

# Braidwood v. Becerra: Where Do We Stand?

Updated March 2024



## Overview of the Case

In May 2023, the U.S. Court of Appeals for the Fifth Circuit granted a nationwide stay, or pause, in a lower District Court's [ruling](#), in the case *Braidwood v. Becerra*, which found part of the Affordable Care Act's preventive services mandate requiring most private health plans to provide access to free preventive services to be unconstitutional. Issuing the stay allows time for the Fifth Circuit to consider the case without interrupting people's current access to no-cost preventive services ahead of a likely Fifth Circuit decision later this year.

Had the Fifth Circuit not issued the stay, any preventive services recommended by the United States Preventive Services Task Force (USPSTF) after 2010, including lung cancer screenings and HIV prevention medication, would [no longer](#) be required to be covered cost-free by insurers as per the District Court decision. USPSTF recommendations that existed before 2010, as well as those made by the Health Resources and Services Administration (HRSA) and Advisory Committee on Immunization Practices (ACIP), were untouched by the District Court's decision.

## More Preventive Services at Risk

While the District Court's ruling was limited to only USPSTF-recommended services put in place after 2010, a "[cross-appeal](#)" was filed with the Fifth Circuit in August 2023 to expand the ruling to include all USPSTF-recommended services, as well as all services recommended by HRSA and ACIP. This means that despite the more limited scope of the District Court's ruling, free access to all preventive services is at risk for the more than 150 million people with private insurance, including 37 million children, who have come to rely on these services.

The graphic on the following page provides an overview of preventive services recommended by the USPSTF, HRSA, and ACIP to illustrate the current and potential impact of this case on access to needed preventive services.

## What's Next?

Regardless of the Fifth Circuit's ruling, potentially as early as spring 2024, it is likely that the *Braidwood* case will be appealed to the Supreme Court (see chart to the right). Until then, as long as a stay remains in place, the ACA's no-cost preventive services mandate remains in effect for people accessing these critical health care services. We will continue to monitor this case and advocate for people's continued access to free preventive services.

## Court & Appeals Process

### CASE ASSIGNED TO DISTRICT JUDGE

Braidwood is assigned to Judge Reed O'Connor in the Northern District of Texas.

March 29,  
2020

### DISTRICT COURT ORAL ARGUMENTS

Both parties make their case & answer questions from the District Court.

July 26,  
2022

### DISTRICT COURT DECISION

Judge O'Connor [dresses down](#) part of the ACA's preventive services mandate.

September 7,  
2022

### DISTRICT COURT REMEDY

Judge O'Connor [announces](#) that his decision applies nationwide immediately.

March 30,  
2023

### FEDERAL GOVERNMENT APPEALS

The federal government immediately [appeals](#) the District Court's decision.

March 31,  
2023

### CIRCUIT COURT GRANTS STAY

The Fifth Circuit [grants](#) the request to stay the District Court's decision.

May 15,  
2023

### CIRCUIT COURT ORAL ARGUMENTS

Both parties make their case & answer questions from the Fifth Circuit.

March 4,  
2024

### CIRCUIT COURT DECISION

The Fifth Circuit [issues](#) an opinion on the case.

Likely  
2024



## POTENTIAL SCENARIOS AFTER THE FIFTH CIRCUIT DECISION IS RELEASED



- The losing party could appeal the case to the Supreme Court, which could take up the case and issue a decision that may apply nationwide.
  - The losing party could also appeal the Supreme Court for an emergency stay depending on the Fifth Circuit's ruling.
  - If the Supreme Court declines to take up the case, then the Fifth Circuit's decision stands.
- The losing party could also appeal the case "en banc" to the entire Fifth Circuit for consideration which, in turn, could make a decision or remand the case back to a Fifth Circuit panel for further discussion.
- Given the uncertainty surrounding the appeals process, it is difficult to predict if and when the case could be considered by the Supreme Court, although it is not likely to happen before 2025, if not later.

# 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

## 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.

## 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
- Meningococcal immunizations
- Pneumococcal immunizations
- Td booster immunizations
- Tdap immunizations
- Varicella immunizations
- Zoster (shingles) immunizations