

Jenner Champions Underrepresented Communities in HIV Coverage Victory

News

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Jenner & Block Partner **David DeBruin**, Associate **Emanuel Powell**, Paralegal **Cheryl Olson**, and former Associates **Ilyana Green** and **Julius Mitchell** represented The Center for HIV Law and Policy (CHLP) in a landmark Supreme Court victory protecting access to PrEP coverage for employees and insured individuals across the country.

CHLP is a national organization that predominantly serves Black and Brown communities across the southern region of the US, advocating on behalf of individuals who face discrimination based on their HIV or STD status. Jenner's involvement began when CHLP's Executive Director reached out to the firm seeking support in a case with potentially far-reaching implications for HIV prevention and healthcare equity.

The matter originated in the Fifth Circuit out of Texas in the case *Kennedy v. Braidwood Management, Inc.*, in which Christian-owned businesses challenged the Affordable Care Act's requirement that employers and insurers cover PrEP without cost-sharing. Plaintiffs argued that the US Preventive Services Task Force (USPSTF), the body responsible for recommending which preventive services must be covered, was unconstitutionally structured because its members were not nominated by the President and confirmed by the Senate as required under the Appointments Clause of the Constitution. The Fifth Circuit agreed, ruling that USPSTF members wielded too much unreviewable authority to be considered anything other than principal officers requiring Senate confirmation, thereby jeopardizing the enforceability of the PrEP coverage mandate nationwide.

The case was then appealed to the US Supreme Court, where the Jenner team prepared a comprehensive amicus brief on behalf of CHLP along with a coalition of HIV advocacy organizations. The brief argued that the USPSTF members were lawfully appointed as inferior officers under the supervision of the Secretary of Health and Human Services, and that the Fifth Circuit's ruling, if upheld, would strip millions of people of access to life-saving preventive care without cost-sharing.

In a 6-3 decision, the Supreme Court agreed, reversing the Fifth Circuit and thereby affirming the arguments advanced by the Jenner team. The Court held that USPSTF members are indeed inferior officers properly appointed under the HHS Secretary's supervision, preserving the ACA's no-cost PrEP coverage mandate.

The ruling was an enormously significant victory for the communities that CHLP serves, particularly Black and Brown individuals in the South who disproportionately bear the burden of HIV and face systemic barriers to access genuine preventive care. CHLP's Executive Director expressed great enthusiasm about the outcome of this critical legal decision and has indicated a strong interest in continuing to collaborate with Jenner on future matters.

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