Lawyer Who Fought Abortion Rights Takes Aim at HIV Prevention PrEP

Requiring insurers to cover PrEP encourages homosexual behavior, promiscuity and drug use, claims a federal lawsuit by Jonathan Mitchell.

July 15, 2022 By Trent Straube

This should come as no surprise: The man responsible for numerous anti-abortion lawsuits has filed a federal case to limit insurance coverage of PrEP, or pre-exposure prophylaxis, meds that prevent HIV. And that's not the only pending legal challenge that could obstruct access to HIV prevention and services.

As the Advocate reports, Jonathan Mitchell, a conservative Texas lawyer, filed a case—Kelley v. the United States of America—in 2020 that challenges the Affordable Care Act's requirement that health insurance providers must cover PrEP.

The lawsuit reads in part:

> The PrEP mandate forces religious employers to provide coverage for drugs that facilitate and encourage homosexual behavior, prostitution, sexual promiscuity, and intravenous drug use. It also compels religious employers and religious individuals who purchase health insurance to subsidize these behaviors as a condition of purchasing health insurance. This substantially burdens the exercise of religion.…
>
> There is no compelling governmental interest in providing PrEP drugs at zero marginal cost. And even if there were, there are ways to achieve this goal in a manner that is less restrictive of the plaintiffs' religious freedom.
>
> The Court should therefore enjoin the defendants from enforcing the PrEP mandate against the plaintiffs or any other individual or employer who objects to the coverage of PrEP drugs for sincere religious reasons.

"The PrEP cases recently filed should alarm us all," Richard Albert, a constitutional scholar and professor of law at the University of Texas at Austin, told the Advocate. "They suggest that LGBTQ+ rights will come under more intense and more frequent attack now that the court has

telegraphed its willingness to revisit hard-won constitutional protections against sexual orientation discrimination."

> For the @Guardian, I examine the "dangerous" legal ideology behind #Texas #abortion law #SB8. The law's architect, Jonathan F. Mitchell, promotes a strategy that empowers legislators to thwart the judiciary, an idea critics call "deeply nihilistic" #txlegehttps://t.co/dXcgP3Y8TT
>
> — Mary Tuma (@TumaTime) October 12, 2021

As the Advocate noted, Mitchell's anti-PrEP lawsuit is one of several legal challenges by conservatives against HIV services and health care access for LGBTQ people. For example, a 2021 bill introduced in Texas aims to give health care providers the right not to treat patients because of the providers' religious beliefs. This could include the right to prescribe PrEP or contraception—or even to treat a patient, for example, who had a heart attack but is also transgender.

Mitchell has much clout in the legal system. A 2001 graduate of University of Chicago Law School, he clerked for the late Supreme Court Justice Antonin Scalia and served as the solicitor general of Texas from 2010 to 2015. He has ties with the ultraconservative groups such as the Federalist Society, a legal organization, and The Hoover Institute, a thinktank.

In addition to filing antiabortion lawsuits that defend the "sanctuary of the unborn," Mitchell has focused his law career on attacking unions, same-sex marriage and LGBTQ rights. For example, according to a profile on Mitchell in The Guardian, he has defended companies that want to fire employees because they are gay.

Federal lawsuits that impede access to PrEP would run counter to the stated goals of federal efforts to end the HIV epidemic. For example, the National HIV/AIDS Strategy, recently updated for 2022 to 2025, aims to reduce new HIV infections by 75% by 2025 and by 90% by 2030. To learn more, see "What's New in the Updated National HIV/AIDS Strategy?" Similarly, the national initiative "Ending the HIV Epidemic: A Plan for America," launched in 2019 by President Donald Trump, sets similar goals but with different strategies. Both plans call for increasing access to PrEP.

The Food and Drug Administration approved the first PrEP medication (Truvada) as HIV prevention 10 years ago this week, on July 16, 2012. PrEP is now available as daily pills, including a generic version, and a long-acting injection.

Scientists estimate PrEP to be about 99% effective among men who have sex with men and 88% to 90% among heterosexual men and women (though researchers believe this latter number is likely higher). For more details, see "How Well Do U=U and PrEP Work? The CDC Updates Its Answers."

To learn more about PrEP, PEP (post-exposure prophylaxis) and other prevention methods, see the POZ Basics on HIV Prevention. And for a collection of related articles, click #PrEP. You'll find headlines such as:

- "On-Demans PrEP Works as Well as Daily Pills,"
- "Illinois Pharmacists Can Now Prescribe HIV Prevention Meds,"
- "Ten Years Later, Where Are My Options? Lingering Questions From a Black Gay Advocate" and
- "Over 100 HIV Groups Urge Congress to Fund a PrEP Program."

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