

1 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
2 **FIRST JUDICIAL DISTRICT**
 AT JUNEAU

3 AMERICAN CIVIL LIBERTIES
4 UNION OF ALASKA, JANE DOE,)
AND JANE ROE,)

5 Plaintiffs,)

6 v.)

7 STATE OF ALASKA; DAVID W.)
8 MARQUEZ, Attorney General for
the State of Alaska, in his)
official capacity,)

Case No. _____

9 Defendants.)

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MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
 INJUNCTION

19 The American Civil Liberties Union of Alaska ("ACLU of
20 Alaska"), Jane Doe and Jane Roe hereby move, pursuant to
21 Alaska R. Civ. P. 65, for a temporary restraining order and
22 preliminary injunction against defendants State of Alaska
23 and David W. Márquez, Attorney General for the State of
24 Alaska. A copy of a Memorandum in Support of Plaintiffs'
Motion for Temporary Restraining Order and Preliminary
Injunction is attached. This Motion for Temporary

Motion for Temporary Restraining Order and Preliminary Injunction
ACLU of Alaska v. State, Case No. _____

1 Restraining Order and Preliminary Injunction is made on
2 behalf of the organization and persons described below, each
3 of whom is immediately and irreparably injured by the
4 enforcement of AS 11.71.050(a)(2)(E), AS 11.71.060(a)(1) and
5 AS 11.71.060(a)(2), as amended by CCS HB 149.

6 1. Plaintiff ACLU of Alaska is a non-
7 profit corporation duly organized in accordance with the
8 laws of the State of Alaska and has its principal place of
9 business in Anchorage, Alaska. The ACLU of Alaska has
10 approximately 1,800 dues-paying members from around the
11 state. The ACLU of Alaska's mission is to advance and
12 defend the cause of civil liberties and the rights of
13 Alaskans under the United State Constitution and the Alaska
14 Constitution. This includes the defense of the right to
15 privacy and respect for the process which exists to protect
16 fundamental constitutional rights from governmental
17 encroachment. The ACLU of Alaska has members who use and
18 possess marijuana and are affected by the law challenged in
19 this case. The ACLU of Alaska also has at least one member
20 who is a doctor who recommends the use of marijuana to his
21 patients. The ACLU of Alaska is a public interest litigant.
It sues on its own behalf and on behalf of its members.

22 2. Plaintiff Jane Doe is a 54-year-old
23 resident of Alaska. Doe uses marijuana to treat chronic
24 pain and other symptoms associated with Reflex Sympathetic
Dystrophy. Plaintiff Doe currently possesses a small amount
of marijuana for purely personal use in the privacy of her

1 home. Doe fears, and is subject to, criminal prosecution
2 and liability for this conduct.

3 3. Plaintiff Jane Roe is a 42-year-old
4 resident of Alaska. Roe possesses a small amount of
5 marijuana for purely personal use in her home. Roe fears,
6 and is subject to, criminal prosecution and liability for
7 this conduct.

8 The ACLU of Alaska, Jane Doe and Jane Roe should be
9 granted a temporary restraining order and a preliminary
10 injunction because AS 11.71.050(a)(2)(E), AS 11.71.060(a)(1)
11 and AS 11.71.060(a)(2), as amended by CCS HB 149,
12 immediately and irreparably violate their fundamental right
13 to privacy. Plaintiffs seek to enjoin the State of Alaska
14 and the Attorney General for the State of Alaska from
15 enforcing Alaska law that permits the government to enter a
16 person's home and arrest them for engaging in
17 constitutionally-protected conduct. The continuing
18 enforcement of AS 11.71.050(a)(2)(E), and AS 11.71.060(a)(1)
19 and AS 11.71.060(a)(2), as amended by CCS HB 149,
20 contravenes the explicit guarantee of the right to privacy
21 contained in the Alaska Constitution and directly conflicts
22 with the Supreme Court's decision in *Ravin v. State*, 537
P.2d 494, 504 (Alaska 1975).

23 A temporary restraining order and preliminary
24 injunction should be granted because plaintiffs face
immediate and irreparable harm and an injunction will not

1 harm the defendants. Moreover, plaintiffs can demonstrate
2 that they likely will win on the merits.

3 For the foregoing reasons, Plaintiffs respectfully
4 request that this Court grant their motion for a temporary
5
6 restraining order and/or a preliminary injunction to enjoin
7 defendants from enforcing AS 11.71.050(a)(2)(E),
8 AS 11.71.060(a)(1) and AS 11.71.060(a)(2), as amended by CCS
9 HB 149.

10 DATED this ____ day of June 2006.

11
12 Respectfully Submitted,

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16 _____
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20 ALYSE BERTENTHAL (NY Bar 4268199)*
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24 * Motion for admission *pro hac vice* pending