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Legal Sidebar

Supreme Court's Appointments Clause Ruling Preserves ACA Preventive-Services Coverage Requirements

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On June 27, 2025, the Supreme Court, in a 6-3 decision in *Kennedy v. Braidwood*, held that members of the U.S. Preventive Services Task Force (Task Force)—a volunteer panel of experts in primary and preventive care—are inferior officers who are properly "appointed by and are supervised and directed by the Secretary of [Health and Human Services (HHS)]." In so concluding, the Court rejected a constitutional challenge that Task Force members have not been properly appointed pursuant to the Appointments Clause of the U.S. Constitution. Because under the Patient Protection and Affordable Care Act (ACA, P.L. 111-148), part of the Task Force's recommendations forms the basis of a portion of the ACA's requirement on private health plans and insurers to cover certain preventive services without cost sharing (i.e., out-of-pocket costs), the decision has the effect of preserving those coverage requirements based on Task Force recommendations. The ruling may also have practical implications on the Task Force's operation going forward. This Sidebar provides an overview of the relevant background and the Supreme Court's decision and highlights certain considerations for Congress.

Background

The Task Force and ACA's Preventive-Services Coverage Requirement

The Task Force, first formed by HHS in 1984, is a volunteer group of national experts in fields such as internal medicine, pediatrics, behavioral health, and nursing. In 1999, when Congress enacted the Healthcare Research and Quality Act to authorize the Agency for Healthcare Research and Quality (AHRQ), an agency within HHS and the Public Health Service (PHS), Congress also enacted the Task Force's governing statute at Public Health Service Act (PHSA) Section 915 (42 U.S.C. § 299b-4). This provision authorized the AHRQ Director to periodically "convene" the Task Force to "review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services" to develop and update recommendations "for the health care community."

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In 2010, Congress enacted the ACA, which included a provision that linked Task Force recommendations to federal private health insurance coverage requirements. Under the ACA's preventive-services coverage requirement (at PHSA § 2713; 42 U.S.C. § 300gg-13), most private health plans and insurers must cover certain preventive health services with no out-of-pocket costs (such as a deductible or a co-pay) to insured individuals. Such services include certain "evidence-based items or services" recommended by the Task Force—which currently includes various cancer screenings—as well as certain vaccines and pediatric and women's preventive care and screening. Relevant to the *Braidwood* litigation, the provision also directs the HHS Secretary to establish a minimum interval of no less than one year between when a relevant recommendation or guideline is issued and when insurers must begin to cover such service without cost sharing. In addition, the provision is subject to other statutory provisions, including PHSA Section 2792 (42 U.S.C. § 300gg-92), which authorizes the Secretary to promulgate "necessary or appropriate" regulations "to carry out" the relevant private health insurance requirements.

The ACA also amended the Task Force's governing statute. Among the changes, the ACA required (rather than authorized) the AHRQ Director to "convene" the Task Force. Relevant to the *Braidwood* litigation, the ACA also added a subsection entitled "Independence," which provides that "[a]ll members of the Task Force convened under this subsection, and any recommendations made by such members, shall be independent and, to the extent practicable, not subject to political pressure." Until June 2023, Task Force members were appointed by the AHRQ Director to four-year terms.

The Appointments Clause

The Constitution's Appointments Clause provides the method of appointment for "Officers of the United States." The Clause generally requires officers to be appointed by the President with the advice and consent of the Senate, but it also provides an exception for "inferior [o]fficers," allowing Congress to "by Law vest" their appointment "in the President alone, in the Courts of Law, or in the Heads of Departments." As interpreted by the Supreme Court, the Clause requires *principal officers* to be appointed by the President and confirmed by the Senate while authorizing Congress to provide for the appointment of *inferior officers* by the President alone, the courts, or department heads. As the Supreme Court has stated, a basic purpose of the Clause is to ensure political accountability to elected officials for appointees' actions. Accordingly, the Supreme Court has held that individuals who "occupy a 'continuing' position established by law" and exercise "significant authority pursuant to the laws of the United States" are "officers" subject to the appointment methods specified in the Appointments Clause.

The Supreme Court has identified several factors that may be relevant for determining whether an officer is a principal or an inferior officer. Its most recent cases have focused on whether the officer's work is "directed and supervised" by a duly appointed principal officer. The Court has indicated that where an officer decides matters involving significant authority, adequate supervision requires, at a minimum, that a principal officer within the executive branch be authorized to review those decisions. Where a statutory scheme raises an Appointments Clause problem, the Court has, at times, applied certain judicial "fixes"—for example, by severing an unconstitutional provision—to address the problem without holding an entire scheme unconstitutional.

The *Braidwood* Litigation

In *Braidwood*, a group of individuals and businesses with financial or other objections to insurance coverage of some or all currently required preventive services filed suit in March 2020, generally arguing that the preventive-services coverage requirement is unconstitutional and unenforceable. Among their claims, the plaintiffs asserted that the manner in which covered benefits are "unilaterally determine[d]" based on Task Force and other recommendations or guidelines violates the Appointments Clause. In September 2022, the district court held that the coverage requirements based on Task Force

recommendations violated the Appointments Clause. In June 2023, while the government's appeal was pending, then-HHS Secretary Xavier Becerra also ratified the appointments of the existing Task Force members and prospectively reappointed them.

On appeal, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) affirmed the district court's decision with respect to the Task Force. The court held that Task Force members are principal officers under the Appointments Clause because they wield the "indisputably significant" power to "promulgat[e] preventive-care coverage mandated for private insurers" and exercise this power "without any review by a higher-ranking officer." In that court's view, Section 915's "Independence" provision evidenced "a clear and express directive from Congress that the Task Force be free from any supervision" by the HHS Secretary because the Task Force cannot be independent if it is supervised by the Secretary, a political appointee. Based on this conclusion, the Fifth Circuit affirmed the district court's order enjoining the government from enforcing the coverage requirements based on Task Force recommendations against the plaintiffs.

The government petitioned the Supreme Court for review of the Fifth Circuit's decision, arguing that Task Force members are inferior officers subject to the HHS Secretary's supervision. Following oral argument, the Court ordered the parties to submit supplemental briefs on a question not addressed by lower courts: "[w]hether Congress has 'by Law' vested" the HHS Secretary with authority to appoint Task Force members—a requirement for invoking the Appointments Clause's alternative appointment methods for inferior officers.

The Supreme Court's Decision

In *Braidwood*, the Supreme Court reversed the Fifth Circuit and held that Task Force members are inferior officers whose appointment by the HHS Secretary is consistent with the Appointments Clause. In so concluding, the Court also held that Congress has by law vested the authority to appoint Task Force members in the HHS Secretary.

Task Force Members Are Inferior Officers

The Court first concluded that Task Force members are inferior officers because their work is "directed and supervised" by the HHS Secretary, a principal officer. In the Court's view, the Secretary directs and supervises Task Force members through "two main sources" of authority: (1) "the Secretary's authority to remove Task Force members at will" and (2) his authority "to review and block the Task Force's recommendations before they can take effect." As to the first source, the Court observed that the authority to remove a subordinate officer at will is a "powerful tool for control." According to the Court, this authority means that "[w]hen a Task Force member makes a decision that the Secretary disagrees with, the Secretary may remove that member." The Court reasoned that this at-will removal authority derives from the HHS Secretary's power to appoint Task Force members, whose governing statute does not restrict their removal.

The Secretary's at-will removal power, the Court continued, is further bolstered by his additional authority to review—and, if necessary, block—Task Force recommendations by "determin[ing] *when* Task Force recommendations become binding." PHSA Section 2713(b), the Court observed, requires the Secretary to create an interval of at least one year between when the Task Force issues a relevant recommendation and when insurers must cover such recommended service without cost sharing. The Court reasoned that this provision authorizes the Secretary to set a longer minimum interval and, during that interval, to (1) request the Task Force's reconsideration of a recommendation that he disfavors and (2) "remove and replace Task Force members who refuse." This statutory scheme, the Court held, empowers the Secretary to "use his at-will removal power to stop any preventive-services

recommendation contrary to his judgment from taking effect." Additionally, a "collection" of other general authorities, the Court observed, also grants the Secretary the power to review the Task Force's recommendations, including through certain general rulemaking authorities. The Court reasoned that these authorities, when used together with the Secretary's authority to set effective dates, "ensure that the Task Force members 'have no power to render a final decision on behalf of the United States unless permitted to do so by'" the HHS Secretary.

The Court rejected the argument that PHSA Section 915's "Independence" provision limits the Secretary's at-will removal authority. In the Court's view, such an interpretation would "read a for-cause removal restriction," which Congress "knows how to" provide, "into a statute that does not explicitly provide for one." The "Independence" provision, the Court continued, at most means "that Task Force members are generally free from the Secretary's influence in their *formulation* of recommendations in the first instance." According to the Court, this reading is also consistent with the canon of constitutional avoidance, which, in this context, counsels that the Court "should not read the statute in a way that makes the current method of appointment—by the Secretary—unconstitutional if [the Court] can reasonably read it otherwise."

Congress Vested Appointment Authority in the HHS Secretary

The conclusion that Task Force members are inferior officers subject to the supervision of the HHS Secretary raised an additional question not addressed by lower courts: whether Congress, as required by the Appointments Clause to invoke the alternative appointment method for inferior officers, has "by Law vest[ed]" the authority to appoint Task Force members in the HHS Secretary, as a "Head[] of Department[]." While recognizing that no statute directly authorizes the HHS Secretary to appoint Task Force members, the Court concluded that Congress nevertheless vested such authority in the Secretary in two steps. First, the Court held that when Congress enacted PHSA Section 915 in 1999 and directed the AHRQ Director to "convene" the Task Force, it authorized the AHRQ Director to appoint Task Force members. In the Court's view, although "convene" could merely mean "call together" or "assemble," the term, in this specific context, encompasses the power to appoint because "there is no separate statutory provision specifying who is to appoint the individuals to be called together or assembled."

Second, recognizing that the Appointments Clause does not permit Congress to vest the appointment of inferior officers in the AHRQ Director, who is not a department head, the Court further concluded that Congress transferred—through the Reorganization Plan No. 3 of 1966 (the 1966 Plan) and its legislative ratification—all of the AHRQ Director's functions, including the authority to appoint Task Force members, to the Secretary. The 1966 Plan, the Court explained, was issued by President Lyndon B. Johnson pursuant to the Reorganization Act of 1949, which authorized the President to prepare reorganization plans when he determines that the transfer of any part of any agency to another agency is necessary. The 1966 Plan, the Court observed, specifically transferred the Public Health Service to HHS's predecessor agency, including "all functions of all agencies of or in the Public Health Service." The Court further observed that in 1984, Congress ratified "as law" certain reorganization plans including the 1966 Plan, and in 1999, Congress conferred onto the AHRQ Director the authority to appoint Task Force members. Because AHRQ is an agency in or of the Public Health Service, the Court reasoned that "by virtue of the 1984 Act ratifying [the 1966 Plan] and the 1999 Act conferring appointment authority, Congress vested the power to appoint Task Force members" in the HHS Secretary.

In so concluding, the Court rejected the argument that the 1966 Plan transferred to the Secretary only those functions that existed as of 1966. The 1966 Plan's transfer of "all functions" and use of present tense, in the Court's view, "most naturally mean[] an ongoing transfer of authority" from the Public Health Service to the HHS Secretary. This construction, according to the Court, precludes the "untenable" practical result of a partially transferred Public Health Service; it also does not render the AHRQ Director an "empty husk" without authorities, given that the Secretary is authorized to delegate functions back to

the Public Health Service. Finally, the Court observed that its construction "is at a minimum 'reasonable,'" whereas the alternative reading—which would vest appointment authority in the AHRQ Director alone—would render the statute "clearly unconstitutional." Thus, the Court concluded that its reading is further supported by the constitutional-avoidance canon. Based on these conclusions, the Court held that since June 2023, when the Secretary first exercised his appointment authority, "all Task Force members . . . have been appointed by the Secretary of HHS pursuant to a law enacted by Congress."

The Dissent

Justice Thomas issued a dissenting opinion, joined by Justices Alito and Gorsuch. In the dissent's view, the starting point of the Appointments Clause analysis at issue should be the statutory question on whether Congress has "by law vest[ed]" the appointment of the Task Force members in the HHS Secretary. The dissent observed, for instance, that the Secretary's at-will removal power—a key source of the Secretary's power to direct and supervise Task Force members under the majority's analysis—is dependent on the Secretary's appointment authority. As a threshold matter, the dissent opined that it would have remanded this question to the Fifth Circuit to address in the first instance. If it had to decide the question, however, the dissent would have concluded that Congress has not spoken with the clarity needed to authorize the appointment of inferior officers by a department head, and thus, the Appointments Clause's default method of appointment—that is, presidential nomination and Senate confirmation—applies to Task Force members.

According to the dissent, "the combination of two ambiguously worded statutes enacted decades apart" did not establish that the HHS Secretary can appoint the Task Force members. In the dissent's view, the AHRQ's Director's power to "convene"—or "call together"—the Task Force under PHSA Section 915 does not include the power to appoint its members, nor does the 1966 Plan transfer that power to the HHS Secretary. The dissent observed that under the majority's interpretation, the 1966 Plan is "a mechanism that siphons away any authority granted to the AHRQ Director and automatically redirects it upward to the Secretary," and it allows the AHRQ Director to "exercise only those powers that the Secretary 'delegate[s]' to him." In the dissent's view, this interpretation cannot be correct because this ongoing reallocation of the AHRQ Director's powers "guarantees that, no matter how clearly Congress vests the Director with authority, the Director nevertheless remains an empty husk with no powers other than what the Secretary returns to him." Further, in the dissent's view, the Task Force's governing statute reflects a congressional intent to establish an independent body "subject to the President's control." The majority, the dissent reasoned, erred by "presum[ing] appointment by a department head absent explicit statutory language" and "invert[ing]" the Appointments Clause's default mode of appointment.

Considerations for Congress

The Supreme Court's decision in *Braidwood* is significant in several respects. Most immediately, the Court's holding that the Task Force members' appointments are consistent with the Appointments Clause means that the existing preventive-services coverage requirements based on current Task Force recommendations remain valid. This means that, unless the Task Force modifies its recommendations, private insurers and plans must generally continue to cover these services without cost sharing.

From a legal and longer-term perspective, the Court's holding that the HHS Secretary exercises at-will removal power over Task Force members—and has authority to review and block Task Force recommendations—may have implications for the Task Force's operation going forward. As a practical matter, until the litigation, the Task Force itself, AHRQ, and HHS have generally recognized the Task Force's independence. CRS has not identified any public reports of a prior removal of a Task Force member by the AHRQ Director or the HHS Secretary, and since the ACA's enactment, coverage

requirements based on Task Force recommendations have generally gone into effect, pursuant to regulations, as of one year after a recommendation's issuance. Under the authority now recognized by the Supreme Court, the HHS Secretary could remove and replace Task Force members who, when requested by the Secretary, decline to modify or rescind a recommendation or to take up a recommendation proposal. Against the backdrop of the Secretary's recent decision to exercise his removal power with respect to members of the Advisory Committee on Immunization Practices, whose vaccine recommendations form another part of the preventive-services coverage requirement, *Braidwood* affirms the Secretary's ability to supervise the Task Force's operation moving forward. Following the Court's decision, it was reported that HHS postponed a Task Force meeting scheduled to occur on July 10, 2025.

Legally, from the perspective of the Court's Appointments Clause jurisprudence, *Braidwood* is significant as what appears to be the first Supreme Court decision since the 1800s that addresses the Appointments Clause's exception authorizing Congress to "by Law vest" the appointment of inferior officers. In its analysis, the Court looked beyond the Task Force's governing statute to hold—relying partly on the constitutional-avoidance canon—that a later-enacted, more specific delegation to a sub-department agency official (i.e., the AHRQ Director) is qualified by an older, more general transfer authority. As a statutory interpretation matter, this reasoning is somewhat in tension with the interpretive principle that where two provisions overlap, "the specific governs the general" to avoid the former being "swallowed" by the latter. At the same time, the Court's overall interpretive approach, which results in the preservation of the relevant statutory scheme, perhaps echoes the Court's approach in its most recent Appointments Clause case before *Braidwood*, *United States v. Arthrex, Inc*. In that case, although the Court had found an Appointments Clause violation in a statute as enacted, it opted to apply a judicial fix (i.e., severance) that also preserved the overall statutory scheme.

The questions raised in *Braidwood* regarding Task Force members' appointment stemmed in large part from the evolving functions of the Task Force, which began as a purely advisory body whose composition was not subject to the Appointments Clause. When the ACA linked certain Task Force recommendations to legally binding coverage requirements, the change implicated the Appointments Clause, an area of law that has developed significantly in recent years. Congress, to the extent it determines appropriate, may consider various legislative actions following the ruling in *Braidwood*. For instance, federal lawmakers could clarify the manner by which the HHS Secretary may review and modify coverage requirements based on Task Force recommendations. Congress could also clarify the manner of Task Force members' appointment and removal or the process by which their recommendations may be used for different purposes.

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