



Written by [Warren Mass](#) on May 1, 2013

## Calif. Assembly Passes Bill to Allow Non-citizens to Serve on Juries

California's Assembly passed a bill on April 25 that would permit non-U.S. citizens to serve on juries. If the bill, AB 1401, passes the Senate and is signed into law by Governor Jerry Brown, California would become the first state to allow this practice. Brown has not taken a public position on the bill.



The [Fresno Bee](#) reported that AB 1401 would remove the exclusion of "lawfully present immigrants" from jury selection lists that are compiled in part from California's Department of Motor Vehicles records. The bill was written by seven Democrats on the Assembly Judiciary Committee, including the chairman, Assemblyman Bob Wieckowski (D-Fremont).

AB 1401 would not change other qualifications for jury service: Jury candidates still must be at least 18, must live in the county that is making the summons, must be proficient in English, and must have no felony convictions.

As of 2008, California led the nation with the highest percentage of non-U.S. citizens at 14.9 percent of the population.

The [Los Angeles Times](#) cited Wieckowski's assertion that the legislation would help ensure an adequate pool of jurors, help immigrants integrate into American society, and make juries more representative of California.

Juries "should reflect our community, and our community is always changing," Wieckowski said. "It's time for California to be a leader on this."

Assemblyman Rocky Chavez (R-Oceanside), who voted against the bill, explained his opposition by saying that the measure was unfair to both the prospective jurors and any defendants whose fates they could decide, reported the *Times*. Non-citizens may not want the responsibilities of American citizenship, said Chavez, and people on trial should not be judged by jurors who "might not have the same cultural experience."

The *Times* also quoted Matthew McCusker, president of the American Society of Trial Consultants, who expressed mixed feelings about the legislation.

On the positive side, McCusker stated: "The real goal is to have people in the community make a determination about guilt or innocence. There could be a value in adding different perspectives into the deliberation process." But McCusker also questioned whether non-citizens might have linguistic or cultural impediments when it comes to understanding the American legal system. "Jury instructions are



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remarkably complex,” he said. “If you add in further barriers, whether it’s language or cultural, you’re adding more difficulties in following the rule of law.”

Assemblywoman Diane Harkey (R-Dana Point) expressed her reason for opposing the bill in a statement to the AP: “Jury selection is not the problem. The problem is trial court funding. I hope we can focus on that. Let’s not break something; it’s not broken now. Let’s not whittle away at what is reserved for U.S. citizens. There’s a reason for it.”

Another opponent of the bill, Assemblyman Tim Donnelly (R-Twin Peaks), said that jury duty is a privilege that should be granted only to citizens. “We can’t completely erase the distinction between being a citizen and not,” Donnelly was quoted by the *Fresno Bee* as saying. “There are certain requirements and responsibilities of being a citizen, and jury duty is one of those.... This effort is misguided, premature and ultimately would not essentially benefit anyone.”

However, Assembly Speaker John A. Pérez disagreed, stating:

What I think is problematic is that some people hear about something new for a group of immigrants and immediately think there must be something wrong.

It’s about upholding the standards of our justice system to ensure that everyone is truly afforded a jury of their peers.

The *Bee* reported that Pérez compared the exclusion of non-citizens from juries to the prior exclusion of women and minority groups, a comparison that classifies non-citizens — regardless of national origin — as a separate demographic requiring exceptional legal protection.

One argument against allowing non-citizens to serve on juries that was not employed by opponents to AB 1401 is that such new residents are in all likelihood completely unfamiliar with the concept of jury nullification. (Indeed, even most citizens are unfamiliar with jury nullification, which remains a highly controversial issue.)

Briefly (according to a definition posted by [Wikipedia](#)): “Jury nullification in the United States has its origins in colonial British America. Similar to British law, in the United States jury nullification occurs when a jury in a criminal case reaches a verdict contrary to the weight of evidence, sometimes because of a disagreement with the relevant law.”

Despite almost universal opposition to jury nullification by modern judges, there is historical precedent for it. In the 1794 case *Georgia v. Brailsford*, Chief Justice John Jay instructed the jury:

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.

Concurrence with the concept that juries have not only the power but the obligation to nullify unjust rulings of a judge came from John Adams, who wrote, “It is not only [the juror’s] right, but his duty ... to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court.”

In his article, “[New Hampshire Passes Jury Nullification Law](#),” Joe Wolverton II, J.D. referred readers to the website of the [Fully Informed Jury Association](#) for its explanation of the reason why jury nullification is a good idea and one supported by constitutional principles of freedom from tyranny:



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The primary function of the independent juror is not, as many think, to dispense punishment to fellow citizens accused of breaking various laws, but rather to protect fellow citizens from tyrannical abuses of power by the government.

The Constitution guarantees you the right to trial by jury. This means that the government must bring its case before a jury of the people if government wants to deprive any person of life, liberty, or property. Jurors can say no to government tyranny by refusing to convict.

Considering that few native-born U.S. citizens possess the historical and legal knowledge to utilize jury nullification — when and where it might be appropriate — it is unfathomable that a non-citizen (unless they immigrated from Great Britain, which shares our legal traditions) would find the concept comprehensible.

The California assemblymen opposed to AB 1401 stated their cases well and addressed the more obvious problems in allowing non-citizens to serve on juries. We have added another, less obvious, one.



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