

PROTECT OUR CARE

***Kennedy, et al. v. Braidwood* Risks Ripping Away Guaranteed Free Preventive Services From More Than 150 Million Americans**

The Conservative-Majority Supreme Court Will Decide the Fate of Case Pushing To End Key ACA Coverage Requirements

Far-right extremists are urging the Supreme Court to invalidate a key portion of the Affordable Care Act (ACA) that requires insurers to cover lifesaving preventive services for free, in *Kennedy et al. v. Braidwood* (formerly *Braidwood v. Becerra*). Dissatisfied with a lower court's disastrous ruling in 2023 that overturned the coverage requirement for a critical set of services recommended by the [U.S. Preventive Services Task Force](#) (USPSTF) after the passage of the ACA, blocked required coverage of USPSTF's future recommendations, and allowed employers to refuse to cover certain preventive services on religious grounds, they want the nation's highest court to agree with the lower courts' elimination of free preventive services for the approximately 150 million Americans who rely on the ACA for guaranteed cost-free coverage of services like cancer screenings, statins to address high cholesterol levels, mental health screenings, and HIV prevention medication.

Eliminating patient fees for these lifesaving screenings and services has [transformed](#) how preventive care is delivered, saved countless lives, improved health outcomes, reduced disparities in care, and cut consumer health care costs. Upholding the lower courts' elimination of the preventive services requirement would set off a massive disruption in the American health care system, revoking protections for hundreds of no-cost services currently available to approximately [150 million](#) Americans – [nearly half](#) of the U.S. population.

Of course, regardless of the outcome, the Supreme Court's ruling could open the door to reshaping free, guaranteed coverage of key preventive services under the ACA. If the right-wing plaintiffs get their way, it will once again put Americans at the mercy of insurance companies and employers, allowing them to charge high out-of-pocket costs for critical preventive care and refuse to cover certain benefits entirely. As a result, more Americans will suffer because their cancers will be detected too late, or they won't receive the medications they need. On the other hand, even if the Court rules against the plaintiffs, the Trump administration likely will be able to overturn [health experts' evidence-based recommendations](#) regarding which preventive services insurers must cover. This outcome would leave existing coverage at risk, given the Trump administration's open embrace of pseudoscientific treatments and track record of embracing junk plans that are not required to cover evidence-based services – not to mention their longtime goal of repealing the ACA altogether.

Background

In March 2023, District Judge Reed O'Connor – the same Federal District Court judge whose decision [invalidating](#) the entire ACA was [reversed](#) by the Supreme Court in 2021 – [struck down](#) a portion of the ACA's preventive health services mandate, invalidating essential, no-cost services recommended by the USPSTF after the ACA's enactment. The government immediately appealed the decision. Last June, the Fifth Circuit agreed with the district court's legal analysis, but refused to apply its decision nationwide, limiting it to the employers who brought the case.

The Fifth Circuit decision left free preventive services at risk as the case proceeded through the legal system and opened the door to further litigation. In January, the Supreme Court agreed to take up the Biden administration's appeal and will review the constitutionality of mandating the USPSTF's recommendations. Meanwhile, the district court still has before it the plaintiffs' attempt to block additional preventive services recommended by the Advisory Committee on Immunization Practices (ACIP) and the Health Resources and Services Administration (HRSA). That part of the case is on hold until after the Supreme Court decision.

The ACA's elimination of out-of-pocket costs for these lifesaving screenings and services has [transformed](#) how preventive care is delivered, saved countless lives, improved health outcomes, reduced disparities in care, and cut consumer health care costs. Guaranteed no-cost coverage of preventive services, including screenings for chronic disease, is a [key factor](#) in expanding access to these services – which, together with actions to address other social and structural determinants of health, are advancing health equity.

The *Braidwood* case is driven by far-right extremists who are [longtime foes](#) of the ACA, abortion rights, contraception, marriage equality, vaccine requirements, and diversity policies. Here are just some of the lifesaving, no-cost benefits at risk:

- **[GONE - Free, Guaranteed Cancer & Health Screenings.](#)** The case threatens ACA provisions requiring insurers to cover screenings for serious health issues, including [breast cancer](#), [colorectal cancer](#), [lung cancer](#), [Hepatitis C](#), and [HIV](#).
- **[GONE - Free, Guaranteed Preventive Medication For Cardiovascular Disease.](#)** The case threatens ACA provisions requiring insurers to cover [drugs that can lower cholesterol](#) for certain adults at risk of developing cardiovascular disease.
- **[GONE - Free, Guaranteed Substance Use Screenings.](#)** The case threatens the ACA requirements that insurers cover [screenings for unhealthy drug use](#).
- **[GONE - Free, Guaranteed Preventive Treatment for Pregnancy Complications.](#)** The case threatens the ACA requirements that insurers cover medications used to prevent [life-threatening complications in pregnancy](#) like preeclampsia as well as mental health interventions for [pregnancy-related depression](#).

- **GONE - Free, Guaranteed PrEP.** The case threatens the ACA requirements that [guarantee](#) access to pre-exposure prophylaxis (PrEP), a drug proven to substantially reduce the risk of contracting HIV. PrEP has been associated with a [significant decrease](#) in the number of new HIV diagnoses.

The plaintiffs will continue to fight at the district court level for the elimination of the preventive services coverage mandate entirely, which requires insurers to cover the following additional services for free:

- **GONE - Free, Guaranteed Vaccinations.** The ACA requires that over a dozen [vaccinations](#), ranging from meningitis and pneumonia to flu shots, be covered free of charge for adults and children.
- **GONE - Free, Guaranteed Contraception & STI Counseling.** The ACA guarantees women access to [contraception](#) without cost sharing, screenings for [HIV](#), and counseling for [sexually transmitted infections \(STIs\)](#). Over [58 million](#) women have benefited from free access to contraceptives, saving billions of dollars in out-of-pocket spending.
- **GONE - Free, Guaranteed Pregnancy Screenings & Treatments.** The ACA [requires](#) free access to a variety of preventive services related to pregnancy, including preeclampsia screenings, [breastfeeding](#) equipment like pumps and bottles, folic acid, and screenings for perinatal [diabetes](#), to support healthy pregnancies and fight the maternal mortality crisis.
- **GONE - Free, Guaranteed Routine Infant & Child Health Care.** Under the ACA, all newborns and young children have access to free, [universal screenings](#). As they grow, children are required to have free access to essential health screenings, behavioral assessments, growth measurements, behavioral assessments, routine childhood vaccinations, vision and dental screenings, and other essential preventive services.
- **GONE - More Free, Guaranteed Health Screenings.** The ACA requires plans to cover screenings and counseling for a wide array of health issues, including risk factors for heart disease – the [leading cause of death](#) in the U.S. – like high [blood pressure](#), high [cholesterol](#), [diabetes](#), and [obesity](#).
- **GONE - Free, Guaranteed Mental Health & Substance Use Screenings.** Under the ACA, insurers are required to cover a wide range of preventive assessments and treatments related to mental health and substance use, including [depression](#), [anxiety](#) in adolescent and adult women, [alcohol misuse](#), [tobacco use](#), and adolescent [drug use](#).

What Happens Next

The Supreme Court [agreed](#) to hear the case just days before President Trump took office. The Trump administration submitted its brief in March. The Supreme Court has scheduled oral argument for April 21.

Who Is Behind It

The *Braidwood* Plaintiffs Have Repeatedly Sued To Overturn Parts Of The ACA. Plaintiff John Kelley filed an earlier and similar class action lawsuit against the ACA's contraceptive mandate in [DeOtte v. Azar](#). Kelley, his company Kelley Orthodontics, and Joel Starnes – all plaintiffs in the *Braidwood* case – brought a similar suit again in 2020 in [Kelley v. Azar](#). Another plaintiff, Braidwood Management, owned by [Dr. Steven Hotze](#), was also a plaintiff in *DeOtte* and has previously [brought and lost challenges](#) to other parts of the ACA. In addition to being a plaintiff in previous efforts to overturn the ACA, Hotze is a vocal advocate for multiple far-right conspiracy theories, [claiming](#) COVID-19 was an invention of the “deep state,” [suggesting](#) equal rights for LGBTQ+ individuals would lead to child molestation, and [bankrolling](#) election fraud vigilantism after making false claims regarding voter fraud in the 2020 election.

The Lead Attorney For The Plaintiffs In the *Braidwood* Case Is One of the Key Authors of SB8, Texas' Vigilante Anti-Abortion Law. The lead attorney for the plaintiffs is [Jonathan Mitchell](#), “who helped craft the Texas abortion law that was designed to evade judicial review by leaving enforcement to private citizens instead of government officials.”

The Case Is Supported By 16 Republican States. A group of Republican Attorneys General representing 16 states – Texas, Florida, Idaho, Indiana, Iowa, Louisiana, Mississippi, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia – [submitted an amicus brief](#) in support of plaintiffs, expressing support for taking away access to preventive services.

What Health Experts Are Saying About The Case

- **Protect Our Care, United States of Care, and 46 Other Organizations: Plaintiffs Would “Dramatically Increase Costs Throughout The Health Care System.”** A coalition of 48 health care advocacy organizations, including Protect Our Care, submitted an [amicus brief](#) urging the Supreme Court to reject plaintiffs' claims. The organizations' amicus brief argues that the Fifth Circuit ruling, if upheld, “would devastate millions of Americans' statutory right to critical cost-free preventive health care. Consumers' utilization of preventive services substantially decreases when they must pay for them,” and “dramatically increase costs throughout the health care system...harm[ing] consumers more broadly...by fracturing uniform coverage requirements and lead to broader negative health insurance market changes.”

- **22 States and Washington, D.C.: Millions of Americans “Rely The Preventive Services Provision To Access Essential Care That Might Otherwise Forego” Due To Cost.** A group of Attorneys General representing 22 states and the District of Columbia [pushed](#) the Supreme Court to reject the Fifth Circuit’s ruling, arguing that the ACA preventive services provision is beneficial to state residents’ health and welfare. The amicus brief reads, “millions of Americans rely on the preventive services provision to access essential care that they might otherwise forego because of its substantial costs.”
- **Dozens of Patient Groups and Medical Professional Organizations including the American Cancer Society, American Medical Association, and the American Academy of Pediatrics: “Preventive Care Without Cost Sharing Improves Health Outcomes And Enables Healthier Lifestyles.”** In an amicus [brief](#) to the Supreme Court, 13 patient groups and 19 medical professional organizations argued that the USPSTF recommendations have allowed millions to access preventive services and improve patients’ lifestyles: “[P]reventive care without cost sharing improves health outcomes and enables healthier lifestyles. All Americans use or will use health care services, and the lifetime risk that an individual American will contract a serious or chronic disease or condition is high. Preventive services aid in the prevention, early detection, and treatment of many conditions, increasing patients’ chances of recovery and extending life expectancies. Preventive care also helps control costs of treating these conditions.”
- **Leading Breast Cancer Organization: Reliable Access To Preventive Care Lowers The Risk of Dying From Breast Cancer.** The Susan G. Komen Breast Cancer Foundation, the leading nonprofit focused on combatting breast cancer, [argued](#) in an amicus brief to the Supreme Court that “Reliable access to affordable preventive care significantly reduces the risk of dying from breast cancer. Moreover, early detection can reduce the risk of being diagnosed with advanced cancer and can lower treatment costs.”
- **The American Public Health Association, Hundreds of Public Health Deans and Scholars, The Robert Wood Johnson Foundation, and Public Health Advocates: “These Services Save, and Dramatically Improve, Americans’ Lives.”** A [coalition](#) led by the American Public Health Association, including hundreds of public health deans and professors, the Robert Wood Johnson Foundation, Trust for America’s Health, and ChangeLab Solutions, urged the Supreme Court not to end guaranteed free preventive coverage because, “These services save, and dramatically improve, Americans’ lives by identifying and addressing health risks early, so they can be treated more effectively – by preventing diseases from occurring at all and by protecting all Americans against the risk of transmission of communicable diseases. They are critical to reducing the incidence and severity of numerous diseases and life-threatening conditions and are especially important to maternal and child health. The ACA’s requirement of cost-free coverage has dramatically increased use of these vital services by all Americans.”

- **Four Hospital Associations: “At-Risk Patients Will Not Receive Necessary Preventive Care.”** The American Hospital Association, the Catholic Health Association, the Federation of Essential Hospitals, Association of American Medical Colleges [urged](#) the Supreme Court to “reverse the Fifth Circuit’s Appointments Clause finding and hold that Congress may validly promote independent Task Force recommendations,” because, “reinstating financial barriers will increase the chance that at-risk patients will not receive this necessary preventive care, leading to more heart attacks and strokes.”
- **A Group of Organizations Led By The Harvard Law School Center for Health Law Policy and Innovation: Access To Evidence-Based Preventive Services Mitigates Chronic Illness and Disability.** A group of 11 organizations including the Center for Health Law Policy and Innovation at Harvard Law School, the Chronic Illness and Disability Partnership, American Diabetes Association, Medicare Rights Center, Center for American Progress, Positive Women’s Network-USA, Community Servings, National Alliance on Mental Illness, Center for Medicare Advocacy, AIDS Institute, and the National Viral Hepatitis Roundtable submitted an [amicus brief](#) to the Supreme Court noting that “chronic illness and disability impose extraordinary burdens on individuals and American society,” and “Evidence-based preventive services have been shown to delay or eliminate the onset of disease, detect illness early when it is most treatable, and mitigate exacerbations of chronic illness and disability.”
- **11 Health Care Advocacy Groups Led By Public Citizen: Plaintiffs Would Imperil Congress’s Critical Efforts To Protect American Lives.** A coalition of 11 nonprofit organizations – Public Citizen, AcademyHealth, AIDS Healthcare Foundation, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids, Families USA, GO2 for Lung Cancer, Parents Against Vaping E-Cigarettes, Public Health Law Center, and the Truth Initiative Foundation – submitted an amicus brief [arguing](#) that the Supreme Court should reject the Fifth Circuit’s ruling: “affirming the lower court’s constitutional holding would imperil Congress’s critical efforts to protect the health—and potentially the lives—of millions of Americans.”
- **48 Bipartisan Economic and Social Science Scholars: The Economy Benefits From Investment In Disease Prevention.** A group of 48 bipartisan scholars working in the economic and social studies fields submitted an [amicus brief](#) to the Supreme Court arguing that the economy benefits from investment in disease prevention through the ACA’s preventive services mandate: “When preventive measures forestall disease or detect it earlier, individuals live longer, more economically productive lives. Longstanding health economics research has quantified the high economic value of many of the preventive services covered through the Provision. Without the Provision, utilization of preventive care will decrease as individuals respond to increased cost-sharing, as they predictably and consistently do, by forgoing care.”

- **20 HIV-Focused Organizations: “Preventive Care Without Cost Sharing Improves Health Outcomes And Enables Healthier Lifestyles.”** In two separate [amicus briefs](#) to the Supreme Court, dozens of organizations committed to “promoting and advancing the health of people living with and impacted by HIV/AIDS” noted that the USPSTF recommendations “have been essential to the prevention of HIV, hepatitis and many other infectious and chronic diseases for millions of Americans” and urged the Court to reverse the Fifth Circuit’s decisions invalidating the USPSTF’s recommendations.
- **PrEP Manufacturer Gilead: Increasing Access To PrEP Is An Essential Part of Controlling and Ending the HIV Epidemic.** Gilead Sciences Inc., the pharmaceutical company that pioneered preventive HIV medication known as pre-exposure prophylaxis (PrEP), including Truvada and Descovy, submitted an [amicus brief](#) to the Supreme Court opposing plaintiff’s appeal, noting: “Ending the HIV epidemic in the United States requires addressing longstanding barriers to HIV testing, prevention, and treatment. Increasing access to PrEP, which is remarkably effective at preventing the transmission of HIV, is an essential part of efforts to end the epidemic.”