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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

February 9, 2015

The Honorable Sylvia M. Burwell
Secretary
U.S. Department of Health & Human Services
330 Independence Avenue, SW
Washington, DC 20201

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretaries Burwell and Lew, Attorney General Holder, and Commissioner Koskinen:

Next month, the Supreme Court will hear oral arguments in the case of *King v. Burwell*, which concerns the legality of Department of the Treasury and Internal Revenue Service regulations extending tax subsidies for health insurance coverage purchased in federal exchanges. As Members of the Senate Committee on Finance, we are charged with overseeing federal health care programs and the administration of the tax code. The *King v. Burwell* case could have significant effects on both of these areas and is therefore of central interest to the Committee.

Last week, the Committee called the Secretary of the Department of Health and Human Services, Sylvia Burwell, to testify about the President's HHS budget proposal for fiscal year 2016. Several of us questioned Secretary Burwell about HHS's contingency plans in the event that the

Supreme Court rules against the Administration in the *King v. Burwell* case, which is directly relevant to HHS's budget for the coming year. Ms. Burwell repeatedly failed to answer these questions, instead deferring to the Department of Justice. Given multiple opportunities to inform the Senate committee charged with oversight of HHS, we find Ms. Burwell's lack of candor to be remarkable.

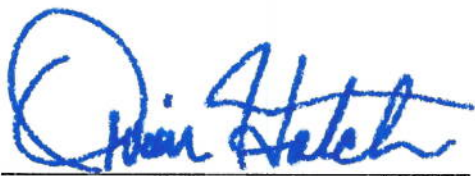
Secretary Burwell's testimony – or lack thereof – deepens our concern about the Administration's readiness to respond to the *King v. Burwell* ruling. Treasury Secretary Lew and Internal Revenue Service Commissioner Koskinen also evaded this issue when it was raised at hearings before the Committee last week. Congress cannot perform its oversight role if agency heads repeatedly refuse to answer straightforward questions about matters of great import. Moreover, a lack of planning for contingencies that could affect millions of HealthCare.gov enrollees would be irresponsible, and a failure to perform basic risk management is unacceptable.

In light of the unwillingness of Commissioner Koskinen and Secretaries Burwell and Lew to address these questions, we must now pose them again in writing, this time to all parts of the Administration that may have a role in creating or implementing contingency plans:

1. Does the Administration have a contingency plan if the Supreme Court rules against the government in *King v. Burwell*? If not, explain why not. If yes, please provide details about the contingency plan, how it was developed, and how it would be implemented.
2. Has the Administration communicated with insurers that participate in Healthcare.gov about the possibility that the Supreme Court may rule against the government in *King v. Burwell*? If yes, please describe the communications and explain the manner in which affected insurers will be given the option of ending their participation in the federal exchange. If not, please explain why not.

We ask that you respond no later than February 20, 2015. Please contact Committee staff at (202) 224-4515 with any concerns.

Sincerely,


Dan Hatch


Chuck Grassley


Tom Harkin


Mike Crapo

Pat Roberts

John Cornyn

John Thune

Johnny Isakson

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