No. 24-316

IN THE

Supreme Court of the United States

ROBERT F. KENNEDY, JR.,
SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*,

Petitioners,

v.

BRAIDWOOD MANAGEMENT, INC., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICUS CURIAE* ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

The Affordable Care Act requires health insurers to cover "preventive health services." 42 U.S.C. § 300gg-13(a). It also empowers the U.S. Preventive Services Task Force ("Task Force") to dictate and decree the preventive items and services that insurers must cover. *See* 42 U.S.C. § 300gg-13(a)(1). A separate statute requires that the Task Force members and their preventive-care coverage edicts be "independent and, to the extent practicable, not subject to political pressure." 42 U.S.C. § 299b-4(a)(6).

The court of appeals held that Task Force members must be appointed as "principal" officers because the Task Force wields "significant authority" under the laws of the United States, and because 42 U.S.C. § 299b-4(a)(6) shields the Task Force and its recommendations from "direction and supervision" by others. And because the Task Force was not appointed by the president with Senate confirmation, the court of appeals enjoined the government from enforcing the Task Force's preventive care coverage mandates against the plaintiffs. The questions presented are:

1. Did the court of appeals correctly hold that Task Force members are "principal" officers under Article II's Appointments Clause?

2. Did the court of appeals correctly refuse to issue a remedy that would "sever," *i.e.*, nullify, 42 U.S.C. § 299b-4(a)(6) and empower the HHS Secretary to direct and supervise the Task Force's preventive-care coverage decisions?

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus Association of American Physicians and Surgeons ("AAPS") is a national association of physicians, founded in 1943. AAPS is dedicated to protecting the patient-physician relationship, and has been a litigant in this Court and in other appellate courts. *See, e.g.*, *Ass'n of Am. Physicians & Surgs. v. Mathews*, 423 U.S. 975 (1975); *Ass'n of Am. Physicians & Surgs. v. Tex. Med. Bd.*, 627 F.3d 547 (5th Cir. 2010); *Ass'n of Am. Physicians & Surgs. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993). AAPS filed an *amicus* brief in defense of the Constitution in the landmark case decided by this Court concerning the Affordable Care Act ("ACA") in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

For more than 80 years AAPS has been an advocate of the free market in medical care, and adherence to the principles of the U.S. Constitution. AAPS has consistently been an opponent of socialism and government mandates for "free" medical care. Members of AAPS were featured in the documentary movie "Wait Till It's Free" (2014) as produced by Colin Gunn, which takes its title from this observation by satirist P.J. O'Rourke: "If you think health care is expensive now, wait until you see what it costs when it's free." Mitch Daniels, "America could use a shot of P.J. about now," Washington Post A17 (Feb. 14, 2025).

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity – other than this *amicus curiae*, its members, and its counsel – contributed monetarily to the preparation or submission of this brief.

AAPS has strong interests in opposing mandates that impose expensive medical obligations by administrative fiat, in bypass of the checks-and-balances required by the U.S. Constitution.

SUMMARY OF ARGUMENT

There is no such thing as "free" medical care, and the push for it by Petitioners and their *amicus* briefs is detrimental to the overall access and affordability of treatment. Requiring subsidies for free access to medication interferes with the healthy market forces that drive down retail prices for every good and service. In addition, co-pays and insurance deductibles are essential in medical care to deter overuse and waste. The mandate at issue here for completely free use by employees of costly medication, without any co-pay or insurance deductible, is both unconstitutional and economically harmful.

If Congress blunders while complying with the Constitution, then repeal might be the only available option. But here Congress has allowed unaccountable administrators to cause havoc in violation of the Constitution. The resultant economic harm is the handiwork of the administrative state, which has run amok and must be reined in. The era of judicial deference to the runaway administrative state should be finished, as this Court made clear last term in *Loper Bright*. It is tyranny for mandates to be imposed by faceless, never-confirmed bureaucrats while they dine with K-Street lobbyists.

The administrative mandate in this case forces millions of ACA-covered businesses to pay tens of thousands of dollars annually, to benefit merely one or a few employees, for medication to reduce the risk of

HIV while engaging in a lifestyle prone to it. Without any co-payment requirement, there is no guardrail against misuse. The medication does not prevent many other types of sexually transmitted diseases, and has a side effect of worsening the sexually transmitted Hepatitis B. The medication can create a false sense of security, as daily consumption of the drug is essential to its effectiveness, yet in studies non-compliance was common. There were no congressional hearings in connection with imposing this mandate, and instead this decision was made by members of the Task Force who are appointed by the Secretary of Health & Human Services ("HHS") for four-year terms, without Senate approval.

If its authority is upheld here, the Task Force could act in the future without political accountability to impose a mandate for no-cost abortifacient mifepristone on businesses nationwide. The dissent in *Little Sisters of the Poor* quoted the statutory grant of authority to the Task Force, and viewed this as not allowing the exemption sought. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 717 (2020) (Ginsburg and Sotomayor, JJ., dissenting). The dissent favorably quoted assertions that contraception has preventive benefits, *id.* at 714, and there are similar assertions about mifepristone such that the Task Force could mandate it next.

Despite the transformative presidential election last November in favor of deregulation, the members of the Task Force remain insulated from public opinion. For example, Joel Tsevat, M.D., M.P.H., began serving on the Task force in 2023 and his term

presumably lasts until 2027.[2] University of California at San Francisco Professor Sei Lee, M.D., M.A.S., joined the Task Force in 2024, and thus his term lasts until 2028, which will be President Trump's last year in office.[3] The Task Force wields vast economic power over millions of American businesses, apparently without any responsiveness to the electorate, and this Court should invalidate that administrative power. "[W]e 'typically greet' assertions of 'extravagant statutory power over the national economy' with 'skepticism.'" *West Virginia v. EPA*, 597 U.S. 697, 724, 142 S. Ct. 2587, 2609 (2022) (quoting *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

Salvaging the underlying statute by rewriting it is inappropriate here, as the Fifth Circuit correctly ruled below. The statute itself does not include a severability clause, and it is far from clear that passage would have occurred in Congress without this delegation to the lobbyist-influenced Task Force. Petitioners grasp at a few distinguishable precedents, including obscure cases from 1829 and 1900, which did not actually sever anything. Only Congress can correct its error, after holding legislative hearings that include testimony about how harmful mandates for free medical care are, and how they are suffocating businesses.

Finally, disunity in our Nation is worsened by federal administrative mandates, without political accountability, as presented here. States and businesses, many of which are entirely intrastate in

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[2] https://www.uspreventiveservicestaskforce.org/uspstf/about-uspstf/current-members/joel-tsevat-md-mph (viewed Mar. 1, 2025).

[3] https://www.uspreventiveservicestaskforce.org/uspstf/about-uspstf/current-members/sei-lee-md-mas (viewed Mar. 1, 2025).

their employment, can themselves best decide which preventive care should be offered to employees. Mandates from D.C. having an unwanted cultural impact on Texas are unhealthy for national unity, in addition to being unconstitutional.

ARGUMENT

I. Forcing Private Businesses to Fund Medications For Risky Lifestyles, Especially Without Political Accountability or Cost-Sharing, Renders Medical Care Less Affordable for All.

A mandate implicated here is not for a beneficial screening for a medical condition, such as mammograms or blood tests, despite the impression left by many *amicus* briefs in support of Petitioners. Inexpensive, widely beneficial screening tests, such as $70 blood work to measure the prostate-specific antigen (PSA) to test for prostate cancer or mammograms to screen for breast cancer, are not what this case is about. This case relates to an expensive new mandate that benefits only those who choose to partake in a high-risk lifestyle. The overall harm from this exceeds its potential benefits, and greater political accountability is required by the Constitution.

A. "Free" Medications Interfere with the Free Market, Inflate Medical Care Prices Overall, and Cause More Harm than Good.

This mandate prevents beneficial market forces from lowering the price of the medication that employees are being forced to fully subsidize. The poorer segments of society, who arguably need this HIV medication the most, are uninsured without ACA-covered full-time employment. They get whipsawed by

this mandate because it keeps the price of the medication high. The tag-team of lobbyists and administrators making this HIV drug free to those in ACA has the effect of keeping the price exorbitantly high for the 25 million American adults who lack access to ACA-mandated insurance. The uninsured would benefit most from preventive treatment, yet are harmed by mandates that increase medical costs.

"Eleven years after the passage of Obamacare, Americans buying health insurance under the law are still worse off financially than before the health law was enacted," concluded the Heritage Foundation in 2021 concerning a period when overall inflation was low. "Obamacare Has Doubled the Cost of Individual Health Insurance," Heritage Foundation (Mar. 21, 2021).[4] Specifically, "the national average premium increasing by 129 percent from 2013 to 2019." *Id.*

A study by Cato showed that employers reduce hours for employees to avoid the ACA mandates:

> Using the same data, we estimated that the ACA increased low-hours, involuntary parttime employment by 2–3 percentage points, or 500,000 to 1 million workers, in retail, accommodations, and food services—the sectors where employers are most likely to reduce hours if they choose to circumvent the mandate.

Marcus Dillender, et al., "Effects of the Affordable Care Act on Part-Time Employment Early Evidence," 314 *Cato Research Briefs in Economic Policy* 2 (Jan. 4, 2023).

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[4] https://www.heritage.org/health-care-reform/report/obamacare-has-doubled-the-cost-individual-health-insurance (viewed Mar. 15, 2025).

Government mandates for health care insurance drive up the number of uninsured, who total 25 million or about 10% of the adult population.[5] As explained by the San Francisco-based KFF, a leading health policy organization, the high cost of insurance causes the large uninsured population:

> Many uninsured people cite the high cost of insurance as the main reason they lack coverage. In 2023, 63% of uninsured adults ages 18-64 said that they were uninsured because the cost of coverage was too high. Many uninsured people do not have access to coverage through a job ….[6]

Yet Petitioners' *amici* flood this Court with arguments that making medical care entirely free to ACA-covered employees has the result of increasing their usage of that free care. That raises the question of the impact on those who do not have the free access, and the additional harm from socialized medicine such as lowering incentives to improve care.

The federal government and the American People fully reject the approach of entirely free care as urged by Petitioners and their *amici.* Medicare strictly requires co-payment, and federal law even criminalizes waiving the co-payment because it is so essential to decrease the wasteful utilization of our medical system. *See, e.g.*, *United States v. Crescendo Bioscience, Inc.*, No. 16-cv-02043-TSH, 2020 U.S. Dist. LEXIS 90940, at *9 (N.D. Cal. May 23, 2020) ("In an

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[5] Jennifer Tolbert, et al., "Key Facts about the Uninsured Population" (Dec 18, 2024) https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/ (analyzing the uninsured population through 2023, viewed Mar. 15, 2025).

[6] *Id.*

effort to conceal the scheme and avoid liability, [defendant] informs its salespeople not to include information on the capping and waiving of fees in emails."). Co-payments are sometimes even required of defendants who receive free *legal* services. *See, e.g.*, Minn. Stat. Ann. § 611.17 (c) ("Upon disposition of the case, an individual who has received public defender services shall pay to the court a $ 75 co-payment for representation provided by a public defender, unless the co-payment is, or has been, reduced in part or waived by the court."). There is no disincentive against losing or otherwise wasting medication that is provided free.

B. Forcing Businesses to Pay for PrEP Requires More Political Accountability than the Task Force Has.

While enjoining an overreaching "no sail order" by the CDC against cruise ships during Covid, District Court Judge Merryday aptly criticized how:

> Courts have allowed an increasing hegemony to the unelected, electorally unaccountable, and largely anonymous executive agents, comfortably housed in one of many formidable edifices in Washington, D.C., or in a regional office, and doing who knows what, for who knows what reason, and at who knows whose instigation — but always answering to no one (at least, no one that the citizenry can perceive) and always reliably defended in their pronouncements by a legion of lawyers, staff, consultants, experts, and others, as well as litigious special interest entities.

Florida v. Becerra, 544 F. Supp. 3d 1241, 1286 (M.D. Fla. 2021).

An issue here is that the Task Force imposed a nationwide mandate for pre-exposure prophylaxis for HIV (PrEP), which is costly medication for those expose themselves to HIV through narcotics or sexual conduct.[7] As explained by a public health website: "There are two pills approved for use as PrEP: Truvada® and Descovy®."[8] These PrEP medications cost $22,000 to $30,000 annually,[9] and the mandate allows an employee to require a supply of the high-priced brand drug version rather than a less expensive generic.[10] "Commercial insurers in the sample spent $295 million on PrEP in 2021, with $177 million spent on Descovy, $31 million on Truvada and $87 million on generic TDF/FTC." Sean Dickson and Katelyn James, "Trends in HIV preexposure prophylaxis utilization and spending among individuals with commercial insurance," AIDS (Mar. 15, 2024).[11] In addition, an injectable, longer-lasting PrEP alternative, estimated to cost $22,500 annually, has since been added to this same Task Force mandate.[12]

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[7] CMS FAQS About Affordable Care Act Implementation Part 47, https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-47.pdf (viewed Mar. 22, 2025).

[8] Shelby County Health Department, https://tinyurl.com/bdex4fdt (viewed Mar. 24, 2025).

[9] Kristen Gerencher, "5 Ways to Save on PrEP Costs (With or Without Insurance)," GoodRx (Aug. 25, 2022) https://www.goodrx.com/truvada/truvada-hiv-prep-cost-generic-how-to-save (viewed Mar. 22, 2025).

[10] *See supra* n.7, at 2, 5.

[11] https://pmc.ncbi.nlm.nih.gov/articles/PMC10906206/ (viewed Mar. 22, 2025).

[12] "PrEP4ALL Applauds The Updated USPSTF Grading Adding Long-Acting PrEP, But Demands Gov't Action to Ensure Access"

Despite this enormous expense, the Task Force requires that every business subject to the Affordable Care Act (ACA) pay in full for the costs of this drug for every employee who wants it, without the employee bearing even a dollar of the costs. The economic effect of this is to impose a substantial levy on all ACA-covered businesses for the benefit of only those who engage in high-risk sexual conduct or illegal intravenous drug use. This mandate is conceptually similar to – but far more expensive than – requiring businesses to provide for free to their employees clean needles for illegal drug use or condoms for sexual promiscuity. Perhaps Congress has the authority under the Commerce Clause to try to enact a law requiring this, but it has not and presumably would not have the political support to do so. Instead, the politically unaccountable Task Force mandates this in an example of administrative tyranny.

In *Loper Bright*, the Supreme Court struck down an administrative mandate costing an estimated $710 per day for fishermen. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 382 (2024) (The federal agency "estimated that the cost of such an observer would be up to $710 per day, reducing annual returns to the vessel owner by up to 20 percent."). This added cost struck down in *Loper Bright* is comparable to the agency-imposed added cost on businesses here.

The drug manufacturer Gilead posts the following about Truvada®:[13]

(Dec. 13, 2022), https://tinyurl.com/mshx2kan (viewed Mar. 24, 2035).

[13] Medication Guide, TRUVADA® (tru-VAH-dah)

- this medication can worsen a Hepatitis B viral infection, which is common among homosexual men;
- "TRUVADA does not prevent other sexually transmitted infections (STIs)," which then make one more susceptible to contracting HIV;
- For those who are pregnant, "[i]t is not known if TRUVADA can harm your unborn baby"; and
- "You must be HIV-1 negative to start TRUVADA," and it must be taken every day or else its effectiveness diminishes.

In promoting use of these medications, CDC asserts that they are 99% effective in preventing HIV,[14] but studies present a less optimistic picture, including a lack of adherence to the necessary once-per-day treatment schedule. "In trials for which adherence was 70% or greater, the reduction in risk was approximately 75% …." R. Chou, C. Evans, A. Hoverman, et al., "Preexposure Prophylaxis for the Prevention of HIV Infection: Evidence Report and Systematic Review for the US Preventive Services Task Force," *JAMA* (June 11, 2019).[15]

In arguing that this mandate be free without a co-pay, the *amicus* brief by the United States of Care and 47 Other Organizations says "[e]ven modest out-of-

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https://www.gilead.com/~/media/Files/pdfs/medicines/hiv/truvada/truvada_medication_guide.pdf (viewed Mar. 15, 2025).

[14] "Let's Stop HIV Together," CDC (Feb. 18, 2025) https://www.cdc.gov/stophivtogether/hiv-prevention/prep.html (viewed Mar. 15, 2025).

[15] https://jamanetwork.com/journals/jama/fullarticle/2735508 (viewed Mar. 15, 2025).

pocket costs reduce utilization of health care services." (US Care *Amici* Br. 13) But that merely restates the basic law of demand familiar to economics students:

> All markets must respect the law of demand. *See* Paul A. Samuelson, *Economics* 53-55 (11th ed. 1980). According to the law of demand, consumers will almost always purchase fewer units of a product at a higher price than at a lower price, possibly substituting other products. *Id.* at 55.

Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc., 246 F.3d 1336, 1359 (Fed. Cir. 2001). *See also Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, 424 F.3d 363, 374 (3d Cir. 2005) ("'It is the fundamental law of demand that as the price of a product increases the amount purchased decreases. A collusive price increase, therefore, will result in a reduction of the quantity of the good purchased.'") (quoting *ABA Section of Antitrust Law, Proving Antitrust Damages: Legal and Economic Issues* 194, 195 (1996)).

The fallacy in this argument for free medication is that it does not result in more affordable, accessible, or higher quality medical care. The supplier of the service, in this case expensive HIV drugs, no longer has any incentive to reduce the price or improve the product once the Task Force mandated that businesses pay in full for it. Patients overall are harmed by this scheme as urged by Petitioners and their *amici* in interference with free market pressures that would drive down the medications' prices. The overall result of this socialist approach of mandating free care is to deny many people affordable access to these medications.

In addition, this expansive PrEP mandate has no benefit – zero – for the vast majority of employees, including those who decline to participate in sexual conduct likely to spread HIV, or use illegal intravenous drugs.

This imprudent mandate is not the result of representative government, but comes from billion-dollar lobbying in Washington, D.C., by a wealthy and political powerful faction at the expense of the vast majority. This sort of faction-driven tyranny is what James Madison hoped the Constitution would prevent, as he wrote in Federalist No. 10: "The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States." James Madison would be mortified at how today lobbying by a faction imposes mandates nationwide.

II. Severance Here Would Be an Improper Judicial Rewrite of the Statute, Thereby Constituting Judicial Activism.

No provision enacted by Congress authorizes severability here, and there is no clear path to severability. The fiction argued by Petitioners and their *amici* is that severability must be done by this Court anyway, or else the proverbial sky will fall upon us all. No, it will not, because businesses acting out of self-interest will fund medications that reduce their future medical care expenses. But even if the sky were to fall, so to speak, it is the job of Congress, the states (as some have already done), or businesses themselves to provide coverage for preventive care in ways that make sense. *See Kimble v. Marvel Entm't*, 576 U.S. 446, 464-65 (2015) ("[T]hat is not our job. … That branch [Congress], far more than this one, has … the

prerogative to determine the exact right response—choosing the policy fix, among many conceivable ones, that will optimally serve the public interest.").

In its brief, the government does not persuade that a provision can be properly severed, or that precedents on severability support its argument. The government makes only passing references to a few decisions on severability, some from the early 19th century that did not actually sever anything, and then baldly concludes that "[i]f the Court believes that the Task Force's current structure is unconstitutional, the Court should apply its traditional severability principles." (Pet. Br. 45) In essence, the government couches a demand to rewrite an unconstitutional statute as though it is merely making a modest request for severance. But no provision can be severed here from ACA while preserving its purpose and while advancing the government's goal of upholding a Task Force authority to impose expensive mandates on businesses.

The structure of the Task Force as enacted by Congress in ACA is plainly one of independence, and not designed to be subject to control by the Secretary of HHS. In this case, the Task Force has imposed astoundingly expensive mandates on businesses for the narrow benefit of a high-risk lifestyle choice, without any suggestion that the HHS Secretary would exercise any oversight over these decisions by the Task Force. This is contrary to how our Republic requires accountability to the electorate.

When an invalid provision is judicially severed from a statute lacking a severability clause, it interferes with the legislative role of Congress, and with the President's role. The President never approves the truncated version *(i.e.,* post-severance) of

the statute, and the President is denied his veto power over the truncated version of the text.

This Court should adhere to a presumption of non-severability, in order to encourage Congress to write constitutional laws and include severability clauses where appropriate. Indeed, "[t]he surest way to insure that Congress addresses severability is to discipline it into doing so …." Michael Shumsky, "Severability, Inseverability, and the Rule of Law," 41 Harv. J. on Legis. 228, 276 (2004). *See also* David H. Gans, "Severability as Judicial Lawmaking," 76 Geo. Wash. L. Rev. 639, 644-645 (April 2008) ("[T]he judicial power to sever has to be constrained by structural constitutional principles. Courts cannot simply focus on legislative intent. They must also consider whether severance in any particular case amounts to impermissible judicial lawmaking.").

The government reaches all the way back to *Marbury v. Madison*, but Supreme Court severability decisions did not begin in earnest until 1876. *See* Kenneth A. Klukowski, "Severability Doctrine: How Much of a Statute Should Federal Courts Invalidate?", 16 Tex. Rev. Law & Pol. 1, 4-5 (Fall 2011) (citing *United States v. Reese*, 92 U.S. 214, 221 (1876), *Trade-Mark Cases*, 100 U.S. 82, 98 (1879), *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, 565 (1902)).

Even when there is a severability clause – and there is none here – this Court has remanded because "legislators [may have] preferred no statute at all to a statute enjoined in the way we have described." *Ayotte v. Planned Parenthood*, 546 U.S. 320, 331 (2006).

Finally, the government's heavy reliance on *Arthrex* is misplaced. First, as Justice Gorsuch aptly

observed in *Arthrex*, "its severability analysis seemingly confers legislative power to the Judiciary—endowing us with the authority to make a raw policy choice between competing lawful options." *United States v. Arthrex*, Inc., 594 U.S. 1, 33 (2021) (Gorsuch, J., concurring and dissenting). But even the expansive view of severability in the divided *Arthrex* decision does not support the government's demand here for this Court to rewrite a federal law.

III. Imposing, by Administrative Fiat, D.C. Culture on Texas as Sought by the Petition Is a Recipe for National Disunity.

It is unhealthy to our Nation for the administrative state in D.C. to impose a cultural change on Texas about a lifestyle, by issuing one-size-fits-all administrative mandates. As observed in 2021, large left-leaning states had already required businesses to pay for these sexual conduct medications independent of the Task Force which Texas declines:

> [I]nsurance regulators in some states—such as California, Colorado, and New York—had already issued guidance to require or encourage the coverage of PrEP-related ancillary and support services without cost sharing.

Katie Keith, "New Guidance On PrEP: Support Services Must Be Covered Without Cost-Sharing" (July 28, 2021).[16] Costly mandates in California and New York are not typically welcome in Texas.

The state level is where this decision belongs, rather than D.C. imposing its culture, and that of California and New York, on Texas. Lobbying firms on

[16] https://tinyurl.com/2a75h6em (viewed Mar. 16, 2025).

K-street dominate administrative decision-making in D.C.,[17] but should not be dictating culture in Texas by imposing culture-changing mandates there. Insurance is within state jurisdiction. *Bituminous Cas. Corp. v. J & L Lumber Co.*, 373 F.3d 807, 815 (6th Cir. 2004).

Assertions emerge of preventive health benefits for mifepristone, an abortifacient drug, and if Task Force authority is upheld then a mandate for no-cost access by employees to mifepristone may be next, without political accountability. *See, e.g.*, B.M. Autry, et al., *Mifepristone* (StatPearls Publishing: 2024) ("Higher doses impede cortisol activity at the glucocorticoid receptor, concurrently elevating circulating cortisol levels to regulate hyperglycemia in individuals with Cushing syndrome.").[18] Well-funded lobbying of the politically unaccountable Task Force to mandate mifepristone or other objectionable drugs is inevitable.

Warning signs of severe cultural fracturing on social issues abound. Hungary, a member of the European Union and NATO, recently banned gay pride parades by an overwhelming parliamentary vote of 136-27. "Hungary: Parliament Bans Gay Pride Parade," FSSPX News (Mar. 21, 2025).[19] A movement is afoot for conservative Alberta to depart Canada, and President Trump talks about adding Canada to the United States. Margot Rubin, "Billboard promoting Alberta to join USA pops up north of Calgary,"

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[17] $2.2 billion overall was spent on federal lobbying in merely the first half of 2024. Anna Massoglia, "Record-breaking federal lobbying tops $2.2 billion in first half of 2024" (Aug. 29, 2024) https://tinyurl.com/25397mmj (viewed Mar. 24, 2025).

[18] https://www.ncbi.nlm.nih.gov/books/NBK557612/ (viewed Mar. 23, 2025).

[19] https://tinyurl.com/y2bzpzst (viewed Mar. 24, 2025).

CityNews Everywhere (Feb. 21, 2025).[20]

There is a widening divide on social issues in the U.S. If bureaucrats can impose by administrative fiat costly treatment mandates without political accountability, then the Task Force might try to order private businesses to pay for "transgender"-related medications. The recent Continuing Resolution to keep the lights on for federal agencies passed by only two votes in the House of Representatives, in another sign of waning support for national government. David Lerman, "House passes wrapup spending package ahead of Friday deadline" Roll Call (Mar. 11, 2025).[21]

As held in *Dobbs*, states should have leeway to go in their own direction on cultural and moral issues. "We now … return that authority to the people and their elected representatives." *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 302 (2022).

CONCLUSION

For the above reasons and those from Respondents, the Court should affirm the decision below.

Respectfully submitted,

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[20] https://calgary.citynews.ca/2025/02/20/billboard-canada-usa-alberta-highway-2/ (viewed Mar. 22, 2025).

[21] https://rollcall.com/2025/03/11/house-passes-wrapup-spending-package-ahead-of-friday-deadline/ (Mar. 11, 2025).