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Joshua Kastenberg
University of New Mexico - School of Law

Miranda Anthistle
Global News Toronto

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U.S. Supreme Court blocks Biden vaccine mandate

Global News Toronto
Miranda Anthistle

January 15, 2022

Miranda Anthistle: Just days before U.S. President Joe Biden marks one year in the Oval Office he's facing a number of challenges brought on by the pandemic. The latest being the Supreme Court rejecting a centrepiece of his COVID-19 response. His administration wanted to make it mandatory for employees at large businesses to be vaccinated or undergo weekly testing. Now with more on the significance of this ruling.

We're joined now by constitutional law expert and professor Joshua Kastenberg. Thanks for speaking with us today.

Joshua Kastenberg: Well thank you for having me on.

MA: Alright so these would have been sweeping vaccine or test requirements affecting 84 million Americans. How did the Supreme Court a conservative majority arrive at this decision and what does this mean for the Biden administration that they've rejected it?

JK: Well they didn't really arrive at this decision as a matter of constitutional law. They arrived at this decision as a matter of statutory interpretation.

So, in the early 1970s, the Congress set up OSHA which is the occupational Safety and Health Administrative Agency and OSHA is designed to promote workplace health and workplace safety. The Biden administration assumed that the agency could also create a vaccine mandate because the largest of American companies move products and goods and services into interstate and global commerce and so it would affect 81 million Americans but in a broader sense it would have affected almost American and probably our neighbors to the north and south.

What the Supreme Court found, the six justices, was that the statute creating OSHA was not so broad as to include vaccines. Now they used a little bit of history in that finding and they said OSHA's never had a vaccine mandate before but frankly the last time there was a global pandemic on this scale it was 1919 during the Spanish Influenza.

Now the court opened the door for states, cities, and Congress to do what Biden wanted to do through OSHA. Whether or not Congress can actually collectively arrive at a new law or an empowerment is open to question but the individual state governments can probably do on their own what the Biden Administration failed to do in that case. Which was to convince the court.

MA: Okay so can the Biden Administration rework and rejig the workplace vaccine mandate and maybe try to pass it again at a later date?

JK: Yeah, so you know as a matter of administrative power within the presidency there are other things that Biden administration can try to do. So, for example they can do what they didn't want to do which is create vaccine mandates for travel on trains, buses, and airplanes. They probably couldn't stretch it to private cars and private modes of travel. So, they could certainly try that.

They could also expand what they've done with through Medicare and Medicaid. Now remember they succeeded yesterday before the in convincing the Supreme Court on a 5-4 decision about mandatory vaccines of healthcare workers. I suppose they could try to take that further and go to first responders and federal contractors that work in promoting the health through federal dollars. You know being funded by federal dollars. But that would be much more of a patchwork than what they tried to do through OSHA.

MA: Right and Professor Kastenberg this rejection from the country's highest court comes as Biden's approval rating is almost as low as Donald Trump's was at this point in his term. So you know what's the reaction been like from workers and businesses to the Supreme Court's decision?

JK: Well I certainly don't think it helps convince Republicans to back Joe Biden but it might solidify Democratic support that was fracturing to support Joe Biden because even the progressives who are not fond of him in the Democratic Party now realize of course that elections have consequences and those consequences include who gets to sit on the Supreme Court and on the other judicial positions. This decision that the U.S. Supreme Court issued is a classic reminder that you know elections have consequences.

I think the other thing of course that Biden's going to push for is a new voting rights act to counter the voting suppression laws that certain states are pushing forward but this is just solidifying the camps, the pro-Biden and anti-Biden camps. The Supreme Court decision of yesterday. So, I don't think it moves the needle one way or the other in and of itself and its popularity. But it gives his opponents talking points.

MA: Thank you so much for your time today. Your insight professor.

JK: There's never a dull day in U.S. politics.

MA: Certainly isn't. Thank you for your time. That's constitutional law expert Joshua Kastenberg.