

"Cut Through the Chase"**Who is in Charge?****Charles E. Kruse | Guest Writer**
MISSOURI FARM BUREAU

We recently concluded our 95th Missouri Farm Bureau Annual Meeting where voting delegates from every county in the state discuss, debate and determine our legislative policy to guide the state's largest farm organization for the coming year. At a time when so many challenges to farmers and ranchers are coming from Washington, D.C., it may appear difficult which issue to address first – but our voting delegates clearly feel Cap and Trade is at the top of the list.

While our farmers and ranchers were meeting, the head of the Environmental Protection Agency (EPA) released the declared endangerment finding with carbon dioxide and other associated gases. The Obama Administration and much of Congress hoped Cap and Trade legislation would have passed into law by now. It could be next summer before the Senate has another chance at the legislation, so the EPA released their declaration in time for the big meeting on global warming in Copenhagen.

This declaration was released just a couple of weeks after the media reported the lead scientists were cooking the books on global warming research. It appears these scientists assumed humans are the cause of global warming, and worked backwards to plug in the holes in the so-called scientific process with whatever data it would take to result in their assumed conclusions.

In addition to the recent EPA endangerment finding with regard to carbon dioxide, the EPA is actually threatening members of Congress that if they don't pass Cap and Trade, the EPA will move forward with demands on this country that, in their own words, would be very harmful for the people in the United States. If I were a member of Congress, the EPA's threat would result in my being both embarrassed and angry.

Imagine, a federal government agency threatening Congress. The last time I checked, no bureaucrat in any federal agency was elected to their position by the people of the United States. We elected our members of Congress to represent us – they are the lawmakers, not the EPA or any other federal agency.

The question in my mind is who is in charge in Washington, D.C.? Doesn't a federal agency have to answer to the authority of Congress? Are the people we elected to represent us in Congress going to allow the EPA to make demands and threaten citizens with regulatory action if Congress does not comply?

It is time to put things back in order. It is time members of Congress, in no uncertain terms, remind the EPA and every other federal agency that they are accountable to Congress. And just in case members of Congress or anyone else in Washington, D.C., needs to be reminded as to who is in charge, it is "We, the People."

(Fourth generation farmer Charles E. Kruse, of Dexter, Mo., serves as the president of the Missouri Farm Bureau, the state's largest farm organization.)

Right of Jury Nullification

Psst! You want to hear a secret? You as a juror have the right to find a defendant innocent for whatever reason- even if the defendant broke the law. The constitution gives the juror the right to question not only whether the defendant broke the law but also the law itself. (Jury Nullification)

Don't ever let a judge or the prosecuting attorney know that you understand your rights as a juror. You may be held in contempt of court and will most certainly not be chosen as a juror during the selection process.

I wonder what other secrets are being held from the American public.

Please note the article below by **Clay S. Conrad:**

I have, for years, heard complaints that jury nullification is not protected by the United States Constitution, because it is not explicitly mentioned in that document. These objections not just wrong, but plainly so. I wish to respond to them briefly here.

HISTORY

First, we must look at the understanding of the jury at the time the Constitution was written. As I've discussed at length elsewhere, the Founding generation considered the role of the criminal trial jury to include discussing both law and fact. This wasn't controversial at the time of the founding. Jefferson, Franklin, Hamilton and many others supported this view.

Secondly, legal practice in the early years of this country was to instruct jurors on their role as finders of both law and fact - even in civil cases. The plainest example is in *Georgia v. Brailsford*, 3 U.S. 1 (1794), in which **John Jay, for a unanimous Supreme Court**, wrote:

"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. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of the law. But still both objects are lawfully, within your power of decision. "

Finally, let's look at the best understanding we can have as to what a jury was expected to BE at the time of the founding: the most popular law dictionary of the time. Jacob's Law Dictionary explicitly stated that a criminal petit (trial) jury's role was to decide both questions of fact and law. Pretty straight-forward as to what informed people would have considered the role of the jury.

Clearly, a historical understanding

of the role of the jury indicates that it was never intended to be a mere fact-finder.

WHAT DOES THE CONSTITUTION SAY?

Several clauses of the Constitution and Bill of Rights protect the jury's prerogative to deliver a verdict according to conscience. The Art. III, Sec.2 and Sixth Amendment guarantees to trial by jury deprive the trial court of the ability to convict a defendant against the wishes of the jury. There can be no directed verdicts for the prosecution in criminal cases - even if the defendant takes the stand and admits to every element of the offense.

A defendant cannot be denied a trial by jury in any case in which the sentence is more than six months. The jury can acquit, whatever the evidence, because only they can make the decision - and no matter what the reason for their acquittal is, it stands.

But most importantly, the Double Jeopardy Clause of the Fifth Amendment prevents the Government from re-prosecuting anyone who has been acquitted by a jury -- no matter how irrational, arbitrary, or bizarre the jury's reasoning in finding the accused not guilty. Even if the jury foreman scribbles the words "because your law sucks" under the words "not guilty" - and the inscription is unanimously initialed by the jurors. Not guilty over (at least so far as that sovereign is concerned).

Consider the situation in Russia, in which jury acquittals are nothing more than speed bumps for prosecutors. Clearly, the power of Russian jurors to nullify is non-existent. Even when Vera Zasulich was acquitted for shooting the Governor General of St. Petersburg, she would have been re-prosecuted had she not gotten out of the city before she could be re-arrested.

Such has never been the case in America. While a person acquitted in State court can still be prosecuted and convicted in Federal court (remember the trials of the L.A. police officers caught on videotape beating Rodney King), it rarely occurs. The Double Jeopardy clause of the Fifth Amendment is still alive and well. As the Pennsylvania Superior Court has noted, the Double Jeopardy interest in protecting jury nullification is "absolute," as nullification is "the highest interest protected by the principle of double jeopardy."

CONCLUSION

It is clear that at the time the Constitution was written, it was intended to protect the nullification prerogative, as the definition of the jury trial at the time included that option. It would be like guaranteeing people cars, and then saying "ah, we never mentioned anything about tires or engines." Without tires or engines, we may have a collection of automotive parts, but we do not have cars. Similarly, without the nullification prerogative intact, we may have maintained significant vestiges of the Founders' trial by jury - but we certainly don't have the whole thing.

Your Letters

The Constitutional right to a jury empowered to nullify is protected in the Constitution. What is not guaranteed in the Constitution (although it may perhaps be considered included under the rubric of procedural due process) is the right of a defendant to inform the jury as to its nullification prerogative. However, there is no room for reasonable doubt as to the jury possessing this prerogative under our Constitution. It is there - and it's not going away.

Larry Flinchbaugh
St. Joseph

Bill of Rights Day

December 15, was Bill of Rights Day. I don't know how much we'll hear about it in the media, but you and I know how important the Bill of Rights is. The Founders recognized that it was important to be specific about what government must not do.

The Libertarian Party platform expresses support for the Bill of Rights in many places. For example: First Amendment:

"We support full freedom of expression and oppose government censorship, regulation or control of communications media and technology. We favor the freedom to engage in or abstain from any religious activities that do not violate the rights of others. We oppose government actions which either aid or attack any religion." (1.1)

Second Amendment:

"We affirm the right to keep and bear arms, and oppose the prosecution of individuals for exercising their rights of self-defense. We oppose all laws at any level of government requiring registration of, or restricting, the ownership, manufacture, or transfer or sale of firearms or ammunition." (1.6)

Fourth Amendment:

"We support the protections provided by the Fourth Amendment to be secure in our persons, homes, and property." (1.2)

Fifth, Sixth, and 7th Amendments:

"We oppose reduction of constitutional safeguards of the rights of the criminally accused. The rights of due process, a speedy trial, legal counsel, trial by jury, and the legal presumption of innocence until proven guilty, must not be denied." (1.5)

Of course, one of the most serious problems America faces today is that the federal government completely ignores the Tenth Amendment, which says the federal government only has the limited powers granted by the Constitution, and no other powers. Unfortunately, our federal government has usurped a long list of powers that are not granted by the Constitution -- far too many to list here.

The Democratic and Republican parties, and their politicians, have very little respect for the Bill of Rights. The Bush and Obama administrations have been especially destructive, not only continuing the expansion of federal power far beyond what is allowed by the Tenth Amendment, but also trampling on due process, privacy protections, and free speech.

Most Americans admire the Bill of Rights, but I think many of them are unaware how much our government violates them.

Wes Benedict, Libertarian Party
Washington, D.C.