

# CAPITOL STREET

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## Preventive Coverage Upheld by Appellate Court

### Mixed Bag: Case Sent Back to District Court

Relevant Companies



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### »» Our Take & Next Up

**Today, the Fifth Circuit Court of Appeals ruled against the ACA preventative coverage mandate on recommendations from the US Preventative Services Task Force ([here](#)).** The decision concurs with the lower court on the legality of the Task Force and ruled they are “principle officers” (who must be nominated by the President and confirmed by the Senate) and ruled that the preventative care mandates that come from the Task Force are unconstitutional. However, the Appeals Court disagreed with the solution to issue a national injunction against coverage that comes from Task Force recommendations. The Fifth Circuit reverses the full injunction, so the preventive mandate stands. However, the contraceptive coverage and vaccine mandates are at risk, again. Now what? The case is being sent back to the District Court(s) to determine if there are procedural issues also present with the other recommending bodies, the Advisory Committee on Immunization Practices (ACIP) and Health Resources and Services Administration (HRSA). The high court may still see this case (SCOTUS) after the district courts reconsider but the confusing decision means that the case will take time to play out.

### »» Key Points

**Decision is a “mixed bag” for manufacturers of important technologies.**

- The appellate court agreed preventative-care mandates cannot be enforced if they come at the recommendation of the US Preventative Services Task Force, as the unreviewable power it holds to issue preventive-care recommendations makes them “principle officers” who must be nominated by the President and confirmed by the Senate.
- However, the Appeals Court disagrees with the District Court on a national injunction as an appropriate solution. On ACIP and HRSA (the other two recommending bodies), the Appeals Court agreed that HHS has the authority to ratify their recommendations and guidelines but chose not to rule on if there are Administrative Procedure Act (APA) issues.

**The case is being remanded back to the District Court level, which will take time to work through.** The case now returns to Judge Reed O'Connor in Northern Texas, an anti-ACA ruling judge. The appeals court chose not to rule on the constitutionality of the other recommending bodies for preventive care -- ACIP and HRSA -- without having the district courts decide first. This puts at risk additional preventative screening and vaccine coverage mandates that come from these bodies. As a reminder, ACA mandates coverage of any vaccinations recommended by ACIP and any "evidence-informed preventive care and screenings" for women and children recommended by HRSA.

**Taking away important preventive healthcare is not a winning issue for Republicans, and this case will likely be taken up by SCOTUS (eventually) after lower court proceedings and now a circuitous path forward.** Preventive services declined during COVID lockdown, and many needed mammograms, screens and other scans have not rebounded fully (to pre-COVID levels). Leading members of Congress from both sides of the aisle have supported prevention as a public health issue critical for all Americans, in a post-pandemic world.

**The preventative mandate comes from the ACA and no-cost coverage remains popular with the general public.** The category of mandated coverage in question is for items or services that have an 'A' or 'B' rating from the Task Force. Under the mandate, most private-sector insurers must cover certain preventive health services with no out-of-pocket costs (such as a deductible or a co-pay) to enrollees. The ACA does not define "preventive care," and instead empowers 3 key recommending authorities (USPSTF, ACIP, HRSA) to determine coverage.

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