While a federal district court struck down the Affordable Care Act as unconstitutional on December 14, the Act and the litigation will continue. The judge didn’t issue a nationwide injunction which would have had the effect of immediately ceasing all aspects of law.

Unsurprisingly, the states defending the law have stated they will appeal this ruling to the Eleventh Circuit. Particularly if the Eleventh Circuit agrees with the lower court the Supreme Court is likely to hear this case though not until its next term beginning October 2019.

The Affordable Care Act individual mandate required uninsured who didn’t purchase health insurance to pay a so-called shared-responsibility payment. In 2012 the Supreme Court held the individual mandate is a constitutional “exercise of Congress’s Tax Power because it triggered a tax.” The Tax Cuts and Jobs Act of 2017 reduced the tax to $0 as of January 1, 2019.

Challengers argued the individual mandate is no longer a “constitutional exercise of Congress’s enumerated powers” when the shared-responsibility payment is zero. The district court agreed. According to the court the individual mandate and the shared-responsibility payment are distinct. The Supreme Court concluded the individual mandate was constitutional because it triggers a tax. But following the Tax Cuts and Jobs Act the mandate no longer triggers a tax.

The three groups of parties to this case argued for three different results assuming the court ruled the individual mandate was unconstitutional. The non-government challengers argued the individual mandate is inseverable meaning if it is unconstitutional the entire law is unconstitutional. The Department of Justice, which didn’t defend the constitutionality of the individual mandate, argued that the individual mandate plus the guaranteed-issue and community-rating requirements, which were intended to provide affordable health insurance for those with pre-existing conditions, are severable. The states, led by California, defending the mandate, argue the individual mandate alone is severable.

The court agreed with the non-government challengers that the individual mandate is inseverable from the rest of the statute rendering it unconstitutional in its entirety. If Congress would have enacted the constitutional parts of a law without the unconstitutional parts the unconstitutional parts are severable. Here the individual mandate is inseverable, according to the court, because “Congress stated three separate times that the Individual Mandate is essential to the ACA.”

In the Eleventh Circuit the parties are likely to press the same positions.