Case No. 17-1192

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ANDY KERR, Colorado State Representative, *et al.*,
Plaintiffs-Appellants,

v.

JARED POLIS, Governor of Colorado, in his official capacity,
Defendant-Appellee.

On Appeal from the United States District Court for the District of Colorado
No. 11-CV-01350-RM-NYW, The Honorable Raymond P. Moore

BRIEF OF *AMICI CURIAE* MOUNTIAN STATES LEGAL FOUNDATION, THE COLORADO UNION OF TAXPAYERS FOUNDATION, AND THE TABOR FOUNDATION IN SUPPORT OF APPELLEE URGING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

The undersigned attorney for *Amici Curiae*, Mountain States Legal Foundation, the Colorado Union of Taxpayers Foundation, and the TABOR Foundation certifies that Mountain States Legal Foundation, the Colorado Union of Taxpayers Foundation, and the TABOR Foundation are non-profit corporations that have no parent corporations and have never issued any stock.

Respectfully submitted this 21st day of December 2020.

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IDENTITY AND INTERESTS OF *AMICI CURIAE*[1]

Mountain States Legal Foundation ("MSLF") is a nonprofit, public interest legal foundation organized under the laws of the state of Colorado. MSLF is dedicated to bringing before the courts issues vital to the defense and preservation of the right to own and use property, individual liberty, limited and ethical government, and the free enterprise system. Separation of powers is an essential feature of the American constitutional system and is necessary for the preservation of individual liberty.

The Colorado Union of Taxpayers Foundation ("CUT") is a nonprofit corporation organized under the laws of the state of Colorado. CUT was formed to educate the public as to the dangers of excessive taxation, regulation, and government spending. CUT is dedicated to the proper implementation and interpretation of the Taxpayer's Bill of Rights ("TABOR"). COLO. CONST. art. X, § 20.

The TABOR Foundation is an educational organization created with the express goal of defending the voter enacted TABOR. The mission of the TABOR Foundation is to develop and distribute educational materials, make public presentations, document compliance with TABOR, and provide a clearinghouse for information and analysis about the effectiveness, structure, and importance of TABOR and other tax-limitation measures.

A judicial determination in favor of Plaintiffs-Appellants would conflict with the

[1] Pursuant to Fed. R. App. P. 29(a)(2), Plaintiffs-Appellants Andy Kerr, *et al*. consent to the filing of this *amici curiae* brief. Defendant-Appellee also consents to the filing of this *amici curiae* brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), the undersigned affirms that no counsel for a party authored this brief in whole or in part, and no person or entity other than MSLF, its members, or its counsel, made a monetary contribution specifically for the preparation or submission of this brief.

interests of MSLF, CUT, and the TABOR Foundation given it would serve as an intrusion upon the separation of powers and would subject Colorado taxpayers to increased taxes and larger government. MSLF, CUT, and the TABOR Foundation submit this *Amici Curiae* Brief in support of Defendant-Appellee Jared Polis, Governor of Colorado, in his official capacity ("Governor"), urging this Circuit affirm the district court's judgment that Plaintiffs lack standing.

ARGUMENT

The right to a republican form of government is afforded to the people of Colorado, not to state political subdivisions. The political subdivisions of Colorado, including Plaintiffs here, have no federal constitutionally or statutorily protected interest in either a republican form of government, or the asserted derivative power to assess or retain taxes. Thus, whether the question of standing is considered in the light of whether Political Subdivision Plaintiffs have a legally protected interest under Article III or whether they have a collective or structural right to tax as a political subdivision, the answer is no. As a matter of jurisdiction, Political Subdivision Plaintiffs have no standing to bring their claims before a federal court.[2]

[2] While the Governor's brief demonstrates that Political Subdivision Plaintiffs lack political subdivision standing in this matter, the brief erroneously defines the inquiry as a prudential one, rather than a threshold jurisdictional question. Gov. Supp. Br. at 9–11. When this Circuit examined political subdivision standing in *Branson* and *City of Hugo*, those inquiries were considered as a matter of jurisdiction. *See Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619, 627 (10th Cir. 1998) (considering political subdivision standing on appeal from a motion to dismiss); *City of Hugo v. Nichols*, 656 F.3d 1251, 1254 (10th Cir. 2011) ("[T]his court vacates the district court's order and remands the case to the district court to dismiss for lack of federal jurisdiction.") (emphasis removed). This Circuit should treat its standing inquiry here as such.

Article III standing requires that a plaintiff demonstrate: (1) an injury in fact to a "legally protected interest"; (2) that is fairly traceable to the challenged action; and (3) is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The party invoking federal jurisdiction bears the burden of establishing these "immutable" requirements. *Lujan*, 504 U.S. at 561. As for political subdivision standing, this Circuit has set forth a two-factor test that a political subdivision must satisfy to have standing to sue its creating state: (1) the political subdivision must be substantially independent from the creating state; and (2) the political subdivision must be "essentially" the beneficiary of a federal trust. *Branson*, 161 F.3d at 629 (citing *Lassen v. Arizona ex. rel. Arizona Highway Dep't*, 385 U.S. 458, 459 n.1 (1967)). This Court later clarified the second factor, noting the federal statute sought to be enforced by the political subdivision must be "directed at protecting the political subdivisions . . . ." *City of Hugo*, 656 F.3d at 1257 (citations omitted).

Whether this Circuit is examining the first factor of Article III standing (injury to a legally protected right) or the second factor of political subdivision standing (specific statutory protection) this Circuit is determining whether the political subdivision asserts a power that has been granted to it and whether there is an injury to that specifically granted power. Political Subdivision Plaintiffs fail to satisfy this test. The crux of Plaintiffs' case is that TABOR deprives them of a "federally guaranteed" right to a republican form of government. FAC ¶¶ 1, 108–16; Op. Br. at 6–8, 9. Yet, Political Subdivision Plaintiffs lack a legally protected interest to a republican form of government under the Guarantee Clause, the Enabling Act, or the Colorado Constitution. Without a legally protected

interest, Political Subdivision Plaintiffs cannot establish Article III nor political subdivision standing. Even if Political Subdivision Plaintiffs have a legally protected interest, TABOR does not invade that interest because a republican form of government does not confer the power to tax upon Political Subdivision Plaintiffs.

I. POLITICAL SUBDIVISION PLAINTIFFS HAVE FAILED TO DEMONSTRATE A LEGALLY PROTECTED INTEREST

To assert a legally protected interest under Article III a plaintiff "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (citation omitted). Similarly, under political subdivision standing, a political subdivision must assert the violation of a right that is specifically granted to the political subdivision. *See Branson*, 161 F.3d at 629 (finding the school districts in that case were essentially the beneficiaries of a federal land trust granted in the Enabling Act); *cf. City of Hugo*, 656 F.3d at 1257–58 ("Because the claims at issue here are based on a substantive provision of the Constitution, and because the Supreme Court has made clear that the Constitution does not contemplate the rights of political subdivisions as against their parent states, Hugo lacks standing under *Branson*.").[3]

[3] Political Subdivision Plaintiffs fail to allege that the Guarantee Clause, U.S. CONST. art. IV, § 4, grants rights or powers to political subdivisions, much less to Political Subdivision Plaintiffs. *See* FAC, ¶¶ 12, 22, 47, 110. Nor could they allege such facts. *See Luther v. Borden*, 48 U.S. 1, 47 (1849) ("No one, we believe, has ever doubted the proposition, that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that they may alter and change their form of government at their own pleasure."). Given Political Subdivision Plaintiffs have not and cannot allege they have a legally protected right under the Guarantee Clause, they lack a legally protectable interest under Article III or political subdivision standing. *See Lujan*, 504 U.S. at 560–61; *City of Hugo*, 656 F.3d at 1257–58.

A. The Enabling Act Does Not Grant Political Subdivision Plaintiffs The Right To A Republican Form of Government

Despite the unambiguous text, Political Subdivision Plaintiffs argue the Enabling Act grants political subdivisions the right to a republican form of government. *See* Op. Br. at 17–21, 30–31. Yet, as the district court correctly determined, the people of Colorado, not political subdivisions, were granted and are guaranteed the right to a republican form of government. *Kerr v. Hickenlooper*, 259 F. Supp. 3d 1178, 1190–91 (D. Colo. 2017).

In 1875, Congress passed the Enabling Act to "enable *the people* of Colorado to form a constitution and State government . . . ." Enabling Act, Title. The Enabling Act grants the right to a republican form of government to *the people* of the state of Colorado:

> [T]he members of the convention thus elected . . . shall declare, *on behalf of the people of said territory*, that they adopt the constitution of the United States; whereupon the said convention shall be . . . authorized to form a constitution and state government for said territory; provided, that *the constitution shall be republican in form* . . . and not be repugnant to the constitution of the United States and the principles of the declaration of independence.

Id. § 4 (emphasis added); *see Kerr*, 259 F. Supp. 3d at 1190–91. ("[P]laintiffs make no attempt to explain how [Section 4] provides [Political Subdivision Plaintiffs] with a right to a Constitution 'republican in form.' In any event, the Court finds that, based on the present record, it does not.").

First, the Enabling Act does not address, nor even posit the existence of, the county commission or special district board, so there is no colorable argument that the Enabling Act grants those entities the right to a republican form of government. *See generally*, Enabling Act; *see also Kerr*, 259 F. Supp. 3d at 1189 ("[T]he FAC fails to allege that the

plaintiffs who are the board of county commissions . . . or the special district . . . are seeking to enforce a right granted to them in the Enabling Act . . . .").

Second, primary and secondary schools are only addressed in the Enabling Act in reference to the assignment and disposition of land for the benefit of the "common schools." Enabling Act §§ 7, 14. A plain reading of these sections indicates Congress intended the "common schools" to have land on which to operate, and to be funded via a "permanent school-fund, the interest of which to be expended in the support of common schools." *Id.*; *see Branson*, 161 F.3d at 629 (finding those school districts were essentially the beneficiaries of a federal land trust granted in the Enabling Act). There is no indication, however, that Congress intended to grant "common schools," or any entity aside from the people, the right to a republican form of government. *See* Enabling Act §§ 4, 7, 14.

B. The Colorado Constitution Does Not Confer Political Subdivision Plaintiffs The Right To A Republican Form Of Government

Notwithstanding the plain language of the Enabling Act, Political Subdivision Plaintiffs argue this Court should look to the Colorado Constitution to determine what rights were granted by the Enabling Act, because the Colorado Constitution was established pursuant to, and in compliance with, the Enabling Act. FAC ¶¶ 111–16; Op. Br. at 18–21. Political Subdivision Plaintiffs argue that, since the Colorado Constitution sets forth a complex structure of governance and funding, the president's grant of statehood necessarily approved that structure as being republican in form. Op. Br. at 18–21.[4]

[4] Of note, the Colorado Constitution is not a federal statute and does not purport to grant federal rights. If Political Subdivision Plaintiffs are alleging TABOR violates a state conferred right, that claim should have been brought in a state court. *See* 28 U.S.C. § 1331.

This argument suffers a major flaw. To enter the Union, the Colorado Constitution only had to meet the base requirements of the Enabling Act; it did not provide the universe of allowable provisions. *See Ex parte Webb*, 225 U.S. 663, 680 (1912) (discussing the approval of Oklahoma's Constitution that contained provisions both prescribed and not specifically prescribed in the Oklahoma Enabling Act). The Enabling Act guaranteed the *people* of Colorado the right to a republican form of government; thus, at a minimum, the Colorado Constitution had to guarantee the *people* of Colorado the same. *See* Enabling Act § 4. Any additional rights or powers, outside the scope of the Enabling Act, contained in the Colorado Constitution do not constitute federally conferred or protected rights or powers. *See* U.S. CONST. amend. X; COLO. CONST. Preamble.

Political Subdivision Plaintiffs do not have a legally protected right to a republican form of government via the Guarantee Clause, Enabling Act, or Colorado Constitution, and cannot allege an Article III injury to a protected right, nor an injury to a specifically granted right as required for political subdivision standing. Thus, Political Subdivision Plaintiffs, as a jurisdictional matter, lack standing to pursue the underlying action.

II. POLITICAL SUBDIVISION PLAINTIFFS HAVE FAILED TO DEMONSTRATE THAT TABOR INJURES THEIR PURPORTED, LEGALLY PROTECTED INTEREST

Assuming *arguendo*, Political Subdivision Plaintiffs have a federally protected right to a republican form of government and this Circuit chooses to weigh in on what constitutes a republican form of government,[5] TABOR does not cause any injury to that alleged right.

[5] The Supreme Court consistently treats claims for a violation of a republican form of government as political questions "not cognizable by the judicial power." *Pacific States*

To establish an Article III injury, in addition to alleging a legally protected interest, a plaintiff must affirmatively allege an injury to that same interest. *Lujan*, 504 U.S. at 560. Similarly, under political subdivision standing, a political subdivision may only bring suit against its creating state when the political subdivision is asserting a state violation of a federal right granted to the political subdivision by the federal statute sought to be enforced. *City of Hugo*, 656 F.3d at 1257–58 (citing *Branson*, 161 F.3d at 629, 630, 637).

The "distinguishing feature of [a republican form of government] is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies . . . ." *In re Duncan*, 139 U.S. 449, 459–62 (1891). James Madison defined a republic as "a government which derives all its powers directly or indirectly from the great body of the people," and goes on to state it is "ESSENTIAL" that a republic "be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it." THE FEDERALIST NO. 39 (James Madison) (emphasis in original); *see Republic*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining republic as a "system of government in which *the people* hold sovereign power and elect representatives who exercise that power") (emphasis added). In the entire text of Federalist No. 39, while Madison discusses the essential and sufficient features of a republic in depth, at no point does Madison mention taxation. Similarly, the Constitution,

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Tel. & Tel. Co. v. State of Oregon, 223 U.S. 118, 133 (1912); *see Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 795 n.3 (2015) ("The people's sovereign right to incorporate themselves into a State's lawmaking apparatus, by reserving for themselves the power to adopt laws and to veto measures passed by elected representatives, is one this Court has ranked a nonjusticiable political matter.") (citations omitted).

rather than *presuming* taxation is inherent in a republican form of government, specifically grants Congress the power to tax in Article I. U.S. CONST. art. I, § 8.

Political Subdivision Plaintiffs do not cite any authority that suggests the ability to tax by political subdivisions is a *requirement* of a republican form of government. While Political Subdivision Plaintiffs cite to Federalist Nos. 10, 30, 39, 51, and 57, none of those papers support their proposition. FAC ¶¶ 5–7. Federalist No. 30, the only cited paper to discuss taxing powers, provides: "[t]he conclusion is, that there must be interwoven, in the frame of the government, a general power of taxation, in one shape or another." THE FEDERALIST NO. 30 (Alexander Hamilton). That statement, however, specifically indicates the *national government* must have a *general power of taxation*. *Id.*; U.S. CONST. art. I, § 8. Hamilton draws this conclusion from the necessity of the federal government to provide for the "support of the national forces" and "for the payment of the national debts contracted." THE FEDERALIST NO. 30 (Alexander Hamilton). At no point does Hamilton extend the need for the power to tax to the states, or to entities created by the state, such as political subdivisions. *See id*. If the power to tax was inherent in the republican form of government, Hamilton would have addressed it in Federalist No. 30, or Madison would have addressed it in Federalist No. 39. Additionally, the Framers would not have had to specifically grant that power to Congress in the Constitution. Political Subdivision Plaintiffs failed to establish that taxation is an inherent necessity for a republican form of government, despite it being their burden to meet. *Lujan*, 504 U.S. at 560–61.

In fact, Political Subdivision Plaintiffs admit their power to tax was granted by statute "after" ratification of Colorado's Constitution. Op. Br. at 20 ("[T]he first Colorado

legislature *after statehood* . . . [gave] authority to the school boards to determine . . . the amount of additional revenue to be raised by special taxation if a district was willing to fund beyond its original appropriation.") (internal quotation omitted and emphasis added). Again, if the *right* to tax was inherent in a republican form of government, "the first Colorado legislature" would not have engaged in the meaningless exercise of statutorily granting the *power* to political subdivisions because the *right* would have already existed. *Id*.; *see* Colo. Rev. Stat. § 22-54-101, *et seq*.; *Kinder Morgan CO2 Co., L.P. v. Montezuma County Bd. of Comm'rs*, 396 P.3d 657, 664 (Colo. 2017) ("We strive to avoid statutory interpretations that render certain words or provisions superfluous or ineffective.").

CONCLUSION

Political Subdivision Plaintiffs believe they know better than the people of Colorado and seek to weaponize a right guaranteed *to the people* of Colorado—via the Guarantee Clause, the Enabling Act, and the Colorado Constitution—*against the people*. What could be less of a republican form of government than a political subdivision suing its creating state to override a constitutional amendment that was enacted by a popular vote of the people? If Plaintiffs are concerned about TABOR's effects, they should appeal to the people, from which Plaintiffs derive their power and authority, not to the federal judiciary. Based on the foregoing, *amici curiae* respectfully request this Circuit affirm the district court's judgment dismissing this case for a lack of jurisdiction.

DATED this 21st day of December 2020.

Respectfully submitted,

/s/ Cody J. Wisniewski

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rules of Appellant Procedure 29 and 32, Tenth Circuit Rule 32, and this Circuit's Order dated October 14, 2020, establishing page limits, that the foregoing *Amicus Curiae* Brief is limited to one-half of Appellee's Supplemental Brief, excluding the parts of the brief exempted by Federal Rule of Appellant Procedure 32(f). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 13-point font.

DATED this 21st day of December 2020.

/s/ Cody J. Wisniewski
Cody J. Wisniewski
MOUNTAIN STATES LEGAL FOUNDATION

CERTIFICATE OF ELECTRONIC FILING

In accordance with this Court's CM/ECF User's Manual and Local Rules, I hereby certify that a copy of the foregoing has been scanned for viruses with SentinelOne Antivirus, updated December 21, 2020, and is free of viruses according to that program. In addition, I certify that all required privacy redactions have been made and the electronic version of this document is an exact copy of the written document to be filed with the Clerk.

DATED this 21st day of December 2020.

/s/ Cody J. Wisniewski
Cody J. Wisniewski
MOUNTAIN STATES LEGAL FOUNDATION

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Cody J. Wisniewski
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ADDENDUM

March 3, 1875.

CHAP. 139.—An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the Territory of Colorado included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever, as hereinafter provided.

Territory of Colorado made a State.

Boundaries.

SEC. 2. That the said State of Colorado shall consist of all the territory included within the following boundaries, to wit: Commencing on the thirty-seventh parallel of north latitude where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north, on said meridian, to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian, to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude, to the place of beginning.

Who may vote at first election.

SEC. 3. That all persons qualified by law to vote for representatives to the general assembly of said Territory, at the date of the passage of this act, shall be qualified to be elected, and they are hereby authorized to vote for and choose representatives to form a convention under such rules and regulations as the governor of said Territory, the chief justice, and the United States attorney thereof may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said Territory in proportion to the vote polled in each of said counties at the last general election as near as may be; and said apportionment shall be made for said Territory by the governor, United States district attorney, and chief justice thereof, or any two of them; and the governor of said Territory shall, by proclamation, order an election of the representatives aforesaid to be held throughout the Territory at such time as shall be fixed by the governor, chief justice, and United States attorney, or any two of them, which proclamation shall be issued within ninety days next after the first day of September, eighteen hundred and seventy-five, and at least thirty days prior to the time of said election; and such election shall be conducted in the same manner as is prescribed by the laws of said Territory regulating elections therein for members of the house of representatives; and the number of members to said convention shall be the same as now constitutes both branches of the legislature of the aforesaid Territory.

Apportionment of representatives.

Time of first election, &c.

Meeting of convention to form State constitution.

SEC. 4. That the members of the convention thus elected shall meet at the capital of said Territory, on a day to be fixed by said governor, chief justice, and United States attorney, not more than sixty days subsequent to the day of election, which time of meeting shall be contained in the aforesaid proclamation mentioned in the third section of this act, and, after organization, shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said Territory: *Provided*, That the constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence: *And provided further*, That said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State, first, that perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested,

No distinction on account of race, color, &c.

Religious toleration.

in person or property, on account of his or her mode of religious worship; secondly, that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

Unappropriated public lands.

Taxes.

SEC. 5. That in case the constitution and State government shall be formed for the people of said Territory of Colorado, in compliance with the provisions of this act, said convention forming the same shall provide, by ordinance, for submitting said constitution to the people of said State for their ratification or rejection, at an election, to be held at such time, in the month of July, eighteen hundred and seventy-six, and at such places and under such regulations as may be prescribed by said convention, at which election the lawful voters of said new State shall vote directly for or against the proposed constitution; and the returns of said election shall be made to the acting governor of the Territory, who, with the chief justice and United States attorney of said Territory, or any two of them, shall canvass the same; and if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

Constitution to be submitted to popular vote.

Voting and returns.

SEC. 6. That until the next general census said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said State officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

Representative in Congress.

SEC. 7. That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands, equivalent thereto, in legal subdivisions of not more than one quarter-section, and as contiguous as may be, are hereby granted to said State for the support of common schools.

School lands.

SEC. 8. That, provided the State of Colorado shall be admitted into the Union in accordance with the foregoing provisions of this act, fifty entire sections of the unappropriated public lands within said State, to be selected and located by direction of the legislature thereof, and with the approval of the President, on or before the first day of January, eighteen hundred and seventy-eight, shall be, and are hereby, granted, in legal subdivisions of not less than one quarter-section, to said State for the purpose of erecting public buildings at the capital of said State for legislative and judicial purposes, in such manner as the legislature shall prescribe.

Land for public buildings.

SEC. 9. That fifty other entire sections of land as aforesaid, to be selected and located and with the approval as aforesaid, in legal subdivisions as aforesaid, shall be, and they are hereby, granted to said State for the purpose of erecting a suitable building for a penitentiary or State prison in the manner aforesaid.

Penitentiary.

SEC. 10. That seventy-two other sections of land shall be set apart and reserved for the use and support of a State university, to be selected and approved in manner as aforesaid, and to be appropriated and applied as the legislature of said State may prescribe for the purpose named and for no other purpose.

State university.

Salt-springs.

SEC. 11. That all salt-springs within said State, not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said State for its use, the said land to be selected by the governor of said State within two years after the admission of the State, and when so selected to be used and disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided*, That no salt-spring or lands the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State.

Proviso.

Five per cent. of sales of public lands for internal improvements.

SEC. 12. That five per centum of the proceeds of the sales of agricultural public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making such internal improvements within said State as the legislature thereof may direct: *Provided*, That this section shall not apply to any lands disposed of under the homestead-laws of the United States, or to any lands now or hereafter reserved for public or other uses.

Proviso.

Unexpended balances of appropriations.

SEC. 13. That any balance of the appropriations for the legislative expenses of said Territory of Colorado remaining unexpended shall be applied to and used for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and rates as are now provided by law for the payment of the territorial legislature.

School-fund.

SEC. 14. That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school-fund, the interest of which to be expended in the support of common schools.

Mineral lands.

SEC. 15. That all mineral-lands shall be excepted from the operation and grants of this act.

Approved, March 3, 1875.

March 3, 1875.

CHAP. 140.—An act to establish the boundary-line between the State of Arkansas and the Indian country.

Boundary-line between Arkansas and the Indian country.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the boundary-line between the State of Arkansas and the Indian country, as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary-line between the said State of Arkansas and the Indian country.

Boundary-line to be retraced, &c.

SEC. 2. That the Secretary of the Interior shall, as soon as practicable, cause the boundary-line, as fixed in the foregoing section, to be retraced and marked in a distinct and permanent manner; and if the original line, when retraced, shall be found to differ in any respect from what the boundary-line would be if run in accordance with the provisions of the treaties establishing the eastern boundary-line of the Choctaw and Cherokee Nations, then the surveyors shall note such variations and compute the area of the land which in that case would be taken from the State of Arkansas or the Indian country, as the case may be; and the Secretary of the Interior shall also cause any monuments set up in any former survey indicating any line at variance with the survey provided for in this act to be obliterated.

Variations to be noted, &c.

Approved, March 3, 1875.