

Short Ballot Title

An initiative regarding the rights of jurors to determine both the facts and the law in a case.

Long Ballot Title

An initiative related to juries; amending Title 2, Idaho Code by adding a new Chapter 7 to establish that juries have the right to determine both the facts and the law in a case based on their best understanding of the clear meaning of the law and to prohibit judges from requiring that juries be bound by the judge's interpretation of the law.

Text of Initiative

SECTION 1. PURPOSE. (1) The tradition of jury nullification has a long and distinguished tradition in the United States of America. While many openly acknowledge "The existence of an unreviewable and unreversible power in the jury, to acquit in disregard of the instructions on the law given by the trial judge" (*United States v. Dougherty* 473 F.2d 1113) the trend in recent years is for judges to deliver jury instructions which directly contradict this long standing common law right of the jury to determine both the facts and the law. Given that many judges are appointed by officials who stand to benefit the most from the arbitrary exercise of unlimited governmental power, the people of Idaho find it necessary to firmly re-establish with no doubt the check of jury nullification on tyrannical and unconstitutional laws dispensed by state and local governments as advocated by the founding fathers.

(2) While Article V, Section 13 of the Idaho Constitution states that the "legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it," the legislature does have full authority to regulate "the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court." Jury instructions clearly fall under the latter provision. Moreover, the right of a jury to determine the facts and the law is a tradition well established upon the founding of the United States. Such extant power of the jury cannot deprive the judicial department of any power or jurisdiction by simply informing members of a jury of this existing prerogative. This was the position held by the first Chief Justice of the United States, John Jay. There is no condition on this right that the jury has to follow the confines of case law, which even the judicial branch ignores when it finds it necessary to correct errors dispensed by prior courts. The existing right of courts of appeal to review decisions of the jury is not infringed by this act.

(3) The Supremacy Clause of the United States Constitution provides that such constitution is "the supreme law of the land," not the opinions of nine unelected officials. While the Supreme Court has the ultimate authority to judge matters of law in a particular case it has jurisdiction over, it does not have the right to tell members of a jury how to interpret a law written in English for all to read. Such would grant to the Supreme Court a power never contemplated by those establishing the Constitution of the United States, which would amount to a dictatorial power to ignore the plain meaning of such social compact, rendering such document moot and worthless. Juries were established in part to prevent against such dictatorial and unjust powers by any branch of the government.

(4) It is also of note, that the ability of the judicial branch to single-handedly overturn

decisions of the legislature is not contained in the United States Constitution, but a power that the supreme court when presided over by John Marshall unlawfully gave to itself in the *Marbury v. Madison* decision. By contrast, as revealed in James Madison's notes on the Constitutional Convention, Madison himself specifically rejected the ability of the judiciary to veto acts of Congress and "doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising under the Constitution, and whether it ought not be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not be given to that Department." In fact, such a judicial veto was considered on August 15, 1787 during the Constitutional Convention and specifically rejected (a presidential veto subject to Congressional override accepted instead) because many members of the delegation such as Hugh Williamson objected to "admitting the Judges into the business of legislation."

SECTION 2. That Title 2, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 7, Title 2, Idaho Code, and to read as follows:

CHAPTER 7 IDAHO INFORMED JURY ACT

2-701. SHORT TITLE. That this act shall be known and cited as the "Idaho Informed Jury Act."

2-702. SCOPE OF LEGISLATION. This act shall apply to any court established by the Legislative branch of the State of Idaho pursuant to the authority of Article V, Section 2 of the Idaho State Constitution.

2-703. AFFIRMATION OF RIGHTS OF JURORS. In any court covered by 2-702, Idaho Code, the jury has an unquestioned right to determine both the facts and the law in a case based on their best understanding of the clear meaning of the law. They also have the right to ignore any judicial precedents they believe to be in error.

2-704. JURY INSTRUCTIONS. No judge of any court described in Section 2-702, Idaho Code:

- (1) Shall tell a jury that it is bound by the judge's interpretation of the law;
- (2) Shall make members of a jury promise to be bound by the judge's interpretation of the law;
- (3) Shall administer an oath to a jury to the extent that they are bound to a judge's interpretation of a law;
- (4) Shall fail to have the statement described in section 2-705, Idaho Code, read to the jury; or
- (5) Shall allow any question regarding an individual's views on jury nullification to be asked in the jury selection process.

2-705. STATEMENT TO JURY. Prior to jury deliberations, the following statement shall be read by the judge or other person so appointed by him or her:

"It is my obligation to inform you of your rights as a jury. None other than the first Chief Justice of the United States supreme court, John Jay, recognized the right of juries to judge both the

fact and the law at trial. This was a common view among our founding fathers who saw the jury as a check against an arbitrary and overreaching government. While a judge presiding over a case is often in the best position to determine the application of the law in such case, you have the right as jurors to disregard his or her interpretation of the law depending on your plain understanding of the text of the law and its relation to the Constitution of Idaho and the United States Constitution.

The law was made for the people to plainly understand their obligations and responsibilities in civil society, and should be of no private interpretation to people specializing in the law. The difference between the common sense interpretation and that of judges and people in the legal profession can be that the latter often are constrained in their interpretation by precedent; however, such precedents can be completely wrong based on the composition of the court at the time, as judges are often political appointments made by people who might prefer to see our Constitution transformed to a living, breathing document and not the document that it is - a social compact meant to severely constrain the powers of government to threaten the life, liberty, and property of the people.

You, the jury, are the last line of defense against government power gone rogue. It was through failure of juries convict people of violations of fugitive slave laws that was in large part responsible for them becoming ineffective prior to the war between the states.

Today you will be given a copy of the United States Constitution as well as the Constitution for the state of Idaho. If any law in this case violates either of those documents as you plainly understand them, you are obligated to ignore such unconstitutional law in your deliberations and final decision. Remember, that your decision is affecting the life or property of one or more persons and if you blindly accept a law you know to be wrong, against the Constitution or the principles governing normal human conscience, you are just as guilty of harming this person or persons as those who passed such an unjust law. Remember also that if you ever serve on a jury in a federal case, supreme court rulings have affirmed the rights of the jury to determine both the facts and the law, even if the judge instructs you that such rights do not exist and that you are barred in his or her court room from exercising them."

2-706. CONSTITUTIONS DISTRIBUTED. Subsequent to the reading of the statement contained in 2-705, Idaho Code, and prior to the initiation of deliberations, all members of the jury will be handed an up to date copy of the Constitution of the State of Idaho and the United States Constitution.

2-707. REMEDIES. (1) If the provisions of Sections 2-704, Idaho Code, are violated in any particular case, such violations shall be immediate grounds for a mistrial.

(2) The repeated failure of a judge to abide by the provisions of section 2-704, Idaho Code, shall be grounds for dismissal pursuant to procedures established relative to 1-2103, Idaho Code, and 1-2103A, Idaho Code.

2-708. SEVERABILITY. If a part of this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this chapter is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 3. That Section 2-101, Idaho Code, be, and the same is hereby amended to read

as follows:

2-101. JURY DEFINED. A jury is a body of men or women, or both, temporarily selected from the citizens of a particular county and invested with power to present or indict a person for a public offense or to try a question of fact and law.

SECTION 4. That Section 9-102, Idaho Code, be, and the same is hereby amended to read as follows:

9-102. QUESTIONS OF LAW ADDRESSED TO COURT. ~~All~~ Certain questions of law arising upon the trial, including the admissibility of testimony, the facts preliminary to such admission, ~~and the construction of statutes and other writings,~~ and other rules of evidence, are to be decided by the court when submitted and before the trial proceeds, ~~and all discussions of law are to be addressed to the court. Whenever the knowledge of the court is by this chapter made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.~~

SECTION 5. That Section 19-2129, Idaho Code, be, and the same is hereby amended to read as follows:

19-2129. DECISION OF QUESTIONS OF LAW. The court must decide ~~all~~ questions of law which arise in the course of a trial with the exception of those questions of law within the purview of the jury, such as constitutionality of the underlying laws in question, which fall under their responsibilities in returning a general verdict.

SECTION 6. That Section 19-2131, Idaho Code, be, and the same is hereby amended to read as follows:

19-2131. DECISION OF QUESTIONS OF LAW AND FACT IN OTHER TRIALS -- ~~JURY BOUND BY INSTRUCTIONS~~. On the trial of an indictment for any other offense than libel, questions of law relating to court procedure, admissibility of testimony, and other rules of evidence are to be decided by the court, questions of fact and certain questions of law, such as the constitutionality of such law, by the jury; ~~and although~~ the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are thus not bound, ~~nevertheless,~~ to receive as law what is laid down as such by the court.

SECTION 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.