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Supreme Court Rejects Appointments Clause Challenge to Preventative Services Task Force, While Potentially Expanding HHS Secretary Control

Kennedy v. Braidwood Management, Inc., 145 S. Ct. 2427 (June 27, 2025)

In *Kennedy v. Braidwood Management, Inc.*, the U.S. Supreme Court rejected a constitutional challenge under the Appointments Clause to the appointment of members of the U.S. Preventative Services Task Force (Task Force), an entity within the Department of Health and Human Services (HHS).

Since the adoption of the Affordable Care Act (ACA) in 2010, preventative health services that are graded "A" or "B" by the Task Force are required to be covered by most health insurers and group health plans without any cost-sharing obligation by patients, such as copays or deductibles. The suit was brought by a group of individuals and small businesses who objected to being required to provide coverage for certain services endorsed by the Task Force. They argued that the structure of the Task Force violated the Appointments Clause in Article II of the Constitution, and HHS should thus be prevented from enforcing any insurance coverage mandates based on the Task Force's recommendations.

In a 6-3 decision authored by Justice Kavanaugh, the Supreme Court disagreed, finding that the appointment of the Task Force's members complied with the Appointments Clause. Justice Thomas dissented, joined by Justices Alito and Gorsuch.

The Appointments Clause of the U.S. Constitution, Art. II, §2, cl. 2, governs the appointment of "Officers of the United States." Principal officers must be appointed by the president, with the advice and consent of the Senate. However, the Appointments

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Clause provides that Congress may vest the authority to appoint "inferior officers" "in the President Alone, in the Courts of Law, or in the Heads of Departments."

Generally speaking, whether an official is an "inferior officer" depends on whether they are subordinate to a superior officer, which turns on whether a superior officer has the power to remove them and to supervise and block their actions. The Supreme Court held that the members of the Task Force were "inferior officers" within the meaning of the Appointments Clause because they were subject to removal and supervision by the HHS secretary and therefore were not required to be appointed by the president and confirmed by the Senate.

The Supreme Court reasoned that, because the HHS secretary had the power to appoint members of the Task Force, the secretary also had the implied authority to remove them at will, notwithstanding language in the Task Force's enabling statute stating that the Task Force would be "independent." The majority construed that language to simply require that the Task Force members be independent of outside entity pressures to the extent practicable.

The Supreme Court also found that the Secretary had authority to supervise and block the Task Force's actions. The majority took a functional approach, noting that although there was no explicit requirement for the HHS secretary to approve Task Force recommendations, the secretary had a number of "tools" for effective control. These tools include the power to delay the effectiveness of recommendations, the power to remove and appoint new members, and the authority to promulgate regulations concerning the requirements for recommendations to become in effect.

The majority further held that Congress had properly vested authority in the HHS secretary—a "Head of [a] Department"—to appoint Task Force members, as required by the Appointments Clause for "inferior officers." Although the 1999 statute that originally codified the Task Force had provided for it to be convened by the director of an agency within the Public Health Service (rather than the HHS secretary), the majority relied on the fact that an executive reorganization plan had transferred the

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powers of the Public Health Service to the HHS secretary. The secretary exercised that authority by ratifying the current Task Force's appointments during the pendency of the litigation and by directly appointing future members thereafter.

Thus, the majority held that the Task Force members were "inferior officers" who Congress had authorized to be appointed by a head of a department—the HHS secretary—in compliance with the Appointments Clause.

While the majority's conclusion upheld the existence—and by extension, the coverage recommendations—of the Task Force, the decision construed the Task Force's governing statutes to give the HHS secretary far greater control over the Task Force's actions than many had previously thought. Some commentators have noted that the price of upholding the Task Force may have been to significantly compromise its independence from political officers, like the HHS secretary.

Also notable is Justice Thomas's dissent, which Justices Alito and Gorsuch joined. The dissent argued for a much stricter application of the Appointments Clause, which Justice Thomas argued established a "default rule" that, in the absence of a clear and explicit congressional statement vesting appointment power elsewhere, all officers must be appointed by the president and confirmed by the Senate. In Thomas' view, the relevant statutes were not sufficiently clear in vesting appointment power in the HHS secretary, and that authority could not be implied from a reorganization plan ratified before the Task Force was established. Should this clear-statement rule eventually garner the support of a majority of the Supreme Court in the future, it could potentially call into question the appointments of many federal officers whose authorizing statutes might not be as clear as the dissenters would require on the question of appointment authority.

Key Takeaways

- The Supreme Court upheld the validity of the Task Force, whose recommended preventative health services are required to be covered by insurers without any cost-sharing

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obligation by insured patients.

- In the majority opinion, the court's analysis of the Task Force's governing statutes potentially expanded the HHS secretary's authority to supervise and control Task Force recommendations.
- The dissent advocated for a stricter view of the Appointments Clause, which, if adopted, could call into question the appointments of many other federal officials.

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