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 SENATE DISTRICTS A, B, AND C 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 the Fairbanks Senate districts have "unnecessarily higher deviations from the ideal district population and violates equal protection of voters rights to an equally weighted vote and the right to fair and effective representation."[1] The Riley Plaintiffs' Renewed Application fails to identify which

[1] First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶ 18 ("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. However, 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.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

districts they allege contain unnecessarily higher deviations. The Board presumes the Riley Plaintiffs are challenging the Fairbanks Senate Districts since paragraph 18 falls under the heading "Fairbanks Senate Districts."[2] As is set forth in further detail below, none of the Senate districts which contain population from the Fairbanks North Star Borough ("FNSB") have "unnecessarily higher deviations." To the contrary, Senate Districts A, B, and C all contain "as near as practicable" a population equal to an ideal Senate district, which is 35,510 people.[3] The Board is entitled to summary judgment on this issue.

II.
FACTS

Senate District A, comprised of House Districts 1 and 2, which contain the entire population of the City of Fairbanks, has 35,464 people and a deviation of -0.13% from the ideal Senate district size.[4] Senate District B, comprised of House Districts 3 and 4, has 35,459 people and a deviation of -0.14%.[5] Senate District C, comprised of House Districts 5 and 6, has a population of 35,644 and a deviation of 0.38% from the ideal

[2] *See id.* at pg. 3.

[3] Article VI, section 6 requires Senate districts be comprised of two contiguous House districts. Alaska Const. art. VI, § 6. The ideal House district is 17,755 when dividing the total population of the state of Alaska as reported by the 2010 Census, 710,231, by forty. *Id.*; ARB00006548. Thus, the ideal Senate district is 35,510.

[4] ARB00017353.

[5] *Id.*

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

Senate district. All of the deviations are well under one-half of one percent, varying only 46, 51, and 134 people respectively from the ideal Senate district size of 35,510.[6]

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

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."[9] Any allegations of fact by the non-movant must be based on competent, admissible evidence.[10] The non-movant may not rest upon mere allegations or denials, but must

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[6] *Id.*

[7] 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).

[8] *Id.*

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

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

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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.[11]

There are no genuine issues of material fact that Senate Districts A, B, and C contain a population "as near as practicable" to the ideal Senate district. The deviations are extremely minimal, all less than one-half of one percent and varying only 46, 51, and 134 people from the ideal population of 35,510. These deviations are much smaller than those in the comparable Senate districts in the original 2011 Proclamation Plan, which the Riley Plaintiffs never challenged, as well as the Senate districts proposed by the Riley Plaintiffs' legal counsel.[12] The Board is entitled to summary judgment.

IV.
ANALYSIS

The Alaska Constitution requires that Senate districts be comprised of two contiguous House districts.[13] To achieve the goal of one person, one vote, 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."[14] The overriding objective is "substantial equality of population among the various districts,

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

[12] *See* Riley Plaintiffs' Application to Correct Errors in Redistricting (July 2011).

[13] Alaska Const. art. VI, § 6.

[14] *Id.*

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state."[15]

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."[16] 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.[17] 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.[18]

In the 2001 redistricting cases, the Alaska Supreme Court found the overall deviation of 9.5% in the Anchorage House districts unconstitutional.[19] The high court did not, however, reject deviations of up to 5% in the Fairbanks or Kenai Peninsula

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

[16] Alaska Const. art. VI, § 6.

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

[18] *Id.*

[19] *Id.*

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

districts.[20] 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.[21] The high 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%.[22]

The 2010 Census reported the state of Alaska has 710,231 people.[23] Thus, the ideal House district would contain 17,755 people.[24] The ideal Senate district, comprised of two contiguous House districts, is therefore 35,510.[25] Senate District A has a deviation of -0.13% from the ideal Senate district, short only 46 people.[26] Senate District B has a deviation of -0.14%, short 51 people, and Senate District C has a

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[20] *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 (2002 Proclamation Population Analysis and House Districts 7 through 11 Maps).

[21] *Id.*

[22] *Id.* at 1094.

[23] ARB00006548.

[24] *Id.*

[25] *Id.*; Alaska Const. art. VI, § 6.

[26] ARB00017353.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

deviation of 0.38% with an excess of 134 people from the ideal Senate district population.[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 three Senate districts which contained population from the FNSB in the original 2011 Proclamation Plan (Senate Districts A through C) had deviations of 1.5%, 2.0%, and 2.8% respectively.[29] 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 in the original 2011 Proclamation Plan.[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 Fairbanks Senate districts than those they now challenge.[31] House Districts 6 through 10 in the Gazewood & Weiner Plan contain population from the FNSB, and the Senate districts comprised of these five House districts, Senate Districts C, D, and E, have deviations of

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[27] *Id.*

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

[29] ARB00006583.

[30] *See* ARB00006452-6456.

[31] ARB00017295-17304.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

2.19%, 3.39%, and 0.36% respectively.[32] As noted above, the Board's comparable Senate districts have deviations of 0.13%, 0.14%, and 0.38%, all substantially less than the majority of those proposed by the Riley Plaintiffs' legal counsel.[33] 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.

The Board anticipates the Riley Plaintiffs may argue the Board could have achieved a lower deviation had it accepted their "settlement proposal" and switched the pairings from House Districts 3 and 4, creating Senate District B, and House Districts 5 and 6, creating Senate District C, to pairing House Districts 3 and 6 to create a Senate district and pairing House Districts 4 and 5 to create a Senate district.[34] This proposed change would reduce the current deviations in the Senate districts by a negligible 0.06%, a mere 6/100th of one percent.[35] The Riley Plaintiffs, who requested the Board make their "settlement proposal" part of the Board Record, offered no legitimate reason

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[32] *Id.*

[33] ARB00017353.

[34] *See* ARB00017764-17765.

[35] A Senate district comprised of House Districts 3 and 6 would have a deviation of 0.08% from an ideal district, or 30 people less than an ideal district. *See* ARB00017353. A Senate district comprised of House Districts 4 and 5 would have a deviation of 0.32%, or 113 people more than the ideal Senate district. *Id.* The result is 0.06% difference between the 2013 Proclamation Plan Senate districts and the Riley Plaintiffs' proposed Senate districts in their "settlement proposal."

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

for the proposed switch in pairings, instead threatening to make more baseless allegations of partisan gerrymandering if the Board rejected their proposal.[36]

A thorough review of the Board Record establishes that the Board did not change any Senate pairings in Anchorage or elsewhere "for the articulated purpose of reducing deviations in Senate districts."[37] The Board rejected the Riley Plaintiffs' "settlement proposal" because there was no legitimate, legal basis for switching the Senate pairings. The difference in deviations is negligible and not constitutionally significant. The Senate districts in the 2013 Proclamation Plan meet all the applicable constitutional requirements, consisting of as near as practicable populations equal to the ideal Senate district comprised of two contiguous House districts.[38]

As this Court has recognized, "the choice among alternative plans that are otherwise constitutional is for the Board."[39] The Board used this constitutionally authorized discretion in rejecting the Riley Plaintiffs' "settlement proposal" and maintaining the Senate pairings as adopted.[40] The Riley Plaintiffs admit the only reason they are now challenging the population in Senate Districts A through C is because the

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[36] ARB00017764-17765.

[37] *See* ARB00016712-16867 (Board Meeting Transcripts July 5-7, 2013, and July 14, 2013).

[38] *See* Alaska Const. art. VI, § 6; ARB00017343-17433.

[39] Memorandum Decision and Order Re: 2011 Proclamation Plan at 46 (February 2, 2013).

[40] ARB00017772-17779.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

Board rejected their "settlement proposal."[41] They have no legitimate legal basis for their challenge, and instead attempt to punish the Board for exercising its discretion in choosing between alternative plans.

The deviations of Senate Districts A through C are as near as practicable equal to an ideal district size, and are lower than any previous redistricting plan, including the Riley Plaintiffs' own proposed plan. The Board was able to achieve such low deviations by pairing contiguous House districts that not only had as near as practicable ideal populations, but are also compact, contiguous, and socio-economically integrated districts.

V.
CONCLUSION

Senate Districts A through C 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 as a matter of law.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

[41] ARB00017764-17765.

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

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: _____
Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
Alaska Bar No. 0805022

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

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:

☑ Electronic Mail on:

Michael J. Walleri; walleri@gci.net;
mwalleri@fairbanksaklaw.com
Jason Gazewood; jason@fairbanksaklaw.com
Gazewood & Weiner PC
Attorneys for Riley/Dearborn
1008 16th Ave., Suite 200
Fairbanks, AK 99701

Thomas F. Klinkner; tklinkner@BHB.com
Birch, Horton, Bittner & Cherot
Attorney for Petersburg Plaintiffs
1127 W. 7th Avenue
Anchorage, AK 99501

Jill Dolan; jdolan@fnsb.us
Attorney for Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, AK 99707

Carol Brown; cbrown@avcp.org
Association of Village Council Presidents
P.O. Box 219, 101A Main Street
Bethel, AK 99550

Thomas E. Schultz; tschulz235@gmail.com
Attorney for RIGHTS Coalition
715 Miller Ridge Road
Ketchikan, AK 99901

Supreme Court of the State of Alaska
jhotho@appellate.courts.state.ak.us
mmay@appellate.courts.state.ak.us

Joseph N. Levesque;
joe@levesquelawgroup.com; joe-wwa@ak.net
Levesque Law Group, LLC
Attorney for Aleutians East Borough
3380 C Street, Suite 202
Anchorage, AK 99503

Natalie A. Landreth; landreth@narf.org
Native American Rights Fund
Attorney for Bristol Bay Native Corporation
801 B Street, Suite 401
Anchorage, AK 99501

Marcia R. Davis; mdavis@calistacorp.com
Attorney for Calista Corporation
301 Calista Court
Anchorage, AK 99518

Scott A. Brandt-Erichsen; scottb@kgbak.us
Ketchikan Gateway Borough
1900 1st Avenue, Suite 215
Ketchikan, AK 99901

Joe McKinnon; jmckinn@gci.net
Attorney for Alaska Democratic Party
1434 Kinnikinnick Street
Anchorage, AK 99508

By: _____
Anita R. Tardugno, PLS
Legal Secretary
PATTON BOGGS LLP

029810.0101\4820-1160-1941.

PATTON BOGGS LLP
601 West Fifth Avenue
Suite 700
Anchorage, AK 99501
Phone: (907) 263-6300
Fax: (907) 263-6345

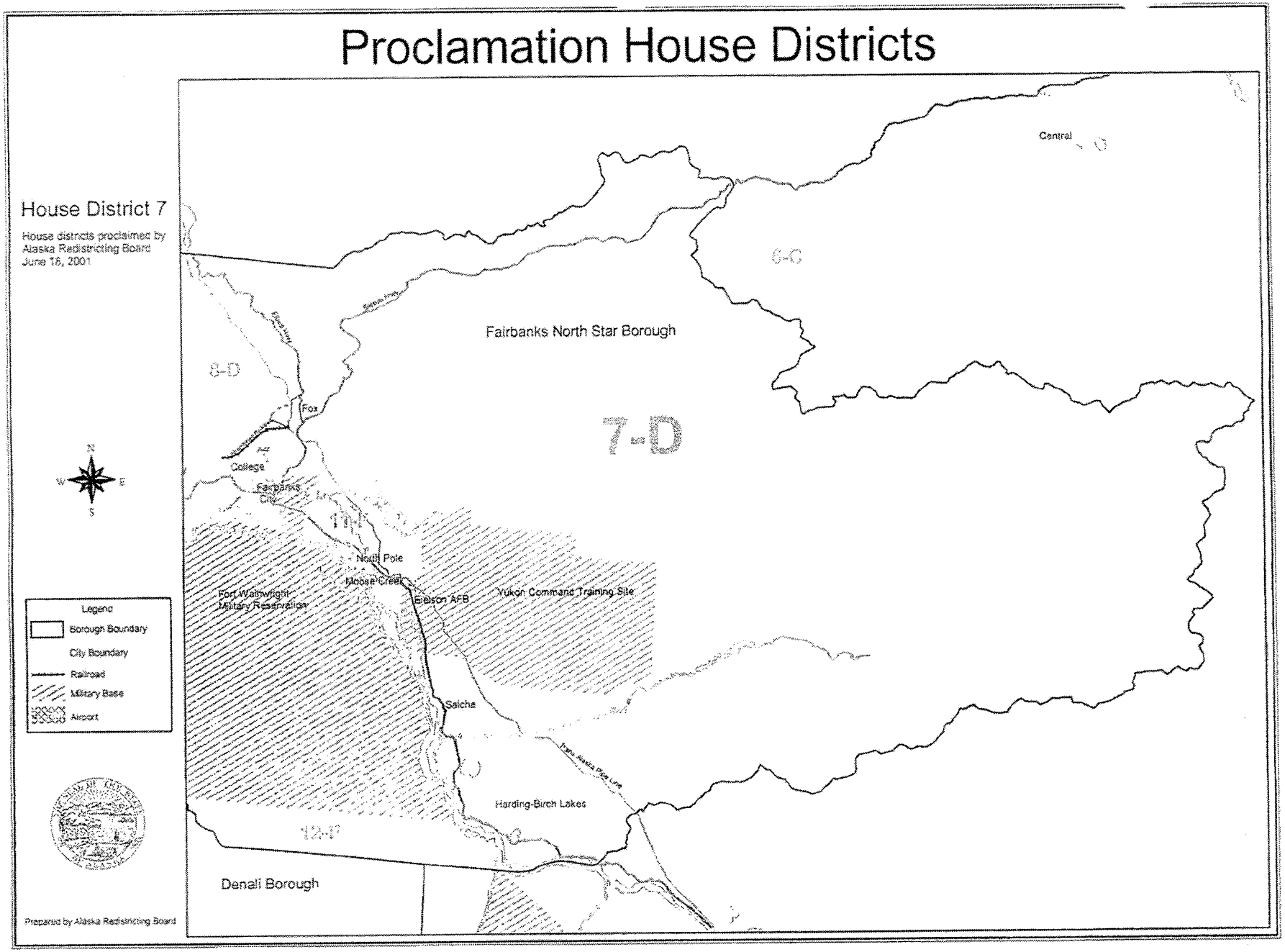
Proclamation District Population Analysis

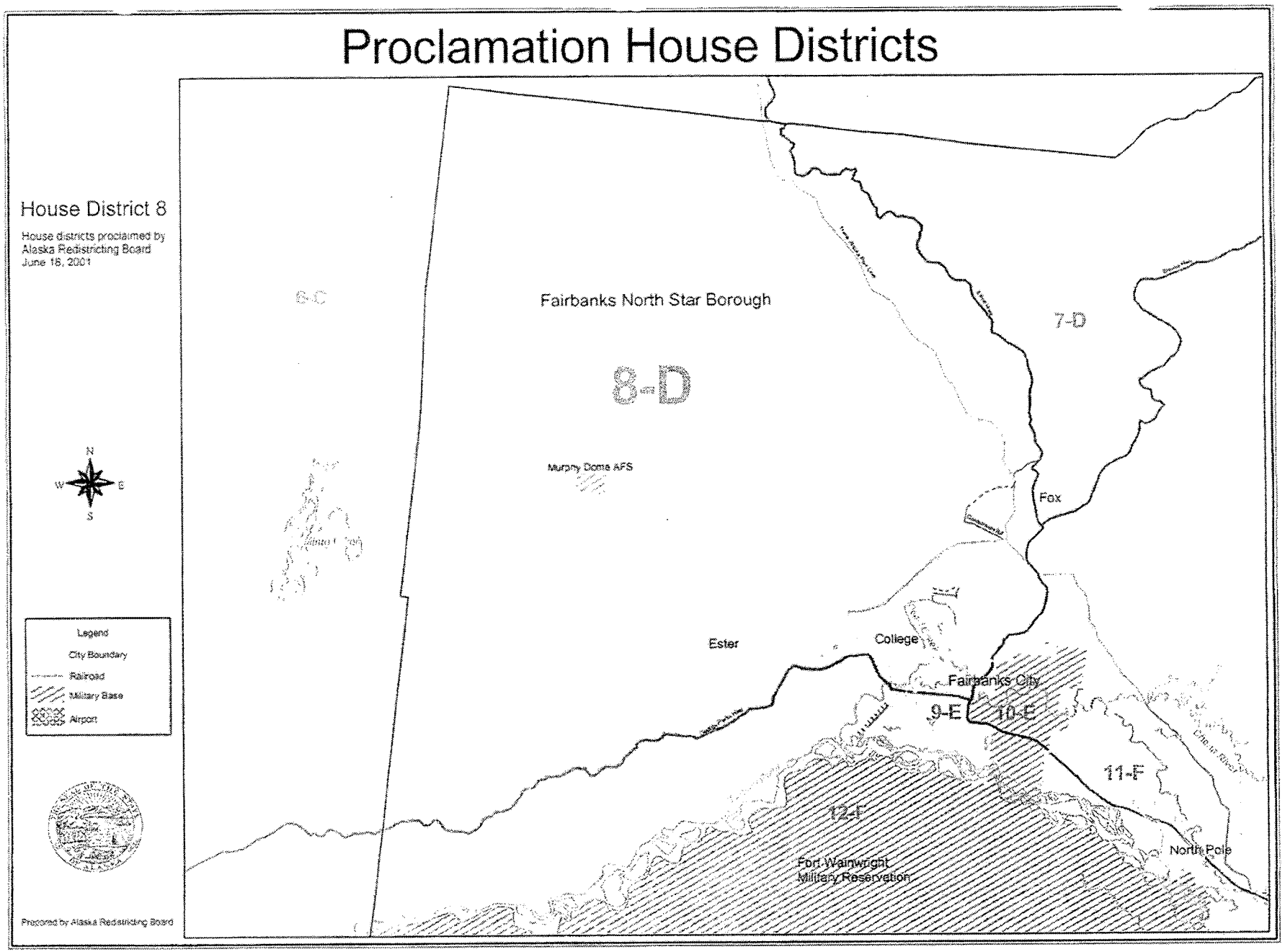
House District	Senate District	Total Population	Per Cent Deviation from ideal (15673)	Per Cent Alaska Native*	18+ Population
1		15031	-4.10%	17.62%	10817
2		14991	-4.40%	20.14%	10809
	A	30022		18.88%	21626
3		15203	-3.00%	17.99%	11459
4		15508	-1.10%	12.10%	10835
	B	30711		15.02%	22294
5		15057	-3.90%	37.68%	10678
6		15443	-1.50%	56.35%	10052
	C	30500		47.23%	20730
7		16432	4.80%	5.06%	10879
8		16307	4.00%	9.61%	12069
	D	32739		7.33%	22948
9		16458	5.00%	17.37%	11990
10		16111	2.80%	7.74%	10989
	E	32569		12.61%	22979
11		16452	5.00%	7.13%	11216
12		16454	5.00%	7.34%	11649
	F	32906		7.24%	22865
13		16258	3.70%	8.14%	10852
14		16213	3.40%	7.81%	10660
	G	32471		7.98%	21512
15		16409	4.70%	8.82%	11297
16		14908	-4.90%	6.99%	10248
	H	31317		7.95%	21545
17		15009	-4.20%	4.35%	10140
18		16432	4.80%	4.19%	10881
	I	31441		4.27%	21021
19		14932	-4.70%	14.28%	10390
20		15490	-1.20%	17.95%	10152
	J	30422		16.15%	20542
21		15773	0.60%	8.00%	11151
22		14941	-4.70%	13.06%	10896
	K	30714		10.46%	22047
23		14993	-4.30%	18.05%	11847
24		15039	-4.00%	11.16%	11160
	L	30032		14.60%	23007
25		15329	-2.20%	12.73%	11920
26		15131	-3.50%	8.77%	11286
	M	30460		10.76%	23206
27		16424	4.80%	8.09%	11489
28		16317	4.10%	6.49%	11317
	N	32741		7.29%	22806
29		16420	4.80%	9.50%	11729
30		16179	3.20%	8.36%	10976
	O	32599		8.93%	22705
31		16191	3.30%	6.65%	10992
32		15186	-3.10%	5.46%	10975
	P	31377		6.07%	21967
33		16466	5.10%	9.14%	11220
34		16409	4.70%	7.93%	11524
	Q	32875		8.54%	22744
35		16436	4.90%	11.44%	11815
36		14928	-4.80%	21.26%	10019
	R	31364		16.11%	21834
37		15150	-3.30%	47.28%	11192
38		14921	-4.80%	85.36%	8970
	S	30071		66.18%	20162
39		15008	-4.20%	84.71%	8891
40		14593	-6.90%	78.82%	8784
	T	29601		81.80%	17675

Prepared by Alaska Redistricting Board

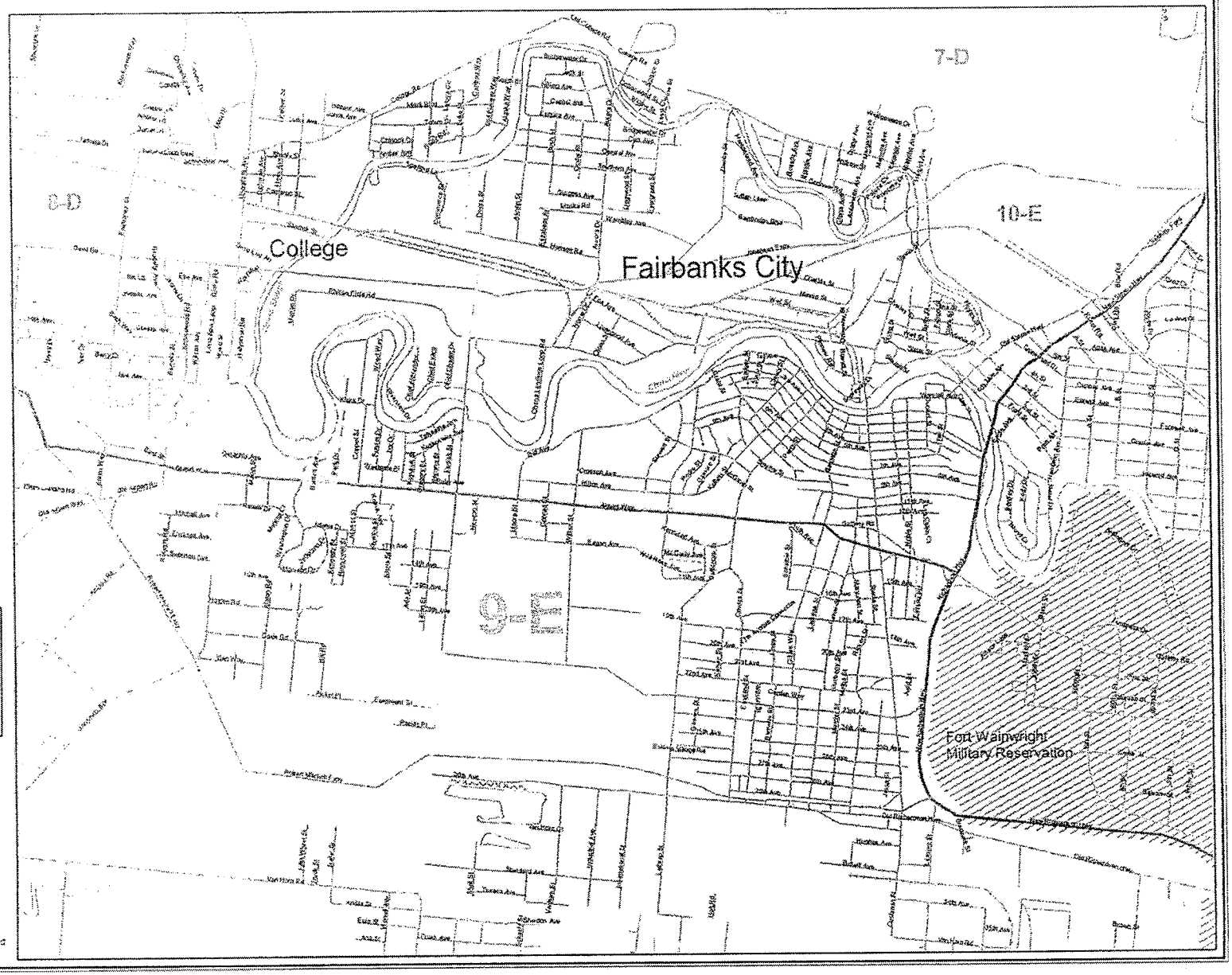
* Alaska Native race defined as people who identified themselves in the census as a single race, Alaska Native, or White and Alaska Native, according to guidelines of U.S. Department of Justice.

Proclamation House Districts

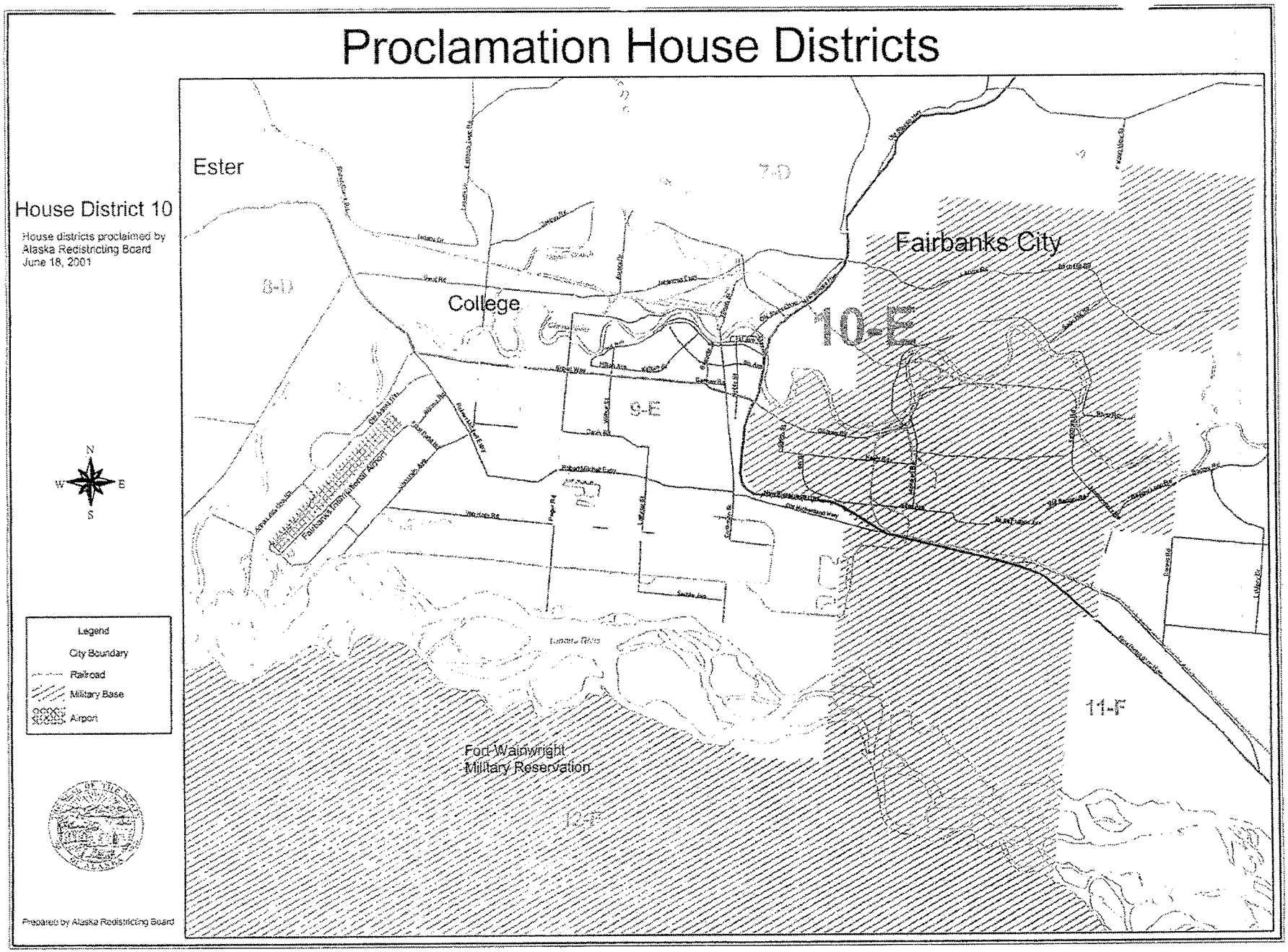



Proclamation House Districts
House District 8
House districts proclaimed by Alaska Redistricting Board June 18, 2001
6-C
Fairbanks North Star Borough
8-D
7-D
Murphy Dome AFS
Fox
Ester
College
Fairbanks City
9-E
10-E
11-F
12-F
North Pole
Fort Wainwright Military Reservation
Legend
City Boundary
Railroad
Military Base
Airport
N
W
E
S
Precinct by Alaska Redistricting Board

Proclamation House Districts



Proclamation House Districts



Proclamation House Districts

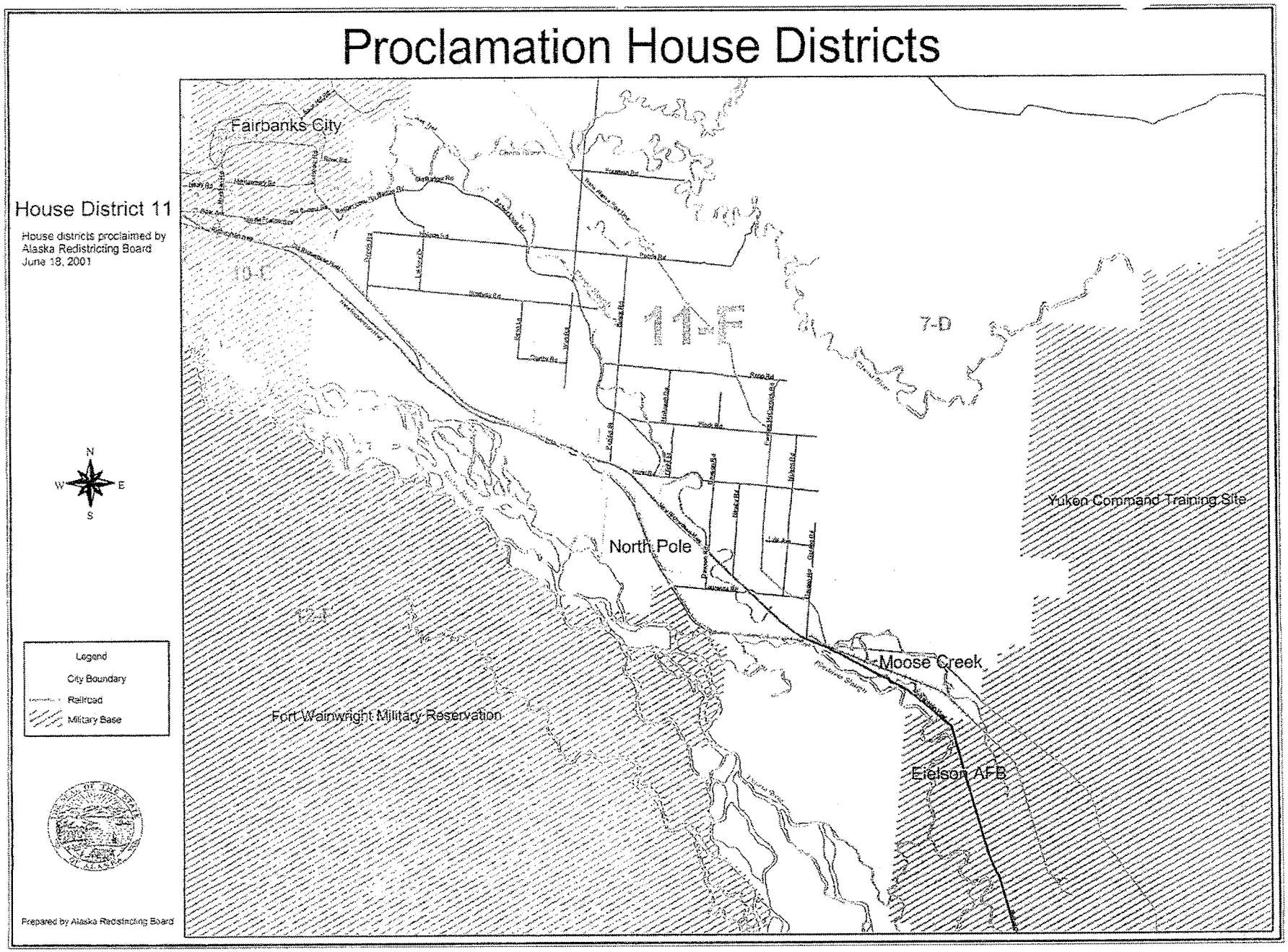


EXHIBIT A
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