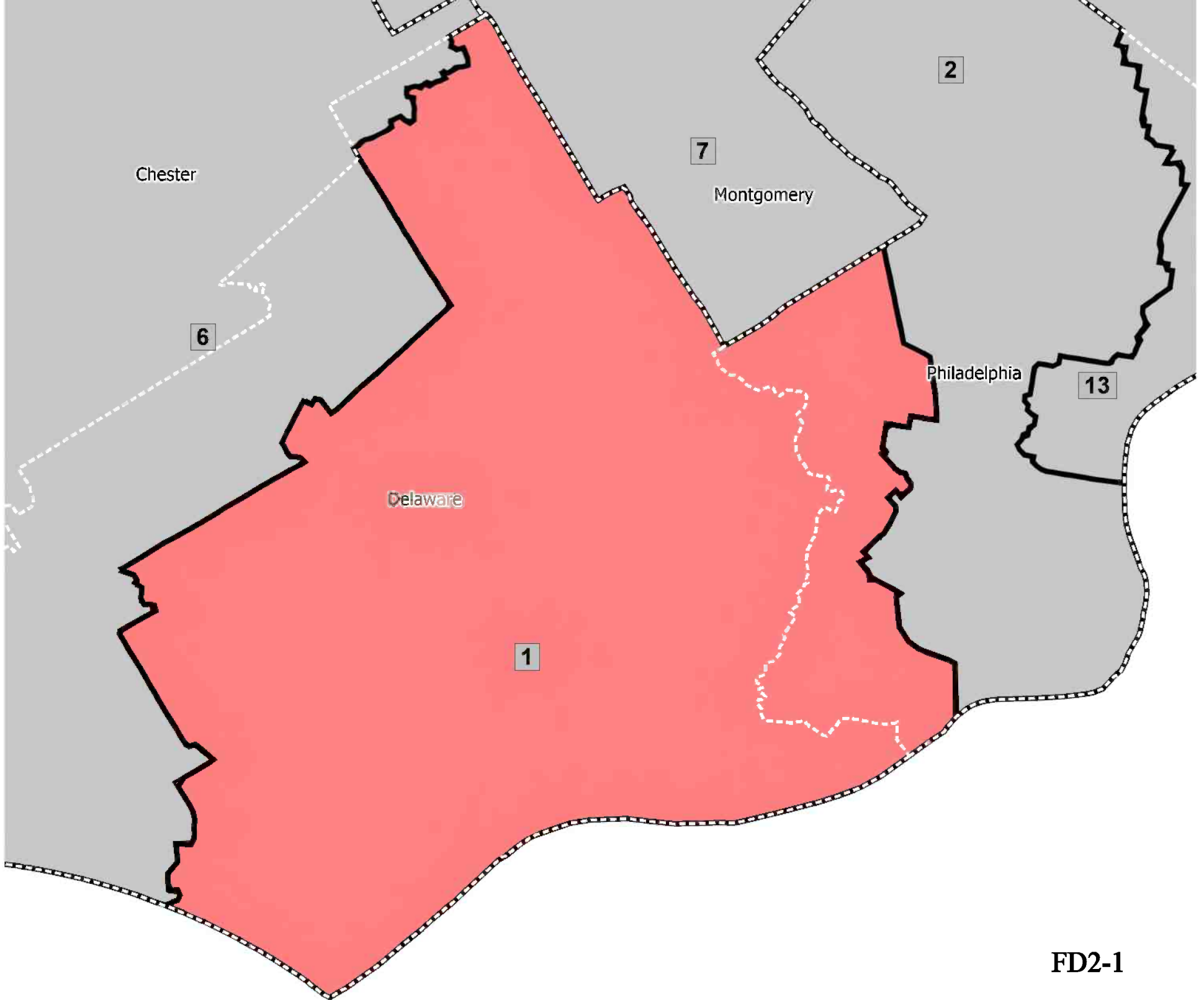
FD1-14
Westmoreland

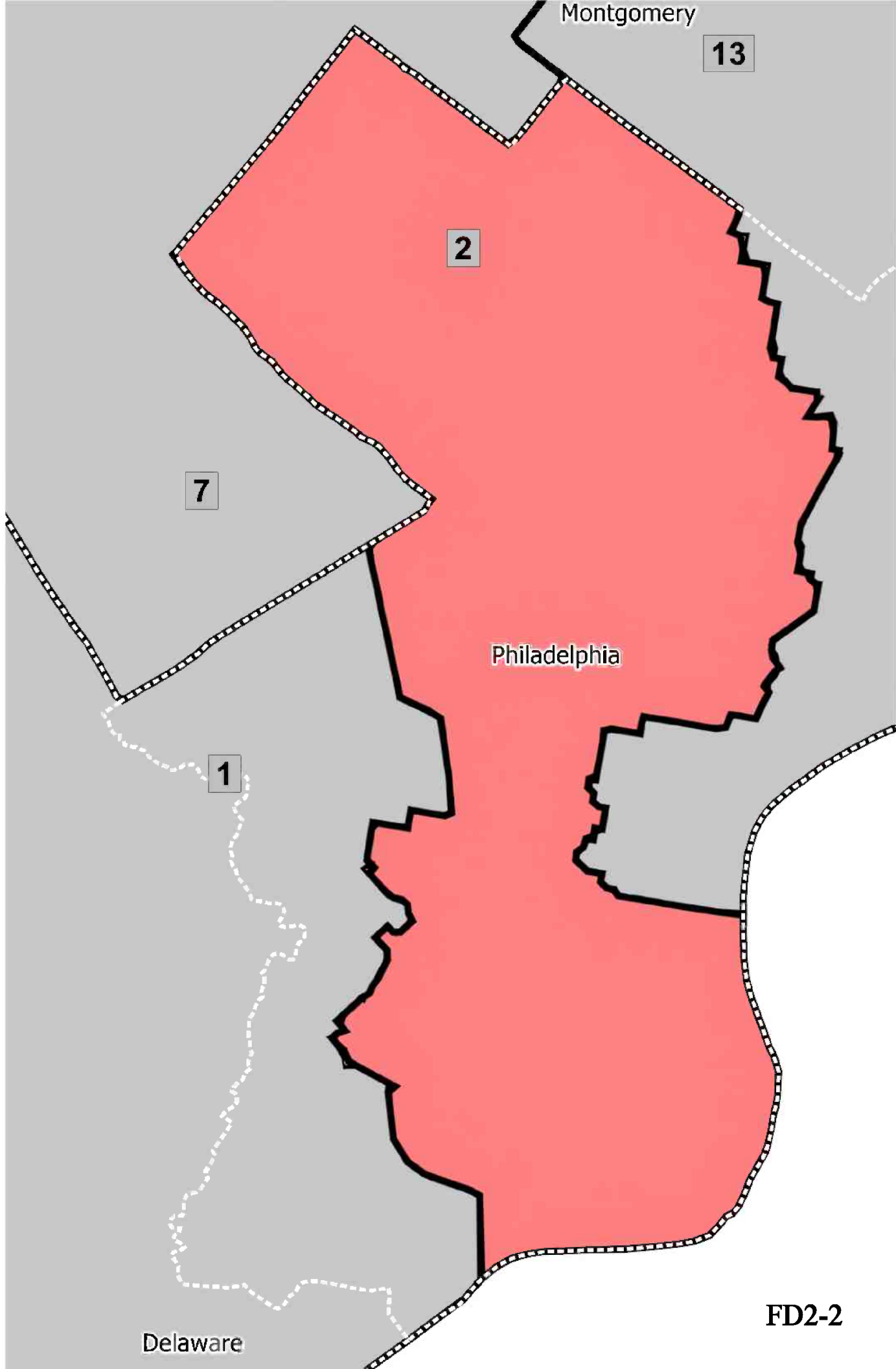






APPENDIX B





Montgomery

13

2

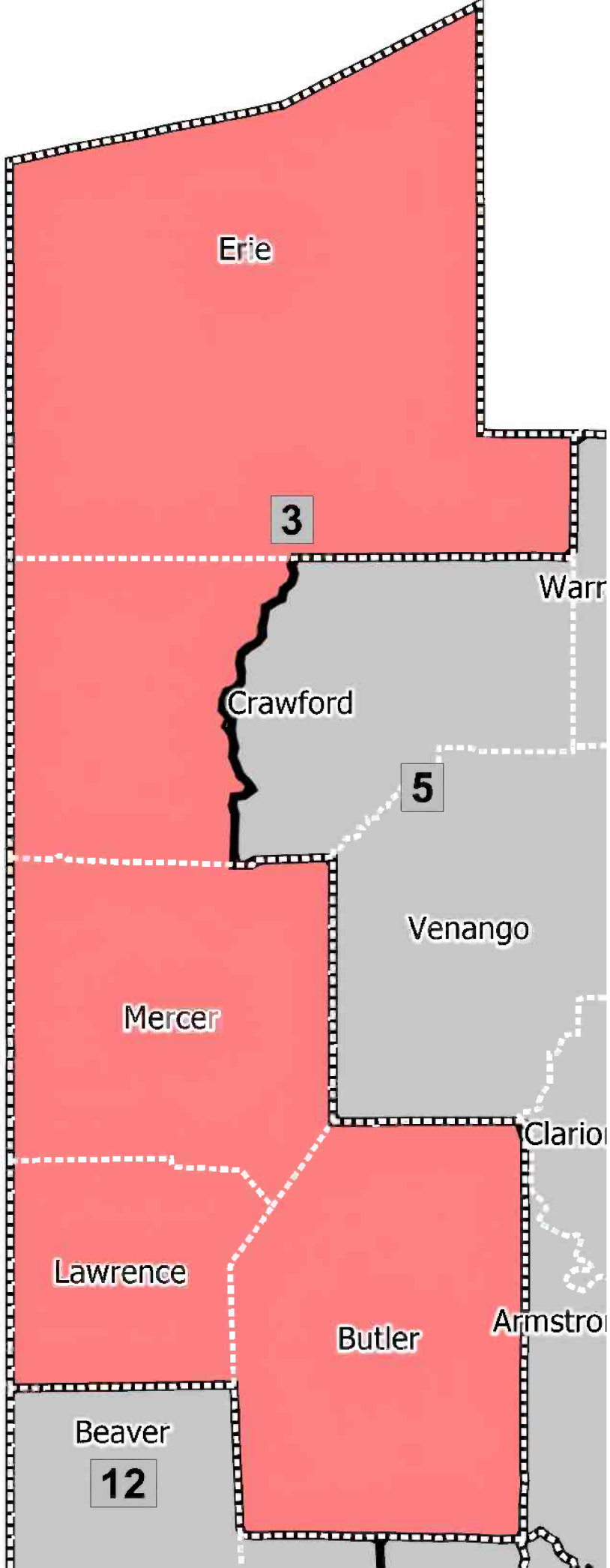
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Philadelphia

1

Delaware

FD2-2



Erie

3

Warr

Crawford

5

Venango

Mercer

Clarion

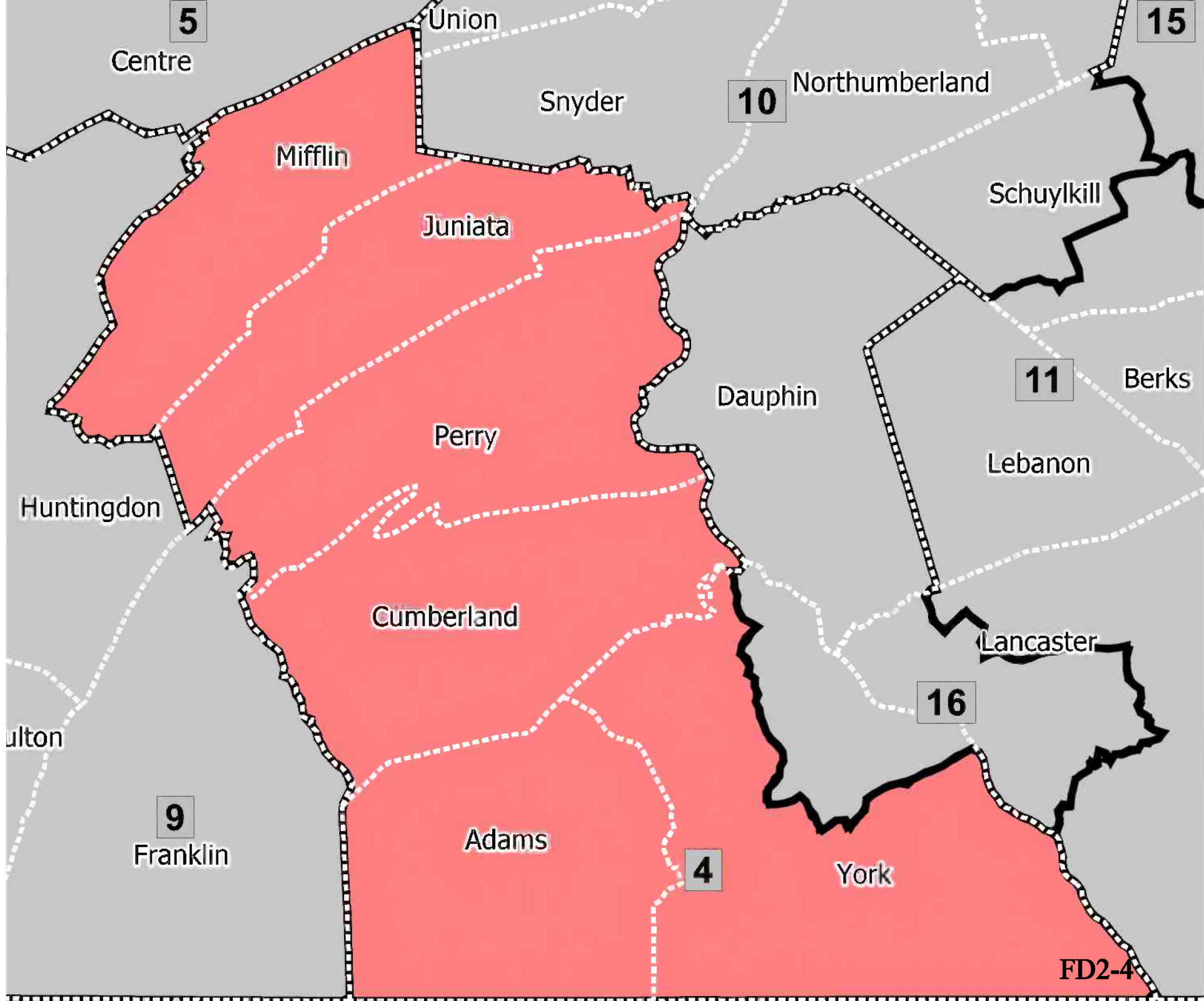
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Butler

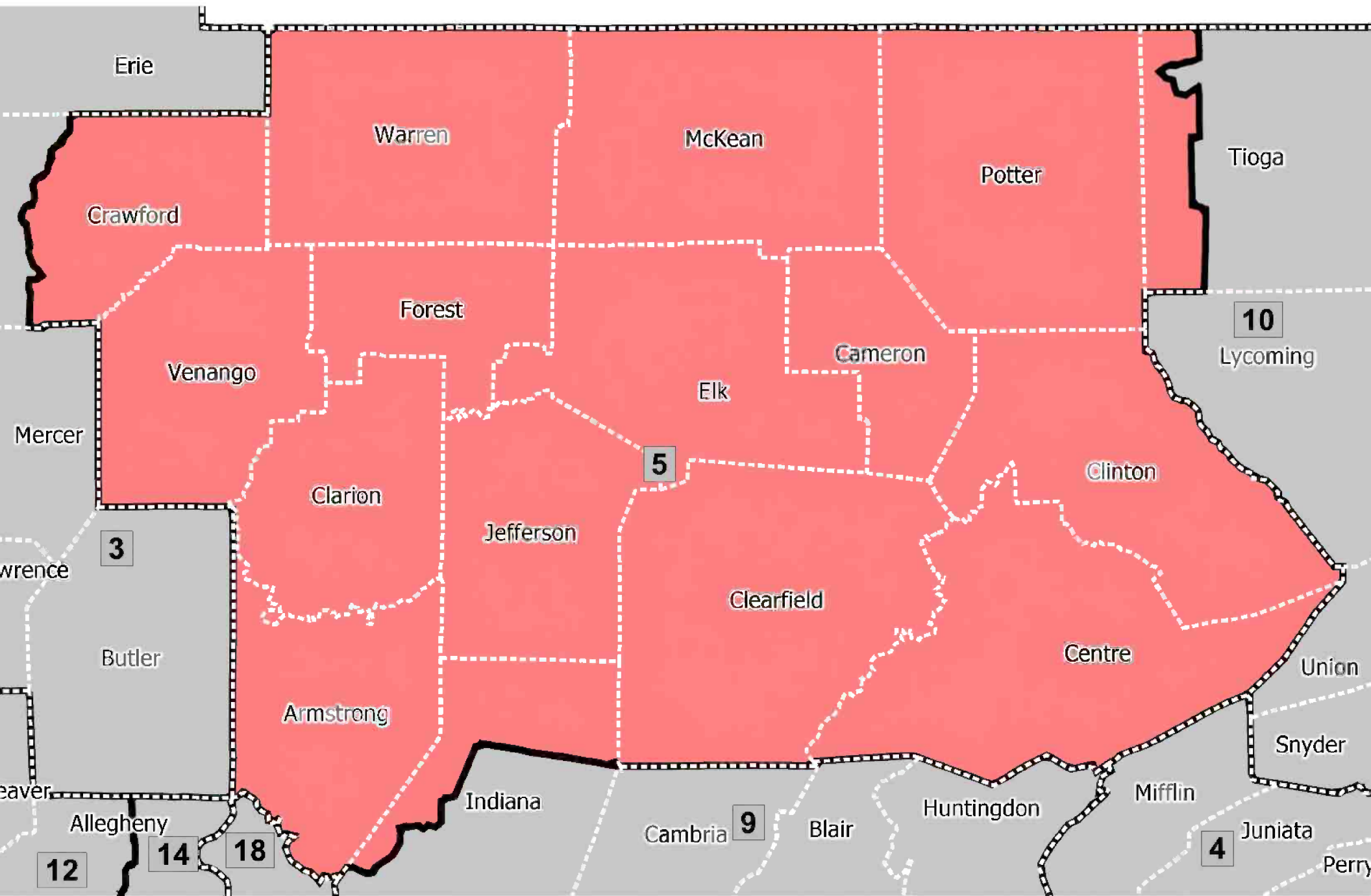
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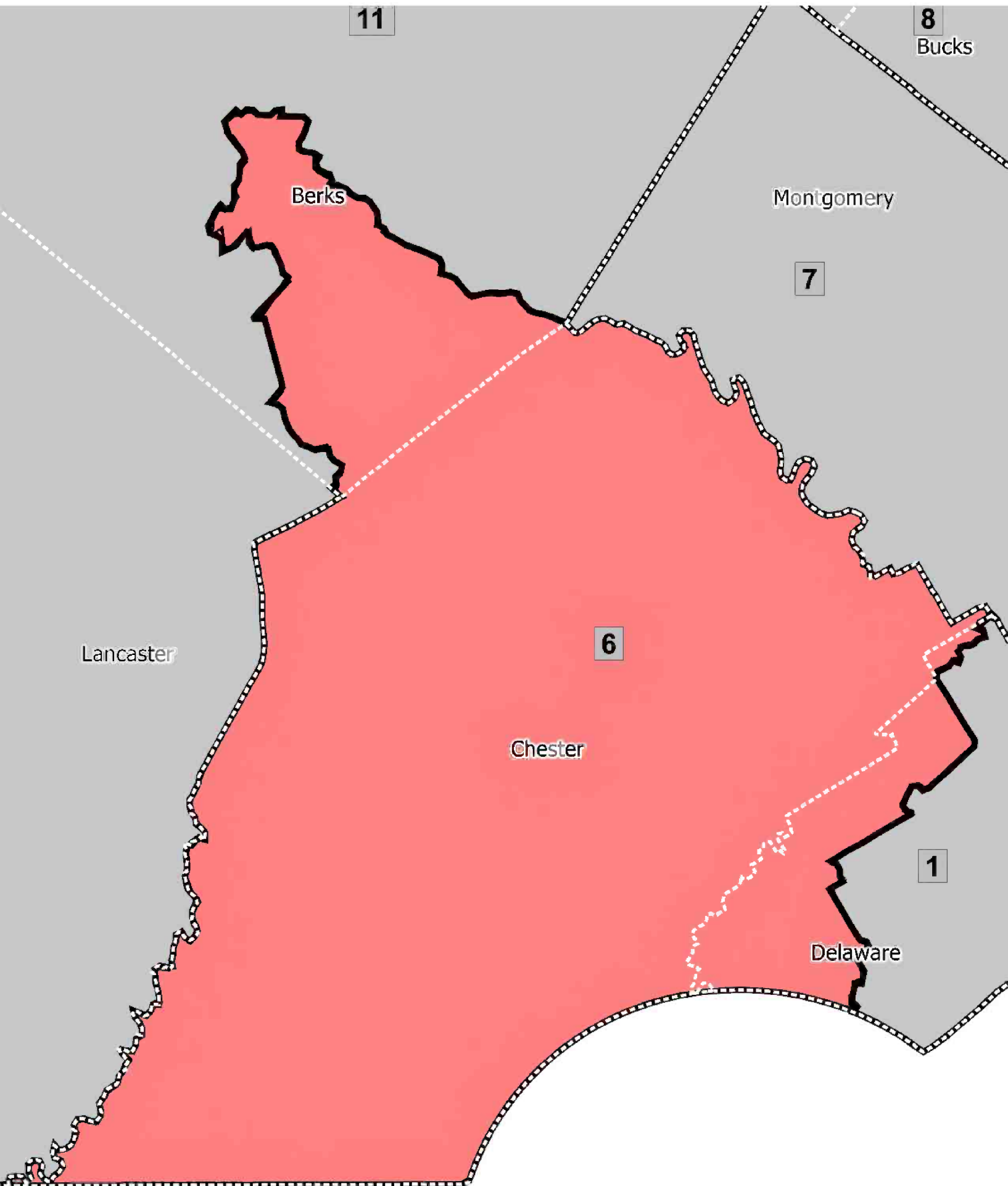
Beaver

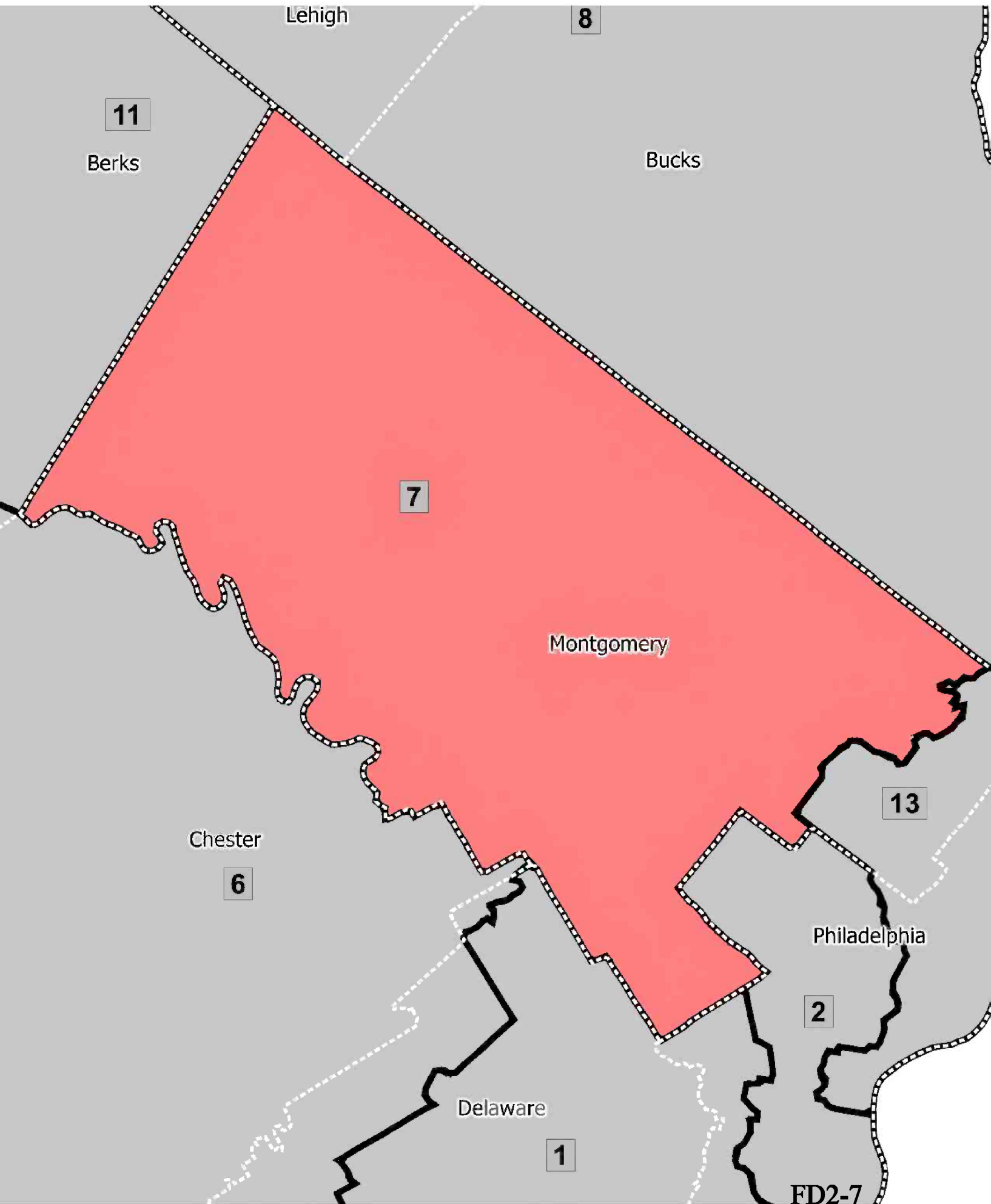
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FD2-4







Lehigh

8

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Berks

Bucks

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Montgomery

Chester

6

13

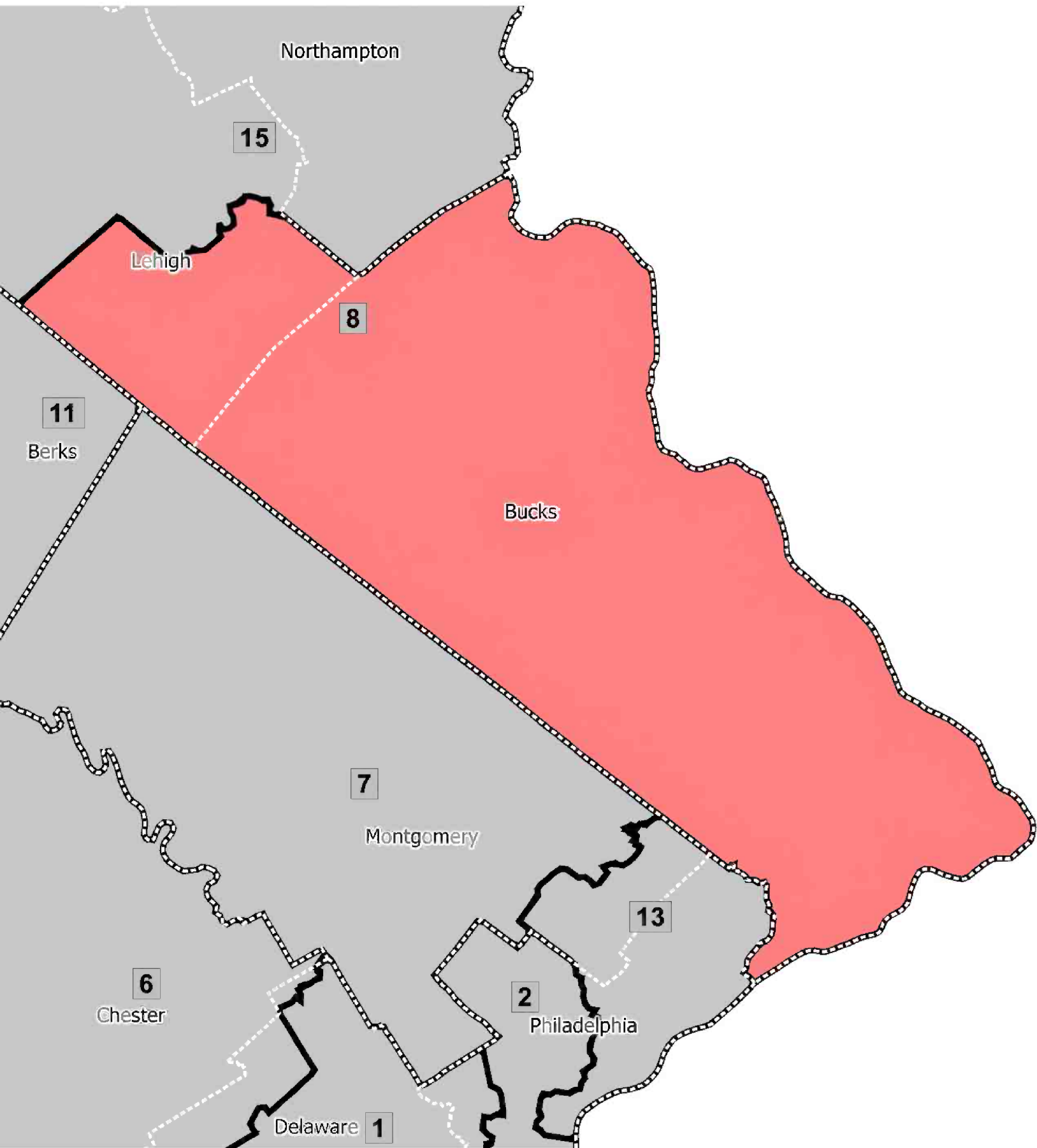
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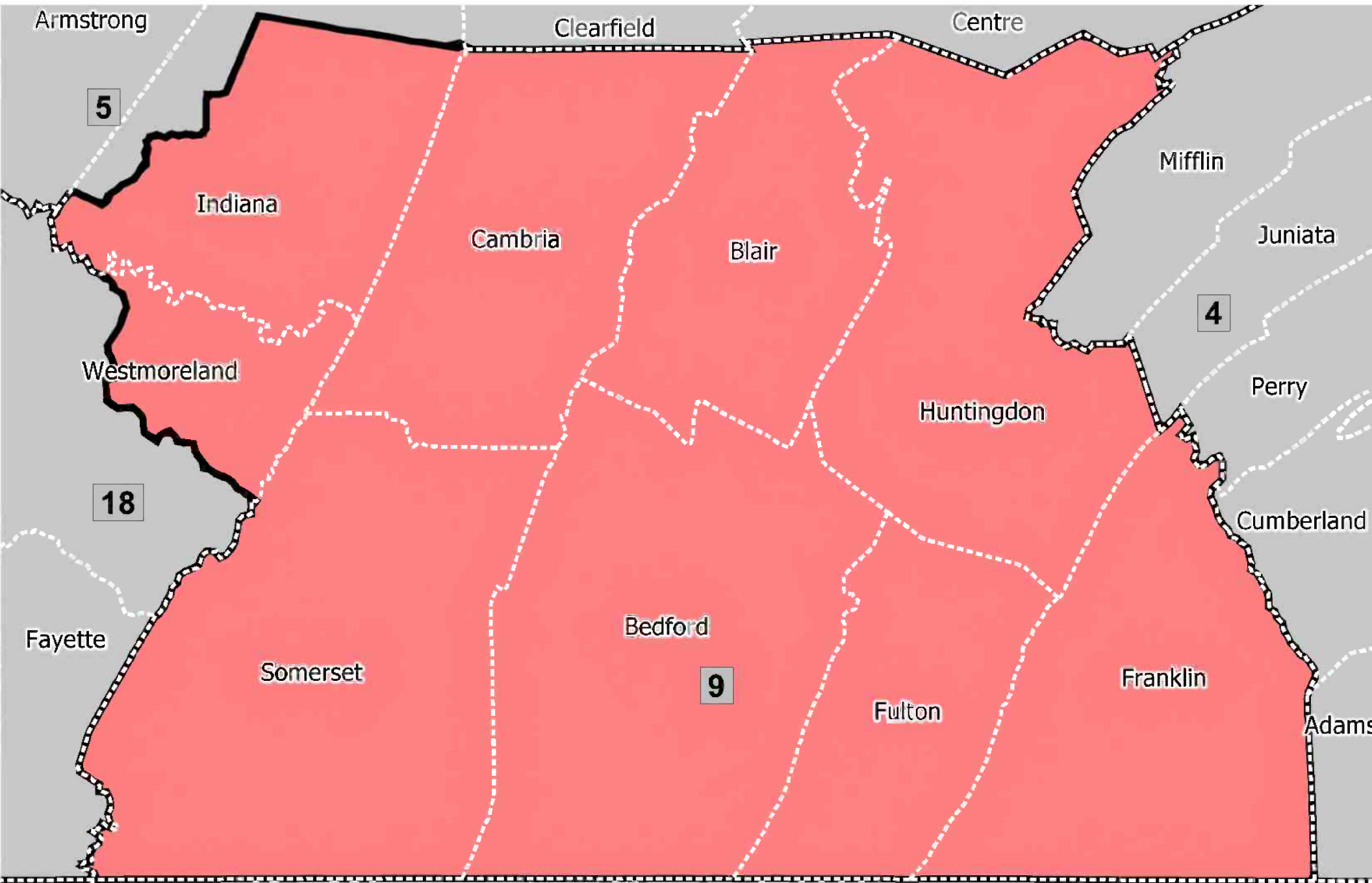
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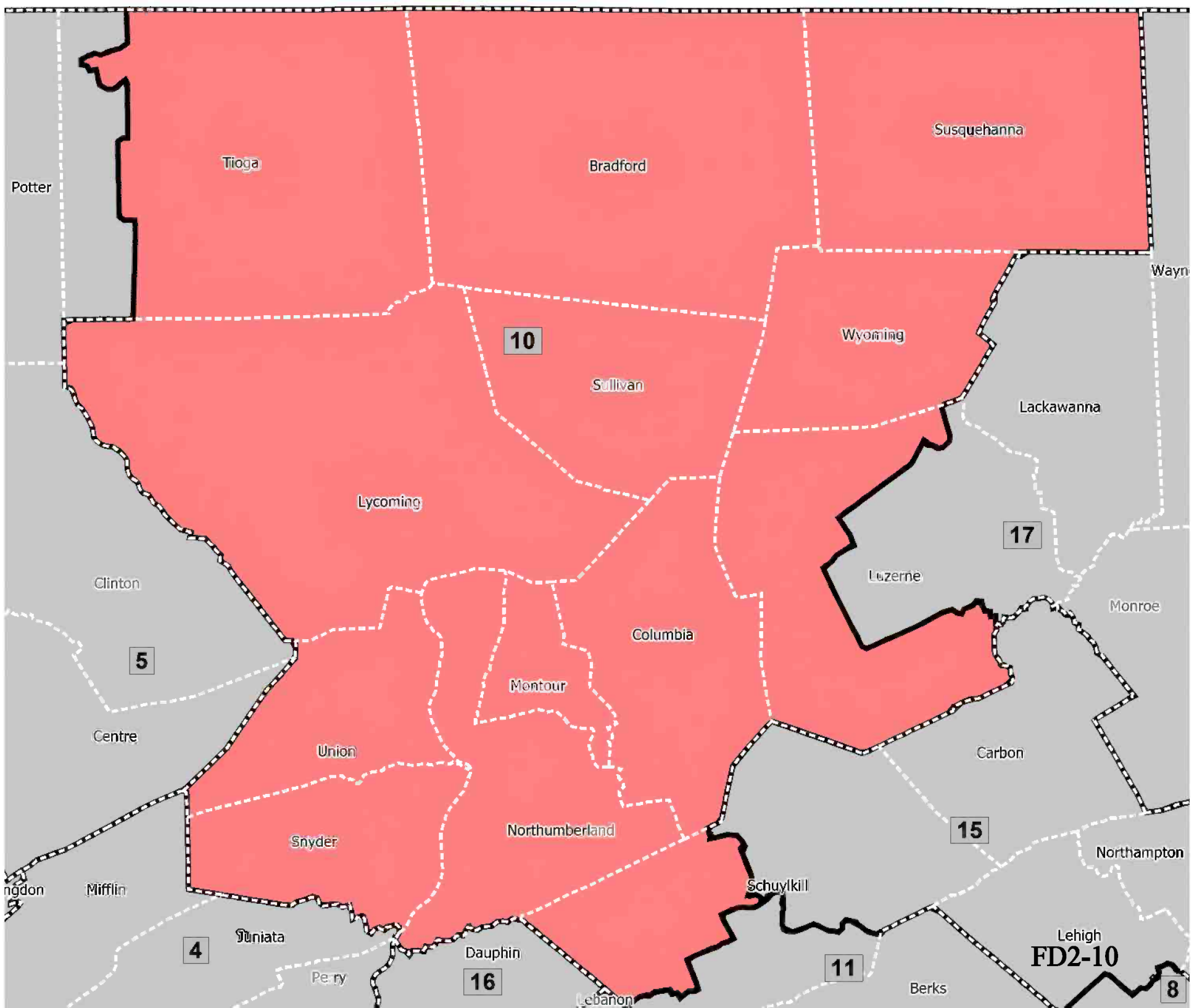
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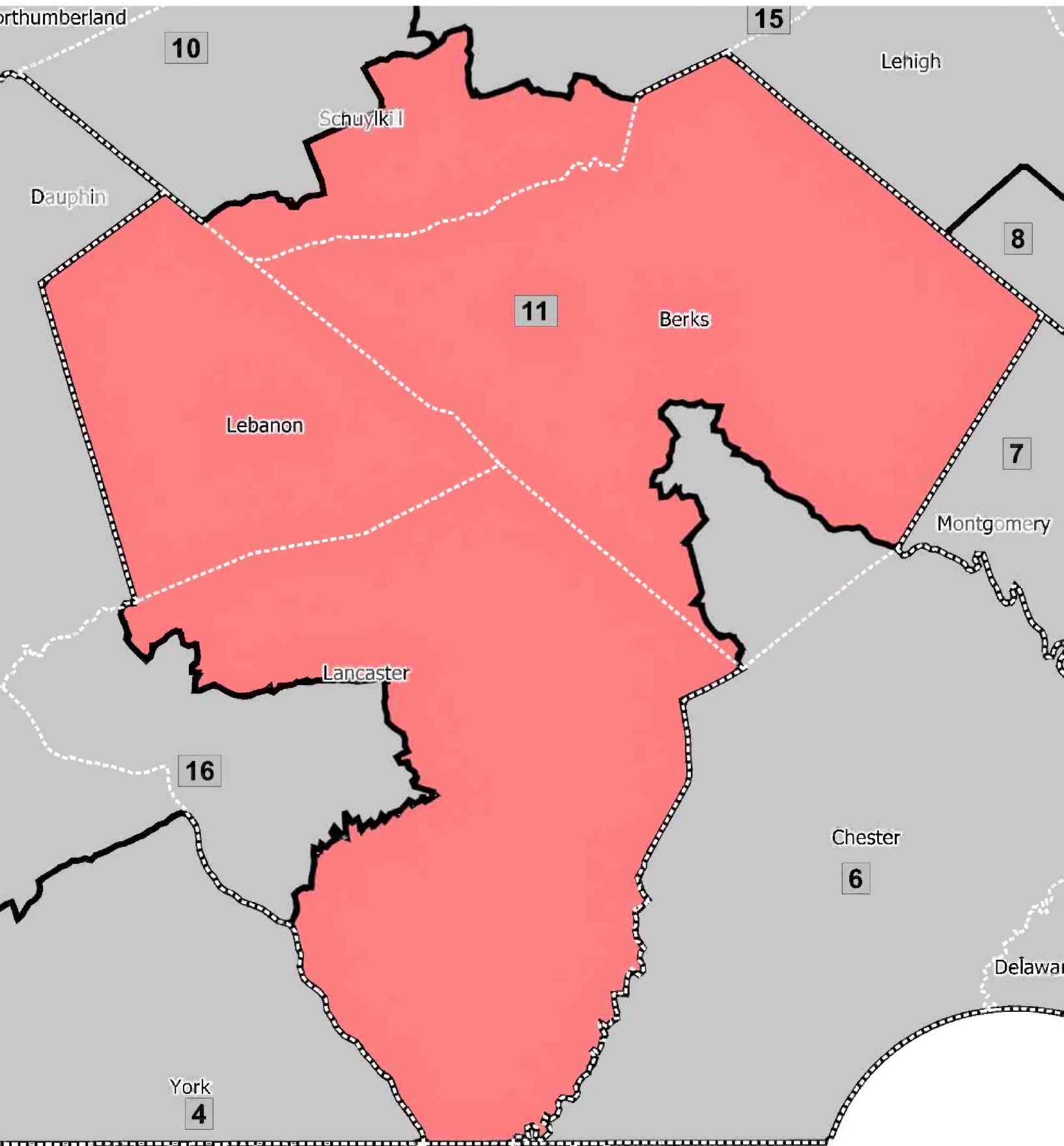
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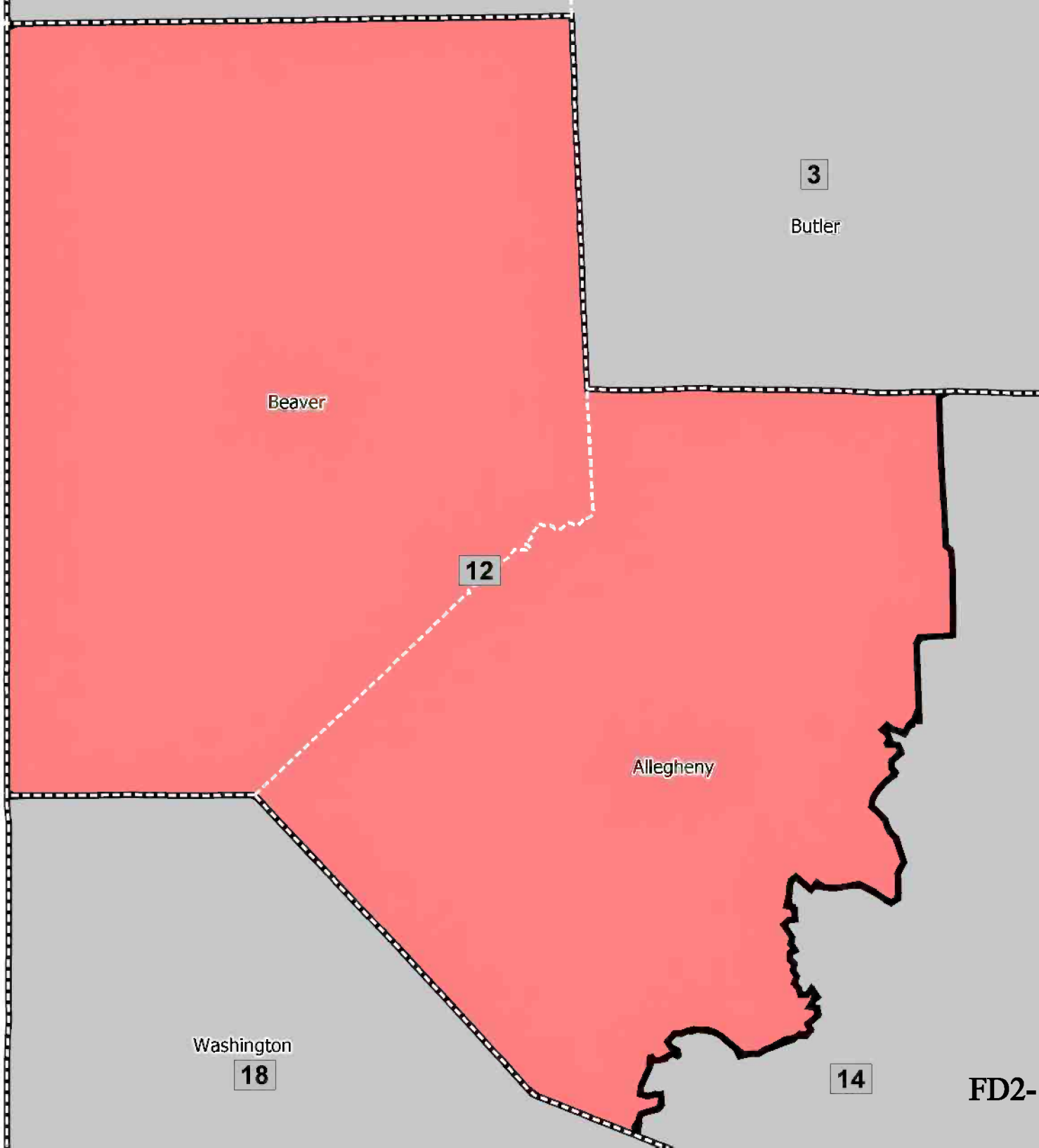
FD2-7











3

Butler

Beaver

12

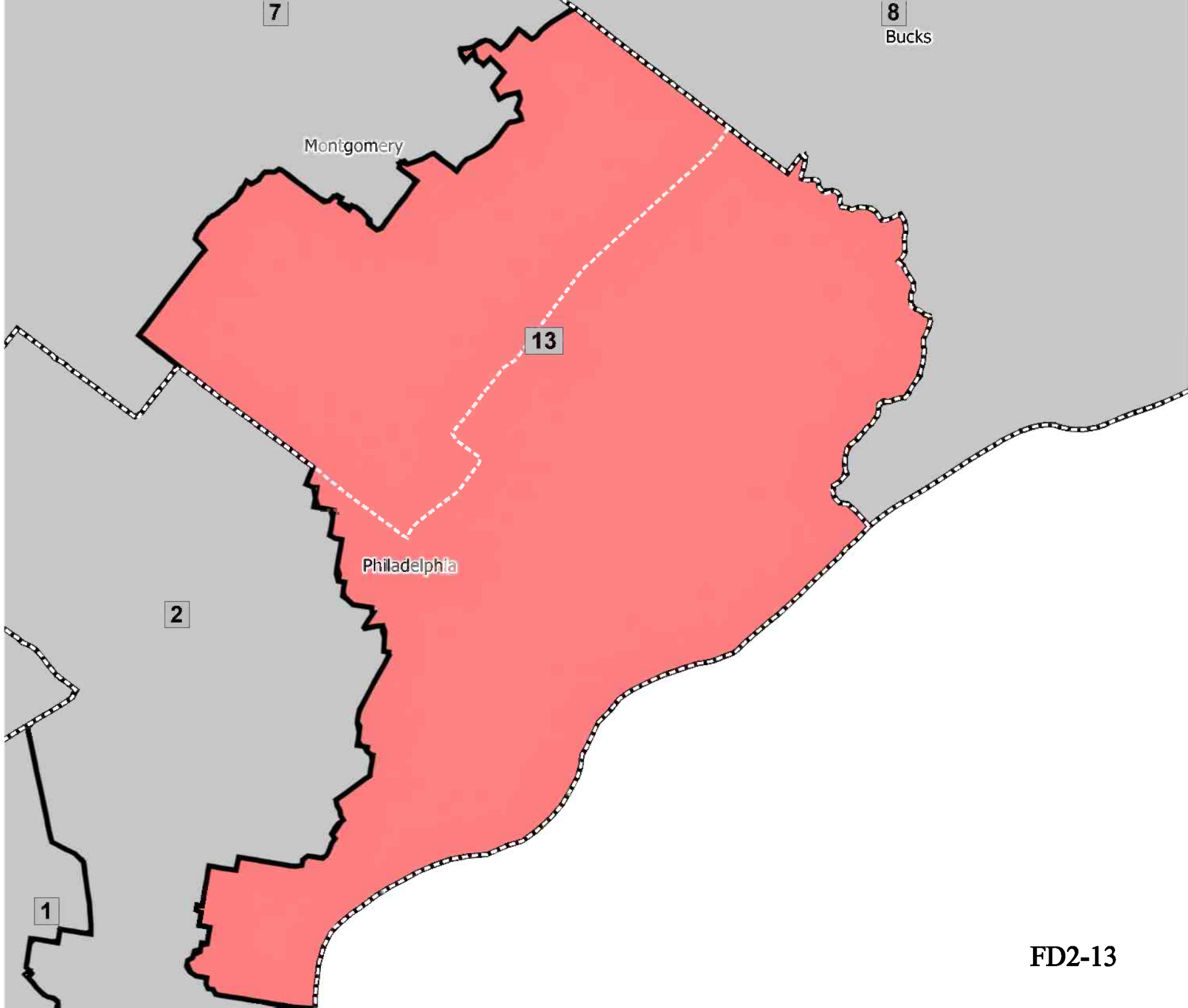
Allegheny

Washington

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FD2-12



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Bucks

Montgomery

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Philadelphia

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FD2-13

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Allegheny

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Washington

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FD2-14
Westmoreland

