



SCOTUS Allows Enforcement of ACA's Preventive-Care Mandates But Opens Door for Political Influence: Key Points for Group Health Plans

Insights

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The federal government may continue to enforce the Affordable Care Act's preventive-care mandates, thanks to the Supreme Court's recent decision in *Kennedy v. Braidwood Management*. In a 6-3 bipartisan opinion written by Justice Brett Kavanaugh, SCOTUS rejected constitutional challenges brought by a Texas business and others to the structure of a federal health task force that, as SCOTUS put it, issues "preventive-service recommendations of critical importance to patients, doctors, insurers, employers, healthcare organizations, and the American people more broadly." But could the Court's rationale make the coverage rules more susceptible to political influence? Here's what employers and plan sponsors need to know about the June 27 decision and how it could impact group health plans.

The ACA's Preventive-Care Mandates and the U.S. Preventive Services Task Force

- **ACA Requirements.** The Affordable Care Act (ACA) requires most group health plans to cover certain preventive services without imposing deductibles, co-payments, or co-insurance on plan participants. Specifically, the ACA requires no-cost coverage of preventive services that receive "A" or "B" ratings from the U.S. Preventive Services Task Force. The Task Force's current recommendations give "A" or "B" ratings to roughly 50 preventive services.
- **The Task Force.** The Task Force is an independent, volunteer panel housed within the Department of Health and Human Services (HHS) that forms and publishes evidence-based recommendations for new preventive services. The Task Force, which was established by Congress long before the ACA's enactment, has around 16 members who are industry experts in disease and illness prevention, medicine, and primary care. Members are required by a federal law to be independent and free from political pressure.
- **HHS Authority.** The HHS Secretary has the power to appoint Task Force members and to remove them at will. The Secretary is also authorized to establish a minimum interval – not less than one year – following a new "A" or "B" recommendation from the Task Force and when insurers must begin covering the recommended service at no cost. During that interval period, the Secretary may review the recommendation and block it from taking effect.

The Controversy in *Kennedy v. Braidwood Management*

In 2020, Braidwood Management, Inc. (and others) sued HHS in a federal court in Texas because it objected to the ACA's requirement that it cover certain HIV-prevention medications without cost-sharing because, Braidwood claimed, those medications "encourage and facilitate homosexual behavior" and conflict with their religious beliefs. Braidwood, which runs a health and wellness center and offers self-insured health plan benefits to roughly 70 employees, ultimately sought to block the government from enforcing the preventive-care coverage mandates against it.

In addition to a claim under the Religious Freedom Restoration Act, Braidwood argued that the Task Force's structure was unconstitutional and that its recommendations could not be given legal force. The sole issue that ultimately made its way to SCOTUS was whether the appointment of Task Force members by the HHS Secretary is consistent with the Appointments Clause in Article II of the Constitution.

Snapshot of the Appointments Clause

The Appointments Clause establishes how "Officers of the United States" must be appointed and provides different rules for "principal" versus "inferior" officers.

- **All officers** can exercise power and authority under federal law. This is what makes officers distinct from other federal employees that only perform subordinate or routine tasks.
- **Principal officers** exercise significant, discretionary power and authority and must be appointed by the president with the advice and consent of the Senate. For example, the HHS Secretary and other cabinet members are principal officers. Principal officers cannot be supervised or directed by other principal officers.
- **Inferior officers** can exercise some authority under federal law, but they are commonly supervised or directed by a principal officer. Under the Appointments Clause, Congress may delegate the power to appoint inferior officers to the president or a head of a department (such as the HHS Secretary).

Task Force Members: Principal or Inferior Officers?

While all parties agreed that Task Force members are "officers of the United States," they disagreed as to whether they are principal or inferior officers.

- **Braidwood argued that Task Force members are principal officers** because they operate independently and make recommendations that become federal law, and that it is therefore unconstitutional for the HHS Secretary appoint, remove, or direct Task Force members.
- **The government argued that Task Force members are inferior officers** because the Secretary has the power to remove them at will and to supervise the Public Health Service, which encompasses the Task Force.

The Lower Court Rulings

Each of the lower courts ruled in favor of Braidwood. While the district court vacated all agency actions taken to enforce the preventive-care mandates and universally blocked the government from enforcing them, the 5th Circuit Court of Appeals affirmed only to the extent that the judgment blocked enforcement of the mandates against specific plaintiffs in the case.

HHS then urged the Supreme Court to weigh in, emphasizing in a court filing that the appeals court's legal rationale would "inflict immense practical harms" because it:

- would "call into question the legal duty of insurance issuers and group health plans to cover Task Force 'A' and 'B' recommendations without cost sharing" – coverage that millions of Americans rely on; and
- could "prompt the district courts within the Fifth Circuit to universally vacate past agency actions implementing 'A' and 'B' recommendations and universally enjoin implementation of those recommendations moving forward."

SCOTUS Reverses, Says Task Force's Structure "Fully Consistent" With Constitution

The Supreme Court ruled on June 27 that the Task Force's structure is constitutional.

In a bipartisan majority, the Court held that:

- Task Force members are inferior officers because they are subject to at-will removal and the Secretary's power to review and block their recommendations before they take effect.
- The federal law requiring Task Force members to be "independent" does not mean independent from the Secretary but instead independent from outside political influence that Task Force members likely face in their careers and personal lives.

SCOTUS therefore concluded that the Task Force members' appointments are "fully consistent with the Appointments Clause in Article II of the Constitution."

2 Key Takeaways for Your Group Health Plan

The *Braidwood Management* case answered important constitutional questions and upheld the validity of the Task Force's structure – but why should employers and plan sponsors care?

- **Free Preventive Services Are Here to Stay – For Now.** Now that the Task Force has received the Court's constitutional blessing, there is no doubt that insurance issuers and group health plans must comply with the ACA's preventive-care mandates or that the federal government may enforce them. You can follow the Task Force's preventive service recommendations [here](#).
- **Task Force Could Be Subject to Greater Political Influence.** The Supreme Court found that Task Force members are inferior officers supervised and directed by the Secretary. With this power dynamic, Task Force members could be exposed to more political influence as current and

future administrations could influence Task Force policies and recommendations. For example, HHS Secretary Robert F. Kennedy, Jr. recently postponed a Task Force meeting that was scheduled for July 10, raising questions, as Axios reported, about whether he might “change the task force’s composition or fire its members, as he did with a federal vaccine advisory panel early last month.” You should prepare for regular updates and changes to free preventive service requirements.

Conclusion

We will continue to monitor developments related to all aspects of employee benefits law, so make sure you subscribe to Fisher Phillips’ Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our Employee Benefits and Tax Practice Group.

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