



## **GOP wants White House's O-Care plan B**

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Administration officials are refusing to say whether they have an ObamaCare backup plan if the Supreme Court torpedoes the law.

But Republicans don't believe them.

GOP lawmakers on the Senate Finance Committee repeatedly pressed Health and Human Services (HHS) Secretary Sylvia Mathews Burwell on the issue. But Burwell on Wednesday did not budge during a tense back-and-forth, with a half-dozen Republicans claiming that the administration must have a "plan B."

"I'm asking, is there a contingency plan? Not what is the plan, but is there a plan?" Sen. Tim Scott (R-S.C.) asked.

The case, which begins oral arguments next month, could make billions of dollars of healthcare subsidies disappear in 37 states. And with such high stakes, two former HHS officials said they are confident the administration is preparing a backup plan.

"Of course, they have one, they should all resign if they don't," said Tom Scully, an HHS official under former President George W. Bush. "And they certainly should not discuss it either."

Former HHS Secretary Michael Leavitt, who left office in 2009, agreed. He added that he isn't surprised that senior officials would rather face a day of bad headlines than signal weakness to the Supreme Court.

"If the court thought they had a plan, they might think, they felt like their case was weak," Leavitt, who also served as governor of Utah, said in an interview.

Wednesday's heated exchange was dominated by Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Senate Majority Whip John Cornyn (R-Texas), both of whom signed an amicus brief in support of the plaintiff earlier this year.

“You’re a highly intelligent, charming person, but you’ve refused to answer our questions, and to me, that doesn’t strike me as trying to work with Congress, but rather contemptuous of Congress’s responsibilities,” Cornyn told Burwell.

Sen. Dan Coats (R-Ind.) added that he believes it is “irresponsible” if the administration is not making plans for the “what-ifs” of the case, which will likely be decided in June.

“Right now, what we’re focused on is the open enrollment [for ObamaCare],” Burwell repeated multiple times to the committee, which had met to discuss her department’s budget. “Between now and Feb 15, that is my deep focus.”

The barrage of questions is the latest effort by Republicans to press the Obama administration to show its hand.

Last month, Republican leaders of the House Energy and Commerce Committee sent a letter to HHS demanding any information related to the administration’s preparation for *King v. Burwell* — starting with “all scenarios considered or evaluated.”

“[Republicans] are taking the opportunity to put the secretary in a position where she has to acknowledge that there’s a possibility that this could fail, and that it would be a problem for a lot of people and that there ought to be a plan,” said Leavitt.

The administration is in an extremely tough spot. Even if officials try to appease concerns about the case, they run the risk of talking too much and generating even more headlines.

Scully said he would likely take the same approach as Burwell.

“It would be foolish to talk about their plan. It would just fire people up more,” he said. “The fact is, if the tables are turned on the Hill, the opposite party would say the same thing.”

Conservative groups quickly seized on Burwell’s silence on the Supreme Court case.

Michael Cannon, the director of health policy for the Cato Institute, said the Obama administration is “hiding the real answer” because she wants people to continue signing up on HealthCare.gov.

Two weeks remain for ObamaCare’s open enrollment, which closes Feb. 15.

“It is deceptive and irresponsible for the administration not to talk about whether they’re making contingency plans. It’s gross irresponsibility,” Cannon said.

Debate on *King v. Burwell* came roaring back to life last month as groups hurried to file amicus briefs in the case.

The court first announced it would take up the case in November, and Burwell has flat-out declined to discuss the case since then. Treasury Secretary Jack Lew also faced questions from Republicans on Tuesday, responding that there is not a simple policy solution to the case.

At the end of the three-hour exchange on Wednesday, Burwell began to defer questions on the Obama administration's case to the Justice Department.

"I am not a lawyer and I will defer to my colleagues at the Justice Department," Burwell said.