

## **Supreme Court's Decision in *Kennedy v. Braidwood Management, Inc.***

### ***Another challenge to the Affordable Care Act fails for now – but other changes may affect MedTech***

#### **The Preventive Services Mandate:**

- Under the Affordable Care Act (ACA), private health insurers must cover certain “preventive health services” at no additional cost to patients.
- The U.S. Preventive Services Task Force (Task Force)—an independent panel of experts—recommends the preventive services that must be covered by insurers. For example:
  - 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

#### **The *Braidwood* Case – Supreme Court's Decision Does Not Disturb Preventive Services:**

- Individuals and small businesses with religious objections to some preventive services (e.g., PrEP) sought to invalidate the Task Force's recommendations, including because its members were not appointed by the President and confirmed by the Senate, in violation of the Appointments Clause of the Constitution.
  - The District Court and Fifth Circuit held that Task Force members are principal officers, not subject to supervision by the Secretary, and thus unconstitutionally appointed.
  - While the case was pending, the former Secretary of HHS, Xavier Becerra, ratified and re-appointed all Task Force members.
  - The Supreme Court agreed to hear the case, and considered the narrow question of whether the ACA's preventive-services mandate is unconstitutional because the Task Force members were not properly appointed under the Appointments Clause.
- On June 27, 2025, the Supreme Court found in favor of the government, with a 6-3 majority opinion holding:
  - The structure of the Task Force does not violate the Constitution's Appointments Clause.
  - The Task Force members are “inferior officers” because:
    - They are appointed by the Secretary of HHS, who is a principal officer.
    - Their work is “directed and supervised” by the Secretary of HHS; e.g., the Secretary has statutory authority to review and block Task Force recommendations before they take effect.
  - Members of the Task Force are subject to *at-will dismissal* by the Secretary.
- The case has been remanded to the Fifth Circuit for proceedings consistent with the Supreme Court's opinion, and briefing will resume in the district court regarding plaintiffs' other claims as to preventive-services coverage.

#### **Implications for MedTech:**

- The Task Force's coverage recommendations remain on the book, preserving the status quo:
  - Private health insurers must continue to cover preventive health services as established by the Task Force, with no out-of-pocket expense to patients. This is a positive development for MedTech, because:
    - Patients receiving fewer preventive screenings would not need as many diagnostic tests from MedTech.
    - Patients receiving fewer preventive screenings could result in fewer patients being diagnosed with conditions that require treatment with medical devices or other technology from MedTech.
- But any shake-up of the composition of the Task Force, its future recommendations, or both could have similar impacts on MedTech.
  - Because the Supreme Court found the Secretary has the power to remove Task Force members at will, the Secretary's exercise of that power to install a new Task Force may result in new recommendations.
    - Demonstrating similar authority, the Secretary recently removed all members of the CDC's vaccine advisory panel and reconstituted it with individuals less supportive of immunizations.
    - Moreover, since the Supreme Court held the Secretary can effectively veto the Task Force's recommendations prior to their finalization, the Secretary could block any of the Task Force's new recommendations from becoming covered preventive services.
  - As set forth above, reduced preventive screenings could affect the need for MedTech devices/products.
  - Attempts by the Task Force to remove or add recommendations, especially where the scientific rationale for new recommendations may be questioned, are likely to yield new legal challenges.