



Written by [Joe Wolverton, II, J.D.](#) on November 9, 2013

## Support for Jury Nullification on Display in D.C.

Drivers traveling around the Washington, D.C. Superior Court may have noticed lit signs encouraging jury members to “nullify” laws they disagree with.

The Montana-based Fully Informed Jury Association is behind the displays, which read: “Good jurors nullify bad laws” and “You have the right to ‘hang’ the jury with your vote if you cannot agree with other jurors.”



The [Washington Times](#) reports:

The signs are strategically placed so prospective jurors arriving at the city’s downtown Judiciary Square and Archives Metro stops pass right by them as they report for duty, and that has prosecutors and judges worried about their possible impact on jury deliberations.

While the subject of nullification has popped up even in mainstream media discussions in recent years, jury nullification is something that is rarely heard of, even among constitutionalists and supporters of the right of the states to oppose federal overreaching.

Again, this introduction to the topic from the *Washington Times* story:

Jury nullification occurs when a jury acquits a defendant they believe to be guilty by nullifying one or more laws that they believe should not apply to the defendant. Jurors often exercise nullification when they either personally disagree with a law or feel that the punishment mandated by a law is too harsh. In general, jurors are not reminded by judges of their nullification powers.

Before one is able to understand why jury nullification is a good idea, one must understand the importance of a trial by jury. Our Founding Fathers universally considered it to be a powerful weapon in the war against tyranny.

Thomas Jefferson wrote, “I consider trial by [jury as the only anchor yet imagined](#) by man, by which a government can be held to the principles of its constitution.”

In the *Federalist Papers*, Alexander Hamilton wrote that trial by jury was the “[very palladium of free government](#)” and a “valuable check upon corruption.”

Hamilton’s fellow *Federalist* author and Supreme Court Chief Justice John Jay informed a jury in [a 1794 case that](#):

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.

Given the strength of these opinions, then, it is no surprise that the denial of trials by jury was one of the foremost acts of despotism listed by Thomas Jefferson in the Declaration of Independence.



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As for the concept that juries have not only the power but the obligation to nullify unjust rulings of a judge, John Adams wrote, “It is not only [the juror’s] right, but his duty ... to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court.”

And [Hamilton, again from the \*Federalist Papers\*](#), described the jury’s check on the judge as a “double security” that “tends to preserve the purity” of both judge and jury.

So, we can see that the idea that juries may act contrary to the will of a judge is nothing new in American law and in fact it is an act of resistance to government oppression that our Founders believed to be fundamental in a Republic that was to remain free under the rule of law, rather than enslaved according to the rule of men.

Activists in several states are promoting the practice of jury nullification as a way to prevent the miscarriage of justice by the judiciary and the police.

Last year, New Hampshire enacted a law protecting the rights of citizens serving on juries to serve as a check on unjust criminal prosecution.

On June 18, 2012, Governor John Lynch of New Hampshire signed into law HB 146, a bill granting to juries in that state the right “to judge the application of the law in relationship to the facts in controversy.” Representatives Lars Christiansen, Dan Itse, and the Speaker of the House sponsored HB 146 in the New Hampshire House of Representatives. Senators Jim Forsythe and Fenton Groen pushed for the bill on the Senate side of the state legislature.

Juries in New Hampshire may override the rulings of judges if they believe the judges are misinterpreting or misapplying the relevant law. Furthermore, defense attorneys may now, over a judge’s objection, inform a jury that it has a right to judge the application of the law in relationship to the facts in controversy.

New Hampshire is faithfully following our Founders’ philosophy. The New Hampshire law reads:

In all criminal proceedings the court shall permit the defense to inform the jury of its right to judge the facts and the application of the law in relation to the facts in controversy.

Permitting defense attorneys to directly address the jury regarding its right to be judges of the facts and the law is something unheard of in nearly every courtroom in the United States.

Of course, as [Cato Institute writer Tim Lynch observed](#), this law may not go far enough in restraining the power of corrupt judges:

We don’t know how much pressure trial judges will exert on defense counsel.... If the attorney’s argument is “too strenuous,” the judge may reprimand the attorney in some way or deliver his own strenuous instruction about how the jurors must ultimately accept the law as described *by the court, not the defense*. I’m also afraid what the jurors hear will too often depend on the particular judge and, then, what that judge wants to do in a particular case. [Emphasis in original.]

For now, constitutionalists will be pleased by the following explanation of the purpose of the law as put forth in Section 243:1:

The jury system functions at its best when it is fully informed of the jury’s prerogatives. The general court wishes to perpetuate and reiterate the rights of the jury, as ordained under common law and recognized in the American jurisprudence, while preserving the rights of a criminal defendant.



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As indicated by the statements provided above, our Founding Fathers zealously defended this right and recognized that only an informed and empowered jury could effectively protect a defendant from the potentially harmful effects of autocratic judges.

On its website, the [Fully Informed Jury Association](#) sums up the reason jury nullification is a good idea and one supported by constitutional principles of freedom from tyranny:

The primary function of the independent juror is not, as many think, to dispense punishment to fellow citizens accused of breaking various laws, but rather to protect fellow citizens from tyrannical abuses of power by the government.

Despite all of this, the *Washington Times* reports that jury nullification proponents in Florida and New Jersey “have been arrested and charged with “jury tampering” for distributing handbills at the courthouse that essentially publish the text of the New Hampshire law.”

In [an editorial](#), the *Washington Times* sees such persecution as a prime example of the need for jury nullification in the fight against government oppression:

This demonstrates clearly the responsibility of juries to serve as a check against judges and prosecutors who may think they’re the last word in all matters of the law. Respect for the law and the courts is necessary for the good of all in a free society, and sometimes, as the number of frivolous and oppressive laws multiply, a little nullification can be a tonic, and a reminder to the lawyers, including judges, of who’s really the boss.

The Constitution guarantees the right to trial by jury. This means that the government must bring its case before a jury of the people if government wants to deprive any person of life, liberty, or property. In defense of those “unalienable rights,” indeed, as the last line of defense, jurors can reject government tyranny by refusing to convict those subjected to prosecution for violating unjust laws.

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