



Written by [Alex Newman](#) on September 19, 2012

New Hampshire Jury Nullifies Major Felony Marijuana Case

Following the [adoption of a new state law on jury nullification](#) in June, a New Hampshire jury nullified its first major felony marijuana case on September 14 when jurors decided to free Doug Darrell, a 59-year-old father of four grown children who was growing illegal plants in his backyard. Activists hailed the decision as a significant victory for the jury nullification movement, which aims to revive awareness about the power inherent in juries to protect citizens from overzealous prosecutors and bad laws by nullifying cases.



Darrell, a Rastafarian piano tuner and woodworker who has been married for almost four decades, was arrested after a National Guard helicopter spotted some marijuana plants on his property in Barnstead. State prosecutors charged him with cultivation, a felony that could have carried up to seven years in prison.

It was clear that he had been growing the marijuana — nobody disputed that. Eventually Darrell was offered a deal that would have allowed him to avoid jail time and fines in exchange for a misdemeanor guilty plea. He refused, however, citing his religion and its view that marijuana is a sacrament. So the case went to trial.

Jurors, led by liberty-minded activist Cathleen Converse of the [Free State Project](#), decided Darrell should be set free. “Mr. Darrell is a peaceful man, he never deals with the darker elements of society and he grows for his own personal religious and medicinal use,” Converse said during an exclusive interview with Free Talk Live, a freedom-oriented talk-radio program. “I knew that my community would be poorer rather than better off had he been convicted.”

So, to prevent that, she helped convince other jurors to do as the defense suggested: vote their conscience and declare Darrell a free man. “Many of us wondered what kind of precedent this would set,” Converse continued. “But after chewing on all of the possibilities and re-reading the definition of nullification, we all decided that the only fair thing to do was to vote with our consciences and acquit the defendant of all charges.”

Jury nullification, of course, is a time-tested practice that goes back to before the American Declaration of Independence. Essentially, it occurs when members of a jury decide to free somebody even though prosecutors prove beyond a reasonable doubt that the accused did indeed violate a criminal statute.

Juries have historically relied on nullification for various reasons including to reject unjust or unconstitutional laws, to free defendants in cases where laws have been misapplied by overzealous officials, and more. During alcohol prohibition it became commonplace as jurors refused en masse to convict their compatriots for drinking illegal substances.

Before that, Supreme Court Chief Justice John Jay informed a jury in 1794 that jurors have “a right to



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take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.” Numerous other Supreme Court justices and Founding Fathers have touted the practice, too. And despite being largely overlooked today, activists across America are trying hard to build awareness about it.

In June, those nullification advocates secured a major victory. New Hampshire Gov. John Lynch [signed HB 146 into law](#) allowing defendants to inform jurors about the jury’s “right to judge the application of the law in relationship to the facts in controversy.” That law does not officially take effect until January, but it has already made waves throughout the state’s judiciary system.

“It’s a really important development,” Darrell’s defense attorney Mark Sisti [told](#) the *New Hampshire Union Leader*, adding that most state residents have no problem with moderate marijuana use by adults and that legislatures across America are rethinking their laws on the controversial plant. “We’re moving along a path we should have been on years ago.”

Sisti acknowledged, though, that the judge’s decision to instruct the jury about nullification was crucial to the victory. Judge James O’Neill, following the state’s model jury instruction on nullification, [told jurors](#) that “even if you find that the State has proven each and every element of the offense charged beyond a reasonable doubt, you may still find the defendant not guilty if you have a conscientious feeling that a not guilty verdict would be a fair result in this case.”

While warning that jury nullification is not a “get-out-of-jail-free card,” Sisti celebrated the ruling and the clearing of his client. “Cases like this shouldn’t be brought,” he was quoted as saying. “And when they are brought, I think that safety valve, that nullification safety valve, is very important. Other states had better start waking up, because without it, people are going to be convicted of very serious charges through hypocrisy. The jury’s going to think they can’t do anything else, and that’s wrong.”

The prosecutor who brought charges against Darrell for his illegal plants also admitted that the judge’s decision to instruct the jury on nullification was key to the government’s defeat, but she tried to downplay its effect going forward. “I don’t see it as being that significant in changing our practice and the practice of the court,” the prosecutor [told](#) the *Union Leader*.

Cathleen Converse, the juror who reportedly helped push the case for nullification, however, is among a growing number of Americans who believe that there should be a victim for something to be considered a crime. “Mr. Darrell seemed to be the only victim here,” she explained after the acquittal. “Almost everyone said this just shouldn’t have happened to these peaceful people.”

In New Hampshire — the official state motto is “Live Free or Die” — such views have become increasingly influential. That’s in part due to the birth of the Free State Project, an ongoing plan to have thousands of liberty-minded people from across America move to the Granite State to build a more libertarian society. FSP activists have already elected more than a few lawmakers, and their influence continued to grow.

“So far, over 12,750 participants have pledged to relocate to the state, and more than 1,000 have already moved, over a dozen of which are currently elected members of the New Hampshire House of Representatives,” said Free State Project President Carla Gericke in a press release touting the acquittal. “Once here, participants are free to pursue their own causes and I’m excited to see that progress is being made.”

While the Darrell case probably will not be shutting down the [unconstitutional, trillion-dollar federal drug war](#) anytime soon, analysts said it was an important milestone in several respects. For one, it



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illustrates the growing opposition to imprisoning people for drug use, which has been a key contributor to the fact that the United States has far more prisoners per capita than any other nation in the world. Well over a dozen states have already [nullified federal marijuana laws](#).

More importantly, perhaps, the acquittal of Doug Darrell represents a significant revival of jury nullification. The [centuries-old practice has always been a critical tool in the fight against government tyranny](#). So, with the victory in New Hampshire and many more anticipated in the near future, liberty-minded activists across America are hoping the trend spreads quickly to other states.

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