

The “Bill of Particulars” Refuted

By
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Gene Nichol, a “Distinguished Professor” at UNC Chapel Hill, recapitulated his published rants against the Governor and the General Assembly on June 25, 2016, in *The News and Observer*. He refers to actions of the Governor and General Assembly as “insanity,” “tragic,” “cruel and indefensible,” “Foundational un-American,” “stealing,” “Totalitarianism,” “threatening,” “coercion,” “degradation,” and “perjury.” He is quite a wordsmith. His charges are so many that to answer them all would take a book. A sample of his charges will demonstrate his reckless disregard for facts and the law!

Charge one: We “tragically refused to expand Medicaid merely to show disdain for President Obama” denying “health care to a half million poor Tar Heels though the federal government would pay almost all the fare.” **Response:** Since the *Medicaid expansion* North Carolina has expanded its Medicaid rolls by 279,643.ⁱ He forgets that he should be reducing his initial figure by that number. By law, the ones remaining on his list earn wages above the poverty line and are able-bodied, childless adults. Otherwise they would already be covered. Many of them have health insurance at work, or would have insurance if the ACA had not incentivized their employers to cut them back to 29 hours/week.

Let us be realistic. The federal government has no money to spend except what it collects from taxpayers and lenders. The United States of America is now 19 trillion dollars in debt. The cost of the “expansion” nationwide has been about 1/7 of net borrowing from China. Professor Nichol is asking us to pay for current expenses by debt imposed on our great-grandchildren with no prospect that it will ever be repaid.ⁱⁱ

Charge two: The “most aggressive voter suppression law in a half century,” a “monstrous” law and “un-American.” **Response:** If [House Bill 589](#) is designed to suppress voters its authors were pretty bad at election law. The intervening election in 2014 showed an uptick, in both absolute and relative terms, in participation by African-American voters. The Professor complains about “limiting early voting” although he well knows that the total hours for early voting are just as many as before. But the hours are now more convenient for voters, e.g. early evening. The electoral reforms of 2013 are all in the mainstream of American election law. The disputed provisions put us where the majority of states have been for decades.

Charge three: “Launched the internationally derided war on LGBT people merely to prove they despise the LGBT community.” **Response:** LGBT people have all the rights they had before HB2 was passed (see [link](#)).ⁱⁱⁱ

Charge four: “Systematically” to “dismantle the public schools, including massive budget cuts, teacher layoffs” which “lay waste to public education.” **Response:** Almost

all of the negativity actually occurred during the reign of Governor Mike Easley and Governor Beverly Perdue, not with a Republican majority. We proudly take credit for opportunity scholarships and achievement school districts for the poor. State tax money spent on education has greatly increased. Over the last three budgets the pay for teachers has increased at the highest rate in the nation.

It is not clear what "Professor" Nichols means by "public education." But since he and his wife are paid by the University of North Carolina more than \$600,000 per year (not including benefits)^{iv} he might want to reflect that North Carolina is fourth highest in the nation in per student state support of public university education.

Charge five: "Initiated the nation's most appalling crusade against poor people."

For proof he writes that we "greatly increase regressive sales taxes." **Response:** Sales tax rates were reduced in 2011 from 7.75% to 6.75%, a 16% reduction. There have been partially off-setting additions to the sales tax base. Rates have been lowered and the scope broadened. This is a key element of tax reform embraced by all parties and most economists. For the fiscal year concluding June 30, 2016, the estimated reduction in sales tax collected by the state is \$656.6 million.^v It was under the Democrats of the last decade that "regressive sales tax" rates were increased by 20% and billions upon billions of those taxes inflicted on the poor.

Charge six: "Violated the personal liberty, constitutional privacy and bodily

integrity of women through the infamous 'motorcycle abortion bill'." **Response:** Not even a single lawsuit has been filed against that 2013 "Health and Safety Law Changes." The 2015 "Women and Children's Protection Act of 2015" from which he claimed a "shocking mandatory sonogram" did not provide that at all. Ultrasounds before an abortion have been mandatory in North Carolina since 1994 (without controversy). Under an administrative rule adopted by the Professor's hero, Governor James Hunt, Planned Parenthood requires it 100% of the time. What happened in 2015 is that the statisticians at the State Center for Health Statistics will verify that late-term abortions really are at the gestational limits which had been in place since 1973. The identity of the woman is protected by law.

Charge seven: "We abused legislative power to limit necessary and traditional prerogatives of public and private institutions. Warming to totalitarianism..." He includes no specifics so I will spare a refutation.

Charge eight: "Opened the doors to the degradation of the environment and natural resources." He includes a charge that we "revoked tax credits for renewable energy. **Response:** These credits expired as the technology for renewable energy has matured. This industry no longer requires a tax subsidy paid by all of us to the wealthy owners of those who buy these credits.

Charge nine: "Embraced government by perjury." While perjury is a felony he

doesn't actually charge any actual perjury. He claims the psychic ability to read our collective minds and claims to know the true motives for measures that he doesn't like. As a law professor he is aware that he has zero proof of perjury but recklessly alleges that hundreds of lawmakers have committed a felony.

Charge ten: "Ruled as a white people's party." For proof he claims that we "eliminated race discrimination lawsuits. False.

Title 42 USC 1981, *Equal Rights Under the Law* provides:

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Section 1981 was enacted in 1870 after ratification of the 13th Amendment. It effectuates the purpose of that amendment, to eradicate the vestiges of slavery. For almost 50 years it has been construed to allow a private right of action against another private person for discrimination based on race. State courts have concurrent jurisdiction with federal courts under title 42 U.S.C. 1981. Discrimination suits can be brought in state court. This is called concurrent jurisdiction. In *Yellow Freight Syst. V. Donnelly*, 494 U.S. 820 at 823

(1990), the Supreme Court construed Title VII to allow suits in state court against private employers because (1) federal and state courts are presumed to have concurrent jurisdiction over cases arising under the laws of the United States and (2) Title VII contains no language stripping state courts of their "presumptive jurisdiction." See *also* [Bullock v. Napolitano, 666 F.3d 281, 283 \(4th Cir. N.C. 2012\)](#). Law Professor Nichol surely should know that his claim is a false statement of the law.

ⁱ Below is a chart with the change in enrollment since 12/31/13. The significance of that date is that 1/1/14 is when States could expand and the health insurance exchanges went into place.

	Medicaid	Health Choice
Enrollment 12/31/13	1,624,146	150,010
Enrollment 6/30/16	1,903,789	89,110
Change	279,643	(60,900)

ⁱⁱ The net lending from China has been seven times greater than Medicaid expansion.

Federal and State Medicaid Expansion Expenditures vs. China's Net Lending to the U.S.				
	Net Expenditure on Medicaid Expansion¹	China's Holdings of U.S. Securities²	U.S. Holdings of China's Securities³	Net China Lending to U.S. (China Holdings-U.S. Holdings)
2010	\$0	\$1,611,000,000,000	\$102,196,000,000	\$1,508,804,000,000
2011	\$0	\$1,727,000,000,000	\$76,676,000,000	\$1,650,324,000,000
2012	\$0	\$1,592,000,000,000	\$92,341,000,000	\$1,499,659,000,000
2013	\$0	\$1,735,000,000,000	\$101,617,000,000	\$1,633,383,000,000
2014	\$23,700,000,000	\$1,816,923,000,000	\$132,487,000,000	\$1,684,436,000,000
2014-2010 Change	\$23,700,000,000	\$205,923,000,000	\$30,291,000,000	\$175,632,000,000

¹2014 Actuarial Report on Medicaid.

<http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Downloads/medicaid-actuarial-report-2014.pdf>.

²Department of Treasury. Foreign Portfolio Holdings of U.S. Securities as of June, 2013.

<http://www.treasury.gov/ticdata/Publish/shla2013r.pdf>; Department of Treasury. Preliminary Report on Foreign Portfolio Holdings of U.S. Securities as of June, 2014. <http://www.treasury.gov/ticdata/Publish/shlprelim.html>.

³Department of Treasury. U.S. Portfolio Holdings of Foreign Securities as of December, 2014.

http://www.treasury.gov/ticdata/Publish/shc2013_report.pdf.

ⁱⁱⁱ Legends vs. the Truth about HB2 , written by Rep. Paul Stam on June 6, 2016.

^{iv} Mr. Nichol receives \$211,400 annually from UNC while his wife, Betty Glenn George is also paid by UNC School of Medicine an annual salary of \$407,410 (not including retirement, health and other benefits).

Estimated Cumulative Tax Law Changes Since FY 2010-11 Through FY 2014-15*	
	FY 2016-17
Personal Income Tax	\$ (1,279.9)
Sales & Use Tax	\$ (656.6)
Corporate Income Tax	\$ (527.1)
Other Tax, Non-Tax, and Transfers	\$ (251.4)
Total Fiscal Impact (millions)	\$ (2,714.9)
*Estimate includes allowing various tax rates and incentives to sunset	