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June 25, 2014

Patricia S. Connor
Clerk, United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: *King v. Burwell*, No. 14-1158 (4th Cir.)
(oral argument heard May 14, 2014)

Dear Ms. Connor:

Plaintiffs' June 24 letter quotes the Supreme Court's decision in *Utility Air* for the proposition that an agency "has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." Op. 21. Their reliance on *Utility Air* is entirely misplaced.

In *Utility Air*, the Court reaffirmed the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Op. 15 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As we have shown, the district court correctly held that the text, structure and purpose of the Affordable Care Act all show that federal tax credits to defray the cost of health insurance are available on federally run Exchanges. "Exchange" is a defined term: Section 1311(d)(1) provides that "an Exchange shall be a governmental entity or nonprofit entity that is established by a State." Thus, by definition, when Section 1321(c)(1) directs the Secretary to set up "such Exchange" if a State elects not to do so, the Act equates that Exchange with the Exchange that otherwise

would have been established by the State. The statutory text ensures that an Exchange's purpose—to offer *affordable* health coverage—is accomplished.

By contrast, plaintiffs' position would nullify statutory text and "be inconsistent with—in fact, would overthrow—the Act's structure and design." *Utility Air* Op. 17. On plaintiffs' theory, the sections that expressly provide "State Flexibility Relating to Exchanges" (Title I, Subtitle D, Part 3) are meaningless: the promised state flexibility is illusory because any federally run Exchange would be dysfunctional. Plaintiffs' position "would render the statute unrecognizable to the Congress that designed it." Op. 20.

Moreover, plaintiffs' theory of statutory interpretation would require the Court to rewrite Section 1312, which defines who is a "qualified individual" eligible to participate in the Exchanges. But the Court may not "edit other statutory provisions to mitigate the unreasonableness" of plaintiffs' position. Op. 24. The government's reading, in contrast, preserves the Act's text, structure and design.

Sincerely,

s/ Alisa B. Klein

Alisa B. Klein
Counsel for the Appellees

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2014, I electronically filed the foregoing letter with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

s/ Alisa B. Klein
ALISA B. KLEIN