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

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

Plaintiffs,)

v.)

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

Case No. _____

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION AND SUMMARY OF CLAIMS

1. For more than three decades, Alaskans
have been accorded a robust right to privacy protected by
the state Constitution and the courts. In *Ravin v. State*,
the Alaska Supreme Court held that the Constitutional right
to privacy, Alaska Const. Art. I, sec. 22, encompasses the

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Complaint For Declaratory and Injunctive Relief
ACLU of Alaska v. State, Case No. _____

1 right of adults to possess small amounts of marijuana in
2 their homes. 537 P.2d 494, 504 (Alaska 1975).

3 2. In a direct assault on Alaskans'
4 fundamental right to privacy, the legislature enacted CCS HB
5 149. Sections 8 and 9 of CCS HB 149 amend AS 11.71.050(a)
6 and AS 11.71.060(a) to criminalize the possession of
7 marijuana. AS 11.71.050(a)(2)(E), AS 11.71.050(a)(1) and AS
8 11.71.060(a)(2), as amended by CCS HB 149, do not contain an
9 exception allowing for the possession or use of small
10 amounts of marijuana within the privacy of the home.

11 3. In clear violation of the
12 Constitution, as interpreted by the state's highest court,
13 the amended statutes immediately and irreparably harm
14 plaintiffs and, indeed, people living throughout the state.
15 Plaintiffs the American Civil Liberties Union of Alaska
16 ("ACLU of Alaska"), on behalf of itself and its members,
17 and two individuals, Jane Doe and Jane Roe, bring this
18 action seeking declaratory and injunctive relief for this
19 violation of the privacy clause of the Alaska Constitution.

20 **JURISDICTION AND VENUE**

21 4. Jurisdiction is based on AS
22 22.10.020. Venue is proper under AS 22.10.030 and Rule 3 of
23 the Alaska Rules of Civil Procedure.

24 **PARTIES**

5. Plaintiff ACLU of Alaska is a non-
profit corporation duly organized in accordance with the
laws of the State of Alaska and has its principal place of

1 business in Anchorage, Alaska. The ACLU of Alaska has
2 approximately 1,800 dues-paying members from across the
3 state. The ACLU of Alaska's mission is to defend civil
4 liberties and the rights of Alaskans under the United State
5 Constitution and the Alaska Constitution. This includes the
6 defense of the right to privacy and respect for the process
7 that exists to protect fundamental constitutional rights
8 from governmental encroachment. The ACLU of Alaska has
9 members who use and possess marijuana in the privacy of
10 their homes and are, and will be, harmed by the law
11 challenged in this case. The ACLU of Alaska also has at
12 least one member who is a doctor who, in accordance with the
13 State's medical marijuana laws, recommends the use of
14 marijuana to some of his patients. The ACLU of Alaska is a
15 public interest litigant. It sues on its own behalf and on
16 behalf of its members.

16 6. Plaintiff Jane Doe is a 54-year-old
17 resident of Alaska. Doe uses marijuana to treat symptoms
18 associated with Reflex Sympathetic Dystrophy ("RSD"). RSD
19 is a chronic neurological syndrome characterized by severe
20 burning pain, pathological changes in bone and skin,
21 excessive sweating, tissue swelling, and extreme sensitivity
22 to touch. Plaintiff Doe currently possesses a small amount
23 of marijuana for purely personal use in the privacy of her
24 home. Doe fears, and is subject to, criminal prosecution
and liability for this conduct.

7. Plaintiff Jane Roe is a 42-year-old

1 resident of Alaska. Roe possesses small amounts of
2 marijuana in her home. Roe fears, and is subject to,
3 criminal prosecution and liability for this conduct.

4 8. Defendant State of Alaska is named as
5 a party defendant pursuant to AS 44.80.010, as it acts
6 through various agencies, departments, divisions, and
7 instrumentalities in the execution and administration of all
8 government functions.

9 9. Defendant David W. Márquez is Attorney
10 General for the State of Alaska. As Attorney General, he is
11 responsible for enforcing and defending the laws of the
12 State of Alaska including the Alaska Constitution. He is
13 sued in his official capacity only.

14 **FACTUAL ALLEGATIONS**

15 10. Article I, section 22 of the Alaska
16 Constitution provides that "the right of the people to
17 privacy is recognized and shall not be infringed." This
18 right encompasses the possession and ingestion of marijuana
19 in a purely personal, non-commercial context in the home.

20 11. In 2005, Governor Murkowski
21 introduced twin bills in both the Alaska Senate and the
22 Alaska House of Representatives to amend the state's
23 criminal statutes to make the personal possession and use of
24 small amounts of marijuana in the privacy of the home
illegal.

12. In response to this attack on

1 Alaskans' constitutional rights, a dedicated alliance of
2 organizations and individuals, including the ACLU of Alaska,
3 stepped forward to provide legal and factual information to
4 the state legislature in order to protect the constitutional
5 right to privacy, as articulated in *Ravin*.

6 13. The legislative hearings were
7 scheduled and the agendas were set in order to prevent
8 introduction and consideration of testimony and written
9 material in support of the *Ravin* decision.

10 14. Despite procedural obstacles,
11 opponents of the legislation presented the legislature with
12 thousands of pages of material. This material was neither
13 reviewed nor considered by the Senate before it issued a set
14 of cursory findings merely days after receiving this
15 voluminous submission. These findings did not incorporate
16 any of the evidence presented in that submission.

17 15. The 2005 legislation failed to gain
18 enough votes in the House and died when the legislative
19 session ended.

20 16. In 2006, the Senate added the very
21 same marijuana amendments to a separate bill concerning
22 methamphetamine, HB 149, already approved by the House.
23 However, the House refused to accept those amendments and
24 voted to send the bill back to committee on April 19, 2006.
Under intense pressure from the Governor, the House
rescinded that vote on May 5, 2006 and approved the bill
that same day.

1 17. The amendments to AS 11.71.050(a) and
2 AS 11.71.060(a) – criminalizing possession in the home of
3 even small amounts of marijuana – subject an untold number of
4 Alaskans to criminal sanctions. Specifically, AS
5 11.71.050(a)(2)(E), as amended by Section 8 of CCS HB 149,
6 makes it a crime of misconduct in the fifth degree if a
7 person possesses “one or more preparations, compounds,
8 mixtures, or substances of an aggregate weight of one ounce
9 or more containing a schedule VIA controlled substance.”

10 18. The new AS 11.71.060(a)(1),
11 as amended by Section 9 of CCS HB 149, makes it a crime of
12 misconduct in the sixth degree if a person “uses or
13 displays any amount of schedule VIA controlled substance.”

14 19. The new AS 11.71.060(a)(2), as
15 amended by Section 9 of CCS HB 149, makes it a crime of
16 misconduct in the sixth degree to possess “substances of an
17 aggregate weight of less than one ounce containing a
18 schedule VIA controlled substance.”

19 20. The clear effect of these statutes,
20 as amended, is to criminalize possession of any and all
21 amounts of marijuana, even marijuana that is possessed by
22 adults for purely personal use in the home.

23 21. By imposing criminal liability for
24 the use or possession of even small amounts of marijuana in
the home, the marijuana prohibition statutes violate
plaintiffs’, and other Alaskans’, fundamental right to
privacy.

1 22. The new AS 11.71.050(a)(2)(E), AS
2 11.71.060(a)(1) and AS 11.71.060(a)(2), as amended by
3 privacy erosion provisions, dramatically alter the
4 legitimate expectations of privacy held by Alaska's
5 residents.

6 23. The change in the law gives police
7 leave to search homes solely based on suspicion of marijuana
8 use.

9 24. AS 11.71.050(a)(2)(E), AS
10 11.71.060(a)(1) and AS 11.71.060(a)(2), as amended by CCS HB
11 149, make Alaskans more vulnerable to government invasion of
12 their home, thus allowing the government to witness
13 legitimate, but intensely private, conduct within their
14 homes.

15 25. The changes in the law mean that
16 Alaskans can never feel truly secure and at peace even
17 within the privacy of their homes.

18 26. By mandating the arrest of anyone
19 who uses or possesses marijuana, regardless of their use of
20 marijuana as medicine or of their status as a registered
21 medical marijuana patient, the amended statutes also
22 undermine the state's medical marijuana laws and threaten
23 the health and well-being of gravely ill individuals and
24 registered medical marijuana patients throughout the state.

 27. Plaintiffs fear that unless
restrained by this Court, defendants State of Alaska and the
Attorney General for the State of Alaska, will enforce AS

1 11.71.050(a)(2)(E), AS 11.71.060(a)(1) and AS
2 11.71.060(a)(2), as amended by CCS HB 149, in violation of
3 the constitutional rights of the plaintiffs. Plaintiffs
4 seek an order from this Court preliminarily and permanently
5 enjoining defendants from enforcing these amended statutes,
6 which violate the constitutional rights of plaintiffs and
7 other Alaskans.

8 **FIRST CLAIM FOR RELIEF**

9 Right to Privacy
(Alaska Constitution, Art. I, Sec. 22)

10 28. Paragraphs 1-27 are incorporated into
11 the First Cause of Action as though fully set forth herein.

12 29. Plaintiffs are engaging in, and will
13 continue to engage in, conduct protected under Article I,
14 Section 22 of the Alaska Constitution.

15 30. As a result of defendants' actions
16 complained of herein, plaintiffs suffer irreparable harm to
17 their constitutional rights. Defendants have irreparably
18 violated plaintiffs' right to privacy. Plaintiffs thus face
19 an actual and concrete threat of violation of their
20 constitutional rights.

21 **PRAYER FOR RELIEF**

22 Plaintiffs seek and are entitled to the following
23 relief:

24 31. That the Court assume jurisdiction
over this matter;

1 32. That the Court award plaintiffs
2 declaratory and injunctive relief;

3 33. That the Court declare that
4 AS 11.71.050(a)(2)(E), AS 11.71.060(a)(1) and AS
5 11.71.060(a)(2), as amended by CCS HB 149, violate the
6 Alaska Constitution and are therefore void;

7 34. That the Court issue a preliminary
8 and permanent injunction restraining defendants, their
9 agents, employees, assigns and all persons acting in concert
10 or participating with them, from enforcing AS
11 11.71.050(a)(2)(E), AS 11.71.060(a)(1) and AS
12 11.71.060(a)(2), as amended by CCS HB 149;

13 35. That the Court declare that
14 plaintiffs are public interest litigants;

15 36. That the Court order defendants to
16 pay plaintiffs' costs and attorneys' fees; and

17 37. That the Court grant any additional
18 relief to which plaintiffs may be entitled in this action.

19
20 WHEREFORE plaintiffs respectfully request that the
21 Court enter judgment in their favor on the claims made and
22 for the relief requested by this Complaint.

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DATED this ____ day of _____, 2006.

Respectfully Submitted,

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