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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.)
MARQUEZ, Attorney General for the)
State of Alaska, in his official capacity,)

Defendants.)

Case No. 1JU-06-793 CI

**PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiffs hereby submit the following undisputed facts in support of their motion for summary adjudication of their First Claim For Relief in their Complaint.¹ Additional supporting evidence is cited in their concurrently-filed brief in support of their motion for summary judgment.

**UNDISPUTED MATERIAL
FACT:**

SUPPORTING EVIDENCE:

1. Article I, section 22 of the Alaska Constitution provides: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

1. Alaska Const. Art. I, sec. 22.

¹ The supporting evidence listed herein is not a comprehensive accumulation of all facts that would support the undisputed material fact but is, rather, a small sample of the supporting evidence that exists in this voluminous record.

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2. In 1975, the Alaska Supreme Court held that Article I, section 22 of the Constitution “encompasses the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.”

2. *Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975).

3. In 1982, the Alaska Legislature determined that “for purposes of the decision in *Ravin*, an amount which is indicative of personal use” and permitted possession of marijuana in an amount up to four ounces.

3. Commentary & Sectional Analysis for the 1982 Revision of Alaska's Controlled Substances Laws, *Conference Committee Substitute for Senate Bill No. 190* at 19.

4. In 1990, the Alaska voters approved Initiative Proposal No. 2, which made it a crime to possess all amounts of marijuana in any location.

4. *E.g.*, *State v. McNeil*, 1KE-93-947 CR at 2(Sup. Ct. 1993).

5. The Legislature codified this initiative as AS 11.71.060(a)(1) in 1991.

5. Former AS 11.71.060(a)(1) (1991).

6. In 2003, in *Noy v. State*, the Alaska Court of Appeals held that former AS 11.71.060(a)(1) was unconstitutional and invalidated the statute to the extent it criminalized possession of marijuana in an amount of less than four ounces.

6. *Noy v. State*, 83 P.3d 538 (Alaska Ct. App. 2003).

7. On September 7, 2004, the Alaska Supreme Court declined to hear an appeal from the Court of

7. Order Denying Pet. For Hrg., *State v. Noy*, Supreme Court No. S-11297 (Sept. 7, 2004).

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1 Appeals' decision in *Noy v. State*.

2 8. On January 21, 2005, House 8. House Journal Text for 01-21-2005—
3 Bill 96 was introduced, by request of 24th Legislature at 127 (Pls.' Ex. L).
4 Governor Frank H. Murkowski.

5 9. On January 21, 2005, Senate 9. Senate Journal Text for 01-21-2005—
6 Bill 74 was introduced, by request of 24th Legislature at 0111 (Pls.' Ex. M).
7 Governor Frank H. Murkowski.

8 10. On January, 21, 2005, the 10. House Journal Text for 01-21-2005—
9 House was read a letter transmitted 24th Legislature at 0127 (Pls.' Ex. L).
10 by Governor Frank H. Murkowski
11 regarding HB 96.

12 11. On January 21, 2005, the 11. Senate Journal Text for 01-21-2005—
13 Senate was read the same letter 24th Legislature at 0112 (Pls.' Ex. M).
14 transmitted by Governor Frank H.
15 Murkowski regarding SB 74.

16 12. In those January 20, 2005 12. House Journal Text for 01-21-2005—
17 letters, Governor Murkowski further 24th Legislature at 0128 (Pls.' Ex. L);
18 urged the Legislature to make Senate Journal Text for 01-21-2005—24th
19 findings about the harmful effects of Legislature at 0112 (Pls.' Ex. M).
20 marijuana because "the Alaska
21 Supreme Court has shown an
22 unwillingness to reconsider the
23 latest scientific evidence on the
24 harmful effects of marijuana."

25 13. The Bill was referred to the 13. House Journal Text for 01-21-2005—
26 Senate Health, Judiciary, and 24th Legislature at 0127 (Pls.' Ex. L);
27 Finance Committees and to the Senate Journal Text for 01-21-2005—24th
28 House Judiciary and Finance Legislature at 0111 (Pls.' Ex. M).
29 Committees.

30 14. Findings in support of this 14. See Bill Versions Display—SB 74 in
31 bill were written in advance and the 24th Legislature (Pls.' Ex. M-1) and HB
32 included in the proposed legislation 96 in the 24th Legislature (Pls.' Ex. L-1).
33 before the Senate Judiciary
34 Committee had even accepted
written evidence from opponents

1 and before it held public hearings on
2 the bill.

3 15. Between March 21, 2005 and
4 April 20, 2005, the Senate HES and
5 Judiciary Committees accepted
6 written evidence from both
7 opponents and proponents of the
8 bill.

9 16. On March 21, 2005; March
10 23, 2005; April 1, 2005; April 11,
11 2005; April 20, 2005; April 23,
12 2005; May 3, 2005; May 5, 2005;
13 January 10, 2006 and January 12,
14 2006, the Senate HES, Judiciary and
15 Finance Committees held public
16 hearings on the proposed SB and
17 received testimony from proponents
18 and opponents of the bill.

19 17. The House Judiciary
20 Committee also held a public
21 hearing and received testimony from
22 proponents and opponents of the bill
23 on April 8, 2005 and April 12, 2005.

24 18. The government's
witnesses—proponents of the
proposed legislation—testified for a
total of 9 hours, 25 minutes.

15. *See* Minutes of Senate Judiciary
Committee—April 20, 2005 (Pls.' Ex. M-
2); *see generally* Minutes of Senate HES
and Senate Judiciary—March 21, 2005
(Pls.' Ex. M-3); March 23, 2005 (Pls.' Ex.
M-4); April 1, 2005 (Pls.' Ex. M-5); April
11, 2005; April 20, 2005 (Pls.' Ex. M-6).

16. *See* Bill History/Action Display—SB
74 in the 24th Legislature (Pls. Ex. M-6) .

17. *See* Bill History/Action Display—HB
96 in the 24th Legislature—April 12, 2005
(Pls.' Ex. L-1).

18. *See* Minutes of Senate Judiciary
Committee—April 20, 2005 (Pls.' Ex. M-
2); *see generally* Minutes of Senate HES
and Senate Judiciary—March 21, 2005
(Pls.' Ex. M-3); March 23, 2005 (Pls.' Ex.
M-4); April 1, 2005 (Pls.' Ex. M-5); April
11, 2005; April 20, 2005 (Pls.' Ex. M-6);
Minutes of House Judiciary Committee-
April 8, 2005 (Pls.' Ex. L-2); Minutes of
House Judiciary Committee-April 12,
2005) (Pls.' Ex. L-3).

1 19. The witnesses opposing the
2 bill were allowed to testify for a
3 mere 6 hours, 18 minutes.

19. *See* Minutes of Senate Judiciary
Committee—April 20, 2005 (Pls.’ Ex. M-
2); *see generally* Minutes of Senate HES
and Senate Judiciary—March 21, 2005
(Pls.’ Ex. M-3); March 23, 2005 (Pls.’ Ex.
M-4); April 1, 2005 (Pls.’ Ex. M-5); April
11, 2005; April 20, 2005 (Pls.’ Ex. M-6);
Minutes of House Judiciary Committee-
April 8, 2005 (Pls.’ Ex. L-2); Minutes of
House Judiciary Committee-April 12,
2005) (Pls.’ Ex. L-3).

8 20. Of the 6 hours, 18 minutes of
9 testimony from the opponents of the
10 bill, only 4 hours and 44 minutes
11 were allotted to those who planned
12 to testify. An even shorter period of
13 time was allotted to the expert
14 witnesses who were prepared to
15 discuss the flaws in the materials
16 upon which the Legislature had
17 based its findings. The remaining 1
18 hour, 34 minutes was taken up by
19 members of the public.

20. *See* Minutes of Senate Judiciary
Committee—April 20, 2005 (Pls.’ Ex. M-
2); *see generally* Minutes of Senate HES
and Senate Judiciary—March 21, 2005
(Pls.’ Ex. M-3); March 23, 2005 (Pls.’ Ex.
M-4); April 1, 2005 (Pls.’ Ex. M-5); April
11, 2005; April 20, 2005 (Pls.’ Ex. M-6);
Minutes of House Judiciary Committee-
April 8, 2005 (Pls.’ Ex. L-2); Minutes of
House Judiciary Committee-April 12,
2005) (Pls.’ Ex. L-3).

16 21. In written evidence and in
17 oral testimony presented to the
18 Legislature, and also included as
19 evidence presented to this Court,
20 opponents of the legislation that
21 would criminalize all marijuana
22 established the following facts,
23 which the State does not dispute:

22 a. Marijuana was harmful in
23 1975.

a. *Ravin v. State*, 537 P.2d 494, 505-
11 (Alaska 1975); Maugh, Thomas
H., “Marihuana: New Support for
Immune and Reproductive
Hazards,” *Science* 190: 865-67 at
3(Nov. 1975) (Pls.’ Ex. I-1 at 3).

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b. Marijuana today, as in 1975, is less dangerous than cigarettes and alcohol.

b. *Ravin v. State*, 537 P.2d 494, 506 (Alaska 1975); Earleywine Aff. at ¶¶11-12 (Pls.’ Ex. G at 5); State’s Ex. S-18 at 1 (prenatal tobacco use associated with reduced weight, length, head and chest circumferences; prenatal marijuana use associated with minor physical anomalies and not associated with growth outcomes); State’s Ex. S-10-H at 226 (prenatal consumption of alcohol causes significant effects on fetus); State’s Ex. S-24 at 2 (4.5 million Americans classified with dependence on alcohol, compared with 2.7 million Americans classified with dependence on illicit drugs); State’s Ex. S-27 at 1 (8,222,000 persons aged 12 and older classified as dependent on alcohol, compared to 2,614,000 persons 12 and older classified as dependent on marijuana *and* hashish).

c. Marijuana testing in the 1970s under-reports the THC levels of the marijuana then in circulation.

c. Testimony of Mitchell Earleywine, April 1, 2005 Senate HESS Committee Hearing (State’s Ex. S-12 at 79).

d. Higher marijuana potency means that individuals smoke less.

d. Earleywine Aff. at ¶9 (Pls.’ Ex G at 4); Heishman, S., et al. *Effects of Tetrahydrocannabinol Content on Marijuana Smoking Behavior, Subjective Reports, and Performance*, 34 Pharmacology Biochemistry and Behavior 173 (1989) at 178 (Pls. Ex. C-7 at 178).

e. The rates of use of

e. *Compare Ravin v. State*, 537 P.2d

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marijuana by teenagers is lower than in 1975.

494, 505 & n.46 (Alaska 1975) (citing study indicating that 24% of Anchorage school children in grades 6-12 had used marijuana; 46% in grades 11 and 12 had used marijuana) *with* State's Ex. S-11-C-2 at 3 (22.9% of males and 20.5% of females in grades 7-9 had ever used marijuana; 45.9% of males and 45.8% of females in grades 10-12 had ever used marijuana).

f. The prevalence of mj use among children is less than the prevalence of alcohol use among children.

f. *Monitoring the Future: National Results on Adolescent Drug Use/Overview of Key Findings*, Nat'l Institute on Drug Abuse at 1, 3 (2005) (Pls.' Ex. N at 1, 3); State's Ex. S-27 at 1 (8,222,000 persons aged 12 and older classified as dependent on alcohol, compared to 2,614,000 persons 12 and older classified as dependent on marijuana *and* hashish).

g. Marijuana does not have a deleterious effect on the chromosomal structure of users.

g. Grinspoon Aff. at ¶ 32 (Pls.'s Ex. I at 15).

h. Marijuana does not have a deleterious effect on testosterone levels in the body.

h. Grinspoon Aff. at ¶ 32 (Pls.'s Ex. I at 15).

i. Many individuals in treatment for substance abuse are there because of court order or as a means to avoid incarceration.

i. Hinterberger Aff. at ¶ 14 (Pls.' Ex. J at 8); State's Ex. S-11-C-* at 14.

j. Marijuana is significantly less likely to induce dependence than opiates,

j. Earleywine Aff. at ¶¶ 11-12 (Pls.' Ex. G at 5); State's Ex. S-11-A-15; Joy, J., et al., *Marijuana and*

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stimulants, alcohol and tobacco.

Medicine: Assessing the Science Base, Institute of Medicine, Division at 35, 70 (1999) (Pls.' Ex. C-9 at 35, 70).

k. Marijuana has been used effectively to treat nausea, appetite loss, pain and anxiety.

k. Musty, Richard E., and Rita Rossi (2001), *Effects of Smoked Cannabis and Oral delta9-Tetrahydrocannabinol on Nausea and Emesis After Cancer Chemotherapy: A review of state clinical trials*, Journal of Cannabis Therapeutics 1(1): 43-56 (Pls. Ex. A-4-e at 148, 156-57); Hinterberger Aff. at ¶ 14 (Pls. Ex. J at 8).

22. The legislation known as CCS HB 149 was codified as Chapter 53 SLA 2006 and took effect immediately on June 3, 2006.

22. Alaska Legislature, Passed Legislation, available online at: <<http://www.legis.state.ak.us/basis>>.

23. Chapter 53 SLA 2006 amends AS 11.71.050(a) and AS 11.71.060(a) to criminalize possession of all amounts of marijuana in any place.

23. Chapter 53 SLA 2006 (State's Ex. S-1).

24. Chapter 53 SLA 2006 amends AS 11.71.050(a) and AS 11.71.060(a) to make it a criminal offense for adults to possess less than four ounces of marijuana in their homes.

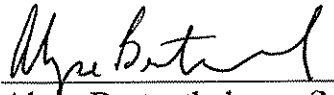
24. Chapter 53 SLA 2003 (State's Ex. S-1).

1 Dated this 29th day of June 2006.

2 Respectfully Submitted,

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