Harry Nelson on Yahoo Finance: Vaccine mandates: Th ‘big question’ at the heart of a Supreme Court challenge

Co-Founder and Managing Partner Harry Nelson was interviewed on Yahoo Finance to weigh in on The U.S. Supreme Court hearing regarding emergency applications for and against the Biden administration’s right to enforce two vaccine mandates.

FROM THE ARTICLE:

The U.S. Supreme Court is scheduled on Friday to hear oral arguments on emergency applications for and against the Biden administration’s right to enforce two vaccine mandates that impact roughly 100 million U.S. workers, and that, for now, remain legal limbo.

The in-person arguments, rarely granted to handle emergency applications, will address a narrow issue: whether the states a business groups seeking to invalidate the mandates as unconstitutional can keep them from being carried out until courts determine the legality of the mandates themselves.

“The big question in both cases is whether the federal government has the authority to impose such a sweeping requirement, whether the government followed the appropriate due process procedure, and whether the government overreached by impos rules that are going to strain businesses already struggling with major staffing shortages,” Harry Nelson, founder and managi partner of health care law firm Nelson Hardiman, said about the broader constitutional issue.

On Nov. 4, senior Biden administration officials said that starting on Jan. 4, U.S. employers with 100 or more workers must en employees are either fully vaccinated for COVID-19, or tested each week for the virus, if they choose to offer that alternative t employees. A separate mandate requires health care employers that receive Medicare or Medicaid funds to have a fully vaccinated workforce, with no testing alternative.

The rule for large employers covers 84 million U.S. workers, or roughly half of the U.S. workforce, and is administered by the Labor Department’s Occupational Safety and Health Administration. The rule for health workers applies to more than 17 millio workers and is administered by the Medicare & Medicaid Services.

The administration’s authority to direct private business to require vaccination policies has been mired in litigation brought by Republican-led states, as well as business groups. Court orders in those cases, some allowing and some denying enforceme during their pendency, have shown enough inconsistency to get the high court’s attention.

The mandates’ challengers say that in directing OSHA and CMS to adopt vaccination requirements, the Biden administration overstepped its executive authority. Congress never delegated that power to the executive branch, they argue.

“The stakes are significant for the Biden administration and the national debate over vaccines,” Nelson says.

If the mandates are invalidated, he explains, it is likely to be viewed as a major defeat for the administration, and a significant victory for those who want to see more limits on federal authority and more decisions made at the state and local level.

“On the other hand, a ruling upholding the rules is less likely to generate as much reaction,” he says. “Either way, the decision going to make many people on one side or the other very unhappy and compound the view that the COVID-19 has been mismanaged by the Biden administration.”

The Supreme Court is hearing four consolidated lawsuits over the mandates.

Biden v. Missouri and Becerra v. Louisiana concern the mandate related to health care facilities and workers. States objecting the mandate in the Missouri lawsuit include Alabama, Arizona, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi,

Montana, Oklahoma, Ohio, South Carolina, Utah, and West Virginia. States objecting to the mandates in the Louisiana matter include Alaska, Arkansas, Kansas, Iowa, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming.

National Federation of Independent Business v. OSHA and Ohio v. OSHA concern the mandate impacting large employers a their workers. Multiple business organizations have signed on to the NFIB lawsuit to oppose the mandate. States objecting in Ohio lawsuit include Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisian Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

The Biden administration filed emergency applications to Justice Brett Kavanaugh asking the court to stay two injunctions bar it from enforcing the mandates until appeals courts resolve the matter.

For their part, the business associations and the states filed an emergency application to Kavanaugh requesting an immediat stay of the OSHA mandate, until the high court decides on their petitions for review, or alternatively until the court makes a decision on the legality of the mandate.