

From: [Susan A](#)
To: [Senate Finance Committee](#); [Senate Labor and Commerce](#); [Senate Health and Social Services](#)
Subject: SB 133 Public Testimony
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Testimony Opposing SB 133 with Formal Legal Complaint

To: Alaska State Legislature, Senate Health & Social Services Committee

My name is Susan Allmeroth, and I am testifying in strong opposition to SB 133. This bill, as written, not only fails to provide the protections patients need—it also directly violates multiple provisions of the Alaska Constitution, the U.S. Constitution, federal law, Tribal treaty rights, and international human rights standards. I am submitting this as both testimony and a formal legal complaint regarding the unconstitutional, unethical, and legally hazardous framework that SB 133 proposes.

I. Constitutional Violations

SB 133 is unconstitutional on its face and as applied.

Due Process Violations: By not including a required appeals process or any enforcement mechanism, the bill violates Article I, Section 7 of the Alaska Constitution and the Fourteenth Amendment of the U.S. Constitution, which guarantee procedural due process.

Equal Protection Failures: Delegating health decisions to insurers without oversight enables arbitrary and discriminatory denial of care, violating Article I, Section 1 of the Alaska Constitution and the Equal Protection Clause of the U.S. Constitution.

Access to Courts: Denying patients any means to challenge harmful decisions violates Article I, Section 21 of the Alaska Constitution.

Lack of Transparency: Allowing insurers to delay or deny API access to data until 2027 impairs patients' rights to information and violates the principles laid out in *Mathews v. Eldridge* (1976) and *Goldberg v. Kelly* (1970).

Suppression of Whistleblowers: The absence of whistleblower protections violates Article I, Section 5 of the Alaska Constitution and the First Amendment, especially where retaliation may silence internal dissent critical to patient safety.

II. Conflicts with Federal Law

SB 133 conflicts with several federal statutes:

HIPAA Violations: The bill's failure to guarantee timely data access violates HIPAA Privacy Rule (45 CFR § 164.524).

21st Century Cures Act: The deferral of real-time API access until 2027 violates the Cures Act, which mandates immediate access to electronic health records.

ACA and ERISA Preemption: By establishing conflicting prior authorization timelines and standards, SB 133 risks federal preemption under ERISA (*Gobeille v. Liberty Mutual*, 2016).

and the Affordable Care Act.

Omission of PBM Regulation: PBMs are governed federally under CMS guidelines, and the bill's silence on their regulation creates a significant legal vacuum.

III. Violations of Tribal Sovereignty and Treaty Obligations

SB 133 violates the trust responsibilities and treaty rights of Alaska Native Tribes:

Omission of Tribal Health Considerations: This violates obligations under the Indian Self-Determination and Education Assistance Act and the Indian Health Care Improvement Act.

Breach of Treaty Obligations: The bill ignores healthcare rights guaranteed under treaties such as the Fort Laramie Treaty of 1868, undermining the federal trust doctrine and tribal sovereignty.

Failure to Protect Tribal Funding Mechanisms: Any delay or denial of services that affect Medicaid match or compact funding could constitute a breach of federal contracts and compact agreements with Tribal health providers.

IV. Human Rights and International Law Violations

SB 133 conflicts with internationally recognized rights:

Right to Health: Denying or delaying care to increase insurer profits violates Article 24 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 12 of the ICESCR.

Discrimination Against Rural and Indigenous Communities: The bill fails to provide equitable protections for Indigenous and rural Alaskans, which violates non-discrimination standards both under state law and international law.

V. Legal Precedent and Litigation Risk

SB 133 invites immediate and future lawsuits:

The lack of accountability and due process violates binding precedents:

Mathews v. Eldridge, 424 U.S. 319 (1976)

Goldberg v. Kelly, 397 U.S. 254 (1970)

Wickline v. State of California, 192 Cal.App.3d 1630 (1986)

Insurer-driven care denials without appeal options create both civil liability and the risk of state-level negligence claims.

Conclusion & Formal Complaint

I submit this testimony as a formal legal complaint to the Alaska State Legislature and request:

Immediate rejection of SB 133;

An investigation into the legality and constitutionality of the bill;

A federal inquiry from HHS and CMS into possible noncompliance with HIPAA, the ACA, and the 21st Century Cures Act;

A review by the Department of Justice's Civil Rights Division regarding violations of Tribal rights and patient access to care.

SB 133 is not a healthcare bill. It is a deregulation blueprint that sacrifices the lives of Alaskans for corporate convenience. It enables secretive denials of care and offers no avenue for challenge or oversight. It is unconstitutional, dangerous, and immoral.

Susan Allmeroth

Two Rivers

Myself

References

Gobeille v. Liberty Mutual Insurance Co., 577 U.S. 312 (2016).

Goldberg v. Kelly, 397 U.S. 254 (1970).

Health Insurance Portability and Accountability Act of 1996, 45 CFR § 164.524.

Indian Health Care Improvement Act, 25 U.S.C. § 1601 et seq.

Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 et seq.

International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966.

Mathews v. Eldridge, 424 U.S. 319 (1976).

State of Alaska Constitution, Article I, Sections 1, 5, 7, and 21.

UN General Assembly. (2007). United Nations Declaration on the Rights of Indigenous Peoples, Article 24.

U.S. Constitution, Amendments I and XIV.

Wickline v. State of California, 192 Cal.App.3d 1630 (1986).

21st Century Cures Act, Pub. L. No. 114–255 (2016).

Full Legal, Constitutional, and Treaty Violations in SB 133

1. Violations of Alaska and U.S. Constitutional Protections

SB 133 contains provisions that are fundamentally at odds with both the Alaska State Constitution and the U.S. Constitution.

The bill lacks any enforcement mechanism, denying patients the ability to seek redress if care is delayed or denied. This violates Article I, Section 7 of the Alaska Constitution and the Fourteenth Amendment of the U.S. Constitution, which guarantee due process rights.

The "technical limitations" loophole grants insurers arbitrary power to withhold real-time data access, allowing them to deny or delay care. This contradicts principles of fairness and equal protection and creates a two-tier system of justice, undermining constitutional equality.

Vague language on “medical necessity” and step therapy delegates unregulated discretion to insurers, which may violate the non-delegation doctrine in administrative constitutional law. Allowing corporations to determine medical care without oversight is both dangerous and likely unconstitutional.

SB 133 does not include a formal appeals process, effectively blocking patients from challenging adverse determinations. This violates Article I, Section 21 of the Alaska Constitution, which guarantees access to courts, as well as the procedural due process protections of the U.S. Constitution.

The bill lacks a requirement for transparency around the use of algorithms or AI in prior authorization. This violates the right to know and challenge decisions that affect liberty interests, as established in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

The absence of whistleblower protections chills speech and may violate Article I, Section 5 of the Alaska Constitution and the First Amendment, particularly if retaliation is used to silence internal critics who expose harm to patients.

2. Violations of Federal Health Laws

Several elements of SB 133 directly conflict with federal laws, including the Affordable Care Act (ACA), HIPAA, and ERISA.

The bill's prior authorization timelines and standards may conflict with federal ACA mandates and are likely preempted under ERISA, as interpreted in *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. 312 (2016). Federal law supersedes conflicting state law in this domain.

The bill does not affirm the patient’s right to access their medical data, a direct violation of the HIPAA Privacy Rule (45 CFR § 164.524). It also lacks any language about data ownership and the ability of patients to contest decisions made using their health information.

The delay in requiring real-time API access until 2027 undermines the goals of the 21st Century Cures Act, which mandates prompt access to electronic health data. By allowing delays and loopholes, the bill contradicts federal transparency mandates.

The omission of pharmacy benefit managers (PBMs) from regulatory oversight is a serious flaw. PBMs are governed under Medicare Part D and federal CMS regulations, and SB 133’s silence on them creates a regulatory blind spot that could result in litigation or federal non-compliance.

3. Violations of Tribal Rights, Sovereignty, and Treaty Obligations

SB 133 fails to recognize the healthcare rights of Alaska Native communities, violating treaty and compact obligations.

The bill excludes protections for Tribal health systems, which operate under the Indian Self-Determination and Education Assistance Act (25 U.S.C. §§ 5301 et seq.) and the Indian Health Care Improvement Act (25 U.S.C. § 1601). These federal laws guarantee access and funding mechanisms that SB 133 puts at risk.

By failing to include any equity or language specific to Indigenous health care access, the bill violates the federal trust responsibility and contradicts treaties like the Fort Laramie Treaties of 1851 and 1868, which bind the federal government (and by extension the state) to healthcare obligations for Indigenous peoples.

Offshore revenue practices that reduce state obligations while underfunding care could violate federal compact agreements with Tribal health organizations if they affect Medicaid match rates or care obligations.

4. Violations of International Law and Human Rights Standards

SB 133 also fails to meet nonbinding, but widely cited, international standards of care and dignity.

Profit incentives based on denying or delaying care contradict the right to health under Article 24 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the U.S. has not ratified all provisions, courts have used these as interpretive guidance, especially in Indigenous rights cases.

The bill fails to address the unique needs of marginalized and rural communities in Alaska, which violates non-discrimination principles under both the Alaska Human Rights Act and international equity principles embedded in multiple human rights instruments.

5. Legal Precedent and Case Law Risks

SB 133 exposes the State of Alaska and its partners to substantial legal risk:

The failure to include a functioning appeals process and protections for timely care runs afoul of decisions like *Mathews v. Eldridge* and *Goldberg v. Kelly*, which require due process in deprivation of benefits or medical services.

Delegating decisions around medical necessity to corporate actors without oversight recalls *Wickline v. State of California* (1986), in which a state was held liable for death caused by an insurer's cost-driven decision.

The exclusion of transparency and regulatory obligations, especially regarding the use of algorithms or AI, could be challenged under Alaska's own privacy and health access cases, including *State v. Planned Parenthood*, where the Alaska Supreme Court emphasized strict scrutiny of government action limiting care access.

SB 133 is not legally or constitutionally compliant. It:

Violates the due process and equal protection clauses of the U.S. and Alaska Constitutions

Conflicts with federal health laws (ACA, HIPAA, ERISA)

Ignores or undermines treaty and Tribal sovereignty obligations

Contradicts international health and human rights standards

Creates significant exposure to litigation based on existing federal and state case law

This bill, in its current form, not only endangers Alaskans' health but also opens the state to legal challenges, liability, and federal non-compliance penalties.

Susan Allmeroth

Two Rivers

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As of today none of these cases have been over ruled.

Mathews v. Eldridge, 424 U.S. 319 (1976) –

Goldberg v. Kelly, 397 U.S. 254 (1970) –

Wickline v. State of California, 192 Cal.App.3d 1630 (1986) –

Gobeille v. Liberty Mutual Insurance Co., 577 U.S. 312 (2016) –