

269

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**

DEFENDANT ALASKA REDISTRICTING BOARD'S
MOTION FOR SUMMARY JUDGMENT RE: RILEY PLAINTIFFS'
CLAIM HOUSE DISTRICTS 9 AND 12 HAVE UNNECESSARILY
HIGHER DEVIATIONS FROM THE IDEAL DISTRICT

COMES NOW, Defendant Alaska Redistricting Board ("Board"), by and through counsel Patton Boggs LLP, pursuant to Alaska Rule of Civil Procedure 56, and for the reasons set for in the Memorandum of Points and Authorities in Support of Defendant Alaska Redistricting Board's Motion for Summary Judgment re: Riley Plaintiffs' Claim House Districts 9 and 12 have Unnecessarily Higher Deviations from the Ideal District (the "Memorandum") filed contemporaneously herewith, hereby moves this Court for entry of partial summary judgment.

As set forth more fully in the accompanying Memorandum, there is no genuine dispute as to any material fact that House Districts 9 and 12 contain "a population as near as practicable" to the ideal district size in accordance with Article VI, section 6 of the Alaska Constitution. The Board Record establishes that House District 9 is short only 16 people from the ideal district size, making it the House District with the second lowest deviation of the 2013 Proclamation Plan; House district 12 has a deviation of

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only -0.47%. The Plaintiffs simply cannot dispute this evidence. Therefore, the Riley Plaintiffs' claims fail as a matter of law.

Accordingly, the Board is entitled to summary judgment on Plaintiffs' claims alleging House Districts 9 and 12 have unnecessarily higher deviations than the ideal district. The Board requests this Court deny the Riley Plaintiffs' claims regarding unnecessarily higher deviations than the ideal district as to House Districts 9 and 12, and enter judgment for the Board.

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

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In Re 2011 Redistricting Cases, Consolidated Case No. 4FA-11-02209 CI
Page 3 of 3

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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In Re 2011 Redistricting Cases.) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR
SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' CLAIM
HOUSE DISTRICTS 9 AND 12 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 9 and 12 allegedly "do not contain populations as near as practicable to the quotient obtained by dividing the population of the state by forty."¹ House District 9 is only 16 people short of an ideal district size, and has the second lowest deviation in the entire plan, second only to House District 22

¹ First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶ 20 ("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.

that contains the exact number of people as the ideal district. House District 12 is equally as close to practicable to the ideal district size, short only 84 people from the ideal district. The low deviations in these two districts contribute to the minimal overall deviation of the 2013 Proclamation Plan, which has the lowest deviation 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 9 and 12 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.² Thus, the ideal House district would contain 17,755 people.³ House District 9 is only 16 people short of an ideal district size, with a minimal deviation of -0.09%.⁴ This is the second lowest deviation of the entire plan, second only to House District 22 which contains the exact number of people as the ideal district.⁵ House District 12 is short 84 people, with

² ARB00006548.

³ *Id.*

⁴ ARB00017353.

⁵ *Id.*

a deviation of -0.47%.⁶ The overall deviation of the districts which contain population from the Mat-Su Borough, including House Districts 9 and 12, is 0.9%.⁷

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.⁸ The moving party has the burden of showing that there are no genuine issues of material fact.⁹

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 movant’s evidence, and thus demonstrate that a material issue of fact exists.”¹⁰ Any allegations of fact by the non-movant must be based on competent, admissible evidence.¹¹ The non-movant may not rest upon mere allegations or denials, but must

⁶ *Id.*

⁷ *Id.*

⁸ 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).

⁹ *Id.*

¹⁰ *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

¹¹ Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

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.¹²

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.”¹³ 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.”¹⁴

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 practicable.”¹⁵ 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.¹⁶

¹² *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

¹³ Alaska Const. art. VI, § 6.

¹⁴ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987), quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

¹⁵ Alaska Const. art. VI, § 6.

¹⁶ *In re 2001 Redistricting Cases*, 44 P.3d 141, 145-146 (Alaska 2002).

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.¹⁷

In the 2001 redistricting cases, the Alaska Supreme Court found the overall deviation of 9.5% in the Anchorage House districts unconstitutional.¹⁸ The high court did not, however, reject deviations of up to 5% in the Fairbanks or Kenai Peninsula districts.¹⁹ 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.²⁰ The Court also approved the amended Anchorage districts which brought the deviations all within 1.1% of an ideal district size, with an overall deviation in the Anchorage area of 1.35%.²¹

House District 9 is short only 16 people from the ideal district size of 17,755.²² This is a deviation of only -0.09%, or 9/100th of one percent.²³ House District 9 has the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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).

²⁰ *Id.*

²¹ *Id.* at 1094.

²² ARB00017353.

second lowest deviation out of the 40 House districts in the 2013 Proclamation Plan, second only to House District 22 which contains a population exactly equal to the ideal district population.²⁴ And yet, the Riley Plaintiffs disingenuously claim that this microscopic deviation is not “as near as practicable to the quotient obtained by dividing the population of the state by forty,” notwithstanding the fact that they themselves previously submitted a plan for the Mat-Su area with much higher deviations.²⁵ House District 12 contains an equally minute deviation, only 84 people short of the ideal population of 17,755 with a deviation of -0.47%.²⁶ The overall deviation in the Mat-Su Borough area is 0.9%, less than one percent for six House districts.²⁷

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.²⁸ The six House districts containing population from the Mat-Su Borough in the original 2011 Proclamation Plan (House Districts 6 through 11) had deviations of 3.61%, 0.06%, 0.46%, 0.37%, 0.25%, and 0.40%

²³ *Id.*

²⁴ *Id.*

²⁵ First Amended Renewed Application at ¶ 20; *see infra* at pg. 7.

²⁶ ARB00017353.

²⁷ *Id.*

²⁸ *See* ARB00006583; *see also* ARB00015160.

respectively.²⁹ Despite having much higher deviations than the current House Districts in the Mat-Su region, 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.³⁰

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 Mat-Su area than those they now challenge.³¹ House Districts 11 through 15 in the Gazewood & Weiner Plan contain population from the Mat-Su Borough and have deviations of -1.35%, 1.21%, -0.59%, 0.81%, and 1.17% respectively.³² All of the House districts in the Gazewood & Weiner plan have a deviation of more than one-half of one percent from the ideal district, with three out of the five above 1.0%.³³ The deviations in the Board's House districts which the Riley Plaintiffs challenge, on the other hand, are all below one-half of one percent.³⁴ The deviation in the Mat-Su area in the Gazewood & Weiner Plan is 2.56%³⁵, much higher than the Board's overall deviation in this same area of

²⁹ ARB00006583.

³⁰ See ARB00006452-6456.

³¹ ARB00017295-17304.

³² ARB00017296.

³³ *Id.*

³⁴ ARB00017353.

³⁵ ARB00017296.

only 0.9%.³⁶ The overall deviation of the Gazewood & Weiner Plan is 9.9%, barely under the federal threshold of ten percent.³⁷ The Board's 2013 Proclamation Plan, however, has an overall deviation of 4.2%, the lowest in redistricting history.³⁸

There is simply no question of material fact that the Board has achieved as near practicable equal populations to the ideal district in both House District 9 and House District 12. House District 9 is only 16 people short, with a deviation of only -0.09%, the second lowest of the entire plan.³⁹ House District 12 has an equally low deviation with only 84 people short of an ideal district.⁴⁰

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.⁴¹ 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

³⁶ ARB00017353.

³⁷ ARB00017296.

³⁸ ARB00017353.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See* Memorandum Decision and Order Re: 2011 Proclamation Plan at 116 (February 3, 2013).

stated that the Board must try to achieve low deviations.”⁴² 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 while harmonizing with the other constitutional requirements.

**V.
CONCLUSION**

House District 9 and House District 12 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. The Board is entitled to summary judgment on this matter.

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

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⁴² *Id.*

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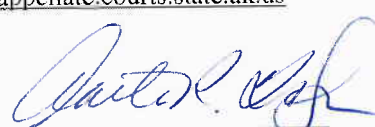
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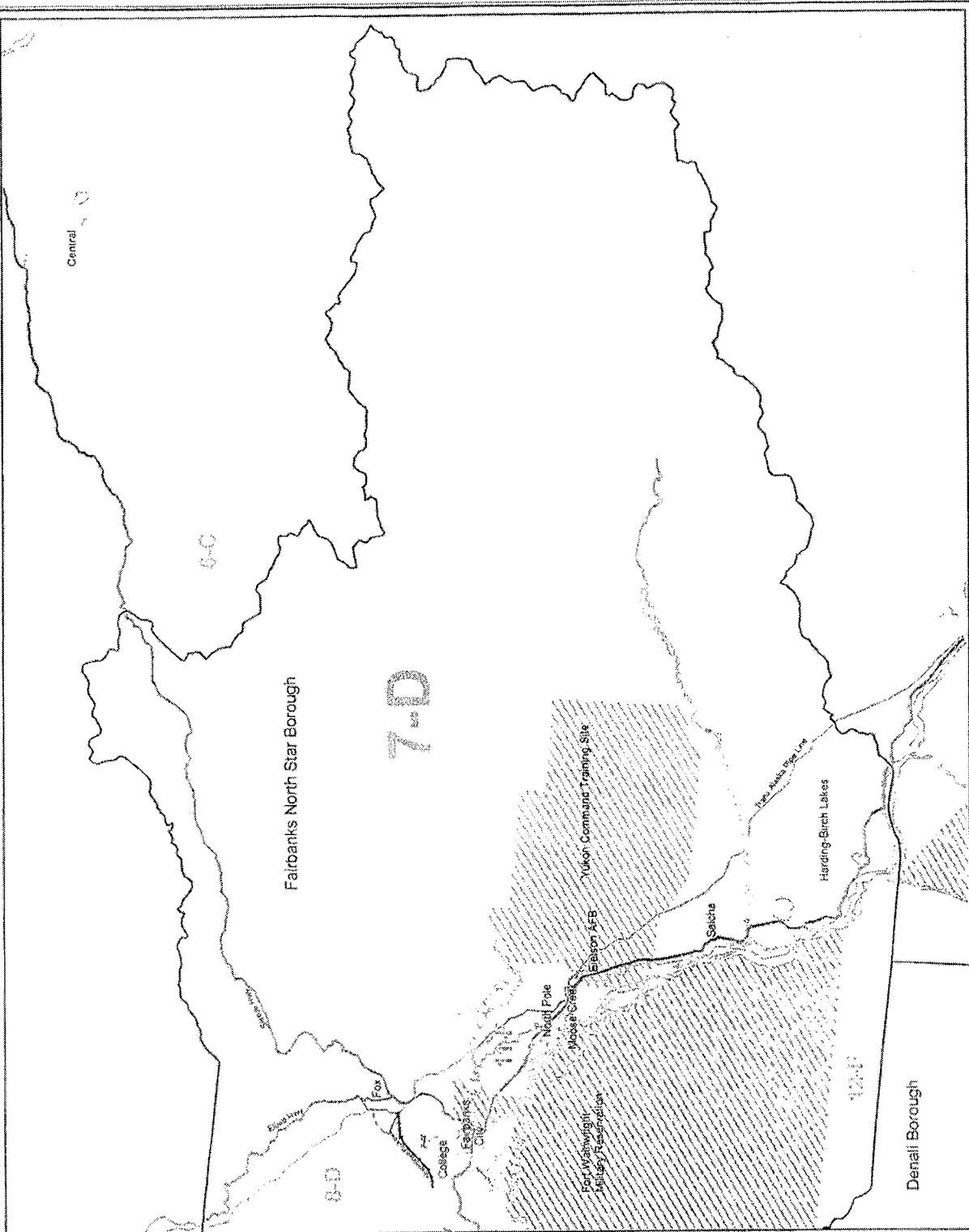
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Proclamation District Population Analysis					
House District	Senate District	Total Population	Per Cent Deviation from ideal (15673)	Per Cent Alaska Native*	18+ Population
1		15031	-4.10%	17.62%	10817
2		14991	-4.40%	20.14%	10809
3	A	30022	18.88%	21628	
4		15203	-3.00%	17.99%	11459
5		15508	-1.10%	12.10%	10833
6	B	30711	15.02%	22294	
7		15057	-3.90%	37.88%	10678
8		15443	-1.50%	56.35%	10052
9	C	30500	47.23%	20730	
10		16432	4.80%	5.06%	10879
11		16307	4.00%	9.61%	12069
12	D	32739	7.33%	22948	
13		16458	5.00%	17.37%	11990
14		16111	2.80%	7.74%	10989
15	E	32589	12.61%	22979	
16		16452	5.00%	7.13%	11218
17		16454	5.00%	7.34%	11649
18	F	32906	7.24%	22865	
19		16258	3.70%	8.14%	10852
20		16213	3.40%	7.81%	10660
21	G	32471	7.98%	21512	
22		16409	4.70%	8.82%	11297
23		14908	-4.90%	6.99%	10248
24	H	31317	7.95%	21545	
25		15009	-4.20%	4.35%	10140
26		16432	4.80%	4.19%	10881
27	I	31441	4.27%	21021	
28		14932	-4.70%	14.28%	10390
29		15490	-1.20%	17.95%	10152
30	J	30422	16.15%	20542	
31		15773	0.80%	8.00%	11151
32		14941	-4.70%	13.06%	10896
33	K	30714	10.46%	22047	
34		14993	-4.30%	18.05%	11847
35		15039	-4.00%	11.16%	11160
36	L	30032	14.60%	23007	
37		15329	-2.20%	12.73%	11920
38		15131	-3.50%	8.77%	11286
39	M	30480	10.78%	23206	
40		16424	4.80%	8.09%	11489
41		16317	4.10%	6.49%	11317
42	N	32741	7.29%	22806	
43		16420	4.80%	9.50%	11729
44		16179	3.20%	8.36%	10976
45	O	32599	8.93%	22705	
46		16191	3.30%	6.65%	10992
47		15186	-3.10%	5.46%	10975
48	P	31377	6.07%	21967	
49		16466	5.10%	9.14%	11220
50		16409	4.70%	7.93%	11524
51	Q	32875	8.54%	22744	
52		16436	4.90%	11.44%	11815
53		14928	-4.80%	21.26%	10019
54	R	31364	16.11%	21834	
55		15150	-3.30%	47.26%	11192
56		14921	-4.80%	85.36%	8970
57	S	30071	66.18%	20162	
58		15008	-4.20%	84.71%	8891
59		14593	-6.90%	78.82%	8784
60	T	29601	81.80%	17675	

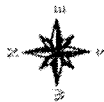
Prepared by Alaska Redistricting Board

* 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 Restricting Board
 June 16, 2001



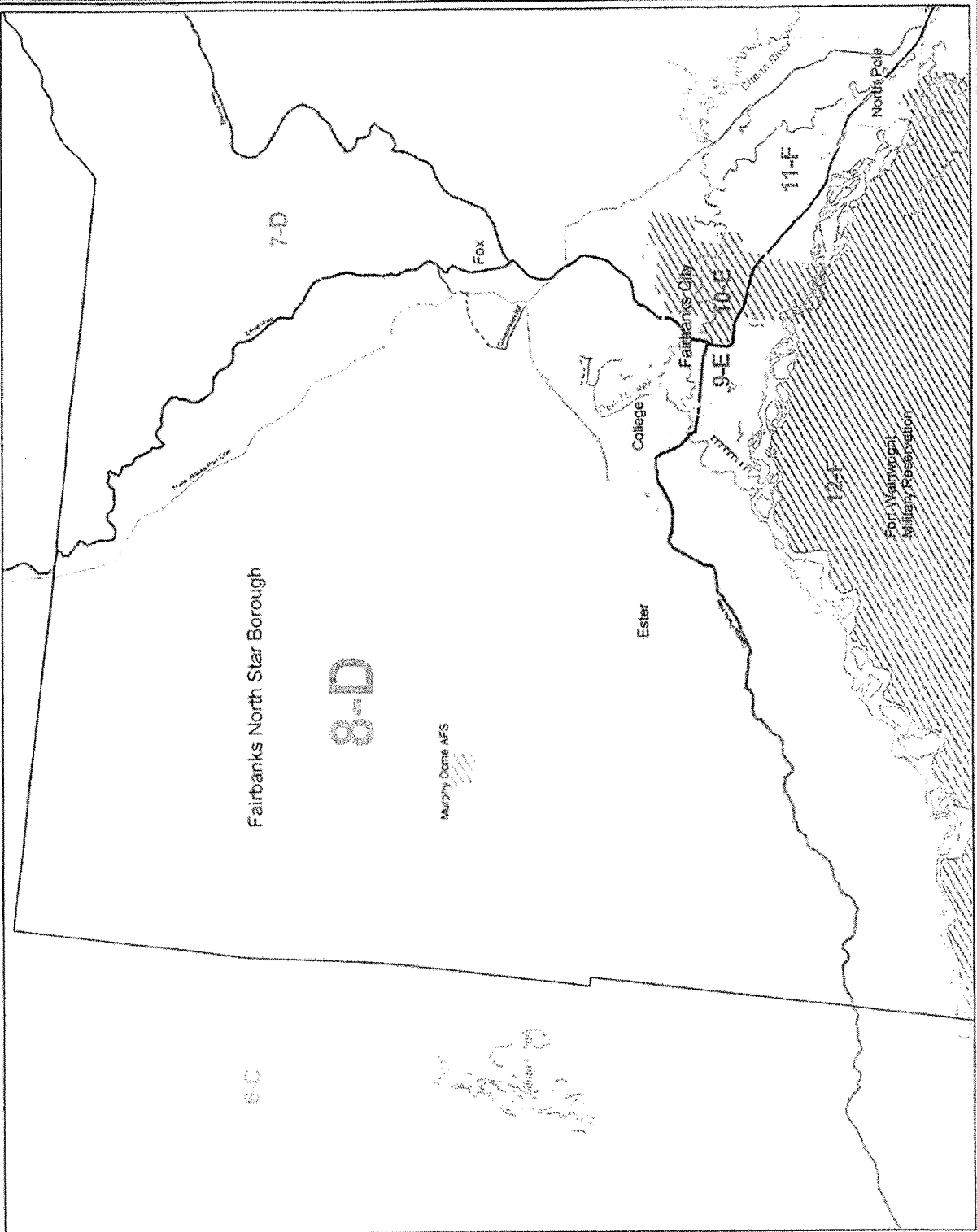
Legend

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



Prepared by Alaska Restricting Board

Proclamation House Districts



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



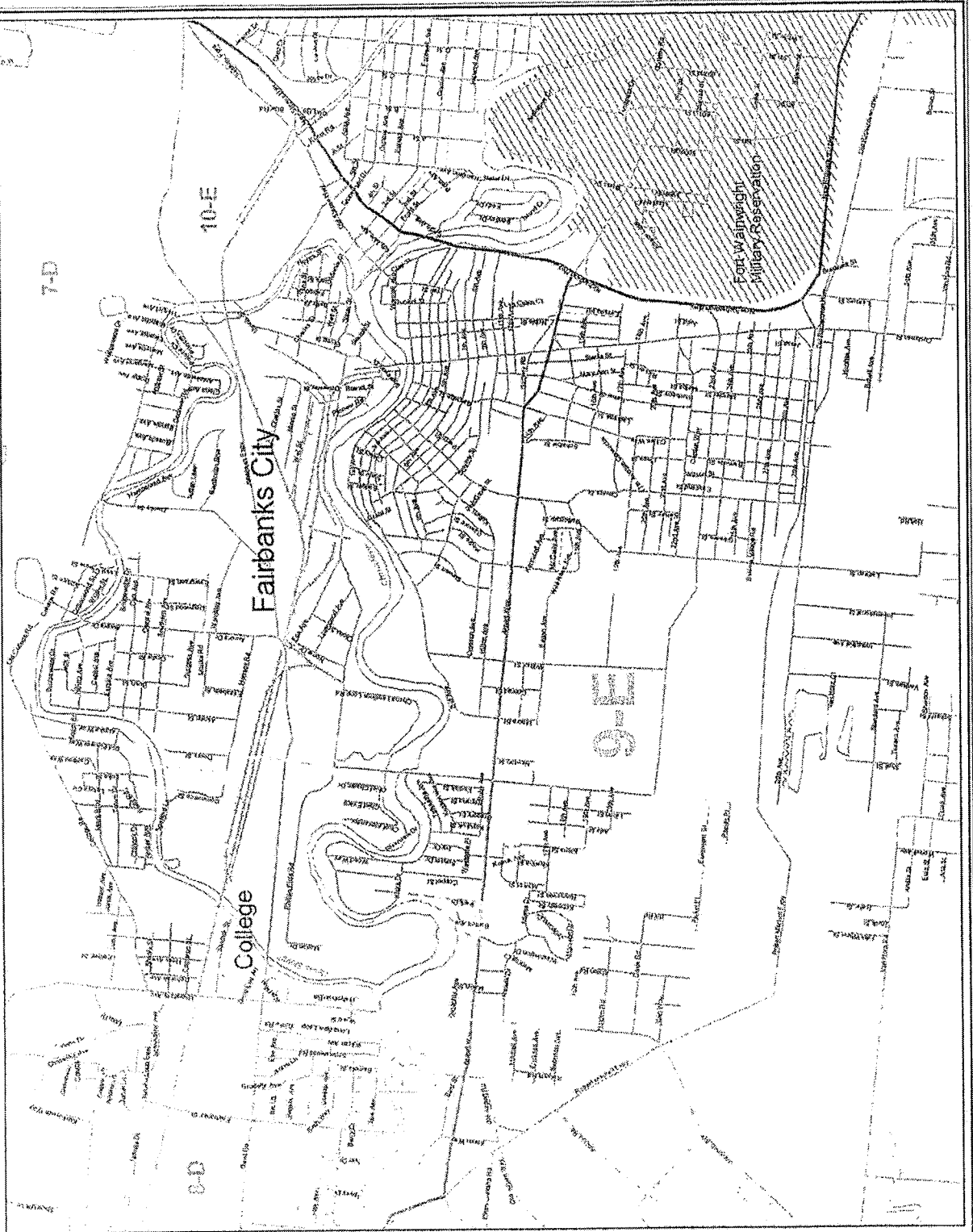
Legends

- City Boundary
- Railroad
- Military Base
- Airport



Prepared by Alaska Restricting Board

Proclamation House Districts



House District 9
 House districts proclaimed by
 Alaska Redistricting Board
 June 18, 2001



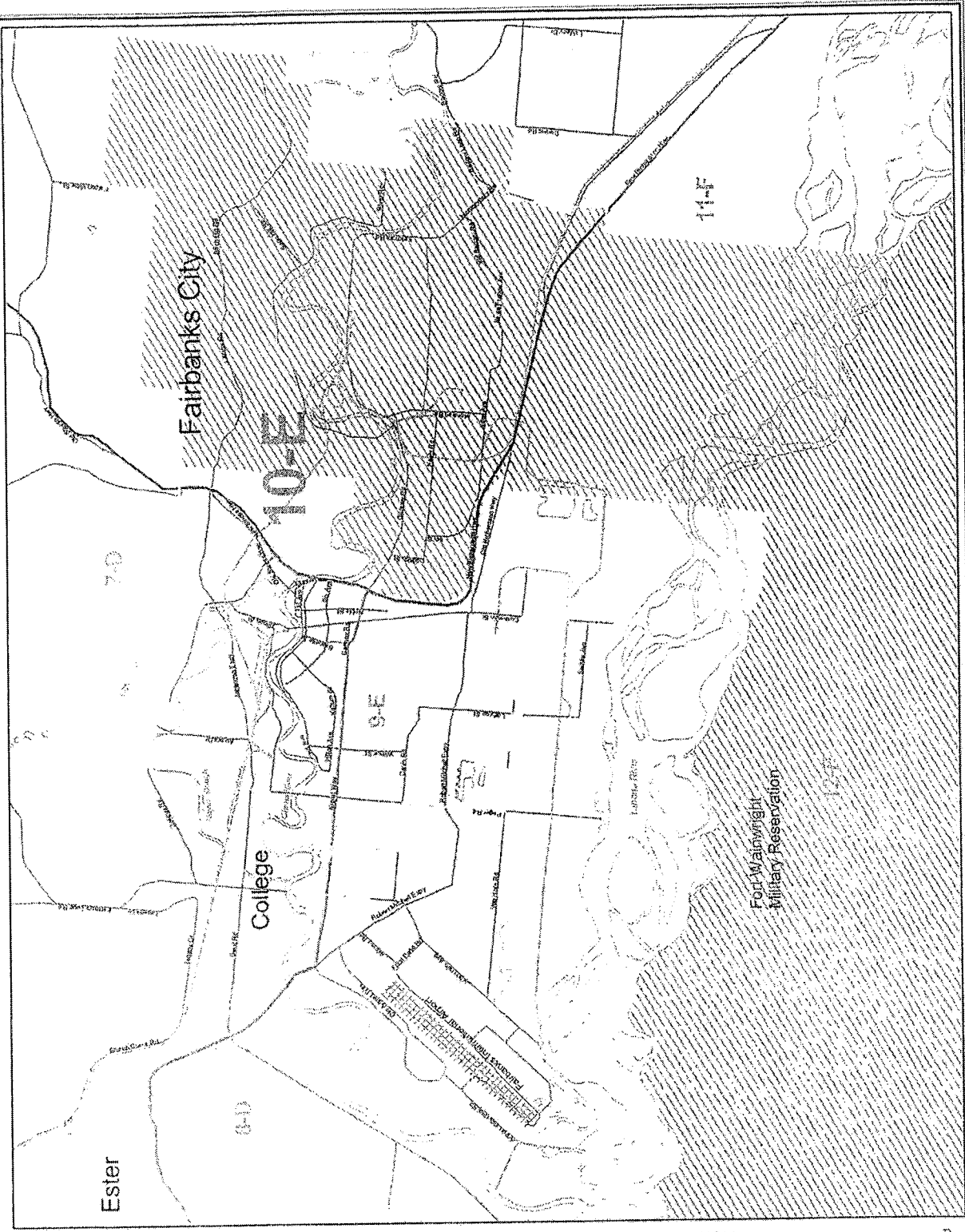
Legend

- City Boundary
- Railroad
- Military Base
- Airport



Prepared by Alaska Redistricting Board

Proclamation House Districts



Ester

House District 10

House districts proclaimed by
Alaska Redistricting Board
June 18, 2001



Legend

- City Boundary
- Railroad
- Military Base
- Airport



Prepared by Alaska Redistricting Board

District is hereby GRANTED and judgment shall be entered on behalf of the Board as to those claims.

DATED at Fairbanks, Alaska this ____ day of _____, 2013.

HON. MICHAEL P. McCONAHY
Superior Court Judge

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[PROPOSED] ORDER GRANTING DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR SUMMARY JUDGMENT RE:
RILEY PLAINTIFFS' CLAIM HOUSE DISTRICTS 9 AND 12 HAVE UNNECESSARILY HIGHER DEVIATIONS FROM THE IDEAL
DISTRICT
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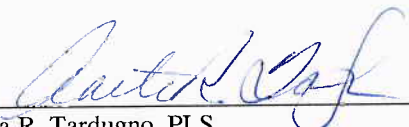
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[PROPOSED] ORDER GRANTING DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' CLAIM HOUSE DISTRICTS 9 AND 12 HAVE UNNECESSARILY HIGHER DEVIATIONS FROM THE IDEAL DISTRICT

In Re 2011 Redistricting Cases, Consolidated Case No. 4FA-11-02209 CI