An Open Letter - Throughout this letter there are Internet Links. You must be connected to the Internet to view the Links.

Honorable Members of the Alaska State Legislature and Attorney General

After listening to the audio recording of the January 26th 2015 "*Joint House and Senate Judiciary Committee Hearing*" on "*Senate Bill No. 30*," I found the discussion on "*Marijuana*" to be very disturbing. There seems to be confusion on the requirements of the "*Constitution*" for the "*State of Alaska*" as that "*Constitution*" addresses "*Initiatives*" with the "*supremacy clause*" of the "*Constitution*" for "*The United States of America*." There also appears to be confusion with the understanding of the "*Powers*" of the "*U.S. Congress*" to not only regulate "*Interstate*" commerce, but also the "*Implied Powers*" to regulate "*Intrastate*" commerce within the borders of a "*State*."

The Conflict Of Constitutions

What is at issue is a "*Ballot Initiative*" that has provisions that are in conflict with the "*Federal Controlled Substance Law*" (*84 Stat. 1242, 21 USC 801 et seq.*), a "*Federal Law*" that was made in pursuance to the provisions of the "*Constitution*" for "*The United States of America*." The confusion arises in the provision of the "*Constitution*" for the "*State of Alaska*" that addresses "*Ballot Initiatives*":

> "If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, **is not subject to veto, and may not be repealed by the legislature** within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law." [Emphasis added].
>
> Alaska Constitution, Article XI, Section 6

As we look at this provision of the "*Alaska State Constitution*," it would appear that all "*Ballot Initiatives*" that have been adopted by the "*People*" are "*mandatory laws*" of the "*State of Alaska*" which cannot be "*vetoed*" or "*repealed*," but that is not true.

All "*Ballot Initiatives*" that establish "*Laws*" for the "*State of Alaska*" must be made in conformity with the "*Constitution*" for "*The United States of America*" and all "*Laws*" and "*Treaties*" made thereunder, and if not; it is the "*Supremacy Clause*" of "*U.S. Constitution, Article VI, Clause 2*" that "***voids***" "*Ballot Initiatives*" and "***repeals***" existing "*Laws*" of the "*State*," not the "*Legislature*" for the "*State of Alaska*":

> "**This Constitution, and the Laws of the United States which shall be made in Pursuance thereof**; and all Treaties made, or which shall be made, **under the Authority of the United States, shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, **any Thing in the Constitution** or Laws **of any State to the Contrary notwithstanding**." [Emphasis added].
>
> U.S. Constitution, Article VI, Clause 2

Which provision of the "*U.S. Constitution*" all "*Members*" of the "*Legislature*" for the "*State of Alaska*" and the "*Alaska Attorney General*" are **required** to "*obey*." There is no discretionary authority:

> "The Senators and Representatives before mentioned, **and the Members of the several State Legislatures**, and all executive and judicial Officers, both of the United States **and of the several States**, **shall be bound by Oath or Affirmation, to support this Constitution**; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." [Emphasis added].
>
> U.S. Constitution, Article VI, Clause 3

We also see that without any further action to be taken by the "*Alaska State Legislature*," the provisions of the year 2014 "*Marijuana Ballot Initiative No. 2*" has been "***voided***" for being in "*positive conflict*" with the enactments of "*Law*" by the "*U.S. Congress*" (e.g. *84 Stat. 1242*, *21 USC 801 et seq.*) which was made under the authority of the "*United States*" in executing of the provision of "*U.S. Constitution, Article I, Section 8, Clause 3*":

> "**To regulate Commerce** with foreign Nations, **and among the several States**, and with the Indian Tribes;" [Emphasis added].
>
> U.S. Constitution, Article I, Section 8, Clause 3

There has been no "*Offering of Proof*" by the "*Office*" of the "*Alaska Attorney General*" or by any "*Member*" of the "*Alaska State Legislature*" showing that any provision of the "*Federal Controlled Substance Law*" (*supra*.) was not made in pursuance to the "*Constitution*" for "*The United States of America*" and there being no "*Offering of Proof*" showing that any provision of the "*Marijuana Ballot Initiative No. 2*" exists in conformity with the "*Federal Controlled Substance Law*" (*supra*.) and therefore the supremacy clause of "*U.S. Constitution Article VI, Clause 2*" has **voided** "*Ballot Initiative No. 2*" as a proposed "*Law*" for the "*State of Alaska*" and notwithstanding the "*Alaska Supreme Court*" case of "*Ravin v. State, 537 P.2d 494*," the "*Federal Controlled Substance Law*" (*supra*) has **repealed** all existing "*Laws*" of the "*State of Alaska*" which addresses the use of "*Marijuana*" within the "*State*" so says the "*U.S. Supreme Court*":

> ". . . . The case comes down to the claim that **a locally cultivated product** that is used **domestically** rather than sold on the open market is not subject to federal regulation. Given the CSA's findings and the undisputed magnitude of the commercial market for marijuana, ***Wickard*** [*Wickard v. Filburn, 317 U.S. 111, 127-128*] **and its progeny foreclose that claim**. Pp. 20-30." [Emphasis added]
>
> GONZALES, ATTORNEY GENERAL, *et al. v.* RAICH *et al.*,
> certiorari to the united states court of appeals for the ninth circuit,
> No. 03-1454. Argued November 29, 2004--Decided June 6, 2005.

There is a positive conflict between the "*subchapters*" of the "*Federal Controlled Substance Law*" and "*State law*" of the "*State of Alaska*" so that the two cannot consistently stand together and therefore, the "*Federal Controlled Substance Law*" is the controlling law.

'Inter'state Commerce vs. 'Intra'state Commerce

The "*U.S. Supreme Court*" has ruled within many "*Court Cases*" that the "*long arm*" of the "*U.S. Congress*" to regulate "*Interstate Commerce*" extends into the "*Intrastate Commerce*" of the "*States*" when the movement of "*Commerce*" within the "*States*" **obstructs** Congressional authority to regulate "*Commerce*" moving between the "*States*" and foreign "*Nations*." This authority of the "*U.S. Congress*" to

regulate "*Intrastate Commerce*" of the "*States*" through the "*Interstate Commerce Clause*" of the "*U.S. Constitution*" is founded upon U.S. Constitution Article I, Section 8, Clause 18:

> "The Congress shall have power … To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

As the "*U.S. Congress*" has documented within "*21 USC 801 §§ (2) thru (5)*" that the movement of "*Marijuana*" within the "*Intrastate Commerce*" of the "*States*" **obstructs** the Congress' authority to regulate "*Marijuana*" as it moves within the "*Interstate Commerce*" of the "*States*" and "*Nations*," the "*U.S. Congress*" has expressly proclaimed within "*21 USC 801§(6)*" its authority to regulate the "*Intrastate Commerce*" of the "*States*":

> "**Federal control** of the **intrastate** incidents of the traffic in controlled substances **is essential** to the effective control of the **interstate** incidents of such traffic." [Emphasis added]
>
> *21 USC 801(6)*

the "*U.S. Congress*" has taken control of "*Marijuana*" as it moves within the boundaries of "*Intrastate Commerce*" of the "*States*" leaving the "*Alaska State Legislature*" without authority to bring into effect any "*Ballot Initiative*" to legalize the use of "*Marijuana*" via enactments of additional "*Laws*," "*Amendments*," or "*Regulations*."

It was very disturbing to hear the "*Members*" of the "*House*" and "*Senate Joint Judiciary Committee*" addressing the "*Federal Controlled Substance Law*" as if it was a "*Law*" that only applied to the use of "*Marijuana*" on "*Federal Controlled Property*" and on "*Federal Financed Projects*." This is a huge "*error*" on the part of the "*Members*" of the "*Judiciary Committees*":

> "Congress' power to regulate purely local activities that are part of an economic "*class of activities*" that have a substantial effect on interstate commerce is firmly established. See, *e.g., Perez v. United States, 402 U. S. 146, 151*. If Congress decides that the " *'total incidence*' " of a practice poses a threat to a national market, it may regulate the entire class. See, *e.g., id.,* at *154-155*. Of particular relevance here is *Wickard v Filburn, 317 U.S. 111, 127-128*, where, in rejecting the appellee farmer's contention that Congress' admitted power to regulate the production of wheat for commerce did not authorize federal regulation of wheat production intended wholly for the appellee's own consumption, the Court established that Congress can regulate purely **intrastate** activity that is not itself "*commercial*," *i.e.,* not produced for sale, if it concludes that failure to regulate that class of activity would

undercut the regulation of the interstate market in that commodity. The similarities between this case and *Wickard* are striking. In both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for **home consumption**, be it wheat or **marijuana**, has a substantial effect on supply and demand in the national market for that commodity. In assessing the scope of Congress' Commerce Clause authority, the Court need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a "*rational basis*" exists for so concluding. *E.g., Lopez, 514 U.S., at 557*. Given the enforcement difficulties that attend distinguishing between **marijuana** cultivated locally and **marijuana** grown elsewhere, *21 U. S. C. §801(5)*, and concerns about diversion into illicit channels, the Court has no difficulty concluding that Congress had a rational basis for believing that failure to regulate the **intrastate** manufacture and possession of **marijuana** would leave a gaping hole in the *CSA*. ["*Control Substance Act*" (*21 USC 811*)] Pp. 12-20." [Emphasis added].

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It is very disturbing to see the "*Members*" of the "*Joint Judiciary Committees*" of the "*Alaska State Legislature*" who are "*Members*" of the "*Alaska BAR Association*" poking their fingers into the eyes of "*Federal Judges*" and showing contempt and disrespect not only for our "*Federal Appellate Courts*," but for the "*U.S. Supreme Court*" as well when the "*Members*" of that "*Committee*" does its best to implement the "*Marijuana Ballot Initiative No. 2*" into a "*Law*" of the "*State of Alaska*" to make legal use of "*Marijuana*" for not only "*recreational*" purposes, but for "*medical*" purposes as well after the "*U.S. Congress*" has declared by "*Law*" that such usage shall be unlawful:

"In enacting the *CSA*, Congress classified marijuana as a **Schedule I** drug. **21 U. S. C. §812(c)**. This preliminary classification was based, in part, on the recommendation of the Assistant Secretary of HEW "*that marihuana be retained within schedule I at least until the completion of certain studies now underway*." **Schedule I** drugs are categorized as such because of their high potential for abuse, **lack of any accepted medical use**, and **absence of any accepted safety for use in medically supervised treatment**. **§812(b)(1)**. These three factors, in varying gradations, are also used to categorize drugs in the other four schedules. For example, **Schedule II** substances also have a high potential for abuse which may lead to severe psychological or physical dependence, but unlike **Schedule I** drugs, they have a currently accepted medical use. **§812(b)(2)**. By classifying marijuana as a **Schedule I** drug, as opposed to listing it on a lesser schedule, **the manufacture, distribution, or possession of marijuana became a criminal offense**, with the **sole exception** being use of the drug as part of a Food and Drug Administration **pre-approved research study**. **§§823(f)**, **841(a)(1)**, **844(a)**;

see also *United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 490* (2001)." [Emphasis added].

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See also the following "*Federal Court*" cases:

1. United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 490 (2001).
2. ASA v. DEA, U.S. Circuit Court of Appeals for the District of Columbia, case No. 11-1265 decided December 22, 2013.
3. James, et al. v. The City of Costa Mesa, et al., No. 10-55769 (9th Cir. 2012).
4. Arizona et.al. *v.* United States, "*Certiorari*" to The United States Court Of Appeals for The Ninth Circuit, No. 11–182. Argued April 25, 2012 — Decided June 25, 2012.

I recommend that you read the full text of GONZALES, ATTORNEY GENERAL, et al. v. RAICH et al..

Federal Register / Vol. 76, No. 131 / Friday, July 8, 2011 / Proposed Rules

Denial of Petition To Initiate Proceedings To Reschedule Marijuana.
AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

". . . In accordance with the CSA rescheduling provisions, after gathering the necessary data, DEA requested a scientific and medical evaluation and scheduling recommendation from the Department of Health and Human Services (DHHS). DHHS concluded that marijuana has a high potential for abuse, has no accepted medical use in the United States, and lacks an acceptable level of safety for use even under medical supervision. Therefore, DHHS recommended that marijuana remain in schedule I. The scientific and medical evaluation and scheduling recommendation that DHHS submitted to DEA is attached hereto. . . ."

This ruling of "*Federal Drug Enforcement Administration*" (*DEA*) was upheld in the Federal Court case of:

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Argued October 16, 2012 Decided January 22, 2013
No. 11-1265
AMERICANS FOR SAFE ACCESS, ET AL.,
PETITIONERS
v.
DRUG ENFORCEMENT ADMINISTRATION,
RESPONDENT

> "The DEA's construction of its regulation is eminently reasonable. Therefore, we are obliged to defer to the agency's interpretation of "*adequate and well-controlled studies*." *See Thomas Jefferson Univ., 512 U.S. at 512* (*deferring to "an agency's interpretation of its own regulations"*). Judged against the DEA's standard, we find nothing in the record that could move us to conclude that the agency failed to prove by substantial evidence that such studies confirming marijuana's medical efficacy do not exist."

The "*Petition*" for U.S. Supreme Court "*Writ of Certiorari*" was "*Denied*" on 11/18/2013. [11-1265] 13-84.

There is a long list of "*Petitions*" addressed to the "*Federal Drug Enforcement Administration*" from the year of 2000 to reclassify "*Marijuana*" from the "*Schedule I*" classification which were all denied.

United States Patents

There is also the problem of "*contempt*" for our Nation's "*Patent Laws*" as shown by the "*Members*" of the "*Legislative Joint Judiciary Committees*" continued attempts to "*authorize*" and "*legalize*" the use of "*Marijuana*" for "*medical purposes*" within the "*State of Alaska*." The government of "*The United States of America*," in and through its **"***Department of Health and Human Services*" of Washington, D.C., has obtained a "*United States Patent*" for the use of "*Marijuana*" for "*medical purposes*" (see *U.S. Patent No. US 6,630,507 B1 dated October 7, 2003*). Has anyone seen any "*written permissions*" authorizing the "*State of Alaska*" or any of its "*citizens*" to use "*Marijuana*" for "medical purposes" from the "*Patent*" holder? Without written authority granted by the "*U.S. Department of Health and Human Services*," the "*State of Alaska*" has trespassed upon the "*Rights*" of the "*Patent*" holder when it authorized by "*Law*" the use of "*Marijuana*" for "*medical purposes*" (e.g. *A.S. Title 17, Chapter 37*).

The positive conflict that cannot consistently stand together

Looking at the wording of the year 2014 "*Marijuana Ballot Initiative No. 2*" we see the following as an example of "*positive conflicts*" that appears throughout the "*Initiative*":

> **Sec. 17.38.020. Personal use of marijuana.**
>
> Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and shall not be a criminal or

civil offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law:

> (a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;
>
> (b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown;
>
> (c) Transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is 21 years of age or older without remuneration;
>
> (d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public; and
>
> (e) Assisting another person who is 21 years of age or older in any of the acts described in paragraphs (a) through (d) of this section.

These above "*sections*" of the "*Ballot Initiative*" are in positive conflict of "*21 USC 841(a)*":

> "Except as authorized by this subchapter, it shall be **unlawful** for **any person knowingly or intentionally**—
>
> > "(1) **to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance**; or
> >
> > "(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance."

And at "*section 841(1)*" at "*subchapter (D)*" of "*Title 21 USC*":

> "**In the case of less than 50 kilograms of marihuana**, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, **such person shall**, except as provided in paragraphs (4) and (5) of this subsection, **be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual** or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment."

See also:

1. 21 USC 849 – Transportation safety offenses.
2. 21 USC 859 – Distribution to persons under age twenty-one.
3. 21 USC 860 – Distribution or manufacturing in or near schools and colleges.
4. 21 USC 861 – Employment or use of persons under the age of 18 years of age in drug operations.

And without going into lengthy quotations, the "*Marijuana Ballot Initiative*" sections **A.S. 17.38.030, A.S. 17.38.040, A.S. 17.38.050, A.S. 17.38.060, A.S. 17.38.070, A.S. 17.38.080, A.S. 17.38.100, A.S. 17.38.130, A.S. 17.38.040, A.S. 43.61.010, A.S. 43.61.020, A.S. 43.61.030,** are also in positive conflict and "*repugnant*" with the "*Federal Control Substance Act*" (*84 Stat. 1242, 21 USC 801 et seq.*). The term "*repugnant*" is used for any "*Law*" of the "*U.S. Congress*" that has been made pursuant to the provisions of the "*Constitution*" for "*The United States of America*" is a "*supreme law*" of the "*land*" and thus the "*Federal Control Substance Act*" is also the "*Law*" of the "*States*" of the "*Union*."

Conclusion

The "*Federal Controlled Substance Law*" (*84 Stat. 1242, 21 USC 801 et seq.*) is a law that was made in pursuance to the "*Constitution*" for "*The United States of America*." The "*Federal Controlled Substance Law*" is an all-inclusive law which does not give the "*States*" discretionary authority to remove, alter, or add any sections of that "*Law*." The "*State of Alaska*" is without authority to make "*lawful*" what the "*U.S. Congress*" has made "*unlawful*" within the "*Federal Controlled Substance Law*" which includes all usages of "*Marijuana*."

The "*Federal Controlled Substance Law*" (*supra.*), being a "*Law*" that was made pursuant to the provisions of the "*Constitution*" for "*The United States of America*," has "*voided*" the "*Alaska Marijuana Ballot Initiative*" as being in positive unresolvable conflict with that "*Law*" and has "*repealed*" all existing "*Laws*" of the "*State of Alaska*" that address's the usage of "*Marijuana*" as an issue of repugnancy.

The "*Attorney General*" for the "*State of Alaska*" has a duty of an "*Oath of Office*" to make an "*Offering of Proof*" that the "*Alaska Marijuana Ballot Initiative*" meets all the requirements of

the "*Constitution*" for "*The United States of America*" and all the "*Laws*" and "*Treaties*" of the "*United States*" that where made pursuant thereto or in the alternative, declare the "*Marijuana Ballot Initiative*" and all existing "*Laws*" of the "*State of Alaska*" that address's the usage of "*Marijuana*" within the "*State*" to be "*null and void*" for being in positive unresolvable conflict with the "*Federal Controlled Substance Law*" (*supra*.) of the "*U.S. Congress*."

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Respectfully Submitted

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