

Federal judge rules HIV prevention drug coverage unconstitutional on “religious freedom” grounds

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Last week a Federal Judge in Texas ruled unconstitutional an Affordable Care Act (ACA) requirement that US healthcare plans cover a pre-exposure prophylaxis (PrEP) drug which prevents the spread of the human immunodeficiency virus (HIV). The judge made this reactionary attack on public health on the basis that covering HIV prevention drugs violates the religious freedom of the plaintiffs. The WHO says that HIV, which, left untreated, leads to the life-threatening AIDS syndrome, is still a major global health emergency with more than 40 million deaths worldwide to date.

The case was brought to court in 2020 by a group of Republican Party connected Texas Christian fundamentalists on the behalf of Braidwood Management and Kelley Orthodontics, arguing that the lifesaving drugs such as Tuvada and Descovy can “facilitate or encourage homosexual behaviour,” with the plaintiffs challenging the legality under the Constitution and the Religious Freedom Restoration Act of 1993.

The Biden administration has announced it is “reviewing” the decision.

US District Judge Reed O’Connor went further than just HIV prevention, however, using it as a launching board for a broad attack on the entire framework of coverage for preventative services recommended by the US Preventative Task Force which are covered by private health insurance at no cost to the patient under ACA rules. The American Medical Association and a coalition of 60 medical organizations have warned that the ruling could mean that “patients would lose access to vital preventive healthcare services, such as screening for breast cancer, colorectal cancer, cervical

cancer, heart disease, obesity, diabetes, preeclampsia, and hearing.’

In fact, this is one of the primary aims of the lawsuit. No doubt businesses would be thrilled at the cost savings of not covering preventative care for their employees, and as will be shown, the real plaintiff to the case is the Republican Party, one of the twin parties of big business in the US. As much as the American financial oligarchy has moved to dismantle public health, letting diseases like COVID-19 and Monkeypox run rampant, so too does it move to remove access to life saving drugs. As Lenin wrote, “Political reaction all along the line is a characteristic feature of imperialism.” Its attitude to public health is no different.

Since their approval in the last decade, HIV PrEP treatments have become one of the necessary measures required to prevent further transmission of the virus, with the US Centers for Disease Control and Prevention (CDC) crediting its use with the decline in HIV diagnoses. Nearly 2.8 million people around the world rely on the drug according to the Global PrEP tracker database.

According to the Centers of Disease Control new HIV diagnoses decreased by 8 percent in the US from 2016 to 2019.

Male-to-male sexual contact still constitutes the vast majority of HIV infections in the US. That said, 1 in 5 new HIV infections are among women, according to the CDC, with the vast majority being through heterosexual contact. HIV operates on objective biological laws; it does not ask if someone is a gay male before infecting them, contrary to the idiotic insinuations of the Republican Party Christian

fundamentalists. In short, anyone can acquire HIV.

In many ways, the policy advanced by the ruling to let the virus which causes AIDS spread regardless of treatments available bears similarity to the same policy of the ruling elite of South Africa, which accounted for 20 percent of all AIDS cases in 2019.

In South Africa, where the government for years denied that HIV caused AIDS and told AIDS sufferers to merely “eat garlic,” HIV prevalence exceeds 15 percent among adults, according to a 2019 commentary by the Center for Strategic and International Studies.

As for the fraudulent claims advanced by the plaintiffs that AIDS is a gay disease, according to a 2021 IPSOS survey South Africa’s total non-heterosexual population (i.e. gay, bisexual, etc) is 8 percent, far less than the 15 percent who have the disease. In some South African communities, a staggering 60 percent of women have HIV. At the time of the commentary, of the 4,500 South Africans newly infected with HIV each week, nearly one-third were females ages 15-24.

Judge O’Connor’s ruling is not only outrageous, it is in fact unconstitutional, as it requires the state to enforce the religious views of Christian fundamentalists, blatantly violating the Establishment Clause of the US constitution, which stipulates a separation between church and state, not to mention spitting on the heritage of the American Revolution, which explicitly repudiated such concepts as a state religion. Thomas Jefferson famously declared that when the American people adopted the establishment clause they built “a wall of separation between the church and state.”

As we have pointed out, what remains of this wall is in the process of being demolished, with the US Supreme Court ordering state funding of religious education in Maine and striking down the right to abortion by overturning *Roe v. Wade* on the basis of explicitly Christian fundamentalist grounds.

The Texas case itself has the characteristics of a far-right conspiracy directed from the Republican Party.

Judge O’Connor is an arch-conservative appointed by George W. Bush in 2007.

Another plaintiff in the case, Dr Steven Hotze, who claimed covering PrEP for his employees would be contrary to his “sincere religious beliefs,” is a megadonor to the Republican Party. He has also

claimed that drugs like Truvada and Descovy, common over-the-counter PrEPs, can “facilitate or encourage homosexual behaviour.”

The initial filing was made by Austin-based attorney Jonathan Mitchell. Mitchell is a far-right political operative, having served as a court clerk for arch-reactionary former Supreme Court Justice Antonin Scalia. He also has connections to former president Donald Trump, who nominated Mitchell to lead the Administrative Conference of the United States. He ultimately did not pass confirmation after questions about his far-right political donors. Mitchell is also responsible for the “fetal heartbeat” abortion ban in Texas, and the earlier 2016 abortion ban.

The Southern US, in which Texas is situated, accounts for the majority of new HIV diagnoses, according to the CDC, at 51 percent for 2020. The CDC notes that “The heavy burden of HIV in the South, especially in those states considered the “Deep South,” is driven in part by socioeconomic factors like poverty and unemployment. The South has the highest poverty rate and lowest median household income compared to other regions of the U.S. Both factors are associated with poorer health outcomes and may contribute to a higher concentration of HIV and other chronic diseases like diabetes in the region.”

The CDC also cites the lack of health insurance, stating that “half of all Americans without health insurance live in the South,” as well as lack of hospitals and public transportation (especially in rural areas), and of medical personnel trained in treating HIV. The Texas ruling against PrEP insurance coverage will make it even more difficult to access preventative drugs as existing insurance plans will no longer cover them.



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