out of State governmental functions.'' In *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178 (1907), the Court noted that these subdivisions are ''created as convenient agencies for exercising such of the governmental powers of the state, as may be entrusted to them'' and that the ''number, nature, and duration of powers conferred upon these [entities] and the territory over which they shall be exercised rests in the absolute discretion of the state.'' The Faso-Collins amendment purports to invoke Federal power to displace New York's sovereign exercise of this ''absolute discretion'' and, for that reason, violates the Constitution. As Chief Justice John Marshall long ago explained in *Gibbons* v. *Ogden*, 22 U.S. 1, 198–200 (1824), the States' ''power of taxation is indispensable to their existence. . . . In imposing taxes for State purposes, [States] are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States.''

OFFICE OF THE ATTORNEY GENERAL,
STATE OF SOUTH CAROLINA,
December 30, 2009.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.
Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

The undersigned state attorneys general, in response to numerous inquiries, write to express our grave concern with the Senate version of the Patient Protection and Affordable Care Act (''H.R. 3590''). The current iteration of the bill contains a provision that affords special treatment to the state of Nebraska under the federal Medicaid program. We believe this provision is constitutionally flawed. As chief legal officers of our states we are contemplating a legal challenge to this provision and we ask you to take action to render this challenge unnecessary by striking that provision.

It has been reported that Nebraska Senator Ben Nelson's vote, for H.R. 3590, was secured only after striking a deal that the federal government would bear the cost of newly eligible Nebraska Medicaid enrollees. In marked contrast all other states would not be similarly treated, and instead would be required to allocate substantial sums, potentially totaling billions of dollars, to accommodate H.R. 3590's new Medicaid mandates. In addition to violating the most basic and universally held notions of what is fair and just, we also believe this provision of H.R. 3590 is inconsistent with protections afforded by the United States Constitution against arbitrary legislation.

In Helvering v. Davis, 301 U.S 619, 640 (1937), the United States Supreme Court warned that Congress does not possess the right under the Spending Power to demonstrate a ''display of arbitrary power.'' Congressional spending cannot be arbitrary and capricious. The spending power of Congress includes authority to accomplish policy objectives by conditioning receipt of federal funds on compliance with statutory directives, as in the Medicaid program. However, the power is not unlimited and ''must be in pursuit of the 'general welfare.' '' South Dakota v. Dole, 483 U.S. 203, 207 (1987). In Dole the Supreme Court stated, ''that conditions on federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs.'' Id. at 207. It seems axiomatic that the federal interest in H.R. 3590 is not simply requiring universal health care, but also ensuring that the states share with the federal government the cost of providing such care to their citizens. This federal interest is evident from the fact this legislation would require every state, except Nebraska, to shoulder its fair share of the increased Medicaid costs the bill will generate. The provision of the bill that relieves a single state from this cost-sharing program appears to be not only unrelated, but also antithetical to the legitimate federal interests in the bill.

The fundamental unfairness of H.R. 3590 may also give rise to claims under the due process, equal protection, privileges and immunities clauses and other provisions of the Constitution. As a practical matter, the deal struck by the United States Senate on the ''Nebraska Compromise'' is a disadvantage to the citizens of 49 states. Every state's tax dollars, except Nebraska's, will be devoted to cost-sharing required by the bill, and will be therefore unavailable for other essential state programs. Only the citizens of Nebraska will be freed from this diminution in state resources for critical state services. Since the only basis for the Nebraska preference is arbitrary and unrelated to the substance of the legislation, it is unlikely that the difference would survive even minimal scrutiny.

We ask that Congress delete the Nebraska provision from the pending legislation, as we prefer to avoid litigation. Because this provision has serious implications for the country and the future of our nation's legislative process, we urge you to take appropriate steps to protect the Constitution and the rights of the citizens of our nation. We believe this issue is readily resolved by removing the provision in question from the bill, and we ask that you do so.

By singling out the particular provision relating to special treatment of Nebraska, we do not suggest there are no other legal or constitutional issues in the proposed health care legislation.

Please let us know if we can be of assistance as you consider this matter.

Sincerely,

Henry McMaster, Attorney General, South Carolina; Rob McKenna, Attorney General, Washington; Mike Cox, Attorney General, Michigan; Greg Abbott, Attorney General, Texas; John Suthers, Attorney General, Colorado; Troy King, Attorney General, Alabama; Wayne Stenehjem, Attorney General, North Dakota; Bill Mims, Attorney General, Virginia; Tom Corbett, Attorney General, Pennsylvania; Mark Shurtleff, Attorney General, Utah; Bill McCollum, Attorney General, Florida; Lawrence Wasden, Attorney General, Idaho; Marty Jackley, Attorney General, South Dakota.

Mr. NADLER. Mr. Speaker, for seven years, the Republicans have tried and failed to repeal the Affordable Care Act. So now, with a Republican-controlled House, a Republican-controlled Senate, and a Republican in the White House, what have they presented us to vote on today? Republicans complained that premiums were skyrocketing, so they offer a bill that raises premiums. They complained that deductibles were too high, so they propose allowing insurance companies to charge more. They complained that too many people were losing their insurance, so they have embraced a plan that will take away health care from 24 million Americans.

This bill imposes a devastating age tax on older Americans and does next to nothing to protect Americans with pre-existing conditions. It gives nearly $900 billion in tax cuts to the insurance companies and the wealthy, while refusing coverage for services as basic as hospitalization. It's simple: Americans will pay more and get less under this bill.

In New York, 2.7 million people will lose insurance and the state will lose $4.6 billion in Medicaid funding. Compounding those cuts is a cynical so-called deal several upstate Members made to secure their votes on this bill. Under the bill, New York State, and ONLY New York State, will no longer be allowed to ask counties to provide a portion of state Medicaid funding.

Don't be fooled—this is no deal at all for New York and will actually gut the State's Medicaid program, forcing hundreds of hospitals to close and rationing health care for millions of New Yorkers.

But my colleagues who have traded their vote for this provision have made an empty bargain. This provision is flatly unconstitutional and will never be enacted. They are giving away health insurance for millions of New Yorkers for an empty promise.

My Republican colleagues claim we need to pass this bill to give people ''freedom'' to buy health insurance. Let me tell you, freedom to buy health insurance and actually being able to afford health insurance are two very different things.

They keep talking about ''access'' to health care. Access is not coverage. When they talk about access and freedom, they are conceding that this bill does nothing to ensure that Americans have affordable, comprehensive health insurance to cover them no matter what their health care needs are.

The Republicans so clearly believe that Americans just need freedom to buy insurance, that when asked what a pregnant woman should do if her state no longer requires insurance companies to cover maternity care, OMB Director Mick Mulvaney said she can ''figure out a way to change the state [she] lives in.'' How callous are my Republican colleagues to believe that is a real option for Americans?

This bill is a cowardly, cynical effort to lower taxes on the rich and dismantle Medicare and Medicaid as we know it. I urge my colleagues to oppose this bill.

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of H.R. 1628 is postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 31 minutes p.m.), the House stood in recess.

□ 1630

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOLDING) at 4 o'clock and 30 minutes p.m.

TERRORIST AND FOREIGN FIGHTER TRAVEL EXERCISE ACT OF 2017

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on suspending the rules and passing the bill (H.R. 1302) to require an exercise related to terrorist and foreign fighter travel, and for other purposes.