

# Braidwood v. Becerra

## Where Do We Stand

### Overview of Case

In the *Braidwood v. Becerra* case, a Texas district court judge deemed part of the Affordable Care Act's preventive services mandate — which requires most private health plans to provide access to free preventive services — to be unconstitutional. The ruling affected cost-free access to approximately half of the preventive services required by the ACA; while the United States Preventive Services Task Force (USPSTF) currently recommends free coverage for 49 preventive services, the judge only ruled that preventive services recommended after the ACA's passage in 2010 ([23 preventive services](#)) were unconstitutional. USPSTF recommendations that existed before 2010, as well as recommendations by the Health Resources and Services Administration (HRSA) and Advisory Committee on Immunization Practices (ACIP), were untouched by the judge's decision and, therefore, still required to be covered without cost-sharing. Additionally, the court found that requiring plans and employers to provide free coverage of PrEP (a medication [highly effective](#) at preventing HIV and already [recommended by USPSTF](#)) violated the Religious Freedom Restoration Act.

Since then, the US Department of Justice appealed the district court ruling to the Fifth Circuit Court of Appeals, and in June 2023, the Fifth Circuit granted a nationwide stay while it considers the case. [Effectively, a stay means that plans must still provide free access to preventive services while the case moves through the appeals process.](#)

### More Preventive Services at Risk

Until now, the focus of the case has been on the preventive services recommended by the USPSTF, but the plaintiffs filed a ["cross-appeal"](#) in August asking the Fifth Circuit to expand the district court ruling to also eliminate the ACA's preventive services mandate for services recommended by HRSA and ACIP. This means that free access to all preventive services is at risk (currently totalling 76 altogether).

The graphic on the following page provides an overview of preventive services recommended by each government body to illustrate the number of services that plans may no longer be required to provide for free, should the plaintiff's request to expand the district court ruling be accepted by the Fifth Circuit

### What's Next

The Fifth Circuit Court of Appeals is likely to issue a ruling on both appeals sometime in Mid-2024. Depending on the ruling, the plaintiffs and DOJ will make decisions about whether they request the case be heard in the Supreme Court. Many expect this case to be brought to the Supreme Court. If that happens, the Supreme Court would not hear this case until 2025.

# Services at Risk: Under an Expanded Braidwood Decision

Services in blue are affected by the district court ruling. Those in purple would be affected by the expanded cross appeal.

## United States Preventive Services Task Force (USPSTF)

- Abdominal aortic aneurysm screenings
- Application of fluoride varnish to primary teeth
- Anxiety screenings for adults and adolescents
- Aspirin use to prevent preeclampsia
- Asymptomatic bacteriuria in adults screenings
- Breast cancer medications for risk reduction
- Breast cancer screenings (mammography)
- Breastfeeding primary care interventions
- BRCA-related cancer risk assessments, genetic counseling, and genetic testing
- Cervical cancer screenings (pap testing and HPV testing)
- Chlamydia and gonorrhea screenings
- Colorectal cancer screenings
- Depression and suicide risk screenings for children, adolescents, and adults
- Falls prevention in older adults
- Folic acid supplements to prevent neural tube defects
- Gestational diabetes screenings (also required by HRSA)
- Healthful diet/physical activity for cardiovascular disease behavioral counseling
- Healthy weight and weight gain in pregnancy (counseling)
  - Hepatitis B/C infection screenings
    - HIV screenings
      - HIV infection screenings (also required by HRSA)
- Hypertensive disorders of pregnancy screening
- Hypertension screenings
- Intimate partner violence screenings/counseling (also required by HRSA)
- Latent tuberculosis infection screenings
- Lung cancer screenings
- Osteoporosis screenings
- Ocular prophylaxis for gonococcal ophthalmia neonatorum
- Obesity in children and adolescents screening
- Perinatal depression (preventive interventions)
- Prediabetes/type 2 diabetes screenings
- Preeclampsia screening/preventive medicine
- PrEP for HIV prevention
- Prevention of dental caries in children younger than 5 years
- Rh(D) incompatibility screenings
- Skin cancer prevention (counseling)
- Statin use for prevention of cardiovascular disease
- STI counseling (also required by HRSA)
- Syphilis screenings
- Tobacco cessation
- Unhealthy drug use screenings
- Unhealthy alcohol use in adolescents/adults screenings/counseling
- Vision screening in children ages 6 months to 5 years
- Weight loss/obesity prevention and behavioral interventions

## Health Resources and Services Administration (HRSA)

- Anxiety screenings for adolescent and adult women
- Breastfeeding supplies and services
- Cervical cancer screenings (HPV testing)
- Contraceptive services/counseling
- Diabetes Mellitus screenings post- pregnancy
- Obesity prevention in midlife women
- Urinary incontinence screenings
- Well woman visits

## Advisory Committee on Immunization Practices (ACIP)

- COVID-19 Immunizations
- Haemophiles Influenza type B immunizations
- Hepatitis A/B immunizations
- HPV immunizations
- Influenza immunizations
- Measles/mumps/rubella (MMR) immunizations
- Pneumococcal immunizations
- Meningococcal immunizations
- Td booster immunizations
- Tetap immunizations
- Varicella immunizations
- Zoster (shingles) immunizations

## Pre-Exposure Prophylaxis (PrEP)

While PrEP is required to be covered cost-free by the USPSTF, the district court also ruled that plans and employers didn't have to cover this HIV treatment on religious freedom grounds.