

Fighting for Access to Lifesaving HIV Medicine

November 16, 2023 | Article |

VIEWPOINT TOPICS

- Pro Bono

RELATED PRACTICES

RELATED INDUSTRIES

Even with breakthrough medication that transformed the human immunodeficiency virus (HIV) from a near-certain fatal disease to a manageable but chronic illness, many with HIV still endure debilitating effects. For about one-third of US HIV patients, efforts to suppress the infection are not fully effective, and more than 10 percent of those with HIV are unaware of their illness, according to CDC estimates. Even with early diagnosis and treatment, HIV raises the risk of heart attack, certain cancers, and pulmonary disease — and the disease and treatment also boost the likelihood of many other serious health conditions, such as diabetes and liver, kidney, bone, and neurocognitive diseases.

Along with stark racial disparities in infection rates, people who have unprotected sex and who inject drugs are disproportionately susceptible. The stigma associated with the disease can also be extremely harmful, contributing to depression, lower adherence to prescribed treatments, and unhealthy coping methods, including substance abuse.

Religious-Based Challenge Reaches the Fifth Circuit

In 2012, about three decades into the AIDS epidemic, the FDA approved HIV pre-exposure prophylaxis (PrEP), a daily pill that, properly used, reduces the viral load of HIV nearly to zero. After the US Preventative Services Task Force gave it an “A” rating, insurers were required to cover PrEP for medically qualifying patients without “cost sharing” starting in June 2020. In other words, such patients would have zero co-pay obligation to access this lifesaving medication.

Shortly after the mandate was implemented, a group of Christian business owners and six individuals together sued the government, challenging the mandate of complete insurance coverage of PrEP in a Texas federal district court on alleged religious grounds. After the court struck down part of the Affordable Care Act (ACA) requirement for no-cost coverage of PrEP in March of 2023, the government appealed that decision to the US Court of Appeals for the Fifth Circuit, which stayed the implementation of the lower court's order during the appeal. When GLAD (GLBTQ Legal Advocates & Defenders) decided to file an amicus (friend of the court) brief, the organization reached out to Mintz attorney Drew DeVoogd, who had assisted GLAD with other pivotal legal filings.

Drew and Pro Bono Committee Chair Sue Finegan quickly agreed to help, marshaling a team to prepare a powerful and extensively researched brief in just six weeks. “We jumped at the opportunity to work with the brilliant lawyers at GLAD again, particularly on such an important public health and welfare-related topic,” Drew said.

Utilizing Public Health Research and Historical Context to Support Powerful Arguments

Mintz health law attorney Kate Stewart, drawing on her extensive knowledge of the field, helped guide the team's research that pulled together detailed information on the medical and societal impact of HIV and the prevalence of HIV-related illness and death in the United States. The team also relied on a rigorous analysis undertaken by public health experts from both Yale and Harvard for the first-year results if cost sharing is permitted. Using that study, the briefing team concluded that if the lower court decision is allowed to stand, approximately 20,000 additional Americans will contract HIV within the next five years, costing the US health care system roughly \$8 billion dollars. These staggering negative outcomes, the brief argued, could be prevented by reversing the lower court. At all phases of the project, Mintz attorneys Courtney Herndon and Katharine Foote, project analyst Rachel Wang, former project analyst Shaina Sikka, and Mintz summer associate Brooke Siegal provided critical support throughout the effort.

Attorneys at GLAD developed the overall structure of the brief and drafted sections, which Mintz populated with the relevant research and extensively edited. Drew and Courtney managed workflows, helping to coordinate work on multiple drafts. In late June 2023, GLAD filed the brief on behalf of the HIV Medicine Association and the National Alliance of State and Territorial AIDS Directors. When the Fifth Circuit ultimately rules on whether patients must pay for PrEP treatments, the ruling could have ramifications on a broad range of other preventative services requirements under the Affordable Care Act.

"The GLAD and Mintz team put together a truly compelling picture of the tragic history of the HIV pandemic, as well as the dramatic real-life repercussions, in terms of human life and dollars, of allowing the lower court's decision to stand," Courtney said. "Every time I have the honor of working on a case like this, I am reminded of the practical and life-changing impact of our work as attorneys," she added.

"The Mintz attorneys brought to bear tremendous depth of experience in litigation and insights that helped us prepare a persuasive and emotional brief. Our goal was to get the judges to care about ending the HIV epidemic, and we couldn't have made such powerful arguments without Mintz's commitment and knowledge. We are so appreciative of their dedication and skills."

Ben Klein

Senior Director of Litigation and HIV Law, GLBTQ Legal Advocates & Defenders (GLAD)

Volunteer Spotlights

"The devastating human and economic impact that reinstating cost sharing would likely have, made it necessary to try to educate the Fifth Circuit on the potential short- and long-term ramifications of allowing the lower court opinion to take effect. We are hopeful that the court will carefully consider the compelling data set forth in our brief."

Drew DeVoogd

Member

"Working with incredibly intelligent and dedicated attorneys from GLAD, we urged the Fifth Circuit to reverse a dangerous ruling that could have far-reaching implications. We have the opportunity to do so much good in the world, and I am so lucky to take on this work with Mintz's enthusiastic support."

Courtney Herndon

Associate

Pro Bono Team

Attorneys

Andrew H. DeVoogd, Member

Susan M. Finegan, Pro Bono Committee Chair

Kate F. Stewart, Of Counsel

Courtney Herndon, Associate

Katharine K. Foote, Associate

Brooke Siegal, Summer Associate

Project Analysts

Rachel Wang, Project Analyst

Shaina Sikka, Former Project Analyst

Authors