

**No. 23-10326**

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**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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BRAIDWOOD MANAGEMENT, INC., ET AL.,

*Plaintiffs-Appellees/Cross-Appellants,*

JOEL MILLER; GREGORY SCHEIDEMAN,

*Plaintiffs-Cross-Appellants,*

v.

XAVIER BECERRA, ET AL.,

*Defendants-Appellants/Cross-Appellees.*

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On Appeal from the United States District Court for the  
Northern District of Texas, Fort Worth Division  
No. 4:20-cv-283-O (Hon. Reed Charles O'Connor)

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**BRIEF OF *AMICUS CURIAE*  
THE SUSAN G. KOMEN BREAST CANCER FOUNDATION, INC.  
IN SUPPORT OF APPELLANTS/CROSS-APPELLEES**

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June 27, 2023

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## CERTIFICATE OF INTERESTED PERSONS

Pursuant to Circuit Rule 29.2, the undersigned counsel of record certifies that, in addition to the persons and entities listed in the parties' Certificates of Interested Persons, the following is a supplemental list of persons and entities that have an interest in the outcome of this case:

The Susan G. Komen Breast Cancer Foundation, Inc., *amicus curiae*;

David C. Frederick, counsel for *amicus* The Susan G. Komen Breast Cancer Foundation, Inc.;

Catherine M. Redlingshafer, counsel for *amicus* The Susan G. Komen Breast Cancer Foundation, Inc.;

Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., counsel for *amicus* The Susan G. Komen Breast Cancer Foundation, Inc.

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respectfully submitted,

/s/ David C. Frederick

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Susan G. Komen Breast Cancer Foundation, Inc. (“Komen”) is the world’s leading nonprofit breast cancer organization. Komen advocates on behalf of the millions of people who have been diagnosed with breast cancer, including more than 300,000 people in the United States who will be diagnosed with breast cancer and almost 44,000 who are expected to die from the disease in 2023 alone.

Komen’s mission is to save lives by meeting the most critical needs in communities and investing in breakthrough research to prevent and cure breast cancer. To that end, Komen has an unmatched, comprehensive 360-degree approach to fighting breast cancer across all fronts, including by (1) advocating for patients; (2) driving research breakthroughs; (3) improving access to high-quality care; (4) offering direct patient support; and (5) empowering people with trustworthy information. Komen’s work has helped reduce the mortality rate from breast cancer by 43% since its founding in 1982.

However, not all people have benefited equally from progress against breast cancer. Thus, Komen is committed to achieving breast health equity so that all

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<sup>1</sup> All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* states that no counsel for a party authored this brief in whole or in part, and no party or party’s counsel made a monetary contribution intended to fund its preparation or submission. No person other than *amicus*, its members, and its counsel made a contribution intended to fund the preparation or submission of this brief.



people have a fair and just opportunity to be as healthy as possible by breaking down the systemic and financial barriers that lead to poorer breast health outcomes through a variety of proven interventions.

Komen aims to assist the Court in understanding the importance of the Affordable Care Act's ("ACA") requirement that insurers cover certain breast-cancer-related preventive care measures – such as screenings, genetic testing, and preventive medications – and the consequences of the district court's decision striking these coverage requirements. Studies show that the ACA's elimination of cost-sharing for these types of services has had a profound impact on public health because such preventive care translates to earlier detection, earlier treatment, lower treatment costs, and fewer deaths from breast cancer. The costs of such preventive care – if not fully covered by insurance, which is the effect of the district court's decision – dissuade individuals from utilizing the services, and thus lead to later detection, later stage diagnoses, more aggressive treatment plans, higher treatment costs, and more deaths. This is especially true among populations most at risk for disparities in breast cancer outcomes, including communities of color, those living in rural areas, and those under financial distress.

## **SUMMARY OF ARGUMENT**

Breast cancer is the most common cancer among women in the United States, as well as the second most deadly. Fortunately, certain preventive care measures can help identify and reduce one's risk of breast cancer, and detect the disease years before symptoms develop. Risk reduction and early detection measures enable individuals and their care providers to fight breast cancer earlier, when more treatment options and better outcomes are possible. Such early efforts result in fewer breast-cancer-caused deaths and lower treatment costs. The ACA requires insurers to cover these essential preventive care measures completely, with no cost-sharing for people. By eliminating cost-sharing, the ACA's preventive care mandate ensures that everyone who needs access to such care has access.

The district court's decision limits the preventive care to which individuals have access, and thus increases (1) the risk of breast cancer progressing to more advanced stage; (2) treatment costs; and (3) the risk of breast-cancer-related deaths. For that reason, Komen respectfully requests that the Court reverse the district court's judgment.

## ARGUMENT

### I. THE ACA'S REQUIREMENT THAT INSURERS COVER PREVENTIVE SERVICES AIMED AT DETECTING BREAST CANCER EARLY REDUCES RISKS ASSOCIATED WITH LATE-STAGE BREAST CANCER, INCLUDING DEATH, AND LOWERS TREATMENT COSTS

Reliable access to affordable preventive care significantly reduces the risk of dying from breast cancer. Moreover, early detection can reduce the risk of being diagnosed with advanced cancer and can lower treatment costs.

#### A. Breast Cancer Diagnoses In The United States Are Prevalent And Often Fatal

Breast cancer is the most common type of cancer among women in the United States and the second most deadly.<sup>2</sup> As of 2020, nearly 4 million people in the United States had been diagnosed with the disease. In 2023 alone, more than 300,000 additional people are likely to be diagnosed with invasive breast cancer in the United States, and the disease will cause more than 40,000 deaths.<sup>3</sup>

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<sup>2</sup> Nat'l Cancer Inst., *Common Cancer Types* (updated Mar. 7, 2023), <https://www.cancer.gov/types/common-cancers#:~:text=The%20most%20common%20type%20of,are%20combined%20for%20the%20list>. For Black and Hispanic women in the United States, breast cancer is the most deadly cancer. Am. Cancer Soc'y, *Breast Cancer Death Rates Are Highest for Black Women – Again* (Oct. 3, 2022), <https://www.cancer.org/research/acs-research-news/breast-cancer-death-rates-are-highest-for-black-women-again.html>.

<sup>3</sup> Susan G. Komen Found., *Breast Cancer Statistics*, <https://www.komen.org/breast-cancer/facts-statistics/breast-cancer-statistics/>.

Breast cancer affects not only the individual diagnosed, but also their families, caregivers, and loved ones. Given the prevalence of the disease and how devastating it can be, it has become part of daily life for far too many. Fortunately, preventive care measures can significantly reduce the risk of breast-cancer-caused deaths, as well as the risk that an early diagnosis advances to a more severe and costly case.

**B. Medical Professionals Recommend Various Preventive Care Measures That Are Proven To Save Lives And Reduce Treatment Costs**

There are various preventive care measures providers recommend to identify both the risk associated with developing breast cancer and early signs of the disease, therefore positioning patients to treat the disease as early as possible. Early detection is crucial, as 98% of women diagnosed with breast cancer at the earliest stage live for five years or more, compared to about 31% of those diagnosed at the most advanced stage.<sup>4</sup>

Early detection and treatment methods have improved over time. In fact, these improvements resulted in a 43% decline in the breast cancer death rate in the United States between 1989 and 2020,<sup>5</sup> which prevented an estimated 460,000

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<sup>4</sup> Ctrs. for Disease Control & Prevention & Nat'l Cancer Inst., Cancer Statistics Working Grp., *U.S. Cancer Statistics Data Visualizations Tool* (rel. June 2023) (based on 2022 submission data (1999-2020)), [www.cdc.gov/cancer/dataviz](http://www.cdc.gov/cancer/dataviz).

<sup>5</sup> Angela N. Giaquinto et al., *Breast Cancer Statistics*, 72 *CA: Cancer J. Clinicians* 524 (2022).

breast cancer deaths during that time.<sup>6</sup> Three of the most effective preventive care methods are (1) screening mammography; (2) genetic counseling and testing; and (3) preventive, risk-modifying medications. Each of these methods of care – if done early and as recommended by healthcare providers – is proven to significantly reduce the risk of breast cancer fatalities. In addition, these measures help to reduce treatment costs and prevent breast cancers from progressing to more advanced stages.

***Screening Mammography.*** The most effective preventive care used to detect breast cancer in women of average risk is screening mammography, which is a test that uses X-rays to create images of the breast; the resulting image is referred to as a “mammogram.”<sup>7</sup> Radiologists use mammograms to identify signs of breast cancer even when the cancer is at its earliest stages and thus when the individual’s chances of long-term survival are highest.<sup>8</sup> Importantly, mammograms can reveal cancer before the individual experiences any symptoms.<sup>9</sup> In fact,

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<sup>6</sup> *Id.*

<sup>7</sup> Susan G. Komen Found., *Mammography* (rev. Nov. 30, 2022), <https://www.komen.org/breast-cancer/screening/mammography/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

studies suggest that mammograms can reveal breast cancer up to 10 years before it could be detected by the individual or even a doctor.<sup>10</sup>

As the most effective screening test used to find breast cancer in women today, mammography is a powerful method that often leads to an early diagnosis, and thus early treatment.<sup>11</sup> Indeed, women who participate in mammography screenings have a 41% reduction in their risk of dying of breast cancer within 10 years and a 25% reduction in the rate of advanced breast cancers.<sup>12</sup> Moreover, screening contributes to a 29% reduction in the number of women diagnosed with metastatic breast cancer that has spread to other parts of the body (which is the most advanced stage and is incurable).<sup>13</sup> Missing even one screen for breast cancer confers a significantly higher risk of breast cancer mortality within 10 years.<sup>14</sup>

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<sup>10</sup> Susan G. Komen Found., *Breast Cancer Screening & Early Detection*, <https://www.komen.org/breast-cancer/screening/#screening>.

<sup>11</sup> Susan G. Komen Found., *Mammography* (rev. Nov. 30, 2022), <https://www.komen.org/breast-cancer/screening/mammography/>.

<sup>12</sup> Stephen W. Duffy et al., *Mammography Screening Reduces Rates of Advanced and Fatal Breast Cancers: Results in 549,091 Women*, 126 *Cancer* 2971 (2020).

<sup>13</sup> Ronald E. Gangnon et al., *The Contribution of Mammography Screening to Breast Cancer Incidence Trends in the United States: An Updated Age-Period-Cohort Model*, 24 *Cancer Epidemiol. Biomarkers Prev.* 905 (2015).

<sup>14</sup> Stephen W. Duffy et al., *Beneficial Effect of Consecutive Screening Mammography Examinations on Mortality from Breast Cancer: A Prospective Study*, 299 *Radiology* 541 (2021).

***Genetic Counseling and Testing.*** Another effective preventive measure is testing women who may be genetically predisposed to breast cancer. Such testing is important given that approximately 10% of breast cancers are related to the inheritance of mutated genes.<sup>15</sup> Once it is determined that an individual has inherited particular gene mutations, “the risk of developing breast cancer or other cancers can be as high as 80%.”<sup>16</sup>

Genetic counseling and testing are currently recommended for individuals who have a personal or family history of breast, ovarian, tubal, or peritoneal cancer, or an ancestry associated with breast cancer susceptibility.<sup>17</sup> Given the prevalence of breast cancer diagnoses in the United States, *see supra* p. 4, many people fall into this category. To identify whether an individual has potentially harmful mutations in breast cancer susceptibility genes (BRCA1 or BRCA2,

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<sup>15</sup> Anisha Ninan, Johns Hopkins Med., *Hereditary Breast Cancer*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/breast-cancer/hereditary-breast-cancer>.

<sup>16</sup> *Id.*

<sup>17</sup> U.S. Preventive Servs. Task Force, *BRCA-Related Cancer: Risk Assessment, Genetic Counseling, and Genetic Testing*, Final Recommendation Statement (Aug. 20, 2019), <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/brca-related-cancer-risk-assessment-genetic-counseling-and-genetic-testing>. With respect to the risk of developing breast cancer, “the most important inherited gene changes are in the BRCA1 and BRCA2 genes.” Individuals with one of these genes have Hereditary Breast and Ovarian Cancer (“HBOC”) syndrome and have an increased risk of breast cancer. Am. Cancer Soc’y, *Genetic Counseling and Testing for Breast Cancer Risk* (rev. Dec. 16, 2021), <https://www.cancer.org/cancer/types/breast-cancer/risk-and-prevention/genetic-testing.html>.

among others), medical professionals first utilize risk-assessment tools designed to study the individual's family history.<sup>18</sup> For example, doctors may employ mathematical models to analyze a patient's family history and other factors in order to determine the likelihood that the patient has a mutated gene.<sup>19</sup> If such a risk is apparent, it is recommended that the individual receive genetic counseling<sup>20</sup> and potentially BRCA testing.<sup>21</sup> BRCA testing itself uses DNA analysis of a blood, saliva, or cheek cell sample to identify mutations in breast cancer-susceptible genes.<sup>22</sup>

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<sup>18</sup> U.S. Preventive Servs. Task Force, *BRCA-Related Cancer: Risk Assessment, Genetic Counseling, and Genetic Testing*, Final Recommendation Statement (Aug. 20, 2019), <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/brca-related-cancer-risk-assessment-genetic-counseling-and-genetic-testing>.

<sup>19</sup> Am. Cancer Soc'y, *Genetic Counseling and Testing for Breast Cancer Risk* (rev. Dec. 16, 2021), <https://www.cancer.org/cancer/types/breast-cancer/risk-and-prevention/genetic-testing.html>.

<sup>20</sup> “Genetic counseling can help you understand what the results could mean for your health, help you decide whether genetic testing is right for you, and recommend a specific set of genetic tests based on your family history.” Mayo Clinic, *BRCA Gene Test for Breast and Ovarian Cancer Risk* (Aug. 12, 2021), <https://www.mayoclinic.org/tests-procedures/brca-gene-test/about/pac-20384815>.

<sup>21</sup> U.S. Preventive Servs. Task Force, *BRCA-Related Cancer: Risk Assessment, Genetic Counseling, and Genetic Testing*, Final Recommendation Statement (Aug. 20, 2019), <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/brca-related-cancer-risk-assessment-genetic-counseling-and-genetic-testing>.

<sup>22</sup> Susan G. Komen Found., *Genetic Counseling For People Who Do Not Have Breast Cancer* (updated Apr. 4, 2023), <https://www.komen.org/breast-cancer/risk-factor/gene-mutations-genetic-testing/genetic-counseling-for-people-who-do-not-have-breast-cancer/>.



Like screening mammography, screening for genetic mutations that make an individual more likely to develop breast cancer is an effective way to detect and combat breast cancer early, including before symptoms appear. Individuals who test positive for gene mutations that make them prone to breast cancer are recommended for more frequent breast imaging in order to identify symptoms early, in the event they do develop, and can even take affirmative steps to lower their risk of developing the disease, *see, e.g., infra* pp. 10-12 (describing medications that lower the risk of breast cancer).

***Risk-Modifying Medications.*** Medical professionals may recommend that individuals with a high risk of breast cancer take preventive medications, such as tamoxifen, raloxifene, or certain aromatase inhibitors.<sup>23</sup> Both tamoxifen and raloxifene are selective estrogen receptor modulators (“SERMs”), which are drugs that reduce the effects of estrogen in the breast. In doing so, these medications “depriv[e] breast cancer cells of the fuel they need to grow and thrive.”<sup>24</sup> Studies show that tamoxifen can lower the risk of invasive breast cancer by about 50% and that raloxifene can lower the risk of breast cancer by about 38%.<sup>25</sup>

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<sup>23</sup> Mayo Clinic, *Breast Cancer Chemoprevention: Drugs That Reduce Risk* (Oct. 19, 2021), <https://www.mayoclinic.org/diseases-conditions/breast-cancer/in-depth/breast-cancer/art-20045353>.

<sup>24</sup> *Id.*

<sup>25</sup> Susan G. Komen Found., *Research Table: Tamoxifen and Raloxifene to Reduce Breast Cancer Risk* (rev. Oct. 4, 2022), <https://www.komen.org/breast-cancer/facts-statistics/research-studies/topics/use-of-tamoxifen-and-raloxifene-to->

Aromatase inhibitors – such as anastrozole, exemestane, and letrozole – reduce the amount of estrogen in the body and are used to prevent breast cancer recurrence after menopause. Some studies show that “aromatase inhibitors are about 30% more effective in preventing breast cancer recurrence than tamoxifen or raloxifene.”<sup>26</sup>

Preventive measures like mammography screenings, genetic testing, and risk-modifying medications save lives. Early detection that follows the use of these measures means lower costs of treatment, compared to those diagnosed at a later stage.<sup>27</sup> For example, one study showed that “[t]he average costs per patient

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[reduce-the-risk-of-breast-cancer/#:~:text=Both%20tamoxifen%20and%20raloxifene%20can,at%20high%20risk%20%5B1%5D.](#)

<sup>26</sup> Ronda Wendler, MD Anderson Cancer Ctr., *Diagnosed With Breast Cancer After Menopause? Aromatase Inhibitors Can Help* (Aug. 18, 2022), <https://www.mdanderson.org/cancerwise/diagnosed-with-breast-cancer-after-menopause--aromatase-inhibitors-can-help.h00-159542112.html#:~:text=Clinical%20trials%20have%20shown%20that,with%20estrogen%2Dfueled%20breast%20cancers.>

<sup>27</sup> Helen Blumen et al., *Comparison of Treatment Costs for Breast Cancer, by Tumor Stage and Type of Service*, 9 Am. Health Drug Benefits 23 (2016) (concluding that “[t]reating advanced- versus early-stage breast cancer is associated with significant increases in incremental costs”); *see also* Jinani Jayasekera & Jeanne S. Mandelblatt, *Systematic Review of the Cost Effectiveness of Breast Cancer Prevention, Screening, and Treatment Interventions*, 38 J. Clin. Oncol. 332 (2020) (concluding that preventive measures generally reduce the cost of treatment, especially when utilized by the groups of individuals who are most likely to benefit, such as those with genetic predispositions to breast cancer); Sujha Subramanian et al., *Cost of Breast Cancer Treatment in Medicaid: Implications for State Programs Providing Coverage for Low-Income Women*, 49 Med. Care 89 (2011).

allowed by the insurance company in the year after diagnosis” more than doubled for individuals diagnosed with Stage III or Stage IV cancer, as opposed to Stage 0 or Stage I cancer.<sup>28</sup> As a result, the researchers concluded that “[k]nowledge of the relevant stage-specific cost data provides support for strengthening programs, such as breast cancer screening, that are designed to shift breast cancer diagnosis to earlier disease stages.”<sup>29</sup>

Ultimately, access to breast cancer preventive care measures results in more people living longer with lower costs of care.

### **C. The ACA’s Preventive Care Coverage Expands Access To Life-Saving Care**

Given the extraordinary benefits of preventive care, it is not surprising that the ACA includes a requirement obligating insurers and group health plans to cover certain breast-cancer-specific preventive care.<sup>30</sup> Specifically, insurers must

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<sup>28</sup> Blumen, *Comparison of Treatment Costs for Breast Cancer, by Tumor Stage and Type of Service*, 9 Am. Health Drug Benefits 23 (2016).

<sup>29</sup> *Id.*

<sup>30</sup> The ACA empowers certain agencies – including the Health Resources and Services Administration (“HRSA”) and the Preventive Services Task Force (“USPSTF”) – to determine which preventive care services must be covered. Komen understands that the district court found unconstitutional USPSTF’s authority to prepare such guidelines and recommendations and found constitutional HRSA’s authority to prepare such guidelines and recommendations, *Braidwood Mgmt. Inc. v. Becerra*, 627 F. Supp. 3d 624 (N.D. Tex. 2022) (ROA.1780-1821), and that Appellants and Appellees are challenging each holding, respectively. Komen does not have a position on the constitutional questions before the Court, and instead submits this brief to educate the Court on the benefits of preventive care for breast cancer and the consequences of the district court’s decision.

cover mammography screenings every one to two years for women aged 40 and older.<sup>31</sup> In addition, plans must cover risk assessment for individuals with ancestry associated with breast cancer susceptibility gene mutations, and, for those with a positive result, genetic counseling and testing.<sup>32</sup> Finally, insurers must cover risk-reducing medications (such as tamoxifen, raloxifene, and aromatase inhibitors) for women who are at increased risk for breast cancer.<sup>33</sup>

The ACA's requirement that insurers cover these preventive measures has had a profound impact, including by increasing access to care, reducing treatment costs, and, ultimately, saving lives. Indeed, since the ACA eliminated cost-sharing for certain preventive services, studies show increased utilization of breast cancer preventive services. Historically, marginalized populations in particular have benefited from the elimination of cost-sharing for certain preventive services. Since the ACA was enacted in 2010, researchers found that mammography

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<sup>31</sup> See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. II, § 223, 136 Stat. 4459, 4883 (2022) (providing that any reference to USPSTF's breast cancer screening, mammography, and prevention be treated as referencing the pre-2009 breast cancer screening recommendations, including that women 40 and older receive screenings every one to two years are covered under the ACA until 2025).

<sup>32</sup> HealthCare.gov, *Preventive Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.

<sup>33</sup> *Id.*

screening among Black Americans has significantly increased.<sup>34</sup> Another study shows an improvement in mammography screening rates in lower-income women in Medicaid expansion States when compared with non-expansion States.<sup>35</sup>

Furthermore, by removing cost-sharing for these preventive care measures, the passage of the ACA is associated with increases in both (a) genetic testing<sup>36</sup> and (b) access to Medicaid-financed prescriptions for breast cancer hormonal therapies (at least within Medicaid expansion States).<sup>37</sup> The ACA's preventive care coverage has even helped cancer survivors obtain necessary care.<sup>38</sup>

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<sup>34</sup> Soudabeh Dehkordy et al., *Breast Screening Utilization and Cost Sharing Among Employed Insured Women Following the Affordable Care Act: Impact of Race and Income*, 28 J. Women's Health (Larchmt) 1529 (2019).

<sup>35</sup> Yoshiko Toyoda et al., *Affordable Care Act State-Specific Medicaid Expansion: Impact on Health Insurance Coverage and Breast Cancer Screening Rates*, 230 J. Am. Coll. Surgeons 775 (2020). Not surprisingly, Medicaid expansion also increased the diagnosis of early-stage disease and increased access to treatment. Quyen D. Chu et al., *Positive Impact of the Patient Protection and Affordable Care Act Medicaid Expansion on Louisiana Women with Breast Cancer*, 127 Cancer 688 (2021).

<sup>36</sup> Hope C. Norris et al., *Utilization Impact of Cost-Sharing Elimination for Preventive Care Services: A Rapid Review*, 79 Med. Care Res. Rev. 175 (2022).

<sup>37</sup> Johanna C. Maclean et al., *The Effect of Medicaid Expansion on Prescriptions for Breast Cancer Hormonal Therapy Medications*, 55 Health Serv. Res. 399 (2020).

<sup>38</sup> Maria Pisu et al., *Costs of Cancer Along the Care Continuum: What We Can Expect Based on Recent Literature*, 124 Cancer 4181 (2018).

## **II. THE DISTRICT COURT’S DECISION WOULD LIMIT ACCESS TO CARE, HARM TREATMENT EFFORTS, INCREASE COSTS, AND RISK LIVES**

It is undeniable that the preventive care covered by the ACA has made a meaningful difference in the lives of people throughout the country. The remedy the district court ordered ensures that fewer people will have access to this care. As a direct result, more people will die from breast cancer.

The district court held unlawful “[a]ll agency action taken to implement or enforce the preventive care coverage requirements in response to an ‘A’ or ‘B’ recommendation by the [USPSTF] on or after March 23, 2010.”<sup>39</sup> Pursuant to this ruling, insurers would no longer be required to fully cover the costs of certain preventive care measures recommended by the USPSTF. As discussed, *see supra* pp. 13-14, out-of-pocket expenses borne by individuals directly impact their utilization of healthcare services. Consequently, by striking the requirement that insurers cover certain preventive care measures, the district court’s judgment ensures that fewer people will have access to these preventive care measures.

That outcome will be devastating. Preventive care measures covered by the ACA – including those recommended by both the USPSTF and HRSA – are lifesaving. Those measures can prevent breast cancer from being diagnosed at later stages and reduce the cost of treatment. By limiting access to those screening

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<sup>39</sup> *Braidwood Mgmt. Inc. v. Becerra*, ECF No. 113, at 27 (ROA.2129).

and treatment measures, the district court's ruling stifles these momentous benefits. Accordingly, Komen respectfully submits that the Court should overturn (1) the district court's decision granting summary judgment (in part) to Appellees and (2) its conclusion that the USPSTF's preventive care recommendations are unlawful and unenforceable.

### CONCLUSION

The district court's judgment granting summary judgment (in part) to appellees should be reversed.

Respectfully submitted,

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June 27, 2023

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the applicable type-volume limitation set forth in Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,382 words, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

I further certify that this brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because it has been prepared using Microsoft Word 2016 in a proportionally spaced typeface (Times New Roman, 14 point).

*/s/ David C. Frederick*

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June 27, 2023



## CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of June 2023, I caused the foregoing brief to be submitted electronically with the Clerk of the Court through the Court's CM/ECF system and that a copy of the same was served upon all counsel of record through the Court's CM/ECF system.

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