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

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

8 Plaintiffs, )

9 v. )

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

13 Defendants. )

Case No. 1JU-06-793 CI

14 **PLAINTIFFS' STATEMENT OF DISPUTED FACTS IN SUPPORT OF**  
15 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR**  
16 **SUMMARY JUDGMENT**

17 Pursuant to Local Rule 56(c), Plaintiffs hereby submit the following  
18 disputed facts in support of their opposition to defendants' motion for summary  
19 judgment.<sup>1</sup> Plaintiffs maintain that there are no genuine issues of disputed  
20 material fact because *Ravin v. State*, 537 P.2d 494 (Alaska 1975), controls the  
21 outcome of this case. *See* Pls.' Consolidated Reply In Support Of Pls.' Mot. for  
22 Summ. J. at 3-7 If this Court considers the evidence presented in this case, there  
23 are no genuine issues of disputed material fact because even accepting defendants'  
24 factual assertions as true, defendants cannot meet their great burden of showing a  
close and substantial relationship between prohibition of marijuana and public  
welfare. *See id.* 18-19. The Court can resolve both these issues independent of  
the facts of this case and grant summary judgment for plaintiffs as a matter of law.

<sup>1</sup> The supporting evidence listed herein is not a comprehensive accumulation of all facts that would support plaintiffs' understanding of the disputed facts but is, rather, a small sample of the supporting evidence that exists in this voluminous record. Plaintiffs cite additional supporting evidence in their concurrently-filed brief in support of their motion for summary judgment.

1 This Court need only consider this Statement of Disputed Facts if it denies  
2 plaintiffs' motion for summary judgment.

3 Defendants do not assert they should be granted summary judgment as a  
4 matter of law, but, rather, rely on the argument that this Court should accord  
5 absolute deference to the Legislature's findings. This Court should not defer to  
6 the Legislature, *see* Pls.' Consolidated Reply in Support of Pls.' Mot. for Summ. J.  
7 19-23. The question of whether the findings are unreasonable is a highly fact-  
8 specific inquiry, which, as demonstrated below, requires the resolution of a large  
9 number of disputed facts. Accordingly, defendants' cross-motion for summary  
10 judgment should be denied.

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**DEFENDANTS' PUPORTED  
FACT:**

**PLAINTIFFS' RESPONSE AND  
SUPPORTING EVIDENCE:**

1. The national average amount of [THC] was less than one percent [in the 1960's and 1970's]. State's Ex. S-13 at 1.

1. Disputed. Earleywine Aff. at ¶¶7-9 (Pls.' Ex. G at 3-4). Further disputed to the extent that defendants contend there is a correlation between potency of marijuana and significant harm from using marijuana. Zimmer, Lynn and Morgan, John P., *Marijuana Myths, Marijuana Facts: a review of the scientific evidence* at 134-41 (Lindesmith Center 1997) (Pls.' Ex. F at 134-41).

2. [THC] increased steadily in the 1980s and 1990s, and by 2003 was six times higher, at 6.4 percent. State's Ex. S-13 at 1.

2. Disputed. *See* Resp. to Purported Fact #1.

3. Marijuana grown and available in Alaska is much more potent than the national average, and has been tested with THC levels over 20 percent. State's Ex. S-13 at 1.

3. Disputed. *See* Resp. to Fact #1. Defendants' purported fact is also irrelevant because the question of harm to Alaskans' health and welfare cannot be based on comparisons with the potency of marijuana in other states.

4. Alaska marijuana today

4. This purported fact is irrelevant to

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commands hundreds of dollars per ounce on the illegal market and is often sold in smaller amounts within the price range of teenagers. State's Ex. S-13 at 1.

the Court's determination of whether the State has legitimate justification for prohibiting adults' personal possession of marijuana in the home; and even if it did, this purported fact does not establish a close a substantial relationship to public welfare.

5. The increasing potency of marijuana corresponds to an increase in substance abuse treatment admissions, particularly of youth 12-17 years of age. Ex. S-13 at 2.

5. Disputed. Written Testimony of Lester Grinspoon at 18, 19 (Pls.' Ex. A-4 at 18-19); Hinterberger Aff. at ¶14 (Pls.' Ex. J at 8-9). This purported fact is further disputed to the extent that defendants argue that the number of persons admitted into treatment programs is indicative of rates of dependence. Hinterberger Aff. at ¶ 14 (Pls.' Ex. J at 8-9).

6. Several hundred adults and children are admitted into treatment each year in Alaska for marijuana abuse, with more than half being children under 18 years of age.

6. Disputed. Hinterberger Aff. at ¶ 14 (Pls.' Ex. J at 8-9). This purported fact is further disputed to the extent that defendants argue that the number of persons admitted into treatment programs is indicative of rates of dependence. *Id.*

7. The increasing potency corresponds with [an increase] in the number of persons seeking emergency medical due to marijuana related incidents. State's Exhibit S-13 at 2.

7. Disputed. There is not a causal link between marijuana use and the increased number of emergency room visits. Written Testimony of Lester Grinspoon at 25 (Pls.' Ex. A-4 at 25); Hinterberger Aff. at ¶13 (Pls.' Ex. J at 7-8). Further disputed to the extent that defendants contend there is a correlation between potency of marijuana and significant harm from using marijuana. *See* Resp. to Purported Fact #1.

8. Pregnant women in Alaska

8. Disputed to the extent Defendants

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use marijuana at a higher rate than the national average. State's Exhibit S-13 at 2.

are implying that use of marijuana causes harm to the fetus. Hinterberger Aff. at ¶¶ 26-28 (Pls.' Ex. J at 15-16).

9. There is evidence that many users become dependent on marijuana under the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders IV. State's Exhibit S-13 at 2.

9. Disputed. Written testimony of Leslie Iversen (Pls.' Ex. A-15 at 2); Hinterberger Aff. at ¶12 (Pls.' Ex. J at 6); Earleywine Aff. at ¶¶ 11-15 (Pls.' Ex. G at 5-7); Joy, J., et al., *Marijuana and Medicine: Assessing the Science Base*, Institute of Medicine, Division at 24 (1999) (Pls.' Ex. C-9 at 24).

10. Studies have shown that use of marijuana and withdrawal from marijuana affect some of the same neurochemical processes as known addictive drugs. State's Exhibit S-13 at 2.

10. Disputed. Earleywine Aff. at ¶16 (Pls.' Ex. G at 7-8); Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 26-30 (Lindesmith Center 1997) (Pls.' Ex. F at 26-30); Hinterberger Aff. at ¶15 (Pls.' Ex. J at 9). Moreover, this purported fact is irrelevant. Even if marijuana affects some of the same neurochemical processes as other drugs, it does not establish a causal link between marijuana use and dependency.

11. Currently, one-third of all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse. State's Exhibit S-13 at 2.

11. Disputed. Hinterberger Aff. at ¶ 14 (Pls.' Ex. J at 8-9). This purported fact is further disputed to the extent that defendants argue that the number of persons admitted into treatment programs is indicative of rates of dependence. *Id.*

12. Early exposure of young people to marijuana increases the likelihood of lifelong health and social problems. State's Exhibit

12. Disputed. Hinterberger Aff. at ¶16 (Pls.' Ex. J at 9-10).

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S-13 at 2.

13. Marijuana makes it more likely that the person will later use more potent drugs. State's Exhibit S-13 at 2.

13. Disputed. Hinterberger Aff. at ¶17 (Pls.' Ex. J at 10-11); Earleywine, Mitch, *Understanding Marijuana: A New Look At The Scientific Evidence* (Oxford University Press 2005) at 49-65 (Pls.' Ex. E at 49-65); Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 32-37(Lindesmith Center 1997) (Pls.' Ex. F at 32-37).

14. Marijuana is associated with depression and increased risk of suicide. State's Exhibit S-13 at 2.

14. Disputed. Hinterberger Aff. at ¶17 (Pls.' Ex. J at 11); Earleywine, Mitch, *Understanding Marijuana: A New Look At The Scientific Evidence* (Oxford University Press 2005) at 144-48 (Pls.' Ex. E at 144-48); Written Testimony of Lester Grinspoon at 4 (Pls.' Ex. A-4 at 4); Testimony of Mitchell Earleywine before the Alaska Senate HES Committee (April 1, 2005) (State's Ex. S-12 at 72).

15. A high percentage of persons in treatment for alcohol abuse also abuse marijuana. State's Exhibit S-13 at 2.

15. Disputed. Grinspoon Aff. at ¶ 35 (Pls.' Ex. I at 16-17); *see also* Resp. to Purported Fact #11.

16. Although the relationship between marijuana and alcohol and other drugs is not fully understood, there is a correlative effect that makes it more difficult to treat alcoholism when marijuana is also used. State's Exhibit S-13 at 2.

16. Disputed. Grinspoon Aff. at ¶35 (Pls.' Ex. H at 16); Written Testimony of Lester Grinspoon at 20-21 (Pls.' Ex. A-4 at 20-21).

17. Marijuana consists of

17. This purported fact is irrelevant.

1 hundreds of different  
2 chemical[s] and can affect  
3 almost every organ of the  
4 body, including the lymph  
5 system, the heart, and the  
6 lungs. State's Exhibit S-13 at  
7 4.

Defendants' purported fact is  
equally applicable to virtually  
anything one ingests, from water to  
chocolate. The purported fact does  
not establish marijuana use results  
in physical harm. In fact,  
plaintiffs' evidence suggests  
marijuana consumption can be  
beneficial to the body. *See, e.g.,*  
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).

13 18. THC binds to receptors in  
14 the brain that should  
15 otherwise bind to naturally  
16 occurring brain chemicals.  
17 State's Exhibit S-13 at 4.

18 Disputed and irrelevant to the  
extent Defendants argue that this  
evinces harm. *See Resp. to*  
*Purported Fact #17.*

17 19. Marijuana can affect  
18 memory, attention,  
19 judgment, and other  
20 cognitive functions and can  
21 impair motor coordination,  
22 time perception, and balance.  
23 State's Exhibit S-13 at 4.

19 Disputed to the extent Defendants  
contend that these effects are  
serious or long-term. Zimmer,  
Lynn and Morgan, John P.,  
*Marijuana Myths and Facts: a*  
*review of the scientific evidence at*  
*7-79 (Lindesmith Center 1997)*  
*(Pls.' Ex. F at 70-79); Written*  
*Testimony of Leslie Iversen at 2*  
*(Pls.' Ex. A-15 at 2).*

23 20. Marijuana smoke contains  
24 more carcinogenic  
hydrocarbons than tobacco  
smoke. State's Exhibit S-13  
at 4.

20 Disputed. Melamede, Robert,  
"Cannabis and Tobacco Smoke Are  
Not Equally Carcinogenic," *Harm*  
*Reduction Journal*, 2005 2:21 at 2  
*(Pls.' Ex. L at 2); Grinspoon Aff. at*  
*¶33 (Pls.' Ex. H at 15-16).*

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21. Marijuana often contains bacteria or fungi that are dangerous to humans, and is harvested and sold without removing pesticides and fungicides. State's Exhibit S-13 at 4.

22. A high percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of their arrest. State's Exhibit S-13 at 4.

23. The percentage is particularly high for adults arrested for domestic violence who test positive for marijuana at the time of their arrest. State's Exhibit S-13 at 5.

24. If a parent uses marijuana, their children are four to five times more likely to become marijuana users. State's Exhibit S-13 at 5.

21. Disputed. Hinterberger Aff. at ¶20 (Pls.' Ex. J at 12). Moreover, this purported fact is irrelevant because Defendants do not establish that such bacteria or fungi cause a serious threat to public health.

22. Disputed to the extent that Defendants contend that there is a causal link between marijuana use and the commission of crime. Hinterberger Aff. at ¶19 (Pls.' Ex. J at 11); Earleywine Aff. at ¶15 (Pls.' Ex. G at 7); Written Testimony of Lester Grinspoon at 19 (Pls.' Ex. A-4 at 19); Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 88-91(Lindesmith Center 1997) (Pls.' Ex. F at 88-91). This fact is also irrelevant because traces of THC may be found in the body long after marijuana was used.

23. Disputed. Hinterberger Aff. at ¶21 (Pls.' Ex. J at 12). This fact is also irrelevant because traces of THC may be found in the body long after marijuana was used.

24. Disputed. Hinterberger Aff. at ¶22 (Pls.' Ex. J at 13); Written Testimony of Lester Grinspoon at 16 (Pls.' Ex. A-4 at 16). This purported fact is also irrelevant because it confuses correlation with causation.

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25. Many high school students report that they have been able to get marijuana at home from a relative. State's Exhibit S-13 at 5.

26. Criminal penalties for possession of marijuana in the home will deter possession by adults and reduce its availability and accessibility to children. State's Exhibit S-13 at 5.

27. Studies have shown that criminal penalties for possession of marijuana are effective in increasing the perception among teenagers of the risks of using the drug, thus reducing its use by young people. State's Exhibit S-13 at 5.

28. The street value of marijuana today is between \$350 and \$550 per ounce. State's Exhibit S-13 at 5.

29. Prenatal exposure has been associated with impaired fetal growth and cognitive development. State's Opposition to Plaintiffs' Mot. for Summ. J. at 13-15.

25. Disputed. Hinterberger Aff. at ¶22 (Pls.' Ex. J at 13).

26. Disputed. Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 151-63(Lindesmith Center 1997) (Pls.' Ex. F at 151-63); Hinterberger Aff at ¶23 (Pls.' Ex. J at 13-14); Grinspoon, Lester and Bakalar, James B., *Marihuana: The Forbidden Medicine* at 273-83 (Yale University 1997).

27. Disputed. Written testimony of Lester Grinspoon at 16 (Pls.' Ex. A-4 at 16); Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 142-49 (Lindesmith Center 1997) (Pls.' Ex. F at 142-49).

28. See Resp. to Purported Fact # 4.

29. Disputed. Hinterberger Aff. at ¶¶26, 27, 28 (Pls.' Ex. J at 15-16); Zimmer, Lynn and Morgan, John P., *Marijuana Myths and Facts: a review of the scientific evidence* at 98-104(Lindesmith Center 1997) (Pls.' Ex. F at 98-104).



1 Dated this 29<sup>th</sup> day of June 2006.

2 Respectfully Submitted,

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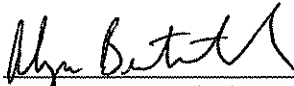
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