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June 14, 2005

Dear Attorney General Márquez:

We are writing to make clear our deep concern about the comments in the news release issued by your office last week in response to the U.S. Supreme Court's June 6, 2005 decision in Gonzales v. Raich. In particular, we are concerned that you are considering declaring Alaska's medical marijuana laws inoperative. Such action would be completely unsupported by the Raich decision, and would violate Alaskan law. We urge you to continue to comply with and enforce the Alaskan medical marijuana law and to issue a public statement assuring Alaskan patients that Alaska's state medical marijuana laws remain in full force and effect.

There is no doubt that the Raich decision leaves intact all of the existing state laws permitting medical marijuana use, including Alaska's medical marijuana provisions. We are submitting with this letter the ACLU's complete legal analysis of the Raich decision. In summary, Raich addressed only a very narrow issue of constitutional law. The Ninth Circuit Court of Appeals had held that applying federal marijuana prohibition laws to purely intrastate non-commercial medical marijuana cultivation, possession and use by individual patients and caregivers exceeded Congress' Commerce Clause authority. The Supreme Court in Raich reversed, and held that federal marijuana laws can indeed be enforced even as to that limited intrastate activity. Importantly, however, Raich did not address the much different issue of the continued validity of state medical marijuana laws.

As you are well aware, under our federalist form of government, there are independent federal and state laws regulating marijuana and other drugs. The federal government enforces federal law and the state governments enforce state law.

The power of state governments to enact and enforce state medical marijuana laws was not challenged in Raich, and the Court's decision did nothing to undercut or diminish that basic state government authority. We note with favor the acknowledgment in your release that the "decision did not strike down the California law." State medical marijuana laws remain valid, and states retain the power to enact

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and enforce state laws permitting medical marijuana. The Raich decision does nothing to grant the federal government power to require states to enforce federal drug laws or to enact state laws prohibiting medical marijuana. In short, while the federal government can once again enforce federal marijuana laws against individual patients, even in states with medical marijuana laws in place, state law enforcement officials must continue to enforce state medical marijuana laws.

State government officials from virtually every other state with medical marijuana laws have been quoted in the press as affirming that the Raich decision does nothing to invalidate their respective state laws. We are attaching copies of news articles reporting that state officials in Montana, Colorado, California, Vermont, Maine, Nevada, Hawaii and Washington have all declared that their state medical marijuana laws are still valid and in force.

There is much uncertainty among the public regarding the impact of the Raich decision. Emotions are running high and sick and dying patients are understandably concerned about their legal status. Your public statements do little to quell this apprehension and, arguably, heighten the uncertainty among Alaskan citizens.

We are submitting with this letter the official statement issued by California Attorney General Bill Lockyer, and urge you to promptly issue a similar statement and continue to uphold and comply with Alaskan law. While we understand that you have not, as of yet, made a decision to suspend or limit in any way current Alaskan medical marijuana laws, please be informed that if you do so, we will take appropriate legal action.

Sincerely,



Michael W. Macleod-Ball
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