

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

CONSOLIDATED CASE NO.:

) **4FA-11-2209-CI**

) 4FA-11-2213 CI

) 1JU-11-782 CI

) 4FA-13-2435 CI

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR
SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' CLAIM
HOUSE DISTRICTS 1 THROUGH 5 HAVE UNNECESSARILY
HIGHER DEVIATIONS FROM THE IDEAL DISTRICT**

**I.
INTRODUCTION**

Plaintiffs Riley and Dearborn ("Riley Plaintiffs") claim the Alaska Redistricting Board's ("Board") 2013 Proclamation Plan fails to comply with Article VI, section 8 of the Alaska Constitution because House Districts 1 through 5 allegedly contain "unnecessarily higher deviations from the ideal district population and do not contain populations as near as practicable to the quotient obtained by dividing the population of the state by forty."¹ All of the districts within the Fairbanks North Star Borough

¹ First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶ 16 ("Riley Plaintiffs' Renewed Application"). The Riley Plaintiffs incorrectly cite to Article VI, section 8 of the Alaska Constitution, which pertains to the creation of the redistricting board and how each member is appointed. *See* Alaska Const. art. VI, § 8. Section 8 has nothing to do with the House and Senate district boundary requirements. Article VI, section 6, on the other hand, requires House districts "be conformed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area" and "contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty." Alaska Const. art. VI, § 6. The Board will presume for the sake of argument that the Riley Plaintiffs intended to cite to Article VI, section 6 despite their failure to correct the citation in their First Amended Renewed Application. As established herein, the Board's 2013 Proclamation Plan complies in all respects with the requirements of Article VI, section 6.

("FNSB"), House Districts 1 through 5, have a deviation of less than one-half of one percent, with three districts having a deviation of less than one-fifth of one percent from the ideal district size.² Each district is less than 100 people either short of, or in excess of, the ideal district size of 17,755 people.³ The overall deviation in these five districts is 0.92%, less than one percent, while the overall deviation of the 2013 Proclamation Plan is 4.2%. These are the lowest deviations in redistricting history, even lower than both the original 2011 Proclamation Plan and the Amended Proclamation Plan. There is no genuine issue of material fact that House Districts 1 through 5 contain a population as near as practicable to the ideal district size while simultaneously complying with the other constitutional requirements of compactness, contiguity, and socio-economic integration. The Board is entitled to summary judgment.

II. FACTS

The 2010 Census reported the state of Alaska has 710,231 people.⁴ Thus, the ideal House district would contain 17,755 people.⁵ House District 1 is 29 people short of an ideal district, with a -0.16% deviation from an ideal district size.⁶ House District 2

² ARB00017353.

³ *Id.*

⁴ ARB00006548.

⁵ *Id.*

⁶ ARB00017353.

is seventeen people short, with a -0.10% deviation from an ideal district size.⁷ House District 3 is 82 people short, with a -0.46% deviation from an ideal district size.⁸ House District 4 has 31 people more than the ideal district size, with a deviation of 0.17%.⁹ House District 5 has 82 people more than the ideal district size, with a deviation of 0.46%, resulting in an overall deviation in the Fairbanks area of 0.92%.¹⁰

III. LEGAL STANDARD

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law.¹¹ The moving party has the burden of showing that there are no genuine issues of material fact.¹²

Once the moving party has met this burden, the non-movant “is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that [he] could produce admissible evidence reasonably tending to dispute or contradict the

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Alaska R. Civ. P. 56; *e.g.*, *Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985).

¹² *Id.*

movant's evidence, and thus demonstrate that a material issue of fact exists."¹³ Any allegations of fact by the non-movant must be based on competent, admissible evidence.¹⁴ The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.¹⁵

IV. ANALYSIS

The cornerstone of redistricting is one person, one vote. To achieve this goal, the Alaska Constitution requires each House district contain "a population as near as practicable to the quotient obtained by dividing the population of the state by forty."¹⁶ The overriding objective is "substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state."¹⁷

The legislature recognized it is impossible to create 40 House districts each with an exact ideal population, and, accordingly, included the language "as near as

¹³ *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

¹⁴ Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

¹⁵ *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

¹⁶ Alaska Const. art. VI, § 6.

¹⁷ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987), quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

practicable.”¹⁸ Although Federal law permits a ten percent overall deviation from the ideal district, the “as near as practicable” language added to the Alaska Constitution in 1998 makes Article VI, section 6, in many cases, stricter than the federal threshold.¹⁹ The Alaska Supreme Court acknowledged, however, that in urban areas in particular, the population is sufficiently dense and evenly spread to allow minimal population deviations, especially in light of the newly available technological advances.²⁰

In the 2001 redistricting cases, the Alaska Supreme Court found the overall deviation of 9.5% in the Anchorage House districts unconstitutional.²¹ The high court did not, however, reject deviations of up to 5% in the Fairbanks or Kenai Peninsula districts.²² The Supreme Court agreed with Judge Rindner that these population deviations in the amended plan did not violate the equal protection requirements of the Alaska Constitution.²³ The high court also approved the amended Anchorage districts

¹⁸ Alaska Const. art. VI, § 6.

¹⁹ *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-146 (Alaska 2002).

²⁰ *Id.*

²¹ *Id.*

²² *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094-1095 (Alaska 2002) (agreeing with Judge Rindner’s finding that since the Supreme Court did not require the Board to reduce the deviations in other areas as it did with Anchorage, all the other population deviations of the June 18, 2001 plan were affirmed). House Districts 7 through 11 in the Fairbanks area had deviations of 4.8%, 4.0%, 5.0%, 2.8%, and 5.0% respectively in the June 18, 2001 plan. *See* Exhibit A (Proclamation Population Analysis and House Districts 7 through 11 Maps).

²³ *Id.*

which brought the deviations all within 1.1% of an ideal district size, with an overall deviation in the Anchorage area of 1.35%.²⁴

House District 1 has a deviation of -0.16% from the ideal district of 17,755 people, short only 29 people.²⁵ House District 2 is 17 people short, with a -0.10% deviation from an ideal district size.²⁶ House District 3 has a deviation of -0.46% and is short 82 people, while House District 4 has 31 people more than the ideal district size, with a deviation of 0.17%.²⁷ House District 5 has 82 people more than the ideal district size, with a deviation of 0.46%.²⁸ The overall deviation in the Fairbanks area is 0.92%, less than one percent for five House districts.²⁹

These deviations are far less than those previously upheld by the Alaska Supreme Court in 2002, and less than the deviations in both the original 2011 Proclamation Plan and the Amended Proclamation Plan.³⁰ The five House districts containing population

²⁴ *Id.* at 1094.

²⁵ ARB00017353.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* ARB00006583; *see also* ARB00015160.

from the FNSB in the original 2011 Proclamation Plan (House Districts 1 through 5) had deviations of 1.40%, 1.51%, 2.03%, 1.96%, and 2.08% respectively.³¹

The Riley Plaintiffs did not challenge any of these deviations as being unnecessarily high or failing to contain a population as near as practicable to the ideal district size.³² In fact, the plan submitted by counsel for the Riley Plaintiffs on June 21, 2013, the Gazewood & Weiner Plan, had much higher deviations in the Fairbanks districts than those they now challenge.³³ House Districts 6 through 10 in the Gazewood & Weiner Plan contain population from the FNSB and have deviations of 2.44%, 0.06%, 0.66%, 1.00%, and 0.93% respectively. Only one is less than one-half of one percent, while the deviations of all five of the Board's House districts presently being challenged by the Riley Plaintiffs are less than one-half of one percent.³⁴ The deviation of the Fairbanks area in the Gazewood & Weiner Plan is 2.38%, while the Board's is less than one percent at 0.92%. The overall deviation of the Gazewood & Weiner Plan is 9.9%, barely under the federal threshold of ten percent, while the overall deviation of the Board's 2013 Proclamation Plan is 4.2%, the lowest in redistricting history.

³¹ ARB00006583.

³² *See* ARB00006452-6456.

³³ ARB00017295-17304.

³⁴ ARB00017353.

Plainly, the deviations of House Districts 1 through 5 are, as near as practicable, equal to an ideal district size. The Board was able to achieve such low deviations while also creating compact, contiguous, and socio-economically integrated districts. As this Court noted in its February 3, 2012 opinion, while the Board's intent to achieve low deviations is commendable, it must live in harmony with the other constitutional requirements.³⁵ This Court explained "the Supreme Court's instruction did not imply that justification for deviating from the lowest possible deviation would not be accepted[;] [i]t simply stated that the Board must try to achieve low deviations."³⁶ The Board has done just that. It has achieved lower deviations than any previous redistricting plan, including the Riley Plaintiffs' own proposed plan, and it did so all while harmonizing with the other constitutional requirements.

V. CONCLUSION


House Districts 1 through 5 do not contain unnecessarily higher deviations from the ideal district size. These districts contain "as near as practicable" a population equal to the ideal district and therefore comply with Article VI, section 6 of the Alaska Constitution. Accordingly, the Board is entitled to summary judgment on this matter.

³⁵ See Memorandum Decision and Order Re: 2011 Proclamation Plan at 116 (February 3, 2013).

³⁶ *Id.*

DATED at Anchorage, Alaska this 12th day of September 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September 2013, a true and correct copy of the foregoing document was served on the following via:

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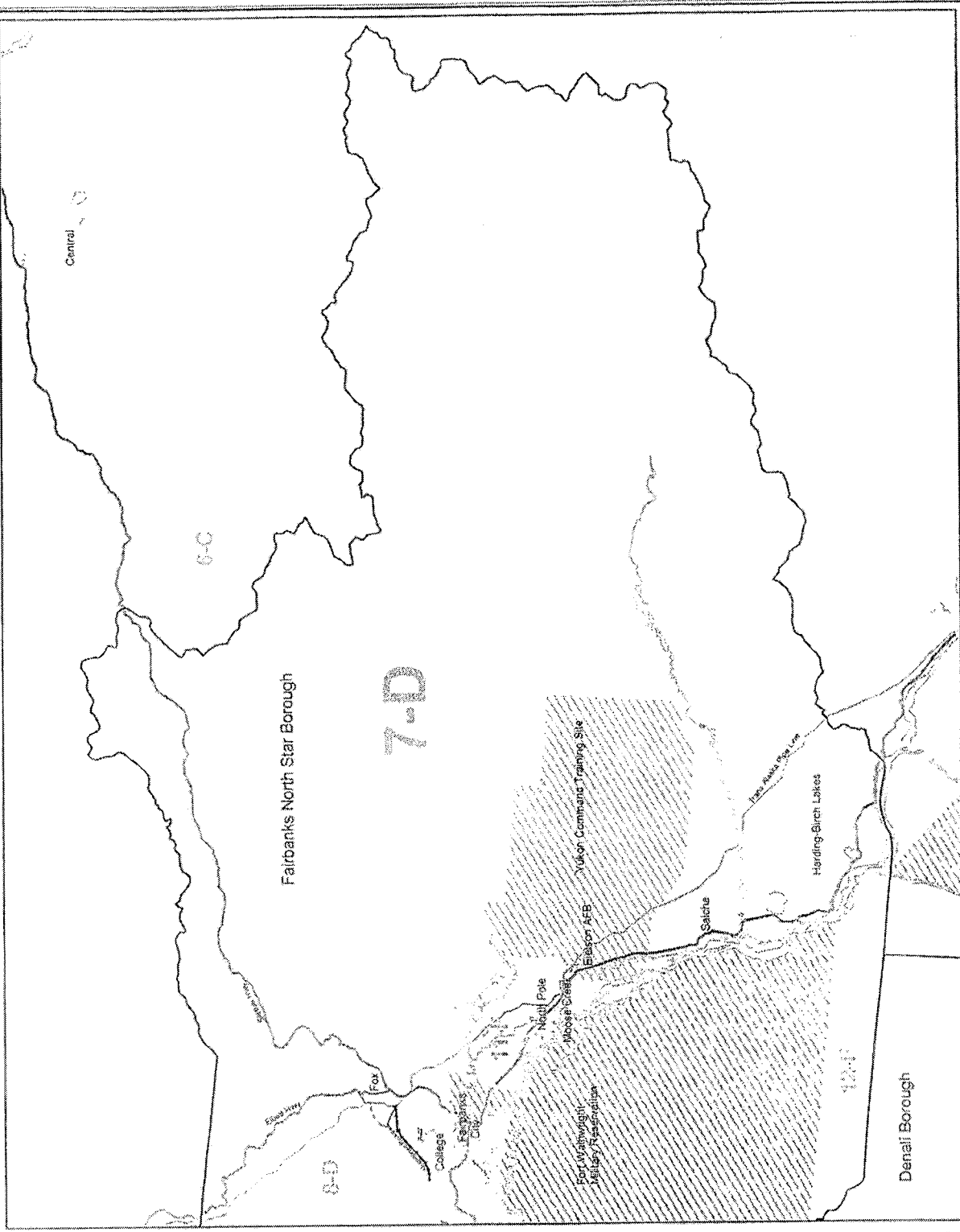
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Proclamation District Population Analysis					
House District	Senate District	Total Population	Per Cent Deviation from ideal (15673)	Per Cent Alaska Native*	18+ Population
1		15031	-4.10%	17.62%	10817
2		14991	-4.40%	20.14%	10809
3	A	30022	18.88%	18.88%	21628
4		15203	-3.00%	17.99%	11459
5		15508	-1.10%	12.10%	10835
6	B	30711	15.02%	15.02%	22294
7		15057	-3.90%	37.88%	10676
8		15443	-1.50%	56.35%	10052
9	C	30500	47.23%	47.23%	20730
10		16432	4.80%	5.06%	10879
11		16307	4.00%	9.61%	12069
12	D	32739	7.33%	7.33%	22948
13		16458	5.00%	17.37%	11990
14		16111	2.80%	7.74%	10989
15	E	32589	12.61%	12.61%	22979
16		16452	5.00%	7.13%	11216
17		16454	5.00%	7.34%	11649
18	F	32906	7.24%	7.24%	22865
19		16258	3.70%	8.14%	10852
20		16213	3.40%	7.81%	10660
21	G	32471	7.98%	7.98%	21512
22		16409	4.70%	8.82%	11297
23		14908	-4.90%	6.99%	10248
24	H	31317	7.95%	7.95%	21545
25		15009	-4.20%	4.35%	10140
26		16432	4.80%	4.19%	10881
27	I	31441	4.27%	4.27%	21021
28		14932	-4.70%	14.28%	10390
29		15490	-1.20%	17.95%	10152
30	J	30422	16.15%	16.15%	20542
31		15773	0.60%	8.00%	11151
32		14941	-4.70%	13.06%	10896
33	K	30714	10.46%	10.46%	22047
34		14993	-4.30%	18.05%	11847
35		15039	-4.00%	11.16%	11160
36	L	30032	14.50%	14.50%	23007
37		15329	-2.20%	12.73%	11920
38		15131	-3.50%	8.77%	11286
39	M	30460	10.78%	10.78%	23206
40		16424	4.80%	8.09%	11489
41		16317	4.10%	6.49%	11317
42	N	32741	7.29%	7.29%	22806
43		16420	4.80%	9.50%	11729
44		16179	3.20%	8.36%	10976
45	O	32599	8.93%	8.93%	22705
46		16191	3.30%	6.65%	10992
47		15186	-3.10%	5.46%	10975
48	P	31377	6.07%	6.07%	21967
49		16466	5.10%	9.14%	11220
50		16409	4.70%	7.93%	11524
51	Q	32875	8.54%	8.54%	22744
52		16436	4.90%	11.44%	11815
53		14928	-4.80%	21.26%	10019
54	R	31364	16.11%	16.11%	21834
55		15150	-3.30%	47.26%	11192
56		14921	-4.80%	85.36%	8970
57	S	30071	68.18%	68.18%	20162
58		15008	-4.20%	84.71%	8891
59		14593	-6.90%	78.82%	8784
60	T	29601	81.80%	81.80%	17675

Prepared by Alaska Redistricting Board

* Alaska Native race defined as people who identified themselves in the census as a single race, Alaska Native, or White and Alaska Native, according to guidelines of U.S. Department of Justice.

Proclamation House Districts



House District 7
 House districts proclaimed by
 Alaska Redistricting Board
 June 16, 2001



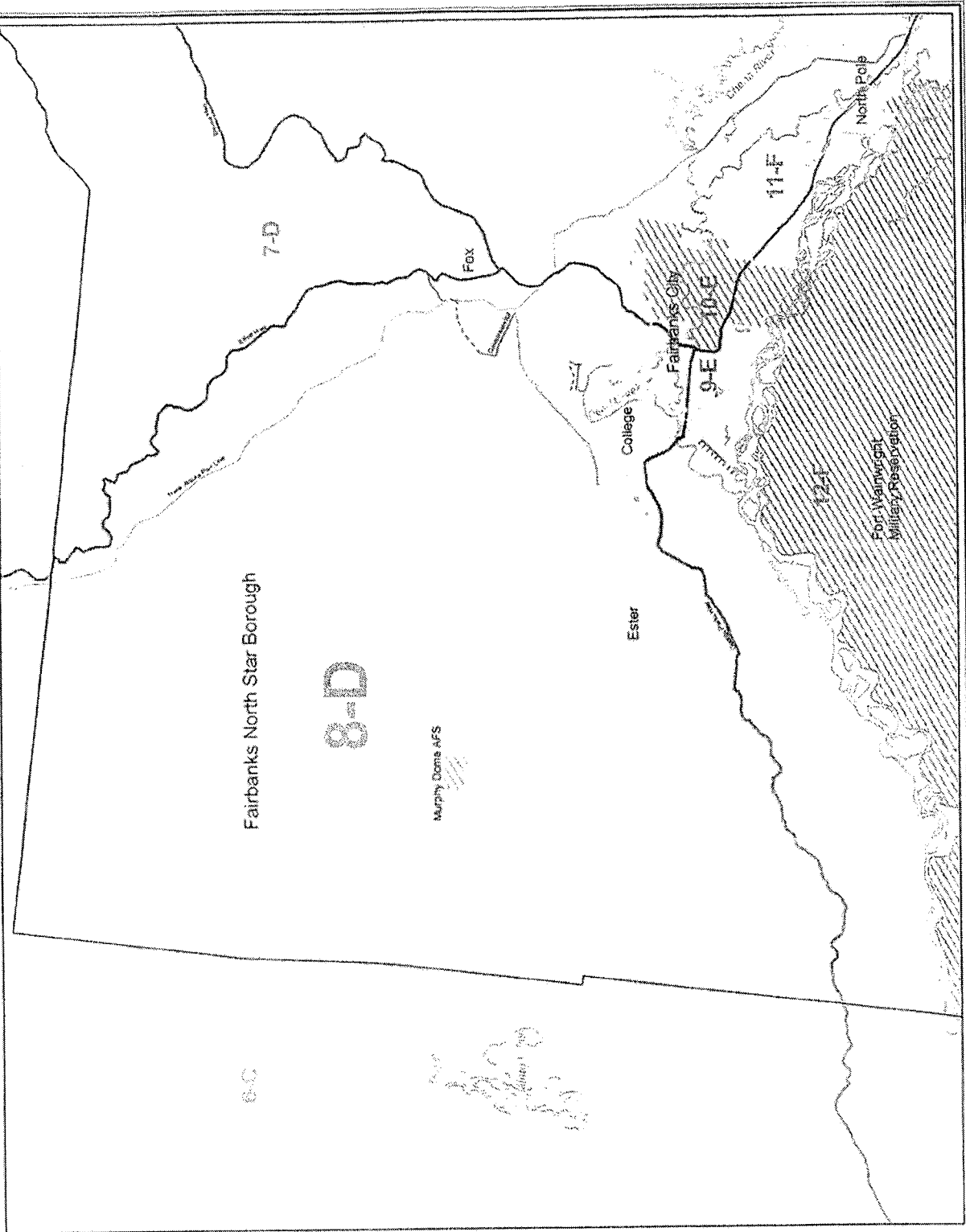
Legend

- Borough Boundary
- City Boundary
- Railroad
- Military Base
- Airport



Prepared by Alaska Redistricting Board

Proclamation House Districts



House District 8
 House districts proclaimed by
 Alaska Redistricting Board
 June 18, 2001

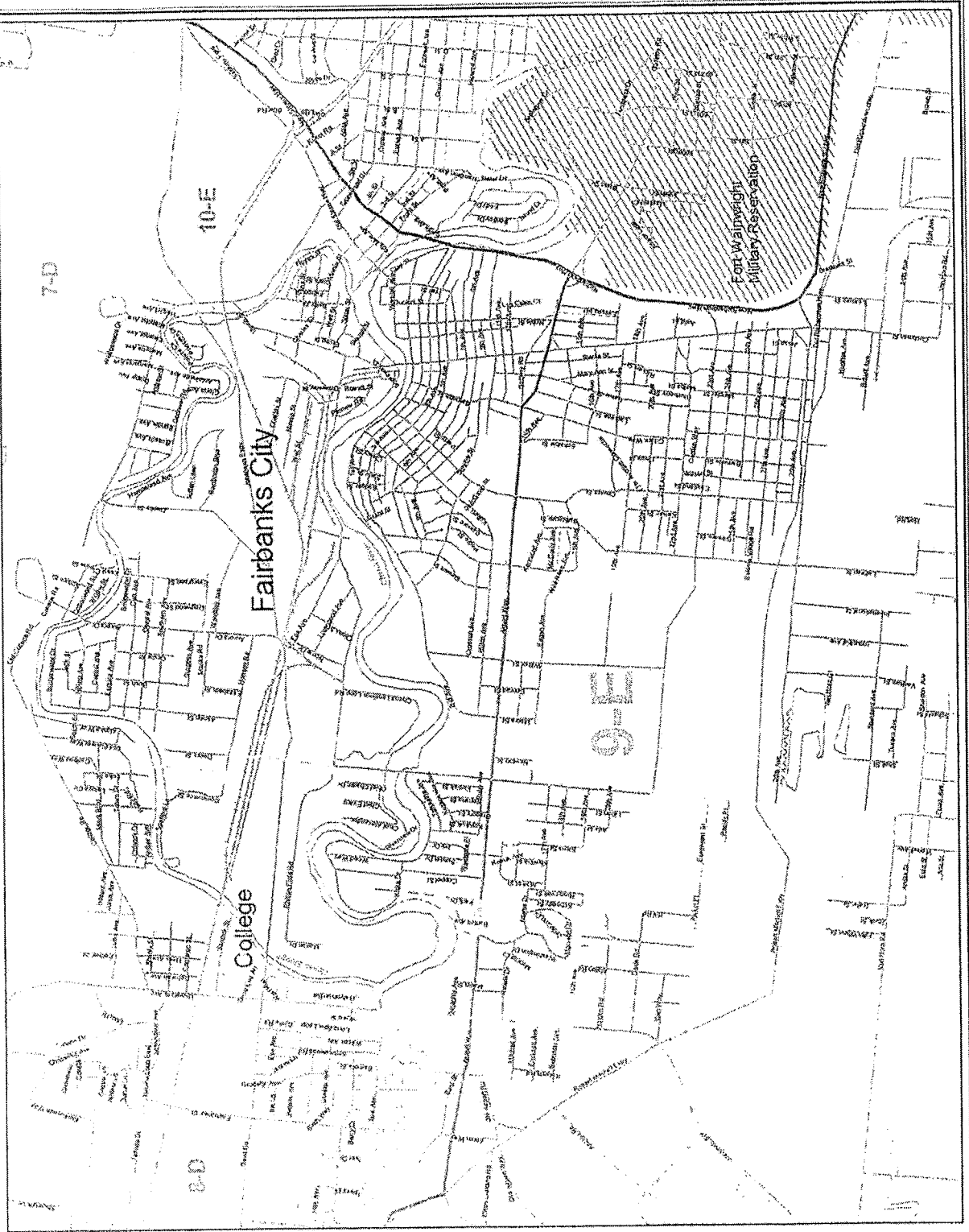


Legend
City Boundary
Railroad
Military Base
Airport

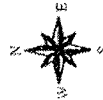


Prepared by Alaska Redistricting Board

Proclamation House Districts



House District 9
 House districts proclaimed by
 Alaska Redistricting Board
 June 16, 2001

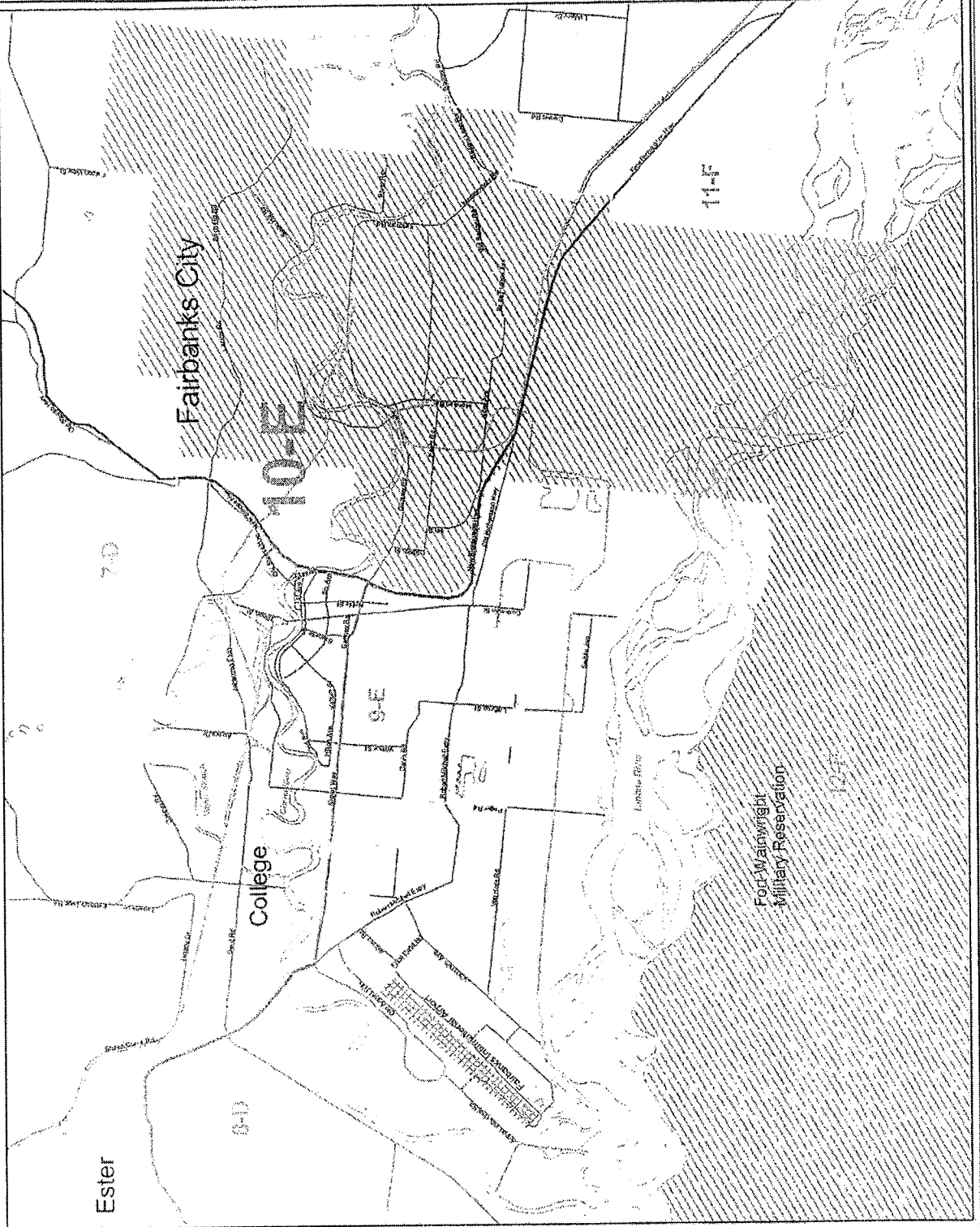


Legend
City Boundary
Railroad
Military Base
Airport



Prepared by Alaska Redistricting Board

Proclamation House Districts



House District 10
 House districts proclaimed by
 Alaska Restructuring Board
 June 18, 2001



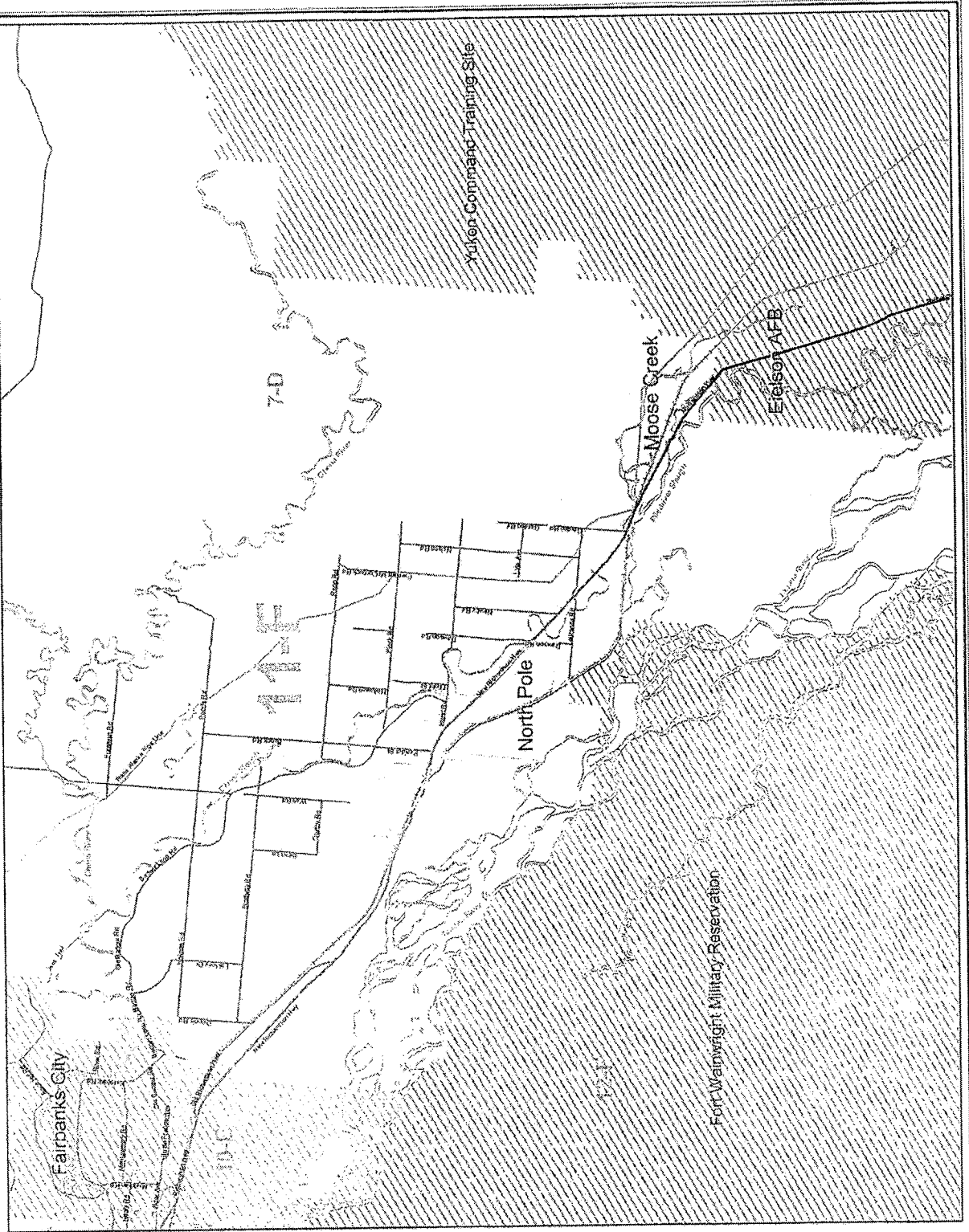
Legend

- City Boundary
- Railroad
- Military Base
- Airport



Prepared by Alaska Restructuring Board

Proclamation House Districts



House District 11
 House districts proclaimed by
 Alaska Redistricting Board
 June 13, 2001



Legend

- City Boundary
- Railroad
- Military Base



Prepared by Alaska Redistricting Board