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PENNSYLVANIA

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# United States Senate

WASHINGTON, DC 20510

January 27, 2015

The Honorable E. Benjamin Nelson



Dear Senator Nelson:

As you are no doubt aware, a lawsuit currently pending in the Supreme Court threatens to cut off premium tax credits in federally facilitated exchanges established under the Affordable Care Act. In arguing that tax credits should not be available in these exchanges, the plaintiffs in *King v. Burwell* allege that the law was designed to deny tax credits in many states because you personally insisted that the law be designed this way. I write to ask if you can resolve any confusion about how you believed – and how you did not believe – the law should operate when it was debated and enacted in 2009 and 2010.

The plaintiffs in *King* argue that the law was intentionally designed to deny tax credits to people in states with federally facilitated exchanges in order to “induce” the states into operating their own exchanges. They also allege that the law was designed this way because you and other unnamed “centrist Senators” insisted upon this structure. “For Nelson and some other Senators,” the *King* plaintiffs argue, “it was important to keep the federal government out of the process, and thus insufficient to merely allow states the option to establish Exchanges, as the House bill did. Rather, states had to take the lead role, which, given the constitutional bar on compulsion, required serious incentives to induce such state participation.” These “serious incentives,” according to the *King* plaintiffs, included the threat that the residents of a state which did not operate its own exchange would lose access to premium tax credits intended to ensure that those residents could afford health insurance.

I do not recall you – or any other member of the House or the Senate – insisting upon such a structure. I would appreciate any clarification you can offer regarding your role in shaping this important law, as I believe it will be beneficial to the American public and the justices themselves.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey, Jr." in a cursive style.

Robert P. Casey, Jr.  
United States Senator