US Supreme Court hears challenge to Biden administration vaccine mandates

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The US Supreme Court Friday heard arguments on rules issued by the Biden administration mandating vaccinations for large employers and workers at health care facilities receiving Medicare and Medicaid funding. The rules are being challenged by Republican-led state governments, as well as a coalition of employer groups.

The right-wing majority on the court seemed ready to accept claims by opponents of the rules that requiring the vaccination of workers against the deadly coronavirus will impose intolerable costs on employers and usurp the prerogatives of state governments. A number of Republican-controlled states have even passed laws banning vaccine mandates.

Scott A. Keller, an attorney representing a lobbying group opposed to the requirements, nakedly argued that businesses' financial interests must be the determining factor in deciding whether to implement the public health measure, stating, "This is going to cause a massive economic shift in the country, billions upon billions of non-recoverable costs."

Voicing the concerns within the ruling class over the ongoing labor shortage and any relative leverage it may grant to workers, he added that "as soon as businesses have to put out their plans and this takes effect, workers will quit. That itself will be a permanent worker displacement that will ripple through the national economy."

The case before the court involves two separate rules issued in November by US government agencies. The Occupational Safety and Health Administration (OSHA) is requiring that employers with 100 or more workers mandate employees be vaccinated or submit to weekly testing. A separate rule issued by the US Department of Health and Human Services' Centers for Medicare & Medicaid Services (CMS) stipulates that medical facilities that receive Medicaid and Medicare funds require vaccinations for certain categories of workers.

In previous rulings the Supreme Court has upheld vaccine mandates imposed by state governments in a variety of circumstances. The Supreme Court agreed to hear the case using an expedited process, and a decision may come very soon. The justices are scheduled to reassemble Monday, the day the employer mandates take effect.

Republican state officials are asking the Supreme Court to impose a stay on the employer vaccine mandates. In December a panel of judges on the 6th US Circuit Court of Appeals based in Cincinnati ruled by a vote of 2-1 in favor of the administration, lifting a hold placed on the OSHA regulations. In its ruling the judges stated that the administration had "demonstrated the pervasive danger that COVID-19 poses to workers—unvaccinated workers in particular—in their workplaces."

Following the ruling the Biden administration announced that employers would have until January 10 to adopt policies compliant with the new OSHA rules. Weekly testing of unvaccinated employees must go into effect by February 9.

Meanwhile, the Biden administration is asking the Supreme Court to reverse two lower court rulings that blocked implementation of the vaccine mandates for health care workers in 24 states, reasonably arguing the rules are necessary in the midst of a pandemic that has killed over 800,000 in the United States alone.

Backing the Republican challenge to the vaccine mandates are several Christian fundamentalist groups such as the American Family Association and business groups such as the National Federation of Independent Business and the Retail Industry Leaders Association.

Several unions, including the United Auto Workers, have also opposed vaccine mandates on the supposed grounds of protecting employee privacy rights and upholding the sanctity of labor contracts. Given that the UAW has refused to take elementary steps to protect

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workers—such as reporting the number and location of COVID cases, demanding full pay for those quarantining or isolating, or even tracking and reporting deaths due to COVID of its members—the position of the UAW is entirely hypocritical, essentially a policy for the mass infection of workers.

In arguments before the courts Friday conservative justices focused their fire on the new OSHA vaccine regulations. This led some legal observers to speculate that the court may allow the CMS rules for medical facilities to go into effect but block the broader employer mandate.

The conservative majority on the court evinced a general contempt for medical science. For example, Justice Clarence Thomas suggested that younger workers, who may not be as susceptible to severe illness, should not be subjected to the same rules as older workers. Right-wing Justice Neil Gorsuch chose to attend the hearing without even wearing a mask.

The conservative justices appeared hostile to supporting the authority of OSHA to impose new restrictions on employers, even under conditions of a catastrophic health emergency. The basic line of argument, entirely cynical, was that OSHA, despite its clear mandate to protect workers' health and safety, did not have specific authority to require vaccinations.

However, OHSA issued the rules under provisions of a 1970 law that gives the agency power to impose emergency regulations if it can show workers are exposed to a grave danger, clearly the present situation.

Broad sections of the ruling class are opposing even the most elementary measures to control the virus, including vaccination. This reflects on the one hand intransigent opposition to regulations, no matter how necessary for public health and safety, that in any way restrict big business. There is also the more immediate fear that the enforcement of a vaccine and testing requirement may limit to some extent the supply of labor, threatening the flow of profits to Wall Street.

Last summer the Supreme Court voted 6-3, with all the conservative justices united against, to strike down an eviction moratorium imposed on public health grounds by US Centers for Disease Control and Prevention.

As far as the CMS rules for health care providers, the courts have established firm precedents that the government can impose rules on those organizations and institutions receiving federal funds. Even conservative justices appeared hostile to claims that the vaccine mandates in this instance represented a usurpation. Justice Kavanaugh, for example, noted that most medical providers strongly supported the regulations.

The Biden administration, for its part, has supported employer vaccine mandates as part of its failed vaccine-only strategy to combat the pandemic. Given the explosive spread of the Omicron variant, which has demonstrated its ability to at least partially evade vaccines, this policy has been exposed as bankrupt. Only 18 percent of the US population has received a third booster shot, which has been demonstrated to be necessary to provide substantial protection against Omicron.

The refusal of the Biden administration to advance any public health measures beyond vaccines to combat COVID-19 is nothing short of criminal. In practice the policy of the Democratic Party, as with the Republicans, is to let the virus run rampant, decimating older and immune-compromised sections of the population. In the midst of the worst surge of the pandemic to date, the Biden administration has insisted that all businesses and public schools remain open, no matter the level of sickness and death.

The decision to allow the virus to spread unchecked is dictated entirely by the concerns of the financial oligarchy, which fears that implementing the well-understood public health measures needed to eliminate the virus would place an intolerable strain on the vastly over-leveraged markets. However, the more the virus is allowed to spread, the more likely it is that new and more vaccine-resistant variant will continue to emerge, overrunning overstretched health care systems and spreading death.

The fight for the implementation of the public health measures needed to contain and eliminate COVID is a life-or-death question. It requires above all the development of a political movement of the working class aimed at breaking the grip of big business over all aspects of economic and social life.

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