

May 1, 2006

Sent via facsimile to: 907-465-2075  
Original via express mail

Attorney General David W. Márquez  
State of Alaska  
Department of Law  
P.O. Box 110300  
Juneau, Alaska 99811-0300

RE: HB 149, Our File No. 06-0112

Dear Attorney General Márquez:

You recently sent a letter to our legislators encouraging them to approve HB 149 with its current marijuana provisions. These provisions will amend AS 11.71.050(a) and AS 11.71.060(a) to make possession of all marijuana illegal. I am writing on behalf of the American Civil Liberties Union of Alaska and our members around the state to urge you to reconsider your support for this blatantly unconstitutional bill.

Alaska has a long and proud history of providing expansive protection for the right to privacy. Article I, section 22 of our state's Constitution provides that "the right of the people to privacy is recognized and shall not be infringed." In 1975, the Alaska Supreme Court held that the explicit guarantee of the right to privacy included in the Alaska Constitution encompasses "the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context." *Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975). The legislature has since determined that this constitutional protection covers adults' possession of less than four ounces of marijuana in the home.

The marijuana provisions of HB 149 directly contravene the constitutional right to privacy under section 22 and our Supreme Court's decision in *Ravin*. HB 149 unconstitutionally criminalizes possession of all amounts of marijuana and contains no exception for small amounts possessed by adults in their homes. The broad scope of these provisions far exceeds the intended purpose "to address the possession and sale of volumes of marijuana that are far in excess of amounts currently recognized as legal for personal possession and

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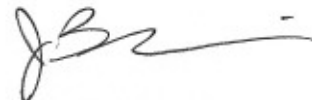
use under state law.” April 28, 2006 Letter at 2. Instead, HB 149 criminalizes all possession of marijuana and punishes even those adults who possess an amount currently recognized as legal for personal possession under state law and the Constitution.

Contrary to the assertions made in your letter to the legislators, the privacy protections in section 22, and as interpreted in *Ravin*, do not impact law enforcement’s power or ability to prosecute commercial marijuana growing operations. Indeed, as you recognize, “[t]he *Ravin* decision does not protect the sale of marijuana.” April 28 Letter at 3. Law enforcement officers who have probable cause to believe that a person is engaged in the unlawful sale or commercial growing of marijuana may still obtain a warrant to search his or her premises. Similarly, *Ravin* does not prevent law enforcement from preventing or prosecuting sales to, or use by, minors.

HB 149 is especially troubling because it represents an unprecedented attempt by the legislature to usurp the proper role of the judiciary. It is the courts’ prerogative – and not that of the legislature or the governor – to interpret the Constitution. The legislature may not overturn a decision of the judiciary by legislative fiat simply because it disagrees with the interpretation that has been given by the state’s highest court. Such action undermines the entire system of checks and balances upon which our government is based and which you, as Attorney General, have the duty to protect.

We strongly urge you to drop your support for the unwarranted, unreasonable and unfounded attack on Alaskans’ constitutional right to privacy. If HB 149 does pass, the ACLU of Alaska is fully prepared to take immediate action to protect the privacy interests of all Alaskans and to defend the Supreme Court’s longstanding interpretation of section 22 that was first enunciated in *Ravin*, and which has since been repeatedly reaffirmed by the trial courts, the Court of Appeals and the Supreme Court of Alaska. We are poised to file suit and to use whatever means are necessary to protect Alaskans’ constitutional rights – including a request for a temporary restraining order and preliminary injunction.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Brandeis", with a horizontal line extending to the right.

Jason Brandeis  
Staff Attorney