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United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

ELIZABETH L. KING, STAFF DIRECTOR
JOHN P. KEAST, REPUBLICAN STAFF DIRECTOR

January 10, 2024

Honorable Lloyd J. Austin II
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

We first want to wish you well, and we hope you enjoy a speedy recovery. However, we are deeply troubled by the apparent breakdown in communications between your office and the rest of the Department of Defense, the White House, and Congress over the past two weeks. The department's failure to immediately inform the President, Congress, and the Comptroller General of the United States of your incapacitation clearly contravenes the requirements of the Federal Vacancies Reform Act of 1998. Further, the apparent failure to even notify your lawful successor in this case is a massive failure of judgment and negligence. It is an intolerable breach of trust with the American people at a dangerous moment for U.S. national security.

Our branches of government share a sacred obligation to work together to keep the American people safe. We cannot do this without clear and open communication. Your statement provided on January 6th is wholly insufficient to address the situation. Accordingly, we need immediate clarification from the Department of Defense on the timeline of events related to your incapacitation, how the department interpreted the laws and regulations regarding the performance of duties and responsibilities of the Secretary of Defense during a vacancy, and the department's views on how it complied with statutory Congressional notification requirements from December 22, 2023, to the present day.

In order to begin rebuilding trust with Congress and the American people, all relevant Department of Defense officials should be prepared to brief Congress no later than January 19th with answers to this non-exhaustive list of questions:

1. When did the Secretary of Defense undergo a medical procedure which required the delegation of authority to the Deputy Secretary of Defense, and what was the nature of that medical procedure?
2. When was the Secretary of Defense admitted to Walter Reed Medical Center, and when was he admitted to the Intensive Care Unit? Why was he transported by ambulance instead of by his security detail?
3. What was the nature of the Secretary's incapacitation? What was the exact time Secretary Austin became incapacitated and who was notified at that time? Please provide a comprehensive list of officials made aware of his incapacitation.
4. Which Department of Defense officials were aware of the Secretary's hospitalization and incapacitation prior to the Deputy Secretary's being made fully aware?
5. Did those officials make any decisions on the Secretary's behalf?

6. Did the Secretary direct his staff not to notify individuals outside OSD about his condition, including the Deputy Secretary?
7. Does the Biden administration consider the Federal Vacancies Reform Act of 1998 to apply to this case?
8. Why was the notification process under 5 U.S.C. 3349 not followed, and who made the determination not to follow it?
9. When was the Office of General Counsel made aware of the Secretary's hospitalization and incapacitation?
10. Was there a decision made not to notify the President, the National Security Adviser, the Deputy Secretary of Defense, and Congress regarding the Secretary's incapacitation?
 - a. Did any Department of Defense personnel dissent from this decision?
 - b. What role did the Secretary of Defense's staff play in that decision?
 - c. If such a decision was not made, were these officials not aware of the underlying statute?
11. When exactly were the President, the Assistant to the President for National Security Affairs, and White House Military Office notified of the Secretary's incapacitation and delegation of authority?
 - a. What justification did the Department of Defense provide to the White House for the delay in providing such information?
12. When were combatant commanders informed of the Deputy Secretary's assumption of operational authorities?
13. When were other agencies made aware of the Secretary's incapacitation and the assumption of authority by the Deputy Secretary of Defense?
14. Were all aspects of the nuclear enterprise, including access to appropriate communications capabilities for supporting presidential decisions on nuclear employment, transferred to the Deputy Secretary of Defense when she took on the role as acting Secretary of Defense?
 - a. If not, who was responsible for that mission?
15. Was Deputy Secretary Hicks on vacation in Puerto Rico, as has been reported, during any of this time period?
 - a. If so, was the National Airborne Operations Center, or an aircraft with similar communications capabilities, dispatched to the Deputy Secretary's location?
 - b. If so, did the Deputy Secretary of Defense have access to the full and necessary suite of communications capabilities to fulfill the entirety of the authorities she assumed upon the Secretary's incapacitation?
 - c. If so, which staff were with the Deputy Secretary of Defense in Puerto Rico?
 - d. Did anyone at the White House direct the Deputy Secretary of Defense not to return to Washington, D.C.?
16. What affirmative decisions and recommendations, such as the airstrike in Baghdad on January 4, 2024, did Deputy Secretary Hicks make as acting Secretary?
17. Is this the only instance in which the Deputy Secretary of Defense has assumed the authorities of the Secretary of Defense during this administration?

In particular, the administration needs to provide answers on how it complied with the Federal Vacancies Reform Act (FVRA). The FVRA is an extension of the inviolable Constitutional principle that the American people have the final say, through the Senate's consent, over who fills our nation's most important executive roles.

Given that you were unable to perform the functions and duties of your office, it is our reading of the statute that at the moment that your incapacity occurred, the FVRA required Deputy Secretary Hicks, then the acting department head, to *immediately* report both the vacancy and her acting service to Congress. However, the Department of Defense did not notify Congress until four days later, after the vacancy had already ended.

We understand that the department failed to even inform the president and the National Security Council of your vacancy. Either Secretary Hicks did not fulfill the statute, or someone else at the Department of Defense withheld information from her that would have allowed her to fulfill the statute. Such disregard for clear statutory requirements is unacceptable.

Sincerely,



Roger F. Wicker
United States Senator



Deb Fischer
United States Senator



Tom Cotton
United States Senator



M. Michael Rounds
United States Senator



Joni K. Ernst
United States Senator



Dan Sullivan
United States Senator



Kevin Cramer
United States Senator



Rick Scott
United States Senator



Tommy Tuberville
United States Senator



Markwayne Mullin
United States Senator



Ted Budd
United States Senator



Eric Schmitt
United States Senator