

CAPITOL STREET

January 14, 2025

ACA & USPSTF Coverage Revisited by the Supreme Court

Our Take on Potential Outcome

Relevant Companies

HOLOGIC®

GSK

GILEAD

EXACT
SCIENCES

»» Our Take & Next Up

The Supreme Court plans to revisit the constitutionality of the US Preventive Services Task Force's (USPSTF) power to allow zero-cost preventive services by insurers. SCOTUS will likely argue the case in March/April and provide a decision by June 2025. We believe a simple potential remedy from SCOTUS is reclassifying USPSTF officers as "inferior officers" who are supervised and can be removed by the HHS Secretary. This fix, involving severability, would allow the SC to avoid the unnecessarily tedious process of making Congress pick up the pieces and pass new legislation. We believe that Congress – on a bipartisan basis – wants to continue free preventive healthcare measures, especially given Americans are used to \$0 copay / coinsurance for preventive services such as colonoscopies, mammograms, and routine vaccinations.

»» Key Points

The high court will only look at Appointments clause & so-called "severability" may win the day.

- The Justice Department petitioned the high court last September to review the Fifth Circuit's ruling in *Braidwood v. Becerra* that found the structure of the USPSTF violates the constitution's Appointments Clause as well as the court's refusal to fix the problem by severing certain language from the statute ([here](#)).
- The high court did not take up the Braidwood plaintiffs' petition to review a lower court ruling that shot down their claim the ACA's women's health and vaccine coverage mandates also violate the Constitution's Delegations Clause.

We believe that a complete eradication of free preventive care services in the near future is unlikely.

Recall that many new Republican Cabinet nominees (RFK Jr, Dr. Oz, Marty Makary) are focused on prevention and wellness as well as other key Congressional leaders and members who work on health policy issues, such as Senate HELP Chairman Cassidy (R-LA).

An interesting twist – do government lawyers defend the ACA? It remains to be seen if lawyers for the incoming Trump administration will stand by the Biden team's position or elect not to defend the panels that set the coverage requirements under the ACA, which Trump has criticized. If the Justice Department doesn't defend the arrangements, the high court could appoint another lawyer to do so ([here](#)).

SCOTUS revisiting the constitutionality of USPSTF recommendations has the potential to significantly impact coverage for many Americans. ACA enrollment reached a record high of 24 M enrollees in 2024 ([here](#)), with many taking advantage of preventive care services with no coinsurance or deductible. Healthy ACA participation is also ascribed to the Biden Administration federal subsidies making premiums more affordable, a policy that is expected to expire at the end of 2025, unless there is an extension by Dec 31, 2025.

BACKGROUND

Braidwood (2020) saw the USPSTF mandate for insurers to provide free PrEP (HIV) as unconstitutional and filed a lawsuit in north TX. Braidwood, a business run by a GOP activist, believes that the option for zero-cost preventive care services, especially contraceptive services, conflicts with their religious beliefs. The company took to the lower court to argue the validity of the USPSTF's authority ([see page 7 here](#)). They cite that the USPSTF violates the Appointments Clause of the Constitution, arguing that officers are not nominated by the President or confirmed by the Senate.

Braidwood further argues that the USPSTF violates the Non-Delegation Doctrine, but the high court is unlikely to “go there” based on SCOTUS decision to take the case (1/10). The non-delegation doctrine refers to the principle that restricts one branch of government to give another entity their constitutional-granted power. Plaintiffs also alleged the ACA mandate to cover all FDA-approved contraceptives and other women's health services without cost-sharing, per guidance created by the Health Resources and Services Administration and vaccines recommended by the Centers for Disease Control and Prevention's ACIP, violates the Delegation Clause. 5th Circuit Judge O'Connor ruled in favor of Braidwood and declared all USPSTF recommendations made after March 23, 2010, unconstitutional ([here](#)). The Justices will only consider the potential violation of the Appointment Clause when SCOTUS revisits the case in 2025.

HHS Solicitor General appealed to SCOTUS ([here](#)) on September 19, 2024, asking for a re-evaluation of the 5th Circuit's ruling. HHS points out that the 5th Circuit inaccurately classified the USPSTF as principal officers and clarifies that the officers are under the supervision of the HHS. Healthcare organizations, including the American Public Health Association, the American Cancer Society, and others, as well as 24 states filed advisory briefs supporting HHS and advocated for the continued use of zero-OOP preventive services. SCOTUS held a conference on January 10, 2025, reopening the case after approving HHS's appeal.

Ipsita Smolinski
Managing Director | Capitol Street
ipsita@capitol-street.com

202.250.3741 | www.capitol-street.com

900 19th St NW 6th Fl
Washington, D.C. 20006

CAPITOL STREET

Copyright 2025 Capitol Street.

This communication, including this broadcast and any attachments hereto, is intended solely for the original recipient(s) and may not be redistributed without the written consent of Capitol Street. This communication is for informational purposes only and is not intended as an offer or solicitation for the purchase or sale of any financial instruments, nor is it intended as advice to purchase or sell such instruments