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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LAW PROJECT FOR PSYCHIATRIC)
RIGHTS, an Alaskan non-profit corporation,)

Plaintiff,)

vs.)

REC'D MAR 16 2009

STATE OF ALASKA, SARAH PALIN,)
Governor of the State of Alaska,)

ALASKA DEPARTMENT OF HEALTH AND)
SOCIAL SERVICES, WILLIAM HOGAN,)

Commissioner, Department of Health and)
Social Services, TAMMY SANDOVAL,)

Director of the Office of Children's)
Services, STEVE McCOMB, Director of the)

Division of Juvenile Justice, MELISSA)
WITZLER STONE, Director of the Division of)

Behavioral Health, RON ADLER,)
Director/CEO of the Alaska Psychiatric)

Institute, WILLIAM STREUER, Deputy)
Commissioner, and Director of the Division of)

Health Care Services,)
)

Defendants.)

Case No. 3AN-08-10115 CI

STATE OF ALASKA'S MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Alaska Rules of Civil Procedure 12(b)(6) and 77, defendants
the State of Alaska; Sarah Palin, Governor of the State of Alaska; the Department of
Health and Social Services; William Hogan, in his official capacity as Commissioner of
the Department; Tammy Sandoval, in her official capacity as Director of the Office of
Children's Services; Steve McComb, in his official capacity as Director of the Division

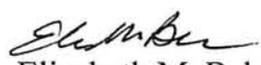
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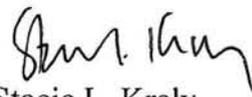
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of Juvenile Justice; Melissa Stone, in her official capacity as Director of the Division of Behavioral Health; Ron Adler, in his official capacity as Director of Alaska Psychiatric Institute; and William Streur, in his official capacity as Deputy Commissioner of the Department of Health and Social Services and Director of the Division of Health Care Services (hereinafter collectively "the Department"), hereby move for judgment on the pleadings in the above-captioned matter on the grounds that plaintiff has failed to present an actual case or controversy under the Declaratory Judgment Act and lacks standing to bring this action. This motion is supported by the attached Memorandum of Law.

DATED this 12th day of March, 2009.

RICHARD A. SVOBODNY
ACTING ATTORNEY GENERAL

By: 
Elizabeth M. Bakalar
Assistant Attorney General
Alaska Bar No. 0606036

By: 
Stacie L. Kraly
Chief Assistant Attorney General
Alaska Bar No. 9406040

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LAW PROJECT FOR PSYCHIATRIC)
RIGHTS, an Alaskan non-profit corporation,)

Plaintiff,)

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STATE OF ALASKA, SARAH PALIN,)
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ALASKA DEPARTMENT OF HEALTH AND)
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Commissioner, Department of Health and)
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Director of the Office of Children's)
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Division of Juvenile Justice, MELISSA)
WITZLER STONE, Director of the Division of)

Behavioral Health, RON ADLER,)
Director/CEO of the Alaska Psychiatric)

Institute, and WILLIAM STREUER, Deputy)
Commissioner and Director of the Division of)

Health Care Services,)
)

Defendants)

Case No. 3AN-08-10115 CI

**STATE OF ALASKA'S MEMORANDUM IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS**

INTRODUCTION

Pursuant to Alaska Rules of Civil Procedure 12(b)(6) and 77, defendants
the State of Alaska; Sarah Palin, Governor of the State of Alaska; the Department of
Health and Social Services; William Hogan, in his official capacity as Commissioner of
the Department; Tammy Sandoval, in her official capacity as Director of the Office of

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3 Children's Services; Steve McComb, in his official capacity as Director of the Division
4 of Juvenile Justice; Melissa Stone, in her official capacity as Director of the Division of
5 Behavioral Health; Ron Adler, in his official capacity as Director of Alaska Psychiatric
6 Institute; and William Streur, in his official capacity as Deputy Commissioner of the
7 Department of Health and Social Services and Director of the Division of Health Care
8 Services (hereinafter collectively "the Department"), move for judgment on the
9 pleadings in the above-captioned matter.
10

11 Plaintiff has filed an Amended Complaint for Declaratory and Injunctive
12 Relief ("Complaint") on behalf of a nonprofit advocacy group, against a number of
13 state defendants in their official capacities. The Complaint does not identify a single
14 individual who has been harmed by the alleged violations in the Complaint, but makes
15 abstract accusations and assertions regarding the administration of and payment for
16 psychotropic medication for children in Alaska. A reading of the Complaint makes
17 obvious that the true subject of plaintiff's grievances is not the Department, but
18 prescribers of psychotropic pharmaceuticals, the pharmaceutical companies which
19 produce and market them, and the overall culture of pediatric psychiatry. The
20 implication that the Department possesses meaningful authority and control over these
21 matters—or is in any realistic position to administer the relief requested even if the
22 court were to order it—is a fiction.
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3 The Department therefore asks the court to decide one straightforward
4 and dispositive legal question: has plaintiff demonstrated a case or controversy under
5 Alaska's Declaratory Judgment Act and the requisite standing to bring this action? For
6 the following reasons, the court should answer that question in the negative and dismiss
7 the case.

8
9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 **I. The Department's Administration of and Payment for Psychotropic
Medication to Minors in State Custody**

11 To better frame the legal issue of standing as it relates to the plaintiff in
12 this case, the Department provides the following factual and procedural background.

13 **A. Administration of Psychotropic Medication to Minors in State
14 Custody**

15 Minors may come into state custody in one of three ways:

- 16 1. Under AS 47.10.080, the Office of Children's Services ("OCS") takes
17 into Department custody children who have been adjudicated children in need of aid;
18 2. Under AS 47.12.120, the Division of Juvenile Justice ("DJJ") takes into
19 Department custody children who have been adjudicated delinquent by a court; or
20 3. A minor may be ordered held at Alaska Psychiatric Institute ("API")
21 pending evaluation and treatment pursuant to AS 47.30.
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23 Under any of the above scenarios, any psychotropic medication
24 prescribed to a child in Department custody is administered on an individual, case-by-
25 case basis either through a court order or upon a release executed by the child's parent
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3 or guardian.¹ Employees of the Department do not have the authority to consent to the
4 administration of psychotropic medications. The only exception to the above would be
5 if emergency medication was warranted while the child was at API, and such situations
6 are specifically governed by AS 47.30.

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8 Plaintiff's Complaint also names Melissa Stone, Director of the Division
9 of Behavioral Health ("DBH") as a defendant with respect to the administration
10 and payment for psychotropic medication given to children in state custody. But
11 children are not placed in the custody of DBH. Rather, children are placed in
12 DBH-administered facilities and programs by their parents or guardians, or by DJJ or
13 OCS after a court orders those respective agencies to take custody of a child. When a
14 child is in a DBH-administered placement, the same analysis applies as to the
15 prescribing and administration of psychotropic drugs. Such decisions are made on an
16 individual, case-by-case basis either through a court order or upon a release executed
17 by the child's parent or guardian.² In fact, as to children in OCS and DJJ custody,
18 AS 47.10.084 and AS 47.12.150 govern the rights of parents and guardians as to their
19 children, and specifically provide that parents have residual rights that include the
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25 ¹ See AS 47.10.084; AS 47.12.150; AS 47.30.

26 ² *Id.*

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3 power to make decisions regarding “major medical treatment,” which in turn explicitly
4 includes the administration of medication used to treat a mental health disorder.³

5 In short, the administration of psychotropic medication to children in
6 Alaska is a decision left to the parent or legal guardian of the child, or to the superior
7 court. None of the named defendants is permitted to prescribe, authorize, or administer
8 psychotropic medication to any child in the state absent consent from that child’s
9 parent, legal guardian, a superior court judge, or, in some circumstances, the child
10 himself or herself. The named defendants simply do not administer psychotropic
11 medication to children in custody in the manner portrayed by plaintiff’s Complaint.
12 Rather, there exist well-established statutory schemes—none of which is referenced in
13 the Complaint—to seek individual approval to make such decisions.
14

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16 **B. Medicaid Payment for Psychotropic Medication to Minors in State
Custody**

17 Medicaid is a joint federal and state program run by the individual states
18 that provides medical services, including prescription drugs, to certain eligible
19 individuals. The program is elective. If a state opts to participate—as Alaska has—the
20 state must operate the program in compliance with federal law in order to receive
21 federal financial contributions.⁴
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24 ³ Under AS 25.20.025, children themselves also may consent to medical
25 treatment under certain circumstances.

26 ⁴ See AS 47.07.

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3 With respect to Medicaid-covered pharmaceuticals of any kind prescribed
4 to Medicaid recipients, including children in Department custody, the drug use review
5 process stated in 7 AAC 43.593 works like authorizations under any other type of
6 third-party insurance program. The recipient or the recipient's parent or legal guardian
7 sees the provider, the provider determines what (if any) medication the recipient needs,
8 the recipient takes the prescription to a pharmacy, and the pharmacy records relevant
9 insurance and demographic information from the recipient, inputs the prescription into
10 the computer, retrieves relevant drug information, and transmits this information to a
11 claims processor. At this point, the prescription undergoes a clinical and eligibility
12 review to confirm the recipient's Medicaid eligibility and determine such facts as
13 whether the recipient has previously received the drug, the correct dosage for the
14 recipient, the recipient's medical history, and drug interactions to determine coverage
15 by Medicaid.⁵ Again, the Department does not consent to the administration of
16 psychotropic medications unless prescribed by a licensed provider, and there is
17 appropriate authorization in place from a parent, a legal guardian, or a court order.
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20 **II. Plaintiff's Complaint**

21 On September 29, 2008, plaintiff, the Law Project for Psychiatric Rights
22 ("Psych Rights), filed the 54-page Complaint that is the subject of the instant motion.
23 Plaintiff avers that it is an "Alaska non-profit corporation" and a "public interest law
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25 ⁵ See 7 AAC 43.593.
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3 firm whose mission is to mount a strategic litigation campaign against forced
4 psychiatric drugging and electroshock.”⁶ Plaintiff’s website supplies further
5 information regarding the origins of this action, stating: “due to massive growth in
6 psychiatric drugging of children and youth and the current targeting of them for even
7 more psychiatric drugging, PsychRights has made attacking this problem a priority.
8 Children are virtually always forced to take these drugs because it is the adults in their
9 lives who are making the decision. This is an unfolding national tragedy of immense
10 proportions.”⁷

11
12 The Complaint seeks a declaratory judgment that “Alaskan children and
13 youth” not be administered psychotropic drugs “unless and until” the Department has
14 engaged in a series of general actions and analyses, specifically “(i) evidence-based
15 psychosocial interventions have been exhausted; (ii) rationally anticipated benefits of
16 psychotropic drug treatment outweigh the risks; (iii) the person or entity authorizing
17 administration of the drug(s) is fully informed of the risks and potential benefits; and
18 (iv) close monitoring of, and appropriate means of responding to, treatment emergent
19 effects are in place.”⁸

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23 ⁶ Complaint at ¶ 4. For purposes of this motion, the Department accepts
24 that plaintiff is a nonprofit corporation registered with the State of Alaska.

25 ⁷ See <http://psychrights.org/index.htm> (last visited March 10, 2009).

26 ⁸ Complaint at p. 3.

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3 The Complaint further seeks a permanent injunction prohibiting “the
4 defendants and their successors from authorizing or paying for the administration of
5 psychotropic drugs to Alaskan children and youth without conformance” to the
6 foregoing prerequisites.⁹ Finally, the Complaint seeks an order requiring an
7 “independent reassessment of each Alaskan child or youth to whom defendants have
8 authorized the administration or payment of psychotropic drugs,” in conformance with
9 plaintiff’s demands, and “for each child for whom it is found the administration of or
10 payment for psychotropic drugs is taking place” out of conformity with said demands,
11 order “that immediate remedial action be commenced to prudently eliminate or reduce
12 such administration of or payment for psychotropic drugs and diligently pursued to
13 completion.”¹⁰

14
15 Plaintiff’s lengthy Complaint goes on to make certain assertions
16 regarding the constitutionality of psychotropic medication use, aver when such use is
17 appropriately paid for by Medicaid, describe plaintiff’s efforts to engage the legislature
18 and the contents of a particular online curriculum critical of psychotropic medication,
19 detail the FDA approval process for certain categories of pharmaceuticals, criticize
20 marketing and prescribing practices for such drugs, and describe plaintiff’s suggested
21 interventions to address these issues.¹¹ Notwithstanding all of the above, the only
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25 ⁹ *Id.*

¹⁰ *Id.* at pp. 3-4.

¹¹ *Id.* at pp. 5-54.

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3 specific allegations directed at the Department are contained at pages 50-52 of the
4 Complaint, in which plaintiff claims that the Department inappropriately administered
5 and paid for psychotropic drugs.¹² Notably, and as further discussed below, neither the
6 Complaint nor plaintiff's website specifies whose interest plaintiff claims to represent,
7 and on what basis.

8 STANDARD OF REVIEW

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10 Alaska Rule of Civil Procedure 12(c) provides that "after the pleadings
11 are closed but within such time as not to delay the trial, any party may move for
12 judgment on the pleadings." A Rule 12(c) motion provides the court with a "means of
13 disposing of cases when the material facts are not in dispute and a judgment on the
14 merits can be achieved by focusing on the content of the pleadings and any facts of
15 which the court will take judicial notice."¹³ Rule 12(c) motions are a useful means for
16 resolving dispositive questions of law.¹⁴ As with a motion brought under Civil
17 Rule 12(b)(6), the court can dismiss a complaint pursuant to a Rule 12(c) motion.¹⁵

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23 ¹² Complaint at ¶¶ 218-228.

24 ¹³ *Hebert v. Honest Bingo*, 18 P.3d 43, 46 (Alaska 2001).

25 ¹⁴ *Id.*

26 ¹⁵ *See, e.g., Fomby v. Whisenhunt*, 680 P.2d 787, 789 (Alaska 1984).

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3 **ARGUMENT**

4 **I. Plaintiff Lacks the Required Case or Controversy to Bring this Action**
5 **under the Declaratory Judgment Act**

6 AS 22.10.020(g) confers upon the superior court the following
7 jurisdiction over actions for declaratory and injunctive relief:

8 In case of an *actual controversy* in the state, the superior
9 court, upon the filing of an appropriate pleading, may declare the
10 rights and legal relations of an interested party seeking the
11 declaration, whether or not further relief is or could be sought.
12 The declaration has the force and effect of a final judgment or
13 decree and is reviewable as such. Further necessary or proper
14 relief based on a declaratory judgment or decree may be granted,
15 after reasonable notice and hearing, against an adverse party
16 whose rights have been determined by the judgment.¹⁶

17 The statute explicitly requires the presence of an “actual controversy” before the court
18 may issue declaratory relief. The Alaska Supreme Court has held that this actual
19 controversy requirement encompasses a number of grounds upon which the court may
20 decline to exercise jurisdiction under the Declaratory Judgment Act, including
21 mootness, standing, and lack of ripeness.¹⁷ As discussed below, this matter does not
22 meet the actual controversy requirement of the Declaratory Judgment Act because the
23 plaintiff lacks standing to sue. Therefore, the court should dismiss the Complaint.

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25 ¹⁶ AS 22.10.020(g) (emphasis added).

26 ¹⁷ *Brause v. State of Alaska et al.*, 21 P.3d 357, 358 (Alaska 2001).

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3 **II. Plaintiff Lacks Standing to Bring this Lawsuit**

4 Plaintiff's Complaint asserts this court's jurisdiction under
5 AS 22.10.020.¹⁸ However, the court may decline to exercise its jurisdiction under that
6 statute where a party lacks standing to sue.¹⁹ Alaska jurisprudence interprets broadly
7 the concept of standing to promote liberal access to the courts.²⁰ Indeed, a complaint
8 seeking declaratory relief requires only "a simple statement of facts demonstrating that
9 the superior court has jurisdiction and that an actual justiciable case or controversy is
10 presented."²¹ But standing in Alaska courts is not limitless. To the contrary, standing
11 constitutes "a rule of judicial self-restraint based on the principle that courts should not
12 resolve abstract questions or issue advisory opinions."²² As noted above, the "case or
13 controversy" requirement of the Declaratory Judgment Act includes lack of standing as
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19 ¹⁸ Complaint at ¶ 2. The Department admitted in its Answer that the
20 superior court has jurisdiction under AS 22.10.020. Answer at ¶2. However, the
21 Department also specifically raised the affirmative defense of lack of standing as a
22 reason for the court to decline to exercise that jurisdiction. Answer at p. 22, ¶10.

23 ¹⁹ *Lowell v. Hayes*, 117 P.3d 745, 757 (Alaska 2005).

24 ²⁰ *North Kenai Peninsula Road Maintenance Service Area v. Kenai*
25 *Peninsula Borough*, 850 P.2d 636 (Alaska 1993) (citing *Moore v. State*, 553 P.2d 8, 23
26 (Alaska 1976); *Trustees for Alaska v. State*, 736 P.2d 324, 330 (Alaska 1987)).

²¹ *Ruckle v. Anchorage School District*, 85 P.3d 1030, 1034 (Alaska 2004)
(citing *Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969)).

²² *Id.*

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3 a ground upon which the court can decline to exercise its jurisdiction,²³ and the
4 Department urges the court to do so here.

5 The basic requirement for standing in Alaska is adversity.²⁴ Questions of
6 standing are limited to whether the litigant is a “proper party to request an adjudication
7 of a particular issue and not whether the issue itself is justiciable.”²⁵ To this end,
8 Alaska courts recognize two forms of standing: “interest-injury” standing and “citizen-
9 taxpayer” standing.²⁶ To have interest-injury standing, the plaintiff “must have an
10 interest adversely affected by the conduct complained of.”²⁷ To have citizen-taxpayer
11 standing, the plaintiff must meet certain criteria which, while liberally construed, are by
12 no means an entitlement.²⁸ As discussed *infra*, plaintiff fails to show “an interest
13 adversely affected” by the state’s alleged conduct. In addition, the criteria required for
14 citizen-taxpayer standing are well-articulated, and plaintiff fails to meet them. Even
15 under Alaska’s liberal requirements, plaintiff satisfies neither type of standing.
16
17 Therefore, the Department is entitled to judgment on the pleadings.
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19 ²³ *Id.* (citing *Bowers Office Prods., Inc. v. Univ. of Alaska*, 755 P.2d 1095,
20 1096 (Alaska 1988)).

21 ²⁴ 850 P.2d 636 at 639-640, citing *Trustees for Alaska v. State*, 736 P.2d
22 324, 327 (Alaska 1987).

23 ²⁵ *Gilbert v. State*, 139 P.3d 581, 587 (Alaska 2006) (citing *Moore v. State*,
24 553 P.2d 8 (Alaska 1976) (internal quotations omitted).

25 ²⁶ 850 P.2d 636. “Citizen-taxpayer” standing is also intermittently referred
26 to as “taxpayer-citizen” standing throughout the case law.

27 ²⁷ *Id.* at n. 5.

28 ²⁸ *Trustees for Alaska v. State*, 736 P.2d 324, 329 (Alaska 1987).

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3 **A. Plaintiff Lacks Interest-Injury Standing**

4 To establish interest-injury standing, a plaintiff must have “an interest
5 adversely affected by the conduct complained of.”²⁹ To ensure this requisite adversity,
6 the plaintiff must have “a sufficient personal stake in the outcome of the
7 controversy.”³⁰ Although the extent of the alleged injury “need not be great,” our
8 supreme court discourages third-person representation and has “never held that
9 standing can be created by wagering on whether *someone else's* injury will ultimately
10 be vindicated.”³¹ Only in “rare cases” will the interest-injury test be read to allow
11 standing “to protect the rights of third parties by acting in a representative capacity.”³²

12
13 In *Gilbert M. v. State*,³³ the court aired fully for the first time the
14 circumstances under which a party may raise the rights of a third person.³⁴ In that case,
15 a dependent child’s grandfather lacked standing to appeal the termination of the
16 mother’s (his daughter’s) parental rights to her own minor daughter. The court
17 observed that generally, a third person may not assert another’s constitutional rights.³⁵
18 The court further observed that a “special relationship between the plaintiff and the
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20 ²⁹ *Id.*

21 ³⁰ *Broeckel v. State, Dept. of Corrections*, 941 P.2d 893 (Alaska 1997)
22 (internal quotations omitted).

23 ³¹ *Foster v. State*, 752 P.2d 459, 466 (Alaska 1988) (emphasis in original).

24 ³² *Id.*

25 ³³ 139 P.3d 581 (Alaska 2006).

26 ³⁴ *Id.* at 587.

³⁵ *Id.*; Complaint at ¶¶ 14-18.

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3 third party” must exist before standing can be established.³⁶ In *Gilbert M.*, the court
4 found no such legal relationship and the plaintiff was denied standing.³⁷

5 Here, plaintiff does not assert interest-injury standing or claim an adverse
6 interest, nor does plaintiff claim any sort of relationship at all to any relevant
7 individual. Plaintiff states only that it is “an Alaskan non-profit corporation” and “a
8 public interest law firm whose mission is to mount a strategic litigation campaign
9 against forced psychiatric drugging and electroshock.”³⁸ This statement is *prima facie*
10 insufficient to establish adversity. The Department cannot infer from this or anything
11 else in the Complaint whose actual interest plaintiff purports to represent, and therefore
12 how such an interest might be adversely affected. This deficiency is not ministerial: it
13 makes resolution of the case—through settlement or otherwise—virtually impossible.
14 The Department is forced to fumble about and engage in shadow boxing with a faceless
15 litigant, and the court’s task of adjudicating the parties’ respective interests is
16 frustrated.
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19 To the extent plaintiff purports to represent the general public interest of
20 children in state custody or other state interests, representation of those interests rests
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22 ³⁶ 139 P.3d 581 at 587.

23 ³⁷ *Id.* See also *Zoerb v. Chugach Elec. Ass'n, Inc.*, 798 P.2d 1258, 1261
24 (Alaska 1990) (plaintiff, an *employee* of an electric company, lacked standing to sue
25 with respect to interests afforded *members* of the organization, based on plaintiff’s lack
26 of a legally protectable interest) (emphasis in original).

³⁸ Complaint at ¶ 4.

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3 with the Attorney General for the State of Alaska, the Department, and/or the parents
4 and guardians of individual children in state custody or the children themselves—not
5 plaintiff's law firm.³⁹ To the extent plaintiff purports to represent a certain class of
6 individuals, no class action has been brought, much less certified. To the extent
7 plaintiff purports to represent a particular individual or individuals who have allegedly
8 been harmed by state action, no such individual has been named, and no specific harm
9 has been alleged.

10
11 In sum, plaintiff has not asserted standing under the interest-injury
12 doctrine, nor can the Complaint be read to infer it. Therefore, plaintiff lacks interest-
13 injury standing.

14 **B. Plaintiff Lacks Citizen-Taxpayer Standing**

15 The Alaska Supreme Court has clearly articulated the requirements of
16 citizen-taxpayer standing:

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18 [A] taxpayer or citizen need only show that the case in question is
19 one of public significance and the plaintiff is appropriate in several
20 respects. This appropriateness has three main facets: the plaintiff
must not be a sham plaintiff with *no true adversity of interest*; he

21 ³⁹ See generally AS 44.23.020; AS 47.10.084 (the Department's legal
22 custody of a child "imposes on the department and its authorized agents or the parents,
23 guardian, or other suitable person the responsibility of physical care and control of the
24 child, the determination of where and with whom the child shall live, the right and duty
25 to protect, nurture, train and discipline the child, the duty of providing the child with
26 food, shelter, education, and medical care, and the right and responsibility to make
decisions of financial significance concerning the child. These obligations are subject
to any residual parental rights and responsibilities and rights and responsibilities of a
guardian if one has been appointed.").

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or she must be capable of competently advocating his or her position; and he or she may still be denied standing if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit.⁴⁰

Plaintiff does not claim citizen-taxpayer standing to bring this case, nor is plaintiff entitled to an inference of such standing as a matter of right.⁴¹ Regardless, the Department does not dispute that plaintiff's nonprofit corporation/law firm is a legitimate advocacy organization or that the Complaint raises—at least in theory if not in fact—issues of public significance. The Department does dispute, however, that plaintiff is an appropriate party to bring this case. While the criteria for citizen-taxpayer standing in Alaska are liberal by any measure, plaintiff has shown no true adversity of interest, and there clearly exist parties more affected by the challenged conduct. Therefore, plaintiff is an inappropriate party.

The leading case in Alaska on citizen-taxpayer standing is *Trustees for Alaska v. State*.⁴² In that case, a coalition of environmental, Native, and fishing groups brought a declaratory judgment action to enjoin the state from enforcing its mineral leasing system.⁴³ The court permitted the plaintiffs to maintain their case under the citizen-taxpayer analysis, finding in relevant part that plaintiffs were appropriate

⁴⁰ *Ruckle v. Anchorage School District*, 85 P.3d 1030, 1034 (Alaska 2004) (emphasis added).

⁴¹ *Trustees for Alaska v. State*, 736 P.2d 324, 329 (Alaska 1987).

⁴² 736 P.2d 324 (Alaska 1987).

⁴³ *Id.*

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3 because of their status as consumers of Alaska's natural resources, their adverse
4 interest with respect to affected mining claims, and the fact that the U.S. Attorney
5 General—the party whom the state alleged was a more appropriate plaintiff—was not
6 likely to sue and had an entirely different interest than existing plaintiffs in any event.⁴⁴

7
8 *Trustees for Alaska* is easily distinguishable from the instant case. As
9 discussed above, plaintiff has not demonstrated an adverse interest. Unlike the
10 consumers of the natural resource at issue in *Trustees for Alaska*, plaintiff here does not
11 allege to be—nor does plaintiff claim to represent or in any way be connected with—a
12 minor Medicaid recipient or child in state custody who has been prescribed or is taking
13 psychotropic medication. Thus, plaintiff can show no interest adverse to the conduct
14 alleged. The above-described persons or their designees would likely be the
15 appropriate plaintiffs in a case regarding the administration of psychotropic medication
16 to children in state custody.⁴⁵ Their interest in the outcome of such a case would be
17 identical to the stated interest of the existing corporate plaintiff and there is no reason
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24 ⁴⁴ *Id.* at 330.

25 ⁴⁵ Arguably, legislation, as opposed to litigation, is the most appropriate
26 way to deal with such issues.

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3 to presume that such persons, aggrieved by some specific action, would not sue to
4 redress it.⁴⁶

5 Here, plaintiff broadly alleges that Alaska's "children and youth" (not
6 defined in the Complaint) have the right not to be administered psychotropic drugs
7 unless the Department complies with various requirements that plaintiff believes the
8 Department should adopt.⁴⁷ As stated above, the only specific allegations directed at
9 the Department are found at pages 50-52 of the Complaint, where plaintiff claims that
10 the Department inappropriately administered and paid for psychotropic drugs to
11 Alaska's children and youth.⁴⁸ The basis for this claim, explained only in these 11
12 paragraphs of the Complaint, can be simply summarized as follows: the Department's
13 administration of and payment for these drugs exceeds evidence of safety and efficacy
14 and is not based on competent, knowledgeable decision-making and informed
15 consent.⁴⁹ Plaintiff makes no reference to any specific statutory violation in these
16 paragraphs. The only reference to any potential statutory violation is found at
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20 ⁴⁶ Citizen-taxpayer standing has been denied for less. *See, e.g., Kleven v.*
21 *Yukon-Koyukuk School Dist.*, 853 P.2d 518, 526 (Alaska 1993) (former school district
22 employee was denied citizen-taxpayer standing to air grievances against the school
23 district on the grounds that the district's current employees were more suitable
24 advocates better poised to raise the same grievances and there was no reason for the
25 court to believe such individuals would not do so).

24 ⁴⁷ Complaint at ¶ 1.

25 ⁴⁸ *Id.* at ¶¶ 218-228.

26 ⁴⁹ *Id.*

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3 paragraphs 19-21 of the Complaint, where plaintiff simply recites the Department’s
4 statutory duty to care for children in state custody.

5 Accordingly, there is no provision in plaintiff’s Complaint—and none
6 can be inferred—demonstrating plaintiff’s required adversity of interest for purposes of
7 establishing citizen-taxpayer standing. Plaintiff is not a child in need of aid, does not
8 allege guardianship of such a child, and has not purported to represent a child or class
9 of children subject to the Department’s duty of care. Instead, plaintiff is engaged in a
10 campaign to change the manner and procedure under which the Department operates
11 without any alleged harm inflicted by the Department on plaintiff or anyone plaintiff
12 represents. This campaign is appropriately directed to the legislature.⁵⁰

13
14 Courts should evaluate the propriety of individual plaintiffs with respect
15 to citizen-taxpayer standing on a case-by-case basis.⁵¹ Such standing has been found
16 where “no one seemed to be in a better position than the plaintiffs to complain of the
17 illegality” of the conduct in question.⁵² A policy agenda and a sweeping critique of
18 alleged state actions perpetrated on no one in particular do not constitute the “true
19 adversity of interest” required to maintain citizen-taxpayer standing. Surely there are
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23 ⁵⁰ The Complaint contains several pages on plaintiff’s efforts to alert the
24 legislature to its concerns.

25 ⁵¹ *Ruckle v. Anchorage School District*, 85 P.3d 1030, 1037 (Alaska 2004).

26 ⁵² 736 P.2d at 328 (citing *State v. Lewis*, 559 P.2d 630 (Alaska 1977)).

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3 more appropriate plaintiffs to raise such issues and, because of their true adversity,
4 would presumably be able to do so in a more concrete manner.

5 **CONCLUSION**

6 Plaintiff's Complaint is brought on behalf of no specific individual and
7 names Department employees who have no meaningful ability to remedy the conduct
8 alleged or administer the relief requested. Statutory mechanisms are already in place to
9 ensure that psychotropic medications are administered to children in Alaska in a
10 methodical, individualized, and constitutional manner. Insofar as plaintiff takes issue
11 with the adequacy of these existing legal mechanisms, such a grievance is more
12 appropriately directed to the legislature, not the executive branch or the judiciary.
13 Insofar as plaintiff disagrees with the practice of pediatric psychiatry and the culture of
14 pharmaceutical marketing and prescribing practices related to psychotropic medication,
15 those matters are not within the Department's meaningful control.
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18 Plaintiff asserts no injury by the conduct complained of and therefore
19 fails the threshold requirement for interest-injury standing. Likewise, plaintiff is a
20 wholly inappropriate party under the citizen-taxpayer standing analysis. The court
21 should decline to exercise jurisdiction over an abstract complaint where even minimum
22 requirements for standing are not met.
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24 For the foregoing reasons, plaintiff has failed to present a justiciable case
25 or controversy and demonstrate the threshold showing of standing required to bring
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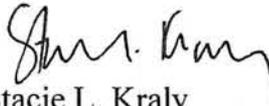
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and maintain this action. The Department is entitled to judgment on the pleadings as a matter of law and the Complaint should be dismissed accordingly.

DATED this 12th day of March, 2009.

RICHARD A. SVOBODNY
ACTING ATTORNEY GENERAL

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LAW PROJECT FOR PSYCHIATRIC)
RIGHS, an Alaskan non-profit corporation,)
)
Plaintiff,)

vs.)

STATE OF ALASKA, SARAH PALIN,)
Governor of the State of Alaska,)
ALASKA DEPARTMENT OF HEALTH AND)
SOCIAL SERVICES, WILLIAM HOGAN,)
Commissioner, Department of Health and)
Social Services, TAMMY SANDOVAL,)
Director of the Office of Children's)
Services, STEVE McCOMB, Director of the)
Division of Juvenile Justice, MELISSA)
WITZLER STONE, Director of the Division of)
Behavioral Health, RON ADLER,)
Director/CEO of the Alaska Psychiatric)
Institute, WILLIAM STREUER, Deputy)
Commissioner and Director of the Division of)
Health Care Services,)

Defendants)

Case No. 3AN-08-10115 CI

**ORDER GRANTING STATE OF ALASKA'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Having reviewed the State of Alaska's and the remaining above-named
defendants' Motion for Judgment on the Pleadings and any responses thereto, IT IS SO
ORDERED:

The defendants' Motion is GRANTED. Plaintiff has failed to present an
actual case or controversy under the Declaratory Judgment Act and lacks standing to
bring this action. Accordingly, the Complaint is hereby dismissed with prejudice.

DATED this _____ day of _____, 2009.

Jack W. Smith
Superior Court Judge

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