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

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BRIEF OF UNITED STATES OF CARE AND 47 OTHER ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

The *amici curiae* listed below are organizations dedicated to assuring quality, affordable, equitable health care — including preventive care — throughout the United States. They have a significant interest in this case, because if this Court does not reverse the Fifth Circuit's ruling, more than 200 million Americans will lose access to no-cost preventive care that would otherwise protect them from illness.

Amicus United States of Care (USofC) is a nonpartisan nonprofit working to ensure everyone has access to quality, affordable health care regardless of health status, social need, or income. USofC drives changes at the state and federal level in partnership with everyday people, business leaders, health care innovators, fellow advocates, and policymakers. Through these partnerships, USofC advocates for new solutions to tackle health care challenges that bring peace of mind to, and a positive impact on, the lives of people of every demographic. It is through this lens, and through their advocacy on behalf of everyday people, that USofC has a deep concern for the preservation of access to preventive services without a financial barrier.

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[1] No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Amicus Voices of Health Care Action is an independent group of health care advocates organizing adults with serious medical conditions and health care activists to make health care more affordable.

Amicus Community Catalyst is a nonprofit health policy organization focused on supporting health justice and health as a right for all.

Amicus Protect Our Care is dedicated to making high-quality, affordable and equitable health care a right for everyone.

Amicus Lavender Rights Project is a Black-trans-led advocacy organization based in Seattle, Washington.

Amicus Advocates for Trans Equality Education Fund is a nonprofit organization dedicated to advocating for the rights of transgender and nonbinary individuals.

Amicus ACA Consumer Advocacy is a health care advocacy group focused on achieving comprehensive, universal, affordable, accessible, equitable, and high-quality health care for all.

Amicus Colorado Consumer Health Initiative is a nonprofit health advocacy organization that serves Coloradans whose access to health care and financial security has been compromised.

Amicus Policy Center for Maternal Mental Health is a nonprofit organization whose mission is to close gaps in maternal mental health care.

Amicus Colorado Center on Law and Policy is a nonprofit organization dedicated to eradicating

poverty through research, legislation, and legal advocacy.

Amicus Tennessee Justice Center works to ensure Tennesseans have access to affordable health care.

Amicus New Mexico Society for Addiction Medicine is a professional organization dedicated to advancing the field of addiction medicine in New Mexico.

Amicus Indiana Justice Project is a nonprofit organization that helps residents of Indiana receive necessary health services with as few barriers as possible.

Amicus Public Justice Center advocates for equity in access to, and outcomes from, healthcare in Maryland.

Amicus Economic Opportunity Institute is a progressive policy think tank working to make Washington a national model of fairness, care, and opportunity.

Amicus National Association of Pediatric Nurse Practitioners is a nonprofit association with a mission to empower pediatric-focused advanced practice registered nurses and key partners to optimize child and family health.

Amicus National League for Nursing is a nonprofit association whose members represent nursing education programs across the spectrum of higher education, health care organizations, and agencies.

Amicus Office of the Health Care Advocate works to increase access to high-quality, affordable health care for all Vermonters.

Amicus Missouri Foundation for Health works to ensure that all Missourians will have a fair and just opportunity to live their healthiest lives.

Amicus Health Care for All Massachusetts is a nonprofit organization dedicated to advocating for health justice.

Amicus Virginia Society of Addiction Medicine is a physician-led professional medical society representing the causes of addiction treatment and education, advocacy, and equity.

Amicus Michigan Society of Addiction Medicine is a professional organization of physicians who deliver care to patients with substance use disorders.

Amicus NETWORK Lobby for Catholic Social Justice fights for policies that include the right to affordable health care.

Amicus Doctors for America is an independent organization of physicians and trainees addressing access to affordable care, community health and prevention, and health justice and equity.

Amicus Georgians for a Healthy Future is a nonprofit consumer health policy organization working to increase access to health care and improve health outcomes.

Amicus Pennsylvania Health Access Network assists individuals navigating high out-of-pocket costs for care.

Amicus Patient Coalition of Washington elevates the patient perspective on health care issues and supports robust protections for preventive services for people with chronic conditions.

Amicus North Carolina Justice Center advocates for access to high quality, affordable, equitable, and comprehensive health care.

Amicus Illinois Society of Addiction Medicine is a professional organization made up of physicians, social workers, pharmacists, nurse practitioners, and physician assistants who work to advocate for underserved communities.

Amicus South Carolina Appleseed Legal Justice Center works to ensure that quality, affordable, and equitable healthcare is available.

Amicus Kentucky Equal Justice Center is a civil legal aid and advocacy organization that represents low-income individuals and their interests.

Amicus Utah Health Policy Project is a nonprofit organization that represents health care consumers and patients.

Amicus Maryland Citizens' Health Initiative works to improve health care access, affordability, and quality.

Amicus Shriver Center on Poverty Law works to ensure that everyone can access quality healthcare for themselves and their families.

Amicus New Day Nevada works on economic justice issues with an emphasis on health care.

Amicus American Society of Addiction Medicine represents health professionals who specialize in the prevention and treatment of addiction.

Amicus Health Access California is a nonprofit health advocacy organization working for affordable, equitable, and quality health care.

Amicus National Health Law Program works to help consumers and their advocates overcome barriers to care.

Amicus Inseparable is a national mental health policy organization that seeks to increase access to needed care.

Amicus National Partnership for Women & Families is a nonprofit organization working to improve the lives of women and families by protecting access to free preventive care.

Amicus Northwest Health Law Advocates is a nonprofit organization that works to improve access to health care.

Amicus American Medical Student Association represents the interests of both domestic and international future physicians.

Amicus Committee to Protect Health Care works to expand health care access and lower costs for patients.

Amicus National Council of Jewish Women is a feminist civil rights organization working for equity and justice for women, children, and families.

Amicus Health Law Advocates, Inc. provides pro bono legal representation to low-income residents experiencing difficulty accessing or paying for needed medical services.

Amicus Young Invincibles is dedicated to expanding access to affordable health care for young adults.

Amicus Planned Parenthood Federation of America is the nation's leading provider and advocate of high-quality, affordable sexual and reproductive health care.

Amicus National Women's Law Center is a nonprofit legal advocacy organization that is committed to ensuring that all individuals have access to preventive care without cost-sharing.

SUMMARY OF ARGUMENT

The Court of Appeals' ruling would devastate millions of Americans' statutory right to critical cost-free preventive health care. Consumers' utilization of preventive services substantially decreases when they must pay for them. And there is no guarantee that insurers or employers would voluntarily provide such coverage. The services that individuals would forgo prevent serious patient harm.

The Court of Appeals' ruling also could lead states to reduce, or charge cost sharing for, essential preventive coverage under Medicaid. In addition, a specific adverse impact would fall on underserved and underrepresented communities that have historically faced limited access to preventive services.

The statutory process at issue ensures that up-to-date expert medical input informs determinations of which preventive services are covered cost-free. Invalidating the process would deprive consumers of the benefits of current and future medical advancements.

The Court of Appeals' ruling also would dramatically increase costs throughout the health care system. Lack of preventive care leads to higher costs to treat disease. No-cost preventive care flowing from the USPSTF's recommendations avoids costly, preventable patient harm.

Finally, the Court of Appeals' ruling would harm consumers more broadly. The ruling would increase consumer and clinician confusion by fracturing uniform coverage requirements and lead to broader negative health insurance market changes.

ARGUMENT

The Court of Appeals' ruling would devastate Americans' statutory right to critical cost-free preventive health care that has kept them healthy for more than a decade. Since 2010, the Affordable Care Act (ACA) has required health insurers and group health plans to cover preventive health care services fully, at no additional cost to consumers. Congress wisely decided that the best-available science would dictate the specific preventive services subject to this no-cost coverage requirement (and that the specific services covered would change as the science evolved over time). Congress determined that health care experts at the U.S. Preventive Services Task Force (USPSTF) would identify the vast majority of preventive services covered by the no-cost requirement. Specifically, most health insurance has been required to cover, with no cost-sharing, evidenced-based items or services that have a rating of "A" or "B" in the current USPSTF recommendations with respect to the individual involved.

The Court of Appeals erroneously ruled that the USPSTF has unlawfully exercised governmental authority since 2010. Unless this Court reverses, that ruling will eviscerate the ACA preventive-care regime rooted in the scientific ratings of USPSTF. Respondents requested the Court of Appeals to affirm nationwide vacatur or injunctive relief invalidating all agency actions taken to enforce USPSTF recommendations. It was a stroke of luck that the Court of Appeals denied that requested remedy, based upon a quirk in the specific litigation choices made by respondents (who made a pleading error by omitting an Administrative Procedure Act claim from their

complaint). *See* Pet. App. 34a, 37a. The Court of Appeals made clear that if a future litigant challenging the USPSTF recommendations included an APA claim, the default remedy — based on the legal theory affirmed by that Court — would be nationwide vacatur (implemented without regard to any balancing of the equities). Pet. App. 36a. That chilling prospect led the Solicitor General, in her petition for a writ of certiorari, to explain that "a future plaintiff with Article III standing could bring an APA claim in a district court within the Fifth Circuit, challenge the Task Force's recommendations on Appointments Clause grounds, and obtain a sweeping remedy that would render the Task Force preventive-services scheme inoperative nationwide." Pet. 30-31. The Solicitor General went on to warn that "[s]uch a remedy would upend healthcare coverage for millions of Americans. Under that remedy, issuers and group health plans could eliminate coverage (or impose cost-sharing requirements) for any preventive services recommended by the Task Force since March 23, 2010." Pet. 31.

Amici describe below the significance of the preventive services identified by the USPSTF, documenting how the Court of Appeals' ruling, if affirmed, would devastate affordable access to preventive services for, and the health of, more than 200 million people across the country.

I. THE COURT OF APPEALS' RULING WOULD DEVASTATE PREVENTIVE CARE THAT PROTECTS MILLIONS OF AMERICANS FROM SERIOUS DISEASES

The ACA mandated that insurers and group health plans must "provide coverage for and shall not impose any cost sharing requirements for" services currently subject to certain recommendations of the USPSTF. 42 U.S.C. § 300gg–13(a)(1). These USPSTF recommendations establish most of the preventive services for which the ACA requires coverage with no consumer cost-sharing.[2] The Court of Appeals' ruling would limit the requirement to USPTSF recommendations that existed at the time of the ACA's enactment in 2010. USPSTF has since updated many of these recommendations, leading to significant uncertainty among consumers and other stakeholders as to which version of pre-2010 recommendations would stand. The Court of Appeals' ruling would trigger elimination of the no-cost coverage requirement for all preventive services that USPTSF has recommended with an "A" or "B" rating since 2010 (and will recommend in the future), thereby decimating affordable access to evidence-based services that protect the health of millions of Americans.

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[2] The remaining requirements unrelated to USPSTF concerned some services for women, certain immunizations, and certain requirements concerning infants, children, and adolescents. 42 U.S.C. § 300gg–13(a)(2) – (a)(4).

A. Eliminating Mandatory No-Cost Coverage Would Dramatically Reduce Consumer Use of Preventive Services

1. Consumers' Utilization of Preventive Services Substantially Decreases When They Must Pay Out-of-Pocket Costs

Consumers' utilization of preventive services substantially decreases when they must pay out-of-pocket costs. Americans consume health care based on their doctors' recommendations and the parameters of their health coverage. "Studies have shown that when people must pay for preventive services, even if that cost is low, they may forgo the services altogether." Elizabeth Kaplan and Anu Dairkee, *The Broken Link: Braidwood, the United States Preventive Services Task Force (USPSTF), and the Health Equity Implications of Losing Free Access to Preventive Care*, 50 AM. J. OF LAW AND MED. 100 (Cambridge University Press December 30, 2024), https://www.cambridge.org/core/journals/american-journal-of-law-and-medicine/article/broken-link-braidwood-the-united-states-preventive-services-task-force-uspstf-and-the-health-equity-implications-of-losing-free-access-to-preventive-care/7C2DD3B3021629CDCCC8FCF385F7858B#fn4. When patients face out-of-pocket costs, their use of health care services, even for urgent health issues, is sharply reduced. Mitchell Wong, et al., *Effects of Cost Sharing on Care Seeking and Health Status: Results from the Medical Outcomes Study*, 91 AM. J. PUB. HEALTH 1889, 1889 (2001)

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446896/pdf/0911889.pdf.

By definition, preventive health care is typically non-urgent, so individuals are even more likely to delay or forgo such care if the cost is too high. Patient cost-sharing obligations reduce uptake of both low- and high-value care, including preventive care. Rajender Agarwal, et al., *High-Deductible Health Plans Reduce Health Care Cost and Utilization, Including Use of Needed Preventive Services*, 36 HEALTH AFFAIRS 1762 (2017), https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2017.0610. When a doctor suggests a preventive health care screening, whether a patient actually receives the recommended service depends in large part on whether it is covered by the patient's health plan and whether the patient will have out-of-pocket costs.

Even modest out-of-pocket costs reduce utilization of health care services. For instance, higher levels of cost-sharing negatively affect prescription drug adherence. Nicole Fusco, et al., *Cost-Sharing and Adherence, Clinical Outcomes, Health Care Utilization, and Costs: A Systematic Literature Review*, 29 AM. J. OF MANAGED CARE & SPECIALTY PHARM. (Jan. 2023), at 5, https://www.jmcp.org/doi/epdf/10.18553/jmcp.2022.21270?role=tab. Poor medication adherence in turn causes higher rates of mortality, hospitalization, and complications, all of which increase costs for consumers as well as other payers in the healthcare ecosystem. *Id.* Similarly, when cancer is diagnosed earlier rather than later, outcomes improve and costs are lower. Zura Kakushadze, et al., *Estimating Cost*

Savings from Early Cancer Diagnosis, SSRN, Data 2(3) 30, at 2-16 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2975597. Still, before the ACA was enacted, approximately one-third of low-income Americans postponed seeking preventive care due to cost. Kaiser Fam. Found., *Preventive Services Covered by Private Health Plans under the Affordable Care Act* (Feb. 28, 2024), https://www.kff.org/health-reform/fact-sheet/preventive-services-covered-by-private-health-plans/. Studies have also shown that elimination of cost sharing generally increases use of preventive services. Hope Norris, et. al, *Utilization Impact of Cost-Sharing Elimination for Preventive Care Services: A Rapid Review,* NAT'L LIBRARY OF MED. (2022) https://pubmed.ncbi.nlm.nih.gov/34157906/.

The ACA preventive services coverage requirements have changed this dynamic. In the years following the ACA, more Americans received blood pressure, cholesterol, and colon cancer screenings compared to before the ACA, and more adults and children received recommended vaccinations, such as the flu and HPV vaccines. Laura Skopec & Jessica Banthin, *Free Preventive Services Improve Access to Care*, URBAN INSTITUTE (July 2022), at 2, https://www.urban.org/sites/default/files/2022-07/Free%20Preventive%20Services%20Improve%20Access%20to%20Care.pdf. These screenings save lives and save money. Increasing current screening rates could save thousands of additional lives each year. Zhen-Qiang Ma & Lisa C. Richardson, *Cancer Screening Prevalence and Associated Factors Among*

US Adults, 19 PREVENTING CHRONIC DISEASE (Apr. 2022), at 2, https://www.cdc.gov/pcd/issues/2022/pdf/22_0063.pdf.

Improved access to mammography demonstrates the powerful impact of no-cost access to preventive care. In 2018, more than 60 percent of women eligible for no cost-sharing mammography services due to ACA requirements reported having had a mammogram within the previous two years. Claire O'Brien & Jessica Banthin, *22.2 Million Women Ages 50 to 64 May Lose Access to Free Mammogram Screening*, URBAN INSTITUTE (Apr. 2023) at 1, https://www.rwjf.org/en/insights/our-research/2023/05/22-2-million-women-ages-50-to-64-may-lose-access-to-free-mammogram-screening.html. By comparison, lung cancer screening rates are very low, despite dire outcomes associated with late stage disease. Recent USPSTF recommendations expanding eligibility for lung cancer screening may improve uptake of this care if cost-sharing is eliminated as a barrier. Rose McNulty, *Estimated Lung Cancer Screening Rates "Extremely Low" Across Insurance Type*, AM. J. MANAGED CARE (Apr. 14, 2023), https://www.ajmc.com/view/estimated-lung-cancer-screening-rates-extremely-low-across-insurance-types.

While access to screening services without cost-sharing has reduced barriers to care and improved equity, cost remains a barrier to care more broadly, and millions of patients report having delayed or avoided medical care due to costs. *See* Claire O'Brien, URBAN INSTITUTE, *supra.* If patients face costs for

preventive care, progress made since the ACA will be reversed.

2. Polling Indicates That Eliminating No-Cost Coverage Would Substantially Deter Consumers From Seeking Preventive Care

Polling conducted since the District Court's decision indicates consumers will be unwilling to pay for preventive services if they are no longer covered at no cost, suggesting utilization will drop. In a survey, 60% of people said they would not pay for smoking cessation or screenings for unhealthy drug use, 58% said they would be unwilling to pay for weight loss measures to address health risks tied to obesity, 53% said they would not pay for depression screenings, and 52% said they would not pay for HIV screenings. Page Minemyer, *Patients Are Likely to Avoid Preventive Care Should ACA Coverage Ruling Stand, Survey Finds*, FIERCE HEALTHCARE (Mar. 8, 2023), https://www.fiercehealthcare.com/payers/patients-are-likely-avoid-preventive-care-should-aca-coverage-ruling-stand-survey-finds.

3. There Is No Guarantee That Insurers or Employers Would Voluntarily Provide No-Cost Coverage

There also is no guarantee that health insurers or employers would voluntarily provide no-cost coverage.

Reviewing coverage offered prior to the ACA demonstrates the potential consequences for

consumers. As of 2003, half of adults aged 18–64 lacked immunization coverage (including 29 million adults considered to be at high risk), let alone having access to this preventive care without cost-sharing. Inst. of Med. (US) Comm. on the Evaluation of Vaccine Purchase Financing in the U.S., *Financing Vaccines in the 21st Century: Assuring Access and Availability* at 89 (National Academies Press (US) 2003), https://www.ncbi.nlm.nih.gov/books/NBK221813/pdf/Bookshelf_NBK221813.pdf. At the same time, having health coverage was demonstrated to make high-risk adults twice as likely to receive flu vaccines, and access to free flu shots was extremely influential to improving vaccination rates. *Id.* at 75.

In 2011, the Institute of Medicine analyzed pre-ACA preventive services coverage for people with employer-based insurance and found that 56 percent of people had coverage for adult immunizations, 80 percent were in plans that had coverage for adult physical exams, 77 percent were in plans that covered well-baby care, and 60 percent had coverage for gynecological examinations and services, with limitations and copayments commonly required. Nat'l Acads. of Scis., Eng'g & Med., Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* (National Academies Press 2011), https://nap.nationalacademies.org/read/13181/chapter/1.

Prior insurer and employer practices demonstrate the consequences for consumers if preventive services coverage requirements are rolled back. If the Court of Appeals' ruling is upheld, preventive care benefits consumers have come to rely

on could once again become unavailable or subject to copayments or other out-of-pocket costs that reduce access.

4. Medicaid Beneficiaries Could Also Lose Coverage

Affirming the Court of Appeals' ruling could harm Medicaid beneficiaries as well.

Coverage of preventive services is mandatory for adults enrolled in Medicaid Alternative Benefits Plans, including most individuals eligible under the ACA's Medicaid expansion. 42 U.S.C. §§ 1396a(a)(10)(A)(i)(VIII); 1396a(k); 1396u-7(b)(5); 42 U.S.C. § 18022(b)(1)(I); 42 C.F.R. §§ 440.300 to 440.395. The Secretary of Health and Human Services is required to define the "essential health benefits" these plans must cover. 42 U.S.C. § 18022(b)(1). The Secretary has chosen to define EHBs by adopting USPSTF preventive services recommendations, among other recommendations. *See* 42 C.F.R. § 440.347, 45 C.F.R. § 147.130, 45 C.F.R. part 156.

Preventive services are optional for other Medicaid adult populations, including persons eligible on the basis of disability, persons caring for a child, and young adults formerly enrolled in foster care. *See* 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(13). Most states have opted to provide some preventive services to these optional groups; however, the coverage can be limited. For example, some states have excluded screening mammograms and Pap testing. Assist. Sec. for Planning & Eval. Off. of Health Pol., *Access to Preventive Services without Cost-Sharing: Evidence from the Affordable Care Act*

at 6 (Jan. 11, 2022), https://aspe.hhs.gov/sites/default/files/documents/786fa55a84e7e3833961933124d70dd2/preventive-services-ib-2022.pdf.

Recognizing the importance of preventive services, Congress amended the Medicaid Act to provide states an incentive to expand this coverage. States offering coverage of USPSTF A and B preventive services, with no cost sharing, to adults in all Medicaid eligibility categories are entitled to receive enhanced federal Medicaid funding. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 4106, 124 Stat. 119 (2010) (adding 42 U.S.C. § 1396d(b)(5)). When adding this provision, Congress defined preventive services to include: (A) any clinical preventive services that are assigned a grade of A or B by the United States Preventive Services Task Force; 42 U.S.C. § 1396d(a)(13). Compare 42 U.S.C. § 300gg-13(a)(1) (requiring coverage of preventive services that have "a rating of 'A' or 'B' in the current recommendations of the United States Preventive Services Task Force"). At least 16 states have taken up this option and claim the enhanced federal funding provided under ACA § 4106. *See* Lindsey Dawson, *Medicaid and People with HIV*, KFF (Mar. 27, 2023), https://www.kff.org/hivaids/issue-brief/medicaid-and-people-with-hiv/ (listing CA, CO, DE, HI, KY, LA, MA, MT, NH, NJ, NV, NY, OH, OR, WA, and WI). For more than a decade, states have relied on these funds. *See, e.g.*, Letter from CMS, Approval of New York State Plan Amendment 13-26 (Jun. 18, 2013), https://www.medicaid.gov/State-resource-

center/Medicaid-State-Plan-Amendments/Downloads/NY/NY-13-26.pdf.

Congress expressly tied Medicaid funding for states to the USPSTF A and B recommended services. Thus, the Court's decision in this case could affect this coverage in the future, leading states to reduce coverage or charge cost sharing for preventive services that are benefiting low-income adults.

The Medicaid Act allows states to impose "nominal" cost-sharing on covered services, with certain groups and services exempt. 42 U.S.C. §§ 1396o(a)(3), 1396o(b)(3); 42 C.F.R. § 447.56(a). Decades of research shows that even "nominal" cost-sharing presents a significant barrier for low-income persons. *See, e.g.*, Lindsay M. Sabik & Anushree Vichare, *Co-Payment Policies and Breast and Cervical Cancer Screening in Medicaid*, 26 AM. J. MANAGED CARE 69 (2020) (patients charged copays were 30% less likely to get a pap smear., and 19% less likely to obtain mammograms); David Machledt & Jane Perkins, *Medicaid Premiums and Cost Sharing*, Nat'l Health Law Prog. (March 25, 2014), https://healthlaw.org/resource/medicaid-premiums-and-cost-sharing/ (imposition of cost sharing on low-income and vulnerable populations reduces access to needed care and correlates with increased risk of poor health outcomes); Leighton Ku, Elaine Deschamps & Judi Hilman, *The Effects of Copayments on the Use of Medical Services and Prescription Drugs in Utah's Medicaid Program* 1, CENTER ON BUDGET AND POLICY PRIORITIES (Nov. 2, 2004), http://www.cbpp.org/files/11-2-04health.pdf (even nominal copayments reduce utilization of services by Medicaid enrollees).

B. The Services That Individuals Would Forgo Prevent Serious Diseases

By nullifying the no-cost incentive for consumers to seek the preventive services at issue, the Court of Appeals' ruling would substantially harm the public health by impeding the prevention of serious diseases. For example, the HIV-prevention medication Pre-Exposure Prophylaxis (PrEP), which USPSTF recommended beginning in 2019, has been shown to reduce the risk of getting HIV by 99%. Under the Court of Appeals decision, PrEP used as recommended would no longer be required to be covered with no cost-sharing. Even a cost as low as $10 for this preventive measure would dramatically reduce its use. *See* Lorraine T. Dean, et al., *Estimating the Impact of Out-of-Pocket Cost Changes On Abandonment of HIV Pre-Exposure Prophylaxis*, 43 HEALTH AFFAIRS 36 (Jan. 2024), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.00808. No comparable drug exists for patients at high risk for HIV, leaving this population at risk for increased HIV transmission if plans drop coverage as would be allowed by the Court of Appeals' decision. *See* David Paltiel et. al., *Increased HIV Transmissions With Reduced Insurance Coverage for HIV Preexposure Prophylaxis: Potential Consequences of Braidwood Management v. Becerra*, Open Forum Infectious Diseases, Vol. 10, Issue 3 (Mar. 2023), ofad139, https://doi.org/10.1093/ofid/ofad139.

The adverse effects of the Court of Appeals' ruling do not stop there. Applied nationwide in a follow-on case, the ruling would eliminate, in whole or

in part, no-cost coverage for the following critical preventive care:

Anxiety screenings	Skin cancer prevention counseling
Application of fluoride varnish to primary teeth	Statin prescriptions to prevent cardiovascular disease
Aspirin use to prevent Preeclampsia	Tobacco prevention interventions
Behavioral counseling interventions of health weight gain	Hepatitis C screenings
Drug abuse screenings	Alcohol abuse screening & behavioral counseling interventions
Falls prevention interventions	Prediabetes & type 2 diabetes screenings
Lung cancer screenings	Colorectal cancer screenings
Medication to reduce risk of breast cancer	Hepatitis B screenings
Perinatal depression preventive interventions	HIV screenings
Pre-exposure Prophylaxis (PrEP) access	Osteoporosis screenings
Screening for gestational diabetes	Cervical cancer screenings
Screenings for intimate partner violence & elder abuse	

C. Limiting No-Cost Preventive Services to Those Recommended in 2010 Would Deprive Consumers of the Benefits of Current and Future Medical Advancements

Limiting no-cost preventive services to those recommended in 2010 also would deprive consumers of the benefits of current and future medical advancements. Clinical knowledge about disease prevention continues to improve. That is why USPSTF revisits its recommendations regularly in order to consider and incorporate new information. The "extent of new evidence" is a driving factor in how USPSTF prioritizes topics for review. Michael J. Barry, et al., *Putting Evidence Into Practice: An Update on the US Preventive Services Task Force Methods for Developing Recommendations for Preventive Services*, 21 ANNALS OF FAM. MED. 165, 165 (2023), https://www.annfammed.org/content/annalsfm/21/2/165.full.pdf.

The harmful effects of taking away coverage requirements and cost-sharing prohibitions for services recommended after 2010 would compound over time, as the recommendations in place at that time become more and more out of date. As new preventive services and drugs are introduced and adopted, even those recommended by the USPSTF's medical experts would be covered only at the discretion of insurers and employers. The services to which the ACA requirements apply would not reflect current evidence and best practices, affecting patient care and safety.

USPSTF makes available the types of services that are currently under review and consideration for potential updating to its recommendations, giving consumers and insurers a glimpse into potential changes that are grounded in medical evidence that soon could become available without cost-sharing. Topics currently under review for potential future recommendations include chronic kidney disease and screening and weight loss to prevent obesity-related morbidity and mortality in adults. USPSTF, *Recommendations in Progress*, https://www.uspreventiveservicestaskforce.org/uspstf/recommendation-topics/recommendations-in-progress (last visited June 23, 2023). If the Court of Appeals' ruling stands, cost-free access will be eroded not only for currently recommended services, but also for any services USPSTF recommends with an "A" or "B" rating in the future.

D. The Court of Appeals' Ruling Would Reverse Progress in Reducing Barriers to Care and Inequities in the Health System

The Court of Appeals' ruling also would reverse progress in reducing barriers to care and inequities in the health system. As of 2022, more than 150 million Americans with private health coverage were eligible to receive preventive services without cost-sharing under the ACA. U.S. Dep't of Health & Hum. Servs., Office of the Assistant Secretary for Planning and Evaluation (ASPE), *Access to Preventive Services without Cost-Sharing: Evidence from the Affordable Care Act* (Jan. 11, 2022), https://aspe.hhs.gov/sites/default/files/documents/786fa55a84e7e3833961933124d70dd2/preventive-

services-ib-2022.pdf. The reach of the ACA preventive services requirement has led to significant strides in reducing barriers to care, especially among underserved and underrepresented communities. Affirming the Court of Appeals' ruling would reverse that progress.

Allowing cost-sharing for preventive services could have profound implications for communities that have historically faced limited access to essential preventive services. Steven Teutsch et. al., *Health Equity in Preventive Services: The Role of Primary Care*, 102 AM. FAM. PHYSICIAN 264, 264 (2020), https://www.aafp.org/content/dam/brand/aafp/pubs/afp/issues/2020/0901/p264.pdf. For example, following the ACA, colonoscopy screenings increased at a higher rate among Hispanic and Black adults compared with white adults. Kenneth E. Thorpe, *Racial Trends in Clinical Preventive Services Use, Chronic Disease Prevalence, and Lack of Insurance Before and After the Affordable Care Act*, 28 AM. J. MANAGED CARE 126 (2022), https://cdn.sanity.io/files/0vv8moc6/ajmc/0df02b9aa79fa4e7fa4f350bdf5053ae6411b0f0.pdf/AJMC_04_2022_Thorpe_final.pdf; *see also* NR Bhandari and C Li, *Impact of the Affordable Care Act (ACA)'s Elimination of Cost-Sharing Provision on the Guideline-Recommended Cancer Preventive Screenings in the United States*, VALUE IN HEALTH, Vol. 21, S131-132 (2018), https://www.valueinhealthjournal.com/article/S1098-3015(18)31181-1/fulltext?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS1098301518311811%3Fshowall%3Dtrue (finding that elimination

of cost-sharing "positively affected" colorectal cancer screening for "privately insured males, females and Medicare-only insured males and Hispanics"). But re-introducing cost-sharing as a barrier to preventive services is likely to reverse progress made in reducing disparities in screening rates. *Id.*

Young adults, who are disproportionately non-white compared to the general population, have historically experienced the lowest levels of health care utilization of all age groups. Josephine S. Lau, et al., *Young Adults' Health Care Utilization and Expenditures Prior to the Affordable Care Act*, NAT'L LIBRARY OF MED. (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4142567/#:~:text=Young%20adults%20had%20the%20lowest,%25%2C%20p%3C0.001. Since the passage of the ACA, young adults' use of preventive services, such as cholesterol checks and flu shorts, increased significantly. Sally H. Adams, et al., *Changes in Receipt of Care Pre- to Post-Affordable Care Act*, 64 J. OF ADOLESCENT HEALTH, 763-69 (June 2019), https://nahic.ucsf.edu/resource_center/ya-preventive-healthcare-aca/; https://jamanetwork.com/journals/jamapediatrics/fullarticle/1913624/). While the health care utilization rates of young adults still lag those of their older or younger counterparts, gains made among young adults stand to be reversed should the Court of Appeals' ruling stand.

The Court of Appeals' ruling would be particularly damaging in reversing gains made in reducing HIV prevalence, especially among underserved and underrepresented communities. High costs led to underutilization of pre-exposure

prophylaxis (PrEP), particularly among Black and Hispanic adults. Karishma Srikanth et. al., *Associated Costs Are a Barrier to HIV Preexposure Prophylaxis Access in the United States*, 112 AM. J. PUB. HEALTH 834 (2022), https://ajph.aphapublications.org/doi/epdf/10.2105/AJPH.2022.306793. Cost-sharing for PrEP has been eliminated for people at "high risk of HIV acquisition" due to the USPSTF's 2019 recommendations, but could return if the Court of Appeals' decision is upheld. USPSTF, *Recommendation Statement: Preexposure Prophylaxis for the Prevention of HIV Infection*, 321 J. AM. MED. ASS'N 2203, 2203 (2019), https://jamanetwork.com/journals/jama/fullarticle/2735509.

Other relatively new USPSTF recommendations support access to important mental health care for at risk populations. In February 2019, USPSTF recommended that "clinicians provide or refer pregnant and postpartum persons who are at increased risk of perinatal depression to counseling interventions." USPSTF, *Recommendation Statement: Interventions to Prevent Perinatal Depression*, 321 J. AM. MED. ASS'N 580, 581 (2019), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/perinatal-depression-preventive-interventions. In October 2022, USPSTF recommended "screening for anxiety in children and adolescents aged 8 to 18 years." USPSTF, *Recommendation Statement: Screening for Anxiety in Children and Adolescents*, 328 J. AM. MED. ASS'N 1438, 1438 (2022), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/screening-anxiety-children-

adolescents. To roll back access to these screenings – and particularly to do so just as the clinical evidence supporting their use has been recognized – would negatively impact vulnerable women and children.

II. THE COURT OF APPEALS' RULING WOULD INCREASE COSTS THROUGHOUT THE HEALTH CARE SYSTEM

Access to cost-free preventive services helps lower health care costs not only for the individual patient, but also for the overall health care system.

A. Preventive Services Save Costs

Preventing the occurrence, risk, and development of chronic conditions can decrease costs in the long-run and reduce the use of health care resources. Chronic illnesses are the leading drivers of health care costs in the U.S. and can significantly affect people's quality of life and ability to work. Nearly 60 percent of adults have at least one chronic condition, and 40 percent have two or more. Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, *Chronic Diseases in America*, *Centers for Disease Control and Prevention*, CDC (Dec. 13, 2022), https://www.cdc.gov/chronicdisease/resources/infographic/chronic-diseases.htm [https://web.archive.org/web/20240503113846/https://www.cdc.gov/chronicdisease/resources/infographic/chronic-diseases.htm]. Approximately 90 percent of the nation's $4.1 trillion in annual health care expenditures is spent on people with chronic and mental health conditions. Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, *Health and Economic Costs of Chronic Diseases*, CDC (Mar. 23,

2023), https://www.cdc.gov/chronic-disease/data-research/facts-stats/?CDC_AAref_Val=https://www.cdc.gov/chronicdisease/about/costs/index.htm. The financial and economic burden chronic illnesses can have on individuals and on the overall health care system can be avoided through robust preventive care.

B. USPSTF's Recommendations Address Some of the Costliest Preventable Diseases

As demonstrated below, USPSTF's recommendations address some of the costliest preventable diseases.

1. Diabetes

Consider *diabetes*. More than 37 million Americans have diabetes, and another 96 million adults in the United States have a condition called prediabetes, which puts them at risk for type 2 diabetes. Diabetes can cause serious complications, including heart disease, kidney failure, and blindness. In 2017 alone, the total estimated cost of diagnosed diabetes was $327 billion in medical costs and lost productivity. Wenya Yang, et al., Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2017*, 41 DIABETES CARE 917-928 (May 2018), https://diabetesjournals.org/care/article/41/5/917/36518/Economic-Costs-of-Diabetes-in-the-U-S-in-2017. In 2022, the Centers for Disease Control and Prevention (CDC) estimated that $1 out of every $4 in U.S. health care costs is spent on caring for people with diabetes, resulting in a total of nearly $237 billion annual spending on direct medical costs and another $90 billion on reduced productivity. Nat'l Ctr.

for Chronic Disease Prevention & Health Promotion, *Health and Economic Benefits of Diabetes Interventions*, CDC (Dec. 21, 2022), https://www.cdc.gov/nccdphp/priorities/diabetes-interventions.html?CDC_AAref_Val=https://www.cdc.gov/chronicdisease/programs-impact/pop/diabetes.htm. Further, research shows that the average medical cost for a patient with either type 1 or type 2 diabetes is more than two times higher than for a patient without diabetes. CDC, *Diabetes Report Card 2021* (Nov. 14, 2022), https://archive.cdc.gov/#/details?url=https://www.cdc.gov/diabetes/library/reports/reportcard.html.

Of the 37 million Americans who have diabetes, over 35 million of them have type 2, which is preventable and can be delayed from progressing to worse stages. CDC, *Type 2 Diabetes* (Apr. 18, 2023), https://www.cdc.gov/diabetes/basics/type2.html. If the Court of Appeals' decision is upheld, policy related to screenings for Type 2 diabetes would revert to June 2008 USPSTF recommendations that would mean prediabetes screenings and interventions would not be uniformly covered without cost-sharing. USPSTF, *Final Recommendation Statement*, *Prediabetes and Type 2 Diabetes: Screening* (Aug. 24, 2021), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/screening-for-prediabetes-and-type-2-diabetes; USPSTF, Screening for Type 2 *Diabetes Mellitus in Adults* (June 15, 2008), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/diabetes-mellitus-type-2-in-adults-screening-2008. Further, USPSTF recommended screening for gestational diabetes with a "B" rating starting in 2014, but upholding the lower

court's decision would mean reverting to when USPSTF provided an "I" rating for these services in 2008, before current evidence has been developed. USPSTF, *Screening for Gestational Diabetes Mellitus* (January 14, 2014), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/gestational-diabetes-mellitus-screening-january-2014; USPSTF, *Screening for Gestational Diabetes Mellitus* (May 15, 2008), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/gestational-diabetes-screening-2008. Losing access to this coverage would make the nation's fight against diabetes harder.

2. Cancer

Consider *cancer*. CDC reports that in 2020, over 1.6 million people were diagnosed with cancer and over 600,000 died from cancer, making it the second leading cause of death in America. CDC, *Cancer Data & Statistics* (June 8, 2023), https://www.cdc.gov/cancer/data/?CDC_AAref_Val=https://www.cdc.gov/cancer/dcpc/data/index.htm. The cost of cancer care is significant across the board. Studies estimate that overall national costs are projected to increase 34 percent to $246 billion by 2030. Angela B. Mariotto, et al., *Medical Care Costs Associated with Cancer Survivorship in the United States*, 29 CANCER EPIDEMIOLOGY, BIOMARKERS & PREVENTION 1304–1312 (2020), https://doi.org/10.1158/1055-9965.EPI-19-1534.

For individual patients, the National Cancer Institute (NCI) estimates that the average annual costs between 2007-2013 in 2020 U.S. dollars for cancer care was over $43,500 for initial care, over

$5,500 for continuing care, and nearly $110,000 in the last year of life. National Cancer Institute, *Cancer Trends Progress Report*, FINANCIAL BURDEN OF CANCER CARE (Apr. 2022), https://progressreport.cancer.gov/after/economic_burden.

According to the World Health Organization (WHO), 30 to 50 percent of all cancer cases are preventable, and prevention offers the most cost-effective long-term strategy for the control of cancer. World Health Org., *Preventing Cancer* (Feb. 2, 2022), https://www.who.int/activities/preventing-cancer#:~:text=Between%2030%E2%80%9350%25%20of%20all,for%20the%20control%20of%20cancer. Prevention is particularly cost-effective because its effects extend to an entire population regardless of socio-economic and other risk factors, as well as empower future generations by promoting healthy behaviors, increasing screening programs, implementing public health regulations (e.g., smoking regulations), and advancing other preventive services. Ivana Valle, et al., *Cancer Prevention: State of the Art & Future Prospects*, 56 J. OF PREVENTIVE MED. & HYGIENE, E21–E27 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4718348/pdf/2421-4248-56-E21.pdf. Reverting to the USPSTF recommendations in place when the ACA was enacted would limit cost-free access to: lung cancer screenings for asymptomatic persons; medication to reduce risk of breast cancer; skin cancer prevention counseling; and colorectal cancer and cervical cancer screenings for certain populations. This is the opposite of progress towards preventing cancer.

3. Heart Disease

Consider *heart disease*. Over 877,500 Americans die from heart disease or stroke each year, which is one-third of all deaths each year. *Health & Economic Costs of Chronic Diseases*, *supra*. Heart disease and stroke cost the U.S. health care system nearly $216 billion per year and result in nearly $147 billion in lost productivity. *Id.*

But 90 percent of heart disease is preventable. *90 Percent of Heart Disease is Preventable through Healthier Diet, Regular Exercise, and Not Smoking*, CLEVELAND CLINIC NEWS ROOM (Sept. 29, 2021), https://newsroom.clevelandclinic.org/2021/09/29/90-percent-of-heart-disease-is-preventable-through-healthier-diet-regular-exercise-and-not-smoking/. By offering preventive services and screening to promote cardiovascular health, the U.S. can improve the health and wellbeing of the 121.5 million American adults with cardiovascular disease (or nearly 50 percent of all adults) and save costs to the overall health care system. Am. Heart Ass'n, *Cardiovascular Diseases Affect Nearly Half of American Adults, Statistics Show*, (Jan. 31, 2019), https://www.heart.org/en/news/2019/01/31/cardiovascular-diseases-affect-nearly-half-of-american-adults-statistics-show. In light of these statistics, reverting to narrower 2008 USPSTF recommendations related to screening for lipid disorders in adults, rather than current, 2022 USPSTF recommendation for prescriptions to prevent cardiovascular disease, would be a travesty. USPSTF, *Lipid Disorders in Adults (Cholesterol, Dyslipidemia); Screening* (Dec. 30, 2013), https://www.uspreventiveservicestaskforce.org/uspst

f/recommendation/lipid-disorders-in-adults-cholesterol-dyslipidemia-screening-2008; USPSTF, *Statin Use for the Primary Prevention of Cardiovascular Disease in Adults: Preventive Medication* (Aug. 23, 2022), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/statin-use-in-adults-preventive-medication. Yet that would appear to be the effect of the Court of Appeals' decision.

4. Depression

Consider *depression*. In 2023, 21.9 million American adults aged 18 or older had at least one major depressive episode, including 17.5 percent of people ages 18 to 25 years. In addition 4.5 million, or 18 percent, of adolescents aged 12 to 17 had a past year major depressive episode. Nat'l Inst. of Mental Health, Major Depression (Jan. 2022), https://www.nimh.nih.gov/health/statistics/major-depression. The economic costs of untreated and treating major depressive disorder (MDD) are high and increasing. For example, the economic costs to care for adults with MDD increased by 37.9 percent between 2010 to 2018, from $236.6 billion per year to $326.2 billion per year. Of these total economic costs, workplace costs accounted for the largest proportion of the growing economic burden of MDD, resulting from lost productivity or decreased workforce capacity. Paul E. Greenberg, et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States* (2010 and 2018), 39 PHARMACOECONOMICS 653, 656 (2021), https://doi.org/10.1007/s40273-021-01019-4. Depression is also a leading cause of disability.

The impacts of depression, coupled with treatment challenges, highlight the importance of investing in and promoting access to preventive care. Joanna R. Beames, et al., *Prevention and Early Intervention of Depression in Young People: An Integrated Narrative Review of Affective Awareness and Ecological Momentary Assessment*, BMC Psychol. 9:113 (2021). https://bmcpsychology.biomedcentral.com/counter/pdf/10.1186/s40359-021-00614-6.pdf. Studies highlight that prevention may help reduce the disease burden of depressive disorders. Pim Cuijpers, et al., *Preventing Depression: A Global Priority*, 307 J. AM. MED. ASS'N 1033–34 (2012), https://doi.org/10.1001/jama.2012.271; Beames, et al., *supra*. By preventing depressive disorders, the U.S. can save lives and health care costs. As discussed above, coverage for mental health screenings for children and pregnant and postpartum women are vulnerable under the Court of Appeals' decision.

5. Tobacco Use

Consider *tobacco use*. Tobacco kills over 480,000 people each year from cigarette smoking or exposure to secondhand smoke. Approximately 28.3 million American adults smoke cigarettes and an additional 3 million high school and middle school students use tobacco in some form. Office on Smoking & Health – Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, *Smoking & Tobacco Use: Data and Statistics*, CDC (May 4, 2023), https://www.cdc.gov/tobacco/data_statistics/index.htm#:~:text=Tobacco%20use%20is%20the%20leading,product%2C%20including%20e%2Dcigarettes [https://web.archive.org/web/20231229010024/https://

www.cdc.gov/tobacco/data_statistics/index.htm]. Cigarette smoking is the leading form of preventable death in the U.S. and more than 16 million Americans have at least one disease caused by smoking. *Health and Economic Costs of Chronic Diseases*, *supra*. Further, cigarette smoking costs the health care system over $241 billion per year and nearly $365 billion in lost productivity. Campaign for Tobacco Free Kids, *The Toll of Tobacco in the United States* (May 5, 2023), https://www.tobaccofreekids.org/problem/toll-us. The U.S. also spends nearly $6.5 billion per year on health care expenditures solely from second hand smoke exposure. *Id.* Health plan coverage for comprehensive, cost-free smoking cessation treatment increases use of treatment services, improves outcomes, and is cost-effective. U.S. Dep't Health & Human Servs., *Smoking Cessation: A Report of the Surgeon General – Key Findings* (Jan. 23, 2020), https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/2020-cessation-sgr-factsheet-key-findings/index.html.

Yet the Court of Appeals' decision would seem to disregard the 2020 USPSTF recommendation for primary care clinicians to provide interventions to prevent initiation of tobacco use among school-aged children and adolescents, instead reverting to a 2003 determination citing insufficient evidence in this population. USPSTF, *Recommendation Statement: Primary Care Interventions for Prevention and Cessation of Tobacco Use in Children and Adolescents*, 323 J. AM. MED. ASS'N 1590, 1590 (Apr. 28. 2020), https://www.uspreventiveservicestaskforce.org/uspst

f/recommendation/tobacco-and-nicotine-use-prevention-in-children-and-adolescents-primary-care-interventions; USPSTF, *Tobacco Use and Tobacco-Caused Disease: Counseling, 2003* (Nov. 1, 2003), https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/tobacco-use-tobacco-caused-disease-counseling-2003.

III. THE COURT OF APPEALS' DECISION WOULD HARM CONSUMERS MORE BROADLY

A. The Decision Would Increase Consumer and Clinician Confusion and Administrative Burdens by Fracturing Uniform Coverage Requirements

Consumers want care that is easy to navigate and understand, but the Court of Appeals' decision would create a patchwork of coverage decisions by insurers and plans that will create both consumer and clinician confusion. United States of Care, *United Solutions for Care, Goal: An Understandable System* (2022), https://unitedstatesofcare.org/wp-content/uploads/2022/05/USOC_PolicyAgenda_UnderstandableSystem_Proof_05.03.22.pdf. As a result of this confusion, consumers will need additional support to navigate care, causing an influx of inquiries to the Department of Labor, the Department of Health and Human Services, state Departments of Insurance and consumer agencies with calls and requests. Similarly, employers and other group health plan sponsors are likely to face questions from

individuals about whether care they have come to count on will continue to be available.

In 2023, eight in ten adults had a favorable opinion of the ACA requirement for health plans to cover recommended preventive services without cost-sharing, indicating widespread familiarity with the availability of this coverage. Audrey Kearney, et al., *KFF Health Tracking Poll May 2023: Health Care in the 2024 Election and in the Courts*, KFF (May 26, 2023), https://www.kff.org/report-section/kff-tracking-poll-may-2023-health-care-in-the-2024-election-and-in-the-courts-prep-and-preventive-care/. Contrast this with the confusing state of play in 2001, when only around half of large employers and 17 percent of small employers required that their plans cover clinical preventive services. Nat'l Acads. of Scis., Eng'g & Med., Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* (National Academies Press (2011), https://nap.nationalacademies.org/read/13181/chapter/1.

The District Court decision (affirmed by the Court of Appeals) has already triggered a step backward toward pre-ACA confusion. Federal agencies released guidance clarifying what they could, yet questions remain. Ctrs. for Medicare & Medicaid Servs., *FAQS About Affordable Care Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 59* (Apr. 13, 2023), https://www.cms.gov/files/document/faqs-part-59.pdf. The decision has produced uncertainty for consumers about whether they will have coverage or face cost-sharing for services that are the subject of the many significant recommendations USPSTF has made

since March 23, 2010. Confusion also abounds with respect to "pre-March 23, 2010 recommendations" about which the government anticipates providing additional guidance. *Id.* at 3. Reversing the Court of Appeals' decision would benefit consumers by re-establishing uniform coverage requirements.

B. The Court of Appeals Decision Would Lead to Broader Health Insurance Market Changes that Would Harm Consumers

Changes to insurance markets and consumer behavior on the basis of the Court of Appeals' ruling would lead to broader harms if consumers or their employers can decline coverage that they think they do not need. Variation in coverage inevitably leads to risk segmentation (through which sicker or higher-risk consumers pay more) and adverse selection (through which consumers wait until they are sick to purchase insurance or purchase coverage based on their known health status). Offered a choice between a plan that covers cancer screenings and one that does not, people who believe they are at higher risk for cancer (perhaps due to family history or known personal risk factors) will select the plan offering screenings at a higher rate. If in fact their group is higher risk, they will pay higher premiums, defeating broader efforts to reduce adverse selection and discriminatory benefit design. *See* Michael Geruso & Timothy J. Layton, *Selection in Health Insurance Markets and Its Policy Remedies*, 31 J. OF ECON. PERSPECTIVES, 23-50 (2017), https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.31.4.23.

Without the requirement for nearly all health plans to provide access to preventive services, plans may see little to gain from doing so. In 2008, before the ACA was enacted, "short expected duration of insurance relationships undermine[ed] insurers' incentives to invest in preventative care and disease management" and contributed to gaps in care. Randall D. Cebul, et al., *Organizational Fragmentation and Care Quality in the U.S. Healthcare System*, 22 J. OF ECON. PERSPECTIVES 4, 93, 96 (Fall 2008), https://www.aeaweb.org/articles?id=10.1257/jep.22.4.93. Thus, it is plausible that insurers revert back to their pre-ACA practice of not providing preventive care services given a lack of incentives to do so. By ensuring that the upfront cost is borne across all insurers and health plans, the ACA required collective action to ensure that the benefits of investing in preventive care would be felt even if individuals switch jobs or switch plans. This also ensures that even seemingly healthy individuals see value from maintaining health insurance coverage.

Furthermore, renewed variation in coverage of preventive services across health plans and across the country will exacerbate inequities. Increased cost-sharing disproportionately affects marginalized communities. Samantha Artiga, et al., *The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings,* KFF (June 1, 2017), https://www.kff.org/medicaid/issue-brief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/. The ACA sought to ensure coverage of preventive

services across markets, whether an individual was covered through employment or in the individual market. Large employers may once again outpace individual market plans in covering prevention, creating divisions between employer sponsored insurance and other forms of coverage. If employers select plans for their employees that do not cover preventive screenings, the Court of Appeals' ruling would put employers between individuals and doctors recommending care and wedge employers into selecting which preventive services to make available to their employees, possibly with steep copayments of coinsurance. State Departments of Insurance and other regulators may step in to update coverage requirements in some areas, but state-to-state variation will exacerbate health disparities.

The ACA dramatically increased access to affordable preventive health care in America by requiring that health coverage keep pace with clinical advancements recognized by the USPSTF. Reversing course would be a tragedy.

CONCLUSION

The Court should reverse the Court of Appeals' judgment.

Respectfully submitted,

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