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SYNOPSIS: Existing law does not specifically require the court in a criminal proceeding tried before a jury to 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.

This bill would require the court in a criminal proceeding tried before a jury to 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.

This bill would require posting in each courthouse and courtroom therein of the right of a jury to judge the facts and the application of the law in relation to the facts in controversy.

This bill would provide a criminal penalty for a violation.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 Relating to juries; to require the court in a
21 criminal proceeding tried before a jury to permit the defense
22 to inform the jury of its right to judge the facts and the
23 application of the law in relation to the facts in
24 controversy; to require posting in each courthouse and
25 courtroom therein of the right of a jury to judge the facts
26 and the application of the law in relation to the facts in
27 controversy; and to provide for a criminal penalty.

28 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The Legislature finds and declares the
2 following:

3 (1) While it is one thing for a Legislature to enact
4 a statute, it is often another thing entirely to insure that
5 the statute is properly administered free of judicial
6 rewriting.

7 (2) In *Standard Oil Co. v. United States*, 31 S.Ct.
8 502, 533 (1910) (Justice Harlan, concurring in part and
9 dissenting in part) wrote: "After many years of public service
10 at the national capital, and after a somewhat close
11 observation of the conduct of public affairs, I am impelled to
12 say that there is abroad in our land a most harmful tendency
13 to bring about the amending of constitutions and legislative
14 enactments by means alone of judicial construction."

15 (3) The Legislature, both at the federal and state
16 levels, has the power to rein in such judicial misbehavior.

17 (4) A principle of preeminence in federal
18 jurisprudence is that federal courts are courts of limited
19 jurisdiction; the exercise of federal jurisdiction is proper
20 only when prescribed by Congress. *fn4 *Chicot County Drainage
21 District v. Baxter State Bank*, 308 U.S. 371, 376, 60 S. Ct.
22 317, 319, 84 L. Ed. 329 (1940); *Edwards v. Selective Service
23 Local Board No. 111*, 432 F.2d 287, 290 (5th Cir. 1970), Cert.
24 denied, 402 U.S. 952, 91 S. Ct. 1637, 29 L. Ed. 2d 122 (1971).
25 A corollary to this principle is that Congress may withhold
26 from the federal courts jurisdiction over a class of cases
27 even though the judicial power of the United States, as
28 described in article III, § 2 of the Constitution, includes
29 that class. *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 12 L. Ed.

1 1147 (1850); *Turner v. Bank of North America*, 4 U.S. (4 Dall.)
2 8, 1 L. Ed. 718 (1799). *Marshall v. Gibson's Products Inc.*,
3 584 F.2d 668 (5th Cir. 1978).

4 (5) The Alabama Legislature has the same power to
5 prescribe the jurisdiction of the state's courts because,
6 under the new Judicial Article of our Constitution, the
7 circuit court has original jurisdiction in all cases, criminal
8 and civil, unless the Legislature provides otherwise. *Rex M.*
9 *Henderson v. State*, 616 So. 2d 406 (Ala. 1993)

10 (6) Only the Legislature has the authority to alter
11 the jurisdiction of circuit courts. *Ex parte Gunn*, No. 1051754
12 (Ala. 2007).

13 (7) Some of the history and comments regarding jury
14 nullification bear repeating. "Jury nullification" simply
15 means the power of the jury to reject a law or the judge's
16 instructions and return a "not guilty" verdict if they are so
17 inclined, and prior to our Civil War, this power was well-
18 known.

19 (8) An attorney could argue law to the jury before
20 the court gave instructions. *Stettinius v. United States*, Fed
21 Car. No. 13, 387 (C.Ct.D.C. 1839) 22 Fed. Car. 1322, 1333
22 quoting *U.S. v. Fenwick* Fed Car. No. 15, 086 (1836). Judges in
23 some western and southern states were not allowed to state law
24 (to overcome judicial interference). 5 *The Law Reporter* 1, 10
25 (1842).

26 (9) The United States Supreme Court later ruled that
27 jurors did not have to be informed of their right to nullify
28 bad laws and unjust convictions. *Sparf and Hansen v. United*

1 States, 15 S.Ct. 273 (1895) (i.e., the judges were entitled to
2 conceal that fact from the jury).

3 (10) A later Supreme Court, *Horning v. District of*
4 *Columbia*, 41 S.Ct. 53, 54 (1920), admitted that jury has the
5 power to bring in verdict in the teeth of both law and facts.

6 (11) Later courts perpetrated the concealment
7 doctrine such as *U.S. v. Calhoun*, 49 F.3d 231, 236 n.6 (6th
8 Cir. 1995), jurors do not have to be informed of power or
9 possible sentence; even defense counsel is "muzzled" in this
10 regard, *Scarpa v. Dubois*, 38 F.3d 1, 11 (1st Cir. 1994),
11 Jurors possess raw power...defense counsel may not press for
12 [W]here a matter of law is complicated with matter of fact,
13 the jury have a right to determine both. Andrew Hamilton,
14 quoted in *The World's Best Orations*, Volume 6, page 341
15 (1923).

16 (12) What judges today are careful to conceal from
17 jury members is that judges are the chief competition to the
18 jury. Moore, *The Jury, Tool of Kings, Palladium of Liberty*,
19 page 159 (1973).

20 (13) The jury is, above all, a political
21 institution, and it must be regarded in this light in order to
22 be duly appreciated. Alexis de Tocqueville, *Democracy in*
23 *America* 293 (P. Bradley rev. ed. 1945) (1835).

24 Section 2. (a) In all criminal proceedings tried
25 before a jury, the court shall permit the defense to inform
26 the jury of its right to judge the facts and the application
27 of the law in relation to the facts in controversy.

28 (b) In order to insure judicial compliance with this
29 act, the following shall be applicable:

1 (1) This statute shall be prominently displayed in
2 every courthouse and every courtroom in this state.

3 (2) Each judge shall instruct the jury as follows:

4 "The laws of this state are established by the vote
5 of the duly elected representatives of your Legislature and
6 are to be presumed as being representative of the will and
7 purpose of the people of this state. As the will and purpose
8 of the people change, our system of government assumes that
9 the representatives of the people will adjust the laws
10 governing the people accordingly. Sometimes, however, laws are
11 passed that do not represent the will of the people, or laws
12 are interpreted in ways that exceed the original scope and
13 intention of the law when it was created. If you as the jury
14 find the evidence shows the defendant violated the law, but
15 you disagree with the law you are being asked to consider as
16 part of your deliberations, and believe such a law should not
17 be enforced, then you have the legal authority to return a
18 verdict of not guilty on the ground of Jury Nullification.

19 "Jury nullification is nothing less than a rejection
20 of a law of this state that has been passed by the state
21 Legislature and signed by the Governor, and for this reason it
22 should never be undertaken lightly. Nevertheless, jury
23 nullification also provides an opportunity for you, as
24 citizens of this state, to inform your government that the
25 laws the defendant is charged with violating exceeds what you
26 consider appropriate and acceptable in our society and should
27 be either repealed or revised.

1 "If you choose to find the defendant not guilty by
2 reason of jury nullification, then you should check the box
3 marked jury nullification on the verdict form."

4 (3) Failure to give this instruction shall result in
5 a mistrial.

6 (4) Failure to give such an instruction shall be a
7 Class C misdemeanor which shall result in prosecution and a
8 minimum three-day jail sentence which shall be mandatory, and
9 may not be suspended.

10 (5) Failure to give such an instruction shall be an
11 impeachable offense.

12 (6) No Alabama State Supreme Court Justice,
13 Appellate Court Judge, or Circuit Court Judge may interpret
14 this statute.

15 (c) Each justice and judge of this state shall read
16 the following and by oath or affirmation confirm that they
17 understand the following concerning jury nullification,
18 namely:

19 (1) "Tis most true, Jurors are Judges of matters of
20 Fact that is their proper Province, their chief business but
21 yet not excluding the consideration of matter of Law, as it
22 arises out of, or is complicated with, and influences the
23 Fact. For to say, they are not at all to meddle with, or have
24 respect to Law in giving their Verdicts, is not only a false
25 position, and contradicted by every days experience but also a
26 very dangerous and pernicious one, tending to defeat the
27 principal end of the Institution of Juries, and so subtilly to
28 undermine that which was too strong to be batter'd down." Sir
29 John Hawles, *The English-man's Right*, pp. 10-11 (1680).

1 (2) "The office of a judge is...not to make any law
2 by strains of wit, or forced Interpretations; but plainly and
3 impartially to declare the Law already established." Sir John
4 Hawles, *The English-man's Right*, p. 10 (1680).

5 (3) "[T]he office of a Judg (as Cook well observes)
6 is jus dicere, not jus dare; not to make any Laws by strains
7 of wit, or forced Interpretations; but plainly and impartially
8 to declare the Law already establisht." Sir John Hawles, *The*
9 *English-mans Right*, p. 10 (1680).

10 (4) "But if by finding against the Direction of the
11 Court in matter of Law, shall be understood, that if the Judge
12 having heard the Evidence given in Court, (for he can
13 regularly know no other, though the Jury may) shall tell the
14 Jury upon this Evidence, the Law is for the Plaintiff, or the
15 Defendant, and the Jury are under pain of Fine and
16 Imprisonment to Find accordingly; then 'tis plain the Jury
17 ought of Duty so to do. Now if this were true, who sees not
18 that the Jury is but a troublesome Delay, of great Charge,
19 much Formality, and no real use in determining right and
20 wrong, but meer Ecchos to sound back the pleasure of the
21 Court; and consequently that Tryals by them might be better
22 abolish'd than continued? which is at once to spit Folly in
23 the Faces of our Venerable Ancestors, and enslave our
24 Posterity." Sir John Hawles, *The English-man's Right*, pp. 28-
25 29.

26 (5) "[F]or the Law of England hath not placed Tryals
27 by Juries to stand between men and Death or Destruction to so
28 little purpose as to Pronounce men Guilty, without regard to

1 the nature of the Offence, or to what is to be Inflicted
2 thereupon." Sir John Hawles, The English-man's Right, p. 39.

3 Section 3. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 4. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.