5-1967

0125 Summary of Congressional Districting and Legislative Reapportionment Action in Colorado: 1961-1967

Colorado Legislative Council

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Report to the Colorado General Assembly:

SUMMARY OF CONGRESSIONAL DISTRICTING AND LEGISLATIVE REAPPORTIONMENT ACTION IN COLORADO: 1961-1967

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 125

LEGISLATIVE COUNCIL

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* * * * * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid to their solution.

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SUMMARY OF CONGRESSIONAL DISTRICTING AND LEGISLATIVE REAPPORTIONMENT ACTION IN COLORADO: 1961-1967

Colorado -- Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 125
May, 1967

STATE OF COLORADO

Legislative Council

STATE CAPITOL - DENVER 2, COLORADO

May 5, 1967

To Members of the Forty-sixth Colorado General Assembly:

Beginning in 1961 and continuing through the 1967 session, the members of Colorado's General Assembly coped with the problem of legislative reapportionment and, to a lesser extent, congressional districting.

The accompanying report has been prepared by the staff to provide the members of the Forty-ninth Colorado General Assembly with a summary of the background on these activities during this decade since the members will again be faced with these decisions in the 1971 or 1972 session. It has also been prepared so that other states might be acquainted with our experiences and perhaps can benefit therefrom.

Respectfully submitted,

C. P. Lamb

Representative C. P. Lamb
Chairman

CPL/mp

FOREWORD

During 1964, Colorado became the first state in the nation to revise both its congressional districts and its state legislative districts to comply with the United States Supreme Court's rulings that these district should be based on equal population representation for the people therein. In order to acquaint legislative service agencies in other states with what had taken place in Colorado, a staff memorandum was prepared on July 14, 1964, in the hope that it might prove of some assistance when other states were considering similar revisions in their congressional and legislative districts.

Making this information available as quickly as possible was felt to be most essential, and the memorandum therefore consisted of a summary of the events concerning the laws which had been adopted in Colorado plus certain additional legal and statistical materials that could easily be duplicated. This memorandum was not intended as a detailed research publication for widespread distribution. However, in view of the resulting demand for this information and subsequent action in Colorado concerning state legislative districts, the accompanying report has been prepared to meet the requests for this material.

Legislative and staff activity leading to the present laws in Colorado governing congressional districts and legislative apportionment started in 1961 with the creation of a committee by the Legislative Council to study the question of state reapportionment. Similar committees were also established by the Council in 1965 and again in 1966. Thus, numerous members of the General Assembly and various staff members of the Legislative Council have worked on these subjects at different times over the years since 1961. The members of the General Assembly who served on these three committees are as follows:

1961 Committee on Legislative Reapportionment

Rep. C. P. Lamb, Chairman
Rep. John L. Kane, Vice Chairman
Senator Neal Bishop
Senator Fay DeBerard
Senator Frank L. Gill
Senator Sam T. Taylor
Senator Dale P. Tursi
Senator Hestia Wilson
Rep. Samuel C. Boyden
Rep. Joseph V. Calabrese
Rep. Robert S. Eberhardt
Rep. Hiram A. McNeil
Rep. Guy Poe
Rep. Clarence H. Quinlan
Rep. Robert Schafer
Rep. Ruth S. Stockton

1965 Committee on Legislative Districting

Senator Floyd Oliver Chairman*	Senator L. T. Skiffington Rep. Palmer Burch
Senator John Bermingham	Rep. Charles DeMoulin
Senator Roger Cisneros	Rep. Tom Farley
Senator Fay DeBerard	Rep. George Fentress
Senator John Donlon	Rep. C. P. Lamb
Senator David Hahn	Rep. Kenneth Monfort

* Non-voting

1966 Committee on Legislative Districting

Rep. C. P. Lamb, Chairman	Senator Anthony F. Vollack
Senator John Bermingham	Rep. Allen Dines
Senator Paul Bradley	Rep. John Mackie
Senator Vincent Massari	Rep. Kenneth Monfort

At the present time, there is no indication of further judicial or legislative activity in Colorado regarding congressional districting or legislative reapportionment. If this situation remains unchanged, the members of the General Assembly will not be faced with revising the existing districts until after the 1970 federal census, or in the 1971 or 1972 session.

May 5, 1967

Lyle C. Kyle
Director

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A SUMMARY OF CONGRESSIONAL DISTRICTING AND LEGISLATIVE REAPPORTIONMENT ACTION IN COLORADO: 1961-1967

The equal population representation decisions of the United States Supreme Court in the middle 1960's caused repercussions in the several state capitols across the nation. The people of Colorado felt the results of these decisions as much as those of any state, especially in view of the divergent geographical conditions that exist in Colorado and the disparity in the location of population centers in the state. The effect of these decisions with respect to the size and shape of congressional districts and state legislative districts in Colorado is summarized in the following paragraphs. More detailed information is contained in the appendix and map sections included subsequently herein.

Congressional Districting Law -- April 29, 1964

Following the United States Supreme Court's decision in Wesberry v. Sanders on February 17, 1964, Colorado's Governor John A. Love convened the General Assembly in special session in order to provide that, as nearly as practicable, one man's vote in a congressional election would be worth as much as another's in this state.

With a 1960 federal census population of 1,753,947, Colorado's four congressional districts would average 438,487 per district on a strict mathematical basis. However, prior to the special session, Colorado's congressional districts ranged from 195,551 to 653,954, a difference of 458,403. (See Map 1.)

The special session was convened on April 25, 1964, and it adjourned on April 29, 1964. Prior to and during the five-day session, numerous plans were drawn and proposed by various members. One major problem facing the General Assembly was the limited population contained in the mountainous regions of the western part of the state, and the resulting large geographical area and mixed economic interests which would be necessary to comply with the population standard set out by the U. S. Supreme Court.

The Colorado General Assembly adopted House Bill No. 1001 on April 29, 1964, and it was signed by the governor on April 30, 1964. (See Appendix A.) Under this bill, the four districts contain the following 1960 population as compared to the mathematical average:

District No.	District Population	State Average Population	Numerical Difference	% Variation
1	493,887	438,487	55,400	12.6%
2	438,974	438,487	487	.1
3	415,187	438,487	(23,300)	(5.3)
4	405,899	438,487	(32,588)	(7.4)

The General Assembly's goal was to keep each district within 15 per cent of the state average per district, and at the same time not divide an existing political subdivision such as the City and County of Denver. Map 2 contains the new congressional districts for Colorado, effective with the 1964 general election.

No suit has been filed contesting the new districts and, so far as is known, no such suit is being contemplated.

State Legislative Reapportionment Activity

The Colorado General Assembly concerned itself with legislative reapportionment in one respect or another annually for a period of seven consecutive years, beginning in 1961. During this time, two constitutional amendments relating to the apportionment of the members of the General Assembly were adopted -- in 1962 and again in 1966 -- and four reapportionment acts were adopted -- in 1963, 1964, 1965, and 1967.

The effect of the changes provided by these various measures on legislative districts in Colorado is depicted in Maps 3 through 10 which are located at the end of this report. The net result of these measures, many members and others hopefully believe, is that Colorado's legislative districts now comply with federal and state court rulings on equal population representation, at least until after the 1970 census.

1961 Legislative Council Study and 1962 Session

House Joint Resolution No. 24, 1961 regular session, directed the Legislative Council to conduct a reapportionment study of the Colorado General Assembly, including methods adopted by other states, with a view toward recommending a fair and equitable reapportionment plan for Colorado. The 17-member committee appointed by the Legislative Council to carry out this study reviewed numerous proposals before a majority of the committee agreed on a reapportionment recommendation. (See Colorado Legislative Council Research Publication No. 52, December, 1961.)

This recommendation was proposed under the state's constitutional provision at that time that reapportionment of the General Assembly shall be made on the basis of population "according to ratios to be fixed by law" (Sec. 45, Art. V). Under this proposal, the largest ten counties in the state, containing 78 per cent of the state's 1960 population, would have received 22 of the 35 senate seats and 40 of the 65 house seats.

In its 1962 session the General Assembly rejected all reapportionment proposals which were submitted. Consequently, the 1962 election of members of the General Assembly was based on the districts contained in Map 3 and Map 4. As may be noted, senatorial

districts ranged from 17,481 to 127,520 in population, and representative districts ranged from 7,867 in Huerfano County to an average of 63,910 in Jefferson County.

1962 Constitutional Amendment

Two constitutional amendments on legislative reapportionment were placed on the 1962 ballot as initiated measures.

One of these -- Amendment No. 7 -- provided for a House of Representatives apportioned in accordance with population and a Senate based on other factors in addition to population, plus an increase in the size of the Senate by four members. Amendment No. 7 also authorized counties having more than one member of either house to be divided into subdistricts rather than every member being elected at large from a multi-member county. The other measure -- Amendment No. 8 -- would have established a three-member commission that would be charged with the responsibility of reapportioning both houses of the General Assembly on the basis of population. (For a more detailed summary of these two amendments, see Colorado Legislative Council Research Publication No. 61, August, 1962.)

Amendment No. 7 was adopted by a vote of 305,700 to 172,725, and carried in every county of the state. (See Appendix B for a copy of the amendment.) Amendment No. 8 lost by a vote of 311,749 to 149,822, and was defeated in every county of the state.

1963 Session -- House Bill 65

In accordance with the provisions of Amendment No. 7, the members of the General Assembly had 45 days after the session began in which to enact a reapportionment law or lose their compensation for expenses and their salary. Consequently, in November of 1962, following the general election, the staff of the Legislative Council began compiling detailed 1960 census data, with the cooperation of the U. S. Bureau of the Census, and began allocating this population to whole general election precincts in the largest ten counties in the state.

Much of this work was completed before the 1963 session opened on January 2nd, and the first few weeks of the session were spent in analyzing the various plans submitted as to population per legislative district and in drawing plans at the request of individual legislators. After a rather substantial amount of debate in both houses, House Bill No. 65 was adopted and signed by the governor on February 11, 1963.

Maps 5 and 6 show the population per Senate and House district under the provisions of H.B. 65. In the Senate, the largest ten counties were provided with 24 of the 39 seats, with the districts ranging in size from a population of 19,983 in District 23 (Las

Animas County) to 73,340 in District 11 in El Paso County. For the House of Representatives, the largest ten counties received 49 of the 65 members and the size of the districts varied from 20,302 (Logan County) to 35,018 in District 35 in Pueblo County.

Court Actions

Two of the court cases filed on Colorado's legislative reapportionment -- Lisco v. Love and Myrick v. Colorado General Assembly -- were consolidated for consideration by the U. S. District Court in Denver. These two cases challenged the composition of the state senate as established by Amendment No. 7, adopted at the 1962 November election.

On July 16, 1963, in a two-to-one decision, the U. S. District Court upheld the apportionment of the state senate under the provisions of Amendment No. 7. Appendix C herein contains the text of the majority decision and the dissenting opinion of District Judge William E. Doyle.

This decision was appealed to the U. S. Supreme Court by Andres Lucas, one of the appellants in the Lisco suit, and in an opinion delivered on June 15, 1964, the U. S. Supreme Court reversed the district court's decision, and remanded the case to the federal district court. (See Appendix D -- Lucas v. Colorado General Assembly.)

On June 26, 1964, the district court ruled that: (1) Amendment No. 7 was not severable; (2) the provisions of the state's constitution in Section 47 of Article V did not forbid the subdistricting of multi-member counties; and (3) sufficient time was available for the state to take action to effectuate the decision of the U. S. Supreme Court for the 1964 elections. The court laid the matter over until July 15, at which time it would review the situation, adding that:

"If State action is taken, then we have the additional responsibility of determining whether that action is permissible under the 14th Amendment.

"If it does not take action, then the burden is on us to come up with some plan which will carry out as closely as may be the principles announced by the United States Supreme Court."*

1964 Legislative Reapportionment Law -- July 8, 1964

Governor Love called the General Assembly into special session on July 1, 1964, to adopt a legislative reapportionment act to

* For complete text of this ruling, see Appendix E.

comply with the decision of the Supreme Court and the order of the federal district court.

On the basis of the 1960 census, 35 Senate districts average 50,113 persons per district, and 65 House districts average 26,984 persons per district. Dividing the state's 1960 population by the total number of General Assembly members results in a figure of 17,539.

Because the state's constitution in 1964 prohibited adding a part of one county to another whole county in the formation of a legislative district, the General Assembly had to observe county boundaries in drawing any reapportionment plan, and exact mathematical accuracy was therefore not possible.

With this in mind, Senate Bill No. 1 was adopted by both houses of the General Assembly on July 7, 1964, and, following federal court approval, was signed by the governor on July 8, 1964. In this connection, it was the opinion of all three members of the federal district court that for the purposes of the 1964 election, Senate Bill No. 1 did not offend the 14th Amendment of the U. S. Constitution, and was adequate to comply with the mandate of the U. S. Supreme Court. Accordingly, the court said that it would enter an order for the defendants to conduct the 1964 election in accordance with the provisions of S.B. No. 1, and that it would retain jurisdiction of this matter. (See Appendix F for text of S.B. 1, and Maps 7 and 8 for Senate and House districts thereunder.)

The effect of S.B. No. 1 was to shift a number of seats in both houses of the General Assembly to the heavily-populated counties. The following table summarizes the differences between districts in 1962 and those for 1964 for the ten largest counties in the state:

	Senators -- 35 Total Seats		
County	No. in 1962	No. in 1964	Change
Denver	8	9	1
El Paso	2	3	1
Jefferson	1	3	2
Pueblo	2	2	0
Adams	1	2.5	1.5
Arapahoe	1	2.5	1.5
Boulder	1	1.5	.5
Weld	2	1.5	(.5)
Larimer	1	1	0
Mesa	1	1	0
	20	27*	7

* Under Amendment No. 7, these ten counties would have received 24 of 39 senate seats.

County	Representatives -- 65 Total Seats No. in 1962	No. in 1964	Change
Denver	17	18	1
El Paso	3	5	2
Jefferson	2	4	2
Pueblo	4	4	0
Adams	2	4	2
Arapahoe	2	4	2
Boulder	2	3	1
Weld	3	3	0
Larimer	2	2	0
Mesa	2	2	0
	39	49	10

As may be noted from the above tabulation, the ten largest counties in Colorado, with 78 per cent of the state's 1960 population, had a majority of the seats in both houses of the General Assembly under Colorado's old reapportionment law. S.B. No. 1 shifted an additional seven senate seats and ten representative seats to these counties to bring their legislative representation in line with their share of the state's 1960 population.

The population per Senate and House district under S.B. No. 1 was reported in the two staff memorandums included herein as Appendix G. A comparison of the district population variation from the State average and the "urban" or "rural" average is contained in Appendix H.

It may be noted that S.B. No. 1 included two so-called "floterial" districts in its apportionment of the senate -- Districts 22 (Adams and Arapahoe) and 25 (Weld and Boulder). The use of this type of district, which was discussed in Davis v. Mann, 377 U. S. 678, 686, also decided on June 15, 1964, was included where one county, by itself, did not have sufficient population to qualify for an additional senator, but sufficient population was obtained by adding an adjoining county to form a separate senatorial district.

Also, in accordance with the comment on page 21 of the Lucas decision (Appendix D), under-representation in one house for a county was balanced with over-representation in the other house as, for example, in Jefferson County.

White v. Anderson

Despite the ruling of the federal district court with respect to S.B. No. 1, on July 17, 1964, the Colorado Supreme Court held that this new legislative reapportionment law was unconstitutional on the ground that districting within multi-member counties violated the state constitutional prohibition against the division of counties (White v. Anderson, 155 Colo. 291). The effective date

of this decision, however, was postponed until after the 1964 general election, with the state supreme court retaining jurisdiction.

On September 11, 1964, the U. S. Supreme Court was petitioned to accept an appeal from part of the federal district court decision of June 26, 1964, namely, that the provisions of Amendment No. 7 (adopted in November, 1962) were not severable, in order to retain the single-member districting provision of this amendment. The federal high court rejected this petition, however, stating that the question of whether a state constitutional provision was severable or not was a matter for determination by the state court (Colorado General Assembly v. Lucas, 379 U.S. 693).

In Re Interrogatories

The House of Representatives of the 45th General Assembly submitted three interrogatories to the Colorado Supreme Court during the 1965 session with respect to the severability of the provisions of Amendment No. 7. The state court ruled that these provisions were not severable and the whole of Amendment No. 7 was therefore invalid and void (In Re Interrogatories, 157 Colorado 77).

1965 Session -- S.B. No. 180

Near the close of the 1965 regular session, the members of the General Assembly adopted a new reapportionment act. This bill -- S.B. No. 180 -- contained the same apportionment features as those in S.B. No. 1, 1964 special session, but provided for the election at large of all members in multi-member counties in order to comply with the ruling of the state supreme court in White v. Anderson.

1965 Legislative Council Committee

With the federal supreme court having ruled that legislative apportionment must be based on population, attention in Colorado next centered on whether the members of the General Assembly should be elected on an at-large basis from multi-member districts or whether each member should be elected from a single-member district in the larger counties in the same manner as members were elected from multi-county districts. Most frequently mentioned as an example in this respect was the City and County of Denver where 18 members of the House of Representatives would be elected at large every two years, along with either four or five senators, under the terms of the then existing apportionment act.

In Colorado, the General Assembly normally considers proposed constitutional amendments during regular sessions held in even-numbered years. The Legislative Council therefore appointed a committee in September of 1965 to study legislative districtricting proposals for submission and consideration in the 1966 session. This

committee reviewed various arguments for and against single-member and multi-member districts and held meetings with various interested individuals and organizations to discuss various proposals.

By the time the 1966 session had started, the members of the committee had narrowed their consideration to four proposals for amending the constitution. These proposals may be summarized as follows:

1. Under one proposal, the state would be divided into as many districts as there are members of the Senate and the House of Representatives, with one such member being elected from each district. No floterial districts would be permitted. A penalty would be provided of loss of compensation and ineligibility of members to succeed themselves in office if they failed to reapportion when required after each federal decennial census. All or part of one county could not be joined with part or all of another county in the formation of such districts.

2. The second proposal would have divided the City and County of Denver into four separate senatorial and four representative districts with the common center of such districts always to be the center point of the intersection of Broadway and Colfax Avenue, and the boundaries thereof always to be a straight line drawn from said center point to the corporate boundaries of the city and county. To achieve equal population in districts, a portion of one county could be combined with an entire adjoining county, or portion thereof, in forming a district. In all cases where more than one senator or one representative is apportioned to a district, such district would be divided into as many subdistricts as the number of members apportioned thereto. This proposal also provided for a penalty of loss of compensation and ineligibility of members to succeed themselves for failure to reapportion when required.

3. The third proposal would have established single-member districting throughout the state except that in Denver two senators and four representatives would be elected from the city and county at large, with one such senator being elected in 1968 and the other in 1970. Floterial senatorial districts would be permitted under the definitions of this proposal, and a portion of one county could not be joined with a part or all of another county in the formation of legislative districts. The members would also be penalized by loss of compensation and ineligibility to seek re-election under this proposal if they failed to reapportion within 45 days after the beginning of the appropriate session.

4. The fourth proposal provided that all senators were to be elected from single-member districts. Senatorial floterial districts would be permitted, and a portion of one county could not be joined with a portion or all of another county in forming districts. The members of the General Assembly would be directed to apportion in the 1967 session and at the first regular session following each federal decennial census, but this proposal did not include a penalty provi-

sion similar to that contained in the first three proposed amendments.

The 12 voting members of the 1965 Legislative Council committee were equally divided between the two houses and the two major political parties and no one proposal received the approval of a substantial number of the committee members. At the final meeting of the committee, which was held on January 11, 1966, after the 1966 session had started, the third proposal summarized above was adopted for recommendation to the members of the General Assembly by a vote of six to four.

1966 Constitutional Amendment

Numerous proposals to amend the apportionment provisions of Colorado's constitution were considered during the 1966 session, including that recommended by the Council committee, but no single-proposal was able to receive the required two-thirds majority in both houses of the General Assembly. Thus, with no affirmative action having been taken on this matter by the General Assembly in the 1966 session, a drive was started by various persons and organizations, including many of those who were successful in the adoption of Amendment No. 7 in 1962, to place a proposed amendment on the 1966 ballot by use of the initiation process, and this move resulted in Amendment No. 4 being voted on by the citizens of Colorado.

On November 8, 1966, the voters of Colorado approved the adoption of Amendment No. 4 by a vote of some 373,000 to 159,000. In brief, this amendment:

1. Requires the election of members of the General Assembly from single-member districts, with the state being divided into no more than 35 senatorial districts and 65 representative districts;

2. Requires that each district in each house must have a population as nearly equal as may be to every other district in the same house;

3. Permits the General Assembly, where the members declare it necessary to meet the equal population requirements, to add part of one county to all or part of another county in the formation of senatorial and representative districts;

4. Requires that no districts of the same house may overlap, thereby prohibiting the formation of floterial districts such as were provided for two districts in the Senate in 1964;

5. Requires the General Assembly to establish the boundaries of senatorial and representative districts in the 1967 regular session and at each regular session next following official publication of each federal enumeration of the population of the state; and

6. Requires the members of the General Assembly to comply with the provisions of this amendment within 45 days from the beginning of the applicable regular session or face loss of their compensation and the right to succeed themselves in office unless and until they adopt the required revisions and alterations in legislative districts.

Amendment No. 4 also repealed the constitutional provision that the state must take a census every five years, beginning in 1885, with the General Assemnly to reapportion itself at the first session following this enumeration. (A copy of Amendment No. 4 is included as Appendix J together with an opinion thereon of the Attorney General dated December 8, 1966, as Appendix K.)

1966 Legislative Council Committee

At its meeting on November 28, 1966, the Legislative Council appointed a committee to work on implementing the provisions of Amendment No. 4 in order to provide the members of the 46th General Assembly with as much background information as possible on legislative districting. This assignment involved developing such information as compiling 1960 census population on the basis of 1966 general election precincts and clarifying any questions that had arisen as to implementing the language contained in Amendment No. 4, including the development of general apportionment and districting standards to be followed in accordance with the equal representation principle contained in Amendment No. 4.

At its initial meeting on December 9, 1966, committee members agreed that it would be beneficial to establish various guidelines to be followed in implementing the provisions of Amendment No. 4 as well as agreeing on procedures and a timetable to follow in meeting the February 17, 1967, deadline set out under the provisions of the amendment. In this former connection, the committee noted that, while the recent impetus for legislative reapportionment was provided by the courts, specific definitions as to what constitutes equal population representation had not been generally provided by the judiciary. Instead, the U. S. Supreme Court in effect had said that each legislative apportionment plan must be judged on its own merits in view of its particular component parts, with the foundation of any such plan being that one man's vote is essentially equal in weight to any other man's vote. Thus, no one at this point could say what population guidelines must be followed in developing legislative districts in Colorado under the provisions of Amendment No. 4 in order to comply with the equal population representation decisions of the courts. On the other hand, the members noted, based on a review of information reported by Congressional Quarterly, a judicially-acceptable minimum variation figure from the state average population per district appeared to be 15 per cent, if based on a rational state policy. In a report published in August of 1966, entitled "Representation and Apportionment," CQ wrote:

> As of June 1966, the latest apportionment plans of 32 states included one or more districts deviating in population from the state district average by more than 15 percent and which would appear particularly susceptible to challenge on the basis of continuing population inequalities: Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. The U. S. Supreme Court had not defined an exact maximum population deviation which would be permissible, but many lower courts and legislatures have used the 15-percent figure as a rough guideline. (p. 65) (Emphasis added.)

Similarly, this 15 per cent deviation figure appeared to have been followed in many states, including Colorado, when redrawing congressional district lines. Prior to February 17, 1964, when the decision in Wesberry v. Sanders was handed down by the U. S. Supreme Court, of the 43 states having more than one congressional representative, all but eight of these states had congressional districts varying in size greater than 15 per cent from the state average. In Texas, for example, 20 of the 23 congressional districts exceeded this 15 per cent limitation, and two of the four congressional districts in Colorado were likewise in excess of this 15 per cent figure. By way of comparison, only two of the 31 states that have been redistricted since February 17, 1964, have congressional districts where the population is greater than 15 per cent of the state average: Georgia (16.4 per cent maximum) and Ohio (20.9 per cent maximum.) Both of these states, however, redistricted before the U. S. House of Representatives had passed a bill on this point authored by Representative Emanuel Celler of New York. This bill, which did not receive approval of the U.S. Senate, would have: (1) established 15 per cent as the maximum percentage by which a congressional district's population could deviate, either above or below, from the average size of the state's districts; (2) prohibited at-large elections for any state with more than one House seat; (3) required that districts be composed of "contiguous territory, in as compact form as practicable"; and (4) forbade more than one redistricting of a state between decennial censuses. One major reason reported by CQ for House approval of the Celler bill appeared to be the desire for protection against even more rigid criteria which the courts might impose.*

* "Congressional Redistricting," Weekly Report No. 37, September 16, 1966, Congressional Quarterly Service, Washington, D. C. pages 2006-2007.

After reviewing this information and the provisions of Amendment No. 4, together with the opinion issued on December 8, 1966, by the Attorney General, the committee established general guidelines to be followed in drawing proposed legislative district boundaries, all of which were designed to achieve the ultimate objective of the preparation of a bill that would meet all tests as to its constitutionality. These guidelines may be summarized as follows:

1. All districts should contain population within plus or minus 15 per cent of the state average based on the 1960 census -- 50,113 persons average for Senate districts and 26,984 persons average for Representative districts.

2. Population variations among districts within multi-member counties should be held to a minimum consistent with following whole general election precinct lines.

3. County boundaries should remain intact except where necessary to achieve equal population representation goals.

4. All districts should be as compact as possible consistent with following whole general election precinct boundaries and equal population objectives.

5. Under-representation in one house of the General Assembly should be compensated, if possible, with over-representation in the other house in order that each man's vote should be approximately equal with another man's vote, on the basis of the 1960 census, in terms of the total membership of the bicameral General Assembly.

Incidental to these major objectives was an attempt to avoid placing incumbent members within the same legislative districts. However, in order to achieve the objective of equal population representation and the other objectives listed, this was not possible in many cases.

At its meeting on December 9, 1966, the committee also agreed that the staff of the Legislative Council should proceed to develop sample districting plans for the state and for multi-member counties in keeping with the aforementioned objectives and guidelines, and adopted the following time schedule for completing the committee's assignment:

December 16, 1966 -- Preliminary review and committee decision on tentative district lines prepared by the staff.

December 23, 1966 -- Duplication and general distribution of tentative district plans, including 1960 population figures on basis of 1966 general election precincts.

January 9, 1967 -- Committee meeting to review comments received on tentative district lines.

January 16, 1967 -- Introduction of bill.

February 17, 1967 -- Final date for legislative action within 45-day deadline.

In general, the committee was able to maintain this time schedule, with the final meetings being held on the afternoon of January 12 and the morning of January 13 and with House Bill No. 1117 being introduced on January 16. As instructed by the committee, a series of maps depicting legislative districts under the provisions of this bill had already been prepared and distributed to the members.

An Analysis of House Bill No. 1117

House Bill No. 1117, 1967 session, reapportioned the members of the General Assembly and established 35 senatorial districts and 65 representative districts in accordance with the provisions of Amendment No. 4. The various districts created under this act were generally based on Council committee guidelines and objectives listed previously herein. Moreover, the relatively few amendments made to this bill prior to its adoption on February 14, 1967, resulted in less population variation among districts than those contained in the bill as introduced.

Apportionment Changes. As contained in H.B. 1117, compared to the previous legislative apportionment law, the membership of the Senate continued to total 35. However, the number of senators being elected from within the City and County of Denver was increased from nine to ten; the two floterial senatorial districts were abolished; instead of having three senators, Jefferson County was apportioned two senators plus roughly 60 per cent of a senatorial district that includes a portion of Adams County; and a new senatorial district was formed composed of parts of Boulder and Weld counties.

For the House of Representatives, the number of members elected from within Jefferson County was increased from four to five, but the over-all apportionment for the remaining multi-member counties remained as it was under the previous plan. The additional representative assigned to Jefferson County resulted from a consolidation of House districts in the northeastern and east-central parts of the state.

District Boundary Changes. Under the provisions of H.B. 1117, new single-member Senate and House districts were established within the multi-member counties in the state. Changes were also necessitated in most of the boundaries of the multi-county districts within the state. (A general visual review of the previous and present

district boundaries may be obtained by comparing Maps 7 and 8 with Maps 9 and 10.)

Incumbent Conflicts. As indicated previously, H.B. 1117 would result in some instances where two or more incumbent members would be located within the same district. These situations are as follows:

Senate District 7 -- Senators Bermingham and Nicholson
Senate District 22 -- Senators Armstrong and Hahn

House District 11 -- Representatives Bain, Horst, and Lamm
House District 12 -- Representatives Frank and Gustafson
House District 13 -- Representatives Bryant and Coffee
House District 18 -- Representatives Cresswell, Lowery, and O'Donnell
House District 21 -- Representatives Hart and Wilder
House District 31 -- Representatives Mullen and Strickland
House District 49 -- Representatives Baer and Woodfin
House District 57 -- Representatives Morris and Schafer

Equality of Representation Under H.B. 1117. Amendment No. 4 provides, in part, that "In the regular session of the General Assembly in 1967, and at each such session next following official publication of each federal enumeration of the population of the state, the General Assembly shall establish or revise and alter the boundaries of senatorial and representative districts according to the provisions of sections 46 and 47." The language of this amendment means that an entirely new apportionment act was required in the 1967 session based on the 1960 federal census. (Also see Attorney General's Opinion included as Appendix K.) Thus, the members of the General Assembly were required to develop and adopt a legislative apportionment plan for the state on the basis of population figures that were seven years old and which, in many areas at least, in no way reflected current population. Further, the apportionment plan that was approved will be applicable only for two general elections -- those in 1968 and in 1970 -- before new federal census figures will be available and it will be time for the General Assembly once again to prepare and approve a new apportionment act.

With respect to measuring equality of representation under the provisions of H.B. 1117, an article in the National Civic Review states, in part:

> Of the various mathematical measures of representative equality, three have served as the most common standards: (1) minimum control percentage; (2) ratio of most populous to least populous district; and (3) percentage deviation from the norm. In some cases, courts have simply used such examples descriptively, in others they have accepted or rejected specific

standards. In a few instances, they have even prescribed mathematical standards.*

Information relating to all three of these methods as they apply to H.B. 1117 has been developed and is contained in Appendix M through R. (The text of H.B. 1117 is included as Appendix L.) In addition, an index of equal population representation has been developed which, among other things, may be used to indicate those areas having over-representation in one house of the General Assembly and under-representation in the other house, as may be noted in Appendix S.

Minimum Control Percentages. Appendices M and N contain senatorial and representative district population figures for the districts created under the provisions of H.B. 1117, with these districts being ranked for comparison purposes from low to high, or from the smallest district to the largest district. Perhaps of some interest, these listings indicate that, by defining "urban" districts as those located within the ten largest counties in the state and "rural" districts as those including the remaining 53 counties, "rural" senatorial and representative districts are fairly well spread throughout the rankings, with some being in the low population category, some in the middle, and some in the high population group.

Appendices M and N also may be used to determine the minimum percentage of district population that it would take to elect a majority of the members to Colorado's Senate or House of Representatives. On this basis, the minimum number for electing 18 members of the Senate would be 50.3 per cent of the district population total; for the House of Representatives, this minimum would be 48.2 per cent. In this connection, the article previously cited in the January, 1967, issue of the National Civic Review, on pages 25-26, comments: "So far, percentages falling below 45 appear to be suspect. In the thirteen cases where an apportionment was rejected and the court mentioned a minimum control percentage as an apparent reflection of inequality, all but one fell in the 33.2 to 44.8 per cent range. The exception was a 47.1 per cent figure rejected in North Carolina (with a 47.5 per cent figure later accepted). All twelve cases where the standards were accepted or prescribed fell in the 46.4 to 49.3 per cent range."

Ratio of Most Populous to Least Populous District. Appendicies O and P are based on the rankings of districts reported in the previous two appendices. That is, a ratio may be obtained from the rankings by district population to compare the relative weight of

* "Judicial Standards Undergo Analysis," taken from a preliminary report by Dr. Gordon E. Baker of the University of California, National Civic Review, January, 1967, page 25.

each man's vote based on the weight of one man's vote in the smallest district compared to the weight of one man's vote in any other district. This has been described as the most dramatic way of stressing inequalities among districts, but this approach emphasizes extreme cases that are frequently not typical and is based on using population as being synonomous with number of voters.

The figures in Appendices O and P show that the weight of one vote in the smallest senatorial district under H.B. 1117 is offset by less than one and one-fifth vote in the largest such district (a ratio of 1 to 1.15), and in only the three largest senatorial districts does the figure exceed a ratio of 1 to 1.10. So far as House districts are concerned, a similar comparison indicates that it would take 1.28 votes in the largest district to offset one vote in the smallest district, as the extreme comparison, while in all but seven of the 65 districts the one vote in the smallest district would be offset by a vote of 1.20 or less in the larger districts.

Percentage Deviation From Norm. A third common indicator of equality of representation under a state's apportionment plan is to compare the percentage variation of each district from the mathematical average-sized district for a state. Apendices Q and R contain this comparison for the state of Colorado under the districts created by H.B. 1117. Additionally, these figures also include a comparison for average-sized districts within multi-member counties.

So far as senatorial districts are concerned, 11 of the 35 districts would vary in size from the state average by less than one per cent, either plus or minus -- Districts 1, 3, 4, 6, 9, 10, 17, 18, 19, 20, and 32. A total of ten districts would vary from the state average by more than one per cent but less than two per cent -- Districts 2, 5, 7, 8, 14, 15, 22, 24, and 27. Three districts -- 21, 23, and 31 -- show a variance of between two and three per cent; four districts -- 25, 28, 30, and 35 -- have a variance of between three and four per cent; and three districts -- 11, 12, and 13 -- vary by between four and five per cent. Four districts have a variance of more than five per cent from the state average. In other words, 60 per cent of the districts vary by less than two per cent from the state average and only one district exceeds a seven per cent variance. The districts range from a plus 7.47 per cent variance in District 33 to a minus 6.16 per cent variance in District 16. Oddly enough, District 33 is a "rural" district and District 16 is an "urban" district.

A similar comparison for representative districts in H.B. 1117 results in greater percentage variations which is due, in part at least, to the greater number of districts involved and a smaller numerical base figure. The variation figures in Appendix R may be summarized as follows:

Percentage Variance (Plus or Minus) From State Average	Districts
Less than one per cent	Six -- Nos. 10, 33, 34, 36, 51, and 53.
Between one and two per cent	Six -- Nos. 4, 11, 17, 38, 47, and 48.
Between two and three per cent	Ten -- Nos. 1, 7, 8, 9, 12, 13, 15, 16, 18, and 57.
Between three and four per cent	Nine -- Nos. 2, 3, 5, 6, 14, 35, 56, 60, and 64.
Between four and five per cent	Seven -- Nos. 23, 26, 40, 50, 54, 59, and 63.
Between five and six per cent	Three -- Nos. 22, 25, and 28.
Between six and seven per cent	Five -- Nos. 19, 24, 27, 43, and 65.
Between seven and eight per cent	Five -- Nos. 21, 39, 42, 49, and 52.
Between eight and nine per cent	Two -- Nos. 20 and 37.
More than ten per cent	Twelve -- Nos. 29, 30, 31, 32, 41, 44, 45, 46, 55, 58, 61, and 62.

For these representative districts, percentage variations from the state average range from a high of plus 13.44 per cent in District 29 to a low of minus 11.70 in District 62.

Index of Equal Population Representation. No apportionment of the state of Colorado can achieve mathematical exactness; however, on the basis of generally-accepted guidelines as to what constitutes equal representation, a fourth test may be applied to the population representation obtained under H.B. 1117, keeping in mind that Amendment No. 4 requires the General Assembly to follow whole general election precinct lines when forming legislative districts. This approach involves the determination of an index of representation based on a comparison of each county's share of the 1960 census total with the same county's share of the membership of the General Assem-

bly, or including members of both the Senate and the House of Representatives.

Based on the information in Appendix S, the ten largest counties in the state contained 78 per cent of the 1960 census population and, under the provisions of H.B. 1117, 77.70 per cent of the membership of the General Assembly is apportioned to the people in these counties, i.e., these people would be under-represented by less than one-third of a member out of the 78 members to which they would otherwise be entitled on the basis of exact methematical equality, an index of under-representation of .38 per cent. On the other hand, the 53 smaller counties in the state, containing 22 per cent of the state's 1960 population, are apportioned 22.30 members of the General Assembly for an index of over-representation of 1.32 per cent.

The information in Appendix S may also be used to determine those counties having under-representation in one house and over-representation in the other house under the provisions of H.B. 1117. It may be noted that there are 24 counties where this happens -- Adams, Conejos, Costilla, Denver, Dolores, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Hinsdale, Jackson, Larimer, Logan, Mesa, Morgan, Phillips, Pueblo, Rio Grande, Routt, Sedgwick, Summit, and Washington.

Concluding Comments. Near the close of the 1966 Council committee's activity, the U. S. Supreme Court delivered an opinion disapproving the plan adopted in Florida for the apportionment of the state legislature. However, the only information available to members of the committee at its final meeting on January 12-13 was a wire service report appearing in a Denver newspaper, and the time remaining for action on legislative apportionment by the members of the General Assembly was too limited to allow for major revisions in the plan developed by the committee.

The opinion of the court reported that Florida's plan "provides for 48 senators and 117 representatives, and includes what in effect are multi-member districts for each house. The senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% under-represented. The ratio between the largest and the smallest district is thus 1.30:1. The deviation from the average population is greater than 15% in one senatorial district, is greater than 14% in five more districts and is more than 10% in still six other districts. Approximately 25% of the State's population living in one quarter of the total number of senatorial districts is under- or over-represented by at least 10%. The minimum percentage of persons that could elect a majority of 25 senators is 48.38%.

"In the house the population per representative ranges from 34,584 to 48,785 or from 18.28% over-represented to 15.27% under-represented. The ratio between the largest and the smallest repre-

sentative district is 1.41 to 1. Two districts vary from the norm by more than 18% and another by more than 15%, these three districts having seven of the 117 representatives. Ten other districts with 22 representatives vary from the norm by more than 10%. There is thus a deviation of more than 10% in districts which elect 29 of the 117 representatives. 24.35% of the State's population live in these districts. The minimum percentage of persons that could elect 58 representatives is 47.79% and a majority of 59 representatives could be elected by 50.43% of the population."

The court noted that: "We reverse for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts with respect to both the senate and house of representatives. Reynolds v. Sims, supra, recognized that mathematical exactness is not required in state apportionment plans. De minimus deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed de minimus and none of our cases suggests that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy. On the contrary, the Reynolds opinion limited the allowable deviations to those minor variations which are based on legitimate considerations incident to the effectuation of a national state policy. 377 U.S. 533, 579. Thus that opinion went on to indicate that variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines. Likewise, in Roman v. Sincock, 377 U.S. 695, 710, the Court stated that the Constitution permits 'such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination.'"

A comparison of the statistics of the Florida plan, although somewhat condensed by the court, with those of the plan embodied in H.B. 1117, as reported previously herein, indicates that substantially greater equal population representation has been included in Colorado than was contained in the Florida plan which was rejected by the U. S. Supreme Court. However, in view of the fact that the court has thus far not announced detailed specifications for every state to observe, it is unlikely that this comparison alone indicates the plan in H.B. 1117 would either be acceptable or not acceptable to the court.

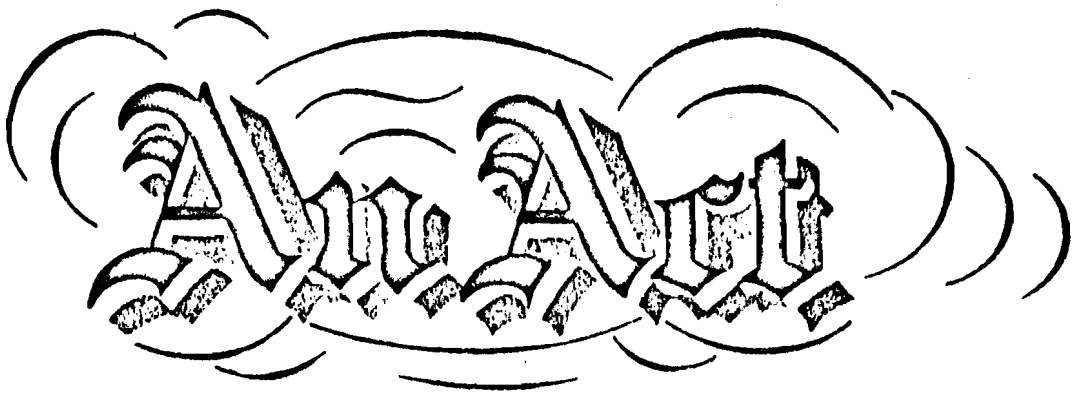
Perhaps of more significance is the fact that consideration was given in the formation of the legislative districts in H.B. 1117 to (1) maintaining the integrity of political subdivisions, (2) the maintenance of compactness and contiguity in legislative districts, and (3) the recognition of natural or historical boundary lines, in addition to equal population standards, with all three of these factors being mentioned by the U. S. Supreme Court in the Reynolds case. In this connection, based on the statistical data developed,

if the apportionment results under H.B. 1117 are not acceptable, the alternative facing the state would be a plan involving crossing or splitting the boundaries of a substantial number of counties, so as to render them almost meaningless for purposes of legislative representation, if any significant changes in the statistics on equal population are to be achieved.

H.B. 1117 resulted from the work of several legislators who based their views on a combination of common sense and fair play. While these attributes have not been given specific credence by the court, the disposition of the result of the work of these members -- H.B. 1117 -- can finally be determined by the courts, and it will only be then when the members of the Colorado General Assembly will know whether this approach meets with the court's approval.

APPENDICIES

APPENDIX A



BY REPRESENTATIVES LAMB and DOUGLASS. MYRICK, MACKIE, ARMSTRONG, ALBI, OHLSON, LENNOX, HOWELL, GOSSARD, HORIUCHI, FRIEDMAN, MORAN, SCHAFER, STEVENS, STALKER, MCCORMICK, BOYDEN, BRADEN, AUTRY, PORTER.

HOUSE BILL NO. 1001

CONCERNING CONGRESSIONAL DISTRICTS.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. 63-4-1, Colorado Revised Statutes 1953, is hereby REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

63-4-1. Congressional districts. For the election of representatives to congress, the state of Colorado is hereby divided into four congressional districts as follows:

(1) The first congressional district shall consist of the city and county of Denver.

(2) The second congressional district shall consist of the counties of Adams, Arapahoe, Boulder, Clear Creek, Gilpin, and Jefferson.

(3) The third congressional district shall consist of the counties of Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Douglas, Elbert, El Paso, Fremont, Huerfano, Kiowa, Kit Carson, Las Animas, Lincoln, Otero, Prowers, Pueblo, Teller, Washington, and Yuma.

(4) The fourth congressional district shall consist of the counties of Alamosa, Archuleta, Chaffee, Conejos, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, Lake, La Plata, Larimer, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Ouray, Park, Phillips, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, and Weld.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1964

No. 7

PROPOSED CONSTITUTIONAL AMENDMENT

I, George J. Baker, Secretary of State of the State of Colorado, do hereby certify that the following is a true copy of the title, text and ballot title of a certain proposed constitutional amendment.

AN ACT TO AMEND ARTICLE V OF THE STATE CONSTITUTION PROVIDING FOR THE APPORTIONMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY AND PROVIDING FOR SENATORIAL DISTRICTS AND REPRESENTATIVE DISTRICTS

The proposed initiative AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO (of which the foregoing title is hereby made or constituted a part) is as follows:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

SECTION 1. Sections 45, 46, and 47 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

Section 45. GENERAL ASSEMBLY. The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

Section 46. HOUSE OF REPRESENTATIVES. The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

Section 47. SENATE. The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

Section 48. REVISION OF DISTRICTS. At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law.

The ballot title and submission clause to the proposed initiative amendment to the constitution petitioned for herein as designated and fixed by the Secretary of State, Attorney General and Reporter of the Supreme Court is as follows, to-wit:

An act to amend Article V of the State Constitution providing for a Senate of 39 members and a House of 65 members; provides for 65 Representative Districts to be substantially equal in population; for Senatorial Districts apportioning Senators as now provided by law, and one additional Senator is apportioned to Adams, Arapahoe, Boulder and Jefferson Counties; Elbert County being detached from Arapahoe County and attached to a District with adjoining Counties; provides for Senatorial Districts of substantially equal population within Counties with more than one Senator; for revision of Districts by the General Assembly in 1963 and after each Decennial Census thereafter, under penalty of loss of compensation and eligibility of members to succeed themselves in office	YES	
	NO	

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver, Colorado this 9th day of April, A.D. 1962.

GEORGE J. BAKER,
(Seal) Secretary of State

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

ARCHIE L. LISCO, and all other registered voters of the Denver Metropolitan Area, State of Colorado, similarly situated,

Plaintiffs,

v.

JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, Byron Anderson, as Secretary of the State of Colorado, THE STATE OF COLORADO and THE FORTY-FOURTH GENERAL ASSEMBLY THEREOF,

Defendants.

Civil Action

No. 7501

WILLIAM E. MYRICK, JOHN CHRISTENSEN, ED SCOTT, GORDON TAYLOR, HENRY ALLARD, ANDRES LUCAS, JOHN L. KANE, WILLIAM J. WELLS, FRANK A. CARLSON, WILLIAM EPPINGER, ALLEN L. WILLIAMS, RUTH S. STOCKTON, KENNETH FENWICK, CHESTER HOSKINSON, and JOE B. LEWIS, individually and as citizens of the State of Colorado, residents in the Counties of Adams, Arapahoe, and Jefferson, and taxpayers and voters in the State of Colorado, for themselves and for all other persons similarly situated,

Plaintiffs,

v.

THE FORTY-FOURTH GENERAL ASSEMBLY of the State of Colorado, JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, and BYRON ANDERSON, as Secretary of State of the State of Colorado,

Defendants.

Civil Action

No. 7637

EDWIN C. JOHNSON, JOHN C. VIVIAN, JOSEPH F. LITTLE, WARWICK DOWNING, and WILBUR M. ALTER, individually and as citizens, residents and taxpayers of the State of Colorado, on behalf of themselves and for all persons similarly situated, Intervenors.	)	Civil Actions No. 7501 and No. 7637

Francis R. Salazar and Carl Harthun, Attorneys at Law, 304 Denver-U. S. National Center, 1700 Broadway, Denver 2, Colorado, for Plaintiffs in Civil Action No. 7501.

George Louis Creamer and Charles Ginsberg, Attorneys at Law, 928 Equitable Building, Denver 2, Colorado, for Plaintiffs in Civil Action No. 7637.

Duke W. Dunbar, Attorney General for the State of Colorado, and Richard W. Bangert, Assistant Attorney General for the State of Colorado, 104 State Capitol, Denver 2, Colorado; Anthony F. Zarlengo and V. G. Seavy, Jr., Attorneys at Law, 830 Majestic Building, Denver 2, Colorado, for Defendants in Civil Actions No. 7501 and No. 7637.

Richard S. Kitchen, Charles S. Vigil and Harvey Williams, Attorneys at Law, 2155 First National Bank Building, Denver 2, Colorado, for Intervenors in Civil Actions No. 7501 and No. 7637.

Philip J. Carosell, Attorney at Law, 430 Majestic Building, Denver 2, Colorado, Amicus Curiae in Civil Actions No. 7501 and No. 7637.

MEMORANDUM OPINION AND ORDER

Before BREITENSTEIN, Circuit Judge, and ARRAJ and DOYLE, District Judges.

BREITENSTEIN, Circuit Judge.

These consolidated actions attack the apportionment of the membership of the bicameral Colorado legislature. At the 1962 General Election, two initiated constitutional amendments were submitted to the electorate. One, known as Amendment No. 7, provided for a House of Representatives with the membership apportioned on a per capita basis and for a Senate which was not so apportioned. The other, Amendment No. 8, apportioned both chambers on a per capita basis. Amendment No. 7 carried in every county of the state and Amendment No. 8 lost in every county.[1] The contest over the conflicting theories presented by these two proposals has now shifted from the political arena to the court. The issue is whether the Federal Constitution requires that each house of a bicameral state legislature be apportioned on a per capita basis.

The plaintiffs are residents, taxpayers, and qualified voters within the Denver Metropolitan Area. The defendants are various state officials[2] and the Colorado General Assembly. The complaints as originally filed on March 28 and July 9, 1962, respectively, challenged the apportionment of legislative membership under the then existing constitutional and statutory provisions. Because the suits presented

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[1] See footnote 32, infra.

[2] Since the suits were filed, the incumbents of these offices have changed. An appropriate order of substitution has heretofore been made under Rule 25(d), F.R.Civ.P.

substantial questions as to the constitutionality of state statutes and sought injunctive relief, a three-judge court was convened under 28 U.S.C. § 2281. The proponents of Amendment No. 7, which had then been submitted to the Colorado Secretary of State for inclusion on the ballot at the 1962 General Election, were permitted to intervene.[3]

On August 10, 1962, after trial, the court held[4] that it had jurisdiction, that the plaintiffs had capacity to sue, that the evidence established disparities in apportionment "of sufficient magnitude to make out a prima facie case of invidious discrimination," and that the defendants had shown no rational basis for the disparities. The court noted that the aforementioned initiated constitutional amendments would be on the ballot at the ensuing General Election, declined to enjoin the forthcoming primary election and to devise a plan of apportionment, and continued the cases until after the General Election.

Following the approval by the electorate of Amendment No. 7, the plaintiffs amended their complaints to assert that Amendment No. 7 violates the

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[3] Four of the intervenors are residents, taxpayers, and qualified voters of the counties within the Denver Metropolitan Area and the other of Moffat County. One intervenor was a nonprofit corporation and it has been heretofore dismissed from the case on the ground of a lack of capacity to sue.

[4] See Lisco v. McNichols, D.C.Colo., 208 F.Supp. 471, 478.

Fourteenth Amendment to the United States Constitution by apportioning the Senate on a basis other than population and that, as the provisions of Amendment No. 7 are not severable, the entire amendment is invalid. In answering the amended complaints, the defendants renewed their jurisdictional objections and asserted the constitutionality of Amendment No. 7.

We are convinced that the allegations of the complaints are sufficient to establish federal jurisdiction under 28 U.S.C. § 1343 and 42 U.S.C. § 1983, and that the plaintiffs have standing to sue.[5] The relief sought is a declaration that Amendment No. 7 is void, that the theretofore existing statutory apportionment is void, and that the court fashion appropriate injunctive relief to assure equality in voting rights. Although the prime attack is now against a provision of the state constitution rather than a state statute, the necessity of adjudication by a three-judge district court is still present.[6]

The Colorado legislature met in January, 1963, and passed a statute, H. B. No. 65, implementing Amendment No. 7. No question is raised concerning the implementing legislation.

Amendment No. 7[7] created a General Assembly

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5 Baker v. Carr, 369 U.S. 186, 204-208.

6 See American Federation of Labor v. Watson, Attorney General, 327 U.S. 582, 592-593, and Sincock v. Duffy, D.C.Del., 215 F.Supp. 169, 171-172.

7 See Appendix A following this opinion.

composed of a Senate of 39 members and a House of Representatives of 65 members. The state is divided into 65 representative districts "which shall be as nearly equal in population as may be" with one representative to be elected from each district. The state is also divided into 39 senatorial districts, 14 of which include more than one county. In counties apportioned more than one senator, senatorial districts are provided which "shall be as nearly equal in population as may be." Mandatory provisions require the revision of representative districts and of senatorial districts within counties apportioned more than one senator after each Federal Census.

The defeated Amendment No. 8[8] proposed a three-man commission to apportion the legislature periodically. The commission was to have the duty of delineating, revising and adjusting senatorial and representative districts. Its actions were to be reviewed by the Colorado Supreme Court. The districting was to be on a strict population ratio for both the Senate and the House with limited permissible variations therefrom.

The record presents no dispute over the material and pertinent facts. The parties disagree as to the conclusions to be drawn from these facts. The plaintiffs rely entirely on statistics said to show that population disparities among the senatorial districts result in over-representation of rural areas. The defendants and

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[8] See Appendix B following this opinion.

intervenors assert that the senatorial districts, and the apportionment of senators thereto, have a rational basis and violate no provisions of the Federal Constitution.

The prime position of the plaintiffs is that representation in proportion to population is the fundamental standard commanded by the Federal Constitution. They say that this standard requires that each house must be made up of members representing substantially the same number of people.

The principle of equal weight for each vote is satisfied by a system under which all members of the legislature are elected at large. Such system would result in absolute majority rule and would effectively deny representation to minority interests. Although it would assure no dilution of the weight of any individual's vote, it presents the danger of dilution of the representative and deliberative quality of a legislature because of the practical difficulties of intelligent choice by the voters and because of the hazard of one-party domination.

The disadvantages of elections at large are overcome by the principle of districting. This principle provides representation to interests which otherwise would be submerged by the majorities in larger groups of voters.

From the very beginning of our Nation, districting has been used at all levels of government - national,

state and local.[9] The application of the districting principle to a state legislature requires the division of the state into geographical areas and the apportionment of a certain number of members of the legislature to each district. The plaintiffs say that the district boundaries must be so drawn, and the apportionment to each so made, that the result is substantial equality in the number of people represented by each member of each chamber of the legislature. The query is whether this is required by the Federal Constitution.

Baker v. Carr sets up no standards for the apportionment of a state legislature. That decision rejects the Guaranty Clause[10] as a basis for judicial action in such cases and speaks in terms of the Equal Protection Clause of the Fourteenth Amendment with overtones of the Due Process Clause. The application of these principles causes us difficulty. If we are concerned with equal protection, the question arises as to what laws we consider when evaluating the equality of protection. In Baker v. Carr a noncompliance with state constitutional provisions was present. We have no need to consider whether deliberate departure

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[9] As said by Neal in his article, "Baker v. Carr: Politics in Search of Law," published in the 1962 Supreme Court Review, 252, 277; " * * * the principle of districting within each such unit reflects our conviction that the general interest, and the innumerable separate interests of which it is composed, will be better expressed in a medley of voices from minor fractions of the population than by any monolithic majority."

[10] U. S. Const. Art. IV, § 4.

from state law denies equal protection[11] because here we are dealing with the state constitution itself and the attacked provisions fall only if they impinge on the Federal Constitution.

We are not concerned here with racial discriminations forbidden by the Fourteenth and Fifteenth Amendments or with discrimination on the ground of sex in violation of the Nineteenth Amendment. If we reject the republican form of government standard as a basis for judicial action, we are left with the Due Process Clause to support an assertion of denial of equal protection upon the theory that unequal representation denies equal protection because minority process is not due process.[12]

For all practical purposes the Supreme Court has foregone the application of the Due Process Clause in substantive matters unless an impingement on some absolute civil right occurs.[13] Although the right of franchise is "a fundamental political right, because preservative of all rights,"[14] no provision of the

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11 See Snowden v. Hughes, 321 U.S. 1, 11.

12 Dixon, "Legislative Apportionment and the Federal Constitution," Law and Contemporary Problems, Vol. XXVII, No. 3, 329, 383.

13 See Ferguson, Attorney General of Kansas, v. Skrupa, 372 U.S. 726, 731, wherein the Court refers to the abandonment of the use of the Due Process Clause "to nullify laws which a majority of the Court believed to be economically unwise."

14 Yick Wo v. Hopkins, Sheriff, 118 U.S. 356, 370.

Federal Constitution of which we are aware makes it an absolute right or forbids apportionment of a state legislature on a basis other than one-man, one-vote. Baker v. Carr speaks in terms of "rationality" and "invidious discrimination." The use of these terms precludes the existence of an absolute right.

If either the Equal Protection Clause or the Due Process Clause or both require absolute majority action, some drastic governmental changes will be necessary. "Every device that limits the power of a majority is, in effect, a means of giving disproportionate representation to the minority."[15] The problem is compounded in the situation with which we are concerned. With full operation of the one-man, one-vote principle, the Colorado electorate by an overwhelming majority approved a constitutional amendment creating a Senate, the membership of which is not apportioned on a strict population basis. By majority process the voters have said that minority process in the Senate is what they want. A rejection

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[15] Quoted from Neal, supra, p. 281. Neal says further: "A constitutional principle that puts unequal districting in doubt also calls into question, by necessary implication, provisions requiring special majorities for particular kinds of legislation, such as approval of bond issues in municipal referenda or adoption of proposed constitutional amendments by legislatures or passage of legislation over an executive veto. Why should it not reach, as well, other procedural rules or devices that give obstructive power to minorities, such as the filibuster or the seniority system for choosing committee chairmen?"

of their choice is a denial of the will of the majority. If the majority becomes dissatisfied with that which it has created, it can make a change at an election in which each vote counts the same as every other vote.

A test for determination of equal protection in apportionment cases might logically be better based on the concept of a republican form of government than on the uncertainties, vagueness, and subjective implications of due process. Whichever route is taken the journey ends at the same destination, the necessity of deciding whether the Federal Constitution requires equality of population within representation districts for each house of a bicameral state legislature. We believe that the question must be answered in the negative.

The concept of equality of representation is without historical support.[16] Supreme Court precedents indicate that it is not required.[17] Four, and

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16 See the historical material in the dissent of Justice Frankfurter in Baker v. Carr, 369 U.S. 186, at 301-324, and the opinion of Judge Edwards in Scholle v. Hare, 360 Mich. 1, at 85, 104 N.W.2d 63, at 107, vacated and remanded 369 U.S. 429, on remand 367 Mich. 176, 116 N.W.2d 350, petition for certiorari filed October 15, 1962, 31 Law Week 3147.

17 E.g. MacDougall v. Green, Governor of Illinois, 335 U.S. 281, where the Court said: "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government." (p.283) In Norvell v. State of Illinois, _____U.S. _____, decided May 27, 1963, a case relating to the right of an indigent to a trial transcript at state expense, the Court, after quoting from Metropolis Theatre Co.

perhaps five, of the Justices sitting in Baker v. Carr [18] reject the idea. A heavy majority of the state and lower federal courts has declined to accept the "practical equality standard" as a requirement inherent in the Equal Protection Clause.[19] By the admission of states

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17 (continued)
v. Chicago, 228 U.S. 61, 69-70, a statement that the problems of government are practical ones which may justify if not require rough accommodations, said: "The 'rough accommodations' made by government do not violate the Equal Protection Clause of the Fourteenth Amendment unless the lines drawn are 'hostile or invidious.'"

18
See concurring opinion of Justice Clark (369 U.S. 186) at p. 252, concurring opinion of Justice Stewart at pp. 265-266, and separate dissenting opinions of Justices Frankfurter and Harlan. Justice Douglas said in his concurring opinion at pp. 244-245: "Universal equality is not the test; there is room for weighting."

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Sobel v. Adams, S.D.Fla., 208 F.Supp. 316, 321, 323, 214 F.Supp. 811; Thigpen v. Meyers, W.D.Wash., 211 F.Supp. 826, 831; Sims v. Frink, M.D.Ala., 205 F.Supp. 245, 208 F.Supp. 431, 439, probable jurisdiction noted June 10, 1963, _____U.S._____; W.M.C.A., Inc., v. Simon, S.D.N.Y., 208 F.Supp. 368, 379, probable jurisdiction noted June 10, 1963, _____U.S._____; Baker v. Carr, M.D.Tenn., 206 F.Supp. 341, 345; Mann v. Davis, E.D.Va., 213 F.Supp. 577, 584, probable jurisdiction noted June 10, 1963, _____U.S. _____; Toombs v. Fortson, N.D.Ga., 205 F.Supp. 248, 257; Davis v. Synhorst, S.D.Iowa, _____F.Supp._____, 31 Law Week 2587; Nolan v. Rhodes, S.D.Ohio, _____F.Supp._____, 31 Law Week 2641; Lund v. Mathas, 145 So.2d 871, 873 (Fla.); Caesar v. Williams, 371 P.2d 241, 247-249 (Idaho); Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 180 A.2d 656, 667-669, 229 Md. 317, 182 A.2d 877, 229 Md. 406, 184 A.2d 715, 718, probable jurisdiction noted June 10, 1963, _____U.S._____; Levitt v. Maynard, 182 A.2d 897 (N.H.); Jackman v. Bodine, 78 N.J.Super. 414, 188 A.2d 642, 651; Sweeney v. Notte, 183 A.2d 296, 301-302 (R.I.); and Mikell v. Rousseau, 183 A.2d 817 (Vt.).

See Israel, "The Future of Baker v. Carr," 61 Mich. L. Rev. 107, 117, which notes as exceptions to the majority rule only Scholle v. Hare, 367 Mich. 176, 116 N.W.2d 350, petition for certiorari filed, 31 Law Week 3147 (Oct. 15, 1962), and Moss v. Burkhart, W.D. Okla., 207 F.Supp. 885, appeal dismissed _____U.S. _____, June 10, 1963. The inclusion of Moss v. Burkhart

into the Union with constitutions creating bicameral legislatures, membership to which is not apportioned on a population basis, Congress has rejected the principle of equal representation as a constitutional requirement.[20] The decision in Gray v. Sanders, 372 U.S. 368, is not contrary because there the Court was not concerned with any limitation on "the authority of a State Legislature in designing the geographical districts from which representatives are chosen * * * for the State Legislature * * * ."[21] The references in Gray v. Sanders to one-person, one-vote are not pertinent because the Court was considering an electoral system whereby votes for officers elected from a state-wide constituency were weighted differently.

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19 (continued)
as an exception is of doubtful propriety because the court there was concerned with specific provisions of the Oklahoma constitution. Sincock v. Duffy, D.Del., 215 F.Supp. 169, presented a question of severability and the peculiar factual situation in Delaware. The majority of the court said that the House must be based strictly on population and the Senate "substantially on population." 215 F. Supp. at 195.

20
The constitutions of Alaska and Hawaii do not require equality of representation in each chamber of the legislature. In admitting these states Congress found the constitution of each "to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence." See Act of July 7, 1958, 72 Stat. 339, and Act of March 18, 1959, 73 Stat. 4.

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372 U.S. 368, 376, and see concurring opinion of Justice Stewart at pp. 381-382.

Our conclusion that nothing in the Constitution of the United States requires a state legislature to be apportioned on a strict population basis does not dispose of the problem. The issue remains as to the permissible deviation from a per capita basis. Speaking in terms long applicable to equal protection cases, the Court suggested in Baker v. Carr that an apportionment of membership in a state legislature must be "rational" and not "invidiously discriminatory." The issue is narrowed in the cases at bar because, under Amendment No. 7, the lower chamber of the Colorado legislature is apportioned on a population basis. The question is the effect of the failure to apportion the upper chamber on the same basis. A discussion of this matter necessitates a return to the facts.

The cases now before the court do not present the issues as they existed prior to the apportionment made by Amendment No. 7. As noted by our opinion in Lisco v. McNichols, 208 F.Supp. 471, 477, the then-existing disparities in each chamber were severe, the defendants presented no evidence to sustain the rationality of the apportionment, and witnesses for the intervenors, while defending the apportionment of the Senate, recognized the malapportionment of the House. The change by Amendment No. 7 was such as to require a trial de novo and we are concerned with the facts as finally presented.

In Colorado the problem of districting the state for the election of members of the legislature and of apportioning legislators to those districts

requires consideration of the state's heterogeneous characteristics. The politically determined boundaries of Colorado created a state which is not an economically or geographically homogeneous unit. The topography of the state is probably the most significant contributor to the diversity.

Colorado has an area of 104,247 square miles which is almost equally divided between high plains in the east and rugged mountains in the west. It has an average altitude of 6800 feet above sea level and some 1500 peaks which rise to 10,000 feet or more. The Continental Divide crosses the state in a meandering line from north to south.

In the eastern half of the state are high plains crossed by two major river systems, the South Platte and the Arkansas. The western half is a mountainous area drained principally by the Rio Grande and by the Colorado River and its tributaries. Major mountain ranges lie east of the Continental Divide in some sections of the state and have foothill areas of varying breadth separating the high peaks from the high plains.

Geographically the state is divided into many regions with transportation difficulties of varying severity. The high plains are crossed from east to west by several railroads and main highways. The only north to south rail system and main highway system in this area lie just east of the foothills. The western part of the state is separated into many segments by

mountain ranges and deep canyons. One main-line railroad crosses this section from east to west and none from north to south. Four principal highways provide east to west transportation by crossing the ranges at passes having altitudes of 9,000 to 12,000 feet. The north to south highways are less adequate and follow indirect routes. The terrain of the western section is such that some communities only a few miles apart on the map are many miles apart by the shortest useable road. Commercial air transportation between other than the metropolitan centers is limited.

Colorado is further divided by the availability of water supply. The state is largely semi-arid with only isolated mountain areas having an annual precipitation of over 20 inches. That part of Colorado west of the Continental Divide has 37% of the total state land area and 69% of the state's surface water yield. The part east of the Continental Divide has 63% of the land area and 31% of the surface water supplies.[22] Conflicts over the use of water have troubled the state continuously since its admission to the Union. The growth of the metropolitan areas would have been impossible without the trans-mountain diversion of water from the Colorado River and its tributaries. The divisive nature of the problem and the need for a state-wide water policy resulted in the creation of the Colorado Water Con-

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[22] Colorado Year Book, 1959-1961, p. 451.

servation Board,[23] the members of which are chosen geographically by drainage basins. This recognition of the diverse interests of the competing areas has enabled Colorado to develop impressive irrigation and hydroelectric power projects.[24]

The 1960 Federal Census gave Colorado a population of 1,753,947 persons. The population is concentrated heavily along the eastern edge of the foothills from Fort Collins on the north to Pueblo on the south. In this relatively narrow strip are located three Standard Metropolitan Statistical Areas as defined by the Census Bureau.[25]

The metropolitan areas and their populations are: Denver (Adams, Arapahoe, Boulder, Denver and Jefferson Counties) - 929,383; Colorado Springs (El Paso County) - 143,742; Pueblo (Pueblo County) - 118,707.

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23 Colo. Rev. Stat. Ann., 1953, §§ 148-1-1 to 148-1-19.

24 Colorado Year Book, supra, pp. 459-462.

25 So far as pertinent the Census Bureau defines a Standard Metropolitan Statistical Area as: "a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more or 'twin cities' with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are essentially metropolitan in character and are socially and economically integrated with the central city. The criteria followed in the delineation of SMSA's relate to a city, or cities, of sufficient population size to constitute the central city and to the economic and social relationships with contiguous counties that are metropolitan in character."

Expert research economists testifying for the defendants divided the state into four regions, Western, Eastern, South Central and East Slope. The Western Region includes those counties west of the Continental Divide and those east of the Divide and entirely within the Front Range of mountains. The area is largely mountainous with wide fluctuations in elevation, precipitation and temperature. About two-thirds of the population live in communities of less than 2,500 inhabitants or on farms. Over 65% of the area is in some form of government ownership. The major industries are agriculture (principally livestock raising), mining, and tourism.

The Eastern Region is a part of the Great Plains. The area is dominated by agriculture with winter wheat the principal crop. Irrigation in the South Platte and Arkansas Valleys produces specialized crops. Livestock raising and feeding are important activities. There is some oil production.

The South Central Region includes Huerfano and Las Animas Counties and the six counties drained by the Rio Grande. Agriculture (principally potato raising and livestock) and coal mining are the main industries.

The East Slope Region includes the strip of counties from Larimer and Weld on the north through Pueblo on the south. The population is highly urbanized with 86.7% living in urban areas. The economy is diversified with manufacturing, agricultural

production, mining, tourism, and trade and services contributing to the wealth of the area.

The state is divided into 63 counties, the boundaries of which have remained substantially unchanged since 1913. Historically, contiguous counties have been grouped into representation districts in accordance with a general pattern which is distinguishable since the early days of statehood. Geographical divisions such as mountain ranges and river basins, accessibility, homogeneity, and population all have been recognized. The apportionment of membership to the districts has varied with shifts in population. In the early days of statehood the mining counties were heavily populated. After the turn of the century the increased population of the agricultural counties in the high plains and the decline of the mining counties required changes in apportionment. In more recent years the growth of metropolitan areas has caused a demand for greater representation of the urban centers in the legislature.

Apportionment of the Colorado legislature has not remained static. Legislative revisions occurred in 1881, 1891, 1901, 1909, 1913, and 1953. In 1910, Colorado adopted a liberal constitutional provision for the initiative and referendum of both "laws and amendments to the constitution."[26] An initiated re-

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[26] Colo. Const. Art. V, § 1. A constitutional amendment may be initiated by petition of 8% of the legal voters. No geographical distribution of petition signers is required.

apportionment law was adopted in 1932.[27] At its next session the legislature passed its own reapportionment law and the conflict between it and the initiated measure went to the Colorado Supreme Court,[28] which upheld the power of the people to adopt the initiated reapportionment measure, sustained the validity of the initiated reapportionment, and declared the legislative act unconstitutional. In 1954 the voters rejected a referred apportionment measure and in 1956 rejected an initiated constitutional amendment proposing the reapportionment of both chambers of the legislature on a straight population basis.[29]

After the defeat of the 1956 proposal the Governor appointed a commission to study reapportionment. The majority favored action similar to Amendment No. 7 and the minority recommended action substantially the same as the 1956 proposal and Amendment No. 8. Attempts of the legislature to agree on a reapportionment measure failed. An effort to compel apportionment by state court action failed.[30] During the spring of 1962 Amendments 7 and 8 were initiated by petition. Intensive campaigns were waged in support

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27 Colo. S. L. 1933, Ch. 157, p. 811.

28 Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757.

29 The vote in 1954 was 159,188 against and 116,695 for. The proposal lost in every county. The vote in 1956 was 349,195 against and 158,204 for. The proposal lost in every county except Denver.

30 In re Legislative Reapportionment, _____Colo._____, 374 P.2d 66.

of each.[31] The voters adopted Amendment No. 7 and rejected Amendment No. 8.[32]

The choice of the voters is now before the court. By their action they have apportioned the House on a population basis and have recognized other factors in the apportionment of the Senate. Consideration must next be given to the deviations from equality of representation which occur in the apportionment of the Senate.

Appendix C following this opinion contains tables giving, for each of the four regions delineated

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[31] The witness Edwin C. Johnson, three times Governor and three times United States Senator from Colorado, was one of the sponsors of Amendment No. 7. After mentioning the fact that No. 7 carried in every county and No. 8 lost in every county, he said: "It is very unusual in the annals of Colorado politics that any proposal or candidate receive a plurality in each and every county of this diverse state. Especially as to ballot proposals, there is normally a large built-in negative vote. If people do not understand a proposal, they vote 'no'. I believe that the principal reason for the character of the vote on Amendment 7 is that the issues were very clearly defined, not only by the continuous activities above described from 1953 through 1962, but also in the campaign itself. The proponents of each amendment were highly organized, and they conducted a campaign in every nook and crannie of the state. * * * In addition both proposals were heavily advertised, pro and con, and were the subject of front page editorial treatments by the newspapers of the state. Every communication medium was filled with discussion of this issue for months prior to election day. In short, in these campaigns, the people were intensely interested, fully informed and voted accordingly."

[32] Amendment No. 7 was adopted by a vote of 305,700 to 172,725 (63.89% for and 36.11% against), and carried in every county of the state. Amendment No. 8 lost by a vote of 311,749 to 149,822 (67.54% against and 32.46% for), and was defeated in every county of the state.

by the defense experts, the senatorial apportionment under Amendment No. 7, listing constituent counties, the area in square miles, the population, the apportionment of senators and the population per senator.

The tables disclose that in the Western Region there are eight senatorial districts to which are apportioned eight senators. This region has 13% of the state population, 45.47% of the state area and 20.5% of the senators. There is one senator for each 28,480 persons.

The Eastern Region contains five senatorial districts, to which are apportioned five senators. The region has 8.1% of the state population, 26.21% of the state area and 12.8% of the senators. There is one senator for each 28,407 persons.

The South Central Region contains three senatorial districts, to which are apportioned three senators. The region has 3.8% of the state population, 13.99% of the state area and 7.7% of the Senate membership. There is one senator for each 22,185 persons.

The East Slope Region contains twenty-three senatorial districts, to which are apportioned twenty-three senators. The region has 75.1% of the state population, 14.33% of the state area, and 59.0% of the Senate membership. There is one senator for each 57,283 persons.

The three metropolitan areas of the state have a combined population of 1,191,832 persons or 67.95% of the state total and elect twenty or a majority of

the thirty-nine senators. The Denver Metropolitan Area has a population of 929,383 persons or 52.99% of the state total and elects sixteen senators. The City and County of Denver, the central portion of the Denver Metropolitan Area, is allotted eight senators. The suburban portion (Adams, Arapahoe, Boulder, and Jefferson Counties) of the same area is allotted a total of eight senators.

The combination of districts which would result in the election of a majority of the Senate by the smallest population is reached by taking Boulder County out of the Denver Metropolitan Area and adding it to the nonmetropolitan areas. This would result in a population of 636,369 persons or 36.28% of the state total electing a majority of the Senate.

Appendix D to this opinion gives the ratio of the population per senator in each district to the population of the district having the least number of persons represented by a senator. The highest ratio, that of Districts Nos. 11 and 12 over District No. 23, is 3.6 to 1.

The heterogeneous characteristics of Colorado justify geographic districting for the election of the members of one chamber of the legislature. In no other way may representation be afforded to insular minorities. Without such districting the metropolitan areas could theoretically, and no doubt practically, dominate both chambers of the legislature.

The plaintiffs make much of the disparities in senatorial representation which vary downward from 3.6 to 1. They say that the deviations from per capita standards are impermissible. We do not agree. The distributive scheme of Amendment No. 7 may not be perfect but it does recognize the geographic diversities, the historic grouping of counties, and the accessibility of a candidate to the voters and of a senator to his constituents. The realities of topographic conditions with their resulting effect on population may not be ignored. For an example, if the contention of the plaintiffs was to be accepted, Colorado would have one senator for approximately every 45,000 persons. Two contiguous Western Region senatorial districts, Nos. 29 and 37, have a combined population of 51,675 persons inhabiting an area of 20,514 square miles.[33] The division of this area into two districts does not offend any constitutional provisions. Rather, it is a wise recognition of the practicalities of life. An analysis of the other senatorial districts in all the regions except the populous East Slope would merely emphasize the point.

We are convinced that the apportionment of the Senate by Amendment No. 7 recognizes population as a prime, but not controlling, factor and gives effect to such important considerations as geography,

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[33] Each of nine states, Rhode Island, Delaware, Connecticut, Hawaii, New Jersey, Massachusetts, New Hampshire, Vermont, and Maryland contains less area.

compactness and contiguity of territory, accessibility, observance of natural boundaries, conformity to historical divisions such as county lines and prior representation districts, and "a proper diffusion of political initiative as between a state's thinly populated counties and those having concentrated masses."[34]

The plaintiffs rest their cases on the argument that the apportionment of the Senate by Amendment No. 7 is arbitrary, invidiously discriminatory, and without any rationality. The voters of Colorado have themselves answered these charges. By adopting Amendment No. 7 and by rejecting Amendment No. 8, which proposed to apportion the legislature on a per capita basis, the electorate has made its choice between the conflicting principles.

The initiative gives the people of a state no power to adopt a constitutional amendment which violates the Federal Constitution. Amendment No. 7 is not valid just because the people voted for it. If the republican form of government principle is not a useable standard because it poses political rather than judicial questions, the observation is still pertinent that Amendment No. 7 does not offend such principle.

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[34] W.M.C.A., Inc., v. Simon, S.D.N.Y., 208 F.Supp. 368, 379, probable jurisdiction noted _____U.S._____, June 10, 1963. See also Mann v. Davis, E.D.Va., 213 F.Supp. 577, 584, probable jurisdiction noted, _____U.S._____, June 10, 1963.

If the true test is the denial of equal right to due process, we face the traditional and recognized criteria of equal protection. These are arbitrariness, discrimination, and lack of rationality. The actions of the electorate are material to the application of the criteria. The contention that the voters have discriminated against themselves appalls rather than convinces. Difficult as it may be at times to understand mass behavior of human beings, a proper recognition of the judicial function precludes a court from holding that the free choice of the voters between two conflicting theories of apportionment is irrational or the result arbitrary.

The electorate of every county from which the plaintiffs come preferred Amendment No. 7; In the circumstances it is difficult to comprehend how the plaintiffs can sue to vindicate a public right. At the most they present a political issue which they lost. On the questions before us we shall not substitute any views which we may have for the decision of the electorate. In Ferguson, Attorney General of Kansas, v. Skrupa, 372 U.S. 726, 731, the Supreme Court said that it refused to sit as a "superlegislature to weigh the wisdom of legislation."[35] Similarly, we decline to act as a superelectorate to weigh the rationality of a method of legislative apportionment adopted by a decisive vote of the people.

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[35] Quoted from Day-Brite Lighting, Inc., v. Missouri, 342 U.S. 421, 423.

We believe that no constitutional question arises as to the actual, substantive nature of apportionment[36] if the popular will has expressed itself. In Baker v. Carr the situation was such that an adequate expression of the popular view was impossible. In Colorado the liberal provisions for initiation of constitutional amendments permit the people to act - and they have done so. If they become dissatisfied with what they have done, a workable method of change is available. The people are free, within the framework of the Federal Constitution, to establish the governmental forms which they desire and when they have acted the courts should not enter the political wars to determine the rationality of such action.

Each case is dismissed and all parties shall bear their own costs. The Findings of Fact and Conclusions of Law of the court are set out in this opinion as permitted by Rule 52(a), F.R.Civ.P. The clerk will forthwith prepare and submit an appropriate form of judgment.

DONE at Denver, Colorado, this ____day of July, 1963.

BY THE COURT

Jean S. Breitenstein
United States Circuit Judge,
Tenth Circuit

Alfred A. Arraj
Chief Judge, United States
District Court

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[36] See McCloskey, "The Reapportionment Case," 76 Harvard Law Review 54, 71-72.

APPENDIX A

INITIATED AMENDMENT No. 7 - 1962 Colo. Gen. Election

"SECTION 1. Sections 45, 46, and 47 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

"Section 45. GENERAL ASSEMBLY. The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

"Section 46. HOUSE OF REPRESENTATIVES. The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

"Section 47. SENATE. The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of

Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

"Section 48. REVISION OF DISTRICTS. At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law."

APPENDIX B

INITIATED AMENDMENT No. 8 - 1962 Colo. Gen. Election

"Sections 45 and 47, Article V, of the Constitution of the State of Colorado, are hereby amended to read as follows:

"Section 45. APPORTIONMENT BY COMMISSION. (A) There shall be established a Commission for Legislative Apportionment composed of three members who shall be qualified electors of the State of Colorado, no more than two of whom shall be of the same political party, to serve for a term of eighteen months from the time of their appointment. One member shall be appointed by each of the following in this order: by the Attorney General prior to June 1, by the Lieutenant Governor prior to June 15 and by the State Board of Education prior to July 1, of each year of appointment. The appointments shall be made prior to July 1, 1963, July 1, 1971, and July 1 of each tenth year thereafter.

"(B) It shall be the duty of the commission to delineate senatorial and representative districts and to revise and adjust the apportionment of senators and representatives among such districts. The commission shall certify to the Colorado Supreme Court the boundaries of the senatorial and representative districts and the reapportionment of senators and representatives on or before January 2, 1964; January 2, 1972, and January 2 of each tenth year thereafter.

"(C) If such delineation and apportionment conforms to the requirements of sections 45 through 47

of this article, the court shall affirm the same. If such delineation and apportionment does not conform to the said requirements, or if for any reason whatever the same is not certified to the court, then the court shall delineate senatorial and representative districts and adjust the apportionment among such districts. The court shall rule on or before April 15 of each year set forth in paragraph (B) of this section, with such districting and apportionment to become effective on the date of the court's ruling. The court shall notify forthwith the secretary of state and the clerk of each county of its ruling.

"(D) The commission shall determine a strict population ratio for the senate and for the house by dividing the total state population as set forth in each decennial United States Census by the number of seats assigned to the senate and house, respectively. No legislative district shall contain a population per senator or representative of 33 1/3% more or less than the strict population ratio, except mountainous senatorial districts of more than 5,500 square miles, where the major portion of the district lies west of the 28th meridian of longitude west from Washington, D.C., but no such senatorial district shall contain a population of less than 50% of the strict population ratio.

"(E) It is the intent that sparsely populated areas shall have maximum representation within the limits set forth in paragraph (D) and that population

per legislator in densely populated areas shall be as nearly equal as possible.

"Section 47. SENATORIAL AND REPRESENTATIVE DISTRICTS. (A) Senatorial districts may consist of one county or two or more contiguous counties but no county shall be divided in the formation of a senatorial district.

"(B) Representative districts may consist of one county or two or more contiguous counties, except that any county which is apportioned two or more representatives may be divided into representative sub-districts; Provided, that, a majority of the voters of that county approve in a general election the exact method of subdivision and the exact apportionment of representatives among the subdistricts and the county at large.

"(C) Any proposal to divide a county into subdistricts shall be placed on the ballot only by initiative petition filed with the secretary of state according to the requirements set forth for statewide initiated measures in Article V, Section 1, of this constitution and statutes enacted thereunder; Provided, that, the requirements for the number of signatures and publication shall be determined for that county instead of for the state.

"(D) Subdistricting measures may be placed on the ballot at the general elections of 1966, 1974, and at the general elections held each tenth year thereafter and at no other times. Any such measure

shall take effect pursuant to the provisions of Article V, Section 1, of this constitution and shall remain in effect until repealed or revised by the people through another initiated measure, except that when the apportionment of representatives to any subdistricted county is increased or decreased by the commission for legislative apportionment, the commission may, subject to the review provided in Section 45, paragraph (C), of this article, amend the subdistricting in said county as necessary to conform to the new apportionment.

"(E) A candidate for representative in any subdistricted county need not reside in the subdistrict in which he is a candidate.

"(F) No part of any county may be combined with another county or part of another county in the formation of any senatorial or representative district."

APPENDIX C

APPORTIONMENT OF THE SENATE BY AMENDMENT NO. 7

(Grouped by Regions)

Sen.* Dists.	Counties	Square Miles	Population	Senators	Population Per Senator
		WESTERN REGION			
24	Chaffee	1,040	8,298		
	Park	2,178	1,822		
	Gilpin	149	685		
	Clear Creek	395	2,793		
	Douglas**	844	4,816		
	Teller	555	2,495		
		5,161	20,909	1	20,909
25	Fremont	1,562	20,196		
	Custer	738	1,305		
		2,300	21,501	1	21,501
27	Delta	1,161	15,602		
	Gunnison	3,243	5,477		
	Hinsdale	1,062	208		
		5,466	21,287	1	21,287
29	Rio Blanco	3,264	5,150		
	Moffat	4,761	7,061		
	Routt	2,331	5,900		
	Jackson	1,628	1,758		
	Grand	1,869	3,557		
		13,853	23,426	1	23,426

*The districts are numbered as in H.B. 65. Before the adoption of Amendment No. 7, the state was divided into 25 senatorial districts by Colo. Rev. Stat. Ann. § 63-1-3 (1953), and 35 senators were apportioned to those districts. Amendment No. 7 retained the same district boundaries except that Elbert County was removed from the district which included Arapahoe County also and was added to the district previously consisting of Kit Carson, Cheyenne, Lincoln, and Kiowa Counties. Arapahoe was left in a district by itself. The membership in the Senate was increased to 39 by apportioning one additional senator each to the suburban counties of the Denver Metropolitan Area, that is, Adams, Arapahoe, Boulder and Jefferson Counties. Counties apportioned more than one senator were to be divided by the legislature into senatorial districts as nearly equal as may be in population. This division was made by H.B. 65. The action so taken is not at issue in these cases.

** Douglas County is a part of the East Slope Region, but because of its peculiarities is joined with five Western Region counties to form a senatorial district.

Sen. Dists.	Counties	Square Miles		Population		Senators	Population Per Senator
32	Mesa		3,334		50,715	1	50,715
33	Montrose	2,240		18,286			
	Ouray	540		1,601			
	San Miguel	1,284		2,944			
	Dolores	1,029		2,196			
			5,093		25,027	1	25,027
35	San Juan	392		849			
	Montezuma	2,097		14,024			
	La Plata	1,691		19,225			
	Archuleta	1,364		2,629			
			5,544		36,727	1	36,727
37	Garfield	3,000		12,017			
	Summit	616		2,073			
	Eagle	1,686		4,677			
	Lake	384		7,101			
	Pitkin	975		2,381			
			6,661		28,249	1	28,249
	Western Region (8 Districts,) (30 Counties)		47,412		227,841	8	28,480
			EASTERN REGION				
28	Logan	1,849		20,302			
	Sedgwick	554		4,242			
	Phillips	680		4,440			
			3,083		28,984	1	28,984
34	Kit Carson	2,171		6,957			
	Cheyenne	1,772		2,789			
	Lincoln	2,593		5,310			
	Kiowa	1,794		2,425			
	Elbert	1,864		3,708			
			10,194		21,189	1	21,189
36	Yuma	2,383		8,912			
	Washington	2,530		6,625			
	Morgan	1,300		21,192			
			6,213		36,729	1	36,729
38	Otero	1,276		24,128			
	Crowley	812		3,978			
			2,088		28,106	1	28,106
39	Bent	1,543		7,419			
	Prowers	1,636		13,296			
	Baca	2,565		6,310			
			5,744		27,025	1	27,025
	Eastern Region (5 Districts,) (16 Counties)		27,322		142,033	5	28,407

Sen. Dists.	Counties	Square Miles	Population	Senators	Population Per Senator
		SOUTH CENTRAL REGION			
23	Las Animas	4,798	19,983	1	19,983
30	Huerfano	1,580	7,867		
	Costilla	1,220	4,219		
	Alamosa	723	10,000		
		3,523	22,086	1	22,086
31	Saguache	3,146	4,473		
	Mineral	923	424		
	Rio Grande	916	11,160		
	Conejos	1,274	8,428		
		6,259	24,485	1	24,485
	South Central (3 Districts,) (8 Counties)	14,580	66,554	3	22,185
		EAST SLOPE REGION			
1-8	Denver	73	493,887	8	61,736
9-10	Pueblo	2,414	118,707	2	59,353
11-12	El Paso	2,159	143,742	2	71,871
13-14	Boulder	758	74,254	2	37,127
15-16	Weld	4,033	72,344	2	36,172
21-22	Jefferson	791	127,520	2	63,760
26	Larimer	2,640	53,343	1	53,343
19-20	Arapahoe	315	113,426	2	56,713
17-18	Adams	1,250	120,296	2	60,148
	East Slope (23 Districts,) (9 Counties)	14,933	1,317,519	23	57,283

APPENDIX D

RATIO OF POPULATION PER SENATOR IN EACH DISTRICT TO THE POPULATION OF THE DISTRICT HAVING THE LEAST NUMBER OF PERSONS REPRESENTED BY A SENATOR

(Grouped by Regions)

District	Population Per Senator	Least Population Per Senator	Ratio
	WESTERN REGION		
24	20,909	19,983	1.0-1
25	21,501	19,983	1.1-1
27	21,287	19,983	1.1-1
29	23,426	19,983	1.2-1
32	50,715	19,983	2.5-1
33	25,027	19,983	1.3-1
35	36,727	19,983	1.8-1
37	28,249	19,983	1.4-1
	EASTERN REGION		
28	28,984	19,983	1.5-1
34	21,189	19,983	1.1-1
36	36,729	19,983	1.8-1
38	28,106	19,983	1.4-1
39	27,025	19,983	1.4-1
	SOUTH CENTRAL REGION		
23	19,983	19,983	1-1
30	22,086	19,983	1.1-1
31	24,485	19,983	1.2-1
	EAST SLOPE REGION		
1-8	61,736	19,983	3.1-1
9-10	59,353	19,983	3.0-1
11-12	71,871	19,983	3.6-1
13-14	37,127	19,983	1.9-1
15-16	36,172	19,983	1.8-1
21-22	63,760	19,983	3.2-1
26	53,343	19,983	2.7-1
19-20	56,713	19,983	2.8-1
17-18	60,148	19,983	3.0-1

Areas	Square Miles	Population	Senators	Population Per Senator
Colorado (39 Districts,) (63 Counties)	104,247	1,753,947	39	44,973
Denver Metropolitan Area (Denver, Boulder, Jefferson, Arapahoe and Adams Counties) (16 Districts,) (5 Counties)	3,687	929,383	16	58,086
All Standard Metropolitan Statistical Areas ("Denver" - Adams, Arapahoe, Boulder, Denver and Jefferson Counties; "Colorado Springs" - El Paso County; and "Pueblo" - Pueblo County) (20 Districts) (7 Counties)	8,260	1,191,832	20	59,592

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

FILED
United States
District Court
Denver, Colorado

JUL 16 1963

G Walter Bowman
Clerk

ARCHIE L. LISCO, and all other registered voters of the Denver Metropolitan Area, State of Colorado, similarly situated,

Plaintiffs,

v.

JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, BYRON ANDERSON, as Secretary of the State of Colorado, THE STATE OF COLORADO and THE FORTY-FOURTH GENERAL ASSEMBLY THEREOF,

Defendants.

Civil Action

No. 7501

WILLIAM E. MYRICK, JOHN CHRISTENSEN, ED SCOTT, GORDON TAYLOR, HENRY ALLARD, ANDRES LUCAS, JOHN L. KANE, WILLIAM J. WELLS, FRANK A. CARLSON, WILLIAM EPPINGER, ALLEN L. WILLIAMS, RUTH S. STOCKTON, KENNETH FENWICH, CHESTER HOSKINSON, and JOE B. LEWIS, individually and as citizens of the State of Colorado, residents in the Counties of Adams, Arapahoe, and Jefferson, and taxpayers and voters in the State of Colorado, for themselves and for all other persons similarly situated,

Plaintiffs,

v.

THE FORTY-FOURTH GENERAL ASSEMBLY of the State of Colorado, JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the

Civil Action

No. 7637

State of Colorado, and BYRON ANDERSON, as Secretary of State of the State of Colorado, Defendants.	Civil Action No. 7501
EDWIN C. JOHNSON, JOHN C. VIVIAN, JOSEPH F. LITTLE, WARWICK DOWNING, and WILBUR M. ALTER, individually and as citizens, residents and taxpayers of the State of Colorado, on behalf of themselves and for all persons similarly situated, Interveners,	Civil Actions No. 7501 and No. 7637

Francis R. Salazar and Carl Harthun, Attorneys at Law, 304 Denver-U.S. National Center, 1700 Broadway, Denver 2, Colorado for Plaintiffs in Civil Action No. 7501.

George Louis Cramer and Charles Ginsberg, Attorneys at Law, 928 Equitable Building, Denver 2, Colorado, for Plaintiffs in Civil Action No. 7637.

Honorable Duke W. Dunbar, Attorney General for the State of Colorado, Richard W. Bangert, Assistant Attorney General for the State of Colorado, 104 State Capitol, Denver 2, Colorado; Anthony F. Zarlengo and V. G. Seavy, Jr., Attorneys at Law, 830 Majestic Building, Denver 2, Colorado, for Defendants in Civil Actions No. 7501 and No. 7637.

Richard S. Kitchen, Charles S. Vigil and Harvey Williams, Attorneys at Law, 2155 First National Bank Building, Denver 2, Colorado, for Interveners in Civil Actions No. 7501 and No. 7637.

Phillip J. Carosell, Attorney at Law, 430 Majestic Building, Denver 2, Colorado, Amicus Curiae in Civil Actions No. 7501 and 7637.

Before BREITENSTEIN, Circuit Judge, and ARBAJ and DOYLE, District Judges.

DOYLE, District Judge, dissenting.

Our concern here is not with the desirability as a matter of policy of a Senate which is controlled by a minority of voters, nor are we concerned with the extent of voter approval which resulted in adoption of Amendment No. 7. The issue for determination is whether the disparities described in the majority opinion, which will be further discussed here, are so substantial and irrational as to constitute invidious discrimination so as to violate the equal protection of the laws, Fourteenth Amendment of the Constitution of the United States.

Prior to the adoption of Amendment No. 7, and on August 10, 1962, this Court issued its per curiam opinion recognizing the equal protection clause as the criterion, finding gross disparities and holding the disparities to be of sufficient magnitude to make out a prima facie case of invidious discrimination. At the same time final adjudication was postponed pending a further hearing and because of the impendency of the election at which the competing measures were on the ballot. Subsequently, Amendment No. 7 was approved by a majority of the voters of the State. And so, the question is whether the gross disparities -- invidious discrimination, was remedied by the adoption of Amendment No. 7; or whether the evidence at the trial showed the existence of a rational basis whereby the discriminations were no longer to be regarded as invidious.

Does Amendment No. 7 remedy the gross and glaring disparity in voting strength which is described and characterized in our prior opinion? Amendment No. 7 provides for a House of Representatives composed of sixty-five members from sixty-five districts which shall be as nearly equal in population as may be. This provision removed the population disparities which existed in the House of Representatives under the old law.[1]

In the Senate, Amendment No. 7 declares that the State shall be divided into thirty-nine senatorial districts, one senator from each district. It further declares that the apportionment of senators among the counties shall be the same as now provided by 63-1-3, Colorado Revised Statutes 1953. Four senators are added, or a total of thirty-nine, as compared with thirty-five under the old law, and one each of these additional senators is apportioned to Adams, Arapahoe, Boulder and Jefferson counties. Further, the amendment freezes the apportionment of the various districts except for a provision permitting a review of counties apportioned more than one senator following each federal census. It is thus apparent then that Amendment No. 7, while apportioning the House on a population basis, retains the old system, that which we previously condemned, except that it gives a senator for each of four populous metropolitan counties. It is clear, therefore, that no real effort has been made to

1. 63-1-2, 63-1-6, Colorado Revised Statutes 1953.

cure the disparities which existed under the old law; on the contrary, these disparities are perpetuated by writing them into the Constitution of Colorado, the only relief being somewhat of a reduction of disparity in four of the sixty-three counties in the State.

The ultimate question is, therefore, the second one posed above, which is, whether the defendants and respondants have offered evidence establishing that the disparities are non-invidious.

Although a number of federal courts have now indicated that at least one house must be apportioned on a per capita basis,[2] there is little authority holding that the upper house may or may not be organized upon a wide disparity of population basis.[3] It would appear that there is no logical basis for distinguishing between the lower and the upper house -- that the equal protection clause applies to both since no valid analogy can be drawn between the United States Congress and the State. See Gray v. Sanders, 83 S. Ct. 801 (1963) _____U.S._____. So, until there is some authoritative ruling to the contrary, we must assume that equality of voting power is demanded with respect to both houses.

It is to be conceded that the Fourteenth Amendment does not require absolute equality. This is apparent from the opinion of Mr. Justice Douglas;[4] in other words, some other factors may be taken into account. It would seem, however, that this is in recognition of the fact that perfect exactness as to the number of inhabitants of each electoral district is a practical impossibility.[5] Beyond this, however, fairness requires that every individual be guaranteed the right to cast an effective vote.[6]

---

2. Toombs v. Fortsen, (D.C. N.D. Ga., 1962) 205 F. Supp. 248; Baker v. Carr, (D.C. M.D., Tenn., 1962) 206 F. Supp. 341; Sims v. Frink, (D.C. M.D., Ala., N.D. 1962) 205 F. Supp. 245; Caesar v. Williams, (Idaho, 1962) 371 P. 2d 241; Sincock v. Duffy, (D.C. D. Del., 1963) 215 F. Supp. 169.
3. Scholle v. Hare, 367 Mich. 176, 116 N.W. 2d 350 (1962), holding a statute which gave citizens of one district twice the voting strength of citizens of another district while voting for the State Senate to be invidiously discriminatory. See also Thigpen v. Meyers, (D.C. W.D. Wash. N.D. 1962) 211 F. Supp. 826, and Sincock v. Duffy, supra.
4. Baker v. Carr, supra.
5. See, for example, State v. Sathre, 113 N.W. 2d 679, (N. Dak. 1962); Wisconsin v. Zimmerman, 209 F. Supp. 183 (D.C. W.D. Wis. 1962)
6. Moss v. Burkhart, 287 F. Supp. 885 (W.D. Okla. 1962); Thigpen v. Meyers, supra.

Although the Supreme Court in Gray v. Sanders, supra, did not have before it the present question, it nevertheless expressed the philosophy of non-dilution of the vote of the individual citizen. It extracted this philosophy not only from the Constitution, but from the history of the United States, and it is to be concluded therefrom that a properly apportioned state legislative body must at least approximate by bona fide attempt the creation of districts substantially related to population. In Sincock v. Duffy, 215 F. Supp. 169, it was said:

> "Such affirmative action must be rendered possible and, as we have already indicated, an apportionment should not be permitted that would allow a blockage of major legislation desired by the great majority of electors of Delaware to come to pass in the Senate. Effecting the will of the majority of the people of a State must be deemed to be the foundation of any apportionment plan.***" /Emphasis supplied/

Even if we assume that the factors which have been given weight in the majority opinion are properly to be considered, nevertheless, the disparities which exist in Amendment No. 7 cannot be rationalized. Criteria such as were applied by the majority here were used in the case of W.M.C.A. Inc. v. Simon (D.C. So.D. N.Y., 1962), 208 F. Supp. 368. Disparities in the New York law were relatively slight. New York City, for example, having 46 per cent. of the state's population was shown to have had 43.1 per cent. of the total number of senators. The ten most populous counties are shown to have had 65.5 per cent. control of the Senate. The factors approved in W.M.C.A., supra, for determining whether or not invidious discrimination existed, were the following:

> "(1) Rationality of state policy and whether or not the system is arbitrary.
>
> "(2) Whether or not the present complexion of the legislature has a historical basis.
>
> "(3) Whether there lies within the electorate of the State of New York any possible remedy (if gross inequalities exist.)
>
> "(4) Geography, including accessibility of legislative representatives to their electors.
>
> "(5) Whether the Court is called upon to invalidate solemnly enacted State Constitutions and laws." 208 F. Supp. at 374.

Applying these factors, or tests in the present case, produce a result different from that which obtained in W.M.C.A.

1. Rational or Arbitrary?

Amendment No. 7 was not adopted upon a basis of recognizing geographic, topographic and economic differences. As shown above, Amendment No. 7 arbitrarily froze existing apportionment and at the same time furnished one additional senator to each of four populous metropolitan counties by writing into the Colorado organic law disparities which had long existed and which we hold were gross. It cannot be said that it was irrational. The unpleasant truth is that it was particularly designed and dictated not by factual differences, but rather by political expediency. Simplicity and success at the polls overrode considerations of fairness and justice. Thus, Amendment No. 7 fails the test of rationality in its adoption.

2. Historic Factors.

The presence of an historical basis has been persuasive in a number of instances.[7] We must be mindful of the fact however, that the present rash of reapportionment litigation is the result of an historical fact; namely, that the several states were in the past predominantly rural. The failure of legislative bodies to recognize population shifts and social changes has produced the present problem. So, therefore, the fact that legislative districts have historic significance has little value in determining what constitutes invidious discrimination. This is particularly true in Colorado, the character of which has substantially changed. The language contained in the opinion of the Court in Toombs v. Fortsen (D.C. N.D. Ga., 1962), 205 F. Supp. 248, is pertinent:

> "Applying these historical facts to the test of invidiousness, we are unable to discern any justification for continuing this sytem merely because it has an historical basis in Georgia's political institutions. This is so, primarily, because while historically the statute and constitutional requirements remain substantially the same, the passage of time and changing living habits of the people have distorted it into something entirely different from what it was at its genesis."

It is difficult to see how history can be of value either than for an explanation of disparities -- it can not justify them.

7. W.M.C.A., Inc. v. Simon (D.C. So.D. N.Y., 1962), 208 F. Supp. 368; Maryland Committee for Fair Representation, et al, v. Tawes, 229 Md. 406, 184 A. 2d 715 (1962); Sobel v. Adams, (D.C.. S.D. Fla. 1963) 214 F. Supp. 811.

3. Alternative Remedies.

The majority were impressed by the argument that the initiative in Colorado is relatively easy so that the voters could readily change the Constitution if the inequities became oppressive. Here again, it is of little consolation to an individual voter who is being deprived of his rights that he can start a popular movement to change the Constitution. This possible remedy is not merely questionable, it is for practical purposes impossible. This was recognized by the United States District Court for the District of Nebraska in League of Nebraska Municipalities v. Marsh, (D.C.D. Nebr., 1962) 209 F. Supp. 189, where it was said:

> "To say that such a remedy is adequate for one ordinary voter, and we are here concerned with the rights of an individual voter, for concededly one ordinary voter could maintain this action, is being impractical. In addition, the expense of putting an initiated proposal on the ballot in Nebraska is prohibitive for the ordinary voter."

4. Geography and Economics.[8]

Much emphasis is placed on Colorado's heterogeneous topography, sparce settlement of mountainous areas, inaccessibility of some communities, and the great distances as justifying the disproportion. In order to soften the impact resulting from population disparities in the districts, the opinion makes comparisons of various regions rather than comparisons of senatorial districts. Such realignment is not, of course, valid, but even this approach shows disparities which are gross and glaring. The majority's Western Region has on the average a population of 28,480 per senator as against the South Central's 22,185 and the East Slope's 57,283.[9] Since disparities of 2-to-1 and 2-1/2-to-1 are sufficiently substantial as to be invidious this glossing, or cloaking and juggling of districts technique fails to camouglage the facts and does not diminish the disproportion. The case could be different if the framars had developed the scheme of Amendment No. 7 as a preconceived plan -- part of a good faith effort to balance off these geographic factors. Such is not the case. Instead, Amendment No. 7 is the product of a mechanical and arbitrary freezing accomplished by

8. (Although economics have not been considered as a factor in W.M.C.A. v. Simon, supra, the majority opinion has stressed it and it is undoubtedly to be considered.)
9. See Exhibit "C" of the majority opinion.

adoption, with slight modification of the unlawful alignments which had existed in the previous statute.[10]

The tendered explanation for a 3.6-to-1 and sometimes 3-to-1, and often 2-to-1 disparity between voting strength on the ground that "in no other way may representation be afforded to insular minorities," carries little weight when considered in the light of modern methods of electronic communication, modern highways, automobiles and airplanes. When a man had to ride on horseback from his constituency to the capital, or to settlements within his district, there might have been valid basis for the geographic factors which are here weighted so heavily. Under the circumstances of the present there can be but little consideration given to this geographic factor. Distances as the crow flies now have little relevance in formulating electoral districts.

Economics has also been given great weight by the majority. The practical difficulties in giving effect to economic factors are mentioned in Moss v. Burkhart, 207 F. Supp. 885 (appendix). The major difficulty is that the economic institutions in a dynamic society change rapidly. Certain industries such as mining in Colorado, rise and fall in a few short years and political institutions must be devised to withstand the ravages of time and change. It is foolish to any that because an area sustained a substantial mining industry at some previous time, it deserves greater representation today; or, because one area has cattle or a surplus of water, that it deserves greater representation. The folly of this kind of reasoning is at once apparent. Governments are devised to arrange the affairs of men. Economic interests are remarkably well represented without special representation. It is dangerous to build into a political system a favored position for a segment of the population of the state. There exists no practical method of ridding ourselves of them, and long after the institutions pass, the built-in advantage remains even though it is at last only a vestige of the dead past.[11]

5. Whether solemnly created state laws must be invalidated.

There is, of course, a presumption of validity which attaches to any enactment, and the presumption is undoubtedly stronger when the law is a constitutional amendment adopted by vote of the people.

10. (Of. Scholle v. Hare, supra, wherein the amalgamation of contiguous counties supposedly having similar interests, was without serious regard for population differences between districts. This was condemned.)
11. (See Moss v. Burkhart, supra.)

This presumption does not, however, have the strength attributed to it by the majority when it says:

> "The plaintiffs rest their case on the argument that the apportionment of the Senate by Amendment No. 7 is arbitrary, invidiously discriminatory, and without any rationality. The voters of Colorado have themselves answered these charges.***"

And again, they say:

> "***The actions of the electorate are material to the application of the criteria. The contention that the voters have discriminated against themselves appalls rather than convinces.***"

And finally:

> "The electorate of every county from which the plaintiffs come preferred Amendment No. 7. In the circumstances it is difficult to comprehend how the plaintiffs can sue to vindicate a public right.***"

The protection of constitutional rights is not to be approached either pragmatically or expediently, and though the fact of enactment of a constitutional provision by heavy vote of the electorate produces pause and generates restraint we can not, true to our oath, uphold such legislation in the face of palpable infringement of rights. Thus, state racial legislation would unquestionably enjoy overwhelming electorate approval in certain of our states, yet no one would argue that this factor could compensate for manifest inequality. It is too clear for argument that constitutional law is not a matter of majority vote.[12] Indeed, the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority.[13] The rights which are here asserted are the rights of the individual plaintiffs to have their votes counted equally with those of other voters. This factor the majority seems to have lost sight of. The opinion even refuses to recognize that the equal protection clause is the applicable standard when it declares:

> "***by majority process the voters have said that minority process in the senate is what they want."

12. (Moss v. Burkhart, supra, and Thigpen v. Meyers, cited supra.)
13. Baker v. Carr (D.C. M.D. Tenn., 1962) 206 F. Supp. 341; Sincock v. Duffy (D.C. D. Del., 1963) 215 F. Supp. 169; Brunson v. Board of Trustees of School District No. 1 (D.C. E.D. So. Car., 1961) 30 F.R.D. 369.

The opinion in still another place states:

> "If we reject the republican form of government standard as a basis for judicial action, we are left with the Due Process Clause to support an assertion of denial of equal protection upon the theory that unequal representation denies equal protection because minority process is not due process."

This confusion of the equal protection and due process clauses, plus lamenting the fact that the republican form of government is not the test, must be attributed to a desire and a search for a more flexible basis. The fact is that the equal protection and due process clauses of the Fourteenth Amendment are not coextensive and coterminous.[14] The equal protection clause is an independent limitation on state action which is in no way dependent upon the due process clause. It is straightforward and exacting in its requirements that the rights of all citizens shall be equated upon an equal scale under the law; laws which grant preferences are thus repugnant. It is impossible to justify substantial differences between voting rights accorded to voters who live in the mountains, for example, as opposed to those who reside in the cities, and any attempts to rationalize on the basis of geography, sociology or economics will, as has been shown above, necessarily rest upon the subjective evaluation of the minds which attempt the rationalization. Moreover, to any that a majority of the voters today indicate a desire to be governed by a minority, is to avoid the issue which this court is asked to resolve. It is no answer to say that the approval of the polling place necessarily evidences a rational plan. The plaintiffs have a right to expect that the cause will be determined in relation to the standards of equal protection. Utilization of other or different standards denies them full measure of justice.

I do not say that a rational plan can not be devised which is not based upon strict numerical equality. It is enough to say that the instant plan, with its gross and glaring inequalities, is not based upon a rational formula or upon any formula which is apparent. Moreover, a plan which builds into the state organic law senatorial districts which are designed to be static in perpetuity, regardless of population changes, is doomed to obsolescence before it becomes effective.

Amendment No. 7 violates the Constitution of the United States and is, therefore, invalid and void. Amended Section 46 of Amendment No. 7, which redistricts the House of Representatives, can not be severed from Amended Section 46, and hence the entire Amendment is void. I would so hold.

14. Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693.

SUPREME COURT OF THE UNITED STATES

No. 508.—October Term, 1963.

Andres Lucas et al., etc., Appellants. v. The Forty-Fourth General Assembly of the State of Colorado et al.	On Appeal From the United States District Court for the District of Colorado.

[June 15, 1964.]

Mr. Chief Justice Warren delivered the opinion of the Court.

Involved in this case is an appeal from a decision of the Federal District Court for the District of Colorado upholding the validity, under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, of the apportionment of seats in the Colorado Legislature pursuant to the provisions of a constitutional amendment approved by the Colorado electorate in 1962.

I.

Appellants, voters, taxpayers and residents of counties in the Denver metropolitan area, filed two separate actions, consolidated for trial and disposition, on behalf of themselves and all others similarly situated, in March and July 1962, challenging the constitutionality of the apportionment of seats in both houses of the Colorado General Assembly. Defendants below, sued in their representative capacities, included various officials charged with duties in connection with state elections. Plaintiffs below asserted that Art. V, §§ 45, 46, and 47, of the Colorado Constitution, and the statutes [1] implementing those

[1] Colo. Rev. Stat. 1953, c. 63, §§ 63-1-1—63-1-6.

constitutional provisions, result in gross inequalities and disparities with respect to their voting rights. They alleged that "one of the inalienable rights of citizenship . . . is equality of franchise and vote, and that the concept of equal protection of the laws requires that every citizen be equally represented in the legislature of his State." Plaintiffs sought declaratory and injunctive relief, and also requested the court to order a constitutionally valid apportionment plan into effect for purposes of the 1962 election of Colorado legislators. Proponents of the current apportionment scheme, which was then to be voted upon in a November 1962 referendum as proposed Amendment No. 7 to the Colorado Constitution, were permitted to intervene. A three-judge court was promptly convened.

On August 10, 1962, the District Court announced its initial decision.[2] *Lisco* v. *McNichols*, 208 F. Supp. 471. After holding that it had jurisdiction, that the issues presented were justiciable, and that grounds for abstention were lacking,[3] the court below stated that the population

[2] The District Court wisely refrained from acting at all until a case pending in the Colorado Supreme Court was decided without that court passing on the federal constitutional questions relating to Colorado's scheme of legislative apportionment which were raised in that suit. *In re Legislative Reapportionment*, 374 P. 2d 66 (Colo. Sup. Ct. 1962). After accepting jurisdiction, the Colorado Supreme Court, over a vigorous dissent, ignored the federal constitutional issues and instead discussed only the matter of when the Colorado Legislature was required, pursuant to the State Constitution, to reapportion seats in the General Assembly. The Court concluded that a reapportionment measure enacted during the 1963 session of the Colorado Legislature, on the basis of 1960 census figures, would, if neither of the proposed constitutional amendments relating to legislative apportionment was approved by the voters in November 1962, be in sufficient compliance with the constitutional requirement of periodic legislative reapportionment. See also 208 F. Supp., at 474, discussing the Colorado Supreme Court's decision in that case.

[3] In its initial opinion, the District Court properly concluded that the argument that "the Colorado Supreme Court has preempted juris-

disparities among various legislative districts under the existing apportionment "are of sufficient magnitude to make out a *prima facie* case of invidious discrimination . . . ." However, because of the imminence of the primary and general elections, and since two constitutional amendments, proposed through the initiative procedure and prescribing rather different schemes for legislative apportionment, would be voted upon in the impending election, the District Court continued the cases without further action until after the November 1962 election. Colorado legislators were thus elected in 1962 pursuant to the provisions of the existing apportionment scheme.

At the November 1962 general election, the Colorado electorate adopted proposed Amendment No. 7 by a vote of 305,700 to 172,725, and defeated proposed Amendment No. 8 by a vote of 311,749 to 149,822. Amend-

diction by first hearing the controversy, is without merit in view of the fact that the Supreme Court of Colorado has refrained from even considering the issue of the plaintiffs' federally-guaranteed constitutional rights." 208 F. Supp., at 475. Continuing, the court below correctly held that, under the circumstances, it was not required to abstain, and stated:

"The considerations which demand abstinence are not present in the instant case. Here, the General Assembly of the State of Colorado has repeatedly refused to perform the mandate imposed by the Colorado Constitution to apportion the legislature. The likelihood that the unapportioned General Assembly will ever apportion itself now appears remote. The Supreme Court of Colorado, while retaining jurisdiction of the subject matter of the controversy presented to it, has postponed further consideration of the cause until June, 1963. Under these circumstances, we must conclude that the parties do not, at least at present, have an adequate, speedy and complete remedy apart from that asserted in the case at bar and thus grounds for abstention are at this time lacking." 208 F. Supp., at 476. See also *Davis* v. *Mann*, — U. S. —, — — —, decided also this date, where we discussed the question of abstention by a federal court in a state legislative apportionment controversy.

ment No. 8, rejected by a majority of the voters, prescribed an apportionment plan pursuant to which seats in both houses of the Colorado Legislature would purportedly be apportioned on a population basis.[4] Amendment No. 7, on the other hand, provided for the apportionment of the House of Representatives on the basis

[4] As stated succinctly by the District Court, in its opinion on the merits,

"The defeated Amendment No. 8 proposed a three-man commission to apportion the legislature periodically. The commission was to have the duty of delineating, revising and adjusting senatorial and representative districts. Its actions were to be reviewed by the Colorado Supreme Court. The districting was to be on a strict population ratio for both the Senate and the House with limited permissible variations therefrom." 219 F. Supp., at 925.

Additionally, under proposed Amendment No. 8, the commission would determine a strict population ratio for both the Senate and the House by dividing the State's total population, as ascertained in each decennial federal census, by the number of seats assigned to the Senate and the House, respectively. No legislative district should contain a population per senator or representative of 33⅓% more or less than the strict population ratio, except certain mountainous senatorial districts of more than 5,500 square miles in area, but no senatorial district was to contain a population of less than 50% of the strict population ratio. Senatorial districts should consist of one county or two or more contiguous counties, but no county should be divided in the formation of a senatorial district. Representative districts should consist of one county or two or more contiguous counties. Any county apportioned two or more representatives could be divided into representative subdistricts, but only after a majority of the voters in the county had approved, in a general election, the exact method of subdivision and the specific apportionment of representatives among the subdistricts and the county at large. A proposal to divide a county into subdistricts could be placed on the ballot only by initiative petition in accordance with state law, and only at the general elections in 1966 and 1974, and at the general elections held each 10 years thereafter. Amendment No. 8, like Amendment No. 7, would have required implementing legislation and would not have become effective, if adopted, until the 1964 elections.

of population, but essentially maintained the existing apportionment in the Senate, which was based on a combination of population and various other factors.

After the 1962 election the parties amended their pleadings so that the cases involved solely a challenge to the apportionment scheme established in the newly adopted Amendment No. 7. Plaintiffs below requested a declaration that Amendment No. 7 was unconstitutional under the Fourteenth Amendment since resulting in substantial disparities from population-based representation in the Senate, and asked for a decree reapportioning both houses of the Colorado Legislature on a population basis. After an extended trial, at which a variety of statistical and testimonial evidence regarding legislative apportionment in Colorado, past and present, was introduced, the District Court, on July 16, 1963, announced its decision on the merits. *Lisco* v. *Love*, 219 F. Supp. 922. Splitting 2-to-1, the court below concluded that the apportionment scheme prescribed by Amendment No. 7 comported with the requirements of the Equal Protection Clause, and thus dismissed the consolidated actions. In sustaining the validity of the senatorial apportionment provided for in Amendment No. 7, despite deviations from population-based representation, the District Court stated that the Fourteenth Amendment does not require "equality of population within representation districts for each house of a bicameral state legislature." Finding that the disparities from a population basis in the apportionment of Senate seats were based upon rational considerations, the court below stated that the senatorial apportionment under Amendment No. 7 "recognizes population as a prime, but not controlling, factor and gives effect to such important considerations as geography, compactness and contiguity of territory, accessibility, observance of natural boundaries, [and] conformity to historical divisions such as county

lines and prior representation districts . . . ." [5] Stressing also that the apportionment plan had been recently adopted by popular vote in a statewide referendum, the Court stated:

> "[Plaintiffs'] argument that the apportionment of the Senate by Amendment No. 7 is arbitrary, invidiously discriminatory, and without any rationality . . . [has been answered by] the voters of Colorado . . . . By adopting Amendment No. 7 and by rejecting Amendment No. 8, which proposed to apportion the legislature on a per capita basis, the electorate has made its choice between the conflicting principles." [6]

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[5] 219 F. Supp., at 932.

[6] *Ibid.* Continuing, the court below stated:

"The initiative gives the people of a state no power to adopt a constitutional amendment which violates the Federal Constitution. Amendment No. 7 is not valid just because the people voted for it. . . . [But] the traditional and recognized criteria of equal protection . . . are arbitrariness, discrimination, and lack of rationality. The actions of the electorate are material to the application of the criteria. The contention that the voters have discriminated against themselves appalls rather than convinces. Difficult as it may be at times to understand mass behavior of human beings, a proper recognition of the judicial function precludes a court from holding that the free choice of the voters between two conflicting theories of apportionment is irrational or the result arbitrary.

"The electorate of every county from which the plaintiffs come preferred Amendment No. 7. In the circumstances it is difficult to comprehend how the plaintiffs can sue to vindicate a public right. At the most they present a political issue which they lost. On the questions before us we shall not substitute any views which we may have for the decision of the electorate. . . . [W]e decline to act as a superelectorate to weigh the rationality of a method of legislative apportionment adopted by a decisive vote of the people." *Id.*, at 932–933.

And, earlier in its opinion on the merits, the District Court stated: "With full operation of the one-man, one-vote principle, the Colorado electorate by an overwhelming majority approved a constitutional

Concluding, the District Court stated:

> "We believe that no constitutional question arises as to the actual, substantive nature of apportionment if the popular will has expressed itself. . . . In Colorado the liberal provisions for initiation of constitutional amendments permit the people to act—and they have done so. If they become dissatisfied with what they have done, a workable method of change is available. The people are free, within the framework of the Federal Constitution, to establish the governmental forms which they desire and when they have acted the courts should not enter the political wars to determine the rationality of such action." [7]

In dissenting, District Judge Doyle stated that he regarded the senatorial apportionment under Amendment No. 7 as irrational and invidiously discriminatory, and that the constitutional amendment had not sufficiently remedied the gross disparities previously found by the District Court to exist in Colorado's prior apportionment scheme. Instead, he stated, the adopted plan freezes senatorial apportionment and merely retains the former system with certain minor changes. Equality of voting power in both houses is constitutionally required, the dissent stated, since there is no logical basis for distinguishing between the two bodies of the Colorado Legislature. In rejecting the applicability of the so-called federal analogy, Judge Doyle relied on this Court's decision in

amendment creating a Senate, the membership of which is not apportioned on a strict population basis. By majority process the voters have said that minority process in the Senate is what they want. A rejection of their choice is a denial of the will of the majority. If the majority becomes dissatisfied with that which it has created, it can make a change at an election in which each vote counts the same as every other vote." *Id.*, at 926–927.

[7] *Id.*, at 933.

Gray v. *Sanders*, 372 U. S. 368. He concluded that, although absolute equality is a practical impossibility, legislative districting based substantially on population is constitutionally required, and that the disparities in the apportionment of Senate seats under Amendment No. 7's provisions cannot be rationalized.[8]

Notices of appeal from the District Court's decision were timely filed, and we noted probable jurisdiction on December 9, 1963. 375 U. S. 938.

II.

When this litigation was commenced, apportionment of seats in the Colorado General Assembly was based on certain provisions of the State Constitution and statutory

[8] Additionally, Judge Doyle correctly stated that "a properly apportioned state legislative body must at least approximate by bona fide attempt the creation of districts substantially related to population." 219 F. Supp., at 941. With respect to the relatively easy availability of the initiative procedure in Colorado, the dissent perceptively pointed out that "it is of little consolation to an individual voter who is being deprived of his rights that he can start a popular movement to change the Constitution. This possible remedy is not merely questionable, it is for practical purposes impossible." *Id.*, at 942. Judge Doyle referred to Amendment No. 7's provisions relating to senatorial apportionment as "the product of a mechanical and arbitrary freezing accomplished by adoption, with slight modification, of the unlawful alignments which had existed in the previous statute." *Id.*, at 943. Discussing the majority's view that geographic and economic considerations were relevant in explaining the disparities from population-based senatorial representation, he discerningly stated that geographic and area factors carry "little weight when considered in the light of modern methods of electronic communication, modern highways, automobiles and airplanes," and, with regard to economic considerations, that "economic interests are remarkably well represented without special representation," that "it is dangerous to build into a political system a favored position for a segment of the population of the state," that "there exists no practical method of ridding ourselves of them," and that, "long after the institutions pass, the built-in advantage remains even though it is at last only a vestige of the dead past." *Ibid.*

provisions enacted to implement them. Article V, § 45, of the Colorado Constitution provided that the legislature "shall revise and adjust the apportionment for senators and representatives . . . according to ratios to be fixed by law," at the sessions following the state enumeration of inhabitants in 1885 and every 10 years thereafter, and following each decennial federal census. Article V, § 46, as amended in 1950, stated that "the senate shall consist of not more than thirty-five and the house of not more than sixty-five members." Article V, § 47, provided that:

> "Senatorial and representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of a senatorial or representative district."

Article V, § 3, provides that senators shall be elected for four-year terms, staggered so that approximately one-half of the members of the Senate are elected every two years, and that all representatives shall be elected for two-year terms.

Pursuant to these general constitutional provisions, the Colorado General Assembly has periodically enacted detailed statutory provisions establishing legislative districts and prescribing the apportionment to such districts of seats in both houses of the Colorado Legislature. Since the adoption of the Colorado Constitution in 1876, the General Assembly has been reapportioned or redistricted in the following years: 1881, 1891, 1901, 1909, 1913, 1932, 1953, and, with the adoption of Amendment No. 7, in 1962.[9] The 1932 reapportionment was an initiated

[9] Admittedly, the Colorado Legislature has never complied with the state constitutional provision requiring the conducting of a decennial state census in 1885 and every 10 years thereafter, and of course has never reapportioned seats in the legislature based upon such a census. Under Amendment No. 7, sole reliance is placed on the federal census, and there is no longer any requirement for the conducting of a decennial state census.

In its initial opinion, the District Court stated that there had been only a "modicum of apportionment, either real or purported," as well as "several abortive attempts," since Colorado first achieved statehood. However, in its later opinion on the merits, the court below viewed the situation rather differently, and stated that "apportionment of the Colorado legislature has not remained static." As indicated by the District Court, in addition to the reapportionments which were effected, "in 1954 the voters rejected a referred apportionment measure and in 1956 rejected an initiated constitutional amendment proposing the reapportionment of both chambers of the legislature on a straight population basis." 219 F. Supp., at 930.

measure, adopted because the General Assembly had neglected to perform its duty under the State Constitution. In 1933 the legislature attempted to thwart the initiated measure by enacting its own legislative reapportionment statute, but the latter measure was held unconstitutional by the Colorado Supreme Court.[10]

The 1953 apportionment scheme, implementing the existing state constitutional provisions and in effect immediately prior to the adoption of Amendment No. 7, was contained in several statutory provisions which provided for a 35-member Senate and a 65-member House of Representatives. Section 63-1-2 of the Colorado Revised Statutes established certain population "ratio" figures for the apportionment of Senate and House seats among the State's 63 counties. One Senate seat was to be allocated to each senatorial district for the first 19,000 population, with one additional senator for each senatorial district for each additional 50,000 persons or fraction over 48,000. One House seat was to be given to each representative district for the first 8,000 population, with one

[10] *Armstrong* v. *Mitten*, 95 Colo. 425, 37 P. 2d 757 (1934). See note 24, *infra*.

additional representative for each House district for each additional 25,000 persons or fraction over 22,400. Sections 63–1–3 and 63–1–6 established 25 senatorial districts and 35 representative districts, respectively, and allocated the 35 Senate seats and 65 House seats among them according to the prescribed population ratios. No counties were divided in the formation of senatorial or representative districts, in compliance with the constitutional proscription. Thus, senators and representatives in those counties entitled to more than one seat in one or both bodies were elected at large by all of the county's voters. The City and County of Denver was given eight Senate seats and 17 House seats, and Pueblo County was allocated two Senate seats and four House seats. Other populous counties were also given more than one Senate and House seat each. Certain counties were entitled to separate representation in either or both of the houses, and were given one seat each. Sparsely populated counties were combined in multicounty districts.

Under the 1953 apportionment scheme, applying 1960 census figures, 29.8% of the State's total population lived in districts electing a majority of the members of the Senate, and 32.1% resided in districts electing a majority of the House members. Maximum population-variance ratios of approximately 8-to-1 existed between the most populous and least populous districts in both the Senate and the House. One senator represented a district containing 127,520 persons, while another senator had only 17,481 people in his district. The smallest representative district had a population of only 7,867, while another district was given only two House seats for a population of 127,520. In discussing the 1953 legislative apportionment scheme, the District Court, in its initial opinion, stated that "factual data presented at the trial reveals the existence of gross and glaring disparity in voting strength as between the several representative and

senatorial districts," and that "the inevitable effect . . . [of the existing apportionment provisions] has been to develop severe disparities in voting strength with the growth and shift of population." [11]

Amendment No. 7 provides for the establishment of a General Assembly composed of 39 senators and 65 representatives, with the State divided geographically into 39 senatorial and 65 representative districts, so that all seats in both houses are apportioned among single-member districts.[12] Responsibility for creating House districts "as nearly equal in population as may be" is given to the legislature. Allocation of senators among the counties follows the existing scheme of districting and apportionment, except that one sparsely populated county is detached from populous Arapahoe County and joined with four others in forming a senatorial district, and one additional senator is apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within counties given more than one Senate seat, senatorial districts are to be established by the legislature "as nearly equal in population as may be." [13] Amendment No. 7 also pro-

[11] 208 F. Supp., at 474, 475.

[12] Amendment No. 7 is set out as Appendix A to the District Court's opinion on the merits, 219 F. Supp., at 933–934, and provides for the repeal of the existing Art. V, §§ 45, 46 and 47, and the adoption of "new Sections 45, 46, 47 and 48 of Article V," which are set out verbatim in the Appendix to this opinion.

Additionally, the provisions of proposed Amendment No. 8, rejected by the Colorado electorate, are set out as Appendix B to the District Court's opinion on the merits. 219 F. Supp., at 934–935. See the discussion of Amendment No. 8's provisions in note 4, *supra*.

[13] In addition to establishing House districts, the legislation enacted by the Colorado General Assembly in early 1963, in implementation of Amendment No. 7's provisions, also divided counties apportioned more than one Senate seat into single-member districts. Amendment No. 7, in contrast to Amendment No. 8, explicitly provided for districting, with respect to both Senate and House seats, in multimem-

vides for a revision of representative districts, and of senatorial districts within counties given more than one Senate seat, after each federal census, in order to maintain conformity with the prescribed requirements.[14] Pursuant to this constitutional mandate, the Colorado Legislature, in early 1963, enacted a statute establishing 65 representative districts and creating senatorial districts in counties given more than one Senate seat.[15] Under the newly adopted House apportionment plan, districts in which about 45.1% of the State's total population reside are represented by a majority of the members of that body. The maximum population-variance ratio, between the most populous and least populous House districts, is approximately 1.7-to-1. The court below concluded that the House was apportioned as nearly on a population basis as was practicable, consistent with Amendment No. 7's requirement that "no part of one county shall be added to another county or part of another county" in the formation of a legislative district, and directed its concern solely to the question of whether the

ber counties. The rejected amendment, on the other hand, made no provision at all for districting within counties given more than one Senate seat, and allowed subdistricting of House seats only upon specific approval of such a plan by a county's voters. Thus, Amendment No. 8 would at least in part have perpetuated the extremely objectionable feature of the existing apportionment scheme, under which legislators in multimember counties were elected at large from the county as a whole.

[14] As stated by the District Court, "Mandatory provisions [of Amendment No. 7] require the revision of representative districts and of senatorial districts within counties apportioned more than one senator after each Federal Census." 219 F. Supp., at 925. Under the provisions of Amendment No. 7, eight counties are given more than one Senate seat, and 14 of the 39 senatorial districts are comprised of more than one county.

[15] Colo. Laws 1963, c. 143, pp. 520–532, referred to as House Bill No. 65.

deviations from a population basis in the apportionment of Senate seats were rationally justifiable.[16]

Senatorial apportionment, under Amendment No. 7, involves little more than adding four new Senate seats and distributing them to four populous counties in the Denver area, and in substance perpetuates the existing senatorial apportionment scheme.[17] Counties containing only 33.2% of the State's total population elect a majority of the 39-member Senate under the provisions of Amendment No. 7. Las Animas County, with a 1960 population of only 19,983, is given one Senate seat, while El Paso County, with 143,742 persons, is allotted only two Senate seats. Thus, the maximum population-variance ratio, under the revised senatorial apportionment, is about 3.6-to-1.[18] Denver and the three adjacent subur-

[16] As stated by the court below, "The Colorado legislature met in January, 1963, and passed a statute, H. B. 65, implementing Amendment No. 7. No question is raised concerning the implementing legislation." 219 F. Supp., at 924–925. Again the District Court stated: "The cases now before the court do not present the issues as they existed prior to the apportionment made by Amendment No. 7. . . . [T]he then-existing disparities in each chamber were severe, the defendants presented no evidence to sustain the rationality of the apportionment, and witnesses for the intervenors, while defending the apportionment of the Senate, recognized the malapportionment of the House. The change by Amendment No. 7 was such as to require a trial de novo and we are concerned with the facts as finally presented." *Id.*, at 928.

[17] Appendix C to the District Court's opinion on the merits contains a chart of the senatorial districts created under Amendment No. 7's provisions, showing the population of and the counties included in each. 219 F. Supp., at 935–938.

[18] Included as Appendix D to the District Court's opinion on the merits is a chart showing the ratios of population per senator in each district to the population of the least populous senatorial district, as established by Amendment No. 7 and the implementing statutory provisions dividing counties given more than one Senate seat into separate senatorial districts. 219 F. Supp., at 939.

ban counties contain about one-half of the State's total 1960 population of 1,753,947, but are given only 14 out of 39 senators. The Denver, Pueblo, and Colorado Springs metropolitan areas, containing 1,191,832 persons, about 68%, or over two-thirds of Colorado's population, elect only 20 of the State's 39 senators, barely a majority. The average population of Denver's eight senatorial districts, under Amendment No. 7, is 61,736, while the five least populous districts contain less than 22,000 persons each. Divergences from population-based representation in the Senate are growing continually wider, since the underrepresented districts in the Denver, Pueblo, and Colorado Springs metropolitan areas are rapidly gaining in population, while many of the overrepresented rural districts have tended to decline in population continuously in recent years.[19]

[19] Appellants have repeatedly asserted that equality of population among districts has been the traditional basis of legislative apportionment in both houses of the Colorado General Assembly. They pointed out that both houses of the territorial legislature established by Congress in the organic act creating the territory of Colorado in 1861 were expressly required to be apportioned on a population basis. And, they contended, the legislative districts established for the apportionment of the 26 Senate and 49 House seats in the first General Assembly after Colorado became a State were virtually all substantially equal in population. Referring to the language of the Colorado Supreme Court in *Armstrong* v. *Mitten*, 95 Colo. 425, 37 P. 2d 757 (1934), they urged that no basis other than population has ever been recognized for apportioning representation in either house of the Colorado Legislature. Appellees, on the other hand, have consistently contended that population "ratio" figures have been used in apportioning seats in both houses since 1881, requiring proportionately more population to obtain additional legislative representation. Since the Colorado Supreme Court's statements in *Armstrong* regarding population as the basis of legislative representation plainly assumed the existence of an underlying population ratio scheme, its language can hardly be read out of context to support the proposition that absolute equality of population among districts has been the

III.

Several aspects of this case serve to distinguish it from the other cases involving state legislative apportionment also decided this date. Initially, one house of the Colorado Legislature is at least arguably apportioned substantially on a population basis under Amendment No. 7 and the implementing statutory provisions. Under the apportionment schemes challenged in the other cases, on the other hand, clearly neither of the houses in any of the state legislatures is apportioned sufficiently on a population basis so as to be constitutionally sustainable. Additionally, the Colorado scheme of legislative apportionment here attacked is one adopted by a majority vote of the Colorado electorate almost contemporaneously with the District Court's decision on the merits in this litigation. Thus, the plan at issue did not result from prolonged legislative inaction. However, the Colorado General Assembly, in spite of the state constitutional mandate for periodic reapportionment, has enacted only one effective legislative apportionment measure in the past 50 years.[20]

historical basis of legislative apportionment in Colorado. For a short discussion of legislative apportionment in Colorado, including the adoption of Amendment No. 7 and the instant litigation, see Note, 35 U. of Colo. L. Rev. 431 (1963).

[20] In 1953 the Colorado General Assembly enacted the legislative apportionment scheme in effect when this litigation was commenced. Prior to 1953, the last effective apportionment of legislative representation by the General Assembly itself was accomplished in 1913. The 1932 measure was an initiated act, adopted by a vote of the Colorado electorate. Although the legislature enacted a statutory plan in 1933, in an attempt to nullify the effect of the 1932 initiated act, that measure was held invalid and unconstitutional, as a matter of state law, by the Colorado Supreme Court. See note 24, *infra*. And the 1962 adoption of the apportionment scheme contained in proposed constitutional Amendment No. 7 resulted, of course, not from legislative action, but from a vote of the Colorado electorate

As appellees have correctly pointed out, a majority of the voters in every county of the State voted in favor of the apportionment scheme embodied in Amendment No. 7's provisions, in preference to that contained in proposed Amendment No. 8, which, subject to minor deviations, would have based the apportionment of seats in both houses on a population basis. However, the choice presented to the Colorado electorate, in voting on these two proposed constitutional amendments, was hardly as clear-cut as the court below regarded it. One of the most undesirable features of the existing apportionment scheme was the requirement, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multimember county represented the county as a whole.[21] Amendment No. 8, as distinguished from Amendment No. 7, while purportedly basing the apportionment of

approving the initiated measure. The 1963 statutory provisions were enacted by the General Assembly simply in order to comply with Amendment No. 7's mandate for legislative implementation.

[21] We do not mean to imply that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective. Rather, we merely point out that there are certain aspects of electing legislators at large from a county as a whole that might well make the adoption of such a scheme undesirable as to many voters residing in multimember counties.

seats in both houses on a population basis, would have perpetuated, for all practical purposes, this debatable feature of the existing scheme. Under Amendment No. 8, senators were to be elected at large in those counties given more than one Senate seat, and no provision was made for subdistricting within such counties for the purpose of electing senators. Representatives were also to be elected at large in multimember counties pursuant to the provisions of Amendment No. 8, at least initially, although subdistricting for the purpose of electing House members was permitted if the voters of a multimember county specifically approved a representative subdistricting plan for that county. Thus, neither of the proposed plans was, in all probability, wholly acceptable to the voters in the populous counties, and the assumption of the court below that the Colorado voters made a definitive choice between two contrasting alternatives and indicated that "minority process in the Senate is what they want" does not appear to be factually justifiable.

Finally, this case differs from the others decided this date in that the initiative device provides a practicable political remedy to obtain relief against alleged legislative malapportionment in Colorado.[22] An initiated

[22] Article V, § 1, of the Colorado Constitution provides that "the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly . . . ," and further establishes the specific procedures for initiating proposed constitutional amendments or legislation.

Twenty-one States make some provsion for popular initiative. Fourteen States provide for the amendment of state constitutional provisions through the process of initiative and referendum. See The Council of State Governments, The Book of the States 1962–1963, 14 (1962). Seven States allow the use of popular initiative for the passage of legislation but not constitutional amendments. Both types of initiative and referendum may, of course, be relevant to legislative reapportionment. See Report of Advisory Commission on Inter-

measure proposing a constitutitonal amendment or a statutory enactment is entitled to be placed on the ballot if the signatures of 8% of those voting for the Secretary of State in the last election are obtained. No geographical distribution of petition signers is required. Initiative and referendum has been frequently utilized throughout Colorado's history.[23] Additionally, Colorado courts have traditionally not been hesitant about adjudicating controversies relating to legislative apportionment.[24] How-

governmental Relations, Apportionment of State Legislatures 57 (1962). In some States the initiative process is ineffective and cumbersome, while in others, such as Colorado, it is a practicable and frequently utilized device.

In addition to the initiative device, Art. V, § 1, of the Colorado Constitution provides that, upon the timely filing of a petition signed by 5% of the State's voters or at the instance of the legislature, the Colorado electorate reserves the power of voting upon legislative enactments in a statewide referendum at the next general election.

[23] Amendment of the Colorado Constitution can be accomplished, in addition to resort to the initiative and referendum device, through a majority vote of the electorate on an amendment proposed by the General Assembly following a favorable vote thereon "by two-thirds of all the members elected to each house" of the Colorado Legislature, pursuant to Art. XIX, § 2, of the Colorado Constitution. Additionally, a constitutional convention can be convened, upon the favorable recommendation of two-thirds of the members elected to each house of the General Assembly, if the electorate approves of the calling of such a convention to "revise, alter or amend" the State Constitution, under Art. XIX, § 1, of the Colorado Constitution. Pursuant to Art. XIX, § 1, "the number of members of the convention shall be twice that of the senate and they shall be elected in the same manner, at the same places, and in the same districts."

[24] See *Armstrong* v. *Mitten*, 95 Colo. 425, 37 P. 2d 757 (1934), where the Colorado Supreme Court held that a 1933 statute, enacted by the legislature to effectively nullify the 1932 initiated act reapportioning legislative representation, was void under the state constitutional provisions. In finding the legislative measure invalid, the Colorado court stated that "redistricting must be done with due regard to the requirement that representation in the General Assembly shall be based upon population," and that "the legislative act in

ever, the Colorado Supreme Court, in its 1962 decision discussed previously in this opinion,[25] refused to consider or pass upon the federal constitutional questions, but instead held only that the Colorado General Assembly was not required to enact a reapportionment statute until the following legislative session.[26]

IV.

In *Reynolds* v. *Sims*, — U. S. —, decided also this date, we held that the Equal Protection Clause requires that both houses of a bicameral state legislature must be apportioned substantially on a population basis. Of course, the court below assumed, and the parties apparently conceded, that the Colorado House of Representatives, under the statutory provisions enacted by the Colorado Legislature in early 1963 pursuant to Amendment No. 7's dictate that the legislature should create 65 House districts "as nearly equal in population as may be," is now apportioned sufficiently on a population basis to comport with federal constitutional requisites. We need not pass on this question, since the apportionment of Senate seats, under Amendment No. 7, clearly involves departures from population-based representation too

question is void because it violates section 45 of article 5 of the Constitution, which requires the reapportionment to be made on the basis of population, as disclosed by the census, and according to ratios to be fixed by law." Stating that "it is clear that ratios, after having been fixed under section 45, . . . cannot be changed until after the next census," the Colorado Supreme Court concluded that "the legislative act attempts to confer upon some districts a representation that is greater, and upon others a representation that is less, than they are entitled to under the Constitution." *Id.*, at 428, 37 P. 2d, at 758.

[25] See note 2, *supra*.

[26] *In re Legislative Reapportionment*, 374 P. 2d 66 (Colo. Sup. Ct. 1962). Even so, the Colorado court stated that "it is abundantly clear that this court has jurisdiction . . . ." *Id.*, at 69. See note 2, *supra*.

extreme to be constitutionally permissible, and there is no indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable.[27] We therefore conclude that the District Court erred in holding the legislative apportionment plan embodied in Amendment No. 7 to be constitutionally valid. Under neither Amendment No. 7's plan, nor, of course, the previous statutory scheme, is the overall legislative representation in the two houses of the Colorado Legislature sufficiently grounded on population to be constitutionally sustainable under the Equal Protection Clause.[28]

[27] See *The Maryland Committee for Fair Representation* v. *Tawes*, — U. S. —, —, decided also this date, where we discussed the need for considering the apportionment of seats in both houses of a bicameral state legislature in evaluating the constitutionality of a state legislative apportionment scheme, regardless of what matters were raised by the parties and decided by the court below. Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole. Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause. Deviations from a strict population basis, so long rationally justifiable, may be utilized to balance a slight overrepresentation of a particular area in one house with a minor underrepresentation of that area in the other house. But, on the other hand, disparities from population-based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect. Of course, the court below can properly take into consideration the present apportionment of seats in the House in determining what steps must be taken in order to achieve a plan of legislative apportionment in Colorado that sufficiently comports with federal constitutional requirements.

[28] See *Reynolds* v. *Sims*, — U. S., at —, where we discussed some of the underlying reasons for our conclusion that the Equal Protection Clause requires that seats in both houses of a state legislature must be apportioned substantially on a population basis in order to comport with federal constitutional requisites.

Except as an interim remedial procedure justifying a court in staying its hand temporarily, we find no significance in the fact that a nonjudicial, political remedy may be available for the effectuation of asserted rights to equal representation in a state legislature. Courts sit to adjudicate controversies involving alleged denials of constitutional rights. While a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved. An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. As stated by this Court in *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U. S. 624, 638, "One's right to life, liberty, and property . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." [29] A citizen's constitutional rights can hardly be infringed simply because a majority

[29] And, as stated by the court in *Hall* v. *St. Helena Parish School Bd.*, 197 F. Supp. 649, 659 (D. C. E. D. La. 1961), aff'd, 368 U. S. 515, "No plebiscite can legalize an unjust discrimination."

of the people choose to do so.[30] We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in *Reynolds* v. *Sims*. And we conclude that the fact that a practicably available political remedy, such as initiative and referendum, exists under state law provides justification only for a court of equity to stay its hand temporarily while recourse to such a remedial device is attempted or while proposed initiated measures relating to legislative apportionment are pending and will be submitted to the State's voters at the next election.

[30] In refuting the majority's reliance on the fact that Amendment No. 7 had been adopted by a vote of the Colorado electorate, Judge Doyle, in dissenting below, stated:

"The protection of constitutional rights is not to be approached either pragmatically or expediently, and though the fact of enactment of a constitutional provision by heavy vote of the electorate produces pause and generates restraint we can not, true to our oath, uphold such legislation in the face of palpable infringement of rights. Thus, state racial legislation would unquestionably enjoy overwhelming electorate approval in certain of our states, yet no one would argue that this factor could compensate for manifest inequality. It is too clear for argument that constitutional law is not a matter of majority vote. Indeed, the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority. The rights which are here asserted are the rights of the individual plaintiffs to have their votes counted equally with those of other voters. . . . [T]o say that a majority of the voters today indicate a desire to be governed by a minority, is to avoid the issue which this court is asked to resolve. It is no answer to say that the approval of the polling place necessarily evidences a rational plan. The plaintiffs have a right to expect that the cause will be determined in relation to the standards of equal protection. Utilization of other or different standards denies them full measure of justice." 219 F. Supp., at 944.

Because of the imminence of the November 1962 election, and the fact that two initiated proposals relating to legislative apportionment would be voted on by the State's electorate at that election, the District Court properly stayed its hand and permitted the 1962 election of legislators to be conducted pursuant to the existing statutory scheme. But appellees' argument, accepted by the court below, that the apportionment of the Colorado Senate, under Amendment No. 7, is rational because it takes into account a variety of geographical, historical, topographic and economic considerations fails to provide an adequate justification for the substantial disparities from population-based representation in the allocation of Senate seats to the disfavored populous areas.[31] And any attempted reliance on the so-called federal analogy is factually as well as constitutionally without merit.[32]

[31] In its opinion on the merits, the District Court stated: "By the admission of states into the Union with constitutions creating bicameral legislatures, membership to which is not apportioned on a population basis, Congress has rejected the principle of equal representation as a constitutional requirement." 219 F. Supp., at 927–928. For the reasons stated in our opinion in *Reynolds* v. *Sims*, — U. S., at —, we find this argument unpersuasive as a justification for the deviations from population in the apportionment of seats in the Colorado Senate under the provisions of Amendment No. 7. Also, the court below stated that the disparities from population-based senatorial representation were necessary in order to protect "insular minorities" and to accord recognition to "the state's heterogeneous characteristics." Such rationales are, of course, insufficient to justify the substantial deviations from population in the apportionment of seats in the Colorado Senate under Amendment in No. 7, under the views stated in our opinion in *Reynolds*.

[32] See *Reynolds* v. *Sims*, — U. S., at ———, discussing and rejecting the applicability of the so-called federal analogy to state legislative apportionment matters. As stated in the dissent below, "It would appear that there is no logical basis for distinguishing between the lower and the upper house—that the equal protection clause applies to both since no valid analogy can be drawn between

Since the apportionment of seats in the Colorado Legislature, under the provisions of Amendment No. 7, fails to comport with the requirements of the Equal Protection Clause, the decision below must be reversed. Beyond what we said in our opinion in *Reynolds*,[33] we express no view on questions relating to remedies at the present time. On remand, the District Court must now determine whether the imminence of the 1964 primary and general elections requires that utilization of the apportionment scheme contained in the constitutional amendment be permitted, for purposes of those elections, or whether the circumstances in Colorado are such that appellants' right to cast adequately weighted votes for members of the State Legislature can practicably be effectuated in 1964. Accordingly, we reverse the decision of the court below and remand the case for further proceedings consistent with the views stated here and in our opinion in *Reynolds* v. *Sims*.

It is so ordered.

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the United States Congress" and state legislatures. 219 F. Supp., at 940–941. Additionally, the apportionment scheme embodied in the provisions of Amendment No. 7 differs significantly from the plan for allocating congressional representation among the states. Although the Colorado House of Representatives is arguably apportioned on a population basis, and therefore resembles the Federal House, senatorial seats are not apportioned to counties or political subdivisions in a manner that at all compares with the allocation of two seats in the Federal Senate to each state.

[33] See *Reynolds* v. *Sims*, — U. S., at —.

APPENDIX.

Amendment No. 7, approved by a vote of the Colorado electorate in November 1962, appears in Colo. Laws 1963, c. 312, p. 1045 *et seq.*, and, in relevant part, provides as follows:

"Sections 45, 46, and 47 of Article V of the Constitution of Colorado are hereby repealed and new sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

"Section 45. GENERAL ASSEMBLY. The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

"Section 46. HOUSE OF REPRESENTATIVES. The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

"Section 47. SENATE. The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63–1–3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jef-

ferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

"Section 48. REVISION OF DISTRICTS. At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the State, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law."

APPENDIX E

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

C. A. No. 7501

LUCAS, et al,

Plaintiffs,

v.

44TH GENERAL ASSEMBLY, et al,

Defendants.

OFFICIAL TRANSCRIPT

Ruling

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, Circuit Judge, United States Court of Appeals, Presiding, and the HONORABLE ALFRED A. ARRAJ, Chief Judge, United States District Court for the District of Colorado, and the HONORABLE WILLIAM E. DOYLE, Judge, United States District Court for the District of Colorado, beginning at 2:00 o'clock p.m., on the 26th day of June, 1964, at Denver, Colorado.

APPEARANCES:

For the Plaintiffs:

GEORGE L. CREAMER, Attorney at Law, Equitable Building, Denver, Colorado.

CHARLES GINSBERG, Attorney at Law, Boston Building, Denver, Colorado.

FRANCIS R. SALAZAR, Attorney at Law, Denver U. S. National Center, Denver, Colorado.

For the Defendants:

DUKE W. DUNBAR, Attorney General, State of Colorado, Denver, Colorado.

ANTHONY F. ZARLENGO, Attorney at Law, Majestic Building, Denver, Colorado.

RICHARD W. BANGERT and JAMES C. WILSON, JR., Office of the Attorney General, State of Colorado, Denver, Colorado.

For the Intervenors:

RICHARD S. KITCHEN, First National Bank Building, Attorney at Law, Denver, Colorado.

CHARLES S. VIGIL, Attorney at Law, Symes Building, Denver, Colorado.

STEPHEN H. HART and JAMES L. WHITE, Attorneys at Law, Equitable Building, Denver, Colorado.

Amicus Curiae:

PHILIP J. CAROSELL, Attorney at Law, Majestic Building, Denver, Colorado.

RULING

JUDGE BREITENSTEIN: We deem it advisable to express our conclusions at this time in the matter presented.

Obviously, it is impossible for us to come down in anything in writing. As counsel have been advised, we, all three of us, have to be away next week.

Here is the way we figured it out. Judge Doyle and I feel that Amendment Number 7 is not severable. That is, as to the provisions on the Senate and the House.

Judge Arraj feels that the provisions of Number 7 relating to the Senate are severable from the provisions relating to the House. That is, as to the apportionment.

The effect of Judge Arraj's position, as I understand it, is that the Senate should have 39 members, but that the method of apportionment, under the Supreme Court decision, must be rejected as invalid.

On the question of the present constitutional provisions, Judge Arraj and I feel that the effect of Section 47 of Article V is to not forbid the subdistricting of counties. Judge Doyle feels that it does.

We state our views in the hope that they may be of some assistance to the State officials in arriving at a solution of this troublesome problem.

The Supreme Court sent the case back to us for determination of whether the imminence of the '64 election requires

the utilization of the apportionment scheme contained in the constitutional amendment, or whether some other method can be effectuated in 1964.

On the presentation of counsel, we feel that the amount of time which is available is sufficient for the State to take action which will effectuate the decision of the United States Supreme Court.

If the State does not do that and does not come up with a solution, the Court will, of course, carry out the duty which it has under the mandate of the United States Supreme Court and come up with some method for the election of the members of the legislature in 1964.

In order that the Court may be advised as to whether the State intends to take action, the Court will set the matter over to 9:30 a.m., July 15th, At that time, we would like to have counsel advise us as to whether State action will be taken or not.

If State action is taken, then we have the additional responsibility of determining whether that action is permissible under the 14th Amendment.

If it does not take action, then the burden is on us to come up with some plan which will carry out as closely as may be the principles announced by the United States Supreme Court.

Now, does any counsel have any question about what

I have said?

MR. CAROSELL: On the question of July 15th, does the Court hold that the State must by that time present to this Court a reapportionment of the legislature?

JUDGE BREITENSTEIN: No, sir, it does not mean that. It means by that time we wish to be advised as to whether proceedings are to be undertaken by the State to do this.

Of course, time is of great importance here. It may be that by July 15th the State can set into operation the machinery necessary to bring about a State enacted apportionment which will comply with what the Supreme Court has said must be done.

We recognize they might not be able to complete that, and if the State sets the machinery in operation, why, we certainly will give you time to complete it, but we can't give too much time because we all know of the imminence of the election.

MR. CREAMER: If it please the Court, it is then, we take it, permissible for the State to embark upon a procedure of apportionment as immediately as the State officials might think practicable before July 15th?

JUDGE BREITENSTEIN: Certainly. We feel that this is essentially a State problem. I believe all of us are in agreement that it is better for the State to solve the problem than for the Federal Court to do it. We recognize that.

At the same time, we recognize our duty and responsibility under the Supreme Court mandate, and if the State doesn't do it, then we have to do something.

Mr. Dunbar?

MR. DUNBAR: I want to be sure that it is clear because I have to report this to the Governor and some of the other State officials.

JUDGE BREITENSTEIN: Yes.

MR. DUNBAR: As I understand it, the entire Amendment 7 is invalid?

JUDGE BREITENSTEIN: That is the view of two members of the Court, Judge Arraj dissenting.

MR. DUNBAR: Yes. That means that we must proceed under the old or the present -- if it is invalid, the former constitutional provisions relating to elections are still in effect.

JUDGE BREITENSTEIN: Yes, sir.

MR. DUNBAR: And that being the case, we proceed to reapportion, having in mind the meaning of ratio which we will determine according to the latest Supreme Court decision.

Now, I think by July 15th, we can certainly advise you what is intended to be done, if something hasn't already been done by that time.

JUDGE BREITENSTEIN: Mr. Zarlengo?

MR. ZARLENGO: Just one thing, and redistricting

is permitted under Section 47 of the Constitution as it existed prior to Amendment 7?

JUDGE BREITENSTEIN: That is the view of two of us, Judge Doyle dissenting.

Of course, Mr. Zarlengo, just to clarify that, with that view of the majority of the Court, it will be possible for the legislature to adopt or accept the apportionment of the House as it exists under House Bill 65 and to apportion the Senate on the basis of subdistricting of counties.

That's the view of the majority of the Court.

That would also mean that the Senate is composed of 35 members.

MR. ZARLENGO: Yes, I understand that, Your Honor, and thank you for the clarification.

JUDGE BREITENSTEIN: All right, Mr. Vigil?

MR. VIGIL: I was going to ask the same question.

THE COURT: All right, now does anybody else have any questions, because we want to make it as clear as we possibly can?

MR. CREAMER: Pardon me, I wonder if we might ask that the reporter be requested to transcribe in multiple copies the statement of the Court from the bench, because absent a written decision it will perhaps, assuming that something is to take place before the 15th, be publicly quite imperative that there be some kind of preserved record.

JUDGE BREITENSTEIN: Of course, any party that wants a copy of what has been said can get it by buying it from the reporter.

MR. CREAMER: I will be happy to commission the reporter to do so and do such in such form there be multiple copies available, and we will bear the cost of doing so.

THE COURT: Of course, I am sure all the lawyers here present realize that when you make an oral ruling such as has been made here, there is a possibility of a slip of the tongue and a possibility of a lack of clarity which is lessened at least when you have something in writing.

The reason we have done this the way that we have orally is because of the pressure of time and the fact that we are leaving town in the morning and we thought that it would be of some advantage to have our views before we had to go.

MR. ZARLENGO: I think it will be a tremendous advantage to have that and we will order a copy and realizing the situation that Your Honor has stated, but it will give us some guidelines that will be of a tremendous amount of help.

MR. DUNBAR: May I express the thanks of the State officials of the Court's position and, of course, action in giving us something immediate now that we will know which way to go.

JUDGE BREITENSTEIN: Well, Mr. Dunbar, we hope the

State can work further --

SPECTATOR: May a person --

JUDGE BREITENSTEIN: Are you of counsel in this case?

SPECTATOR: No, I am not. I won't ask a question.

JUDGE BREITENSTEIN: I think we should only hear from counsel.

MR. CREAMER: May the plaintiffs also express their thanks to the Court for its extreme expedition in this matter? It is one in which all of Court and counsel have been aware of the pressing nature of the problems and we do thank the Court for taking this unusual step in expediting it.

(Whereupon, the hearing was concluded.)

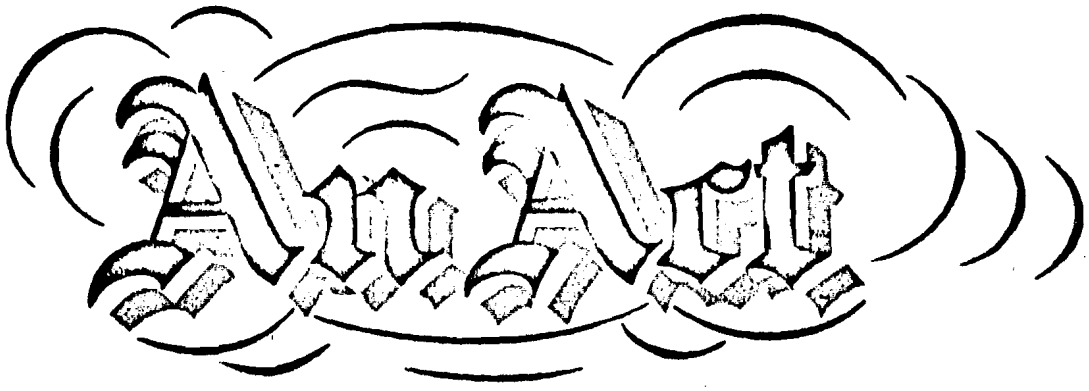
REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that I thereafter reduced my shorthand notes reflecting the ruling of the Court at the conclusion of the matter to typewritten form, comprising the foregoing Official Transcript; further, that the foregoing official transcript is a full, true and accurate record of the ruling of the Court in this matter on the date set forth.

Dated at Denver, Colorado, this 26th day of June, 1964.

Donna G. Spencer
Certified Shorthand Reporter

APPENDIX F



(Senate Bill No. 1. By Senators Rogers, Wenke, and Gill; also Representatives Mackie, Stevens, Myrick, Schieffelin, Stockton, and Griffith.)

CONCERNING THE GENERAL ASSEMBLY, PROVIDING FOR THE APPORTIONMENT OF THE MEMBERS THEREOF, AND ESTABLISHING SENATORIAL AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the General Assembly of the State of Colorado:

Section 1.—**Number of members of general assembly —election from districts.**—The senate of the general assembly of the state of Colorado shall consist of thirty-five members and the house of representatives thereof shall consist of sixty-five members, with one member of the senate to be elected from each senatorial district and one member of the house of representatives to be elected from each representative district, as hereinafter established.

Section 2.—**Senatorial districts — number—composition.**—(1) **Districts 1-9—city and county of Denver.**—There shall be nine senatorial districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, and 624.

District 2: Precincts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, and 1525.

District 3: Precincts 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, and 1826.

District 4: Precincts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, and 725.

District 5: Precincts 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, and 1727.

District 6: Precincts 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, and 418.

District 7: Precincts 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, and 1232.

District 8: Precincts 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, and 825.

District 9: Precincts 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, and 1426.

(2) **Districts 10-12—El Paso county.** There shall be three senatorial districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 10: Precincts 19, 20, 21, 22, 31, 32, 33, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 56, 64, 65, 66, 67, 68, 69, and 70.

District 11: Precincts 16, 17, 18, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 57, 58, 59, 60, 61, 62, 63, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

District 12: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 93, 94, and 95.

(3) **Districts 13-15—Jefferson county.** (a) For the forty-fifth general assembly only, there shall be two senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts **104, 106,** 110, 201, 202, 203, 204, 205, 206, 207, 208, **209, 210,** 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, **301, 302, 303,** 304, 305, 306, 307, 308, 309, 310, 311, 312, **313, 314,** 315, 316, 317, 318, 319, 402, 405, 406, 408, 410, **411, and** 412.

District 14: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

(b) For the forty-sixth and subsequent general assemblies, there shall be three senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts 101, 102, 103, 104, 105, 107, 108, 109, 110, 301, 303, 309, 311, 313, 314, 316, 319, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412 and 503.

District 14: Precincts 401, 404, 501, 502, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

District 15: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, 304, 305, 306, 307, 308, 310, 312, 315, 317, and 318.

(4) **Districts 16 and 17—Pueblo county.** There shall be two senatorial districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 16: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 41, 42, 43, 57, 58, 103, 105, 107, 116, and 117.

District 17: Precincts 34, 35, 37, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 106, 108, 109, 110, 111, and 112.

(5) **Districts 18 and 19—Adams county.** There shall be two senatorial districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 18: Precincts 101, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 19: Precincts 100, 102, 103, 104, 105, 106, 107, 108, 109, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(6) **Districts 20 and 21—Arapahoe county.** There shall be two senatorial districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 20: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

District 21: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

(7) **District 22—Adams and Arapahoe counties.** —The counties of Adams and Arapahoe shall constitute the twenty-second senatorial district.

(8) **District 23—Weld county.** The county of Weld shall constitute the twenty-third senatorial district.

(9) **District 24—Boulder county.** The county of Boulder shall constitute the twenty-fourth senatorial district.

(10) **District 25—Boulder and Weld counties.** The counties of Boulder and Weld shall constitute the twenty-fifth senatorial district.

(11) **District 26—Larimer county.** The county of Larimer shall constitute the twenty-sixth senatorial district.

(12) **District 27—Mesa county.** The county of Mesa shall constitute the twenty-seventh senatorial district.

(13) **District 28.** The counties of Morgan, Logan, and Washington shall constitute the twenty-eighth senatorial district.

(14) **District 29.** The counties of Sedgwick, Phillips, Yuma, Kit Carson, Cheyenne, Kiowa, Crowley, Lincoln, and Elbert shall constitute the twenty-ninth senatorial district.

(15) **District 30.** The counties of Gilpin, Clear Creek, Douglas, Park, Teller, Chaffee, Fremont, Custer, and Saguache shall constitute the thirtieth senatorial district.

(16) **District 31.** The counties of Prowers, Bent, Baca, and Otero shall constitute the thirty-first senatorial district.

(17) **District 32.** The counties of Las Animas, Huerfano, Costilla, Alamosa, and Rio Grande shall consitute the thirty-second senatorial district.

(18) **District 33.** The counties of Conejos, Archuleta, Mineral, La Plata, San Juan, Dolores, and Montezuma shall constitute the thirty-third senatorial district.

(19) **District 34.** The counties of Gunnison, Hinsdale, Ouray, San Miguel, Montrose, and Delta shall constitute the thirty-fourth senatorial district.

(20) **District 35.** The counties of Moffat, Routt, Jackson, Grand, Summit, Eagle, Lake, Pitkin, Garfield, and Rio Blanco shall constitute the thirty-fifth senatorial district.

Section 3.—**Election of senators.**—(1) Senators from the following senatorial districts shall be elected at the general election held in November, 1964, and every four years thereafter: 2, 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 24, 25, and 35.

(2) Senators from the following senatorial districts shall be elected at the general election held in November, 1966, and every four years thereafter: 1, 3, 4, 9, 10, 15, 16, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

Section 4.—**Holdover senators keep office—vacancies.**—Nothing in this act shall be construed to cause the removal of any senator from his office for the term for which he was elected, but each such senator shall serve the term for which he was elected. In the event of a vacancy in the senate, such vacancy shall be filled as provided by law; provided, if any senator elected at the 1962 general election from a county which by this act contains two or

more senatorial districts, shall vacate his seat on or after the second Tuesday in January, 1965, and prior to the expiration of his term of office in January, 1967, such vacancy shall be filled from the county at large.

Section 5.—**Representative districts—number—composition.**—(1) **Districts 1-18—city and county of Denver.**—There shall be eighteen representative districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101 through 130.
District 2: Precincts 201 through 222.
District 3: Precincts 301 through 324.
District 4: Precincts 401 through 418.
District 5: Precincts 501 through 520.
District 6: Precincts 601 through 624.
District 7: Precincts 701 through 725.
District 8: Precincts 801 through 825.
District 9: Precincts 901 through 923.
District 10: Precincts 1001 through 1035.
District 11: Precincts 1101 through 1129.
District 12: Precincts 1201 through 1232.
District 13: Precincts 1301 through 1327.
District 14: Precincts 1401 through 1426.
District 15: Precincts 1501 through 1525.
District 16: Precincts 1601 through 1626.
District 17: Precincts 1701 through 1727.
District 18: Precincts 1801 through 1826.

(2) **Districts 19-23—El Paso county.** There shall be five representative districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 19: Precincts 19, 20, 21, 22, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 69, 70, and 71.

District 20: Precincts 31, 32, 33, 37, 38, 56, 57, 58, 64, 65, 66, 67, 68, 86, 87, and 90.

District 21: Precincts 18, 23, 24, 25, 27, 28, 29, 30, 34, 35, 36, 59, 60, 61, 62, 63, 88, 89, 91, and 92.

District 22: Precincts 2, 3, 4, 5, 6, 7, 8, 16, 17, 26, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 93, 94, and 95.

District 23: Precincts 1, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 72, 73, and 74.

(3) **Districts 24-27—Jefferson county.** There shall be four representative districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 24: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, and 318.

District 25: Precincts 104, 110, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 319, 402, 405, 406, 408, 410, 411, and 412.

District 26: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 502, 503, 504, 507, 508, 509, 511, 513, 515, and 707.

District 27: Precincts 501, 505, 506, 510, 512, 514, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, and 708.

(4) **Districts 28-31—Adams county.** There shall be four representative districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 28: Precincts 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, and 300.

District 29: Precincts 101, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 30: Precincts 102, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 322.

District 31: Precincts 100, 103, 104, 105, 106, 107, 108, 109, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(5) **Districts 32-35—Pueblo county.** There shall be four representative districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 32: Precincts 1, 2, 3, 5, 9, 10, 11, 12, 13, 14, 41, 42, 43, 57, 58, 116, and 117.

District 33: 4, 6, 7, 8, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 103, 105, and 107.

District 34: Precincts 39, 40, 44, 45, 46, 47, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 75.

District 35: Precincts 34, 35, 37, 38, 48, 49, 50, 51, 52, 53, 70, 71, 72, 73, 74, 76, 106, 108, 109, 110, 111, and 112.

(6) **Districts 36-39—Arapahoe county.** There shall be four representative districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 36: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.

District 37: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

District 38: Precincts 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

District 39: Precincts 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

(7) **Districts 40-42—Boulder county.** There shall be three representative districts within the county of Boulder which shall be numbered as follows and shall consist of the following whole general election precincts:

District 40: Precincts 1, 2, 3, 6, 17, 18, 19, 20, 22, 23, and 24 in the city of Boulder; and precincts 6, 7, 12, 17, 18, 19, 20, 21, and 22 in the county of Boulder.

District 41: Precincts 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 25, and 26 in the city of Boulder; and precincts 8, 13, and 16 in the county of Boulder.

District 42: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 in the city of Longmont; and precincts 27 and 28 in the city of Boulder; and precincts 1, 2, 4, 5, 9, 10, 11, 14, and 15 in the county of Boulder.

(8) **Districts 43-45—Weld county.** There shall be three representative districts within the county of Weld which shall be numbered as follows and shall consist of the following whole general election precincts:

District 43: Precincts 1, 2, 3, 4, and 9 in ward one in the city of Greeley; precinct 1 in ward two in the city of Greeley; and precincts 2, 4, 9, 10, 11, 13, 17, 18, 19, 20, 21, 25, 30, 31, and 32 in the county of Weld.

District 44: Precincts 3, 4, and 5 in ward two in the city of Greeley; precincts 1, 2, 3, and 4 in ward three in the city of Greeley; and precincts 1, 5, 22, 23, 27, 28, 29, 33, and 34 in the county of Weld.

District 45: Precincts 5, 6, 7, and 8 in ward one in the city of Greeley; precincts 2 and 6 in ward two in the city of Greeley; and precincts 3, 6, 7, 8, 12, 14, 15, 16, 24, and 26 in the county of Weld.

(9) **Districts 46 and 47—Larimer county.** There shall be two representative districts within the county of Larimer which shall be numbered as follows and shall consist of the following whole general election precincts:

District 46: Precincts A1, B1, B2, B3, B4, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, D1, D2, D3, E1, E2, E3, E4, E5, E6, and 17.

District 47: Precincts 1, 2, 4, 5, 6, 7, 18, 19, 20, 21, 22, 22A, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 41, 44, 46, and 47.

(10) **Districts 48 and 49—Mesa county.** There shall be two representative districts within the county of Mesa which shall be numbered as follows and shall consist of the following whole general election precincts:

District 48: Precincts 1, 4, 5, 8, 12, 13, 15, 16, 19, 20, 26, 29, 30, 32, 36, 37, 38, 39, 40, 42, 44, 47, 49, 52, 53, 55, 56, 58, 59, 60, and 61.

District 49: Precincts 2, 3, 6, 7, 9, 10, 11, 14, 17, 18, 21, 22, 23, 24, 25, 27, 28, 31, 33, 34, 35, 41, 43, 45, 46, 48, 50, 51, 54, and 57.

(11) **District 50.** The counties of Bent, Prowers, and Baca shall constitute representative district 50.

(12) **District 51.** The county of Logan shall constitute representative district 51.

(13) **District 52.** The counties of Fremont and Custer shall constitute representative district 52.

(14) **District 53.** The counties of Otero and Crowley shall constitute representative district 53.

(15) **District 54.** The counties of Las Animas and Costilla shall constitute representative district 54.

(16) **District 55.** The county of Morgan shall constitute representative district 55.

(17) **District 56.** The counties of Yuma, Phillips, Sedgwick, and Washington shall constitute representative district 56.

(18) **District 57.** The counties of Delta, Gunnison, and Hinsdale shall constitute representative district 57.

(19) **District 58.** The counties of Park, Teller, Douglas, Chaffee, and Lake shall constitute representative district 58.

(20) **District 59.** The counties of La Plata and Montezuma shall constitute representative district 59.

(21) **District 60.** The counties of Garfield, Eagle, Pitkin, and Rio Blanco shall constitute representative district 60.

(22) **District 61.** The counties of Summit, Moffat, Routt, Jackson, Grand, Clear Creek, and Gilpin shall constitute representative district 61.

(23) **District 62.** The counties of Conejos, Rio Grande, Mineral, and Archuleta shall constitute representative district 62.

(24) **District 63.** The counties of Alamosa, Huerfano, and Saguache shall constitute representative district 63.

(25) **District 64.** The counties of Montrose, Ouray, San Miguel, Dolores, and San Juan shall constitute representative district 64.

(26) **District 65.** The counties of Lincoln, Kit Carson, Elbert, Cheyenne, and Kiowa shall constitute representative district 65.

Section 6.—**Districts to coincide with county line changes.**—(1) To the extent that boundaries of senatorial and representative districts established pursuant to this act coincide with county lines, such senatorial and representative districts shall continue to coincide therewith in the event that such county lines are changed.

(2) In cases involving changes in county lines where newly acquired territory is contiguous to two or more senatorial districts, or to two or more representative districts, or both, within the county to which annexed, such annexed territory shall be included in that contiguous senatorial district or that representative district, or both, containing the lesser population as determined by the last preceding federal decennial census.

Section 7.—**Meaning and scope of terms—changes in precinct boundaries.**—(1) As used in this act, for the purpose only of describing senatorial and representative districts, the term "whole general election precincts" means those precincts existing on July 1, 1964, as fixed by the election commission of the city and county of Denver and the boards of county commissioners of all other counties containing two or more senatorial or representative districts.

(2) Changes in the precinct boundaries of a county shall be made only within the district boundaries of each senatorial and representative district as established by this act.

Section 8.—**Applicability of act.**—This act shall apply to the forty-fifth and subsequent general assemblies, except as provided in section 2 (3) of this act; and sections 63-1-1 through 63-1-7, Colorado Revised Statutes

1953, repealed by this act, shall remain in effect as they existed prior to such repeal and prior to amendment by chapter 143, Session Laws of Colorado 1963, for all purposes of the forty-fourth general assembly.

Section 9.—**Repeal.**—63-1-1 through 63-1-7, Colorado Revised Statutes 1953, and chapters 143 and 144, Session Laws of Colorado 1963, as amended, are hereby repealed.

Section 10.—**Safety clause.**—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Robert L. Knous
PRESIDENT OF THE SENATE

John D. Vanderhoof
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mildred H. Cresswell
SECRETARY OF THE SENATE

Donald H. Henderson
CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED_____

John A. Love
GOVERNOR OF THE STATE OF COLORADO

APPENDIX G

MEMORANDUM

July 6, 1964

TO: Colorado General Assembly

FROM: Legislative Council Staff

SUBJECT: Population of Senate Districts As Contained in S.B. No. 1 As It Passed

Senate Districts	1960 Population	County
1	55,879	Denver
2	59,141	Denver
3	52,266	Denver
4	57,106	Denver
5	56,190	Denver
6	54,028	Denver
7	53,122	Denver
8	56,668	Denver
9	51,529	Denver
10	47,667	El Paso
11	48,509	El Paso
12	47,566	El Paso
13	42,682	Jefferson
14	42,859	Jefferson
15	41,633	Jefferson
16	58,003	Pueblo
17	60,704	Pueblo
18	59,538	Adams
19	60,558	Adams
20	52,840	Arapahoe
21	51,516	Arapahoe
22	224,452	Adams - Arapahoe
23	72,344	Weld
24	74,254	Boulder
25	146,598	Boulder - Weld
26	53,343	Larimer
27	50,715	Mesa

Senate Districts	1960 Population	County
28	48,119	Logan, Morgan, and Washington
29	42,761	Sedgwick, Phillips, Yuma, Elbert, Lincoln, Crowley, Kit Carson, Cheyenne, and Kiowa
30	46,883	Gilpin, Clear Creek, Park, Teller, Douglas, Chaffee, Fremont, Custer, and Saguache
31	51,153	Otero, Bent, Prowers, and Baca
32	53,229	Las Animas, Huerfano, Costilla, Alamosa, and Rio Grande
33	47,775	Dolores, Montezuma, San Juan, La Plata, Archuleta, Mineral, and Conejos
34	44,118	Delta, Montrose, Ouray, San Miguel, Gunnison, and Hinsdale
35	51,675	Moffat, Routt, Jackson, Grand, Rio Blanco, Garfield, Eagle, Summit, Pitkin, and Lake

* Population estimates based on 1960 census tract information supplied by the Bureau of Census, U.S. Department of Commerce. Figures include approximately 7,525 persons living in areas in 1960 which subsequently were annexed to Denver. Of this number, roughly 6,979 persons previously resided in Arapahoe County; 346 -- Jefferson County; and 200 -- Adams County. Population estimates do not include 5,483 persons assigned to Lowry Air Force Base within the limits of Denver, and 2,091 persons assigned to Lowry Field and apportioned to Arapahoe County.

MEMORANDUM

July 6, 1964

TO: Colorado General Assembly

FROM: Legislative Council Staff

SUBJECT: Population of Representative Districts As Contained in S.B. No. 1 As Passed

County	Representative District	1960 Population
Denver	1	28,548
Denver	2	28,857
Denver	3	27,956
Denver	4	26,072
Denver	5	24,251
Denver	6	27,331
Denver	7	28,249
Denver	8	32,417
Denver	9	29,704
Denver	10	29,511
Denver	11	26,251
Denver	12	26,871
Denver	13	27,020
Denver	14	24,509
Denver	15	29,437
Denver	16	26,476
Denver	17	26,679
Denver	18	25,790
El Paso	19	28,595
El Paso	20	33,328
El Paso	21	27,790
El Paso	22	24,719
El Paso	23	29,310
Jefferson	24	30,964
Jefferson	25	33,653
Jefferson	26	35,123
Jefferson	27	27,434
Adams	28	30,279
Adams	29	29,259
Adams	30	27,446
Adams	31	33,112
Pueblo	32	28,759
Pueblo	33	29,244
Pueblo	34	30,595
Pueblo	35	30,109

County	Representative District	1960 Population
Arapahoe	36	32,027
Arapahoe	37	28,999
Arapahoe	38	22,517
Arapahoe	39	20,813
Boulder	40	27,222
Boulder	41	24,381
Boulder	42	22,651
Weld	43	24,303
Weld	44	24,014
Weld	45	24,027
Larimer	46	28,162
Larimer	47	25,181
Mesa	48	26,941
Mesa	49	23,774
Bent, Prowers, and Baca	50	27,025
Logan	51	20,302
Fremont and Custer	52	21,501
Otero and Crowley	53	28,106
Las Animas and Costilla	54	24,202
Morgan	55	21,192
Yuma, Phillips, Sedgwick, and Washington	56	24,219
Delta, Gunnison, and Hinsdale	57	21,287
Park, Teller, Douglas, Chaffee, and Lake	58	24,532
La Plata and Montezuma	59	33,249
Garfield, Eagle, Pitkin, and Rio Blanco	60	24,225
Summit, Moffat, Routt, Jackson, Grand, Clear Creek, and Gilpin	61	23,827
Conejos, Rio Grande, Mineral, and Archuleta	62	22,641
Alamosa, Huerfano, and Saguache	63	22,340
Montrose, Ouray, San Miguel, Dolores, and San Juan	64	25,876
Lincoln, Kit Carson, Elbert, Cheyenne, and Kiowa	65	21,189

APPENDIX H
SENATE DISTRICT POPULATION VARIATIONS
Senate Bill No. 1, 1964 Second Special Session

District	County	Aver. State Population Per Seat	Population of District	% Variation	Aver. Rural Population Per Rural Sen. Seat	% Variation	Aver. Urban Population Per Urban Sen. Seat	% Variation
1	Denver	50,113	55,879	11.51	---	---	50,675	10.27
2	Denver	50,113	59,141	18.01	---	---	50,675	16.71
3	Denver	50,113	52,266	4.30	---	---	50,675	3.14
4	Denver	50,113	57,106	13.95	---	---	50,675	12.69
5	Denver	50,113	56,190	12.13	---	---	50.675	10.88
6	Denver	50,113	54,028	7.81	---	---	50,675	6.62
7	Denver	50,113	53,122	6.00	---	---	50,675	4.83
8	Denver	50,113	56,668	13.08	---	---	50,675	11.83
9	Denver	50,113	51,529	2.83	---	---	50,675	1.69
10	El Paso	50,113	47,667	(4.88)	---	---	50,675	(5.94)
11	El Paso	50,113	48,509	(3.20)	---	---	50,675	(4.28)
12	El Paso	50,113	47,566	(5.08)	---	---	50,675	(6.14)
13	Jefferson	50,113	42,682	(14.83)	---	---	50,675	(15.77)
14	Jefferson	50,113	42,859	(14.48)	---	---	50,675	(15.42)
15	Jefferson	50,113	41,633	(16.92)	---	---	50,675	(17.84)
16	Pueblo	50,113	58,003	15.74	---	---	50,675	14.46
17	Pueblo	50,113	60,704	21.13	---	---	50,675	19.79
18	Adams	50,113	59,538	18.81	---	---	50,675	17.49
19	Adams	50,113	60,558	20.84	---	---	50,675	19.50
20	Arapahoe	50,113	52,840	5.44	---	---	50,675	4.27
21	Arapahoe	50,113	51,516	2.80	---	---	50,675	1.66
22	Adams and Arapahoe	50,113	224,452	(10.42)*	---	---	50,675	(11.42)*
23	Weld	50,113	72,344)		---	---	50,675)	
24	Boulder	50,113	74,254)	(2.49)**	---	---	50,675)	(3.57)**
25	Weld and Boulder	50,113	146,598)		---	---	50,675)	
26	Larimer	50,113	53,343	6.45	---	---	50,675	5.26
27	Mesa	50,113	50,715	1.20	---	---	50,675	.08
28	Logan, Morgan, Washington	50,113	48,119	(3.98)	48,214	(.20)	---	---
29	Sedgwick, Phillips, Yuma, Elbert, Lincoln, Crowley Kit Carson, Cheyenne, Kiowa	50,113	42,761	(14.67)	48,214	(11.31)	---	---
30	Gilpin, Clear Creek, Park, Teller, Douglas, Chaffee, Fremont, Custer, Saguache	50,113	46,883	(6.45)	48,214	(2.76)	---	---

District	County	Aver. State Population Per Seat	Population of District	% Variation	Aver. Rural Population Per Rural Sen. Seat	% Variation	Aver. Urban Population Per Urban Sen. Seat	% Variation
31	Otero, Bent, Prowers, Baca	50,113	51,153	2.08	48,214	6.10	---	---
32	Las Animas, Huerfano, Costilla, Alamosa, Rio Grande	50,113	53,229	6.22	48,214	10.40	---	---
33	Dolores, Montezuma, San Juan, La Plata, Archuleta, Mineral, Conejos	50,113	47,775	(4.67)	48,214	(.91)	----	---
34	Delta, Montrose, Ouray, San Miguel, Gunnison, Hinsdale	50,113	44,118	(11.96)	48,214	(8.50)	---	---
35	Moffat, Routt, Jackson, Grand, Rio Blanco, Garfield, Eagle, Summit, Pitkin, Lake	50,113	51,675	3.12	48,214	7.18	---	---

* Based on district population divided by five, or 44,890 average.
** Population of Weld and Boulder Counties combined and divided by three.

HOUSE DISTRICT POPULATION VARIATIONS
Senate Bill No. 1, 1964 Second Special Session

District	County	Aver. State Population Per Seat	Population of District	% Variation	Aver. Rural Population Per Rural House Seat	% Variation	Aver. Urban Population Per Urban House Seat	% Variation
1	Denver	26,984	28,548	5.80%	---	---	27,923	2.24%
2	Denver	26,984	28,857	6.94	---	---	27,923	3.34
3	Denver	26,984	27,956	3.60	---	---	27,923	.12
4	Denver	26,984	26,072	(3.38)	---	---	27,923	(6.63)
5	Denver	26,984	24,251	(10.13)	---	---	27,923	(13.15)
6	Denver	26,984	27,331	1.29	---	---	27,923	(2.12)
7	Denver	26,984	28,249	4.69	---	---	27,923	1.17
8	Denver	26,984	32,417	20.13	---	---	27,923	16.09
9	Denver	26,984	29,704	10.08	---	---	27,923	6.38
10	Denver	26,984	29,511	9.36	---	---	27,923	5.69
11	Denver	26,984	26,251	(2.72)	---	---	27,923	(5.99)
12	Denver	26,984	26,871	(.42)	---	---	27,923	(3.77)
13	Denver	26,984	27,020	.13	---	---	27,923	(3.23)
14	Denver	26,984	24,509	(9.17)	---	---	27,923	(12.23)
15	Denver	26,984	29,437	9.09	---	---	27,923	5.42
16	Denver	26,984	26,476	(1.88)	---	---	27,923	(5.18)
17	Denver	26,984	26,679	(1.13)	---	---	27,923	(4.46)
18	Denver	26,984	25,790	(4.42)	---	---	27,923	(7.64)
19	El Paso	26,984	28,595	5.97	---	---	27,923	2.41
20	El Paso	26,984	33,328	23.51	---	---	27,923	19.36
21	El Paso	26,984	27,790	2.99	---	---	27,923	(.48)
22	El Paso	26,984	24,719	(8.39)	---	---	27,923	(11.47)
23	El Paso	26,984	29,310	8.62	---	---	27,923	4.97
24	Jefferson	26,984	30,964	14.75	---	---	27,923	10.89
25	Jefferson	26,984	33,653	24.71	---	---	27,923	20.52
26	Jefferson	26,984	35,123	30.16	---	---	27,923	25.79
27	Jefferson	26,984	27,434	1.67	---	---	27,923	(1.75)
28	Adams	26,984	30,279	12.21	---	---	27,923	8.44
29	Adams	26,984	29,259	8.43	---	---	27,923	4.78
30	Adams	26,984	27,446	1.71	---	---	27,923	(1.71)

District	County	Aver. State Population Per Seat	Population of District	% Variation	Aver. Rural Population Per Rural House Seat	% Variation	Aver. Urban Population Per Urban House Seat	% Variation
31	Adams	26,984	33,112	22.71	---	---	27,923	18.58
32	Pueblo	26,984	28,759	6.58	---	---	27,923	2.99
33	Pueblo	26,984	29,244	8.38	---	---	27,923	4.73
34	Pueblo	26,984	30,595	13.38	---	---	27,923	9.57
35	Pueblo	26,984	30,109	11.58	---	---	27,923	7.83
36	Arapahoe	26,984	32,027	18.69	---	---	27,923	14.70
37	Arapahoe	26,984	28,999	7.47	---	---	27,923	3.85
38	Arapahoe	26,984	22,517	(16.55)	---	---	27,923	(19.36)
39	Arapahoe	26,984	20,813	(22.87)	---	---	27,923	(25.46)
40	Boulder	26,984	27,222	.88	---	---	27,923	(2.51)
41	Boulder	26,984	24,381	(9.65)	---	---	27,923	(12.68)
42	Boulder	26,984	22,651	(16.06)	---	---	27,923	(18.88)
43	Weld	26,984	24,303	(9.94)	---	---	27,923	(12.96)
44	Weld	26,984	24,014	(11.01)	---	---	27,923	(14.00)
45	Weld	26,984	24,027	(10.96)	---	---	27,923	(13.95)
46	Larimer	26,984	28,162	4.37	---	---	27,923	.86
47	Larimer	26,984	25,181	(6.68)	---	---	27,923	(9.82)
48	Mesa	26,984	26,941	(.16)	---	---	27,923	(3.52)
49	Mesa	26,984	23,774	(11.90)	---	---	27,923	(14.86)
50	Bent, Prowers, Baca	26,984	27,025	.15	24,107	12.10	---	---
51	Logan	26,984	20,302	(24.76)	24,107	(15.78)	---	---
52	Fremont, Custer	26,984	21,501	(20.32)	24,107	(10.81)	---	---
53	Otero, Crowley	26,984	28,106	4.16	24,107	16.59	---	---
54	Las Animas, Costilla	26,984	24,202	(10.31)	24,107	.39	---	---
55	Morgan	26,984	21,192	(21.46)	24,107	(12.09)	---	---
56	Yuma, Phillips, Sedgwick, Washington	26,984	24,219	(10.25)	24,107	.46	---	---
57	Delta, Gunnison, Hinsdale	26,984	21,287	(21.11)	24,107	(11.70)	---	---
58	Park, Teller, Douglas, Chaffee, Lake	26,984	24,532	(9.09)	24,107	1.76	---	---
59	La Plata, Montezuma	26,984	33,249	23.22	24,107	37.92	---	---
60	Garfield, Eagle, Pitkin, Rio Blanco	26,984	24,225	(10.24)	24,107	.49	---	---
61	Summit, Moffat, Routt, Jackson, Grand, Clear Creek, Gilpin	26,984	23,827	(11.70)	24,107	(1.16)	---	---
62	Conejos, Rio Grande, Mineral, Archuleta	26,984	22,641	(16.09)	24,107	(6.08)	---	---
63	Alamosa, Huerfano, Saguache	26,984	22,340	(17.21)	24,107	(7.33)	---	---
64	Montrose, Ouray, San Miguel, Dolores, San Juan	26,984	25,876	(4.11)	24,107	7.34	---	---
65	Lincoln, Kit Carson, Elbert, Cheyenne, Kiowa	26,984	21,189	(21.48)	24,107	(12.10)	---	---

(1) Establishes single-member districting, except that in Denver, 2 senators and 4 representatives shall be elected at large, 1 such senator first elected in 1968 and the other in 1970.

(2) Floterial senatorial districts defined and permitted.

****

Section 45. General assembly. The general assembly shall consist of not more than thirty-five members of the senate and not more than sixty-five members of the house of representatives. Apportionment of members of the general assembly shall be made on the basis of equal population representation, with each senator and each representative representing an equal number of people as nearly as may be.

Section 46. Senatorial and representative districts. The general assembly shall divide the state into senatorial and representative districts, each of which shall consist of whole general election precincts. Except as provided in section 47 of this article, when a single county is apportioned more than one senator or more than one representative, the county shall be divided into senatorial and representative districts equal in number to the number of senators or representatives apportioned the county, respectively. When a district includes two or more counties, they shall be contiguous. No part of one county shall be added to another county or part thereof to form a district; provided, that when a portion of the area of an existing district is annexed or otherwise added to another county, it shall become a part of any contiguous district or districts in such county in the manner prescribed by law.

Except for floterial senatorial districts and except as provided in section 47 of this article with respect to the city and county of Denver, districts of the same house shall be as nearly equal in population as may be, shall be as compact as may be, and shall not overlap. A floterial senatorial district may be formed by combining two counties, each of which constitutes one or more senatorial districts and which by itself would not be entitled to an additional senator, but where the total population of the two counties would entitle them jointly to another senator.

Section 47. Election of members. One member of the senate shall be elected from each senatorial district and one member of the house of representatives shall be elected from each representative district; provided, that in the city and county of Denver, two members of the senate and four members of the house of representatives shall be elected from the city and county at large, one of such members of the senate to be first elected at the general election in 1968 and the other in 1970.

Section 48. Revision and alteration of districts. In the regular session of the general assembly in 1967, and in each regular session next following official publication of each federal enumeration of the population of the state, the general assembly shall revise and alter the apportionment of senators and representatives among the counties of the state, and the senatorial and representative districts, according to the provisions of sections 46 and 47 of this article. After forty-five days from the beginning of such regular session, no member of the general assembly shall be entitled

to or earn any compensation for his services or receive any payment for compensation or expenses, nor shall any member be eligible to succeed himself in office, unless or until such revision and alteration shall have been made.

APPENDIX J

AMENDMENT NO. 4

SINGLE-MEMBER LEGISLATIVE DISTRICTS

Proposed Constitutional Amendment

I, Bryon A. Anderson, Secretary of State of the State of Colorado, do hereby certify that the following is a true copy of the title, text and ballot title of a certain proposed constitutional amendment.

AN ACT TO AMEND ARTICLE V OF THE STATE CONSTITUTION CONCERNING THE APPORTIONMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY AND SINGLE MEMBER SENATORIAL AND REPRESENTATIVE DISTRICTS.

The proposed Initiative AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO (of which the foregoing title is made or constituted a part) is as follows:

Be It Enacted by the People of the State of Colorado:

Section 1. Sections 45, 46, 47 and 48 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted to read as follows:

Section 45. GENERAL ASSEMBLY. The General Assembly shall consist of not more than thirty-five members of the senate and of not more than sixty-five members of the house of representatives, one to be elected from each senatorial and each representative district, respectively.

Section 46. SENATORIAL AND REPRESENTATIVE DISTRICTS. The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the Constitution of the United States.

Section 47. COMPOSITION OF DISTRICTS. Each district shall be as compact in area as possible and shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap. Except when declared by the General Assembly to be necessary to meet the equal population requirements of Section 46, no part of one county shall be added to all or part of another county in forming districts. When county boundaries are changed, adjustments, if any, in legislative districts, shall be as prescribed by law.

Section 48. REVISION AND ALTERATION OF DISTRICTS. (1) In the regular session of the General Assembly in 1967, and at each such session next following official publication of each federal enumeration of the population of the state, the General Assembly shall establish or revise and alter the boundaries of senatorial and representative districts according to the provisions of sections 46 and 47. After forty-five days from the beginning of each such regular session, no member of the General Assembly shall be entitled to or earn any compensation for his services, or receive any payment for salary or expenses, nor shall any member be eligible to succeed himself in office, unless and until such revision and alteration shall have been made.

(2) Each paragraph, sentence and clause of Sections 45, 46, 47 and 48 shall be deemed to be severable from all other parts thereof and shall be interpreted to preserve, as the primary purpose thereof, the creation of single member districts. Nothing in said sections contained, nor any judgment or judicial declaration pertaining to sections hereby repealed, nor the failure of the State of Colorado to conduct a census in 1885 and subsequent years, shall affect the validity of laws at any time enacted by the General Assembly or by the people on any subject not directly pertaining to legislative districting or apportionment.

The ballot title and submission clause to the proposed initiative amendment to the constitution petitioned for herein as designated and fixed by the Secretary of State, Attorney General and Reporter of the Supreme Court is as follows to-wit:

AN ACT TO AMEND ARTICLE V OF THE STATE CONSTITUTION, PROVIDING FOR A SENATE OF NOT MORE THAN THIRTY-FIVE MEMBERS AND A HOUSE OF REPRESENTATIVES OF NOT MORE THAN SIXTY-FIVE MEMBERS; PROVIDES FOR SINGLE MEMBER DISTRICTS IN BOTH HOUSES, EACH DISTRICT IN EACH HOUSE TO BE SUBSTANTIALLY EQUAL IN POPULATION.	YES
PROVIDES STANDARDS FOR FORMATION OF DISTRICTS; PROVIDES FOR REVISION OF DISTRICTS BY THE GENERAL ASSEMBLY IN 1967 AND AFTER EACH DECENNIAL CENSUS THEREAFTER, UNDER PENALTY OF LOSS OF COMPENSATION AND ELIGIBILITY OF MEMBERS TO SUCCEED THEMSELVES IN OFFICE; AND INCLUDES A SEVERABILITY AND SAVINGS CLAUSE	NO

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver, this 23rd day of March, A.D. 1966.

BRYON A. ANDERSON
Secretary of State

APPENDIX K

The State of Colorado

DUKE W. DUNBAR
ATTORNEY GENERAL

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
DENVER, COLORADO 80203

FRANK E. HICKEY
DEPUTY ATTORNEY GENERAL

December 8, 1966

Senator John R. Bermingham
Senator James C. Perrill
Senator Roger Cisneros
Senator George L. Brown
Senator Clarence A. Decker

Gentlemen:

This is in response to your letter of November 23, 1966.

1. It is my opinion that senators who were elected on an "at large" basis will continue to represent the entire county or city and county until the expiration of their terms in January, 1971.

2. Whether or not elections are to be held in 1968 in those areas where senatorial elections were held in 1964 is a matter for the General Assembly to determine.

3. I see no problem by reason of the fact that an "at large" senator happens to reside in a single-member district in which an election is scheduled for 1968.

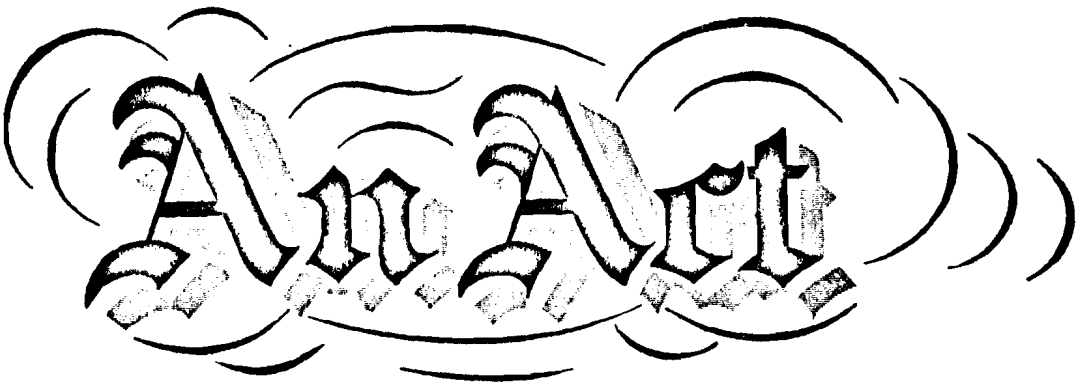
4. It is my opinion that Amendment No. 4 requires an entirely new apportionment act based on the 1960 Federal census.

5. The Legislature is required to create single-member districts but not necessarily out of the same multi-member districts. Under Amendment No. 4, it is possible that the General Assembly may find it necessary to add a part of one county to all or part of another county in forming a district.

Sincerely,

DUKE W. DUNBAR
Attorney General

DWD:eg



(House Bill No. 1117. By Representatives Lamb, Mackie, Monfort, and Senators Bermingham, and Gill; also Representatives Braden, Bryant, Cole, Edmonds, Fentress, Gossard, Gustafson, Hart, Johnson, Koster, McCormick, Morris, Norgren, Porter, Quinlan, Sack, Schafer, Schubert, Shore, Sonnenberg, Strahle, Strickland, Wilder, and Senator Hewett.)

CONCERNING THE GENERAL ASSEMBLY, PROVIDING FOR THE APPORTIONMENT OF THE MEMBERS THEREOF, AND ESTABLISHING SENATORIAL AND REPRESENTATIVE DISTRICTS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. **Number of members of general assembly—election from districts.**—The senate of the general assembly shall consist of thirty-five members and the house of representatives thereof shall consist of sixty-five members, with one member of the senate to be elected from each senatorial district and one member of the house of representatives to be elected from each representative district, as hereinafter established.

Section 2. **Senatorial districts—number—composition.—(1) Districts 1-10—city and county of Denver.**—There shall be ten senatorial districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101, 102, 104, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 201, 202, 203, 209, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 614, 712, and 724.

District 2: Precincts 103, 105, 111, 204, 205 206, 207, 208, 210, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 701, 702, 703, 901, 902, 903, 904, and 905.

District 3: Precincts 308, 309, 310, 704, 705, 706, 707, 708, 709, 710, 711, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 725, 906, 908, 909, 911, 913, 915, 917, 918, 919, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1011, 1012, 1013, 1015, 1020, 1021, 1022, 1023, and 1024.

District 4: Precincts 301, 302, 303, 304, 305, 306, 307, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 415, 419, 801, 802, 803, 804, and 805.

District 5: Precincts 414, 416, 417, 418, 420, 501, 502, 503, 504, 505,

506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 806, 807, 809, 810, 811, 812, 814, 815, 816, 818, 819, 822, 823, and 826.

District 6: Precincts 907, 910, 912, 914, 916, 920, 921, 922, 923, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1601, 1602, 1603, 1605, 1607, 1608, 1610, and 1612.

District 7: Precincts 1010, 1014, 1016, 1017, 1018, 1019, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1714, 1715, 1716, 1718, 1722, 1723, and 1726.

District 8: Precincts 808, 813, 817, 820, 821, 824, 825, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1224, 1225, 1226, 1227, 1229, 1305, 1306, 1308, 1315, 1316, 1317, 1401, 1402, 1403, 1404, 1405, and 1410.

District 9: Precincts 1604, 1606, 1609, 1611, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1710, 1711, 1712, 1713, 1717, 1719, 1720, 1721, 1724, 1725, 1727, 1728, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, and 1821.

District 10: Precincts 1222, 1223, 1228, 1230, 1231, 1232, 1301, 1302, 1303, 1304, 1307, 1309, 1310, 1311, 1312, 1313, 1314, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1406, 1407, 1408, 1409, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1822, 1823, 1824, 1825, and 1826.

(2) **Districts 11-13—El Paso county.**—There shall be three senatorial districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 11: Precincts 1, 9, 10, 19, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 69, 70, 71, 72, 73, 74, 75, 76, 97, 101, 102, 103, 104, 105, and 106.

District 12: Precincts 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 37, 38, 39, 64, 65, 66, 67, 68, and 98.

District 13: Precincts 2, 3, 4, 5, 6, 7, 8, 29, 30, 35, 36, 56, 57, 58, 59, 60, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, and 100.

(3) **Districts 14 and 15—Jefferson county.**—There shall be two whole senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 14: Precincts 301, 303, 304, 305, 307, 308, 309, 310, 311, 312, 313, 315, 317, 401, 402, 403, 404, 407, 408, 409, 410, 411, 413, 501, 502, 504, 505, 506, 508, 509, 511, 512, 513, 514, 515, and 516.

District 15: Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 302, 314, 316, 318, 319, 320, 405, 406, 412, 503, 507, 510, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 701, 702, 703, 704, 705, 706, 707, and 708.

(4) **District 16—Jefferson and Adams counties.**—There shall be one

senatorial district partly within the county of Jefferson and partly within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts in said counties:

District 16: Precincts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, and 306, all in Jefferson county; and precincts 200, 201, 202, 203, 205, 208, 209, 210, 211, 212, 229, 230, and 231, all in Adams county.

(5) **Districts 17 and 18—Adams county.**—There shall be two whole senatorial districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 17: Precincts 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 206, 207, 213, 214, 215, 216, 219, 220, 221, 222, 223, 228, 232, 233, 234, 235, 238, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

District 18: Precincts 204, 217, 218, 224, 225, 226, 227, 236, 237, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 322.

(6) **Districts 19 and 20—Pueblo county.**—There shall be two senatorial districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 19: Precincts 27, 28, 33, 34, 38, 40, 41, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, 69, 70, 71, 72, 73, 74, 76, 108, and 109.

District 20: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 32, 35, 37, 39, 42, 43, 45, and 46.

(7) **Districts 21 and 22—Arapahoe county.**—There shall be two senatorial districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 21: Precincts 1, 2, 2a, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 54a, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

District 22: Precincts 21, 22, 23, 23a, 24, 25, 26, 27, 28, 29, 30, 31, 32, 32a, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 44a, 65, 65a, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 77a, 78, 78a, 79, 79a, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

(8) **District 23—Boulder county.**—There shall be one whole senatorial district within the county of Boulder which shall be numbered as follows and shall consist of the following whole general election precincts:

District 23: County precincts 5, 6, 7, 8, 10, 11, 12, 13, 16, 21, and 22; and Boulder city precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

(9) **District 24—Boulder and Weld counties.**—There shall be one senatorial district partly in the county of Boulder and partly in the county of Weld which shall be numbered as follows and shall consist of the following whole general election precincts in said counties:

District 24: County precincts 1, 2, 3, 4, 9, 14, 15, 17, 18, 19, 20, and city of Longmont precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, all in Boulder

county; and precincts 3 and 4 in ward two in the city of Greeley, precincts 1, 2, 3, and 4 in ward three in the city of Greeley, and county precincts 5, 6, 7, 8, 14, 22, 24, 28, and 29, all in Weld county.

(10) **District 25—Weld county.**—There shall be one whole senatorial district within the county of Weld which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 25: Precincts 1, 2, 3, 4, 5, 6, 7, 8, and 9 in ward one in the city of Greeley; precincts 1, 2, 5, and 6 in ward two in the city of Greeley; and precincts 1, 2, 3, 4, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 30, 31, 32, 33, and 34 in the county of Weld.

(11) **District 26—Larimer county.**—The county of Larimer shall constitute the twenty-sixth senatorial district.

(12) **District 27—Mesa county.**—The county of Mesa shall constitute the twenty-seventh senatorial district.

(13) **District 28.**—The counties of Logan, Morgan, and Washington shall constitute the twenty-eighth senatorial district.

(14) **District 29.**—The counties of Cheyenne, Crowley, Douglas, Elbert, Kiowa, Kit Carson, Lincoln, Phillips, Sedgwick, and Yuma shall constitute the twenty-ninth senatorial district.

(15) **District 30.**—The counties of Alamosa, Chaffee, Clear Creek, Custer, Fremont, Gilpin, Park, Saguache, and Teller shall constitute the thirtieth senatorial district.

(16) **District 31.**—The counties of Baca, Bent, Otero, and Prowers shall constitute the thirty-first senatorial district.

(17) **District 32.**—The counties of Costilla, Huerfano, and Las Animas, and precincts 65, 66, 67, 75, 77, 78, 103, 104, 105, 106, 107, 110, 111, 112, 116, and 117 in Pueblo county shall constitute the thirty-second senatorial district.

(18) **District 33.**—The counties of Archuleta, Conejos, La Plata, Mineral, and Rio Grande, and precincts 1, 2, 3, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, and 20 in Montezuma county shall constitute the thirty-third senatorial district.

(19) **District 34.**—The counties of Delta, Dolores, Gunnison, Hinsdale, Montrose, Ouray, San Juan, and San Miguel, and precincts 4, 5, 11, 12, 13, and 14 in Montezuma county shall constitute the thirty-fourth senatorial district.

(20) **District 35.**—The counties of Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, and Summit shall constitute the thirty-fifth senatorial district.

Section 3. **Election of senators.**—(1) Senators from the following senatorial districts shall be elected at the general election held in November, 1968, and every four years thereafter: 4, 5, 6, 7, 9, 10, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, and 35.

(2) Senators from the following senatorial districts shall be elected at the general election held in November, 1970, and every four years thereafter: 1, 2, 3, 8, 11, 15, 20, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

Section 4. **Holdover senators keep office—vacancies.**—Nothing in this act shall be construed to cause the removal of any senator from his office

for the term for which he was elected, but each such senator shall serve the term for which he was elected. In the event of a vacancy in the senate, such vacancy shall be filled as provided by law; if any senator elected at the 1966 general election from a county which by this act contains all or part of two or more senatorial districts, shall vacate his seat on or after the second Tuesday in January, 1969, and prior to the expiration of his term of office in January, 1971, such vacancy shall be filled from the county at large.

Section 5. **Representative districts—number—composition.—(1) Districts 1-18—city and county of Denver.**—There shall be eighteen representative districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, and 129.

District 2: Precincts 126, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 221, and 222.

District 3: Precincts 220, 223, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 322.

District 4: Precincts 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 810, and 826.

District 5: Precincts 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 814, 818, and 822.

District 6: Precincts 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, and 901.

District 7: Precincts 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 720, 721, 722, 723, 724, and 725.

District 8: Precincts 324, 801, 802, 803, 804, 805, 806, 807, 808, 809, 811, 812, 813, 815, 816, 817, 819, 820, 823, 824, and 825.

District 9: Precincts 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 1514, and 1516.

District 10: Precincts 719, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, and 1105.

District 11: Precincts 1019, 1033, 1034, 1035, 1101, 1102, 1103, 1104, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, and 1129.

District 12: Precincts 323, 1128, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1231, and 1232.

District 13: Precincts 1230, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1330, and 1826.

District 14: Precincts 821, 1316, 1329, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428,

District 15: Precincts 902, 903, 904, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1515, 1517, 1518, 1521, 1522, 1523, and 1524.

District 16: Precincts 1519, 1520, 1525, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1624, 1626, and 1806.

District 17: Precincts 1113, 1625, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, and 1728.

District 18: Precincts 1613, 1623, 1727, 1801, 1802, 1803, 1804, 1805, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, and 1825.

(2) **Districts 19-23—El Paso county.**—There shall be five representative districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 19: Precincts 7, 8, 24, 33, 34, 37, 38, 47, 56, 57, 58, 59, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 93, 94, 96, 98, 99, 101, and 102.

District 20: Precincts 3, 4, 5, 6, 13, 14, 15, 16, 17, 18, 23, 25, 26, 27, 28, 29, 30, 35, 36, 45, 46, 91, 92, 95, and 100.

District 21: Precincts 60, 61, 62, 64, 65, 66, 67, 68, 86, 87, 88, 89, 90, and 97.

District 22: Precincts 19, 20, 21, 22, 31, 32, 39, 40, 41, 42, 48, 49, 50, 51, 54, 69, 70, and 106.

District 23: Precincts 1, 2, 9, 10, 11, 12, 43, 44, 52, 53, 55, 71, 72, 73, 74, 75, 76, 103, 104, and 105.

(3) **Districts 24-28—Jefferson county.**—There shall be five representative districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 24: Precincts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, and 225.

District 25: Precincts 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 317, 403, 408, 410, and 411.

District 26: Precincts 401, 402, 404, 407, 409, 413, 501, 502, 504, 505, 506, 508, 509, 511, 512, 513, 514, 515, and 516.

District 27: Precincts 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 302, 314, 316, 318, 319, 320, 405, 406, and 412.

District 28: Precincts 103, 503, 507, 510, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 701, 702, 703, 704, 705, 706, 707, and 708.

(4) **Districts 29-32—Adams county.**—There shall be four representative districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 29: Precincts 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 217, 229, 230, 231, 300, 301, and 302.

District 30: Precincts 304, 305, 306, 307, 308, 310, 311, 312, 313, 314, 315, 316, 317, 318, and 320.

District 31: Precincts 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 213, 214, 215, 216, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 232, 233, 234, 235, 236, 237, 238, 303, and 309.

District 32: Precincts 319, 321, 322, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(5) **Districts 33-36—Pueblo county.**—There shall be four representative districts within the county of Pueblo which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 33: Precincts 38, 45, 46, 47, 48, 49, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, and 69.

District 34: Precincts 3, 10, 11, 12, 13, 14, 15, 35, 37, 39, 40, 41, 42, 43, and 44.

District 35: Precincts 1, 2, 4, 5, 6, 7, 8, 9, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 32, 33, and 34.

District 36: Precincts 27, 28, 50, 51, 54, 70, 71, 72, 73, 74, 76, 103, 104, 105, 106, 107, 108, 109, 110, 111, and 112.

(6) **Districts 37-40—Arapahoe county.**—There shall be four representative districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 37: Precincts 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

District 38: Precincts 2, 2a, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 54a, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

District 39: Precincts 41, 42, 65, 65a, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 77a, 78, 78a, 79, 79a, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

District 40: Precincts 21, 22, 23, 23a, 24, 25, 26, 27, 28, 29, 30, 31, 32, 32a, 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, and 44a.

(7) **Districts 41-43—Boulder county.**—There shall be three representative districts within the county of Boulder which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 41: County precincts 8, 10, 11, 13, 16, and 22; and Boulder city precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, and 23.

District 42: County precincts 5, 6, 7, 12, and 21; and Boulder city precincts 16, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

District 43: County precincts 1, 2, 3, 4, 9, 14, 15, 17, 18, 19, and 20; and Longmont city precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

(8) **Districts 44-46—Weld county.**—There shall be three representative districts within the county of Weld which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 44: Precincts 4, 5, 6, 7, and 8 in ward one in the city of Greeley; precincts 2 and 6 in ward two in the city of Greeley; and precincts 2, 3, 4, 12, 13, 15, 16, and 24 in the county of Weld.

District 45: Precincts 3, 4, and 5 in ward two in the city of Greeley; precincts 1, 2, 3, and 4 in ward three in the city of Greeley; and precincts 5, 6, 7, 8, 14, 22, 28, and 29 in the county of Weld.

District 46: Precincts 1, 2, 3, and 9 in ward one in the city of Greeley; precinct 1 in ward two in the city of Greeley; and precincts 1, 9, 10, 11, 17, 18, 19, 20, 21, 23, 25, 26, 27, 30, 31, 32, 33, and 34 in the county of Weld.

(9) **Districts 47 and 48—Larimer county.**—There shall be two representative districts within the county of Larimer which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 47: Precincts 2, 4, 5, 6, 18, 19, 20, 26, 30, 39, 40, 41, 44, A-1, B-3, B-4, C-1, C-3, C-6, D-1, E-1, E-2, E-4, and E-6.

District 48: Precincts 1, 7, 17, 21, 22, 22A, 23, 23A, 25, 27, 31, 33, 34, 35, 37, 38, 46, 47, B-1, C-7, C-9, C-10, and E-5.

(10) **Districts 49 and 50—Mesa county.**—There shall be two representative districts within the county of Mesa which shall be numbered as follows and which shall consist of the following whole general election precincts:

District 49: Precincts 2, 3, 6, 7, 9, 10, 11, 14, 17, 18, 21, 22, 23, 24, 25, 27, 28, 31, 33, 34, 35, 36, 41, 43, 45, 46, 48, 50, 51, 54, 57, 63, and 64.

District 50: Precincts 1, 4, 5, 8, 12, 13, 15, 16, 19, 20, 26, 29, 30, 32, 37, 38, 39, 40, 42, 44, 47, 49, 52, 53, 55, 56, 58, 59, 60, 61, and 62.

(11) **District 51.**—The counties of Baca, Bent, and Prowers shall constitute representative district 51.

(12) **District 52.**—The counties of Logan, Phillips, and Sedgwick shall constitute representative district 52.

(13) **District 53.**—The counties of Alamosa and Huerfano and precincts 65, 66, 67, 75, 77, 78, 116, and 117 in the county of Pueblo shall constitute representative district 53.

(14) **District 54.**—The counties of Crowley and Otero shall constitute representative district 54.

(15) **District 55.**—The counties of Costilla and Las Animas shall constitute representative district 55.

(16) **District 56.**—The counties of Morgan and Washington shall constitute representative district 56.

(17) **District 57.**—The counties of Cheyenne, Kiowa, Kit Carson, Lincoln, and Yuma shall constitute representative district 57.

(18) **District 58.**—The counties of Delta, Gunnison, Hinsdale, Ouray, and San Juan, and Precinct 11 in Montrose county shall constitute representative district 58.

(19) **District 59.**—The counties of Chaffee, Douglas, Elbert, Lake, Park, and Teller shall constitute representative district 59.

(20) **District 60.**—Representative district 60 shall consist of the following precincts in La Plata and Montezuma counties:

Montezuma: Precincts 1, 2, 3, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, and 20.

La Plata: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 20, 23, 24, 25, 26, 27, and 29.

(21) **District 61.**—The counties of Eagle, Garfield, Pitkin, and Rio Blanco shall constitute representative district 61.

(22) **District 62.**—The counties of Clear Creek, Gilpin, Grand, Jackson, Moffat, Routt, and Summit shall constitute representative district 62.

(23) **District 63.**—The counties of Archuleta, Conejos, Mineral, and Rio Grande, and precincts 9, 14, 19, 21, 22, and 28 in La Plata county shall constitute representative district 63.

(24) **District 64.**—The counties of Custer, Fremont, and Saguache shall constitute representative district 64.

(25) **District 65.**—The counties of Dolores and San Miguel, and precincts 4, 5, 11, 12, 13, and 14 in Montezuma county, and precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 in Montrose county shall constitute representative district 65.

Section 6. **Districts to coincide with county line changes.**—(1) To the extent that boundaries of senatorial and representative districts established pursuant to this act coincide with county lines, such senatorial and representative districts shall continue to coincide therewith in the event that such county lines are changed.

(2) In cases involving changes in county lines where newly acquired territory is contiguous to two or more senatorial districts, or to two or more representative districts, or both, within the county to which annexed, such annexed territory shall be included in that contiguous senatorial or representative district, or both, containing the lesser population as determined by the last preceding federal decennial census.

Section 7. **Meaning and scope of terms—changes in precinct boundaries.**—(1) As used in this act, for the purpose only of describing senatorial and representative districts, the terms "whole general election precincts" or "precincts" mean those precincts existing on January 16, 1967, as fixed by the election commission of the city and county of Denver and the boards of county commissioners of all other counties containing all or part of two or more senatorial or representative districts.

(2) Changes in the precinct boundaries in any county shall be made only within the district boundaries of each senatorial and representative district as established by this act.

Section 8. **Applicability of act.**—This act shall apply to the forty-seventh general assembly and subsequent general assemblies, and sections 63-5-1 through 63-5-7, Colorado Revised Statutes 1963, as amended, which are repealed by this act, shall remain in effect as they existed prior to such repeal for all purposes of the forty-sixth general assembly.

Section 9. **Declaration of policy.**—The general assembly hereby declares the policy of the state of Colorado concerning the apportionment of seats in said general assembly to be as follows and enacts the legislation to carry out that policy:

The membership of the senate shall be 35 members and the membership of the house of representatives shall be 65 members all of which shall be elected from single-member districts into which the state of Colorado is hereby divided. Each legislative district has a population herein, based on the 1960 federal enumeration of the population of the state of Colorado, as

nearly equal as may be; is as compact in area as possible; and consists of contiguous whole election precincts.

To establish the state average population for the respective senatorial districts established in the state of Colorado, the official population figure for the state was divided by the number of seats established in this act for the senate; i.e., 35. To establish the state average population for the respective representative districts established in the state of Colorado, the official population figure for the state was divided by the number of seats established in this act for the house of representatives; i.e., 65. After the state average was determined, as set out above, the 62 counties and the city and county of Denver were divided into two categories, those with insufficient population to entitle them to a single senate or house seat and those with sufficient population to entitle them to one or more senate or house seats.

The counties with insufficient population were combined to form senatorial and representative districts, keeping county boundaries intact wherever feasible. The counties with a population exceeding the state average were assigned one legislative seat or were divided into legislative districts within the county when assigned two or more seats.

Where counties were combined, the county boundaries of each county remained intact as to legislative districts in all instances except where natural topographic conditions made communication within the legislative district virtually impossible. In senatorial districts 16, 24, 32, 33, and 34 and in representative districts 53, 58, 60, 63, and 65, to meet the equal population requirements of section 46 of article V of the constitution of the state of Colorado, it was necessary to add part of one county to another county. In all other instances the integrity of political subdivisions was preserved although this results in minimal variances from a mathematical equal population total.

Where counties were divided into legislative districts the variation from the state average was minimized requiring in five instances the combination of whole election precincts from an adjoining county to retain this minimal variance.

Section 10. **Repeal.**—63-5-1 through 63-5-7, Colorado Revised Statutes 1963 (1965 Supp.), are repealed.

Section 11. **Severability clause.**—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 12. **Safety clause.**—The general assembly hereby finds, deter-

mines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John D. Vanderhoof
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Mark A. Hogan
PRESIDENT OF THE
SENATE

Henry C. Kimbrough
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Comfort W. Shaw
SECRETARY OF
THE SENATE

APPROVED_____

John A. Love
GOVERNOR OF THE STATE OF COLORADO

APPENDIX M

SENATE DISTRICT POPULATION AND RANKING OF DISTRICTS FROM LOW TO HIGH UNDER H.B. 1117

Low to High Ranking	District Number	1966 Population
1	16*	47,026
2	29	47,577
3	11*	47,824
4	13*	47,893
5	12*	48,026
6	28	48,119
7	25*	48,217
8	23*	48,973
9	34	49,196
10	7*	49,230
11	14*	49,342
12	2*	49,385
13	24*	49,408
14	5*	49,477
15	8*	49,573
16	17*	48,890
17	1*	49,954
18	10*	49,965
19	9*	49,972
20	6*	49,996
21	3*	50,153
22	19*	50,176
23	4*	50,245
24	32	50,264
25	20*	50,336
26	18*	50,355
27	27*	50,715
28	15*	50,728
29	22*	50,955
30	31	51,153
31	21	51,409
32	35	51,675
33	30	52,067
34	26	53,343
35	33	53,857**

*Indicates senatorial districts located within the ten largest counties in the state on the basis of the 1960 census.

**District populations total 1,746,474, or some 7,473 less than the 1960 census total for Colorado, since Denver and Arapahoe County do not include persons residing on Lowery Air Force Base within their general election precincts.

APPENDIX N

REPRESENTATIVE DISTRICT POPULATION AND RANKING OF DISTRICTS FROM LOW TO HIGH UNDER H.B. 1117

Low to High Ranking	District Number	1966 Population
1	62	23,827
2	58	23,919
3	45*	24,033
4	44*	24,140
5	41*	24,142
6	46*	24,171
7	55	24,202
8	61	24,225
9	37*	24,815
10	42*	24,831
11	49*	25,061
12	39*	25,075
13	27*	25,136
14	65	25,277
15	43*	25,281
16	24*	25,356
17	25*	25,407
18	28*	25,592
19	50*	25,654
20	26*	25,683
21	40*	25,880
22	63	25,886
23	64	25,974
24	57	26,393
25	38*	26,594
26	48*	26,669
27	47*	26,674
28	51	27,025
29	53	27,123
30	10*	27,192
31	34*	27,201
32	36*	27,204
33	33*	27,215
34	17*	27,317
35	11*	27,330

Low to High Ranking	District Number	1966 Population
36	4*	27,515
37	12*	27,568
38	7*	27,583
39	8*	27,588
40	18*	27,631
41	16	27,645
42	1	27,667
43	13	27,702
44	9	27,719
45	15	27,737
46	3*	27,817
47	56	27,817
48	35*	27,831
49	5*	27,968
50	60	27,971
51	6*	27,978
52	2*	27,980
53	14	28,013
54	54	28,106
55	59	28,240
56	23*	28,272
57	22*	28,404
58	19*	28,633
59	52	28,984
60	21*	29,072
61	20*	29,362
62	31*	29,817
63	32*	29,819
64	30*	29,921
65	29*	30,610**

* Indicates representative districts located within the ten largest counties in the state on the basis of the 1960 census.

** District populations total 1,746,474, or some 7,473 less than the 1960 census total for Colorado, since Denver and Arapahoe County do not include persons residing on Lowery Air Force Base within their general election precincts.

APPENDIX O

COMPARISON OF RATIO OF 1960 POPULATION AMONG SENATE DISTRICTS UNDER H.B. 1117

The tablulation below the ratio between the population of the smallest Senate district and the population of each other Senate district, beginning with the Senate district having the largest population (designated 35), and going on in descending order of size.

Low to High Ranking	Ratio
1 to 35	1 to 1.15
1 to 34	1 to 1.13
1 to 33	1 to 1.11
1 to 32	1 to 1.10
1 to 31	1 to 1.09
1 to 30	1 to 1.09
1 to 29	1 to 1.08
1 to 28	1 to 1.08
1 to 27	1 to 1.08
1 to 26	1 to 1.07
1 to 25	1 to 1.07
1 to 24	1 to 1.07
1 to 23	1 to 1.07
1 to 22	1 to 1.07
1 to 21	1 to 1.07
1 to 20	1 to 1.06
1 to 19	1 to 1.06
1 to 18	1 to 1.06
1 to 17	1 to 1.06
1 to 16	1 to 1.06
1 to 15	1 to 1.05
1 to 14	1 to 1.05
1 to 13	1 to 1.05
1 to 12	1 to 1.05
1 to 11	1 to 1.05
1 to 10	1 to 1.05
1 to 9	1 to 1.05
1 to 8	1 to 1.04
1 to 7	1 to 1.03
1 to 6	1 to 1.02

Low to High Ranking	Ratio
1 to 5	1 to 1.02
1 to 4	1 to 1.02
1 to 3	1 to 1.02
1 to 2	1 to 1.01

APPENDIX P

COMPARISON OF RATIO OF 1960 POPULATION
AMONG HOUSE DISTRICTS UNDER H.B. 1117

The tabluation below shows the ratio between the population of the smallest House district and the population of each other House district beginning with the House district having the largest population (designated 65), and going on in descending order of size.

Low to High Ranking	Ratio
1 to 65	1 to 1.28
1 to 64	1 to 1.26
1 to 63	1 to 1.25
1 to 62	1 to 1.25
1 to 61	1 to 1.23
1 to 60	1 to 1.22
1 to 59	1 to 1.22
1 to 58	1 to 1.20
1 to 57	1 to 1.19
1 to 56	1 to 1.19
1 to 55	1 to 1.19
1 to 54	1 to 1.18
1 to 53	1 to 1.18
1 to 52	1 to 1.17
1 to 51	1 to 1.17
1 to 50	1 to 1.17
1 to 49	1 to 1.17
1 to 48	1 to 1.17
1 to 47	1 to 1.17
1 to 46	1 to 1.17
1 to 45	1 to 1.16
1 to 44	1 to 1.16
1 to 43	1 to 1.16
1 to 42	1 to 1.16
1 to 41	1 to 1.16
1 to 40	1 to 1.16
1 to 39	1 to 1.16
1 to 38	1 to 1.16
1 to 37	1 to 1.16
1 to 36	1 to 1.15

Low to High Ranking	Ratio
1 to 35	1 to 1.15
1 to 34	1 to 1.15
1 to 33	1 to 1.14
1 to 32	1 to 1.14
1 to 31	1 to 1.14
1 to 30	1 to 1.14
1 to 29	1 to 1.14
1 to 28	1 to 1.13
1 to 27	1 to 1.12
1 to 26	1 to 1.12
1 to 25	1 to 1.12
1 to 24	1 to 1.11
1 to 23	1 to 1.09
1 to 22	1 to 1.09
1 to 21	1 to 1.09
1 to 20	1 to 1.08
1 to 19	1 to 1.08
1 to 18	1 to 1.07
1 to 17	1 to 1.07
1 to 16	1 to 1.06
1 to 15	1 to 1.06
1 to 14	1 to 1.06
1 to 13	1 to 1.05
1 to 12	1 to 1.05
1 to 11	1 to 1.05
1 to 10	1 to 1.04
1 to 9	1 to 1.04
1 to 8	1 to 1.02
1 to 7	1 to 1.02
1 to 6	1 to 1.01
1 to 5	1 to 1.01
1 to 4	1 to 1.01
1 to 3	1 to 1.01
1 to 2	1 to 1.00

APPENDIX Q

SENATE DISTRICT POPULATION VARIATIONS
UNDER H.B. 1117

Dist. No.	County	District Population	% Var. From State Average[1]	% Var. From Dist. Avg. Within County[2]
1	Denver	49,954	- .32%	.32%
2	Denver	49,385	-1.45	- .82
3	Denver	50,153	.08	.72
4	Denver	50,245	.26	.90
5	Denver	49,477	-1.27	- .60
6	Denver	49,996	-.23	.40
7	Denver	49,230	-1.76	-1.13
8	Denver	49,573	-1.08	- .45
9	Denver	49,972	- .28	.36
10	Denver	49,965	- .30	.34
11	El Paso	47,824	-4.57	- .19
12	El Paso	48,026	-4.16	.23
13	El Paso	47,893	-4.43	- .04
14	Jefferson	49,342	-1.54	-1.39
15	Jefferson	50,728	1.23	1.39
16	Jefferson-Adams	47,026	-6.16	-4.94[3]
17	Adams	49,890	- .44	- .46
18	Adams	50,355	.48	.46
19	Pueblo	50,176	.13	- .16
20	Pueblo	50,336	.44	.16
21	Arapahoe	51,409	2.59	.44
22	Arapahoe	50,955	1.68	- .44
23	Boulder	48,973	-2.27	.21[4]
24	Boulder-Weld	49,408	-1.41	1.11[4]
25	Weld	48,217	-3.78	-1.37[4]
26	Larimer	53,343	6.45	
27	Mesa	50,715	1.20	
28	Logan, Morgan, Washington	48,119	-3.98	
29	Cheyenne, Crowley, Douglas, Elbert, Kiowa, Kit Carson Lincoln, Phillips, Sedgwick and Yuma	47,577	-5.06	
30	Gilpin, Clear Creek Park, Chaffee, Teller Fremont, Saguache, Custer, Alamosa	52,067	3.90	

Dist. No.	County	District Population	% Var. From State Average[1]	% Var. From Dist. Avg. Within County[2]
31	Baca, Bent, Otero, and Prowers	51,153	2.08%	
32	Costilla, Huerfano, Las Animas, and Pueblo (In Part)	50,264	.30	.01%[5]
33	Mineral, Rio Grande, Conejos, Archuleta, La Plata, and Montezuma (In Part)	53,857	7.47	
34	Delta, Montrose, Gunnison, Ouray, San Miguel, Hinsdale, Dolores, and San Juan	49,196	-1.83	
35	Moffat, Routt, Jackson, Rio Blanco, Garfield, Grand, Eagle, Pitkin, Summit, and Lake	51,675	3.12	

1. Average size of senatorial district is 50,113 persons as determined by dividing state's 1960 census total of 1,753,947 by 35.

2. Denver district average 49,795
   El Paso district average 47,914
   Jefferson district average 50,035
   Adams district average 50,123
   Pueblo district average 50,256
   Arapahoe district average 51,182

3. Combined average size of Adams County - Jefferson County Senatorial District -- 49,468.

4. Combined average size of Boulder County - Weld County Senatorial District -- 48,866.

5. Combined average size of Costilla County, Huerfano County, Las Animas County, and Pueblo County Senatorial District -- 50,259.

APPENDIX R

REPRESENTATIVE DISTRICT POPULATION
VARIATIONS UNDER H.B. 1117

Dist. No.	County	District Population	% Var. From State Average[1]	% Var. From Dist. Avg. Within County[2]
1	Denver	27,667	2.53%	.01%
2	Denver	27,980	3.69	1.14
3	Denver	27,817	3.09	.55
4	Denver	27,515	1.97	- .54
5	Denver	27,968	3.65	1.10
6	Denver	27,978	3.68	1.14
7	Denver	27,583	2.22	- .29
8	Denver	27,588	2.24	- .27
9	Denver	27,719	2.72	.20
10	Denver	27,192	.77	-1.71
11	Denver	27,330	1.28	-1.21
12	Denver	27,568	2.16	- .35
13	Denver	27,702	2.66	.14
14	Denver	28,013	3.81	1.26
15	Denver	27,737	2.79	.26
16	Denver	27,645	2.45	- .07
17	Denver	27,317	1.23	-1.25
18	Denver	27,631	2.40	- .12
19	El Paso	28,633	6.11	- .40
20	El Paso	29,362	8.81	2.14
21	El Paso	29,072	7.74	1.13
22	El Paso	28,404	5.26	-1.20
23	El Paso	28,272	4.77	-1.66
24	Jefferson	25,356	-6.03	- .17
25	Jefferson	25,407	-5.84	.03
26	Jefferson	25,683	-4.82	1.11
27	Jefferson	25,136	-6.85	-1.04
28	Jefferson	25,592	-5.16	.76
29	Adams	30,610	13.44	1.86
30	Adams	29,921	10.88	- .43
31	Adams	29,817	10.50	- .78
32	Adams	29,819	10.51	- .77
33	Pueblo	27,215	.86	- .56
34	Pueblo	27,201	.80	- .59
35	Pueblo	27,831	3.14	1.71

Dist. No.	County	District Population	% Var. From State Average[1]	% Var. From Dist. Avg. Within County[2]
36	Pueblo	27,204	.82%	- .58%
37	Arapahoe	24,815	- 8.04	-3.03
38	Arapahoe	26,594	- 1.44	3.92
39	Arapahoe	25,075	- 7.07	-2.02
40	Arapahoe	25,880	- 4.09	1.13
41	Boulder	24,142	-10.53	-2.46
42	Boulder	24,831	- 7.98	.32
43	Boulder	25,281	- 6.31	2.14
44	Weld	24,140	-10.54	.10
45	Weld	24,033	-10.94	- .34
46	Weld	24,171	-10.42	.23
47	Larimer	26,674	- 1.15	.01
48	Larimer	26,669	- 1.17	- .01
49	Mesa	25,061	- 7.13	-1.17
50	Mesa	25,654	- 4.93	1.17
51	Baca, Bent, Prowers	27,025	.15	
52	Logan, Phillips, Sedgwick	28,984	7.41	
53	Alamosa, Huerfano and Pueblo (In Part)	27,123	.52	- .26[3]
54	Crowley, Otero	28,106	4.16	
55	Costilla, Las Animas	24,202	-10.31	
56	Morgan, Washington	27,817	3.09	
57	Cheyenne, Kiowa, Kit Carson, Lincoln, and Yuma	26,393	- 2.19	
58	Delta, Gunnison, Ouray, Hinsdale, San Juan and Montrose (In Part)	23,919	-11.36	
59	Lake, Park, Chaffee, Teller	28,240	4.65	
60	Montezuma (In Part) and La Plata (In Part)	27,971	3.66	
61	Eagle, Garfield, Pitkin and Rio Blanco	24,225	-10.22	
62	Clear Creek, Gilpin, Grand, Jackson, Moffat, Routt, and Summit	23,827	-11.70	

Dis. No.	County	District Population	% Var. From State Average[1]	% Var. From Dist. Avg. Within County[2]
63	Archuleta, Conejos, Mineral, Rio Grande, La Plata (In Part)	25,886	- 4.07	
64	Saguache, Fremont, Custer	25,974	- 3.74	
65	Dolores, San Miguel, Montezuma (In Part), and Montrose (In Part)	25,277	- 6.33	

1. Average size of representative district is 26,984 persons as determined by dividing state's 1960 census total of 1,753,947 by 65.

2.

Denver district average	27,664
El Paso district average	28,748
Jefferson district average	25,400
Adams district average	30,050
Pueblo district average	27,363
Arapahoe district average	25,591
Boulder district average	24,751
Weld district average	24,115
Larimer district average	26,672
Mesa district average	25,357

3. Average size of representative district of Alamosa, Huerfano, and Pueblo Counties is 27,195 persons as determined by dividing districts 1960 census total of 135,974 by 5.

APPENDIX S

INDEX OF EQUAL POPULATION REPRESENTATION UNDER
H.B. 1117 BASED ON 1960 FEDERAL CENSUS

County	(1) 1960 Census Population	(2) % of State Total	(3) % of Senate Memb.	(4) % of House Memb.	(5) % of Total General Assembly	(6) Index of Equal Rep.
Denver	493,887	28.16%	28.57%	27.69%	28.00%	- .57%
El Paso	143,742	8.20	8.57	7.69	8.00	-2.44
Jefferson	127,520	7.27	7.42	7.69	7.60	4.54
Adams	120,296	6.85	6.86	6.15	6.40	-6.57
Pueblo	118,707	6.77	6.74	6.67	6.70	-1.03
Arapaho	113,426	6.47	5.71	6.15	6.00	-7.26
Boulder	74,254	4.23	4.31	4.61	4.51	6.62
Weld	72,344	4.12	4.26	4.61	4.49	8.98
Larimer	53,343	3.04	2.86	3.08	3.00	-1.32
Mesa	50,715	2.89	2.86	3.08	3.00	3.81
Sub Total	1,368,234	78.00%	78.16	77.42	77.70	- .38%
Alamosa	10,000	.57	.54	.57	.56	-1.75
Archuleta	2,629	.15	.14	.15	.15	0
Baca	6,310	.36	.34	.35	.35	-2.78
Bent	7,419	.42	.43	.42	.42	0
Chaffee	8,298	.47	.46	.45	.45	-4.26
Cheyenne	2,789	.16	.17	.17	.17	6.25
Clear Creek	2,793	.16	.14	.15	.15	-6.25
Conejos	8,428	.48	.46	.51	.49	2.08
Costilla	4,219	.24	.23	.26	.25	4.17
Crowley	3,978	.23	.23	.22	.22	-4.35
Custer	1,305	.07	.07	.08	.08	14.29
Delta	15,602	.89	.91	1.00	.97	8.99
Dolores	2,196	.13	.11	.14	.13	0
Douglas	4,816	.27	.29	.26	.27	0
Eagle	4,677	.27	.26	.29	.28	3.70
Elbert	3,708	.21	.23	.22	.22	4.76
Fremont	20,196	1.15	1.11	1.20	1.17	1.74
Garfield	12,017	.69	.66	.77	.73	5.80
Gilpin	685	.04	.03	.05	.04	0
Grand	3,557	.20	.20	.23	.22	10.00
Gunnison	5,477	.31	.31	.35	.34	9.68
Hinsdale	208	.01	.004	.02	.01	0
Huerfano	7,867	.45	.46	.45	.45	0
Jackson	1,758	.10	.09	.11	.10	0
Kiowa	2,458	.14	.14	.14	.14	0

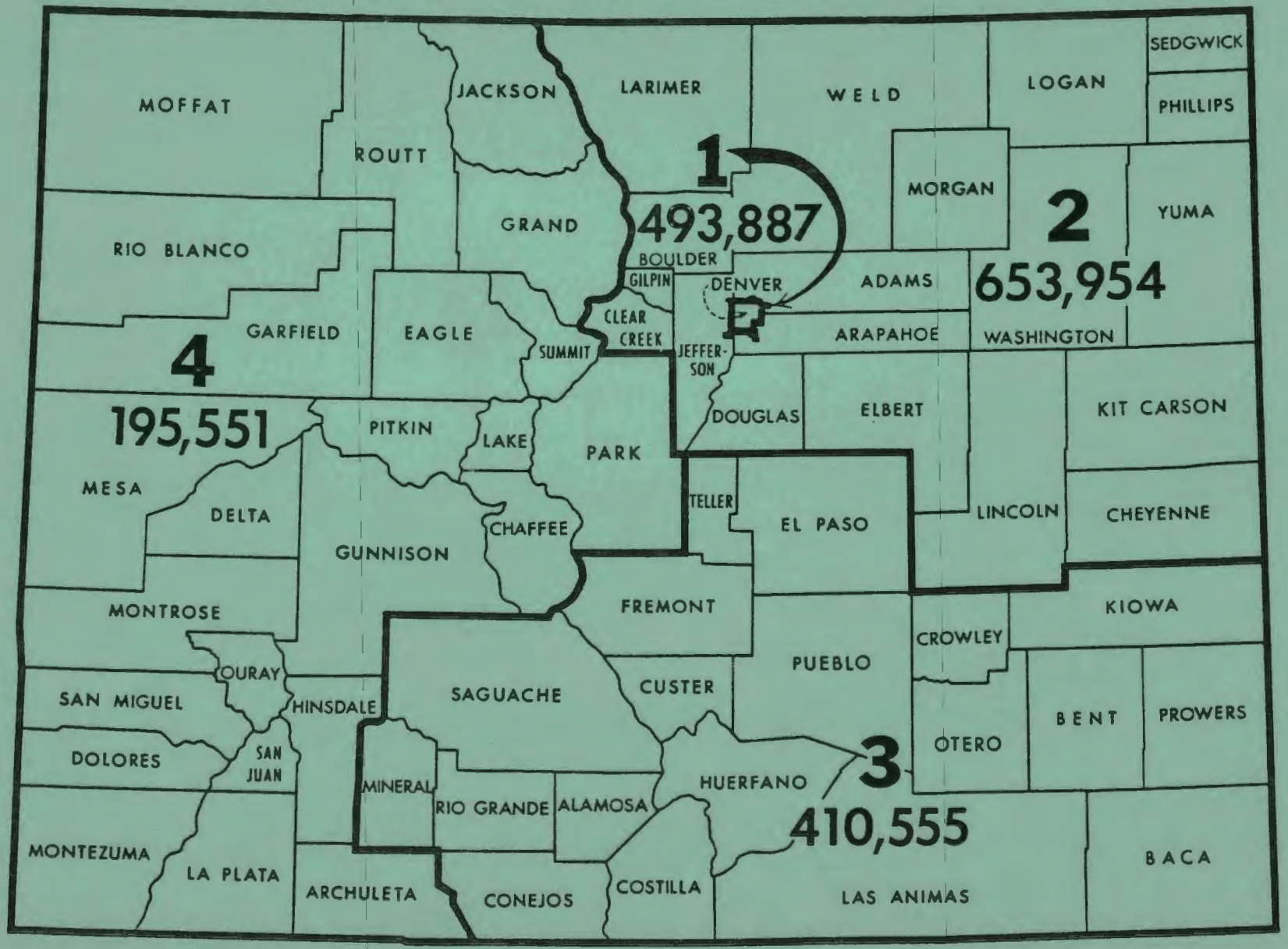
County	(1) 1960 Census Population	(2) % of State Total	(3) % of Senate Memb.	(4) % of House Memb.	(5) % of Total General Assembly	(6) Index of Equal Rep.
Kit Carson	6,957	.40%	.43%	.40%	.41%	2.50%
Lake	7,101	.40	.40	.38	.39	-2.50
La Plata	19,225	1.10	1.03	1.07	1.06	-3.64
Las Animas	19,983	1.14	1.14	1.28	1.23	7.89
Lincoln	5,310	.30	.31	.31	.31	3.33
Logan	20,302	1.16	1.20	1.08	1.12	-3.45
Mineral	424	.02	.02	.03	.02	0
Moffat	7,061	.40	.40	.46	.44	10.00
Montezuma	14,024	.80	.74	.78	.77	-3.75
Montrose	18,286	1.04	1.06	1.12	1.10	12.31
Morgan	21,192	1.21	1.26	1.17	1.20	- .83
Otero	24,128	1.38	1.34	1.32	1.33	-3.62
Ouray	1,601	.09	.09	.11	.10	11.11
Park	1,822	.10	.09	.09	.09	-10.00
Phillips	4,440	.25	.26	.23	.24	-4.00
Pitkin	2,381	.14	.14	.15	.15	7.04
Prowers	13,096	.76	.74	.75	.75	-1.32
Rio Blanco	5,150	.29	.29	.32	.31	6.90
Rio Grande	11,160	.64	.60	.66	.64	0
Routt	5,900	.34	.31	.38	.36	5.88
Saguache	4,473	.26	.26	.26	.26	0
San Juan	849	.05	.06	.06	.05	0
San Miguel	2,944	.17	.17	.18	.18	5.88
Sedgwich	4,242	.24	.26	.23	.24	0
Summit	2,073	.12	.11	.14	.13	8.33
Teller	2,495	.14	.14	.14	.14	0
Washington	6,625	.38	.40	.37	.38	0
Yuma	8,912	.51	.54	.52	.53	3.92
Sub Total	385,713	22.00	21.80	22.56	22.30	1.32
Total	1,753,947	100.00%	99.96%	99.98	99.99	

M A P S

MAP 1

CONGRESSIONAL DISTRICTS IN COLORADO

POPULATION OF DISTRICTS, 1960 CENSUS

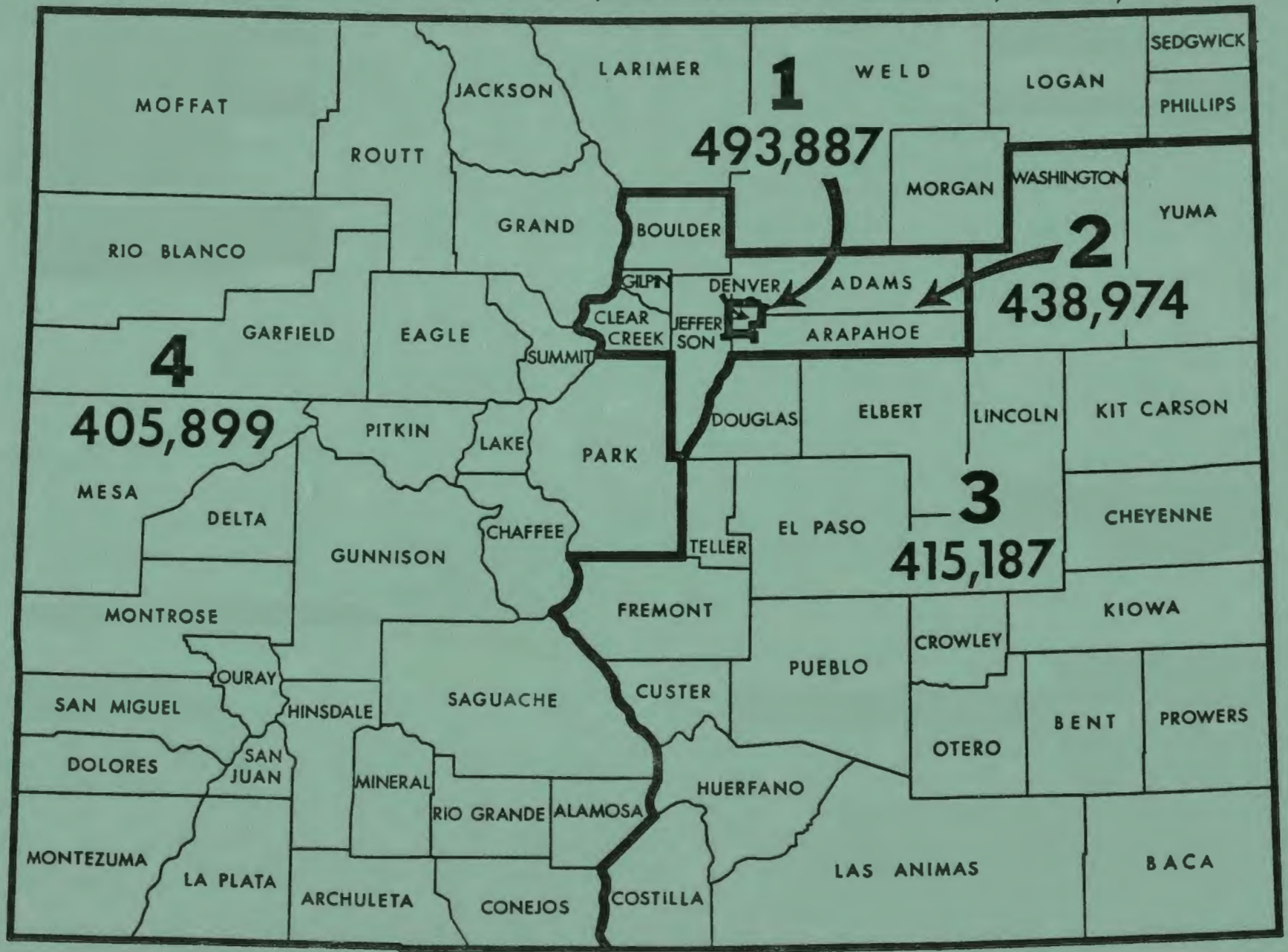


TOTAL STATE POPULATION, 1960 U. S. CENSUS - 1,753,947 PREPARED BY STATE PLANNING DIVISION

MAP 2

CONGRESSIONAL DISTRICTS IN COLORADO

AS ADOPTED BY 44TH GENERAL ASSEMBLY, FIRST EXTRAORDINARY SESSION, APRIL 29, 1964



TOTAL STATE POPULATION, 1960 U. S. CENSUS – 1,753,947

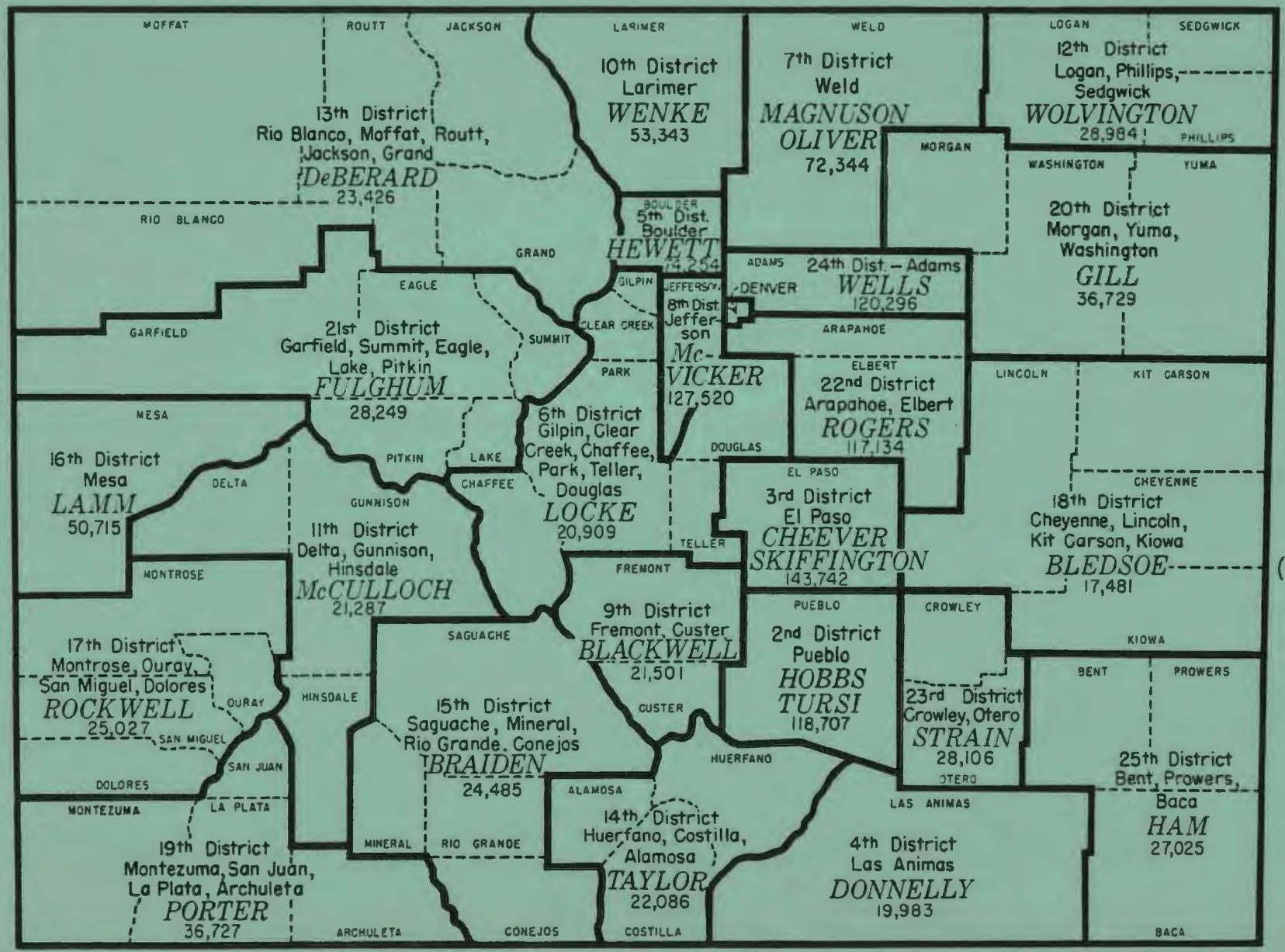
PREPARED BY STATE PLANNING DIVISION
May 1964

MAP 3

SENATORIAL DISTRICTS, STATE OF COLORADO

FORTY-FOURTH GENERAL ASSEMBLY, 1963 – 1964

POPULATION OF DISTRICTS, 1960 CENSUS



1st District

Denver:

ALLEN
BROWN
BYRNE
CHENOWETH
KELLEY
MAPELLI
ROMER
SHOEMAKER

493,887

(Average – 61,736)

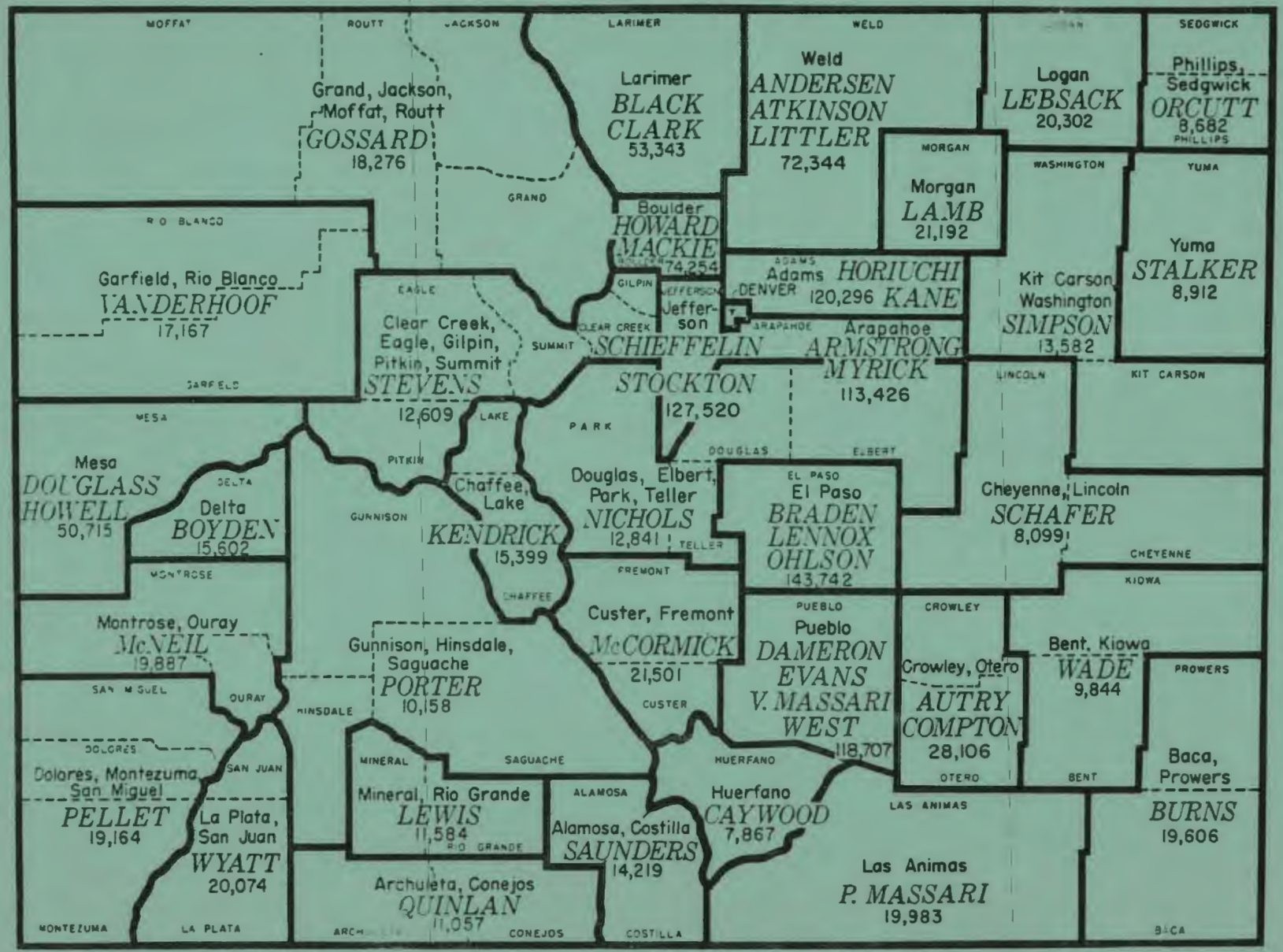
Total State Population, 1960 U. S. Census – 1,753,947

PREPARED BY STATE PLANNING DIVISION

REPRESENTATIVE DISTRICTS, STATE OF COLORADO

FORTY-FOURTH GENERAL ASSEMBLY, 1963 - 1964

POPULATION OF DISTRICTS, 1960 CENSUS



Denver :

ALBI
BAIN
BURCH
BYRNE
CALABRESE
DECKER
DINES
EBERHARDT
FRIEDMAN
GRIFFITH
HOGAN
JOHNSON
KELLEY
KEMP
KLEIN
O'DONNELL
RUBIN

493,887

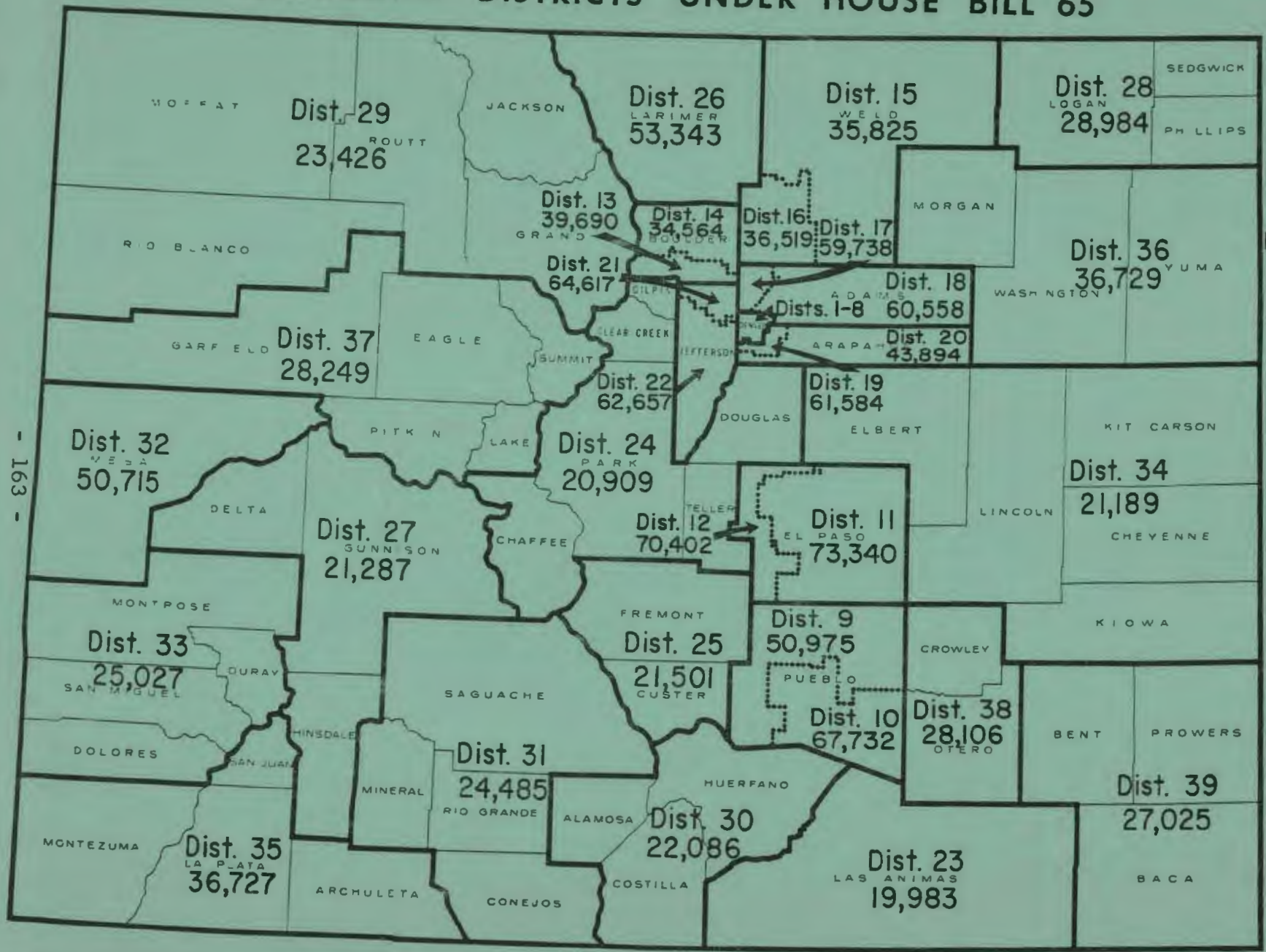
(Average = 29,052)

Total State Population, 1960 U. S. Census – 1,753,947

PREPARED BY STATE PLANNING DIVISION

MAP 5

SENATORIAL DISTRICTS UNDER HOUSE BILL 65



DENVER DISTRICT POPULATIONS

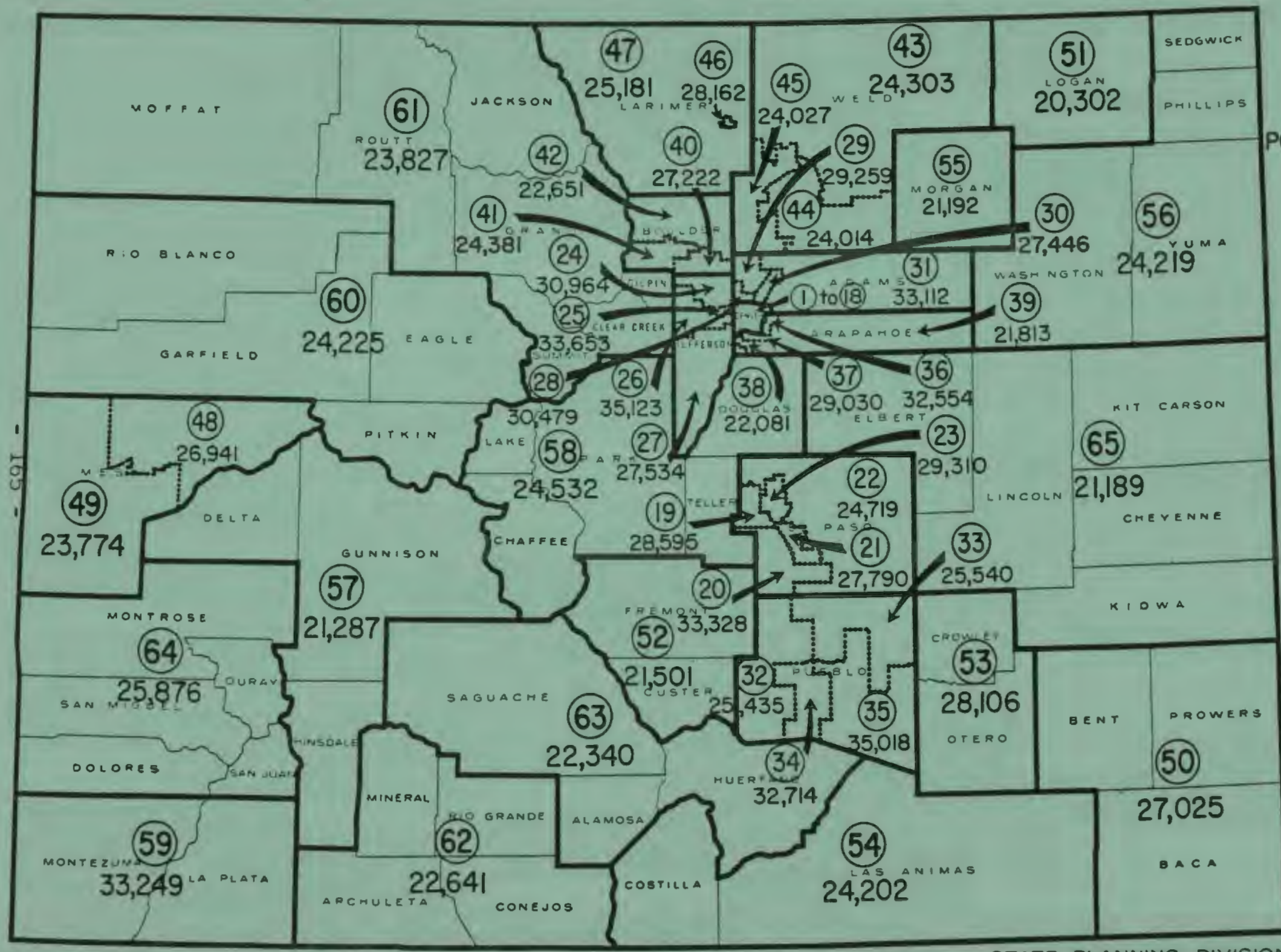
1 - 60,169
2 - 60,738
3 - 65,857
4 - 61,444
5 - 61,807
6 - 61,275
7 - 61,065
8 - 62,152

NOTE All district populations are based on the 1960 census However, in accordance with the opinion of the Attorney General, population in areas involving Denver annexations since 1960 have been adjusted to credit the persons involved to their present county of residence This procedure adds an estimated 6,108 persons to Denver's population and reduces the population total in Arapahoe County by 5,857 and Jefferson County by 246 Also, population credited to Lowry Air Force Base in Denver (5,483) and in Arapahoe County (2,091) is not reflected in legislative district totals as this area is not included within any general election precinct

STATE PLANNING DIVISION

MAP 6

REPRESENTATIVE DISTRICTS UNDER HOUSE BILL 65



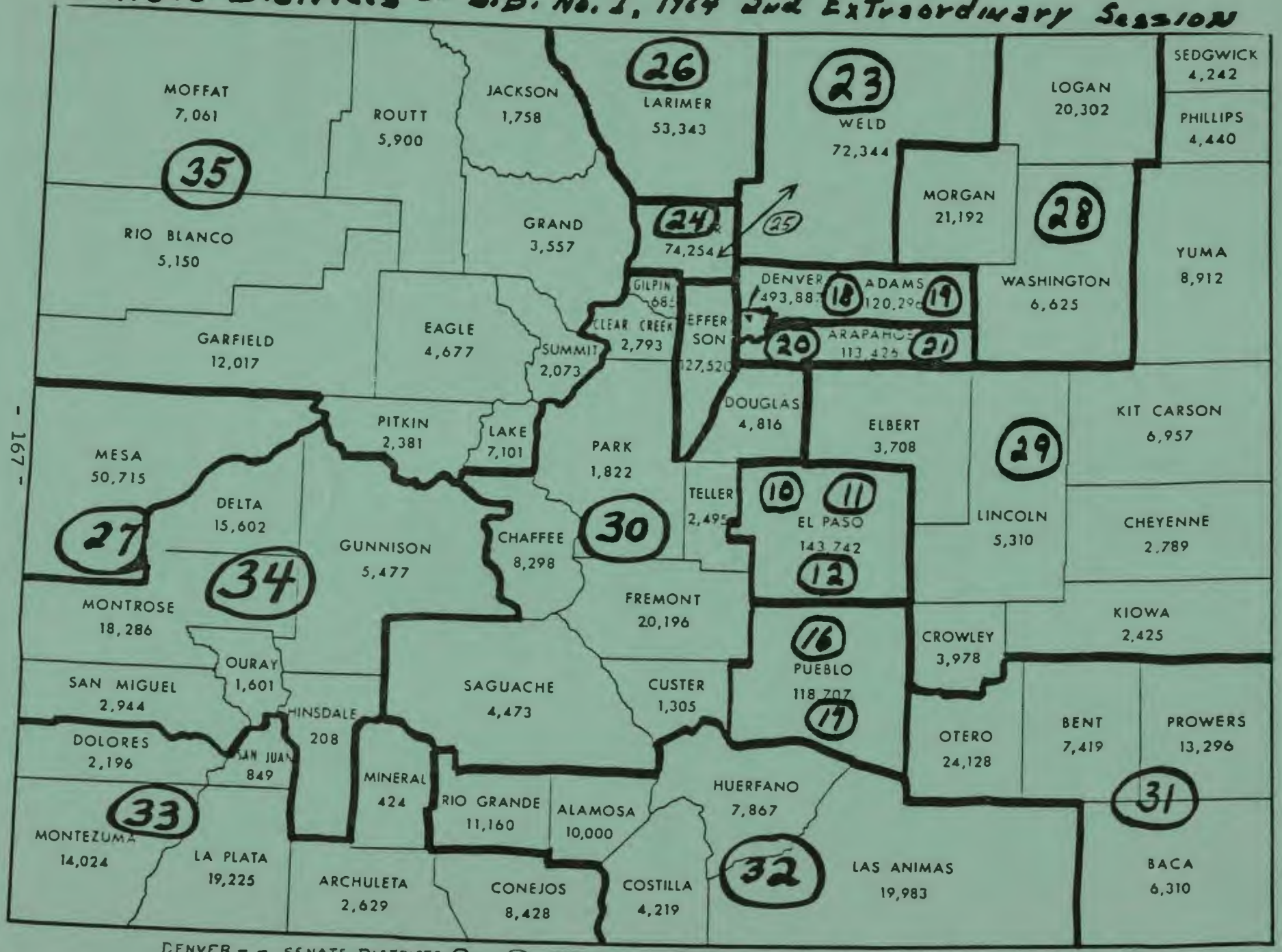
DENVER DISTRICT POPULATIONS

1 – 28,348
2 – 28,857
3 – 27,956
4 – 26,072
5 – 23,587
6 – 27,331
7 – 28,249
8 – 32,417
9 – 29,704
10 – 29,511
11 – 26,251
12 – 26,871
13 – 26,493
14 – 24,478
15 – 29,437
16 – 26,476
17 – 26,679
18 – 25,790

STATE PLANNING DIVISION

NOTE All district populations are based on the 1960 census. However, in accordance with the opinion of the Attorney General, population in areas involving Denver annexations since 1960 have been adjusted to credit the persons involved to their present county of residence. This procedure adds an estimated 6,103 persons to Denver's population and reduces the population total in Arapahoe County by 5,857 and Jefferson County by 246. Also, population credited to Lowry Air Force Base in Denver (5,483) and in Arapahoe County (2,091) is not reflected in legislative districts inasmuch as these areas are not included within any general election precinct.

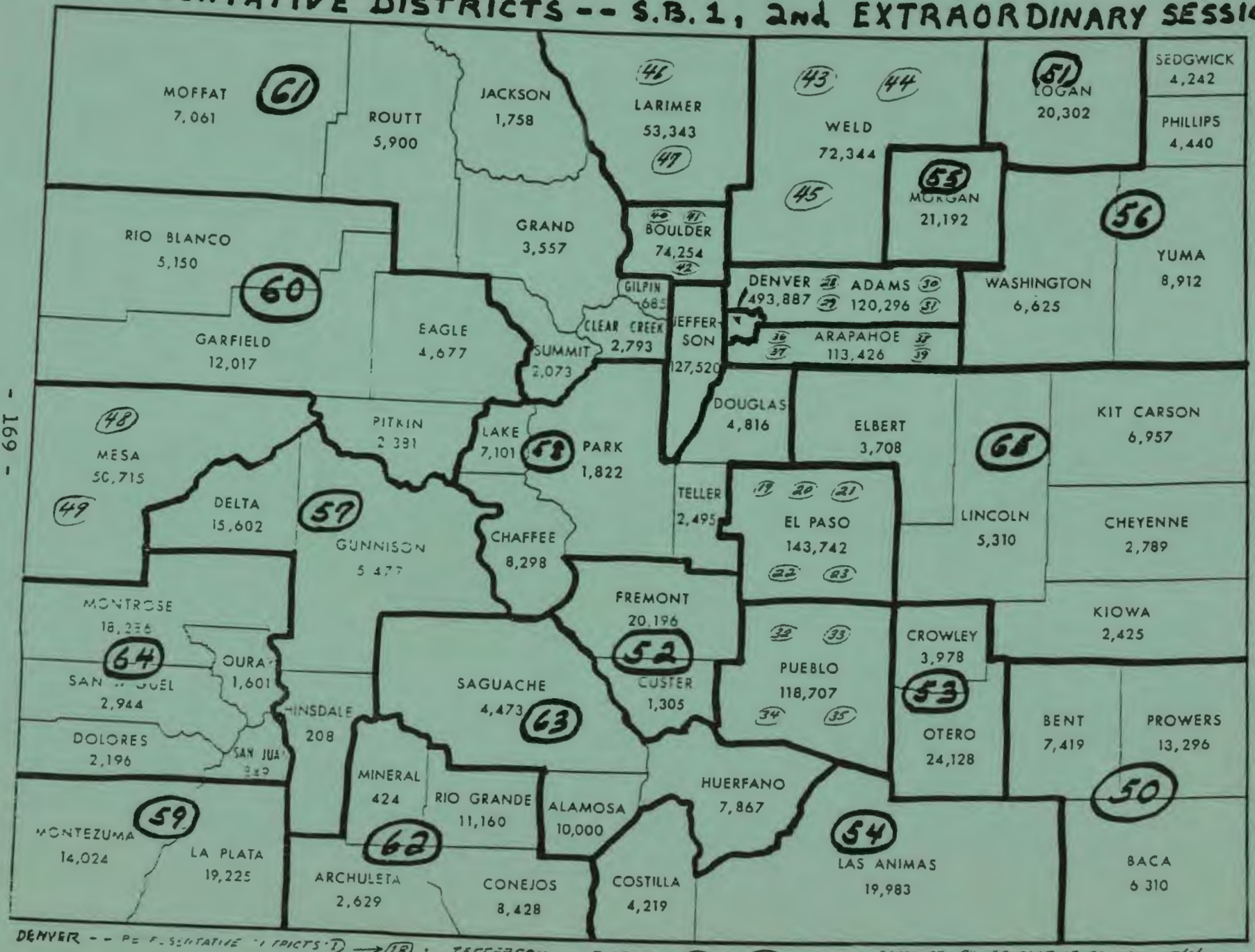
Senate Districts -- S.B. No. 2, 1964 2nd Extraordinary Session



DENVER -- SENATE DISTRICTS (1) → (9); JEFFERSON -- (13) (14), & (15); DISTRICT (33) -- ADAMS & ARAPAHOE

MAP 8

REPRESENTATIVE DISTRICTS -- S.B. 1, 2nd EXTRAORDINARY SESSION



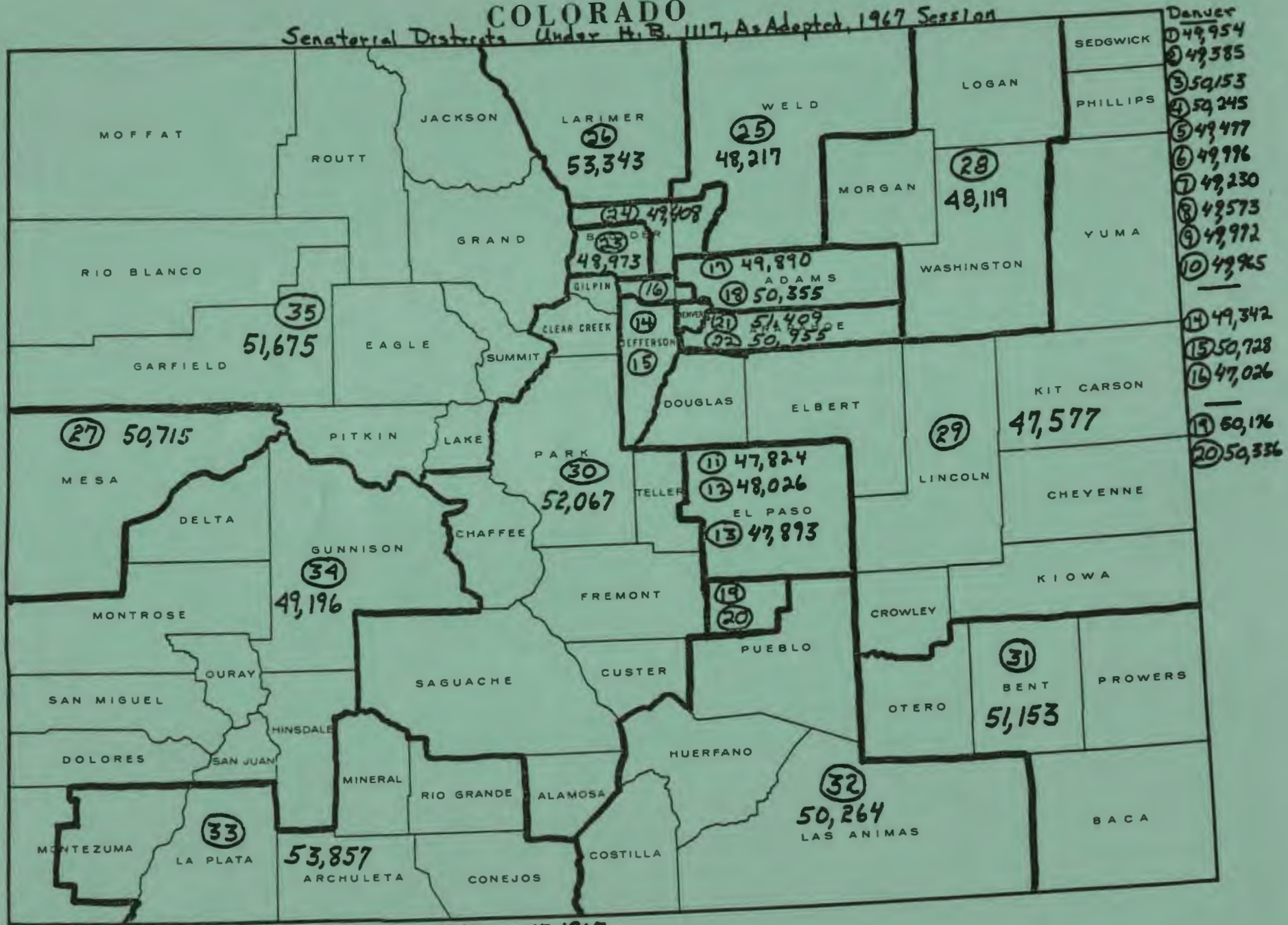
DENVER -- REPRESENTATIVE DISTRICTS (1) → (18) ; JEFFERSON -- DISTRICTS (24) → (27)

PREPARED BY LEGISLATIVE COUNCIL 7/3/64

MAP 9

COLORADO

Senatorial Districts Under H.B. 1117, As Adopted, 1967 Session



Denver
1 49,954
2 49,385
3 50,153
4 50,245
5 49,477
6 49,996
7 49,230
8 49,573
9 49,972
10 49,965

14 49,342
15 50,728
16 47,026

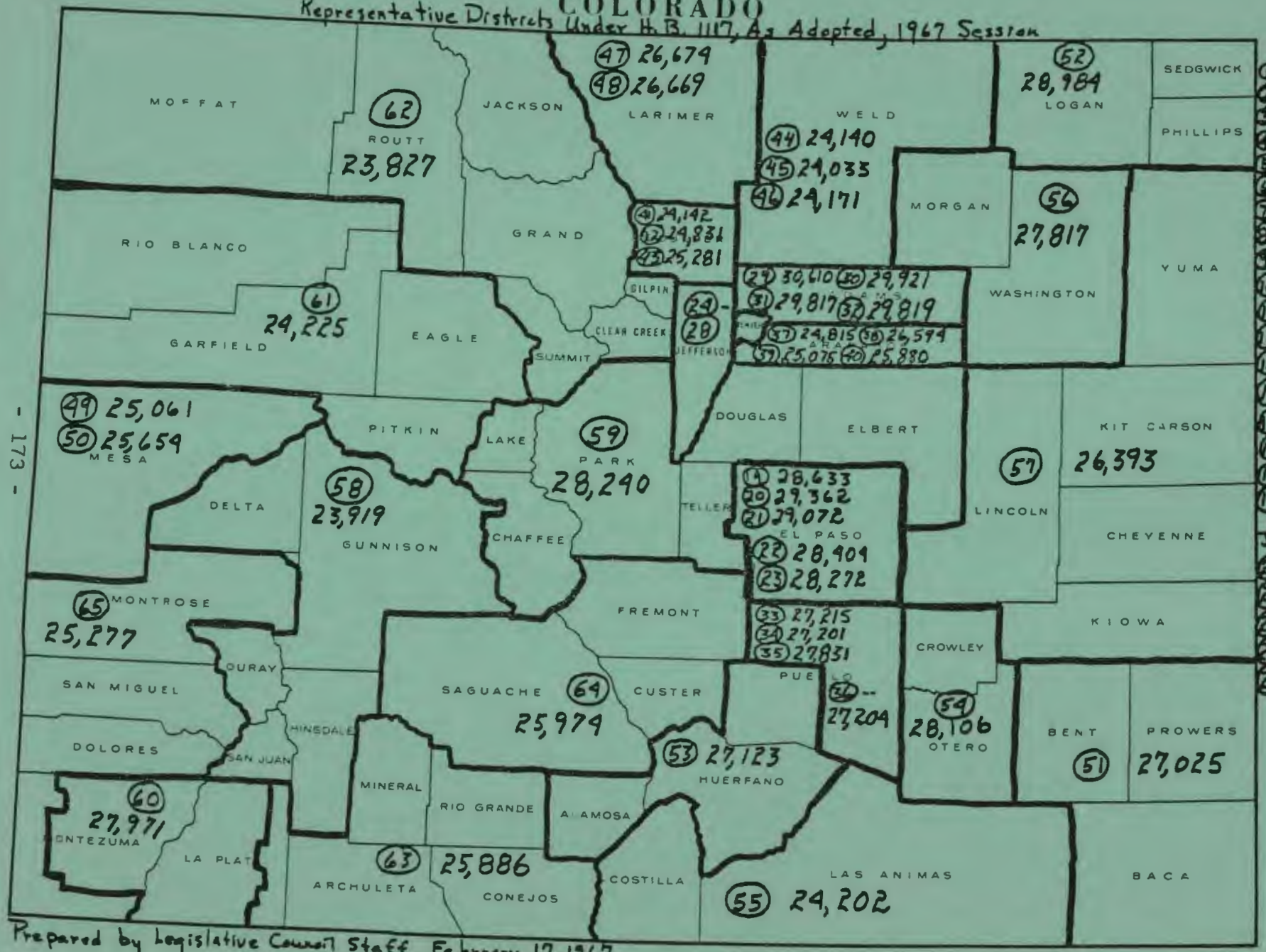
19 50,176
20 50,336

Prepared by Legislative Council Staff February 17, 1967

MAP 10

COLORADO

Representative Districts Under H.B. 1117, As Adopted, 1967 Session



Denver
1 27,667
2 27,980
3 27,817
4 27,515
5 27,968
6 27,978
7 27,583
8 27,588
9 27,719
10 27,192
11 27,330
12 27,568
13 27,702
14 28,013
15 27,737
16 27,695
17 27,319
18 27,631

Jefferson
24 25,356
25 25,407
26 25,683
27 25,136
28 25,572

Prepared by Legislative Council Staff February 17, 1967