

Supreme Court Case to Watch: *Kennedy v. Braidwood Management, Inc.*

Yet another challenge to the Affordable Care Act (ACA) – and why it matters to MedTech:

The ACA's Preventive Health Services Mandate:

- Private health insurers must cover “preventive health services” at no additional cost to patients.
- What are “preventive health services”? The ACA directs the U.S. Preventive Services Task Force (Task Force)—an independent panel of experts—to make recommendations about these services.
- This brand-new type of requirement had a profound impact on patients being able to access preventive services with no extra costs, and then receive treatment, including with medical devices.

Example Services the Task Force Has Recommended Covering:

- Biennial screening mammography for women 40-74
- Colon imaging for colorectal cancer screening for adults 45-49 and 50-75
- Screening for abdominal aortic aneurism with ultrasonography for men 65-75 with smoking history
- Annual screening for lung cancer with LDCT in adults 50-80 with smoking history

What Is the Case Pending Before the Supreme Court?

- Individuals and small businesses with religious objections to some preventive health services (e.g., PrEP) sued the federal government. Among other claims, they contend that the task force's recommendations are invalid because the members of the Task Force were not appointed by the President and confirmed by the Senate, in violation of the Appointments Clause of the Constitution.
- A district court invalidated all preventive-care requirements imposed by the Task Force since the ACA took effect and barred the government from enforcing preventive-services requirements. The Fifth Circuit agreed that the Task Force's structure violates the Constitution, but limited the remedy, barring the government from enforcing the preventive-services mandate only against these plaintiffs.
- The Supreme Court is considering a narrow question from the case with broad implications: whether the ACA's preventive-services mandate is unconstitutional because the Task Force members were not properly appointed under the Appointments Clause.
- The Supreme Court held oral arguments in April, then sought additional briefing on whether, even if the Task Force structure is constitutional, its members are subject to dismissal by the Secretary of HHS. The Court is expected to release its opinion in the matter by late June or early July.

What Might Happen Next:

If the Supreme Court sides with plaintiffs, there may be:

- A demise of the no-cost mandate:
 - Private health insurers may no longer be required to cover many preventive health services.
 - They may either charge patients for these services or may increase premiums to pay for them.
- An impact on the use of medical devices and other technology:
 - If patients are not receiving as many preventive screenings, then they will need fewer diagnostic tests that MedTech currently supplies.
 - If patients are not receiving as many preventive screenings, then fewer patients may be diagnosed with conditions that require treatment with medical devices or other technology.

Even if the Supreme Court finds the structure of the Task Force is constitutional, it could find that the members are subject to at-will dismissal by the Secretary of HHS.

In the current political climate, this could result in a wholesale change in the Task Force that could result in a radical direction change in recommendations, which may have the same practical effect.

We are closely watching this case and will be covering the Supreme Court's opinion when it arrives, including what it may mean for MedTech.