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[Braidwood v. Becerra Judge Moves To End Guaranteed Free Preventive Health Care For More Than 150 Million Americans](#)

On March 30, 2023, District Judge Reed O'Connor [struck down](#) portions of the Affordable Care Act (ACA) that require insurers to cover lifesaving preventive services without cost sharing. Judge O'Connor invalidated all of the benefits covered under the [U.S. Preventive Services Task Force](#) (USPSTF), including lifesaving cancer and heart disease screenings, prenatal care, pre-exposure HIV treatments, and more.

This lawsuit was initiated and driven by extremist, [longtime foes](#) of the ACA, abortion rights, marriage equality, vaccination mandates, and diversity policies—and decided by the same Federal District Court judge whose decision [invalidating](#) the entire ACA was [reversed](#) by the Supreme Court in 2021. Judge O'Connor's ruling will once again put Americans at the mercy of insurance companies and employers, who could [eliminate](#) the benefits entirely or start charging for them, increasing costs for patients by thousands of dollars a year and creating major obstacles to care. 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 – and advancing health equity.

The ACA's requirement that insurers provide services recommended by the USPSTF without cost-sharing guarantees access to dozens of health services with zero out-of-pocket costs. Eliminating 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 for more than [150 million](#) Americans. Judge O'Connor's decision in the *Braidwood Management (formerly Kelley) v. Becerra* lawsuit ends the requirement that insurance plans cover these lifesaving, no-cost benefits. Here are just [some](#) of the preventive services invalidated by Judge O'Connor:

- **GONE - Free, Guaranteed Cancer & Health Screenings.** This decision strikes down the ACA requirements that insurers cover screenings for serious health issues including colorectal cancer, lung cancer, hypertension, and prediabetes.
- **GONE - Free, Guaranteed Mental Health & Substance Use Screenings.** This decision strikes down the ACA requirements that insurers cover screenings for depression and anxiety for children and adolescents, as well as depression screenings for adults. This decision also strikes down the requirement that insurers cover screenings for unhealthy alcohol and drug use and tobacco cessation counseling and products.

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- **GONE - Free, Guaranteed PrEP.** This decision strikes down 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.

Here's What Health Experts Have Said About The Case

- A [coalition](#) of 16 patient advocacy organizations—led by the American Cancer Society—urged the court not to end guaranteed preventive coverage because it “would be highly disruptive to the health care system and patient care,” noting, “USPSTF’s preventive care recommendations have been adopted and relied on by patients and providers in the health care system for over 12 years...It is a popular provision of the law favored by 62% of Americans.”
- A [coalition of 8 leading medical organizations](#)—led by the American Medical Association—warned that O’Connor’s ruling would “revert to the pre-ACA regulatory regime, where insurers could charge their enrollees...for mammograms, colonoscopies, and other services at will. [...] All Americans...will be affected by the confusion that emerges from gutting the ACA’s decade-old preventive-care requirements. Doing so would yield a “confusing patchwork of health plan benefit designs offered in various industries and in different parts of the country,’ making it difficult for ‘patients who have serious medical conditions or are at high risk for such conditions’ to ‘find a plan that fully covers preventive and screening services.’ [...] Many will instead decide to forgo basic preventive services entirely.”
- Twenty-four organizations representing millions of people with or at risk for serious or chronic illnesses [released a letter](#) highlighting the need to protect access to preventive services.

What Happens Next

If the federal judiciary allows O’Connor’s ruling to stand, a full reversal of the preventive services requirement would set off a massive disruption in the American health care system with over 150 million Americans at risk of losing access to no-cost preventive care [at the end of this year](#) or when they renew their insurance.

It is imperative Judge O’Connor’s ruling be stayed pending appeal. The case will almost certainly be appealed to the 5th Circuit Court of Appeals, and it will eventually end up at the Supreme Court.

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Who Is Behind It?

The *Braidwood Management v. Becerra* Plaintiffs Have Repeatedly Sued To Overturn Parts Of The ACA. John Kelley, his wife, and his company, Kelley Orthodontics, filed an earlier and similar class action lawsuit against the ACA's contraceptive mandate known as [DeOtte 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 *Braidwood Management V. Becerra* 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."

- **Mitchell Filed Briefs Arguing the Supreme Court Should Overrule its Decisions Protecting Marriage Equality and Invalidating Anti-Sodomy Laws.** Mitchell [filed a brief](#) in the *Dobbs* case urging the Supreme Court to overturn *Roe v. Wade*—and criticized Mississippi for suggesting that the Court could leave in place its 2015 ruling in *Obergefell v. Hodges*, holding that same-sex couples have the right to marry in all states. He said that *Obergefell* and *Lawrence v. Texas*, the 2003 ruling that invalidated all remaining state anti-sodomy laws, "are judicial concoctions, and there is no other source of law that can be invoked to salvage their existence." Mitchell has also [referred](#) to PrEP, a life-saving medication that prevents HIV infection as a drug that would "facilitate and encourage homosexual behavior, prostitution, sexual promiscuity, and intravenous drug use."

The Plaintiffs In *Braidwood Management v. Becerra* Are Also Represented By The Trump-Aligned America First Legal Foundation. The [plaintiffs](#) are "represented by America First Legal Foundation, a nonprofit led by senior members of President Donald Trump's administration, including Trump senior adviser Stephen Miller."

- **America First Legal Has Supported Suits To Overturn Vaccine Mandates And Block "Critical Race Theory."** America First Legal is involved in numerous hot-button conservative legal actions. AFL has supported suits seeking to overturn [vaccine mandates](#) and [sued companies](#) that have policies to increase diversity in their workforces. The group has also filed suits alleging that pandemic aid for [minority](#)

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[farmers](#) is “racist” and trying to force the Biden administration to stop allowing [immigrant children](#) into the country.

- **America First Legal Was Established By Former Trump Aide Stephen Miller “To Make Joe Biden’s Life Miserable.”** America First Legal was founded by former Trump aide and white nationalist [Stephen Miller](#) who was “looking to use it to make Joe Biden’s life miserable.” He was also the architect of the Trump administration’s harshest immigration policies and a supporter of the forced sterilizations committed by ICE in Georgia.

The Judge Ruling on *Braidwood Management v. Becerra* Is Well-Known For His Anti-Obamacare Beliefs. According to [CNN](#), U.S. District Judge Reed O’Connor is, “a Texas-based judge who has become notorious for his rulings against the Affordable Care Act under the Trump and Obama administrations.” O’Connor – an appointee of President George W. Bush and a [former advisor](#) to Sen. John Cornyn on the Senate Judiciary Committee – has issued opinions spanning over a decade that would [dismantle](#) key Obamacare provisions and now, with *Braidwood Management v. Becerra*, has ruled once again to strip Americans of their quality and affordable health care.

- **Judge O’Connor Has Previously Ruled To Strike Down The Entire ACA, To Overturn Contraceptive Coverage Requirements, To Invalidate Vaccine Mandates, And Limit LGBTQ+ Rights.** [O’Connor](#) presided over the last major Obamacare challenge to land on the Supreme Court’s doorstep. In that case, O’Connor invalidated the entire ACA – and his decision was overturned by a 7-2 majority that included four of the Supreme Court’s conservative Justices. In addition to the individual mandate case, O’Connor also sided with Obamacare challengers who took aim at the law’s non-discrimination provisions, its contraceptive coverage requirement, and at insurance provider fees imposed on states through the law. He also recently ruled against the military’s Covid-19 vaccine mandate and has in the past issued decisions against policies that expanded LGBT rights.
- **For Opponents Of The ACA, Judge O’Connor Is “Their Guy.”** Describing Judge O’Connor’s string of anti-ACA rulings, [John Cogan](#), a health law professor at the University of Connecticut School of Law said, “There are plaintiffs who simply will not give up, despite years of defeats. They’ve had some successes, but years of defeats, and there’s just no lack of an appetite for continuing litigation. [...] The whole approach to challenging the ACA ... he’s their guy.”

Why The Plaintiffs’ Legal Arguments Are Wrong

The plaintiffs make three primary legal arguments – all are wrong. The plaintiffs will likely raise these arguments as the case is appealed.

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The Plaintiffs' First Argument: The law violates the Appointments and Vesting Clauses of the Constitution because members of the United States Preventive Services Task Force (USPSTF), Advisory Committee on Immunization Practices (ACIP), and Health Resources and Services Administration (HRSA) have not been nominated by the President or confirmed by the Senate and, according to the plaintiffs, can “unilaterally determine” the preventive care that must be covered by insurers and plans.

Why The Plaintiffs Are Wrong: Congress made a conscious decision to require coverage of preventive services – specifying bodies that utilized well-established standards to guide their decisions – and ensured each entity in question (USPSTF, ACIP, and HRSA) is overseen by federal agencies whose heads have been appointed by the President and who all report to a senior official appointed by the President and confirmed by the Senate (the Secretary of Health and Human Services [HHS]). USPSTF members are appointed by the head of the Agency for Healthcare Research and Quality, who reports to the Secretary of HHS. The HRSA Administrator reports to the Secretary of HHS. The members of ACIP are appointed by the CDC Director who reports to the Secretary of HHS. HRSA is a component of HHS.

The Plaintiffs' Second Argument: The preventive services provision violates the nondelegation doctrine because it delegates legislative power to the USPSTF, ACIP, and HRSA without providing an “intelligible principle” to guide their exercise of discretion.

Why The Plaintiffs Are Wrong: Congress required the coverage of evidence-based and preventive services, and it specified bodies that applied well-established standards to guide their decisions. By specifying those bodies, Congress plainly endorsed and incorporated the standards that they utilized, and those standards provide a sufficient “intelligible principle” to limit discretion and govern the recommendations and guidelines that must be covered under the ACA.

The Plaintiffs' Third Argument: The plaintiffs claim they have religious objections to paying for one of the preventive services mandated by the ACA – PrEP, a drug essential to HIV prevention – and that requiring coverage of this medication is a violation of the Religious Freedom Restoration Act (RFRA).

Why The Plaintiffs Are Wrong: As the Department of Justice explains in its court filings, the plaintiffs have not shown that their religious beliefs are burdened because they failed to prove that the availability of PrEP medications encourages behavior inconsistent with their beliefs or that the PrEP requirement causes an increase in their cost for health insurance. In addition, preventing the spread of HIV, a potentially fatal, infectious disease, is a compelling government interest—which is a separate basis for rejecting the RFRA claim.