

United States: Millions of Americans at risk of losing free preventive care after Texas ruling on ACA

Monday 10 April 2023, by [SHAFER Paul](#), [STOJANOVSKI Kristefer](#) (Date first published: 7 April 2023).

On the basis of government appointment technicalities and religious freedom, Americans may lose free coverage for cancer and blood pressure screenings, HIV prevention medication and other essential services.

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Many Americans breathed a sigh of relief when the Supreme Court left the Affordable Care Act in place following the law's [third major legal challenge](#) in June 2021. This decision left [widely supported policies](#) in place, like ensuring coverage [regardless of preexisting conditions](#), granting coverage for [dependents up to age 26](#) on their parents' plan and removing [annual and lifetime benefit limits](#).

But now, millions of people in the U.S. are holding their breath again [following a March 30, 2023 ruling](#) in *Braidwood v. Becerra* that would [eliminate free coverage](#) for many basic preventive care services and medications.

Litigating preventive care

[Section 2713](#) of the ACA requires insurers to offer [full coverage of preventive services](#) endorsed by one of three federal groups: the U.S. Preventive Services Task Force, the Advisory Committee on Immunization Practices or the Health Resources and Services Administration. If one of those groups recommends a preventive care service as essential to good health outcomes, then you shouldn't have to pay anything out of pocket. For example, [the CARES Act](#), which allocated emergency funding in response to the COVID-19 pandemic, used this provision to ensure COVID-19 vaccines would be free for many Americans.

Immunizations, including COVID-19 vaccines, require a recommendation from the [Advisory Committee on Immunization Practices](#) of the Centers for Disease Control and Prevention, while women's health services require approval from the [Health Resources and Services Administration](#). Most other preventive services require an A or B rating from the [U.S. Preventive Services Task Force](#), an independent body of experts trained in research methods, statistics and medicine, and supported by the [Agency for Healthcare Research and Quality](#).

The lead plaintiff in the ACA case, [Braidwood Management](#), is a Christian for-profit corporation

owned by Steven Hotze, a physician and conservative activist who has [previously filed](#) multiple lawsuits against the Affordable Care Act. Braidwood and its co-plaintiffs, a group of conservative Christian employers, objected to being forced to provide their 70 employees free access to pre-exposure prophylaxis, or PrEP, a medicine that is [nearly 100% effective](#) in preventing HIV infection. Hotze claimed that PrEP “facilitates and encourages homosexual behavior, intravenous drug use and sexual activity outside of marriage between one man and one woman,” despite a lack of evidence to support this. He also claimed that his religious beliefs prevent him from providing insurance that covers PrEP.

PrEP received an [A rating](#) from the U.S. Preventive Services Task Force in June 2019, paving the way for it to be covered at no cost for millions of people.

PrEP is a key tool to helping the U.S. reach its goal of substantially reducing new HIV infections by 2030. AP Photo/Pablo Martinez Monsivais

Though Section 2713 of the ACA [doesn't work perfectly](#), sometimes leaving patients frustrated by [unexpected bills](#), it has made a huge difference in reducing costs for services like [well-child visits](#) and [mammograms](#), just to name a few.

[Over 150 million Americans](#) are enrolled in private health insurance, allowing them to benefit from free preventive care, with [about 60%](#) using at least one free preventive service each year. Raising the cost barrier again for PrEP, for example, would [disproportionately harm](#) younger patients, people of color and those with lower incomes.

As public health researchers at [Boston University](#) and [Tulane University](#) who study [health insurance](#) and [sexual health](#), we believe that prevention and health equity in the U.S. stand to take a big step backward with this policy in jeopardy.

What preventive services are affected?

The ruling in Braidwood rests in large part on the [appointments clause](#) of the U.S. Constitution, which specifies that certain governmental positions require presidential appointment and Senate confirmation, while other positions have a lower bar.

Texas federal [District Judge Reed O'Connor ruled](#) that because the U.S. Preventive Services Task Force is an independent volunteer panel and not made up of officers of the U.S. government, they do not have the appropriate authority to make decisions about which preventive care should be free, unlike the Advisory Committee on Immunization Practices or Health Resources and Services Administration. O'Connor also ruled that being forced to cover PrEP violated the religious freedom of the plaintiffs.

Following his initial ruling in September, both sides submitted briefs that tried to inform the “remedy,” or solution, the judge would ultimately recommend. He could have chosen, as the [federal government advocated](#), to grant only the plaintiffs an exemption from covering PrEP under the Religious Freedom Restoration Act. But O'Connor instead chose to make his “remedy” apply nationally and cover more services.

He invalidated all of the task force's recommendations since the Affordable Care Act was passed in March 2010, returning the power to insurers and employers to decide which, if any, preventive care would remain free to patients in their plans. A few of the [recommendations covered by his ruling](#) include PrEP; blood pressure, diabetes, lung and skin cancer screenings; and medications to lower

cholesterol and reduce breast cancer risk. As of 2022, [15 states](#) have laws with ACA-like requirements for plans in the insurance marketplace, but not for large employer plans generally [exempt from state oversight](#).

Insurance contracts are typically defined by calendar year, so most people will [see these changes](#) starting only in 2024. Importantly, these services will likely still need to be covered by health insurance plans as [essential health benefits](#) through a separate provision of the ACA – they just won't be free anymore.

Other U.S. Preventive Services Task Force recommendations and those made by the Advisory Committee on Immunization Practices or Health Resources and Services Administration – namely, immunizations and contraception, respectively – will remain free to patients [for now](#).

The Affordable Care Act has faced many legal challenges over the years. AP Photo/Alex Brandon

What's next?

The [federal government appealed](#) the ruling to the 5th U.S. Circuit Court of Appeals on March 31, 2023, buoyed by a [coordinated response](#) from 23 patient advocacy groups. They have asked for a stay while the case continues, which pauses the effects of the ruling. If either O'Connor or a higher court grants their request, it will leave the status quo of free preventive care in place.

But there are also concerns that either the 5th Circuit or the Supreme Court could take the ruling even further, endangering the free coverage of contraception and other preventive care that remains in place.

The ending to this case may still be several years off, with [even more frustration](#) ahead as the courts undermine national goals in [fighting cancer](#), [diabetes](#) and [ending the HIV epidemic](#).

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