

JURY NULLIFICATION

ISSUE - Jury nullification legislation requires a Judge to give an instruction in cases (civil or criminal) in which the State is the Plaintiff. The instruction tells the jury to judge the law as well as the evidence, and to render a verdict dictated by conscientious consideration.

ISBA POSITION - The Iowa State Bar Association strongly opposes this legislation, which allows a jury to make its own laws. A jury nullification instruction allows jurors to disregard, nullify, or overrule laws enacted by the General Assembly. Jury nullification is a direct attack on the legislature.

BACKGROUND - Neither the United States Constitution nor judicial precedent explicitly authorizes jury nullification. However...juries have frequently employed nullification throughout history, thus creating a precedential foundation on which to establish nullification's legality. Specifically, constitutional protections effectively create a jury nullification power...practically speaking, a jury can nullify, and the court cannot reverse its verdict. While courts and scholars almost universally recognize the existence of a jury nullification power, there is significant debate as to whether a jury has a right to use that power. In virtually all jurisdictions, jury instructions allowing nullification are prohibited. Currently, jurisdictions are split regarding whether attorneys can address jury nullification in closing arguments. As for current judicial precedent, opinions regarding jury nullification tend to range from prohibiting jury instructions and arguments regarding nullification to vague support of nullification power without express approval of its exercise. Contrary to the momentum of judicial precedent--in an effort to promote jury nullification--a group called Fully Informed Jury Association (FIJA) has lobbied state legislatures to pass laws requiring judges to give jury instructions on nullification. In many states, FIJA successfully proposed such legislation, but no state has passed the proposed legislation. Thus, it appears that the continued existence of jury nullification will likely depend on the courts and their precedent. Aaron McKnight, *Jury Nullification as a Tool to Balance the Demands of Law and Justice*, 2013 B.Y.U. L. Rev. 1103 (2014).

In Iowa, jury nullification law rests with two leading cases, *State v. Willis* and *State v. Hendrickson*. In *Willis*, the court held juries should not be told they have a right to disregard the law, and that jurors do not have the right to do as they please and acquit at pleasure, although they have the power to do so. *State v. Willis*, 218 N.W.2d 921, 924-25 (Iowa 1974). "Jury nullification exalts the goal of particularized justice above the ideal rule of law. We are persuaded the rule of law should not be subverted." *Id.* In *Hendrickson*, the court concluded that instructing the jury that the verdict had to be based on evidence received did not improperly deprive jury of alleged the "jury nullification" right to acquit defendant. *State v. Hendrickson*, 444 N.W.2d 468, 473 (Iowa 1989). In essence, although the power of jury nullification exists, a defendant has no right to have the jury defy the law, ignore the undisputed evidence, or have a right to a jury nullification instruction. See *id.*

The state Constitutions of Maryland (Art. 23), Indiana (Art. I, Sec. 19), Oregon (Art. I, Sec. 16), and Georgia (Art. I, Sec. I, Para. XI) expressly guarantee the right of the jury to judge the law in criminal cases. Some scholars read this to be an inherent jury nullification right; however, this may be an anomaly. Maryland courts have interpreted the clause as not referring to any jury nullification right. The Indiana Supreme court has held their provision does not allow the jury to ignore the law when making decisions. The Georgia Supreme Court has held their clause does not create a right for the jury to be instructed that it can judge the law. New Hampshire passed a jury nullification law in 2012 that allows jurors the right "to judge the application of the law in relationship to the facts in controversy." N.H. Rev. Stat. § 519:23-a (2014). There was another related New Hampshire bill introduced in 2014, that has not been passed, that requires the court to give an instruction to the jury regarding jury nullification and requires the court to declare a mistrial if the instruction is not given to the jury. Alaska introduced a bill in 2014 to formally legalize jury nullification, but it was not voted on this legislative session. Georgia filed the "Fully Informed Jury Act of 2013" that seeks to permit the defendant to argue for jury nullification based on the right to judge both the facts and the application of the law pursuant to Georgia Constitution. Georgia's bill was not enacted into law.

Nullification instructions place citizens at the mercy of a small group of people who may grant or withhold justice at their whim, in complete disregard of the law. Proponents of this type of legislation state that a nullification instruction will protect criminal defendants from "unfair" laws. In reality, a nullification instruction invites and authorizes juries to acquit defendants who have clearly committed atrocious crimes. For example, in the 1960s, state juries frequently acquitted members of the Klu Klux Klan for some of the most heinous acts against other human beings that have ever been committed in the United States. These instances of jury nullification were so wide spread that Congress enacted separate federal laws to address the issue. A nullification instruction also allows a jury to convict innocent persons even when the evidence does not show guilt. Jury nullification allows jurors to act out of hatred or sympathy, rather than following the law, and makes these acts a real and legitimate part of the legal system.

Nullification instructions weaken the constitutional guarantee to trial by an impartial jury. Studies show that juries receiving a nullification instruction in mock trials spend less deliberation time on the evidence presented on the case, and more deliberation time on the defendant's characteristics and attributes, and on the juror's own personal experiences.¹¹ Horowitz, *the Effect of Jury Nullification instruction on Verdicts in Juries functioning in Criminal Trials*, 9 Law and Human Behavior 25 (1985); Horowitz, *Changing Views of the Jury Power: The Nullification Debate, 1787 to 1988*, 15 Law and Human Behavior 1965 (1991)

Nullification instructions affect important constitutional protections. When criminal charges are brought against an individual, an allegation is made that the defendant violated a particular provision of state law. Even if the evidence in the case proves that the defendant did not violate state law, a jury may decide to convict the defendant because they think the state law is not a good law. A nullification instruction allows people to be convicted of breaking laws based upon the belief of a small group of individuals as to what the law should be. This would result in persons being convicted without due process of law, because the act for which the person is convicted has not yet been declared illegal. In such cases, persons are also denied their constitutional right to know what he or she is accused of. Furthermore, a person's right to be presumed innocent and not guilty unless the evidence shows guilt beyond a reasonable doubt is lost if the jury can rely on "conscientious consideration".

Jury nullification reverts to the rule of man, rather than the rule of law.

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