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RSCCC
Republican State Central Committee of California

Contact: Al Donner

I'm here this morning to show you some of the things the Democrat leadership in the Legislature would rather you didn't see. These plans are an insult to all the people of California, regardless of their political affiliation.

The reapportionment bills passed here last night are partisan gerrymandering in its grossest form. Instead of enacting a measure that would insure reasonable representation for the 20 million people, the measures passed last night are really a plan for non-representation of large segments of the state's population. The Moretti-Mills-Burton leadership has concocted a program for reapportionment whose main purpose, as I read it from these maps, is to fragment the population groupings of this state into meaningless splinters.

It breaks up population centers so that they are in three, four, or even more districts. A community so Balkanized will not be able to marshall its people to elect its own representative. Conversely, a person elected from such a group of splinters, such as Mr. Cory whose proposed 69th Assembly District is nothing more than a series of "Cory-dors" joined together, will not have to pay very much attention to the particular interests of any of the communities partially included in his district.

After twelve months of pious platitudes about their "good government" bill which was to be unveiled in June and about "open hearings", the Democrats attempted last night to give themselves a secret Christmas present.

RSCCC
Republican State Central Committee of California

This plan is an abuse of the responsibility vested in the leadership by the voting public of the state.

I think that it is important at this stage of the proceedings to recall that the last two reapportionments of Califom ia were drawn by Democratic majorities in both houses of the Legislature with the eager concurrance of a Democratic governor. Neither of the last two reapportionments could by any stretch of the imagination be called non-partisan or in the best interests of the general public of this state. They were simply executed with the prime purpose of maximizing Democrat voting strength.

In this context the Republican leadership sought a 1971 reapportionment that would have retained communities of interest and increased the representation of minority groups. Unfortunately, the Democrat leadership in both houses of the Legislature refused to work toward that goal of fair representation. The gerrymanders that you see on these maps are the sad result.

Therefore, I am asking Governor Reagan to veto the measures which have been rammed through by the Democrat leaders.

The citizens of California have a number of legal avenues open to prevent the implementation of this gerrymander and we Republicans, for our part, will commence immediately to pursue these remedies.

Finally, I would like to express my appreciation and admiration for the very fine efforts of the Republican leadership in both houses through this very difficult reapportionment process. I have worked closely with the Republican members of the Legislature and with the Governor during the past 12 months in an effort to gain a fair reapportionment for the people of the state. Senators Marler and Harmer, and Assemblymen Monagan, Stull and Lewis have worked very dilligently on this important project. They deserve a vote of thanks from all Californians interested in fair and adequate representation for the people of this state.

Reapportionment

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

en banc

THE LEGISLATURE OF THE STATE OF CALIFORNIA, et al., Petitioners, v. ED REINECKE, as Lieutenant Governor of the State of California, et al., Respondents.	SAC 7917
EDMUND G. BROWN, JR. as Secretary of State of the State of California, Petitioner, v. RONALD REAGAN as Governor of the State of California, Respondent.	SAC 7919
MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES, CHET HOLLIFIELD, et al., Petitioners, v. RONALD REAGAN as Governor of the State of California, et al., Respondents.	SAC 7923

In these mandate proceedings we are called upon to resolve the impasse created by the failure to date of the Legislature to pass legislative and congressional reapportionment bills acceptable to the Governor in time for the upcoming 1972 primary and general elections. For the reasons hereafter

stated we have concluded that there is now no practical alternative available to us but to order into effect readily available temporary apportionment plan for the 1972 elections. As we have repeatedly emphasized in the past however reapportionment is primarily a matter for the legislative branch of the government to resolve (Silver v. Brown (1965) 63 Cal.2d 270, 280; Silver v. Brown (1965) 63 Cal.2d 316, 318; Silver v. Reagan (1967) 67 Cal2d 452, 458). Accordingly we urge the Legislature and the Governor in the exercise of their shared legislative power to enact laws (See Lukens v. Nye j(1909) 195 Cal. 498, 501-505). To enact reapportionment measures in time for the 1972 elections and thus to render unnecessary the use of our temporary plan. In this respect we note that the date of the June primary at least insofar as it relates to the nominations of candidates for seats in the Legislature and the Congress could be postponed by statute to allow substantial or additional time for the orderly conduct of such primary nominating election. Since however the legislative impasse may continue indefinitely and since "It is our duty to insure the electorate equal protection of laws" (Silver v. Brown, supra, 63 Cal.2d 270, 282) we deem it essential to state that we shall proceed well in advance of the 1974 elections to draft our own reapportionment plans based on the 1970 census unless by the end of the current regular session the Legislature has enacted valid statutes reapportioning Legislative and Congressional districts. (The parties to the litigation involving legislative reapportionment are the

Governor, the Legislature, various members of the Legislature, representing the views of various groups of Legislators, the Lieutenant Governor, the Attorney General, The Controller, the Secretary of State and the Superintendent of Public Instruction acting as members of the Reapportionment Commission, and the Secretary of State acting as Chief Election official of the state. The parties to the litigation involving congressional reapportionment are 32 of the members of the United States House of Representatives from California, the Governor, the Secretary of State, other elected officials of the state and all of the members of the Legislature. (We turn to the conflicting contentions of the parties) since the Legislature failed to enact statutes reapportioning the Assembly and Senatorial districts at its first regular session following the 1970 Federal census. At least the majority of the members of the Reapportionment Commission now assert the authority to reapportion those districts and have commenced working toward that end. In the Legislature v. Reinecke, SAC 7917, petitioners challenge the authority of the Commission to act and seek a peremptory writ of mandate directing it not to reapportion either house of the Legislature. Section 6, of Article IV of the California Constitution provides in part[1/] "Should the Legislature at

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1. Section 6 in its entirety provides: "

the first regular session . . . following any decennial Federal census fail to reapportion the Assembly and Senatorial districts a Reapportionment Commission which is hereby created . . . shall forthwith apportion such districts in accordance with the provisions of this section . . . ." This provision in Section 6 was adopted in 1926 at the same time the People amended section 6 to provide for a federal plan of legislative apportionment whereby the Senate was apportioned largely on its geographical basis and the Assembly was apportioned largely, but not entirely, on a population basis. After the United States Supreme Court held that the federal plan provisions of section 6 applicable to the Senate violated the one-man-one-vote requirement of the equal protection clause (Jordan v. Silver (1965) 381 U.S. 415 affirming Silver v. Jordan (1964) 241 F.Supp. 576) this court was confronted in Silver v. Brown, supra, 63 Cal.2d 270) with implementing the United States Supreme Court decision (we noted our prior holding in Yorty v. Anderson (1963) 60 Cal.2d 312, 316-317 that the failure of the Legislature to enact a valid re-apportionment at its first regular session following a federal decennial census did not deprive it of power thereafter to enact a valid reapportionment within the ensuing stage (63 Cal.2d at page 274).

We pointed out that such power was part of the legislative power vested in the Legislature by section 1 of Article IV of the California Constitution subject to the powers reserved to the people of initiative and referendum (63 Cal.2d at page 280). We then held that the Reapportionment Commission had no power to act on the ground that the provision creating the Commission was inseverable from the

invalid part of section 6 restated: "There is also no merit in the contention that since the Legislature has had the opportunity but has failed to reapportion the Senate. The Reapportionment Commission should now do so even if we could reasonably disregard the express conditions precedent to the Commission's power namely that the Legislature must have failed to reapportion itself after the 1960 census. We could not hold the provision creating the Commission severable from the invalid parts of section 6. In amending section 6 in 1926 the people created the Commission to enforce a specific apportionment plan. We do not believe they would have delegated such broad legislative power to the Commission as is now appropriate for the Legislature to exercise had they known that the standards set forth in section 6 could not be followed consistently with the United States Constitution [citations]." (63 Cal.2d at page 281)

We adhere to that holding not only because of the principle of stare decisis but because it is compelled by the language of section 6. The only authority of the Commission is to "apportion such districts in accordance with the provisions of this section" but for the Commission to so apportion the districts would necessarily violate the United States Constitution.

It is contended that insofar as the California Senate and Assembly are concerned the reapportionment bills passed by the Legislature at its 1951 first extraordinary session are effective despite the Governor's vetoes. It is urged that the doctrine of separation of powers compels the

conclusion that the Legislature must have unfitted power to reapportion its own houses within constitutional limits and that therefore the Governor is without power to override the will of a simple majority by exercising his vetoes.

We find no basis whatsoever in the California Constitution however for concluding that measures reapportioning the houses of the Legislature are not laws that must be enacted pursuant to the Constitution (see Smiley v. Holm (1932) 285 U.S. 355) subdivision (b) of section 8 of Article IV provides: "The Legislature may make no law except by statute and may enact no statute except by bill." Subdivision (a) of section 10 of Article IV provides: "Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if he signs it. He may veto it by returning it with his objections to the House of origin which shall enter the objection in the journal and seek to reconsider it. If each house then passes the bill by roll call vote entered in the journal two-thirds of the membership concurring it becomes a statute. A bill presented to the Governor that is not returned within twelve days becomes a statute. . . ." There is no room in these provisions for evading the Governor's veto power with respect to reapportionment measures.

Since valid reapportionment measures based on the 1970 census have not been enacted and since population shifts reflected in that census and increasingly strict standards of electorial equality (see Calderon v. City of Los Angeles (1971) 4 Cal.3d 251, 266-271 and cases cited). Make clear that the present legislative and congressional apportionment

no longer meet the one-man-one-vote requirement. It is now incumbent upon this court to determine how this impasse should be resolved in time for the orderly conduct of the 1972 elections.

The problem is intensely practical and extremely urgent for election officials must know the district boundaries by February 23, 1972 (see Election Code, section 6462; Silver v. Brown, supra, 63 Cal.2d 270, 277) to prepare for a June primary. Moreover, even a delay in fixing district boundaries until that date would create serious complications for the election officials in the larger counties. Reapportion ment however is an extremely complex matter for innumerable plans could be adopted that would satisfy the one-man-one-vote requirement. Before this court in the discharge of its duty to insure the electorate equal protection of the laws undertakes to draft reapportionment plans of its own, it should afford all interested parties an opportunity to be heard. The court should be fully informed with respect to all of the possible criteria that might be adopted for reapportionment and with respect to all of the specific implementations of such criteria that might be ordered into effect.

Insofar as the 1972 elections are concerned there is obviously insufficient time before district boundaries must be known for this court to allow all interested parties to be heard to resolve the conflicting contentions presented and to translate its conclusions into concrete reapportionment plans for the legislative and congressional districts.

Accordingly, the only practical choices now available

to us are either to allow the present apportionment to remain in effect temporarily for the 1972 elections or to adopt as temporarily court plans for the 1972 elections the plans passed by the Legislature but vetoed by the Governor. Neither choice is satisfactory and in determining which is the least undesirable we consider reapportionment of legislative districts and of congressional districts separately.

Only the most compelling considerations would compel us to disregard the solemn vetoes of the Governor and to adopt the plans passed by the Legislature as court plans at least in the absence of a complete hearing as described above, which would allow us to exercise a pre-informed and independent judgment with respect to those plans. Insofar as reapportionment of the Legislature is concerned we find no such compelling consideration. We believe that it will be far less destructive of the integrity of the electoral process to allow the existing legislative districts, imperfect as they may be, to survive for an additional two years than for this court to accept, even temporarily, plans that are at best truncated products of the legislative process (see Reynolds v. Simms (1964) 377 U.S. 533, 585; Silver v. Brown, supra, 63 Cal.2d 270, 278; Silver v. Brown, supra, 63 Cal.2d 316, 318. There are however compelling considerations that impel us to adopt as a temporary court plan for the 1972 elections only the bill passed by the Legislature to reapportion the congressional districts (Assembly Bill No. 16, 1971 First Extra-Ordinary Session) unlike the numbers of Assemblymen and

State Senators which remain unchanged the number of Representatives in the United States House of Representatives to which California is entitled increased following the 1970 census from 38 to 43. Accordingly, unless congressional districts are reapportioned, the offices of five representatives will either have to be left unfilled or filled by statewide elections. We cannot accept either alternatives for Congress has expressly provided that California shall elect 43 representatives from 43 single membered districts.[2/]

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2. United States code, title 2, section 2c provides:

We need only add that we fully agree with the congressional mandate. It would be wholly unacceptable to avoid statewide congressional elections by depriving the state of representation of five congressmen to which it is entitled. But to conduct statewide elections to fill five congressional seats in a state of California's geographical size and large populations would not only tremendously increase the burden and expenses of effective campaigning but by increasing the choices confronting the electorate from the candidates for one to the candidates for six congressional seats would seriously impede the casting of informed ballots.

We regret of course that the only readily available congressional reapportionment plan is one that has been vetoed by the Governor. We note however that it has the bi-partisan support of all of the California members of the United States House of Representatives appearing herein and that it is opposed by none of such members. We would be naive not to recognize that the plan was drafted with the interests of the incumbents in mind whether or not we may deem it appropriate to consider those interest when and if we must ultimately draft our own reapportionment plan for post 1972 elections. The fact that Assembly Bill No. 16 may favor incumbents does not disqualify it from serving as the court's temporary plan in exigent circumstance confronting us.

To summarize, we hold that the Reapportionment Commission has no jurisdiction to reapportion the Legislature.

We further hold that unless the Legislature enacts valid legislative reapportionment statutes in time for the 1972 elections the present statute apportioning the Legislature shall remain in effect for the 1972 elections.

We finally hold that unless the Legislature enacts a valid congressional reapportionment in time for the 1972 elections the congressional districts set forth in Assembly Bill No. 16, 1971 First Extra-Ordinary Session, shall be in effect for the 1972 elections.

We retain jurisdiction to draft new reapportionment plans for the elections of 1974 thru 1980 in the event that the Legislature does not enact valid legislation and congressional reapportionment statutes by the close of its 1972 regular session.

Since there is no reason to believe that any of the parties to these proceedings will not exceed to our holdings herein no purpose would be served by issuing writs of mandate (see Silver v. Brown (1966) 63 Cal.2d 841, 848). All parties shall recover their costs from the State of California (see Code of Civil Procedure, section 1095).

This judgment is final forthwith.

Wright, C.J.

We concur:

McComb, J
Peters, J
Tobriner, J
Mosk, J
Burke, J
Sullivan, J

REAPPORTIONMENT

News Release No. 153

LEGISLATURE OF THE STATE OF CALIFORNIA vs. REINECKE.

State Supreme Court issues temporary order directing Reapportionment Commission not to do any redistricting.

In an order filed today the California Supreme Court directed the State Reapportionment Commission not to do any reapportioning or redistricting until the matter is heard by the Supreme Court. The order does not, however, restrain the Commission from meeting or preparing tentative reapportionment plans.

The action of the court was taken in response to a petition filed Wednesday (Dec. 15) by Senator Mervyn M. Dymally and Assemblyman Henry A. Waxman on behalf of the State Legislature which sought immediate court action to restrain the Commission from meeting, acting, or attempting any redistricting.

The court specified that the writ must be issued, served and filed on or before Tuesday December 21. This action must be taken by the attorneys representing the petitioning legislature. The Reapportionment Commission has until Tuesday, December 28 to reply. The matter will then be set for hearing by the court.

Members of the Reapportionment Commission are Lt. Governor Ed Reinecke, Attorney General Evelle J. Younger, Controller Houston Flournoy, Secretary of State Edmund G. Brown Jr. and State Superintendent of Public Instruction Wilson Riles.

Alternative Writ of Mandate

No. SAC 7917

The Legislature of the State
of California, et al.

vs.

Reinecke as Lt. Governor, et al.

Let an Alternative Writ of Mandate issue directing respondents acting as the Reapportionment Commission to cease, desist and refrain from in any way apportioning, reapportioning, districting, redistricting or in any other way organizing or establishing any senatorial and assembly districts from and in which to elect members to the Legislature of the State of California or in the alternative to be and appear before this court when the matter is ordered on calendar to show cause, if any they have, why a peremptory Writ of Mandate should not issue as prayed.

The Alternative Writ is to be issued, served and filed on or before Tuesday, December 21, 1971.

The written return to the writ is to be served and filed on or before Tuesday, December 28, 1971.

Pending a further order of this court respondents acting as the Reapportionment Commission are directed to cease, desist and refrain from apportioning, reapportioning, districting, redistricting or in any other way organizing or establishing any senatorial or assembly districts from or in which to elect members of the Legislature of the State of California.

/s/ Wright
Justice

Reapportionment

STATEMENT ADOPTED DECEMBER 1, 1971, BY THE REPUBLICAN COUNTY CHAIRMEN'S ASSOCIATION MEETING IN SACRAMENTO:

- -

The County Republican Chairmen's Association unanimously urges the Governor to veto any reapportionment bill that is not fair to all segments of California, based on the community of interest, natural boundaries, and ethnic criterion as set forth by the California Republican State Central Committee.

If Californians are not afforded a fair reapportionment by the Legislature, then this Association favors a veto to let the Constitutional Reapportionment Commission fairly set boundaries so all people in California can be fairly and properly represented in Sacramento and Washington.

---Ralph Rosedale
President
Republican County
Chairmen's Association

STATEMENT OF THE MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND IN SUPPORT OF FAIR REAPPORTIONMENT

In our democratic form of government, the privilege of voting is deemed a fundamental interest. The U.S. Supreme Court has said; "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges the right."

Because reapportionment directly affects voting rights which are a "fundamental interest," any reapportionment plan must pass the "strict scrutiny" test. This test is one which the Supreme Court has employed in measuring legislative classifications against the Equal Protection Clause of the Fourteenth Amendment. Under the "strict scrutiny" test, the State bears a heavy burden of establishing that it has a compelling interest which justifies the particular law enacted and its effect.

The reapportionment plans of both the Senate and the Assembly are not justified by a compelling state interest and are not necessary to further that purpose. The legislature has stated at various times that the districts have been drawn in a manner that protects the seats of incumbents and only incidentally

fulfills the one-man-one-vote requirement. We submit that the protection of incumbents is not compelling state interest.

The legislature's reapportionment plans create a classification which is constitutionally suspect because they invidiously discriminate against Mexican Americans. The reapportionment creates two classes: One class consists of all Californians who will have full voting rights, and the second class is comprised of Mexican Americans who are deprived of their voting rights by this reapportionment. This violation of a fundamental right cannot stand the test of constitutionality.

The interests of Chicanos have not been properly considered in past legislation, and Chicanos of California will not tolerate a plan which denies them a political voice in the future. Therefore, unless the legislature passes a reapportionment plan which gives Mexican Americans an effective political voice which they can use to preserve their basic civil and political rights, the State will have the heavy burden of justifying their plan in the Courts.

Statement made by
Mario Obledo at
Press Conference on Reapportionment

November 2, 1971

November 3, 1971

MEXICAN AMERICAN POLITICAL ASSOCIATION
COALITION FOR A FAIR REAPPORTIONMENT,
composed of:
United Auto Workers
YWCA
Californians for Liberal Representation
and 12 other allied organizations
Chicano Youth for Representation

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FOR IMMEDIATE RELEASE

"According to the Mexican American Population Commission's most recent figures, Chicanos make up approximately fifteen percent (15%) of California's population. One of every six children in California's public schools is Chicano," stated Armando Rodriguez, President of the Mexican American Political Association of California.

"California has eighty (80) Assembly seats. Fifteen percent of eighty is twelve (12), yet there are now only two (2) Chicano Assemblymen. There are forty (40) California State Senators. Fifteen percent of 40 is six (6), yet there is not one single Chicano Senator. California has forty three (43) Congressmen. Fifteen percent of forty three is six-plus (6+), yet there is only one Chicano congressman," Rodreguez said.

Herman Sillas, chairman of the California Coalition for Fair Reapportionment, stated that previous legislative districts in California have been drawn with general disregard of the Chicanos' community of interest. "There are at least 750,000 Chicanos in East Los Angeles, yet they have been divided up among at least ten (10) assembly districts, with the result that no district now has over 28% Chicano registration, thereby effectively diluting the Chicano political voice.

more

If any serious attenpt to affirmatively consider Chicano interests were made, we would have at least four Chicano majority districts in Los Angeles."

Rodriguez, resident of Fresno, stated: "In the South Fresno, Merced, and Madera areas, we have a majority Chicano area with a population of over 250,000. Yet there is no Chicano assembly seat proposed for the area (ideal population for each assembly district, based on 1970 Census data, is 249,414 people)."

Sillas claimed that "there is a large Chicano community stretching from San Jose to Salinas. Most of the schools in this area are over 50% Chicano. This area must be preserved to give it a political voice.

"The three million (3,000,000) California Chicanos, most of whom live in four large Chicano communities, must be represented by at least seven (7) Chicano Assemblymen, three (3) Chicano State Senators, and three (3) Chicano Congressmen. The present plan for the Assembly, in particular, is a jig-saw puzzle to preserve incumbents, an unconstitutional destruction of Chicano Communities and voting power.

# # #

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CRUZ REYNOSO
DIRECTOR

November 2, 1971

Honorable Mervyn Dymally, Chairman
Senate Committee on Elections and
Reapportionment
State Capitol
Sacramento, California 95814

Dear Senator Dymally:

Thank you very much for the opportunity which you have given us to express our legal opinion with reference to representation of our Chicano clients in the Legislature.

We hope that the questions which you and Senator Harmer raised are adequately answered in the attached Memorandum of Law Re Discrimination Against Chicano Voters in Legislative Reapportionment.

In short, it is our view that the record of past discrimination now requires the Legislature to affirmatively consider race and to give Chicano communities the representation to which they are entitled.

If we may be of further assistance, please contact us.

Yours very truly

Cruz Reynoso

Cruz Reynoso
Executive Director

Attachment

MEMORANDUM OF LAW

RE DISCRIMINATION

AGAINST CHICANO VOTERS

IN LEGISLATIVE REAPPORTIONMENT

Cruz Reynoso
Phil Jiminez
Peter Weiner
Peter Schilla
Antonio Quintero
Lucy McCabe
Fred Altshuler
Martin R. Glick
California Rural Legal Assistance
1212 Market Street
San Francisco, California

Mario Obledo
Roberto Rubago
Mexican-American Legal Defense & Education Fund
145 Ninth Street
San Francisco, California

November 2, 1971

Apportionment of legislative districts is one of the most deliberate, carefully planned acts performed by elected officials. Legislators possess and make use of detailed population data revealing the political affiliation, registration, voting patterns, and racial and ethnic composition of present and proposed election districts. Decisions of where to draw district lines are the result of trade-offs and deals made by those who possess the power at the time lines are drawn. In California this deliberate process has resulted in dilution in natural Chicano voting strength and consequent disenfranchisement of California's three million Chicano voters.

The statistics and history tell a compelling story. Under the treaty of Guadalupe Hidalgo California was originally a bi-lingual state which provided that electoral and legal processes would be carried out in English and Spanish. Between 1849 and 1899 there were at least seventeen (17) Spanish-surnamed legislators in California. However, in 1879 Spanish was excluded as an official language and in 1894 English literacy was made a prerequisite to voting. Between the years 1900 and 1960 there was only one (1) Spanish-surnamed legislator in California.

According to the Mexican-American Population Commission,

Chicanos make up approximately fifteen percent (15%) of the state's population.[1/] According to 1971 statistics released last month by the Department of Education one (1) of every six (6) children in California's public schools is Chicano. Chicanos are the largest minority group in California; numerically they are the largest minority group in any state.

California has eighty (80) assembly seats. Fifteen percent (15%) of eighty (80) is twelve (12), yet there are now only two (2) Chicano assemblymen in California. There are forty (40) California state senators. Fifteen percent (15%) of forty (40) is six (6), yet there is not one single Chicano senator. California has forty-three (43) congressmen. Fifteen percent (15%) of forty-three (43) is six-plus (6+), yet there is only one (1) Chicano congressman.

An analysis of maps of population and registration by district readily explains this disparity. The legislature has chosen not to form Chicano districts in areas where neighborhood living patterns actually lend themselves naturally to formation of Chicano districts. Just the opposite has been done. The East Los Angeles area is a classic example. The area, bordered by Downey on the south, Whittier, Walnut and West Covina on the east, Azusa, San Marino, Glendale and

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[1/] For purposes of consistency the term "Chicano" is used throughout this brief instead of "Mexican-American" or "Spanish-surnamed". Where statistics used are based on Spanish-surnamed an appropriate deduction is made. [The Population Commission found that 95% of California's Spanish-surnamed population is Mexican-American.]

South Pasadena on the north, and Vermont Avenue on the west, has an estimated seven hundred and fifty thousand (750,000) Chicano residents. More than thirty (30) schools in this area range between 75 and 100 percent Chicano, and few are below thirty percent (30%).

The area could be divided so as to create four (4) block shaped districts with Chicano majorities. [According to the 1970 census, each Assembly District should ideally contain 249,414 constituents.] Instead the contiguous Chicano community has been carved up into no less than ten (10) districts. From this community, 18,731 voters are in the 48th district, 20,177 are in the 51st, 18,235 are in the 50th, 19,621 are in the 45th, 14,084 are in the 40th, 9,291 are in the 66th, 8,135 are in the 58th, 7,538 are in the 52nd, 4,553 are in the 56th, and 3,646 are in the 65th. (1971 figures, using 1965 boundary lines). In only one of these districts are the Chicanos over twenty-three percent (23%) of the registered voters.

The most recent fragmentation of the Chicano community resulted from the 1965 reapportionment of the California legislature.[1/] At the time Democrats controlled both houses of the legislature and the Governorship. They knew from registration statistics that Chicanos in the East Los Angeles

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1/ The Legislature did not voluntarily reapportion itself in 1965. After the California Supreme Court required such reapportionment in Silver v. Brown, 63 Cal.2d 270 (1965), the Governor called an extraordinary session of the Legislature to consider reapportionment. The resulting plan was then reviewed and modified by the state supreme court. (Silver v. Brown, 63 Cal.2d 841 (1966)) Congressional reapportionment is chronicled in Silver v. Reagan, 67 Cal.2d 452 (1967).

area were registered in excess of eighty percent (80%) Democrat.[1/] Furthermore, election returns showed that this eighty-plus percent (80+%) Chicano group almost always voted for the Democratic candidate in partisan elections. Therefore, it was to their advantage to take especial note of ethnic background and carefully apportion Chicano voters among existing Democratic districts--enough Chicanos to assure as many safe Democratic districts as possible.

At the same time the architects of the reapportionment were careful to keep the Chicano population in any district small enough so that no incumbent need fear a challenge from a Chicano challenger. The Los Angeles example is paralleled by the experience and the practice in the Fresno area and the South Santa Clara-San Benito-Salinas area. (Fresno and its surrounding areas has a Chicano community of approximately 150,000. Approximately 250,000 Chicanos reside in the South Santa Clara-San Benito-Salinas area.)

1/ Indeed in many areas the figures more closely approximate 90%. The figures are:

District	Total Registered	Spanish-surnamed Registered	Spanish-surnamed Democrat	Spanish-surnamed Republican	Spanish-surnamed Other
40	51,017	14,084	12,677	868	539
45	85,582	19,621	17,297	1,700	624
48	90,249	18,731	16,201	1,749	781
50	97,999	18,235	16,095	1,636	504
51	86,522	20,177	18,120	1,526	532
52	84,717	7,538	6,297	869	372
56	97,066	4,353	3,231	829	293
58	84,161	8,135	6,792	1,051	292
65	89,529	3,646	2,814	636	196
66	91,498	9,291	7,773	1,231	287

The Chicano community is now entitled to redress of past policies which deliberately excluded them from geographical voting strength and representation to which they were and are entitled. The system of democratic government was designed to give all citizens a meaningful voice in the affairs of the government. Chicanos, and particularly young Chicanos, have become acutely aware that those of their cultural and ethnic background have been shut out of the affairs of the government. There may not be another reapportionment until 1981.

The burdens imposed on the California Chicano community by this history of legislative discrimination, make it imperative that the legislature now act to remedy these inequities and give the Chicano an effective voice. The law, as well as elementary principles of justice, demands no less.

I. THE LEGISLATURE'S DISCRIMINATION AGAINST CHICANO VOTERS VIOLATES THE UNITED STATES AND CALIFORNIA CONSTITUTIONS.

It is clear from the facts outlined above, that the 1965 California legislature deliberately played politics with race by dividing and diluting the Chicano vote in an effort to minimize the voting strength of the minority community. This gerrymandering along racial and ethnic lines is similar to that condemned by the United States Supreme Court in Gomillion v. Lightfoot, 364 U.S. 339 (1960),[1/] and is particularly egregious considering the importance to minorities of "a political voice if they are to have any realistic hope of ameliorating the conditions in which they live." Castro v. State of California, 2 Cal.3d 223, 240 (1970).[2/]

Admittedly, the California legislature has not attempted to disenfranchise all Chicano voters. But "the right to vote

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[1/] In Gomillion, the City of Tuskeegee, Alabama, sought to exclude black voters altogether, but the Court, speaking through Justice Frankfurter, found that any scheme whereby a legislature singles out a readily isolated segment of a racial minority for special discriminatory treatment would be unconstitutional. 364 U.S. at p. 346.

[2/] It is clear that any alleged infringement of the right of citizens to vote will be carefully and meticulously scrutinized by the courts. Reynolds v. Sims, 377 U.S. 533, 561-62 (1964). This maxim is even more forceful when the denial of the right to vote, or the dilution of a vote, is imposed upon a racial minority. Calderon v. City of Los Angeles, 4 Cal.3d 251 (1971); Castro v. State of California, supra; Gomillion v. Lightfoot, supra.

can be affected by a dilution of voting power." Fairley v. Patterson, 393 U.S. 544 (1969). And such a dilution of the vote of an identifiable racial minority can no longer withstand constitutional scrutiny:

> "[A]pportionment schemes. . . will constitute an invidious discrimination. . . if it can be shown that designedly or otherwise, a. . . scheme. . . would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." Burns v. Richardson, 384 U.S. 73, 88 (1966).

Just such an invidious discrimination was found in a legislative plan that effectively precluded the election of a black to the Alabama House. The plan was declared unconstitutional by a three-judge federal court: "Systematic and intentional dilution of Negro voting power by racial gerrymandering is just as discriminatory as complete disfranchisement or total segregation." Sims v. Baggett, 247 F.Supp. 96, 109 (M.D.Ala. 1965).

The California Supreme Court has gone beyond the decisions of the United States Supreme Court in protecting the rights of this State's minority groups. Only last year, in an unanimous opinion, the Court held that dilution of minority voting strength by any scheme of representation "must be regarded as constitutionally suspect." Calderon v. City of Los Angeles, 4 Cal.3d 251, 261 (1971).

In Calderon, the plaintiffs were Chicano residents of Los Angeles, who challenged the city council districts, which had been apportioned on the basis of registered voters within

each district, rather than actual population. The effect was, of course, to dilute the voting strength of Chicanos, and the Court declared the scheme patently unconstitutional. The Court further stated:

> "Racial or ethnic minorities often have distinct political interests, not shared by the general public, for which they seek political redress through their elected representatives. . . .[Therefore], within the framework of population-based apportionment, group interests may not be ignored. Id. at p. 260 and fn. 10, emphasis added.

Whatever the motive, the Court made it clear that the effect of racial or ethnic discrimination is sufficient to invalidate a reapportionment scheme that reduces the voting power of minority citizens: "[N]o discriminatory motive on the part of districting officials need be shown to call into question such an apportionment." Id. at p. 261, fn. 11.

Only the most compelling state interest can justify diminution of the voting power of racial and ethnic minorities by the state. No such compelling interest has been shown to the satisfaction of any court within recent history. Here, instead of any state interest governing reapportionment, what has been demonstrated by the California legislature is a reapportionment scheme based on the rankest of political motives--the protection of incumbents at the expense of any other group in the state. This is not a permissible basis for the drawing of district lines. In Klahr v. Williams, 313 F.Supp. 148 (D.Ariz. 1970), aff'd, 400 U.S. 963 (1971), a three-judge federal court invalidated the reapportionment plan adopted by

the Arizona legislature. The legislative districts had been adopted with the aid of a computer--and one of the criteria fed into the computer was the protection of incumbents. The court, in invalidating the plan, held that "the incumbency factor has no place in any reapportionment or redistricting." 313 F.Supp. at p. 152. In League of Nebraska Municipalities v. Marsh, 242 F.Supp. 357 (D.Neb. 1965), appeal dismissed, 382 U.S. 1021 (1966), a three-judge court declared unconstitutional a bill reapportioning the Nebraska legislature, stating that "[t]he goal of reapportionment. . . is just representation of the people, not the protection of incumbents in a legislative body." Id. at p. 360.

II. THE LAW REQUIRES AFFIRMATIVE ACTION TO UNDO PAST DISCRIMINATION

The legislature must cease its blatantly discriminatory treatment of the Chicano community and take affirmative action to eradicate the legacy of years of past discrimination. It can do so only by expressly considering the special group interests of the Chicano community in drawing district lines. Affirmative action to undo the effects of past discrimination, including the frank use of racial or ethnic considerations to achieve that goal, is not only permitted but is affirmatively required by law. Louisiana v. United States, 380 U.S. 145, 154 (1965); United States v. Montgomery Board of Education, 395 U.S. 225 (1969).

It has often been asserted, usually by those responsible for previous discrimination, that the state may not take race or ethnic background into consideration in order to establish nondiscriminatory policies. These challenges have universally and uniformly failed, for it is clear that conscious interference with the status quo is required in order to undo past discrimination. In the field of school desegregation, for example, it was asserted that the state could do no more than cease further discrimination, and could not affirmatively consider race in order to draw integrated school attendance zones. But as the courts have

firmly stated, "This is not the 'consideration of race' which the Constitution discountenances....Courts will not say in one breath that public school systems may not practice segregation, and in the next that they may do nothing to eliminate it." Wanner v. County School Board of Arlington County, 357 F.2d 452, 454-455 (4th Cir. 1966).[1/] Indeed, courts have consistently sanctioned or required the express consideration of race and ethnic background to assure that discriminatory treatment in the distribution of governmental benefits and exercise of constitutional rights is not perpetuated. Conscious consideration of race has been required in assuring that minority citizens are assured adequate housing, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 931-932 (2nd Cir. 1968); Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736, 738-739 (N.D. Ill. 1969), aff'd 436 F.2d 306 [imposing racial occupancy quotas in public housing]; an equal opportunity to serve on

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[1/] The courts have consistently required school boards to be "color conscious" in order to eliminate segregated student bodies. Clark v. Board of Education, 426 F.2d 1035, 1045 (5th Cir. 1970); United States v. Jefferson County Board of Education, 372 F.2d 836, 876-878 (5th Cir. 1966), faculties United States v. Montgomery Board of Education, 395 U.S. 225 (1969) [imposing racial quotas]; Board of Education v. Dowell, 375 F.2d 158, 164 (10th Cir. 1961), and inequalities in educational opportunity through the use of remedial programs for minority students. United States v. Plaquemines Parish School Bd., 291 F.Supp. 841 (E.D. La. 1967); United States v. Jefferson County Board of Education, supra, at p. 900. As stated in Offermann v. Nitkowski, 378 F.2d 22, 24-25 (2nd Cir. 1967), "Where [consideration of race] is to insure against, rather than to promite deprivation of equal educational opportunity, we cannot conceive that our courts would find that the state denied equal protection to either race by requiring its school boards to act with awareness of the problem."

juries, Brooks v. Beto, 366 F.2d 1, 22-23 (5th Cir. 1966); and equal employment opportunities. Porcelli v. Titus, 431 F.2d 1254 (3rd Cir. 1970), cert. denied, 91 S.Ct. 1612 (1971); Contractors' Ass'n of Eastern Pa. v. Secretary of Labor, 442 F.2d 159 (3rd Cir. 1971).[1/]

Because the right to vote is of such fundamental importance in a democratic society, courts have gone so far as to forbid the use of what would otherwise be valid voting standards in order to allow minority groups, previously discriminated against, to register under lower standards. See, e.g., Louisiana v. United States, supra; United States v. Ward, 349 F.2d 795, 802 (5th Cir. 1965); United States v. Duke, 332 F.2d 759, 768 (5th Cir. 1964).

California Chicanos, many of whom until recently were not allowed to vote, Castro v. California, 2 Cal.3d 223 (1970), must clearly be affirmatively considered in any legislative reapportionment. Past reapportionment discrimination, in which Chicano voting strength was minimized in order to serve the selfish aims of incumbents, must be eradicated by

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[1/] In Porcelli, the court sustained the Newark School Board's scrapping of its regular promotion schedule and procedure in favor of giving black candidates priority, stating that the action was justified by the goal of faculty integration. In the Contractors' case, the court sustained President Nixon's "Philadelphia Plan," in which the Department of Labor considered the racial composition of a contractor's work force in awarding government contracts, because the use of racial considerations was remedial rather than invidious. See also, Etheridge v. Rhodes, 268 F.Supp. 83 (S.D. Ohio 1967), which required affirmative action to end discriminatory hiring by contractors on state contracts.

affirmative action. The California Supreme Court, specifically recognizing that the special group interests of racial and ethnic minorities must be protected, expressly requires that "within the framework of population-based apportionment, group interests may not be ignored." Calderon v. City of Los Angeles, 4 Cal.3d 251, 260, fn. 10 (1971).[1/]

The recent case of Wright v. Rockefeller, 376 U.S. 52 (1964) highlights the propriety of legislative action seeking to afford representation to previously disenfranchised racial and ethnic minorities. In Wright, minority plaintiffs challenged the apportionment of a predominently black Congressional district. In rejecting the plaintiffs' claim, the Supreme Court reiterated that the creation of the districts at issue in that case had not been shown to be detrimental to minorities, and in fact may have aided minority voting power. In his recent opinion questioning the permissibility under Wright of providing fair representation to Chicanos (Opinion No. 19123), the Legislative Counsel ignores the critical distinction between legislative action seeking to discriminate against minorities by minimizing their voting power and legislative action seeking

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[1/] The California Supreme Court did not of course require that the Legislature draw lines so as to create 100% Chicano districts. Nor is such a claim made here. Indeed, concentrating Chicanos in districts so completely homogeneous would be as detrimental to their group interests and voting strength as is the present "dispersal" line-drawing policy. The California Supreme Court has previously had occasion to warn that such minimization of minority voting strength, accomplished by putting all of one group within a single district, will not be sanctioned. Silver v. Brown, 63 Cal.2d 841 (1965), 48 Cal.Rptr. 609, 612.

to eradicate past discrimination by affording minorities voting power they previously have been denied. In California, any express consideration of racial or ethnic background in order to eradicate discrimination against minority voters would clearly be ameliorative rather than burdensome and would serve to correct past discrimination, both in legislative districting and in access to the electoral process. See Castro v. California, supra; cf. Elec. Code §14217. Moreover, California law now requires the Legislature to consider group interests, and more particularly, to consider the special interests of racial and ethnic minorities. Calderon v. City of Los Angeles, supra; at pp. 260-261. It is thus clear that express legislative action to remedy past discrimination by aiding minority groups to elect one of their own people to the legislature would be sustained by both California and federal courts.

REAPPORTIONMENT

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California Legislature

Senate Committee on Elections and Reapportionment

SENATOR
MERVYN M. DYMALLY
CHAIRMAN

November 11, 1971

FOR IMMEDIATE RELEASE:

Sacramento -- Senate Democratic and Republican leaders today jointly announced they resolved their partisan differences over Senate reapportionment and would submit a bill for a full vote on the Senate floor later this morning.

Sen. Mervyn M. Dymally (D-L.A.), Chairman of the Senate Elections and Reapportionment Committee, and Sen. John L. Harmer (R-Glendale), Vice Chairman, publicly presented detailed maps of the redistricting before the floor vote at a Capitol press conference.

Sens. Dymally and Harmer, also Chairmen of their respective party caucuses, termed S.B. 18 "a compromise considered fair and equitable to both political parties."

Senate Floor Leaders George R. Moscone (D-S.F.) and Fred W. Marler (R-Redding) said they hoped the bill would pass today without difficulty.

The compromise plan is expected to maintain the present ratio of 21 Democrats and 19 Republicans.

The Senate leaders said the bi-partisan plan would permit the east Los Angeles Mexican-American community to "speak with a responsible representative in Sacramento, one who would probably be of Mexican-American descent."

"I am, of course, pleased that we have reached an agreement which satisfies most Senate members and which takes care of the most pressing political business in California, increased representation for the Mexican-American community," Sen. Dymally stated.

"Negotiations were long and hard, sometimes bitter. Nevertheless, that is sometimes a part of the political process. What is gratifying is that we can sit together now, members of opposite parties with different political views, and come to a compromise," Sen. Dymally said.

"And I am pleased that we have been able to agree on the two vital issues that made this possible," state Sen. Harmer, "the northern California district to be moved to the southern part of the State, and the establishment of a district for the Mexican-American community of Los Angeles."

"By virtue of these two agreements between the parties, we were able to then build a plan for reapportionment that will assuredly be upheld by the courts and considered fair and equitable to all concerned.

"It was the ability of the Republican Caucus to support the concept of the Mexican-American district 'in principle' several weeks ago which facilitated the final negotiations leading to an agreed upon plan," Sen. Harmer said.

"Sometimes it was not possible to give everyone exactly what they wanted, but a valiant effort was made to produced the most feasible and effective plan."

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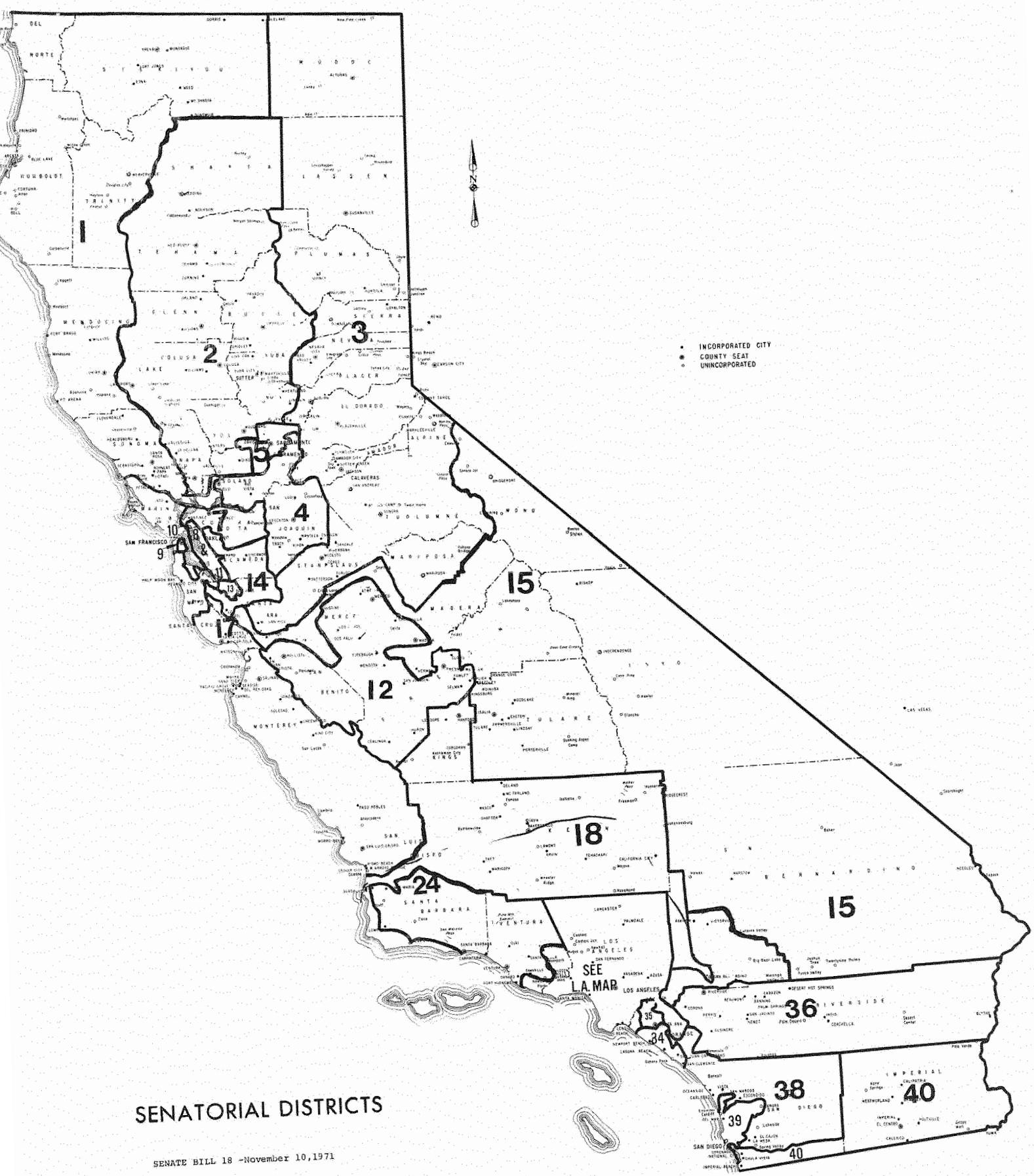
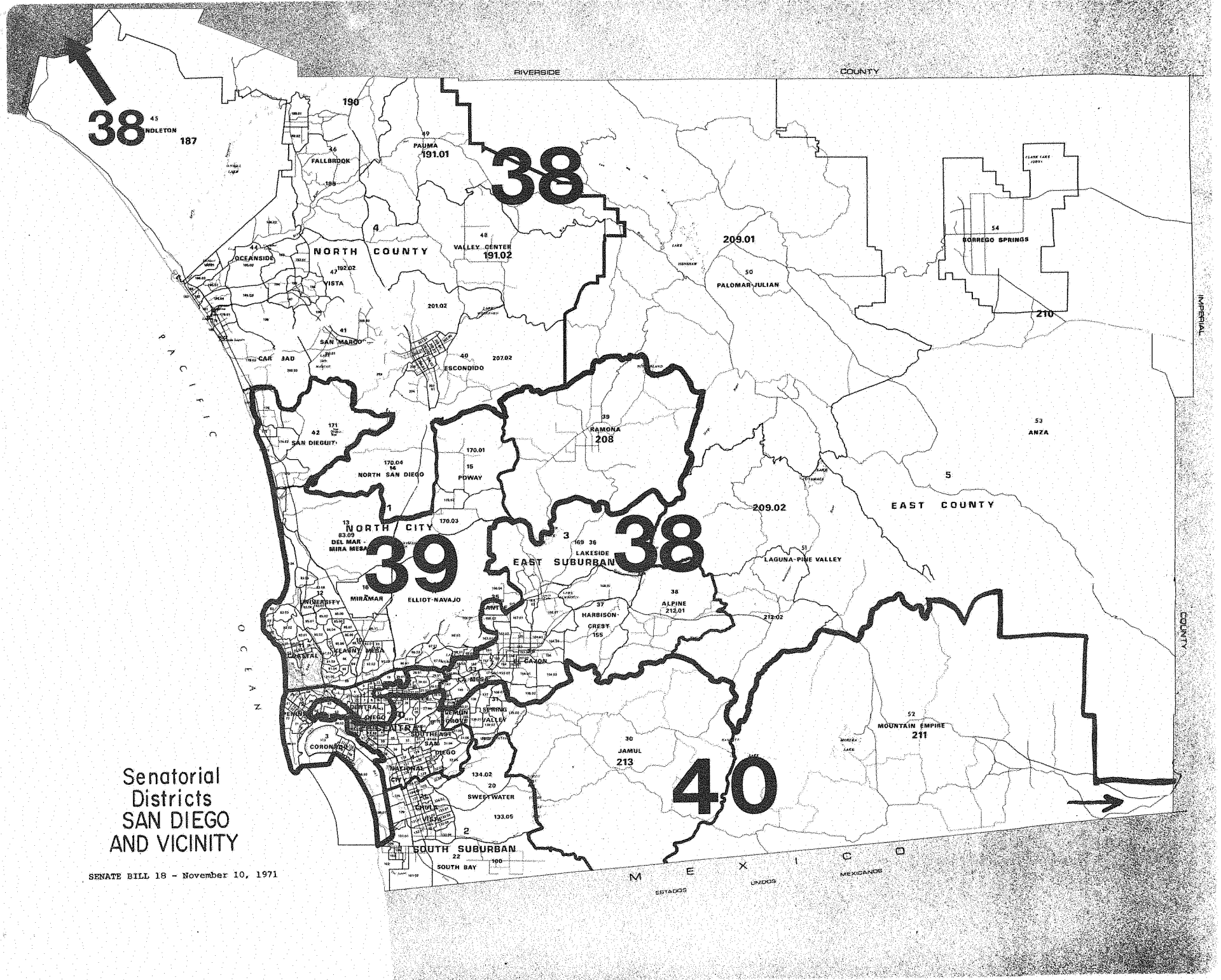


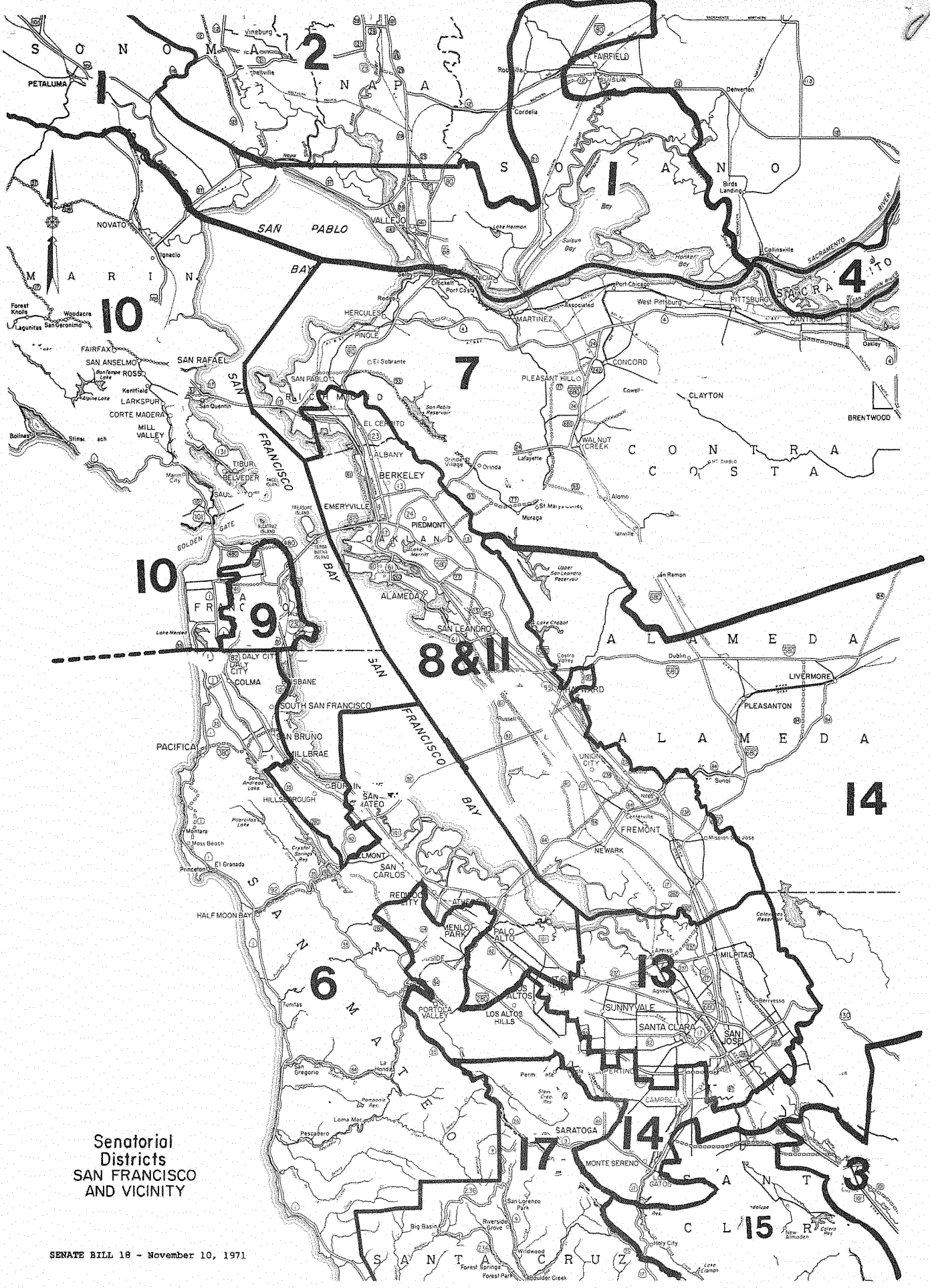
SENATORIAL DISTRICTS

SENATE BILL 18 -November 10,1971



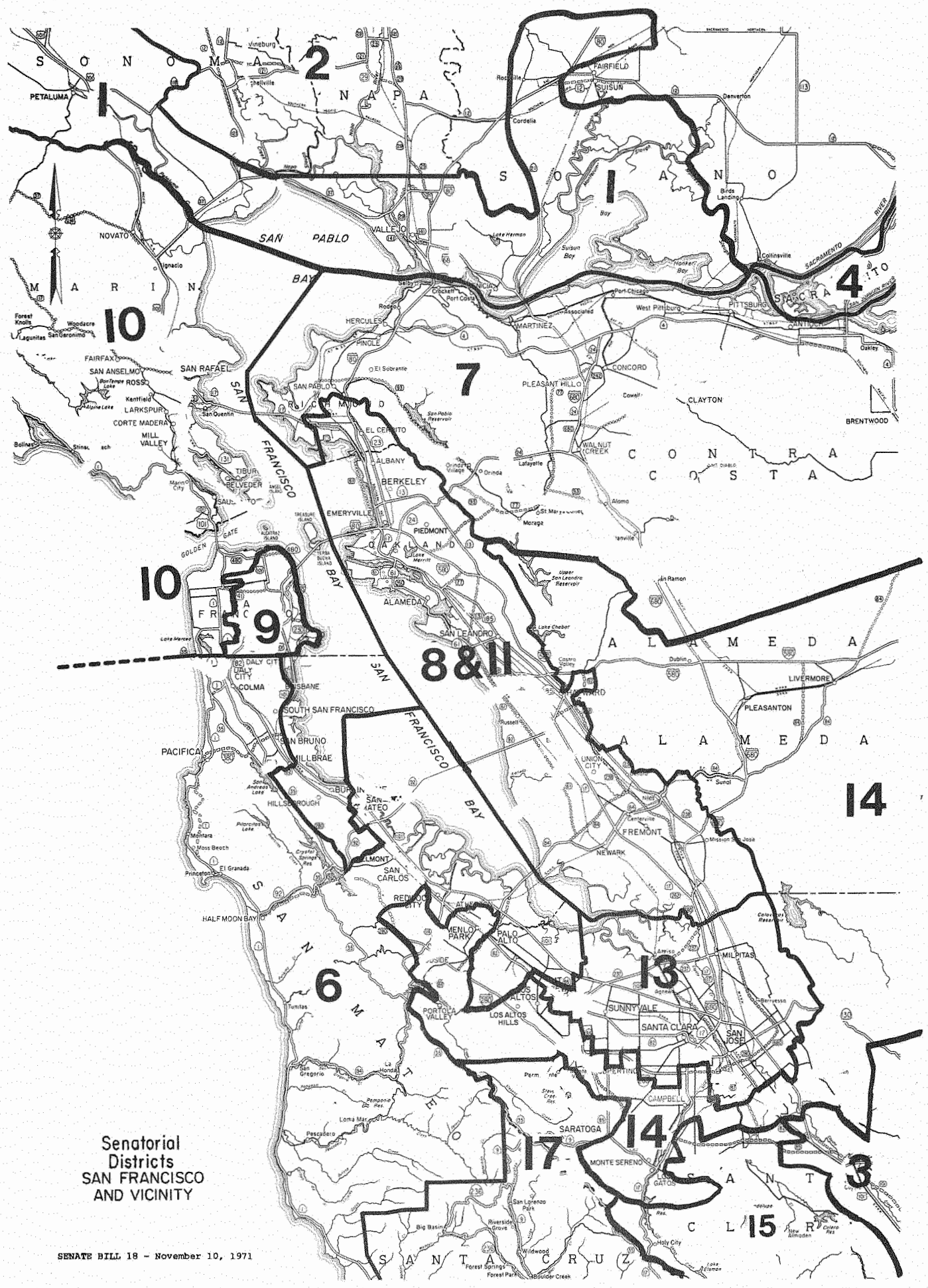
Senatorial Districts SAN DIEGO AND VICINITY

SENATE BILL 18 - November 10, 1971



Senatorial Districts SAN FRANCISCO AND VICINITY

SENATE BILL 18 - November 10, 1971



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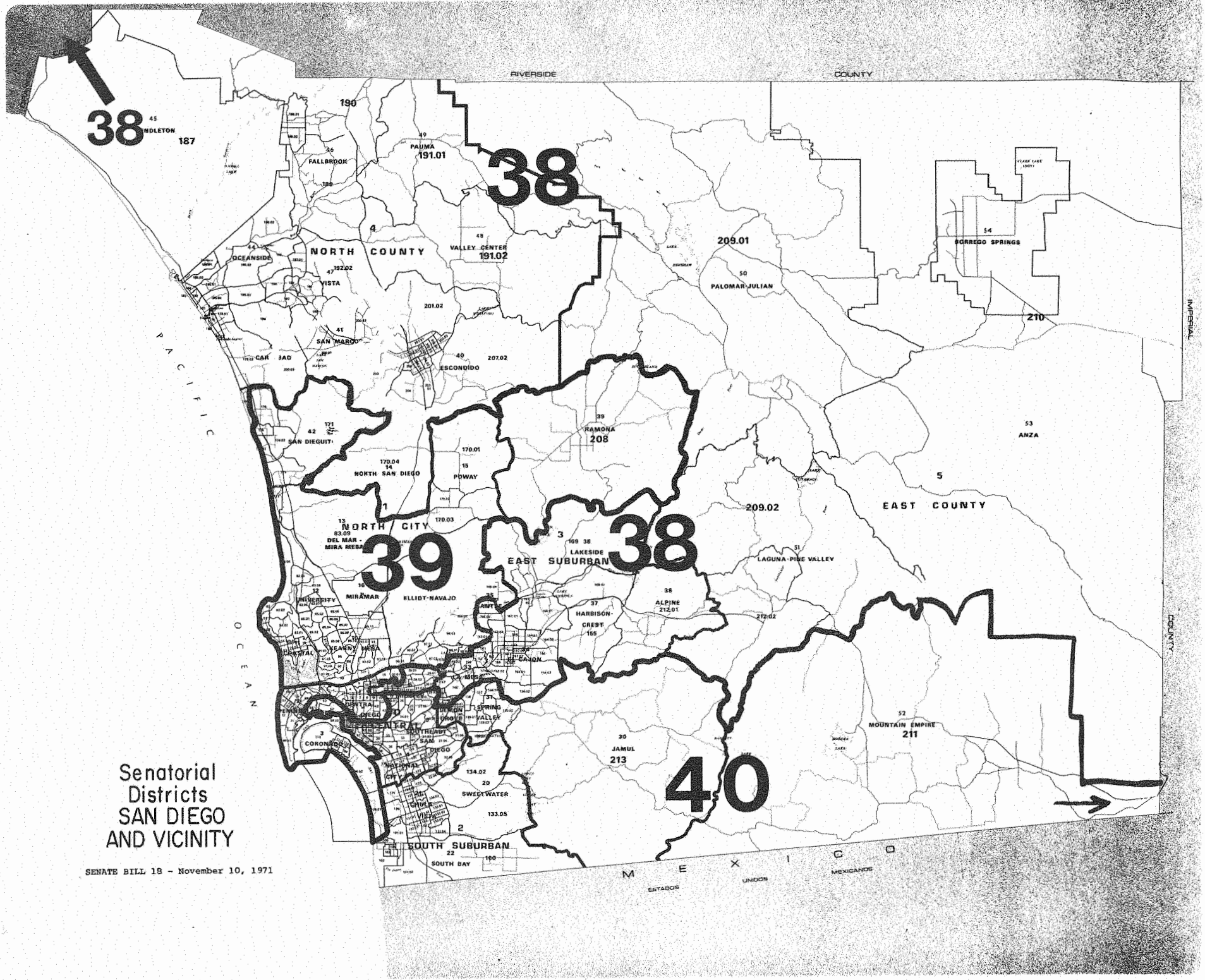

Senatorial Districts SAN DIEGO AND VICINITY

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