

## Proposal to Amend the UCRP Platform P-108 – Limit Jury Nullification

**Purpose:** Modify the existing platform to limit the cases for which we support jury nullification and to remove existing language supporting judicial activism.

**Language to change in the Platform:**

(Text to be removed is ~~struck out~~. Text to be added is underlined. These changes are also in **bold**.)

**LAW ENFORCEMENT AND JUSTICE**

**Judicial System** Each individual is entitled to a trial by jury in both criminal and civil cases. ~~It is the duty of juries to rule on the law as well as the facts of a case. We call upon the judiciary to reestablish this process and to inform juries of this duty.~~ **The jury has the right and the authority to acquit if jurors feel justice will be served.** State senators must hold thorough hearings for all judicial nominees, and members of the Judiciary should undergo regular reviews. The results of such reviews should be a matter of public record. We support the appointment of judges who respect traditional family values and the sanctity of human life. Judges should not make statute but apply it.

**Recommendation by Constitution and Bylaws Committee:** (March 16, 2017)

The recommendation from the CB Committee is based on “style, form, balance, redundancy, and consistency.” (See Bylaw 10.B.2.) It is not based on meaning or effect.

In Favor: 4

Opposed: 0

**Recommendation by Executive Committee:** (April 20, 2017)

In Favor: 10

Opposed: 7

**Description:** Remove language from the UCRP Platform that encourages juries to ignore the law.

## **Arguments in Favor of Limiting Jury Nullification:**

The platform should be modified to remove any support for judicial activism and to not encourage jury nullification in civil cases. The proposed new language is a direct quote from the Utah State Republican Party platform.

The existing platform encourages judges to actively change the law. This is a slippery slope we ought not to encourage. Judges should apply the law, not make the law. The courts should be free of politics, applying the law on a non-partisan basis and without interference from political parties or politicians. We, as Republicans should not encourage judicial activism in any form, even when we like the result. Instead, we ought to seek legislative solutions to laws we don't like. In this instance, we ought to support legislative changes to the existing laws, not judicial activism. For this reason, the clause calling for judicial activism should be deleted.

Jury nullification ought to be limited to those criminal cases where criminal laws are not just. To apply jury nullification in civil cases creates confusion, and economic uncertainty.

An example of how jury nullification creates confusion and extra costs in economic transactions can be found in the law of contracts. Utah law states that contracts for the sale of real property must be in writing to be enforceable. Many jurors, however, believe that every contract based on a handshake ought to be enforceable. If jurors were allowed to decide the law in every case, parties to a real estate contract would not know whether a verbal contract is enforceable. This would create confusion and unpredictability in real estate transactions, adding to transaction costs and creating extra litigation. Ultimately the smooth and efficient operation of our economy would suffer, eventually bringing down our standard of living. In civil transactions, businesses and persons ought to be able to expect that the law will be enforced equally and consistently.

There are some instances when laws are unjust and jurors ought to be allowed to ignore the law. This amendment to the platform limits the right of juries to ignore the law to criminal cases where the jurors believe that the criminal statute is unjust. This serves as a check on the legislative and executive branches from making unjust criminal laws. It does not allow juries to convict someone of a crime even if the existing law does not make the action criminal.

This proposed language is more consistent with republican ideals, the state party platform and those various groups who support proposals for informed juries.

## **Arguments in Opposition of Limiting Jury Nullification:**

While one could agree that we should not encourage jury nullification in civil cases, the proposal does not explicitly say this. Of course, the trial lawyers among us might understand that acquittals occur only in criminal cases, and that juries render verdicts in civil cases, the common citizen—upon reading the proposed text—will not apprehend that fine distinction.

The existing platform does not encourage judges to actively change the law. Rather, it enables them to dictate the law to a jury ("The law is what I say it is. And if the facts prove the defendant broke the law, you must find him guilty.") The current platform informs juries of their right and duty to judge the justice of the law as well as the facts of the case.

Furthermore, striking the sentence that calls “upon the judiciary to reestablish this process and to inform juries” would be a grave mistake. Most jurors today do not understand that they have the authority and the duty to judge the law as well as the facts. A juror must be taught his duty.

For more than six hundred years—that is, since Magna Carta, in 1215—there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.

Unless such be the right and duty of jurors, it is plain that, instead of juries being a “palladium of liberty”—a barrier against the tyranny and oppression of the government—they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

But for their right to judge of the law, and the justice of the law, juries would be no protection to an accused person, even as to matters of fact; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible, and what inadmissible, and also what force or weight is to be given to the evidence admitted. And if the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleases to offer them.

The Utah County Republican Party Platform affirms our belief in the rule of law. But there are myriad statutes, regulations, and orders that masquerade as "law," but which are really not law. Jefferson called these "pretended acts of legislation" in the Declaration of Independence. There is a big difference between the laws of Nature and Nature's God, and the acts declared illegal by a legislative body. In other words, there are many lawful acts that can be declared illegal by fiat (bearing arms in DC, for example).

We must not entreat our fellow Republicans to imbibe in the mistaken notions that all laws must be obeyed, that juries may not decide the justice of a supposed law, and that jury nullification of an unjust law would lead to anarchy. Nothing is more certain than the verity that legislative bodies will—time and time again—approve measures that violate one's rights. We must not weaken the protections of trial by jury. For it is (or should be) a "palladium of liberty" against the tyranny and oppression of government.